

# State of the rule of law in the European Union

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## Reports from National Human Rights Institutions

2023



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## About

This report is the result of the fourth joint rule of law reporting cycle conducted by ENNHRI Members from the EU Member States through ENNHRI. It brings together reports developed by ENNHRI members on their national rule of law situations. It also offers an overview of trends, challenges, and recommendations developed by ENNHRI on the basis of the country reports received. These reports will later form part of ENNHRI's broader regional report on the state of the rule of law in Europe.

## Title

State of the rule of law in the European Union - Reports from National Human Rights Institutions – 2023

## Disclaimer

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

## Acknowledgements

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## Executive Summary

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National human rights institutions (NHRIs), as independent, state-mandated bodies with a broad human rights mandate, play a key role as pillars for the respect of fundamental rights, democracy and rule of law. The extent to which a state has in place an NHRI able to independently and effectively carry out its mandate in line with the UN Paris Principles is regarded by international and regional actors – in particular by the European Commission in its annual rule of law reports – as indicative of the state’s respect for rule of law and checks and balances more broadly.

Within the European Network of National Human Rights Institutions (ENNHRI) – a network connecting all NHRIs across the EU and the Council of Europe region – European NHRIs continue their strategic engagement in regional rule of law mechanisms through joint rule of law reporting, with a view to feeding international and regional policy processes aimed at monitoring, promoting and protecting the rule of law, fundamental rights and democracy across Europe. This year’s more targeted annual reporting focuses on certain rule of law areas, as well as on the implementation of regional actors’ – including the European Commission’s – recommendations on rule of law, to further facilitate more impacts at regional and national level and advance the rule of law, democracy and fundamental rights in the European Union. This year again, all NHRIs from the EU have contributed to ENNHRI’s joint reporting on the rule of law.

### Key findings

ENNHRI’s members from EU Member States report on persisting challenges affecting the European rule of law and human rights environment, namely:

- follow-up by State authorities to the European Commission’s country specific rule of law recommendations is not consistent and in quite some cases NHRIs reported that state authorities did not follow-up the recommendations. Overall,

ENNHRI members from European Union Member States thus underline the **need to strengthen the effective implementation of recommendations issued by the European Commission;**

- No significant progress has been made in the EU countries without an NHRI established in line with UN Paris Principles, despite the European Commission's recommendations, with the exception of the Czech Republic. Furthermore, **numerous issues negatively impact on the enabling space for NHRIs across the EU to carry out their mandates effectively and independently**, including: challenges in due consultation of NHRIs by national authorities in relevant legislative and policy-making processes; an unsatisfactory level of follow-up to NHRIs' recommendations; undue limitations in access to information; lack of adequate resources to carry out NHRIs' mandates effectively; lack of transparent and objective criteria for the appointment and dismissal of heads of institutions; as well as, in some cases, harassment and obstruction of work of the NHRIs.
- **Worsening conditions in which human rights defenders (HRDs) and civil society organisations (CSOs) act.** CSOs and HRDs continue to be in a number of Member States the object of attacks and harassment, including legal harassment and Strategic Lawsuits Against Public Participation (SLAPPs), particularly targeting those working on sexual and reproductive rights, LGBTI+ rights, rights of migrants and asylum seekers and environmental protection. ENNHRI members in a number of EU countries raise particular concerns about laws restricting civic space and CSOs' activities (namely impacting freedom of association and assembly) as well as laws criminalising HRDs' activities, in particular in the area of migration. ENNHRI's members reporting also reveals the insufficient CSOs' access to and involvement in law and policy making by state authorities, as well as obstacles in access to funding.

- **Unsatisfactory level of the effective and timely implementation of European Courts' judgments**, which is impacted by the financial, legal, structural and organizational obstacles identified across EU Member States. This is also perpetuated sometimes by the lack of procedural framework for the effective fulfilment of the state's obligation to implement the European Courts' judgments at national level.
- **The significant yet relatively unknown impact of the use of Artificial Intelligence (AI) on the rule of law, democracy and fundamental rights**. This is exacerbated by the lack of national laws regulating the use of AI, lack of transparency of the use of AI by state authorities, including when carrying out secret surveillance, as well as the risks of discrimination and negative impact on vulnerable groups, in particular when AI is used for automated administrative decision making. ENNHRI members also flag the general insufficient public awareness regarding the use of AI and its impacts on rule of law, democracy and human rights.

## ENNHRI's key recommendations

On the basis of the findings of NHRIs across EU Member States, ENNHRI formulates following key recommendations to the European Commission, as well as other relevant regional and international actors, and Member States:

1. Take concrete steps to advance the implementation by state authorities of the European Commission's recommendations on the rule of law, timely and in cooperation with NHRIs;
2. Firmly support the establishment and enabling space for independent and effective NHRIs in full compliance with the Paris Principles;
3. Support, protect and empower human rights defenders and civil society space which is fundamental for rule of law;

4. Prioritise and take firm steps to support the implementation of European Courts' judgments, in consultation with NHRIs and civil society;
5. Ensure a human rights based approach to the use of Artificial Intelligence (AI) and pay particular attention to its impact on the rule of law, democracy and fundamental rights, through institutionalised cooperation with NHRIs;
6. Address other persisting challenges for the rule of law, including structural human rights issues while acknowledging that the rule of law and fundamental rights are mutually reinforcing.

These key recommendations are each developed further in the next section.



## ENNHRI's key recommendations

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### **1. Take steps to advance the implementation by state authorities of the European Commission's recommendations on the rule of law, timely and in cooperation with NHRIs.**

In order to further advance the implementation by state authorities of the European Commission's recommendations on the rule of law, ENNHRI suggests the Commission to:

- Make its recommendations more concrete and actionable, and develop a timeline for implementation by state authorities as well as a dedicated mechanism to monitor the implementation process;
- Include consistently implementation of recommendations in country-specific rule of law dialogues, at national and Council level;
- Consider lack of implementation of recommendations as evidence for triggering enforcement actions, such as infringement proceedings and the rule of law conditionality regulation.

Moreover, ENNHRI suggests relevant EU and other regional actors as well as EU Member States to:

- Include and consult, on a consistent basis, NHRIs in country-specific rule of law dialogues, at national level (in particular in parliamentary debates) and at Council level; including to help determine the most relevant topics in the current domestic context to be addressed, and to help ensure all relevant domestic counterparts (including from civil society) will be included in the dialogues;
- Continue and further strengthen support to NHRIs and ENNHRI to build capacity to address rule of law issues across the EU.

## 2. Firmly support the establishment and enabling space for independent and effective NHRIs

To support the establishment, independence and effectiveness of NHRIs in the EU Member States, ENNHRI recommends the Commission:

- Report on the extent of follow-up to last year's recommendations on NHRIs, and strengthen the recommendations when they have not been adequately followed-up by state authorities;
- Continue to call for the establishment of NHRIs in full compliance with the Paris Principles in EU Member States where they do not exist yet;
- In line with [Council of Europe Committee of Ministers Recommendation 2021/1 on NHRIs](#), include the recognition of key challenges faced by NHRIs across EU Member States more consistently across its report and recommendations, and call on Member States to address those, including:
  - ensuring transparent, merit-based and pluralistic selection and appointment of heads of NHRIs as well as transparent and objective dismissal procedures;
  - ensuring adequate resources for NHRIs to carry out the full breath of their mandate independently and effectively, ensuring independent budget allocation, and allocating sufficient additional resources when NHRIs are being given additional mandates;
  - ensuring timely and reasoned responses and effective follow-up by state authorities to NHRI recommendations;
- Consider adopting a dedicated Commission Recommendation on the establishment of an NHRI in each EU Member State, as well as EU standards that should be met to ensure independent, effective and pluralistic NHRIs in EU Member States;

Furthermore, ENNHRI:

- Calls on the EU Member States without an NHRI (especially Italy, Malta and Romania) to urgently advance on the establishment of an NHRI in compliance with the Paris Principles, and to make use of ENNHRI's technical advice in doing so;
- Encourages the Czech government to swiftly advance with the adoption of legislative amendments, in consultation with the Czech Public Defender, to enable it to function as NHRI in compliance with the Paris Principles;
- Encourages all relevant state authorities, as well as relevant international actors such as the European Commission, to support the implementation of the SCA recommendations, in consultation with NHRIs.

### **3. Support, protect and empower human rights defenders and civil society space**

Taking into account the 2023 Council Conclusions on civic space, the Commission 2022 report on the Charter of Fundamental Rights, and FRA's annual reports on civic space, ENNHRI recommends the EU to:

- Enhance and expand its monitoring and reporting of challenges affecting civic space, civil society organisations and rights defenders within its annual rule of law report;
- Develop a policy framework (eg.: European Civil Society Strategy) to enable, safeguard and protect civic space at national and at EU level.
- Support and concretely advance on the creation of an 'EU HRD protection mechanism', to swiftly detect and act in response to attacks against HRDs, including in cases of reprisals against HRDs for their work on the implementation of the EU fundamental values/ acquis;
- counter effectively the abuse of laws and legal harassment, in particular Strategic Lawsuits Against Public Participation (SLAPPs) in EU Member States by adopting the EU anti-SLAPP Directive with a broad scope and strong safeguards to

counter SLAPPs effectively, as put forward in the European Commission's proposal.

Moreover, ENNHRI recommends Member States ensure and the Commission support:

- effective national HRD protection laws and mechanisms, including helplines and legal assistance, taking into account international standards. While doing so, Member States should consult with their NHRI, which can be allocated a specific mandate as HRD protection mechanism or can support such mechanism, provided it is independent and is allocated adequate resources;
- on the basis of impact assessments and broad consultation, revise the laws and practices resulting in undue restrictions on the work of civil society organisations and human rights defenders, in particular regarding rules on registration and dissolution of civil society organisations, reporting & transparency obligations, and criminalization of activities;
- an enabling, flexible and accessible financing framework for all civil society organisations and human rights defenders, eliminating any undue obstacles to access to funding, including from foreign sources;
- the guarantee to the right to freedom of assembly and association as well as freedom of expression, as a crucial element of a functioning rule of law framework and fundamental for civic space and HRDs;
- the full and effective transposition of the EU Whistleblower Directive;
- increased cooperation with civil society actors in law and policy making processes at both national and EU level, including by securing timely, inclusive and meaningful consultations, and participation of persons in a vulnerable situation and their representative associations.
- adoption of national laws to counter SLAPPs in all domestic cases as well as abuse of laws in criminal procedural law, and revise national laws on defamation

to safeguard freedom of expression, in line with the Commission's Recommendation on SLAPPs and in consultations with journalists, civil society and NHRIs;

- implementation of the Commission's Recommendation on SLAPPs, including by carrying out awareness-raising, trainings, providing support (also financial support) to victims of SLAPPs and developing ethical standards for legal professionals.

#### **4. Prioritise and take firm steps to support the implementation of European Courts' judgments, in consultation with NHRIs and civil society**

Building on the initial Commission findings on implementation of European Courts' judgments in its last annual report on the rule of law, ENNHRI recommends the Commission:

- Continue reporting on the implementation of European Court judgments in each EU Member State and to consider further highlighting its relevance such as through including in country-specific recommendations;
- Follow-up on implementation of European Court judgments with Member States, including through national dialogues, while initiating infringement proceedings in case of persistent non-implementation of the CJEU judgments relating to systemic issues which violate EU law, including fundamental rights issues;
- when lack of implementation of a CJEU ruling is connected to pre-existing infringement proceedings, follow-up through enforcement measures such as blocking of EU funds;
- Reinforce the pivotal importance of the implementation of European Courts' judgments for a vibrant society, and raise awareness on this of the public as well as state authorities and other relevant actors, adapted to the domestic context.

ENNHRI recommends Member States to:

- Make available judgments and decisions issued by the European Courts in an open and accessible manner, as well as steps taken by the state to implement those judgments (such as national action plans);
- Ensure efficient institutional and procedural frameworks for the effective fulfilment of States' obligation to implement the judgments of the European Courts at national level, including stakeholders such as NHRIs and civil society;
- implement the European Courts' judgments pending (in particular Grand Chamber/ leading judgments), including by tackling financial, legal, structural and organizational obstacles which impact the effective and timely implementation.

In light of the recognised potential and roles of NHRIs to advance the implementation of European Courts' judgments, ENNHRI recommends the EU and Council of Europe, as well as EU Member States to:

- support the development of procedures of the CJEU and the ECtHR to strengthen meaningful participation of NHRIs;
- engage and consult with NHRIs to advance implementation of European Courts' judgments;
- provide sufficient resources and capacity building opportunities for NHRIs on implementation of European Courts' judgments, including through ENNHRI.

#### **5. Ensure a human rights based approach to the use of Artificial Intelligence (AI) and pay particular attention to its impact on the rule of law, democracy and fundamental rights, in cooperation with NHRIs**

Considering the rapid development and application of AI by state authorities and the significant yet still relatively unknown impacts this has on rule of law, as well as fundamental rights and democracy, ENNHRI recommends:

The Commission, as well as other European and international actors:

- To address emerging challenges concerning fundamental rights and rule of law, including in particular the use of AI and its impacts on the rule of law, fundamental rights and democracy, with due attention to the collective and societal harm caused by AI systems, in relevant monitoring and reporting, including the annual report on the rule of law;
- Ensure a human rights based approach is integrated in the EU Artificial Intelligence Act, the Council of Europe Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, as well in the relevant standardization processes and in the development of impact assessments.
- Ensure a human rights based approach is integrated in the oversight mechanisms and ensure necessary safeguards to guarantee the right to effective redress for all individual, collective or societal harm caused by AI systems. For example, not only natural and legal persons directly affected by AI may file complaints, but also by public interest groups and consumer organisations.

Member States with support from the Commission and other regional actors:

- To raise awareness of state authorities and the general public as well as other relevant stakeholders on the use of AI and its impacts on rule of law, as well as on fundamental rights and democracy, including by facilitating public debates;
- To ensure transparency of the use of AI by state authorities and its impacts on rule of law, democracy and fundamental rights, including by establishing independent domestic oversight, publicly accessible registers and by ensuring independent impact assessments in advance and during the use of AI;
- ensure multistakeholder consultations, in particular consult with NHRIs and other relevant stakeholders, including independent bodies such as data protection authorities, in the development of laws and policies on AI to ensure the

safeguarding of rule of law, democracy and fundamental rights as well as adoption of a human rights based approach;

- support provision of additional powers, resources (financial, technical and staffing) as well as capacity-building of NHRIs to enable them to further develop their capacity on safeguarding rule of law, democracy and fundamental rights in relation to AI.

**6. Address other persisting challenges for the rule of law, including structural human rights issues while acknowledging that the rule of law and fundamental rights are mutually reinforcing**

In view of the intrinsic interconnection between the rule of law and fundamental rights, ENNHRI recommends the Commission to further recognise and consider systemic fundamental rights issues in its actions to address the rule of law, including its annual rule of law reporting.



## Introduction

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### About ENNHRI and NHRIs

The [European Network of National Human Rights Institutions \(ENNHRI\)](#) brings together over 40 [National Human Rights Institutions](#) (NHRIs) across wider Europe, including 29 ENNHRI members in 25 EU Member States. It provides support for the establishment and strengthening of NHRIs, a platform for collaboration, solidarity, and a common voice for NHRIs at the European level to enhance the promotion and protection of human rights, democracy and the rule of law in the region.

NHRIs are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote fundamental rights at the national level. NHRIs act as bridge-builder between the state and civil society. NHRIs cooperate with a variety of civil society actors, and bring an accurate overview of the human rights situation, with recommendations, to governments, parliament and other state bodies. They are established and function with reference to the [UN Paris Principles](#) which require NHRIs to carry out their work independently and promote respect for fundamental rights, democracy and rule of law.

NHRIs are unique in that their independence, pluralism, accountability and effectiveness is periodically assessed and subject to international accreditation, carried out by the UN Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI) with reference to UN Paris Principles. This [accreditation](#) reinforces NHRIs as key interlocutors on the ground for rights holders, civil society organisations, state actors, and international bodies.

## NHRIs as a rule of law indicator and indispensable part of checks and balances in each state

NHRIs are a key pillar for the respect of human rights, democracy and rule of law and the establishment and functioning of NHRIs has become accepted as an indicator for a healthy rule of law in European countries. The vital role NHRIs play in human rights and rule of law has been recognised by a wide range of actors at the level of the EU, Council of Europe, and United Nations, among others. At the EU level, the crucial role of NHRIs is reaffirmed in the European Commission's [annual rule of law reports](#), [the EU Strategy to Strengthen the application of the Charter of Fundamental Rights in the EU](#) as well as the Council conclusions on [strengthening the application of the Charter](#), and on the [role of civic space in protecting and promoting fundamental rights](#).

Recently, in its [2022 Rule of Law Report](#) the European Commission emphasized that NHRIs are an indispensable element in the system of checks and balances in a healthy democracy and that restrictions to their operating space can present a threat to the rule of law. More specifically, the European Commission in its first-ever country specific [recommendations](#) encourages Member States to establish NHRIs in line with UN Paris Principles in countries where NHRIs are not yet created (in Czechia, Italy, Malta, Romania) and to strengthen the enabling environment for the functioning of NHRIs ((in Croatia, Lithuania, Poland, Slovenia). Such initial recognition by the Commission opens the door for further acknowledgment of the cross-regional challenges NHRIs face in the EU and how these can be addressed, such as through a dedicated Recommendation from the Commission fleshing out the EU standards for ensuring the establishment and strengthening of independent and effective NHRIs to advance the implementation of the EU acquis.

## Rule of law reporting by NHRIs – updated methodology

Besides being themselves an indicator of the state of rule of law, independent and effective NHRIs are reliable sources of information on the rule of law situation at the national level. Given the close interconnection and mutually reinforcing relationship between the rule of law, democracy and human rights, NHRIs are in a key position to report and participate in rule of law monitoring initiatives in a consistent manner as an integral part of their mandate to promote and protect human rights.

Building on their monitoring functions, their cooperation with state and non-state actors and their role as interlocutors between the state and general public, NHRIs have great potential in raising awareness, mobilising support and maximising impacts of international and regional actors' efforts at the national level. At the same time, NHRIs' engagement in rule of law monitoring mechanisms is seen by NHRIs themselves as an opportunity to further promote and enhance the impact of their work and recommendations, by contributing to a more comprehensive and informed assessment of existing challenges at national and regional level and helping policy makers, at both national, regional and international level, identify the most appropriate responses and interventions.

Based on this understanding, ENNHRI has supported and advanced European NHRIs' engagement in EU and regional rule of law mechanisms, based on a common methodology and coordinated approach. Such engagement led to the publication since 2020 of annual regional ENNHRI Reports on the State of the Rule of Law in the [European Union](#) and [wider Europe](#), compiling European NHRIs' country submissions and an overview of trends reflecting NHRIs' perspectives on the state of the rule of law across the region.

ENNHRI's annual Rule of Law Reports published to date and the follow-up engagement of ENNHRI and NHRIs successfully fed into key policy processes, in particular at EU-level. ENNHRI's common reporting mainly has served for ensuring timely ENNHRI

response to annual consultations by relevant counterparts (UN Secretary-General report on NHRI reprisals, [EU rule of law monitoring cycle](#), [EU annual report on implementation of the Charter](#), Enlargement Package, Eastern Partnership), and has also been the basis for submissions to some specific thematic initiatives when they emerged ([EU SLAPP initiative](#) (2021), [EU Freedom of the Media Act](#) (2022), [Defence of Democracy Package](#) (2023)). In addition, ENNHRI's reporting has been used by members for their own follow-up with actors at national level, as deemed relevant by them.

Under the new ENNHRI Strategic Plan 2022-2025, more effective promotion and protection of human rights, rule of law and democracy is prioritised. To achieve this goal, ENNHRI members held the discussions on how to further develop ENNHRI's rule of law work and its impact on regional and national level to meet the strategic objectives and effectively contribute to safeguarding the rule of law and human rights in Europe. On the basis of those discussions, the updated approach to ENNHRI's joint work on rule of law has been agreed for more focused reporting and further impact-oriented actions in this area.

The updated methodology envisages an annual targeted rule of law reporting, focused more on impacts from reporting and only on certain rule of law areas, while further emphasising the interlinkage between human rights and rule of law. Therefore, ENNHRI's 2023 annual rule of law reporting covers more in-depth the following topics:

- NHRIs and their enabling space;
- implementation of regional actors and NHRI recommendations on the rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation;
- structural human rights issues affecting the rule of law through reporting on implementation of European Courts' judgments (with possible reasons for lack of implementation/ focus on cases under enhanced supervision by the CoE's Committee of Ministers);

- deepened analysis on one key priority area of rule of law, which in 2023 is civil society space and human rights defenders;
- Artificial Intelligence, which remains a thematic priority for ENNHRI in 2023, and which contributes to ENNHRI's and NHRIs' actions concerning this topic, including through regional engagement (concerning the EU Artificial Intelligence Act and the Council of Europe Convention on Artificial Intelligence, Human Rights Democracy and Rule of Law), and NHRI capacity-building.
- other rule of law issues of specific relevance in members' national context.

From 2023 onwards, ENNHRI's rule of law reporting will have a thematic focus annually, with a broader report to be developed every 4 years in the beginning of the new ENNHRI's strategic plan. In 2023, ENNHRI's report ensures more in-depth analysis on the area of civil society space and the enabling environment for civil society actors and human rights defenders with a view to feed into policy developments as means to advance progress on the ground, such as:

- Ongoing civil society and European Parliament's proposals on an EU strategy in support of civil society, and for stronger HRD protection mechanisms in Europe;
- The upcoming EU Defence of Democracy [Package](#);
- The adoption of the EU [Directive](#) on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (SLAPPs);
- The implementation of the [EU Guidelines on Human Rights Defenders](#), which constitute the policy framework and provide the operational means for protecting human rights activists in third countries; and
- Follow-up to the European Commission's 2022 [report](#) on the application of the Charter of Fundamental Rights in the EU;

- Council of Europe's review of the implementation of [Recommendation 2018\(11\)](#) on the protection and promotion of civic space, including recommendations on NHRIs' contribution to civic space.

More targeted ENNHRI annual rule of law reporting supports effective advocacy and meaningful engagement with regional stakeholders and other relevant rule of law actors to achieve positive change for rule of law, human rights and democracy across the region. Therefore, on the basis of ENNHRI's rule of law reporting, ENNHRI continues to further engage with regional policy and standard-setting initiatives relevant to the rule of law. Moreover, ENNHRI's annual rule of law reporting contributes to developing capacity building activities for NHRIs to support their efforts and impacts to secure the rule of law in each European country.

Notably, again in 2023, all NHRIs from EU Member States have contributed to ENNHRI's joint reporting. For those Member States where ENNHRI has no member, the ENNHRI secretariat provided information on the progress concerning the establishment of an NHRI.

## Overview of trends, challenges and recommendations

### Implementation of recommendations on rule of law (from previous year) and actions undertaken by NHRIs to facilitate implementation

#### Towards greater State authority follow-up to European Commission recommendations on rule of law:

##### ENNHRI key recommendations:

In order to further advance the implementation by state authorities of the European Commission's recommendations on the rule of law, ENNHRI suggests the Commission to:

- Make its recommendations more concrete and actionable, including an envisaged timeline for implementation by state authorities;
- Support state authorities to set-up a dedicated mechanism to monitor and follow-up state authorities' implementation of rule of law recommendations;
- Include consistently implementation of recommendations in country-specific rule of law dialogues, at national and Council level;
- Consider lack of implementation of recommendations as evidence for triggering enforcement actions, such as infringement proceedings and the rule of law conditionality regulation.

ENNHRI welcomes the significant improvement through the inclusion of country-specific recommendation in the Commission's rule of law reporting. This significantly advances the actionability, and potential impacts from the Commission's monitoring and reporting exercise at domestic level. In line with NHRIs' monitoring of the follow-up by Member States, some concrete actions have been monitored by NHRIs on the side of State authorities. However, follow-up by State authorities appears not consistent

across recommendations and in quite some cases NHRIs reported that state authorities did not follow-up recommendations. Overall, ENNHRI members from European Union Member States thus underline the need to strengthen the effective implementation of recommendations issued by the European Commission, as particularly reported also by ENNHRI members from Belgium, Estonia, Lithuania Poland, Slovakia and Slovenia.

In relation to the area of **judiciary independence and access to justice**, numerous EU NHRIs flag the ongoing judicial reforms at national level in follow-up to regional actors' recommendations, including those of the European Commission, such is the case for Bulgaria, Cyprus, Denmark, Greece, Poland, Romania and Spain. ENNHRI members from Belgium and Germany highlight the provision of additional resources to enhance the capacities of the judiciary.

However, some NHRIs also report on the lack of specific follow-up actions on the part of state authorities to implement relevant recommendations regarding justice systems, such as in Slovakia, while the NHRI in Poland flags the delay of the judicial reform due to referral of the reform to the Constitutional Court and persisting gaps in the judicial framework impacting judicial independence.

The Commission's recommendations to safeguard **media freedom** in the European Union led to legislative amendments in Luxembourg to ensure better protection of journalists and new regulations regarding freedom of expression in Greece. In Croatia, a governmental working group was established to develop a legislative proposal to counter Strategic Lawsuits Against Public Participation (SLAPPs) targeting journalists and to carry out trainings on this topic to legal professionals. On the other hand, in Germany, the NHRI reported that the plans to create a legal basis for right to information for journalists at federal level were not taken forward despite the recommendations.

Recommendations in the area of **anticorruption** led to some legislative reforms, as noted by NHRIs from Greece, Estonia, the Netherlands and Spain. For example in



Estonia, an anticorruption network consisting of state authorities was established and a public registry of meetings with lobbyists, while the Netherlands adopted a code of conduct for ministers.

As regards the Commission's recommendations on healthy **checks and balances, and particularly on NHRIs**, limited follow-up is reported. Some EU NHRIs, namely from Estonia and Greece, reported the insufficient steps to enhance public access to information, as recommended by the Commission.

In relation to NHRIs, ENNHRI's member from the Czech Republic notes positively the ongoing legislative works on the amendment of the Act on the Public Defender to ensure the institutional framework's compliance with UN Paris Principles, following the European Commission's country specific recommendation issued in its 2022 Rule of Law Report. Also in Croatia, some follow-up to the recommendations of the Commission on the NHRI has been reported, at the end of 2021 a multisectoral advisory body (composed of public administration representatives and civil society) was set up and in practice it, among other tasks, was used to discuss how to advance implementation of the NHRI's recommendations.

On the other hand, ENNHRI's members in other EU Member States, such as from Lithuania and Romania, report a **lack of any state actions to ensure implementation of the EC recommendations on NHRIs**. In Romania, no progress has been made to establish the NHRI, while in Lithuania the NHRI is still facing a lack of adequate resources to carry out its mandate.

As will be further developed in the dedicated section on NHRIs below, ENNHRI recommends the Commission to further develop its recommendations in relation to NHRIs, including by **more consistently addressing key issues NHRIs are facing across EU Member States**, such as the lack of adequate resources or lack of follow-up by state authorities of NHRI recommendations. In particular, the Commission should continue to urge the final four EU Member States which do not yet have an NHRI to advance in

doing so, and should speak up in support of NHRIs which face obstruction and intimidation in the context of carrying out their work. Moreover, ENNHRI encourages the Commission to further highlight in its annual communication and the relevant country specific chapters the key role that the NHRIs play in monitoring and evaluating the state of the rule of law in Member States.

**A dedicated EU-wide Recommendation from the Commission requiring an NHRI in each EU Member State and spelling out the EU standards that should be met to ensure independent, effective and pluralistic NHRIs in EU Member States** would be particularly relevant to prevent any weakening of existing NHRIs in EU Member States, especially in a wider context of continued deterioration of the rule of law and shrinking civic space.

One way **to further advance implementation of its recommendations** is for the Commission to make its recommendations more concrete and actionable, including an envisaged timeline for implementation by state authorities. In parallel, the Commission could recommend and support state authorities to set-up dedicated mechanisms to follow-up implementation of rule of law recommendations, and ensure monitoring and follow-up of steps taken by state authorities. Furthermore, it is key that the recommendations developed by the Commission in its rule of law reporting and related follow-up by state authorities are consistently included in country-specific rule of law dialogues, at national and Council level. When the monitoring and reporting of the Commission reveals systemic issues and violations, it is of key importance that the Commission makes use of such information to launch infringement proceedings against EU Member States.

## NHRI's follow-up actions supporting implementation of the Commission's recommendations

### **ENNHRI key recommendations:**

In order to further support NHRIs to advance domestic implementation of the European Commission's recommendations on the rule of law, ENNHRI suggests relevant EU, other regional actors and EU Member States:

- Include, on a consistent basis, NHRIs in country-specific rule of law dialogues, at national level (in particular in parliamentary debates) and at Council level;
- Consult NHRIs in advance of national rule of law dialogues, to help determine the most relevant topics in the current domestic context to be addressed, and to help ensure all relevant domestic counterparts (including from civil society) will be included in the dialogues;
- Continue and further strengthen support to NHRIs and ENNHRI to build capacity to address rule of law issues across the EU.

ENNHRI welcomes the enhanced inclusion of NHRIs in the Commission's national rule of law dialogues, and the Commission's outreach with all NHRIs across EU Member States in this context. In line with the Paris Principles, NHRIs' engagement with the Commission, including in the context of the Commission's annual rule of law reporting, fits within their overall mandate and role to engage with international counterparts and to monitor and report on the implementation of international obligations. It is worth noting that greater engagement of NHRIs in the preparation of the Commission's annual rule of law report positively impacts the awareness or perception of the NHRIs by state authorities and general public as one of the key actors in monitoring and reporting on the rule of law at national level. EU NHRIs thus report on a range of activities they have undertaken to advance implementation of the Commission's annual rule of law report and recommendations within the context of their own work.

Such NHRI actions include issuing relevant **opinions and recommendations** on rule of law challenges, as reported by Belgium, Croatia, Cyprus, Estonia, Greece, Finland, Ireland, Luxembourg, the Netherlands, and Poland. EU NHRIs also addressed **public statements in the media**, as reported by the members in Estonia, Latvia, Luxembourg and Poland. At the same time, NHRIs from Cyprus, Luxembourg, Poland and Slovakia held **meetings with state authorities and/or with EU Institutions** to raise awareness regarding the recommendations on the rule of law.

Several efforts were made by ENNHRI members to **advocate for changes in the legal framework** which respond to some of the Commission's recommendations, as for example in the Czech Republic where the consultations on a draft law on the NHRI were launched in 2022, or in Croatia where the NHRI - being a part of the working group – contributes to developing a legislative proposal to counter SLAPPs.

NHRI members in Latvia and the Netherlands each developed **close cooperation and joint advocacy with CSOs** to support the implementation of the Commission's recommendations. NHRIs also issued **studies and reports, as well as participated in public hearings**, as indicated by ENNHRI members in Belgium, Cyprus, Finland, and Lithuania.

In order for the Commission and EU Member States to further support NHRIs' follow-up of its report and recommendations, some suggestions are set out below.

Notably, while NHRIs have been invited to roundtables organised by the Commission (and EU FRA) on the rule of law, it would be relevant to also include NHRIs in **national parliamentary debates** on the implementation of the Commission rule of law reports. Notably, such a role for NHRIs at such parliamentary debates would mirror and interlink with the formal role and mandate NHRIs have to, at least annually, report to national parliaments and make recommendations. The inclusion of the independent voice of NHRIs at parliamentary debates on the rule of law can be conducive to leverage implementation of the Commission's recommendations at national level. The Croatian

NHRI, for example, includes a dedicated chapter on the rule of law in its annual report it submits and presents at the Croatian parliament.

Furthermore, NHRIs should also be included in the **rule of law dialogues at the Council**. Such approach would run in line with the independent participation rights of NHRIs (at least those with A-status accreditation) to intervene in intergovernmental procedures, such as the EU Human Rights Dialogues or the execution of judgments by the Committee of Ministers of the Council of Europe, or the Universal Periodic Review at the United Nations.

## Establishment, independence and effectiveness of NHRIs

### ENNHRI key recommendations:

Building on the initial Commission recommendations on NHRIs in its last annual report, ENNHRI recommends the Commission:

- Report on the extent of follow-up to last year's recommendations on NHRIs, and strengthen the recommendations when they have not been adequately followed-up by state authorities;
- Include the recognition of key challenges faced by NHRIs across EU Member States<sup>1</sup>, and to call on Member States to address those, including:
  - ensuring transparent, merit-based and pluralistic selection and appointment by heads of NHRIs and independent and transparent and objective dismissal procedures;
  - ensuring adequate resources to carry out the full breath of their mandate independently and effectively;
  - ensuring timely and reasoned responses to NHRI recommendations, and developing processes to facilitate effective follow-up by state authorities of NHRI recommendations;

- Consider adopting a dedicated Commission Recommendation spelling out the requirement to establish an NHRI in each EU Member State, as well as EU standards that should be met to ensure independent, effective and pluralistic NHRIs in EU Member States.

ENNHRI welcomes the inclusion of initial recommendations on NHRIs from the European Commission in its 2022 rule of law report. Such recommendations were included in respect of all EU Member States where no NHRI is established yet (Czech Republic, Italy, Malta, Romania), as well as in relation to some EU Member States to address challenges that NHRIs face in relation to their enabling environment, including in Croatia, Lithuania, Poland, and -somewhat implicitly- Slovenia.

As reported above, the Commission recommendations have been followed up in a few Member States, notably the Czech Republic and Croatia. At the same time, NHRIs in other countries have reported a lack of follow-up by their authorities, while in the Czech Republic and Croatia the follow-up is only partially meeting the Commission's recommendations. Thus, ENNHRI recommends the European Commission report on the extent of follow-up to last year's recommendations on NHRIs, and strengthen the recommendations when they have not been followed-up by state authorities.

Moreover, as reported in more detail in the sections below, the initial recommendations on ensuring an enabling environment for NHRIs made to a few EU Member States in the European Commission's 2022 Rule of Law Report reflect issues which affect significantly more NHRIs across EU Member States.<sup>1</sup> Thus, ENNHRI encourages the Commission to consider a more consistent integration of recommendations on NHRIs in EU Member States, and to actively engage with NHRIs and ENNHRI in follow-up. In particular, ENNHRI would welcome recommendations and engagement in relation to:

- selection and appointment of heads of NHRIs and their dismissal procedures;
- ensuring adequate resources for NHRIs to carry out the full breath of their mandate independently and effectively;

- ensuring timely and reasoned responses to NHRI recommendations, and to develop processes to facilitate effective follow-up by state authorities of NHRI recommendations.

Furthermore, in a context of deterioration of the rule of law across the EU, ENNHRI also encourages the Commission to develop an EU-wide Recommendation spelling out the need for an NHRI in each EU member State and outlining EU standards that should be met to ensure independent, effective and pluralistic NHRIs in EU Member States. Taking into account the particularities of the EU context, including NHRIs' role in the implementation of the EU fundamental values and the Charter, the Commission could develop EU standards on NHRIs, building on and complementing other international standards such as the UN Paris Principles and the Council of Europe CM Recommendation 2021/1 on NHRIs.

Such a Recommendation from the European Commission would be key to preventing the weakening of existing NHRIs in EU Member States, and to ensure they will continue to be key actors to advance EU fundamental rights and values domestically, including the rule of law.

### **Developments concerning NHRI establishment and accreditation.**

#### **ENNHRI key recommendations:**

In line with the commitments in the European Commission Action Plan on the implementation of the Charter of Fundamental Rights and the Council Conclusions on fundamental rights (2021) and civic space (2023), ENNHRI:

- Calls on the EU Member States without an NHRI (especially Italy, Malta and Romania) to urgently advance on the establishment of an NHRI in compliance with the Paris Principles, and to make use of ENNHRI's technical advice in doing so;

- Encourages the Czech government to swiftly advance with the adoption of legislative amendments, in consultation with the Czech Public Defender, to enable it to function as NHRI in compliance with the Paris Principles;
- Requests the European Commission to continue to call for the establishment of NHRIs in full compliance with the Paris Principles in EU Member States where they do not exist yet, and to seek consultation with ENNHRI as relevant.

Since ENNHRI's last rule of law report, **three NHRIs from EU Member States were reviewed by the Sub-Committee on Accreditation (SCA)**, namely those from Belgium, Cyprus, and Poland.

The accreditation status of the Cypriot NHRI was upgraded from B to A-status in October 2022. In March 2023, the Polish NHRI was reaccredited with A-status. The SCA also accredited the Belgian Federal Institute for Human Rights (FIRM-IFDH) for the first time, with a B-status. As a result, Belgium currently has two institutions accredited as NHRIs being partially compliant with the UN Paris Principles (UNIA and FIRM-IFDH). This means that as of March 2023, in the European Union there are currently 19 states with an A-status accredited NHRI, 3 states with a B-status accredited NHRI, and four states where no internationally accredited NHRI exists.

**Two other NHRIs in EU Member States will be reviewed by the SCA in October 2023**, namely from Germany and Greece. The reaccreditation of the Lithuanian NHRI was initially scheduled for October 2023 but it will likely be postponed to March 2024. In April 2023, the Swedish Institute for Human Rights has also requested the SCA for a first-time accreditation as an NHRI, which may be scheduled for October 2024. On the accreditation of the Swedish Institute, the Swedish Equality Body has indicated it will give up its B-status accreditation.

**There have been no substantial developments in EU Member States without an accredited NHRI, with the exception of the Czech Republic.** In Czechia, the



government, in consultation with the Czech Public Defender, is taking concrete steps in relation to possible legislative amendments that have the potential to further align the mandate of the Czech Public Defender to that of a fully-fledged NHRI and pave the way for its future accreditation. However, in the other EU countries concerned (Italy, Malta and Romania) there have not been significant and concrete steps towards paving the way for establishing an NHRI or strengthening the mandate of existing institutions to bring them closer to that of an NHRI.

Regarding the situation in Italy, ENNHRI is informed that there are several legislative proposals for discussion at the level of the Chamber of Deputies. However, this has been the situation for many years and there is no clear indication as to real prospects of a legislative proposal being close to adoption. In Malta, a revised Bill on the Human Rights and Equality Commission was presented to the Maltese Parliament in 2019, and ENNHRI is unaware of considerable progress on this legislative proposal since then. In Romania, there has been no change in the legislative framework of the Romanian Institute for Human Rights. 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 accreditation.

## Follow-up to SCA Recommendations and related developments

### ENNHRI key recommendation:

ENNHRI encourages all relevant state authorities, as well as relevant international actors such as the European Commission, to support the implementation of the SCA recommendations, in consultation with NHRIs.

With a view to deepening the information available in relation to NHRIs' enabling environment in-country, this year's NHRI reporting provides further information on their follow-up to SCA recommendations as well as on related developments. While the information varies from country to country, **most NHRIs from EU countries have taken concrete steps to implement the SCA recommendations** and to further strengthen their institutional framework.

The NHRI reports point to the **need for inputs by other actors to achieve full implementation of some SCA recommendations**. For example, some recommendations require actions from the state, for which international support could be beneficial. ENNHRI has a key role to play in this regard, but other regional actors such as the European Commission and other EU institutions could liaise with NHRIs to further understand their needs.

It is, in this context, worth flagging that the implementation of recommendations from the SCA lie often in the hands of the national parliament or government. While NHRIs are encouraged to advocate for these actors to take steps towards realising the SCA recommendations, for instance through a legislative reform or allocation of additional resources, **regional actors such as EU institutions, could further encourage national authorities to implement relevant SCA recommendations**. It is important that regional actors engage and discuss with NHRIs on the best avenues to support them in the implementation of the SCA recommendations.

## Regulatory framework

### ENNHRI key recommendation:

In line with [Council of Europe Committee of Ministers Recommendation 2021/1 on NHRIs](#), ENNHRI recommends Member States to ensure and the European Union, including the Commission, to support:

- strong NHRI regulatory frameworks, preferably at constitutional level (Latvia, Luxembourg) and the strengthening of NHRIs' mandates to enable them to promote and protect all human rights in their country (Belgium, Slovakia, Lithuania)
- transparent, merit-based and pluralistic selection and appointment of heads of NHRIs (Luxemburg, Sweden), and an independent and objective dismissal process (Poland).

A number of ENNHRI members from EU member States report **changes in the national regulatory frameworks** in which they operate. For instance, some NHRIs were granted **new competences**. In Germany, the German NHRI started acting as a National Rapporteur Mechanism on Gender-Based Violence and a National Rapporteur Mechanism on Trafficking in Human Beings. The NHRIs in Ireland and Latvia were given new mandates to carry out the role of National Preventative Mechanisms. The Austrian NHRI appointed interdisciplinary expert commissions which are entitled to regularly visit and inspect places of detention under Optional Protocol to the Convention Against Torture. Following the transposition of the EU directive on whistleblowers, the NHRI in Croatia was granted a mandate to receive complaints from people reporting violations of EU law in the context of whistleblowers' protection.

In addition, ENNHRI members from Ireland, Hungary and Sweden started carrying out the roles of as an Independent Monitoring Mechanism for the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Meanwhile, the Greek

NHRI was appointed as a member with voting rights in the Monitoring Committee on EU Migration Funds 2021-2027.

Some EU NHRIs also report on **legislative reforms concerning their institutions other than additional mandates**. Namely, the Finnish NHRI underlines the changes introduced to further clarify the scope of tasks of some national human rights bodies, including the Finnish NHRI. The Greek NHRI points out the legislative amendment on the composition and term of its Board, while the Cypriot NHRI highlights the regulation that clarifies the term of the head of institution, to maximum two terms (6 years), the formalization of the selection and appointment procedure of the Commissioner (including a public call for expression of interest for the post of the Commissioner), and the establishment of the Advisory Committee of Human Rights. Moreover, the NHRIs from Estonia, Greece and Latvia point out that some measures to ensure more budgetary independence of the NHRI have been introduced.

Despite some examples of positive changes, ENNHRI members from Belgium, Latvia, Lithuania, Luxembourg, the Netherlands, Slovakia and Sweden stress the **need to further strengthen their regulatory frameworks**. For example, NHRIs from Latvia and Luxembourg stress the need to **introduce a constitutional basis** for their functioning, while other ENNHRI members advocate for **strengthening and increasing the scope of their mandates** (Belgium, Slovakia, Lithuania, and the Netherlands).

In particular, NHRIs from Lithuania and Sweden point to the need to **improve the procedure of appointment of the head of institutions** by, for instance, ensuring transparent requirements established by law and civil society participation, while the NHRI from Poland flags **vaguely specified grounds for the dismissal** of the head of the institution in the law. The NHRI from Poland also points out several gaps in its regulatory framework – namely the fact that it is unclear who heads the NHRI after the end of term of the head of institution (and lack of appointment of the successor).

Furthermore, some EU NHRIs also underline the need to **introduce legal provisions to improve state authorities' follow-up to NHRI's recommendations**, such is the case in Luxembourg, Slovakia, and Sweden. Lastly, NHRIs from Slovakia and Slovenia emphasize that it is vital to introduce by law regulations ensuring **budgetary independence of the NHRI**.

### Enabling and safe space for NHRIs

#### ENNHRI key recommendations:

In line with [Council of Europe Committee of Ministers Recommendation 2021/1 on NHRIs](#), ENNHRI recommends that Member States provide and the Commission support:

- Timely and reasoned response(s) to NHRI recommendations, and processes to facilitate effective follow-up by state authorities of NHRI recommendations (Belgium, Cyprus, Czech Republic, Finland, Luxembourg, Netherlands, Romania, Poland and Slovakia);
- Adequate resources for NHRIs to carry out the full breath of their mandate independently and effectively (France, Germany, Greece, Latvia, Lithuania, Netherlands and Slovakia), ensuring independent budget allocation (Estonia and Slovenia), and allocating sufficient additional resources when NHRIs are being allocated additional mandates (Belgium and France);
- NHRIs' timely and adequate access to information (Croatia and Luxembourg), and to policy-makers and legislators, including timely and adequate consultations on the human rights implications of draft legislation and policies (Czech Republic, Denmark, Germany, Greece, France, Luxembourg, Poland, Slovakia and Sweden),
- addressing without delay any undue challenges and threats to NHRIs while carrying out their mandate, including harassment and obstruction of their work (Slovakia, Sweden, Poland).

A number of EU NHRIs reported that their state authorities have a generally **good awareness of the NHRI's mandate, independence and its role** (for instance in Bulgaria, Cyprus, Estonia, Finland, Germany, Latvia, Portugal and Spain). Moreover, the Luxembourgish NHRI acknowledges the greater awareness on the NHRI's role by some state authorities as well as good cooperation between human rights actors.

Furthermore, some ENNHRI members highlight their ongoing **good cooperation with state authorities**, for instance by being invited to comment on draft legislation as in Latvia and the Netherlands, having regular meetings with relevant authorities such as in the Netherlands, and a high level of implementation of NHRIs' recommendations by state authorities, such as in Latvia. It is also worth noting that some EU NHRIs – namely from Croatia, Cyprus, Greece, Luxembourg and Slovakia – report on **improvement of the cooperation with state authorities**. Thus, NHRIs from Croatia, Greece, Luxembourg and Slovakia confirm being invited by the government to discuss the follow-up to their recommendations. Moreover, the NHRI from Cyprus notes the higher implementation rate of its recommendations.

Unfortunately, despite some positive examples of how some states try to enhance enabling space for NHRIs, this year's rule of law reporting reveals **persisting challenges that impact on NHRIs' functioning, effectiveness and enabling space**.

Numerous EU NHRIs report on **limited access to legislative and policy-making processes and difficulties in cooperating with national authorities**, which is the case in particular in Greece, Luxembourg, Slovakia and Sweden, where ENNHRI members are not being systematically invited by state authorities to comment on draft laws and policies. ENNHRI members from the Czech Republic, Denmark, Germany, Poland, Slovakia and Sweden also flag the problem of **too little time envisaged by state authorities for public consultations on draft legislation** which hinders the work of NHRIs and their ability to provide recommendations in a timely, effective and impactful manner.

Moreover, similarly to last year, the problem of **state authorities' limited follow-up to NHRIs' recommendations** persists across EU Member states, as particularly flagged by ENNHRI members from Belgium, Croatia, Czech Republic, Finland, Luxembourg, Netherlands, Romania, Poland and Slovakia. For instance, the NHRIs from Latvia, Luxembourg and Slovakia point out that state authorities are not legally obliged to carry out follow-up actions to NHRI's recommendations. The ENNHRI Member from the Czech Republic alerts that its annual reports were not taken into consideration or timely discussed by the Parliament for several years. It is noted that this institution is not yet accredited as an NHRI, for which the UN Paris Principles require Parliamentary debate on its annual report. As such, further alignment of the Czech Public Defender's legislation with international standards, and a future accreditation as an NHRI, could lead to improvements in this regard.

Furthermore, the NHRIs from Croatia and Luxembourg describe **limitations in their access to information**. For instance, the Luxembourgish NHRI raises concerns over lack of access to positions of the government in relation to EU regulatory initiatives such as the EU's Corporate Sustainability Due Diligence Directive, while the NHRI from Croatia still does not have access to all data on the treatment of irregular migrants, including the access to the information system of the Ministry of Interior. 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.

Importantly, this year's reporting confirms that some NHRIs in the European Union may also be subjected to **threats**. Most far reaching, ENNHRI member from Sweden reports on a proposal from a political party to close the institution while this proposal has not been rebutted by ruling parties, thus posing a threat to the very existence of this newly established institution.

Moreover, some EU NHRIs also reveal that they face **harassment and obstruction while carrying out their mandate**. This was the case in Slovakia, where the 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 the capacity of National Preventive Mechanism.

Lastly, the **problems of inadequate budget and insufficient human resources for NHRIs** are also widely raised by ENNHRI members from EU Member States. Even though, in some EU countries the NHRIs were given some additional resources (such is the case of NHRIs in Cyprus, Czech Republic, Estonia, Germany, Greece, Latvia, Luxembourg, Poland, Slovakia, Spain), in many cases, – as flagged in particular by ENNHRI members from Czech Republic, Luxembourg and Poland - such a budget increase did not meet the NHRI's reasonable needs, including due to the impact of the high inflation rate in EU countries. The NHRIs from Croatia, France, Greece, Latvia, Lithuania, Netherlands and Slovakia firmly advocate for adequate budget increases to secure the effectiveness of the institutions. In addition, the NHRIs from Estonia and Slovenia call for ensuring the structural independence of the NHRIs' budgets. Notably, some EU ENNHRI members raise the problem of a **lack of additional resources provided to carry out additional, specific mandates**, such is the case Belgium and France, while in Croatia there is a lack of political will to appoint an additional Deputy who would support fulfilment of the institution's additional mandates.



## Human rights defenders and civil society space

### ENNHRI key recommendations:

**Taking into account the 2023 Council Conclusions on civic space, the Commission 2022 report on the Charter of Fundamental Rights, and FRA's annual reports on civic space, ENNHRI recommends that the Commission:**

- Enhance and expand its monitoring and reporting of challenges affecting civic space, CSOs and rights defenders within its annual rule of law report;
- Take account of the findings from the rule of law reporting on civic space and rights defenders while developing a policy framework (eg.: European Civil Society Strategy) to enable, safeguard and protect civic space at national and at EU level.
- Support and concretely advance on the creation of an 'EU HRD protection mechanism', to swiftly detect and act in response to attacks against HRDs, including in cases of reprisals against HRDs for their work on the implementation of the EU fundamental values/ acquis.

The identification of civic space and human rights defenders by NHRIs as a key area to prioritise in addressing the rule of law in the EU, runs in parallel with the current EU policy momentum to advance the protection of civic space and rights defenders in the EU. While NHRIs are human rights defenders themselves, they also have a mandate and role in promoting and protecting other human rights defenders. Notably, recent [Council Conclusions](#) (7388/23) recognise that civil society organisations and human rights defenders are 'an indispensable element in the system of checks and balances in a healthy democracy' and that 'unjustified restrictions to their operating space can present a threat to the rule of law.' In particular, the Council Conclusions also invite the Commission to 'protect CSOs and human rights defenders by continued efforts to foster and protect democracy, the rule of law, and fundamental rights across all relevant policy areas.'

In such a wider political context, the relevance for the Commission to deepen and expand its monitoring and reporting on civic space and rights defenders within its rule of law annual reports, and to ensure integration of the findings in relevant ongoing policy initiatives across the Commission, only becomes more important. This is even more so, given the continuous overall trend of further deteriorating civic space across the EU -as reflected also in NHRIs' reports- and the need to systemically address those challenges at EU and Member State level.

### Undue challenges and threats to civic space and HRDs

#### ENNHRI key recommendations:

ENNHRI recommends Member States develop and the Commission support:

- effective national HRD protection laws and mechanisms, including helplines and legal assistance, while taking into account international standards and guidance in this respect (including from the UN, OSCE ODIHR, and [International Service for Human Rights](#)). While doing so, Member States should consult with their NHRI, which can be allocated a specific mandate as HRD protection mechanism or can support such mechanism, provided it is independent and is allocated adequate resources;
- on the basis of impact assessments and broad consultation, revise the laws and practices resulting in undue restrictions on the work of civil society organisations and human rights defenders, in particular regarding rules on registration and dissolution of civil society organisations, reporting & transparency obligations, and criminalization of activities;

- an enabling, flexible and accessible financing framework for all civil society organisations and human rights defenders, eliminating any undue obstacles to access to funding, including from foreign sources;
- the guarantee to the right to freedom of assembly and association as well as freedom of expression, as a crucial element of a functioning rule of law framework and fundamental for civic space and HRDs;
- the full and effective transposition of the EU Whistleblower Directive.

Only some positive findings are reported this year by NHRIs in relation to civic space and HRDs. For instance, NHRIs flag the adoption of **national plans, programmes and strategies** relevant to supporting a vibrant civic space. For example in Estonia and in Denmark, where focus is dedicated on combatting hate crimes and raising awareness on this topic by the police. In Finland, updated **guidelines** of the Finnish Foreign Service **for supporting human rights defenders** (applicable to third country HRDs) were adopted.

EU NHRIs report that HRDs and civil society organisations continue to be a **target of increasing attacks, hate speech, smears and threats** in many EU countries. These attacks particularly target HRDs and civil society organisations working **on sexual and reproductive rights, LGBTI+ rights, rights of migrants and asylum seekers or environmental protection**, as reported by numerous ENNHRI members, namely from Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Greece, Latvia, Lithuania, Netherlands, Romania, Poland and Slovakia.

Several NHRIs also mention in particular the use of **hate speech** in social media against CSOs and HRDs, as reported by the NHRI from Bulgaria, Estonia, France, Finland and Slovakia. In France, hate speech was used by the police and far-right supporters against the sister of a victim, murdered by the police. The NHRI in Belgium reports that organisations and institutions working on human rights topics are often victims of threats and harassment.

This year, EU NHRIs underline the rising number of **attacks on climate activists**. NHRIs from Germany and France report on the criminalisation of actions of climate defenders. For example, in Germany some federal governments have executed preventive detention of climate activists. The German NHRI urged state authorities to exercise great caution when considering preventative detention. It was also worried that the activists have been called terrorists. In France, the NHRI reports on numerous worrying developments, such as the prosecution and imprisonment of climate protesters while designating them as eco-terrorists, SLAPPs from companies against environmental defenders, as well as ongoing financial cuts to environmental CSOs. In Croatia, environmental defenders also are victims of SLAPPs.

NHRIs in Lithuania and in Slovakia report **attacks on HRDs and CSOs working on women and reproductive rights**. In Lithuania, HRDs working on rights of marginalised groups sometimes face discrimination themselves.

Moreover, EU NHRIs report **attacks and threats to HRDs and CSOs working in the area of migration**. The NHRI in Poland reports the lack of actions to support migrants at the Polish-Belarusian border, illegal pushbacks and restricted access to provide aid by HRDs and CSOs, as well as lack of access to border for journalists. The NHRI from Croatia also alerts about a denial of access of CSOs providing legal aid to migrants living in reception centres. Also, the NHRI from France reports the state's disruption of CSOs' and HRDs' humanitarian work, for example in Calais. Additionally, the NHRI from Greece reports the criminalization of the search and rescue operations at sea by private vessels. In some countries, providing support to migrants is obstructed by state authorities and even criminalised and prosecuted, as is reported by NHRIs in Latvia and Lithuania.

Moreover, EU ENNHRI members raise concerns over **laws violating freedom of association**, as reported in France, Germany, Greece and Poland. This relates to, for instance, introducing restrictive rules to register CSOs, **limited access to funding**, lack of tax privileges, and vague and disproportionate legal provisions on dissolution of

associations. Especially, ENNHRI members raise concerns over restrictions in access to funding by CSOs, such as in Croatia – where state funding available for CSOs was reduced, in France – where the arbitrary and vague legal provisions may lead to subsidies' cuts for CSOs, and in Slovakia, where most of the funding is project-based, leading to a **lack of stability of the functioning of the CSOs**.

Similarly, ENNHRI members report **violations of the right to assembly**, as reported in Belgium, France, Ireland, Netherlands and Romania. For example, the NHRI from Poland reported on disproportionate police intervention against peaceful protesters.

Meanwhile, in Belgium and the Netherlands, restrictive provisions on an obligation to ask for authorization of a protest and possible administrative sanctions raises concerns due to lack of proportionality. In Ireland three bills are in legislative process to enable the use of technologies by police authorities without an effective oversight complaint mechanism, which might restrict rights to freedom of assembly and freedom of expression.

Furthermore, some ENNHRI members note the **inadequate transposition of the EU Whistle-Blowers Directive**. For example, ENNHRI's member from Romania flags that ineffective transposition hinders the investigation of complaints, while the Luxembourgish NHRI raises concerns over a delay in implementation of the Directive by state authorities.

EU NHRIs also point to legislative gaps related to protection of civic space and human rights defenders. They report a **lack of human rights defenders protection mechanism**, as for instance underlined, in particular, by the NHRIs in Croatia and Finland. Moreover, EU NHRIs note with regret a **lack of legislation which would sufficiently address fundamental rights challenges and safeguard civic space**, including for minorities, women, and environmental defenders, as reported by ENNHRI members in Croatia, Ireland and Romania.

As developed in [ENNHRI's resource on how NHRIs can defend HRDs](#), and as illustrated further below through this year's NHRI rule of law reports, NHRIs play an important role in the promotion and protection of civic space and HRDs. In view of the many attacks and threats to HRDs in the EU, ENNHRI will build on its activities to support NHRIs in their protection of HRDs. Notably, and as is the case beyond the EU<sup>2</sup>, NHRIs can also be mandated explicitly as HRD protection mechanisms, if they are independent and have adequate resources and capacities.

### Access to and involvement of civil society actors in law and policy making

#### ENNHRI key recommendations:

Taking into account the 2023 [Council Conclusions](#) on civic space, the Commission 2022 report on the Charter of Fundamental Rights and FRA's annual reports on civic space, ENNHRI recommends Member States and the Commission to:

- Increase cooperation with civil society actors in law and policy making processes at both national and EU level, including by securing timely, inclusive and meaningful consultations, and participation of persons in a vulnerable situation and their representative associations.

Reporting by ENNHRI members from EU member States confirms **serious shortcomings in access to and involvement in law and policy making for civil society organisations**. ENNHRI members in Cyprus, Denmark, Estonia, Greece, Lithuania, Luxembourg, Poland, Romania, Slovakia and Slovenia expose several gaps affecting consultation frameworks and practices. These include **lack of public consultations, underrepresentation of vulnerable groups in such consultations, consultations conducted in a very short time or by using accelerated procedures, as well as limited accessibility of public consultations and public information**. For example, ENNHRI members from Estonia, Ireland and Romania, report the need to strengthen consultation with vulnerable groups, and better access to public information,

especially for HRD and CSOs working on certain issues. The insufficient engagement of CSOs and HRDs in law and policy making is also affected by a lack of human rights impact assessment that should be carried out by state authorities when drafting laws, as flagged by NHRIs in Estonia.

At the same time only some ENNHRI members from EU member States **confirm good access and involvement of civil society actors** in law and policy making at national level, namely in Greece, and in the Netherlands. The NHRIs from Germany and Latvia highlight an improvement in their legislation to ensure more inclusiveness of civil society actors in the policy-making processes. Legislative changes and proposals regarding access to information and documents were introduced to promote civic space and cooperation in Belgium and Slovakia.

## Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)

### ENNHRI key recommendations:

Taking into account the ongoing legislative initiative of the Commission on an anti-SLAPP Directive, ENNHRI recommends the Council of the European Union to:

- counter effectively the abuse of laws and legal harassment, in particular Strategic Lawsuits Against Public Participation (SLAPPs) in EU Member States by adopting the EU anti-SLAPP Directive with a broad scope and strong safeguards to counter SLAPPs effectively, as put forward in the European Commission's [proposal](#),

ENNHRI recommends the Member states to:

- adopt national laws to counter SLAPPs in all domestic cases as well as abuse of laws in criminal procedural law, and revise national laws on defamation to safeguard freedom of expression, in line with the Commission's Recommendation on SLAPPs and in consultations with journalists, civil society and NHRIs;
- take firm steps to implement the Commission's Recommendation on SLAPPs, including by carrying out awareness-raising, trainings, providing support (also financial support) to victims of SLAPPs and developing ethical standards for legal professionals.

ENNHRI members from EU member States confirm that **CSOs, HRDs and journalists are facing threats from abuse of law, in particular Strategic Lawsuits Against Public Participation (SLAPPs)**. This is in particular the case for Belgium, Bulgaria, Croatia, Greece, Estonia, the Netherlands, Poland, Romania, and Slovakia. For example, in Belgium, Bulgaria, Croatia, Estonia and the Netherlands, CSOs, HRDs and journalists are threatened with SLAPPs for expressing critical opinions. In Poland, CSOs and HRDs working on LGBT and women rights are reported to often face SLAPPs. In Greece, the



NHRI expresses concerns regarding an **increase in criminal cases against people providing services to migrant and refugees at the borders.**

A **lack of state authorities' actions and legislative measures to combat SLAPPs** is also outlined by several EU NHRIs, namely from Greece, Luxembourg, Netherlands and Slovakia. However, the NHRI from Lithuania welcomes the recent amendments to the Code of Civil Procedure which allows the dismissal of a case in which the abuse of procedural rights (and harm towards defendant's activities) is identified.

Also on a positive note, the NHRI from Germany notes that state authorities gave more attention to this systemic issue because of the EC recommendations on SLAPPs, and consulted stakeholders for input on the European Commission's anti-SLAPP recommendations. Similarly, in Slovakia, a focus on protection of journalists was included in upcoming governmental strategy, while in Croatia there are ongoing legislative works on the new act to introduce an early detection and dismissal mechanism for SLAPPs.

It is worth noting that EU NHRIs undertake actions to support victims of SLAPPs. In line with the Commission's Recommendation on SLAPPs, ENNHRI members from Germany, Romania and Slovakia conduct **more advocacy regarding the need to ensure effective protection of journalists.** Moreover, ENNHRI members from Belgium and Romania are **focal points on SLAPPs**, while the NHRI from Poland provides an example of the CSOs establishing a joint working group to counter SLAPPs and support victims of abusive lawsuits. In Romania, the institution plans to organise awareness-raising campaigns regarding SLAPPs and trainings for journalists, as requested by the state authorities.

In order to further build the awareness and capacity of NHRIs in tackling SLAPPs, ENNHRI will include this in capacity-building of NHRIs at its 2023 NHRI Academy, taking place in June.

## NHRI role in promoting and protecting civil society space and human rights defenders

In line with the UN Paris Principles, NHRIs are pluralistic institutions, reflective of the various strands of civil society in a country, and function as bridge-builders between the state and civil society, including through close cooperation with CSOs in carrying out their daily work.

This role of NHRIs is also reflected in their 2023 reporting. Many EU NHRIs report on their **regular cooperation with CSOs on thematic areas** in the past year, including in Croatia, Cyprus, Estonia, France, Ireland, Luxembourg, Poland, Slovakia, Slovenia and Spain. EU NHRIs also report on **advocacy** work to support the protection and promotion of civil society space over the past year, namely in Bulgaria, Croatia, Finland, Luxembourg and Slovakia. The NHRIs from Belgium, Croatia, Cyprus, Estonia, Poland have echoed issues flagged by CSOs in their **recommendations and opinions** to state authorities. EU NHRIs have also conducted **systematic monitoring on civic space and HRDs**, for example for the purposes of dedicated reports, studies and data collection, namely in Belgium, France, Greece, Latvia, Slovakia and Slovenia.

Some EU NHRIs also report on their provision of **legal assistance** to CSOs and HRDs over the past year. In particular, this relates to victims of SLAPPs as reported by ENNHRI members from Estonia and in Romania. On the other hand, some NHRIs also carry out more practical assistance – NHRIs from France and Germany, for example, support the protection programs for settlement of foreign HRDs. The NHRI from Ireland established a granting scheme for CSOs focusing on the rights of migrant women, persons with disabilities, the Traveller community, and access to accommodation.

Further examples of successful cooperation between NHRIs, CSOs, and HRDs over the past year are also illustrated by **joint meetings and roundtables** with state authorities and CSOs, as reported by NHRIs from Estonia, France, Latvia, Luxembourg, the Netherlands, and Slovenia, as well as **trainings** conducted by NHRIs from France and

Latvia to CSOs and HRDs. EU NHRIs have also been involved in promotion of work by CSOs and HRDs, such as by **awarding prizes**, as reported by NHRIs from France and Latvia.

## Implementation of European Courts' judgments

### ENNHRI key recommendations:

Building on the initial Commission findings on implementation of European Courts' judgments in its last annual report on the rule of law, ENNHRI recommends the Commission:

- Continue reporting on the implementation of European Court judgments in each EU Member State and to consider further highlighting its relevance such as through including in country-specific recommendations;
- Follow-up on implementation of European Court judgments with Member States, including through national dialogues, while initiating infringement proceedings in case of persistent non-implementation of the CJEU's judgments relating to systemic issues which violate EU law, including fundamental rights issues;
- when lack of implementation of a CJEU ruling is connected to pre-existing infringement proceedings, follow-up through enforcement measures such as blocking of EU funds.

As recognised by the European Commission in its 2022 rule of law report, the track record of implementation of European Court judgments is an important indicator for the functioning of the rule of law in a country. The reasons behind this are two-fold: because the subject-matter of the judgments include rulings concerning the independence and impartiality of the judiciary and the right to fair trial as well as other structural human rights issues affecting society; and because the implementation of judgments is inherently a rule of law issue, which is fundamental to a system of checks

and balances.<sup>3</sup> Thus, this year EU NHRIs' rule of law reports include consistent attention for implementation of regional judgments, and include an assessment by NHRIs on the reasons behind the challenges in implementation of European Court judgments in their country.

### Implementation of European Courts' Judgments by EU Member States

#### **ENNHRI key recommendations:**

ENNHRI recommends the European Commission, and other international actors, to:

- Reinforce the pivotal importance of the implementation of European Courts' judgments for a vibrant society, and raise awareness on this of the public as well as state authorities and other relevant actors, adapted to the domestic context;

ENNHRI recommends Member States to:

- Make available judgments and decisions issued by the European Courts in an open and accessible manner, as well as steps taken by the state to implement those judgments (such as national action plans);
- Ensure efficient institutional and procedural frameworks for the effective fulfilment of States' obligation to implement the judgments of the European Courts at national level, including stakeholders such as NHRIs and civil society
- Implement the European Courts' judgments pending (in particular Grand Chamber/ leading judgments), including by tackling financial, legal, structural and organizational obstacles which impact the effective and timely implementation.

In their national submissions, ENNHRI members from EU Member States provided country-specific information on the implementation of judgments of European Courts. The majority of ENNHRI members reflected on the process of implementation of judgments issued against states by the European Court of Human Rights (ECtHR), while

some NHRIs also included observations on the issues with the implementation of the judgments of the Court of Justice of the European Union (CJEU), namely in infringement cases against states that failed to implement EU law. Reporting by EU NHRIs identifies common problems preventing the effective and timely implementation of European Courts' judgments, which are valid for both the ECtHR and CJEU judgments.

Numerous EU ENNHRI members, such as from Belgium, Bulgaria, Finland, France, Latvia, Lithuania, Poland and Slovakia raise concerns over **the lack of satisfactory level of implementation of European Courts' decisions**. For instance, the NHRIs from Lithuania and Slovakia report a lack of any progress on addressing the non-execution of judgments by state authorities, while the NHRI from Bulgaria and Finland regret that there are judgments pending implementation for many years.

EU NHRIs provide information on the reasons for some delays in the implementation of the European Courts' judgments, which can help address the roadblocks and advance the implementation of European Court judgments in the future.

ENNHRI members flag that **financial reasons** are indicated by authorities as preventing the timely implementation of European Courts' judgments, as reported by ENNHRI members from Belgium, Finland and Poland. More fundamentally, several ENNHRI members report that **political reasons** prevent the implementation of judgments, as reported by NHRIs from Finland, Germany, Lithuania, Poland and Spain. This particularly relates to politically sensitive topics which may raise wide public discussions. For example, NHRI from Lithuania reports that judgments in the area of migration are often not implemented. As reported by the NHRI in Finland, lack of implementation may relate also to the fact that for state authorities the implementation of European Courts' judgments is not prioritised by the government. The most challenging national contexts are countries that call into question that EU law has primacy and that the European Convention on Human Rights takes precedence over national law. Germany and Poland are two examples.

NHRIs report further that there is often a lack of will of state authorities to engage in more structural changes that are needed to implement European Court judgments such as the adoption or amendment of laws, as for example flagged by the NHRI in Lithuania. Other **structural barriers** are also referred to as reasons for non-implementation by several ENNHRI members. For example, the NHRIs in Lithuania and Poland report a **lack of procedural framework** for the effective fulfilment of the state's obligation to implement the European Courts' judgments. Other structural problems identified by NHRIs are the need to carry out complex structural changes that would concern modifying national judicial practice, or would require comprehensive structural reforms to the justice system, police and prison systems, as identified by ENNHRI members from Belgium, Greece, France, Lithuania, the Netherlands and Slovakia. EU NHRIs provide more detailed information on the European Courts' pending judgments against each EU state in their country reports.

Despite the above obstacles, ENNHRI members from EU Member States report on some actions taken by state authorities to facilitate the execution of European Courts' judgments. This includes **sharing the overview of judgments issued by the European Courts** as well as action plans on the implementation of judgments on the implementation process on governmental websites and with relevant stakeholders, including NHRIs, as reported by NHRIs from Croatia, Cyprus, Estonia and Germany. In Croatia, Poland and Slovenia a **governmental consultative and advisory body** is functioning to support implementation of European Courts' judgments.

## NHRIs' actions to support the implementation of European Courts' judgments

### ENNHRI key recommendations:

In light of the recognised potential and roles of NHRIs to advance the implementation of European Courts' judgments, ENNHRI recommends the EU and Council of Europe, as well as EU Member States to:

- support the development of procedures of the CJEU and the ECtHR to strengthen meaningful participation of NHRIs;
- engage and consult with NHRIs to advance implementation of European Courts' judgments;
- provide sufficient resources and capacity building opportunities for NHRIs on implementation of European Courts' judgments, including through ENNHRI.

NHRIs are recognised stakeholders for ensuring the effective implementation of the ECHR and the EU acquis (including the Charter of Fundamental Rights), and in this context engage on implementation of European Courts' judgments. Importantly, NHRIs engage on implementation of judgments at domestic and European level, and engagement on each level is conceived as complementary for the implementation of European Courts' judgments.<sup>4</sup> Such efforts can work as a continuous cycle through which outcomes of domestic activities on implementation can be used as input for international engagement efforts. *Vice versa*, outcomes of international engagement can influence and strengthen efforts on the national level.

In the context of the execution of the judgments of the European Court of Human Rights, NHRIs have a right to provide an independent and objective report on the state of play regarding the execution of the ECtHR judgments through issuing **rule 9 submissions to the Committee of Ministers**. In this sense, EU ENNHRI members refer to such rule 9 interventions in their annual rule of law reports, including ENNHRI members from Belgium, France, Greece, Ireland, Poland and Slovenia. As ENNHRI advocates in the context of the upcoming Council of Europe Summit, there is leeway to

further strengthen meaningful participation of NHRIs in the context of implementation of ECtHR judgments and thereby further building on their potential to advance implementation.<sup>5</sup>

At domestic level, NHRIs engage on implementation of European Courts' Judgments in many ways, including through their engagement with the executive, parliament, civil society and the wider public.<sup>6</sup> Importantly, through their broad promotion and protection mandate, NHRIs can advise state authorities on how to advance on implementation, but can also play a role in creating further awareness and understanding on why implementation of European Courts' judgments is important in the domestic context. These roles NHRIs carry out at domestic level on implementation of European Courts' judgements is also reflected in their rule of law reports.

EU NHRIs refer to judgments of the European Courts in their **reports and recommendations** throughout their work, as flagged by ENNHRI members from Belgium, Croatia, Cyprus, Estonia, France, Greece, Latvia, Poland, Slovenia and Spain. The Slovenian NHRI also reports on its systemic monitoring of the progress on the implementation of European Courts' judgments. ENNHRI members from Belgium, the Netherlands and Slovenia highlight their outstanding recommendations urging state authorities to implement the pending judgments. Some NHRIs are also involved in **national mechanisms established by state authorities to advance implementation** of European Courts' judgments. A good example can be found in Slovenia,<sup>7</sup> and the Polish NHRI and the Croatian NHRI report taking part in the governmental consultative body created to facilitate the implementation process. Other examples referred to by ENNHRI members in their rule of law report refer to **awareness-raising of the general public** on the importance of the judgments of European Courts, as flagged by NHRIs from Greece, Poland and Spain.



In view of the fundamental importance to further advance implementation of European Courts' judgments, including for upholding the rule of law in the EU, ENNHRI envisages further investment in supporting NHRIs' capacity in doing so.

## Artificial intelligence rule of law, democracy and fundamental rights

### Addressing the impact of AI on rule of law, democracy and fundamental rights

#### ENNHRI key recommendations:

Considering the rapid development and application of AI by state authorities and the significant yet still relatively unknown impacts this has on rule of law, as well as fundamental rights and democracy, ENNHRI recommends:

The Commission, as well as other European and international actors:

- To include attention for emerging challenges in the area of fundamental rights and rule of law, including in particular the use of AI and its impacts on the rule of law, fundamental rights and democracy, with due attention to the collective and societal harm caused by AI systems, in relevant monitoring and reporting, including the annual report on the rule of law;
- Ensure a human rights based approach is integrated in the EU Artificial Intelligence Act and the Council of Europe Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, as well as in the relevant standardization processes and in the development of impact assessments.
- Ensure a human rights based approach is integrated in the oversight mechanisms to prevent societal and collective harm by AI systems. Such mechanisms should ensure that not only natural and legal persons directly affected by AI may file complaints, but also by public interest groups and consumer organisations.

- Ensure a human rights based approach is integrated in the oversight mechanisms and ensure necessary safeguards to guarantee the right to effective redress for all individual, collective or societal harm caused by AI systems. For example, not only natural and legal persons directly affected by AI may file complaints, but also by public interest groups and consumer organisations.

Member States with support from the Commission and other regional actors:

- To raise awareness of state authorities and the general public as well as other relevant stakeholders on the use of AI and its impacts on rule of law, as well as on fundamental rights and democracy, including by facilitating public debates;
- To ensure transparency of the use of AI by state authorities and its impacts on rule of law, democracy and fundamental rights, including by establishing independent domestic oversight, publicly accessible registers and by ensuring impacts assessments in advance and during the use of AI;
- To adopt a human rights based approach while developing regulation on AI.

The development and use of AI by state authorities is rapidly expanding, while the knowledge and awareness on the challenges and opportunities related to AI and its implications for rule of law, democracy and human rights is limited. Accordingly, ENNHRI members decided to include particular attention for AI across ENNHRI's work, including its annual reporting.

ENNHRI members' reports confirm that the implication of the use of AI and its impact on rule of law, democracy and human rights is **in many cases still unknown**, as emphasized by members in Cyprus, Denmark, Greece, Latvia, Luxembourg, Poland, Portugal, Romania and Spain. This stems from a variety of factors, including the novelty of this field, limited research and lack of expertise on the impact of AI on human rights, democracy and the rule of law.

As one of the key underlying challenges, EU NHRIs refer to the **lack of laws regulating the use of AI**, as well as gaps in existing legislation. This concern is voiced by numerous NHRIs, including ENNHRI members from Belgium, Estonia, France, Latvia and Poland. ENNHRI members from Belgium, for example, report a lack of explicit legal basis for the use of facial recognition technologies by the police, while the NHRIs from Estonia and Poland underline **gaps in the legal basis for algorithm-based, automatic administrative decisions**, given without authorization, while not taking into account individual circumstances, and without a clear legal basis. Furthermore, some ENNHRI's members from the European Union indicate that the **lack of adoption of national legislation concerning the use of AI**, such as in Estonia, is impacted by ongoing regional legislative initiatives that will come to fruition in the future, including the EU Artificial Intelligence Act (AIA) and the CoE's Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law.

On the other hand, some NHRIs report on policies and measures taken by their governments in the area of AI. In Germany, Greece and Portugal, governments developed a national strategy for Artificial Intelligence. The Greek Government expanded the competence of the National Bioethics Commission to include also Technoethics (this Commission appoints a member to the Greek NHRI).

Notwithstanding the gaps in regulation and limited policies and measures developed to ensure rule of law, democracy and fundamental rights are safeguarded, AI is increasingly used by authorities, and affects also key rule of law issues such as access to justice. ENNHRI Members of Belgium, Denmark, Estonia and Poland, refer to the common area of concern about the **persistent lack of transparency of the use of AI**. In Poland, for example, the automatized system of selecting judges to adjudicate in specific court cases lacks transparency regarding the method used for such selection. In Belgium, a more general lack of obligation for state authorities to disclose the use of artificial intelligence is flagged, thereby causing important concerns from an overall accountability perspective.

ENNHRI members from Belgium, Denmark, Germany, Greece, the Netherlands, Poland, Portugal and Spain, warn how the use of AI, if unregulated, **especially impacts vulnerable groups and may lead to discrimination**. In particular, this is a case when state authorities use the AI as a basis for administrative decision-making. Key examples of this worrying trend might be observed in the uses of AI by tax authorities, as in Belgium and the Netherlands. In Belgium, ENNHRI members emphasized how an increasing number of public policies are reportedly implemented by using AI, which, for instance, leads to decision-making on social benefits on the basis of untransparent criteria. At the same time, in the Netherlands the use of AI in the decision making by tax authorities was found to be racially biased. Also, the NHRI from Denmark points out risks of discrimination when public authorities use automated profiling of citizens as the basis of an administrative decision.

ENNHRI members from Denmark, France, Ireland, Poland and Spain voice particular concern in relation to the **ongoing use of AI to carry out secret surveillance by state authorities and/or secret services against citizens**, with detrimental impact on the respect of human rights. In this regard, draft and existing bills concerning the use of AI for surveillance purposes may negatively impact **freedom of expression and freedom of assembly** in France and Ireland, as an ongoing draft bill foresees provisions without adequate scrutiny for the use of facial recognition technology. The NHRIs from Germany and Spain also warn about broad competences of state authorities to use spyware without sufficient oversight mechanisms, while the NHRIs from Greece and Poland alert about possible violations of the **right to privacy** in such context.

Notably, EU NHRIs also report concerns about the **insufficient public awareness initiatives regarding the use of AI**, as emphasized by NHRIs from Denmark, Estonia, Poland, Portugal and Slovenia. Moreover, EU NHRIs also flag the **need to ensure strengthened cooperation between state actors and their guidance on the use of AI**. More specifically, in Denmark, the NHRI emphasized the need for the guidance on human rights based approach in the use of AI in profiling model and decisions. In

Poland, the NHRI underlines the need for institutional cooperation between personal data protection authorities and other state authorities. In this respect, it is also noteworthy that the current draft EU AIA, for example, foresees in the establishment of national supervisory authorities, whose competences and expertise shall include an in-depth understanding of artificial intelligence technologies, data, as well as fundamental rights.<sup>8</sup>

### NHRI's actions to address challenges regarding the use of artificial intelligence

#### **ENNHRI key recommendations:**

In order to build on the potential of NHRIs to support rule of law, democracy and fundamental rights in the context of AI, ENNHRI recommends Member States, the Commission, as well as other regional actors:

- ensure multistakeholder consultations, in particular consult with NHRIs and other relevant stakeholders, including independent bodies such as data protection authorities, in the development of laws and policies on AI to ensure the safeguarding of rule of law, democracy and fundamental rights;
- support provision of additional powers, resources (financial, technical, and staffing) as well as capacity-building of NHRIs to enable them to further develop their capacity on safeguarding rule of law, democracy and fundamental rights in relation to AI.

As the increasingly widespread use AI systems can impact upon the enjoyment and protection of rule of law, democracy and fundamental rights, the role of NHRIs is increasingly important, particularly given their broad human rights mandate and mutually reinforcing functions. The design and deployment of AI systems can affect the full range of human rights. To this end, the wide-mandate of NHRIs is useful to address the impact of AI upon the fundamental rights of individuals, as well as its larger societal and collective impacts, including for rule of law and democracy.

From the reporting, it appears that numerous EU NHRIs undertake **activities to address challenges regarding the use of artificial intelligence** already. A significant number of ENNHRI members have made **recommendations to state authorities on the use of AI and its human rights and rule of law implications**, as in the case of Belgium, Croatia, Denmark, Estonia, France, Greece, Portugal and Slovenia. The NHRIs from Croatia and France call for **increased transparency by public administrations** to improve the implementation of oversight procedures in the use of AI.

ENNHRI members also reported **providing opinions on draft laws on AI**, both at the national and regional level, as emphasized by Belgium, France, Latvia and Slovenia. While in Belgium the ENNHRI member provided feedback on national legislative initiatives, in France, Latvia and Slovenia the NHRIs provided opinions either through consultations on the EU Artificial Intelligence Act, or on the CoE regional convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law. Notably, ENNHRI is also playing a role in this context, including through developing a [common position](#) of European NHRIs on the draft Council of Europe AI Convention, as well as through participating as Observer to the CoE negotiations.

In Denmark, Greece, Latvia and Netherlands, NHRIs also emphasise **the drafting of dedicated reports** looking at the impact of Artificial Intelligence on human rights, as well as participating in **dialogues with state authorities** on human rights impacts, as reported specifically by Denmark, Greece and Poland. Artificial intelligence has been one of the key priorities included in the **NHRI's annual action plans** of ENNHRI members from both Romania and the Netherlands.

In order to address insufficient public awareness on the AI and its impact on rule of law, democracy and fundamental rights, ENNHRI members from Belgium, Estonia, Greece, Latvia, Netherlands and Poland have prioritised **awareness-raising activities**, either through seminars and targeted discussions (in Estonia, Greece, and Poland), or through trainings, as flagged by the Belgian member (Unia).

Given the novelty of this field, ENNHRI is investing further in facilitating peer exchange amongst its members on AI, as well as in capacity-building activities. ENNHRI will be building on [ENNHRI's 2022 NHRI Academy](#), bringing together staff from across European NHRIs, around the topic of AI.

## Other persisting challenges for the rule of law, including structural human rights issues

### ENNHRI key recommendation:

In view of the intrinsic interconnection between the rule of law and fundamental rights, ENNHRI recommends the Commission to:

- further recognise and consider systemic human rights issues in its actions to address the rule of law, including its annual rule of law reporting.

While ENNHRI's joint reporting on the rule of law focused on specific issues of concern addressed above (such as NHRI independence and effectiveness, civic space and HRDs, the use of AI), ENNHRI members still reported on other key rule of law and fundamental rights challenges, of particular importance within their domestic context. In their country reports, ENNHRI members provide examples of specific threats to media freedom, access to justice and independence of judiciary, check and balances, among others. Below, a general overview of reported challenges regarding other rule of law areas and human right issues impacting rule of law compliance is presented.

ENNHRI members point at a number of **human rights issues which negatively impact on the rule of law environment** in their respective EU Member States.

Several ENNHRI members flag the threats to **media freedom, including insufficient transparency of the media market and limits to freedom of expression**, as emphasized by ENNHRI members from Denmark, Finland, Germany, Latvia, Poland and Romania. For example, in the Finnish context, the NHRI reports issues such as lower

media freedom score, risks of media concentration, lack of media regulation and risks of commercial pressure on media outlets. **Harassment, hate speech and threats to journalists** have been emphasized by NHRIs in Latvia, Finland, Germany and Slovakia. In Germany, media and journalists were harassed during demonstrations, while in Finland the NHRI reports on charges pressed against journalists for revealing confidential information. Moreover, in Denmark, freedom of expression and right to privacy were hampered by the actions of tech giants and their platforms.

ENNHRI members also report about **threats to the system of checks and balances**. In some countries, and in particular in Estonia, France, Latvia, Luxembourg and Romania, NHRIs stress the need to **improve the quality of legislative processes**, for instance, impacted by the unproportionate use of accelerated legislative procedures as in France, and insufficient implementation of legislation in practice as in Romania. ENNHRI members from Germany and Lithuania also flag the importance of strengthening the independence of equality bodies, which is of particular relevance in the context of the [EC's legislative proposals on Equality Bodies](#).

Numerous EU NHRIs emphasized challenges in their national contexts regarding **access to justice**. More specifically, issues were raised over **length of proceedings** and concerns over the **respect for a fair trial**, as highlighted by the NHRI from the Netherlands. In Germany and Ireland, the NHRI emphasized the need to improve effective **access to justice by vulnerable groups**, such as children. Furthermore, EU NHRIs point out the **need for legislative reforms improving justice systems**. As flagged by the NHRIs from Cyprus and Greece, legislation and measures to tackle long delays in court proceedings is needed. The NHRI from Luxembourg, at its turn, highlights the need for an effective witness protection program.

Lastly, ENNHRI members also emphasized serious concerns with regard to the **protection of LGBTIQ+ individuals**, as reported by NHRIs from Latvia, Lithuania and Slovakia. While the former report the need to ensure the economic and social protection and support of the same-sex partners' families, the latter has raised concerns



over discriminatory practices against the LGBTIQ+ community in Lithuania. In Latvia, furthermore, the NHRI also highlights the need to implement the Council of Europe Convention on preventing and combating **violence against women** (Istanbul convention). As developed further in the cross-regional overview in relation to civic space, other key human rights challenges are flagged by NHRIs in relation to the rights of **asylum seekers and migrants**, as well as in relation to **hate speech and discrimination**, and ensuring human rights in the context of **climate change**. Worryingly, HRDs, including NHRIs, which stand up to address such key human rights challenges face undue obstacles and challenges when addressing such key human rights issues.

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<sup>1</sup> Baseline study on the implementation of the [Council of Europe Committee of Ministers Recommendation on the development of effective, pluralist and independent NHRIs](#) forthcoming 31 May 2023.

<sup>2</sup> See for example: International Service For human Rights (ISHR), 'The Potential of NHRIs to Serve as Protection Mechanisms for Human Rights Defenders, [here](#).

<sup>3</sup> See further: EIN and DRI, 'Justice Delayed and Justice Denied. Non-Implementation of European Courts' Judgments and the Rule of Law', April 2022, [here](#). <sup>4</sup> ENNHRI [Guidance for NHRIs on ECtHR Judgment Implementation](#).

<sup>5</sup> [ENNHRI Submission to Council of Europe High-Level Reflection Group - July 2022](#).

<sup>6</sup> See further: [Guidance for NHRIs on ECtHR Judgment Implementation](#).

<sup>7</sup> As reported during ENNHRI's webinar on Implementation of ECtHR judgments (2021) by the Human Rights Ombudsman of the Republic of Slovenia: [How has Slovenia managed to cut down the number of non-implemented judgments by setting up a strong structure at the domestic level?](#) .

<sup>8</sup> See: [Proposal](#) for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts, 2021/0106(COD), of 25 November 2022.

# Country reports



## Austria

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### Austrian Ombudsman Board

#### Impact of 2022 ENNHRI rule of law reporting

##### Impact on the Institution's work

Following the 2021 ENNHRI Rule of Law Report, the Austrian Ombudsman Board (AOB), started a reaccreditation process to obtain an "A" status accreditation with GANHRI in autumn 2021. Since the last accreditation, the mandate of the AOB had been considerably expanded; a bundle of new competences as well as the enshrinement of its human rights protection mandate in Constitutional Law now provide a solid basis for the AOB's human rights work.

In 2022<sup>1</sup>, the AOB thus gained re-accreditation with "A" status by GANHRI's Subcommittee on Accreditation (SCA). The SCA recommended further improvements related to the AOB's compliance with the Paris Principles.

##### Follow-up initiatives by the Institution

The AOB informs that the organization issued three special reports in 2022:

- Special report on youth in detention: The National Preventive Mechanism (NPM), i.e. the commissions appointed by the AOB, put a special focus on the topic of "Youth in Detention" and the resulting special report contains their observations regarding living conditions, medical treatment, education and structural questions concerning the incarceration of juvenile offenders. Kindly consult chapter 3 of the report for the AOB's and its commissions' recommendations on this topic.<sup>2</sup>

- Special report on fundamental social rights: In this context, the AOB also held a panel discussion on 11 May 2022 to present its special report and advocated for the constitutional enshrinement of fundamental social rights. The report presents the results and recommendations of the six working groups on poverty prevention, health, social security, housing/homelessness, the provision of public services and education, which were formed as part of the 2022 NGO forum.<sup>3</sup>
- Special report on the terrorist attack – a series of shootings that took place in Vienna on 2 November 2020, which resulted in the death of 4 people and 23 injured (the report was submitted to the National Council in 2022 and published in 2023).<sup>4</sup> The report deals with the question whether the attack could have been prevented in advance. The AOB concluded that the authorities might not have reacted timely on information received in advance. Therefore, the AOB has recommended the Federal Minister of the Interior to start a disciplinary proceeding to fully investigate the reasons for this failure.

The AOB states that it also reiterated the importance of its special report on the working conditions of persons with disabilities (initially issued in 2019) the implementation of which is still insufficient. The special report includes the demand to pay persons with disabilities adequately and to pay them a “wage instead of pocket money”.<sup>5</sup> In 2020, the National Council took a first step towards better protection for people with disabilities working in workshops with a motion for a resolution. The Minister for Social Affairs commissioned a study, which was to be presented in 2022. Parliamentary discussions are still ongoing.

Moreover, the AOB held meetings with representatives of NGOs and civil society in order to discuss pressing human rights issues. In this context, in February 2022, Ombudsman Rosenkranz held a meeting with the OSCE Special Representative on Civil Society Engagement, Kyriakos Hadjiyianni, in Vienna. The topic of the exchange was the participation of civil society in the policy-making process.<sup>6</sup> What is more, the 2022 NGO

Forum was held in May 2022 and dealt with fundamental social rights, during which a special report on fundamental social rights was drafted.<sup>7</sup>

The AOB informs that in 2022 the AOB and the Ludwig Boltzmann Institute for Fundamental and Human Rights started an EU Twinning project entitled “Support to the Office of the People’s Advocate and promotion of human rights in Albania”.<sup>8</sup>

The NHRI reminds that at the beginning of September 2022, the European Commission presented a “European Care Strategy”, which is to contribute to improving the situation of nursing staff, the quality of care for persons receiving care, and childcare. This new strategy was the subject of several events in Brussels, in which Ombudsman Achitz participated. At an exchange in the European Parliament and at a panel discussion in the Permanent Representation of Austria to the EU, Ombudsman Achitz welcomed the fact that the EU is addressing the issue of care but also advocated for a broader focus of the European Care Strategy.<sup>9</sup>

On 18 October 2022, the AOB also participated in a meeting at the request of the responsible Advisory Committee of the Council of Europe in the context of the 5th monitoring cycle of the Framework Convention on the Protection of National Minorities. The AOB elaborated on its efforts to address the concerns of various ethnic groups living in Austria and outlined individual investigative proceedings.<sup>10</sup>

The AOB informs that in 2022, the two meetings of the Southeast European Network of National Preventive Mechanisms (SEE NPM Network) were held under the chairmanship of the AOB. The first exchange of experiences between the 13 participating NPMs took place from 20 to 22 June and mainly dealt with the topics of elderly persons in detention and people with disabilities in detention. Recommendations made at this meeting include adequate accommodation for older prisoners and prisoners with special care needs as well as an appropriate number of trained carers with specific training for those who care for older prisoners or inmates with physical disabilities.<sup>11</sup> The second meeting was held on 15 and 16 November and the topics of the meeting were

"Coercive measures in adolescents and adults with mental illness" and "Children and adolescents with mental and physical disabilities". Recommendations were made on the restricted circumstances, in which coercive measures against these specific groups, who enjoy special protection, may be applied as well as on specific regulations including documentation requirements when different types of restraint measures are applied.<sup>12 13</sup>

On 10 and 11 November 2022, the annual exchange meeting of the German-speaking NPMs (Germany, Austria, and Switzerland) took place at the AOB. For the first time, representatives of the NPMs from Luxembourg and Liechtenstein took part. The participants discussed various topics, such as police operations and inspection activities in accommodations for asylum seekers, monitoring of deportations, manifestations of violence and the inspection of child and youth welfare facilities, among other things.<sup>14</sup>

Further activities of the NHRI in 2022 included a roundtable organised by the AOB on the European Commission's proposal to adopt a Directive on corporate sustainability due diligence<sup>15</sup>, a symposium on data and whistle-blower protection at advocacy and ombudsman offices on 20 June 2022.<sup>16</sup>

The AOB also informs about a speech delivered by Ombudsman Achitz on the occasion of the World Mental Health Day on 10 October 2022 on the need to improve psychotherapeutic treatment and the lack of personnel in psychiatry.<sup>17</sup>

And on 23 November 2022, at the premises of the AOB, a lecture was held on the topic "1 out of 5 – violence against women at the workplace". This was a kick-off event of a lecture series, which included a panel discussion on the topic of "Violence against women at the workplace". The event was hosted by the Centre for Forensic Medicine at the Medical University of Vienna, the Autonomous Austrian Women's Shelters Association and the Austrian Ombudsman Board.<sup>18</sup>

The AOB notes that more information on the AOB's activities in 2022 can be found at the AOB's website or in its annual report, which is going to be published in the first half of 2023.

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Austrian Ombudsman Board achieved its first-time A-status reaccreditation in March 2022.<sup>19</sup> On that occasion, the Sub-Committee on Accreditation (SCA) welcomed the amendments to the institution's enabling laws and the Federal Constitutional Law in relation to recommendations made by the SCA during its 2011 review. In its recommendations, the SCA further noted that the current selection and appointment process for Board members is not sufficiently broad and transparent. Thus, the SCA recommended that a clear, transparent and participatory appointment and selection process is formalised in relevant legislation, regulations or binding administrative guidelines. The SCA also encouraged the institution to work towards greater pluralism in its Board membership and staff composition. In particular, it noted the gender imbalance in the composition of the AOB members at the time of the assessment and the lack of sufficient formal provisions to ensure ethnic, geographic, religious, and minority representation. The SCA also encouraged the institution to formalise its working relationships with domestic civil society organizations and human rights defenders, including those working on the rights of vulnerable groups.

### Follow-up to SCA Recommendations and relevant developments

Since its A-status reaccreditation in March 2022, the gender imbalance in the composition of the AOB members has been resolved with the appointment of Ombudsperson Gaby Schwarz as female member of the AOB. The AOB continuously strives to further deepen its working relationships with civil society organizations and human rights defenders.

### Regulatory framework

The AOB informs that there were no recent modifications in the institute's legal framework.

The AOB informs that its independence is constitutionally guaranteed by Article 148a para 6 of the Federal Constitutional Law.<sup>20</sup> According to Article 148b para 1 of the Federal Constitutional Law, all federal, provincial, and municipal authorities are obliged to support the AOB in the performance of its tasks. This involves inter alia the inspection of their records and the suspension of official confidentiality towards the AOB. In general, state authorities show themselves cooperative towards the AOB (for further information kindly consult the AOB's annual reports).

Moreover, according to Article 148c of the Austrian Federal Constitutional Law in conjunction with § 6 of the Austrian Ombudsman Act 1982,<sup>21</sup> the federal executive bodies and officers responsible for handling supreme administrative matters are obligated to comply with recommendations on measures to be taken in or by reason of a particular case addressed to them by the AOB. They shall do so within a period of eight weeks and inform the AOB accordingly or give reasons in writing why the recommendation has not been complied with. (For more information on the issued recommendations over the years, kindly consult the AOB's annual reports.)

The AOB stresses that regarding the competence to issue recommendations, pursuant to the Act on the Implementation of the Optional Protocol to the Convention against Torture (OPCAT) 2012,<sup>22</sup> the AOB has appointed seven interdisciplinary expert commissions which are entitled to regularly visit and inspect places of detention as defined in Article 4 of the OPCAT, to observe operations by organs authorized to exert direct administrative power and compulsion, and to regularly visit and inspect facilities and programmes designed to serve persons with disabilities, in order to implement Article 16 para 3 of the UN-CRPD (Article 148a para 3 Federal Constitutional Law in conjunction with Section 11 para 1 Ombudsman Act 1982).

Since the adoption of the Act on the Implementation of the OPCAT 2012, the AOB is moreover entitled by law to issue recommendations regarding legislative reforms



according to Section 1 para 2 item 5 in conjunction with Section 7 para 2 Ombudsman Act 1982.<sup>23</sup>

Furthermore, the AOB clarifies that all recommendations are included in the annual reports and special reports of the AOB, which are submitted to the National Council and Federal Council as well as to Regional Parliaments. All reports are dealt with in the parliamentary “Ombudsman Committee” (“Volksanwaltschaftsausschuss”) and the following plenary sessions of the Parliament. The AOB points to the high rate of the state authorities’ implementation of the Austrian NHRI’s recommendations – issued within its mandates of Ombudsperson, NPM, monitoring body according to Article 16 para 3 UN CRPD, and NHRI. Moreover, the Ombudspersons are entitled to participate in the debates – which are held several times a year at both federal and regional level - and to speak on their reports (Article 148d para 2 Federal Constitutional Law).

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<sup>1</sup> [Article on the AOB’s website about the re-accreditation with A-status](#) (in German).

<sup>2</sup> [The Austrian Ombudsman Board \(2022\), Special Report 2022, Youth in Detention](#) (in German).

<sup>3</sup> [The Austrian Ombudsman Board \(2022\), Special Report 2022, NGO-Forum Fundamental Social Rights](#) (in German), [Article on the AOB’s website about the constitutional enshrinement of fundamental social rights](#), [Article on the AOB’s website about the panel discussion held on 11 May 2022](#) (in German).

<sup>4</sup> [The Austrian Ombudsman Board \(2022\), Special Report on the terrorist attack on 2 November 2020](#) (in German).

<sup>5</sup> [The Austrian Ombudsman Board \(2019\), Special report on the working conditions of persons with disabilities](#) (in German), [Article on the AOB’s website about the deficient implementation of the special report in 2022](#) (in German).

<sup>6</sup> The Austrian Ombudsman Board (2023), Annual Report on the activities of the Austrian National Preventive Mechanism (NPM) 2022 (forthcoming in the first half of 2023).

<sup>7</sup> [The Austrian Ombudsman Board \(2022\), Special Report 2022, NGO-Forum Fundamental Social Rights](#) (in German).

<sup>8</sup> The Austrian Ombudsman Board (2023), Annual report – Monitoring Public Administration 2022 (forthcoming in the first half of 2023), [Article on the AOB’s website about the Twinning Project](#) (in German).

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- <sup>9</sup> The Austrian Ombudsman Board (2023), Annual report – Monitoring Public Administration 2022 (forthcoming in the first half of 2023), [Article on the AOB's website about the European Care Strategy](#) (in German).
- <sup>10</sup> The Austrian Ombudsman Board (2023), Annual report – Monitoring Public Administration 2022 (forthcoming in the first half of 2023).
- <sup>11</sup> [Article on the SEE NPM Network website on the first SEE NPM Network exchange.](#)
- <sup>12</sup> [Article on the SEE NPM Network website on the second SEE NPM Network exchange.](#)
- <sup>13</sup> The Austrian Ombudsman Board (2023), Annual Report on the activities of the Austrian National Preventive Mechanism (NPM) 2022 (forthcoming in the first half of 2023), [Article on the AOB's website about the first SEE NPM Network exchange](#) (in German), [Article on the AOB's website about the second SEE NPM Network exchange.](#)
- <sup>14</sup> The Austrian Ombudsman Board (2023), Annual Report on the activities of the Austrian National Preventive Mechanism (NPM) 2022 (forthcoming in the first half of 2023), [Article on the AOB's website about the German-speaking NPM exchange meeting.](#)
- <sup>15</sup> [Article on the AOB's website about the Directive on corporate sustainability due diligence](#) (in German)
- <sup>16</sup> [Article on the AOB's website about the symposium on data and whistleblower protection](#) (in German),
- <sup>17</sup> [Article on the AOB's website about the speech delivered by Ombudsman Achitz on the occasion of the World Mental Health Day on 10 October 2022](#) (in German)
- <sup>18</sup> [Article on the AOB's website about the lecture on violence against women at the workplace](#) (in German)
- <sup>19</sup> [SCA Report March 2022](#)
- <sup>20</sup> Federal Constitutional Law (Bundes-Verfassungsgesetz), Federal Law Gazette No. 1/1930, as amended by: Federal Law Gazette I No. 141/2022.
- <sup>21</sup> Ombudsman Act 1982 (VolksanwG), Federal Law Gazette No. 433/1982, as amended by Federal Law Gazette I No. 56/2021.
- <sup>22</sup> Act on the Implementation of the OPCAT 2012 (OPCAT-Durchführungsgesetz), Federal Law Gazette I No. 1/2012.
- <sup>23</sup> [List of Recommendations of the Austrian National Preventive Mechanism \(2012 – 2021\).](#)

## Belgium

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Federal Institute for the Protection and the Promotion of Human Rights (FIRM-IFDH)

UNIA (Interfederal Centre for Equal Opportunities and Opposition to Racism)

MYRIA

Combat Poverty, Insecurity and Social Exclusion Service

Central Monitoring Council for Prisons (CTRG-CCSP)<sup>1</sup>

### Impact of 2022 ENNHRI rule of law reporting

#### Follow-up by State authorities

Similarly to what happened in 2020 and 2021, the federal advisory committee on European issues of the Belgian Parliament conducted a national dialogue on the rule of law with European Commissioner Reynders<sup>2</sup> on January 10th 2023<sup>3</sup>. To the best of the authors' knowledge, there was no other official action or initiative on the topics.

More generally, the rule of law has been an increasingly discussed theme in Belgium in 2022<sup>4</sup>, with multiple institutions expressing their concerns on the evolution of the rule of law<sup>5</sup>. First and foremost, the so-called "reception crisis"<sup>6</sup> saw the Belgian State convicted over 7.000 times by Belgian courts for its disregard for the rights of asylum seekers<sup>7</sup>.

This crisis has fed into a growing problem of non-enforcement of court decisions by the Belgian state when it is convicted for human rights violation. The state of the rule of law

has also been debated following the beginning of the trial of the Brussels 2016 terrorist attacks – and the rights of defendants to a decent treatment; the lack of funding for the justice system; and the ongoing violations of the rights of prisoners due to severe prison overcrowding. The Human Rights League, a major Belgian non-profit organization, stated that lobbying in favour of human rights and the rule of law increasingly falls on deaf ears, and calls for a political awakening to put an end to the casualness with which human rights are treated today<sup>8</sup>.

Many of the highlighted issues are not new, nor is it the first time that they have led to wide discussions. Yet, the rule of law is increasingly the framing used to describe the state's failings, including by public actors. This is a relatively recent phenomenon in Belgium, which shows both increasing public interest in the rule of law, and growing concerns regarding its evolution<sup>9</sup>.

### **Impact on the Institutions' work**

From FIRM-IFDH's perspective, the impact of the ENNHRI 2022 report on the rule of law has been limited, and would be difficult to evaluate, as the report has not been the subject of any particularly significant follow-up action or discussion by public authorities. Nevertheless, the conclusions of the report recommending the extension of FIRM-IFDH's mandate to the non-federal levels, and to grant it the competence to handle individual complaints, has allowed FIRM-IFDH to keep discussions on such an extension on the political agenda. In addition, the federal government, represented by the Minister of Justice, supported FIRM-IFDH's request for accreditation by GANHRI.

The report has also enabled FIRM-IFDH to strengthen its collaboration with the European Commission regarding the monitoring of rule of law mechanisms. Several meetings, in which FIRM-IFDH participated, were held to discuss developments and concerns regarding the judicial system, anti-corruption mechanisms, Belgium's media environment and press freedom. European Commission's Rule of Law recommendations

were discussed during those meetings and the subsequent exchanges, and FIRM-IFDH also had the opportunity to present its work on these issues.

### **Follow-up initiatives by the Institution**

FIRM-IFDH, Unia, CTRG-CCSP, Myria and the Combat Poverty Service also stepped-up efforts in 2022 to increase their participation to international rule of law mechanisms, including through several Rule 9 submissions sent to the enforcement department of the Council of Europe's Committee of Ministers, and through a report to the European Committee on Social Rights regarding the state of Labour rights in Belgium<sup>10</sup>.

Finally, several public human rights institutions, including Myria and FIRM-IFDH<sup>11121314</sup>, have repeatedly called on public authorities to act regarding the reception crisis, in particular stressing the risks to the rule of law.

### **NHRI's Recommendations to national and European policy makers**

The Institutions recommend the organisation of an audition of the NHRIs by Parliament about the rule of law report.

For the last three years, Belgian authorities have organized an annual parliamentary debate on the European Commission's report on the rule of law. FIRM-IFDH, Unia, CTRG-CCSP, Myria and the Combat Poverty Service recommend that the institutions that produced the parallel ENNHRI report be invited to this debate, and for their report to also be discussed by parliamentary bodies.

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors' recommendations on rule of law**

The European Commission's 2022 report on the rule of law in Belgium contained four main recommendations. FIRM-IFDH has been monitoring the implementation of two of the four recommendations in recent months, namely strengthening the resources of the

judicial system<sup>15</sup> and on strengthening the right of access to administrative documents<sup>16</sup>. The two other recommendations of the Commission pertain to Belgium's anticorruption framework, which does not currently fall directly within FIRM-IFDH's human rights mandate. Only the recommendation on the justice system is examined hereunder.

The Commission had recommended that Belgium should "*continue measures to provide adequate human and financial resources for the justice system as a whole (...)*". The underfunding of the justice system is a recurring problem in Belgium, including in 2022<sup>17</sup>. FIRM-IFDH has welcomed the State's plans to increase the financing of the justice system<sup>18</sup>. It has however expressed concerns over the conditionality of the performance requirements associated with the allocation of the additional resources.

The Minister of Justice has announced<sup>19</sup> that the additional resources planned by this legislature to strengthen the judiciary, amounting to 300 million € per year (including 50 million for digitalization), will be linked to measurable objectives. The minister also stated that "*additional resources will be made available when entities present clear objectives or precise and measurable projects that are part of the quest for a swift, human and firm justice. This is an obligation of result: if the expected results are not achieved, this will be taken into account in the subsequent allocation of resources*". Furthermore, on 16 June 2021, a "Cooperation Protocol for a better financed and organised justice system on the way to management autonomy" was concluded between the Minister of Justice and the College of Courts and Tribunals in the context of the allocation of the announced additional resources reinforcing the justice system. The protocol links objectives (for the organization as a whole) to the allocated resources<sup>20</sup>.

The vague nature of this 'carrot and stick' approach to the allocation of additional financial resources for the justice system is a cause for concern. It raises several questions, including how results will be measured and who will assess them, which could infringe upon the quality of the work of the judiciary and, in principle, also upon the independence of the judiciary vis-à-vis the executive. It should also be noted that the citizen will be the first to bear the consequences of an entity underfinanced for not

meeting the abovementioned 'targets'. The Commission should urge Belgium to ensure that the conditionality attached to additional resources does not have the unwarranted effect of threatening the quality of the work of the judiciary as well as its independence, nor citizens' effective access to justice.

### **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

FIRM-IFDH, Unia, Myria, the Combat Poverty Service and CTRG-CCSP have taken several actions to support implementation of recommendations on the rule of law, including by submitting several Rule 9 submissions<sup>21</sup> to the enforcement department of the Council of Europe's Committee of Ministers to support the execution of judgments of the European Court of Human Rights, and addressing numerous recommendations to the federal parliament and government on rule of law-related issues.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

There are two institutions accredited as B-status NHRIs in Belgium (Unia and FIRM-IFDH).<sup>22</sup> Myria and the Combat Poverty Service (also ENNHRI members) are not accredited, due to their restricted human rights mandate. All ENNHRI members in Belgium work collaboratively to promote and protect human rights in Belgium.

FIRM-IFDH was created in 2019 with the aim of establishing an A-status NHRI in Belgium. FIRM-IFDH has competence over all fundamental rights matters that are not dealt with by other independent sectoral bodies for the promotion and protection of human rights (residual mandate) and only those matters under the jurisdiction of the federal state (federal mandate). However, to cover human rights issues as broadly as possible, FIRM-IFDH works in collaboration or in complementarity with other public institutions, both at the federal and the regional level.

In March 2023, GANHRI's Sub-Committee on Accreditation (SCA) has decided to accredit FIRM-IFDH with a B-status. The SCA recommended that FIRM-IFDH expands and strengthens its residual-federal mandate through changes to its enabling Act or through other legal instruments. It also notes that the 2019 Act and the federal government's declaration<sup>23</sup> provide for such a future inter-federalization of FIRM-IFDH. Should this step be successfully implemented, FIRM-IFDH could also work on matters falling under the competence of the communities and regions. Furthermore, the SCA recommends that FIRM-IFDH should be granted free and unannounced access to all public premises, including places where people are deprived of their liberty, and to all relevant documents and other materials, in order to verify the proper respect for their human rights.

Unia is effectively the successor to the Centre for Equal Opportunities and Opposition to Racism ('the Centre') which was officially created by an Act of Parliament on 15 February 1993 as an independent public body initially dedicated to the opposition to racism and the promotion of equal opportunities. The Centre for Equal Opportunities and Opposition to Racism was given B-status in 1999, confirmed by a reaccreditation in March 2010. The interfederalisation of the Centre for Equal Opportunities in July 2012 prompted institutional change that resulted in the creation of two distinct juridical entities, Unia and Myria, and the status associated with the parent institution was lost. Consequently, Unia and Myria decided to conclude a cooperation agreement. When Unia submitted a new request for accreditation in 2017, its statement of compliance referenced and took into account this cooperation agreement. Unia was accredited with B-status in May 2018. During its accreditation, the SCA noted that Unia interprets its mandate broadly and undertakes a range of activities to promote all human rights, both on their own and in cooperation with other human rights bodies in Belgium. Yet, the SCA encouraged Unia to advocate for appropriate amendments to its enabling law to vest it with the mandate to promote and protect all human rights. In addition, the SCA put forward recommendations regarding the need for protection from criminal and civil



liability for official actions and decisions undertaken in good faith, the selection and appointment of members of the decision-making body, and the need to ensure that the decision-making body includes full-time members. Unia has informed the SCA, after the accreditation, that this last recommendation can be a difficult observation to address, and clarified the role, standards and functions of Unia's Interfederal Management Board.

Moreover, in September 2019, the Flemish Government has announced its intention to cease its cooperation agreement with Unia, which was valid until March 2023. In parallel, the Flemish Government has put forward an initiative for creating the Flemish Institute for Human Rights. In December 2021, the Flemish Government endorsed a preliminary draft decree providing the framework for the establishment of the new institution. In September 2022, the Flemish Government [officialised](#) the political decision to withdraw from UNIA from March 2023, with implications on the available budget and scope of actions by UNIA. This was followed by the [passing](#) of a law on the establishment of a separate Flemish Human Rights Institute. The Flemish Government expressed the intention that the new Institute would comply with the UN Paris Principles and eventually seek to be accredited with A-status. In response to these developments, ENNHRI published a statement clarifying the applicable international standards.<sup>24</sup> In line with the definition of an NHRI in the GANHRI Statute, no sub-national or regional institutions are accredited as NHRIs, the only historical exception being the United Kingdom.

ENNHRI continues to provide its advice to Belgian authorities regarding the applicable international standards and the prospect of the establishment of an NHRI in full compliance with the Paris Principles in Belgium.

### **Follow-up to SCA Recommendations**

In its memorandum for the last elections, Unia recommended that the authorities take all useful initiatives to set up an NHRI that could obtain A status.

Furthermore, Unia and FIRM-IFDH signed a protocol of collaboration in 2022 and Unia supported FIRM-IFDH's application for accreditation.

## Regulatory framework

### FIRM-IFDH

FIRM-IFDH stated that an extension of its mandate, pursuant to EU Directive 2019/1937 (whistleblowers support), has been transposed into national law<sup>25</sup>. The acts of 28 November 2022<sup>26</sup>, and 8 December 2022<sup>27</sup> mandate FIRM-IFDH to provide support to whistle-blowers of the private and public sectors, including through legal, financial and psychological support, as well as media-training, IT-support and support and for the reintegration of whistleblowers in the labour market. Additionally, FIRM-IFDH will act as an information centre and promote whistleblowers' rights in Belgium.

FIRM-IFDH believes there is need for further strengthening of its regulatory framework.

The Act of 12 May 2019 – which created FIRM-IFDH – explicitly envisages its future interfederalisation, i.e. the expansion of FIRM-IFDH 's mandate to include matters that fall within the competence of the Communities and Regions. The future interfederalisation of FIRM-IFDH has been announced in the Governmental Declaration of 30 September 2020<sup>28</sup>, but has not yet taken place. Yet, the full interfederalisation of FIRM-IFDH is compromised by the recent establishment of the Flemish Human Rights Institute in the Flemish Community. Nevertheless, FIRM-IFDH's asymmetric interfederalisation, i.e. the extension of its mandate to issues under the competence of the other federal states, remains on the political agenda.

Belgium has signed the Optional Protocol regarding NPM under OPCAT in 2005 but has not yet ratified it. Negotiations regarding the establishment of an NPM are ongoing. It is expected that the protocol will be ratified once the outcome of this discussion becomes clear.

### Unia (Interfederal Centre for Equal Opportunities and Opposition to Racism).

Unia has a legal basis through a cooperation agreement<sup>29</sup> between the Communities, the Regions and the federal State. This cooperation agreement has the same rank as a law within the hierarchy of norms. No changes have been made to Unia's regulatory framework in 2022.

### The Combat Poverty, Insecurity and Social Exclusion Service

The Combat Poverty Service is a non-accredited, interfederal, institution that covers federal and regional fields of competence in Belgium<sup>30</sup>. It approaches poverty and its eradication on the basis of different human rights and submits parallel reports to UN treaty bodies. The Service works together with Unia, Myria and FIRM-IFDH (also ENNHRI members) to promote and protect human rights in Belgium. It is also a member of the Human Rights Platform, where different human rights institutions meet every month.

There have been no changes in the regulatory framework applicable to the Combat Poverty Service in the past year.

### Myria

Myria, the Federal Migration Centre, is an independent, non-accredited, federal body<sup>31</sup>. Myria analyses migration, defends the rights of foreigners and combats human smuggling and trafficking. Myria promotes public policies based on evidence and human rights.

There have been no changes in the regulatory framework applicable to Myria in the past year.

### Central Monitoring Council for Prisons (CTRG-CCSP)

CTRG-CCSP<sup>32</sup>, established by the Principles Act of 12 January 2005<sup>33</sup>, is a non-accredited, federal, independent institution that monitors the respect for the rights and human dignity of prisoners in Belgium. CTRG-CCSP is not an ENNHRI member. It has a federal mandate to organise, announced and unannounced visits of penitentiary

facilities. Within the framework of prisoners' right to complain (Principles Act, art. 148 et seq.), CTRG-CCSP establishes complaints committees (KC/CdP) and appeal commissions (BC/CdA).

## **Enabling and safe space**

### FIRM-IFDH

FIRM-IFDH is regularly solicited by the executive and Parliament to issue advisory opinions on legislative proposals and initiatives. In 2022, FIRM-IFDH issued 15 advisory opinions (of which 11 upon request of Parliament or the executive; and 4 at FIRM-IFDH's own initiative)<sup>34</sup>. In practice FIRM-IFDH is regularly in contact with parliamentarians, the executive and public authorities to present and discuss its recommendations.

Nevertheless, FIRM-IFDH does not automatically receive feedback from the authorities regarding the consideration of its recommendations. While the law allows FIRM-IFDH to request written explanations regarding the follow-up of these opinions, recommendations and reports (article 6 §3), the Institute has not yet used this possibility.

The Act of 12 May 2019 provides for FIRM-IFDH to collaborate with sectoral bodies for the protection and promotion of fundamental rights. In practice, FIRM-IFDH closely collaborates with public bodies promoting human rights, for example by issuing joint opinions and recommendations, joint submissions; cooperation for inputs to parallel reports to UN Treaty bodies; joint submissions to the enforcement department of the ECtHR; etc. FIRM-IFDH has also concluded cooperation protocols with several organizations, including Unia<sup>35</sup>, while several others are under negotiation.

Institutions with a full or partial mandate regarding the protection of human rights meet monthly, at the Human Rights Platform. The platform is an informal forum for exchange and debate between the various public bodies working on human rights in Belgium. The presidency of the platform is rotating bi-annually. From September 2022 to January 2023, FIRM-IFDH presided this platform.

## Unia

Although state authorities are generally well informed of Unia's interfederal mandate, role and independence, the multiplicity of human rights institutions in Belgium contributes to confusion of the message. Unia is regularly invited to take part in different parliamentary assemblies and is sometimes consulted by the ministerial cabinets regarding draft legislation.

Unia's recommendations are generally considered, although not always in a timely nor a systematic manner.

## **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

### FIRM-IFDH

The Flemish Authority adopted a decree establishing a Flemish Human Rights Institute (VMRI) in October 2022<sup>36</sup>. This new institute will take over the Flemish competences of Unia and will protect and promote human rights in all matters falling under the powers of the Flemish Community and Region. Cooperation between FIRM-IFDH and VMRI (once operational) is envisaged, as mentioned by the competent Minister in his policy declaration for 2023<sup>37</sup>. Following the creation of the VMRI, the interfederalisation of FIRM-IFDH can only be achieved partially (supra). Henceforth, an inter-federal human rights institute will be not able to work on matters falling under the competences of the Flemish Region and Community.

FIRM-IFDH stresses the importance of a structural cooperation with the Flemish Human Rights Institute.

## Unia

**N-VA & Vlaams Belang left a parliamentary debate on Unia the moment Unia-director took the Floor**

During the committee meeting “Equal Opportunities” in the Flemish Parliament<sup>38</sup>, MPs from political parties N-VA and Vlaams Belang ostentatiously left the committee meeting the moment Unia director Els Keytsman began speaking. Unia perceived this as a form of principled defiance of the institution, or even as a desire to deny it. It should be noted that Vlaams Belang has a programme for the dissolution of Unia.

The meeting also saw criticism from the other MPs about Unia's reaction on Twitter.

### **Parliamentary debates regarding the establishment of VMRI: negative and erroneous statements about Unia**

Together with members of the party N-VA (part of the governing majority) and the far-right party Vlaams Belang, the minister responsible for Equal Opportunities and thus responsible for the establishment of VMRI (taking over Unia's Flemish competences) Bart Somers communicated very negatively on the work and impact of Unia. In 2022, different parliamentary debates on the establishment of VMRI<sup>39</sup> took place, including a hearing of experts on 26 September 2022<sup>40</sup>. Unia was not invited, although one of the topics dealt with future cooperation between Belgian institutions with a human rights mandate. The Flemish Parliament Equal Opportunities Committee then approved the Decree establishing VMRI<sup>41</sup>. Some erroneous statements were made about Unia including the success rate in cases deliberately ignoring alternative dispute resolution. These debates with false information forced Unia to prepare a document addressed to MPs with some corrections<sup>42</sup>. Unfortunately, Minister Somers repeated his very negative erroneous statements during the plenary<sup>43</sup> (Oct. 26, 2022) and in his external communication afterwards.

### **No takeover of Unia's expertise and staff**

Unia has been committed to an orderly exit by Flemish authorities and collaboration with VMRI. Minister Bart Somers has always held out the prospect of taking over Unia's staff, thus maintaining their employment. Unfortunately, in January 2022, his chief of staff informed Unia that there would be no takeover. Unia's Board of Directors

requested the Flemish government to explore options for redirecting affected Unia staff and to take financial responsibility but received no reply. Unia then issued a formal letter to the minister, but again received no response. Following this decision, redundancies were implemented within Unia at the end of February 2022. Minister Somers communicated in a very negative way about these redundancies.

With regards to actions taken to address the issues raised and/or to improve its functioning in compliance with the Paris Principles and Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs<sup>44</sup>,

FIRM-IFDH indicated it had submitted its application for accreditation to GANHRI in November 2022. It has been put for review of the Subcommittee on Accreditation in the March 2023 session.

### **NHRI's recommendations to national and regional authorities**

Although FIRM-IFDH has not (yet) actively advocated for the implementation of Recommendation 2021/1, it would recommend that its mandate be strengthened by aligning the law with the following recommendations:

- Having a firm legal basis, preferably at the constitutional level. Currently the Act of 12 May 2019, defines the mandates and functions of the Institute and guarantees its independence, but the Constitution does not include a reference to FIRM-IFDH. To hold a yearly debate in the relevant parliamentary bodies on its activities and recommendations.
- Provide a right to access to all relevant premises, including places of deprivation of liberty, and to all relevant individuals, in the Act. Such a provision is currently not foreseen.
- Confirm that FIRM-IFDH has the authority to determine its staffing profile and recruit its own staff, and needs to have sufficient resources available, in order to fulfil its mandate, so as to permit the employment and retention of staff and to ensure that they receive adequate training.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

#### Administrative municipal sanctions to restrict human rights

Municipalities in Belgium have used municipal administrative sanctions (GAS-SAC) to restrict freedom of speech, of assembly and of demonstration, or the right to strike, often based on a narrow understanding of public order. For example, some local governments require to seek an authorisation to hold a protest and use GAS-SAC to sanction unauthorized events. GAS-SAC can be applied to children over the age of 13, despite criticisms by the UN Children's Rights Committee<sup>45</sup>. Several legislative proposals are under consideration to extend the powers of municipalities to use SAC-GAS<sup>46</sup>, including to monitor mandatory schooling.

#### Municipal administrative approach

In Belgium, municipal authorities are responsible to ensure public order. Most local police regulations prohibit manifestations without prior written authorization from the mayor. The prior notification procedure allows the mayor to assess the risks for public order. There is no uniformized procedure, and depending on the municipality, the notification period takes several days to several weeks. Some civil society organizations have complained that the length of the notification periods in certain municipalities severely impacts the possibility to react in a timely manner to topical events.

A survey of organizations defending human rights, held in the fall of 2022 by FIRM-IFDH<sup>47</sup>, confirmed that certain organizations encounter difficulties in obtaining approval to organize demonstrations. The survey included a question on the evolution of conditions set by municipalities for organizing a public event (like a demonstration) compared to the conditions two years prior. Three quarters of the 75 organisations surveyed indicated that the situation has remained the same, 17% that it has deteriorated or deteriorated strongly, while 7% spoke of an improvement.



In August 2022, the Minister of the Interior issued a circular clarifying that the municipal authorities have the competence to take preventative measures prohibiting a specific person from participating in a demonstration<sup>48</sup>. Such measure must be based on concrete indications that this person aims to disturb public order. FIRM-IFDH is currently preparing an advisory opinion for the federal government on this issue.

### **FIRM-IFDH's study "Room for human rights defenders in Belgium"**

In its study "Room for human rights defenders in Belgium – 2022/2023"<sup>49</sup> FIRM-IFDH asked public human rights bodies and a broad range of Belgian civil society organisations about their experiences with threats and attacks in 2021 and 2022. The results of this study will be published in 2023, following qualitative interviews.

Out of 167 organisations, 106 reported to have experienced verbal or written threats or harassment in 2021-2022, while about 25 organisations experienced this more than twice a month on average. Online threats and abuse is not necessarily more common than offline threats and abuse. About 34 organisations (including public human rights bodies) reported having been the target of one or more negative media campaigns, several times for more than half of them. Physical attacks against staff and volunteers were experienced by at least 15 organisations, damage to private property by at least 19 organisations, while excessive administrative controls and surveillance by Belgian or foreign authorities were less prevalent, but not inexistent.

### **Safety of journalists**

Belgium dropped 12 places in the World Press Freedom Index in 2022<sup>50</sup>, among others due to rising safety concerns. Online intimidation and threats, often with racist and/or sexist connotations<sup>51</sup>, are also a problem. Violence encourages self-censoring and the use of pseudonyms; some journalists even leave the profession. As highlighted by FIRM-IFDH in its parallel report to the CEDAW Committee<sup>52</sup>, no official information exists on the number of complaints lodged related to violence against journalists, nor does such violence currently carry harsher sentences. The 2021-2025 National Action Plan against

Gender Violence<sup>53</sup> identifies the particular vulnerability of female journalists to cyberviolence, without including specific action measures.

### **Protection of the right to strike**

The European Social Charter is the main instrument explicitly enshrining the right to strike in the Belgian legal order. In 2019 and 2021, two courts of appeal have convicted trade unions members for the criminal offence of malicious traffic obstruction for roadblocks (“pickets”) which had been erected in the context of trade union activities. Both convictions were upheld by the criminal chamber of the Court of cassation, which held that Article 6 §4 of the Charter did not have direct effect in Belgian law. FIRM-IFDH<sup>54</sup> is concerned about the failure of the domestic courts to carefully balance the interests at stake in the light of the principles from the European Court of Human Rights’ jurisprudence, and that broad nature of the terms used in the judgments may impair the protection of the right to strike in Belgium. The right to participate in picketing is recognized as part of the right to strike, subject to certain conditions, and its direct effect has long been established in Belgium. This decision by the highest court is therefore exceptional in Belgium, and its impact outside criminal law is uncertain. However, concerns remain for the protection of the right to strike in Belgium.

### **Police strip searches**

FIRM-IFDH issued an advisory opinion<sup>55</sup> on a legislative proposal aimed at introducing a registration and motivation obligation in case of strip searches by the police. This legislative proposal was introduced following reports of, among other things, systematic and collective strip searches at summer music festivals and in the context of demonstrations. The legislative proposal, which was broadly speaking welcomed by FIRM-IFDH, is still pending.

## Access to and involvement of civil society actors in law and policy making

### FIRM-IFDH's study "Room for human rights defenders in Belgium"

Half of the respondents of the "Room for human rights defenders in Belgium – 2022/2023" study reported that the conditions for participating in the policy-making process have not changed in 2021-2022, while about a quarter reported some improvement and about a quarter reported some deterioration. At the same time, 11 organisations experienced a sudden change in their access to or involvement in the policy-making process.

## Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)

FIRM-IFDH's monitoring and reporting on abuse of laws or of process laws to intimidate civil society organisations and human rights defenders identified some worrisome trends.

### FIRM-IFDH's study "Room for human rights defenders in Belgium"

SLAPPs against civil society organisations should remain a point of attention. About 10% of the organisations in our sample have experienced threats of SLAPPs or SLAPPs in 2021-2022. Eight organisations (5%) reported to have experienced it more than once from 2021 to 2022, including an official public human rights body. Threats of legal action against staff and volunteers was even more prevalent.

### SLAPPs

In one of the better-known SLAPPs cases against a Belgian media organisation, namely investigative medium Apache, the Court of Cassation<sup>56</sup> rejected the appeal against the judgment of the Court of Appeal in Antwerp on 18 October 2022. The Court of Appeal in Antwerp had concluded that the defendants had not committed any wrongdoing when publishing information related to the relationship between a senior politician and a real estate developer, thus confirming the journalist's acquittal<sup>57</sup>.

With regards to the introduction of laws or measures to safeguard against manifestly unfounded and abusive lawsuits and support for its victims, the Belgian federal ministry of Justice notified the European Commission [by letter dated 15 December 2022](#) that it had designated FIRM-IFDH as 'focal point' under Commission Recommendation 2022/758 of 27 April 2022<sup>58</sup>. The focal point is the national mechanism tasked with gathering and sharing information on available resources for victims of SLAPPs. It is understood that further implementation of the Recommendation is underway.

### **Measures undertaken by State authorities to protect and promote civic space**

Although not specifically referencing Recommendation CM/Rec(2018)11, interest was shown both by several members of the federal parliament and by the federal Minister of the Interior to reform the federal legislation concerning access to documents, leading to two advisory opinions by FIRM-IFDH on the topic<sup>59</sup>. While these initiatives are still pending, FIRM-IFDH has welcomed the interest to further improve and strengthen the legislative framework concerning access to documents.

Strengthening the framework for access to official documents was one of the core recommendations formulated by the European Commission in its 2022 rule of law report on Belgium<sup>60</sup>. The Commission particularly stressed the need to improve the request and appeal processes and limiting grounds for rejection of disclosure requests. Belgium's right to access to official documents is notoriously poor when compared to many of its European peers and improving its framework is of crucial importance. In its two 2022 advisory opinions to the federal parliament and government on this topic<sup>61</sup>, FIRM-IFDH has recommended several improvements to the access to official documents framework, including :

- To simplify the legal framework by integrating the different legal bases into one unique act ;
- To broaden the duty to find and communicate certain information by public authorities ;

- To strengthen the appeal bodies that exist to challenge refusal of access to documents by merging them into a single federal authority, giving it decision-making powers on top of its current advisory capacity, with increased resources. FIRM-IFDH also recommended that the decisions of this appeal body should be published online and that there should be a legal obligation to either consult or inform it of any draft legislative amendment relating to the publicity of the administration.

Furthermore, the procedures for effective access to documents are relatively long in Belgium. This is particularly detrimental to journalists. It would be advisable to put in place an emergency procedure, allowing a decision to be obtained within a shorter period of time if the circumstances justify it.

Finally, FIRM-IFDH recommended that Belgium fully ratify the Tromsø Convention, to which the federal government committed itself in 2021.

All recommendations made by FIRM-IFDH in 2022 on the issue of access to official documents are accessible in the two advisory opinions referenced above.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

Three initiatives taken by FIRM-IFDH in 2022 to promote and protect civil society space and human rights defenders have been highlighted.

#### **FIRM-IFDH's study "Room for human rights defenders in Belgium"**

In 2022, the Federal Institute for Human Rights launched 'Room for human rights defenders in Belgium, a study set up to develop a monitoring instrument which will feed into a much broader strategy to protect and promote an open civic space in Belgium. The study is expected to be published by the end of 2023.

#### **Advisory opinions aimed at strengthening the protection of human rights defenders and civic space**

FIRM-IFDH issued several advisory opinions on legislative proposals it identified as important – both as risks and as opportunities – to civil society space and human rights defenders. This list includes:

- an advisory opinion on introducing a registration and motivation obligation in case of strip searches by the police <sup>62</sup>;
- another on the use of municipal administrative sanctions to restrict the use of some human rights, such as the freedom of demonstration and of assembly, or the right to strike<sup>63</sup> ;
- a third one on the municipal administrative approach, meaning all measures, preventative or repressive, used by local authorities to prevent crime<sup>64</sup> ;
- a report to the CEDAW-Committee highlighting challenges to human rights defenders and journalists, especially women<sup>65</sup> ;
- a report to the European Committee on Social rights including a focus on the protection of trade union representatives<sup>66</sup> ;
- an advisory opinion aiming at reinforcing the secrecy of private communications and correspondence <sup>67</sup>;
- two advisory opinions on initiatives to reform the legislative framework concerning access to documents<sup>68</sup>;
- And finally several advisory opinions on measures related to the COVID19 epidemic, including an evaluation of the “Covid Safe Ticket” system<sup>69</sup>, and a legislative proposal intending to compel vaccination for health professionals<sup>70</sup>.

### **National focal point on SLAPPs**

By letter dated 15 December 2022, the Belgian federal ministry of Justice notified the European Commission that it had designated FIRM-IFDH as ‘focal point’ under Commission Recommendation 2022/758 of 27 April 2022.

## **NHRI's recommendations to national and regional authorities**

In matters of access to official documents, FIRM-IFDH recommends to strengthen the appeal bodies that exist to challenge refusal of access to documents by merging them into a single federal authority, giving it decision-making powers on top of its current advisory capacity, with increased resources.

Explicitly state in the Act of 24 June 2013 on municipal administrative sanctions that none of its provisions infringe or hinder fundamental rights and freedoms, such as the right to strike, freedom of assembly, association, expression and demonstration.

Favour the use of criminal law – with its stronger human rights guarantees – to administrative law as an instrument by local authorities to prevent and pursue crimes and misdemeanours.

## **Implementation of European Courts' judgments**

### **Assessment of follow-up activities of State authorities**

Non-implementation of judgments by the executive is an increasing problem in Belgium. This situation primarily concerns judgments from European courts: the European Court of Human Rights<sup>71</sup>, certain judgments of the Court of Justice of the European Union, and even the "quasi-jurisprudence" of the European Committee of Social Rights. Some problems underlined by rulings of the European courts remain standing despite being several years old. For example, the backlog of court cases mentioned in the Bell group case already dates from 2008<sup>72</sup>, or the overcrowding of prisons had already been established in the Vasilescu case from 2014. Both cases highlight long-standing issues in human rights protection in Belgium.

In addition, the non-execution of certain judgments of the courts and tribunals of the Belgian judiciary also appears to be on the rise. Nearly 7,000 judgments have been issued condemning the State for its inability to ensure a reception of asylum seekers compatible with the respect of their human rights<sup>73</sup>. Yet, this did not result in the

government taking firm and urgent measures to put an end to the violations. Other judgments have also been willfully ignored by state authorities, such as repetitive orders to stop arms exports to authoritarian countries, judgments regarding compliance with noise standards in aviation, etc.

This situation is however not exclusively negative: some judgments of European courts have been well executed by the Belgian state, such as the Lachiri case, which led to an amendment of the Judicial Code in 2021 to remove the prohibition of headscarf in courts. For more information, the Ministry of Justice publishes an annual report on Belgian litigation before the European Court of Human Rights<sup>74</sup>, which includes information on the execution of the Court's judgments by state authorities. While the picture painted by this annual report is usually quite sympathetic to state efforts, it does show a genuine attention to the execution of ECtHR's judgments by public authorities.

More generally and despite those positive steps, the non-execution of judgments by Belgian authorities is a cause for increasing concern. This situation is one of the main reasons why non-governmental organizations and independent public institutions have deplored a severe weakening of the rule of law in Belgium. Therefore, the issue of the non-execution of judgments should become a priority for all actors involved in rule of law protection in Belgium, whether they be human rights defenders or competent state authorities.

### **Leading European Courts' judgments awaiting implementation**

The following cases are currently considered leading judgments that have not yet been executed by the Belgian authorities.

#### **L.B. group**

The applicants in L.B.<sup>75</sup> were interned on the grounds that they suffered from mental illnesses and were considered dangerous under the 1964 "Social Defence Law". From 2004 onwards, the ECtHR found that their prolonged detention in establishments under the authority of the prison administration (psychiatric wing of a penitentiary or social



defence section) constituted a violation of art. 5§1. The Court stressed that this situation was due to a structural problem, namely that support provided to internees in establishments under the authority of the prison administration was insufficient, while placement outside prisons was often impossible because of a lack of places in psychiatric hospitals and/or because the legislative provisions did not allow the courts responsible for enforcing the placement measure (social protection chamber of the sentence enforcement courts) in an external structure.

### **Bell group**

The Bell<sup>76</sup> case concerns the excessive length of civil proceedings before first instance tribunals. It was decided in 2008 and remains unimplemented. In September 2022, the Committee of Ministers decided to join the Abboud group of cases to the enhanced surveillance procedure of the Bell case. The case concerns the excessive length of criminal proceedings. Both cases show that Belgium has so far failed to tackle its long-standing problem of excessive length of judicial procedures.

### **Vasilescu group**

In Vasilescu (2014)<sup>77</sup>, the ECtHR judged that the conditions of detention the applicant was subjected to amounted to a violation of art. 3 of the ECHR. The ECtHR recommended that Belgium adopt general measures guaranteeing human conditions of detention and to install an effective remedy by which to put a stop to an alleged violation or allow detainees to obtain an improvement in their conditions of detention.

### **Clasens group**

Clasens<sup>78</sup> follows the case of an extensive strike in all Belgian prisons during the spring of 2016. Due to the lack of a guaranteed minimum service in Belgian prisons, this strike led to the suspension of the standard detention regime, in various degrees in different prisons. Faced with this situation, some detainees brought proceedings before the court of first instance (Clasens), while others (several of the applicants concerned by Detry

and others<sup>79</sup>) brought their case directly before the ECtHR, in the absence of an effective remedy under Belgian law.

The Court held that there had been violations of art. 3 ECHR, due to the cumulative effect of the continuous absence of physical activity, repeated breaches of the hygiene regulations, the absence of contact with the outside world and the uncertainty of being able to satisfy basic needs. Furthermore, the Court found a violation of art. 13 because the Belgian prison system did not, at the time, have an effective remedy in practice.

### **Trabelsi**

Nizar Trabelsi<sup>80</sup> was extradited by Belgium in 2013 to the United States of America to stand trial for offences of a terrorist nature, despite an interim measure forbidding it by the ECtHR. The ECtHR then found that the extradition had violated art. 3 ECHR. The execution of the ECtHR case has been closed in 2018 by the enforcement department, following guarantees given by American judicial authorities as to the possibility of parole in case of a future conviction.

Yet, Mr Trabelsi was already convicted of this terrorist offence in Belgium and had served his prison term at the time of his extradition. Belgian courts have repeatedly required the State to inform US authorities of the application of the *ne bis in idem* principle, which the State has so far failed to do in a satisfactory manner, according to Belgian courts. As a result, Mr Trabelsi remains on trial in the US for an offence for which he has already been convicted for in Belgium.

### **Makdoudi and Saqawat**

The cases Makdoudi<sup>81</sup> and Saqawat concern the administrative detention of migrants and the insufficient legality review of their right to private and family life by the administrative migration court. There had been no decision within a sufficiently short timeframe on the legality of the detention, nor had the Belgian courts sufficiently considered the family life of the detainee before deciding his expulsion. Belgium has so

far failed to correctly implement those judgments, as the required legislative modification has yet to take place.

### **M.A.**

In M.A.<sup>82</sup>, Belgium was convicted for violating articles 3 and 13 of the ECHR for removing the applicant from Belgium to Sudan without sufficient consideration of the risks of violation of article 3 ECHR involved, in disregard of a national court decision ordering the suspension of the expulsion. According to a national court, the Belgian Migration Office “had abused the vulnerable situation of the applicant resulting from his deprivation of liberty in order to make him consent to a so-called voluntary return”.

### **ECtHR and Belgian judgments regarding the “reception crisis”**

Since autumn 2021 and throughout 2022, the Belgian state has been ordered more than 7 000 times by national courts to provide reception to asylum seekers who were not given a place in a reception centre when they filed their application<sup>83</sup>. It concerned mainly isolated men, as well as some families and unaccompanied minors. In many cases, subsidiary penalty payments have been imposed by the courts. Asylum seekers who have been given such an order often have to wait weeks or months before receiving a place. The penalties have never been paid. Since end of October 2022, interim measures have been ordered by the ECtHR regarding single men<sup>84</sup>.

#### **Zubair Haqbin v. Fedasil**

Since November 2019, Belgium has failed to implement the ECJ Grand Chamber judgment [Zubair Haqbin](#)<sup>85</sup>, recalling the obligation to ensure “*a dignified standard of living*” for all asylum seekers, including those subjected to disciplinary sanctions. Such sanctions “*cannot deprive the applicant of the possibility of meeting his or her most basic needs*”, and a sufficient standard of living must be guaranteed “*continuously and without interruption*”. Although this obligation is included in the Belgian law transposing the reception directive, Myria still observes that numbers of asylum seekers, after a sanction

or limitation of their reception rights, become homeless, including during the Covid-19 pandemic<sup>86</sup>.

### **Criminal punishment of illegal residence**

In 2011, the [ECJ Grand Chamber](#) ruled that the criminal punishment of illegal residence by means of a prison sentence violates EU law if the foreigner has not previously been subjected to the administrative return procedure and had not seen the expiry of the maximum duration of such detention<sup>87</sup>. A decade later, Belgian law still allows judges to impose prison sentence for illegal residence in Belgium without taking into account the limitative conditions posed by EU law. Separated prison sentences are effectively imposed for illegal residence when the person is also prosecuted for other acts<sup>88</sup>.

The member believes the reasons for the lack of implementation of European courts' judgments are as follows:

#### **L.B.**

The lack of places in the regular psychiatric circuit hinders the free flow of the treatment process for interned persons, who only manage to leave the prison system with great difficulty. The number of interned persons is increasing, especially in Flanders, despite the 2014 Act having reduced the scope of the internment measure.

Furthermore, the lack of financial and human resources creates staff shortage and leads to a decrease of the quality of care. The 2016 Masterplan III Detention and Internment intends to create three forensic psychiatric centres in Wallonia by 2027, but their focus on a 'security' approach could be cause for concern<sup>8990</sup>.

#### **Bell**

The lack of funding of the justice system is one of the main reasons for the judicial backlog. Some courts and tribunals are chronically understaffed, and it also hampers efforts to create an effective data collection system. This results in a lack of statistics on

the “disposition time”, an indicator which would enable effective monitoring of the evolution of the average length of proceedings.

### **Vasilescu**

In March 2022, Belgium submitted a sixth action plan to the Committee of Ministers<sup>91</sup>. In a Rule 9.2 submission, CTRG-CCSP found that this new action plan doesn't adequately address the structural problems of prison overcrowding and inadequate conditions of detention. And, furthermore, that detainees continue to lack access to an effective remedy.

Following these exchanges, the Committee of Ministers concluded that Belgium had not yet sufficiently ensured the execution of Vasilescu and expressed its deep concern at the worsening situation in Belgian prisons. It urged Belgium to quickly establish the 'Conseil pénitentiaire', based on the law of 23 March 2019, and tasked with the evaluation of the (penal) policies and with the preparation of a global plan to combat overcrowding<sup>92</sup>.

Belgium has, once again, been invited to raise awareness to reinforce the use of alternatives to detention and to reduce the number of detainees in Belgian prisons. In addition, the Committee requested Belgium to consider rapidly binding measures to regulate the prison population. Finally, the Committee has again urged the authorities to adopt, at short notice, any solution to improve the distribution of prisoners and to ensure, at the very least, that every detainee has a bed, and to continue their efforts to improve conditions of detention in general.

### **Trabelsi**

Officially, the follow-up of the execution of the Trabelsi case has been closed by the Committee of Ministers, and the Belgian State claims to have responded in an appropriate manner. Yet, the State has been convicted several times by Belgian courts for its lack of action, including 2 times in 2022 (on 23 May and 12 September)<sup>93</sup>. The Brussels Court of Appeal ordered the State to negotiate the repatriation of Mr Trabelsi,

but with little success as far as FIRM-IFDH knows. The reasons for not fully enforcing these decisions are unclear.<sup>94</sup>

### **NHRI's actions to support the implementation of European Courts' judgments**

#### **L.B.**

Unia has set up a prevention and monitoring unit to ensure that the fundamental rights of persons who have been interned are respected. During its visits, Unia<sup>95</sup> collects the experiences and points of attention of the sector (staff and interned individuals) to relay them, in the form of recommendations, to the national authorities.

Unia also reports to the various international bodies that monitor fundamental rights, including a Rule 9 submission.

#### **Bell**

FIRM-IFDH has addressed a [submission](#) to the Department for the Execution of Judgments of the ECHR concerning the Bell case. In this context, it has welcomed the intent of the State to increase the financing of the justice system. It has however expressed concerns over the conditionality to performance requirements associated with the allocation of the additional resources. FIRM-IFDH has also stressed the importance of strengthening the capacity to collect judicial data.

#### **Vasilescu**

In addition to its Rule 9 submission, CTRG-CCSP<sup>96</sup> has called upon all relevant actors - government, parliament, the judiciary and all other relevant actors in the penal chain - to implement the Council of Europe's stringent recommendations without further delay. In a context of steadily reducing crime rates, as the Minister of Justice personally pointed out during a speech, the need for an ambitious, effective and integrated approach to address the shameful overcrowding of prisons is more urgent than ever<sup>97</sup>.

#### **Clasens**

In a Rule 9 submission, CTRG-CCSP and FIRM-IFDH<sup>98</sup> have requested that the Committee of Ministers keeps monitoring the Clasens case, despite the request for closure made by the State. Indeed, in the absence of improvements to the social dialogue – which appears to be the only way to guarantee the continuity of the prison service during a strike, as intended by the Act of 23 March 2019 – it is important to keep monitoring the execution of these decisions. Unfortunately, this consultation and dialogue is still at a stalemate.

Since the submission, the Council of Ministers has not yet resumed its assessment of the execution of this judgement.

### **M.A.**

Myria and FIRM-IFDH presented a joint Rule 9 submission<sup>99</sup> on the execution of M.A. v. Belgium. According to the two institutions, M.A. warrants particular attention from the Committee, given its similarities with the 2012 M.S. case<sup>100</sup>. The Belgian government should provide solid guarantees to avoid abuse in the context of such a declaration of voluntary departure.

### **Makdoudi and Saqawat**

As with M.A., Myria and FIRM-IFDH submitted a joint Rule 9 submission<sup>101</sup> in the cases Makdoudi and Saqawat. They recommended the Committee adopt the enhanced procedure in its assessment of those two decisions and urged several legislative modifications to the control of administrative detention of migrants.

### **Lacatus v. Switzerland**

In 2022, the Combat Poverty Service and FIRM-IFDH jointly worked on a study concerning the prohibition of begging in Belgian municipalities. Our analysis was made in light of the recent judgment of the ECtHR<sup>102</sup> where it acknowledged a right to beg (Lacatus vs. Switzerland<sup>103</sup>) and the relevant case-law of the Belgian Council of State. Although begging has not been a criminal offence in Belgium since 1993, several municipalities have resorted to measures based on their police powers. When we

examined the regulations of the 581 municipalities in Belgium, we found that 304 municipalities had regulations on begging, of which 272 are problematic. This study will be published in February 2023 and will be freely available on the websites of both institutions.

### **NHRI's recommendations to national and regional authorities**

#### **L.B.**

Transfer interned individuals currently being detained to appropriate care structures, giving priority to the regular sector. Prevent forensic psychiatric centres from becoming the dominant models and their being used to the detriment of the extension (or the maintenance) of the healthcare offer of the regular circuit (in more open residential structures).

#### **Bell**

Commit to providing sufficient staffing and resources to courts and tribunals. Additional resources should be allocated to assist in resorbing the backlog of especially affected courts and tribunals. Those resources should not be conditioned to performance standards decided by the executive branch to avoid threatening the independence of the judiciary.

#### **Vasilescu**

Implement the Council of Europe's recommendations on prison overcrowding without further delay.

#### **"Reception crisis"**

Provide reception to every asylum seeker who were not given a place in a centre.



## Artificial Intelligence

### Impact of AI on human rights, democracy and rule of law

In Belgium, an increasing number of public policies are implemented using automated data processing and/or AI. Those tools can present advantages for public authorities in terms of efficiency, but they can also lead to difficulties of control, systematisation of certain biases leading to discriminatory results, reinforcement of social exclusion mechanisms, and a potential increase of State control over individual behaviour.

### Lack of administrative transparency

Those problems are reinforced by a general lack of transparency regarding the use of AI. Currently, under Belgian law, public authorities have limited obligations to disclose their use of artificial intelligence. Under the GDPR, they only have an obligation to disclose fully-automated decisions which produce legal effects on individuals. This obligation does not extend to cases where a decision is taken by a civil servant with the assistance of AI. This results in a general lack of awareness about the uses of AI in Belgium, which in turn limits possibilities of democratic oversight. It also limits the possibility for potential victims of AI-generated human rights violations to obtain redress.

### Algorithms to decide unemployment support

In Belgium, algorithms are currently being used to calibrate the level of assistance extended to jobseekers from the State to find employment. The criteria used are unclear and could be based on stereotypical representations, leading to a consolidation of existing inequalities. Oversight is too limited. In Flanders, the employment agency launched an [Ethics Council on the use of data and AI](#) in December 2022. The Regions of Brussels and Wallonia do not appear to have similar institutions.

## Facial recognition

There is no explicit legal basis for the use of facial recognition technology (FRT) by Belgian police services. The Police Act provides for a general legal basis to process "biometric data" for the purpose of unambiguous identification of, inter alia, suspects of a criminal offence and missing persons<sup>104</sup>. However, it lacks a sufficient legal basis for the use of FRT. The COC, the body supervising the processing of information and data used by police services issued a report about the use of the Clearview AI software by Belgian police<sup>105</sup>. It highlighted the unauthorized and unsupervised use of the tool by police services.

## NHRI's actions to address challenges regarding the use of artificial intelligence

### FIRM-IFDH

In 2021, FIRM-IFDH provided advice to the Parliament on the necessity to increase transparency with respect to the use of AI – and more generally algorithms – by public administrations<sup>106</sup>. It notably stressed the need to create a public register of the use of AI by public authorities. It stated that this register should include information on the learning capacity of the AI in question, as well as information on the data used to train it. It also emphasized the need to disclose the fact AI has been used for personal decision making to rights-holders.

In addition to this report, FIRM-IFDH has also more broadly stressed the potential risks for human rights violations associated with the use of AI by publishing opinions in newspapers (FR/NL). FIRM-IFDH has started streamlining AI-related issues in its work, notably advising municipalities wishing to become "Human Rights cities" on the potential risks of "smart city" programs. FIRM-IFDH also submitted a parallel report<sup>107</sup> on labour rights to the European Committee of Social Rights with the Combat Poverty Service, the Institute for the Equality of Women and Men, Myria, and CTRG-CCSP. This report criticizes the current legal protection of platform workers and formulates suggestions to improve their rights. These findings were reported in the media<sup>108</sup>.

## Unia

Unia has been investing in the theme of AI by building knowledge, awareness-raising efforts<sup>109</sup>, providing feedback on legislative initiatives (e.g. EU AI Act), building cases and representation in relevant platforms and discussions. Some notable initiatives include:

- Unia collaborates with the CoE on an online training AI and discrimination: existing trainings in France and UK will be adapted to the Belgian context<sup>110</sup>.
- Unia is member of the Ethics and Law working group of AI4Belgium, a coalition of key-players from public sector, private sector, academia and civil society.
- Activities via case handling:
  - Unia is member of the commission that accompanies the use of bodycams for the purpose of law enforcement.
  - Unia has on several occasions been requested to advise on AI-systems used in the housing market.
  - Unia cooperates with trade unions and Social Inspectorates in the context of the labour market to address AI on the work floor.

With regards to the different institutions' engagement in consultations on the regional conventions that are being drafted on artificial intelligence (the EU Artificial Intelligence Act and the Council of Europe Convention on Human Rights, Democracy and Rule of Law), Unia is co-chair of ENNHRI's AI working group. Unia also represents ENNHRI during the sessions at CAI. FIRM-IFDH is an active member of ENNHRI's AI Working Group and contributes actively through legal analysis, drafting arguments to improve human rights protection.

## **NHRI's recommendations to national and regional authorities**

### **a. Public registry on AI uses by public authorities**

Belgian authorities should create a registry of the uses of AI by public authorities. The registry should describe the AI in question and how it is used by public authorities. It should also include information on the learning capacity of the AI, as well as information

on the datasets used to train it. The creation of this registry would be a notable first step to increase possibilities of democratic oversight. It would enable civil society to engage meaningfully with public authorities on the uses of AI and would enable national human rights institutions to provide expertise on the human rights implications on certain uses of AI. The creation of the registry would also increase possibilities for rights-holders to obtain redress for human rights violations. Indeed, the current prevalent opacity concerning the uses of AI in Belgium prevents rights-holders from asserting their rights. It also prevents public authorities, including courts and tribunals, from effectively ensuring that rights are respected.

**b. Systematic notification of AI use to assist individual decision-making processes by public authorities**

Along the same lines, Belgian authorities should systematically notify individuals when they use AI to assist decision-making processes for individual decisions. Under current data privacy regulations, individuals have the right not to be subject to a decision based solely on automated processing which produces legal effects concerning him or her (art. 22 GDPR). However, there is no similar right where the use of AI may have played a significant role in informing a decision, but where the process was only partly automated. However, in such a case, human oversight can still be minimal due to several factors: lack of time, lack of understanding of the functioning of the AI, over-reliance in the said AI. Systematically notifying individuals that an AI has been used to inform decisions concerning them would therefore be a step forward. It would increase transparency and allow individuals to request additional human oversight. It would also enable them to request the assistance of NHRIs to assess whether they have been subject to human rights violations.

**c. National support of NHRIs to address challenges posed by AI**

Human rights violations caused by automated systems increase the weaknesses of fundamental rights law. Addressing automated human rights violations will also mean

reconsidering the gaps in the material scope, adapting and revisiting some of the core concepts to accommodate the changing nature of violations. In an automated context, effective redress is even more challenging. Cooperation between the relevant enforcing institutions will be vital in ensuring effective redress. National authorities should support NHRIs and ensure that they have adequate and meaningful powers to address the new challenges posed by AI.

## **Other challenges in the areas of rule of law and human rights**

### **Comprehensive Human Rights Assessment of Anti-terrorism legislation**

Belgian counter-terrorism legislation has undergone significant developments following the transposition of EU Directive 2017/541. Several new offences have been introduced into the criminal code<sup>111</sup> (i.e. recruitment, “self-education”, or leaving the territory with a “terrorist intent”). These new offences require an intent element difficult to demonstrate, and risk leading to very broad interpretation. Administrative tools have also been increasingly used to preventively manage terrorism and radicalism, relying on vague definitions of “radicalism”, and rendering oversight mechanisms somewhat ineffective. At the same time, very little time has been devoted to assess these mechanisms, despite their impact on human rights and the rule of law. The way these new standards are implemented and their compatibility with human rights law should be subject to an overall human rights assessment conducted by the federal Parliament<sup>112</sup>.

### **Overcrowding in Belgian prisons**

The overcrowding of Belgian prisons is and remains unacceptable. On 25 November 2022, 231 prisoners were forced to sleep on mattresses on the floor, and the population mounted to 11,322 prisoners for 9,739 available places<sup>113</sup>. In February 2022, the authorities had announced the placement of 284 additional bunk beds and stated that the problem of prisoners sleeping on the floor would have been largely solved by the spring of 2023. This seems unrealistic considering the constant increase of the prison population since the end of the pandemic. The government also decided to

progressively enforce all sentences of less than three years<sup>114</sup> which, as a rule, were previously executed under electronic surveillance. It is therefore suspected (and feared) that the present situation will worsen in the months to come, as the population will likely increase with around 750 additional prisoners.<sup>115</sup>

In some prisons, the overcrowding rate, combined with other problems such as infrastructural deficiencies, is so acute that the ECtHR considers the situation to be a violation of Article 3 ECHR (see Vasilescu group). Yet, few detainees are aware that the ECtHR is the court of law par excellence that can award them a compensation for moral damage suffered as a result of the deplorable conditions of detention, without having to exhaust domestic remedies<sup>116</sup>.

### **Use of administrative law as preventative tool**

FIRM-IFDH is concerned about the increasing use of administrative law<sup>117</sup> as a preventative tool for law enforcement, often based on perceived risk rather than actual conduct. This is obvious in the area of terrorism prevention or the recent circular on prohibiting individuals to demonstrate. FIRM-IFDH has also criticized a government legislative proposal<sup>118</sup> that would allow municipal authorities to refuse, suspend or withdraw a business permit, or to close a business, based on indications that it might be used to commit criminal offences or to benefit from the proceeds of prior criminal offences. These powers would be added to the already-existing local competences to close establishments based on indications that these are used to commit terrorism-related, drugs and human trafficking offences.

FIRM-IFDH has a fundamental preference for the use of criminal law over administrative law as an instrument of crime control and is concerned about the widening of the social control net and the creation of a parallel justice system governed by administrative law rather than criminal law.

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<sup>11</sup> Central Monitoring Council for Prisons (CTRG-CCSP) is not an ENNHRI member.

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<sup>2</sup> Federal advisory Committee on European Affairs, [The 2022 report on the Rule of Law – exchange of views with Commissioner Didier Reynders](#), 10 January 2023, DOC 55 3237/001 (Chambre), 7-412/1 (Sénat).

<sup>3</sup> [National dialogue on the rule of law](#), (in Dutch) January 2023

<sup>4</sup> Chambre des Représentants, Commission de la Justice, [compte-rendu intégral des interventions du 14 décembre 2022](#) (with an exchange of views on the consequences of the conviction of Olivier Vandecasteele by Iran on the rule of law).

<sup>5</sup> Human Rights League (French-speaking), [État des droits humains en Belgique – Rapport 2022](#), January 2023.

<sup>6</sup> Le Soir, [Crise de l'accueil : des avocats « enterrent » l'État de droit belge](#), 1st December 2022.

<sup>7</sup> Chambre des Représentants, Commission de l'Intérieur, de la Sécurité, de la Migration et des Matières Administratives, [compte-rendu intégral du 21 septembre 2022](#) (with an exchange of views on the reception crisis).

<sup>8</sup> Human Rights League (French-speaking), [État des droits humains en Belgique – Rapport 2022](#), January 2023, p. 61.

<sup>9</sup> Chambre des Représentants, Commission de la Justice, [compte-rendu intégral des interventions du 14 décembre 2022](#) (with an exchange of views on the consequences of the conviction of Olivier Vandecasteele by Iran on the rule of law).

<sup>10</sup> See FIRM-IFDH and CTRG-CCSP, "[For a humane treatment of prisoners, including during prison strikes](#). Rule 9 submission to the Committee of Ministers of the Council of Europe in the cases of *Clasens v. Belgium* and *Detry v. Belgium*", 30 July 2021 ; Myria and FIRM-IFDH, "[For a better protection of the right to an effective remedy against deprivation of liberty and the right to private life of migrants](#). Rule 9 submission to the Committee of Ministers of the Council of Europe in the cases *Makdoudi v. Belgium* and *Saqawat v. Belgium*", 24 March 2022 ; CTRG-CCSP, "[Third submission of the CTRG-CCSP to the Committee of Ministers of the Council of Europe in the group of cases \*Vasilescu v. Belgium\*](#)", 11 May 2022 ; FIRM-IFDH, Myria, Combat Poverty Service, IGVM-IEFH, CTRG-CCSP, "[Parallel report on labour rights in Belgium the European Committee of Social Rights](#)", 20 July 2022; Myria and FIRM-IFDH, "[For a better consideration of the risks incurred by foreigners during the voluntary return procedure](#). Rule 9 submission to the Committee of Ministers of the Council of Europe in the case *M.A. v. Belgium*", 26 September 2022 ; FIRM-IFDH, "[For a reasonable length of court proceedings](#). Rule 9 submission to the Committee of Ministers of the Council of Europe in the group of cases *Bell v. Belgium*", 30 September 2022.

<sup>11</sup> Myria, FIRM-IFDH, Kinderrechtencommissaris, Délégué général aux droits de l'enfant and the Federal ombudsman, [Le gouvernement fédéral en échec face à la crise de l'accueil : crise humanitaire et atteinte à l'État de droit](#), 21 December 2022.

<sup>12</sup> Myria, Unia, Combat Poverty Service, FIRM-IFDH, Kinderrechtencommissaris, Délégué general aux droits de l'enfant, [Apprendre de l'accueil des Ukrainien.ne.s en Belgique : recommandations de six institutions de droits humains](#), 22 September 2022.

<sup>13</sup> FIRM-IFDH, [Crise de l'accueil : un petit pas en avant mais d'autres mesures d'urgence restent nécessaires](#), 27 October 2022.

<sup>14</sup> Myria, Unia, Combat Poverty Service, FIRM-IFDH, Kinderrechtencommissaris, Délégué general aux droits de l'enfant, [Apprendre de l'accueil des Ukrainien.ne.s en Belgique : recommandations de six institutions de droits humains](#), 22 September 2022.

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<sup>15</sup> Among others by addressing a review of the State's efforts to the Committee of Ministers of the Council of Europe. See FIRM-IFDH, "[For a reasonable length of court proceedings](#). Rule 9 submission to the Committee of Ministers of the Council of Europe in the group of cases *Bell v. Belgium*", 30 September 2022.

<sup>16</sup> FIRM-IFDH, [Advisory Opinion on legislative proposals pertaining to the disclosure of information by the administration](#), 24 January 2022 ; FIRM-IFDH, [Advisory Opinion on the Reinforcement of the Disclosure of Information by the federal Administration](#), 26 October 2022.

<sup>17</sup> Conseil supérieur de la justice, [Audit : Cour d'appel de Bruxelles](#), 30 June 2022, p. 16.

<sup>18</sup> FIRM-IFDH, "[For a reasonable length of court proceedings](#). Communication to the Committee of Ministers of the Council of Europe in the group of cases *Bell v. Belgium*", 30 September 2022.

<sup>19</sup> Team Justice, [Déclaration de politique 2.0 Justice](#), 27 January 2021, pp. 12-13.

<sup>20</sup> [Cour d'appel de Bruxelles document](#), (in French), June 2022.

<sup>21</sup> FIRM-IFDH, [Rule 9 submission in the Bell v. Belgium judgment](#), 30 September 2022.

<sup>22</sup> [SCA Report May 2018](#)

<sup>23</sup> [Federal Government Declaration of 30 September 2020](#), p. 85.

<sup>24</sup> [ENNHRI advises on possible establishment of Flemish Institute for Human Rights and the UN Paris Principles](#)

<sup>25</sup> [Act of 12 May 2019](#) holding the establishment of the Federal Institute for the protection and promotion of Human rights (2019/12931), Belgian official Bulletin, 21 June 2019.

<sup>26</sup> [Act of 28 November 2022](#) on the protection of persons reporting violations of Union or national law within a private sector legal entity, Belgian official Bulletin, 15 December 2022.

<sup>27</sup> [Act of 8 December 2022](#) on reporting channels and the protection of whistleblowers in federal public sector bodies and the integrated police, Belgian official Bulletin, 23 December 2022.

<sup>28</sup> [Federal Government Declaration of 30 September 2020](#), p. 85.

<sup>29</sup> [Cooperation agreement between the federal authority, the Regions and the Communities aimed at creating an Interfederal Centre for Equal Opportunities and Opposition to Racism and Discrimination in the form of a joint institution, in the sense of article 92bis of the Special Act of 8 August 1980 on the Reform of the Institutions](#)

<sup>30</sup> [Cooperation Agreement between the Federal State, the Communities, and the Regions concerning the continuation of the Poverty Reduction Policy](#), Belgian official Bulletin, 16 December 1998 and 10 July 1999.

<sup>31</sup> [Act of 17 August 2013 adapting the Act of 15 February 1993 creating a Centre for Equal Opportunities and Opposition to Racism with a view to transforming it into a Federal Centre for the Analysis of Migration Flows, the Protection of the Fundamental Rights of Foreigners and the Fight against Human Trafficking](#), Belgian Official Bulletin, 5 March 2014.

<sup>32</sup> [CCPS website](#)

<sup>33</sup> [Principles Act of 12 January 2005](#) on the prison system and legal position of prisoners, Belgian official Bulletin, 1<sup>st</sup> February 2005.

<sup>34</sup> All advisory opinions can be consulted on FIRM-IFDH's website : <https://www.institutfederaldroitshumains.be/fr/rechercher-publications>.



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- <sup>35</sup> The cooperation protocol is listed [on Unia's website](#).
- <sup>36</sup> [Act of 28 October 2022](#) establishing a Flemish Human Rights Institute, Belgian official Bulletin, 9 November 2022.
- <sup>37</sup> [Policy and Budget Information](#), Minister for Equal Opportunities and Integration, 28 October 2022
- <sup>38</sup> [Exchange of views on Unia's 2020 annual report on Feb. 11, 2022](#).
- <sup>39</sup> [11 January 2022 : Questions for explanation on the review of Flemish anti-discrimination regulations, on civil society coalition's criticism of the VMRI](#)
- <sup>40</sup> 27 September 2022 : Hearing with experts <https://docs.vlaamsparlement.be/pfile?id=1879098>
- <sup>41</sup> [Decree of Oct. 5, 2022 establishing VMRI](#)
- <sup>42</sup> [15 February 2022 : Questions for clarification to Bart Somers on opinions on establishment of Flemish Human Rights Institute](#)
- <sup>43</sup> 26 October 2022 : Parliamentary debate in plenary session <https://www.vlaamsparlement.be/nl/parlementair-werk/plenaire-vergaderingen/1673302/verslag/1676582>
- <sup>44</sup> [Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs](#),
- <sup>45</sup> United Nations' Committee on the Rights of the Child, [Concluding observations on the combined fifth and sixth periodic reports of Belgium](#), CRC/C/BEL/CO/5-6, 28 February 2019, § 47.
- <sup>46</sup> FIRM-IFDH, [Advisory opinion on a legislative proposal modifying the law of 24 June 2013 on municipal administrative sanctions](#), 29 November 2022.
- <sup>47</sup> FIRM\_IFDH, [Research on pressure on human rights defenders](#), 24 October 2022.
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- <sup>50</sup> [2022 World Press Freedom Index – Belgium](#).
- <sup>51</sup> FIRM-IFDH, Combat Poverty Service, Myria, CTRG-CCSP, Institute for the Equality between women and men, [Parallel Report to the European Committee of Social Rights](#), 20 July 2022, pp. 59-60.
- <sup>52</sup> FIRM-IFDH, Combat Poverty Service, CTRG-CCSP, [Parallel Report to the Committee on the Elimination of Discrimination against Women](#) (CEDAW), 14 October 2022.
- <sup>53</sup> Federal government, [Plan d'Action National de lutte contre les violences basées sur le genre 2021-2025 – Axes stratégiques et mesures clés](#).
- <sup>54</sup> FIRM-IFDH, [Advisory Opinion on traffic obstruction](#), 27 January 2023.
- <sup>55</sup> FIRM-IFDH, [Advisory Opinion on a legislative proposal on strip searches](#), 15 June 2022.
- <sup>56</sup> Court of cassation, [Judgment of 22 October 2022](#), P.22.0871.N.
- <sup>57</sup> D. Voorhoof, "[News site acquitted for stalking and breach of privacy in Belgian SLAPP-case](#)", 22 June 2022.

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<sup>58</sup> European Commission, [Commission Recommendation \(EU\) 2022/758 of 27 April 2022](#) on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'), C/2022/2428.

<sup>59</sup> FIRM-IFDH, [Advisory Opinion on legislative proposals pertaining to the disclosure of information by the administration](#), 24 January 2022.

FIRM-IFDH, [Advisory Opinion on the Reinforcement of the Disclosure of Information by the federal Administration](#), 26 October 2022.

<sup>60</sup> European Commission, [Annex to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the 2022 Rule of Law Report](#), COM (2022) 500 final, 13 July 2022.

<sup>61</sup> FIRM-IFDH, [Advisory Opinion on legislative proposals pertaining to the disclosure of information by the administration](#), 24 January 2022.

FIRM-IFDH, [Advisory Opinion on the Reinforcement of the Disclosure of Information by the federal Administration](#), 26 October 2022.

<sup>62</sup> FIRM-IFDH, [Advisory Opinion on a legislative proposal on strip searches](#), 15 June 2022.

<sup>63</sup> FIRM-IFDH, [Advisory Opinion on a legislative proposal modifying the law of 24 June 2013 on municipal administrative sanctions](#), 29 November 2022.

<sup>64</sup> FIRM-IFDH, [Advisory Opinion on the Municipal Administrative Approach](#), 18 November 2022.

<sup>65</sup> FIRM-IFDH, Combat Poverty Service, CTRG-CCSP, [Parallel Report to the Committee on the Elimination of Discrimination against Women](#) (CEDAW), 14 October 2022.

<sup>66</sup> FIRM-IFDH, Combat Poverty Service, Myria, CTRG-CCSP, Institute for the Equality between women and men, [Parallel Report to the European Committee of Social Rights](#), 20 July 2022

<sup>67</sup> FIRM-IFDH, [Advisory Opinion on the secrecy of communications](#), 7 October 2022.

<sup>68</sup> FIRM-IFDH, [Advisory Opinion on legislative proposals pertaining to the disclosure of information by the administration](#), 24 January 2022.

FIRM-IFDH, [Advisory Opinion on the Reinforcement of the Disclosure of Information by the federal Administration](#), 26 October 2022.

<sup>69</sup> FIRM-IFDH, [Advisory Opinion assessing the Covid Safe Ticket from a Human Rights Perspective](#), 7 March 2022.

<sup>70</sup> FIRM-IFDH, [Advisory Opinion on Compulsory Vaccination and Human Rights](#), 4 February 2022.

<sup>71</sup> Federal public ministry of Justice, [Rapport annuel sur le contentieux de la Belgique devant la Cour européenne des droits de l'homme – 2020](#), 4 février 2022.

<sup>72</sup> ECtHR, [Bell v. Belgium](#), nr. 44826/05, 4 November 2008.

<sup>73</sup> Myria, FIRM-IFDH, Federal Ombudsman, Kinderrechtencommissaris, Délégué general aux droits de l'enfant, [Le gouvernement fédéral en échec face à la crise de l'accueil : crise humanitaire et atteinte à l'État de droit](#), 21 December 2022.

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<sup>75</sup> ECtHR, [L.B. v. Belgium](#), nr. 22831/08, 2 October 2012.

- <sup>76</sup> ECtHR, [Bell v. Belgium](#), nr. 44826/05, 4 November 2008.
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- <sup>78</sup> ECtHR, [Clasens v. Belgium](#), nr. 26564/16, 28 May 2019. This group also concerns the case [Detry and Others v. Belgium](#), nr. 26565/16, 4 June 2020, as well as six other cases.
- <sup>79</sup> ECtHR, [Detry and others v. Belgium case](#).
- <sup>80</sup> ECtHR, [Trabelsi v. Belgium](#), nr. 140/10, 4 September 2014.
- <sup>81</sup> ECtHR, [Makdoudi v. Belgium](#), nr. 12848/15, 18 February 2020 ; [Saqawat v. Belgium](#), nr. 54962/18, 30 June 2020.
- <sup>82</sup> ECtHR, [M.A. v. Belgium](#), nr. 19656/18, 27 October 2020.
- <sup>83</sup> ECtHR, [Al-Shujaa and 142 others v. Belgium](#), nr. 52208/22, 16 December 2022 ; [Msallem and 147 others v. Belgium](#), nr. 48987/22, 16 November 2022 ; [Camara v. Belgium](#), nr. 49255/22, 2 November 2022.
- <sup>84</sup> [Interim measures ordered by the ECtHR regarding single men](#)
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- <sup>86</sup> Myria, [La migration en chiffres et en droits 2020](#), Cahier Protection internationale, pp. 14-19.
- <sup>87</sup> ECJ (Grand Chamber), [Achughbabian v. Préfet du Val-de-Marne](#), C329/11, 6 December 2011.
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- <sup>93</sup> Brussels Court of Appeal, 23 May 2022, R.G. 2021/AR/1769, not published.  
Brussels Court of Appeal, 12 September 2022, R.G. 2020/AR/508, not published.
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- <sup>99</sup> Myria, FIRM-IFDH, [Rule 9 submission in the judgment M.A. v. Belgium](#), 16 September 2022.
- <sup>100</sup> ECtHR, [M.S. v. Belgium case](#).
- <sup>101</sup> Myria, FIRM-IFDH, [Rule 9 submission in the Makdoudi group of cases v. Belgium](#), 24 March 2022.
- <sup>102</sup> ECtHR, [Lacatus v. Switzerland](#), nr. 14065/15, 19 January 2021.
- <sup>103</sup> ECtHR, [Lacatus vs. Switzerland, op. cit.](#)
- <sup>104</sup> Art. 44/1 to 44/11/14, [Police Act of 5 August 1992](#).
- <sup>105</sup> Control body for police information, [control report on the use of the software Clearview AI by the integrated police](#), DIO21006, 4 February 2022.
- <sup>106</sup> FIRM-IFDH, [Advisory Opinion on the use of algorithms by public administrations](#), 5 October 2021.
- <sup>107</sup> FIRM-IFDH, Combat Poverty Service, Myria, CTRG-CCSP, Institute for the Equality between women and men, [Parallel Report to the European Committee of Social Rights](#), 20 July 2022.
- <sup>108</sup> P. GOVAERT, "[Comment le nouveau monde du travail a plongé ces travailleurs dans la précarité](#)", *Moustique* (Belgian French-speaking media), 16 January 2023.
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- <sup>110</sup> [CoE report on France](#) ; [CoE report on UK](#)
- <sup>111</sup> On the new terrorist offences : see [art. 140 quater – sexies](#), Belgian Penal Code.
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- <sup>114</sup> CTRG-CCSP, [Advisory Opinion on the execution of sentences of imprisonment of three years or less for the attention of the Federal Parliament](#), 17 May 2022.
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## Bulgaria

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### Ombudsman of the Republic of Bulgaria

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

In 2022, both public opinion and actions of state authorities were deeply impacted by series of different crises such as the Russia's armed attack on Ukraine, the issues around the gas supply independence, increasing inflation, etc. The rule of law issues were part of the political dispute among major political groups during the 47th National Assembly as Bulgaria has to include major reforms of its judicial system as part of its National plan under the National Recovery and Resilience Plan. The National Assembly saw its premature end after only 8 months of functioning between December 2021 and July 2022. The highly politicized parliamentary debate did not refer directly to the 2022 ENNHRI rule of law report. However, some of the findings of the report concerning Bulgaria were discussed during the public hearings in the standing parliamentary committees while reviewing the Ombudsman Annual report for 2021.

The care-taker government, which took over after the dissolution of the 47th National Assembly on August 1st 2022, restarted the work of the Rule of Law National Coordination Mechanism within the Ministry of Justice. The Rule of Law Council under the National Coordination Mechanism took stock of all documents issued within the preparation of the European Commission Rule of Law 2022 Report<sup>1</sup>.

## Impact on the Institution's work

The 2022 ENNHRI rule of law report has helped the process of enlarging the set of institutional priorities and engaging with state authorities. Follow-up initiatives by the Institution

In 2022, the Ombudsman office continued its action for public awareness on human rights and rule of law within the local communities. The findings and conclusions of the 2022 ENNHRI Rule of Law Report were discussed with local authorities, partners and civil society organisations (CSOs) in 14 different municipalities. Common position on the need to further develop joint activities with local CSOs was reached, especially in light with the shrinking of the civic space observations in the 2022 ENNHRI Rule of LAW Report.<sup>2</sup>

Further public outreach was achieved through different public events in which the Ombudsman office took part such as the Academy of Young leaders<sup>3</sup>, the annual meeting of local ombuds institutions, etc.

The promotion of the Rule of Law was also carried out through the Ombudsman's active participation in public discussions and debates, including in the media. This approach makes it possible to publicly emphasize individual aspects of specific rights, but also to support better understanding and respect by citizens and institutions. At different occasions, the Ombudsman has acted on major key points of the 2022 ENNHRI Rule of Law Report related to rights of vulnerable groups, voting rights, the reform of the juvenile justice. In May 2022, Prof. Diana Kovatcheva participated in a scientific conference entitled "Law and Society in the (post) pandemic world", organized by the Faculty of Law and History of the Southwestern University "Neofit Rilski". In October, 2022 Prof. Kovatcheva was the co-organiser of another scientific conference in the New Bulgarian University.<sup>4</sup>

Furthermore, in October 2022, the Ombudsman of the Republic of Bulgaria hosted the ENNHRI high-level network meeting on “Revisiting our approach to joint work on rule of law”. The event has further strengthened the cooperation of the Ombudsman institution with leading human rights CSO in Bulgaria.

Since December 2022, the office of the Ombudsman is part of the working group on Media pluralism and Freedom of Media established within the Rule of Law National Coordination Mechanism.

## **Implementation of regional actors’ and NHRI’s recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors’ recommendations on rule of law**

The state of the Rule of Law in Bulgaria was a constant issue of concern for the two consecutive legislatures adopted in 2022, the 47th National Assembly (December 2021 – July 2022) and the 48th National Assembly (October 2022 – February 2023). The Rules of the 47th National Assembly<sup>5</sup> provided for the establishment of a Standing Subcommittee on Constitutional Affairs which was then established as a Specialised Standing Committee on Constitutional Affairs.

Within the 48th National Assembly, one of the competencies of the Standing Committee on Constitutional Affairs was to carry out monitoring and analysis of the legislation for compliance with the principles and rules of the European Union and the international rules for the protection of human rights and fundamental freedoms<sup>6</sup>. In the exercise of its functions, the Committee on Constitutional Affairs holds discussions with the participation of representatives of science, civil and professional organisations.

Unfortunately, the Standing Committee on Constitutional Affairs was able to proceed to only one hearing on some legislative proposals that were drafted in response to the

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European Commission 2022 EU Rule of Law Report and the recommendations of the Venice Commission.<sup>7</sup>

### **State authorities follow-up to NHRI's recommendations regarding rule of law**

The adoption, in January 2023, of the Act on the protection of persons who report or publicly disclose breaches (Whistleblowers Protection Act) is one of the recommendations on which a positive follow-up has taken place in Bulgaria. The Ombudsman institution has been advocating throughout the years for the implementation of a human rights-based approach in drafting the Whistleblowers Protection Act. The legislator recognized the efforts and the capacity of the Ombudsman institution as an A Status NHRI. The provisions of the Whistleblowers Protection Act have enlarged the competencies of the institution by establishing a new function for the Ombudsman to perform an external audit of activities aiming at protection of whistleblowers under the Act on the Protection of Persons Reporting Information or Publicly Disclosing Information on Breaches.<sup>8</sup>

### **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

The Ombudsman is constantly promoting the implementation of recommendations on the rule of law issued by regional actors. This is done through the participation in public hearings of the parliamentary standing committees. In 2022 alone, the Ombudsman took part in more than 20 meetings of the relevant standing committees on human rights and legal affairs of the 47th National Assembly (December 2021 – July 2022) and the 48th National Assembly (October 2022 – February 2023).

The Ombudsman also issued more than 2800 recommendations to public and private bodies, in which reference was made to the leading standards that need to be respected by public authorities and private entities in the exercise of their functions.<sup>9</sup>



Pursuant to Article 19, paragraph 1, item 10 of the Ombudsman Act, the Ombudsman has express powers to monitor and encourage the effective application of the human rights protection conventions to which the Republic of Bulgaria is a party. This monitoring is based on the UN Paris Principles and the Ombudsman Act (OA)<sup>10</sup>.

In exercise of its powers to encourage and protect human rights, the Ombudsman created a separate section in the Annual Report assessing the degree to which national legislation and practices of national institutions is aligned to the content of each convention..<sup>11</sup>

For another consecutive year, the Ombudsman found that Bulgaria was lagging in the process of acceding to international legal acts, which allow citizens to lodge complaints with supranational (convention) bodies in case of violations of their rights. Although the Ombudsman has alerted MPs of the Human Rights standing parliamentary committee on these shortcomings in the public hearing held on April 7<sup>th</sup>, in 2022, Bulgaria did not take steps to accede to the Optional Protocol to the Convention on the Rights of Persons with Disabilities and to the Third Optional Protocol to the Convention on the Rights of the Child.<sup>12</sup>

In 2022, nearly 74,500 citizens and representatives of CSOs sought protection or assistance from the ombudsman's institution in Bulgaria. Out of all of them, 31,900 applied with collective petitions and complaints on specific cases. The Ombudsman office has responded to more than 15 00 complaints, issued 4 requests to the Constitutional Court and 27 proposals for legislative amendments. The Ombudsman, acting as NPM, has carried out on-site check inspections in 58 institutions where people are deprived of their freedom and sent 134 recommendations on necessary remedies.

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Ombudsman of the Republic of Bulgaria was re-accredited with A-status in March 2019<sup>13</sup>. Among its recommendations, the SCA took the view that the selection process outlined in the enabling law would be strengthened by explicitly requiring the advertisement of vacancies, and by describing how a broad consultation and participation of civil society is to be achieved. The SCA encouraged the Bulgarian NHRI to advocate for the formalisation and application of a broad and transparent process. The Bulgarian NHRI also reported that, while its budget had improved, it would benefit from additional funding to carry out its functions (including as an NPM and NMM), to establish regional offices and to ensure that its communications are accessible to all. The SCA encouraged the NHRI to continue to advocate for the funding necessary to ensure it can effectively carry out the full extent of its mandate. Finally, the Bulgarian NHRI reported that there had been inadequate responses by state authorities, including relating to the NHRI's recommendations on the issue of domestic violence and the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. The SCA encouraged the Bulgarian NHRI to continue to conduct follow-up activities to monitor the extent to which their recommendations have been implemented.

### Regulatory framework

The national regulatory framework applicable to the Bulgarian national human rights institution has not changed since January 2022. The Ombudsman of the Republic of Bulgaria continues to function on a constitutional basis. The Ombudsman's mandate to contribute to the rule of law includes complaints handling, approaching the Constitutional Court with a petition to establish unconstitutionality of any law whereby any rights and freedoms of citizens are violated; submitting a request for an

interpretative decision or interpretative decree to the Supreme Court of Cassation and/or the Supreme Administrative Court; makes proposals and recommendations for reinstatement of the violated rights and freedoms to the respective authorities and private entities, etc.<sup>14</sup>

The NHRI believes there is no need for further strengthening of the regulatory framework on the Ombudsman institution because the powers conferred to the NHRI are sufficient and cover all potential threats to human rights protection.

### Enabling and safe space

The relevant state authorities have good awareness of the Bulgarian NHRIs' mandate, independence and role of the NHRI. Furthermore, the Ombudsman has adequate access to information and to policy makers and is involved in all stages of legislation and policy making with human rights implications.

Although the overall regulatory framework is enabling space for effective implementation of the Ombudsman's mandate, the institution is still facing problems with the lack of adequate funding. Following the enlarged mandate of the institution with the legislative amendments in 2018<sup>15</sup> and the acquisition of the A Status under the Paris Principles in 2019, the Ombudsman institution did not receive additional funding in order to effectively fulfil its new functions. For the institution to fulfil its competencies as assigned by the law in a more effective way, the Ombudsman of the Republic of Bulgaria is constantly requesting an increase of its annual budget with the purpose to enlarge the team of experts in new areas of competence. Such a recommendation is constantly issued by different international and regional <sup>16</sup> ~~orgs~~. No significant change in the funding provided by the State for the Ombudsman institution has taken place so far.

## Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

No significant changes have taken place in 2022 that could endanger the independent and effective fulfilment of the Ombudsman's institution mandate.

In 2022, the Ombudsman institution performed an internal review of its law- embedded competences, functions and practices to assess the level of their compliance with the Recommendation CM/Rec(2021)<sup>17</sup> of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions. The assessment outlined that the Ombudsman institution of the Republic of Bulgaria is fulfilling all principles as established by Recommendation CM/Rec(2021)<sup>1</sup>:

- mandate and competence to promote and protect all human rights for everyone;
- autonomy from government;
- independence guaranteed by primary legislation or, preferably, the constitution;
- pluralism, including through the appointment and composition of the decision-making body, staff composition and procedures enabling effective co-operation with diverse societal groups;
- adequate access to individuals, premises and information; and
- international accountability and legitimacy through periodic international accreditation.

The only weak point is related to the lack of adequate level of resources. On the grounds of this review, the Ombudsman approached the government in December 2022 with a request for an increase of the institutional funding for 2023. The budget provided to the institution was increased but is nevertheless insufficient as it even does not compensate the 2022 inflation rate (around 16% on an annual basis).

## NHRI's recommendations to national and regional authorities

The most important recommendation to the national authorities is to establish a mechanism to regularly update the Ombudsman annual budget based on the increased scope of competences and workload as established by the Ombudsman's Annual Report 2022.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

In February 2022, the Ombudsman of the Republic of Bulgaria submitted a proposal for legislative<sup>18</sup> change in the Law on measures and actions during the state of emergency to the National Assembly. The legislative change would regulate the deferred payment of electricity and heating bills for non-governmental organizations providing social services. The initiative for this proposal comes from a letter sent to the Ombudsman by more than 24 non-governmental organizations providing social service. The CSOs requested the assistance of the Ombudsman due to their inability to cover their electricity, natural gas and activity costs. This means that the normal functioning of this type of service is threatened, with a real risk of worsening the support for thousands of children and people in a vulnerable situation.

This is just one of the examples of a shortage in the legislative process itself. There is no compulsory consulting of CSOs on general legislative measures that may have unwanted impact on CSOs and human rights defendants' activities.<sup>19</sup>

In October 2022, the ultra-nationalist and pro-Kremlin Revival party introduced a Russia-style foreign agent registration bill into the Parliament, which was aiming to introduce obligatory registration of all types of funding CSOs receive in support of their functioning.<sup>20</sup> The bill requires self-registration of all natural and legal persons who, on

an annual basis, directly or indirectly, have received financial or material assistance over BGN 1,000 (EURO 500) and are engaged in dissemination of information through the media, training and political activity. Such "agents" are prohibited from operating in state and private kindergartens, schools and universities, hospitals, structures of the Ministry of the Interior and the National Academy of Sciences, etc. They are prohibited from participating in political activities and receiving state and municipal funding. The bill, which received numerous negative statements from CSOs and institutions, was not considered at first reading during the legislature of the 48th National Assembly.<sup>21</sup>

Some CSOs reported negative behaviour and some campaigns against LGBT organisations, although the Ombudsman office did not receive any direct complaints.

In June 2022, the Sofia City Court delivered a first-instance judgment in the case of an anti-LGBTI attack committed in 2021 by a well-known right-wing radical and then-presidential candidate. Given the absence of a hate crime penalty when the conduct is motivated by the sexual orientation or gender identity of the victim, the person was charged with "hooliganism." The court however found him not guilty of charges of crime motivated by "hooliganism" and of causing slight bodily harm to the LGBTI activist. It also rejected the victim's civil claim.

Lastly, the Bulgarian Helsinki Committee has claimed to receive constant denial to perform on-site inspections by prison authorities.<sup>22</sup>

### **Access to and involvement of civil society actors in law and policy making**

According to the Ombudsman of the Republic of Bulgaria, civil society organisations in Bulgaria should be seen as generators of social change and having an important role in promoting, protecting and defending human rights. Through their work and research, they create opportunities for different groups in society to express their opinions on issues that concern them. Particularly important is their merit in their work with vulnerable groups whose communication with state authorities is difficult, often formal

and unproductive due to a bureaucratic approach on the part of the latter. In many cases, these people rely on civil society organizations to improve their situation, including through assistance before the relevant competent authorities. The Ombudsman observes a quick and adequate reaction of CSOs to changing social realities and the implementation of solutions to improve the lives of vulnerable groups. There are frequent cases in which the public defender supports members of non-governmental organizations that assist citizens in various administrative and judicial procedures to protect their rights, as well as volunteer groups in unforeseen situations such as crises or disasters. For instance, on 16 April, at a round table in the National Assembly, the Ombudsman raised the alarm about the problem with the expired medical expertise decisions and informed the Members of Parliament about numerous complaints and reports received by the Ombudsman about the difficulties that people with disabilities had in exercising their rights after 1 April 2022, i.e. after the end of the emergency epidemic situation<sup>23</sup>.

The Ombudsman also supports the process of enhancing the access of civil society representatives through their participation in the preparation and discussion of legislation, which, according to the public defender, are key to ensure the quality of laws. In this context, the Ombudsman conducted several joint events and initiatives with the participation of non-governmental organizations.<sup>24</sup> Although the Rules of procedure of the National Assembly provide an opportunity for parliamentary Standing committees to request information directly from citizens and their organizations, this practice of the 48th National Assembly did not prove to be sustainably effective as most of the legislative decisions were taken under time pressure<sup>25</sup>.

## Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)

### Threats to journalists

At the end of 2022, allegations have been made public about unlawful practices that investigations are targeting only investigative journalists that have denounced irregularities while the wrongdoers are not<sup>26</sup>. As an example, investigations concerning wrong practices with the delivery of medicines to patients in several hospitals resulted in claims by the investigative journalists that there had been abuse of law against them

### Right to freedom of expression

A specific case of abuse of the right to freedom of expression was closely monitored by the Ombudsman in 2022. Three minors decided to express their protest to the Russia's armed attack against Ukraine by spreading colours on a commemorative monument of the Russian army in the capital city of Sofia. The minors were detained while their parents or guardians were not informed about their detention in the building of the regional police department, and they were not provided legal protection in violation of the Directive on procedural safeguards for children (2016/800/EU)<sup>27</sup>.

The Ombudsman, acting as NPM, found a disturbing practice of violating the rights of children during police custody involving the completion of a declaration of waiver of the right to protection by a minor in contradiction with their rights in violation of all international standards of the Council of Europe and the European Union. In the opinion issued by the institution, the Ombudsman clearly emphasizes that the detention of a minor is permissible only as an exception. This possibility is provided for in the law as a last resort after a list of less serious measures in relation to minors, which do not include restrictions on their freedom. Where children are concerned, depriving them of basic human rights while in police custody is unacceptable. The Ombudsman Institution has consistently maintained that the competent authorities must take timely action to



bring the legislation in line with the existing international standards to ensure effective access to justice for children and treatment that is appropriate to their age, development and needs.<sup>28</sup>

### **Measures undertaken by State authorities to protect and promote civic space**

No significant changes have taken place in 2022 that could improve the protection and promotion of civil society space, especially in relation to measures aiming to:

- prevent and combat cases of hate crime and hate speech, in particular by carrying out effective investigations with the aim of ending impunity;
- ensure access to resources to support the stable funding of human rights defenders, including NHRIs and civil society organisations, and increase efforts to promote their activities;

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

With regards to the shortage of CSO's financial resources to pay their bills and subsequent request for assistance, the Ombudsman stressed that failure to take appropriate actions will be in violation of both the Constitution of the Republic of Bulgaria, in which it is expressly established that people in risk groups are under special protection of the state and society, and several<sup>29</sup>.

### **NHRI's recommendations to national and regional authorities**

The Bulgarian NHRI recommends that further legislative changes and other measures should take place in order to improve the protection and promotion of civil society space, especially in relation to measures aiming to:

- prevent and combat cases of hate crime and hate speech, in particular by carrying out effective investigations with the aim of ending impunity;

- ensure access to resources to support the stable funding of human rights defenders, including NHRIs and civil society organisations, and increase efforts to promote their activities;
- explicitly recognise the legitimacy of human rights defenders, including NHRIs and civil society organisations, and publicly support their work, acknowledging their contribution to the advancement of human rights and the development of a pluralistic society;

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

In its 2022 Annual Report<sup>30</sup>, the Ombudsman recalled that after the entry into force of Article 28, paragraph 3 of the Statutory Instruments Act at the end of 2016, the National Mechanism for compliance review of statutory instruments with the European Convention of Human Rights (ECHR) needs to be applied both by the executive and the legislature<sup>31</sup>. Where the bills put forward by Members of Parliament are not checked for compliance with the ECHR and the ECtHR case-law, this could lead to a violation of the international standards of observance of human rights and new convictions of Bulgaria before the European Court of Human Rights in Strasbourg. In this sense, it is appropriate to consider legislative amendments providing for a preliminary assessment of the bills proposed by Members of Parliament for compliance with the ECHR when they concern citizens' fundamental rights and freedoms.

A positive step in this regard is the establishment of a parliamentary sub-committee in the 47th National Assembly to monitor and analyse legislation in accordance with EU principles and norms and international norms for the protection of human rights and fundamental freedoms, and to analyse the legal consequences of the decisions of the Constitutional Court.

In addition, Bulgaria has not yet ratified Protocol 16 to the ECHR, which provides for a mechanism for cooperation between the national court and the ECtHR, similar to preliminary rulings before the EU court. This mechanism will significantly facilitate the harmonization of the case law of the Bulgarian court with that of the ECtHR and will contribute to fewer convictions. In 2022, new decisions of the ECtHR against Bulgaria amounted to 27.<sup>32</sup>

Observations from the Ombudsman's monitoring made in the previous years are still valid in 2022:

- a significant number of judgments have remained under enhanced supervision for a decade;
- there is also a steady tendency of convictions, which are still under enhanced supervision and unfortunately concern many ECHR texts, which requires many complex measures to be taken;
- the number of leading judgments by which the general recommendations of the ECtHR have been implemented is still incomparably smaller than those where no satisfactory progress has been made;
- Bulgaria continues to pay an extremely high compensations for violated rights. Although actions for implementation have been taken on almost all convictions in the years since they were issued, they are still not enough to put a stop to the monitoring, despite the efforts of various institutions and working groups. For this reason, the recommendations of the Committee of Ministers on the implementation of such judgments have hardly changed.

### **Leading European Courts' judgments awaiting implementation**

The judgments in the *Budinova and Chaprazov v. Bulgaria*<sup>33</sup> and *Behar and Gutman v. Bulgaria*<sup>34</sup> cases are the first and, so far, the only ones in the practice of the ECtHR, which establish a positive obligation of the state to sanction speech that incites ethnic

hatred against groups of the population while not being uttered in the presence of the victims and is not a direct incitement to violence. In these cases, the Court found violations of Article 14 (protection against discrimination) and Article 8 (right to privacy) of the ECHR.

Clarifying the ECtHR's case-law in hate speech cases provides an important means of protecting members of various vulnerable communities in Europe from discriminatory attacks against their privacy. The significance of these cases is especially great for Bulgaria, where many of them are targets of racist, anti-Semitic, homophobic, Islamophobic and other incitements.

Other issues, for which the ECtHR case-law is still pointing deficiencies in Bulgarian legislative framework and practices for its implementation are:

- the defects of the ongoing investigations into death cases and inhuman treatment. Violations of the right to life and the prohibition of torture, inhuman and degrading treatment (Articles 2 and 3 of the Convention);
- the prohibition of torture (Article 3); Overcrowding and poor conditions in places of detention and the means of protection against them (Article 3);
- placements in centres for minors and underage persons (Article 5);
- violations of the right to fair trial (Article 6);
- the right to respect for personal and family life (Article 8);
- the freedom of thought, conscience and religion (Article 9);
- restitution and other matters of possession (Article 1 of Protocol 1);
- problems related to the right to suffrage;
- signing and ratification of Protocol 16 to the ECHR by Bulgaria.

The lack of progress in this regard in 2022, once again proves that the implementation of general prevention measures is necessary, which the state should undertake.

The ombudsman's observation for 2022 shows that measures should be taken to strengthen the role of the Ministry of Justice and its specialized directorate in coordinating the process of bringing the national legislation and the practice of the institutions in line with the decisions of the ECHR.

Lastly, the implementation requires a new format of inter-ministerial co-operation in order to be significantly more effective and to achieve real progress. This applies particularly to cases where executive action is required, as well as to measures that can only be implemented by a change in judicial or administrative practice or by amending legislation;

### **NHRI's actions to support the implementation of European Courts' judgments**

In 2022, Bulgaria continued to be sentenced in similar cases. This means that, going forward, the country will pay great amounts of compensation while citizens' rights are not effectively protected. This situation is unacceptable and decisive actions need be taken to overcome it. As in previous years, the Ombudsman is committed to assisting and providing support to the Minister of Justice through recommendations to the responsible institutions to take specific actions in relation to the sentences against Bulgaria.

### **NHRI's recommendations to national and regional authorities**

1. The Ombudsman proposes the establishment of an interdepartmental coordination council, including representatives (experts) of all national institutions, which should be directly involved in the process of coordinating and monitoring the implementation of measures to implement the convictions of the ECHR. Such a mechanism can ensure the effective implementation of the decisions of the ECtHR and fruitful cooperation between the competent authorities and institutions in this area. In addition, this body can significantly raise awareness regarding the practice of the ECtHR and the standards of respect

for basic human rights. This would lead to a reduction of the convictions that have been in the procedure of enhanced monitoring by the Committee of Ministers for many years;

2. Bringing the national legislation and practice into line with the ECtHR and the practice of the ECHR will ensure and more effectively guarantee compliance with the fundamental rights and freedoms of Bulgarian citizens – this will require the involvement of both the judicial and legislative authorities.
3. Include the Ombudsman institution into this coordination process and the work of the coordination council alongside with representatives of human rights CSOs.
4. Ratify Protocol 16 to the ECHR, which provides for a mechanism for cooperation between the national court and the ECtHR.

## Artificial Intelligence

### NHRI's actions to address challenges regarding the use of artificial intelligence

In its activities and recommendations, the Ombudsman institution shares the understanding that digitization is important because services will become faster, cheaper and more convenient for people. At the same time, however, the Ombudsman has warned public authorities that the state must always have a plan to face problems of vulnerable groups, so that there are no collapses, such as are happening in Bulgaria and from which thousands of pensioners directly suffer. The AI can lead to inequalities, exclusion and violation of health, education and social rights. A typical example are children with special educational needs who never managed to benefit from online learning and their educational deficit deepened due to a lack of specialized and adapted software and trained teachers.<sup>35</sup>

With regards to the NHRI's involvement with consultations on the regional conventions, the Ombudsman institution is planning to launch a joint program for an online course on AI & Discrimination in cooperation with the Council of Europe, specifically the

Directorate General of Democracy, Anti-Discrimination Department – No Hate Speech and Cooperation unit.

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<sup>1</sup> Ministry of Justice official website, <https://www.justice.government.bg/home/index/396aedca-f63a-48c5-a5c2-e145d29fa69d> (in Bulgarian)

<sup>2</sup> Ombudsman of the Republic of Bulgaria official website, <https://www.ombudsman.bg/bg/n/priemna-i-informacionna-sreshta-s-ekipa-na-om-1873> (in Bulgarian)

<sup>3</sup> Amalipe Center for Interethnic Dialogue and Tolerance Leaders Academy <https://amalipe.bg/la2/> (in Bulgarian)

<sup>4</sup> New Bulgarian University official web site event announcement <https://news.nbu.bg/bg/events/jubilejna-nauchna-konferenciq-pod-patronazha-na-ombudsmana-na-republika-bylgariq!63941> (in Bulgarian)

<sup>5</sup> [www.parliament.bg/en/podns](http://www.parliament.bg/en/podns)

<sup>6</sup> Art. 22. (1), RULES of Organization and Procedure of the National Assembly, source: <https://www.parliament.bg/en/podns>

<sup>7</sup> Standing Committee on Constitutional Affairs webpage, <https://www.parliament.bg/bg/parliamentarycommittees/3123?date=9999-12-31> (in Bulgarian)

<sup>8</sup> Act on the protection of persons who report or publicly disclose breaches, Prom. SG. 11/2 Feb 2023, source: <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=185482>, (in Bulgarian)

<sup>9</sup> 2022 Annual report of the Ombudsman of the Republic of Bulgaria, p.p. 24-33, <https://www.ombudsman.bg/bg/p/godishen-doklad-za-deynostta-na-ombudsmana-p-567> (in Bulgarian)

<sup>10</sup> [https://www.ombudsman.bg/storage/pub/files/20220725170050\\_Ombudsman%20Act%20EN.pdf](https://www.ombudsman.bg/storage/pub/files/20220725170050_Ombudsman%20Act%20EN.pdf)

<sup>11</sup> 2022 Annual report of the Ombudsman of the Republic of Bulgaria, p.p. 239-245, <https://www.ombudsman.bg/bg/p/godishen-doklad-za-deynostta-na-ombudsmana-p-567> (in Bulgarian)

<sup>12</sup> Ibidem, p. 239

<sup>13</sup> [SCA Report March 2019](#)

<sup>14</sup> Ombudsman of the Republic of Bulgaria official website <https://www.ombudsman.bg/en/p/8>

<sup>15</sup> Ombudsman act, amend. SG. 7/19 Jan 2018, amend. and suppl. SG. 20/6 Mar 2018, [https://www.ombudsman.bg/storage/pub/files/20220725170050\\_Ombudsman%20Act%20EN.pdf](https://www.ombudsman.bg/storage/pub/files/20220725170050_Ombudsman%20Act%20EN.pdf)

<sup>16</sup> Third Cycle of the UPR on Bulgaria recommendation 134.17, source: <https://www.ohchr.org/en/hr-bodies/upr/bg-index>

<sup>17</sup> <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/-/cm-rec-2021-and-cm-rec-2021->

<sup>18</sup> <https://www.ombudsman.bg/bg/n/ombudsmanat-vnese-zakonodatelna-promyana-za-1846> (in Bulgarian)

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- <sup>19</sup> 2022 Annual report of the Ombudsman of the Republic of Bulgaria, p. 363, <https://www.ombudsman.bg/bg/p/godishen-doklad-za-deynostta-na-ombudsmana-p-567> (in Bulgarian)
- <sup>20</sup> List of Bills deposited to the National Assembly, <https://www.parliament.bg/bg/bills/ID/164424>
- <sup>21</sup> Bulgarian National Radio, <https://bnr.bg/horizont/post/101731211/aleksandar-kashamov>
- <sup>22</sup> Bulgarian Helsinki Committee report on Prison reform, <https://prisonreform.bg/en/>
- <sup>23</sup> Ombudsman of the Republic of Bulgaria, news, <https://www.ombudsman.bg/bg/n/ombudsmanat-signalizira-za-iztekal-srok-na-1644> (in Bulgarian)
- <sup>24</sup> 2022 Annual report of the Ombudsman of the Republic of Bulgaria, p.p. 362-371, <https://www.ombudsman.bg/bg/p/godishen-doklad-za-deynostta-na-ombudsmana-p-567> (in Bulgarian)
- <sup>25</sup> Art. 28. (1), RULES of Organization and Procedure of the National Assembly, source: <https://www.parliament.bg/en/podns>
- <sup>26</sup> [Цялото нещо е тормоз". Как огласяването на порочна практика провокира само разпит на огласяващите \(svobodnaevropa.bg\)](https://svobodnaevropa.bg)
- <sup>27</sup> Annual Report of the Ombudsman acting as National Preventive Mechanism 2022, [https://www.ombudsman.bg/storage/pub/files/20230220142454\\_Annual%20Report%20NPM%202022%20-%20BG.pdf](https://www.ombudsman.bg/storage/pub/files/20230220142454_Annual%20Report%20NPM%202022%20-%20BG.pdf)
- <sup>28</sup> Annual Report of the Ombudsman as National Preventive Mechanism 2022, p. 7, source [https://www.ombudsman.bg/storage/pub/files/20230220142454\\_Annual%20Report%20NPM%202022%20-%20BG.pdf](https://www.ombudsman.bg/storage/pub/files/20230220142454_Annual%20Report%20NPM%202022%20-%20BG.pdf)
- <sup>29</sup> Ombudsman of the Republic of Bulgaria, news, <https://www.ombudsman.bg/bg/n/ombudsmanat-predupredi-che-tsentrove-za-hora-1844>
- <sup>30</sup> 2022 Annual report of the Ombudsman of the Republic of Bulgaria, p. 363, <https://www.ombudsman.bg/bg/p/godishen-doklad-za-deynostta-na-ombudsmana-p-567> (in Bulgarian)
- <sup>31</sup> The obligation to review draft regulations for compliance with the European Convention is provided for in paragraph 9 (b) ii of the Brighton Declaration of 2012 and reaffirmed in the Declaration adopted at the High Level Conference of the Member States of the Council of Europe in Brussels in 2015 (letter C, paragraph 1, (d) of the Action Plan to the Declaration).
- <sup>32</sup> [Violations by Article and by State \(coe.int\)](https://www.coe.int)
- <sup>33</sup> [Budinova and Chaprazov v. Bulgaria](https://www.echr.coe.int)
- <sup>34</sup> [Behar and Gutman v. Bulgaria](https://www.echr.coe.int)
- <sup>35</sup> Ombudsman of the Republic of Bulgaria, new, <https://www.ombudsman.bg/bg/n/ombudsmanat-v-strasburg-lipsata-na-plan-b-p-1649>



## Croatia

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### Ombudswoman of the Republic of Croatia

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

In the context of follow-up action/initiatives to address the issues reported in the European Commission's 2020 and 2021 Rule of Law Reports, at the end of 2021 the government established the Human Rights Council, an inter-departmental advisory body, which held its first session in March 2022<sup>1</sup> at which the Ombudswoman provided an overview of the state of human rights and equality in Croatia, whereas at its session in April 2022 she presented the recommendations from the 2021 Annual Report. It should be noted that the Council was not set up exclusively for the purpose of the implementation of the Ombudswoman's recommendation due to the EC recommendation. But, following a constructive discussion on the Ombudswoman's report, in particular on the recommendations, the Council adopted a conclusion calling on the public authorities to take appropriate measures and activities to implement the Ombudswoman's recommendations or to provide her with the appropriate justification of their inability to implement them.

In September 2022, the Council met again and discussed recommendations the Ombudswoman issued in relation to the rights of older persons.

In relation to the recommendation of EC for Croatia to address the issue of strategic lawsuits against public participation targeted at journalists, including by addressing the abuse of legal provisions on defamation and encouraging awareness, taking into account the European standards on the protection of journalists, the working Group on

Policy Making against SLAPP lawsuits at the Ministry of Culture and Media was established. The Ombudswoman is taking part in the Working Group. One of the core activities of the working group was providing training to judges, lawyers, and journalists in order to prevent SLAPP. Such trainings were organized in Split, Osijek and Varaždin. Other objective of the Working Group relates to situational analysis, data collection and awareness raising on this topic as well as the formulation of proposals for the future anti-SLAPP legislative measures. According to the data provided by the Ministry, the new Media Act should include an early recognition mechanism and dismissal of SLAPP suits.

Although in the cases of whistleblowers SLAPP is not as widespread as when it comes to journalists, individual cases show us that it is necessary to pay attention to this problem in the field of whistleblowers' protection as well. Since the institution is the body responsible for the external reporting of irregularities based on the Law on the Protection of Whistleblowers, through our work, most of all education of various stakeholders, the Ombudswoman strives to raise the level of awareness of SLAPP against whistleblowers.

### **Impact on the Institution's work**

In the context of the NHRI's work, rule of law continues to be a significant part of the Ombudswoman's work and the Institution has been recognized by stakeholders for its work on the issues involved.

The Ombudswoman used the 2022 ENNHRI Rule of Law Report to raise awareness on the rule of law through the institution's webpage and meetings with the relevant stakeholders. Additionally, the European Commission's Rule of Law Report was used as a source of information for our Annual Report for 2022<sup>2</sup> and the Ombudswoman especially used the Commission's Recommendation in the Rule of Law Report for

Croatia regarding the follow-up to the Ombudswoman's recommendations and access to information.

Hence, rule of law is included in the NHRI's Annual Report to the Parliament (Judiciary, Media Freedoms, Human Rights Defenders, Whistleblowers protection, NHRIs). In January 2022 the Institution organized a conference in cooperation with the Law Faculty Zagreb entitled "30 Years of Human Rights Protection in the Republic of Croatia: Past, Present and Future", and one of the panels was dedicated to the rule of law.

Additionally, in November 2022 the Croatian Ombudswoman organized a conference "Human Rights and the Rule of Law", marking 30<sup>th</sup> anniversary of the institution<sup>3</sup>. Finally, the Ombudswoman is implementing a project in cooperation with the FRA and ENNHRI, where one of the streams relates to rule of law activities.

### **Follow-up initiatives by the Institution**

In January 2022 the Ombudswoman organized a conference in cooperation with the Law Faculty Zagreb entitled "30 Years of Human Rights Protection in the Republic of Croatia: Past, Present and Future", and one of the panels was dedicated to the rule of law. Additionally, in November 2022 the Institution organized a conference "Human Rights and the Rule of Law", marking the 30<sup>th</sup> anniversary of the institution<sup>4</sup>. Finally, the Ombudswoman is implementing a project in cooperation with FRA and ENNHRI, where one of the streams relates to rule of law activities.

Also in January 2023 it took part in the national exchange organized by the EC and FRA in Croatia as a follow up to the Rule of Law Report.

### **NHRI's Recommendations to national and European policy makers**

The Ombudswoman suggests including NHRIs more visibly in the discussions on the rule of law reporting by the European policy makers and providing visible space for NHRI input in the EC Report and in events organized by the EC.

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Also, the NHRI suggest organizing a yearly EU level conference on the Rule of Law Report, which would bring together EU NHRIs, national Government representatives and other relevant stakeholders, which should be facilitated by the EU.

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors' recommendations on rule of law**

In the context of the recommendation by the EC for Croatia to ensure a more systematic follow-up to recommendations and information requests of the Ombudsperson, it should be noted that at the end of 2021 the Government established the Human Rights Council, an inter-departmental advisory body, which held its first session in March 2022 at which the Ombudswoman provided an overview of the state of human rights and equality in Croatia, whereas at its session in April 2022 she presented the recommendations from the 2021 Annual Report. It should be noted that the Council was not set up exclusively for the purpose of the implementation of the Ombudswoman's recommendation due to the EC recommendation. But, following a constructive discussion of the Ombudswoman's Report, in particular of the recommendations, the Council adopted a conclusion calling on the public authorities to take appropriate measures and activities to implement the Ombudswoman's recommendations or to provide her with the appropriate justification of their inability to implement them.

In September 2022 the Council met again and discussed the recommendations the Ombudswoman issued in relation to the rights of older persons.

However, during 2022, as in previous years, the NHRI emphasized the need to be able to access all data on the treatment of irregular migrants, including the data held in the information system of the Ministry of Interior.

In relation to the recommendation of EC for Croatia to address the issue of strategic lawsuits against public participation targeted at journalists, including by addressing the abuse of legal provisions on defamation and encouraging awareness, taking into account the European standards on the protection of journalists, the working Group on Policy Making against SLAPP lawsuits at the Ministry of Culture and Media was established. The Ombudswoman is taking part in the Working Group. One of the core activities of the working group was providing training to judges, lawyers, and journalist in order to prevent SLAPP. Such trainings were organized in Split, Osijek and Varaždin. Other objective of the Working Group relates to situational analysis, data collection and awareness raising on this topic as well as the formulation of proposals for future anti-SLAPP legislative measures. According to the data provided by the Ministry, the new Media Act should include an early recognition mechanism and dismissal of SLAPP suits.

### **State authorities follow-up to NHRI's recommendations regarding rule of law**

The Croatian Ombudswoman, with regard to the recommendations issued, reported the following:

- 1. To provide the institution of the Ombudswoman with adequate resources (including staff members and deputy) corresponding to broadening of mandate.**

In 2022, the Office of the Ombudsman was managed by the Ombudswoman and three Deputies, who managed six Departments, which are staffed by advisers who are in a horizontal relationship with each other.

At the same time, the Law on the Ombudsman prescribes three Deputies as the minimum number of Deputies. But as new mandates were assigned to the institution, it grew and increased in the number of staff, but not in the number of Deputies.

While the institution had only one (ombudsman) mandate, the Ombudsman also had three Deputies. Today it has as many as five mandates: ombudsman, national institution for the protection of human rights, national equality body, institution that performs the tasks of the National Preventive mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment, and the body responsible for the external reporting of irregularities, which also monitors the implementation of the protection of whistleblowers.

International standards for the work of independent institutions underline the importance of ensuring the conditions for their work, including sufficient funds and human resources for these institutions to be able to implement their mandates. In the case of increasing the institution's mandates, the standards specifically indicate the need of securing additional funds and resources.

During the last round of accreditation in 2019, the SCA made a recommendation related to the new mandate of the Ombudsman as a body for the protection of whistleblowers/body for external reporting of irregularities and the need for the state to ensure additional funds for increasing the Ombudswoman's resources. Although the institution has been strengthened in staff by the employment of 5 advisers, this has not been done with regard to Deputies. It should be emphasized that this is a very demanding mandate, among others, because of the obligation to protect the identity of the whistleblowers and the confidentiality of the data, which requires extra attention when acting on whistleblowers' complaints. Those actions are currently supervised by a Deputy who is at the same time working on other mandates as well.

Therefore, in order to ensure effective and timely action in all the mentioned mandates the institution should be strengthened by another Deputy.

Namely, despite the continuously growing number of mandates (and to a large extent staff members), the number of the Ombudswoman's Deputies has remained the same throughout the years. Given there are no managerial staff whatsoever (mid-level or high-level staff) in the institution and its management is done only by the Ombudswoman and her 3 Deputies, in order to ensure effective functioning of the institution, following the growth of the mandates and the staff, it is now necessary to provide for at least one additional Deputy. However, the Deputies are not civil servants, but are state officials and cannot be hired by the Ombudswoman when she so deems necessary (but she must have political support for this as they have to be elected in the Parliament).

## **2. To ensure adequate premises for the work of the institution following the earthquake.**

In the 2020 Annual Report, a recommendation was given to the Government of the Republic of Croatia and the relevant Ministry, which the Ombudswoman repeated due to non-fulfilment in our 2021 Report, and it referred to ensuring adequate premises for the work of the institution following the earthquake, given that our headquarters were badly damaged in the 2020 earthquake. In 2022, the aforementioned recommendation was implemented and an additional temporary space was provided for our work.

## **3. To debate annual reports of the Ombudswoman in a timely manner and discontinue voting on the annual report on the situation of human rights - the reports should be debated, but should be "duly noted".**

In order to fulfil the role of the plenipotentiary of the Croatian Parliament for the protection and promotion of human rights, the support from the Croatian Parliament and the cooperation with the Parliament is key. Additionally, discussing the Annual

Report in a timely manner, i.e. in the year it was submitted, would support an increase in the degree of the implementation of the recommendations from the Report. When it comes to the Ombudswoman's reports submitted in 2021, that opportunity was unfortunately missed. This is particularly important because the Ombudswoman's Report is not a report on her work and activities but is a report on the state of protection of the rights and freedoms in the Republic of Croatia. Thus, the collected and analyzed data contained in the Report loses its relevance over time, so it is important for the Report to be presented before the members of the parliament and for them to have the opportunity to discuss it while the presented data, analysis and recommendations are current. Additionally, various public bodies have put a lot of effort in data collection and delivery of the data contained in the Report.

Unfortunately, during 2022 the discussion on the 2021 Report was held only within the framework of the Committee for Human Rights and the Rights of National Minorities.

In 2022, the Ombudswoman also submitted a special report to the Croatian Parliament on the impact of the COVID-19 pandemic on human rights and equality<sup>5</sup>, with recommendations for strengthening resistance to the future crises. Unfortunately, it has not been discussed as yet either.

#### **4. Ensure unannounced and free access to all data, including data in the information system of the police/the Ministry of the Interior needed for our work on protecting human rights of irregular migrants.**

Unfortunately, the Ombudswoman still does not have access to all data on the treatment of irregular migrants, including the access to the information system of the Ministry of Interior.



## NHRI's follow-up actions supporting implementation of regional actors' recommendations

The Ombudswoman has used recommendations on the rule of law in her monitoring of human rights and equality in Croatia – it has been used in the Annual Report, in the promotional activities and in the regular exchange with the key stakeholders for the protection and promotion of human rights in Croatia.

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Ombudsman of the Republic of Croatia was last re-accredited with A-status in March 2019<sup>6</sup>. Among the recommendations, the SCA encouraged the Croatian NHRI to advocate for broad consultation and participation of civil society in the selection process for the position of the Ombudsperson. The SCA also noted that the Croatian NHRI had recently been mandated with additional responsibilities under the whistle-blower legislation, but that no new funding had been allocated to allow it to carry out these new responsibilities. Therefore, the SCA encouraged the Croatian NHRI to continue to advocate for the funding necessary to ensure that it can effectively carry out the full extent of its mandate, including its newly mandated responsibilities. Additionally, the SCA noted that the term of office of the Ombudsperson is of 8 years and that the enabling law does not limit the number of re-appointments. The SCA took the view that it would be preferable for this to be limited to one re-appointment. Finally, the SCA acknowledged that the regional offices in Rijeka was not accessible to persons with disabilities at the time. It encouraged the NHRI to continue to seek a solution of this situation, including by advocating for additional funds to ensure that all its offices are accessible.

## Follow-up to SCA Recommendations and relevant developments

As for the SCA recommendation regarding the Whistleblower protection mandate, the institution has been strengthened in staff by the employment of 5 advisers. However, this has not been done with regard to Deputies and the number of Deputies has remained the same regardless of the increase of mandate. It should be emphasized that this is a very demanding mandate, among others, because of the obligation to protect the identity of the whistleblowers and the confidentiality of the data, which requires extra attention when acting on whistleblowers' complaints.

Therefore, in order to ensure effective and timely action in all the mentioned mandates the institution should be strengthened by another Deputy.

As regards enabling broad consultation and participation of civil society in the selection process for the position of the Ombudsperson, under Article 10, paragraph 3 of the Ombudsman Act (Official Gazette no. 76/12), " [t]he Committee for the Constitution, Standing Orders and Political System, with prior opinion of the Committee for Human Rights and Rights of National Minorities of the Croatian Parliament, shall propose at least two candidates for Ombudsman according to the received applications from the public call and it shall be submitted to the Croatian Parliament. « Prior to deciding on the two candidates to propose, the two committees hold an interview with all of the candidates whose candidatures fulfill the conditions regulated by the Act. The interview is public, and questions asked to the candidates come from Parliament members, but also CSOs and academia representatives, who are external members of the Committees.

In the context of the Rijeka office, based on the recommendation of SCA, the office moved its premises and is now accessible.

## Regulatory framework

In 2022 the new Act on the Protection of the Persons Reporting Irregularities came into force. Through this Act the EU Directive 2019/1937 of the European Parliament and the Council of 23 October 2019 on the protection of persons reporting violations of rights of the Union was transposed into the national framework.

A significant innovation of the Act is that now the applicants can freely decide whether to report irregularities to a confidential person appointed by the employer or directly to the Ombudswoman, that is, they can choose between internal and external reporting channels. This resulted in the increase in the number of external reports of irregularities by 60.37% and the decrease in the number of notifications about internal applications by 22.92% compared to the previous year.

Since the Ombudswoman monitors and analyzes reports submitted through the internal reporting channels, but does not act on them, while the institution actively acts on external reports of irregularities, it is clear that this legislative change led to an increase in the scope of work of the Ombudswoman in the mandate concerning the protection of whistleblowers.

## Enabling and safe space

Unfortunately, the Croatian Ombudswoman has submitted the new 2022 Annual Report at a time when the previous one, the one for 2021 year, had not yet been discussed at the plenary session of the Croatian Parliament. Additionally, the Special Report "The Impact of the COVID-19 Epidemic on Human Rights and Equality - Recommendations for Strengthening Resilience to Future Crises," also submitted last year, has not been discussed yet.

This affects the perception of the support of the Croatian Parliament for the institution, its Annual Report and the recommendations which are part of the Report. Additionally, an up-to-date discussion is important in order for members of the parliament to have

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the opportunity to discuss the reports while the numerous data and analyses are up to date and relevant. Moreover, numerous public bodies and other stakeholders invest substantial time in preparing their input to our Annual Report.

Regarding the implementation of the recommendations from the 2021 Report, according to the analysis of the responses the Institution received from the bodies to which the recommendations were made, the competent authorities have acted or are acting on 45% of recommendations, slightly more compared to the 2020 Annual Report, when they did so in relation to 43% of recommendations. Competent authorities have not implemented 37% recommendations, and for 18% the Institution has no information about their implementation.

The Office for Human Rights and the Rights of National Minorities, as the body responsible for preparing a report on the implementation of the Ombudswoman's recommendations did not prepare such Report during 2022. The last such report was made for our 2013 Annual Report, so this mechanism should be evaluated (and is currently being evaluated).

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

In 2019 the Croatian institution gained a new mandate – that of the external channel for the reporting of irregularities (the so-called “whistleblower protection”). However, as mentioned above, in 2022 the new Act on the Protection of the Persons Reporting Irregularities<sup>7</sup> was adopted broadening the tasks of our institution in this area. To accommodate for this and in line with the 2019 GANNHRI recommendation regarding our institution's capacities, the Croatian Ombudswoman was able to employ 5 new staff members in the relevant Department, which the Ombudswoman commends. However, despite the continuously growing number of mandates (and to a large extent staff members), the number of the Ombudswoman's Deputies has remained the same

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throughout the years. Given there are no managerial staff whatsoever (mid-level or high-level staff) in the institution and the management is done only by the Ombudswoman and her 3 Deputies, in order to ensure the effective functioning of the institution, following the increase in the mandates and the staff, it is now necessary to provide for at least one additional Deputy. However, Deputies are not civil servant but state officials and cannot be hired by the Ombudswoman, but have to be elected in the Parliament.

Following the earthquake in Zagreb in 2020 rendering our office building unusable and a period of working in an inadequate space and in line with our 2020 and 2021 recommendations, in 2022 the Institution was provided with additional temporary office space and can now accommodate all of our employees.

Following our recommendation, in December 2021 the Council for Human Rights, an advisory body to the Government, was established. This is an intersectoral body consisting mainly of the representatives of the public administration bodies and the government offices along with several CSO representatives. So far, it has held 4 meetings: 1st – the Ombudswoman presented the human rights situation in the RC, 2nd - the Institution presented the recommendations from our 2021 annual report and the Council issued a Conclusion calling on the public authorities to take appropriate measures and activities to implement the recommendations of the Ombudswoman as well as to provide the Ombudswoman with an appropriate explanation if they believe that a recommendation cannot be implemented in the proposed manner. The Conclusion also communicated about the necessity of the public authorities maintaining a constructive dialogue with the Ombudswoman regarding the implementation of her recommendations, as well as about a plan to hold thematic sessions on the topic of their implementation. Consequently, at its 3rd session our recommendations related to the human rights of older persons were discussed.

## NHRI's recommendations to national and regional authorities

The Croatian NHRI recommends national and regional authorities:

- To debate annual reports of the Ombudswoman in a timely manner in the Croatian Parliament.
- To ensure unannounced and free access to all data, including the data in the information system of the police/the Ministry of the Interior needed for our work on protecting the human rights of irregular migrants.
- To strengthen the human resources of the institution, especially the number of Deputies to the Ombudswoman, following a growth in mandates over the years from 1 to 5, but with the number of Deputies remaining 3.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

As part of its monitoring activities the Croatian NHRI has noted certain negative normative trends and measures impacting the work of HRDs.

Although the last National Strategy for the Creation of Favorable Conditions for the Functioning of the Civil Society expired in 2016 and the drafting of the new one began in 2021, it has not been adopted yet. The National Plan for the Protection and Promotion of Human Rights and Suppression of Discrimination has been adopted in March 2023, the last having expired in 2016. Contrary to our 2021 Annual Report recommendation, it does not include the creation of a favorable environment for the functioning of the civil society as one of its goals and does not recognize CSOs active in the fields of human rights protection and promotion as human rights defenders.

## Access to and involvement of civil society actors in law and policy making

In the recent years, the space for the functioning of the civil society has been rated as “narrowed”<sup>8</sup>.

The civil society sector has been rating the cooperation with the Council for the Development of the Civil Society (the Government’s inter-sectoral advisory body) as stalling.

The proportion of the national financial sources (a proportion of the lottery funds) intended for the financing of the civil society’s activities was significantly reduced in 2016 and its level has still not returned to its pre-2016 levels (10,65% in 2022 vs. 14,21% in 2015).

Furthermore, CSOs regularly point to the difficulties in the administration of EU funds – the delays in the national bodies’ issuing of the calls for proposals, the long duration of the selection processes, delays in the payments, as well as the absence of calls for CSOs active in areas such as human rights promotion and protection, combatting discrimination, watchdog and advocacy activities, as well as the continuously growing level of administrative tasks they are being burdened with.

Environmental OCDs report breaches of their rights enshrined in the Aarhus Convention – the right to the access to information, the right of the public to participate in decision making and the access to justice in environmental matters as well as not being granted access to documentation in the procedures related to assessments of the projects’ impact on the environment, to the evaluations of the projects’ impact on the environment and the strategic assessments of the projects’ impact on the environment.

Public participation in decision-making is regulated well when it comes to the normative framework. However, CSOs perceive their participation as limited due to the frequent practice of the bodies organizing the public consultations processes of simply “noting” the comments received without providing sufficient explanation as to the reasons for

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not accepting them. Additionally, they point to practices of providing the deadlines for the e-consultations that fall short of those prescribed by the legislation regulating this area, as well as the lack of transparency in the processes of electing CSOs' representatives in the working groups that participate in the drafting of laws and national policy documents and the insufficient avenues for their participations in the working groups.

The 2022 report by the Human Rights House Zagreb on the situation of the human rights defenders in the Republic of Croatia<sup>9</sup> cites pressures, threats and intimidation faced by the CSOs received by telephone, anonymous letters, social networks and in the comment sections of the online portals. According to the report, CSOs active in the areas of migrations, women's and LGBTIQ+ persons' rights, national minorities, victims of gender based violence and dealing with the past are facing the highest levels of negative reactions.

Certain number of the CSOs working with migrants continue to be denied access to reception centers for asylum seekers and to the reception center "Jezevo" and the transit and reception centers in the Republic of Croatia, although they are providers of free legal aid. Moreover, according to CSOs, no CSOs dealing with the provision of free legal aid have been allowed access to the reception center for asylum seekers "Porin" in Zagreb since the beginning of the pandemic, despite the fact that the persons accommodated there express the need for these services.

Journalists and CSOs (especially those dealing with environmental issues) keep facing SLAPP suits. Furthermore, in 2022 a SLAPP suit was instigated against a civic initiative in the city of Pula after having organized a referendum against the building of a hotel in the city.



## **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

SLAPPs against journalist are quite present in the Republic of Croatia (RC). It is especially worrying that some of them are instigated by judges against journalists/media. Given the high amounts of damages requested, they can both put a significant financial burden on the journalists and the publishers, especially when it comes to small, independent ones, and create a chilling effect on their activities. Additionally, the fact that in certain cases the plaintiff happens to be a high-level court judge has the potential to impact the impartiality of the judge deciding on the case, thus potentially placing the other side into a an unfavorable position.

CSOs, especially those dealing with environmental matters have also been targeted by SLAPPs, which places a burden on them both organizationally and financially.

Ultimately, whistleblowers who have publicly disclosed wrongdoings also indicate to be victims of SLAPP lawsuits filed by reported persons, which significantly affects the whistleblowers financial situation and the private life.<sup>10</sup>

### **Measures undertaken by State authorities to protect and promote civic space**

Within the Ministry of Culture and the Media a Working Group for the Formulation of Anti-SLAPP Policy, in the work of which our institution participates as well, has been established. Its goals include the analysis of the current situation when it comes to SLAPPs, data collection, awareness-raising, educational activities and the formulation of the proposals for the future anti-SLAPP normative measures. According to the information the Ombudswoman received from the Ministry, there are plans to implement, within the new Media Act, a mechanism for an early detection of SLAPPs and declaring them void.

In relation to SLAPP lawsuits against whistleblowers, the Ombudswoman follows the ECtHR's and the national courts' case-law in these cases so that she can continue

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reporting on it in her subsequent reports and use it in the education the institution provides to various stakeholders on the protection of whistleblowers. For example, recently in the proceedings before an RC court, the judge rejected six lawsuits filed against a whistleblower by a reported person. The reasoning of the judgment has not yet been published, and the Ombudswoman will monitor whether and when it becomes final.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Ombudswoman has a long history of cooperation with the civil society. The Council for Human Rights is an advisory body to the Ombudswoman. It proposes strategic guidelines in the field of promotion of human rights and freedoms to the Ombudswoman and secures permanent cooperation between the Ombudswoman, the civil society, the academic community and the media, since their representatives are members of the Council. In 2022, 7 new members of the Council were elected, including one of the two representing the civil society. Furthermore, 11 CSOs active in the area of combatting discrimination have been elected to function as our 'Antidiscrimination contact points'. Their purpose is information exchange and the planning of joint activities in the area of antidiscrimination. Additionally, as part of the process of the drafting of the annual reports to the Croatian Parliament, the Ombudswoman issues a call for inputs addressed to a large number of stakeholders, including CSOs and their inputs are one of the sources informing its content. The Institution regularly participates in the CSOs' activities, such as conferences and roundtables and vice versa.

Finally, the institution participates in the processes of the drafting of laws and national policy documents. As part of this, the institution's representatives participated in the working groups drafting the new National Plan for the Creation of the Enabling Environment for the Civil Society and the new National Plan for Human Rights

Promotion and Protection and Combatting Discrimination and both in the past years as well as in 2022 recommendations related to the adoption of these documents were included into the NHRI's annual reports.

For years the Croatian NHRI has been covering the situation of the CSOs in Croatia in its annual report, broadening this approach in 2021 to cover HRDs as a broader group of actors with the aim of educating the relevant stakeholders on the concept and the broad scope of the notion of HRDs and the duties of the state stemming from a variety of international instruments adopted so far in this area, raising the awareness of both the public sector as well as the broader public of HRDs, their important contributions in the area of human rights promotion and protection and the importance of ensuring adequate conditions for their work, as well as highlighting the issues faced by the HRDs and providing recommendations.

### **NHRI's recommendations to national and regional authorities**

The Croatian NHRI recommends national and regional authorities:

- To the Government of Croatia, to adopt the National Plan for the Creation of the Enabling Environment for the Civil Society;
- To the Government's Office for Human Rights and the Rights of National Minorities, to ensure long-term institutional and programming funding for the activities of the CSOs active in human rights promotion and protection and antidiscrimination.

## **Implementation of European Courts' judgments**

### **Assessment of follow-up activities of State authorities**

The Croatian state authorities are generally more aware of the importance of ECtHR's jurisprudence than CJEU's case law.

Since the national courts have a very important role to play in guaranteeing the primary protection stemming from the Convention, they mainly refer to the ECtHR's case-law. The Constitutional Court has developed the practice of using ECtHR's case law as a benchmark in cases brought before it by constitutional complaints against final decisions in individual cases.

There is still room for the state authorities and national courts to get more familiar with the provisions of the EU law and CJEU's jurisprudence. Croatian courts and State authorities apply EU law mainly by applying Croatian legislation that has been harmonized with the EU law.

The activities of the Office of the Representative of the Republic of Croatia before the ECtHR, which regularly publishes<sup>11</sup> translations and analyses of the decisions of the ECtHR against the RC as well as a periodic review of the judicial practice of the ECtHR in the Croatian language, contribute to the application of the decisions of the ECtHR by the RC courts. However, due to the complexity of the legal arguments, it is also necessary to follow the complete explanations of the ECtHR's decisions, which the Institution assumes is sometimes time-consuming for judges considering the number of cases they are in charge of.

### **Leading European Courts' judgments awaiting implementation**

Currently, there are two leading cases against Croatia:

1. M.H. and Others v. Croatia (App. No. 15670/18 and 43115/18)<sup>12</sup>
2. Statileo group v. Croatia (App. No. 12027/10)<sup>13</sup>

According to the statistical data of the ECtHR, in 2022, 886 requests against the RC were distributed to the court department for decision, which is 27% more than in 2021. From

the total number of requests against the RC decided by the ECtHR in 2022, 809 were declared inadmissible or struck out, while 32 of them were decided by a judgment, 20 by friendly settlement, and for 12 a unilateral statement was issued by the Government of the RC on violations of Art. 6 of the Convention. Of the 32 verdicts that the ECtHR rendered in 2022 in relation to the RC, 26 found a violation of the rights from Convention, while in six no violation of convention rights was found. During 2022, the Expert Council considered 14 action plans for the execution of ECtHR judgments. The above figures do not indicate a systemic problem in the implementation of ECtHR decisions. However, when executing individual decisions, there is not always the agreement of all relevant stakeholders and members of the Expert Council regarding adequate general measures, which can lead to the application of the available legal remedies such as Rule 9.

### **NHRI's actions to support the implementation of European Courts' judgments**

The Ombudswoman has a function to ensure the compliance of the national laws and practices with the international human rights treaties, including the Convention. Our institution contributes to the implementation of ECtHR judgments primarily through recommendations and participation in the public consultation processes, where the Ombudswoman monitors whether the proposed legislation is aligned with the Convention and ECtHR practice.

In the Annual Reports, the Ombudswoman provides data about the level of respect for the constitutional and legal rights of the citizens, especially taking into account the Convention and the ECtHR practice. The Annual Reports also include the chapter on the relevant ECtHR cases regarding Croatia. The Ombudswoman emphasizes particular legislation or practice that ignores the judgments of the ECtHR, and makes recommendations to the state authorities on the measures to be taken to comply with these judgments.

The institution is a member of the National Council of Experts for the Execution of the Court's judgments, which is an important inter-sectoral body for the analysis and the implementation of the ECtHR judgments at the national level. Regarding our participation in the National Council's activities, besides our monitoring role, recently the Ombudswoman has submitted comments on the Action plans proposed by the Government State Agent in the following cases: *M.H. and others v. Croatia*, *Huber v. Croatia*, *Statileo group v. Croatia*

### **NHRI's recommendations to national and regional authorities**

The Croatian NHRI recommends national and regional authorities:

- Education/training of the legal professionals on the implementation of European courts' judgements (especially of CJEU's case law);
- Publishing and disseminating European courts' jurisprudence;
- Enhancing the cooperation with the relevant stakeholders (e.g. CSOs, academia, etc.)

## **Artificial Intelligence**

### **Impact of AI on human rights, democracy and rule of law**

In Croatia, the use of AI in the public sector is only starting, while the private sector has been quicker in using AI. The Ombudswoman is closely following the use of AI in both private as well as in the public systems.

Each year starting from 2019 in the annual reports the Ombudswoman is informing the parliament but also the public about the use of new technologies and AI. However the Ombudswoman still does not regularly receive complaints from the citizens pointing to violations of their human rights due to the use of AI.

When the media published the news that the Ministry of Justice and Public Administration launched a public procurement procedure for a centralized selection

system and normative framework for admission to the civil service, which would fully digitize the recruitment process in the civil service, the Ombudswoman initiated the procedure, which is still ongoing so the Ombudswoman does not have relevant information to share as yet. In order to learn from the experiences of other states, the Institution also follows the application of AI in their national contexts and the negative consequences that AI has had on human rights and equality.

### **NHRI's actions to address challenges regarding the use of artificial intelligence**

The Institution regularly engages in informing the public, which is currently not sufficiently aware of the rapid growth of AI and its possible implications on human rights, as the Ombudswoman quite frequently mentions this in her public/media appearances and has also conducted meetings and trainings regarding this.

Also, each year in the Ombudswoman's annual reports, the Institution informs the parliament but also the public about the use of AI, its potential negative impacts on human rights and the rule of law, as well as about the legislative initiatives in the EU and the CoE. As an important and useful step, the Ombudswoman recommended in the 2022 Annual Report that a Registry should be established for all public AI usage, so it can be better monitored and citizens informed AI is being used.

### **NHRI's recommendations to national and regional authorities**

The Croatian Ombudswoman advocates for public registers of AI systems used by public institutions and the transparency of those systems, as well for the Human rights impact assessment (HRIA) that should be one of the mandatory obligations within conformity assessment and not only for high-risk systems. It should involve third parties and not be solely the obligation of the provider.

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<sup>1</sup> [Sessions of the Human Rights Council of the Government of the Republic of Croatia](#)

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<sup>2</sup> [Croatian annual rule of law report 2022](#)

<sup>3</sup> [Conference of Croatian Ombudswoman "30 years of human rights protection in the Republic of Croatia: past, present and future" , January 2022](#)

<sup>4</sup> [Conference of Croatian Ombudswoman "Protection of Human Rights and the Rule of Law", November 2022](#)

<sup>5</sup> [Special report to the Croatian Parliament on the impact of the COVID-19 pandemic on human rights and equality](#)

<sup>6</sup> [SCA Report March 2019](#)

<sup>7</sup> [The New Act for the Protection of Persons Reporting Irregularities \("Whistleblowers"\) – Key Information for Reporting Persons and Confidential Persons](#)

<sup>8</sup> [Civicus Monitor: Croatia; CERANEO Civil Society Index Croatia](#)

<sup>9</sup> [Human Rights Defenders: Challenges and Obstacles, Human Rights House Zagreb, December 2022](#)

<sup>10</sup> [Zadarski - She lost her job and 'earned' a bunch of defamation lawsuits, and her secret recordings are the key in the USKOK investigation: 'It was clear to me at first that I had no protection...!' \(slobodnadalmacija.hr\)](#)

<sup>11</sup> [Republic of Croatia caselaw at the European Court of Human Rights](#)

<sup>12</sup> [European Court of Human Rights, M.H. and Others v. Croatia \(App. No. 15670/18 and 43115/18\)](#)

<sup>13</sup> [European Court of Human Rights, Statileo group v. Croatia \(App. No. 12027/10\)](#)



## Cyprus

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### The Office of the Commissioner for Administration and the Protection of Human Rights

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

The Office of the Commissioner for Administration and the Protection of Human Rights (the Commissioner) informs that the main follow up actions taken by the state during the year 2022 to address the issues reported in the 2022 ENNHRI Rule of Law Report to foster a rule of law culture were the following:

The Bill on the establishment of an Independent Authority against Corruption (discussed during 2021 in the Parliamentary committee for Legal Affairs) was finally adopted in March 2022 (Law 19(I)/2022).<sup>1</sup>

In July 2022 following the establishment, the President of the Republic appointed 5 members of the Independent Authority.<sup>2</sup> The main objective of the Authority is to ensure the coherence and effectiveness of actions taken both in the public and the private sectors, in matters relating to the prevention of corruption, including the responsibility to implement a national anti-corruption strategy.

The Authority also has the competence to investigate, ex officio or following a complaint of any acts of corruption in the public, wider public and/or private sectors (in relation to actions by private entities for which public or wider public sector entities are involved.)

Furthermore, the Authority has the following main powers and responsibilities:

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- To prepare ex officio reports with suggestions and proposals for the prevention of corruption.
- To raise awareness in the private sector on best practices and standards for the prevention of corruption and providing advice and guidance for their adoption and proper implementation.
- To issue circulars to competent public authorities and take necessary actions when it is necessary.
- To cooperate with international organizations on the implementation of programs, policies and/or strategic plans relating to the prevention of corruption, the receipt of technical assistance and the exchange of information.
- To investigate and evaluate any complaint or information that comes to its knowledge in relation to acts of corruption in both the public and private sectors.

In February 2022, the Law which introduces the protection of persons reporting breaches of EU law and national law, including corruption offences ('the Whistleblowing Law') was published in the Official Gazette of the Republic<sup>3</sup>. The Law transposed the Directive on the Protection of Persons who Report Breaches of Union Law (Directive (EU) 2019/1937) into national law and, among others, provides that entities are prohibited to retaliate against whistle-blowers in any way.

In July 2022, a Law was passed to ensure transparency of the participation of lobbyists in public decision-making (Law No. 20(I)/2022 on "Transparency of Public Decision-Making and Relevant Procedures"<sup>4</sup>).

The Ministry of the Interior has prepared a draft law which aims to provide a legal framework to safeguard freedom of operation of the press and media in Cyprus. The draft law, which is under consultation, includes provisions specifically in relation to the safeguarding of the safety of journalists and other media workers.

Throughout 2022, the Ministry of Justice and Public Order has organised several specialized training seminars to civil servants of various public departments/authorities, on issues relating to identifying and combatting corruption.

In March 2022, the Attorney General of the Republic set up a specialized anti-corruption team/unit of various stakeholders (including the Chief of Police), to coordinate the criminal investigation of corruption offences, and its terms of reference include the supervision, guidance, and coordination of the investigation procedures of serious criminal corruption cases, as well as cases that may contain elements of corruption<sup>5</sup>.

### Impact on the Institution's work

The Cypriot National Human Rights Institution (NHRI) states that the 2022 ENNHRI Report on Rule of Law had a positive impact on its work, specifically:

- It stressed the important and interlinked relationship that the implementation of the Rule of Law has on the protection of human rights of citizens and, thus, the emphasis and the priority that the Institution, as a NHRI, must give in the promotion and protection of the rule of law in Cyprus.
- It provided an important benchmark to compare/evaluate our work in the area of rule of law in Cyprus, with the work of other NHRIs in Europe.
- It provided insights to the (similar) challenges that other European NHRIs face in their work (albeit in varying degrees) in relation to the implementation of the Rule of Law in their respective countries, including challenges on the issues of safeguarding their independence and effectiveness.

### Follow-up initiatives by the Institution

In 2022, the Cypriot NHRI undertook several actions which supported the rule of law compliance in Cyprus.

Namely, it was done by the submission of reports or the issuance of Public Opinions or Public Announcements, on cases related to the protection and respect of fundamental rights of citizens, especially those belonging to more vulnerable groups.

The Commissioner also submitted specific recommendations to change administrative decisions or practices in accordance with the law and human rights standards.

The Cypriot NHRI provides examples of such reports, opinions, announcements, as the following:

In March 2022, a report was submitted regarding the reception conditions provided to people who reside in the “Pournara” asylum seekers ‘Reception Centre. The NHRI received the information the NHRI that the overpopulation issue had worsened.<sup>6</sup> At the time of institute’s visit, 2280 asylum seekers resided in the Centre, while its capacity is only for 1200 people, resulting in dire living conditions.

Special reference was made in the Report regarding the living conditions of the unaccompanied minors who resided in the Reception Centre (310 at the time) and the specific problems that they faced due to their age.

Amongst the NHRI recommendations to the implicated authorities was:

- to take steps to improve the infrastructure of the Centre
- to take measures to examine asylum applications without delays, and
- initiate procedures to identify or create other reception places to which all unaccompanied minors would be moved to without further delay

After the submission of the Report, the unaccompanied minors were placed in other more suitable accommodation. In total, between March and April 2022, more than 160 unaccompanied minors were transferred to hotels. It was also announced that the “Protection Center” exclusively for unaccompanied minors, with a capacity of 120-150 persons, would be created.

Additionally, the Commissioner informs that accommodation places for 40 persons were created in Nicosia and Larnaca districts and a tender was launched for the creation of a Protection Centre exclusively for minors seeking asylum, with a capacity of at least 120-150 persons.

Furthermore, after the NHRI's Report and in line with its recommendation to speed up registration procedures, additional office space was placed in the Centre and the competent staff of the Aliens and Immigration Service, FRONTEX Police and EUROPOL was increased.

Regarding the improvement of the Centers 'infrastructure, measures were taken to: extend the lighting around the perimeter of the Centre and in the quarantine area, the number of Social Services Officers in the Center was increased, a study was carried out by the Nicosia Sewerage Board to connect the Centre to the sewerage system and solve the problem the drainage problems that were observed, and, a new safe zone was put into operation within the Center.

In February 2022, the Cypriot NHRI was informed by the media coverage that, in different occasions, several teenagers had assaulted, in a parking lot in Nicosia, migrants working in food-delivery businesses.

In view of the incidents, the Cypriot NHRI issued a Report<sup>7</sup>, by which the Commissioner expressed the view that the assaults had obvious racist motives, and referred to the legal framework that prohibits hate crimes. The NHRI stated that the perpetrators were underage, therefore, the NHRI also addressed the role of the school and education system. Recommendations were also addressed to the Police to fully investigate the incidents and encourage the victims to report them.

In July 2022, a report was published by the Cypriot NHRI regarding the handling of an asylum application by a young person who claimed that he was a victim of torture and who was a minor when he initially filed the asylum application.<sup>8</sup>

The NHRI's investigation showed long delays in both the referral of the applicant to a medical board by the Asylum Service, and, subsequently, in the setting up of a medical board to examine the applicant by the Ministry of Health. It was found that, during the examination of his case, the applicant was not provided with either suitable interpretation services or adequate psychological support.

The Cypriot NHRI stresses that the report contained critical assessment of the handling of the case by the implicated authorities and highlighted the need to avoid similar delays and omissions.

In April 2022, the Report was published regarding the handling by the Police of a complaint by a citizen who was the victim of a homophobic assault.<sup>9</sup> The NHRI's investigation showed that the case was not identified and handled as a hate crime incident, in accordance with a relevant Circular of the Chief of Police and that the motive of the assault (prejudice) was not taken into consideration, as it is provided by the Law.

In the report, the Cypriot NHRI commented on the process of case handling and recommended to the Chief of Police, the organization of specialized training to Police officers on how to handle and investigate homophobic and transphobic offences.

In follow-up to this recommendation, and after receiving the invitation from the Police Academy, in July 2022, the staff member of the Cypriot NHRI conducted a training seminar to Police Officers on the national anti-discrimination legislation and the proper handling of offences with racist/homophobic motive.

The Commissioner also flags that in July 2022, a video that went viral online showed a Cypriot man physically attacking and racially abusing an African woman while she was holding her infant child in her arms<sup>10</sup>.

The Cypriot NHRI published an Opinion/Announcement<sup>11</sup> in which it condemned the incident and highlighted the need for the Police to investigate it as a racist offence

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(based on the antidiscrimination legislation), and, to prosecute the case under the penal code as it provides that the motivation of prejudice against a group of persons or a member of such a group of persons, because of (amongst others) race and ethnic origin, may be considered as an aggravating factor.<sup>12</sup> Additionally, the NHRI notes that authorities should provide the necessary material and psychological support to the victim of the assault.

In April 2022, on the basis on several complaints received, the Cypriot NHRI filed a systemic report concerning the rejection of requests for residence permits for family members of supplementary protection holders, as well as refugees, by their spouses and/or children<sup>13</sup>.

The applications were rejected due to the family relationship that not previously exist in their country of origin, contrary to the previous practice of the immigration authorities, (which residence permits were issued to refugee's family members or holders of supplementary protection, regardless of the time of the marriage or birth of the children involved).

Amongst others, the investigation showed that the national Refugee Law did not transpose a specific provision of Directive 2003/86/EC on the right to family reunification, which clearly states that the term "family reunification" also covers family ties established before the entry of the holder of international protection in the member state.<sup>14</sup>

The Cypriot NHRI emphasized the fact that, given to the legal gap in the national refugee law, the right to family unity derives from the right to family life which is protected by international human rights regulations, such as the European Convention of Human Rights, as well as the Constitution of the Republic of Cyprus. Thus, it was concluded that the need to maintain and safeguard the "family unity" of all holders of international protection constitutes both a legal and a moral obligation.

In view of the above, the NHRI recommended that the immigration authorities re-examine and modify their controversial practice in a way that ensures the right to family reunion of holders of international protection in accordance with human rights standards and the provisions of Directive 2003/86/EC.

During 2022, the Commissioner conducted interventions and reports on three different individual cases regarding the rejection of applications submitted by third-country nationals to acquire the Cypriot citizenship by naturalization.

In the three cases the NHRI noted that the applicants had resided for many years in Cyprus before submitting their applications having a high level of integration in the local society. The investigation showed that the applications were rejected on subjective criteria and/or narrow interpretation of the Law. Examples of such criteria that are often used by the competent authority to evaluate applications for naturalisation are: the level of integration in the Cypriot society ( without any relevant guidelines to measure it), the level of knowledge of the Greek language (based solely on an interview with the applicant) the “ good character” of the applicant and whether the “public interest” is served from the naturalisation of the applicant) The Cypriot NHRI in its interventions discussed the gaps in the procedures and institutional framework to access naturalization, including the lack of clear and objective criteria on which the applications may be examined. The Commissioner raised questions about, the legality of the application process and the recommended to the Ministry of Interior to re-examine each individual case, considering the personal circumstances of each applicant.

During 2022, the NHRI also issued Public Announcements on the International Roma Day (April 8), the World Refugee Day (June 20), the International Day for the Elimination of Racial Discrimination (March 21) and the Human Rights Day (10 December)<sup>15</sup>.



In its opinions, the Cypriot NHRI raised public awareness on the corresponding human rights issues and pointed to the obligations that arise, for all society actors, to respect and protect human rights without discrimination.

Further to the submission of Reports or the issuance of Public Opinions /Announcements, and in relation to monitoring and further strengthening the rule of law compliance, throughout 2022 the Commissioner carried out the following actions:

- providing regular trainings/awareness raising seminars to members of the Police on human rights, discrimination, and diversity related issues.
- providing trainings/awareness raising seminars with respect to sexual harassment in the workplace to personnel of public authorities.
- participating and expressing views in several discussions held in Parliamentary Committees on issues pertaining to its competence.
- continuing the joint initiative since 2021 with the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), to explore the possibilities for the development and promotion of inter-agency co-operation between competent public authorities and civil society bodies, in order to address hate crimes more effectively in Cyprus<sup>16</sup>. In the framework of this cooperation, two meetings were held in 2022 by the Working Group, to promote specific actions that will strengthen and improve the national framework addressing hate crimes and supporting the victims of such crimes.

### **NHRI's Recommendations to national and European policy makers**

The Commissioner recommends National and European policy makers to:

- Recognise that the rule of law cannot be implemented in an environment that does not provide a wider protection to fundamental human rights and, thus, ensure, in practice, the respect and protection of these rights,

- Take into due consideration the findings and recommendations of the NHRIs, as these are included in their annual rule of law reporting,
- Develop a firm and comprehensive legal and institutional framework, which will provide NHRIs in Europe the ability to function effectively and independently, without threats and/or undue pressure.

## **Implementation of regional actors 'and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors' recommendations on rule of law**

The Commissioner informs that currently there is an ongoing judicial reform process that aims to establish the functioning of the two supreme courts provided in the constitution of the Republic: the Supreme Constitutional Court and the Supreme Court of Justice, and a new Court of Appeal<sup>17</sup>. It is worth noting that, following the withdrawal of Turkish Cypriots from the government in 1963, and according to the "law of necessity", the two Supreme Courts until now were merged into one.

The reform made by the amendment of the Constitution in July 2022 and is part of the wider changes made by the Ministry of Justice in order to strengthen the rule of law in Cyprus, in line with the recommendation of the European Union in its 2019 Rule of Law Report. The operation of the new Courts is scheduled for 2023.

Furthermore, for the ongoing judicial reform process, the Republic of Cyprus took into account opinions of the Venice Commission, as also in line with the relevant recommendation in the European Commission's 2022 EU Rule of Law Report.<sup>18</sup>

### **State authorities follow-up to NHRI's recommendations regarding rule of law**

The Commissioner informs that measures were taken by the competent state authorities to comply with some of the NHRI's recommendations that were made in its reports. For

instance, following the Report from March 2022 regarding the reception conditions provided to people who reside in the asylum seekers Reception Centre, as per the Commissioner's recommendations, several measures were taken to improve the infrastructure of the centre and to place unaccompanied minors in more suitable accommodation

After the NHRI's public Opinion/Announcement in July 2022, the Police, in line with our recommendation, arrested the perpetrator based on the legislation which provides for the combatting racism and xenophobia<sup>19</sup>.

Following the report in April 2022 regarding the handling by the Police of a homophobic assault, and in line with our recommendation to organise specialized training seminars, as mentioned in the previous subchapter, in July 2022, an Officer of the Cypriot NHRI conducted a training seminar to Police officers on the national anti-discrimination legislation and the proper handling by the Police of offences with racist/homophobic motive.

### **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

The Cypriot NHRI states that it supports the implementation of the recommendations on strengthening the rule of law in Cyprus by conducting follow-up actions and exchange with the relevant state authorities and other stakeholders.

As a rule, the Reports are followed by letters by which it is requested to be informed about the actions taken by State authorities to comply with the recommendations.

In some cases, consultations are called between the implicated parties, for the implementation of the Commissioner's suggestions in order to reach a commonly acceptable solution to identified problems.

Furthermore, summaries of the reports and the main recommendations are included in the annual report submitted to the President of the Republic, as well as the monthly memorandum the NHRI submits to the Council of Ministers and the House of Representatives.

Finally, in cases where systemic human rights are identified, the Reports may also be sent to other stakeholders, like the Attorney General and members of the Parliament.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Cypriot NHRI received its first-time accreditation with A-status by the Sub-Committee on Accreditation (SCA) in October 2022<sup>20</sup>, after being deferred in June 2021<sup>21</sup>. During its last review, the Cypriot NHRI informed the SCA of several steps it had taken to implement previous SCA recommendations, including the establishment of a Human Rights Advisory Committee aimed at promoting stronger and formal cooperation with civil society and enhancing the institution's visibility. At the time, it was in the process of appointing members to the Committee, which would include civil society organizations working on the promotion and protection of the rights of the LGBTI community, persons with disabilities, women, and other groups. In light of this, the SCA recommended the Cypriot NHRI to ensure the Committee was functional and urged it to continue to enhance and formalize its working relationships with a wide range of civil society organizations and human rights defenders. The SCA also called for strengthened adequate funding of the NHRI related to recruitment of staff at senior level. Particularly, it noted that, while the institution has management and control over its budget and has effectively undertaken activities within its existing budget, it requires additional funding to allow for recruitment of staff at senior level, particularly in view of its expanded mandates of National Preventive Mechanism under OPCAT and National Monitoring Mechanism under CRPD. To this direction, SCA recommended NHRI to

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continue to advocate for an increase of its budget allocation and an appropriate level of funding to carry out its mandate. Such resources should allow for salary levels, and terms and conditions of employment, equivalent to those of other independent State agencies.

### **Follow-up to SCA Recommendations and relevant developments**

The Commissioner underlines that the Law which determines the its functioning was amended in July 2022. The amendment indicates that the Commissioner can be reappointed only once<sup>22</sup> – i.e. serve a maximum of two 6-year terms. The specific amendment of the NHRI's regulatory framework was promoted in view of SCA's remark in 2021 that Law was silent on the number of times the Ombudsman could be re-appointed and for this reason, SCA was of the view that it would be preferable for the term of office to be limited to one (1) re-appointment, to ensure full compliance with the UN Paris Principles.

With a Decision by the Council of Ministers in June 2022 (Decision No 93.297), an advisory Committee of Human Rights was established. The Committee will be comprised by various human rights stakeholders (including representatives of the civil society representing the rights of: persons with disabilities, the elderly, the LGBTQI community, prisoners, refugees, and others), and will be presided by the acting Commissioner for Administration and Human Rights.

With another Decision by the Council of Ministers in June 2022 (Decision No 93.298), the selection and appointment procedure of the Commissioner was formalized and specific binding rules took place. Specifically, it is provided that for the appointment of the Commissioner: a public call by the Council of Ministers needs to be initiated for expression of interest for the position prior to the expiry of the term of the Commissioner, the evaluation of all the candidates by the Council of Ministers (to recommend the most suitable one to the President of the Republic), the approval of the

nominated person by the majority of the House of Representatives, and, then, the appointment of the Commissioner by the President. Kindly note that the above described procedure is currently taking place.

The institutional changes undertaken, as well as the Institution's continuous work for the promotion and protection of human rights (e.g. awareness raising campaigns, events, trainings, engagement with civil society etc.), led to the re-accreditation of our NHRI with status A, (in full compliance with the Paris Principles), by SCA of the GANHRI in October 2022.

### **Regulatory framework**

The regulatory framework provides the NHRI with a broad mandate to protect and promote fundamental rights in Cyprus.

As mentioned above, the regulatory framework of the NHRI has been changed to ensure the institution's further compliance with UN Paris Principles, which led to being awarded A-Status by SCA.

The Commissioner has management and control over its allocated budget and have effectively undertaken activities within its existing budget.

### **Enabling and safe space**

The Cypriot NHRI confirms that it has sufficient space to carry its work, and that its provided with adequate access to information and to policy processes with human rights implications.

Additionally, the NHRI informs that the relevant state authorities have a legal obligation to respond to questions/enquiries, as well as to present relevant documents/evidence following the NHRI's investigation. In most cases, the authorities respond within a reasonable timeframe and provide reasoned responses. However, there are exceptions,

and in some cases, the NHRI is obliged to send reminder letters or follow-up letters requesting additional information or clarifications.

The Cypriot NHRI also mentions that the compliance with its recommendations has increased in recent years. Moreover, in all the cases where binding decisions were issued by the Commissioner under its mandate as Equality Body, the involved authorities/bodies complied and took steps to implement them.

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

The Cypriot NHRI notes that the actions of the legislative and executive powers to strengthen the regulatory framework of the institution should be assessed positively.

Furthermore, in September 2022, the NHRI organized special exams for the recruitment of new staff members and with this procedure, 7 additional officers are expected to be recruited during the next few weeks. It should be noted that the vacant positions pending to be filled after the said examinations, were initially three and in 2022 the House of Representatives approved our request to fill 4 more vacancies and in total the vacancies to be filled are 7.

The Commissioner stresses that the modification of its legal framework through the formalization of selection and appointment procedure of the Commissioner and the establishment of an advisory Committee of Human Rights presided by the Commissioner which also contributed to the compliance with the Paris Principles.

Furthermore, the re-accreditation of the Cypriot NHRI with A-Status, is in line with Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on the development and strengthening of effective and, pluralist and independent NHRIs.

## NHRI's recommendations to national and regional authorities

The NHRI's recommendations to national authorities on how to strengthen the independence and effectiveness of our institution is to take measures and actions that:

- ensure that state authorities involved in investigations conducted by NHRIs, comply with their legal obligation to respond to questions/enquiries, in a timely manner and with reasoned and analytical responses,
- strengthen further the NHRI's financial and human resources to enable the exercise of its mandate effectively and timely, in line with SCA's recommendations.
- That the budget allocation shall be increased, and an appropriate level of funding shall be provided to allow the same conditions of employment of other independent State agencies.
- To continue to provide the same level of protection to the independence of the NHRI, without interfering in carrying out its mandate.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

The Cypriot NHRI informs that, in general, human rights defenders and civil society organisations enjoy a safe space to operate and express their opinions in Cyprus.

### Access to and involvement of civil society actors in law and policy making

The NHRI notes that civil society actors are often consulted in the discussions held in Parliament for the introduction of new legislation drafting which is related to the sphere of their mandate. However, it also agrees with the European Commission's 2022 Report on the Rule of Law situation in Cyprus, that consultation should also be done in the earlier stages of the drafting legislation processes<sup>23</sup>.



Moreover, in some cases, non-governmental organisations promoting the rights of persons with disabilities (PwDs), have complained to the Commissioner that state decisions regarding PwDs are often taken without prior consultation with them, in violation of the provisions of the UN Convention on the Rights of Persons with Disabilities. It is noted that in relation to State's obligation to consult with the representative organisations of PwDs, in December 2022, the Commissioner carried out an ex officio intervention<sup>24</sup> and issued the recommendation, inter alia, that consultation with civil society organisations should start from the initial stages of decision-making procedures and be continuous.

However, when draft laws are put a competent Parliamentary Committees for a discussion, representatives of civil society are, as a rule, invited and they express their views, before draft laws are brought before the Plenary of Parliament to be adopted.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Cypriot NHRI stresses that throughout 2022 it continued to collaborate with civil society organisations and human rights defenders and assist them to support them in carrying out their activities.

This cooperation, as in previous years, was mainly undertaken through the investigation of cases or issues that CSOs raised by the institution, regarding possible human rights violations against individuals, and/or, policies and practices that are implemented by state authorities and negatively affect the fundamental rights of a group of vulnerable people, in a more systemic manner. Predominantly, in 2022, the NHRI's intervention was requested by CSOs that worked on the rights of: migrants, beneficiaries of international protection, asylum seekers and persons with disabilities.

Examples of such intervention is the NHRI's ex officio report regarding the state authorities obligation to consult representative organizations of persons with disabilities

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on matters relating to disability issues, as well as the NHRI's ex officio report published in September 2022 regarding the better use of school escorts to students with disabilities.<sup>25</sup> Also, before issuing the report regarding the reception conditions provided to people who reside in the asylum seekers Reception Centre, the Commissioner contacted and received the views of the UNHCR Cyprus.

Additionally, in 2022, the NHRI continued to have regular meetings, contacts and exchange of views with civil society and human rights defenders, as well as to participate in events that CSOs organised to raise awareness on specific human rights issues.

Moreover, the establishment, in June 2022, of the Advisory Committee of Human Rights is a development which strengthens the role of the civil society in Cyprus, as the Committee will also be comprised by representatives of the civil society organisations.

### **NHRI's recommendations to national and regional authorities**

The Commissioner's key recommendations to national and regional authorities on how to better protect and support civil society actors are:

- Recognize the important (and often complementary to the State) role that civil society organisations play in actively and effectively protecting human rights, and, to ensure that the legal and institutional framework is put in place to provide the civil society, and especially human rights defenders, with an environment in which they can freely carry out their activities, without threats, harassment, or under pressure.
- Engage and consult competent civil society actors in the development of policies and or/draft legislation, at all stages of the procedures.

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

The NHRI informs that regarding the implementation of the judgments of the European Court of Human Rights, usually there is an active follow-up by state authorities and the implementation procedure in place.

The NHRI highlights that when a judgment is issued by the European Court regarding the Republic of Cyprus:

- The competent department of the Law Office of the Republic discloses it to the public authority involved, the House of Parliament and the Cyprus Bar Association and, in cooperation with the competent execution department of the Council of Europe, conducts a follow-up procedure.
- Then, specific action plans are prepared with respect to actions or remedies that need to be taken for the judgment to be implemented and relevant developments concerning the implementation process are regularly submitted to the Council of Europe's Committee of Ministers.
- When the competent department of the Law Office considers that the judgment has been implemented, it then informs the Council of Europe's Committee of Ministers accordingly, and, if no further observations are received by the Committee of Ministers, the follow-up procedure is concluded.

The Cypriot NHRI informs that for further information the website of the Law Office of the Republic of Cyprus - Human Rights Section - can be consulted.<sup>26</sup>

### Leading European Courts' judgments awaiting implementation

The Commissioner underlines that the following judgments are still pending implementation:

- Kamenos v. Cyprus (Application no. 147/07) judgment dated 31 October 2017 (Access to and efficient functioning of justice: Unfair judicial proceedings (civil rights)<sup>27</sup>;
- Danilczuk v. Cyprus (application no. 21318/12) judgment dated 3 April 2018 (Protection of rights in detention: Detention and other rights, Protection of rights in detention: Poor detention conditions - medical care)<sup>28</sup>;
- Nicolaou v. Cyprus (Application no. 29068/10) judgment dated 28 January 2020 (Right to life and protection against torture: Special situations, Right to life and protection against torture - Failure to conduct an effective investigation into a conscript's death of 2005)<sup>29</sup>;
- Vassiliou and others v. Cyprus (Application no. 58699/15) judgment dated 31 November 2021 (Protection of private and family life - Failure to inform the applicants of the progress of the investigation into the disappearance of a relative during the 1974 Turkish invasion in northern Cyprus, his possible death and location of the body in common grave)<sup>30</sup>;
- Drousiotis v. Cyprus (Application no. 42315/15) judgment dated 5 October 2022 (Freedom of expression and information - Unjustified interference with the applicant's freedom of expression due a lack of a balancing exercise between competing rights at stake in ordering him to pay a fine for a defamatory article on a public figure)<sup>31</sup>;
- Foutas Aristidou v. Cyprus (Application no. 11990/15) 7 June 2022 (Access to and efficient functioning of justice - Length of criminal proceedings)<sup>32</sup>.

The information on the process of compliance about the cases, can be found on the website of the Department of website of the Department of the Execution of Judgements of the European Court of Human Rights.<sup>33</sup>

## NHRI's actions to support the implementation of European Courts' judgments

The Commissioner stresses that it does not have competence to oversee the implementation of judgments of European Courts. The Commissioner cannot exercise control on the actions of the Attorney General of the Republic (Law Office).<sup>34</sup>

However, the Cypriot NHRI monitors the cases of the European Courts. When judgments against Cyprus are relevant to cases under the NHRI's investigation, the Courts' argumentation is referred by the NHRI in its argumentation and recommendations.

## NHRI's recommendations to national and regional authorities

The NHRI notes that the implementation of European Court's Judgments is directly related and interlinked with the respect for the rule of law. Therefore, the Commissioner recommends national authorities to intensify their efforts to implement pending judgments in a timely and comprehensive manner.

## Artificial Intelligence

### NHRI's recommendations to national and regional authorities

The NHRI states that the key recommendation to national and regional authorities is to take measures which ensure that, when artificial intelligence is used, the fundamental rights of citizens are protected, and the principle of non-discrimination is adhered.

Specific measures should also be taken to protect the rights of people who are not familiar with technology (e.g. the elderly) and ensure that they can also access public services in ways that are not restricted to online access.

## Other challenges in the areas of rule of law and human rights

The Cypriot NHRI points to persisting shortcomings in the area of justice system in Cyprus. The Commissioner, therefore, underlines the need to give priority to the reform

of the justice system. Cyprus has an ongoing judicial reform process to address and improve the problems that exist and are recognised by all key stakeholders, both national and regional. Especially to tackle the long delays in the examination of cases and appeals before the Courts.<sup>35</sup>

### **NHRI's recommendations to national and regional authorities**

The Commissioner's key recommendation is, on a general level, to foster and develop rule of law culture amongst national stakeholders, as well as the society in general, by:

- raising awareness on the interconnection between the rule of law and fundamental rights and the important role that each stakeholder – such as the NHRI and CSOs - can play in this respect,
- the translation of summaries of the Rule of Law country reports to the respective national languages and in easy-to-understand formats.

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<sup>1</sup> [Cyprus Legislation Portal](#).

<sup>2</sup> [Article in the Media on July 8<sup>th</sup>, 2022](#)

<sup>3</sup> [Official Gazette of the Republic](#) (date 4/2/2022)

<sup>4</sup> [Cyprus Legislation Portal](#)

<sup>5</sup> [Article in the Media on March 2022](#)

<sup>6</sup> [The Office of the Commissioner for Administration and Human Rights website- summary of the Report in English](#)

[The Office of the Commissioner for Administration website - copy of the Report in Greek](#)

<sup>7</sup> [Copy of the Report on the website of the Office of the Commissioner for Administration and Human Rights](#)

<sup>8</sup> [Copy of the Report on the website of the Office of the Commissioner for Administration and Human Rights](#)

<sup>9</sup> [Copy of the Report on the website of the office of the Commissioner for Administration and Human Rights](#)

<sup>10</sup> [Media Report from the Philenews](#). (in Greek)

<sup>11</sup> [Copy of the Opinion/Announcement on the website of the Office of the Commissioner for Administration and Human Rights](#)

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<sup>12</sup> Article 35A of the Penal Code

<sup>13</sup> [Copy of the Report on the website of the Office of the Commissioner for Administration and Human Rights](#)

<sup>14</sup> Article 2(d) of Directive 2003/86/EC: "family reunification" means the entry and residence in a Member State of the family members of a third-country national residing legally in a specific Member State, in order to preserve the family or unity, regardless of whether the family ties were established before or after the resident's entry.'

<sup>15</sup> Links to the Public Announcements on the website of the Office of the Commissioner for Administration and Human Rights for:

[The International Roma Day](#)

[The World Refugees Day](#)

[The International Day for the Elimination of Racial Discrimination](#)

[The Human Rights Day](#)

<sup>16</sup> [Post about the action on the website of the Office of the Commissioner for Administration and Human Rights](#)

<sup>17</sup> Relevant media articles coverage: [Article in Cyprus Mail](#) ; [The letter of Ionas Nicolaou, to the members of the Committee on Legal Affairs of the Parliament.](#) (in Greek); [Article by Evagoras Prokopiou.](#) (in Greek)

<sup>18</sup> [Eur-lex website](#) and [Venice Commission Website](#)

<sup>19</sup> [Article in the media](#)

<sup>20</sup> [SCA Report October 2022](#)

<sup>21</sup> [SCA Report June 2021](#)

<sup>22</sup> [Cyprus Law.](#) (in Greek)

<sup>23</sup> [European Commission's 2022 Rule of Law Report on the rule of law situation in Cyprus, pages 2 and 15](#)

<sup>24</sup> [Copy of the Report on the Commissioner of Administration's website](#)

<sup>25</sup> [Copy of the Report on the Commissioner of Administration's](#)

<sup>26</sup> [Website of the Law Office of the Republic of Cyprus](#)

<sup>27</sup> [Case of Kamenos v. Cyprus](#)

<sup>28</sup> [Case of Danilczuk v. Cyprus](#)

<sup>29</sup> [Case of Nicolaou v. Cyprus](#)

<sup>30</sup> [Case of Vassiliou and others v. Cyprus](#)

<sup>31</sup> [Case of Drousiotis v. Cyprus](#)

<sup>32</sup> [Case of Foutas Aristidou v. Cyprus](#)

<sup>33</sup> [Website of the Department for the Execution of Judgments of the ECHR](#)

<sup>34</sup> Article 2 of the Commissioner for Administration Laws of 1991 to 2022.

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<sup>35</sup> [See European Commission's 2022 Rule of Law Report on the rule of law situation in Cyprus, page 6](#)

[Media Article](#)

[Media article](#)



## Czech Republic

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### Public Defender of Rights of the Czech Republic

#### Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation

##### State authorities follow-up to regional actors' recommendations on rule of law

In 2022 Rule of Law Report's Country Chapter on the rule of law situation in Czechia<sup>1</sup>, the European Commission has recommended to Czechia to take steps to establish a National Human Rights Institution taking into account the UN Paris Principles.

So far, the Czech Republic has still not established a national human rights institution (NHRI) in line with the Paris Principles. The Defender contributes to the protection of human rights by performing his duties entrusted to the institution by law. In practice, to a certain degree and in some areas, the Defender replaces the role of an NHRI in its absence. However, the Defender still does not have the broad mandate to promote and protect human rights, as required by the Paris Principles.

However, in 2022 the new Governmental Commissioner for Human Rights started to be active in this matter. At the end of the year, the Minister for Legislation and his team started working on drafting an amendment of the Act on the Public Defender of Rights. The purpose of this amendment is to entrust the Defender with a competence of an NHRI, as well as to establish a new position of an Ombudsman for Children that would share the same premises as the Defender. It is expected that in 2023 the draft amendment will be duly discussed (including, for instance, during a planned roundtable

in 2023 on this topic), specified and submitted to the government for consideration and further legislative action.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Public Defender of Rights is a non-accredited associate member of ENNHRI. As such, under the ENNHRI Statute, it commits to take active steps towards compliance with the UN Paris Principles and A-status accreditation. The Defender can handle complaints, write legislative recommendations, and conduct independent inquiries. Moreover, the Public Defender of Rights has received the mandate of Equality Body, National Monitoring Mechanism (NMM) under the UN CRPD, the National Preventive Mechanism (NPM) under the UN CAT, monitor of forced returns (under the EU Return Directive), and body promoting equal treatment and supporting workers in the European Union and their family members (under the Directive 2014/54/EU). ENNHRI has supported the steps taken by the Public Defender of Rights to strengthen its mandate in compliance with the UN Paris Principles and stands ready to assist the institution in applying for international accreditation. Already in 2019, a roundtable on NHRI accreditation, organised by the Senate, took place proving that there are many stakeholders who are prepared to support the establishment of the NHRI<sup>2</sup>. In 2022, the Minister for Legislation started preparing a legislative proposal concerning steps for a Czech NHRI in a reasonable future. In 2023, the Public Defender has been closely involved in the suggestions for possible legislative amendments to the Act on the Public Defender of Rights, which have the potential to further align the mandate of the institution to that of a fully-fledged NHRI. Depending on the outcome of the legislative changes, the pending amendments could also pave the way for the future accreditation of the Public Defender as an NHRI. At this stage (February 2023), ENNHRI has provided informal advice to the Public Defender on the possible amendments and reaffirmed its willingness to advise the institution, government and national authorities in reaching

legislative amendments that contribute to the further alignment of the Public Defender's legislative framework in relation to the UN Paris Principles.

### **Regulatory framework**

The national regulatory framework applicable to the Public Defender of Rights in the Czech Republic has not changed since last year. As it has been mentioned in the previous chapter, however, it is expected that in 2023 a draft amendment on the Act on the Public Defender of Rights will be further discussed. The draft amendment aims to ensure full compliance of the institution with Paris Principles.

### **Enabling and safe space**

State authorities ensure enabling space for the Public Defender of Rights to carry out its work.

Nevertheless, the Defender points to several shortcomings in this regard.

With respect to follow-up to the Defender's recommendations, the Defender's Annual Reports from 2019, 2020 have not been discussed by the Chamber of Deputies, while the 2021 Annual Report was only recently discussed by the Chamber, however, without a participation of the Defender. In contrast, in the past, when the Defender could not participate in the discussions due to other arrangements, the Annual Report's discussions were postponed for another session to allow the Defender's participation. The Chamber of Deputies passed the resolution in which asked the government to take a stand to the legislative recommendations issued by the Defender in the 2021 Annual Report. There is, however, no deadline set in the resolution for the government to do this. It is important to mention in this regard that as to the knowledge of the Defender the situation is more or less the same in case of other institutions submitting their annual reports to the Chamber of Deputies.

It is worth noting that the Public Defender of Rights also takes part in the procedure of commenting on draft legislation. In 2022, however, the participation in law-making procedure for all institutions and authorities engaged was more difficult due to very

short deadlines for submitting the comments by relevant stakeholders, including the Public Defender of Rights. Earlier on, the declared reason for that negative practice was the pandemic. In 2022, it was justified by the impact of the war in the Ukraine and the migration of people from Ukraine to the Czech Republic.

Moreover, the Defender has long been addressing the lack of cooperation with the police in carrying out our mandate to monitor deportations<sup>3</sup>. Again this year, there was a recurring situation where the Public Defender of Rights' staff were not allowed into the escort vehicle and thus could not monitor part of the deportation process. In the past, the Defender addressed two sanction letters to the police president<sup>4</sup>. It is worth stressing that the Defender's mandate includes a competence to monitor the process of deportation in all its stages, including the part of the migrant's transfer in the police vehicle.

With regard to the independence of the Defender, there are no issues as for possible political or other interference. With respect to the budget, according to the law the institutional expenses are covered by a separate chapter of the state budget. In September 2022, the tariff salaries were increased by 10%, but the Office did not receive any additional resources for this increase and it had to cover these costs from other sources (unspent expenditure) during the rest of the year. For 2023, the Ministry of Finance has increased the salary funding by 4%, but a 7.84% increase would be required to cover the funding of higher salaries. The requested increase of 3.84% to cover the need was not granted to the Office. Therefore, in order to cover the tariff salaries, it will be necessary to reduce personal allowances and remuneration for major tasks. In a worst case scenario, the Office might also struggle to fully cover tariff salaries.

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

In 2022, three employees of the Defender's institution took part in a three-day study visit of the Norwegian NHRI in Oslo in order to learn about functioning of an A-

accredited NHRI. This visit took place as a part of a four-year project funded by EEA Norway Grants to enhance the human rights argumentation of the Office and to prepare it for a role of an NHRI<sup>5</sup>.

As mentioned in the earlier chapter, at the end of 2022, the works on the draft amendment of the Act on the Public Defender of Rights were initiated by the Minister for Legislation and his team to provide the institution with a broad mandate to promote and protect human rights. The Defender fully cooperates with the Minister in order to provide advice on the functioning of the Office as well on implementing the respective requirements of Paris Principles and General Observations into the draft amendment, so that the future regulatory framework of the institution operating as an NHRI has the full potential to be accredited with an A status.

### **NHRI's recommendations to national and regional authorities**

The Public Defender of Rights recommends the Government to fully support the Minister for Legislation and his team in their preparations of the draft amendment of the Act on the Public Defender of Rights. The wording should be duly discussed and evaluated, whether it fulfils the respective accreditation criteria enshrined in the Paris Principles. If needed, it should be further adjusted, so that it is in line with the Paris Principles as interpreted by the GANHRI Subcommittee for Accreditation. Throughout 2023, the Government should approve the draft amendment and initiate the legislative process at the Czech Parliament.

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<sup>1</sup> [The European Commission 2022 Rule of Law Report - Country Chapter on the rule of law situation in Czechia](#)

<sup>2</sup> [A roundtable on the establishment of the NHRI held in 2019 and organised by the Senate](#)

<sup>3</sup> The Public Defender of Rights reported on this issue in its [annual report 2021](#) (page 91).

<sup>4</sup> Two sanctions letters addressed to the police president (No. 8/2021/NZ and 9/2021/NZ available at the [Records of the Ombudsman's opinions](#) (ESO)

<sup>5</sup> [EEA Norway Grants funded project to support the human rights argumentation of the Public Defender of Rights' Office](#) and to carry out the role of the NHRI

## Denmark

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### Danish Institute for Human Rights

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

The Danish Institute for Human Rights is not aware of any follow-up action by state authorities to address the 2022 ENNHRI Rule of Law Report.

##### Impact on the Institution's work

The Danish Institute for Human Rights confirms that the 2022 ENNHRI Rule of Law Report has provided a fruitful overview of the rule of law situation in Europe.

#### Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation

##### State authorities follow-up to regional actors' recommendations on rule of law

The European Commission in its 2022 Rule of Law Report<sup>1</sup> recommended to Denmark to ensure adequate human and financial resources for the justice system in the next multiannual framework, considering European standards on resources for the justice system. The Danish Institute for Human Rights informs that in the autumn of 2022, political negotiations were planned between the previous government and the parliamentary parties on a new multiannual agreement on the finances of the courts.

The negotiations should result in a political agreement that could solve the current problems with long case processing time. However, the negotiations were postponed until 2023 as parliamentary election was held on 1 November 2022.

At the same time as the negotiations were postponed, the Ministry of Justice appointed a committee with former Supreme Court President Thomas Rørddam as a chairman.<sup>2</sup> The committee has been tasked with looking at measures that can make the courts more efficient and reduce case processing time at the courts.

None of the other recommendations in the European Commission's 2022 Rule of Law Report have been addressed yet by the Danish state authorities.

### **State authorities follow-up to NHRI's recommendations regarding rule of law**

In the 2022 ENNHRI Rule of Law Report, the Danish Institute for Human Rights recommended that national and regional authorities ensure transparency and public consultation in law-making procedures.

In the green paper (regeringsgrundlaget) from December 2022<sup>3</sup> the newly appointed government states that "Openness and transparency are important prerequisites for the population's insight into and trust in the political processes and public administration [...] The government will place emphasis on the public's opportunity to submit consultation responses. The government will, therefore, focus on ensuring that the indicative consultation period of four weeks is observed as a clear main rule." Thus, the government emphasises the importance of transparency and public consultation in law-making procedures.

Furthermore, in ENNHRI's 2022 Rule of Law Report, the Danish Institute for Human Rights recommended that Denmark provides the necessary funding of the courts to ensure that case handling times are kept at a reasonable level in accordance with Article 6 of the European Convention on Human Rights. In the previous subchapter, the Institute points to the on-going political negotiations regarding the increase of financial resources for the Danish justice system, which follows up to the recommendations issued by the Institute.

## **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

The Danish Institute for Human Rights works to promote shorter case processing time at the courts by raising the agenda and engaging in the political process. As mentioned above, the Danish Institute for Human Rights recommended that Denmark provides the necessary funding of the courts to ensure that case handling times are kept at a reasonable level in accordance with Article 6 of the European Convention on Human Rights.

Moreover, the Danish Institute for Human Rights carries out meetings with the Ministry of Justice to discuss important issues regarding rule of law, including on the justice system. In this regard, the Institute has a particular focus on preventing risks stemming from the governmental initiatives which aim at reducing case processing time at the courts. It should be ensured that the governmental initiatives do not lead to deterioration of rule of law in the justice system.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Danish Institute for Human Rights was last reaccredited with A-status in October 2018<sup>4</sup>. In relation to the selection and appointment process, the SCA noted that the Institute had taken steps to amend its bylaws to ensure a broad, transparent and uniform selection process. It encouraged the Institute to advocate for the Human Rights Council of Greenland to adopt a guideline or similar administrative instrument to regulate the selection process. Further, the SCA acknowledged that there is a relevant body of Danish jurisprudence defining 'personal and professional integrity'.

Nonetheless, in the interest of clarity and consistency, the SCA encouraged the Institute to provide greater precision in its Bylaws or other binding administrative guidelines to clarify the scope of 'personal and professional integrity' as it relates to the dismissal of members of the Board of Directors. In addition, the SCA encouraged the Institute to



continue to interpret its protection mandate in a broad manner and to conduct a range of protection actions, including monitoring, enquiring, investigating and reporting. The SCA noted that the Institute is not explicitly mandated with the responsibility to encourage ratification or accession to international human rights instruments. Finally, acknowledging that the Institute conducts these activities in practice, the SCA encouraged the Institute to advocate for amendments to its enabling law to make this mandate explicit.

### **Follow-up to SCA Recommendations and relevant developments**

The Board of Directors of the Institute considered the SCA recommendations at a board meeting in November 2018.<sup>5</sup> Subsequently, and pursuant to the SCA recommendations, the grounds for dismissal were subsequently adjusted in the Institute's Bylaws in January 2020.

In October 2020, the Greenland Council for Human Rights adopted new guidelines for the selection process of the board member appointed by the Human Rights Council of Greenland. These new guidelines are based on the guidelines applicable to the selection of the other board members of the Institute.

Regarding the SCA recommendation on the mandate, the Institute continues to work within its existing mandate (as per article 2, section 1 (3) in the Act) to advise Parliament, including on the ratification to international human rights instruments. The institute has recently advised Parliament on the ratification to the Convention on Enforced Disappearances,<sup>6</sup> and actively advocates for the ratification of other international human rights instruments.<sup>7</sup> The Institute finds that this illustrates the implied powers within its mandate.

### **Regulatory framework**

The Danish Institute for Human Rights notes that there have been no changes in the regulatory framework introduced after the publication of ENNHRI's 2022 Rule of Law Report.

The Institute also indicates that the NHRI's regulatory framework does not require any actions to further strengthen it.

### **Enabling and safe space**

The Danish Institute for Human Rights works with policy processes in various ways within the Institute's mandate. To achieve increased societal impact, the Institute has in recent years put greater emphasis on working not only with how duty bearers ensure sufficient protection of human rights and rule of law, but also on whether and how rights holders perceive and enjoy protection.

Moreover, the Danish Institute for Human Rights also responds to public consultations on draft bills, including giving recommendations for alterations of the text etc. and reports to international organisations on human rights. The Institute gives legal advice to people experiencing discrimination and takes steps of strategic litigation in selected matters of principle.

The Danish Institute for Human Rights stresses that the state authorities sufficiently ensure its independence. However, on a more general note, the Institute states that public consultations on draft bills sometimes can be very short thus allowing insufficient time for civil society, stakeholders, and the Institute to provide its feedback in an effective manner. On these occasions, the Institute limits its contributions to selected areas.

### **Human rights defenders and civil society space**

#### **Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities**

The Danish Institute for Human Rights finds that surveillance used for police investigations and by intelligence services (for instance - the Danish Security and Intelligence Service (Politiets Efterretningstjeneste (PET)) or the Danish Defence

Intelligence Service (Forsvarets Efterretningstjeneste (FE)) through advanced technologies can have a negative impact on civic space and it raises concerns.

On 30 March 2022, new rules concerning retention of traffic and location data came into effect in Denmark<sup>8</sup>. It can have a discouraging effect on civic space as actors may refrain from fully exercising their freedom of expression as their data is collected by telecommunications companies and stored for 12 months. According to the Court of Justice of the European Union (CJEU), the “retention of traffic and location data for policing purposes is liable to deter user of electronic communications systems from exercising their freedom of expression, guaranteed in Article 11 of the Charter”<sup>9</sup>.

The new rules were prompted by decisions from the CJEU which made it evident that the previous Danish rules did not comply with the requirements for data retention stressed in the EU law which, as a rule, prohibits general and indiscriminate retention of data. Although the rules were changed to comply with EU law, the aim of the rules is still to conduct data retention to the greatest extent possible<sup>10</sup>.

In its assessment of the draft bill (and this is still relevant for the Act that entered into force on 30 March 2022), the Danish Institute for Human Rights found that the criteria for putting in place general and indiscriminate retention of data is still at risk of violating EU law<sup>11</sup>. This is so, as the criteria in the legislative act is not sufficient to ensure that general and indiscriminate retention of data is only applied for situations where there is a serious and actual or foreseeable threat to national security, and that such period is kept at what is strictly necessary. There is also a risk that general and indiscriminate data retention becomes systematic in nature.

Furthermore, the Danish Institute for Human Rights has not identified any practices of public authorities that could negatively impact on civil society space and human rights defenders. However, the Institute finds it deeply concerning that most of the Danish users on Facebook avoid expressing their opinion in debates on this social media because of the harsh and hateful tone of interlocutors. A report from the Danish

Institute for Human Rights shows that particularly young people, women and ethnic minorities are exposed to abusive statements and threats<sup>12</sup>.

### **Access to and involvement of civil society actors in law and policy making**

The Danish Institute for Human Rights is constantly seeking to engage in dialogue with civil society actors to share experience on relevant matters and to support civil society in dealing with human rights issues.

For instance, the Institute has identified that ethnic minorities and women are, in general, underrepresented in the Danish Parliament<sup>13</sup>. In January 2023, the Institute hosted a debate forum to put these issues into a new perspective. The Institute had invited three young women with ethnic minority background from different civil society organisations to discuss how ethnic minorities can have better access to participate in policy making<sup>14</sup>.

### **Measures undertaken by State authorities to protect and promote civic space**

In the political agreement on the budget for the Police and the Prosecution service for 2021-2023 (Aftale om politiets og anklagemyndighedens økonomi 2021-2023), emphasis is put on identifying and registering hate crimes more within the police. This includes strengthening the continued education of the police with focus on their handling and registration of hate crimes.<sup>15</sup>

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Danish Institute for Human Rights focuses on monitoring the discouraging effects on civil society space through advanced surveillance technologies used for police investigations and by intelligence services. This is a primary concern for the Danish Institute for Human Rights and has led to various recommendations to address this problem throughout 2022<sup>16</sup>.

## **NHRI's recommendations to national and regional authorities**

The Danish Institute for Human Rights, *inter alia*, recommends that the Danish Parliament (Folketinget) amends the legislation that enable telecommunications companies to store information on telephone calls and text messages (data retention) to ensure that general and undifferentiated data retention is limited.

## **Implementation of European Courts' judgments**

### **Assessment of follow-up activities of State authorities**

In general, Denmark has a high implementation of European Courts' judgments score when compared to other EU Member States<sup>17</sup>. There are, however, several examples of recent judgments of the European Court of Human Rights which are still pending implementation<sup>18</sup>.

### **Leading European Courts' judgments awaiting implementation**

The Danish Institute for Human Rights flags that in the case of *Aggerholm v. Denmark*<sup>19</sup>, the Council of Europe's Department for the Execution of Judgments of the European Court of Human Rights reverted to the authorities on 27 October 2022, raising certain issues related to the general measures taken by the authorities.

In this case, two NGOs (Dignity and Better Psychiatry) and the Danish Institute for Human Rights have submitted a joint statement under Rule 9<sup>20</sup>. The parties have argued for the Danish Government to allocate more resources to the psychiatry field in order to enable the institutions to apply existing knowledge and experience on how to reduce the use of means of restraint in psychiatric wards and to introduce effective legal guarantees supporting the overall principles of the Danish Mental Health Act.

The case of *Aggerholm v. Denmark* concerns the inhuman or degrading treatment that took place in 2013 of a man suffering from paranoid schizophrenia who was strapped to a restraint bed in a psychiatric hospital for nearly 23 hours (a violation of the Article 3 ECHR). Whilst the initial decision to strap him to a restraint bed was justified because he

represented a danger to the staff and other patients at the hospital, the continuation and duration of the restraint measure was not strictly necessary and not respectful of the patient's human dignity. In particular, the Court noted that the restraint measures were maintained after the applicant had calmed down, that there was a 12-hour period with no assessment by a doctor and that the applicant was not released until 1,5 hours after a doctor had assessed that it was safe to do so.

### **NHRI's actions to support the implementation of European Courts' judgments**

The Danish Institute for Human Rights has submitted a statement under Rule 9 in the abovementioned case (*Aggerholm v. Denmark*) to prevent inhuman and degrading treatment of patients in mental health facilities – in cases where restraint measures are used by personnel.

## **Artificial Intelligence**

### **Impact of AI on human rights, democracy and rule of law**

The use of artificial intelligence is becoming widespread and can affect human rights, democracy and rule of law in numerous ways. However, implications of the use of artificial intelligence are still in many cases unknown.

In October 2021, the Danish Institute for Human Rights published a report on challenges relating to human rights and rule of law when the public administration uses automated decision-making systems (*Når algoritmer sagsbehandler - Rettigheder og retssikkerhed i offentlige myndigheders brug af profileringsmodeller*)<sup>21</sup>.

The report indicates that implications on human rights and the use of artificial intelligence are still widely unknown. The report examines challenges to human rights and rule of law raised by the use of artificial intelligence in case processing by public authorities.

For instance, decisions by public authorities made by artificial intelligence may lack transparency with regards to the information used in the decision. Further, the report

points towards risks of discrimination when public authorities use profiling of citizens as the basis of a decision.

Following the Danish Institute for Human Rights' report, the Danish Data Protection Agency announced in May 2022 that it is setting up an internal project group to look at artificial intelligence and data protection in a broad context<sup>22</sup>.

The project group will focus mainly on developing guidelines and best practises for the development and use of AI solutions and mapping the use of artificial intelligence solutions across the public sector. The Danish Protection Agency intends to involve a wide range of relevant stakeholders in Denmark and draw on existing experiences from other European countries, mainly Norway, the United Kingdom and France.

### **NHRI's actions to address challenges regarding the use of artificial intelligence**

In its report regarding the use of artificial intelligence, the Danish Institute for Human Rights issued several recommendations to Danish authorities<sup>23</sup>. The Institutes three key recommendations were:

- The Danish Ministry of Justice should, with the involvement of the Danish Data Protection Authority and the Danish Digital Agency, issue guidance on the use of profiling models by public authorities with a particular focus on human rights and rule of law challenges.
- The Danish Ministry of Justice should, with the involvement of the Danish Data Protection Agency, the Danish Agency for Digital Government, and the Parliamentary Ombudsman, ensure strengthened cooperation across the supervisory, recourse and control bodies that are expected to control the authorities' use of profiling models.
- The Danish Agency for Digital Government should, as part of the joint public work with municipalities and regions, create a public register of all public authorities' use of profiling models aimed at citizens.

Moreover, in relation to the ongoing works on the EU AI Act, the Danish Institute for Human Rights made recommendations both for the EU and national actors<sup>24</sup>. The Institute's recommendations were also referenced to in dialogue that the Institute carried out with Danish members of European Parliament regarding the EU AI Act.

The Danish Institute for Human Rights also has developed a tool to conduct human rights impact assessment (HRIA) of digital activities<sup>25</sup> and is involved in the ENNHRI's working group focusing on AI.

### **NHRI's recommendations to national and regional authorities**

The Danish Institute for Human Rights recommends:

- the European Parliament and the Council to adopt the AI Regulation with a provision that ensures citizens an easily accessible and effective access to complaint if public authorities or private companies do not comply with the Act<sup>26</sup>.
- the Danish Agency for Digital Government, as part of the joint public work with municipalities and regions, to create a public register of all public authorities' use of profiling models aimed at citizens, including information on human rights impact assessments<sup>27</sup>.
- the relevant Danish national authorities to produce national guidelines on human rights and rule of law risks in the public administrative use of automated decision-making<sup>28</sup>.

### **Other challenges in the areas of rule of law and human rights**

The Danish Institute for Human Rights pays particular attention also on the wide range of human rights impact caused by the actions of tech giants and their platforms. The Danish NHRI published following reports tackling this topic:



- Tech giants, freedom of speech and privacy (Tech-giganterne, ytringsfriheden og privatlivet)<sup>29</sup>. The report describes human right issues in relation to freedom of speech, inter alia, grey areas for the protection of freedom of speech on digital platforms; the right to privacy and data protection, including the platforms collection of data for commercial use and effective law enforcement.
- Tech giants and human rights - Investor expectations<sup>30</sup>. The report describes selected human rights risks relevant to tech giants and their platforms.
- EU Digital Services Act from a human rights perspective (Retsakten om digitale tjenester i et menneskeretligt perspektiv).<sup>31</sup> The memo provides an overview of the rules in the Digital Services Act that are most significant for human rights and point out where there are still human rights challenges on the digital platforms.

### NHRI's recommendations to national and regional authorities

The Danish Institute for Human Rights recommends, inter alia, that the forthcoming Corporate Sustainability Due Diligence Directive is drafted in accordance with the UN Guiding Principles on Business and Human Rights (UNGP's).

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<sup>1</sup> European Commission, [2022 Rule of Law Report](#), Country Chapter on the rule of law situation in Denmark, page 2.

<sup>2</sup> Denmark, The Ministry of Justice, [New committee led by Thomas Rørdam will support political negotiations of the courts](#) (Nyt udvalg med Thomas Rørdam i spidsen skal understøtte politiske forhandlinger om domstolene), 22 September 2022 (in Danish).

<sup>3</sup> Denmark, [Green paper for the government appointed 15 December 2022](#) (regeringsgrundlaget), page 48 (in Danish).

<sup>4</sup> [SCA Report October 2018](#)

<sup>5</sup> [Danish Institute for Human Rights, minutes from the meeting on 20. November 2020, page 8](#), available in Danish.

<sup>6</sup> [Danish Institute for Human Rights, Annual report to Parliament 2020, page 14](#), available in Danish.

<sup>7</sup> [Danish Institute for Human Rights, Annex II supplementing the individual stakeholder report by the Danish Institute for Human Rights to the Universal Periodic Review \(UPR\) of Denmark for the 38th session in April/May 2021.](#)

<sup>8</sup> See [Act no. 291 from 8 March 2022 on revision of rules on registering and storing information on telecommunications \(data retention\)](#)

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- <sup>9</sup> See amongst other [CJEU judgment of 5 April 2022, C-140/20, EU:C:2022:258, paragraph 46](#)
- <sup>10</sup> See [press release from the Danish Ministry of Justice on the Danish Parliament's adoption of new rules on data retention](#) from 3 March 2022 (in Danish).
- <sup>11</sup> See [public consultation memo from the Danish Institute for Human Rights on revision of rules on registering and storing information on telecommunications \(data retention\)](#) send on the 25 October 2021 (in Danish).
- <sup>12</sup> Denmark, The Danish Institute for Human Rights, [The public debate on Facebook. A report on the Danish behaviour](#). (*Den offentlige debat på Facebook. En undersøgelse af danskernes debatadfærd*), June 2022 (in Danish).
- <sup>13</sup> Denmark, The Danish Institute for Human Rights, [Debate forum on minorities, women and power \(Minoriteter, kvinder og magt\)](#), 18 January 2023.
- <sup>14</sup> Denmark, The Danish Institute for Human Rights, [Debate forum on minorities, women and power \(Minoriteter, kvinder og magt\)](#), 18 January 2023.
- <sup>15</sup> Denmark, Department of Justice (2020), ['Aftale om politiets og anklagemyndighedens økonomi 2021-2023'](#), 15 December 2020.
- <sup>16</sup> Denmark, The Danish Institute for Human Rights, [Oversight of Danish intelligence services \(Tilsyn med efterretningstjenester\)](#), 13 June 2022.
- <sup>17</sup> [Democracy Reporting International and European Implementation Network, Justice Delayed and Justice Denied: Non-Implementation of European Courts' Judgments and the Rule of Law, 2022, p. 36.](#)
- <sup>18</sup> Please see [HUDOC EXEX \(Departement for the Execution of Judgements of the ECHR\) for Denmark](#).
- <sup>19</sup> See [Status of Execution in the case of AGGERHOLM v. Denmark](#), the European Court of Human Rights, judgement, 15 December 2020
- <sup>20</sup> Please see [communication submitted by DIGNITY- Danish Institute Against Torture, Better Psychiatry and The Danish Institute for Human Rights](#), 17 March 2022
- <sup>21</sup> Denmark, The Danish Institute for Human Rights, [Algorithmic case processing in the public sector \(Når algoritmer sagsbehandler- Rettigheder og retssikkerhed i offentlige myndigheders brug af profileringsmodeller\)](#), 2021 (in Danish).
- <sup>22</sup> Denmark, The Danish Data Protection Authority, [New project group on artificial intelligence and data protection](#), (*Ny projektgruppe om kunstig intelligens og databeskyttelse*), 10 May 2022.
- <sup>23</sup> Denmark, The Danish Institute for Human Rights, [Algorithmic case processing in the public sector \(Når algoritmer sagsbehandler- Rettigheder og retssikkerhed i offentlige myndigheders brug af profileringsmodeller\)](#), 2021, page 9-10 (in Danish).
- <sup>24</sup> Denmark, The Danish Institute for Human Rights, [Analysis on EU legislation on artificial intelligence \(Analysenotat om EU-regler om kunstig intelligens\)](#), January 2023 (in Danish).
- <sup>25</sup> Denmark, The Danish Institute for Human Rights, [Human rights impact assessment of digital activities](#).
- <sup>26</sup> Denmark, The Danish Institute for Human Rights, [Analysis of EU legislation on artificial intelligence \(Analysenotat om EU-regler om kunstig intelligens\)](#), January 2023, page 2 (in Danish).
- <sup>27</sup> Denmark, The Danish Institute for Human Rights, [Algorithmic case processing in the public sector \(Når algoritmer sagsbehandler- Rettigheder og retssikkerhed i offentlige myndigheders brug af profileringsmodeller\)](#), 2021 (in Danish).

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<sup>28</sup> Denmark, The Danish Institute for Human Rights, [Algorithmic case processing in the public sector](#) (*Når algoritmer sagsbehandler- Rettigheder og retssikkerhed i offentlige myndigheders brug af profileringsmodeller*), 2021 (in Danish).

<sup>29</sup> Denmark, The Danish Institute for Human Rights, [Tech giants, freedom of speech and privacy](#) (*Tech-giganterne, ytringsfriheden og privatlivet*), May 2020.

<sup>30</sup> Denmark, The Danish Institute for Human Rights, [Tech giants and human rights - Investor expectations](#), January 2021.

<sup>31</sup> Denmark, The Danish Institute for Human Rights, [EU Digital Services Act from a human rights perspective](#) (*Retsakten om digitale tjenester i et menneskeretligt perspektiv*), January 2023 (in Danish).

## Estonia

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### Chancellor of Justice

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

In 2022, several public debates were held in Estonia on the topic of rule of law. They were not directly related to the ENNHRI 2022 Rule of Law Report but addressed some of the important issues raised in the report. Undoubtedly, the discussions also contributed to raising public awareness about rule of law and strengthening the rule of law.

The public debates on the rule of law in Estonia referred to the below developments.

Last year, some courts' proceedings in relation to COVID-19 restrictions were carried out. For instance, the Supreme Court upheld a Tartu Circuit Court's ruling, which nullified an Estonian Defence Forces termination of the contract of an employee who had refused to get a coronavirus vaccination, setting a precedent in doing so<sup>1</sup>.

Russian armed attack against Ukraine starting in February 2022 spurred an extensive public debate about the rights of people holding citizenship of the Russian Federation and Belarus in Estonia. In this situation, members of the Riigikogu (the Parliament of Estonia) submitted to parliamentary proceedings a Draft Act on Amending the Municipal Council Election Act which would deprive foreigners (i.e. third-country nationals who are not European Union citizens, and stateless people) residing in Estonia on the basis of a long-term residence permit or permanent right of residence of the right to vote in municipal council elections<sup>2</sup>.

The Riigikogu Constitutional Committee asked for the Chancellor's assessment whether such an amendment is constitutional. The Chancellor found that adopting the Draft Act

in the form it was presented would lead to a violation of the Constitution<sup>3</sup>. Section 156(2) of the Constitution confers the right to vote in local elections on persons residing permanently within the boundaries of the local authority and not just on Estonian citizens. This stipulation provided by the Constitution has been the underlying basis in all the versions of the Municipal Council Election Act since 1993. In addition to the Chancellor of Justice, the President of the Republic also spoke critically about the Draft Act<sup>4</sup>. Their assessments of the constitutionality of the proposed amendments prevented a hasty change of the law and a possible violation of fundamental rights.

In February, the Riigikogu passed amendments to the Media Services Act<sup>5</sup>. According to the Act<sup>6</sup>, video-sharing platforms, social media channels, and new audiovisual media services are also included in the scope of the Media Services Act. In order to improve access to audiovisual media services for disabled persons, service providers are obliged to draw up an accessibility action plan. The Act also enacts that media service must not incite hatred, violence, or discrimination due to any group's characteristics.

Discussions continued regarding the fees for attorneys providing state legal aid. In November, the Chancellor of Justice made a proposal to the Minister of Justice to change the Regulation No. 16 "The procedure for paying the state legal aid fee and compensation of expenses to an attorney" that regulates the fees. According to the opinion of the Chancellor of Justice<sup>7</sup>, the provision on the procedure for paying the fee contravenes the Constitution insofar as it does not enable, in justified cases, determination of the fee to consider the actual scope of the steps performed by the attorney. The Minister of Justice amended the Regulation accordingly on 31 January 2023<sup>8</sup>.

Unfortunately, due to the lack of initiative of the previous Minister of Justice, the bill tightening the supervision of the financing of political parties was put on hold<sup>9</sup>. This was despite the fact that the bill had sufficient political support in the Riigikogu. The aim of the amendments was to expand the investigative powers of the Political Party Funding Supervision Committee (ERJK)<sup>10</sup>.

## Impact on the Institution's work

Adherence to the principle of the rule of law has always been an inevitable part of the work of the Chancellor of Justice (the Estonian NHRI). The Chancellor keeps an eye on the rule of law by monitoring developments in society on its own initiative and resolving petitions from people. A broad mandate gives the Estonian NHRI the opportunity to intervene when, in the Chancellor's opinion, the legislation does not comply with the Constitution, or if the state has unjustifiably restricted people's fundamental rights and freedoms.

The Chancellor also monitors whether and how the authorities observe the principle of good administration when communicating with people. This means that, in addition to ensuring that the communication by state authorities remains clear and accessible to public, the authorities must make sure that people have access to public information.

Last year, the state of the rule of law in Estonia was under special attention of the Chancellor of Justice due to the crises caused by the COVID-19 pandemic and the war in Ukraine. For example, the issue of the constitutionality of the provisions of the Infections Diseases Prevention and Control Act reached the Supreme Court. The Chancellor also had to resolve several situations concerning treatment of foreigners. For instance, the Estonian NHRI reports on the excessive length of the process of applying for a residence permit. Moreover, public officials sometimes refuse to provide applicants with an explanation or information on the status of application and decisions.

Chancellor of Justice's statements and recommendations on those topics can be found in the online opinions database, annual reports, and published articles and interviews.<sup>11</sup>

## Follow-up initiatives by the Institution

The Chancellor of Justice paid special attention to the issues of the rule of law in her annual speech at the plenary session of the Riigikogu and in her annual activity report<sup>12</sup>.

For instance, the Chancellor of Justice devoted a chapter to pandemic issues in her Annual Report 2021/2022<sup>13</sup>. Moreover, the Chancellor gave an opinion in the Supreme

Court's constitutional review proceedings concerning the provisions of the Infections Diseases Prevention and Control Act based on which the Government had imposed restrictions<sup>14</sup>. The Chancellor issued the opinion that the definition of a dangerous novel infectious disease and the power granted to the Government to establish generally mandatory behavioural guidelines aimed at regulating an unlimited number of cases to combat an extremely dangerous and novel infectious disease under the Act was contrary to the Constitution. The Chancellor also found that establishing such behavioural rules by an order (i.e. an administrative act) is unconstitutional. The Supreme Court, however, did not agree with the Chancellor's arguments and decided that the Act is in conformity with the Constitution<sup>15</sup>.

The Chancellor has also continued to speak publicly on several issues concerning the rule of law<sup>16</sup>. For example, the Chancellor of Justice performed at the 5th Baltic Congress of Paediatricians, where she spoke about the COVID-19 pandemic and the resulting restrictions on fundamental rights and freedoms<sup>17</sup>.

The Chancellor also wrote an opinion on how propaganda and intimidation favour the creation of a society without freedom<sup>18</sup>. The Estonian NHRI emphasized in the article that a free and successful society requires fair rules and independent institutions: ethical and bold scientists and universities, a free press to distinguish facts from opinions, honest elections, and independent and professional courts and public officials.

Liiri Oja, head of NHRI activities, gave an interview to the feminist portal Feministreerium, talking about human rights and emphasizing that human rights analysis should be an integral part of drafting the laws<sup>19</sup>.

### **NHRI's Recommendations to national and European policy makers**

The Chancellor of Justice recommends:

- the authorities to adhere to the principle of separation of powers and to maintain strong independent institutions;

- to continue open and honest public debates on the rule of law to protect the rule of law and raise alarm on potential threats to the rule of law.

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors' recommendations on rule of law**

One of the most important tools for monitoring developments of the rule of law are the Rule of Law Reports issued by the European Commission. In 2022, the European Commission made four recommendations to Estonia to strengthen the rule of law<sup>20</sup>. These concerned the implementation of guidelines on conflict of interest and lobbying, ensuring the right to access to information, and making the legislative process more visible and inclusive for public consultation.

To fulfil these recommendations, for example, the anti-corruption network, which contains contact persons from all ministries<sup>21</sup>, was formed to better implement the conflict of interest<sup>22</sup> and lobbying<sup>23</sup> guidelines. The purpose of the network is to advise ministers and their advisers on these matters. Ministries and authorities have also begun to publish data on meetings with lobbyists and interest groups on their websites<sup>24</sup>.

In addition, there are plans to specify some provisions of the laws. With an amendment to § 27 of the Rules of Procedure of the Government of the Republic<sup>25</sup>, the State Chancellery will be obliged to advise on and introduce the members of the Government to requirements arising from the Anti-corruption Act and instructions given to avoid conflicts of interest and good practice in communication with lobbyists. In the Anti-Corruption Act<sup>26</sup>, it is proposed to change the provisions regarding procedural restrictions, for example, and to make it mandatory to declare investments made in virtual currencies. However, the process of amending the laws is still at an early stage.



The study "Trends in access to public sector information"<sup>27</sup> commissioned by the Foresight Centre of the Riigikogu in 2022 draws attention to the bottlenecks in the use of public information. According to the study, the balance between the data protection requirements and the right to obtain public information is askew in Estonia. Nevertheless, the case law has positively contributed to facilitating access to public information<sup>28</sup>.

For instance, in April, the Supreme Court reiterated in its judgment<sup>29</sup> the principle that the disclosure of public information is the rule and the refusal to comply with the request for information is the exception. Therefore, the exceptions must be interpreted narrowly. In this matter, the Ministry of Rural Affairs refused to disclose the information about the legal assessment composed by a law firm on the perspective of contesting the European Commission's decision.

Recently, the Supreme Court analysed the constitutionality of § 31(1) of the Imprisonment Act<sup>30</sup>. In the judgment<sup>31</sup>, the Supreme Court found that detainees must be given wider access to the websites of state institutions. As part of the constitutional review proceedings, the Chancellor of Justice also submitted its opinion<sup>32</sup>, reaching the same conclusion.

In recent years, both lawyers and journalists have drawn attention to the fact that state authorities limit access to public information too lightly with the mark "intended for internal use", referring to the protection of privacy<sup>33</sup>. The availability of public information is an important prerequisite for involving the public, reducing corruption, and controlling the activities of the public sector. However, complaints about access to public information are rarely sent to the Chancellor of Justice. The Data Protection Inspectorate is mainly responsible for resolving these issues.

The Estonian NHRI spotlights that it is important that the State pays more attention to public information and privacy issues, trains authorities respectively, and improves supervision.

## State authorities follow-up to NHRI's recommendations regarding rule of law

In 2022<sup>34</sup>, the Chancellor of Justice made 8 proposals to bring legislation in conformity with the Constitution. The Estonian NHRI also made a total of 13 memorandums to the Riigikogu, ministries, and local governments on the need to initiate legislation. Most of the issues raised have been resolved, but some are still being worked on. The Chancellor of Justice also submitted two requests to the Supreme Court to declare unconstitutional the construction regulation of the city of Maardu<sup>35</sup> and § 2 (1) point 5 of the regulation of the Minister of Education and Research "Types and amounts of state scholarships for students and the general conditions and procedure for their award"<sup>36</sup>. The requests concerned proceedings that had started in previous years. During the Supreme Court proceedings, the city of Maardu decided to declare its construction regulation invalid, which is why the Supreme Court rejected the Chancellor of Justice's request. In the matter of the regulation of the Ministry of Education and Research, the Supreme Court made a decision on 23.02.2023, agreeing to the request of the Chancellor of Justice and finding that the regulation contradicts the Constitution. Besides, the Chancellor of Justice made 80 recommendations to the state and local authorities to adhere to the principles of legality and good administration. In general, these recommendations are taken into consideration and followed by the authorities. However, some recommendations requiring significant financial resources are still awaiting an effective follow-up by state authorities.

Some issues addressed by the Chancellor are being resolved in the course of the proceedings. For example, if the institution immediately adjusts its practice or changes the unconstitutional provisions of the legislation after the Chancellor of Justice's request for explanations or respective remarks. In such case, the proceedings carried out by the Chancellor have been terminated without making any formal proposal or recommendation. However, the Chancellor of Justice usually highlights such cases as positive examples in its annual reports.

## **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

The main tools of the Chancellor of Justice are thoroughly thought-out and well-reasoned opinions and recommendations, as well as inspection visits carried out within a mandate of the Ombudsman as well as while performing the tasks of National Preventive Mechanism. She also often refers in her opinions to decisions of European courts and recommendations of international organizations. If necessary, the Chancellor of Justice also explains her views publicly in the media and social media.

In general, it can be said that the recommendations of the Chancellor of Justice are mostly followed. Implementation of some recommendations has been hindered by the lack of financial resources, and in some cases also by the inability of the political parties to agree on which solution path to choose.

Rarely, but it has happened that the authority does not agree with the opinion or recommendation of the Chancellor of Justice. In such a case, the Chancellor of Justice has consistently repeated her recommendations, made a memorandum to a higher authority, addressed the media, or, in the case of constitutional review proceedings, submitted a request to the Supreme Court to declare the piece of legislation invalid or unconstitutional.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Chancellor of Justice was accredited with A-status in December 2020<sup>37</sup>. The Subcommittee on Accreditation (SCA) welcomed the establishment of the Chancellor of Justice as an NHRI and commended its efforts to promote and protect human rights in Estonia since then. Regarding the selection and appointment of the Chancellor of Justice, the Estonian NHRI clarified that, in practice, the Estonian President consults all political parties represented in the Parliament as well as the legal community before submitting a proposal to the Parliament. However, the SCA took the view that the

process enshrined in the NHRI's enabling legislation was not sufficiently broad and transparent. The SCA encouraged the Chancellor of Justice to advocate for the formalization and application of a process that includes all requirements under the UN Paris Principles and SCA General Observations. Further, the SCA noted that the legislation is silent on the number of times the Chancellor can be re-appointed, which leaves open the possibility of unlimited tenure. The Chancellor of Justice reports that, in the past, re-appointment has not occurred. Nevertheless, the SCA encouraged the NHRI to advocate for amendments to ensure that the term of office be limited to one re-appointment. Finally, the SCA encouraged the Estonian NHRI to advocate for an appropriate legislative amendment to make explicit its mandate to encourage ratification of and accession to regional and international human rights instruments. However, the SCA acknowledged that the Estonian NHRI interprets its mandate broadly and carries out activities in this regard in practice.

### **Follow-up to SCA Recommendations and relevant developments**

Regarding the recommendation on selection and appointment, the Chancellor of Justice reports that, in Estonia, the President of the Republic is an independent non-political body, which plays an important role in ensuring that selecting and appointing a candidate for the position of Chancellor of Justice is non-political. In addition, the law sets out specific criteria that must be met by the candidates (e.g. they must be experienced and recognised lawyers with high moral character) and that must be considered by the President. The Chancellor of Justice also informs that, in practice, the Estonian President consults all political parties represented in the Parliament as well as the legal community before submitting a proposal to the Parliament. It is also allowed to notify the President of the desire to run for office.

As for the recommendation to encourage the ratification of and accession to regional and international human rights instruments, the Estonian NHRI interprets its mandate really broadly and has also given corresponding recommendations in practice. For example, the Chancellor of Justice has advised the State to ratify Optional Protocol 3 to

the UN Convention on the Rights of the Child and has referred to international recommendations, general comments and other human rights instruments in her opinions.

### **Regulatory framework**

The national regulatory framework applicable to the institution has not changed since the ENNHRI's 2022 report on the state of the rule of law in Europe.

It is worth noting, though, that a draft law amending the State Budget Act has been prepared to foresee for the Chancellor of Justice and other independent constitutional institutions (e.g. the President of the Republic, the National Audit Office, the Supreme Court, etc.) a special annual budget application procedure. The purpose of this is to ensure the greater budgetary independence of these institutions from the Government of the Republic, who is generally responsible for drafting the State's annual budget. However, the draft act has not reached the Riigikogu proceedings yet.

### **Enabling and safe space**

The state and local authorities have good awareness of the Chancellor of Justice's mandate, independence and role.

The Constitution<sup>38</sup> and the Chancellor of Justice Act<sup>39</sup> provide the Chancellor of Justice with strong tools for independent performance of her duties. In case of obstruction, the Chancellor has the right to apply for initiation of disciplinary procedures against officials who obstruct the actions of the Chancellor of Justice or her advisers and/or inform the public of obstruction of her activities (§ 35 of the Chancellor of Justice Act).

Obstruction of the activities of the Chancellor of Justice means:

- 1) concealment of information from the Chancellor of Justice which is necessary for the performance of their duties, evading vision of such information and refusal to provide such information without good reason;

- 2) evading vision of expansion or testimony, or refusal to provide expansion or testimony without good reason;
- 3) provision of insufficient or incorrect planning, testimony or information;
- 4) hindrance of unrestricted access.

So far, the Chancellor of Justice has not encountered such hostile activity.

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

The Chancellor of Justice has not had the need to raise questions related to her independence so far. Also, almost every year, the institution has received additional funds in the budget to fulfil more effectively its duties (in 2022 the Estonian NHRI was granted additional 120.000 euro, while in 2023 – 320.000 euro). However, the Chancellor considered it necessary to raise the question of how to procedurally increase the budgetary independence of constitutional institutions.

It is also worth noting that the Chancellor of Justice has expressed her support for the strengthening of the institution of the Gender Equality and Equal Treatment Commissioner (the equality body in Estonia), including increasing its formal and budgetary independence from the Government.

### **NHRI's recommendations to national and regional authorities**

The Estonian NHRI recommends state authorities consider amending the State Budget Act in a way it would ensure the constitutional institutions, such as the Chancellor of Justice, greater procedural independence from the Government.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

The Chancellor of Justice did not observe significant legal problems related to civil society in 2022.

As regards the practices that could negatively impact on civil society space and human rights defenders' activities, the Chancellor of Justice has not received any complaints flagging those issues last year. The Chancellor, however, sometimes noticed verbal populist attacks on some civil society organizations on social media. Generally, upon learning of such attacks, some political figures, civil society organizations, independent institutions and the general public have spoken against and condemned such verbal attacks.

### Access to and involvement of civil society actors in law and policy making

The Chancellor of Justice has noted shortcomings in civil society actors' access to law- and policy-making processes. Sometimes such access to decision making is ensure only formally or not at all. Also, a comprehensive human rights impact analysis, including the effect of draft laws on fundamental rights and freedoms, has often been omitted.

For instance, in December, the Chancellor of Justice sent a memorandum<sup>40</sup> to the Kuusalu Municipality that failed to hold public discussions for the preparation of the municipality's budget strategy, as stipulated in the Local Government Organization Act.

In her recent response to the State Chancellery<sup>41</sup>, the Chancellor of Justice stated in connection with the preparation of the country's green turn action plan that the socioeconomic impact of restrictions on people's rights and of additional obligations must also be analysed, including on people living in rural areas, low-income residents, etc. The Chancellor of Justice's remark in this regard was driven, among other things, by a civil society organization's corresponding observation.

## **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

Even though Estonia enjoys a high 4th place according to RSF's 2022 World Press Freedom Index<sup>42</sup>, discussions about the threats to media freedom and freedom of expression are ongoing.

For example, in the spring of 2022, the Harju County Court imposed a fine of 1,000 euros on two journalists and AS Ekspress Meedia at the request of the prosecutor's office. This was because they published classified information about the circumstances of the Swedbank AS criminal proceedings and the circle of suspects in an article without the permission of the prosecutor's office. The prosecutor's office was not notified of the publication of the article.

The Tallinn District Court annulled the imposed fines, but at the same time took the position that permission must be sought from the prosecutor's office before publishing such data. The circuit court also acknowledged the argument of the prosecutor's office that premature publication of pre-trial data may significantly damage the collection of evidence<sup>43</sup>.

The Supreme Court agreed with the circuit court and found that the imposition of a fine on journalists was not justified in this case. The Supreme Court added that the imposition of a fine is justified primarily if the criminal proceedings were impeded or if the rights of the parties to criminal proceedings - especially a suspect or a victim - have been significantly violated. The Supreme Court also noted that the prosecutor's office must not act arbitrarily when granting or refusing permission to publish data, but must consider, on the one hand, the public's interest in obtaining information and, on the other hand, the need to solve a criminal offense and protect the interests of the people or companies affected<sup>44</sup>.

In previous years, there have been a few such cases where the affected person has demanded compensation or threatened to sue a civil society organization for publicly



expressing a critical opinion about his or her actions or statements. One such case also was reported to the Chancellor of Justice, and the NHRI explained to the civil society organization its rights in the situation (the Estonian NHRI does not have a mandate to provide legal aid nor to represent the victim of abusive lawsuit before courts). Some cases have also reached the court, and, in the opinion of the Estonian NHRI, the courts - in their judgments – have fairly distinguished the differences between expressing a critical opinion and insulting.

### **Measures undertaken by State authorities to protect and promote civic space**

From 2021, the main directions for the development of the field of civil society have been set in the Coherent Society Development Plan 2021–2030<sup>45</sup>, the program "Community Estonia" and the Strategy of the National Foundation of Civil Society for the Years 2021–2024<sup>46</sup> (the National Foundation of Civil Society is a state established foundation that organizes funding application rounds for NGOs, supports NGO development activities, and promotes international cooperation of NGOs.). The objective is to increase the proportion of residents participating in voluntary activities, support community initiatives, increase the capacity of non-governmental organizations to act and the Estonian civil society to thrive<sup>47</sup>.

The information about the implementation of these development plans in 2022 has not yet been published. However, some conclusions can be drawn from the 2021 results report<sup>48</sup>. As of the end of 2021, a total of 18 consultants provided free consulting services to NGOs across Estonia, three of them were able to advise in Russian, and eight in English. The purpose of the consultants is to advise NGOs throughout their life cycle, including establishment, development of activities, finding funding opportunities, involvement of volunteers, and termination. During the year, the consultants provided advice on a total of 1,772 occasions. They also organized 27 information days and 26 training events.

In 2021, the development subprogram 2019-2021 for strengthening the strategic partnership ended. The broader goal of the program was to improve cooperation between ministries and NGOs by introducing strategic partnership as a form of cooperation. For this purpose, a strategic partnership manual was developed and implemented through the training of ministries and NGOs. The program also helped make the funding scheme for NGOs clearer. Following the program, the ministries organized public competitions to find strategic partners. For example, the Ministry of Social Affairs was looking for partners to promote children's rights and equal treatment. Strategic partners were selected until 2024 when a new round of tenders will be held. Also, religious associations were given operational grants, cooperation was developed and various targeted training and outreach activities were organized.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Chancellor of Justice works and collaborates with the civil society on an ad hoc basis depending on the issues on the agenda. Civil society organizations have also been active in submitting applications to the Chancellor of Justice or in other ways informing about concerns in society.

Different departments of the Office have developed relationships with civil society organisations that work with the issues covered by the particular department. For example, in cooperation with the ambassadors for the rights of the child of the Estonian Union for Child Welfare, a children's report to the United Nations will be drafted. Together with various sports organizations, the safety of children in sports is promoted. Medical experts are often involved in the inspection visits and advise the Chancellor on medical issues. In the field of the rights of people with disabilities, there is close cooperation with various respective representative organizations. In matters of migration, the Chancellor of Justice has cooperated with NGOs operating in the field of human rights and migration. Green turn and other current environmental issues have

intensified cooperation with environmental protection organizations and other related interest groups.

In addition to broader collaboration with civil society and stakeholders, the Chancellor of Justice has three advisory bodies – Advisory Committee on Human Rights, Advisory Committee for Persons with Disabilities and Advisory Committee for Children’s Rights – with very diverse and representative membership. They include members of different human rights NGOs, professional organisations (e.g. medical associations), universities (professors teaching law, IT and genetics) and religious associations. The Gender Equality and Equal Treatment Commissioner has also been invited to participate in the work of the Advisory Committee on Human Rights. Moreover, the Chancellor of Justice has regularly had meetings with the Commissioner on topical issues.

In May 2022, a joint meeting was held of the Advisory Committee on Human Rights with the Chancellor’s Advisory Committee of People with Disabilities. The meeting took place in cooperation with the Gender Equality and Equal Treatment Commissioner. The topic was equal treatment, focusing more specifically on what constitutes equal treatment and discrimination and why not every instance of unequal treatment amounts to discrimination. Also discussed were issues of accessibility and equal treatment in the context of services, education, culture and healthcare.

In December, the Advisory Committee on Human Rights met to discuss the problems that have arisen in society. Among other things, concerns related to ensuring the rights of children and people with disabilities, green turn, and access to health care were highlighted.

Parliament members and government departments are contacted by the Estonian NHRI through consultations and information exchange whenever deemed necessary by the Chancellor of Justice. For instance, the Chancellor of Justice can invite the different authorities and NGOs to a joint table to resolve the issue or raise the matter at a session of the Government of the Republic or the Riigikogu.

## **NHRI's recommendations to national and regional authorities**

The Chancellor of Justice recommends state authorities to strengthen cooperation with civil society and professional organizations in the development of policies and laws.

## **Implementation of European Courts' judgments**

### **Assessment of follow-up activities of State authorities**

The Ministry of Foreign Affairs keeps an eye on the decisions of the European courts by regularly publishing overviews of judgments on its website, and sharing updates on recent judgments with various actors (including the Chancellor of Justice, the Supreme Court, ministries, the prosecutor's office and other authorities concerned).

The European Court of Human Rights has so far rather rarely found violations of the European Convention of Human Rights by Estonia, and in general, Estonia has not had problems complying with these decisions<sup>49</sup>. The judgments of the European Court of Human Rights are mostly referred to by the courts and the Chancellor of Justice in their decisions, but also the government authorities (e.g. ministries), the prosecutor's office and the Riigikogu take them into account in their activities.

The same applies to the judgments made by the Court of Justice of the European Union and their implementation<sup>50</sup>.

### **Leading European Courts' judgments awaiting implementation**

On March 2, 2021 the Court of Justice of the European Union made a preliminary ruling in the case *H. K. v. Prokuratuur* (No. C 746/18)<sup>51</sup> on the processing of personal data in the electronic communications sector. The court found that communication data may only be used for the investigation of serious crimes, and the use of communication data must be authorized by an independent authority (e.g. by the court), not by the prosecutor's office itself. It was also found that the current Estonian regulation on the storage of communication data does not comply with EU law. Estonia fulfilled the first two points of the judgment by amending the Code of Criminal Procedure, but the third

point is still waiting to be resolved. The main obstacle has been finding such a balanced legal solution, which, in turn, would not violate other obligations set by the European Union.

On September 8, 2022 the Court of Justice of the European Union in a preliminary ruling in the case *Lux Express Estonia v. Majandus- ja Kommunikatsiooniministeerium* (case No. C-614/20)<sup>52</sup> ruled that the EU law does not allow the national law to oblige bus companies to transport persons with disabilities and pre-schoolers free-of-charge and without any state compensation, which means that such the Estonian law must be repealed. The law has been in force for almost 20 years. Lux Express is seeking compensation from the state for the loss of revenue in the amount of nearly EUR 2 million. In mid-February 2023, the Government decided to allocate 4.2 million euros from the reserve to compensate transport companies for their obligation to transport pre-schoolers and people with special needs free of charge<sup>53</sup>.

In a very recent decision, published on 24 January 2023, the European Court of Human Rights (ECtHR) found in the case of *Abuladze v. Estonia* (No. 12928/20)<sup>54</sup> that by keeping a person in custody for 4,5 years during criminal proceedings, Estonia violated the right of detainees to a trial within a reasonable time or to being released until the case is heard. When establishing a violation of Article 5 paragraph 3 of the European Convention on Human Rights, the ECtHR took into account that, among other things, the delays in the proceedings resulted from changing the session times, as the prosecutor's office had assigned another large-scale criminal case to the same prosecutor in parallel, as well as the fact that the court could not request the appointment of a substitute prosecutor and that there were problems with the organization of legal aid. Following up to this decision, the courts, the prosecutor's office, and the bar association must make conclusions and change their work organization and practices respectively.

Estonia has generally not had considerable issues with the execution of the decisions of the European courts. Delays might have been occurred due to financial considerations

or the inability to agree on how to best comply with the judgment (e.g. if there is a need to change legislation or structure of the functioning mechanisms and practices). Moreover, some judgments lead to state authorities' obligation to support the change of practice in a country rather than the obligation to amend specific legislative acts which can also result in unclear status of execution of some judgments.

### **NHRI's actions to support the implementation of European Courts' judgments**

The Chancellor monitors the process of implementation of European Courts' judgments by Estonian state authorities. Also, the Chancellor of Justice often refers to decisions of European courts in her opinions and recommendations. For example, she has often done so by solving the complaints of detainees and making recommendations to places of detention<sup>55</sup>. But the Estonian NHRI has also done this in many other areas, such as family law, refugees, business environment, data protection, property law, etc. Additionally, in the web book "Human rights" published by the Office of the Chancellor of Justice in 2022, one chapter is devoted to the role of the European Court of Human Rights<sup>56</sup>.

Besides, it should be noted that according to the decision of the Supreme Court (No. 3-4-1-1-05)<sup>57</sup>, the Chancellor of Justice cannot challenge legislation in the Supreme Court, which, in her opinion, is contrary to EU law. The Supreme Court explained in its judgment that constitutional review court proceedings are not intended to check the compatibility of domestic legislation with EU law. Special procedures are provided for this. Nevertheless, the Chancellor of Justice can challenge such legislation that, in addition to EU law, also contradict the Estonian constitution.

### **NHRI's recommendations to national and regional authorities**

The Chancellor of Justice recommends national authorities to increase state bodies' overall awareness of decisions made by European courts.

## Artificial Intelligence

### Impact of AI on human rights, democracy and rule of law

Estonian companies and public sector organizations have applied artificial intelligence (AI) technologies in several fields.<sup>58</sup> For example, self-driving buses are developed and tested, chatbots are used, using visual AI the traffic load is detected and urban planning needs are analysed, etc. Many public services also use automated decisions.

It may seem surprising, but there is no special law regulating artificial intelligence in Estonia. Thus, it can be said that technological development has quickly run ahead, and legal regulations have slowly jogged behind. While it was originally planned to draw up an AI law<sup>59</sup>, which would have regulated its use, duties, supervision, etc., now it seems that the State is waiting for the completion of the EU regulation on artificial intelligence and will then decide on further steps.

Legislation on automatic decisions also has some gaps. Even though the laws of some fields (tax management, environmental fees, unemployment insurance) already established the authority to issue automatic administrative decisions, the Administrative Procedure Act, the Law Enforcement Act, and the Public Information Act still need to be respectively amended as the problem of making automatic administrative decisions without authorization and without clear legal basis. The Ministry of Justice sent the initial law amendments to the Riigikogu but withdrew them when it became clear that the bill needed further elaboration.

Undoubtedly, human rights aspects are one of the most important issues for AI systems, but also data quality and its use, protection and cybersecurity, as well as transparency, accountability and supervision of the decision-making process. In its development plan, the State has considered it important to promote awareness of AI among entrepreneurs and officials but has not paid enough attention to raising the awareness of society as a whole.

## **NHRI's actions to address challenges regarding the use of artificial intelligence**

The Chancellor of Justice has not yet had to resolve complaints about the use of AI but has had to resolve cases where an automated decision was made based on incomplete or incorrect data in previous years. Also, she drew attention to the shortcomings of the draft law amending the Administrative Procedures Act, which was sent to the Riigikogu, and was supposed to regulate the making of automatic decisions in administrative procedures.

The Chancellor of Justice has also been involved in raising awareness about AI and information technology development by organizing various discussions and seminars on the topic.<sup>60</sup> Besides, as mentioned above, in the ebook "Human rights" published by the Office of the Chancellor of Justice in 2022, one chapter is devoted to technology and human rights<sup>61</sup>.

The Chancellor of Justice has not been directly involved in the public consultations on the regional conventions that are being drafted on artificial intelligence (the EU Artificial Intelligence Act and the Council of Europe Convention on Human Rights, Democracy and Rule of Law) but monitors those developments through various cooperation networks (including ENNHRI).

## **NHRI's recommendations to national and regional authorities**

The Chancellor of Justice recommends state authorities to:

- ensure the necessary legal basis for the use of AI and automated administrative decisions;
- increase society's general awareness of AI, its opportunities, and threats.

## **Other challenges in the areas of rule of law and human rights**

The transparency of funding for political parties and its effective control must be strengthened. The financial sources of political parties and other legal entities acting in their interests must be public (including financial support in the form of price reductions



and free services, etc.). The Political Party Funding Supervision Committee needs additional powers in order to check the correctness of the disclosed data, including whether a fair market price has been paid for the published political advertisements<sup>62</sup>.

### **NHRI's recommendations to national and regional authorities**

The Chancellor of Justice recommends state authorities to:

- secure strong independent institutions and civil society;
- ensure compliance of laws with the Constitution and international agreements;
- ensure the right to a good administration.

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<sup>1</sup> [Supreme Court voids employee contract termination in vaccine refusal cases](#)

<sup>2</sup> [Draft Municipal Council Election Act Amendment Act 594 SE \(in Estonian\)](#)

<sup>3</sup> [Opinion of the Chancellor of Justice on the draft law on the amendment of the Local Government Council Election Act \(594 SE\) \(in Estonian\)](#)

<sup>4</sup> [President Karis: Even in a crisis, the rule of law must never be bent out of shape](#)

<sup>5</sup> [The Riigikogu passed amendments to the Media Services Act](#)

<sup>6</sup> [Media Services Act](#)

<sup>7</sup> [Chancellor of Justice's proposal to the Minister of Justice on state legal aid fees \(in Estonian\)](#)

<sup>8</sup> [Amendment of the Regulation No. 16 on the state legal aid fees \(in Estonian\)](#)

<sup>9</sup> [Bill seeking tougher party funding supervision stalls](#)

<sup>10</sup> [Political Party Funding Supervision Committee](#)

<sup>11</sup> [Speeches, articles and interviews \(mostly in Estonian, some in English\); Chancellor's Year in Review 2021/2022; Opinions Database \(in Estonian\)](#)

<sup>12</sup> [Chancellor's Year in Review 2021/2022: The Rule of Law; The Chancellor of Justice presented the annual review in the Riigikogu \(in Estonian\)](#)

<sup>13</sup> [Chancellor's Year in Review 2021/2022: The Pandemic](#)

<sup>14</sup> [Chancellor's opinion to the Supreme Court on the Infections Diseases Prevention and Control Act \(in Estonian\)](#)

<sup>15</sup> [Supreme Court's judgment No. 5-22-4 \(in Estonian\)](#)

<sup>16</sup> [The Chancellor of Justice talked about the recent annual report on Kuku Radio \(in Estonian\);](#)

[Speeches, articles and interviews \(mostly in Estonian, some in English\)](#)

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- <sup>17</sup> [Chancellor's speech on COVID-19 restrictions at the 5th Baltic Congress of Paediatricians](#)
- <sup>18</sup> [Ülle Madise: The vicious circle of silence](#)
- <sup>19</sup> [Liiri Oja: human rights analysis should be an integral part of the creation of draft laws \(in Estonian\)](#)
- <sup>20</sup> [EC 2022 Rule of Law Report](#)
- <sup>21</sup> [Corruption prevention contacts in ministries](#)
- <sup>22</sup> [Guidelines for Ministers and their Advisors to Avoid Conflicts of Interest](#)
- <sup>23</sup> [Good Practice in Communicating with Lobbyists](#)
- <sup>24</sup> Please see, for example, the respective registers of the [Ministry of Justice](#) and the [Social Insurance Board](#) (in Estonian)
- <sup>25</sup> [Rules of Procedure of the Government of the Republic](#)
- <sup>26</sup> [Anti-Corruption Act](#)
- <sup>27</sup> [Trends in access to public sector information](#)
- <sup>28</sup> [Study: There's an imbalance between data protection and disclosure of public information](#)
- <sup>29</sup> [Supreme Court's judgment No. 3-20-1265 \(in Estonian\)](#)
- <sup>30</sup> [Imprisonment Act](#)
- <sup>31</sup> [Supreme Court's judgment No. 3-18-477 \(in Estonian\)](#)
- <sup>32</sup> [Opinion of the Chancellor of Justice in the case of constitutional review No. 3-18-477 \(in Estonian\)](#)
- <sup>33</sup> [Kadi-Kaisa Kaljuveer: The refusal to provide information must be justified \(in Estonian\); Analysis: Public governance is at risk of becoming a thing of the past \(in Estonian\); Kärt Pormeister: Documents of state institutions get 'intended for internal use' marks too easily \(in Estonian\)](#)
- <sup>34</sup> [Chancellor's Year in Review 2021/2022; Opinions Database \(in Estonian\)](#)
- <sup>35</sup> [The request of the Chancellor of Justice to the Supreme Court regarding the construction regulation of the city of Maardu \(in Estonian\)](#)
- <sup>36</sup> [The request of the Chancellor of Justice to the Supreme Court regarding the regulation of the Minister of Education and Science on state scholarships \(in Estonian\)](#)
- <sup>37</sup> [SCA Report December 2020](#)
- <sup>38</sup> [The Constitution of the Republic of Estonia](#)
- <sup>39</sup> [The Chancellor of Justice Act](#)
- <sup>40</sup> [Chancellor of Justice's memorandum to the Kuusalu Municipality \(in Estonian\)](#)
- <sup>41</sup> [Chancellor of Justice's response to the State Chancellery on green turn action plan \(in Estonian\)](#)
- <sup>42</sup> [Europe - Central Asia: Polarisation to the west, war & propaganda to the east \(RSF's 2022 World Press Freedom Index\)](#)
- <sup>43</sup> [District court annulled the fine imposed on the journalists \(in Estonian\)](#)
- <sup>44</sup> [Supreme Court: the prosecutor's office must provide a plausible reason for fining journalists \(in Estonian\)](#)

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- <sup>45</sup> [The development plan of Coherent Estonia 2021-2030 \(in Estonian\)](#)
- <sup>46</sup> [National Foundation of Civil Society; The Strategy of the National Foundation of Civil Society for the Years 2021–2024](#)
- <sup>47</sup> [The Ministry of the Interior on supporting civil society \(in Estonian\)](#)
- <sup>48</sup> [Coherent Society 2021 Results Report \(in Estonian\)](#)
- <sup>49</sup> [About the European Court of Human Rights \(website of the Ministry of Foreign Affairs\); Decisions of the European Court of Human Rights regarding Estonia and their implementation \(in Estonian\)](#)
- <sup>50</sup> [About the Court of Justice of the European Union \(website of the Ministry of Foreign Affairs\); Reviews and summaries of the decisions of the Court of Justice of the European Union \(in Estonian\)](#)
- <sup>51</sup> [Preliminary ruling in the case of H. K. v. Prokuratuur \(No. C 746/18\)](#)
- <sup>52</sup> [Preliminary ruling in the case of Lux Express Estonia v. Majandus- ja Kommunikatsiooniministeerium \(No. C-614/20\)](#)
- <sup>53</sup> [The state reimburses the bus travel of children and disabled people with 4.2 million euros \(in Estonian\)](#)
- <sup>54</sup> [Abuladze v. Estonia \(No. 12928/20\)](#)
- <sup>55</sup> [As an example, one of the latest opinions of the Chancellor of Justice to the Supreme Court in a constitutional review case, which concerned the right of detainees to visit the websites of state institutions \(in Estonian\)](#)
- <sup>56</sup> [Chapter “The European Court of Human Rights as an applicator and interpreter of the European Convention on Human Rights” in the web book “Human Rights” \(in Estonian\)](#)
- <sup>57</sup> [Judgement of the Supreme Court No. 3-4-1-1-05 \(in Estonian\)](#)
- <sup>58</sup> [Estonian national artificial intelligence action plan 2022-2023 \(in Estonian\)](#)
- <sup>59</sup> [The intention to develop regulation of the effects of algorithmic systems \(in Estonian\)](#)
- <sup>60</sup> [Initiatives of the Chancellor of Justice \(in Estonian\)](#)
- <sup>61</sup> [Chapter “Technology and human rights” in the web book “Human Rights” \(in Estonian\)](#)
- <sup>62</sup> [Bill seeking tougher party funding supervision stalls](#)

## Finland

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### Finnish Human Rights Centre (HRC) and its Human Rights Delegation

#### Parliamentary Ombudsman

#### Impact of 2022 ENNHRI rule of law reporting

##### Impact on the Institution's work

Monitoring and promotion of the rule of law principles together with human rights has been a long-term priority of the Finnish Human Rights Centre. This is again reflected in the HRC's Action Plan for the year 2023. The HRC has developed a tool for monitoring and reporting, which enables it to systematically collect data and to issue reports on the rule of law and fundamental and human rights in Finland.

Parliamentary Ombudsman is a constitutional guarantor for the rule of law. It supervises the exercise of public powers and has even the right to prosecute crimes committed by civil servants or persons performing a public task. This is a rarely used power. The Ombudsman equally has the competence to take initiative in matters concerning the legal responsibility of a minister and criminal responsibility of the president. The Ombudsman also supports the independence of the court system through legislative proposals and statements. The Ombudsman's judicial oversight on courts is limited to procedural matters, such as delayed proceedings. Furthermore, the Ombudsman oversees the implementation on fundamental and human rights.

The director of the HRC is the Chair of ENNHRI and one of its experts chairs the Legal Working Group. The HRC has been following closely rule of law developments in Europe and developing ENNHRI's activities in this regard. This has informed the HRC's

domestic work as well by providing warning signals and examples from other European countries of what could also happen in Finland.

### **Follow-up initiatives by the Institution**

Since the rule of law reporting started by the European Commission and ENNHRI, the Finnish NHRI notes the increasing attention paid to the rule of law also in Finland every year. The Finnish Human Rights Centre has contributed to the discussions early on by linking the rule of law to the fundamental and human rights and highlighting the need to strengthen rule of law institutions including human rights structures. As regards the Finnish Parliament, the HRC has raised concerns in many of its statements to the various parliamentary committees. The HRC and the director of the HRC have been active discussants on the rule of law in social media platforms.

For instance, the HRC continued:

- attending rule of law related events both domestically and at the EU level (e.g. taken part in a panel at the FRA Fundamental Rights Platform meeting on the rule of law and civil society).
- having meetings with state authorities (Ministry of Justice) to raise the need to strengthen rule of law institutions in Finland.
- issuing statements to the parliamentary committees.
- participating in discussions on the rule of law in social media with other rule of law actors in Finland.

### **NHRI's Recommendations to national and European policy makers**

The Finnish NHRI recommends that:

- at the European level, there is need for more engagement with NHRIs by the European Parliament, the Council of Europe rule of law mechanisms and PACE in addition to the European Commission and EU Fundamental Rights Agency

- at the national level, the new Government (after parliamentary elections on 2 April 2023) needs to commit to uphold and strengthen the rule of law and fundamental and human rights in Finland and in its foreign and security policy, which should be based on human rights-based approach and the rule of law principles.

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities' follow-up to NHRI's recommendations regarding rule of law**

One of the most long-standing problems in Finland has been the length of legal proceedings. In the ENNHRI 2022 Report on Finland it was recommended that the justice system needs adequate resources to function efficiently and to ensure access to justice in reasonable time.

In March 2022, the Ministry of Justice's working group completed a report on enhancing the efficiency of the criminal process<sup>1</sup>. The report proposes several changes to legislation, the aim of which is to improve and speed up the processing of criminal cases. The proposed amendments concern, among other things, the speeding up and centralizing investigation of crimes against children, wider possibility of audio and video recording of the interrogations, and wider cooperation between the pre-trial investigation authority and the prosecutor. The report also proposes legislative changes related to prison deaths.

Based on the report, in October 2022 the Government presented changes to the Coercive Measures Act and the Pretrial Investigation Act. The Ministry of Justice also appointed a new working group in autumn 2022 to evaluate ways to streamline the preliminary investigation and the criminal process. The working group prepares proposals that would specifically respond to deficiencies and challenges that have arisen in situations of practical application of the law.

In November 2022, the Government Report on the Administration of Justice was published<sup>2</sup>. The report describes the current state of the administration of justice in Finland. According to this report, despite increases in budget appropriations during the current parliamentary term, the situation remains unsatisfactory. Key problems regarding legal protection include the excessive length of legal proceedings and the high costs of trials. At the same time, the personnel of the justice administration are overburdened. The Report includes proposals for measures to ensure resources for justice administration, to make internal structures and processes more efficient, and to improve the availability of legal services.

The Government has thus taken some preliminary measures to reduce the length of legal proceedings and costs. The real impact of these measures needs to be closely monitored and evaluated.

It is important to note that the length of proceedings is not the only problem. For example, the Deputy Chancellor of Justice gave in December 2022 a decision where the length of proceedings in the Finnish Immigration Service was assessed<sup>3</sup>. Proceedings were found to be systematically too long. The Immigration service states that the delays are caused by a backlog of applications that in turn has its background in the lack of and frequent changes in the personnel and in the unpredictability and inadequacy of the resources given to the Office.

### **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

The Finnish Human Rights Centre has recommended on several occasions, including in its rule of law reporting and statements, that the Government should be strategic when developing national human rights structures. The Finnish human rights architecture consists of many actors with legislative tasks to promote, monitor and/or protect human rights. Some of the actors have a broad human rights mandate whilst some of them are mandated to focus on specific human rights groups or themes.

Besides the Finnish NHRI, and the two constitutional bodies (the Chancellor of Justice and again the Parliamentary Ombudsman), these actors include two Equality Bodies (Non-Discrimination Ombudsman and Equality Ombudsman), Data Protection Ombudsman, Intelligence Ombudsman, Ombudsman for Children, and the newly established Ombudsman for Older People. Furthermore, the Non-Discrimination and Equality Tribunal is a low threshold judicial body that considers cases of discrimination.

The specialized bodies – called ombudsmen - are organizationally attached to the Ministry of Justice and are included in the budget of the Ministry. The Government also appoints the specialized ombudsmen. Their independence is thus limited to functional independence, while the Finnish NHRI is a parliamentary body and completely independent from the executive also structurally.

While new actors and new tasks for the existing human rights bodies have been created, no thorough analysis or discussion on the human rights structures and their development has taken place, even though there are overlaps and gaps in some of the actors' mandates. From the rightsholders' perspective this is problematic, as it is difficult to understand what the division of task between the actors is, and which instance is eligible to consider their complaints.

For the abovementioned reasons, the Finnish Human Rights Centre decided to conduct a study in 2021–2022 on national human rights actors that focuses on the strengthening and development of these structures<sup>4</sup>. The study clearly shows that there is a need for a more holistic and strategic approach. Balance should be sought between general and specific human rights mandates. When structures become too fragmented, resources and expertise are scattered in between several actors which risks weakening the clarity, coherence, resilience and efficiency of the bodies. Furthermore, international and regional standards, praxis and recommendations on human rights actors' independence should be better taken into account when developing the national actors' status and capacities. Therefore, the Finnish NHRI stresses that:



- The existing human rights structures should be strengthened instead of setting up new human rights bodies. This is particularly important as regards competencies to protect, supervise and monitor human rights and fundamental rights. New actors should be set up only after needs assessment has been carried out and based on evidence on real need.
- The review of the Non-Discrimination Act and the Equality Act should be carried out simultaneously to harmonise the legal protection against discrimination on different grounds and to strengthen intersectional perspective. Despite some amendments to the Non-Discrimination Act, there are still differences in the legal remedies according to the Non-Discrimination Act (covers discrimination grounds such as age, origin, religion, disability and sexual orientation) and the Equality Act (covers discrimination based on gender, gender identity and gender expression).
- The structural independence of special ombudsmen from the Ministry of Justice should be strengthened. Analysing the status of the two Finnish Equality Bodies (Non-Discrimination Ombudsman and Equality Ombudsman) is of particular importance due to the EU directive proposals on Equality Body standards.<sup>5</sup>

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Finnish National Human Rights Institution (FNHRI) is comprised of the Human Rights Centre, its Human Rights Delegation, and the Parliamentary Ombudsman. All the three parts that together form the FNHRI have their own specific legal duties, whereby the role of the Human Rights Centre is to take part and represent the FNHRI in international and European human rights co-operation among its statutory tasks. It needs to be emphasized that despite the three-part structure of FNHRI, there is only one NHRI in Finland.

The FNHRI was last reaccredited with A-status in October 2019<sup>6</sup>. First, the SCA recommended that adequate funding be made available to the FNHRI to perform its function as a National Preventive Mechanism under the OPCAT (only the Parliamentary Ombudsman) and National Monitoring Mechanism under the CRPD (the FNHRI joint task), and for the Human Rights Centre to work on business and human rights. The SCA encouraged the FNHRI to continue advocating for the necessary funding to ensure that it can effectively carry out its mandate. Further, the SCA was of the view that due to the different procedures through which the annual reports of the FNHRI are submitted to the Parliament, the Parliament is not provided with a complete account of the work of the FNHRI. The SCA encouraged the FNHRI to continue to advocate for the Human Rights Centre to have the competence to table reports to the Parliament for discussion to align this procedure with that followed by the Parliamentary Ombudsman.

Furthermore, while recognising that the Government Bill establishing the three components of the NHRI is a source of law in Finland, the SCA encouraged FNHRI to advocate for legislative amendments that would clearly stipulate these structures as one NHRI by the Parliamentary Ombudsman Act.

### **Follow-up to SCA Recommendations and relevant developments**

The SCA recommendations that concerns the annual report of the HRC and the stipulation of the NHRI in the Parliamentary Ombudsman Act (its founding legislation) were included in the Human Right Centre's study on national human rights actors<sup>7</sup>. The HRC also recommended that its general task to follow-up the realization of human rights in Finland (monitoring function) should be more clearly stipulated in the Parliamentary Ombudsman's Act. Currently, only the promotion of fundamental and human rights is a clear statutory task of the HRC, while the mandate to monitor and follow-up is expressed indirectly through Centre's more specific legislative tasks.

There have been no changes in the regulatory framework of the Finnish Human Rights Centre and its Delegation after the 2022 ENNHRI Rule of Law Report.

For the Parliamentary Ombudsman, important changes have taken place. The new Act on the Division of Duties between the Chancellor of Justice and the Parliamentary Ombudsman came into force in October 2022. The act does not change the constitutional competences and tasks of the two supreme guardians of legality.

The Parliamentary Ombudsman oversees and promotes the legality of actions taken by authorities and other parties performing public tasks as well as the implementation of fundamental and human rights. The Ombudsman examines complaints, investigates matters on his own initiative and carries out inspections of administration, and more importantly, at prisons, military garrisons and other closed institutions or places where people can be held against their will.

The new Act on the Division of Duties strengthens the role of the Ombudsman as regards the rights of vulnerable persons and the oversight of security authorities. Based on the new Act the Ombudsman will be the main institution to supervise the implementation of fundamental and human rights at the individual level. The reform of the Act by increasing the focus on vulnerable persons and increasing the specialization of the Ombudsman staff provides opportunities also to further strengthen the cooperation within the FNHRI.

According to the new Act, the oversight of legality by the Chancellor of Justice is directed towards examining structural issues related to the implementation of fundamental and human rights in the development of public administration. The Chancellor is also responsible for supervising matters relating to anti-corruption.

The aim of the reform is to reduce the challenges caused by the overlapping duties between the Ombudsman and the Chancellor, and to improve the quality and effectiveness of the oversight of legality and to support the consistency of the decision-making practice.

As regards the resources of the FNHRI, both the HRC and the Parliamentary Ombudsman have received additional resources as recommended by SCA. In 2022

again, both were granted more budget funds by the Parliament for additional permanent staff members as requested.

### **Enabling and safe space**

In view of the Finnish NHRI, the authorities sufficiently ensure enabling space for the institution to carry out its work independently and effectively.

### **NHRI's recommendations to national and regional authorities**

- FNHRI and its three component parts (Human Rights Centre, its Human Rights Delegation and the Parliamentary Ombudsman) should be explicitly stipulated as the Finnish NHRI in the Parliamentary Ombudsman's Act (at the text of the Act).
- Finnish Human Rights Centre should have a competence to table its reports to the Parliament for discussion.

## **Human rights defenders and civil society space**

### **Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities**

Regarding protection of civil society space, there have been several legislative processes in 2022 during which the problem of hate speech has occurred. Especially discussions – including the plenary discussion in the Parliament - concerning the Government Proposal on the legal recognition of gender as well as the Government Proposal on the Sami Parliament increased hate speech towards these minorities. Trans activists and Sami activists - as well as those supporting them - have been targeted and attacked in the social media.

The ongoing discussions and the hate speech they have generated have had negative impacts on the well-being of some trans people, especially trans youth<sup>8</sup>. Regarding hate speech against the Sami people, the Sami Parliament made a statement in November 2022 where it drew the attention to the increased hate speech and expresses concern regarding especially Sami youth and how they are coping with the situation<sup>9</sup>.

The HRC has provided information and statements in support of the legislative proposals and called for more respectful discussion not offending those who are concerned<sup>10</sup>.

Regrettably, while the Trans Act passed in the Parliament, the Sami Parliament Act did not. The Constitutional Committee voted not to proceed with the proposal. This failure – already by the 4<sup>th</sup> consequent government – to remedy the violations against Sami people’s right to self-determination is highly problematic as it is the duty of the Constitutional Committee to ensure that legislation complies with international human rights obligations and the Constitution.

### **Measures undertaken by State authorities to protect and promote civic space**

In 2022, there have been some activities undertaken by state authorities to protect human rights defenders abroad. The MFA provides funding for several INGOs whose activities include protection of human rights defenders.

In November 2022, the Ministry for Foreign Affairs published new internal guidelines for supporting human rights defenders<sup>11</sup>. The guidelines are based on the European Union’s guidelines for human rights defenders as well as an independent report made in 2017. The updated guidelines consider that human rights defenders can also be harassed by companies and, for example, various armed groups.

However, the guidelines still do not address situations in which a human rights defender needs to relocate to safety to Finland. Finland does not have a national mechanism to assist and protect human rights defenders.

In late 2022, the MFA finally started the process of preparing a special humanitarian visa for defenders<sup>12</sup>. Internal report was first drafted at the MFA and some meetings were organized including with the HRC. Such visa would allow for human rights defenders, reporters and activists fleeing their country to legally enter Finland. The initiative by the MFA was positive as such but was launched too late and as a result, the process will not be finished during this Government term.

In December 2021, the Government Report on Human Rights Policy was published<sup>13</sup>. During the spring 2022, it was discussed in the Parliament. The report outlines Finland's fundamental and human rights policy both internationally and domestically. In the report, supporting the work of human rights defenders is one of the priorities.

Despite the policy priority of the Government to protect human rights defenders, the lack of protection mechanism diminishes the credibility of the otherwise important work done by the MFA politically, and in supporting many international NGOs working to protect defenders.

The Finnish Human Rights Centre is aware of an increasing number of human rights defenders at risk who have managed to enter Finland but have left for other countries because they have not received residence permits or protection. Some defenders have been refused visa and have ended up in neighboring countries or have not been able to flee. Due to the nature of the information the source is confidential but reliable.

In addition to the protection that could be provided in Finland, it would be important for the human rights defender to receive fast and flexible support also in the country in which they work. This kind of help could be offered through the network of Finland's diplomatic missions.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

In September 2022, the HRC and its Human Rights Delegation, which is the Human Rights Centre's broad-based cooperation body, published a strong statement on the protection of human rights defenders, where it demands that the Government develops a comprehensive model to support the human rights defenders both in the country of origin and in Finland, secures the human rights defenders' quick and legal entry to Finland with a fast and flexible visa procedure, and guarantees sufficient resources for protection<sup>14</sup>.

The Finnish Human Rights Centre has during the 2022 advocated for a mechanism to protect human rights defenders in Finland. This was one of the priorities of the HRC in its statements for the Parliamentary committees during the discussions on the Government Report on Human Rights Policy<sup>15</sup>. For example, in its statement to the Foreign Affairs Committee, the Human Rights Centre drew attention to the fact that although human rights defenders have been made a priority in the Government report, Finland still does not have a mechanism to protect human rights defenders by enabling their entry into Finland.

The Foreign Affairs Committee in its statement on the report insisted that a mechanism must be developed to enable the protection of human rights defenders in Finland<sup>16</sup>. As Finland is a member of the UN Human Rights Council during 2022–2024, it is essential that the emphasis on supporting the work of human rights defenders mentioned in the Report on Human Rights Policy is also reflected in Finland's activities in the Human Rights Council.

### **NHRI's recommendations to national and regional authorities**

- The Finnish Government and in particular the MFA should urgently establish a comprehensive mechanism to protect human rights defenders and their families, including a fast and flexible visa procedure to relocate to safety in Finland and the necessary support.
- The Finnish Government should cooperate and learn from other Governments supporting defenders with protection programmes and to cooperate and support the EU mechanism on human rights defenders including by providing relocation possibilities in Finland.
- The Finnish Government should continue providing support to international NGOs that protect and assist defenders.

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

Finland has 18 judgments from the ECHR pending implementation.<sup>17</sup> Several of them would only require updated information on the implementation status to be sent to the Committee of Ministers and could be closed. The Government has not been capable of finalizing the reports.

### Leading European Courts' judgments awaiting implementation

The number of leading judgments of the European Court of Human Rights pending implementation did not change in 2022. Still 9 leading judgments were pending implementation<sup>18</sup>.

For the first time, a judgment against Finland is being examined under enhanced procedure before the Committee of Ministers. The case of *X. v. Finland* (application no. 34806/04<sup>19</sup>) concerns lack of legal remedy against forced medication in psychiatric hospital. The Court found a violation on 3 July 2012, among others, of Art. 8 (Right to private life). Regarding the violation of Article 8, implementation has not taken place, more than 10 years on. The Committee of Ministers examined the status of implementation and reasons for its delay in December 2021. The case is due to be examined again in March 2023.

Two further complaints on the same issue (*E.S. against Finland*, application no. 23903/20 and *H.H. against Finland*, no. 19035/21) have been lodged before the Court in June 2020 and April 2021 and communicated to the Government in March 2021 and December 2021, respectively.

The main reason for non-implementation in most cases is not prioritizing or having the resources available for the final reporting on the implementation, as in most cases the actual implementation work is done. This situation is difficult to comprehend, also for



the staff of Department for the Execution of Judgment, who visited Finland in early 2023.

In cases like *X. v. Finland*, where the required legislative changes are in process for a long time and not proceeding, there is lack of political will to prioritize these reforms combined with lack of resources and lack of uniform understanding on the importance of the full implementation.

### **NHRI's actions to support the implementation of European Courts' judgments**

The Human Rights Centre has requested information from the Ministry for Foreign Affairs already in 2021 on all pending cases asking for the reasons for the delay<sup>20</sup>. In 2021 (and in January 2023 again<sup>21</sup>) the Finnish Human Rights Centre has submitted Rule 9 communication on the case of *X v. Finland*<sup>22</sup>. In early 2023 NHRI held discussions with the Department of Execution of the Judgments of the ECHR during their country visit, specifically on the case of *X v. Finland*<sup>23</sup>.

### **NHRI's recommendations to national and regional authorities**

The Finnish NHRI recommends to:

- Take urgent measures to finalise the remaining implementation of judgments of the European Court of Human Rights.
- Ensure sufficient resources for the office of the Government Agent to enable speedy implementation of any future judgments;
- Enhance the knowledge and respect for the judgments of the ECtHR especially among the authorities responsible for drafting legislation

## **Other challenges in the areas of rule of law and human rights**

### Legislative changes in the Border guard Act

Finland amended its Border Guard Act in 2022<sup>24</sup>. Both the legislative process and the amended Act raise concerns from a rule of law and human rights perspective. 16.2 § of

the new Border Guard Act gives authorities the option to concentrate the reception of asylum applications to one or more border crossing points in case of instrumentalization of migration or sudden and large-scale arrivals of asylum-seekers, if concentration is deemed necessary based on public order, national security, or public health.

Although the Act in its final form enables the concentration of asylum applications in case of sudden and large-scale arrivals of asylum seekers, the reasoning for the legislation is based only on the threat of instrumentalization of migration. The Government Proposal mentions for example the EU's plans on combating instrumentalization of migration and hybrid threats. The possibility of concentration in the situation of sudden and large-scale arrivals of asylum seekers when there is no reasonable suspicion of instrumentalization is problematic as sufficient motivations for it were not given in the legislative process<sup>25</sup>.

The possibility to concentrate the reception of asylum-seekers to only one border point is not in line with the requirement of genuine and effective access to the asylum procedure. The Finnish Eastern border is over 1300 km long.

According to 16.3 § of the Act, if the decision is made to concentrate the reception of asylum applications, they can only be received at designated border crossing points, except in individual circumstances considering the rights of children, disabled persons, or others in a particularly vulnerable position. Yet the Administration Committee of the Parliament indicates in its reasoning that persons seeking asylum from the Finnish border authorities on other border crossing points than the designated ones could be removed from the country without the possibility to seek asylum. This would result in pushbacks.

Both the Council of Europe Commissioner for Human and the Director of the European Fundamental Rights Agency (FRA) have expressed their concern regarding the amended Act<sup>26</sup>.

## Media freedom

The situation of media continues to be relatively good and stable in Finland. However, hate speech, different type of harassment and targeting of journalists have been an alarming threat against media freedom in Finland. In addition, concentration of the national media market continues to raise some concern.

In 2022, Finland fell from second place to fifth place in the press freedom index<sup>27</sup>. The index prepared annually by the organization Reporters Without Borders measures the realization of press freedom in 180 countries. Finland's ranking is the weakest since 2007.

One of the reasons for the weaker ranking are the charges against three journalists of the national daily newspaper Helsingin Sanomat for revealing and for attempt of revealing a security secret<sup>28</sup>. The charges concern the publication of an article in 2017 concerning military intelligence by the Defence Forces and the activities of the Communications Experiment Centre (*Viestikoekeskus*) conducting signals intelligence. The main question of the case relates to the journalists' right not to reveal their sources. Helsinki District Court made its judgment on 27.01.2023: one of the reporters received fines, and the article is to be removed.<sup>29</sup> The judgment came only in 2023, in other words after the press freedom index evaluation. However, the charges themselves can have affected Finland's result in the index.

The case has raised broader discussion on the limits of freedom of speech and on the responsibility of journalists in their work. On the other hand, on 11 January 2022, the Supreme Court overturned the defamation sentence of a journalist in relation to commenting political action. The court thus clarified the ambit of freedom of speech, and what is allowed within the freedom of speech, which is of importance for future cases.

The Media Pluralism Monitor 2022 report identifies several risks concerning Finland's media environment<sup>30</sup>. The most relevant risks are those related to the concentration of

news media and online platforms, and the underdevelopment of the field of local and regional media. Many local communities or minority groups are underserved or neglected by both private and public service media, and there are shortcomings in accessibility of media services for persons with disabilities. According to the report, Finland should also better prepare for the threat of coordinated mis- and disinformation campaigns. When looking at the legislation, defamation and blasphemy remain punishable under the Criminal Code and may be punished relatively harshly.

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<sup>1</sup> See [the report on enhancing the efficiency of the criminal process by the Ministry of Justice's working group](#), only in Finnish

<sup>2</sup> See [the Government Report on the Administration of Justice](#)

<sup>3</sup> See [the Decision of the Deputy Chancellor of Justice on the processing times of the Immigration Service](#), only in Finnish

<sup>4</sup> See [Finnish Human Rights Centre's study on national human rights actors 2022](#) in Finnish

<sup>5</sup> See [Finnish Human Rights Centre's study on national human rights actors 2022](#) in Finnish.

<sup>6</sup> [SCA Report October 2019](#)

<sup>7</sup> See [Finnish Human Rights Centre's study on national human rights actors 2022](#) in Finnish

<sup>8</sup> See article "[Sateenkaarinuoret poikkeusaikana](#)" in the book *Nuorten elinolot 2022*, available in Finnish

<sup>9</sup> The [Sami Parliamentary Council on hate speech against Sami people](#), available in Finnish

<sup>10</sup> See the info package and press statement of the HRC on Sami rights - [Saamelaiskäräjälain ehdotettu uudistus poistaa ihmisoikeusrikkomuksen | Ihmisoikeuskeskus / Människorättscentret / Human Rights Centre](#)

<sup>11</sup> See "[Supporting Human Rights Defenders Together, Guidelines of the Finnish Foreign Service](#)" by the [Ministry for Foreign Affairs](#), abstract in English

<sup>12</sup> See a [press release by the Ministry for Foreign Affairs where drafting of a proposal for a national humanitarian visa is mentioned](#)

<sup>13</sup> See [the Government Report on Human Rights Policy](#), abstract in English

<sup>14</sup> See [Statement of the HRC's Human Rights Delegation: Protection of human rights defenders at risk must be strengthened](#)

<sup>15</sup> See [the statements of the Finnish Human Rights Centre to different parliamentary committees concerning the Government Report on Human Rights Policy](#), available only in Finnish

<sup>16</sup> See [the Report of the Foreign Affairs Committee on the Government Report on Human Rights Policy](#), available only in Finnish

<sup>17</sup> [Justice delayed and justice denied: report on non-implementation of European court rulings, p. 38 on Finland](#)

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- <sup>18</sup> See [Pending cases of ECtHR concerning Finland, waiting implementation – 18 cases \(17.1.2023\)](#)
- <sup>19</sup> [ECtHR judgment in the case of X v. FINLAND](#)
- <sup>20</sup> See [Finnish Human Rights Centre’s letter in 2021 to the Minister for Foreign Affairs on pending cases](#)
- <sup>21</sup> See Finnish Human Rights Centre’s Rule 9 communication in 2023 on the case of X v. Finland [Ihmisoikeuskeskus lausui toistamiseen Euroopan ihmisoikeustuomioistuimen pakkolääkintätuomiosta – Euroopan neuvoston täytäntöönpano-osasto vierailulla Suomessa täytäntöönpanon viiveiden takia | Ihmisoikeuskeskus / Människorättscentret / Human Rights Centre](#)
- <sup>22</sup> See [Finnish Human Rights Centre’s Rule 9 communication in 2021 on the case of X v. Finland](#)
- <sup>23</sup> See [information on visit to Finland on implementation of the European Court’s judgments](#)
- <sup>24</sup> See the [English press release on the amendments to the Border Guard Act](#) from July 2022
- <sup>25</sup> See [the Statement of the Finnish Human Rights Centre on the Draft Government Proposal for the Border Guard Act](#), which is available in Finnish
- <sup>26</sup> See [Letter to the Minister of the Interior of Finland from the Commissioner for Human Rights of the Council of Europe](#)
- <sup>27</sup> See [the World Press Freedom Index 2022](#) by Reporters Without Borders
- <sup>28</sup> See article in Finnish: [Tapaus Viestikookeskus ja journalistin vastuu](#)
- <sup>29</sup> [Communication on the District Court Judgment](#)
- <sup>30</sup> See [Media Pluralism Monitor 2022 Country Report of Finland](#) with an abstract in English

## France

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### French National Consultative Commission on Human Rights (CNCDH)

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

The French National Consultative Commission on Human Rights (CNCDH) notes that within the framework of international and regional forums, France often defends the rule of law. As part of the presidency of France at the Council of the European Union, the President Emmanuel Macron in his speech to the European Parliament in Strasbourg delivered on January 19, 2022, launched an appeal to defend the rule of law by considering that "the end of the rule of law is the reign of arbitrariness, the sign of a return to authoritarian regimes".<sup>1</sup>

Still within the framework of this presidency<sup>2</sup>, France declared that it had used all the tools available to continue advancing the rule of law in Europe. It thus initiated a debate on the strengthening of the Rule of law conditionality regulation (in force since January 2021) which allows acting against any violation in this topic which had an impact on the European budget.

Furthermore, the French NHRI notes that among the activities undertaken to promote the rule of law was the launch of the European Cycle on the Rule of Law, within the framework of the Council of Europe, by the Secretary of State for Europe and the President of the National Council of the Bars.<sup>3</sup> Their first meeting focused on the independence of the judiciary.

The CNCDH recommends to national and European authorities to widely disseminate and promote the findings and recommendations issued by the European Commission in

it its rule of law reports. It would thus be plausible to clearly explain the operating methods of the EU's rule of law mechanism about which the awareness by civil society remains insufficient. This would enable the various stakeholders to participate and submit their findings and reports with the European Commission.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The French NHRI was last reaccredited with A-status by the Sub-Committee on Accreditation (SCA) in March 2019<sup>4</sup>. The SCA noted with appreciation the continuous efforts by the institution to implement the previous recommendations made by the SCA. Regarding the mandate of the CNCDH, the SCA encouraged the NHRI to continue to broaden its activities in relation to its protection mandate and to advocate for amendments to its enabling law to make its broad protection mandate explicit. The SCA also recommended the institution to continue to strengthen its cooperation with the Défenseur des droits and with other national entities with responsibility for the promotion and protection of human rights. In addition, the SCA was of the view that, in order to promote institutional independence, it would be preferable for the terms of all members of the CNCDH to be limited to one renewal and encouraged the institution to advocate for amendments to its Decree to address this issue. Finally, the SCA reminded that, where an NHRI has been mandated with additional responsibilities, it must be provided with the adequate funding to effectively fulfil these duties. Thus, the SCA encouraged the institution to continue to advocate for adequate funding to effectively carry out the full extent of its mandate, especially in view of its expanding responsibilities.

### **Regulatory framework**

The national regulatory framework applicable to the French NHRI has not changed since the 2022 ENNHRI report.

The CNCDH is the French national institution for the protection and promotion of human rights. The CNCDH monitors, provides advice, cooperates with the Government and Parliament on all subjects relating to human rights and international humanitarian law (IHL). The institution ensures and monitors the implementation of human rights and IHL by France. It has a mandate dedicated to human rights education through which it promotes international and European law.

The NHRI explains that it has mandates as an independent national rapporteur on the fight against racism, the fight against trafficking in human beings, the implementation of the United Nations Guiding Principles on Human Rights and Business, the rights of LGBTI+, and, since December 3, 2020, on the effectiveness of the rights of people with disabilities.

The NHRI is composed, since 2007 (Act n°2007-292 of 5th March 2007<sup>5</sup>) of 64 individuals and representatives from civil society organizations (NGOs and unions). The CNCDH is accredited with A-status and fully complies with UN Paris Principles.

The composition of the CNCDH was renewed by the Prime Minister for three years on November 12<sup>6</sup>, 2022 (2023-2025). No significant changes took place in the environment in which the institution operates. However, the French NHRI highlights that this renewal comes after a very long inter-mandate period of approximately seven months; the previous mandate (2019-2022) which ended on April 9, 2022.

The CNCDH recalls the importance of allocating the necessary financial and human resources to it to be able to carry out all its mandates effectively.

### **Enabling and safe space**

The CNCDH notes that it is not systematically informed on the preparations of legislative and regulatory acts and public policies that are related to human rights. Nevertheless, during year 2022, the Government provided written answers to three CNCDH opinions (sexual exploitation of minors, social inequalities in health and end of



life). These answers show a relative will for dialogue on the recommendations made by the Commission.

Moreover, the CNCDH confirms that it often advocates to the government on the importance of allocating the necessary financial and human resources to allow the French NHRI to carry out its tasks effectively. As part of its report for the universal periodic review of France, the CNCDH reminded it the importance of allocating the means necessary for the full realisation of the NHRI's different mandates.

### **NHRI's recommendations to national and regional authorities**

The CNCHH recommends the state authorities that:

- The French NHRI should be provided with financial and human resources so that it can effectively carry out all its tasks and mandates effectively.
- The inter-mandate period shall not be too long, and the new composition should be appointed within a reasonable time, not exceeding 3 months.
- The CNCDH shall be consulted in advance, or be informed systematically, on the preparation of legislative and regulatory texts and public policies, in particular those that are directly related and affect human rights.

## **Human rights defenders and civil society space**

### **Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities**

The French NHRI's human rights monitoring and reporting found the following evidence of laws and measures that could negatively impact on civil society space and reduce human rights defenders' activities.

#### Threats to freedom of association

The implementing decree relating to the Contract of Republican Commitment (*Contrat républicain d'engagement*-CER) was published on 31 December 2021. Instituted by the law of August 2021 reinforcing the respect of the principles of the Republic, the CER

oblige associations of public utility or receiving public subsidies to affirm that they respect the values of the Republic. After several months of implementation, the NHRI was informed that the civil society organisations are very concerned about this provision, which in some cases contributes to hamper their action. The "*Mouvement associatif*", which federates about half of French associations, relies on several cases to denounce the danger that the CER represents for freedom of association and to ask for its repeal.

For instance, in Poitiers, the Mayor ordered the City of Poitiers to withdraw part of the subsidy granted to an association for the defence of the environment because the association organised a workshop on civil disobedience.

In Lille, on the other hand, an association of social economy was challenged by the Mayor for non-compliance with the CER because it hosted a meeting of an association which fight against the extension of Lille-Lesquin Airport.

In Saône-Loire, the mayor of Châlon-sur-Saône has withdrawn from Planning Familial (an important association for the defence of women's rights) its authorization to organize an event during the International Women's Rights Day, arguing that the poster campaign uses the face of a veiled woman, among others, to symbolize the diversity of the women. This decision was cancelled by the administrative court.

#### Threats to freedom of assembly

A few days after the protests against the mega-basins of Sainte Soline in Deux-Sèvres , on November 9 2022 the Minister of Justice adopted a circular addressed to prosecutors in order to deal with offenses committed during protests related to land development projects (*Circulaire DM du 9 novembre 2022 relative au traitement judiciaire des infractions commises dans le cadre de contestations de projets d'aménagement du territoire*). While recognizing that "the protection of the environment and the preservation of our common heritage constitute subjects of legitimate concern", the Minister considers that actions undertaken in the margins of protest

movements of land development projects violate the order of the Republic "when they take the form of violent clashes and projectile throwing, systematically directed, against the police force". In doing so, the Minister calls for "a systematic and reactive criminal response" which must be adapted to the facts committed. The circular details the methods of comparison and the offenses concerned by this text such as rebellion.<sup>7</sup>

Moreover, the French NHRI states that in 2022 several practices were identified which violated human rights. They also impacted negatively on civil society space and reducing human rights defender's activities.

#### Attacks on environmental rights defenders

Several environmental defenders are prosecuted under criminal law in the context of opposition to environmental projects (also in relation to the circular of November 9 2022). It should be noted that several lawsuits are initiated regarding protests to oppose mega-basins (large water reserves supposed to help agriculture but which have negative effects on ecosystems).

On 27-28 October 2022, thousands of environmental defenders protested to the mega basin project in Sainte-Soline while demonstrations were forbidden on the site. Among them, 5 activists were arrested by the police and prosecuted for "participation in a group with the aim of committing violence or damage to property". In application of a circular from the Minister of Justice, as mentioned above, the Niort criminal court refused to grant the defence lawyers a postponement of the hearing. On 28 November 2022, the five activists were sentenced to two- and three-months imprisonment with a three-year ban from the Deux-Sèvres department. This sentence was handed down in the absence of one of the defendants, who was still in hospital given injuries suffered during the demonstration by an LBD shot. The defendants have therefore appealed to this decision.

In the beginning of November 2022, two activists were accused of participating in the degradation of the Cram-Chaban basin cutting and burning the tarpaulins sealing the

mega basin. They appeared before the Niort Criminal Court, which delayed giving its judgment until 2 March 2023.

On 22 September 2021, nearly six hundred people demonstrated in Mauzé-le-Mignon against the mega basin project. Five demonstrators accused of damage and violence against the gendarmes appeared before the Niort criminal court in January 2023. Four of the five activists were sentenced to two to six months' imprisonment with a simple suspended sentence, a ban on appearing in the Deux-Sèvres and in Mauzé-le-Mignon and Sainte-Soline, as well as fines for refusing to take a DNA sample. Only one of them was acquitted.

Furthermore on the topic the NHRI declares that:

Two activists from Extinction Rebellion, an environmental movement, were sued by a company following an action of civil disobedience action carried out on October 15, 2021 to protest against a subway line construction as part of the "Grand Paris Express", a project requiring land artificialisation. The activists had climbed a crane in Essonne to put up a banner without any violent action being taken. About two years after the events, the activists appeared before the correctional court of Evry for "opposition, by assault or violence, to the execution of public works or public utility" facing one year of imprisonment and a fine of 15 000 (fifteen thousand euros). The prosecutor considered that the action in question was legitimate but not legal and requested a two-month suspended prison term. The court considered that the facts were not sufficiently characterized and finally requested the acquittal of the accused.

On 28 November 2022, seven activists appeared before the Nancy Court of Appeal for opposing the Cigeo nuclear waste disposal project during an undeclared demonstration in August 2017. During the hearing, the defendants' lawyers denounced the judges' confusion between participation in a demonstration that had been declared illegal and participation in an undeclared demonstration that is part of the exercise of a fundamental freedom. They also challenged the identification of some of the activists

involved in the demonstration and challenged the prosecution of the activists for criminal association. On 26 January, at the end of the trial, the Nancy Court of Appeal acquitted four activists and sentenced the other three to four months' suspended prison for participation in an unarmed gathering and refusal to comply with the dispersal order. This trial follows the use of anti-terrorist means to identify those responsible for the fires at a hotel and an eco-centre in the village of Bure, which housed staff in charge of the Cigeo project, for which the case was dismissed.

At the end of October 2022, a demonstration against a water retention project (some huge basins pump water from the water table in winter and store it to irrigate crops in summer) led to violence between demonstrators and the police. When questioned about these scuffles, the Minister of the Interior described the people who threw projectiles at the police as "eco-terrorists". Although no legal proceedings were initiated on this basis, the qualification used by the Minister of the Interior is worrying because of its disproportionate nature.

In September 2022, a mayor decided to cancel subsidies granted to an environmental association because of the civil disobedience courses it offers. The mayor relies on a law of August 2021<sup>8</sup> that institutes a "contract of republican commitment", which becomes the prerequisite for any subsidy. Among the commitments provided for by this contract is "abstention from any action that undermines public order". In its opinion on the draft law, the CNCDH had expressed concerns about this provision. The case is currently being heard in the court.

### Migrant's rights defenders

As in the previous year, associations and citizens supporting migrants are generally obstructed in their work by state authorities in the city of Calais, particularly regarding the distribution of food. Mayor decrees prohibited "any free distribution of drinks and food" on a certain perimeter of the city. These decrees were subsequently cancelled by the Lille administrative court on October 12, 2022. The judges found that these texts,

which affected the living conditions of particularly vulnerable populations, were disproportionate to the aims pursued.

#### Dissolution of association and support group

During the year 2022, the Interior French Minister dissolved on several occasions associations and *de facto* groups, such as in January 2022, concerning a *de facto* group of ultra-right-wing or associations managing a mosque.

The French NHRI highlights the case where the Interior Minister which dissolved an association<sup>9</sup> and a support group for Palestine<sup>10</sup> (Comité Action Palestine and Collectif Palestine Vaincra), based on the provisions of the internal security code. According to the dissolution decrees adopted by the Council of Ministers on March 9, 2022, these associations were accused of provoking or contributing "by their actions to discrimination, hatred or violence" and "who engage, on French territory or from this territory, to acts with a view to provoking acts of terrorism in France or abroad". However, the urgent applications' judge of the Council of State suspended the execution of these decrees. He considered that, taking into account the investigation and the hearing, the positions of the association and the *de facto* group cannot be considered as inciting discrimination, hatred or violence against a group of persons or as consisting of acts with a view to provoking acts of terrorism"<sup>11</sup>.

#### Hate speech and threats

Assa Traoré, the sister of Adama Traoré, who died during his custody by the police in 2016, was the target of hate speech and threats uttered through tweets from police unions and a far-right movements. This attack occurred following her intervention before the Committee on the Elimination of Racial Discrimination (CERD) in Geneva which was examining France (November 15 and 16, 2022) during its 108th session.

This was considered by the Committee in its concluding observations on France published on December 2, 2022 through which it expressed concern about the fact that human rights defenders are subject to intimidation and threats, when they cooperate

with the Committee, constituting an obstacle to its proper functioning. More specifically, the Committee expressed concern emanating from information stating that Mrs. Assa Traoré<sup>12</sup>, who provided elements concerning her brother, was victim of defamatory messages and online threats, especially in a police union's Twitter account. It was thus recommended to France in this regard to "take immediate and effective measures to guarantee the safety of Mrs. Assa Traoré and to take disciplinary measures, to expedite the necessary investigations and, if necessary, to initiate criminal proceedings against the agents of the State who are associated with these messages of intimidation and threats".

#### Threats to journalists

Three journalists from Radio France and the online media Disclose, Benoît Collombat, Geoffrey Livolsi and Jacques Monin<sup>13</sup>, were summoned in December 2002 to an open hearing by the General Directorate of Internal Security (DGSI) and heard by officers of the judicial police. This follows an investigation carried out in December 2018 and broadcasted on the radio (*Transport aérien : soupçons de trafic d'influence dans l'armée*<sup>14</sup>) concerning possible cases of favouritism and influence peddling within the French army. These journalists are suspected of having breached national defence confidential information by revealing the existence of a judicial investigation by the national financial prosecutor's office that allows the identification of militaries involved in cases of favouritism and influence peddling. After indicating that the investigation is in the general interest and is part of their mission to inform the public, they did not answer the police officers' questions, asserting their right to silence in accordance with Article 10 of the European Convention of Human Rights.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

In 2022, the French NHRI undertaken the following activities to protect and promote civil society space and human rights defenders:

- The French Republic's Human Rights Prize: Since 1988, the CNCDH awards this prize each year on the 10th of December to five laureates (NGOs and human rights defenders all around the world). The winners receive a financial contribution, and the prize has a protective value. The prize relates each year to one or two themes chosen collectively by the members of the CNCDH. For 2022, the theme was related on projects related on sexual and reproductive rights in relation to the rights of LGBTIQIA+ people and gender inequalities. The organisations from Egypt, Venezuela, Argentina and Albania were awarded.<sup>15</sup>
- Reports to international human rights mechanisms: The French NHRI interacts regularly with international bodies for the protection of human rights, with focus when it monitors France's international obligations such as in the context of the Universal Periodic Review (UPR) or The United Nations committees. Thus, when the commission sends written contributions within the framework of these various processes, it often raises questions about human rights defenders. As part of the periodic review of France which will take place in May 2023, the CNCDH sent a written contribution in which it devoted a paragraph to human rights defenders<sup>16</sup>.
- The Marianne initiative for human rights defenders: The CNCDH participated and supported the development of the Marianne government initiative, a governmental mechanism to facilitate the settlement in France of foreign human rights defenders.<sup>17</sup>
- Exchanges with human rights defenders: The NHRI regularly receives and organizes discussion meetings at its premises with human rights defenders from various countries. For example, the meeting organized on December 6th with two Jordanian human rights defenders.
- Trainings on international mechanisms for the protection of human rights: Given its expertise in the field, the CNCDH organizes meetings for French civil society



to raise awareness of international human rights mechanisms and encourage them to engage by, for example, sending a written contribution when France is being examined. In 2022, three seminars have been organized with NGOs and unions to deal respectively with the UPR (July 2022) the Committee on the Elimination of Racial Discrimination (CERD) (September 2022) and the Committee on the Rights of the Child (September 2022). A follow-up was carried out which was very fruitful as they were able to send their contribution for the UPR or the CERD and attend and intervene in the review for the CERD that took place in November 2022.

- Declaration "Acting in solidarity with Ukraine against violations of international law resulting from Russian aggression". The NHRI adopted in the plenary assembly of March 17th 2022, a declaration following the aggression of Ukraine by Russia.<sup>18</sup> The CNCDH underlined that solidarity with the people of Ukraine must be accompanied by increased support for Russian and Belarusian civil society organisations and human rights defenders. The CNCDH declared paying its particular attention, in the international networks of which it is a member, to initiatives aimed at strengthening the capacities of various actors working to protect and promote human rights in the above countries.

### **NHRI's recommendations to national and regional authorities**

The CNCDH recommends establishing the status of human rights defenders in French national law and to ensure their protection, in accordance with the United Nations Declaration of 1998, in particular regarding environmental defenders and migrant rights defenders.

### **Implementation of European Courts' judgments**

#### **Assessment of follow-up activities of State authorities**

The French NHRI states that France was condemned on several occasions following the non-implementation of the European Court of Human Rights' judgments that raise

problems of a structural nature, such as prison overcrowding, care for unaccompanied minors and administrative detention of families with children.

On these cases, the CNCDH maintains a regular dialogue with the Committee of Ministers, which continues to monitor their execution.

The execution of the European Court's judgments comes up again opposing political orientations, particularly with regard to prison overcrowding and the care of unaccompanied minors.

### **Leading European Courts' judgments awaiting implementation**

The NHRI informs the following cases pending implementation:

- Khan v. France, 28 February 2019, Application no. 12267/16: failure to care for an unaccompanied minor (violation of Art. 3)<sup>19</sup>;
- J.M.B. and others v. France, 30 January 2020, Application no. 9671/15 and 31 others: lack of effective remedy against undignified detention conditions (violation of Art. 3 and 13)<sup>20</sup>;
- N.B. and others v. France, 31 March 2022, Application no. 49775/20: administrative detention for fourteen days of an eight-year-old foreign child accompanied by his parents in an unsuitable centre (violation of Art. 3)<sup>21</sup>.

### **NHRI's actions to support the implementation of European Courts' judgments**

The CNCDH states that in order to enhance the level of implementation of the European Courts' judgments the NHRI carries out various types of action, such as issuing recommendations to state authorities, conducting advocacy, providing rule 9 submissions (joint ones with the Controller General of Places of Deprivation of Liberty (CGLPL) when it relates to prisons).

### **NHRI's recommendations to national and regional authorities**

The NHRI recommends other NHRIs to:

- use rule 9 submissions to CoE's Committee of Ministers.

- contact members of government and members of Parliament.
- undertake joint actions with other institutions (such as the CGLPL for instance, when the case relates to prison).

## Artificial Intelligence

### Impact of AI on human rights, democracy and rule of law

The French NHRI underlines that the use of the AI can have impact on human rights, rule of law and democracy in France.

The CNCDH flags that automated video surveillance (AVS), i.e. the combined use of cameras and algorithms, was already subject of experiments in France (for instance in the cities of Toulouse<sup>22</sup>, Nîmes<sup>23</sup>, Paris and Suresnes<sup>24</sup>). To tackle the lack of a legal basis for this type of this surveillance system, the government introduced a draft bill in December 2022. This text is presented with reference to the Olympic Games of July and August 2024, but it authorizes, on an experimental basis, the use of AVS from the adoption of the law up until 30 June 2025.

The AVS may be authorised by the representative of the State in the department to ensure the security of sporting, recreational or cultural events that, due to their scale or circumstances, are “particularly exposed to the risk of acts of terrorism or serious harm to the safety of individuals”. The software that equips the cameras will be expected to detect suspicious packages, crowd movements or behaviour.

The French NHRI also informs that it is currently reviewing the draft law<sup>25</sup>. It raised a statement about this draft law<sup>26</sup>.

### NHRI’s actions to address challenges regarding the use of artificial intelligence

The CNCDH issued an opinion in April 2022<sup>27</sup>. The opinion recommends, the prohibiting of AI considered to be harmful to fundamental rights, such as social scoring or remote biometric identification of people in publicly accessible spaces. And additionally, it recommends placing users of an AI system requirement that can ensure fundamental

rights: an impact assessment, stakeholder consultation, and supervision of the system throughout its life cycle.

The CNCDH finally calls for the recognition of rights for persons who were subject of a decision involving an algorithm, in particular the right to human intervention in the decision-making process, or a right to configure the operating criteria of the AI system.

The French NHRI also participated to the consultation organized by the European Commission on the EU AI Act. It sent a contribution to highlight some shortcomings about the protection of fundamental rights<sup>28</sup>.

### **NHRI's recommendations to national and regional authorities**

The NHRI recommends to the relevant regional and national policymakers that:

- Certain uses of AI should be internationally prohibited regarding their severe impact on human rights, in particular: social scoring, remote biometric identification of persons in public spaces, emotion recognition technologies (with exceptions in the field of health).
- the user of an AI system assesses the impact of on fundamental rights and, if risks are identified, carry out an assessment considering the probability and severity of these risks. The impact assessment should include as a minimum:
  - a statement of the purpose(s) attached to the use of the envisaged AI system.
  - identification of the fundamental rights likely to be affected by the system.
  - a review of the envisaged AI system, based on an assessment of its necessity, its suitability and the proportionality to the infringements of fundamental rights in relation to the intended purpose.
  - the procedures used to monitor the application, and the mitigation measures about the risks incurred.

- setting up an oversight of the AI system, according to a procedure that might vary according to the risks of violations of human rights identified by the impact assessment, to maintain ongoing monitoring by user regarding the effects of the system, including its discriminatory effects.

## Other challenges in the areas of rule of law and human rights

The French NHRI informs that the action plan formulated at the end of the Estates General of Justice and presented on 5 January 2023, by the Minister of Justice provides ,among other things, the overhaul of the Code of Criminal Procedure which will be carried out during the year 2023 and which could give rise to certain questions in terms of human rights.

The CNCDH also mentions that the French government routinely initiates the accelerated legislative procedure, whereas the latter must be carried out exceptionally forcing parliamentarians to hold a debate within very tight deadlines.

### NHRI's recommendations to national and regional authorities

The CNCDH recommends to regional and national authorities:

- carrying out impact studies rigorous, including consideration of human rights violations.
- that the government carry out the necessary public consultations to ensure a democratic debate to safeguard the quality of legislation.
- that the public authorities recognise the rights of indigenous peoples by ratifying the ILO Indigenous and Tribal Peoples Convention (No. 169).

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<sup>1</sup> [Déclaration de M. Emmanuel Macron, président de la République, sur les défis et priorités de la présidence française du Conseil de l'Union européenne, à Strasbourg le 19 janvier 2022.](#)

<sup>2</sup> [Bilan de la présidence française du Conseil de l'Union européenne](#)

<sup>3</sup> [Lancement du cycle européen "Etat de droit"](#)

<sup>4</sup> [SCA Report March 2019](#)

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<sup>5</sup> [Loi n°2007-292 du 5 mars 2007 relative à la Commission nationale consultative des droits de l'homme](#)

<sup>6</sup> [Arrêté du 12 novembre 2022 relatif à la composition de la Commission nationale consultative des droits de l'homme](#)

<sup>7</sup> [Circulaire DM du 9 novembre 2022 relative au traitement judiciaire des infractions commises dans le cadre de contestations de projets d'aménagement du territoire.](#)

<sup>8</sup> [Law No 2021-1109 reinforcing the respect of the principles of the Republic \(Loi confortant le respect des principes de la République\), 24 August 2021, art. 12.](#)

<sup>9</sup> [Décret du 9 mars 2022 portant dissolution d'un groupement de fait](#)

<sup>10</sup> [Décret du 9 mars 2022 portant dissolution d'une association](#)

<sup>11</sup> [The decision of the Council of State concerning Collectif Palestine Vaincra and Comité Action Palestine](#)

<sup>12</sup> [Observations finales concernant le rapport de la France valant vingt-deuxième et vingt-troisième rapports périodiques, § 27 and 28.](#)

<sup>13</sup> [La DGSJ convoque trois journalistes de Radio France et « Disclose » pour des soupçons d'atteinte au secret de la défense nationale.](#)

<sup>14</sup> [Transport aérien : soupçons de trafic d'influence dans l'armée](#)

<sup>15</sup> [CNCDH, Prix des droits de l'homme de la République française « Liberté, égalité, fraternité », 2022 Edition, 10 December 2022.](#)

<sup>16</sup> [Contribution CNCDH 4th UPR cycle for France.](#)

<sup>17</sup> [L'initiative Marianne pour les défenseurs des droits de l'Homme.](#)

<sup>18</sup> [Declaration "Acting in solidarity with Ukraine against violations of international law resulting from Russian aggression".](#)

<sup>19</sup> [ECtHR Judgment Khan v. France](#)

<sup>20</sup> [ECtHR Judgment J.M.B. and others v. France](#)

<sup>21</sup> [ECtHR Judgment N.B. and others v. France](#)

<sup>22</sup> [AVS in Toulouse.](#)

<sup>23</sup> [AVS in Nîmes.](#)

<sup>24</sup> [AVS in Suresnes.](#)

<sup>25</sup> [The draft law on Automated video surveillance.](#)

<sup>26</sup> [Lettre du président, 14 février 2023.](#)

<sup>27</sup> [Opinion of the CNCDH on artificial intelligence and fundamental rights](#)

<sup>28</sup> [Consultation of the CNCDH on the proposal for an AI regulation of the EU Commission](#)

## Germany

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### German Institute for Human Rights

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities and impact on the NHRI's work

The German Institute for Human Rights informs that the Russian war of aggression against Ukraine and the resulting energy crisis have impacted the priorities of the governing coalition which was expected to bring forward more progressive legislation on issues of human rights and the rule of law in 2022 and has slowed the pace of legislation in all areas.

The GIHR states that progress was made regarding the Federal Anti-Discrimination Agency (FADA) where the Institute is a member of the advisory council. The position of director, which was vacant since 2018, has been filled after an amendment of the General Equal Treatment Act. Ferda Ataman was elected for a period of five as head of FADA and Independent Federal Anti-Discrimination Commissioner by the Bundestag on a proposal of the federal government. She was appointed by the Federal President. These new procedures were implemented to strengthen the independence of the agency<sup>1</sup>.

The NHRI also informs that regarding women victims of gender-based violence, in November 2022, Germany decided not to renew its reservations to the Istanbul Convention, which extends the full protections of the Convention to migrants from February 2023 onwards<sup>2</sup>. The Ministry of Justice published a draft bill revising sanctions law to include gender-specific motives of the perpetrator into sentencing considerations, therefore raising awareness about the issue in courts and clarifying that

such motives cannot be used as mitigating circumstances in cases of intimate partner violence<sup>3</sup>.

The Bundestag held a contentious debate on the need to combat extremism and the prevalence of crimes with right-wing motives in May of 2022<sup>4</sup>. The Committee on the Interior of the Bundestag held a special session in December of 2022<sup>5</sup> following the discovery and police raid of a large network of right-wing extremists (so-called “Reichsbürger”) who had plotted to storm the federal parliament, take over the government and end the democratic rule of law<sup>6</sup>. The MPs were informed on the progress of the investigations and the results of the raid so far by the presidents of the Federal Criminal Police Office (BKA) and the Federal Office for the Protection of the Constitution (BfV). The topic of the discussions were the structure and ideological orientation of the suspected organisation, the connections of suspected members to the Bundeswehr and the police, and the cooperation of the competent authorities<sup>7</sup>.

Furthermore, in 2022, the GIHR published an analysis<sup>8</sup> of the funding of “Desiderius Erasmus Foundation” which is affiliated with the right-wing party: “Alternative für Deutschland (AfD)”. The study concluded that fundamental human rights should be the basis of political education in Germany. The NHRI notes that a foundation that spreads right-wing and racist ideals is incompatible with the aim of public funding, and would, therefore, contradict the purposes of political education in Germany. In February 2023, the Federal Constitutional Court ruled that an exclusion of funding for political foundations is possible as long as it is based on a separate parliamentary act if that is adequate and necessary for the protection of equivalent constitutional goods. In particular, the protection of the free democratic basic order was considered by the court as an equivalent constitutional good.<sup>9</sup>



## **NHRI's Recommendations to national and European policy makers**

The GIHR recommends that the German federal and Länder parliaments schedule annual public dialogues with civil society actors and academia on the EU Commission's annual Rule of Law Report in their relevant parliamentary committees.

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors' recommendations on rule of law**

The GIHR informs that limited progress has been made regarding the five recommendations contained in the European Commission's 2022 EU Rule of Law Report on Germany. Most recommendations asked Germany to continue existing efforts and take forward plans already contained in the coalition agreement.

The German Institute for Human Rights notes that the coalition agreement had foreseen to continue the so-called "pact of the rule of law": an agreement between federal authorities and the Länder to provide additional resources to the justice system, through adding more personnel for the judiciary, to public prosecutors' offices, and to the police. According to the coalition agreement, the pact was supposed to be complemented by a "digital pact for the judicial system".<sup>10</sup> The Federal Ministry of Justice has suggested a "pact for a digital judicial system" to the Länder which would focus on digitising the judicial authorities and provide additional funding to this end.<sup>11</sup> The Länder criticized the proposal, and the funding as inadequate, and have requested that the new pact should include a steady funding for the staff recruited under the existing "pact of the rule of law".<sup>12</sup>

The coalition also planned to amend the lobby register law to include a "legislative footprint" which would allow better monitoring of attempts to influence or contribute to legislative proposals from third parties, such as associations or lobby groups<sup>13</sup>.

Previously announced for the first half of 2022, the project has not yet been implemented by the government.<sup>14</sup>

The NHRI informs that the plans to create a legal basis for right to information for journalists as regard to federal authorities was not taken forward<sup>15</sup>. Journalists continue to advocate for a Press Information Act.<sup>16</sup> A Federal Transparency Act which would replace the existing Freedom of Information Acts at the federal level was contained in the coalition agreement<sup>17</sup>. The Ministry of the Interior announced to present the cornerstones of the act in 2022 however the work is delayed.<sup>18</sup>

The GIHR stresses that the recommendation by the EU Commission Report to have stricter and more consistent rules on “revolving doors” and “cooling-off” periods for federal officials who leave the offices to work in the private sector are not under planning. Federal reform efforts focus on the recommendations of the lobby register law. Additionally, at the state level, the state of Baden-Wuerttemberg has adopted notification requirements and the possibility of “cooling-off” periods for ministers and parliamentary state secretaries to increase public trust to the current federal rules.<sup>19</sup>

### **State authorities follow-up to NHRI’s recommendations regarding rule of law**

#### Participation and consultation of civil society and GIHR

The GIHR informs that the Bundestag decided to continue the sub-committee on “civic engagement” for the current legislative session. The sub-committee’s task includes cultivating dialogue with civil society and accompanying legislative initiatives, including initiatives relevant to the rule of law, such as the promotion of democratic culture.<sup>20</sup>

Regarding individual legislative initiatives that may have a bearing on rule of law issues, such as in the context of the development of the Democracy Promotion Act, broad participation of civil society is sometimes solicited by the relevant ministries.<sup>21</sup>

However, the NHRI’s recommendation issued in ENNHRI’s 2022 Report on the state of the rule of law in Europe<sup>22</sup>, that the German federal and Länder parliaments schedule

annual public dialogues with civil society actors on the EU Commission's annual rule of law report, is not yet addressed by state authorities. Furthermore, contrary to the NHRI's recommendations in last year's ENNHRI report on rule of law the federal parliamentary rules of procedure were not amended to extend a standing invitation to the GIHR to participate in parliamentary hearings, comment on draft laws with human rights implications, and circulate statements as parliamentary documents. The GIHR notes that the Institute may only participate in hearings when invited by a political party.

#### Extension of tax privileges to human rights purposes

A promised modernization of the charity law was not taken forward in 2022. The promotion of climate protection has in principle been included as a privileged purpose in the Federal Fiscal Code since 2021 (Section 52 para. 2 no. 8 of the Federal Fiscal Code) as other purposes with a specific human rights dimension, such as support against gender-based discrimination (Section 52 para. 2 No. 10 of the Federal Fiscal Code).<sup>23</sup> Despite clarifications on the limits on political activity in the Federal Implementation Decree, uncertainty persists regarding CSOs that primarily rely on political means to further their activities even when they pursue human rights purposes that fall under recognized grounds for tax privileges.<sup>24</sup>

#### Setting up of complaint bodies and support services for victims of human rights violations by police, human rights education for police

Moreover, the GIHR informs that complaint bodies and support services were set up to support victims of human rights violations caused by the police, together with the implementation of human rights education offered to the police force.

According to the report on racism in Germany made by the Integration Commissioner, 7 out of 16 of the German Länder states have either established or are in the process of establishing police complaint bodies. However, their mandate and independence from the police and administrative bodies are different depending on state to state.

The NHRI informs that The Commissioner encouraged the establishment of independent bodies in all the 16 Länder. Additionally, the report made reference to the 2017's GHRI report, and Germany's human rights obligations to investigate complaints by independent bodies. It also reiterated the decision in the 2021 by the coalition agreement, to create a mandate for an independent police commissioner at the Bundestag to oversee the federal police force<sup>25</sup> The Bundestag budgeted for the independent police commissioner and support staff role in 2023.<sup>26</sup>

The NHRI also notes that the Integration Commissioner, Germany's first Federal Commissioner for Anti-Racism, has also announced the creation of a nationwide counselling centre for those experiencing racism.<sup>27</sup>

As part of a 10-point action plan against right-wing extremism, the Minister of the Interior stated that training on "intercultural competence" should be strengthened in the police training when dealing with victims of violence by right-wing supporters<sup>28</sup>.

The NHRI highlights that the national strategy against antisemitism recommends the institutionalization of prevention initiatives, including for the police and the judicial authorities<sup>29</sup>. Envisioning the creation of educational standards and networks between different actors, the national strategy against antisemitism refers to the GIHR's project on racism in law enforcement that has the goal of discuss the issue in the daily police practice and to judicial authorities aiming to improve law enforcement and the protection of victims by implementing guidelines, job aids and recommendations for continuous improvement<sup>30</sup>. The Commissioner against Antiziganism was appointed in March of 2022<sup>31</sup> and will continue to develop and implement the 2022 national strategy against antiziganism, which refers the national counselling centre against racism as a source to identify specific needs for action regarding police authorities.<sup>32</sup>

## NHRI's follow-up actions supporting implementation of regional actors' recommendations

In 2022, the GIHR participated in the rule of law dialogue hosted by the European Commission in Germany.

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

In March 2022, the SCA decided to defer further consideration of the German NHRI's reaccreditation application for 18 months<sup>33</sup>. The German NHRI received its A-status reaccreditation in March 2015<sup>34</sup>.

Among its recommendations, the SCA recommended the NHRI to advocate for appropriate amendments to its enabling law to strengthen its protection mandate, including its capacity to monitor and have access to places of deprivation of liberty, to access classified documents, and to visit certain facilities. At the same time, the SCA acknowledged that the German NHRI has made use of its current mandate to protect human rights in practice.

The SCA also pointed to its recommendations from the previous re-accreditation round that members of the Board of Trustees are selected and appointed through a number of appointing bodies, which may result in different entities using different selection processes. Therefore, the SCA recommended a consistent, transparent, merit-based and broadly consultative selection process for all relevant entities. The SCA also repeated that government representatives and members of parliament should not be voting members of the decision-making body of the NHRI. Finally, the SCA highlighted the need for the NHRI to advocate for the strengthening of the NHRI's core funding.

The German NHRI will provide clarification regarding these recommendations and the Institute's structure and German law to the SCA in the context of its reaccreditation in October 2023.

## Relevant developments

In 2022, in line with the needs identified by the GIHR, the Federal Parliament increased the budget of the GIHR by over 2 million euro, including by allowing the GIHR to fill 22 additional permanent staff positions, by allocating 600.000 € in research funds, and by making the Monitoring Mechanism for the UN Convention on the Rights of the Child (the CRC Monitoring Body) permanent. This is the first substantial increase of its core funding since the GIHR's founding in 2001.

In November 2022, the National Rapporteur Mechanism on gender-based violence and the National Rapporteur Mechanism on Trafficking in Human Beings were set up within the GIHR. Both Mechanisms will use data and evidence-based monitoring to make practical recommendations for action and help to implement measures against gender-based violence and human trafficking more effectively<sup>35</sup>. Both National Reporting Mechanisms are project-funded for a period of four years only.

## Enabling and safe space

The GIHR informs that the environment in which the Institute operates is supportive and it considers itself able to carry out its work independently and effectively.

## Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The NHRI informs that no recent developments have taken place in the environment of the institution regarding its effectiveness and mandate's fulfilment.

It is worth noting, however, that the GIHR addressed the issue of adequate funding with the new coalition government after the 2021 general elections. These efforts were successful as the Institute's institutional financial and human resources were increased in the last two budgetary cycles.

## **NHRI's recommendations to national and regional authorities**

The GIHR recommends to the Federal Parliament that in its next revision of procedure rules it shall include a provision to invite the NHRI as ex officio to parliamentary hearings (by a standing invitation), also requesting to submit a written statement on all draft laws with human rights implications, and that these statements would be circulated as official parliamentary documents.

On the level of federal states, the GIHR recommends that states provide a legal basis, as well as permanent and sufficient funding to the Institute as a monitoring body under Article 33 the Convention on the Rights of Persons with Disabilities (CRPD) The NHRI also recommends that the Bundestag introduces a legal basis for the two new Rapporteur Mechanisms on gender-based violence and on trafficking in human beings, additionally providing funding (instead of a project-based funding by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth). The GIHR reinforces that these measures would strengthen the independence of the monitoring and reporting mechanisms. It would also facilitate their task of data collection from state actors.

## **Human rights defenders and civil society space**

### **Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities**

#### Restrictive criteria for civil society organisations to enjoy tax privileges

The IGHR reiterates its concerns raised in the last year's ENNHRI report regarding the ongoing unresolved policy issue of tax privileges for non-profit associations benefiting the public, particularly for those CSOs relying primarily on political means. The German NHRI had flagged that a judgment by the Federal Tax Court of January 2019 had narrowed civil society space through a restrictive interpretation of the statutory criteria for civil society organisations (CSOs) to benefit from tax privileges (as non-profit associations benefitting to the public). Consequently, the ability of a number of organisations to function and proceed with their work in order to actively participate in

democratic discourse and social welfare has been affected or at least jeopardised. The government still has not addressed this issue by modernizing German charity law as foreseen in the coalition agreement.<sup>36</sup> The Democracy Promotion Act which is set to enter into force in 2023 was not used to address this issue and instead requires privileged tax status as a condition for obtaining public support.<sup>37</sup> The NHRI therefore continues to recommend changes in the legal basis for tax privileges to allow civil society organisations to carry out their activities effectively to promote and protect of human rights, support climate protection, democracy and the rule of law.

Regarding the scope of permissible political activity by civil society organisations under the current legal situation, the NHRI stresses that important clarifications were made to the Implementation of the Decree on the Federal Fiscal Code. The decree is binding for tax authorities but not for courts.<sup>38</sup> However, the amendments have relieved some of the uncertainty, for the substantial number of non-profit organizations that want to take an occasional stand on a particular issue which may fall outside their tax privilege.

Furthermore, the GIHR T notes that in some cases, losing the privilege status could be considered disproportional. For example, a sports club that occasionally wants to take a stand or comment on a current important issue such as racism or climate protection, the Implementation Decree explicitly states that privileged entities are allowed to influence public opinion when this activity is covered by the relevant privileged purpose and remains neutral regarding political parties.

The NHRI informs that a legal reform is still necessary even though a CSO alliance has welcomed the revised provisions of the Decree and its additional safety to non-profit works and taxation. However, this same alliance stresses its concerns about the new terms, limitations, and uncertainties, such as: the "political purpose" that is not defined and the neutrality requirement towards political parties<sup>39</sup>. The GIHR informs that during a conference in September 2022, the Minister for Family Affairs, Senior Citizens, Women and Youth (who doubles as the "Civic Engagement" Minister) announced she was



confident that the Finance Ministry would present a reform bill in 2023, and that there was broad support for it in the parliament.<sup>40</sup>

### Climate activists under threat

Moreover in 2022, the GIHR published an analysis of preventive detention of climate activists in Germany<sup>41</sup>, who had engaged in disruptive forms of protest, such as the blocking of roads and airports.<sup>42</sup>

The maximum length of preventive detention varies under the police laws of the Länder, with Bavaria's Police Act permitting up to 30 days of detention and a one-time prolongation of an additional month for a total of two months. In 33 cases, the court had ordered preventive detention for members of an activist groups for up to 30 days. The conference of Ministers of the Interior debated the approach and maximum length of preventive detention regarding climate protests in which the Federal Minister of the Interior suggested to find a common approach, however, some of the Ministers of the Länder were in doubt whether the instrument should be applied or not.<sup>43</sup> The GIHR notes that in the Bavarian example the maximum duration had been extended in 2017 with the view to preventing acts of islamist terror. In its analysis, the GIHR stresses that courts have diverged if the protests formats chosen by the climate activists violate criminal laws, particularly considering the UN Human Rights Committee authoritative reading of Art. 21 ICCPR on the right to peaceful assembly that disruption of traffic or pedestrians do not constitute "violence". The Detention of protestants could be justified under Art. 5 I lit. c ECHR to prevent specific offences, but only for a certain amount of hours, not days, based on a concrete and substantiated prognosis by police authorities. The NHRI urged state authorities to exercise great caution when considering preventative detention.

The GIHR informs that the protests also resulted in the definition of activists as "extremists" and "climate terrorists". "Klimaterroristen" was appointed as the "Unwort" of the year 2022. The term climate terrorist has been used by politicians, especially from

the AfD and the CDU/CSU, where calls for a tougher legal crackdown were also growing louder.. The NHRI also notes that calls for harsher criminal sanctions were raised<sup>44</sup>.

In its annual report, the GIHR highlighted Germany's human rights obligation to protect people from the current and future effects of climate change by developing and implementing policy measures.<sup>45</sup> The negative campaigns against activists seem both dangerous and unproductive. This opinion was shared by several major environmental CSOs who called for discussion about underlying climate concerns and effective forms of protest, instead of direct criminalisation as civil disobedience.<sup>46</sup>

### **Access to and involvement of civil society actors in law and policy making**

Regarding new legislation, the GIHR notes that the new federal government decided to improve the quality of legislation and legislative process. The agreement states that it would be achieved by better involving practitioners and affected groups from society and by considering the experiences and requirements of the Länder and municipalities in the implementation of legislation.<sup>47</sup> Ministries, on both the federal and Länder level regularly request written comments from CSOs and the Institute on draft of legislative proposals. However, the period for submitting responses varies, and short deadlines potentially undermine the effectiveness of stakeholder consultations, particularly concerning legislations that may affect vulnerable populations and areas protected by basic and human rights.<sup>48</sup>

### **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

The GIHR does not systematically monitor SLAPPs or similar abuse of laws or process laws against civil society organisations, human rights defenders, and journalists. While both companies and individuals have brought or threatened civil action with the possible goal to intimidate civil society actors in the past (e.g. regarding climate activism) the phenomenon has received more attention as a systemic issue in Germany with the release of the Commission Recommendation (EU) 2022/758 of 27 April 2022.<sup>49</sup>

As regards laws or measures that could be introduced to safeguard against manifestly unfounded and abusive lawsuits, namely SLAPPs, so far the Federal Ministry of Justice has asked certain stakeholders for input on the implementation of the EU Commission Recommendation on SLAPPs<sup>50</sup>, but no new legislation has been introduced so far.

### **Measures undertaken by State authorities to protect and promote civic space**

The GIHR informs that the new governing coalition government had pledged to tackle the issue of sustainable and long-term funding for civil society from federal sources in 2022 by introducing a Democracy Promotion Act. The goal of the Act is to better enable civil society to respond to the challenges as for example the rise of right-wing extremism, racism, and antisemitism by creating a legal mandate for the federal government in the area of democracy promotion, diversity shaping and extremism prevention to ensure appropriate funding and to establish eligibility requirements for demand-driven, reliable and longer-term support. To this end, the Ministry of the Interior and Home Affairs and the Ministry of Family Affairs, Senior Citizens, Women and Youth jointly presented a discussion paper in February 2022 and started a broad participation process to co-develop the act.<sup>51</sup> On 4 May 2022, the participation process resulted in a joint conference, after 170 umbrella organisations, specialist organisations<sup>52</sup> and academics had submitted their comments on the draft act.

Despite a broad consensus on the need to strengthen democratic initiatives, civil society actors called for more in-depth participation and criticised the continuation of fragmentation of their work due to projectized funding such as the “Demokratie leben!” programme.<sup>53</sup> The Draft Democracy Promotion Act<sup>54</sup> was approved by the Federal Cabinet on 14 December 2022 and is set to enter into force in 2023.

To what extent the goal of long-term funding can be achieved, will depend on the funding guidelines long-term which will be developed in 2023.<sup>55</sup> As described in the previous chapter, the issue arising out of the 2019 judgment by the Federal Fiscal Court which leads to narrowing civil society space by restricting eligibility for tax privileges

have not been resolved, and a legal reform is outstanding. This has led some CSOs to bring or support legal action against the tax authorities in order to have their non-profit status returned. However, few CSOs have the financial resources to engage in extended legal action. CSOs are also concerned that the goal of the Democracy Promotion Act cannot be met unless the planned reform of charity law is implemented at the same time.<sup>56</sup>

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The NHRI continue to support the human rights defender's protection programme of the Ministry of Foreign Affairs (Elisabeth-Selbert-Initiative). It also supports members of the former AIHRC (Afghan Human Rights Commission, the National Human Rights Institution of Afghanistan) and other human rights defenders. One year after the take-over of the Taliban many human rights defenders are still in Afghanistan and under a continuous threat to be exposed and persecuted by the Taliban regime. In line with its previous activities the Institute is participating in the newly established Federal Admission Programme for Afghanistan, which was established by the German Government in October 2022.

The programme is intended to assist Afghans at risk to leave Afghanistan and to resettle in Germany. Eligible are Afghans that are individually persecuted due to their activities or belonging to a particular vulnerable group. The GIHR is facilitating the access for former members and staff of the Afghanistan Independent Human Rights Commission (AIHRC) to the admission programme and advocates for the rapid admission of human rights defenders to Germany. To facilitate the advocacy in other countries GIHR translated the analysis on the responsibility of states involved in the international mission in Afghanistan to protect particularly vulnerable Afghans.<sup>57</sup>

## NHRI's recommendations to national and regional authorities

The GIHR recommends to the federal government to make sure that the new Admission programme works effectively and thoroughly to allow human rights defenders, local staff under threat and other vulnerable persons to leave Afghanistan.

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

The GIHR informs that the implementation of the European Court of Human Rights (ECtHR) can be considered effective. The Federal Ministry of Justice publishes an annual report on the jurisprudence of the ECtHR's and the implementation of the Court's judgments in proceedings against Germany. The report for 2022 has not yet been published. The government relays the Court's decisions to the relevant courts and administrative bodies involved in the underlying case, as well as to affected federal ministries and federal courts, and the Ministers of Justice of the Länder. The Federal Ministry of Justice also publishes translations of ECtHR judgments on its website and provides anonymized unofficial translations to specialized publications.<sup>58</sup>

In 2022, the ECtHR established one violation of the ECHR, found no violation in three cases, ruled seven cases inadmissible, and struck two more cases from the list. The Court also communicated nine cases to the Government.<sup>59</sup>

Unlike ECtHR judgments, there does not appear to be systematic tracking or reporting of CJEU judgements awaiting implementation at the national or European level. With preliminary rulings directly binding on national courts, an analysis of the level of implementation of judgments would therefore require a case-by-case analysis.<sup>60</sup>

What is worth noting, the application of the "ultra vires" doctrine by the Federal Constitutional Court resulted in the EU Commission starting infringement proceedings against Germany in 2021 regarding the ruling on the Public Sector Purchase Programme (PSPP) as described in the previous report. Such instances of open non-compliance with

CJEU judgments remain rare in Germany but have the potential to contribute to a fragmentation of European law and the undermining the rule of law in other Member States.

### Leading European Courts' judgments awaiting implementation

The GIHR informs that the European Implementation Network<sup>61</sup> has compiled a list of leading ECtHR judgments which are considered pending.<sup>62</sup> According to the Department for the Execution of Judgments of the European Court of Human Rights, 13 leading ECtHR judgments in proceedings against Germany remain pending as of December 2022.<sup>63</sup> As mentioned above, the implementation of CJEU judgments can only be assessed on a case-by-case basis.

The German NHRI provides examples of challenges regarding the process of implementation of CJEU judgments - on both legislative and administrative levels:

- On 22 September 2022, the CJEU decided that EU law precludes Germany from engaging in general and indiscriminate retention of traffic and location data, except in the case of a serious threat to national security.<sup>64</sup> In response, the adoption to a “quick freeze” model has been proposed by the Minister of Justice, where only data that is already being collected by service providers would be retained in the aftermath of serious crimes<sup>65</sup> and a draft law was proposed.<sup>66</sup> However, the Minister of the Interior has announced the intention to use the narrow exceptions for national security granted by the CJEU to continue collecting IP addresses to fight serious crime.<sup>67</sup> It is therefore conceivable that German courts would again submit such legislation to the CJEU for review. On 1 August 2022 the CJEU decided that German legislation on the right of family reunification violates the EU Family Reunion directive (2003/86/EC) when children turn 18 years old during the asylum application or visa procedure, and either the children are prevented from joining their parents in Germany or parents do not receive visas for family reunion to join children who were

unaccompanied minor refugees<sup>68</sup>. German authorities had claimed that a similar CJEU judgment concerning the Netherlands did not apply in Germany and had appealed the lower court decision to the Federal Administrative Court.

As regards the reasons of non-implementation of European court's pending judgments, the German NHRI informs that, as far as can be ascertained, all but one ECtHR judgment not yet implemented were considered pending as the action plan/report submitted by Germany is still under review<sup>69</sup>. With regard to one judgment from 2020 (in the case Evers v. Germany – application no. 17895/14) the action plan/report was still outstanding<sup>70</sup>.

### **NHRI's actions to support the implementation of European Courts' judgments**

The German Institute monitors the process of implementation of the European Courts' judgments related to the field of work and priorities of the NHRI.

## **Artificial Intelligence**

### **Impact of AI on human rights, democracy and rule of law**

The NHRI informs that in 2022 the Government adopted its Digital Strategy which sees artificial intelligence ("AI") as a priority issue. The strategy emphasises that AI must be seen as human-centric technology and that processes must be established helping to understand and manage the risks for individuals and society. According to the strategy the government will support an EU AI Act which is innovation-friendly while ensuring the protection of fundamental rights and a high level of security.<sup>71</sup>

AI is also one of three "key topics" of the Federal Data Protection Commissioner's annual report 2021. The Commissioner highlights the need for human-centric and rights-oriented AI and it is calling upon a legal regulation of the use of AI in employment contexts and for a very careful consideration of the use of AI for biometric analyses and its implications for the freedoms of assembly, expression and association.<sup>72</sup> The EU AI Act was the topic of several debates in the Digital Committee of the Federal

Parliament. Experts from NGOs called a broader approach which would not only focus on the developers and suppliers of AI but also on its users. They warned against the risks of facial recognition and predictive policing software, as well as concerns that freedom of assembly could be negatively affected by use of facial recognition software.<sup>73</sup>

The use of AI systems seems most concerning when it is used against vulnerable populations. In January 2022, the Federal Government answered a request by the Left Party in parliament and provided an overview on 79 AI applications which are currently in use at federal ministries and federal authorities.<sup>74</sup> In an answer to a follow-up request on AI applications deployed by the Federal Office for Migration and Refugees the Federal Government did not comment on whether such applications would be classified as high-risk applications under the EU AI Act, but simply replied that AI systems are being deployed in line with applicable law – and systems would be adapted in case of legal changes. The government has declared that it relies on the understanding of AI contained in the Digital Strategy.<sup>75</sup>

The Federal Office for Migration and Refugees uses various means of AI in asylum procedures since 2017.<sup>76</sup> The asylum authorities read out mobile data devices when the asylum seeker cannot present a valid passport or other proof of identity. By using machine learning the extracted data is processed into a results report which is stored and can be used in the asylum procedure in order to get information about the country of origin and the identity of the asylum seeker.<sup>77</sup> However, in 2021 the Berlin Administrative Court decided in a case of an Afghan woman that reading out mobile phones can be unlawful when less incisive means to determine the identity are available, such as presenting a marriage or birth certificate.<sup>78</sup>

Moreover, the asylum authorities also use a language software to recognize the asylum seekers dialect to give indications of his or her country of origin. The computer program compares recorded speech samples of the asylum seeker with an underlying language



model. The dialect recognition software is used primarily for Arabic-speaking asylum seekers but was recently extended to the Dari, Persian and Pashto languages. A Kurdish language model is planned.<sup>79</sup>

## **Other challenges in the areas of rule of law and human rights**

### Media freedom, pluralism and safety of journalists

The NHRI informs that it does not carry out systematic monitoring in the area of media freedom, pluralism and safety of journalists. As mentioned in the ENNHRI's 2022 report on the state of the rule of law in Europe, journalists' organisations continue to report harassment and violent attacks by demonstrators, strengthening a trend seen about Corona protection measures, that were also extended to the protests against inflation and measures to combat the energy crisis in 2022.<sup>80</sup>

The NHRI also notes that trust in Germany's public broadcasting system was affected by a series of revelations about excessive compensation for executive management.<sup>81</sup> Cases of corruption and disproportionate bonus systems for senior management occurred at RBB (Rundfunk Berlin Brandenburg, the broadcast service of the federal states Berlin and Brandenburg) in August 2022. The head of the service Patricia Schlesinger and other high ranking staff members have resigned, or have been dismissed<sup>82</sup>; the attorney general office has started investigations focusing on the offences of "breach of trust" and acceptance of benefits<sup>83</sup>.

This resulted in a robust public discussion about the needs for reform, including on working conditions and the purpose of public broadcasting in a modern media . A proposal to strengthen compliance, transparency, and governance by the Broadcasting Commission of the Länder was presented in December 2022.<sup>84</sup> The revelations also led to calls to reduce funding and influence the direction of programming, which were criticized by journalists' organizations as risking constitutionally protected journalistic independence.<sup>85</sup>

### Functioning of the justice system

The NHRI informs that the overall situation remains largely unchanged compared to last year's report. Long-term structural challenges, particularly regarding recruitment in the upcoming generational change remain.

The NHRI notes that according to the coalition agreement, the Federal Government plans to create a "child-sensitive judiciary".<sup>86</sup> However, there is no clear overall responsibility at respective ministries for the implementation of this goal in practice and 2022 there were not any relevant reforms or any new law for children in criminal proceedings. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Government's Independent Commissioner for Issues of Sexual Child Abuse published the non-binding guidelines for the application of child-appropriate criteria in family court proceedings<sup>87</sup>) developed by the National Council complementing the ones for criminal proceedings. The Institute has called upon federal level and the Länder to create the necessary conditions in the judicial system beyond family matters so that children experience support in legal proceedings.<sup>88</sup>

Being able to exercise one's rights, including access to social and medical support, depends on a birth certificate. In 2022, the Institute has launched a website to promote the underlying child and human rights requirements and inform parents who cannot prove their identity how to register their child's birth.<sup>89</sup>

### Anti-corruption

The NHRI informs that it does not carry out systematic monitoring in this area. In connection with public sector procurement of masks to fight COVID-19, the Federal Court of Justice confirmed that a gap existed in the German Criminal Code regarding the bribery of office holders when parliamentarians are acting outside of their office, even when they rely on their status or use connections made as members of parliament.

<sup>90</sup> The 2021 coalition agreement already planned to increase the effectiveness of the relevant provision in the German Criminal Code, and members of the legal committee

in the Bundestag have announced that they are working strengthening the anti-corruption provision together with the Ministry of Justice as a result of the judgment.<sup>91</sup>

The NHRI informs that with a year's delay, Germany has implemented the EU Whistleblowing Directive (2019/1937) which was adopted by the legal committee in December of 2022<sup>92</sup>, and which is expected to enter into force in 2023. The Whistleblower Protection Act will not only protect whistle-blowers who report corruption, but also anti-constitutional activities. Civil society has generally welcomed the implementation but has criticized exemptions for secret services and the prevention of whistleblowing through the option of classifying documents.

### Checks and balances

In line with the Advisory Council's recommendation the German Bundestag has amended the General Equal Treatment Act to strengthen the independence of the federal anti-discrimination agency. Among other things, the head of the anti-discrimination agency will now be elected by the Bundestag for a five-year term of office and will be given the status of an independent commissioner for anti-discrimination. The law also strengthens the participation rights of the anti-discrimination agency in legislative processes at federal level.<sup>93</sup>

The German NHRI also reports that the Federal Constitutional Court decided that provisions on the Bavarian Constitutional Protection Act which allow the Bavarian domestic intelligence agency to bug private apartments, to remotely search computers, to deploy IMSI catchers to locate persons' mobile phones by simulating cell phone towers, to request traffic data from telecommunication corporations, to operate covert agents, to shadow target persons and to transfer personal data to third parties violate fundamental rights, namely the right to informational self-determination, the right to the confidentiality and integrity of IT systems, the right to confidential communication or the right to the integrity of private homes.<sup>94</sup> The judgment is seen as a landmark decision in the field of German intelligence law with implications for most of the German Länder and the federal law on domestic intelligence. Legislative consequences

were discussed by a working group of the Permanent Conference of the German Interior Ministers.<sup>95</sup> . The Bavarian act must be revised until 31 July 2023.<sup>96</sup>

In another decision, the Federal Constitutional Court ruled that data transfer provisions of the Federal Act on the Protection of the Constitution, which governs the powers of the federal internal intelligence agency and its cooperation with the intelligence agencies of the Länder violate the fundamental right of informational self-determination and the principle of separating information held by the police on one hand and the intelligence agencies on the other hand. The Court held that provisions stipulating that personal data obtained by the intelligence agencies must be transferred to the police and prosecution authorities if necessary for the prevention or persecution of so-called crimes against the state are too vague, disproportionate and lack log-filing regulations that would allow effective oversight. The federal legislator must revise these provisions until 31 December 2023.<sup>97</sup>

### **NHRI's recommendations to national and regional authorities**

Even though Russia's armed attack against Ukraine has impacted the progress on ensuring rule of law compliance, the German NHRI notes that it is now clear that in the light of an unlawful aggression and an obvious breach of international law, the European Union should prioritise upholding and strengthening the rule of law as a fundamental principle.

National and regional authorities must therefore not get side-tracked and neglect their activities to strengthen the rule of law protection framework, including the enabling framework for civil society, while addressing other pressing needs.

The NHRI therefore reiterates the previous recommendations to national and regional authorities to:

- take incisive sanctions to states that systematically undermine the independence of the judiciary, when systematically ignoring judgments of the Court of Justice of the EU and the European Court of Human Rights in this regard.

- ensure systematic election monitoring, including amendments of electoral laws to the disadvantage of opposition parties and unfair conditions for opposition parties during the electoral campaign; non-recognition of election results in cases of widespread and systematic violations.
- schedule annual public dialogues with civil society actors/academia on the EU Commission's annual rule of law report in their relevant parliamentary committees.

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<sup>2</sup> [DIMR, "Istanbul-Konvention gilt künftig vorbehaltlos", 23 November 2022](#)

<sup>3</sup> [BMJ, Entwurf eines Gesetzes zur Überarbeitung des Sanktionenrechts – Ersatzfreiheitsstrafe, Strafzumessung, Auflagen und Weisungen sowie Unterbringung in einer Entziehungsanstalt, 21 December 2022](#)

<sup>4</sup> [Bundestag, "Kontroverse Debatte über die Extremismusbekämpfung", 13 May 2022](#)

<sup>5</sup> See [Bundestag, "Sondersitzung des Innenausschusses zu „Reichsbürger“-Razzia", 13 May 2022](#)

<sup>6</sup> [ZDF, "Reichsbürger planten Staatsstreich - Was passiert bei ZDFheute live?", 7 December 2022](#)

<sup>7</sup> [Information on the special session by 'heute im bundestag' \(today in parliament\).](#)

<sup>8</sup> [Report at: DIMR, "Staatliche Gelder für rassistische und rechtsextreme Bildungsarbeit?", May 2022, p. 21](#)

<sup>9</sup> [Federal Constitutional Court judgment on exclusion of funding for political foundations](#)

<sup>10</sup> [SPD, Bündnis90/Grüne/FDP, Mehr Fortschritt wagen 2021-2025, p. 106](#)

<sup>11</sup> [BMJ, "Pakt für den digitalen Rechtsstaat", 27 September 2023](#)

<sup>12</sup> [Konferenz der Justizministerinnen & Minister, Gemeinsame Erklärung: Verstetigung des Paktes für den Rechtsstaat und neuer Digitalpakt für die Justiz, 10 November 2022](#)

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<sup>16</sup> [DJV, "Geheimniskrämerei beenden", 13 July 2022.](#)

<sup>17</sup> [The coalition agreement, p. 11.](#)

<sup>18</sup> [Dachwitz, I., netzpolitik.org, Bundesregierung bummelt bei der Transparenz, 22 December 2022](#)

<sup>19</sup> [Zeit Online/DPA, Südwesten führt Karenzzeit für Minister ein, 23 June 2022.](#)

<sup>20</sup> [Bundestag, "Konstituierung des Unterausschusses „Bürgerschaftliches Engagement“ in Anwesenheit von Bundesfamilienministerin Spiegel", 4 April 2022](#)

<sup>21</sup> [BMFSFJ, "Ministerien legen Diskussionspapier zu Demokratiefördergesetz vor", 25 February 2022](#)

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- <sup>23</sup> [Allianz Rechtssicherheit für politische Willensbildung, "Jahressteuergesetz 2020 – das ändert sich", 16 December 2020](#)
- <sup>24</sup> [BMF, "Änderung des Anwendungserlasses zur Abgabenordnung \(AEAO\)", 11 January 2022](#)
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- <sup>82</sup> [Dismissal of the media senior staff following the extensive compensation in public media broadcaster](#)
- <sup>83</sup> [Cases of corruption and excessive compensation for executive management in public media broadcaster](#)
- <sup>84</sup> [Rundfunkkommission der Länder, "Diskussionsentwurf für staatsvertragliche Regelungen zu Compliance und Transparenz des öffentlichrechtlichen Rundfunks", December 2022](#)
- <sup>85</sup> [See e.g. DJV, "Schluß mit politischem Druck", 21 September 2022](#)
- <sup>86</sup> [SPD, Bündnis90/Grüne/FDP, Mehr Fortschritt wagen 2021-2025, p. 108](#)
- <sup>87</sup> [DIMR, " Bund und Länder sollen kindgerechte Justiz stärken", 18 November 2022](#)
- <sup>88</sup> [BMFSFJ/UBSKM, Praxisleitfaden zur Anwendung kindgerechter Kriterien für das familiengerichtliche Verfahren, November 2022](#)
- <sup>89</sup> [DIMR, "Jedes Kind hat das Recht auf eine Geburtsurkunde", 23 März 2022](#)
- <sup>90</sup> [Bundesgerichtshof, Az. StB 7-9/22, Decision of 5 July 2022](#)
- <sup>91</sup> [Suliak, L., Legal Tribune Online, "Ampel will Straftatbestand der Bestechlichkeit verschärfen, 13 July 2022](#)



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- <sup>92</sup> [Bundestag, "Hinweisgeberschutzgesetz passiert Rechtsausschuss", 14 December 2022](#)
- <sup>93</sup> [Antidiskriminierungsstelle des Bundes, Bundestag beschließt AGG-Änderungen, 29 April 2022](#)
- <sup>94</sup> [Bundesverfassungsgericht, 1 BvR 1619/17, 26 April 2022](#)
- <sup>95</sup> [Wissenschaftliche Dienste des Deutschen Bundestages \(2022\), Auswirkungen des Urteils des Bundesverfassungsgerichts vom 26. April 2022 zum Bayerischen Verfassungsschutzgesetz - Allgemeine Vorgaben und deren Anwendung auf das Bundesrecht \(WD 3 - 3000 - 069\), 10 June 2022](#)
- <sup>96</sup> [BMI, Abschlussbericht der Bund-Länder-AG zur Auswertung des Urteils des Bundesverfassungsgerichts v. 26.4.2022 - 1 BvR 1619/17 – \(BayVSG\), 21, 21 June 2022](#)
- <sup>97</sup> [Bundesverfassungsgericht, 1 BvR 2354/13, 28 September 2022](#)

## Greece

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### Greek National Commission for Human Rights

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

The Greek National Commission for Human Rights (GNCHR) informs that it is not aware of any follow-up action or initiative from state authorities which could be directly linked to the ENNHRI 2022 Rule of Law Report<sup>1</sup> or the 2022 European Commission's Rule of Law Report on Greece (2022 EC RoL Report) published in July 2022. Unlike the 2020 EC RoL Report which was debated in the Parliament with the participation of the EU Commissioner for Justice and the Greek Minister for Justice<sup>2</sup>, the 2022 EC RoL Report did not receive such attention or dissemination.

It is worth highlighting, however, that in November 2022, a Greek translation of the "Rule of law Checklist" of the Venice Commission was published by the Hellenic Parliament Foundation for Parliamentarism and Democracy.<sup>3</sup>

##### Impact on the Institution's work

In 2022, the GNCHR disseminated in its social media and mailing lists both the 2022 ENNHRI RoL Report and the 2022 EC RoL Report. The GNCHR notes that the annual reporting on rule of law situation enables the GNCHR to systematize its relevant work and mainstream rule of law considerations into different human rights topics. For example, in 2022, rule of law aspects were further explored regarding human rights defenders in Greece, the implementation of the European Court of Human Rights (ECtHR) judgments, the involvement of the Greek NHRI in law-making process, the review of the Greek penitentiary system and institutional racism against refugees and

migrants. Moreover, in 2023, the GNCHR plans to issue a report on the institutional framework for the oversight of intelligence services.

The GNCHR welcomes the explicit reference in the EC 2022 Rule of Law Report to the A-Status Greek National Commission as an example of a national independent authority aiming to protect and safeguard human rights in Greece<sup>4</sup> and to the findings of the GNCHR, submitted through our regional network ENNHRI during the 2022 reporting cycle.<sup>5</sup> The NHRI encourage the European Commission to consult further its thematic reports submitted to international bodies which are publicly available in its website and provide a comprehensive analysis on the status of human rights of Greek residents.<sup>6</sup>

### **Follow-up initiatives by the Institution**

The GNCHR informs that no follow-up initiatives were taken to the 2022 ENNHRI Rule of Report. However, the GNCHR has considered the recommendations as well as the European Commission's recommendations in its consulting, monitoring and promotional activities with respect to the shrinking space of the civil society, the accountability gaps for human rights violations at borders and the institutional framework for the oversight of intelligence services. The President, Members of the GNCHR and of the Scientific Staff have raised GNCHR's findings and recommendations from the 2022 ENNHRI RoL Report in newspaper articles<sup>7</sup>, radio interviews<sup>8</sup> and meetings with regional stakeholders.<sup>9</sup>

### **NHRI's Recommendations to national and European policy makers**

The GNCHR, states that the rule of law and human rights are interlinked. The protection and promotion of human rights are ensured only by respecting the rule of law. It is a universal principle recognized by all member states of the UN. According to the UN, the rule of law and human rights are two sides of the same principle, which is the freedom to live in dignity.<sup>10</sup> In the European context, the rule of law is one of the core values of the European Union, and one of the three pillars of the Council of Europe. In our

continent, rule of law questions maintains a main role in upholding healthy, thriving democracies and translating human rights from theory to practice.<sup>11</sup>

The GNCHR notes that in Greece the focus is more on constitutional aspects rather European ones. The public as well as relevant stakeholders are not familiar with the EU concept of rule of law as it evolved over time and it is reflected in the choice of the four pillars for country monitoring.

The GNHRC highlights that the current rule of law discussions in public discourse provide an opportunity for launching of a coherent, open and inclusive dialogue on rule of law questions among parliamentarians, members of the Government, justice, independent authorities with the participation of the NHRI and civil society. The 2023 European Commission's RoL Report on Greece should serve as a background document along with other relevant reports, such as the ENNHRI 2023 RoL report, civil society's contributions to 2023 monitoring cycle and annual reports of relevant authorities (for instance, Ministry of Justice, National Transparency Authority, Hellenic Authority for Communication Security and Privacy). The GNHRC agrees that rule of law questions cover a diverse range of political, social and economic activities. Therefore, the Greek NHRI concludes that is necessary to establish a common basis for action among all key stakeholders. For example, this inter-institutional dialogue could be a session at the Parliament, an open forum for rule of law or a stakeholders' hearing under the auspices of the GNCHR which would serve as best practices that might lead to an institutionalisation of this annual public discussions among relevant stakeholders.

The GNCHR is involved in the preparation and implementation phase of the annual rule of law reports to the European Commission. By its statute, the NHRI has the competence to deliver an opinion on human rights reports that the Greek Government submits to international organisations, including the European Commission. In addition, the Greek NHRI can effectively contribute to formulating well evidenced proposals for the strengthening of the rule of law in Greece, within the framework of EU law, principles and recommendations, given:

- its mandate (acting as a bridge between international law and national practice),
- its pluralistic composition (independent authorities, trade unions, civil society and academia appoint members to the Commission),
- its specialized expertise on a wide range of human rights, and
- its extensive network (not only with international and regional human rights bodies but also with counterpart institutions from other EU member states under the ENNHRI umbrella)

The GNCHR recommends to the Greek state authorities to meaningfully involve the NHRI in the preparation of the state's rule of law report and attach particular importance to the NHRI's recommendations given its mandate and expertise as analyzed above.

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors' recommendations on rule of law**

The GNCHR welcomes the publication of the 2022 European Commission's Rule of Law Report which contains for the first-time specific recommendations addressed to each Member State. It aims to encourage Member States to promote current or planned reforms and to identify where improvements are needed.

The following are the EC's recommendations to Greece:

- Address the need for involvement of the judiciary in the appointment of President and Vice-President of the Council of State, the Supreme Court and the Court of Audit considering European standards on judicial appointments.
- Ensure the effective and systematic verification of the accuracy of asset disclosures filed by all types of public officials.

- Increase efforts to establish a robust track record of prosecutions and final judgments in corruption cases.
- Establish legislative and other safeguards to improve the physical safety and working environment of journalists, in line with the recently adopted Memorandum of Understanding and considering European standards on the protection of journalists.
- Ensure that registration requirements for civil society organisations are proportionate in view of maintaining an open framework for them to operate.

Regarding the recommendations mentioned above, the GNCHR informs that milestones were agreed under the national recovery and resilience plan. These mainly concern the improvement of the efficiency of justice and the digitalisation of the justice system. The NHRI informs that there are no specific recommendations concerning the Greek NHRI from the regional authorities.

The GNCHR provides input on the follow-up measures on the rule of law, adopted by the Greek State in 2022.

According to the World Justice Project (WJP) Rule of Law Index, Greece's overall rule of law score remains the same as the last years, i.e. 0.61/1. At 44th place out of 140 countries and jurisdictions worldwide, Greece climbed four positions in global rank. Greece's score places it at 28 out of 31 countries in European Union, European Free Trade Association, and North America region. WJP evaluates 8 factors: (1) constraints on government power, (2) absence of corruption, (3) open government, (4) fundamental rights, (5) order and security, (6) regulatory enforcement, (7) civil justice and (8) criminal justice. Greece has better scores in order and security, constraints on government power and fundamental rights. In criminal justice, regulatory enforcement and absence of corruption has the lower.<sup>12</sup>

Furthermore, Economist's Democracy Index 2022 lists Greece as a flawed democracy noting that it makes the most notable overall improvement, rising nine spots in the

ranking from 34th in 2021 to 25th in 2022. Its overall score is 7.97/10 in comparison with 7.56/10 in 2021. Economist Intelligence Unit scores are based on the following categories: (1) electoral process and pluralism, (2) functioning of government, (3) political participation, (4) political culture, (5) civil liberties. Greece has the highest score in electoral process and pluralism (10/10) and civil liberties (8.53/10).<sup>13</sup>

### Checks and balances

Rule of law issues have been consistently raised during the second half of 2022 in public discourse. It was due to the break-out of the Greek wiretapping scandal of journalists, politicians and high-ranking officers in the Hellenic Army.<sup>14</sup> The illegal use of spyware software for surveillance purposes by states constitutes a threat to human rights, democracy and the rule of law. Furthermore, it is a cross-cutting issue affecting all four pillars of the EU rule of law monitoring cycle, however the GNCHR opted to address it at national level under the checks and balances system.

On 10 March 2022, the European Parliament decided to set up the PEGA Committee to investigate alleged infringement or maladministration in application of EU law regarding the use of Pegasus an equivalent spyware surveillance software. In particular, the PEGA Committee was asked to gather information on the extent of the use of this intrusive surveillance by Member States or third countries, and to the extent that it violates the rights and freedoms enshrined in the Charter of Fundamental Rights of the EU.<sup>15</sup> Following revelations that Nikos Androulakis's phone was hacked with malicious spyware while serving as a member of the European Parliament, an inquiry committee was set up in the Hellenic Parliament,<sup>16</sup> in parallel to PEGA investigations. The findings of the inquiry committee were submitted to the President of the Parliament and discussed at Plenary. The public did not receive any information on the deliberations and outcome of the proceedings since they were classified as confidential. A meeting in the Special Permanent Committee on Institutions and Transparency took place with the participation of non-parliamentary people invited to provide all relevant information. The meeting was attended by the Minister of State and the discussion was also

confidential (art. 43A of the Rules of Procedure of the Parliament).<sup>17</sup> In the meantime, the Head of National Intelligence Service and the General Secretary of the Prime Minister resigned. The Greek NHRI notes that the National Intelligence Services are supervised by the Prime Minister's Office (Law 4622/2019).

The GNCHR informs that the Greek Constitution provides in article 19 that "1. Secrecy of letters and all other forms of free correspondence or communication shall be inviolable. The guaranties under which the judicial authority shall not be bound by this secrecy for reasons of national security or for the purpose of investigating especially serious crimes, shall be specified by law. 2. Matters relating to the constitution, the operation and the functions of the independent authority ensuring the secrecy of paragraph 1 shall be specified by law". By virtue of Law 3115/2003, the Hellenic Authority for Communication Security and Privacy (ADAE) was established to fulfill the role appointed to it by art. 19 par. 2 of the Constitution. It is worth noting that ADAE appoints a representative into the Greek National Commission and therefore the GNCHR has both the necessary expertise and the relevant evidence to substantiate its opinion on matters related to the secrecy of communications.

On 29 November 2022, a bill was introduced at the Parliament by the Ministry of Justice on "Waiving of communication privacy, cyber security and citizens' data protection (subsequent Law 5002/2022). According to the Minister, the new legislation aims to address shortcomings in the protection to citizens' rights and a necessary balance between the protection of privacy and national security.<sup>18</sup> One of its objectives, as stipulated in art. 1 is to protect privacy of communications from spyware software (item c). The Greek National Commission, despite not being timely involved in the law-making process by the Ministry of Justice, it has timely submitted its comments to the Parliament while the deliberations were ongoing. The Greek NHRI questions how the authorities would use the data and the technology to fight criminality, for national security reasons and yet fully respecting fundamental rights enshrined in international and national law, such as the right to private and family life, the right to privacy,



freedom of thought, freedom of opinion and expression, protection of personal data and protection of communications privacy. The NHRI states that of the subject of the Law 5002/2022, i.e. waiving communications privacy constitutes a limitation of the right to free and confidential communication and has adverse consequences on the exercise of individual freedoms of the person against whom is directed. The GNCHR is of the opinion that in democratic states that respect the rule of law, specific guarantees must exist to prevent the executive power from being able to monitor its political opponents under the pretext of national security reasons. On the other hand, when politicians are involved in crimes against national security, they must enjoy the same treatment as any other citizen. Reservations were raised by the Greek National Commission as to the restriction of the ADAE's constitutional mandate which puts in peril the trust of citizens into national institutions.<sup>19</sup> Moreover, in January 2023, the Public Prosecutor of the Supreme Civil Court (Areios Pagos) issued an opinion, interpreting provisions of Law 5002/2022 after a request made by telecommunications companies.<sup>20</sup>

In view of the above, the GNCHR prepares a special thematic report on the institutional framework for the oversight of intelligence services. The role of intelligence services in combatting crime and protecting national security is crucial. However, their work affects human rights and imposes restrictions on securing citizen's communications privacy and data protection. The GNCHR decided to study more in depth the available checks and balances to ensure that both objectives are met, i.e. protection of national security interests and interference with human rights in a proportionate way.

In September 2022, PEGA Committee held a hearing on the use of spyware in Greece with the presence of targeted journalists and Greek authorities.<sup>21</sup> Later in October 2022, an exchange of views took place with Members of the European Parliament who have been targeted with spyware.<sup>22</sup> The Committee also did some fact-finding missions, including Greece. In January 2023, the European Parliament send its relevant draft recommendations to the Council and the Commission. It calls the Commission and the EEAS to halt any support to third countries that enables the latter to develop surveillance

capabilities, to carry out fundamental rights impact assessments and in case they find that the respect of human and fundamental rights, including rule of law and the protection of democratic principles, politicians, human rights defenders and journalists cannot be guaranteed, to discontinue the support. The European Parliament also formulates recommendations to the Commission with respect to the Rule of Law monitoring, such as assessing, among others, the responsiveness of state institutions to provide redress to victims of spyware (p.21). Concerning Greece, the European Parliament concludes that contraventions and maladministration have taken place in the implementation of Union law and calls the Greek authorities to: (a) urgently restore and strengthen the institutional and legal safeguards, including effective ex ante and ex post scrutiny as well as independent oversight mechanisms; (b) urgently repeal all export licenses that are not fully in line with the Dual-Use Regulation and investigate the allegations of illegal exports, among others to Sudan; (c) ensure that the authorities can free and unhindered investigate all allegations of the use of spyware; (d) urgently withdraw Amendment 826/145 of Law 2472/1997, which abolished the ability of the ADAE to notify citizens of the lifting of the confidentiality of communications; (e) restore full independence of the judiciary and all relevant oversight bodies, such as the Ombudsman and the Data Protection Authorities, to ensure all oversight bodies get full cooperation and access to information and to provide full information to all victims; (f) reverse the legislative amendment of 2019 that placed the EYP under the direct control of the Prime Minister; (g) urgently implement the Whistleblowers Directive; (h) ensure the independence of the EAD leadership; (i) urgently launch a police investigation following the alleged abuse of spyware and seize physical evidence of proxies, broker companies and spyware vendors that are linked to the spyware infections; and (j) invite Europol to immediately join the investigations. The GNCHR informs it will consider the recommendations, in its consulting, monitoring and reporting activities regarding the challenges raised for fundamental rights and the rule of law by the use of technology and spyware systems. On this matter, the NHRI informs that its forthcoming report on

the institutional framework for the oversight of intelligence services will help Greek authorities to improve checks and balances systems.

### Justice system

According to World Bank's Doing Business Index, it takes 1.711 days to enforce a contract in Athens by launching judicial proceedings, and there are discrepancies between six cities benchmarked in Greece in 2020. Trial time for a commercial dispute at the local first instance court varies from a year and eight months in Thessaloniki, to under four years in Athens. On average, it takes three years to litigate the standardized commercial dispute through the Greek Single-Member First Instance Courts and enforce the judgment. This is nearly fifteen months longer than the EU average. On the quality of the judicial processes, Greece is close to EU average. On the average cost of suing in court and enforcing a judgment in Greece is slightly cheaper than the EU average.<sup>23</sup>

The excessive length of court proceedings is a perennial problem for the Greek justice system. The Greek Parliament already adopted dozens of laws to accelerate the proceedings (Laws 2915/2001, 3160/2003, 3346/2005, 3659/2008, 3900/2010, 3994/2011, 4043/2012, 4198/2013, 4194/2013, Presidential Decree 150/2013, Laws 4239/2014, 4335/2015, 4332/2015, 4411/2016, 4446/2016 and 4738/2020). Despite the efforts, the NHRI notes that there is no substantial improvement in the average time for the completion of a case. It is noteworthy that the main bulk of cases brought before the European Court of Human Rights concern the excessive length of civil, administrative and penal proceedings (art. 6 ECHR). Greece quite recently adopted also a remedy against lengthy proceedings,<sup>24</sup> a measure indicated by the Court in *Michelioudakis and Glykatzi* cases.<sup>25</sup>

In 2022 two more Laws were adopted with a view to accelerate judicial proceedings. Law 4938/2022 was adopted as a new Code of Courts Organization and Status of Judges). The objective was, apart from acceleration of judicial proceedings, the upgrade

of inspection procedures, the setting of reasonable times for cases processing and the provision of sanctions for staff delays of issuing decisions, such as, cut on salary, no promotion or reason for dismissal. Law 4947/2022 amended provisions of the Code of Criminal Procedures with a view also to accelerating justice. According to the Deputy Minister of Justice, “the amendments moved in three directions: in facilitating the processing of citizens' complaints (appeals) by public prosecutors; in increasing the amount of the fine imposed on witnesses who have been summoned to testify in the context of a criminal proceeding and do not appear unreasonably and, finally, limiting the current unlimited delay of cases which result in the long trial time of even a simple criminal case with a corresponding burden on the parties - victim and defendant - but also on the sense of security of the citizens, who are reasonably prevented from resorting to the Greek courts”.<sup>26</sup>

The GNCHR notes that despite previous efforts the legislative reforms did not achieve their foreseen goals. Furthermore, the NHRI elaborates that in a recent research conducted by Dianeosis with the support of seven serving judges concluded that the delays in justice are caused by (1) the distribution of the judicial services, i.e. the spatial planning of the courts and prosecutor's offices, which is based on an outdated design, (2) the administration of the courts which does not take into account the modern needs and methods of administration and (3) the evaluation system of judges and prosecutors which is not organized and does not produce reliable results.<sup>27</sup>

The GNCHR informs that the Law 5001/2022 on judicial clerks of the National School of Judges and a National School for Judicial Clerks will be adopted. Currently, there is one judicial clerk for every judge; the target is to employ 3 judicial clerks for every judge. Other relevant developments in January 2023 are: (1) the establishment of the Judicial Police as an independent body under the Ministry of Justice, which will be staffed both by civil and police staff (Presidential Decree 6/2023) and (2) the publication of a call for assistants to judges according to Law 4798/2021.

Improving the overall efficiency of the justice system constitutes also a component of the National Recovery and Resilience Plan (NCRP). The following reforms are mentioned:

- acceleration of the administration of justice,
- a comprehensive plan to introduce e-justice, including the upgrade of record keeping systems of the courts, the digitisation of archives, and the expansion of IT systems,
- upgrade of existing infrastructure and new buildings,
- investment in the reskilling and upskilling of judges and judicial staff. Already in 2022, 10 magistrate judges were enrolled to National School of Judges for training (objective 224 of the NCRP).

The GNCHR states that it has already identified the digitalization of justice as a tool for enhancing accessibility and efficiency of the justice system and monitors national and EU initiatives in this field.<sup>28</sup>

#### Anti-corruption framework

The NHRI stresses that the perception of corruption of the public sector in Greece is at average in comparison to other countries. Greece ranks 51st out of 180 countries and its scores are moderately improving in recent years (after 2018).<sup>29</sup> According to a Eurobarometer survey conducted in July 2022, 98% of those questioned consider that corruption is widespread in the country, particularly in the healthcare system (91%), the tax authorities (67%), political parties and politicians (65%), officials issuing building permits (65%) and awarding public tenders (63%), inspectors (62%) and officials issuing business permits (61%).<sup>30</sup>

The NHRI informs that increasing transparency and fighting corruption is among the components of the National Recovery and Resilience Plan. These encompass (1) a comprehensive package of reforms and investments for the detection and prevention of corruption (National Transparency Authority), (2) the strengthening of the legal

framework for Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) and (3) combating illicit trade and protection intellectual property rights.

By virtue of Law 4795/2021 (arts 23-30), it was provided that Independent Offices of Integrity Advisors shall be established in every Ministry – with some exceptions– and under certain conditions, in independent authorities, local governments, decentralised administrations, independent services, legal persons of public law and legal persons of private law belonging to the General Government. The Advisor's role is supportive, informative and advisory for employees who are faced with cases of corruption, abuse of power, anti-social behaviour, sexual harassment but also any other form of breach of integrity either by their colleagues or supervisors. The Integrity Advisor provides personalized counselling assistance to victims, receives relevant reports and mediates to be investigated by the competent authority, while also monitoring their progress, informing the concerned employee. As an advisory body in matters of his competence, the Advisor provides information to employees in principle regarding his role and responsibilities, but also more generally on issues of ethics and integrity by organizing corresponding training initiatives. Finally, the Advisor collaborates with the Division for administrative support and human resources of the Ministry, for the development and implementation of internal integrity policies and standards. The selection of Advisor is done through a General Register kept at the General Secretariat of Public Sector Human Resources of the Ministry of the Interior. Law provides for the qualifications that officers need to have to be appointed as Integrity Advisors. In addition, they should complete a special training program by the National Centre for Public Administration and Local Government in collaboration with the General Secretariat of Human Resources of the Public Sector of the Ministry of the Interior and the National Transparency Authority. The Law 4940/2022 which amended certain provisions of the Law 4795/2021 provides that for the first two years from the entry into force, Integrity Advisors may be appointed officers who have not yet been registered in the General Register and have not completed the training.

On the topic of whistleblowers, in its 2022 RoL Report the Commission stressed that Greece lacked a comprehensive legislative framework for their protection. On 28 January 2022, the Commission addressed a letter of formal notice to Greece for failure to communicate the measures taken to transpose the Directive on the protection of persons who report breaches of Union law (EU Directive 2019/1937) by the deadline of 17 December 2021. On 15 July 2022, the Commission issued a reasoned opinion on lack of transposition of the directive. On 11 November 2022, Greece adopted Law 4990/2022 on “Protection of persons reporting violations of EU law - Transposition of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 (L 305) and other urgent regulations”. The draft law was shared with the public for consultation for two weeks prior to its submission by the competent Minister to the Parliament for discussion. During the deliberations, relevant stakeholders were invited to express their opinions on the draft provisions. Civil society organisations expressed their disappointment to the scope of application of the law which is restricted only to violations of EU legislation and does not extend to reporting of violations of domestic law. Transparency International Greece underlined that this may lead to shortcomings in the implementation of the law since public employees wishing to report violations by state organs, shall make the distinction between acts infringing EU law and other acts, not protected under this framework.<sup>31</sup> Furthermore, Vouliwatch claims that the legislation transposed the Directive into a restrictive way.<sup>32</sup>

Other regional organisations drafted recommendations regarding the protection of whistleblowers. The OECD Working Group on Bribery in its last report, urged Greece to implement new legislation for whistleblowers to provide clear and comprehensive protection from retaliation for whistleblowers who report foreign bribery.<sup>33</sup> GRECO recommended Greece to strengthen the protection of whistleblowers within the police and take all other measures necessary to facilitate the reporting of corruption, including by guaranteeing whistleblowers’ confidentiality, as appropriate.<sup>34</sup> These issues are still pending resolution. In addition, within the framework of the Council of Europe, a

particular set of principles have been drafted to help member states render the whistleblower protection effective in practice (CM/Rec (2014)7 of the Committee of Ministers on the protection of whistleblowers). Therefore, the GNCHR recommends that these principles be taken into consideration for the establishment of a comprehensive legal framework for the protection of whistleblowers in Greece.

### Media pluralism and freedom

In its annual World Press Freedom Index for 2022, Reporters without borders list Greece in 108th position out of 180 countries, the lowest of any European country and thirty-eight places lower than 2021. The Governmental spokesperson in a press briefing commented on the methodology of this report which includes also evaluations on open investigation cases pending before Greek courts as well as repercussions from the Covid-19 outbreak to the operation of the Press in Greece. According to the 2022 Media Pluralism Monitor of the Centre for Media Pluralism and Media Freedom of the European University Institute, Greece is among European states with a high risk (64%) on media pluralism based on four factors: (1) fundamental protection, (2) market plurality, (3) political independence and (4) social inclusiveness.<sup>35</sup> Greece has the highest risk score on market plurality (72%) which is associated with the commercial and ownership influence over the media content (83%) and the economic problems that prohibit media from becoming viable (74%), among others.<sup>36</sup>

In addition to the above risks concerning market plurality, other worrying factors in 2021 constituted the escalation of threats to journalists' physical and online safety and the amendment in the Greek Penal Code (art. 191) which rendered the offence of spreading fake news punishable with up to five years' imprisonment. In 2022, the relevant provision was amended: its scope became narrower and the sanctions lighter (see art. 41 of Law 5005/2022).



The Economist mentions that Greece is penalised in the 2022 Democracy Index in relation to freedom of the press, given also that as revealed in 2022, journalists have been victims of the Predator spyware for reasons of national security.<sup>37</sup>

The GNCHR monitors the safety of newspapers and journalists in Greece within the broader scope of its work on human rights defenders, raising awareness on the situation at national and international level through its communication channels with national, regional and international human rights bodies.

### **State authorities follow-up to NHRI's recommendations regarding rule of law**

The GNCHR informs that some measures were taken by the state authorities in 2022 affecting the rule of law in Greece but they cannot directly be linked to the GNCHR's recommendations under the rule of law reporting cycle. The Greek NHRI states that as long as there is no institutionalised follow-up procedure from the part of the authorities on the Greek NHRI's recommendations, conclusions cannot be made.

### **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

The GNCHR informs that it monitors any developments either to the reinforcement or to the restriction of the rule of law in Greece. The Greek National Commission also participates each year to the ENNHRI rule of law report dedicating time and resources. As mentioned above, the recommendations from both 2022 ENNHRI RoL report and 2022 EC RoL report have been disseminated and followed-up in a variety of activities, consulting, promoting and educational ones.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Greek National Commission for Human Rights (GNCHR) was established in 1998 as the independent advisory body to the State on all matters pertaining to human rights protection and promotion, in accordance with the UN Paris Principles (General

Assembly Resolution 48/134, 20 December 1993). The competent GANHRI Sub – Committee on Accreditation, under the auspices and in collaboration with the Office of the High Commissioner for Human Rights (OHCHR), has accredited GNCHR, since 2011, A status (full compliance with Paris Principles).

The Greek National Commission for Human Rights (GNCHR) was last re-accredited with A-status in March 2017<sup>38</sup>. The SCA was of the view that the selection and appointment process enshrined in the GNCHR's enabling law was not sufficiently broad and transparent; particularly, it did not specify the process for achieving broad consultation and participation in the application, screening, selection, and appointment process. Further, the SCA noted that providing for different stakeholders to select members according to their rules of operation could result in the different entities using different selection processes. It took the view that these processes should be standardised across nominating entities. The SCA encouraged the GNHCR to continue its efforts to advocate for the formalization of a detailed process in its enabling law. The SCA also recommended GNCHR to strengthen the applicable grounds of dismissal of members of the NHRI. It recalled that the grounds for dismissal must be clearly defined and appropriately confined to those actions that impact adversely on the members' capacity to fulfil their mandate. It recommended that this process should apply uniformly to all nominating entities. Finally, acknowledging that the financial situation in Greece at the time limited the NHRI's ability to advocate for increased funding, the SCA encouraged the GNCHR to continue to advocate for an appropriate level of funding to carry out its mandate including, where appropriate, the establishment of regional offices.

The SCA will consider the reaccreditation of the GNCHR at its October 2023 session.

### **Follow-up to SCA Recommendations and relevant developments**

Since 2017, the GNHCR advocated and achieved significant changes in its founding law in line with SCA's above Recommendations with a view to strengthen the National Human Rights Institution of Greece and prepare the Institution to meet the challenges

of the future. Further details on the amended law provisions and their implementation progress can be found in the following four chapters.

### **Regulatory framework**

By virtue of Law 4780/2021 the GNCHR is explicitly recognised as the National Human Rights Institution in Greece, acquiring legal personality, fully financial independence and administrative and financial autonomy.<sup>39</sup> The GNCHR takes subsidy from the state budget but also from other sources, such as the European Union in the framework of agreements on EU-funded research or other projects. Furthermore, the GNCHR may conclude agreements with Higher Education Institutions or other bodies relevant to its mission. It can also assign work by contract to third parties in accordance with the applicable law on public contracts (article 17 of Law 4780/2021).

The organizational structure of the GNCHR is strengthened since a position of a full time Director has been established and the positions of the scientific and administrative personnel increased from 12 to 15. The GNCHR is now structured into two units: (a) the Scientific Organization Unit and (b) the Administrative and Financial Unit. Furthermore, the responsibilities of the President and of the Bureau of the GNCHR are specified in detail in the law. Law also explicitly provides for the power of the GNCHR to conduct field investigations and seek from both public services and individuals, any information, document or any other element relating to the protection of human rights. The President may take cognizance of documents and other elements, which are classified as confidential, unless they are affiliated with national defence, state security and international relations of the State (article 21 of Law 4780/2021).

The GNCHR being a commission type NHRI has a pluralistic composition. The Commissioners are experts in different fields of human rights and come both from public and private sector (independent authorities, universities, third level trade unions, non-governmental organisations and research institutions). They bring along their expertise in the GNCHR and contribute to the work of the GNCHR (consultative,

monitoring, educational, promotional) as well as in organizational matters by voting in the Plenary, which is the decision making body of the GNCHR. For the facilitation of the organization of the work at the GNCHR, five Sub-Commissions operate under the Plenary.<sup>40</sup> The Commissioners also elect the three-membered Board (President and two Vice-Presidents). The President is responsible for the representation of the Commission before any authorities and the supervision, coordination and management of scientific and administrative work of the GNCHR. Based on Law 4780/2021, the Commission's term is four years instead of three years under the previous regime. In addition, a significant change in this new term of GNCHR (2022-2026) was the replacement of non-voting members appointed from the Ministries, the Parliament and political parties represented in the Parliament (pursuant to previous Law 2667/1998) with "liaison officers" designated from the above three categories (art. 16 Law 4780/2021). This amendment was introduced to facilitate decision-making process in the Plenary but still maintain a close collaboration with the Ministries, the Parliament and the political parties. Liaison officers act as bridges between the GNCHR and the governmental and parliamentary authorities facilitating the flow of information between them.

Regarding the specific developments in 2022, the Greek NHRI's mandates were strengthened.<sup>41</sup> For instance, the GNCHR was appointed as a member with voting rights in the Monitoring Committees on EU Migration Funds 2021-2027<sup>42</sup>, whereas the Ministry of Development and Investment entrusted the Commission with the mandate to monitor the compliance of EU development funds with the provisions of the EU Charter of Fundamental Rights at a strategic and operational level.<sup>43</sup> For the implementation of the above mandate, the GNCHR offered its expertise at a strategic level, assisting the authorities with a checklist on the compliance with rights of the EU Charter of Fundamental Rights. At operational level, GNCHR representatives participate in seven thematic and thirteen regional Monitoring Committees.

Further developments in 2022 are the appointment of the twenty new Commissioners and the elections of the new three-membered Board that were held.

The GNCHR informs that its administrative capacity was reinforced in 2022 after four new additional employees joining the Secretariat from other public services (finance, informatics, translation). The GNCHR's offices were also renovated to create a better working environment for the staff and members of the Commission while the IT equipment has been updated to facilitate hybrid/online meetings and a better service of telephone communications and intranet. Also in 2022, the office of the Recoding Mechanism of Informal Forced Returns was established in the premises of the GNCHR.

### **Enabling and safe space**

The GNCHR informs that it was established as an independent advisory body to the Greek State in accordance with the UN Paris Principles 25 years ago (by virtue of Law 2667/1998).<sup>44</sup> From day one of its operation until now, the Greek National Commission proudly exercises its mission independently. Members are independent from the bodies that designate them, enjoying full freedom of opinion within the Commission.

According to para. 6 of art. 14 of Law 4780/2021: "the members of the Commission shall not be liable, persecuted and questioned for opinions expressed or vote given in the exercise of their functions under the present Law".<sup>45</sup> Furthermore, the GNCHR's

independence is guaranteed by the election system provided for its governing board.

The President and Vice-Presidents are elected by the body of Commissioners in a quorum of an absolute majority. It is true that in the past, the executive power interfered with the GNCHR's independence by introducing unilateral changes into its legal framework.<sup>46</sup> However, in recent years, the GNCHR's mandate was reinforced by law, however challenges persist in practice. Even though the GNCHR operates for at

least 20 years, the full range of its responsibilities as well as its unique role as an NHRI is not widely known among the competent authorities, i.e. Ministries, Public

Administration, Parliamentarians, Justice. For instance, in 2022, the Greek National Commission was invited only twice to participate in parliamentary debates within the scope of its mandate. In addition, there is a repeated omission on the part of the

Ministries to not involve the GNCHR in a pragmatic way in the law-making process. The

2022 EU RoL Report stresses that stakeholders are not involved in a timely manner, and this has an impact on the quality of law-making. The Handbook on Regulatory Impact Assessment issued by the Secretariat General for Legal and Parliamentary Affairs in 2020 explicitly provides that a comprehensive assessment of the consequences of a regulation requires the prior opinion of services or authorities with expertise in the specific subject of the proposed regulation, such as the GNHCR.<sup>47</sup> The GNCHR, embodied by a sense of duty and professionalism, has always provided its expert opinion on relevant draft legislation and policies, irrespective of whether it was timely involved or not. In 2022, the GNCHR submitted its views in the following bills: Ratification of the Code of Legislation on the reception, international protection of third-country nationals and stateless persons and temporary protection in the event of a mass influx of displaced foreigners (June 2022), Provisions for its simplification of the environmental licensing, establishing a framework for the development of Offshore Wind Farms, tackling the energy crisis, environmental protection and other provisions (July 2022), Reform and modernization of the Penitentiary Code - amendments to Law 2776/1999 (October 2022).

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

The GNCHR informs that following the Recommendation CM/Rec(2021) of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions: "member States should implement the recommendations of NHRIs and are encouraged to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame, to develop processes to facilitate effective follow-up of NHRI recommendations, in a timely fashion and include information thereon in their relevant documents and reports". Indeed, in the GNCHR's statute provides that "at the end of each year, the Ministries represented in the Commission shall submit a report with their observations on the protection of human rights in the

field of their responsibility, indicating with special reference the points where they have adopted recommendations made by the Commission” (art. 22 Law 4780/2021).<sup>48</sup> This provision is being partially implemented by the Ministries (*à la carte*). The GNCHR, in its Annual Reports dedicates a chapter on the implementation and follow-up on its recommendations by the state authorities (impact and efficiency of the GNCHR’s work).

In 2022, the law on reception, international protection and temporary protection was regulated by the Law 4939/2022.<sup>49</sup> The GNCHR, as the independent advisory body to the state on all matters pertaining human rights protection, submitted its comments to the Ministry of Migration and Asylum.<sup>50</sup> For the first time in the 20 years of the GNCHR’s operation, the Minister of Migration and Asylum invited the Commissioners to an in-person meeting to which the Deputy Minister, the General and Special Secretaries and high-ranking officers attended to discuss in detail the GNCHR’s recommendations and provide a reply to each one of them. In the GNCHR’s notes that this shall become regular, best practice by all state authorities.

### **NHRI’s recommendations to national and regional authorities**

Despite the GNCHR’s upgrade into an independent authority and the progress in the staffing of the vacant positions in the last two years, delays in the issuance of delegated acts by Law 4780/2021 *de facto* hinder the transition of the Greek National Commission into a strong, independent and adequate resourced institution. Pursuant to [article 28 of Law 4780/2021](#), three Ministerial Decisions must be issued to regulate: (a) the compensation of the President, the Vice-Presidents and other Commission members, (b) the salary and insurance status of the Director and (c) the salaries of the scientific staff. These Ministerial Decisions have not yet been issued. Also the issuance of a presidential decree with the “Organisation” of the GNCHR (structure, name and distribution of posts) is still pending.

The GNCHR would like to address the following recommendations to state authorities:

- Continue to provide the GNCHR with adequate, sufficient and sustainable resources to allow it to carry out its mandate.
- Expedite the issuance of the delegated acts in order for the GNCHR to operate in an enabling environment for its members and staff.
- Award salaries and benefits to the GNCHR's staff comparable to those of civil servants performing similar tasks in other independent institutions of the State.
- Institutionalize a follow-up procedure to the GNCHR's recommendations.
- Provide sanctions to authorities not cooperating with the Greek NHRI despite the explicit provision in Law 4780/2021.
- Always involve the GNCHR in the law-making process of bills with an impact on human rights and use its expertise when drafting national actions plans and national strategies on human rights.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

The GNCHR informs that since 2016, all NGOs active in Greece in the field of international protection, migration and social integration, have an obligation to be registered in a special "Register of Greek and Foreign NGOs" operating under the Ministry for Migration and Asylum. However, by virtue of Laws 4636/2019 and 4686/2020 the requirements for registration and verification became stricter, involving also the registration of their members and employees for anti-laundering purposes.<sup>51</sup>

The European Commission in its 2022 RoL report recommended that the Greek authorities "ensure that registration requirements for civil society organisations are proportionate in view of maintaining an open framework for them to operate". The NHRI informs that there is no progress towards the implementation of this recommendation. The Law 4939/2022 which regulates existing legislation on reception, international protection of third country citizens and stateless persons and temporary



protection in the event of a mass influx of displaced foreigners reiterated the same provisions. By virtue of the Law 4960/2022, the provisions of art. 191 of Law 4662/2020 on the Register of the Members of Non-Governmental Organisations was added to the art. 78 of Law 4939/2022. The registration of members, employees and partners of NGOs and their certification is a requirement for their activity within the Greek territory as well as for their cooperation with public bodies.

The legality of these requirements was questioned by international and European bodies.<sup>52</sup> Most recently, the UN Special Rapporteur on the situation of human rights defenders after her visit in Greece in June 2022 stated that “the imposition of a registration requirement on a specific segment of civil society, and the disproportionate requirements within the registration process itself, are in violation of Greece’s obligations under international human rights law and are discriminatory”.<sup>53</sup>

A judicial review application is currently pending before the Greek Council of State (the hearing took place on 2.12.2022). It is worth mentioning that in April 2022, the Civil Court of Athens declared that the Ministerial Decision on NGO Register was ultra vires on the ground that it exceeded the limits of legislative authorisation granted by primary law.<sup>54</sup> On 8 November 2022, the Council of State found that the provisions of Law 4808/2021 which regulated, in a similar way, the registration of trade unions into a General Register was contrary to art. 8 of the EU Fundamental Rights Charter and the General Data Protection Regulation.<sup>55</sup>

#### Developments regarding Human Rights Defenders

The NHRI notes that another concerning provision introduced in national legal framework by Law 4825/2021 is the criminalization of the search and rescue operations at sea by private vessels. The GNCHR warned, prior to the adoption of this provision, on the risks entailed therein of possible contravention with the customary principle and the law of the sea conventions binding upon Greece regarding the duty to rescue people in distress at sea.<sup>56</sup>

The GNCHR is a commission-type NHRI. The twenty Members of the Commission are experts appointed by independent authorities, universities, research institutions, tertiary trade union organisations, civil society organisations and bar associations. In the Plenary of the Commission are represented, through liaison officers, the Greek Parliament, the Ministries and the parliamentary parties. For monitoring and reporting purposes, the GNCHR maintains a very close relation with NGOs and CSOs. Not only prominent NGOs and CSOs form part of its Plenary, but the Greek National Commission also maintains within its premises the Racist Violence Recording Network (RVRN) and the Recording Mechanism of incidents of Informal Forced Returns (RMIFR) which are comprised by NGOs and other civil society actors, such as migrant and refugee communities.

RVRN records “cases of racist violence”, i.e. any criminal acts, or violent acts or behaviour against people targeted given their national or ethnic origin, colour, religion, sexual orientation, gender identity, sex characteristics and disabilities. RVRN also records criminal acts or violent activities or behaviours against HRDs, namely against people who promote and protect human rights and are targeted because of that. During January-December 2021, the Network recorded 72 incidents of racist violence through interviews with victims. In 28 incidents those targeted were migrants, refugees or asylum-seekers due to their national origin, religion or colour as well as human rights defenders due to their association with refugees and migrants. In 36 incidents, the targets were LGBTQI+ individuals as well as human rights defenders, due to their connection with the LGBTQI+ community. Attacks on human rights defenders show that perpetrators associate them with the people they are defending, thus expanding the use of violence to them. Although the defenders of LGBTQI+ people are not always part of that social group, the targeted organisations do consist of members of the LGBTQI+ community, which is why the assaults have a high impact both on them and the community.<sup>57</sup>

The GNCHR participates since 2022 in the STAND-UP project which aims to establish a public authority-led, multi-agency model for countering hate crime in Italy, Greece,

Spain and France. Among others, technological tools are used to enhance monitoring of the phenomenon and inter-agency data exchange (law enforcement, judicial bodies and CSOs). Within this framework, the GNCHR research focused on online hate speech, helping public authorities and CSOs to identify areas of intervention and at-risk groups, among them also human rights defenders.<sup>58</sup>

### **Access to and involvement of civil society actors in law and policy making**

The NHRI informs that in Greece, the legislation initiative lies in the Government's responsibilities. The ordinary law-making process requires, as a mandatory step, that a public consultation has taken place on the provisions of the proposed bill prior to its submission to Parliament.<sup>59</sup> Bilateral consultations meetings with relevant stakeholders, among them civil society may take place. However, the main tool for public consultation is an online platform (opengov). Civil society actors, unions of employees and any other interested party or citizen may submit his/her comments online. Once the consultation is closed, the competent Ministry that will introduce the bill to the Parliament is obliged to draft a follow-up report on the results of the public consultation; in this report, each comment is addressed separately or in group and note is made whether it has been taken into consideration or not and why. Based on the GNCHR's monitoring on the law-making procedure, it is noted that indeed, comments/proposals by the civil society have been considered and the draft provisions were reworded, amended or abolished.

The GNCHR also participates in different collective bodies whereby national policies, such as National Action Plans are adopted or monitored. The composition of these bodies is usually multi-stakeholder and comprises of national authorities, independent bodies (such as the GNCHR and the Greek Ombudsman), trade unions (if applicable) or other tertiary organisations and representatives of the civil society. For instance, in the National Council against Racism and Intolerance, civil society is mainly represented through the Racist Violence Recording Network.<sup>60</sup> Another example is the participation of three civil society organisations in the Committee that drafted the National Strategy for LGBTQI+ Equality in 2021 and comprised of three academics, three representatives

from LGBTQI+ organisations and two governmental officers.<sup>61</sup> The GNCHR was not a member of this Committee but submitted its own comprehensive memo.<sup>62</sup> The final text of the draft National Strategy includes parts of the GNCHR's proposals.

### **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

Since 2016, the GNCHR receives information on a number of criminal cases opened against Greek and/or foreign journalists, volunteers, rescuers, refugees and migrants, directors/members of non-governmental organisations providing services to migrants and refugees at borders.<sup>63</sup> They have been accused of facilitating illegal entry or stay of third country nationals, forgery, facilitation of smuggling, formation and membership into a criminal organisation, revealing of state secrets and espionage. Some cases never reached the courts, others are pending on trial and in others, the defendants were acquitted. In June 2022, the three-membered Court of Chios acquitted a third country national of the criminal charges of facilitating the illegal entry of eleven third country nationals and hampering the work of authorities.<sup>64</sup> The same month, the trial of a Dutch journalist who faces charges of facilitating illegal stay of a third country national has been postponed. In January 2023, the Court of Mytilene quashed the criminal charges of money laundering, espionage, forgery, collaboration with smuggling networks against twenty-four rescuers, volunteers and members of civil society organisations.

The Greek NHRI informs that the UN Committee against Torture has expressed serious concerns about consistent reports of intimidation and harassment of human rights defenders and humanitarian workers and volunteers, recommending that the Greek state refrains from detaining and persecuting humanitarian workers and volunteers as means of intimidating or discouraging them from delivering vital emergency assistance to refugees and migrants.<sup>65</sup> The Council of Europe's Commissioner for Human Rights referred in a recent statement reminded the Greek authorities that "targeting human rights defenders and individuals engaged in acts of solidarity is both incompatible with states' international obligations and has a chilling effect on human rights work".<sup>66</sup>

The Greek NHRI stresses that states have a right, and a duty, according to international and European law to protect their borders and tackle organised crime, terrorism and other criminal activities. On the other hand, States have clear obligations under international human rights law which also apply at borders and with respect to both third country nationals seeking asylum and humanitarian workers being at the frontline, assisting refugees with access to basic services (food, shelter, medical care etc) and procedures (reception and identification, asylum etc.). The GNCHR would like to remind to the Greek state that creating an enabling environment for human rights defenders and protect them and their work in defending human rights is also a state's responsibility.<sup>67</sup> In this framework, the notion of human rights defenders should be broadly interpreted to comprise anyone who acts to protect or promote human rights regardless of his profession, according to international standards.<sup>68</sup>

The GNCHR informs that it is not aware of any laws or measures been introduced in Greece to safeguard against manifestly unfounded and abusive lawsuits against public participation (SLAPPs).

### **Measures undertaken by State authorities to protect and promote civic space**

The NHRI states that a long-standing recommendation of both the GNCHR and the RVRN is to adopt a legislative provision for the protection of human rights defenders. As already mentioned in 2022 ENNHRI RoL Report, the GNCHR has already drafted a proposal for the recognition and protection of Human Rights Defenders and stands ready to cooperate with the Ministry of Justice on a draft bill. In this context, the GNCHR still considers that the GNCHR should be appointed as a focal point for human rights defenders.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The GNCHR informs that in 2022, the Recording Mechanism of Incidents of Informal Forced Returns (Recording Mechanism) became operative. The Recording Mechanism

was founded by a decision of the Plenary of the GNCHR in September 2021 as the response of the Greek NHRI following two major findings: a) the absence of an official and effective data collection mechanism of informal forced returns; and b) the need for coordination among organizations who record on their own initiative any alleged incidents of informal forced returns from persons who recourse to their services. The GNCHR followed the best practice of the RVRN which operates together with the UNCHR Office in Greece since 2011. It is true that NGOs, responding to the urgent needs of refugees and migrants in the field, often lack the capacity or knowledge to record testimonies of informal forced returns. The Recording Mechanism provides the tools and the expertise to enhance NGOs' capacity in this aspect. The UNHCR Office in Greece, as a Collaborating Agency of the Recording Mechanism, provides technical assistance to its operation. In January 2023, the GNCHR hold a launching event of the Recording Mechanism at its offices where representatives from the EU Agency for Fundamental Rights, the Fundamental Rights Office of Frontex, the UNCHR Office in Greece and the IOM Mission in Greece addressed the public and welcomed the initiative.<sup>69</sup> The Ministry for Asylum and Migration also welcomed the initiative with a press release.<sup>70</sup>

### **NHRI's recommendations to national and regional authorities**

The GNCHR is of the view that Greek authorities should adopt a zero-tolerance policy to hate speech against human rights defenders that stems from politicians or other people that hold public office. The NHRI believes this is crucial to foster a safe environment for civil society to operate and prevent racist crimes against human rights defenders. In parallel, all complaints on racist attacks against human rights defenders shall be effectively investigated by the police and judicial authorities in an expeditious way. Lengthy judicial proceedings add to the prevailing climate of impunity in Greece towards organized groups or individual perpetrators of hate crimes.

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

The NHRI states based on available statistics, that Greece has a good pace of the implementation of judgments of the European Court of Human Rights (ECtHR) and pays the amounts for just satisfaction usually within the set deadlines.<sup>71</sup>

The European Court of Human Rights (ECtHR) plays a very significant role in the advancement of the effective enjoyment of human rights in Greece.<sup>72</sup> For instance, based on an ECtHR's judgment on same sex partnerships (Vallianatos and others v. Greece), Greece passed a law back in 2015 that gave same-sex couples the right to enter civil partnerships. The GNCHR has always been very progressive on LGBT rights and has since 2004 advocated for the recognition of the stable de facto partnerships between same-sex couples in law.<sup>73</sup> Another significant development which can be attributed to the ECtHR's judgment on Thlimmenos v. Greece is the constitutional amendment in 2001 to grant conscientious objectors the right to perform civilian service. The GNCHR closely follows the effective enjoyment of the conscientious objectors' rights and had recently intervened in times of risk.<sup>74</sup>

### Leading European Courts' judgments awaiting implementation

The GNHCR states that the institution maintains a close collaboration with the Department for the Execution of Judgments of the European Court of Human Rights and in 2022, met twice with delegations visiting Greece. According to an updated list of cases under enhanced supervision before the Committee of Ministers,<sup>75</sup> the following cases or groups of cases are still pending implementation by Greece:

- Beka Koulocheri group v. Greece (38878/03) which relates to a failure or considerable delay in the enforcement of final domestic judgments and absence of effective remedies (art.1 P1, art. 6, art. 6 par. 1, art. 13 ECHR)<sup>76</sup>

- Bekir-Ousta and others group v. Greece (35151/05) which relates to a refusal to register of two associations and dissolution of one association (art. 6 par. 1, art. 11 ECHR)<sup>77</sup>
- House of Macedonian Civilization and others v. Greece (1295/10) which relates to a refusal to register the applicants' association (art. 11 ECHR)
- M.S.S. group v. Belgium and Greece (30696/09) which relates to shortcomings in the examination of asylum requests, poor detention conditions, absence of adequate support when release and absence of an effective remedy (arts. 3 and 13 ECHR)<sup>78</sup>
- Sidiropoulos and Papakostas group v. Greece (33349/10) which relates to ill-treatment by police agents and coastguards and lack of effective investigations (art. 2, art. 3, art. 6 par.1, art.13, art. 14 ECHR)<sup>79</sup>
- Nisiotis group v. Greece (34704/08) which relates to inhuman and degrading treatment on account of poor detention conditions in prison and lack of an effective remedy (art. 3 and 13 ECHR).<sup>80</sup>

During the last years (2019-2022), there have been many reforms to the Criminal Code and the Code of Criminal Procedures following the judgments of the ECtHR. The GNCHR closely followed the matter and convened a hearing of experts on the proposed changes to formulate an informative opinion. In 2022, the Penitentiary Code was amended by Law 4985/2022 on "Reform and modernization of the Penitentiary Code - Amendments to Law 2776/1999 and other provisions". The Greek National Commission commented the draft provisions before the Hellenic Parliament putting emphasis on structural issues identified, among other human rights bodies, by the ECtHR.<sup>81</sup> The introduction in the new law of a remedy against prison conditions was a positive step towards implementation of the dicta on the Nisiotis group cases pending before the CoE's Committee of Ministers. the GNCHR informs that monitors its implementation and will formulate its conclusions in a forthcoming report on the Penitentiary system. Moreover, the Greek National Commission expressed its disappointment that that the



new law did not respond to long-standing crucial issues regarding detention conditions in line with ECtHR's jurisprudence and the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment on its last report on Greece.

The Greek NHRI informs that there is no qualitative analysis carried out by the authorities or other body on the reasons behind the non-execution of those cases that are still pending before the Committee of Ministers. In the GNCHR's view, most of them relate to structural deficiencies in justice, police and prisons systems. The length of proceedings, despite being improved, has not reached the EU average. Police arbitrariness has not been drastically tackled and a general climate of impunity remains. Penitentiary facilities - despite the recent reforms in the Penal Code to facilitate the exit from the system - remain overcrowded and prison conditions are below international human rights standards.

Another factor for the non-expeditious implementation of indicated general measures by the Court is the fact that either legislative reforms are involved or re-opening of cases which make things more complex, time-consuming and may lead to an impasse for several reasons attributed to the particularities of the Greek legal order.<sup>82</sup>

### **NHRI's actions to support the implementation of European Courts' judgments**

The GNCHR maintains a long standing, multi-level cooperation with the ECtHR, promoting the work of the Court and contributing to the effective implementation of its judgments.

The Greek National Commission is entrusted with the translation into Greek of the ECtHR factsheets. In addition, the GNCHR publishes yearly an updated list of all ECtHR's judgments against Greece with special mention on their status of execution. It has also developed a tool, easily accessible in GNCHR's website to facilitate both the Greek authorities and the civil society in a more effective monitoring of the execution of the ECtHR's decisions.<sup>83</sup> The GNCHR raises awareness to the public, to students and specific

categories of professionals on ECtHR case law through training activities. The Greek National Commission, being an A-status NHRI enjoys credibility and trust by its international interlocutors, among them the Council of Europe organs. The ECtHR in particular makes regularly reference to GNCHR's reports, positions and recommendations as source of credible information on the status of human rights in Greece.

Furthermore, the GNCHR monitors the appeal cycle against Greece from the moment of its submission to the ECtHR to the issuance of a final resolution by the Committee of Ministers. In 2022, there was a high number of interim orders issued by the ECtHR concerning refugees and migrants stranded at borders. NGOs estimate that between 15 March and 21 October 2022 the Court has granted at least 21 interim measures under Rule 39 in such cases.<sup>84</sup> The Greek National Commission intervened in support of the implementation of 17 interim measures indicating to the Greek authorities not to remove third country nationals from the Greek territory and to provide them with water, food, clothing and appropriate medical care.<sup>85</sup> In some of them, the competent Ministry provided a reasoned reply to the GNCHR's letter. In other cases, we have no official information but according to NGOs who handled the cases, most people forcibly returned to Turkiye.<sup>86</sup>

The GNCHR, as an independent advisory body of the State gives particular emphasis on working constructively with the authorities to substantially and fully implement the ECtHR judgements against Greece. In the case of *Chowdury and others v. Greece* (known as the "Manolada case"), which was a landmark case establishing the definition of forced labour under Article 4 ECHR, the NHRI developed a strategy on its implementation, making use of the full range of its competences. Acting as a bridge-builder between the State and the civil society, the GNCHR organized two hearings with domestic stakeholders involved in the fight against human trafficking for the purpose of labour exploitation as a preparatory step for the drafting of a detailed Roadmap for the full compliance of the Greek State with the ECtHR judgment. The GNCHR initiated

further a debate in Parliament on forced labour and labour exploitation where Parliamentarians discussed the GNCHR's specific recommendations.<sup>87</sup>

In parallel to this actions at domestic level, the GNCHR submitted for the first time two Rule 9 Communications to the Committee of Ministers where the judgment was pending under enforced supervision (2018, 2020).<sup>88</sup> This practice was welcomed by the Department for the Execution of Judgements of the European Court of Human Rights and was considered as a best practice among peers (NHRIs).

Furthermore, in 2020, the GNCHR supported, together with UNHCR, the Racist Violence Recording Network (RVRN), a network umbrella of fifty-two civil society organisations for monitoring hate crime in Greece, which is coordinated by the GNCHR and UNCHR Office in Greece, in the preparation of the RVRN Rule 9 Submission to the Committee of Ministers of the Council of Europe in the case of Sakir v. Greece, which was pending before the Committee of Ministers classified as a complex problem. The case concerned the breach by the Greek authorities to effectively investigate a violent racist attack against a migrant and provide the needed support and protection to the hate crime victims. The RVRN through the submission of a Rule 9 Communication asked for the listing of this case under enhanced supervision and proposed, additionally, a comprehensive set of coherent actions to the Greek authorities to prevent future violations.<sup>89</sup>

### **NHRI's recommendations to national and regional authorities**

The NHRI stresses that the execution of ECtHR judgments is extremely important both in the context of the national legal order and in the context of the Council of Europe's system. The implementation of ECtHR judgments – both by indicating individual measures, but mainly by indicating general measures– results in the harmonization of the Greek legal order with the requirements of the ECHR, adds to the prevention of new violations of rights guaranteed by the Convention and contributes to a more efficient functioning of the ECtHR through the reduction of the number of new appeals.

The role of NHRIs in the implementation of the ECtHR judgments shall be promoted at national level. Competent bodies for the execution of ECtHR judgements - in Greece it is the Legal Council of State - shall be aware of the unique role and standing of NHRIs in this field and be encouraged to cooperate with them. NHRIs through their reporting and training activities can further enhance the level of awareness and knowledge of bodies entrusted with the national remedies in follow-up to ECtHR judgments. The GNCHR in its training to judges, prosecutors, judicial officers and law enforcement agents always highlights the ECHR dimension and disseminates the ECtHR jurisprudence to assist them in the consolidation of their knowledge on the ECtHR system.

## Artificial Intelligence

### Impact of AI on human rights, democracy and rule of law

The GNCHR informs that an ecosystem of dialogue on the impact of AI on human rights, democracy and the rule of law is gradually progressing. A National Strategy on AI has been drafted by the Ministry for Digital Governance with the help of experts.<sup>90</sup> In 2022, Law 4961/2022 on “Emerging technologies of information and communication, strengthening digital governance and other provisions” was adopted which is part of the National Strategy and regulates issues of AI, internet of things, blockchain, 3D printing and drones. The Economic and Social Committee of Greece (OKE) has issued an opinion on AI and called for a social dialogue and a broad consultation on the National Strategy.<sup>91</sup> The GNCHR has not been involved so far in any consultation process.

### NHRI’s actions to address challenges regarding the use of artificial intelligence

The GNCHR informs that it has not specifically addressed AI impact on the rule of law, democracy and human rights. The National Commission for Bioethics and Technoethics – which appoints a member in the GNCHR - has already addressed the matter with respect to disinformation during the Covid-19 health crisis which can be attributed to AI

driven digital platforms.<sup>92</sup> Technological means and algorithms exacerbate the problem of misinformation, which increases polarization in society and erodes people's trust in politics.<sup>93</sup> Fake news constitutes a threat to democracy. Currently the National Commission for Bioethics and Technoethics studies the ethics of AI.

At the GNCHR level, some preliminary conclusions can be drawn from the study of the impact of technology on human rights. The NHRI has provided so far, its opinion on the impact of digitalisation on labour rights and access to asylum.

In 2021, a multi-level reform of labour law took place. The GNCHR, despite not being timely involved in the law-making procedures, submitted its comprehensive comments to all parts of the draft bill. Among others, the Greek NHRI criticised the provisions related to the communication of teleworking hours, the control on employee performance during the teleworking period. Additionally, in reference to the online platform ERGANI II and the Digital Card, the GNCHR found that the draft bill does not consider the fundamental provisions of the General Data Protection Regulation (GDPR), such as the purpose limitation, the data minimisation and the storage limitation.<sup>94</sup> In 2022, the GNCHR submitted its observations on the 5th National Report on the implementation of the Revised European Social Charter. In this framework, the Greek National Commission focused on the challenges of the digital transition in labour rights protection, the teleworking and the digital employment card. The Greek NHRI drafted comments on the contractual relationship between digital platforms and service providers, the right to disconnect for teleworkers and the implementation of the digital employment card and its impact on personal data of workers.<sup>95</sup>

As regards asylum procedures, Law 4686/2020 introduced new technologies in the asylum procedure with the aim of modernizing the administration and improving the provision of services to asylum seekers. Although some provisions were positively evaluated by the Greek NHRI - such as the replacement of asylum seeker's paper card with a card with electronic registration and renewal - the introduction of an e-service system for decisions on asylum applications raised concerns as to its compatibility with

the right to appropriate notification of a decision and of the reasons for that decision in fact and in law (par. 25 of the Preamble, Directive 2013/32/EU).<sup>96</sup> During 2021- 2022, the GNCHR's Sub-Commission for the Application of Human Right to Aliens has extensively dealt with challenges occurred in the implementation of the above law. It has convened two hearings of relevant stakeholders on asylum matters.<sup>97</sup> Based on the feedback of organisations or professionals working in the field with asylum seekers, access to asylum is restricted, which is in part linked with the transfer of some actions into the digital platform.

### **Other challenges in the areas of rule of law and human rights**

In the GNCHR's opinion, as reiterated earlier, it is urgent the reform of the justice system to address structural malfunctions that persist over the years. Without a reform in the judicial system, the reform in all other areas will be less effective. The measures provided by the National Recovery and Resilience Plan as well as recent initiatives of the Greek Government go to the right direction but are not enough. Wider and more robust reforms are necessary to keep up with society's needs and the challenges of the new era. In Greece, the justice system mostly suffers from delays in courts' proceedings. Justice delayed is justice denied. Indeed, Greek justice can effectively tackle threats to democratic states and the rule of law, as shown in the case of the neo-Nazi party and criminal organization Golden Dawn.<sup>98</sup>

At the same time, the role of National Human Rights Institutions is no less important; they have a distinctive role in safeguarding human rights through preventive measures or remedies provided. Consequently, strong and effective national institutions (justice and independent authorities) that are in place and operate independently are essential for upholding the rule of law, democratic values and fundamental rights.

### **NHRI's recommendations to national and regional authorities**

The Greek NHRI recommends to the Greek states to prioritize justice reform measures, such as the digitalisation of procedures at every step (pre-trial, during trial, post-trial),

the training of judges on digital skills, the staffing of courts with adequate administrative personnel, the implementation of the new system of evolution and promotion of judges, the review of the legal aid scheme and the promotion of alternative dispute resolution.

Moreover, the administration of courts, judges' associations and unions, the administration of local legal bar associations, the plenary of legal bar associations as well as other legal professions' associations, the Greek National Commission and civil society actors, like the Hellenic League for Human Rights should be consulted during the planning and implementation of governmental justice reform policies to maximise synergies and effectiveness of planned measures.

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<sup>2</sup> Hellenic Parliament, [Joint meeting of the Special Standing Committee on European Affairs and the Standing Committee on Public Administration, Public Order and Justice](#), 11.2.2021 [in Greek]

<sup>3</sup> The Hellenic Parliament Foundation for Parliamentarism and Democracy, [New publication](#): Council of Europe (Venice Commission), Rule of law: checklist, 7.11.2022 [in Greek].

<sup>4</sup> European Commission, 2022 Rule of Law Report - [Country Chapter on the rule of law situation in Greece](#), SWD(2022) 508 final, p.19.

<sup>5</sup> European Commission, 2022 Rule of Law Report - [Country Chapter on the rule of law situation in Greece](#), SWD(2022) 508 final, p.20.

<sup>6</sup> GNCHR Submission to the United Nations Committee against Torture on the List of Issues Prior to Reporting for the Eighth periodic examination of Greece, 24.2.2022; GNCHR input to the OHCHR quadrennial analytical report 2022 on conscientious objection to military service, 22.3.2022; GNCHR reply to the call for inputs of the UN Special Rapporteur on the situation of human rights defenders, 7.7.2022; GNCHR Observations on the 5th National Report on the implementation of the Revised European Social Charter, 11.1.2023.

<sup>7</sup> Maria Gavouneli, "[The humanitarian character of the refugee flows is being bypassed](#)", *TA NEA*, December 2022 [in Greek].

<sup>8</sup> Giannis Tasopoulos, Kostis Grimanis, "[I exercise my rights. I fulfill my obligations, in the Europe of tomorrow](#)", *ERTecho*, October 2022 [in Greek].

<sup>9</sup> GNCHR, [Meeting](#) of the Greek National Commission with the Group for Fundamental Rights and the Rule of Law of the European Committee on Social Rights, May 2022 [in Greek].

<sup>10</sup> UN, [Rule of Law and Human Rights](#)

<sup>11</sup> EU, [European Democracy Action Plan](#)

<sup>12</sup> World Justice Project, Rule of Law Index, [Greece 2022](#)

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- <sup>13</sup> Economist Intelligence, [Democracy Index 2022: Frontline democracy and the battle for Ukraine](#)
- <sup>14</sup> Govwatch, [EYP: Surveillance of six high ranking politicians and military officers](#), 20.02.2023 [in Greek].
- <sup>15</sup> European Parliament, Committees – [PEGA Committee of Inquiry](#)
- <sup>16</sup> According to art. 68 par. 2 of the Greek Constitution and article 144 par. 5 item b of the Regulation of the Greek Parliament and after a motion advanced from MEPs belonging to PASOK-KINIMA ALLAGIS on the case of violation of the privacy of communications of their leader, Nikos Androulakis whose phone was tapped and he was under surveillance from the National Intelligent Service, an Inquiry Committee was set up on 22 August 2022.
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- <sup>18</sup> Ministry of Justice, Bill on the waiving of communications privacy, cybersecurity and protection of citizens' personal data – [The basic innovations of the bill](#).
- <sup>19</sup> GNCHR, [Note](#) on the Draft Law for the communications privacy, cybersecurity and the protection of citizens' personal data, 5.12.2022 [in Greek].
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- <sup>21</sup> European Parliament, PEGA Committee, Hearing : Use of Spyware in Greece, 8.9.2022 ([Programme](#)).
- <sup>22</sup> European Parliament, Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware, PEGA\_PV1006\_1, [Minutes](#), Meeting of 6 October 2022, Strasbourg.
- <sup>23</sup> World Bank Group/European Commission, [Doing Business in Greece](#), 2020, p. 29 et seq.
- <sup>24</sup> Art. 53 Law 4055/2012 and Law 4239/2014.
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- <sup>27</sup> Dianeosis Research and Policy Institute, Reform in three critical sections of the justice system, January 2021
- <sup>28</sup> GNCHR, [Reference Report](#) on the impact of Covid-19 on human rights, pp. 40-41[in Greek]. Greek Government, [National Program on Simplifying Procedures](#) [in Greek]; Greek Government, Digital Transformation Bible for 2020-2025 – [Justice](#) [in Greek]; European Union, [Council Conclusions](#) "Access to Justice – Seizing the Opportunities of Digitalisation" 11399/20, 8.10.2020; European Commission, [Communication](#) to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2020)710 final, 2.12.2020; European Commission, [Proposal for a Regulation](#) of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, COM(2021) 759 final, 1.12.2021.
- <sup>29</sup> Eurobarometer, [Corruption – Country factsheet Greece](#), July 2022
- <sup>30</sup> Transparency International, Corruption Perceptions Index, 2022, [Greece](#)
- <sup>31</sup> Continuation of the processing and examination of the draft law of the Ministry of Justice "Protection of persons who report violations of Union law - Transposition of Directive (EU) 2019/1937 of the European



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<sup>34</sup> GRECO Fifth Evaluation Round, [Evaluation Report, Greece](#), 3 March 2022, p. 61.

<sup>35</sup> EUI Centre for Media Pluralism and Media Freedom, [MPM2022 General Ranking](#).

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<sup>37</sup> Economist Intelligence, Democracy Index 2022: Frontline democracy and the battle for Ukraine, [p. 39](#).

<sup>38</sup> [SCA Report March 2017](#)

<sup>39</sup> [Law no. 4780/2021](#) on "National Accessibility Authority, National Commission for Human Rights and National Bioethics and Technoethics Committee". GNCHR, [Press Release](#): Law 4780/2021: The new law that amends the founding legislation of GNCHR was passed, 17.3.2021. More details in [ENNHRI 2022 Rule of Law Report, Country Chapter: Greece](#).

<sup>40</sup> For the composition of the current term of the GNCHR, see GNCHR official [website](#).

<sup>41</sup> See FRA's [June 2022 update](#) on NHRI accreditation status and mandates, 29.6.2022.

<sup>42</sup> Ministerial Decision nr. 737910/7.12.2022 on "Establishment of the Monitoring Committee of the Programs of the Migration and Home Affairs Funds (TAMEY) 2021-2027"

<sup>43</sup> GNCHR Press Release, Signing of a memorandum of cooperation between the GNCHR and the Ministry of Development and Investment on the compatibility of NSRF programs with the Charter of Fundamental Rights of the EU, 25.02.2022 [in Greek].

<sup>44</sup> [Law 2667/1998](#) (Government's Gazette issue A nr. 281/18.12.1998) as codified by subsequent laws and until the enter into force of Law 4780/2021 that replaced it [in Greek].

<sup>45</sup> See [Law 4780/2021](#).

<sup>46</sup> For instance, Law 4606/2019, the Government changed the GNCHR's composition without prior consulting with the NHRI. More specifically, Article 11 of the aforementioned law amended Articles 2 and 9 of Law 2667/1998. The GNCHR published a [Statement](#) on the immediate withdrawal of the provisions that violate its independence (28.03.2019) and [participated in the Parliamentary debate](#) on the draft law. ENNHRI's Chair also addressed a letter to the Greek PM stressing the risks of such a decision. The GNCHR's President Mr. Georgios Stavropoulos [resigned](#) following these events (04.04.2019).

<sup>47</sup> Presidency of the Government/Secretariat General for Legal and Parliamentary Affairs, Handbook on Regulatory Impact Assessment, 2020, p. 24.

<sup>48</sup> See [Law 4780/2021](#).

<sup>49</sup> See publication of the Law in the [Government's Gazette](#) [in Greek].

<sup>50</sup> GNCHR, [Memorandum](#) to the Hellenic Parliament on the discussion and vote on draft law of Ministry for Migration and Asylum under the title "Ratification of the Code of Legislation on the reception, international protection of third country citizens and stateless persons and the temporary protection in case of mass influx of displaced foreigners", 7.6.2022 [in Greek].

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<sup>51</sup> ENNHRI/GNCHR, [National Report on the situation of human rights of migrants at borders – Greece](#), July 2021, p.59 et seq;

GNCHR [reply to the call for inputs of the UN Special Rapporteur on the situation of human rights defenders](#) in preparation of her Report on human rights defenders working on issues related to migration, refugees and asylum, June 2022.

<sup>52</sup> Expert Council on NGO Law of the Conference of INGOs, Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration, 2.7.2020, CONF/EXP(2020)4; Council of Europe Commissioner for Human rights, Letter to Minister for Citizens' Protection of Greece, Minister of Migration and Asylum of Greece and Minister of Shipping and Island Policy of Greece, urging Greek authorities to put an end to pushback operations and to ensure that independent and effective investigations are carried out into all allegations of pushbacks, 3 May 2021, CommHR/DM/sf 019-2021; UN Special Rapporteur on freedom of assembly and association, UN Special Rapporteur on human rights defenders & UN Special Rapporteur on the human rights of migrants, OL GRC 1/2021, 31 March 2021.

<sup>53</sup> UN Special Rapporteur on the situation of human rights defenders, [Preliminary observations and recommendations \(Statement\)](#), 22 June 2022.

<sup>54</sup> For more information see Rule of Law Backsliding Continues in Greece - [Joint Civil Society Submission](#) to the European Commission on the 2023 Rule of Law Report, January 2023, p. 31

<sup>55</sup> Council of State, Decision no. 2175/2022, 8.11.2022.

<sup>56</sup> GNCHR, [Oral intervention](#) before the Standing Parliamentary Committee on Public Administration, Public Order and Justice, 31 August 2021 [in Greek].

<sup>57</sup> Racist Violence Recording Network, [Annual Report 2021](#).

<sup>58</sup> For more information visit the [website](#) of STAND-UP Standing Against Hate in the EU.

<sup>59</sup> Hellenic Parliament, [Legislative process](#).

<sup>60</sup> There are also other civil society members. For the full composition see relevant information available at the [website](#) of the Ministry of Justice [in Greek].

<sup>61</sup> [National Strategy for LGBTQI+ Equality](#), June 2021 [in Greek].

<sup>62</sup> GNCHR [Memo](#) to the Committee for the drafting of the National Strategy for LGBTQI+ Equality, June 2021 [in Greek].

<sup>63</sup> For instance see: Kathimerini, "Heavy accusations against 33 NGO members – Investigation by the Hellenic Police and National Intelligence Service", 28.9.2020; Hellenic Police, [Press release](#): (4) members of NGOs and (6) third country nationals are included in a criminal file on organised action of persons who are active in the facilitation of the illegal entry of foreigners into the Greek territory, through the North-eastern Aegean Islands, 19.7.2021 [in Greek].

<sup>64</sup> Efimerida ton Syntakton, "[Solemn acquittal for the 23-year-old who gave water and bread to refugees](#)", 16.6.2022 [in Greek].

<sup>65</sup> Committee against Torture, Concluding observations on the seventh periodic report of Greece, 3 September 2019, CAT/C/GRC/CP/7, paras. 48-49.

<sup>66</sup> Council of Europe/Commissioner for Human Rights, [Statement](#): Greek authorities should reverse the trend undermining the work of human rights defenders and journalists, 12.1.2023.

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- <sup>67</sup> CoE's [Recommendation](#) CM/Rec(2018)11 of the Committee of Ministers on the need to strengthen the protection and promotion of civil society space in Europe.
- <sup>68</sup> CM/REC (2018) 11 and UN Declaration on Human Rights Defenders (A/RES/53/144). See also GANHRI [Marrakesh Declaration](#) "Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions", 2018.
- <sup>69</sup> GNCHR, [Press Release](#): Presentation of the Recording Mechanism of Incidents of Informal Forced Returns and its first Interim Report, 24.1.2023.
- <sup>70</sup> Ministry for Migration and Asylum, [Press release](#): Comment from the Press Office of the Ministry for Migration and Asylum, 24.1.2023 [in Greek].
- <sup>71</sup> Council of Europe/Department for the Execution of Judgements of the European Court of Human Rights, Country Factsheets: [Greece](#).
- <sup>72</sup> Council of Europe/Department for the Execution of Judgments of the European Court of Human Rights, Main achievements, [Greece](#).
- <sup>73</sup> GNCHR, [Decision-Opinion of the Plenary](#) on issues related to discrimination against sexual minorities in Greece and the extension of civil marriage to same-sex couples, December 2004 [in Greek].
- <sup>74</sup> GNCHR, [Input](#) to the OHCHR quadrennial analytical report 2022 on conscientious objection to military service, 21.3.2022; GNCHR, [Letter](#) to the Ministry of National Defense on the Draft Law "Care for the personnel of the Armed Forces, rationalization of the legislation of the Armed Forces, organization of the National Guard and other provisions", 17.1.2023 [in Greek].
- <sup>75</sup> Data were triangulated in the following sources: Council of Europe/Committee of Ministers, Table of cases and groups of cases under enhanced supervision, DH-DD (2022)1298E, 15.12.2022; Council of Europe/Department for the Execution of Judgments of the European Court of Human Rights, Main issues under supervision, [Greece](#); Council of Europe/Committee of Ministers, Supervision of the execution of judgments and decisions of the European Court of Human Rights, [15<sup>th</sup> Annual Report](#), 2021.
- <sup>76</sup> [ECtHR Judgment in the case of Beka-Koulocheri v. Greece \(app. 38878/03\)](#)
- <sup>77</sup> [ECtHR Judgment in the case of Bekir-Ousta and others group v. Greece \(app. 35151/05\)](#)
- <sup>78</sup> [ECtHR Judgment in the case of M.S.S. v. Belgium and Greece \(app. 30696/09\)](#)
- <sup>79</sup> [ECtHR Judgment in the case of Sidiropoulos and Papakostas v. Greece \(app. 33349/10\)](#)
- <sup>80</sup> [ECtHR Judgment in the case of Nisiotis group v. Greece \(app. 34704/08\)](#)
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- <sup>82</sup> M. Gavouneli, A.-E. Baka and K. Charokopou, "Greek National Commission for Human Rights: towards a more effective national strategy for the monitoring of the execution of the ECtHR's judgements in Greece" in Linos-Alexandre Sicilianos (ed), *The execution of the ECtHR judgements by Greece*, Nomiki Vivliothinki, 2021, pp. 27-43 [in Greek].
- <sup>83</sup> GNCHR website, [Execution of the ECHR Decisions](#).
- <sup>84</sup> Rule of Law Backsliding Continues in Greece, [Joint Civil Society Submission](#) to the European Commission on the 2023 Rule of Law Report, January 2023

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<sup>85</sup> GNCHR, [Letter](#) to the Minister for Citizen’s Protection on refugees being stranded on an islet in the river Evros, 15 August 2022 [in Greek]. For more details see the [Interim Report](#) of the Recording Mechanism of Incidents of Informal Forced Returns, January 2023.

<sup>86</sup> Rule of Law Backsliding Continues in Greece, [Joint Civil Society Submission](#) to the European Commission on the 2023 Rule of Law Report, January 2023, p.11.

<sup>87</sup> GNCHR, Chowdury and others v. Greece – [Recommendations](#) for the full compliance of the Greek State, 27.8.2018.

<sup>88</sup> GNCHR, [Communication](#) on the assessment of the level of compliance of the Greek State with GNCHR’s recommendations on ECtHR judgment Chowdury and Others v. Greece (Manolada-case), 5.6.2020.

<sup>89</sup> GNCHR, [Communication](#) on the assessment of the level of compliance of the Greek State with GNCHR’s recommendations on ECtHR judgment Chowdury and Others v. Greece (Manolada-case), 5.6.2020.

<sup>90</sup> Institute of Informatics and Telecommunications (IIT) of the National Centre for Scientific Research Demokritos, [White Paper](#) “Democratising AI – A National Strategy for Greece”, April 2020.

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<sup>93</sup> GNCHR, [Comments to the Draft Bill](#) of the Ministry of Labor and Social Affairs “On the Protection of Employment – Establishment of the Independent Authority ‘Labor Inspectorate’ – Ratification of the ILO Convention No. 190 on violence and harassment in the world of work – Ratification of the ILO Convention No. 187 on the Promotional Framework for Occupational Safety and Health at Work – Incorporation of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and careers”, June 2021, p. 11 [in Greek].

<sup>94</sup> GNCHR, [Comments to the Draft Bill](#) of the Ministry of Labor and Social Affairs “On the Protection of Employment – Establishment of the Independent Authority ‘Labor Inspectorate’ – Ratification of the ILO Convention No. 190 on violence and harassment in the world of work – Ratification of the ILO Convention No. 187 on the Promotional Framework for Occupational Safety and Health at Work – Incorporation of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and careers”, June 2021, p. 11 [in Greek].

<sup>95</sup> GNCHR, [Observations](#) on the 5<sup>th</sup> National Report on the implementation of the Revised European Social Charter (reference period 01/01/2017-31/12/2020), December 2022, pp. 14-16.

<sup>96</sup> GNCHR, Comments to Draft Bill of the Ministry of Migration and Asylum “Improvement of migration legislation, amendments of provisions of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions” [\[summary in English\]](#);

ENNHRI/GNCHR, [National Report](#) on the situation of human rights of migrants at borders – Greece, July 2021, p. 5.

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<sup>98</sup> Racist Violence Recording Network, [Press release](#): No room for complacency towards racist violence one year after the conviction of Golden Dawn, 12.10.2021. Watch also the [video of the GNCHR members](#) commenting the issuance of the court judgment on the trial of Golden Dawn, 12.10.2020 [in Greek].

## Hungary

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### Office of the Commissioner for Fundamental Rights of Hungary

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

The Office of the Commissioner for Fundamental Rights of Hungary ('OCFRH', 'the Commissioner, 'CFR') informs that in 2022, several debates were held by the Hungarian National Assembly to promote the rule of law on the national level, , resulting in the adoption of various bill, e.g., Act XXIX of 2022 on the amendment of the laws concerning the audits of the individual public interest foundations performing public tasks and managing funds related to the control of the utilization of European Union budgetary resources, Act XXVIII of 2022 on the amendment of certain laws related to the control of the utilization of European Union budgetary funds, Act XLI of 2022 on the Amendment of Act XC of 2017 on Criminal Procedures, Act XLIV of 2022 on the Directorate-General for Audit of European Funds, and Act LVI of 2022 on the amendment of certain laws with a view to the successful conclusion of the conditionality procedure required by the European Commission. Given that, the laws that have recently come into effect address concerns raised by the European Commission regarding the rule of law, focusing on four main areas: independence of the judiciary, anti-corruption framework, freedom of press, as well as the system of checks and balances.

Act XXVII of 2022 the control of the use of European Union budget funds, the 'Integrity Authority Act' has been adopted, which provides for the establishment of the Integrity Authority (hereinafter "the Authority") and the Anti-Corruption Task Force (hereinafter "the Task Force").

The Parliament clarified the rules on the declaration of assets introduced by Act XXXI of 2022 amending certain Acts on declaration of assets relating to the control of the use of European Union budget funds (hereinafter: Act XXXI of 2022) as a result of the consultation between the Government and the European Commission.

Under Act XLIV of 2022, the Directorate General for the Audit of European Subsidies, currently operating as a central office under the authority of the Ministry of Finance, has been transformed into an autonomous public administration body. This means that it is functionally and professionally fully independent in the performance of its tasks, cannot be instructed by any other person or body in the performance of its tasks, cannot seek guidance from any other person or body in the performance of its tasks, and performs its tasks separately from other bodies and free from any influence.<sup>1</sup>

### **Impact on the Institution's work**

OCFRH informs that the 2022 ENNHRI rule of law report impacted the work of the institution in several aspects. The report exposed several problems that receive special focus but also contained several recommendations for good practices. OCFRH reports that the report also encouraged the institution to perform the tasks in more harmonized efforts with the other social organizations, as well as international and Hungarian institutions, which resulted in successful advocacy for the enforcement of rights. Furthermore, the NHRI fostered social awareness, to ensure that the institution and its responsibilities are accessible to anyone. OCFRH implemented an action to facilitate raising awareness of OCFRH competencies to the citizens and make available access to its activities closer to their place of residence by opening regional offices (f. ex. in order to file a complaint to the Commissioner). The OCFRH states that the year 2022 challenged the institute with unprecedented tasks resulting from the COVID-19 Pandemic and the Russian armed attack on Ukraine. Since the outbreak of the pandemic, it has continuously represented the view that the fundamental rights-related inquiries should be continued and that personal presence during these inquiries was vital. The NHRI undertook visits to the children's care centres, penitentiary institutions,

psychiatric departments, and police facilities. Regarding the impact of the Russia's armed attack on Ukraine, OCFRH monitored the protection of rights of Ukrainian refugees Commissioner and was able to provide direct legal and humanitarian support to as many people as possible. OCFRH promptly responded by opening several temporary offices near the Ukrainian-Hungarian border section, in the regions that were hit hardest by the Ukrainian refugee crisis. The staff members of the office provided voluntary support not only at the temporary offices opened near the Ukrainian-Hungarian border (in the settlements of Záhony and Beregsurány) but also in the capital, at the reception centre opened for the refugees, assisting thousands of people daily on the spot. Besides the provision of legal support about the asylum procedure and employment, the staff members of the Office distributed information sheets in Hungarian, English and Ukrainian and they also facilitated for the refugees to file complaints against the procedures of the authorities. The Commissioner for Fundamental Rights of Hungary also placed informational material on its official website as well as the activities and the accessibility of the NHRI. Furthermore, the OCFRH presented the accessibility and competence of other organizations as well. The 2022 ENNHRI report and the large-scale humanitarian disaster also highlighted the significance of cooperation and coordinated efforts with state authorities and civil society organizations. His endeavour that the national human rights institution should give appropriate responses to the new challenges by relying on the available means (e.g., in the case of the refugee crisis generated by the war in Ukraine) has found widespread international reception: several ombudspersons and institutions contacted the NHRI, requesting information and good practices, and many international delegations checked this work in person. OCFRH informs that throughout 2022 it maintained close regular contact with the institutions involved in international human rights protection, and that it regularly voiced its concerns about helping the persons and families fleeing Ukraine at several international forums. Additionally, every two weeks, it published a newsletter about the war-related fundamental rights situation in

English. The newsletter was sent by the NHRI to the International Ombudsman Institute (IOI) and its member organizations, among others. At the NHRI's initiative, several international delegations also paid a visit to Hungary.

OCFRH also highlights that in 2022 it had as a priority the dialogue with other ombudspersons. During the regular coordination talks and bilateral meetings, the parties exchanged their experience and good practices related to the handling of the humanitarian refugee crisis. The delegations had the chance to inspect the fundamental rights-related activities on the Hungarian-Ukrainian border section in person. The ombudsman gained first-hand information on the operation of the collection points, as well as on the experience gained up till then by the agencies serving at the individual locations, such as the volunteers of the Hungarian Charity Service of the Order of Malta, the Federation of Hungarian Jewish Communities, the Hungarian Reformed Church Aid, as well as the Catholic Caritas Hungary, with whom the staff members of the Office worked in close cooperation by providing humanitarian assistance in the field, such as food, transport and legal aid.

OCFRH also stresses that the President of IOI visited the newly established regional offices of OCFRH, opened in 2022, the activities on the Ukrainian-Hungarian and Romanian-Hungarian border sections, as well as to the temporary regional offices and several county-level penitentiary institutions. During his visit, the President of IOI emphasized that the activities pursued by the Commissioner for Fundamental Rights of Hungary and his Office qualify as one of the best on an international scale, with special regard to the decisions adopted and measures are taken for supporting the Ukrainian refugees. The Commissioner for Fundamental Rights of Hungary deems cooperation and the professional exchange of experience on an international level critically important. The role of the ombudsman and active cooperation between the individual states are highly appreciated now when fundamental rights-related tasks affecting several countries emerge. It was his key goal for efficient rights protection to make several countries aware of the extraordinary situation, thus he assigned special



importance to providing information to IOI, as this institution coordinates two hundred independent ombudsman institutions of over one hundred countries in the world.<sup>2</sup>

### **Follow-up initiatives by the Institution**

OCFRH prioritises promoting, protecting and controlling the enforcement of the Convention on the Rights of Persons with Disabilities (CRPD). OCFRH also reports that the ENNHRI's 2022 proposals were among its priorities. The NHRI supported the UN Special Rapporteur on the Rights of Persons with Disabilities with an extended mandate on the basis of UN Human Rights Council decision No. 35/6, as well as other committees and rapporteurs by sending them materials, such as reports. Under its CRPD mandate, the OCFR has the duty to monitor the situation of people with disabilities, to conduct individual and comprehensive probes, to regularly visit small and large institutions serving them, to assess the reports of civil society organisations and to initiate the necessary legal actions.

Additionally, OCFRH contributed to the online session of the CRPD (26th session – Committee on the Rights of Persons with Disabilities). In his speech, the CFR stressed that the OCFR welcomes the efforts made in recent years in the spirit of the CRPD, and will always make public disclosure of its findings in the form of a report in order to align with the spirit of the CRPD.

The NHRI also took the floor at a high-level meeting of ENNHRI on the human rights situation of those fleeing Ukraine. On this occasion, conditions of the persons fleeing to Hungary were reported.

The OCFRH notes that it initiated the OPCAT Civil Consultative Body ('CCB') to be complemented by new members to further enhance the visibility and representation of civil society organizations. Thus, the Body whose membership increased from eight to fifteen back in 2021, could conclude fruitful and proactive sessions in 2022 as well. The increase in the memberships allowed broader social participation together with the new approaches added by the new members. OCFRH reports that CSOs positively assessed

the monitoring activities of the Commissioner acting in the role of National Preventive Mechanism. The Commissioner for Fundamental Rights of Hungary took part in the summit meeting of the ombudspersons of the Visegrád Group (V4) countries, which was organized at Kroměříž, the Czech Republic this time. During the summit meeting, the parties reviewed, among others, the role of ombudsman institutions in the reception and integration of those fleeing the war in Ukraine.

The OCFRH regarding the Ukrainian refugee-crisis informs that it installed an investigation of the institutions of the service system for those who are under temporary protection with a focus on children, persons with disabilities, elderly and minorities. The investigations conducted by the NHRI, the OPCAT and the Department for Equal Opportunities and Children's Rights, among others, focused on whether the education rights of children arriving from Ukraine as refugees were violated. Simultaneously, it was also assessed whether the rights of Hungarian children to education were breached. To this end, the OCFRH has contacted the rectors of several Hungarian universities to monitor the situation of students from Ukraine continuing their higher education in Hungary. Furthermore, it also shared its experience in the field of children's rights at international conferences. A notable event was the Council of Europe's high-level international conference in Rome entitled "Beyond the Horizon: a New Era for the Rights of the Child" OCFRH presented its practice Commissioner. In addition to this, the expert staff shared their experience on a bi-weekly basis in the Eurochild Open Space for Solidarity online peer discussion. Moreover, the Commissioner and his staff took part in the general assembly of ENOC (European Network of Ombudsmen for Children) and their children's rights conference entitled "Shaping the Future: Children's Rights in a Climate Crisis" in Reykjavik, Iceland. The key topic of the conference organised by the European Network of Ombudsmen for Children was the enforcement and protection of children's rights related to the climate change.

In 2022, the OCFRH presented the office at several events and raised awareness about the Ombudsman's work among civilians. In 2022, he held a talk to students at the

National University of Public Service. The opening of the six regional offices mentioned in Sections 6 and 7 also reinforced the aim of reaching out to as many people as possible with the NHRI's activities and assistance. OCFRH highlights the importance of inclusiveness in the digitalization of services in filling complaints. The OCFRH states that in the framework of the National Preventive Mechanism, COVID-19-focused investigations continued, with personal visits to the Veszprém County Remand Prison and the Kiskunhalas National Prison (the latter was a follow-up investigation). The Veszprém County Remand Prison was also visited by the President of the International Ombudsman Institute. The visits to the penitentiary institutions were largely affected by the pandemic, and the inspections were focused on the reception, contact, accommodation, employment, education, and leisure time activities of the prisoners. The use of electronic means of communication has since then become a regular practice in prisons and enables inmates to maintaining communication with relatives online, and OCFRH informs it represents a good practice to be maintained.<sup>3</sup>

### **NHRI's Recommendations to national and European policy makers**

In order to preserve the results achieved in the field of fundamental rights protection and to perform its tasks more effectively, the OCFRH is open to dialogue with both national and international organisations. Therefore, it recommends that the priority should be given to face-to-face meetings and conferences, which provide an opportunity to share useful experiences and to learn directly about the state of the rule of law.

### **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

#### **State authorities follow-up to regional actors' recommendations on rule of law**

OCFRH reports that the implementation of regional actors' recommendations was a priority in the Hungarian Legislature in 2022.

OCFRH highlights the Act XXIX of 2022 that aims to promote the proposal of the anticorruption reinforcement efforts explained in the report on the amendment of the laws on the audits of the individual public interest foundations performing public tasks and managing funds - related to the control of the use of the European Union resources - the National Tax and Customs Administration, as well as the European Anti-Fraud Office (OLAF)<sup>4</sup>. Based on the law, if OLAF conducts an on-site audit or review, the National Tax and Customs Administration should provide support by ensuring excise officers.

Moreover, the Commissioner reports the adoption of the Act XXVIII of 2022 on the amendment of certain laws related to the control of the utilization of European Union budgetary funds. The Act expresses Hungary's commitment to the values of the European Union, with special regard to the protection of the EU's financial interests and the regular use of European Union budgetary resources. Through this, the Act established the independent Directorate of Internal Audit and Integrity which monitors the activities related to the assessment and treatment of potential situations of conflicts of interest related to the development projects implemented from the subsidies from the individual European Union funds. Among others, the Directorate performs a sample testing of conflict of interest statements and declarations of interest, as well as investigates the reports concerning the establishment of conflicts of interest. The Directorate identifies the potential situations of conflicts of interests and performs risk assessments. It takes care of raising the awareness of the players of the development policy institutions regarding the prevention of situations of conflicts of interest. It liaises and cooperates with national security services and law enforcement agencies and operates via an anonymous reporting system. The Directorate of Internal Audit and Integrity reports on its activity to the independent Integrity Authority on an annual basis.

The Act XLI of 2022 on the Amendment of Act XC of 2017 on Criminal Procedures creates an accessible tool for abuses of public authority and funds. This law introduced

a new procedural mechanism named “Procedure for cases of grave crimes with regard to exercising public authority or the management of public funds”. OCFRH explains that a person who has no direct private interests but who wishes to act in the interests of the public may rely on judicial channels in a public prosecution procedure. In criminal proceedings launched after 1 January 2023, in the case of serious crimes regarding the exercising of public authority and the management of public funds, if the report is rejected or the proceedings are terminated by the investigative authority or the public prosecutor’s office, it is possible to use a motion to a court for reviewing the order or resume an investigation, if the investigative authority or the public prosecutor’s office rejects the motion for review.

Moreover, the Act XLIV of 2022 was adopted at the request of the European Commission aiming at the successful conclusion of the conditionality procedure and adoption of laws. The Integrity Authority held its inaugural session and operations on 18 November 2022. As an autonomous public administration agency, the Integrity Authority is fully independent in fulfilling its responsibilities and acts in each case when any organization using the European Union Funds failed at preventing, investigating, or solutioning frauds, conflicts of interest, corruption and law violations with competence to control. The Authority has special competence regarding planned, ongoing earlier measures or projects that are partially or fully financially supported by the European Union. OCFRH informs that the competence of the Integrity Authority is not affected by the withdrawal of projects if it happens. Furthermore, OCFRH stresses that the Act LVI of 2022. As a result of the coordination talks between the Government and the European Commission, the act clarifies the provisions in the individual laws related to declarations of finances of the use of European Union budgetary funds.

The Commissioner for Fundamental Rights of Hungary agrees with the requirement that civil society organisations be given the opportunity to engage in meaningful cooperation with the Integrity Authority and to support the work of the Anti-Corruption Working Group.<sup>5</sup>

## State authorities follow-up to NHRI's recommendations regarding rule of law

OCFRH highlights the following follow-up activities:

### Support provided to persons fleeing Ukraine

In 2022, the previous ENNHRI statement (issued in 2018) on the role of NHRIs in the protection of the human rights of internally displaced persons (IDPs) due to conflict (post-conflict) has not lost its relevance and has become even more relevant.

OCFRH informs that in the Hungarian legislation and in the work of the authorities in 2022, priority was given to solving the legal situation of persons fleeing Ukraine, the social, health care, and housing as well as ensuring the education of school-age children. As part of its active role in supporting people fleeing the war to Hungary, the OCFRH monitored the situation during these extraordinary times and continuously examined the newly adopted and enacted legislation in favour of those fleeing the war in Ukraine.

Following the implementing decision of the Council of the European Union on 4 March 2022, the Government issued a decree stipulating that Hungary should grant protection:

- to a Ukrainian citizen residing in Ukraine before 24 February 2022
- to a stateless person or a non-Ukrainian third-country national who was granted international protection or equivalent national protection in Ukraine before 24 February 2022, or
- to a member of the family of the person referred to in (a) and (b).

OCFRH describes that Hungary has helped refugees from Ukraine since the beginning of the war with temporary shelter, food, medicine, and clothing donations. The Ukrainian refugees are received by the staff members of the Hungarian authorities on the Hungarian-Ukrainian border. If they are not dual Hungarian-Ukrainian citizens, they have the possibility to contact the Hungarian asylum authorities after crossing the border in order to initiate the procedure for their recognition as asylum seekers. They

are provided with food, hygiene equipment and rest facilities in transit centres along the border.

Pursuant to the relevant Council Regulation (EU), holders of Ukrainian passports with biometric identifiers are granted the right to stay in Hungary for 90 days within 180 days (every six months) visa-free, even if they do not apply for recognition as asylum seekers, under the conditions set out as follows).

Those who apply for recognition as asylum seekers are granted the right to stay in Hungary and are protected against refoulement, expulsion and extradition.

Asylum seekers are entitled to accommodation in the reception centre, where they are provided with food and medical care.

Asylum seekers are entitled to accommodation and food supply free of charge at the reception centre throughout the period of temporary protection.

OCFRH notes that Hungary provides a number of health services free of charge to socially deprived applicants for recognition and to dual Ukrainian-Hungarian nationals who have been forced to leave Ukraine (if they are not covered by Hungarian social security), including basic health care and age-related compulsory vaccinations, outpatient specialist care in case of urgent need, inpatient hospital care in case of urgent need, patient transport if the medical condition does not allow for any other transport, emergency dental care and dental prosthesis treatment, prenatal and obstetric care, specialised oncological care.

Also, persons under temporary protection and those applying for this status are entitled to a regular subsistence allowance, including during their stay in the reception centre or other accommodation designated for them.

Regarding the right to education, OCFRH provides that among the persons recognised as eligible for temporary protection in 2022, who were enrolled in the last year of secondary school in their home country in the school year 2021/2022, and can prove this by a school certificate or other document issued and certified by the school in

Ukraine, including electronically, and wishes to take the Hungarian final examination in the Hungarian final examination system, in accordance with the rules of the final examination regulations, the interested can apply for early final examination in certain subjects until 20 April 2022.

The OCFRH also considers the protection of members of the most vulnerable groups in society to be a priority within the framework of the rule of law. It is therefore important that their grievances are not hidden but that their complaints and petitions are sent to the OCFRH, either orally or in writing. To this end, the staff of the Hungarian NHRI provided assistance to refugees in the temporary regional offices near the Ukrainian-Hungarian border (in the settlements of Záhony and Beregsurány) and in the reception centre in the capital.

### **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

#### Whistleblowing protection

In 2019, the OCFRH states that it joined the Network of European Integrity and Whistleblowing Authorities (NEIWA), a newly created international network on anti-corruption and whistleblowing protection. Following the inaugural meeting in The Hague, OCFRH attended meetings of national whistle-blower protection organisations in the network in Paris and Barcelona, where the Commissioner provided further examples to support the Office's monitoring function.<sup>6</sup>

#### Renovation of children's homes in 2022

The renovation of children's homes was carried out in several stages. Firstly, the Commissioner engaged in a dialogue with the penitentiary institutions on the reintegration of detainees in penitentiary institutions, eventually proposing the involvement of civil society. The Saint Agatha Child Protection Service's Szentlőrinc Group Home and Gyulafirátót Children's Home were among the NGOs. These children's homes were renovated under the institute's renovation programme, as was the Rumi



Special Children's Home. The Ágota Foundation was also involved in the coordination and strengthening of cooperation with civil society organizations.

Finally, the projects included the renovation of a group room for therapeutic activities, the fencing of the courtyard by the project's facilitators, and the creation of rooms for sports and visitors.

These children's homes were modernised with the help of public actors and NGOs. Among other things, the rooms in the homes had their laminate flooring replaced, the fences of the institutions were painted, and the interior of the building was completely redecorated and cleaned, and garden pavilions for the residents were built in the courtyard.

OCFRH inspected the results of the modernisation. During its visit, the OCFRH donated toys and gifts raised and donated by its staff to the children living there.

OCFRH highlights its intention to renovate at least two children's homes in 2023.

#### Preparing the regional offices

OCFRH states that it strives to inform citizens about the extension of the NHRI's competencies and powers. OCFRH also informs that it would like to provide easier access to the NHRI's activities to people, not only by digital services. Until February 2022, the NHRI was based exclusively in Budapest. While it was possible to initiate cases electronically, some clients lack the necessary devices and knowledge to do so. The OCFRH considering its mandates, to provide more opportunities for citizens to assert their rights, to have wider access to ombudsman procedures, to learn about the types of cases and procedures, and to improve the delivery of customer service and fundamental rights protection, the NHRI opened six Regional Offices last year, also related to the expansion of the Office's fundamental rights protection activities over the last two years.

OCFRH states that the date for opening regional offices was 2022, hence the staff was recruited in November 2021. In order to train the colleagues, the mentoring of the

relationship officers and advisors was carried out by the staff of the Client Service and Department for the Protection of Whistle-blowers. During the training period, the staff of the regional offices was required to spend several days a week in the Office.

In order to effectively perform their customer service and other tasks, the staff of the regional offices also became familiar with the work of other departments of the NHRI and the types of cases handled. To this end, the heads of department and, on behalf of the Deputy Commissioners, the heads of secretariat gave the new colleagues an insight into the activities of the departments concerned.



Each of the six regional centres comprises 3 counties, as follows:

- Győr Regional Office of the Office of the Commissioner for Fundamental Rights of Hungary (Western Transdanubia regional centre) receives citizens from Győr-Moson-Sopron County, Vas County, Zala County.
- Szeged Regional Office of the Office of the Commissioner for Fundamental Rights of Hungary (Southern Great Plain regional centre) receives citizens from Bács-Kiskun County, Békés County, Csongrád-Csanád County.

- Debrecen Regional Office of the Commissioner for Fundamental Rights of Hungary (Northern Great Plain regional centre) receives citizens from Hajdú-Bihar County, Jász-Nagykun-Szolnok County, Szabolcs-Szatmár-Bereg County.
- Miskolc Regional Office of the Office of the Commissioner for Fundamental Rights of Hungary (Northern Hungary regional centre) receives citizens from Borsod-Abaúj-Zemplén County, Heves County, Nógrád County.
- Székesfehérvár Regional Office of the Office of the Commissioner for Fundamental Rights of Hungary (Central Transdanubia regional centre) receives citizens from Komárom-Esztergom County, Fejér County, Veszprém County.
- Pécs Regional Office of the Office of the Commissioner for Fundamental Rights of Hungary (South Transdanubia regional centre) receives citizens from Baranya County, Somogy County, Tolna County.

OCFRH informs that the Regional Offices are staffed by 6 lawyers (regional legal advisors) and one head of the unit, who have been recruited as new staff.

Furthermore, OCFRH notes that the statistics of the first half-year show that since the opening of the Regional Offices, citizens showed strong interest in the Regional Offices, as represented by the data below:

OCFRH received 3,548 requests from citizens. In total, 899 complainants have requested in-person counselling at the Regional Offices at a pre-arranged time to discuss their specific complaints.

Around 80% of the minutes were recorded in the frame of a personal interview. Several complaints were made by telephone which were mainly chosen by elderly and disabled clients. Other telephone inquiries mainly concerned the general functioning and competencies of the Office of the Commissioner for Fundamental Rights of Hungary, and there were many inquiries about the status of ongoing cases.<sup>7</sup>

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Hungarian NHRI currently holds a B-status after being downgraded in March 2022.<sup>8</sup> In October 2019, the SCA had decided to defer its decision on the re-accreditation of the NHRI. In June 2021, the SCA recommended that the Hungarian NHRI be downgraded to B-status, with recommendations on 'addressing human rights violations', 'selection and appointment', 'interaction with the international human rights system' and 'cooperation with civil society'.<sup>9</sup> The Hungarian NHRI had one year to provide the documentary evidence necessary to establish its continued conformity with the UN Paris Principles and maintained its A-status during this period. However, in March 2022, the SCA confirmed its recommendation for the Hungarian NHRI to be downgraded to B-status. OCFRH challenged this recommendation before the GANHRI Bureau, in accordance with Article 12 of the GANHRI Statute.<sup>10</sup> This challenge was not successful, and the decision became final on 17 May 2022.

### Follow-up to SCA Recommendations and relevant developments

The Hungarian NHRI has demonstrated concerns and dissatisfaction with the outcome and procedures related to its accreditation review. For example, the Office of the Commissioner believes that its appeal against the SCA recommendation to downgrade was not properly examined and that there were procedural and substantive errors in the evaluation process. The institution also argues that the SCA recommendations lacked sufficiently concrete recommendations and believes that the SCA did not reflect the entirety of the information provided by the institution. It also argues that the SCA failed to sufficiently take into account the social, legal, and institutional specificities of Hungary.

For example, the Hungarian NHRI believes that the selection and appointment of the Commissioner for Fundamental Rights is subject to strict eligibility and selection criteria,

and that it reflects regional practice and standards. The institution believes that the SCA recommendations do not fully account for the specific constitutional system of Hungary.

The Hungarian NHRI has reiterated that, despite the accreditation status, it judges its functioning as being fully compliant with the UN Paris Principles. It has also reported that it is considering the legal possibilities within GANHRI in order to apply for reaccreditation as an A-status NHRI, and that it appreciates meaningful discussion and cooperation with partners for this purpose.

### **Regulatory framework**

OCFRH outlines the main changes concerning its regulatory framework: The responsibilities of the independent mechanism defined in Section 33(2) of the UN Convention on the Rights of Persons with Disabilities (hereinafter referred to as: the Disability Convention) promulgated by Act XCII of 2007 are fulfilled by the Commissioner for Fundamental Rights of Hungary with effect from 1 January 2023. The Commissioner for Fundamental Rights of Hungary, involving the civil society, especially the persons with disabilities and the organisations that represent them, ensures the performance of the tasks of the independent mechanism as defined by the quoted provision of the Disability Convention. The Disability Advisory Board, which will support the disability-related tasks of the Commissioner for Fundamental Rights of Hungary and will consist of experts with outstanding theoretical knowledge or practical experience in the rights of persons with disabilities, as well as the delegates of organisations that represent persons with disabilities or the civil society. At least eleven staff members with outstanding theoretical knowledge or practical experience in disability-related issues shall be authorised by the Commissioner for Fundamental Rights of Hungary to perform the tasks of the Independent Disability Mechanism to be established at the Office of the Commissioner for Fundamental Rights of Hungary as a separate organisational unit, pursuant to Section 39/Q (3) of Act CXI of 2011 on the Commissioner for Fundamental Rights of Hungary. (Hereinafter referred to as: the Commissioner Act).

OCFRH notes that to ensure the independence of its work, it plans to prepare a comprehensive annual report on the performance of the tasks of the Independent Disability Mechanism, which will be displayed on the homepage of the Office of the Commissioner for Fundamental Rights of Hungary.

Moreover, OCFRH informs that based on the government decree No. 1593/2022. (XII. 1.) on the provision of resources to the mechanism activities that will on an on-going basis be provided in the upcoming financial years, in line with the preliminary government commitments.

With regard to institution's regulatory framework, OCFRH points out its mandate is strengthened by the case law of the Curia (the Supreme Court of Hungary).

Pursuant to the Commissioner Act, the Commissioner may also intervene in court cases launched in relation to environmental law decisions. This capacity is in line with the Commissioner Act's provision that the Commissioner pays special attention to - among others - the interests of future generations (Article P) of the Fundamental Law. With relation to this specific mandate, the Curia (Supreme Court of Hungary) has issued a decision (Kfv.VI.38.029/2021/7.) in February 2022 emphasizing that the Courts, in accordance with Article P of the Fundamental Law, regarding the common heritage of the nation, have an obligation to protect, maintain and safeguard these for future generations. The Curia in its decision has stressed that in cases where the interests of future generations are concerned, the courts should ex officio inform the Commissioner about the possibility to intervene in court cases. This decision further underlines the potential, albeit not an obligation, of the Commissioner to intervene in court proceedings.<sup>11</sup>

### **Enabling and safe space**

OCFRH states that its independence is guaranteed by the fact that its proceedings are subject only to the Fundamental Law of Hungary and that it cannot be instructed in connection with its activities and there is no appeal against its reports.

OCFRH informs that the powers of the institution are wide-ranging, its independence and effectiveness are guaranteed by law, its access to legislation and the political process is adequate, and its recommendations are implemented by the public authorities, with explicit justification for any deviation from them.

Furthermore, OCFRH states that it can initiate proceedings before a number of public bodies, give opinions on draft legislation affecting its functions and powers, on plans and concepts for long-term development, spatial plans and other matters directly affecting the quality of life of future generations, and propose amendments to or the creation of legislation affecting fundamental rights or the recognition of the binding force of an international treaty.

OCFRH informs that there were 169 recommendations formulated in the 226 reports of investigations. Out of those, the recommendations made by the Commissioner for Fundamental Rights of Hungary were accepted in as many as 153 cases, which means a rate of 91%, on the current level of processing.

However, we shall highlight that the OCFR's work is wide-ranging, as it also deals with equal treatment cases (General Directorate for Equal Treatment, hereinafter referred as "ETA"), and police complaints (General Directorate of Police Complaints) under the mandate of the CFR. The following data shows that the capacities of the ombudsman are comprehensive and extend way beyond the classic Ombudsman toolkit.

In 2022, 689 cases were generated at the Directorate of Police Complaint. There were 124 complaints against police actions, and 477 complaints against offences, criminal proceedings and enforcement of sentences. In addition, 79 cases were prosecuted ex officio, while 9 cases of an administrative nature concerning internal activities were opened. The Directorate closed 75 cases in respect of cases carried over from 2020, 399 cases in respect of cases opened in 2021 and 427 cases in respect of cases opened in 2022, for a total of 901 cases. In the year under review, the CFR issued 29 reports on complaints against police action. In 24 of the reported police measures, the National

Police Commissioner conducted the administrative procedure, taking into account the findings of the CFR. In 20 cases, the decision was in full agreement with the Commissioner's decision, in 1 case it was contrary to the Commissioner's position, while in 3 cases the complaint was rejected by the National Police Commissioner on the grounds of procedural obstacles.

In 2021, after the merger, the ETA dealt with a total of 462 cases. Of these, 265 were administrative cases and 197 were non-administrative cases, in which the CFR, through ETA, informed clients who approached him in individual cases about the possibility of seeking redress for violations of the requirement of equal treatment without any official procedure or decision having been taken. In 2021, the ETA took 169 decision closing proceedings.

In 2022, the ETA dealt with a total of 463 cases. Of these, 265 were administrative cases, and there were also 198 non-administrative cases, in which the CFR, through the ETA, provided information to complaints, typically in individual cases, on how to seek redress for violations of equal treatment requirements, or otherwise provided information on the ETA's activities.<sup>12</sup>

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

OCFRH informs that due to Russia's armed attack on Ukraine, an emergency situation was declared in Hungary. Providing legal assistance and legal protection for refugees requires a significant redeployment of the resources of our institution.

The Commissioner for Fundamental Rights of Hungary should pay special attention to assisting the implementation of the United Nations Convention on the Rights of Persons with Disabilities, i.e., CRPD. In recognition of its work towards this aim, as a result of a legislative amendment adopted in 2022, the Commissioner for Fundamental Rights of Hungary will assume the functions of the independent mechanism under the CRPD Convention from 1 January 2023. In order to carry out these tasks effectively, it was



necessary to restructure the Office and a new, separate department was created. It will be assisted by a Disability Advisory Board, representing civil society, composed of experts with outstanding theoretical knowledge or practical experience in the field of rights of disabled persons and delegates from organisations representing people with disabilities.

In 2022, the Commissioner for Fundamental Rights of Hungary, as a National Human Rights Institution accredited by the UN, continued to carry out his duties in accordance with the Paris Principles. The powers of the Commissioner for Fundamental Rights of Hungary were further extended when the functions of the defunct Independent Police Complaints Board were taken over and the Equal Treatment Authority was integrated with the Ombudsman. The Office of the Commissioner for Fundamental Rights of Hungary now protects the widest possible range of human rights and exercises official powers to ensure equal treatment. As mentioned above, as of 1 January 2023, the Commissioner for Fundamental Rights of Hungary will assess the compliance of the rights of persons with disabilities with the Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007. The Paris Principles place emphasis on OCFRH carrying out its tasks in partnership with civil society organisations. This requirement was a key priority for the Commissioner for Fundamental Rights of Hungary in 2022 as well. The Civil Consultative Body (CBB), which operates alongside the OPCAT, continued to operate in 2022, with an increase in membership from eight to fifteen members (Hungarian Dietetic Association, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Catholic Church, Evangelical Lutheran Church in Hungary, Reformed Church in Hungary, Federation of Hungarian Jewish Communities, Together for Fundamental Rights Foundation, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Hungarian Association for Persons with Intellectual Disability, Mental Health Interest Forum, Pressley Ridge Hungary Foundation, Streetlawyer Association).

Furthermore, frequent participation in conferences, high-level meetings and bilateral consultations were particularly important for the Commissioner for Fundamental Rights of Hungary in 2022, as appropriate legal practices, experience and exchange of ideas were essential for continued and innovative assistance to refugees from Ukraine. The Commissioner for Fundamental Rights of Hungary and his staff regularly provided information in response to requests from international and national bodies.

Before the expiry of the mandate of the Deputy Commissioner for Future Generations, the Commissioner for Fundamental Rights of Hungary once again proposed the election of Prof. Dr. Gyula Bándi to the Parliament. The Parliament supported the proposal by a much larger margin than the required minimum, which is also a recognition of the independence of the institution as enshrined in the Paris Principles.<sup>13</sup>

### **NHRI's recommendations to national and regional authorities**

OCFRH informs that it would like to draft up its annual budget proposal, and submit it, without any changes, to the Parliament that decides on it, it would serve the NHRI's independence. The law also guarantees that the budget of the institution is set by Parliament at a level that is not less than the amount set in the previous year's central budget.

Furthermore, the OCFRH's legal certainty could be enhanced by a legal provision stipulating that the Commissioner for Fundamental Rights of Hungary should remain in office after the expiry of his or her term of office until the election of a new Commissioner for Fundamental Rights by the Hungarian Parliament.

OCFRH explains that the Deputy Commissioner for the Rights of Future Generations regularly issues General Opinions and Legal Summaries containing legal analyses and legislative recommendations to national and local authorities within his mandate. All these touch upon systemic matters that are significant from the aspect of fundamental rights (regarding the right to a healthy environment and physical and mental health and the rights of future generations) and offer examples of relevant case law from the

Constitutional Court of Hungary and the European Court of Justice. In order to draw the attention of local authorities to these summaries, in 2022, the Ministry of Interior has specifically included these General Opinions and Legal Summaries in their internal newsletter addressed to local municipalities.<sup>14</sup>

## **Human rights defenders and civil society space**

### **Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities**

OCFRH informs that the restrictions previously described in the context of the COVID-19 epidemic were no longer in force in 2022.

Furthermore, OCFRH informs that despite encouraging CSOs to inform OCFRH if they have questions or observations in the matter, no enquires were received during 2022.

### **Access to and involvement of civil society actors in law and policy making**

As already stated in last year's ENNHRI report, it is still true today that civil society organizations are not always invited to take part in consultations on the draft laws that affect their activity. The Commissioner for Fundamental Rights of Hungary has called the ministries concerned to ensure the right of the civil society organisations to express their opinions in several of his comments on laws. The OCFRH states that it has called upon Hungarian ministries to ensure the right of civil society organisations to express their opinions in several draft laws.

### **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

The Office of the Commissioner for Fundamental Rights of Hungary does not have knowledge of this.

No law was passed in 2022 to prevent strategic lawsuits against public participation (SLAPPs). However, the Government of Hungary has put a package of laws up for public debate which aims to remove the possibility for public authorities to challenge final

court decisions in the Constitutional Court of Hungary, which came into force at the end of 2019.

### **Measures undertaken by State authorities to protect and promote civic space**

Every year, including in 2022, the Commissioner for Fundamental Rights of Hungary has encouraged civil society organisations to contact his Office with questions and comments. No such requests were received last year. Looking ahead, the Office of the Commissioner for Fundamental Right continues to welcome comments from civil society organisations. In line with its own objective and the previous report on legal certainty, and took the initiative to enlarge the membership of the CCB to increase civil society participation, which has produced positive results and has been justified.

In 2022, the Parliament decided that the Disability Advisory Board (hereinafter referred to as: the Advisory Board), composed of experts with outstanding theoretical knowledge or practical experience in the field of disability rights and delegates of organisations representing persons with disabilities, representing civil society, will assist the Commissioner for Fundamental Rights of Hungary in the performance of his/her duties in the field of disability. The Disability Advisory Board, which will support the disability-related tasks of the Commissioner for Fundamental Rights of Hungary and will consist of experts with outstanding theoretical knowledge or practical experience in the rights of persons with disabilities, as well as the delegates of organisations that represent persons with disabilities or the civil society, will be an important forum of cooperation.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Civil Consultative Body (CCB) working alongside OPCAT continued its work in 2022, with an increase from 8 to 15 members (Hungarian Dietetic Association, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Catholic Church, Evangelical Lutheran Church in Hungary, Reformed Church in Hungary, Federation of Hungarian Jewish Communities, Together for Fundamental

Rights Foundation, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Hungarian Association for Persons with Intellectual Disability, Mental Health Interest Forum, Pressley Ridge Hungary Foundation, Streetlawyer Association). We note that the meetings, which were actively held throughout the year, were unanimously positively evaluated by the NGOs. This provided a platform for constructive discussion. In summary, the feedback and ideas from the 2022 CCB meeting confirm the right decision of the Commissioner for Fundamental Rights of Hungary in this exercise.

## **Implementation of European Courts' judgments**

### **Assessment of follow-up activities of State authorities**

OCFRH informs that Hungary is continuously monitoring the decisions of the European Court of Human Rights and the judgments of the Court of Justice of the European Union, as well as the legislative obligations of the competent public authorities arising from the former. Overall, in view of the Commissioner, Hungary is endeavouring to implement the decisions within a reasonable period of time.

OCFRH also highlights that in its procedures and practices, the Commissioner for Fundamental Rights of Hungary is carefully attentive to the case law of the European courts and always endeavours to take decisions in line with it.<sup>15</sup>

The Commissioner informs that it was received by the President of the European Court of Human Rights (ECHR) in Strasbourg on 26 April 2022. In the framework of bilateral meetings, good human rights practices were discussed.<sup>16</sup>

### **Leading European Courts' judgments awaiting implementation**

The OCFRH informs that the enforcement of judgments of the European Courts is ongoing and that Hungary is trying to implement the judgments in the foreseeable future there are still judgments that have not yet been enforced.<sup>17</sup>

In these unimplemented judgments, a conflict with the provisions of the Fundamental Law (the Constitution of Hungary) may arise. In one such CJEU case, the Constitutional

Court has initiated proceedings to provide an official interpretation of the Fundamental Law, at the request of the Government.

In the course of its monitoring activities, the Commissioner for Fundamental Rights of Hungary considers that Hungary is consistently following the decisions of the European Court of Human Rights and that it is part of his mandate to review the legislative obligations of Hungary in the light of these decisions.

### **NHRI's actions to support the implementation of European Courts' judgments**

OCFRH informs that the Government of Hungary is directly responsible for the implementation of decisions by European courts and these measures cannot be enforced by ombudsman-type powers. In the event of a failure to act, i.e., if the Hungarian legislation needs to be amended or supplemented following a decision of the European courts, the Ombudsman does not have the means to enforce the decision because he cannot petition the Constitutional Court to declare that the failure to act is contrary to Fundamental Law.

In its procedures and practices, the Commissioner for Fundamental Rights of Hungary is carefully attentive to the case law of the European courts and endeavours to take decisions in line with it.<sup>18</sup>

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<sup>1</sup> <https://net.jogtar.hu/jogszabaly?docid=A2200027.TV&searchUrl=/gyorskereso>

<https://net.jogtar.hu/jogszabaly?docid=A2200031.TV&searchUrl=/gyorskereso>

<https://net.jogtar.hu/jogszabaly?docid=a2200044.tv>

<sup>2</sup> <https://www.ajbh.hu/en/web/ajbh-en/important-information-for-persons-fleeing-ukraine>

<https://www.ajbh.hu/en/web/ajbh-en/-/2674194-107>

<https://www.ajbh.hu/en/web/ajbh-en/-/2674194-151>

<sup>3</sup> <https://www.ajbh.hu/en/-/2670755-51>

<https://www.ajbh.hu/en/web/ajbh-en/opcat-ccb>

<https://www.ajbh.hu/en/web/ajbh-en/-/2674194-103>

<https://www.ajbh.hu/en/web/ajbh-en/-/the-ombudsman-visited-the-kiskunhalas-national-prison>

<https://www.ajbh.hu/en/web/ajbh-en/-/2674194-119>

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<sup>4</sup> <https://njt.hu/jogszabaly/2022-29-00-00.0#CI>

<sup>5</sup> <https://njt.hu/jogszabaly/2022-29-00-00.0#CI>

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<sup>6</sup> [https://www.ajbh.hu/en/-/2670755-182?p\\_l\\_back\\_url=%2Fen%2Fkeres%25C3%25A9s%3Fq%3DNEIWA](https://www.ajbh.hu/en/-/2670755-182?p_l_back_url=%2Fen%2Fkeres%25C3%25A9s%3Fq%3DNEIWA)

<sup>7</sup> [https://www.ajbh.hu/en/web/ajbh-en/-/2674194-105?p\\_l\\_back\\_url=%2Fen%2Fweb%2Fajbh-en%2Fsearch%3Fq%3Dregional%2Boffices%26tag%3D2022](https://www.ajbh.hu/en/web/ajbh-en/-/2674194-105?p_l_back_url=%2Fen%2Fweb%2Fajbh-en%2Fsearch%3Fq%3Dregional%2Boffices%26tag%3D2022)

[https://www.ajbh.hu/en/web/ajbh-en/-/2674194-102?p\\_l\\_back\\_url=%2Fen%2Fweb%2Fajbh-en%2Fsearch%3Fq%3Dregional%2Boffices%26tag%3D2022](https://www.ajbh.hu/en/web/ajbh-en/-/2674194-102?p_l_back_url=%2Fen%2Fweb%2Fajbh-en%2Fsearch%3Fq%3Dregional%2Boffices%26tag%3D2022)

[https://www.ajbh.hu/en/web/ajbh-en/-/2674194-104?p\\_l\\_back\\_url=%2Fen%2Fweb%2Fajbh-en%2Fsearch%3Fq%3Dregional%2Boffices%26tag%3D2022](https://www.ajbh.hu/en/web/ajbh-en/-/2674194-104?p_l_back_url=%2Fen%2Fweb%2Fajbh-en%2Fsearch%3Fq%3Dregional%2Boffices%26tag%3D2022)

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<sup>8</sup> [SCA Report March 2022](#)

<sup>9</sup> [SCA Report June 2021](#)

<sup>10</sup> [GANHRI Statute](#)

<sup>11</sup> <https://www.ajbh.hu/en/web/ajbh-en/about-the-office>

<https://net.jogtar.hu/jogszabaly?docid=a1100111.tv>

<https://www.corteidh.or.cr/tablas/r25910.pdf>

<sup>12</sup> <https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178>

<sup>13</sup> <https://net.jogtar.hu/jogszabaly?docid=a2200195.kor>

<https://www.ajbh.hu/en/web/ajbh-en/opcat-ccb>

<sup>14</sup> <https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178>

<sup>15</sup> <https://igazsagugyiinformaciok.kormany.hu/az-emberi-jogok-europai-birosaganak-iteletei>

<sup>16</sup> [Commissioner's meeting with the President of the European Court of Human Rights](#)

<sup>17</sup> <https://igazsagugyiinformaciok.kormany.hu/emberi-jogok-europai-birosaga>

<sup>18</sup> <https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178> ; <https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178>

## Ireland

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### Irish Human Rights and Equality Commission

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up initiatives by the Institution

The Irish Human Right and Equality Commission (IHREC or “the Commission”) has carried out a number of actions to support the implementation of recommendations on the rule of law made in its previous submission. This includes work across international reporting to UN bodies, public policy work and legislative work at a domestic level.

Below is a list (non-exhaustive) of the Commission’s work to support the implementation of recommendations made on the rule of law:

- The Commission continues to advocate that the Irish State carry out an assessment of the impact of COVID-19, in particular on those disproportionately impacted. Through its Strategy Statement, the Commission continues to offer the Irish State opportunities to engage on progressing this assessment (in particular in relation to strengthening the Public Sector Equality and Human Rights Duty).<sup>1</sup>
- The Commission continues to make recommendations that legislative and policy measures to regulate civil society organisations should avoid placing undue restrictions on civil society engagement and advocacy.<sup>2</sup>
- The Commission also continues to recommend that the State ensure the active and informed participation of individuals in the development, implementation and monitoring of legislative, executive and administrative decisions that concern them.<sup>3</sup>
- The Commission recommends that the State overhaul the operation of its redress schemes for past human rights violations to ensure access to an effective



remedy for victims and survivors of historical abuse, in line with human rights and equality principles. The Commission further recommends that the State ensure that redress schemes are based on the right to truth, justice, reparation, non-recurrence and memory processes.<sup>4</sup>

- The Commission continues to recommend that the Irish State progress with the National Action Plan Against Racism without further delay.<sup>5</sup>

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Commission was re-accredited as an “A” status NHRI by GANHRI’s Sub-Committee on Accreditation at its June 2021 session.<sup>6</sup> The SCA commended the efforts of the Commission to promote and protect human rights in the Republic of Ireland and encouraged the Commission to continue these efforts. The SCA made a number of recommendations in relation to the Commission’s human rights mandate; the process for the selection and appointment of members of the Commission; the provision of adequate funding; and term of appointment of members of the Commission.

The SCA encouraged the Commission to continue to advocate for changes to its enabling law to ensure that all the full range of civil, political, economic, social and cultural rights are covered by the Commission’s mandate. At the same time, the SCA has acknowledged that the Commission has argued that a wider definition of human rights should apply to all of its powers but that the government has argued that a wider definition would attract constitutional difficulties and legal challenge.

Further, the SCA noted that the Commission does not have the explicit mandate to encourage ratification or accession to international human rights instruments; however, it acknowledged that the Commission interprets its mandate broadly to include actions in this regard. The SCA encouraged the Commission to advocate for changes to its enabling law to mandate it with the explicit responsibility to encourage ratification and accession to international instruments.

Acknowledging that the Commission has engaged with policy-makers, society, and government departments on the ratification of the UN OPCAT and provided views on the establishments of an NPM in the country, the SCA noted that the Commission does not have the explicit mandate to monitor places of deprivation of liberty. Therefore, the SCA encouraged the Commission to continue advocating for an explicit mandate to conduct unannounced visits to all places of deprivation of liberty.

The SCA noted that while Section 13 of the enabling law provides certain requirements for the selection and appointment process, including on diversity, pluralism, and publicising of vacancies, the law is silent on a permanent selection criteria and process. The SCA encouraged the Commission to advocate for the formalisation and application of a uniform process that ensures the broad participation of civil society in the selection and appointment process, and the assessment of applicants on the basis of pre-determined and objective criteria.

Additionally, the Commission reported that its mandate has expanded, that its responsibilities are increasing and that it would benefit from additional funding for its existing mandate as well as all expanded powers. The SCA encouraged the Commission to continue to advocate for additional funding to ensure that it can effectively carry out the full breadth of its mandate.

Finally, while acknowledging that in practice, all members of the Commission appointed after its establishment were appointed for five-year terms, the SCA encouraged the Commission to advocate for amendment to its enabling law to provide for a fixed minimum term of appointment for members of the Commission.

### **Regulatory framework**

The Irish Government published the General Scheme on the Inspection of Places of Detention Bill in June 2022. The purpose of this Bill is to ratify the Optional Protocol to the UN Convention against Torture (OPCAT) and to designate National Preventative Mechanisms (NPMs) that will act as national inspecting bodies for places of detention

within Ireland. Under this proposed legislation the Commission will be mandated as the coordinating NPM. When enacted, this role will give the Commission statutory oversight on the entire NPM network across the state, a role that is essential in establishing a level of consistency in the inspections carried out across places of detention. It will also facilitate sharing of experience and knowledge of each NPM, helping to build a general set of guidelines and assist in training provision within the network as a whole. The Commission made a submission to the state on the General Scheme General Scheme on the Inspection of Places of Detention Bill.<sup>7</sup>

The Assisted Decision-Making (Capacity) (Amendment) Act 2022 enacted in December 2022 by the Irish State places on a statutory footing the role of the Commission as the national independent monitoring mechanism for the Irish State's implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

The Commission continues to hold its role as Ireland's Independent National Rapporteur on the Trafficking of Human Beings as per article 19 of the European Union (EU) Anti trafficking Directive<sup>8</sup>, which legally requires all EU Member States to have National Rapporteurs or equivalent mechanisms. In June 2022, the Commission published the first 'Evaluation of the Implementation of the EU Anti-Trafficking Directive' report on the State's actions to combat human trafficking.<sup>9</sup>

### **Enabling and safe space**

The Commission has entered a new strategic period 2022-2024 with one of the strategic priorities focusing on the Public Sector Duty.<sup>10</sup> The Public Sector Equality and Human Rights Duty ('the Duty') is a statutory obligation for public bodies in Section 42 of the Irish Human Rights and Equality Commission Act 2014. Section 42(1) requires public bodies, in the performance of their functions, to have regard to the need to eliminate discrimination, promote equality and protect human rights of staff and people availing of their services. Section 42(2) requires public bodies to assess, address and report on progress in relation to equality and human rights in their strategic plan and

annual reports in a manner that is accessible to the public. The Commission has developed an e-learning module, 'Equality and Human Rights in the Public Service', to provide a foundation to support staff within public bodies to meet their obligations and increase their understanding of equality.<sup>11</sup> The Commission has requested that this training be mandatory within the civil service and is awaiting a response. This online training should be seen as a starting point for public bodies meeting their Public Sector Duty obligations, and would be further supported by the issuing of a circular to all Government Departments and public bodies to comply with their obligations under the Duty.<sup>12</sup>

The Commission's Strategy Statement 2022-2024 has a strategic priority focus on futureproofing.<sup>13</sup> The Commission has identified that particular groups have been disproportionately impacted by the COVID-19 pandemic and as per this strategic priority, the Commission has set out to ensure the State assesses the impact of the pandemic, improves the data available to make such assessments, provides direct assistance, and to compel improved protective measures from the State to those structurally vulnerable groups who are disproportionately impacted. To date there has been a lack of engagement from the Irish State with the Commission regarding an assessment of the impact and for preparing for future crises that may threaten the human rights and equality of those structurally vulnerable groups.

### **NHRI's recommendations to national and regional authorities**

- The Commission recommends that the State establish an expert unit on the Public Sector Duty to advise departments on its implementation and enforcement and to coordinate professional education across government on the Public Sector Duty.
- The Commission recommends that the State should consider how it will engage with the Commission in commencing an impact assessment of the COVID-19 pandemic.

- The Commission recommends that the State should consider how it will engage with the Commission in preparing measures to protect structurally vulnerable groups who may be disproportionately impacted by future crises.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

The Commission raised concerns with the Electoral Reform Bill 2022 (which has now been enacted into law in Ireland) which provides for the establishment of the Electoral Commission. The Electoral Commission is a State Body which will oversee elections and referendums, inform the public about the electoral process, and regulate political advertising. Prior to the Bill's publication, the Commission recommended that the proposed Electoral Commission (established under the Electoral Reform Act 2022) be specifically mandated to address the use of discriminatory rhetoric and hate speech in political campaigning, and that it should continuously engage with structurally vulnerable groups facing barriers to participating in the Irish electoral process.

Regrettably, several of the Commission's recommendations were not adopted. While the Act does state a function of the Electoral Commission shall be encouraging participation by the public in the electoral process, there are no specific obligations relating to women, young people, migrants and people from ethnic minority backgrounds including Travellers and Roma. There is also no provision in the Act that mandates the Electoral Commission to address the use of discriminatory rhetoric and hate speech in political campaigning, nor is there any obligation with regard to ensuring polling stations are accessible to disabled people.<sup>14</sup>

The Commission has raised concerns regarding the Online Safety and Media Regulation Bill 2022 (which has now been enacted into law in Ireland), in particular that there is no specific reference to hate speech or incitement to violence and hatred in the definition of harmful online content under this Act.<sup>15</sup> This Act is intended to regulate online

content and create accountability for children's rights violations, but the Commission has highlighted that there are several areas where its provisions could have been strengthened, namely, clarification on the difference between harmful content and age-inappropriate content is advisable to ensure the effectiveness of the Act in practice; the legislation fails to detail the children's rights considerations which underpin the work of the Media Commission (established under this legislation); and the Commission has recommended that there is a need for the Irish State to take a rights-based, collaborative, and cross-departmental approach to online safety, which is informed by the active participation of children and their best interests.<sup>16</sup>

The Commission continues to have concerns with the State's delay in publishing its National Action Plan Against Racism (NAPAR). The Commission has recommended no further delays in the publication of the NAPAR, that authority for the oversight and implementation of the Action Plan be vested in the Department of the Taoiseach (Irish Head of State), and that the State takes immediate action to establish implementation structures, allocate resources and deliver recommendations.<sup>17</sup>

The Commission has made a number of submissions to the Irish state regarding the new policing legislative framework emerging in Ireland. Three Bills relating to police powers and policing oversight are currently in the legislative process, and if enacted as currently drafted the Bills will significantly expand the powers of members of An Garda Síochána (the Irish police force). These Bills raise substantial concerns for the Commission with regard to the adequacy of safeguards and effectiveness of independent oversight of policing powers.

Garda Síochána (Recording Devices) Bill - The Commission raised concerns with regard to balancing the protection of people's individual rights and permitting law enforcement authorities to use and access technology such as body-worn cameras, drones, recording devices, and CCTV.<sup>18</sup> The Commission has concerns regarding the impact that these technologies may have on the rights of individuals, in particular the

rights to freedom of assembly and freedom of expression, which could lead to a shrinking of civil society space.

Garda Síochána (Powers) Bill – The Commission raised concerns with the precise scope of the powers – arrest, stop and search, search of premises, and detention – being provided under this legislation and advised that these powers must be clearly outlined within the legislation. The Commission has also called for a clear distinction to be maintained between ordinary and extra ordinary police powers to avoid conflation; adequate training and education on the powers to be provided to An Garda Síochána members; and the rights of structurally vulnerable groups to be appropriately addressed in the legislation.

Policing, Security and Community Safety Bill – The Commission raised concerns with the proposals to reform the internal and external oversight of An Garda Síochána (the national police service of Ireland). The proposals do not guarantee sufficiently independent and effective oversight and complaint mechanisms, which may impact on public confidence in An Garda Síochána.

The Irish state has yet to enact its Hate Crime Legislation and the Commission continues to be concerned with the delay in progressing this legislation. The Commission made a submission to the Irish State on the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 and highlighted its importance with regard to protecting Civil Society and the State's positive obligation to ensure a favourable environment exists for freedom of expression and participation in public debate without fear.<sup>19</sup>

The Commission co-funded an important 'Irish Travellers Access to Justice Project', which outlines the barriers Irish Travellers face when accessing justice (such as institutional racism which was found to be prevalent in the criminal justice system).<sup>20</sup> In its concluding observations to the Irish State in July 2022, the UN Human Rights Committee highlighted the overrepresentation of Travellers in the penal system as well as the practice of 'unwarranted home searches' of Traveller homes.<sup>21</sup> The Commission

continues to have concerns of the treatment of the Traveller community in Ireland by the State.

### **Access to and involvement of civil society actors in law and policy making**

The Commission has emphasised to the Irish State the importance of ensuring that consultation with and participation of structurally vulnerable groups in legislation, practices, policies and decision-making concerning them is an ongoing rather than a once-off process. The Commission continues to call for the State to ensure that development, implementation, monitoring, reporting, evaluation and review of legislation, policies, practices and decisions should be informed by the effective participation and consultation with affected individuals and groups.

The Commission has called for the development and establishment of the planned redress scheme for survivors of Mother and Baby Homes and other related institutions to include consultation with survivors. Mother and Baby Institutions were institutions for women and girls (majority of residents were unmarried mothers) and their infant children. Survivors of these institutions experienced a range of violations of human rights included forced separation of mother and child, loss of mother and child relationship, discriminatory treatment, loss of life due to malnutrition or neglect, abuse and ill treatment, illegal vaccine trials, forced labour and unauthorised burials. In the Commission's submission on the Mother and Baby Institutions Payment Scheme Bill, the Commission noted that the planned proposals for the redress scheme did not fully reflect the views of survivors who took part in a Government consultation on the redress scheme.<sup>22</sup> Minimum length of stay requirements to be eligible for redress and the harms recognised in the legislative proposals do not fully reflect the views of survivors expressed in the consultation process. The Commission has called for the State to ensure meaningful and effective consultation with survivors and their representative groups on the redress scheme.



The Commission has raised concern with the limited and lack of participation of disabled people and Disabled Persons Organisations ('DPOS') in developing national laws and policies. The Commission highlighted the limited participation of disabled people and DPOs in the development and oversight of the COVID-19 response. As a group that was disproportionately impacted by the pandemic, the Commission continues to advocate for the participation of disabled persons and DPOs in all future proofing against future crises.<sup>23</sup>

The Commission also made recommendations for the participation of children's rights associations in future crises planning and decision making structures. Children are also a group that was disproportionately impacted during the pandemic and the Commission continues to advocate for their participation with the State, including recommending that the State establish a Parliamentary Committee on Human Rights and Equality that is inclusive of children's rights, with an expansive mandate across all Government Departments.<sup>24</sup>

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Commission has been engaging in the several measures with the aim to promoting and protecting civil society space and human rights defenders. Examples of such engagement are the following:

Human Rights and Equality Grant Scheme: the Irish Human Rights and Equality Commission Act 2014 gives the Commission powers to provide grant funding to bodies to carry out certain activities to promote human rights and equality in Ireland. The themes of this year's funding are informed by the priorities set out in the Commission's Strategy Statement 2022-2024.

32 organisations have been awarded a total of €400,000 in funding for projects under the Human Rights and Equality Grants Scheme 2022. The successful projects focus on areas such as: valuing care work and supporting carers; addressing employment barriers

and opportunities for migrant women in rural Ireland and disabled people; building capacity of members of the Traveller community to access their accommodation rights; and supporting groups to engage with public bodies on the Public Sector Equality and Human Rights Duty.

With regard to the establishment of Advisory Committees:

WEAC: The Commission established the Worker and Employer Advisory Committee ('WEAC') to advise the Commission on issues in relation to human rights and equality in the workplace, and in service provision.

The Advisory Committee is made up of worker and employer representatives nominated by the Irish Congress of Trade Unions (ICTU) and by the Irish Business and Employers' Confederation (IBEC) advise the Commission on fighting discrimination and vindicating rights, and establishing a strong collaboration with workers and employers groups to drive equality and human rights.

The Commission established the Disability Advisory Committee ('DAC') to support its statutory function of monitoring Ireland's implementation of the UN Convention on the Rights of Persons with Disabilities. DAC is made up of disabled people who have significant personal and professional experience, and wide expertise in relation to the rights of disabled people in Ireland.

The DAC advises the Commission on its work and on how the Commission is fulfilling its mandate to hold the State to account on the rights of disabled people.

The WEAC and the DAC have been established in line with section 18 of the Irish Human Rights and Equality Act 2014, which provides that IHREC shall establish advisory committees "for the purpose of establishing and maintaining effective co-operation with representatives of relevant agencies and civil society"

With regard to cooperation with civil society, the Commission supports civil society organisations in engaging with and participating in international monitoring mechanisms including ICCPR, CRC and GREVIO.

## NHRI's recommendations to national and regional authorities

The Commission recommends that the Irish State:

- consider how the development of the new policing legislative framework ensures that human rights and equality concerns regarding adequacy of safeguards and effectiveness of independent oversight mechanisms are appropriately balanced against police powers.
- ensure progress of the legislative and policy work regarding Hate Crime and Racism and ensures that the framework adequately protects structurally vulnerable groups.
- ensure the adequate and meaningful participation of structurally vulnerable groups and civil society in the development, implementation, monitoring, reporting, evaluation and review of its legislation, policies, practices and decision-making.

## Implementation of European Courts' judgments

### Leading European Courts' judgments awaiting implementation

The European Court of Human Rights' O'Keeffe judgment against Ireland from 2014 (application no. 35810/09<sup>25</sup>) is still awaiting execution. This judgment relates to the State's failure to protect children from the consequences of sexual abuse committed by teachers in a National School owned and managed by the Catholic Church; the absence of a mechanism of effective State control against the risks of such abuse; and the lack of effective remedy to complain about the State's failure to protect against sexual abuse.

In 2014, the Grand Chamber of the European Court of Human Rights ruled that the State had violated Articles 3 and 13 of the European Convention on Human Rights, had failed to fulfil its obligation to protect Louise O'Keeffe from inhuman and degrading treatment, and had failed to provide her with an effective remedy.

### NHRI's actions to support the implementation of European Courts' judgments

The Commission has made submissions, pursuant to Rule 9(2) of the Rules of the Committee of Ministers, with regard to the execution of the judgment of the ECtHR in

the O’Keeffe case. The Commission has set out to the Council of Ministers that a new State Redress scheme, established in 2021, designed to meet obligations to survivors of abuse in schools has a number of significant flaws, which mean it continues to fail survivors.<sup>26</sup> The Commission is concerned that the Scheme is open only to victims who sued the State before 1 July 2021, the Scheme fails to make adequate provision for the discharge of legal costs related to proceedings against the State, and places an onus on survivors to explain how their abuse would have been prevented if Department of Education guidelines had been in place at the time sexual abuse occurred. IHREC has requested the case be transferred to enhanced supervision, on the basis that the mechanism of standard supervision had proved inadequate, with the question of execution still live eight years after the judgment.

In November 2022, the Commission appeared as *amicus curiae* in a High Court case which challenged the Scheme providing payments to victims of historic sexual abuse in schools.<sup>27</sup> The case focuses on the requirement under the Scheme for survivors to have, on or before 1 July 2021, issued legal proceedings against the State seeking damages for sexual abuse in day schools before 1991 and 1992 in primary and post-primary schools respectively, and following the O’Keeffe judgment. The Commission’s view is that this requirement is indefensible and discriminatory, and that the State must ensure the Scheme complies with international obligations.

### **NHRI’s recommendations to national and regional authorities**

The Commission recommends that the Irish State:

- overhaul the operation of its redress scheme for historical sexual abuse in Irish schools to ensure access to an effective remedy for victims and survivors of historical abuse, in line with human rights and equality principles. The State should ensure that the redress scheme is based on the right to truth, justice, reparation, non-recurrence and memory processes.

- commit to a clear time bound implementation plan for the O’Keeffe judgement to ensure the provisions of an adequate and effective redress scheme.
- The Commission requests the Committee of Ministers to transfer the O’Keeffe case to enhanced supervision so that that the process of execution may be more closely followed by the Committee of Ministers, with such supportive interventions for domestic execution process as may be deemed appropriate.

## Artificial Intelligence

### Impact of AI on human rights, democracy and rule of law

The Commission made a submission in April 2022 on the Garda Síochána (Recording Devices) Bill and highlighted concerns regarding the use of surveillance, such as facial recognition technology.<sup>28</sup> The Commission is concerned that the Irish Government intends to introduce provision for the use of facial recognition technology and artificial intelligence through amendments to the Garda Síochána (Recording Devices) Bill without adequate scrutiny by the public and Dáil Éireann (the Irish Parliament). The Commission has highlighted to the Irish State concerns around the impact of these technologies on fundamental rights, including the potential chilling effect the technologies may have on the rights of freedom of expression, assembly and right to participation; intrusion in the private lives of individuals; and, profiling in the use of these technologies. The Commission expressed concern that the Government is planning to introduce provision for facial recognition technology and artificial intelligence at the same time as the European Commission is proposing an EU regulation laying down harmonised rules on artificial intelligence. As the amendments to provide for the use of artificial intelligence and facial recognition technology in Irish law have not been published to date, the Commission is not in a position to evaluate the adequacy of safeguards for the protection of human rights. The Commission is of the view that further discussion is needed on the evidence basis for the effectiveness of facial recognition technology and artificial intelligence for law enforcement purposes

and its compliance with human rights and equality principles. This legislation is still progressing through Dáil Éireann (the Irish Parliament) and the Commission will continue to engage with its provisions.

### **NHRI's actions to address challenges regarding the use of artificial intelligence**

The Commission continues to monitor the impact of AI on human rights, rule of law and democracy. The Commission issues opinions and recommendations to State authorities to flag human rights and rule of law challenges arising from draft laws on the use of Artificial Intelligence by State authorities.

### **NHRI's recommendations to national and regional authorities**

The Commission recommends that the Irish State:

- ensure that provisions on artificial intelligence and facial recognition technologies in the Garda Síochána (Recording Devices) Bill mirror the main provisions under the proposed EU regulation on artificial intelligence.
- ensure that data protection and human rights impact assessments are carried out by suitably qualified independent experts before artificial intelligence and facial recognition technologies are deployed under the Garda Síochána (Recording Devices) Bill.

Moreover, the Commission recommends that the human rights and equality implications of the use of artificial intelligence and facial recognition technology should be subject to independent and effective scrutiny by an existing or new police oversight body. This oversight should occur prior to and after these technologies are deployed.

### **Other challenges in the areas of rule of law and human rights**

The Commission's Strategy Statement 2022-2024 has a strategic priority focus on justice, and the Commission has committed to defending access to justice and the rule of law. The Commission has repeatedly highlighted various issues that can impact on access to justice for structurally vulnerable groups, including quality of interpreting

services, lack of disaggregated sentencing data, no provision for multi-party litigation, and barriers in discrimination proceedings.<sup>29</sup> A lack of accreditation and regulations has resulted in limited availability of interpreters with the necessary training and technical expertise to assist in legal proceedings. The Commission is concerned about the overrepresentation of minority ethnic groups in the prison system and a lack of available collated data disaggregated on ethnicity inhibits the introduction of measures to address this issue. The Commission has repeatedly highlighted shortcomings with the Civil Legal Aid Scheme in Ireland, including that the Legal Aid Board – an independent statutory body responsible for, amongst other things, the provision of civil legal aid and advice – is precluded from providing legal representation before many quasi-judicial tribunals and bodies which structurally vulnerable regularly engage with.<sup>30</sup> The Commission has also expressed concern that the requirement of a minimum financial contribution for legal representation under the Scheme also constitutes a barrier to justice for people on low incomes. The Commission is engaging with an ongoing independent review of the Civil Legal Aid Scheme in 2023.

The Commission has emphasised that the current family law system falls short of children's rights standards, including due to chronic delays, crowded lists, inconsistent approaches to hearing the views of children, adversarial approaches, inconsistency in decisions, unsuitable physical facilities, and a lack of specialist training for judges and legal practitioners. The Commission has expressed concern with the delay in progressing the Family Courts Bill 2020. In light of the disproportionate representation of structurally vulnerable groups in child and family law proceedings and the barriers faced by these groups in accessing proceedings, the Commission has called for reform in the family justice system to include a focus on the creation of supports and procedures to address this over-representation.

## NHRI's recommendations to national and regional authorities

The Commission recommends that the State:

- address the barriers to accessing justice for structurally vulnerable groups including by professionalising interpreting services, collecting disaggregated sentencing data, introducing multi-party litigation, and removing general procedural barriers in discrimination proceedings.
- extend the scope of the Legal Aid Board to areas of law that are particularly relevant to Travellers, ethnic minorities and low-income groups.
- ensure that the reform of the family law system is progressed as a matter of priority, and addresses the disproportionate representation of structurally vulnerable groups in child and family law proceedings, including disabled people, one parent families and minority ethnic groups. The Family Court Bill should be amended to expressly require the Irish Courts Service to have regard to the need to ensure that geographical locations are accessible to all courts users on an equal basis.

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<sup>1</sup> IHREC [Strategy Statement 2022-2024](#).

<sup>2</sup> See, IHREC, [Ireland and the International Covenant on Civil and Political Rights Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (June 2022); IHREC, [Ireland and the Rights of the Child Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports](#) (August 2022).

<sup>3</sup> See, IHREC, [Ireland and the International Covenant on Civil and Political Rights Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (June 2022); IHREC, [Ireland and the Rights of the Child Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports](#) (August 2022).

<sup>4</sup> [Ireland and the International Covenant on Civil and Political Rights – Submission to the Human Rights Committee on Ireland's 5th Periodic Report - IHREC - Irish Human Rights and Equality Commission](#); IHREC, [Submission on the General Scheme of the Inspection of Places of Detention Bill](#) (November 2022).

<sup>5</sup> IHREC, [Ireland and the Rights of the Child Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports](#) (August 2022).

<sup>6</sup> [SCA Report June 2021](#) ; IHREC, [The Irish Human and Equality Commission Retains "A" Status UN Accreditation](#) (press release, 1 September 2021)



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- <sup>7</sup> IHREC, [Submission on the General Scheme of the Inspection of Places of Detention Bill](#) (November 2022).
- <sup>8</sup> [As per Article 19 of the European Union \(EU\) Anti-Trafficking Directive](#)
- <sup>9</sup> IHREC (National Rapporteur on Human Trafficking), [Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), (June 2022).
- <sup>10</sup> IHREC [Strategy Statement 2022-2024](#), pp. 18-19.
- <sup>11</sup> IHREC's Public Sector Duty eLearning module: <https://www.ihrec.ie/elearning>
- <sup>12</sup> IHREC, Ireland and the Council of Europe Convention on preventing and combating violence against women and domestic violence (2022), p. 52.
- <sup>13</sup> IHREC [Strategy Statement 2022-2024](#), pp. 16-17.
- <sup>14</sup> IHREC, [Ireland and the International Covenant on Civil and Political Rights Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (June 2022), p. 83.
- <sup>15</sup> IHREC, [Ireland and the International Covenant on Civil and Political Rights Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (June 2022), pp. 28-29.
- <sup>16</sup> IHREC, [Ireland and the Rights of the Child Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports](#) (August 2022), pp. 34-35.
- <sup>17</sup> IHREC, [Ireland and the International Covenant on Civil and Political Rights Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (June 2022), p. 28.
- <sup>18</sup> IHREC, [Submission to the Minister for Justice on the General Scheme of the Garda Síochána \(Digital Recording\) Bill](#) (April 2022).
- <sup>19</sup> IHREC, [Submission on the General Scheme of the Criminal Justice \(Hate Crime\) Bill](#) (February 2022).
- <sup>20</sup> Joyce, Sindy; O'Reilly, Olive; O'Brien, Margaret; Joyce, David; Schweppe, Jennifer; Haynes, Amanda (2022): [Irish Travellers' Access to Justice](#), University of Limerick (2022)
- <sup>21</sup> UN Committee on Human Rights, [Concluding observations on the fifth periodic report of Ireland](#), para. 39.
- <sup>22</sup> IHREC, [Submission on the General Scheme of a Mother and Baby Institutions Payment Scheme Bill](#) (October 2022).
- <sup>23</sup> IHREC, [Ireland and the International Covenant on Civil and Political Rights Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (June 2022), pp. 22-23.
- <sup>24</sup> IHREC, [Ireland and the Rights of the Child Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports](#) (August 2022), p. 11.
- <sup>25</sup> [Case O'Keeffe v. Ireland](#)
- <sup>26</sup> IHREC, [Ireland and the Rights of the Child Submission to the Committee on the Rights of the Child on Ireland's combined fifth and sixth periodic reports](#) (August 2022), p. 44.
- <sup>27</sup> IHREC, [PD Amicus Curiae Submissions – High Court](#) (November 2022).
- <sup>28</sup> IHREC, [Submission to the Minister for Justice on the General Scheme of the Garda Síochána \(Digital Recording\) Bill](#) (April 2022).

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<sup>29</sup> [IHREC, Ireland and the International Covenant on Civil and Political Rights Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (June 2022), pp. 89-90.

<sup>30</sup> [IHREC, Ireland and the International Covenant on Civil and Political Rights Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (June 2022), pp. 88-89.

## Italy

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### Independence and effectiveness of the NHRI

#### International accreditation status and SCA recommendations

Despite several initiatives over many years, a National Human Rights Institution has not yet been established in Italy. Other state bodies, such as the National Authority (Garante nazionale) for the rights of persons deprived of liberty carry out important human rights work in the country. However, they do not have a broad human rights mandate and do not fulfil other criteria under the UN Paris Principles to be considered an NHRI.

In November 2019, at the occasion of the Universal Periodic Review (UPR) of Italy, delegations from over 40 countries included in their recommendations the establishment of an NHRI in Italy, in compliance with the UN Paris Principles.<sup>1</sup> As a result, the Italian government reaffirmed its commitment to establish an NHRI.

Multiple actors, including ENNHRI, have been calling for the establishment of an Italian NHRI in compliance with the UN Paris Principles. In January 2019, ENNHRI addressed the Italian Chamber of Deputies to underline the importance of establishing an NHRI in Italy and how it would differ from other existing national mechanisms.<sup>2</sup> This message was reiterated later that year during a roundtable in Italy, organized by ENNHRI with Amnesty International, which brought together representatives from Italian civil society, European NHRIs and regional organisations.<sup>3</sup>

In October 2020, the Committee on Constitutional Affairs of the Italian Chamber of Deputies adopted a unified text version based on three draft proposals for the establishment of an Italian NHRI. The unified proposal aimed to serve as a basis for the discussions on the establishment of an Italian Commission on human rights an anti-

discrimination.<sup>4</sup> As far as ENNHRI is aware, after a governmental crisis in February 2021, the draft bill has not been rescheduled for discussion in the Chamber of Deputies.

In January 2021, ENNHRI intervened in a conference organised by the EU's Fundamental Rights Agency and a group of leading academics on the establishment of an Italian NHRI. ENNHRI highlighted that an Italian NHRI, in compliance with the UN Paris Principles, will contribute to greater promotion and protection of human rights in Italy.

In 2023, ENNHRI is informed that there are several legislative proposals for discussion at the level of the Chamber of Deputies. However, there is currently no clear indication as to real prospects of a legislative proposal being close to adoption.

ENNHRI is closely monitoring developments in the country and stands ready to provide its expertise on the establishment and accreditation of NHRIs to relevant stakeholders in Italy, including the legislature, government, academics and civil society organisations.

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<sup>1</sup> [Human Rights Council, report of the Working Group on the Universal Periodic Review, Italy](#)

<sup>2</sup> [ENNHRI, the case for an NHRI in Italy presented before Italian law-makers](#)

<sup>3</sup> [ENNHRI, Civil Society Actors call for parliament debate and greater collaboration on the establishment for an NHRI in Italy](#)

<sup>4</sup> [Italian Chamber of Deputies, Law proposal on the establishment of a national commission for the promotion and protection of human rights](#)

## Latvia

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### The Ombudsman's Office of the Republic of Latvia

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

With regard to initiatives on the part of state authorities to address any of the issues reported on in the 2022 ENNHRI rule of law report, the member indicated that the Whistleblowing Law<sup>1</sup> had come into force on 4 January 2022. In a verification procedure (investigation case), the Ombudsman concluded that the whistleblower rights protection mechanism established in the law was not clear. The Whistleblower Law does not specify the competent institution that would ensure the control of whistleblower issues, including verifying whether the institution examining the whistle-blower's report has ensured the protection of their personal rights. The Ombudsman suggested the Prosecutor's Office as a potential competent institution, calling on the State Chancellery to take measures to eliminate the identified deficiencies.

On 13 October 2022, the Parliament adopted the Law on "Transparency in Interest Representation"<sup>2</sup> widely known as the "Law on Lobbying", to further regulate the communication of representatives of various interests with state representatives. The Law entered into force on 1 January 2023. The register of interest representation, where authorities would publish information about interest representation activities/lobbying activities, will start functioning on 1 September 2025.

It is worth noting that, while some actions were taken to foster a rule of law culture, there were also instances where the rule of law was threatened. The Ombudsman has repeatedly criticized the Parliament's inability or unwillingness to respect and comply

with rulings of the Constitutional Court. This has been the case with a ruling on civil partnership<sup>3</sup>, as well as – partially – on rulings on minimum income levels<sup>4</sup>. Furthermore, the independence of the courts was called into question when the Parliament refused to confirm Ms Sanita Osipova (a former Constitutional Court judge) as a judge at the Supreme Court because she had previously spoken in favour of the civil partnership law<sup>5</sup>. Other judges have expressed concern that this may lead to potential personal repercussions following politically “inconvenient” rulings and thereby posing threat to judiciary independence.

### **Follow-up initiatives by the Institution**

The Ombudsman continues to raise awareness and advocate on the issues related to the rule of law in Latvia, also by addressing opinions and recommendations to state authorities to flag rule of law shortcomings at national level.

### **NHRI’s Recommendations to national and European policy makers**

The Ombudsman recommends regional and state authorities to continue the good practice of consulting NHRIs and involving NHRIs in the legislative process. A good example of this was FRA’s initiative to consult NHRI’s regarding the EU Screening Regulation in 2022. This initiative, as well as a continuous involvement of civic society, can further help keep up with the everchanging legislative landscape and through this, enhance capacity to protect and promote the rule of law.

## Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation

### State authorities' follow-up to regional actors' recommendations on rule of law

Several activities and measures have been taken in Latvia to follow-up on the recommendations concerning the rule of law issued by European Commission. For instance, civic engagement and civil society have been strengthened.

Furthermore, with regards to the following EC recommendations to Latvia:

1. "Continue efforts towards the swift adoption and effective implementation of the Action Plan 2021-2024 to prevent corruption".

On 10 February 2022, Latvia's Fifth National Open Governance Action Plan for 2022-2025<sup>6</sup> was adopted to ensure openness and accountability to the public authorities, as well as public participation.

2. "Continue efforts towards adopting the draft legislation on lobbying, and following that, ensure the setting-up of a special lobby register".

On 13 October 2022, the Parliament adopted the Law on "Transparency in Interest Representation"<sup>7</sup>, among other providing for the setting-up registry of representers of interests (lobbyists) and Interest representation declaration system registering cases of lobbying.

3. "Take measures to increase the participation of civil society in decision-making at local level".

Since 1 January 2023, the Law on Local Governments has come into force and includes different forms of civil society involvement at the municipal level: a) advisory councils

and commissions, b) newsletters; c) public hearings; d) collective submission; e) resident councils; f) municipal referendum.

The public portal of legal drafts (TAP portal) is a national information system used to ensure the functioning of the Cabinet, to inform the public and to ensure participation in the drafting of legislation.<sup>8</sup>

### **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

To support implementation of recommendations of regional actors, the Ombudsman cooperates with relevant authorities, including local governments, and takes action to inform society through close cooperation with the media - especially the public broadcasting of Latvia.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Ombudsman of the Republic of Latvia was re-accredited with A-status in December 2020.<sup>9</sup> Among the recommendations, the Sub-Committee on Accreditation (SCA) was of the view that the selection and appointment process enshrined in the Ombudsman Law was not sufficiently broad and transparent. It noted that the Latvian NHRI has proposed amendments to its enabling law to provide for the advertisement of vacancies and the ability for all interested candidates to submit their application prior to the proposal being made by the members of Parliament. The SCA encouraged the NHRI to advocate for the formalisation and application of a broad and transparent process. With regard to the provisions on dismissal of the Ombudsman, the SCA took the view that the process does not provide sufficient procedural safeguards to ensure that it could not be undertaken for political reasons. It encouraged the Latvian NHRI to advocate for appropriate amendments to its Law to ensure an independent and objective dismissal



process. Further, the SCA noted that the enabling Law is silent on the number of times the Ombudsman can be re-appointed. It encouraged the Latvian NHRI to advocate for amendments to its enabling law to provide for limits on the term of office. Finally, the SCA encouraged the NHRI to advocate for the inclusion in its founding legislation of express provisions that clearly establish the functional immunity of the Ombudsman for actions taken in his or her official capacity in good faith.

### **Follow-up to SCA Recommendations and relevant developments**

Amendments to the Ombudsman Law (entering into force on 8 February 2021) state that the same person may serve as Ombudsman for not more than two consecutive terms.<sup>10</sup>

The Amendments to the Ombudsman Law envisage that the Ombudsman shall be approved in the office by the Parliament (Saeima) pursuant to the proposal of not less than ten members of the Parliament (before only five members of the Parliament could submit the proposal).

The following documents signed by the candidate nominated for the office of the Ombudsman shall be appended to the submission regarding a candidate for the office of the Ombudsman: consent to apply for the office of the Ombudsman and proposals regarding the solution necessary in the field of human rights and good administration. Prior to the sitting of the Saeima during which the Ombudsman will be approved in office, the candidates nominated for the office of the Ombudsman shall be heard at the Human Rights and Public Affairs Committee of the Saeima.

The mentioned Amendments to the Ombudsman Law provide also that the release of the Ombudsman from the office may be proposed by not less than one third of the members of the Saeima. In the case referred to in Section 10 Paragraph 1 Clause 1 or 5 of this Law, the Ombudsman shall submit a relevant notification to the Presidium of the Saeima.

## Regulatory framework

On 9 January 2022, Latvia became the 91st country where the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Additional Protocol) has entered into force. The Additional Protocol determines that the State must establish a national preventive mechanism or a system of regular visits to institutions where people are or might be deprived of liberty. The ratification of the Additional Protocol reaffirms that the Ombudsman's institution has all rights referred to in the Protocol to carry out the tasks of the national preventive mechanism for the prevention of torture in Latvia. It is important to note that this function is not new for the Ombudsman — from the very beginning, the representatives of the Office have been conducting visits to closed-type institutions.

The Latvian NHRI believes its regulatory framework should be further strengthened.

To strengthen the guarantee of the Ombudsman as an autonomous, independent constitutional entity, the Ombudsman urged the Parliament to establish a constitutional basis for the functioning of the Ombudsman. The Latvian NHRI issued a proposal to supplement the Constitution of the Republic of Latvia (henceforth "the Constitution") with a new chapter named "Ombudsman" already in May 2015. Strengthening the Ombudsman's status in the Constitution would protect it against undesirable political manipulation; promote the compliance of the national human rights authority with the UN Paris Principles; strengthen the principle of power-sharing enshrined in the Constitution and exclude any doubts that the Ombudsman is affiliated to state powers. Unfortunately, his proposal has not yet progressed any further.

## Enabling and safe space

Relevant state authorities have a good awareness of the NHRIs' mandate, independence, and role. The NHRI has adequate access to information and to policy makers and is involved in all stages of legislation and policy making with human rights implications.

Recommendations of the Ombudsman are not legally binding. Yet, the average level of implementation of Ombudsman's recommendations exceeds 70%.

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

In 2022, several amendments in the Law on Remuneration of Officials and Employees of State and Local Government Authorities came into force. The amendments allow the Ombudsman's institution to set more competitive salaries for its employees. Although the practical implementation of these amendments depends on the overall budget that is allocated to the institution, this step nevertheless can be important in recruiting and employing highly qualified specialists.

### **NHRI's recommendations to national and regional authorities**

The Ombudsman confirms that its independence is not threatened. However, additional finances are required to strengthen the capacities of the Ombudsman. Therefore, additional finances were demanded for salaries in 2023 to ensure competitiveness of the remuneration and achieve the minimum coefficient included in the Law on Remuneration of Officials and Employees of State and Local Government Authorities. The main idea behind the requested additional finances is to ensure the conduct of research as one of the main tasks of the Ombudsman.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

#### Law on Transparency in Interest Representation

The Law on Transparency in Interest Representation<sup>11</sup> was adopted on 13 October 2022 and entered into force on 1 January 2023. The adoption of the law can generally be assessed as positive. In the long term, this law will promote openness and transparency of public decisions, as well as reduce the risks of corruption. Ultimately, the law will also change the public opinion on transparent representation of interests as being a normal part of democracy. The practical implementation of this law, however, causes more uncertainty. The term "interest representation" is formulated quite broadly in the law, which aims to implement this concept at all levels of public authorities (from civil servants of the public administration to the Parliament, etc.).

Given the diverse spectrum of modern-day communication, concerns arise as to the difficulties for the public sector to distinguish between the cases of lobbying (aside from the most typical cases) which require registration and the ones that do not. This could contribute to the reluctance of the public sector representatives to engage in communication of certain formats. For the time being, it is also uncertain how much administrative burden the system of interest representation put in place will entail for the parties involved, particularly, the public sector, which will be obliged to declare cases of interest representation. However, it is important to note that the Cabinet of Ministers will be working on the abovementioned problems and other unclear issues until 1 September 2023. Consequently, these uncertainties may be cleared up in the future.

## Prohibition of Russian propaganda television channels

Last year, the National Electronic Mass Media Council (NEPLP) decided to prohibit the distribution of Russian television channels in Latvia. According to the NEPLP Chairman Ivars Āboliņš the decision was taken based on the newly adopted Electronic Mass Media law amendments (Article 18)<sup>12</sup>, which stipulate that channels registered in a country threatening the territorial integrity and independence of another country should not be operational in Latvia. The decision will remain in force until Russia stops its war in Ukraine and returns the territory of Crimea to Ukraine. Shortly after the decision was taken, the Ombudsman met with the management of the National Electronic Mass Media Council (NEPLP). The Ombudsman got acquainted with the decisions of NEPLP regarding the closure of the channels. Although it can be regarded as restriction of the freedom of expression, it is based in law, has legitimate aim and is proportionate.

In general, the Ombudsman supports the view of the NEPLP that the distribution of Russian propaganda channels which spread hate speech in Latvia is contrary to the Latvian national law, international obligations and national interests of the country and has a negative impact on the national information space. However, the Ombudsman considers that possibilities of alternative sources to prevent the lack of reliable information in Russian must be found.

On 6 December 2022, NEPLP adopted a decision to withdraw the broadcasting permit for the Russian independent TV programme "TV Rain" operating in Latvia, on the grounds of threats to national security and public order (after evaluating of the information received from the state security service). The decision taken was based on a recent assessment of a set of irregularities: failure to provide the official language path for broadcasts, displaying Crimea on the map as part of the territory of Russia, calling the Russian army as "our army", possible expression of support to the Russian army.

The Latvian Association of Journalists expressed regret about the decision of the NEPLP to cancel the broadcasting licence for “TV Rain” and considers it disproportionate to the violations committed. The international organisation Reporters Without Borders declared that the censorship of Russia’s independent TV programme is an unworthy decision of the European State.<sup>13</sup>

In the context of the NEPLP decision and the public debate that has already taken place, it is important to emphasize that Latvia, as a democratic state, is also characterized by such a protective mechanism as the right to a fair trial. These rights include fundamental principles such as the independence of the judiciary and access to justice. Also, the decision of the National Electronic Media Council of 6 December 2022 is an administrative act and can be appealed to the court, therefore, it will be the duty of the court to assess its legality and compliance with the rule of law. The court shall balance the rights and obligations of state institutions and the media in the specific situation.

#### Latvia-Belarus border crisis

A state of emergency was announced on the Latvia-Belarus border area on 11 August 2021. The state of emergency has been extended several times and the last extension has been granted until at least 10 May 2023<sup>14</sup>. Due to security concerns, both CSOs and the media has limited access to the border for reporting on the migration crisis. This has cast a shadow on the Border Guard, as there are reports of alleged violence and inhumane treatment of migrants. In consequence, they are difficult to corroborate or refute due to a lack of publicly available information. The Ombudsman’s access to the border area is also limited. If any information suggesting violence is received, it is forwarded to the Internal Security Bureau that is a separate state entity that has the mandate to investigate such allegations.

## Freedom of expression

In November 2022, freedom of speech and expression was also violated when several pieces of artwork were taken down due to political pressure at the Mark Rothko Centre of Art in Daugavpils<sup>15</sup>. The municipal government put pressure on the Centre to take down the pieces as they had received a letter of complaint from their constituents and several religious leaders claiming that they went against Christian values<sup>16</sup>. The Daugavpils municipal government has claimed that they would only re-evaluate their decision after having received opinions from the Ombudsman and the Ministry of Justice<sup>17</sup>. The Ombudsman is currently preparing an opinion to address this issue.

## Hate speech

Another practice having a negative impact on members of civil society, especially those who work on the topics such as migration, or other issues of importance to the national public etc., is online hate speech and verbal attacks targeting civil society actors following public appearances on traditional media outlets or other forms of media. Although those comments might not always reach the point of being regarded as threats that can be criminally investigated, they nevertheless affect the wellbeing of activists and might even be the reason for their lesser involvement in certain activities.

## **Access to and involvement of civil society actors in law and policy making**

Since 1 January 2023, the Law on Local Governments<sup>18</sup> has come into force and includes different forms of civil society involvement at the municipal level: a) advisory councils and commissions, b) newsletters; c) public hearings; d) collective submission; e) resident councils; f) municipal referendum.

When developing the new Law on Local Governments, requests and proposals of civil society organisations were considered. This includes requests regarding the participation budget used to promote the involvement of the residents of the

municipality in decision-making regarding the development issues on its territory. Public participation budgets have already been introduced and are functioning in many municipalities. The municipality of Riga has been holding a participatory budget competition for 4 years, implementing projects and directing funds to the local, development projects instigated by the residents. From 1 January 2025, the annual budget of local governments will have to include funding for the participation budget.<sup>19</sup>

Although recent studies show that the state provides every active member of society with tools that allow them to participate in decision-making processes, some large groups have nevertheless been identified as not being involved in processes that influence decision-making at the state and local government levels such as the Russian-speaking population and vulnerable groups. Citizens can be heard by participating in the work of parliamentary commissions and by submitting their proposals and complaints in writing. The issue now, as pointed out by experts, is the need to improve the dialogue between civil society and the government. Important political issues, such as education and health reforms, budget distribution and others, are addressed at the government level. In these processes, experts observe the lack of civil society involvement and civil dialogue. The public portal of legal drafts could be considered as one of the tools that has been created and is being improved to eliminate this deficiency.

To inform society on the new provisions of the Law on local governments, including the possibilities of civil society to take part in the decision-making process at the local level, the Ombudsman has invited the representative from the Ministry of Environmental Protection and Regional Development to the Ombudsman's Annual Conference. The Conference was translated online and is available on Ombudsman's website.



## Measures undertaken by State authorities to protect and promote civic space

In recent years, journalists and civil society actors, including human rights defenders, experienced intimidation and verbal attacks due to their professional activities. This was very common especially during Covid-19 pandemic. These problems and possible solutions were discussed in different fora at CSO, media and Parliament level.

On 3 May 2022, the Law on Administrative Penalties for Offences in the Field of Administration, Public Order, And Use of the Official Language was amended, stating under Article 11.<sup>1</sup> that administrative liability can be applied for aggressive behaviour towards a person or their relatives - threats to cause harm to their health or sexual integrity; threats to property or intrusive stalking such as tracking, monitoring or unwanted, intrusive and disruptive communication (if there is a reason to fear that this threat could be implemented).<sup>20</sup>

## NHRI's role in promoting and protecting civil society space and human rights defenders

### Children with additional needs

On 27 January, the Ombudsman's Office co-hosted a public virtual discussion on the inclusion of children with additional needs in educational institutions. The discussion aimed to learn about parents' experiences regarding cooperation with educational institutions. The Ombudsman's Office was represented by the head of the Children Rights Division.<sup>21</sup>

### Impact of Covid-19 pandemic

The Ombudsman published the monitoring report on the public accessibility of municipalities and public administration during the COVID-19 emergency.<sup>22</sup> It concluded that, despite the circumstances created by the COVID-19 pandemic, the institutions had generally remained accessible to residents. However, the Ombudsman stressed the

necessity to provide people with clear and understandable information in all circumstances.

### Children's rights and participation

On 1 June, the Ombudsman, in cooperation with the Latvian Children's Welfare Network (LBLT), organised an online discussion on the importance of child participation "Listen to children and young people. They HAVE an opinion!" to mark the International Day for the Protection of Children. The aim of the discussion was to highlight child participation, the right to express their opinion and to be heard. A child's right to be heard is fundamental to ensuring his rights and best interests in any field. Promoting participation helps young people develop conflict resolution skills and connect with their peers and adults. The discussion was attended by representatives from the Ombudsman's Office and the Latvian Children's Welfare Network, as well as from the Centre "Dardedze", Cēsis New School, Youth International Programme Agency, and the Youth Organisation "Protests".<sup>23</sup>

The year 2022 marked the 30th anniversary of Latvia's accession to the UN Convention on the Rights of the Child. To highlight the importance of children's rights, an information campaign explored various topics related to children's rights, such as access rights, child neglect and out-of-family care throughout the month of June. The aim of the campaign was to raise awareness of children as fully-fledged members of society, as well as highlight the role of society in the development and protection of children's rights.<sup>24</sup>

### Civil Society participation

The Ombudsman's Office representatives participated in multiple events with the aim to promote and protect civil society space and human rights:

- Representatives participated in the “gathering of meaningful conversations” festival “LAMPA. The discussion was centred around the current types of intangible means of enforcement; human trafficking, how to recognise threats and protect oneself and others from it. There was also a discussion on elections with the goal to increase civic participation.<sup>25</sup> Representatives participated in events called “The Democracy Café” organized by a CSO with the aim to gather unacquainted people, including “secret guests” to promote a respectful dialogue on topics related to democracy.<sup>26</sup>

Furthermore, the Ombudsman’s Office delivered a social media campaign on several topics focussing on civic engagement during the month of September, including on elections, public debate, freedom of association, volunteering, pickets, rallies and strikes, referendums and signature collection, involvement in local administration, law enforcement mechanisms, protection of vulnerable groups, freedom of speech and expression, privacy, and data protection. In particular, the Ombudsman stressed the importance of elections, inviting everyone to participate in the parliamentary elections on 1 October 2022.<sup>27</sup>

### Elections

On the topic of parliamentary elections, representatives of the Ombudsman’s Office participated in the monitoring of the 14th Parliamentary Election on 1 October 2022. They carried out in-person monitoring visits to psychoneurological hospitals and prisons. The duty of election observers was to make sure that the voting procedure and the conduct of the polling commission complied with the Saeima Election Law and the instructions of the Central Election Commission, as well as to report on any violations detected and to request that they be prevented. Before monitoring the elections, representatives of the Ombudsman’s Office met with the head of the Central Election Commission to discuss the voting rights of people with disabilities and full participation

opportunities in the upcoming elections, including the availability of polling stations and the accessibility of information about the election process. During the meeting, the implementation of the recommendations given by the Ombudsman in previous years was discussed, as well as the information provided by the non-governmental organizations representing people with disabilities regarding the problems related to the elections.

### Persons with disabilities

On 3 December, the Ombudsman, in cooperation with the Association of Disabled People and their Friends “Apeiron” and the National Library of Latvia (LNB), held the 8th consecutive “Annual Award for Supporting People with Disabilities” to mark the International Day of Persons with Disabilities. The in-person ceremony celebrated the 2022 winners, as well as those who had received awards in previous years – to compensate for the lack of an in-person ceremony due to the pandemic. The ceremony also honoured those who received recognition awards or special jury’s awards. The Award has become an integral tradition of the Ombudsman’s Office and its partners as a way to support the people and organisations that have actively represented the interests of people with disabilities.<sup>28</sup>

### Civic space

On 8 December, the Ombudsman’s annual human rights and good governance conference<sup>29</sup> took place with the focus on civic engagement as the foundation of democracy. Speakers engaged in the discussions on children’s right to be respected and the duty to treat others with respect; civic involvement in the decision-making process being closely linked to trust in government at national and local level; on the extent to which the awareness and enjoyment of human dignity in old age depends on the instruments guaranteed and offered by the state, and to what extent - on the initiative and openness of the persons themselves.

## Educational activities

The Ombudsman's Office continued educating legal professionals (police officers, prosecutors, judges, sworn lawyers and sworn bailiffs), as well as psychologists regarding child victims of human trafficking. In total, 21 lessons were conducted in 2022 and significantly improved the ability of the officials to timely recognize cases of human trafficking, so that to prosecute guilty persons while victims receive the necessary help and support from the state.

Throughout the year, representatives of the Ombudsman's Office visited schools to deliver in-person and online guest lectures on topical issues as part of the "Ready for Life" programme. They offered lectures on electoral literacy, legal text literacy, freedom of expression and hate speech, prevention of trafficking in human beings and data protection. Thirty-eight lectures were delivered in the school year 2021/2022, and another thirty lectures during the autumn semester of 2022.<sup>30</sup>

## **NHRI's recommendations to national and regional authorities**

Following the publication of the report on the Roma situation in Latvia, the Ombudsman recommends further support and cooperation with the Roma community, the engagement of Roma mediators; the encouragement of Roma families to give their children a formal education, to engage children in vocational or interest education activities to motivate them to acquire basic education; and local governments to provide Roma teaching assistants in schools attended by several Roma children and to ensure the functioning of after-school day centres, where children could receive study support.<sup>31</sup>

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

Overall Latvia has a good record of implementing the judgments of European courts when it comes to decisions addressed to Latvia. However, there are occasions when the European Courts have issued decisions regarding legal aspects in other countries that are relevant and applicable to the situation in Latvia. An example could be the decision made by the Court of Justice of the European Union in the case C-72/22 PPU *Valstybės sienos apsaugos tarnyba* where the court concluded that the Lithuanian national regulation was not compatible with the EU Law. Since Latvian regulation is almost identical to the one that was analysed in the judgment, it can be concluded that specific Latvian norms could also be incompatible with the EU law. The Ombudsman has also notified the Chamber of Ministers regarding this possible incompatibility and requested to take appropriate actions.<sup>32</sup>

### NHRI's actions to support the implementation of European Courts' judgments

The Ombudsman regularly refers to the case law of the European Courts when providing recommendations to State institutions (especially regarding migration, prison conditions, a right to a fair trial, etc.). The European Courts case law is used in Ombudsman's applications to Constitutional Court.

## Artificial Intelligence

### NHRI's actions to address challenges regarding the use of artificial intelligence

The Ombudsman has not done research regarding AI and its effect on human rights in Latvia, but the Latvian NHRI has focused its efforts on raising awareness of the Latvian society about AI.

In December 2021, the Ombudsman organised a virtual discussion entitled "People with disabilities and digital solutions. From a user to a creator"<sup>33</sup>. The event aimed to inspire

This report is part of the 'Strengthening National Human Rights Institutions' project funded by Iceland, Liechtenstein and Norway through the EEA and Norway Grants Fund for Regional Cooperation.

people with disabilities to use digital solutions but also create them. During the discussion, the Ombudsman's Office and NGO "Riga TechGirls" discussed learning possibilities in the digital field and invited people with disabilities to develop new digital technologies and artificial intelligence systems based on universal design and human rights. Various Latvian companies introduced with their digital products and artificial intelligence solutions which can improve lives of persons with disabilities. Examples include a virtual reality tool to help children with autism; technical aids printed by 3D printers; a digital balance tool; a technical solution for Para Ice Hockey sledges; user-friendly guidance of complex whole-body rehabilitation for lower extremity amputees by means of extended reality and advanced wearables data processing.

In September 2022, the Ombudsman's Office participated in a meeting with the Baltic and Nordic Ombudsmen discussing aspects of artificial intelligence. There are different practices in the region, but the Ombudsmen agreed on the lack of regulatory framework in this area. The countries agreed on the need to develop a training programme specifically for the staff of ombudsmen's institutions with the focus on the protection of individual rights, automated decision-making, evaluation of the relevant EU and national regulations.

As COVID-19 pandemic led to very rapid digitalisation in many areas, the Ombudsman's Office plans to research if and how people without digital skills can access state and municipality services and how comfortable and easy they are to use. The Ombudsman also plans to research automated decision-making systems used by state institutions in Latvia.

The focus on digital challenges increases the work of the Ombudsman's Office. For example, the Ombudsman is the responsible institution for investigating the claims regarding Directive (EU) 2016/2102 of the European Parliament and of the Council of 26

October 2016 on the accessibility of the websites and mobile applications of public sector bodies<sup>34</sup>.

In 2022/ 2023 the Ombudsman published the report on “Accessibility of bank services” where the attention was brought on implementation of Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services.<sup>35</sup> It was concluded that only several banks try to ensure accessible digital products and services, as it is not common practice. The banking sector currently ensures very close cooperation with the Ombudsman’s Office to implement the recommendations and provide accessible digital products and services for clients with disabilities.

Moreover, in relation to the regional developments regarding regulation of the use of AI in Europe, the Ombudsman turned to the Ministry of Environmental Protection and Regional Development of Republic of Latvia as the responsible ministry regarding EU Artificial Intelligence Act. Currently, the ministry would like to have a discussion with the Ombudsman on division of responsibilities under the EU Artificial Intelligence Act.

## **Other challenges in the areas of rule of law and human rights**

The Ombudsman has stressed the need to improve the quality of the legislative process, i.e., the need for in-depth discussions with professionals and civil society actors during the legislative drafting process as well as accountability checks for the Parliament. For example, Parliament should be required to adapt regulations to indicate the maximum allowed time-period between the submission of a legislative draft to the responsible Parliamentary commission and the moment the Parliamentary Committee starts working on it.

The Ombudsman also called on the Parliament to ratify the Istanbul Convention. As an international treaty, the Convention would help fight violence against women and



domestic violence more effectively, as well as gradually eradicate various stereotypes rooted in gender roles.

The Ombudsman discussed with the Ministry of Welfare (responsible Ministry for gender equality) other Ministries and CSO representatives the problem of stereotypes and sexism in advertisements and the possible legal solutions.

The Ombudsman also points that criminal liability for hate speech is defined in Latvian legislation. Article 78 of the Criminal Law provides for responsibility for inciting national, ethnic, and racial hatred, while Article 150 provides for responsibility for inciting social hatred and discord. However, in the public space, the Latvian NHRI often come across statements that would be considered hate speech, but for which criminal liability would not apply. In most cases, administrative liability would probably be applicable for such statements, but this type of liability is not provided for in Latvia. Many commentators, who have directed hateful statements against vulnerable groups, have remained unpunished. Thus, hate speech continues to exist, damaging democratic values and creating a sense of impunity.

Moreover, there is still no legal framework in the country through which families formed by same-sex partners can enjoy the rights arising from Article 110 of the Constitution.<sup>36</sup> Although on 15 December 2022, the MPs voted against the adoption of the draft law on civil union in the work of the current Parliament, the Ombudsman has pointed out that the legislator has not fulfilled the duty set in the first sentence of the abovementioned Article 110 of the Constitution to ensure the economic and social protection and support of the same-sex partner families.

## NHRI's recommendations to national and regional authorities

Ombudsman's recommendations to national (including local municipalities) authorities are listed in the Ombudsman's Annual Report.<sup>37</sup>

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<sup>1</sup> [Whistleblowing Law \(in English\)](#)

<sup>2</sup> [The Law on Openness of Representation of Interests \(in Latvian\)](#)

<sup>3</sup> [The State must protect all families. The Ombudsman urges MPs to be respectful in their rhetoric \(in Latvian\)](#)

<sup>4</sup> [The Ombudsman: Politicians must fulfil Constitutional Court rulings and reassess minimum income levels \(in Latvian\)](#)

<sup>5</sup> [A clash of opinions and concerns about the independence of the courts: The Parliament dismisses Osipova's candidacy for the judge's position \(In Latvian\)](#)

<sup>6</sup> [Latvia's Fifth National Open Governance Action Plan for 2022-2025](#)

<sup>7</sup> [The Law on Openness of Representation of Interests \(in Latvian\)](#)

<sup>8</sup> [Article 30 of the Rules of Procedures of the Cabinet](#)

<sup>9</sup> [SCA Report December 2020](#)

<sup>10</sup> Section 7 Part 3 of the [Ombudsman Law](#)

<sup>11</sup> [The Law on Openness of Representation of Interests \(in Latvian\)](#)

<sup>12</sup> Section 18 of the [Electronic Mass Media Law](#)

<sup>13</sup> [Reporters without Borders asks Latvian media regulator not to revoke TV Rain's licence](#)

<sup>14</sup> [Emergency near Latvia-Belarus border could be extended again](#)

<sup>15</sup> [Latvian Museum Association: An open letter against the censure of art at the Mark Rothko Art Centre in Daugavpils \(In Latvian\)](#)

<sup>16</sup> [Censure of art at the Rothko Centre of Art in Daugavpils: this case is a warning that we must educate society \(In Latvian\)](#)

<sup>17</sup> [Censure at the Rothko Centre discussed at the Parliament \(in Latvian\)](#)

<sup>18</sup> [The Law on Local Governments \(in Latvian\)](#)

<sup>19</sup> Section 7 of the Transitional Provisions of the Law on Local Governments (in Latvian)

<sup>20</sup> [Article 11.1 of the Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language \(in Latvian\)](#)

<sup>21</sup> [Information about the public online discussion on inclusion of children with additional needs in schools and pre-schools \(in Latvian\)](#)

<sup>22</sup> [The Ombudsman has concluded the study "Availability of local governments and public administration during the COVID-19 emergency"](#)

<sup>23</sup> [The Ombudsman has concluded the study "Availability of local governments and public administration during the COVID-19 emergency"](#)

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- <sup>24</sup> [Campaign material on children rights \(in Latvian\)](#)
- <sup>25</sup> [Information about participation of the Ombudsman's Office in the gathering of meaningful discussions "LAMPA" \(in Latvian\)](#)
- <sup>26</sup> [Information about representatives of the Ombudsman's Office participating in the Democracy Cafe \(in Latvian\)](#)
- <sup>27</sup> [Info material – compilation of social media campaign - on forms and examples of civic engagement \(in Latvian\)](#)
- <sup>28</sup> [Information on the ceremony and winners of the "Annual Award for Supporting People with Disabilities" \(in Latvian\)](#)
- <sup>29</sup> [Ombudsman's Annual Conference on Human Rights and Good Governance](#)
- <sup>30</sup> [Information on the lectures of the Ombudsman's Office in the school programme "Ready for Life" in 2021/2022\(in Latvian\)](#)
- <sup>31</sup> [Summary and recommendations of the Ombudsman's Report on the Roma situation in Latvia](#)
- <sup>32</sup> [Ombudsman's letter to the Prime Minister regarding amendments in the Cabinet Order \(in Latvian\)](#)
- <sup>33</sup> [Ombudsman invites to public online discussion about people with disabilities and digital solutions \(in Latvian\)](#)
- <sup>34</sup> Cabinet Regulation No 445 of 14 July 2020 "[Procedures for Publishing Information on the Internet by Institutions](#)"
- <sup>35</sup> [Research on the Accessibility of Bank Services \(in Latvian\)](#)
- <sup>36</sup> [The Constitution of the Republic of Latvia](#)
- <sup>37</sup> [Ombudsman's Annual Report 2022, pages 133-167 \(available in Latvian\)](#)

## Lithuania

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### The Seimas Ombudspersons' Office of the Republic of Lithuania

#### Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation

##### State authorities follow-up to regional actors' recommendations on rule of law

European Commission's 2022 Rule of Law Report included a recommendation to Lithuania to provide adequate human and financial resources for the functioning of the Office of the Parliamentary Ombudspersons, respecting the European standards regarding resources for Ombuds institutions and the UN Paris Principles<sup>1</sup>. Despite the recommendation and repeated requests of the Seimas Ombudspersons' Office to allocate funding for at least two positions in the Human Rights Division, tasked with performing the mandates of NHRI and NPM and currently consisting of 5 persons, this was given no consideration in the allocation of budget for the year 2023.

##### State authorities follow-up to NHRI's recommendations regarding rule of law

The member has put numerous efforts in place to ensure implementation of the recommendation to grant itself the constitutional right to apply to the Constitutional Court.<sup>2</sup> The member had raised this issue at international and local level by writing letters to the Government, the Seimas (Parliament) Committee on Human Rights as well as addressing the Board of the Seimas. Initially, the suggested amendments to the Constitution included the constitutional right to apply to the Constitutional Court. However, this right was later removed.<sup>3</sup> Ultimately the member was not empowered to apply to the Constitutional Court directly and this reflects the lengthy and complicated

process that is initiating amendments to the Constitution to achieve the desired changes.

The recommendation to amend the current legislative framework providing for the possibility to remove the Seimas Ombudsperson from office through a parliamentary no-confidence vote as well as the possibility to establish a list of clear and reasonable conditions for his/her removal in the Law on the Seimas Ombudsmen, has not been implemented. The member has raised this problem in its alternative reports and at the meetings with members of the Seimas Committees.

The recommendation to allocate sufficient financial and other resources to the member was not implemented either; although the Seimas Ombudspersons had raised this issue on different occasions with various international bodies and received their support concerning this matter, however, was not implemented by the Government.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Seimas Ombudsperson's Office of the Republic of Lithuania was accredited with A-status in March 2017.<sup>4</sup> The SCA noted that the enabling law does not provide an explicit promotion mandate or a mandate to interact with the international human rights system and encourage ratification or accession to international human rights systems. Recognising that, in practice, the Lithuanian NHRI undertakes functions in these areas, the SCA encouraged it to continue doing so and to advocate for legislative amendments that would explicitly include a mandate for these activities. Further, the SCA acknowledged the Ombudspersons' engagement with other Ombuds institutions and civil society in Lithuania and encouraged the NHRI to continue to develop, formalise and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights. Finally, the SCA noted that the enabling law is silent on whether and how many members enjoy

functional immunity for actions taken in their official capacity in good faith. It recommended that the NHRI's legislation should include provisions to protect members from legal liability for acts undertaken in good faith in their official capacity.

The periodic reaccreditation of the Seimas Ombudspersons' Office will be considered by the SCA in October 2023.

## **Regulatory framework**

### Legal basis

The national regulatory framework applicable to the Lithuanian NHRI has been changed since last year. The law was amended when a new institution, the Intelligence Ombudspersons, was created. The amendments stipulate that the Seimas Ombudspersons do not investigate the activities of intelligence institutions. The amendments entered into force on 1 January 2022.<sup>5</sup>

The Lithuanian NHRI continues to function on a constitutional basis. The base for the establishment of the Seimas Ombudspersons' Office of the Republic of Lithuania" is Art. 73 of the Constitution of the Republic of Lithuania.

The Lithuanian NHRI, however, points to the developments regarding the Intelligence Ombudspersons. The Intelligence Ombudspersons are appointed by the Seimas and they have a separate institution from the Lithuanian NHRI. Its main function is to supervise the legality of the activities of the intelligence authorities and to assess compliance with the requirements of the protection of human rights and freedoms. Having examined the petition of a group of members of the Seimas, the Constitutional Court has recognised in its ruling of 29 December 2022 that Article 2(3), Article 3(2.3), Article 11(3), and Article 15(1) of the Law on the Intelligence Ombudspersons, insofar as those paragraphs and items grant the Intelligence Ombudspersons the power to investigate applicant's complaints about the abuse of authority or bureaucratic intransigence by intelligence institutions and/or intelligence officials in the sphere of

public administration. The Court also pointed out that paragraph 2 of Article 12 of the Law on the Seimas Ombudspersons<sup>6</sup>, insofar as, according to that paragraph, the Seimas Ombudspersons do not investigate the activities of intelligence institutions, are not in conflict with the Constitution<sup>7</sup>.

### Risks to the NHRI's independence

The Legislative initiative<sup>8</sup>, introduced in 2021, concerning the amendment of Articles 18 and 22 of the Law on the Seimas Ombudsmen by setting an imperative 6 month deadline for the examination of complaints, as well as placing restrictions on the Ombudsperson's right to mediate between a complainant and the institution whose actions are being scrutinised is still pending adoption in the Parliament (the Seimas of the Republic of Lithuania). If adopted, proposed amendments risk the undermining of the principles of independence and autonomy of the Ombudspersons. Moreover, they would restrict the powers of the Ombudspersons to conduct, where deemed necessary due to public interest concerns, complex investigations, including the ones that are related to situations that sometimes last for years.

Certain risks to the Seimas Ombudspersons' independence are also related to the current legislative framework, which provides for the possibility to remove a Seimas Ombudsperson from office following a parliamentary no-confidence vote, whereas according to the "Principles on the Protection and Promotion of the Ombudsman Institution" („The Venice Principles") adopted by the European Commission for Democracy through Law ("Venice Commission") of the Council of Europe, ombudsmen should be removed from office only according to an exhaustive list of clear and reasonable conditions established by law.

### Strengthening of the regulatory framework

The Institution believes its regulatory framework should be strengthened. Following the issues mentioned, the current legislative framework should be amended. and an

exhaustive list of clear and reasonable conditions defining when an ombudsperson could be removed from office should be established by law.

Furthermore, a transparent and pluralistic procedure for the appointment of an Ombudsperson should be established, involving active participation of the society. Such a procedure should include a requirement for the candidate to have experience in the field of human rights.

Moreover, in order to enable the Seimas Ombudspersons' Office to realize the functions of a national human rights institution more effectively, and in particular to seek the compatibility of national laws with international human rights standards and also with the Constitution, the Seimas Ombudsperson should be granted the right to directly apply to the Constitutional Court as currently it can only propose to the Seimas to apply to the Constitutional Court.<sup>9</sup>

### **Enabling and safe space**

When evaluating Lithuania according to its international obligations in the field of human rights protection, various international supervisory institutions have repeatedly drawn attention to the insufficient financing of national human rights protection mechanisms, which created conditions for limiting the independence and efficiency of the institutions' activities<sup>10</sup>. The need to ensure adequate financing of the Seimas Ombudspersons' Office has been repeatedly emphasized by international supervisory authorities<sup>11</sup>. For example, the United Nations Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, after considering the Fourth Periodic Report of Lithuania, published its final conclusions to Lithuania in December 2021<sup>12</sup>. These conclusions showed concern about the lack of staff performing NPM functions in the Human Rights Division of the Seimas Ombudspersons' Office and recommended Lithuania to ensure the independence of the national torture prevention mechanism as well as to take measures to provide the Seimas Ombudspersons' Office with adequate human resources and funding necessary for implementation of the



functions under Article 18 (1) and (3) of the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The recommendation to Lithuania to provide the Seimas Ombudspersons' Office with adequate resources, considering the European standards regarding the allocation of resources to ombudsman institutions and the UN Paris principles, also can be found in the section on Lithuania of the European Commission's 2022 Rule of Law Report.

In addition, the Government approved the recommendations made to Lithuania during the third cycle of the Universal Periodic Review conducted by the United Nations Human Rights Council in 2022 to allocate sufficient funding to the Seimas Ombudspersons' Office, to effectively and independently carry out its mandate, including in new areas of competence, especially in the performance of the functions of a national human rights institution.

However, when allocating budget allocations for the year 2023, the above-mentioned appeals of international supervisory authorities and repeated requests of the Seimas Ombudspersons' Office to allocate funding for at least two posts in the Human Rights Division were not considered. When the funding of the institution is not harmonized with the functions assigned to it, it leads only to formal changes, but does not provide the prerequisites for the expected qualitative changes.

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

In 2022, the issue of resources was intensively raised and discussed with the members of the Seimas Committee on Human Rights, as well as with representatives of the Ministry of Justice and the Ministry of Finance. However, the Ministry of Finance and the Government did not consider the request to allocate EUR 68,000 for two full-time positions as to enable a more effective implementation of the NPM and NHRI mandates. The decision on financing of the Seimas Ombudspersons' Office, which in

addition performs the functions of the NHRI, is taken by the Ministry of Finance; however, there is no formal negotiation mechanism as regards the allocation of the budget. From this point of view, the Seimas Ombudspersons' Office, belonging neither to legislative, nor executive, or judicial authorities, is clearly at a disadvantage compared to the executive authorities.

The member has raised problems hindering its independence many times during the meetings of the Seimas Committee on Human Rights. The member also presented its position and arguments to the committees of the Seimas regarding the reasoning behind the need to enshrine a mandatory final complaint investigation deadline for complaints investigated by the Seimas Ombudspersons in the Law on the Seimas Ombudsmen. The member is also of the opinion that the proposed amendments of the Law could limit the independence of the Seimas Ombudspersons and in particular the capacity to thoroughly investigate complaints, to identify the causes of the infringements and to take actions to remedy them.

In addition, the member addressed the Seimas of the Republic of Lithuania regarding the lack of funds several times.

### **NHRI's recommendations to national and regional authorities**

The Seimas Ombudspersons' Office recommends to regional and state authorities to:

- Provide tools to strengthen and protect the Institution;
- Issue recommendations to ensure the adequate financing and independence of the Institution;
- Draw attention to the importance of ensuring transparency and pluralism when selecting an Ombudsman as there is no strict and clear procedure that ensures the involvement of the society into the process.
- Provide adequate financing to the Seimas Ombudspersons' Office;

- Stop initiating amendments to the Law on the Seimas Ombudsmen that could hinder the ability of the Seimas Ombudspersons to carry out their functions independently, properly and to the full extent;
- Develop amendments needed for safeguarding the Ombudspersons' independence and immunity in terms of his/her dismissal and election.
- Ensure that an Ombudsperson is not given, nor should follow instruction from any authorities.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

#### Impact on marginalised groups and their rights

In Lithuania, national minority groups, migrants and asylum seekers, women and the LGBTI+ community have been particularly affected by the deterioration of the rule of law. Civil society organisations and rights defenders representing and standing up for these groups often faced specific challenges linked with discriminatory and exclusionary trends promoted, enabled or tolerated by authorities. These trends include limiting NGOs access to border facilities, initiating legal proceedings against members of NGOs that provide information, food or shelter to irregular migrants in the border area without being explicitly mandated, even if these activities are not prohibited by law.

Key problems witnessed over last year also include the lack of minimum standards or clear rules on implementing the right to participation, as well as its inconsistent implementation. For example, Jūratė Juškaitė, Director of the Centre for Human Rights was expelled from the Parliament Hall with other human rights representatives just for having LGBT+ "attributes" (e.g. rainbow flag and rainbow-coloured bag) during consultations on the Draft Law on Partnerships at the Seimas (Parliament) of the Republic of Lithuania. Other issues include: a 'Box ticking' approach and non-transparent

processes for consultation which were poorly communicated; short deadlines; reduced ability of civil society to engage due to reduced resources, lack of adequate skills to address complex processes.

Attention should also be drawn to the provisions of the “Law on the Protection of Minors from the Detrimental Effects of Public Information”, which states that public information adversely affects minors when it “despises family values, promotes a different conception of marriage and family building than that enshrined in the Constitution and the Civil Code.” These provisions remain a potential basis for restricting the dissemination of public information relating to the right of LGBT+ people, such as the rights to respect for private and family life.

Episodes of hate crime, including threats and physical attacks, against vulnerable social groups, such as the LGBT+ community, migrants as well as against democratic civil society organisations have been documented. For example, the Chair of Lithuanian Gay League (“LGL”) V. Simonko received an email from a father of three children on 16 July 2022, threatening and insulting him. Although the Chair registered the incident with the Police, the latter decided to refuse to start a pre-trial investigation claiming that there was no real threat in the letter. Since the LGL organization has already been a target of a hate crime in 2018 when the door of the office was deliberately set on fire, it can be said that there are still no effective prevention solutions and measures taken to make LGBT+ community members feel safe in society.

As a general rule, it is still possible to see the opposition and hatred expressed by society towards the LGBT+ community and its members, often based on unfounded objections to the Constitution as well as negative stereotypes and attitudes. Although officially direct incidents of disturbance were not recorded during the March for Equality and Peace organised in the context of Baltic Pride festival 2022, some people still gathered at the Cathedral square on the very same day holding posters with inscriptions demeaning the LGBT+ community.

### Belarussian border crisis

It is a well-known fact that there have been tensions at the border between Lithuania and Belarus following the arrival of thousands of migrants and asylum seekers. Due to the imposed state of emergency, violations of migrants' rights, including asylum seeker pushbacks by Lithuanian border guards, the denial of the possibility to lodge an asylum claim, as well as inadequate food, water, and shelter, as well as the possibility for NGOs to exert their watchdog and humanitarian role still exist.

### Participation

While the law regulating the right to assembly conforms with international human rights standards and does not directly restrict the operation of NGOs, concrete measures and activities carried out by institutions (namely the Parliament) have affected the civil society space in several cases. For example, representatives of a conservative Catholic NGO were not allowed to participate in the consultation surrounding the amendments of the Law on Protection against Domestic Violence that took place in the Committee on Human Rights at the beginning of 2022. Although on March 16, 2022 the Commission for Ethics and Procedures of the Seimas concluded that the provisions of the Statute of the Seimas were not violated; it however, recommended the Seimas committees and commissions, to consider organising debates and hearings for matters regarding issues relevant to the public, and when hearings are not held, allow participation of all the persons concerned in the meetings of the committees and commissions.<sup>13</sup>

### **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

With regards to laws or measures introduced to safeguard against manifestly unfounded and abusive lawsuits, the Lithuanian NHRI indicated that there is currently no anti-SLAPP legislation at EU level. However, Lithuania has made amendments to the

Code of Civil Procedure which came into force on 30 December 2022 with Article 95<sup>1</sup>, Abuse of procedural rights, to harm the defendant's activities. The essence of these provisions of the Code of Civil Procedure is that if the court, on the application of the defendant against whom the action has been brought, finds that the plaintiff has brought an unfounded action in bad faith to prejudice the defendant's activities in the field of public information or other activities relating to the satisfaction or protection of the public interest or to discourage the defendant from carrying out such activities, then the action shall be dismissed.

Furthermore, the Seimas Ombudspersons' Office does not have the mandate to provide support to victims of SLAPPs.

### **NHRI's recommendations to national and regional authorities**

The Seimas Ombudspersons' Office recommends to regional and state authorities to:

1. To protect the rights to freedom of association, freedom of peaceful assembly.
2. To provide comprehensive data on the amount of public and private funding.
3. To involve civil society in law- and policy making in a meaningful and effective way, possibly including by allocating resources for activities involving expert opinions, etc.

## **Implementation of European Courts' judgments**

### **Assessment of follow-up activities of State authorities**

The overall implementation of European Court's judgments is not good enough, since there are cases in which unacceptable delays in implementation persist.

For example, despite the fact that Lithuania was condemned in the case *L. v. Lithuania* at the European Court of Human Rights in 2007 and was obliged to adopt the Gender Identity Recognition Law, no legal regulation providing for a quick, transparent and accessible gender recognition procedure has been adopted<sup>14</sup>.

The Committee of Ministers last examined the execution of this case during its

1436th meeting in June 2022 and invited the Lithuanian authorities to submit all relevant developments in a consolidated action plan by 1 March 2023<sup>15</sup>.

Another example of non-compliance concerns the ruling of the Court of Justice of the European Union (CJEU) on 30 June 2022.<sup>16</sup> The CJEU ruled that the laws and proceedings restricting the right of asylum seekers to seek asylum in Lithuania on the grounds that they have entered irregularly, to be in violation of EU Directive 2013/32<sup>17</sup> and article 18 in the Charter of Fundamental Rights of the European Union. The Court highlighted that the state must ensure effective access to an asylum application procedure regardless of migration status. The Court also ruled that the detainment of asylum seekers solely on the grounds of their “irregular” entry or stay is not in accordance with EU law. The general argument made by state authorities is that a mass influx of migrants constitutes a risk to its national security. However, a state of emergency is, according to the CJEU, not a justifiable ground for automatically detaining refugees and other migrants.

Since the Court’s ruling, the Lithuanian Interior Minister Agnė Bilotaitė has stated<sup>18</sup> that the government is consulting with the European Commission on the topic but insisted that the country will not back down from its policies and that the Lithuanian government wants to see European law and migration policy align with its national law. The Lithuanian Interior Minister argues for the country’s right to defend itself from Belarus’s “hybrid attacks” and that the measures therefore are deemed necessary by the government. Hence, instead of complying with the Court ruling, the Lithuanian government is pursuing a bill to legalise the migration pushback policy, stating that there is not enough time to wait for EU law to change<sup>19</sup>.

### **Leading European Courts’ judgments awaiting implementation**

The Lithuanian NHRI flags to several leading judgments of the European Court of Human Rights (ECtHR)

ECtHR Case Mironovas and Others (40828/12)

These cases concern the poor conditions of detention in long term detention facilities between 2008 and the date of the judgments (violation of Article 3). The lack of preventive remedies and the amount of the monetary compensation awarded by the domestic courts for non-pecuniary damage which was considered too small compared to the ECHR case law amounted to a separate violation of Article 13 in the *Višniakovas* case. Judgment final on 02/05/2016 under standard supervision. Still pending.<sup>20</sup>

ECtHR Case Beizaras and Levickas (41288/15)

Refusal to start a pre-trial investigation into the applicants' allegations of having been subjected to extreme homophobic online hate speech in 2014 and lack of an effective remedy. Beizaras and Levickas (41288/15) Judgment final on 14/05/2020 is under supervision.<sup>21</sup> The Committee of Ministers<sup>22</sup> examined the execution of this case during its 1419th DH meeting (December 2021). The Committee of Ministers invited the authorities to submit a consolidated action plan/report including all relevant developments and an assessment of the impact in practice of the measures taken so far, as well as information on any additional measures envisaged to monitor the effectiveness of investigations into hate crimes and hate speech in the future, by the end of June 2023 at the latest. The Committee of Ministers in light of the progress of the individual and general measures taken so far, decided to continue the examination of this case under the standard procedure. However, over the years wide-ranging measures to enhance investigations into hate (especially homophobic) crime were recorded in the context of execution of this case.



ECtHR Case Abu Zubaydah v. Lithuania (application no. 46454/11) in the enhanced procedure.

The case concerns violations of several ECHR rights on account that the applicant was the victim of an “extraordinary rendition” operation<sup>23</sup>. The European Court of Human Rights found it was beyond reasonable doubt that Lithuania had hosted a Central Intelligence Agency (CIA) detention facility, code-named “Detention Site Violet”, which operated from 17 or 18 February 2005 until 25 March 2006 and that the applicant was secretly detained there during that period. The applicant was subsequently transferred out of Lithuania by the CIA to another CIA detention site in Afghanistan and eventually to the United States Internment Facility at the Guantánamo Bay Naval Base in Cuba. The Committee of Ministers requested the authorities to submit information on all the remaining questions by 15 June 2023 at the latest and decided to resume consideration of this case at their 1475th meeting HD in September 2023.

ECtHR Case L. v. Lithuania (27527/03)

The case concerns the State’s failure to fulfil its positive obligation to ensure respect for private life on account of the absence of implementing legislation to regulate the conditions and procedure for gender reassignment surgery and legal gender recognition<sup>24</sup>. As a result of the absence of such legislation, the applicant was prevented from accomplishing full gender reassignment surgery and changing his gender identification in official documents. He was thus left in a situation of distressing uncertainty with regard to his private life and the recognition of his true identity (violation of Article 8 of the Convention). Judgment final on 31/03/2008 under enhanced supervision. Still pending. The Committee of Ministers invited the Lithuanian authorities to submit all relevant developments in a consolidated action plan by 1 March 2023.

With regards to the reasons for non-implementation of European courts’ judgments, the Institution highlighted the following:

- The existence of several major structural deficiencies and a lack of effective domestic mechanisms, which must be co-ordinated at the highest political level;
- Insufficient visibility of the supervision of the execution of the Court's judgments.
- The lack of political will to adopt laws or amend them.

### **NHRI's actions to support the implementation of European Courts' judgments**

The Institution addresses the issues dealt with in the European courts' judgment by carrying out national prevention functions, conducting investigations into fundamental human rights problems, submitting proposals to state and municipal institutions and bodies on human rights issues; or seeking harmonization of national legislation with the international commitments of the Republic of Lithuania in the field of human rights by providing assessment for draft laws.

### **NHRI's recommendations to national and regional authorities**

The Seimas Ombudspersons' Office recommends that the Government must take more effective measures to seek dialogue with the legislator (Parliament) so that decisions that require political will would have support. The Government should aim to work closer with the Parliament, consolidating the necessary support (present possible solutions to the committees, discuss with political groups and their representatives).

## **Artificial Intelligence**

### **Impact of AI on human rights, democracy and rule of law**

The institution has not addressed the impact of artificial intelligence (henceforth "AI") on human rights, democracy and the rule of law directly. The Lithuanian NHRI did however, closely monitor the issue, especially following the purchase of video surveillance cameras by the national police to be used on the streets with face recognition features. The 204 video surveillance cameras installed on the streets and bridges of Kaunas<sup>25</sup> did not work for a long time, because the State Data Protection Inspectorate (SDPI) determined that the intended video surveillance would not meet the requirements of

the General Data Protection Regulation. According to them, it is necessary to first assess where that video surveillance is necessary and where it is not. It was also emphasized that the very idea of recording the numbers of all passing cars with cameras cannot be implemented. As the State Data Protection Inspectorate pointed out at the time, it must be ensured that the records of license plates of passing vehicles are stored only for an adequate period of time and only of those car drivers, for example, who have committed violations under Road Traffic Rules.

Currently, the video surveillance cameras are functional, and the data captured by the devices is stored in the system database for no longer than 30 days, after which it is deleted automatically. Data on the recorded license plates of vehicles having committed violations under the Road Traffic Rules, are stored for 24 months.

### **NHRI's actions to address challenges regarding the use of artificial intelligence**

The NHRI has not undertaken any actions concerning the use of artificial intelligence due to the lack of resources; however, recognized it as a problem that needs to be addressed.

### **NHRI's recommendations to national and regional authorities**

The Seimas Ombudspersons' Office underlines that the use of AI should follow the main core principles:

1. Transparency: Ensure that AI systems are transparent in their decision-making processes and that individuals have the right to understand how decisions that affect them are being made.
2. Non-Discrimination: Ensure that AI systems do not discriminate against individuals based on protected characteristics such as race, gender, and religion.
3. Human Control: Maintain human control over AI systems, so that decisions can be reviewed and revised by human beings, and so that accountability is maintained.

4. Privacy: Ensure that privacy rights are respected in the design, development, and deployment of AI systems.
5. Fairness: Ensure that AI systems are fair and do not perpetuate existing biases or lead to unjust outcomes.
6. Responsibility: Clearly define the responsibilities of different actors involved in the development and deployment of AI systems, including governments, businesses, and individuals.
7. Regulation: Develop and enforce regulations that ensure that AI is developed and used in a manner that is consistent with human rights, democracy, and the rule of law.
8. Public Engagement: Foster public engagement and participation in the development and deployment of AI, so that citizens have a say in shaping the technology and its impact on their lives.
9. Monitoring and Evaluation: Monitor and evaluate the impact of AI on human rights, democracy, and the rule of law, and adjust policies and regulations as necessary to ensure that these values are protected.

## **Other challenges in the areas of rule of law and human rights**

### Discrimination against the LGBTI+ community

Concerns about freedom of expression limitations remain, especially concerning activities linked to reporting on LGBT issues and providing material on LGBT issues to the population, including minors. The Applicant in the case *Macaté v. Lithuania*<sup>26</sup>, an openly lesbian author, wrote a children's book containing six fairy-tale retellings that include characters from marginalised social groups. Two of the retellings depict relationships between persons of the same sex. The book was published, but distribution was stopped soon after due to some public outcry against it. Although the publishing was later renewed, the book was marked with a warning that it "might have a negative effect on persons below the age of fourteen". The publisher invoked the

Lithuanian law on the protection of minors<sup>27</sup>, which stipulates that any information expressing contempt for traditional family values or promoting a vision of marriage and the creation of a family different from that enshrined in the Constitution or the Civil Code is considered to be harmful to minors. This case shows that Lithuania and its private entities are still contributing to the discrimination of the LGBT community, which in turn limits their right to freedom of expression.

### Limitation of free speech

On 10 March 2022, Lithuania imposed a stricter state of emergency in response to Russia's invasion of Ukraine. The state of emergency limited the rights to freedom of expression and peaceful assembly, in what critics said were the toughest constraints on personal freedom since Soviet times. The new legislation enabled the police to remove access to a media outlet for up to 72 hours for "disinformation", "war propaganda" and "incitement of hate" relating to the invasion.

### **NHRI's recommendations to national and regional authorities**

The Seimas Ombudspersons' Office recommends the following:

1. Support/enhance political dialogue on rule of law (security and justice) needs, norms and standards;
2. Support/enhance national assessment of needs, gaps and capacity, in relation to international standards and good practice;
3. Support/enhance development of national strategies in relation to the security of the state and its people, with a focus on the effectiveness and accountability of security and justice.
4. Regional authorities should support NHRIS by encouraging national authorities to respect the autonomy of those institutions by providing needed resources so they can operate within their capacities without limiting them based on the scarcity of funds required to support their activities.

5. Regional authorities should encourage national authorities to cooperate with national human rights bodies in developing human rights agenda and strategies to combat human rights violation and find policy resolutions to human rights problems.
6. The Government should respect the rule of law and comply with international commitments. Also, all national human rights bodies should be strengthened and supported by providing needed financial or human resources to carry out functions assigned by law.

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<sup>1</sup> [European Commission's 2022 Rule of Law Report – country chapter on the rule of law situation in Lithuania](#)

<sup>2</sup> [Draft Law](#) in Lithuanian (no translation is available) ensuring the Seimas Ombudspersons the right to apply to the Constitutional Court.

<sup>3</sup> The [Draft Law](#) in Lithuanian (no translation is available) without the right of the Seimas Ombudspersons' to apply to the Constitutional Court.

<sup>4</sup> [SCA Report March 2017](#)

<sup>5</sup> [Amendment of the law applicable to the Lithuanian NHRI](#)

<sup>6</sup> [The Law on the Seimas Ombudsperson](#)

<sup>7</sup> [Constitutional Court Acts](#)

<sup>8</sup> [Draft Law No. XIII P-5306, amending Arts. 18 and 22 of Law No. NoVIII-950](#)

<sup>9</sup> [Article 19\(1\)\(11\) of the Law on the Seimas Ombudsmen](#)

<sup>10</sup> See, for example, [Committee on Economic, Social and Cultural Rights](#) Concluding observations on the third periodic report of Lithuania, 2023, no. 67; [European Commission's 2022 Rule of Law Report – country chapter on the rule of law situation in Lithuania](#), p. 19; [CERD report](#) on Lithuania, p. 5.

<sup>11</sup> [CAT concluding observations on the fourth periodic report of Lithuania](#) p.5 , points 13, 14.

<sup>12</sup> [CAT concluding observations on the fourth periodic report of Lithuania](#) p.5 , points 13, 14

<sup>13</sup> [The Conclusion of the Commission for Ethics and Procedures](#) is available only in Lithuanian.

<sup>14</sup> [L v. Lithuania](#),

<sup>15</sup> [L. v. Lithuania \(coe.int\)](#)

<sup>16</sup> Judgment of the Court of Justice (First Chamber) 30 June 2022, CURIA - Dokumentai (europa.eu)

<sup>17</sup> EU Directive 2013/32, [Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection \(recast\) - EU monitor](#)

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<sup>18</sup> Position of the Lithuanian Minister of the Interior, [Lithuania won't back down on migrant pushback law – minister - LRT](#)

<sup>19</sup> A bill to legalise the migration pushbacks, [Lithuania moves to enshrine migrant pushbacks in law - LRT](#)

<sup>20</sup> [ECtHR Judgment](#) in the case Mironova and others

<sup>21</sup> [ECtHR Judgment in the case Beizaras and Levickas](#)

<sup>22</sup> <https://rm.coe.int/mi-lithuania-eng/1680a23c98>

<sup>23</sup> [ECtHR Judgment Abu Zubaydah v. Lithuania](#)

<sup>24</sup> [L. v. Lithuania \(coe.int\)](#)

<sup>25</sup> [An article in Lithuanian about surveillance cameras in Kaunas](#)

<sup>26</sup> [Case of Macate v. Lithuania](#)

<sup>27</sup> [Lithuanian law on the protection of minors](#)

## Luxembourg

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### Consultative Human Rights Commission of Luxembourg

#### Impact of 2022 ENNHRI rule of law reporting

##### Impact on the Institution's work

The 2022 ENNHRI rule of law report confirmed that most of the concerns raised by the CCDH were shared by other ENNHRI members, which in turn reaffirmed the importance of the CCDH's efforts to tackle rule of law related matters. One key outcome of ENNHRI's 2022 rule of law report lies in its use by the European Commission, as well as the organizations of meetings between the CCDH, the Ombudsman and the EU Commission's representatives<sup>1</sup>.

The CCDH has been invited by two Ministries (Ministry for Internal Security and Ministry of Justice) to discuss its opinions and recommendations on draft legislation or regulatory acts, showing an improvement in the awareness of public authorities about the CCDH.

Furthermore, together with the EU Commission's permanent representation in Luxembourg, in January 2023 EU Commissioner Didier Reynders organized an exchange with civil society organisations and some other associations or institutions, including the CCDH. The President of the CCDH reiterated several of the NHRI's concerns raised in the 2022 rule of law report (e.g. insufficient stakeholder consultation and involvement in the decision-making process). These concerns were also widely shared by the other stakeholders attending the meeting.



## Follow-up initiatives by the Institution

Due to a lack of capacity and resources, the CCDH was not able to take any additional follow-up initiatives other than engaging with meetings related to rule of law matters with regional policymakers and state authorities, as mentioned above. It has been focussing on rule of law questions mostly in a transversal manner in its publications and recommendations.

## NHRI's Recommendations to national and European policy makers

As reiterated in ENNHRI's 2022 rule of law report, the CCDH still recommends:

- Compulsory and inclusive meetings and dialogues with stakeholders to discuss the findings of the rule of law report (for example in the interministerial committee of human rights lead by the Ministry of Foreign Affairs or in the Parliament of Luxembourg)
- Obliging the government and the Parliament to respond to the NHRI's recommendations within a reasonable timeframe and justify why they are not following the NHRI's recommendations
- Meetings with the European Commission should be organised closer to the date of publication to obtain a bigger impact, as currently such meetings are organised six months after the publication.

## Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation

### State authorities follow-up to regional actors' recommendations on rule of law

The European Commission's 2022 Rule of Law Report has been discussed in the Parliament and during a meeting with the Minister of Justice.<sup>2</sup> However, the CCDH has not received any information regarding measures specifically taken to follow-up on the recommendations issued by regional actors.

Furthermore, while it remains unclear if the government specifically aimed to follow-up on the European Commission's recommendations, some measures taken by the government covered some of the recommendations concerning rule of law. A good example is the Prime Minister's recent acknowledgment of the issue regarding journalists' access to information.<sup>3</sup> In 2022, according to the Luxembourgish association of professional journalists<sup>4</sup>, a new "circulaire" has slightly improved the situation.<sup>5</sup> Nonetheless these "circulaires", which aim only to provide interpretation of the current law, are insufficient as they do not compensate the lack of an effective legal framework guaranteeing access to information both in theory and in practice. Access to information is centralized by the government, which seemingly adopts a restrictive approach when it comes to journalists' access to information in some cases. According to the press association, journalists could not directly contact public officials but had to go first through the press contact of the Ministry – unless the public officials were explicitly allowed to talk to the press or the information were not of an internal or secret nature. There are lots of restrictions and delays of several months only to find out if access is granted or not.<sup>6</sup> The journalist association as well as the CCDH continue therefore to recommend creating a legal framework for an effective right to access to information for journalists.

A further initiative from state authorities is draft legislation 8015<sup>7</sup>, which has been proposed in May 2022. The draft law aims to reinforce the protection of journalists, police forces, and members of the Parliament and the government) following some incidents related to violent protests related to Covid-19 pandemic restrictions.<sup>8</sup> The draft proposal for a constitutional reform (chapter on justice, bill n°7575), which creates a "National Council of Justice" has been adopted and will enter into force on 1st July 2023. Moreover, article 104, paragraph 1, of the consolidated version of the future Constitution will explicitly guarantee the independence of the judiciary. This is a positive development since the current Constitution does not explicitly address this topic. Draft bills 7323A<sup>9</sup> (organisation of the national council of Justice) and 7323B<sup>10</sup> (status of

magistrates) mentioned in the EC's 2022 rule of law report have been adopted. The press reported some issues following the first elections of the national council's members.<sup>11</sup> Some senior judges, who did not receive the votes and mandate they expected, seemingly refused to accept the position of "membre suppléant". Draft bill 7323<sup>12</sup> (Organisation of the supreme council of justice) is still in the legislative process. The CCDH has not monitored this process and cannot assess whether the laws can be seen as an adequate follow-up of the EC's rule of law report.

Draft bill 7959 (legal aid) is also still pending in the Parliament. The CCDH generally welcomes the intent to widen the scope of people who are eligible for judicial aid, but it would like to highlight that it does not have conducted an in-depth assessment of the draft legislation so it cannot say whether it is sufficient or not to guarantee access to justice to everyone.

The Parliament has put in place a lobby register. The CCDH did not assess so far whether or not this register is in line with EC recommendations. There has been however some criticism and calls by some political parties for an overhaul.<sup>13</sup>

The CCDH has not received any information regarding the improvement of the prosecution services' resources. The CCDH also flags that – to its best knowledge – there was no effective follow-up by state authorities to improve the legislative decision-making process by providing wider possibilities for stakeholders to participate in public consultations.

### **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

The CCDH supported the implementation of regional actors recommendations by publishing the rule of law reports (ENNHRI and EU) on its website and by addressing these issues in its various opinions, reports (also to UN, EU or Council of Europe bodies), letters, public interventions and meeting with the European Commission on rule of

law.<sup>14</sup> Due to limited resources, the CCDH could not engage in more specific actions in supporting the implementation of regional actors recommendations.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Luxembourgish NHRI was last reaccredited with A-status by the Sub-Committee on Accreditation (SCA) in March 2022<sup>15</sup>. In its latest review, the SCA recommended that the NHRI advocate for amendments to relevant legislation to limit the number of times that members of the Commission may be reappointed and the President may be re-elected. Moreover, the SCA encouraged the NHRI to advocate for changes to its enabling law to provide for remunerated full-time members in its decision-making body. Further, the SCA encouraged the NHRI to advocate for relevant changes to provide the explicit power to table reports directly in the legislature, rather than through the Executive, and in doing so to promote action on them. It also recommended the institution to advocate for its reports to be discussed by the Parliament. Additionally, the SCA called on the institution to continue to conduct systematic follow-up activities to ensure that its recommendations are implemented by the relevant authorities, in order to fulfil its protection mandate. While acknowledging that the Luxembourgish NHRI has received increases in its budget in recent years, the SCA also encouraged the institution to continue to advocate for an appropriate level of funding to carry out its mandate effectively and independently.

### **Regulatory framework**

The national regulatory framework applicable to the institution has not changed since the ENNHRI's 2022 report on the state of the rule of law in Europe. In a similar vein to the 2022 report, the CCDH reports the need to enshrine the NHRI's mandate in the constitution, as only the Ombudsman has a constitutional mandate.

Indeed, the equality body, the Ombudsman for the rights of the child and the CCDH however “only” have a legislative basis, not a constitutional one. The CCDH reports no changes on this regard during the last constitutional reform.

Actions are needed to reinforce the impact of the NHRI’s recommendations, for instance by explicitly obliging the government and the Parliament to respond and justify their (in)actions (at the very least give a timely and reasoned response). Finally, although the funding directed to the Institution has increased, the CCDH believes that its level of funding should be further increased to carry out its mandate effectively and independently.

### **Enabling and safe space**

The CCDH reports mixed practices with regard to the States’ ability to ensure enabling space for the NHRI to effectively carry out its work, as practices differ according to the state authority. With regard to access to legislative and policy processes and follow-up, the Luxembourgish NHRI reports that while some authorities seem still to be unaware of the existence, the independence, the mandate and the role of a NHRI, an increasing number of state authorities seem to become aware of the NHRI’s mandate and are willing to cooperate.

In general, the CCDH usually receives the information it requests - for example relating to the deadlines in the legislative process. A good practice reported is the availability of ministries to meet or call in order to give further explanations about the draft legislation, prior to the finalisation of the CCDH’s opinion. Nonetheless, as there is no legal obligation in place for the authorities to follow up on the NHRI’s recommendation, once the latter is published, it is more difficult to get appropriate feedback. Despite the CCDH’s numerous recommendations, opinions of relevant stakeholders are only very rarely taken into account before the adoption of a first draft legislation. Once the draft is adopted, many bodies can and actually give their feedback, but it is unclear if and

how the relevant authorities (government and the Parliament) are following up on the many opinions they receive.

In some cases, it may take unreasonably long for the government to respond to the CCDH's official letters, especially in the area of business and human rights. For instance, despite the CCDH's requests to receive information about Luxembourg's position regarding the European Commission's proposal for a corporate sustainability due diligence directive, Luxembourg is still reluctant to disclose its definitive position (only some elements are known). The CCDH reported the intention to solicit more proactively feedback from the government and the Parliament, as well as to keep track of the implementation rate of its recommendations.

Another example worth mentioning is the constitutional reform, where the Parliament did not take into account any of the CCDH's recommendations raised in its opinion<sup>16</sup>. While the CCDH regrets that it was not able to issue its opinion earlier due to a lack of resources, it deplores that neither the parliamentary committee nor the assembly were deeming it necessary to receive the NHRI's opinion prior to their vote on the chapter on fundamental rights of the constitution. Political pressure to adopt the reform before the next elections seemingly prevailed over an inclusive and participatory process.

As far as the CCDH is concerned, the level of cooperation between different human rights actors is sufficient and, in some cases, encouraged (e.g. interministerial working groups or committees). Since 2020, the CCDH is located in a "House of human rights", together with the equality body ("Centre pour l'égalité de traitement") and the Ombudsman for children ("OKAJU"), which facilitated and improved cooperation between the three entities. The NHRI also regularly collaborates with NGOs and participates in events and working groups organised by civil society (e.g. in the field of rights of persons with disabilities).

## **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

With regard to developments related to the independent and effective fulfilment of the NHRI's mandate, the CCDH addressed a letter to the Prime Minister after its reaccreditation to inform him about the results and the recommendations. It also reiterated the importance of getting a response from the public authorities to its recommendations in its opinions, reports, etc.

The CCDH also sporadically raises attention to issues linked to the Paris Principles (via its opinions, communications, press conferences, etc.), especially regarding its efficiency and independence, the role of civil society, etc. The NHRI has also applied for and received additional human resources. While it has not had any significant negative experiences regarding resources, it could always need more in order to be able to improve its monitoring abilities. The NHRI is still occasionally obliged to decide not to issue an opinion on draft legislation due to a lack of resources. It is worth noting that because it is attached to the government, it has fewer resources at its disposal and less freedom regarding the allocation of its resources as compared to the institutions attached to the Parliament (CET, OKAJU, Ombudsperson).

## **NHRI's recommendations to national and regional authorities**

Similarly to the 2022 rule of law report, the CCDH recommends to:

- Put in place a follow-up procedure or an obligation to respond to the CCDH's recommendations for public authorities.
- Ensure more human resources for the NHRI; improving general knowledge about the NHRI's role, mandate and independence.
- Improve data collection by public authorities, communication with the NHRI and consultation of the CCDH on draft laws and regulatory acts.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

The CCDH has not found any specific or direct evidence of laws or measures negatively impacting on civil society space and human rights defenders. There are, however, some more general issues that may affect their activities.

The whistle-blower protection legislation currently in place is still limited to specific sectors such as private and public labour law and new legislation to address these gaps is in progress. On 10 January 2022, the Government adopted a draft law aiming to transpose the EU whistle-blower Directive<sup>17</sup>, which has a broader material scope than the Directive. However, the deadline for transposing the directive already expired on 17 December 2021.

Moreover, the CCDH stresses that court statistics (e.g. disaggregated data about judgments, cases, parties involved, offenses, victim compensation, length of proceedings, etc.) urgently must be improved. The tools and databases at the disposal of the prosecution and the courts were, according to the judicial authorities, not conceived as a tool to establish statistics. It is therefore currently impossible to create reliable and disaggregated statistics. As a result, monitoring and evaluating the data becomes very difficult, if not impossible. However, this is not limited to the courts. Luxembourg is regularly subject of criticism on an international level because of its insufficient efforts regarding data collection. Often, disaggregated data is simply not collected by the relevant authorities. While some actors do their best to improve the situation (for ex. the Police in the area of human trafficking), a lot of work needs to be done to tackle the general data collection issues in Luxembourg.

Access to information and documents sometimes is not systematic, and it depends on the topics and actors involved. A case in point the ongoing refusal from the Ministry of Foreign Affairs, the Ministry of Economy and the Ministry of Finance to communicate in



a transparent manner about their position regarding the due diligence (CSDDD) directive proposal. The improvement of the business and human rights situation in Luxembourg is lacking transparency, notwithstanding the government's frequent recognition of the importance of its multi-stakeholder working group, which is supposed to accompany the implementation of the business and human rights National Action Plan.<sup>18</sup> Non-governmental members of the working group are often not informed on series of important developments.

Lastly, in its opinion on the constitutional reform, the CCDH pleaded in favour of the ratification of the convention of the CoE on access to public documents.<sup>19</sup>

### **Access to and involvement of civil society actors in law and policy making**

The Luxembourgish NHRI reports mixed practices with regard to the access to and involvement of civil society actor in law and policy making. While good practices exist, the CCDH reports that in practice the level of dialogue and participation mostly depends on the different ministries and platform. As mentioned above in the section on enabling space, although the NHRI and CSO stakeholders can in some instances provide their feedback, the follow-up on the NHRI's recommendations is not sufficient.

As already mentioned above, a lack of consultation and transparency is a common issue that civil society actors and the NHRI are usually confronted with. The abovementioned example of the Business and human rights multi-stakeholder working group is a case in point. Moreover, the CCDH issued an opinion<sup>20</sup> on draft legislation 7787 implementing the EU regulation<sup>21</sup> on conflict minerals which requires EU companies to ensure they import certain minerals and metals from responsible and conflict-free sources only : one of the NHRI's recommendations aimed at improving civil society implication in the reporting process (e.g. by publishing a list of the businesses covered by the EU regulation and strengthening their role in the procedure)<sup>22</sup> and the NAP (p. 31) explicitly mentions that it is essential to associate the different stakeholders (private sector and NGOs) to the implementation of the EU regulation. Nonetheless, neither the members

of the working group, nor the CCDH have been implicated so far in the process. As a reminder, the conflict mineral regulation entered into force on 1st of January 2021. The draft legislation was introduced in March 2021 and is still pending in the Parliament. There has been no consultation and no feedback whatsoever.

### **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

The CCDH does not report any specific initiative taken to promote and protect civil society space and human rights defenders. The CCDH had no capacity to conduct specific monitoring related to such practices and assess whether or not any specific lawsuits amount to SLAPPs. An online news outlet recently decried the attempt of some companies to remove critical articles by threatening with legal action.<sup>23</sup>

Besides offering general information and support about where to get help to potential victims of abusive lawsuits, the CCDH cannot provide support to victims of SLAPPs since it cannot intervene in individual cases.

Moreover, the CCDH assesses negatively the lack of transposition of the whistle-blower directive, as the draft legislation is still pending in the Parliament.<sup>24</sup> The CCDH notes that the European Commission launched infringement proceedings against Luxembourg shortly after the publication of a recent ECHR judgment in the case *Halet v. Luxembourg* (application no. 21884/18<sup>25</sup>) because of its failure to transpose the whistle-blower directive.<sup>26</sup>

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

In its opinions, the CCDH systematically recommends adopting an inclusive and participatory approach by state authorities regarding civil society space and human rights defenders<sup>27</sup>. The CCDH also supports various civil society initiatives, e.g. by participating in roundtables and events (also as speaker) (or in working groups, as for example the working groups on the right of persons with disabilities or on video

surveillance. The CCDH is regularly pleading in favour of an effective witness protection programme, which still does not exist in Luxembourg. Furthermore, in its recent opinion<sup>28</sup>, the CCDH welcomed the proposal of a draft legislation aimed at introducing an aggravating circumstance for offenses committed because of discriminatory motives (thus reinforcing the punishment e.g. for hate crimes committed against human rights defenders and civil society). The NHRI also reports advocating for the need to assess and improve access to remedies, protection against SLAPP suits and whistleblower protection.

### **NHRI's recommendations to national and regional authorities**

As reiterated in ENNHRI's 2022 rule of law report, the CCDH still recommends to:

- Improve legal right to access to information for journalists and greater inclusion of stakeholders in decision and policy making processes;
- Implement fully the whistleblower directive and protect against SLAPPs;
- Put in place the "Shelter cities" project for foreign human rights defenders that aims at setting up a procedure for the reception of individual human rights defenders in Luxembourg for a predetermined rest period Implementation of European Courts' judgments.

## **Implementation of European Courts' judgments**

### **Assessment of follow-up activities of State authorities**

The CCDH does not have capacity to conduct an in-depth follow-up of ECtHR and CJEU judgments. However, according to the report "Justice Delayed and Justice Denied: Non-implementation of European Courts' Judgments and the Rule of Law"<sup>29</sup>, Luxembourg's implementation rate of the Court of Justice of the European Union's (CJEU) judgments appears to be rather acceptable. Following the CJEU's ruling on cases of refusal to grant public access to information<sup>30</sup> related to the "Luxembourg Business Registry" (RBE)" (cases C-32/20 et C-601/20), public access to information had been restricted for some

time, which caused an outcry from journalists and civil society. It seems like a temporary solution has been found allowing at least some people to access the database again. The CCDH does not know if this is sufficient for NGOs and journalists to access the information they need.<sup>31</sup>

It also seems like Luxembourg implemented the ECtHR's judgments since it does not appear in the list of judgments pending execution.<sup>32</sup>

## **Other challenges in the areas of rule of law and human rights**

The Luxembourgish NHRI flags to another rule of law and human rights challenge persisting in Luxembourg. The CCDH notes the difficulty in assessing if the legislative process is based on evidence-based policy-making. The impact assessment attached to draft legislative acts are most of the times filled out inadequately. Similarly, the explanatory memorandum and the commentaries on articles are often quite imprecise and lack explanations or sources. In the abovementioned draft legislation 8032 introducing an aggravating circumstance for offenses committed because of discriminatory motive, a chunk of the explanatory memorandum were reportedly copy-pasted from a third party website<sup>33</sup> with no references. Also see the recent opinion of the CCDH on bodycams to be worn by police officers<sup>34</sup>: instead of referring to empiric data and local experiences, the government decided not to perform a pilot project to gather initial data on the effectiveness of the use of bodycams. The draft bill confers a large margin of discretion to the police regarding the use of such cameras and primarily aims at the protection of police officers, while neglecting the human rights of other persons.

Regarding access to the justice system, the NHRI repeatedly urged the government and the Parliament to improve access to courts. There is currently no human rights institution or equality body with the power to go to courts in case of discrimination or human rights violations. Some NGOs can, in some circumstances, support and represent individuals. However, this mechanism does not seem to be used very often, seemingly

for a variety of reasons: fear of going to court in the Luxembourgish microcosm; fear of jeopardising their career; length of judicial proceedings; difficulty to prove the allegations; need of judicial and social assistance; lack of resources of the NGOs to assist with these needs<sup>35</sup>. The CCDH and other national and international actors recommend strengthening the powers and resources of the equality body (Centre for Equal Treatment)<sup>36</sup>.

The high legal costs and risks related to bringing a case to court may also be a barrier for some victims to access the justice system, as is the case for victims of racial discrimination<sup>37</sup>. It is also unclear if access to justice is sufficient in case of human rights violations committed by businesses which are established in Luxembourg or which are exercising some of their activities in Luxembourg. The National Action Plan on Business and Human Rights<sup>38</sup> recognised the need to assess the current situation and, if necessary, improve access to justice for victims of human rights violations committed abroad. However there has not been any follow up so far.

Finally, there is also an urgent need for a legal framework for an effective witness protection program, which currently still does not exist.<sup>39</sup> The CCDH, the Police and international experts have repeatedly urged the government to take the necessary steps to improve the situation as quickly as possible. The CCDH underlines that such a witness protection programme would entail creating a legal framework to protect victims and their close ones (and police agents and other persons involved in the protection/proceedings) from harm because of their witness status. Currently, the Police is trying their best to protect witnesses with the means at their disposal but a legal framework and sufficient means are desperately needed (f. ex. for housing, anonymity, protection, etc.). The details need to be consulted with police and civil society actors.

### **NHRI's recommendations to national and regional authorities**

The CCDH recommends to state authorities:

- Improving access and quality of disaggregated data collection

- Improving evidence-based policy making and the quality of legislation
- Improving access to justice (e.g. witness protection programme, training of justice professionals)

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<sup>1</sup> See for instance the [country chapter on the rule of law situation in Luxembourg](#), pages 13 and 15.

<sup>2</sup> See for instance [the government communication on the working visit of Commissioner Reynders to Luxembourg](#) and the [Parliament's article about the visit published on its website](#).

<sup>3</sup> See the [press article "Xavier Bettel promises more transparency in media \(In French\) "](#).

<sup>4</sup> [Circular from the Luxembourgish association of professional journalists](#)

<sup>5</sup> See the [statement of the journalist association](#).

<sup>6</sup> [Hindered access to information by journalists - data](#)

<sup>7</sup> [Law 8015 from the government of Luxembourg \(protection of journalists police forces, members of parliament and of the government\)](#)

<sup>8</sup> See [draft legislation 8015 to amend the criminal code and the code of criminal procedure](#).

<sup>9</sup> See [draft bill 7323A on the Parliament's website](#).

<sup>10</sup> See [draft bill 7323B on the Parliament's website](#).

<sup>11</sup> See for instance the [press article published on reporter.lu](#).

<sup>12</sup> See [draft bill 7323 on the Parliament's website](#).

<sup>13</sup> See the press article [published on Luxembourg times](#).

<sup>14</sup> The CCDH published opinions on draft legislation (e.g. [Covid legislation](#), [conflict mineral legislation](#), [access to information](#) and [origins, the Constitution, detention conditions, child justice reform, discriminatory motives as an aggravating circumstance, bodycams worn by police officers](#)) and issued letters to the government to address certain shortcomings for example in the area of business and human rights. On 10th of December, the President raised a number of rule of law related issues during an event organised by the CCDH. The CCDH published its [3rd human trafficking report](#) where it also raised rule of law related issues (e.g. access to justice, witness protection, data collection).

The CCDH also met with representatives of GREVIO, [GRETA](#), [contributed to the CERD report](#), the [UN WG on business and human rights](#), etc, where it also addressed some rule of law related concerns. It also contributed to requests for information from the EC for example on the reform of equality bodies.

<sup>15</sup> [SCA Report March 2022](#)

<sup>16</sup> See the NHRI's [opinion on the constitutional reform](#).

<sup>17</sup> See draft [draft legislation 7945 on whistleblower protection](#).

<sup>18</sup> See the [second business and human rights National Action Plan](#) (2020-2022), p. 28.

<sup>19</sup> See the NHRI's [opinion on the constitutional reform](#).

<sup>20</sup> [CCDH Opinion on draft legislation 7778 on regulation on conflict minerals](#)

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<sup>21</sup> For more information about the conflict mineral regulation, see the [European Commission's dedicated website](#).

<sup>22</sup> See the NHRI's [opinion on draft legislation 7787](#).

<sup>23</sup> See [this article published on reporter.lu](#).

<sup>24</sup> See [draft legislation 7945 transposing Directive 2019/1937 EU of 23 October 2019 on the protection of persons who report breaches of the Union law](#).

<sup>25</sup> [ECtHR Judgment in the case Halet v. Luxembourg \(application no. 21884/18\)](#) concerning a violation of freedom of expression when a criminal-law fine of EUR 1,000 was imposed for disclosing to the media confidential documents from a private-sector employer concerning the tax practices of multinational companies (Luxleaks).

<sup>26</sup> [The EC launches infringement procedure against Luxembourg - lack of transposition of the whistleblowers directive](#)

<sup>27</sup> See the opinions on the [constitutional reform](#) (p.4), the draft legislation on [access to origins](#) (p.27) or the draft regulatory act on internal [prison organisation](#). (p.4)

<sup>28</sup> NHRI's opinion on draft legislation 8032 [introducing an aggravating circumstance for offenses committed because of discriminatory motive](#)

<sup>29</sup> See the [report "Justice delayed and justice denied: Non-implementation of European Courts' Judgments and the Rule of Law](#) published in April 2022, p. 55.

<sup>30</sup> [ECJ case c-32/20 and c-601/20 on access for any member of the general public to the information on beneficial ownership](#). Also see the [Court's press release](#).

<sup>31</sup> See, for instance this [press article about insufficient access for NGOs](#) or [this article about potential difficulties for journalists](#).

<sup>32</sup> See the [surveillance table of the Committee of ministers of the Council of Europe](#).

<sup>33</sup> See the [Ooreka Droit Website on "circonstances aggravantes"](#).

<sup>34</sup> See the NHRI's [opinion on draft legislation 8065 on bodycams](#)

<sup>35</sup> See for instance the [LISER/CEFIS study on racism](#), p. 94.

<sup>36</sup> See for instance the [CERD concluding observations](#), §§23-24 and 13-14, and the [open letter of the CCDH and 20 NGOs \(2020\)](#).

<sup>37</sup> [Report on racial discrimination in Luxembourg](#) (pp. 93-100)

<sup>38</sup> [Luxembourg National Action Plan on Human Rights](#), p. 40.

<sup>39</sup> See the NHRI's [human trafficking report](#), p. 67 and [concluding observations](#), §32 b).

## Malta

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### Independence and effectiveness of the NHRI

#### International accreditation status and SCA recommendations

In the past years, national, regional and international stakeholders have called on Malta to establish a NHRI. This recommendation has featured prominently during the Universal Periodic Review of Malta.<sup>1</sup>

On July 2019, the Bill on the Human Rights and Equality Commission was presented to the Maltese Parliament, which would establish an NHRI.<sup>2</sup> ENNHRI, alongside civil society organisations and other actors, has supported the establishment of a Maltese NHRI and advised national actors in their efforts.<sup>3</sup> Prior to the submission of the bill to Parliament, the Council of Europe's Venice Commission published its Opinion on the draft bill.<sup>4</sup>

As far as ENNHRI is aware, the revised Bill is still being discussed before the relevant Parliamentary Committees, but there has not been considerable progress since 2019.

ENNHRI is closely monitoring developments in the country and stands ready to provide its expertise on the establishment and accreditation of NHRIs to relevant stakeholders in Malta, including the legislature, government, academics and civil society organisations.

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<sup>1</sup> [UN Human Rights Council, Malta Universal Periodic Review](#)

<sup>2</sup> [Malta House of Representatives, Human Rights and Equality Commission bill](#)

<sup>3</sup> [ENNHRI, ENNHRI advises on Malta's plan on the establishment of an NHRI](#)

<sup>4</sup> [Venice Commission Opinion on Malta, 2018](#)



## Netherlands

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### The Netherlands Institute for Human Rights

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

Since the childcare benefit scandal (kinderopvangtoeslagaffaire), reported in ENNHRI's 2022 Report on the state of the rule of law in Europe, there has been more attention at national level for the rule of law. The Second Chamber of Parliament organizes an annual debate on the state of the rule of law, while the First Chamber of Parliament holds this debate bi-annually. Furthermore, the government has established a Commission of State on the Rule of Law. This Commission's task is to analyze the functioning of the rule of law in the Netherlands and to give recommendations on strengthening it. Additionally, the Dutch government regularly intervenes in the cases brought before the Court of Justice of the European Union (CJEU) which focus on a rule of law aspect.

##### Impact on the Institution's work

The Netherlands Institute of Human Rights (NIHR) does not report any substantial changes in the institution's work following the 2022 ENNHRI rule of law report. The Institute had already prioritised the topic of the rule of law in the European Union (EU) in its work, because protecting and promoting of human rights in any Member State effective requires effective EU, European and international structures. One of the Institute's Commissioners is a member of the Meijers Committee, a well-established group of Dutch lawyers, judges and academics providing independent advice and opinions on EU law matters.

The main impact of the Dutch NHRI on the European institutions' rule of law work is bottom-up, in the sense that the Institute has consistently aimed at influencing the Dutch government, Dutch parliamentarians and European parliamentarians for them to remain active on this topic. In doing so the Netherlands Institute of Human Rights has drawn mainly from its own work and expertise.

### **NHRI's Recommendations to national and European policy makers**

The Netherlands Institute for Human Rights recommends the regional policy makers:

- To focus on enabling national level change makers, like civil society organisations, and draw on the expertise of National Human Rights Institutions (NHRIs) directly as eyes and ears on the ground, and a source of reliable independent data.
- To redirect the focus from reporting to putting greater emphasis on the enforcement actions.

### **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

#### **State authorities follow-up to regional actors' recommendations on rule of law**

In its 2022 Rule of Law Report<sup>1</sup>, the European Commission recommended the government improve the level of digitalisation on the justice system, complete revision of the rules on revolving doors involving former government ministers, adopt a Code of Conduct for ministers, and continue efforts to ensure a comprehensive follow-up to the childcare benefits scandal.

In 2022, the government has completed the revision of the rules on revolving doors, and adopted a Code of Conduct for ministers. The follow-up to the childcare benefits scandal continues to be a slow process, as the efforts to compensate all victims is expected to last many years. Digitalisation of the justice system is an on-going process.

### **State authorities follow-up to NHRI's recommendations regarding rule of law**

As reported by the Dutch NHRI in the ENNHRI 2022 Report on the state of the rule of law in Europe, the consequences of the so-called 'child benefit scandal' concerning parents who received a day-care child support and were subjected to discriminatory, unjustified and unproportionate treatment by the public authorities, remain to be fully tackled. The issue of insufficient oversight regarding tax authorities and in general public authorities was raised. The government was in the process of improving the day-care allowance system and reviewing legislation and the practice of the tax authorities.

Challenges reported in the ENNHRI 2022 Report, regarding respect for fair trial standards and the right to liberty in Netherlands, remain still unresolved. These concerns mostly the problem of lack of motivation of (continuation of) pre-trial detention decision-making by judges.

### **NHRI's follow-up actions supporting implementation of regional actors' recommendations**

As a general approach, the Netherlands Institute of Human Rights gave many briefings to civil servants, national and European parliamentarians and national ministers about the topic of the rule of law situation in other member states. Given the assumption that a bottom-up approach is most effective, the Dutch NHRI works together with a national alliance of Dutch NGOs. Such a cooperation helps amplifying the Institution's messages to the Netherlands and other governments and parliaments that significant pressure is to be built to change the political dynamic at EU level. The Dutch NHRI also supports the European Commission's recommendations issued to the Netherlands in the 2022 Rule of Law Report.

Furthermore, it is also worth noting that the Dutch NHRI's Commissioner in April 2022 took part in consultations to feed the 2023 European Commission's rule of law monitoring cycle. The Netherlands Institute for Human Rights' Commissioner provided its feedback on the rule of law situation in the Netherlands and European Union with a

joint contribution prepared by several Dutch NGOs (Netherlands Helsinki Committee (NHC), Nederlands Juristen Comité voor de Mensenrechten (NJCM), Free Press Unlimited (FPU) Transparency International Nederland (TI-NL), and Commissie Meijers).

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Netherlands Institute for Human Rights was re-accredited with A-status in December 2020<sup>2</sup>. The SCA understood that the NHRI's jurisdiction includes the Caribbean territories of the Netherlands; however, as the Dutch Equal Treatment Act is not applicable in these territories, the Netherlands Institute of Human Rights, which is also an equality body, cannot discharge the full breath of its mandate in these territories. The SCA encouraged the NHRI to advocate for the extension of the Equal Treatment Act to the Caribbean territories of the Netherlands, which the NHRI has consistently done. On the issue of possible conflicts of interest, the SCA acknowledged that where part time members of the governing body or staff of the Dutch NHRI wish to engage in other paid or unpaid activities, an internal discussion occurs, and a decision is made by the governing body. The NHRI makes relevant details relating to other activities publicly available on its website. However, the SCA noted that there did not appear to be further guidance on what types of activities would constitute a conflict of interest, in legislation, regulations or other binding administrative guidelines. The SCA encouraged the NHRI to advocate for the development of further binding guidance with respect to what constitutes a conflict of interest and the process by which the existence of such a conflict can be determined. The NHRI reported that its budget was the minimum necessary to carry out its mandate and that it can therefore prioritize a limited number of issues. The SCA encouraged the NHRI to continue to advocate for adequate funding necessary to allow it to address a broad range of priorities, including, for example, the rights of migrants and of the LGBTI community.

## Follow-up to SCA Recommendations and relevant developments

In relation to its funding, the NHRI reports that its budget has been systematically raised by about 10% as of 2022.<sup>3</sup>

Concerning the NHRI's jurisdiction in the Caribbean territories of the Netherlands, the Dutch NHRI reports that the Dutch Equal Treatment Act is still not applicable in these territories, so the NHRI, which is also an equality body, cannot discharge the full breadth of its mandate there. A legislative process to introduce this legislation in the Caribbean territories has started, which will include the Dutch NHRI's tasks as an equality body, but the legislative process is expected to take at least two more years. In January 2023, the Minister of Internal Affairs and Kingdom Affairs announced that the Equal Treatment Act would be extended to the Caribbean parts of the Netherlands (Bonaire, St. Eustatius and Saba). The NIHR will also function as an equality body in these parts.

## Regulatory framework

The Dutch NHRI reports no changes on the regulatory framework in comparison with January 2022. On the other hand, it believes that the regulatory framework should be further strengthened. One of the changes that could enhance the NHRI's regulatory framework is the applicability of the Dutch Equal Treatment Act in the Caribbean territories of the Netherlands, which would allow the NHRI to discharge its equality mandate there.

## Enabling and safe space

The state and local authorities ensure safe and enabling space for the NHRI's independent and effective discharge of its functions. The Dutch NHRI has regular meetings with government officials and ministers on a wide range of human rights issues. It is also regularly asked to advise on legislative proposals. The level of cooperation between different human rights actors is high, including the National Ombudsman and the National Coordinator Against Discrimination and Racism. The

response and follow-up to the Dutch NHRI's recommendations is however not always done in a timely manner.

### **NHRI's recommendations to national and regional authorities**

The Netherlands Institute for Human Rights recommends to national authorities to allocate the adequate budget for the NHRI so that it can address a broad range of human rights priorities.

## **Human rights defenders and civil society space**

### **Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities**

The Netherlands Institute of Human Rights' monitoring and reporting has not found any evidence of laws, measures or practices that could negatively impact on civil society space and/or reduce human rights defenders' activities. However, concerns raised in the ENNHRI 2022 Rule of Law Report regarding freedom of assembly remain unaddressed. In 2022, the Dutch NHRI reported that under the Dutch Public Assemblies Act (*wet openbare manifestaties*) planned assemblies needed to be pre-notified to the public authorities.<sup>4</sup> Despite this being a procedural requirement allowing authorities to assess security risk and make arrangements on time, sometimes this practice has also led to the control of the assemblies' content, ultimately playing a role in the decision-making. Furthermore, in March 2023, climate activists announced that they were planning to occupy a motorway in the Hague. In response, in the week leading up to the planned protest, police arrested six activists on suspicion of instigating a criminal act. The six activists had called for people to join the planned protest and had made clear they were going to attend. The Dutch NHRI published a statement, emphasizing the government's obligation to facilitate protests and stating that using criminal law to prevent a peaceful protest was an extremely severe instrument which could not be easily justified.<sup>5</sup>

### **Access to and involvement of civil society actors in law and policy making**

The Netherlands Institute of Human Rights has not identified any serious shortcomings in national laws and practices regulating access to and involvement of civil society actors in law and policy making.

### **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

The 2022 Dutch NHRI's annual report<sup>6</sup> was dedicated to freedom of speech and intimidation and aggression towards journalists, politicians, scientists and citizens. The report found that intimidation and aggression against all of these groups speaking out on matters of public interest had increased and threatened the right of the public to access information. While the report did not find any evidence for SLAPPs, threats of a lawsuit were part of the intimidation and aggression.

The Dutch NHRI underlines that there have been no laws introduced at national level to combat the phenomenon of SLAPPs. However, the European Commission has introduced a proposal of a so-called anti-SLAPP directive. It is worth noting, though, that the Netherlands Institute of Human Rights has not identified any victims of SLAPPs so far in the Netherlands. As such, no support needed to be provided.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

In December 2022, the Netherlands Institute of Human Rights hosted an event for a group of human rights defenders from Eastern European countries and discussed the human rights situation in the Netherlands and in their home countries.

In addition, the annual report emphasized the importance of civil society space. The Dutch NHRI notes that the ongoing partnership with the national alliance of Dutch NGOs helps amplify the message on the importance of human rights protection and rule of law compliance across the European Union.

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

The Netherlands Institute for Human Rights assesses the overall effectiveness of follow-up and implementation by state authorities of European courts' judgment as sufficient, given that the majority of judgements are implemented in a timely manner.

### Leading European Courts' judgments awaiting implementation

The Dutch Institute considers the following three cases not to have been (fully) executed in the Kingdom of the Netherlands:

- The Murray case<sup>7</sup> from 2016, in which the European Court of Human Rights (ECtHR) found a violation of Article 3 ECHR due to the *de facto* irreducibility of a life sentence due to the lack of any kind of psychiatric treatment or even of any assessment of the needs and possibilities of such treatment. The implementation of the Murray case was delayed because of a dispute over the scope of the judgment. The Dutch government asserted that the judgment covered only the situation in Curacao and Aruba and not the other countries in the Kingdom. Several NGOs, however, maintain that the judgment also covers the situation in the European part of the Netherlands.
- The Corallo case<sup>8</sup> from 2018, in which the ECtHR found a violation of Article 3 ECHR due to the poor conditions of detention pending extradition proceedings in Philipsburg Police Station in Sint Maarten. The implementation of the Corallo case was complicated by the fact that the detention conditions were in St. Maarten, an autonomous country within the Kingdom of the Netherlands. The judgment also required fundamental changes in the detention system. However, in the last few years, there has been significant progress in improving the detention conditions and this progress is reported regularly. For these reasons, the case continues to be under enhanced supervision.



- The Maassen case<sup>9</sup> from 2021, in which the ECtHR found a violation of Article 5 ECHR due to insufficient motivation by judges on the necessity of pre-trial detention in criminal law cases. While the Maassen judgment is not under the enhanced supervision, the Dutch NHRI does not consider this judgment to have been implemented fully as this practice continues. In addition, new cases against the Netherlands on the same issue are currently pending before the ECtHR.

### **NHRI's actions to support the implementation of European Courts' judgments**

The Netherlands Institute for Human Rights has made recommendations to state authorities and submitted rule 9 submissions to the Council of Europe's Committee of Ministers and has also intervened as a third party.<sup>10</sup> In addition, it has sent letters to the Dutch government urging them to execute these judgments as soon as possible.

### **NHRI's recommendations to national and regional authorities**

The Netherlands Institute for Human Rights recommends the European Commission to make greater use of enforcement action under article 260(2) TFEU. It does so in the cases in which case rule of law related Court of Justice of the European Union's judgments are not implemented by Member States, particularly those that are subject to the procedure under Article 7 TEU.

## **Artificial Intelligence**

### **Impact of AI on human rights, democracy and rule of law**

The Dutch NHRI published results of its investigation into the Dutch Tax Authority's use of artificial intelligence in the child care benefits scandal.<sup>11</sup> The NHRI found that the Tax Authority had used artificial intelligence systems for 'risk selection' which resulted in the applications of parents with a double nationality to be reviewed more often. This led to a presumption of discrimination on the basis of race in equality cases now pending before the NHRI in its capacity as Dutch Equality Body.

## NHRI's actions to address challenges regarding the use of artificial intelligence

Digitalization and Human Rights is one of the four strategic priorities of the Dutch NHRI. Since 2019, the NHRI has written reports on the impact of algorithms and artificial intelligence on human rights,<sup>12</sup> looked into the use of algorithms in recruitment, advised on legislative proposals in this field and engaged in awareness-raising activities.

## NHRI's recommendations to national and regional authorities

The Netherlands Institute for Human Rights recommends the authorities to ensure transparency in the use of algorithms in AI, as well providing that sufficient oversight.

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<sup>1</sup> [European Commission, 2022 Rule of Law Report, Country Chapter on the rule of law situation in the Netherlands](#)

<sup>2</sup> [SCA Report December 2020](#)

<sup>3</sup> [Dutch Coalition Agreement](#)

<sup>4</sup> [Dutch Public Assemblies Act](#)

<sup>5</sup> [Statement of Dutch NHRI on arrest of climate activists.](#)

<sup>6</sup> [Dutch NHRI's annual report 'A safe public debate'.](#)

<sup>7</sup> [Murray v The Netherlands, Application number 10511/10](#)

<sup>8</sup> [Corallo v The Netherlands, Application number 29593/17](#)

<sup>9</sup> [Maassen v The Netherlands, Application number 10982/15](#)

<sup>10</sup> [Communication of the Dutch NHRI to the Council of Europe](#)

<sup>11</sup> [Dutch NHRI's report on the Dutch Tax Authority](#)

<sup>12</sup> [See, for example the report into the use of algorithms in recruitment](#)

## Poland

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### Commissioner for Human Rights of Poland

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

In the ENNHRI 2022 Report on the state of the rule of law in Europe, the Commissioner for Human Rights (CHR) has flagged persisting challenges in the area of independence of judiciary.

On 12 January 2023, the lower chamber of the Parliament passed an amendment to the Law on the Supreme Court. The amendment aims to solve issues concerning disciplinary proceedings concerning judges in Poland. In the opinion of the Commissioner, presented to the Senate on 23 January 2023<sup>1</sup>, the law raises many constitutional concerns.

Despite the fact that the amendment addresses longstanding problems in the area of independence of judiciary, it includes the specific proposals which are not compatible with the Constitution and European law. In particular, in the opinion of the Commissioner, the idea that the Supreme Administrative Court is entrusted with the task of adjudicating disciplinary cases of common court judges violates Article 183 of the Constitution. Although some provisions are welcomed, such as the clear legal clause that a judge cannot be held responsible for the content of a judicial decision, the law in question as such still needs to be changed to ensure full compliance with the Constitution and European law.

After the review of the Senate, the amendment has been forwarded to the President. On 20 February 2023, the President of the Republic, before signing a bill, referred the amendment to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution.<sup>2</sup>

Other than that, to the best knowledge of the Commissioner for Human Rights, the public authorities have not undertaken any general campaigns and actions to foster a culture of the rule of law in Poland. However, some activities of such kind are undertaken by various Polish civil society organisations.

### **Impact on the Institution's work**

Problems related to the rule of law in Poland date back to 2015 and since then they have been an important part of the activities of the Commissioner for Human Rights. Many of the issues raised in the ENNHRI report overlap with issues that the Commissioner has dealt with before. In this context, the ENHRI report from 2022 refers to the problems that were generally well known to the Commissioner earlier. Nonetheless, ENNHRI reports are welcomed by the Commissioner as an important point of reference for his activities and positions.

### **Follow-up initiatives by the Institution**

The Commissioner for Human Rights conducts continuous actions to protect the rule of law within the framework of his constitutional and statutory powers. The Commissioner delivers opinions on draft legal acts concerning the judiciary, intervenes in court proceedings concerning human rights and rule of law (especially those precedent-setting cases), addresses general statements and recommendations to representatives of the executive and legislative authorities to prepare and implement reforms necessary to ensure compliance with constitutional and international obligations of the Republic of Poland.

### **NHRI's Recommendations to national and European policy makers**

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The Commissioner for Human Rights recommends to the European policy makers to focus on the NHRIs' independence and NHRIs' enabling space to the greater extent in their actions, for instance in the regional actors' rule of law reporting. The role of the national human rights institutions in upholding the rule of law in European countries should be more highlighted, reported on and, therefore, strengthened.

## Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation

### State authorities follow-up to regional actors' recommendations on rule of law

In the Commissioner's opinion, public authorities have not taken any significant steps to solve the fundamental problems indicated in reports of ENHRI or other regional actors.

In particular, the judgments of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) stating irregularities in the functioning of the **National Council of the Judiciary**, responsible for the selection of candidates for judges in Poland, remain unimplemented<sup>3</sup>. In the opinion of the Commissioner, the implementation of these judgments is necessary, and for this purpose, in particular, the National Council of the Judiciary should be reformed so that it becomes independent of the executive and legislative authorities.

Nonetheless, three changes have recently occurred that should be assessed positively. Although they do not solve the essence of the problem, they do constitute a step in the right direction.

Firstly, under the Act of 26 May 2022, the Disciplinary Chamber has been abolished, which, in the light of the jurisprudence of the Supreme Court, the Court of Justice of the EU and the European Court of Human Rights, did not meet the requirements of

independence provided by the treaties and Article 47 of the EU Charter of Fundamental Rights (CFR) neither Article 6 of the European Convention on Human Rights (ECHR).

Secondly, the same act of 26 May 2022 also strongly prohibits holding judges to disciplinary liability for references for a preliminary ruling to the CJEU, which, unfortunately, had previously been the case in situations where such references concerned the independence of the judiciary in Poland.

Thirdly, the same act also prohibited holding judges to disciplinary responsibility for the content of judgments. The Commissioner provided a comprehensive opinion on this act, highlighting its shortcomings and minor positive changes introduced<sup>4</sup>.

The Disciplinary Chamber of the Supreme Court has been replaced by the Chamber of Professional Responsibility (Accountability), which, however, still raises concerns. This is due to the fact that judges appointed in the procedure before the reformed National Council of the Judiciary adjudicate in this new Chamber, which in line with the above-mentioned jurisprudence was also found incompatible with the requirements set by Article 6 ECHR and Article 47 CFR.

On January 23, 2023, the Sejm passed a law that transfers disciplinary cases of judges from the Chamber of Professional Responsibility of the Supreme Court to the Supreme Administrative Court. However, in the opinion of the Commissioner, this Act is unacceptable for many constitutional reasons, among others because it establishes *sui generis* supervision of the Supreme Administrative Court over the Supreme Court, even though, according to the Constitution, these two courts are equal (cf. Article 183 (1) and Article 236 (2) of the Constitution). The Commissioner also issued the opinion on this act.<sup>5</sup>

## NHRI's follow-up actions supporting implementation of regional actors' recommendations

The Commissioner for Human Rights supports the implementation of its rule of law recommendations :

- by sending official letters (with recommendations) to state authorities and by issuing opinions on draft legal acts related to the judiciary and more generally – rule of law problems. In those opinions not only specific solutions are analysed, but also key problems regarding the rule of law in Poland are reminded;
- by promoting the NHRI's recommendations in oral exchanges and meetings with representatives of state authorities and relevant experts;
- through the media channels, by giving interviews in the press, radio, television and on the Internet portals.

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Polish NHRI was last reaccredited with A-status in March 2023.

### Follow-up to SCA Recommendations and relevant developments

- The Commissioner's budget for 2023 has been increased in comparison with the previous year. However, this is still insufficient in relation to the needs of the institution. Particularly, the new budget will not allow for salary raises adequate to the inflation rate.
- Following functional interpretation of Article 20 para. 1 of the Commissioner for Human Rights Act of 15 July 1987, according to which 'The Commissioner shall perform the Commissioner's duties with the assistance of the Office of the Commissioner for Human Rights', Deputies and other staff members of the Office of the Commissioner are authorized to perform on behalf of the

Commissioner the tasks and activities provided for in the Act. The employees of the Office of the Commissioner shall exercise his/her and their actions shall be treated as those of the Commissioner him/herself. Such interpretation has been confirmed in the jurisprudence and case-law, i.e. in the judgment of the Constitutional Tribunal of 19 October 2010 (case K 35/09) in which the Office of the Commissioner has been defined as a professional body of the Commissioner, lacking legal and constitutional self-existence, and must therefore be regarded as a dependent entity, situated next to a constitutional organ of the State.

- The Labor Code provides for equal treatment all candidates and applicants to the Office of the Commissioner for Human Rights. The principle of pluralism is also informally realized by the functioning of numerous expert committees which involve NGO and advocacy representatives of diverse minorities (e.g. within the expert committees for elderly persons, mental health and persons with disabilities, etc.).
- Following the broad formulation of the CHR's mandate in the Article 208 para. 1 of the Constitution, qualified by the jurisprudence as open definition of the Commissioner's competences, promotional tasks are regularly exercised within the use of his/her statutory powers. The Commissioner for Human Rights established also, following the SCA recommendation, a special department in the Office of the Commissioner, whose mandate is to promote human rights and freedoms – the Center of Societal Projects.

## Regulatory framework

The national regulatory framework applicable to the Polish NHRI has not changed since the 2022 ENNHRI report.

The Polish NHRI, however, notes that regulatory framework should include a provision indicating the person responsible for heading the Office of NHRI when the

Commissioner's term has expired and the parliament has not appointed the successor.

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Until 2021, the current Commissioner was authorised to continue to fulfil his/her duties after expiration of his/her term – as long as the parliament had problems with the appointment of a successor. Unfortunately it is no longer possible due to the judgment of Constitutional Tribunal of 15 April 2021 (case K 20/20)<sup>6</sup>, which declared unconstitutionality of the Article 3, paragraph 6 of the Act on the Commissioner for Human Rights of Poland, which provided that the Commissioner shall remain in office until the new office-holder is appointed. The Constitutional Tribunal also decided that the existing transitional provision shall cease to apply three months after 15 April 2021, the date when this decision was published in the Journal of Laws of the Republic of Poland<sup>7</sup>. The Tribunal's judgment results in a situation where - in the event of the expiration of the Commissioner's term of office and difficulties in selecting his successor - the Polish NHRI Office must function without the Commissioner for Human Rights.

The current law does not clearly define who manages the work of the NHRI Office in such a situation. In practice, such a situation took place once. Because of the judgment of the Tribunal, after which Commissioner Adam Bodnar was forced to stop working, although his successor has not yet been appointed. Between July 16 and July 23, the NHRI Office was headed by Deputy Commissioner until a new Commissioner, Marcin Wiącek, was elected. Nevertheless, it should be emphasized that the parliament chose Adam Bodnar's successor only 10 months after the end of his formal term of office. Similar problems with the selection of a successor in the future may result in a serious disruption of the Office's work. The fact that the principle of continuity of service of the CHR as the national human rights institution has been successfully challenged before the Constitutional Tribunal can still have some negative effects on human rights protection in analogous situations in the future.

## Enabling and safe space

The cooperation of the Commissioner for Human Rights with other public institutions is generally adequate, although still remains challenging. In the majority of cases, the Commissioner's requests are answered in a timely manner and, in general, the Commissioner's on-site interventions and visits take place without serious disruptions. However, there is a need for improvement.

Firstly, the responses to the Commissioner's requests are sometimes formulated in vague terms and clearly avoid giving specific answers.

Secondly, there are cases of long delays in response to Commissioner's inquiries without any explanation given on the reasons for the delay.

Thirdly, there were incidents where public authorities hindered on-site interventions carried out by representatives of the Commissioner, despite the fact that they presented an official ID card authorizing them to carry out activities on-site (e.g. during the immigration crisis on the Polish-Belarusian border<sup>8</sup>). Another example of hindering intervention carried out by representatives of the Commissioner occurred during an inspection at the Prison in Barczewo. After a 1.5-hour conversation between the CHR's employee and a prisoner classified as dangerous, the employee started calling a prison officer indicating the need to open the cell. However, for several minutes the employee's call was ignored. In connection with this situation, the Commissioner addressed the Minister of Justice asking him to undertake appropriate measures<sup>9</sup>.

Fourthly, an increasingly concerning problem is the excessively hasty processing of bills by the Parliament - for instance when related to the area of justice system and independence of judiciary - without proper and adequate consultations with the Polish NHRI, civil society organisations, and other public institutions. Sometimes the parliament does not even invite the Commissioner for Human Rights to submit his opinion on a bill at all, even though it concerns issues of fundamental importance to the rule of law and human rights in Poland. Even if the Commissioner for Human Rights

receives such an invitation, the excessively fast pace of parliamentary work leaves little time for the diligent preparation of opinions. Moreover, the Commissioner's opinions often remain unanswered – not only the authorities do not take into account any of the NHRI's recommendations, but also no reasons for omitting them are given to the Polish NHRI.

An example of such situation was the Commissioner's opinion for the Senate on the Act of 26 May 2022 replacing the Disciplinary Chamber with the Chamber of Professional Liability. Not only were none of the Commissioner's comments taken into account, but his opinion was not even read by many parliamentarians, who voted in favour of the bill.<sup>10</sup>

Moreover, the Commissioner presents its recommendations in the Annual Report during the Parliament session. It is discussed by human rights committees of the Sejm and of the Senate and by both chambers during the plenary session. There are no direct impacts regarding the implementation of the Commissioner's recommendations, however the Commissioner's report is used by MPs in their parliamentary work.

### **Developments relevant for the independent and effective fulfilment of the NHRI's mandate**

In 2022, there were no significant legislative changes affecting or improving the work of the Commissioner for Human Rights in Poland. The Commissioner for Human Rights points out, however, that particular attention should be paid to the unresolved problem of the lack of regulation which would indicate the person acting instead of the Commissioner for Human Rights after the end of the term of office, when the parliament is unable to appoint the successor in a timely manner (as mentioned in the previous chapter).

The Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on to member States on the development and strengthening of effective, pluralist and

independent national human rights institutions<sup>11</sup> requires that national legislation provides objective dismissal process for the NHRI leadership, with clearly defined terms in a constitutional or legislative text. This recommendation is not fully implemented in Poland.

The Commissioner for Human Rights is appointed by the Sejm and the Senate (two chambers of parliament) for a 5-year term guaranteed by the Constitution. However, the Sejm may dismiss the Commissioner before the end of the term of office in 4 cases, of which only 3 cases constitute objective criteria. The fourth criteria, however, is difficult to reconcile with the principle of the Commissioner's independence guaranteed in Article 210 of the Constitution. According to Article 7 (2) and (4) of the Act of 15 July 1987 on the Commissioner for Human Rights, the Sejm may dismiss the Commissioner by a 3/5 majority of votes in the event of "betrayal of the oath". Since the oath of office refers to extremely general, undefined concepts such as "respect for rules of justice" or "respect for principles of community life", in practice the Sejm may arbitrarily assess the adequacy of this ground to dismiss the Commissioner for Human Rights.

### **NHRI's recommendations to national and regional authorities**

The Commissioner for Human Rights in Poland recommends:

- increasing the number of field offices of the Commissioner for Human Rights in order to provide citizens with the possibility of direct contact with the NHRI's legal professionals to whom they will be able to file a complaint about the violation of their rights or freedoms. Increasing the number of offices is necessary in particular in the eastern part of Poland. Currently, the Commissioner has his seat in Warsaw, and apart from that, the Commissioner's field plenipotentiaries reside only in three locations: Katowice, Wrocław and Gdańsk;
- increasing further the budget of the Office of the Commissioner for Human Rights to strengthen staff and provide necessary raises to employees who in

many cases are paid below their qualifications and below the average pay in central public administration;

- repealing Article 7 (2) of the Act of 15 July 1987 on the Commissioner for Human Rights which allows the dismissal of the head of the institution on the ground of 'betrayal of the oath';
- inviting and taking into consideration by the state authorities NHRI's recommendations/opinions on draft laws, as well as ensuring adequate time for public consultations.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

As mentioned in the ENNHRI 2022 Report on the state of the rule of law in Europe, the Commissioner addressed the Minister of Home Affairs and Administration regarding the presidential regulation on the state of emergency at the Polish Eastern border with Belarus caused by the migration crisis in the area, which limited the right to free movement and access to information of CHR's staff members. On 17 January 2022 the Minister replied that the CHR's representatives may be allowed to exercise their mandate in the area of the state emergency, involving on-site investigations, on the condition that they demonstrate they are performing public services in their capacity of civil servants.<sup>12</sup> In the opinion of the Ministry, the law requires specific demonstration of the performance of public services in their capacity of civil servant in a given case. Therefore, the argument that every authority (its representatives), whose scope of activity covers the area where the state of emergency has been introduced, has an unlimited (without appropriate demonstration in a given case) possibility of staying at the above-mentioned area, in fact, it would undermine the cited part of the provision (concerning "demonstration").

Nonetheless, the state of emergency ended after 90 days on 2 December 2021 and could not be prolonged further due to constitutional limitations. As a way of bypassing this limitation, the Parliament amended the Law on the State Border, introducing the so-called state of 'para-emergency'. The new provisions allowed for a temporary ban on staying in a specified area in the border area adjacent to the state border constituting the external border of the EU to be imposed in case of a need to ensure security or public order in the border area in connection with a threat to human life or health or to property resulting from crossing the state border illegally or attempting to cross the state border. On 18 January 2022, Poland's Supreme Court stated that the governmental regulation preventing journalists from accessing the border with Belarus is incompatible with the Polish Constitution, European and international law<sup>13</sup>. Three journalists who were detained in the area of the state emergency on the Poland-Belarus border in September 2021, won an appeal. The Commissioner joined the court proceedings in this case to support the applicants.

Following an intervention to the draft of the law from the Commissioner, the Senate proposed amendments which aimed at excluding journalists from the ban on staying in a specified area in the border area adjacent to the state border.<sup>14</sup> The amendments, however, were rejected by the Sejm. Nonetheless, the Law still impacted the effectiveness of human rights defenders and civil society organisations, whose activities were furthermore hindered due to the regulations allowing for pushbacks of the refugees and limits on granting international protection to the refugees, which have further exacerbated the humanitarian crisis at the border.<sup>15</sup> On 27 October 2022, the administrative court agreed with the Commissioner's intervention that the border control guards violated the law and the international law non-refoulement principle by returning a 16-year-old Syrian to Belarus who arrived in Poland without a legal guardian.<sup>16</sup>

The Commissioner also took actions to protect the right to a spontaneous manifestation as well as counter-manifestation as falling within the constitutional right to assembly. This was the NHRI's follow-up to the citizens' complaints submitted to the Commissioner flagging unjustified police interventions in peaceful gatherings. In early 2022, the Commissioner addressed the Chief of Police with a set of remarks and recommendations regarding the police's practices in light of the right to a peaceful assembly.<sup>17</sup> Nevertheless, in August 2022, the Commissioner addressed once again the Chief of Police following the police intervention in a manifestation "Against Fascism". While the police confirmed having surrounded and identified the participants, it justified the practice with participants' security.<sup>18</sup> The Commissioner has further intervened in this case with regard to the assessment of the 'spontaneity' of an assembly and the following police reactions.<sup>19</sup>

Moreover, the Commissioner intervened in three criminal cases regarding counter-manifestants charged with interruption of a lawful assembly. The Commissioner's argued that the right to assembly entails the right to peaceful counter-manifestations and the right to peacefully voice one's disagreement with the assembly. Moreover, public authorities have to maintain a certain level of tolerance for peaceful gatherings<sup>20</sup>. Also, the Commissioner intervened in the case of a ban of some of the citizens of the town of Rypin in a meeting with the Prime Minister Mateusz Morawiecki in July 2022. While the invitation to the meeting was open to all, citizens who came to the meeting manifesting their critical views (by holding government-critical banners) were not allowed to participate. The mayor of Rypin was further recorded forcefully grabbing someone's banner. The Commissioner addressed a series of questions to the mayor and the Office of the Prime Minister aiming at clarifying the criteria for allowing participation in the meeting and their legal basis<sup>21</sup>. The mayor of Rypin replied that the event was held by the Office of the Prime Minister, who did not get back to the Commissioner yet.

The Commissioner has intervened with the Prime Minister following a lack of response of the Minister of Home Affairs and Administration to the Commissioner's motion to amend the provisions of a regulation on police officers uniforms. Namely, the Commissioner flags that all uniformed police officers must display individual identification, which is particularly important in case of police interventions during peaceful assemblies in order to identify police officers abusing their power.<sup>22</sup>

The Polish NHRI also points to issues arising from tax privileges not being available for civil society actors. The Commissioner reports that since 3 March 2022, the 0% rate VAT applied to free deliveries of goods and services offered to subjects engaged in organising help and distributing services necessary to the victims of the war in Ukraine. The Commissioner noted that non-governmental organizations, which have been vital since the Russia's armed attack on Ukraine and the humanitarian crisis on the border of Poland-Belarus, were not included in the recipients of free deliveries with 0% VAT rate. The Commissioner intervened with the Prime Minister, asking for the non-governmental organisations to be included as well as asking to clarify why they were excluded.<sup>23</sup> The Ministry replied that, in its opinion, there is no need to change the law as proposed by the Commissioner. The Ministry believes that the already existing provisions regarding tax exemptions for free supplies of goods are sufficient.

The Commissioner also found a shortcoming in the major reform of the tax laws (the so-called Polish Deal (Polski Ład)). In ENNHRI's 2022 Report, the Commissioner criticised the reform for its hasty legislative proceeding and adoption. Amongst its provisions, the Polish Deal allows undertakings additional tax allowance for sponsoring certain cultural activities. Following citizens' complaints, the Commissioner noted that this tax privilege does not apply when the financial support is provided to the civil society organisations organising such cultural activities. The Commissioner addressed the Minister of Culture with a request to expand the list of subjects qualifying for the allowance.<sup>24</sup>

### **Access to and involvement of civil society actors in law and policy making**

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Obstacles reported in last year's report continued to affect the exercise of the right to access public interest information. In this regard, the Commissioner participated in the proceedings before the Constitutional Tribunal regarding the Supreme Court First President's motion of unconstitutionality of certain provisions of the law on access to public information of 2001, which would negatively impact the citizens' right to access public information. Having joined the proceedings in March 2021, on 15 September 2022 the Commissioner responded to the petitioner's new motion stating that it contains a new set of objections and should be treated separately. Overall the Commissioner upholds its previous statement of dismissal of the case.<sup>25</sup> The Constitutional Tribunal has not given a judgment in this case so far.

### **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

On 20 October 2022, the Coalition Against SLAPPs in Europe (CASE) announced Poland as the 'winner' of the award for the country which has provided the most favourable conditions for SLAPPs in 2021-2022.<sup>26</sup> In 2021 and in 2022, numerous abusive lawsuits have been brought against human rights defenders and activists, particularly working in the area of the rights of LGBTIQ+ people<sup>27</sup> and sexual and reproductive rights.<sup>28</sup>

The Commissioner for Human Rights alerted that abusive legal proceedings, which may be qualified as SLAPPs, have also been reportedly brought against investigative journalists<sup>29</sup>.

On a positive note, it is worth highlighting that in September 2022 a Polish working group on strategic lawsuits against public participation (SLAPPs) has been created. The group aims at supporting victims of SLAPPs, advocating for changes to the legislation and practices as well as analysing this phenomenon. The group consists of numerous representatives of civil society organisations, such as: Citizens Network Watchdog Poland together with ARTICLE 19 Europe, Helsinki Foundation for Human Rights, Polish

Federation of Non-Governmental Organisations and Foundation ClientEarth Lawyers for Earth.<sup>30</sup>

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Commissioner for Human Rights supports civil society actors, including human rights defenders, by, for instance, issuing relevant opinions and recommendations to state authorities as well as by intervening before the courts in cases relevant for thriving civic space, as mentioned above.

Moreover, since January 2022, the Commissioner started a continuous collaboration with a group of civil society organisations, human rights defenders and social initiatives supporting the Commissioner's independence, called "Our Commissioner". Led by the Polish Federation of Non-Governmental Organisations, the initiative aims to strengthen the role of civil society space and human rights defenders through collaboration with the Commissioner.<sup>31</sup>

Moreover, to promote civil society space and human rights defenders, the Commission issued a statement to the Minister of Funds and Regional Policy concerning distribution of EU funds to civil society organisations helping Ukrainian refugees.<sup>32</sup>

### **NHRI's recommendations to national and regional authorities**

The Commissioner for Human Rights in Poland recommends the relevant authorities:

- to carefully review and take into account the recommendations issued by monitoring bodies such as NPM, including by changing the legislation concerning the issues raised by these bodies, in close cooperation and consultation with professional association bodies and civil society;

## **Implementation of European Courts' judgments**

### **Assessment of follow-up activities of State authorities**

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The effectiveness of follow-up and implementation by state authorities of European courts' judgments is only partially satisfactory.

In 2007, the Prime Minister appointed a consultative and advisory body, the inter-ministerial Team for the Implementation of European Court of Human Rights judgments<sup>33</sup>. The Team monitors the implementation of the Court's judgments and decisions by ministers and may propose appropriate actions. The competent ministers and central bodies, depending on the subject of the violation of the Convention, are obliged to translate and disseminate the judgment of the Court, as well as to prepare an action plan and a report on its implementation.

Moreover, since 2013 the Ministry of Foreign Affairs has been publishing annual reports on the implementation of the ECtHR judgments by Poland.

### Leading European Courts' judgments awaiting implementation

In Poland, there are numerous ECtHR's judgments, namely concerning the rule of law, access to legal abortion, access to justice and independence of judiciary, which are still pending implementation by state authorities, for instance:

- *Tysi c v. Poland* (application no. 5410/03)<sup>34</sup>, *R.R. v. Poland* (application no. 27617/04)<sup>35</sup>, *P and S v. Poland* (application no. 57375/08) (access to legal abortion)<sup>36</sup>
- *Grz da v. Poland* (application no. 43572/18) (rule of law)<sup>37</sup>
- *Xero Flor sp. z o.o. v. Poland* (application no. 4907/18) (rule of law)<sup>38</sup>
- *Advance Pharma sp. z o.o v. Poland* (application no. 1469/20) (rule of law)<sup>39</sup>
- *Rutkowski and others v. Poland* (applications nos. 72287/10, 13927/11 and 46187/11) (excessive length of proceedings and lack of an effective remedy)<sup>40</sup>
- *Al Nashiri v. Poland* (application no. 28761/11)<sup>41</sup> and *Husayn (Abu Zubaydah) v. Poland* (application no. 7511/13)<sup>42</sup> (secret "rendition" operation to CIA agents)

- M.K. and others v. Poland (applications nos. 40503/17, 42902/17 and 43643/17) (refusal of border guards to receive asylum application)<sup>43</sup>
- Broda and Bojara v. Poland (application nos. 26691/18 and 27367/18) (rule of law)<sup>44</sup>
- Reczkowicz v. Poland (application no. 43447/19) (rule of law)<sup>45</sup>
- Grabowski v. Poland (application no. 57722/12) (unlawful deprivation of liberty of a juvenile)<sup>46</sup>

There is also one outstanding CJEU judgment still awaiting execution in Poland given in the case C-791/19 (disciplinary regime for judges).<sup>47</sup>

In the Commissioner's opinion one of the reasons for non-execution of judgments is the lack of financial and organizational resources. Moreover, a lack of political will to implement certain judgments is also noted. This applies in particular to judgments concerning politically or ethically sensitive issues, such as rule of law or access to abortion. In the context of non-execution of judgments, it should be also noted that there are attempts to undermine the primacy of the European Convention of Human Rights (ECHR) and EU law by the state authorities and the Constitutional Tribunal.

Furthermore, in the Polish legal system, however, there is no institutional and procedural framework for the effective fulfilment of the Polish state's obligation to implement the judgments of European courts. As a result numerous systemic cases (as listed above), in line with Article 46 ECHR, are still pending implementation.

### **NHRI's actions to support the implementation of European Courts' judgments**

The Commissioner actively monitors and advocates the implementation of the European courts' judgments in Poland. His actions with this regard include:

- participation in the work of the inter-ministerial Team for the European Court of Human Rights, by i.a. presenting his motions and opinions;
- issuing recommendations to relevant state authorities and recalling the need for the European Courts' judgments implementation;
- exercising the right to submit to the Committee of Ministers Rule 9 submissions with regard to the execution of judgments<sup>48</sup>;
- dissemination of information about judgments in Commissioner's publications (e.g. in annual reports on its activity).

### HNHRI's recommendations to national and regional authorities

The Commissioner recommends the national authorities to:

- ensure institutional and procedural framework for the effective fulfilment of state's obligation to implement the judgments of European Courts (e.g. establishing a permanent parliamentary subcommittee on the enforcement of judgments of the European Court of Human Rights);
- increase the participation of NGOs in the dialogue on the execution of European Courts' judgments.

## Artificial Intelligence

### Impact of AI on human rights, democracy and rule of law

The Commissioner for Human Rights underlines the problem of insufficient information on how exactly state bodies use artificial intelligence against citizens. As a result, it is difficult to comprehensively assess the possible impact of artificial intelligence on human rights, democracy and the rule of law.

However, the Commissioner for Human Rights in its activities has been focusing on issues related to secret surveillance and the problem of the use of the Pegasus spying system<sup>49</sup>. The remote use of this system, as well as the possibility of infecting citizens'

phones with a spyware programmes, points to the possible use of artificial intelligence to conduct surveillance of citizens. The above modus operandi, if confirmed, not only violates the right to privacy, but also undermines democratic values and the rule of law, as in many cases political opponents are subjected to surveillance. In the Commissioner's opinion, the possible state bodies' violation of the right to private life of citizens by using spyware surveillance systems – requires increased NHRI's monitoring in terms of respect for human rights.

In addition, the Commissioner underlines that the transparency of state authorities' decision making, when based on the artificial intelligence systems and automatic algorithms, must also be ensured. In Poland, for example, the random, automatized system of selecting judges to adjudicate in specific court cases lacks transparency regarding the method used for such selection.

Importantly, the Commissioner flags the need to ensure a follow-up to recommendations issued by the European Data Protection Board and the European Data Protection Supervisor<sup>50</sup>, who called for the draft regulation on artificial intelligence and a ban on the use of artificial intelligence to automatically recognize human characteristics in public spaces.

The Commissioner for Human Rights is aware of the inevitability of the digital revolution and does not oppose new technologies in principle, as well as the possible ways of using them. The Commissioner also sees the potential associated with artificial intelligence used for business and process transformation. According to analysis<sup>51</sup>, organizations point to the so-called three "A's" effect - automation, analytics and AI. Automation increases efficiency and reduces costs, analytics allows for more accurate data-driven decision-making, while artificial intelligence solves more complex problems and reduces the involvement of human resources. All three elements working together and complementing each other work best, although it is important that all those processes respect fundamental rights.

## NHRI's actions to address challenges regarding the use of artificial intelligence

The Commissioner for Human Rights of the seventh term was the initiator of the "Civil Rights Congress", which took place in 3 consecutive years - 2017, 2018 and 2019. Among the recommendations related to the results of these congresses<sup>52</sup>, it was pointed out that algorithms and artificial intelligence are becoming part of everyday life and are very useful and helpful in many spheres. However, in the context of human rights protection, new technologies may also pose a threat - both from state authorities and large corporations. Increasingly large datasets, which consist of personal data, created for various purposes are putting citizens' lives under increasing scrutiny. The subject of China's control (social credit) system, cited in many discussions and publications, is an example of such excessive state authorities' control. Moreover, biometric identification linked to artificial intelligence systems can also - even in real time - help identify, for example, participants in demonstrations (e.g. such as in Hong Kong).

Lately, the Commissioner for Human Rights, in a statement addressed to the Prime Minister on the integrated analytics platform, which is planned to be a central system for analyzing data collected and created by public administration and data available from other sources.<sup>53</sup>, pointed out the dangers of collating and handling such large datasets concerning citizens. The Polish NHRI pointed to the abovementioned Chinese example, which contradicts EU values of respect for human dignity, freedom, equality, democracy and the rule of law, as well as the Union's fundamental rights, including the right to non-discrimination, data protection and privacy, and the rights of the child.

## NHRI's recommendations to national and regional authorities

The Commissioner recommends the national authorities to:

- ensure transparency of all state authorities' actions and decisions taken on the basis of algorithms and AI.

- ensure greater involvement of the President of the Office for Personal Data Protection in issues concerning how artificial intelligence is used in the context of the right to privacy and the protection of personal data.
- ensure effective follow-up to the Commissioner for Human Rights' opinions and recommendations regarding the use of AI and its impact on human rights and rule of law.

## Other challenges in the areas of rule of law and human rights

The Commissioner for Human Rights addressed the Prime Minister with a recommendation that freedom of media should become a binding and obligatory criteria of the assessments made by state supervisory authority regarding anti-monopoly proceedings and decision concerning trust merger decision on media outlets (competition law). The intervention was made as a follow-up action regarding the take-over of a regional media publisher Polska Press by Polish state-owned oil company Orlen.<sup>54</sup>

## NHRI's recommendations to national and regional authorities

The Commissioner recommends to national authorities to:

- ensure effective follow-up to the recommendations of monitoring bodies such as NPM in order to assess the possibility of changing the legislation applicable to the issues raised by these bodies, in close cooperation with professional association bodies and civil society actors;
- pay particular attention to the standards and recommendations of monitoring bodies when drafting relevant legislative acts, strategies, policies, guidelines and regulations;
- ensure financial support to the relevant institutions so as to enable them to practically implement the monitoring bodies' recommendations, and put in place



awareness raising and training initiatives addressed to officers and employees of places of detention.

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<sup>1</sup> [Opinion of the Commissioner on the amendment to the Law on the Supreme Court](#)

<sup>2</sup> [President's referral to the Constitutional Court on the amendment in the Law on the Supreme Court](#)

<sup>3</sup> [ECtHR judgment of 15 March 2022, \*Grzęda v. Poland\* \(Grand Chamber\); CJEU judgment of 6 October 2021, C-487/19 \(Grand Chamber\); ECtHR judgment of 7 May 2021, \*Xero Flor v. Poland\*, ECtHR judgment of 3 February 2022, \*Advance Pharma v. Poland\*.](#)

<sup>4</sup> [Opinion of the Commissioner regarding bill of 26 May 2022 amending Supreme Court Act](#)

<sup>5</sup> [Opinion of the Commissioner regarding bill of 12 January 2023 amending Supreme Court Act](#)

<sup>6</sup> [Judgment of the Constitutional Tribunal of 15 April 2021 \(case K 20/20\)](#)

<sup>7</sup> [Judgment of the Constitutional Tribunal](#) regarding the Commissioner's term of office

<sup>8</sup> [Hindering the NHRI's actions during the immigration crisis on the Polish-Belarusian border](#)

<sup>9</sup> [Commissioner's letter to the Minister of Justice on the NPM's inspection in the prison in Barczewo](#)

<sup>10</sup> [Opinion of the Commissioner on the Act of 26 May 2022 amending Supreme Court Act](#)

<sup>11</sup> [Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs](#)

<sup>12</sup> [State of emergency – limits on journalistic activity and access to public information](#)

<sup>13</sup> [Supreme Court's Judgment of 18 January 2020, I KK 171/21](#)

<sup>14</sup> [Commissioner's comments on the law on state border](#)

<sup>15</sup> [Humanitarian crisis on the Poland-Belarus border](#)

<sup>16</sup> [Commissioner appeal on the pushback](#)

<sup>17</sup> [Counter-manifestations and spontaneous manifestations](#)

<sup>18</sup> [Police intervention in manifestation Against Fascism](#)

<sup>19</sup> [Against Fascism –when is manifestation spontaneous](#)

<sup>20</sup> [Court ruling on the right to counter-manifestation](#)

<sup>21</sup> [Ban on meeting with the PM](#)

<sup>22</sup> [Police officers uniforms with IDs](#)

<sup>23</sup> [0% VAT rate for NGOs](#)

<sup>24</sup> [Polish Deal tax break for NGOs](#)

<sup>25</sup> [Access to public information constitutionality proceedings](#)

<sup>26</sup> [Case, the European SLAPP contest 2022](#)

<sup>27</sup> [LGBT activists free, LGBT activists fall victims to homophobia](#)

<sup>28</sup> [Women's strike organisers prosecuted](#)

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- <sup>29</sup> [The Commissioner intervenes before the Court in the SLAPP case against an investigative journalist](#)
- <sup>30</sup> [Citizens Network SLAPPs](#)
- <sup>31</sup> [Our Ombudsman Initiative, website](#)
- <sup>32</sup> [Support to NGOs helping Ukrainian refugees](#)
- <sup>33</sup> [Inter-ministerial Team for the Implementation of European Court of Human Rights judgments](#)
- <sup>34</sup> [ECtHR Judgment Tysiąc v. Poland \(application no. 5410/03\)](#)
- <sup>35</sup> [ECtHR Judgment R.R. v. Poland \(application no. 27617/04\)](#)
- <sup>36</sup> [ECtHR Judgment P and S v. Poland \(application no. 57375/08\) \(access to legal abortion\)](#)
- <sup>37</sup> [ECtHR Judgment in the case of Grzęda v. Poland](#)
- <sup>38</sup> [ECtHR Judgment Xero Flor sp. z o.o. v. Poland \(application no. 4907/18\) \(rule of law\)](#)
- <sup>39</sup> [ECtHR Judgment Advance Pharma sp. z o.o v. Poland \(application no. 1469/20\) \(rule of law\)](#)
- <sup>40</sup> [ECtHR Judgment Rutkowski and others v. Poland \(applications nos. 72287/10, 13927/11 and 46187/11\) \(excessive length of proceedings and lack of an effective remedy\)](#)
- <sup>41</sup> [ECtHR Judgment Al Nashiri v. Poland \(application no. 28761/11\)](#)
- <sup>42</sup> [ECtHR Judgment Husayn \(Abu Zubaydah\) v. Poland \(Application no.7511/13\) \(secret "rendition" operation to CIA agents\)](#)
- <sup>43</sup> [ECtHR Judgment M.K. and others v. Poland \(applications nos. 40503/17, 42902/17 and 43643/17\) \(refusal of border guards to receive asylum application\)](#)
- <sup>44</sup> [ECtHR Judgment Broda and Bojara v. Poland \(application nos. 26691/18 and 27367/18\) \(rule of law\)](#)
- <sup>45</sup> [ECtHR Judgment Reczkowicz v. Poland \(application no. 43447/19\) \(rule of law\)](#)
- <sup>46</sup> [ECtHR Judgment Grabowski v. Poland \(application no. 57722/12\) \(unlawful deprivation of liberty of a juvenile\)](#)
- <sup>47</sup> [CJEU Judgment C-791/19](#)
- <sup>48</sup> [Rules 9.2 and 9.6 - Communication from NHRI \(Commissioner for Human Rights of the Republic of Poland\) \(29/01/2020\) and reply from the authorities \(12/02/2020\) in the cases of R.R., TYSIAC and P. and S. v. Poland \(Applications No. 27617/04, 5410/03, 57375/08\)](#)
- <sup>49</sup> [An article about surveillance published at the official website of the Polish Commissioner for Human Rights](#)  
; [An article about surveillance published at the official website of the Polish Commissioner for Human Rights](#)  
[An article published at the official website of the Polish Commissioner for Human Rights](#)
- <sup>50</sup> [EDPB EDPS Joint Opinion on AI regulation](#)
- <sup>51</sup> [Report on digitization of the insurance sector](#), p. 18.
- <sup>52</sup> [Recommendations of the Congress of Civil Rights](#), p. 26.
- <sup>53</sup> [Commissioner for Human Rights' statement addressed to the Prime Minister on the integrated analytics platform](#)
- <sup>54</sup> [Commissioner for Human Rights addressed the Prime Minister with a recommendation on freedom of media](#)



## Portugal

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### Office of the Ombudsperson- Provedor de Justiça

#### Impact of 2022 ENNHRI rule of law reporting

##### Impact on the Institution's work

As mentioned in the 2022 ENNHRI rule of law report, the Ombudsperson referred to the Constitutional Court, a set of rules governing municipal elections is considered by to have breached fundamental rights of citizens to take part in political life and public affairs of the country as protected by the national Constitution. The Ombudsperson highlights those changes made in 2020 in the law on municipal elections, notably concerning the requirements applicable to the lists of candidates, constrained the citizens from presenting candidates simultaneously to the municipal assembly, the city council and more than one parish assembly within a given municipality, in breach of fundamental rights<sup>1</sup> of citizen's participation in public life (Articles 48 (1) in conjunction with 239(4) of Portuguese Constitution).<sup>2</sup> The Constitutional Court agreed with the Ombudsperson and delivered its ruling in April 2021 (Decision no. 247/2021). After that, the law was amended clarifying the submission of applications by groups of citizens. The request concerned the participation by citizens in the electoral process and not only by political parties electing and ensuring appropriate procedures for holding elections for the bodies of local authorities.<sup>3</sup>

Furthermore, during 2021 the Ombudsperson concluded a study on the rule of law issues during the pandemic, highlighting the need to adopt new legislation on sanitary emergencies. The initiative resulted in the establishment of a working group determined by the Government entrusted with the task of preparing such legislation. The group included a member indicated by the Ombudsperson. The group delivered a draft bill to the Executive, in November 2021, which due to the dissolution of Parliament, wasn't

object of parliamentary discussion.<sup>4</sup> Meanwhile, the XXIII Constitutional Government took office on March 30 of 2022. And, at the end of the year, a constitutional review process was launched.<sup>5</sup> Some proposals intend to contribute, among other issues, to clarify the regime on health emergencies.

Moreover, the Portuguese NHRI informs that in 2022, a legal act revoked several decree-laws approved under COVID-19 disease pandemic, given the positive evolution of the epidemiological situation (Decree-Law 66-A/2022, of 30 September), putting an end to the remaining restrictive measures. The revoked acts were about exceptional and temporary measures relating to the COVID-19 disease pandemic, namely in the fields of education, health, justice, housing, banking, movement, employment and social protection.

The Portuguese NHRI informs that the ENNHRI Report on the state of the rule of law in Europe 2022 (ENNHRI 2022 rule of law report) strengthened the European dimension of the national work on human rights, democracy and rule of law.

In this sense, the Portuguese NHRI notes that interaction with national bodies is a fundamental part of the work of the Office of the Ombudsperson and takes place beyond the specific domain of complaints handling. As an institution with parliamentary legitimacy and reporting annually to the Parliament, the Portuguese Ombudsperson naturally holds a particularly close connection with that institution. In addition to the Annual Reports, the Ombudsperson participates in the work of parliamentary committees.

In 2022, the Ombudsperson participated in a Parliament hearing on the legislative initiatives under consideration on the legal framework of Professional Orders. The Committee on Constitutional Affairs, Rights, Freedoms and Guarantees also received the Ombudsperson, in the context of the examination of the Bills under consideration in the Working Group - Data Retention.<sup>6</sup>

The Ombudsperson, as Portuguese NHRI, with observer status, is entitled to attend to the plenary and working group meetings of the Portuguese Government's National Human Rights Committee - an inter-ministerial coordination body, under the supervision of the Minister of Foreign Affairs which is responsible for ensuring that the Government fulfils its obligations under the international human rights system.<sup>7</sup>

### **Follow-up initiatives by the Institution**

The Office of the Ombudsperson acts as a promoter of civil society's awareness on fundamental and human rights and remedies available. The Portuguese NHRI informs that relevant initiatives under this provision include:

- decisions and positions taken by the Ombudsperson in complaints processing, aiming to clarify the content of fundamental/human rights<sup>8</sup>,
- providing specialized information and advice;
- organizing and participating in seminars, conferences and lectures on human/fundamental rights<sup>9</sup>,
- publishing studies and reports<sup>10</sup>,
- posting of information on the Ombudsperson's website and
- active press relations<sup>11</sup>.

The Portuguese NHRI stresses that it acts as a channel for voicing the concerns of civil society before public authorities. Additionally, it informs that civil society actors such as professional associations and NGOs often make use of the constitutional right to complain to the Ombudsperson, in order to address concerns regarding actions or omissions in the exercise of public powers, perceived as an illegal or unfair abuse of fundamental human rights. Civil society representatives also meet with the Ombudsperson to report on human rights and rule of law challenges. Furthermore, the NHRI may decide to investigate matters its initiative, based on the NGO reports. Still regarding the participation of CSOs, the NHRI notes that the Advisory Board of the

National Prevention Mechanism includes two members representing NGOs, the Portuguese Association for Victim Support (APAV) and the Jesuit Refugee Service (JRS). Furthermore, in 2022, the Ombudsperson' Office participated in several events organized to debate and foster a rule of law culture, for example: in the Conference promoted by the Bar Association on the topic «Pandemic, Constitution, Rule of Law»; in the XV Congress on «Rule of Law in Europe: Judicial Independence and Effective Remedies», organized by the University of Luxembourg; in a meeting of the working group on Fundamental Rights and Rule of Law Group of the European Economic and Social Committee (an horizontal body tasked to provide a forum for European civil society organisations to meet and share their assessment, on the state of fundamental rights, democracy and rule of law in the Member States).

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors' recommendations on rule of law**

The Portuguese NHRI informs that in 2022, legislative measures within the scope of the Reform of Administrative Justice were announced. The reforms described could be considered as a follow-up to some of the European Commission's 2022 Rule of Law Report - recommendations to Portugal.<sup>12</sup>

Concerning the efficiency of the Portuguese judicial system, especially regarding administrative and fiscal courts' jurisdiction, a Strategic Plan for Administrative and Fiscal Courts<sup>13</sup> was announced, which is structured in five essential objectives:

- improvement of judicial management – providing to the jurisdiction with means in terms of self-management and organization capacity.
- optimization of performance in the superior courts;
- implementation of technical advice for judges in administrative and fiscal courts;

- procedural simplification and streamlining; digital transformation and;
- strengthening of human resources.

The Ombudsperson explains that the reform should introduce changes to the Statute of Administrative and Fiscal Courts. For example, specialization in the second instance, the regime for the creation of teams of judges by the Superior Council of Administrative and Fiscal Courts, (aiming specialization and prompt decision), as well as the recovery of pending proceedings. The NHRI also informs that in 2022, adjustments to the judicial map were announced, namely the creation of a new Central Administrative Court.

Moreover, it was announced that a new legislation will create a simplified form of procedure, to be applied, on an experimental basis, in a pilot court, for actions of lesser value at 5,000 euros and of low complexity, with the objective that the decisions on the merits are handed down in less than 9 months.<sup>14</sup>

The Portuguese NHRI informs the introduction of new technological program in courts. This program will facilitate consultation of cases by magistrates with improved functionalities together with a new platform that was created to schedule appointments in courts.

The Ombudsperson highlights that during 2021, several initiatives were taken regarding the prevention and fight against corruption, through the approval of 2020-2024 National Anticorruption Strategy 2020-2024.

The installation of the National Anti-Corruption Mechanism<sup>15</sup> and its staff were regulated in 2022 (Ordinance 164/2022, of 23 June and Ordinance 292-A/2022, of 9 December). The institution started operating in 2022.

Moreover, the NHRI informs that in 2022, the Constitutional Court appointed the members of the Entity for Transparency<sup>16</sup>, an independent body to supervise the declaration of income, assets and interests of holders of political offices and high public offices. The members of the Entity for Transparency took office on 15/02/2023.



## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Portuguese NHRI was last reaccredited with A-status by the Sub-Committee on Accreditation in November 2017.<sup>17</sup> At that occasion, the SCA welcomed the amendments to the institution's law that provided it with a broad mandate to promote and protect human rights. It also highlighted the institution's appointment as the National Preventive Mechanism (NPM) and National Monitoring Mechanism (NMM) under the UN Convention on the Rights of Persons with Disabilities. With regards to the selection and appointment of the Provedor, the SCA acknowledged that the process is governed by Portuguese Parliament's Rules of Procedure but took the view process enshrined in the enabling law was not sufficiently broad and transparent. The SCA recommended the Provedor to advocate for the formalization of a clear, transparent and participatory selection and appointment process. Moreover, the SCA encouraged the Portuguese NHRI to advocate for appropriate amendments to its law to provide for an independent and objective dismissal process for the deputies. As it stands, Article 16(1) of the legislation provides that the Provedor may, at any time, dismiss the deputies chosen, and is silent on the ground and process for such a dismissal.

### Follow-up to SCA Recommendations and relevant developments

In Portugal, there is no open call for applications for the selection and appointment of the Ombudsperson.

The selection and appointment process is governed by the Rules of Procedure of the Assembly of the Republic (Portuguese Parliament), in compliance with the relevant provisions of the Constitution and of the Statute of the Ombudsperson.

It should be noted that under Article 257 (b) of the Rules of Procedure of the Assembly of the Republic (Portuguese Parliament), the election of the Ombudsperson takes place after a mandatory hearing by the competent parliamentary committee. During this hearing, the candidate makes a presentation sharing her views about what would be her

priorities as Head of Institution. MPs are given the floor to make comments, ask questions and also to make a public assessment of the candidate's resume, qualifications, experience and if she meets the guarantees of independence to take office.

Experience shows that the integrity of the selection and appointment process is complied with.

The main reason for this to happen lies in the required qualified majority for the election. Article 163 (h) of the Constitution of the Portuguese Republic establishes a qualified majority (so called 'double majority') for the election by parliament of the Ombudsperson: a majority that is at least equal to two thirds of all MPs present and greater than an absolute majority of all MPs in full exercise of their office.

In Portugal, only the Ombudsperson is elected by Parliament, This process is governed by the Constitution and by the Statute of the Ombudsperson.

The two Deputy Ombudspersons are not elected. They are appointed on discretion of the Ombudsperson among people with a suitable university degree and verified reputation of integrity and independence (Article 16 (1) of the Statute of the Ombudsperson).

### **Regulatory framework**

All guarantees of the independence of the Portuguese NHRI mentioned in the 2022 ENNHRI rule of law report are still in force.

The Portuguese Ombudsperson underlines that according to the Constitution<sup>18</sup> (Article 23 (3)) and the Statute (Article 1 (1)), the NHRI is an independent State body elected by the Parliament by a two thirds majority of votes. Additionally, the Statute<sup>19</sup> explicitly reaffirms and guarantees the complete independence of the institution in the performance of its duties (see Article 1 (4), and Article 7 of the Statute).

The Portuguese Ombudsperson, besides being established at constitutional level and its Statute contained in an act of the Parliament, it is endowed with a set of other important personal, institutional, functional and organisational guarantees provided for by the law and that strengthen the independence and autonomy of the institution.

The current mandate holder, Maria Lúcia Amaral, took office in November 2017 and was re-elected by the Portuguese Parliament for a second (and last) mandate in November 2021.

After thirty years, the Ombudsperson stresses that its internal structure remained unchanged, and the organization struggles to meet the growing demands. The new organic law of the Ombudsperson's Service (Decree-Law 80/2021, of 6 October)<sup>20</sup> was approved with the aim of adapting the institution to the growing competences and responsibilities that today fall within the Ombudsperson's mission. The increasing number of complaints received for several consecutive years was one of the reasons behind the reform of the internal structure of the Office of the Portuguese Ombudsperson. The new organisation explicitly reflects different dimensions of its mandate, namely its work as a National Human Rights Institution and the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The new departments have specific competences in the fields of prevention against torture, international relations and law office, and the development of studies and projects. A new triage unit has also been established to help with the increasing number of complaints efficiently. Furthermore, the Portuguese NHRI informs that its website is more user-friendly, containing a video<sup>21</sup> that explains with practical examples the mission of the Ombudsperson and how the Office can be reached.

In 2022, the Ombudsperson dedicated a large part of her time carrying out the necessary changes. The new legislative Act necessarily required the elaboration of new internal normative acts: i) Regulation No. 159/2022, of 11 February, on the selection and

recruitment process for the position of advisor and coordinator at the Office of the Ombudsperson; ii) Regulation No 182/2022 of 21 February which regulates the organization and operation of Ombudsperson's support services, involving the Statute and the Organic Law. iii) Regulation 246/2022 of 11 March to renew the Ombudsperson's internal organization by giving more flexibility and efficiency to technical and administrative support.<sup>22</sup>

The Portuguese NHRI also informs that the activities could only be carried out after the adoption of the regulations mentioned above. Nevertheless, the institution informs that it is now able to strategize, prioritize, reallocate advisors and, hence, cope with the existing workload more efficiently.

### **Enabling and safe space**

The Portuguese Ombudsperson informs that the relevant state authorities have good awareness of the NHRIs' mandate, independence and role of the NHRI. The practice confirms the complete respect, namely by public authorities, regarding the independence, integrity and credibility of the Office of the Ombudsperson in the performance of its duties.

The Portuguese Ombudsperson maintains a particularly close connection with the Parliament. According to Article 20, paragraph 1 c) of the Statute, the Ombudsperson may submit written opinions, of any matter falling within the scope of its activity, upon request of the Parliament. Besides that, the Ombudsperson is regularly invited to participate in the work of parliamentary committees. In 2022, the Portuguese NHRI participated in Parliament hearings on the legislative initiatives under consideration on the legal framework of Professional Orders and the context of the proposed Bills of the Working Group on data retention.

As NHRI, the Ombudsperson is entitled to attend, with observer status, the plenary and working group's meetings of the Portuguese Government's National Human Rights

Committee - an inter-ministerial coordination body, under the supervision of the Minister of Foreign Affairs, which is responsible for ensuring that the Government fulfils its obligations under the international human rights system.

Pursuant to Article 29 of the Statute on the Ombudsperson, all authorities subject to its supervision must cooperate providing clarifications and information requested. The entities must provide access to documents and procedures and perform inspections as per the Ombudsperson request. The Portuguese NHRI informs that this duty does not compromise legal regimes on state secrecy and determined by the need to ensure the protection of public interests.

Furthermore, the Ombudsperson may also fix a deadline for urgent requests and may order the presence of individuals in certain places to fulfil the duty of cooperation, under the penalty of disobedience. Also, the Ombudsperson may order any citizen to make depositions, under the penalty of disobedience.

In line with paragraph 9 of the Appendix to Recommendation CM/Rec (2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent NHRI, it should be noted that in Portugal there is a legal obligation to all address the recommendations to state their positions within a 60 days' time frame (Article 38 (2)).

Non-fulfilment the recommendations must be duly justified. If recommendations are not attended and whenever the Ombudsperson does not receive due cooperation, it may address the hierarchical superior or the Ministry responsible for the subject-matter. In cases of municipalities, the Ombudsperson can address the local assembly. The Ombudsperson has a mandate to address the Parliament at any time, and on its own initiative, on the grounds that public administrative authorities are failing to implement its recommendations or refuse to cooperate with the institution.

In general, recommendations and remarks by the Ombudsperson are well received and followed by their addressees. However, sometimes state authorities do not give timely responses to the Ombudsperson's requests.

The Ombudsperson has focal points in the various addressed entities (municipalities, government bodies), in order to streamlining responses.

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

There were no significant changes in the environment in which the Portuguese Ombudsperson operates that were relevant for the independent and effective fulfilment of its mandate, and/or there were no challenges related to the rule of law environment in Portugal with impact on the work of the institution.

In general, the principle of separation of powers, including the independence of the judiciary, as well as the fundamental rights and freedoms (freedom of expression, freedom of assembly, freedom of the press) are safeguarded. There are effective mechanisms of checks and institutional balances.

After thirty years, the Ombudsperson's internal structure remained unchanged and the organization struggled to meet the growing demands. The new Organic law of the Ombudsperson's Office (Decree-Law 80/2021 6 October<sup>23</sup>) was approved with the aim of adapting the institution to the growing competences and responsibilities that today fall within the Ombudsperson's mission, as mentioned in the previous chapter.

The new organisation explicitly reflects different dimensions of its mandate, namely its work as NHRI and the National Preventive Mechanism under the OPCAT. The new departments have specific competences in the fields of prevention against torture (NPM), international relations office and development of studies and projects.

The International Relations Department performs the duties of the Ombudsperson as NHRI. This Department is in charge of promoting harmonization between internal and

international law, in the human rights area; preparing and presenting reports required by international organisations; cooperating with international, regional and local institutions responsible for promoting and protecting human rights and coordinating the Ombudsperson's international activity.

## **Human rights defenders and civil society space**

### **Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities**

The Portuguese NHRI highlights that the Portuguese Republic is a democratic state based on the rule of law, the sovereignty of the people, plural democratic expression and political organization, on the respect for and on the guarantee of the effective implementation of the fundamental rights and freedoms, and the separation and interdependence of powers, with a view to achieving economic, social and cultural democracy and deepening participatory democracy (Article 2 of the Constitution). Freedom of speech, expression and assembly are enshrined in the Portuguese Constitution and may not be hindered or limited by any type or form of censorship.

The Portuguese NHRI also informs that regarding freedom of assembly, all persons have the right to form associations freely without the prerequisite of any authorization, on condition that such associations are not intended to promote violence and their purposes are not contrary to criminal law. Associations shall pursue their purposes freely and without interference from public authorities and may not be dissolved by the state or have their activities suspended other than in cases provided for by law and then only by judicial decision.

The NHRI states that the country has a deep-rooted democracy and civil society space is considered open. Additionally, the Portuguese Ombudsperson did not intervene in

any case in 2022, related to laws and/or measures that could negatively impact on civil society space and/or reduce human rights defenders' activities<sup>24</sup>.

### **Access to and involvement of civil society actors in law and policy making**

In 2022, the Portuguese Ombudsperson did not intervene in any case related to practices that could negatively impact on civil society space and/or reduce human rights defenders' activities.

However, the availability of public and private funding and the reduced diversity of funding sources still represents an important challenge for NGOs.

Furthermore, part of the managing bodies' members are volunteers engaged in other professional activities. This means that the most part lack a professional central structure required, not only to solve the day-to-day issues that may be present in any kind of organization, but also to be able to spend time in defining strategies and actions to promote and defend human rights.

In 2022, the Portuguese Ombudsperson did not find any serious shortcomings in national laws and practices concerning access to and involvement of civil society actors and human rights defenders in law and policy making.

These associations have strong relevance in establishing national action plans and strategies that provide concrete measures to fulfil State's responsibilities under the Constitution, international obligations and the law. Some of these plans set forth important tasks and measures for NGOs. There are several examples of action plans that considerably rely on the participation of NGOs and in the work developed by human rights defenders in order to accomplish their goals.

In the Rule of Law Index 2022, Portugal scored 75% of civic participation, 79% of freedom of expression, 84% of freedom of association.<sup>25</sup>



### **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

The Portuguese Ombudsperson has not intervened in any case of abuse of laws or of process laws, including strategic lawsuits against public participation (SLAPPs) to intimidate civil society organisations, human rights defenders and other actors, such as journalists, speaking out on matters of public interest.

Moreover, the NHRI explains that its mandate does not include the NHRI's engagement in strategic litigation before the courts. The Ombudsperson's powers can only be exercised regarding administrative aspects of the activity of the courts and services – namely, cases of judicial delay – and cannot cover the content or merits of judicial decisions and sentences. On the other hand, the complaints which do not fall outside the Ombudsperson's scope of activities, shall be dealt with through the High Judicial Council, the High Council of Public Prosecution and the High Council of the Administrative and Fiscal Courts. Considering the limitations of the Ombudsperson's intervention on court's activity, there have been no complaints on abusive legal proceedings against journalists or human rights defenders.

### **Measures undertaken by State authorities to protect and promote civic space**

The Directorate-General for Justice Policy requested the contribution of the Portuguese Ombudsperson in regard to (i) a proposal for a European Commission Directive on the protection of persons involved in manifestly unfounded or abusive court cases against public participation and (ii) a Recommendation of the European Parliament on the protection of journalists and human rights defenders involved in manifestly unfounded or abusive legal proceedings against public participation (this Recommendation has been adopted by the European Parliament by the resolution of 11 November 2021 on "Strengthening democracy and media freedom and pluralism in the EU: misuse of civil and criminal law actions to silence journalists, NGO,s and civil society", published in the Official Journal of the European Union on 20/5/2022).

The Portuguese Ombudsperson states that the proposals for a Directive and a Recommendation were received with great interest. Particularly regarding the references made in the Recommendation to the role of NHRI and Ombudsperson of the European Union, as regards training, awareness-raising, and information initiatives aimed at legal practitioners, media professionals, and human rights defenders.

The Ombudsperson cannot participate in court proceedings. The Ombudsperson powers of inspection and monitoring can only be exercised about administrative aspects of the activity of the courts and services – especially, cases of judicial delay – and cannot cover the content or merits of judicial decisions and sentences. On the other hand, these complaints which due to their very nature, do not fall outside the Ombudsperson’s scope of activities, shall be dealt with through the High Judicial Council, the High Council of Public Prosecution and the High Council of the Administrative and Fiscal Courts

The Office of the Ombudsperson, in the capacity of NHRI, is entitled to attend, with observer status, the plenary meetings of the Portuguese Government’s National Human Rights Committee - an inter-ministerial coordination body, under the supervision of the Minister of Foreign Affairs, which is responsible to guarantee that the Government fulfils its obligations under the international human rights system. Once a year, a plenary meeting is open to civil society representatives. In 2022, the meeting took place in December and covered the topic of mental health and human rights.

The State recognized the key role of NGOs in the design, development and implementation of policies regarding the promotion and protection of human rights.

This recognition is particularly evident in the relevance given to NGOs in the establishment of sectorial national action plans that provide concrete measures to fulfil the State’s responsibilities under the Constitution, international obligations and the law.

There are several examples of action plans that considerably rely on the participation of NGOs and in the work developed by human rights defenders to accomplish their goals.

Throughout 2022, the Portuguese authorities reinforced the funds<sup>26</sup> allocated to the co-financing of NGO for Development, namely on Education for Development Projects to promote educational approaches and debate on themes that cut across development issues - such as human rights protection, social justice, environmental defence, economic and social sustainability, as well as interculturality, and promotion of gender equality.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Portuguese Ombudsperson highlights that its relationship with human rights defenders may be carried out at the following levels: i) institutional - the Advisory Board of the National Prevention Mechanism includes two members representing NGOs, namely the Portuguese Association for Victim Support (APAV) and the Jesuit Refugee Service (JRS); ii) ongoing relationships - the Ombudsperson receives and meets with groups of citizens, associations, and other civil society structures in defence of human rights; iii) relationships with complainants - civil society actors such as NGOs often make use of the constitutional right to complain to the Ombudsperson, to address concerns regarding actions or omissions in the exercise of public powers allegedly. Furthermore, the Ombudsperson may decide to investigate matters on his/her own initiative, based on NGO reports, the information provided by other actors, or news disseminated by the media.

In 2022, the Ombudsperson met with the Representative on Freedom of the Media Organization for Security and Co-operation in Europe (OSCE)<sup>27</sup>, during her official visit to Portugal. During the meeting were discussed a link between media freedom, public debate and democracy, and Portugal's achievements and challenges regarding media freedom over the past years.

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

The Portuguese NHRI informs that some main achievements<sup>28</sup> and reforms have been adopted in Portugal over the years with regard to the implementation of the European Court of Human Rights' judgments, which have led to changes of legislation or government regulations.

The number of implemented cases by Portugal<sup>29</sup> (including judgments and decisions from the ECtHR concerning which the Council of Europe's Committee of Ministers has decided that all necessary follow-up measures have been taken) is 500.

The percentage of leading judgments from the last decade which are pending implementation regarding Portugal is around the EU average (see the report *Justice Delayed and Justice Denied: Non-Implementation of European Courts' Judgments and the Rule of Law, 2022*)<sup>30</sup>.

The longest pending leading judgment of the European Court of Human Rights against Portugal is the case of *Moreira Ferreira v. Portugal* (application no. 19808/08<sup>31</sup>), pending since 2011. It concerns the failure of the court of appeal to hear the applicant in person, in criminal proceedings brought against her which resulted in her conviction.

The Portuguese NHRI informs that the main issues<sup>32</sup> raised by the cases brought before the committee of ministers (under ongoing supervision) are: access to a court; fairness of judicial proceedings; length of judicial proceedings; enforcement of domestic judicial decisions.

### NHRI's actions to support the implementation of European Courts' judgments

The Portuguese NHRI informs that for the implementation of some European courts' judgments can only be effectively addressed by the Portuguese authorities through individual and/or general measures and that legislative reforms take time to be implemented, as well as, the penitentiary system where the adoption of measures

requires availability of resources. The Portuguese Ombudsperson also informs about the lack of a mechanism on a systematic basis, however the NHRI is more proactive in cases involving vulnerable people, for example in , judicial decisions concerning the penitentiary system.

Furthermore, the NHRI within its mandate as National Prevention Mechanism under the system established by the OPCAT, is updated on judicial decisions involving the penitentiary system and their follow-up by the relevant public authorities. For example, in 2019, Portugal was found to have violated Article 3 of the European Convention of Human Rights in a case concerning the minimum standards of privacy and dignity when using sanitary facilities in prison cells. And in 2022<sup>33</sup>, in other two cases, the ECtHR once again held that the applicants were kept in detention in poor conditions in breach of Article 3 of the Convention concerning the inadequate conditions of detention.

Following the judgment, the Directorate-General of Reintegration and Prison Services produced a pluri-annual rehabilitation plan on the improvement of the privacy and dignity of sanitary facilities in prison cells<sup>34</sup>. In 2020, an assessment of priorities was undertaken. The first phase of the plan was executed in 2021 in 21 prison establishments, covering 1037 prison cells, 501 of which were single cells, to the benefit of 1854 inmates. The Office of the Ombudsperson has been informed on the progress and execution of the plan ever since and it intends to keep monitoring and following-up to assess its full compliance with the relevant case-law.

## Artificial Intelligence

### Impact of AI on human rights, democracy and rule of law

The Portuguese NHRI states that with the advance of AI – faster than regulation – surely can affect human rights, democracy and rule of law from several perspectives., The NHRI considers that attention should be given to the importance of addressing the implication of the use of new technologies for the most vulnerable.

Furthermore, the Portuguese Ombudsperson states the lack of public awareness on the impact of AI in human rights, especially its discriminatory potential. Therefore, the NHRI concludes that it is not surprising that the public do not seek effective remedies against human rights abuses, for example, by filling complaints to the Ombudsperson and it did not receive complaints in this regard. Important to address, that the Government is gradually investing in the development and use of new technologies in welfare systems with the objectives of cost-saving and efficiency. The Portuguese Ombudsperson notes that the 'AI Portugal 2030' is an innovation and growth strategy to foster Artificial Intelligence in Portugal within the European context. The strategy fully aligns with the coordinated action plan of the EU in the "INCoDe.2030".

According to the AI Portugal 2030 document, areas of specialization to drive innovation, research, and opportunities: natural language processing, real-time decision-making, AI for software development (welfare protection and allocation of social benefits), cybersecurity, health and development.

The Portuguese NHRI explains that during the pandemic, computer tools were developed to decide requests for social support for more vulnerable people. However, the computer applications developed by Social Security revealed some problems, such as (i) the undue exclusion of beneficiaries by error or out-of-date data contained in the information system of the services, (ii) the short duration of the deadlines for submitting applications, (iii) the impossibility of, in some cases, correcting the requirements and (iv) the difficulties and access to information.

Furthermore, regarding a different subject area, some beneficiaries of the social energy tariff complained to the Ombudsperson about its allocation. It was concluded that these problems resulted from errors in the crossing of information, considering that the impaired customers were the most vulnerable.

The Ombudsperson states, that digital accessibility is also a matter of concern, for example, energy companies that need to adapt communication and means of contact

to the most vulnerable consumers, in particular by their age and physical limitations, offering alternatives to the online customer account.

### **NHRI's actions to address challenges regarding the use of artificial intelligence**

In January 2019, the Portuguese Ombudsperson addressed the Recommendation 1/B/2019 to the Minister of Justice to amend the Law 32/2008, of 17 July, that transposed European Directive 2006/24/EC regarding the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks. This Directive was declared invalid by the Court of Justice of the European Union (CJEU) in 2014.

In Portugal, the decision of the CJEU had no impact on Law 32/2008, which remained in force unchanged. The Ombudsperson recommended that national legislation should be amended and brought into conformity with the principles and requirements of the Charter of Fundamental Rights of the European Union, according to the interpretation of the CJEU. The Recommendation was not complied by the Government.

Hence, the Ombudsperson then requested the Constitutional Court to review the constitutionality of some Articles of Law 32/2008 arguing that there was a disproportionate restriction of fundamental rights, among them the right to privacy of both private and family life, the right to secrecy of communications and the right to effective judicial protection, all enshrined in the Constitution of the Portuguese Republic.

In 2022, the Portuguese Constitutional Court, agreeing with the Ombudsperson, found provisions of the national data retention law unconstitutional and repealed them (ruling [268/2022](#)).

The Ombudsperson also requested the Constitutional Court to review the constitutionality of Article 6 of Law 27/2021, of 17 May (approving the Portuguese Charter of Human Rights in the Digital Age). While acknowledging that there is a duty

to protect individuals against disinformation, the Ombudsperson considered that enabling the national media regulatorily authority to initiate proceedings against individuals was in breach of freedom of expression. The legislator revoked the provision shortly after the Ombudsperson submitted the request to the Constitutional Court (Law 15/2022, 11 August).

The Portuguese Ombudsperson's Office is a member of the ENNHRI AI working group and of the NHRI Digital Rights Alliance<sup>35</sup>, moderated by the Danish Institute for Human Rights, and that aims to consolidate the role of NHRIs in the digital age to better protect and promote digital rights and freedoms.

Recently, the Office of the Ombudsperson has established its own working group on AI and defined as strategic priority to analyse the National Strategy for Artificial Intelligence – AI Portugal 2030, from a human rights perspective.<sup>36</sup>

### **NHRI's recommendations to national and regional authorities**

The Portuguese Ombudsperson expresses that a fundamental rights-centred approach to AI should be underpinned by legal regulation, establishing:

- clear limits to ensure human rights protection, non-discrimination, with special concern to persons in vulnerable situations;
- the creation of mechanisms ensuring that public administration, technology companies and other businesses identify, on an on-going basis, the impacts of their operations, including the risks of human rights abuses. Ideally, this should be done at an initial stage of the design of the algorithmic systems, namely by requiring a human rights impact assessment.



## Other challenges in the areas of rule of law and human rights

### Media Freedom

Freedom of Speech and of Press are fundamental liberties deeply guaranteed in the Portuguese Constitution (Articles 37 and 38) and Portugal ranks well in international press freedom rankings. The European University Institute's 2022 Media Pluralism Monitor finds that Portugal, in the indicator on the 'Protection of freedom of expression' is in the low risk band<sup>37</sup>. On the other hand, according to the same indicators, there's no significant online harassment of Portuguese journalists.<sup>38</sup>

According to the Study on "Reporters without borders", Portugal ranks the 7th place in the 2022 World Press Freedom of Press Index, among other 180 countries<sup>39</sup>.

However, Portugal has already been condemned by the European Court of Human Rights (ECtHR) for sanctions applied for press publications on grounds of the law on defamation. In January 2022, the ECtHR held that the state of Portugal breached the right to freedom of expression of a journalist when its domestic courts ordered him to pay fines and non-pecuniary damages for making statements in Parliament and in a newspaper criticizing judges and prosecutors<sup>40</sup>.

The Ombudsperson is aware of the content of the concerns highlighted on the legislative political option of criminalization and conduct that may constitute defamation or injury (Articles 180 and 181 of Criminal Code); the provision, in the national legal system of effective prison sentences; and the option of aggravating of penalties when targets are public officers.

The UN Human Rights Committee recommended to Portugal, in 2020, to consider decriminalizing defamation and, in any case, resorting to criminal law only in the most serious cases, bearing in mind that imprisonment is never an appropriate penalty for defamation.<sup>41</sup>

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- <sup>1</sup> [Request of the Portuguese Ombudsperson to the Constitutional Court](#)
  - <sup>2</sup> [Portuguese Constitution](#)
  - <sup>3</sup> [Organic Law 1/2021, 4 June](#)
  - <sup>4</sup> [Draft Act on Public Health Emergency](#)
  - <sup>5</sup> [Proposals for Constitutional amendments](#)
  - <sup>6</sup> [Parliament Working Group - Data Retention](#)
  - <sup>7</sup> [Portuguese National Human Rights Committee Ministry of Foreign Affairs](#)
  - <sup>8</sup> [Request to the Constitutional Court - Portuguese Charter of Human Rights in the Digital Age](#)
  - <sup>9</sup> [Deputy Ombudsman at the opening session of the Seminar on Juvenile Justice](#)
  - <sup>10</sup> [National Preventive Mechanism](#)
  - <sup>11</sup> [The Ombudsperson as the national human rights institution](#)
  - <sup>12</sup> [European Commission's 2022 Rule of Law Report Country Chapter on the rule of law situation in Portugal](#)
  - <sup>13</sup> [Information on the Strategic Plan for Administrative and Fiscal Courts](#)
  - <sup>14</sup> [Minister of Justice, on the occasion of the Opening of the Judicial Year 2023, Supreme Court of Justice](#)
  - <sup>15</sup> [Information on the installation of the National Anti-Corruption Mechanism](#)
  - <sup>16</sup> [Information on the Entity for Transparency](#)
  - <sup>17</sup> [SCA Report November 2017](#)
  - <sup>18</sup> [Portuguese Constitution](#)
  - <sup>19</sup> [Statute on the Portuguese Ombudsperson](#)
  - <sup>20</sup> [New Act on the Ombudsperson's Office](#)
  - <sup>21</sup> <https://youtu.be/slIX3OmMOI8>
  - <sup>22</sup> [New Act on the Ombudsperson's Office](#)
  - <sup>23</sup> [New Act on the Ombudsperson's Office](#)
  - <sup>24</sup> [Provedor de Justiça, "Questionnaire to Special Rapporteur on the situation of human rights defenders", 2018.](#)
  - <sup>25</sup> [World Justice Project, Rule of Law Index, pg. 149](#)
  - <sup>26</sup> [Funds for financing of NGO](#)
  - <sup>27</sup> [Report by the OSCE Representative on Freedom of the Media, Regular Report to the Permanent Council, 2022](#)
  - <sup>28</sup> [Main achievements and reforms have been adopted in Portugal with the Execution of European Court of Human's Rights Judgments](#)
  - <sup>29</sup> [Number of implemented cases by Portugal](#)

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<sup>30</sup> [Justice Delayed and Justice Denied: Non-Implementation of European Courts' Judgments and the Rule of Law](#)

<sup>31</sup> [ECtHR judgment in the case of Moreira Ferreira v. Portugal](#)

<sup>32</sup> [The link of the Department for the Executions of Judgements of the ECtHR; Portugal: main issues before the committee of ministers](#)

<sup>33</sup> Judgment of 15 September 2022 of the European Court of Human Rights, in the case of Ribeiro dos Santos and Jevdokimovs v. Portugal, [no. 28688/20 and 8655/21](#).

<sup>34</sup> [The Plan is described in the activities report of the Directorate-General for Reinsertion and Prison Services for 2021 \(page 183\)](#)

<sup>35</sup> [NHRI Digital Rights Alliance](#)

<sup>36</sup> [National Strategy for Artificial Intelligence – AI Portugal 2030](#)

<sup>37</sup> [The European University Institute's 2022 Media Pluralism Monitor](#)

<sup>38</sup> [2022 Media Pluralism Monitor: pg. 22 and 127, 128.](#)

<sup>39</sup> [Reporters without borders - 2022 edition of the World Press Freedom Index](#)

<sup>40</sup> [Judgment of 11 January 2022 of the European Court of Human Rights, in the case of Freitas Rangel v. Portugal, application no 78873/13.](#)

<sup>41</sup> [Human Rights Committee, Concluding observations on the fifth periodic report of Portugal, 2020](#)

## Romania

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### Romanian Institute for Human Rights

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

The Romanian Institute for Human Rights (RIHR) noted that the rule of law has been discussed in the public sphere during 2022, in light of the European Commission's decision to stop the monitoring of Romania under the Cooperation and Verification Mechanism (CVM). The European Commission stated that Romania met its commitments on judicial reform and the fight against corruption under the CVM.<sup>1</sup> At the same time, the rule of law has been part of the discussions in the context of the adoption of the legislative package on the justice system. This justice reform is a part of the legislative package to address the European Commission's 2022 Rule of Law Report findings and country-specific recommendations to Romania<sup>2</sup>, the CVM as well as the National Recovery and Resilience Plan for Romania (NRPP).

##### Impact on the Institution's work

The ENNHRI 2022 Report on the state of the rule of law in Europe inspired a set of priorities for the Romanian Institute for Human Rights to safeguard the rule of law on the ground. For instance, RIHR has become an associate partner in the CERV-Rule of Law for Lawyers (ROLL) project<sup>3</sup>, which aims to promote an independent and efficient judicial system, capable of protecting fundamental rights by strengthening the knowledge and capacity of lawyers and civil society organisations in strategic litigation at national and European level. As an associate partner, RIHR will share the resulting documents, identify, and engage participants in Romania the participants being lawyers working in the field of strategic litigation.

At the same time, RIHR has been organising meetings on the 2030 UN Agenda for Sustainable Development, with the aim of integrating a human rights-based approach in the public policies developed within this framework. During the meetings the Institute highlighted the need to use a human rights-based approach in the policies developed under the 2030 UN Agenda. From this point of view, the Institution mentions SDG 10, which refers to participation in public affairs and the right to social security, as well as SDG 16 (peace, justice and strong institutions), taking into account the related rights.

### **Follow-up initiatives by the Institution**

Following the publication of the 2022 ENNHRI Rule of Law Report, the Romanian Institute for Human Rights held meetings with representatives of the Committee for Human Rights of the Senate and of the Chamber of Deputies on the Report and Institutes' contribution therein. At the same time, RIHR has informed the Ministry of Foreign Affairs on the ENNHRI's report to which the institute had contributed into.

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors' recommendations on rule of law**

#### The establishment of the NHRI in Romania in line with UN Paris Principles

The European Commission in its 2022 Rule of Law Report recommended to Romania to continue efforts to establish a National Human Rights Institution taking into account the UN Paris Principles.<sup>4</sup>

Regarding the legislative framework and status of the Romanian Institute for Human Rights, in 2022, unfortunately, there was no follow-up by the Romanian state authorities to this Commission's recommendations. There were no changes or new developments regarding the institution to ensure the institutional framework compliance with UN Paris Principles.

Overall, the state authorities – the Parliament (through its two chambers) and the Government (through the Ministry of Foreign Affairs) have responded positively to the information provided by the Institute and to the RIHR contribution to the ENNHRI report as well as to the recommendations of the European Commission 2022 Rule of Law Report. In particular, the Committee on Human Rights of the Senate, specifically the chair of the committee, stressed the opportunity to organise a conference to discuss the findings of those two reports (ENNHRI's and European Commission's), Unfortunately, such a debate has not been organised. Moreover, there are no concrete legislative measures discussed by state authorities to address the challenges the Romanian Institute for Human Rights faces. This lack of any actions to support the enabling space of the Romanian Institute for Human Rights impact its effective functioning and the efforts to comply with UN Paris Principles and seek accreditation.

The Romanian Institute for Human Rights noted that as a result of the milestones to be met in the context of the NRRP, last year the Advisory Council for Impact Assessment of Legislation was established. It is a separate body set up by the Secretariat General of the Government to help with implementing the Government Decision on the approval of the content of the presentation and motivation tool, the structure of the report on the implementation of regulatory acts, the methodological instructions for carrying out impact assessment and the establishment of the Advisory Board/Council on Impact Assessment of Regulatory Acts. The Gov. Decision was adopted in the context of NRRP milestones, as legislative acts from the government have to follow a certain structure and include an explanation on the human rights impact. Moreover, a working group has been set up at the level of the Secretariat-General of the Government to develop a checklist and guidelines on the justification of legislative acts issued by the Government in terms of their impact on human rights. The Romanian Institute for Human Rights actively participates in the working group, together with government and civil society representatives with a view to contribute to developing human rights impact checklist and guidelines mentioned above.

## Judiciary reforms in Romania

The Romanian Institute for Human Rights underlines that a new set of laws on the judiciary was adopted in Romania in 2022. This legislative package consisted of Law no. 303/2022 on the status of judges and prosecutors, Law no. 304/2022 on the organisation of the judiciary and Law no. 305/2022 on the Superior Council of Magistrature.<sup>5</sup> The legislative package was flagged by the government, through the Ministry of Justice, as a response to the recommendations made by the European Commission in their 2022 Rule of Law Report, according to which the revision of the laws on justice should strengthen safeguards for judicial independence.<sup>6</sup>

At the same time, the CVM recommendation was also taken into account with regard to strengthening the independence and efficiency of the judiciary (Benchmark 1: Independence of the judiciary and judicial reform) as highlighted in the latest CVM report published in November 2022. Last but not least, the adoption of this package of laws was also listed as target in the National Recovery and Resilience Plan (Reform “Ensuring the independence of the judiciary, enhancing its quality and efficiency”) and thus the obligations were met by Romania.

In November 2022, at the request of the Romanian Ministry of Justice, the European Commission for Democracy through Law (Venice Commission) published an Urgent Opinion on the three draft laws on the justice system following their adoption by the Romanian Parliament. The Venice Commission's report generally assessed that the laws “seem to be heading in the right direction”, although they were adopted under the emergency procedure with a short time provided for public consultations. The Venice Commission underlined that “under the urgent procedure, it is not possible to cover all aspects of the three very detailed and lengthy Laws that were adopted on 17 October 2022. The complexity of the laws and their level of detail make it difficult to see how they can be applied in practice.”<sup>7</sup>

Justice reform referred to the Constitutional Court by the Romanian People's Advocate

The Justice Laws have been the subject of constitutional complaints after their adoption by the Parliament. The Romanian People's Advocate referred to the Constitutional Court the claim that the provisions of Article 271 of the Law on the status of judges and prosecutors are in breach of constitutional provisions<sup>8</sup> by failing to regulate the liability of judges and prosecutors for non-compliance with the decisions of the Constitutional Court and the High Court of Cassation and Justice.

The Romanian People's Advocate in its referral raised the following arguments<sup>9</sup>:

"In view of the provisions of Article 124(3) on the obligation of judges to obey the law and those of Article 132(1), which enshrine the principle of legality in the activity of the prosecutors, together with the provisions of Article 147(4) of the Constitution on the binding nature of the decisions of the Constitutional Court, the People's Advocate considers that it is natural that the failure of judges and prosecutors to comply with these constitutional obligations should entail disciplinary liability as a guarantee of the fulfilment of their obligations towards the justiciable and the state". The constitutional principle of the independence of judges necessarily implies another principle, that of accountability, since otherwise the Constitution itself and respect for fundamental rights, freedoms and duties would become optional.

Although the case raises the issue of a legislative omission that would call into question the quality of the Constitutional Court as a negative legislator, the People's Advocate considers that, by virtue of its role as guardian of the supremacy of the Constitution, the Court cannot ignore the defect of unconstitutionality created precisely by this omission, which leads to the violation of the Constitution, by failing to regulate in the Law on the status of judges and prosecutors the disciplinary liability for non-compliance with the decisions of the Constitutional Court and the High Court of Cassation and Justice.



## The Constitutional Court's judgment on the Romanian justice reforms

On 9 November 2022, the Constitutional Court in its judgment<sup>10</sup> stated that “in the aforementioned Decision of the Constitutional Court no. 2 of 11 January 2012, the Court ruled that both its decisions and those of the High Court of Cassation and Justice in resolving the appeal in the interest of the law reflect a specific competence, that is strictly provided for by the law. Consequently, to comply with them does not prevent the courts from exercising their statutory powers. In order to make their decisions, courts must take into account and apply both the provisions of domestic law and the provisions of international treaties to which Romania is a party, in accordance with the distinctions imposed by Articles 20 and 148 of the Constitution. However, the judgments of the courts are always based on a specific case/issue; the procedural framework specific to each case always determines the interpretation and application of relevant provisions”.

At the same time, according to the Court, Article 124(3) of the Constitution, in addition to guaranteeing the independence of judges, also provides for their obligation to obey only the law. The term “law” in Article 124(3) of the Constitution “is used in its broad sense, which also includes the Constitution, as a fundamental Law, as well as all the other legislative acts, whether of equal or lesser legal force, which constitute the corpus of rules on which the act of justice must be based”. In view of this, and considering the binding character of the decisions in question is provided by the Constitution, which is a law within the meaning of Article 124 of the Constitution, the Court held that the criticisms made in relation to that constitutional text were unfounded.

After examining the text of Article 271 of the contested Act, it is noted that the failure to comply with the decisions of the Constitutional Court or those of the High Court for Cassation and Justice in the resolutions of appeals in the interest of the law was no longer regulated as a separate disciplinary offence in the text of the aforementioned law. This does not mean, however, that a judge or a prosecutor may not be subjected to

disciplinary sanctions for failure to comply with them if it is proven that he or she acted in bad faith or with gross negligence.

According to Article 272(1) and (2) of the contested law, "(1) Bad faith exists if the judge or public prosecutor knowingly violates the rules of substantive or procedural law by seeking or accepting harm to a person. (2) Gross negligence exists if the judge or public prosecutor culpably, seriously, unquestionably and unjustifiably disregards the rules of substantive or procedural law".

Consequently, each legal norm is part of a primary or secondary regulatory act. The Constitution, for its part, is a law that contains legal rules and provides for the general binding character of the decisions of the Constitutional Court [Article 147(4)]. Therefore, the violation in bad faith or gross negligence of this constitutional text constitutes a disciplinary misconduct in the sense of Article 271 letter s) of the contested law. Indeed, the new regulation no longer establishes as disciplinary misconduct any violation of the decisions of the Constitutional Court, but only those made in bad faith or with serious negligence. The same aspects should be highlighted with regards to the decisions of the High Court of Cassation and Justice in the resolutions of appeals in the interest of the law and requests for a preliminary ruling on the resolution of a question of law.

At the same time, according to Article 52(3) of the Constitution, "the state shall be liable for damage caused by judicial error. The liability of the State shall be determined in accordance with the law and shall not exclude the liability of magistrates who have exercised their duties in bad faith or gross negligence". In other words, with regard to disciplinary misconduct of judges, the legislator has correlated Articles 126(3) and 147(4) of the Constitution with Article 52(3) of the Constitution, with the result that, without affecting the binding nature of the decisions of the Constitutional Court or of the High Court for Cassation and Justice, the liability of judges and prosecutors is incurred under the conditions of Article 52(3) of the Constitution, conditions which in turn also involve the liability of the state for judicial errors.

Consequently, the Constitutional Court was of the opinion that Article 271 of the Law under review continues to provide that the failure to comply with the decisions of the Constitutional Court or of the High Court for Cassation and Justice in the resolutions of appeals in the interest of the law and requests for a preliminary rulings on the resolution of a question of law constitutes disciplinary misconduct if the judge/prosecutor performs his/her duty in bad faith or gross negligence. Therefore, Article 271 of the Law does not violate the Constitution.<sup>11</sup>

### **State authorities follow-up to NHRI's recommendations regarding rule of law**

The Romanian Institute for Human Rights in the ENNHRI 2022 Report on the state of the rule of law in Europe pointed to shortcomings regarding the functioning of justice systems as well as the institution's efforts to fully comply with UN Paris Principles. The Romanian state authorities activities in both areas are presented in the chapter above, as they also relate to the follow-up to regional actors' recommendations.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

Romania currently does not have an institution accredited as a National Human Rights Institution. The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of ENNHRI.

The Romanian Institute has a strong promotional mandate and has been addressing a wide range of human rights in Romania. In 2020, both the Romanian Institute and the Romanian Ombudsman (which is not an ENNHRI member and is not accredited) applied for accreditation. In 2021, a legislative proposal on the merger of the Romanian Institute for Human Rights into the National Council for Combating Discrimination was under debate in the Senate and was rejected by the Senate, as decision making chamber.

## Regulatory framework

The Romanian member indicated that the national regulatory framework applicable to the institution has not changed since January 2022.

The following actions should be undertaken to ensure that the functioning of the Romanian Institute for Human Rights meets the standards established by the UN Paris Principles:

- implementation of the SCA recommendations of 2011<sup>12</sup>
- ensure clear wording in terms of powers taking into account the UN Paris Principles
- reduce the political component in the management (as the General Board of the Institute also consists of representatives from each political group from the Senate and Chamber of Deputies – 1/3 of board members in total; the other 2/3 consists of civil society members and academia<sup>13</sup>)

All those recommendations above were included in the 2 legislative proposals. The first proposal was rejected by the Senate in 2019, while the second legislative proposal on RIHR has been declared as unconstitutional.

## Enabling and safe space

There have been no developments to strengthen an enabling space for the Romanian Institute for Human Rights to independently and effectively carry out its work compared to last year. Communication and engagement with state authorities on this matter, as well as the state authorities follow-up to RIHR's recommendations or RIHR's access to information and policy making still, remain insufficient.

There is a lack of support from the Parliament for the drafting of a new legislative proposal to reform the RIHR, taking into account the SCA recommendations of 2011 and the evolution of the institutional system in Romania compared to 1991 (the year in which the Institute's law was adopted).

The Romanian Institute for Human Rights underlines that:

- The Law establishing the Institute dates from 1991 and has not been modified since, although in the past two years there were two legislative proposals in this regard, aimed at strengthening the observance of the Paris Principles.
- For the institute the law on unitary pay has led to several inconsistencies in terms of payment/employment and duties of the respective positions, some of them being assimilated to different fields of the public administration (Ministry of Education, Ministry of Culture).
- Due to low salaries, compared to the wages in other institutions with similar duties and functions, the Institute is facing a loss of staff, as they are attracted by higher salaries in other institutions/fields. If in 2020, the Institute had a staff deficit of 31% (the unoccupied positions being specialised positions), in spring 2023/currently the Institute has a staff deficit of 60% (70% of the vacant/unoccupied positions being specialised positions).
- Although, overall, the role of RIHR in the implementation of Recommendation (EU) 2022/758 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (SLAPP) is a positive development for the institute, all these new tasks and roles require more employment positions, in addition to occupying the existing empty positions. Given the aforementioned context, the pressure on the Institute to fulfil its mandate will grow and it will also have an impact on the existing staff.

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

There have been no developments compared to last year with regards to changes possibly impacting the independence and effective fulfilment of the institution's mandate. What is important, RIHR stresses that the lack of commitment of the state authorities with regards to the necessary changes of the Institute's status (the expected adoption/amendment of the law on RIHR taking into account the developments in

public administration, as the law on the functioning of the Institute have not changed since 1991) is making it increasingly difficult for RIHR to carry out its work. At the same time, the lack of reform leads to a more difficult management of human resources, which has a direct impact on the activity of the institute as a whole (involvement in fewer projects, selection of fewer areas of interest in the field of human rights given the limited number of staff).

It is worth mentioning that the Institute carried out promotion and information activities on Recommendation 2021/1 of the Committee of Ministers of the Council of Europe as well as on other recommendations in the field of human rights and NHRIs developed by the Council of Europe.

## **Human rights defenders and civil society space**

### **Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities**

#### Law No 361/2022 on the protection of whistle-blowers

In 2022, Law No 361/2022 on the protection of whistle-blowers was adopted, but some civil society organisations pointed out that anonymous reporting is "regulated in a way that discourages the investigation of complaints and, in practice, it will lead to their faster dismissal"<sup>14</sup>. According to these organisations, following an amendment tabled during the legislative process, anonymous reports will only be examined and processed if there is "strong evidence" of violations of the law, according to Article 6(2) of the law. In this context, the civil society organisations stress that, according to the Directive, whistleblowers provide information, not evidence.

It should be noted that this legislative act aims to transpose Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law, and that the first draft of this legislative act (adopted by Parliament in July 2022) was the subject of a complaint of unconstitutionality. The Constitutional Court rejected the constitutional objection as unfounded. However, even after the Constitutional Court has rejected the

unconstitutional complaint, the President requested the re-examination of the draft law considering that an improper transposition of the Directive could lead to infringement procedure or to applying the conditionality mechanism.<sup>15</sup>

Draft law amending Law no. 60 of 23 September 1991 on the organisation and conduct of public assemblies

Also contested by civil society organisations (CSOs), the draft law amending Law no. 60 of 23 September 1991 on the organisation and conduct of public assemblies is said to contain provisions that may restrict the right to peaceful assembly. CSOs have pointed out that the proposed solutions may lead to abuses and limit the right to demonstrate by prohibiting the use of public roads<sup>16</sup>. To draw attention to the reported irregularities, representatives of civil society have also formulated a series of amendments concerning: the use of public roads, the notification system, ensuring the protection of public security and grounds for offences.<sup>17</sup> The Human Rights Committee of the Chamber of Deputies asked RIHR for an opinion on this draft law.<sup>18</sup> Following the analysis, the Institute emphasised that certain elements are not in line with the interpretations of Article 2 of the ICCPR of the Human Rights Committee and the decisions of the ECtHR, such as those relating to the use of public roads, the notification system, the use of firearms and the holding of simultaneous assemblies. The opinion also noted the lack of clear correlation between the articles of the draft law, which may cause confusion.

Legislative proposal amending the Law no.50/1991 on the authorisation of construction works, amending the Law no.350/2001 on territorial and urban planning and amending the Law on administrative litigation no.554/2004

Civil society organisations have also expressed concern about a legislative proposal in the field of urban planning, as the new provisions restrict access to justice by reducing the prescription period for appeals against decisions approving land-use planning documentation from 5 years to 1 year, as well as by setting the time limit for bringing an action for annulment under administrative proceedings, by reference to the time the act

in question was submitted. Organisations can request the annulment of acts in term of 60 days. This period is calculated from the moment they have received an answer to a preliminary complaint or after expiry of the term to submit a preliminary complaint. The current period is 6 months. If a preliminary complaint is not mandatory, the annulment of an act can be requested 60 days after the last publicity operation. In practice, these new provisions will only allow the organisations concerned to bring environmental disputes before the courts in a very short time, which is insufficient.<sup>19</sup>

A complaint of unconstitutionality has been lodged after the adoption of the law, however the Constitutional Court dismissed as unfounded the objection of unconstitutionality, in the context of the a priori constitutional review of the draft act. "The Court found that the claims of the authors of the objection of unconstitutionality are unfounded and that the provisions of the contested law fully comply with the constitutional requirements deriving from Articles 1(5), 11, 20(2), 21, 53 and 124(2) of the Constitution, in conjunction with those of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)."<sup>20</sup>

#### Draft law amending Law no. 60 of 23 September 1991 on the organisation and conduct of public assemblies

Another legislative proposal initiated by members of Parliament<sup>21</sup> has also provoked a negative reaction from civil society organisations. The proposal aims to amend the law on associations and foundations, but the proposed solutions may violate certain fundamental rights, including the right of access to justice. The authors of the legislative proposal have stipulated that an association can only bring legal action if a number of conditions are cumulatively met, namely: the administrative act being challenged must be related to the object of activity and purpose of the association, the administrative act must have been issued after the establishment of the association, the association must have been established for more than two years and must have been active according to the state in areas related to the administrative act to be challenged and, last but not



least, it must deposit a bond of 1% of the value of the investment to guarantee compensation for the damage caused to the beneficiaries of the administrative act to be challenged. These provisions would also apply to proceedings already pending, which is contrary to the principle of non-retroactivity of laws. According to CSOs, such provisions would reduce their capacity for strategic litigation.

#### Cases of harassment of journalists

With regards to the Romanian Institute for Human Rights' human rights monitoring and reporting of practices that could negatively impact on civil society space and/or reduce human rights defenders' activities, RIHR highlighted that there had been cases of harassment of journalists. Some of these were brought to public attention by civil society organisations. One case involved the alleged leaking of information from a criminal investigation and the publication of personal images. In the second case, a journalist's equipment and other electronic devices were confiscated, leading to the blocking of a publication and violating the confidentiality of journalistic sources.<sup>22 23</sup>

#### **Access to and involvement of civil society actors in law and policy making**

With regards to serious shortcomings in the access to and involvement of civil society actors in law and policy making, RIHR indicates that, in most cases, civil society organisations or associations representing vulnerable groups are not involved in the drafting of legislation at all. However, they can intervene when the act is subject to public debate (according to the legislation in force). Although the law stipulates that the explanatory memorandum of a draft legislative act must include the results of the public consultation, this element is often overlooked by relevant authorities. Sometimes certain comments are included in the text of the draft legislation, but the reasons for rejecting other comments/proposals is not always clear. These issues have been discussed by the Secretariat-General of the Government Working Group on human rights impact.

In addition, CSOs mention that the transparency of the decision-making process is not always adequate and that they often face obstacles in the area of access to information.<sup>24</sup>

### **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

Several examples of abuse of laws to intimidate civil society actors have been highlighted by the Romanian member throughout this report. However, RIHR has not undertaken any monitoring activities due to a lack of resources.

With regards to laws or measures been introduced to safeguard against manifestly unfounded and abusive lawsuits (SLAPPs), the Institution mentioned some are in the process of implementation. In December, the Ministry of Justice sent a letter to RIHR asking to become the focal point in this area. RIHR would also organise training programmes for journalists and human rights defenders and organise information campaigns on SLAPP procedures.

The Institute has responded positively to this request and is developing an action plan and consulting with partners and other relevant institutions. Therefore, actions on this topic will be carried out from 2023 onwards.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Romanian Institute for Human Rights promotes and protects civil society space and human rights defenders by:

- providing opinions on draft laws regarding this area at the request of relevant state authorities;
- carrying out human rights monitoring on laws, measures and practices potentially impacting civic space;
- becoming a focal point on protection against SLAPPs.

## Artificial Intelligence

### NHRI's actions to address challenges regarding the use of artificial intelligence

The Romanian Institute for Human Rights underlines that the impact of AI on human rights, democracy and the rule of law is a relatively new field.

The Institute will include the topic of AI and its impact on human rights, rule of law and democracy in its multi-annual strategy. The strategy envisages the research, information and documentation activities which are included in the annual activity plan for 2023.

Moreover, this theme has been addressed in articles in the Institute's journals since 2020.<sup>25</sup> A section on the Institute's website on AI and digital technologies and their impact on human rights is currently under construction<sup>26</sup>.

The Romanian Institute for Human Rights has been engaged in consultations on the regional conventions that are being drafted on artificial intelligence through ENNHRI's Working Group on Artificial Intelligence.

### NHRI's recommendations to national and regional authorities

The Romanian Institute for Human Rights highlights that better communication is needed on the issue of compliance between artificial intelligence (AI) and human rights, the rule of law and democracy. The role of AI and its potential impact on human rights need to be better understood by the society as well as by decision makers. The Parliament should be informed about the impacts of AI on society and human rights in order to better understand the potential threats to human rights protection.

Such raising awareness activities can come through a campaign carried out by the institutions working on the field (e.g. Ministry of Digitalisation) or in collaboration with state-mandated institutions protecting human rights (namely RIHR, People's Advocate, National Council for Combating Discrimination), in order to highlight not only the advantages of the use of AI, but also the possible impact on human rights, rule of law and democracy.

## Other challenges in the areas of rule of law and human rights

Deterioration concerning the area of media freedom persists in Romania. According to Reporters Without Borders' (RSF) 2022 index, Romania ranked 56th, compared to 48th in 2021. As RSF also points out, the challenges in the area of media freedom are exacerbated by the non-implementation of the existing law.<sup>27</sup>

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<sup>1</sup> [European Commission - press release - Romania and CVM](#)

<sup>2</sup> [European Commission, 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania](#)

<sup>3</sup> [CERV Project](#)

<sup>4</sup> [European Commission, 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania](#)

<sup>5</sup> Legislative package on justice system ([303/2022](#)) ([304/2022](#)) ([305/2022](#))

<sup>6</sup> [European Commission, 2022 Rule of Law Report, Country Chapter on the rule of law situation in Romania](#)

<sup>7</sup> See Venice Commission - [Opinion n° 1105 / 2022](#) - Romania, Urgent Opinion on three laws concerning the justice system

<sup>8</sup> Articles 1(5), 124(3), 126(3), 132(1) and 147(4) of the Romanian Constitution

<sup>9</sup> [The People's Advocate referral](#)

<sup>10</sup> See Constitutional Court, Decision no. 520 of 9 November 2022 on the objections of unconstitutionality concerning the Law on the Status of Judges and Prosecutors, points 330-333 ([In Romanian](#))

<sup>11</sup> Ibidem, points 334-336

<sup>12</sup> [SCA Report May 2011](#)

<sup>13</sup> [Members of the General Council of the Romanian Institute for Human Rights](#)

<sup>14</sup> Press release by CSOs on the adoption of the Law on whistleblowers [Comunicat de presă CSO cu privire la adoptarea Legii avertizorilor de integritate](#)

<sup>15</sup> [Timeline – the Law on the protection of whistleblowers](#)

<sup>16</sup> Opinion of civil society organisations on the draft law on public assemblies [Opinia organizatiilor societății civile cu privire la proiectul de lege privind adunările publice](#)

<sup>17</sup> CSO amendments on the draft law on public assemblies [Amendamente CSO la proiectul de lege privind adunările publice](#)

<sup>18</sup> [Opinion of RIHR on the draft law on public assemblies Punct de vedere al IRDO asupra proiectului de lege privind adunările publice](#)

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<sup>19</sup> Legislative proposal amending the Law no. 50/1991 on the authorisation of construction works, amending the Law no.350/2001 on territorial and urban planning and amending the Law on administrative litigation no.554/2004

<sup>20</sup> [News on the Decision of the Constitutional Court](#)

<sup>21</sup> [Legislative proposal for amending and supplementing Government Ordinance 26/2000 on associations and foundations](#)

<sup>22</sup> [Open letter: Ten European and international organisations call for prompt and independent investigations into the harassment of Emilia Sercan](#)

<sup>23</sup> [Open letter: The Directorate for the Investigation of Organised Crime and Terrorism relapsing into harassment of journalists](#)

<sup>24</sup> Article: [The Public Health Directorate of Braila makes access to information of public interest more difficult through various bureaucratic](#)

<sup>25</sup> Please see, Andreea Moroianu, [Elemente privind inteligenta artificială, democrația și drepturile fundamentale, in Drepturile Omului](#) (Elements on Artificial Intelligence, Democracy, and Fundamental Rights), 1/2021, IRDO

<sup>26</sup> [Article on Human rights in the era of Artificial Intelligence](#), Andreea Moroianu

<sup>27</sup> [Country Index 2022, Romania, Reporters Without Borders](#)

## Slovakia

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### Slovak National Centre for Human Rights

#### Impact of 2022 ENNHRI rule of law reporting

##### Impact on the Institution's work

The Slovak NHRI informs that the rule of law has become one of the strategic areas of work of the institution and it decided to devote a specific focus to the issue of Democracy, Rule of Law and Enabling Space for Civil Society Organisations (CSOs) and human rights defenders in its upcoming Activity Plan for 2023.<sup>1</sup>

Moreover, the Centre implemented a specific rule of law project entitled "Fostering innovative approaches to rule of law monitoring in Slovakia" supported by the financial contribution of the Ministry of Foreign Affairs of the Netherlands. The main aim of the project was to develop a practical and user-friendly tool for enhancing the monitoring of the state of the rule of law in Slovakia.<sup>2</sup> In cooperation with the Center for International Legal Cooperation, the Slovak NHRI developed a rule of law conceptual framework and new specific methodology,<sup>3</sup> which underwent a thorough participatory process with the participation and engagement of international and national stakeholders, including state authorities, civil society and individual experts.

The Slovak NHRI notes that the aim of the monitoring tool is to provide relevant and comprehensive information on the state of rule of law in the selected areas. Its functions enable to highlight areas where significant progress has been achieved, on the contrary, to also alert to areas in which no progress has been achieved, or in which the standards deteriorated. It also aims to encourage and initiate a public debate on the need for

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further legislative and policy proposals or reforms in the areas of identified searing flaws.

The first prototype of the created monitoring tool is available at the website of the Centre<sup>4</sup>. Other outputs of the project, such as the rule of law conceptual framework and methodology of the tracker, or a short video presenting the tracker are also accessible to all interested stakeholders.<sup>5</sup>

In October 2022, the Centre started implementing a new project entitled “Supporting national human rights institutions in monitoring fundamental rights and the fundamental rights aspects of the rule of law,”<sup>6</sup> funded by EEA and Norway Grants under the Fund for Regional Cooperation and implemented together with the EU Agency for Fundamental Rights (“FRA”) as lead partner, ENNHRI as expertise partner and six other national human rights institutions (“NHRIs”). The project aims to enhance the use of the Charter of Fundamental Rights of the European Union (“EU Charter”) by NHRIs and other national authorities, to strengthen the NHRI’s capacity to monitor fundamental rights and the rule of law and to monitor fundamental rights compliance in the implementation of EU funds.

At the national level, in 2022, the Centre nominated its experts to participate in the creation and review of the Participation Index, a project implemented under the Office of the Plenipotentiary for the Development of the Civil Society.<sup>7</sup> The Index aims to create a stable tool for monitoring and evaluating the conditions and status of participation in the environment of the central state administration bodies in Slovakia.

### **Follow-up initiatives by the Institution**

In 2022, the Centre continued its advocacy and awareness-raising activities, in particular in the form of engagement with international, regional and national stakeholders.

For instance, in February 2022, the Slovak NHRI participated in a technical meeting with the representatives from the EC, discussing the specific issues as reported by the Centre in its 2022 rule of law report, further elaborating on specific topics of concern and presenting its recommendations. For instance, the discussion focused on the issues related to the status and mandate of the Centre as an NHRI, the legal framework as well as the enabling space for the CSOs in Slovakia and the challenges they continue to face, or the impact of the COVID-19 pandemic on the particular areas of work of the Centre.<sup>8</sup>

Moreover, in April 2022, the Centre participated in a roundtable together with selected representatives from the civil society and other interested stakeholders with the EU Commissioner for Justice, organized by EC's Representation in Slovakia.<sup>9</sup> The NHRI states that besides the elaboration on the state of the rule of law during the discussion, the Centre particularly highlighted the importance of ensuring participatory process during law and policy making and continued to highlight the important work of the representatives of CSOs in Slovakia. The law and policy making has been undermined by the reliance on accelerated legislative procedures as well as lack of engagement of relevant experts, including the CSOs when initiating an important legislative or policy proposal.

In May 2022, the Slovak NHRI notes that it had a meeting with the director of the European Union Agency for Fundamental Rights (FRA),<sup>10</sup> which focused on discussing the particular response of Slovakia to the situation in Ukraine, as regards the protection of human rights and freedoms of persons fleeing Ukraine, the Centre also discussed the possibilities for a closer cooperation also in the monitoring and reporting on the rule of law.

In July 2022, the Centre was invited to a discussion by the representatives of the ad hoc group on Fundamental Rights and the Rule of law of the European Economic and Social Committee,<sup>11</sup> with whom it discussed the recent challenges in the field of the rule of law



in Slovakia together with other interested national actors.<sup>12</sup> The discussion focused on the issues of ensuring participatory process during law and policy making and the issues concerning the independence of the judiciary and the length of the proceedings.

In addition, the Slovak NHRI created a network of interested international, regional and national stakeholders, including national state authorities, international networks, members of equality bodies and NHRIs as well as CSOs and individual international or national experts working in the field of the rule of law as part of the project “Fostering innovative approaches to rule of law monitoring in Slovakia”. The NHRI intends to provide activities aiming to review the proposed methodology for the monitoring tool. In November 2022, the Slovak NHRI organized a focus group discussion with members of selected equality bodies and NHRIs with necessary expertise in qualitative and quantitative research. Moreover, the Centre hold also several thematic consultations, for instance with the ENNHRI, or Transparency International Slovakia with the aim to provide expert feedback on selected areas of the methodology. In December 2022, the Centre organized a final launch conference and a roundtable discussion on the presentation of the created rule of law tracker, with the participation of international, regional and national actors.<sup>13</sup>

### **NHRI’s Recommendations to national and European policy makers**

The Centre recommends:

- To the European policy makers to ensure an effective follow-up on the compliance and implementation of the recommendations given in the European Commission’s rule of law report. To state authorities, as concerns the awareness raising activities relating to the European Rule of Law Mechanism, in particular, to the findings and recommendations of the European Commission in its rule of law report, to focus on informing fully about the role of other institutions, including the NHRI and civil society organizations working in this area. To the National

Council of the Slovak Republic, to organize specific follow-up initiatives or discussions on the findings and recommendations of the European Commission in the rule of law report within its structures, for instance in the relevant Parliamentary Committees, with a wider participation of relevant institutions, such as the NHRI or civil society organizations working in this field.

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors' recommendations on rule of law**

The Slovak NHRI explains that in 2022, several monitoring bodies issued recommendations concerning rule of law in Slovakia, parts of which also reflect the Centre's recommendations from its annual rule of law report, or other alternative reports.<sup>14</sup> While in general, some progress has been achieved, namely in terms of recognizing the recommendations by state authorities, the implementation and effective and efficient follow-up by the relevant state authorities remain a challenge.

### GRECO recommendations

In January 2022, GRECO published its Fifth evaluation round compliance report on Slovakia<sup>15</sup> concluding that Slovakia satisfactorily implemented only two out of 21 recommendations under the Fifth Round Evaluation Report from 2019.<sup>16</sup> These concerned fight against corruption within the Police Force (establishment of an operational anti-corruption strategy<sup>17</sup> and a risk management mechanism to identify corruption risks and emerging trends within the Police Force<sup>18</sup>). Three recommendations were partially implemented (training of police officers, investigators; increase of representation of women in the Police Force, more effective protection of whistleblowers from within the Police Force). However, 16 recommendations remain

unimplemented, including issues reported on by the Centre, such as prevention of lobbying activities towards the government by top executive functions, or preparation of an updated Anti-Corruption Programme.

### OECD Recommendations

In March 2022, the Slovak NHRI notes that the OECD published its Integrity Review of the Slovak Republic,<sup>19</sup> including 43 concrete recommendations for strengthening the Slovak Republic's Anti-Corruption Policy. According to the official information,<sup>20</sup> the Government is cooperating with OECD experts to ensure that these recommendations are implemented and has included a specific measure on it in its updated Programme. However, so far the recommendations remain unimplemented.

### EC Recommendations

The Centre expresses that little progress was also achieved on the implementation of the six specific recommendations addressed to Slovakia in the EC's 2022 Rule of Law Report.<sup>21</sup>

Only selected state authorities or other national actors reported on the publication of the report and recommendations of the European Commission ("EC"). These included, for example, the Whistle-blower Protection Office<sup>22</sup>, or the Judicial Council of the Slovak Republic.<sup>23</sup>

The Slovak NHRI informs that the Ministry of Justice of the Slovak Republic ("Ministry of Justice") issued a press release informing about the publication of the findings of the EC 2022 rule of law report.<sup>24</sup> However, the Centre notes that, similarly to last year, the press release focused largely on the positive aspects of the rule of law report and only partially highlighted or described the major challenges identified by the EC in each area, including where recommendations were made. Similar approach was taken by some

Members of Parliament (“MPs”) who organized a brief press conference in July 2022,<sup>25</sup> where the head of the Constitutional and Legal Affairs Committee of the National Council of the Slovak Republic (“Parliament”) rather focused on highlighting the positive aspects of the report and reported that the EC found no subversion of the rule of law in Slovakia, disregarding the challenges identified.

Besides a few state authorities, the NHRI particularly highlights the follow-up initiatives taken by some civil society organisations (CSOs)<sup>26</sup> or other professional associations regarding the publication of the findings of the EC. For instance, the Slovak Bar Association (“SBA”) informed about its opinion sent to the Commission regarding the findings and recommendations of the EC on the legislative efforts to restrict the power of the Prosecutor-General to annul prosecutorial decisions.<sup>27</sup> In this opinion, it alerted for the requirement of proper and rigorous expert evaluation before the adoption of such legislation, which is still lacking<sup>28</sup>. The American Chamber of Commerce in Slovakia (AmCham) Rule of Law Initiative also issued a press statement on the occasion of publication of the EC’s rule of law report and highlighted the remaining challenges and alerts identified by the EC, as well as, it also supported the recommendations given by the EC, especially in the area of functioning of the justice system, fight against corruption, and ensuring participatory law and policy making.

There has not been any legislative amendment introduced or other significant developments regarding the dismissal of the members of the Judicial Council.<sup>29</sup> The explicit possibility to dismiss the members of the Judicial Council at any time before the expire of their tenure by their appointing authority regulated in Article 141a(2) of the Constitution does not require the dismissal to be founded on specific criteria prescribed by law. The law should, however, provide precise grounds, procedure and competences concerning the dismissal. The same applies to the legislation regulating the crime of abuse of law. While the new criminal offence under which judges may be prosecuted for

any arbitrary decisions causing damage to or bestowing a favour on another person was introduced in an effort to enhance the integrity regime for judges, concerns remain as to the possible misuse, possibly impacting the independence and impartiality of the judges. There were only two cases of prosecutions for the crime of abuse of law in 2022.<sup>30</sup> With regard to the recommendation on introducing proposal to regulate lobbying, by the end of 2022, the Deputy Prime Minister for Legislation and Strategic Planning only presented a preliminary information on a forthcoming lobbying bill.<sup>31</sup> Regarding the recommendation on restricting the powers of the Prosecutor General, despite the ongoing discussions, no legislative amendments were adopted apart from few unsuccessful legislative proposals<sup>32</sup> coming from the MPs. Civil society organizations have actively engaged in discussing the necessity of amending the Criminal Procedure Code of the Slovak Republic and have also attempted to introduce the legislative amendments.<sup>33</sup>

The Slovak NHRI notes that concerning media pluralism, transparency of ownership and the safety of journalists, some progress has been achieved. Despite the postponement of the adoption of the constitutional act on the safety of journalists, the Ministry of Culture of the Slovak Republic (Ministry of Culture) informed that the protection of journalists will be included in the Strategy to prevent criminality and other antisocial activities in Slovakia until 2028. It proposed that methodology of police procedures on protecting journalists during high-risk occasions and mechanism on monitoring attacks on journalism are included in the strategy.

Furthermore, the Slovak NHRI also highlights that no legislative progress was made in the area of media freedom.<sup>34</sup> The Ministry of Culture informed that it was not possible to determine the expected date of submission of the Constitutional Act on Media Freedom due to the current political situation. Regarding the enhancement of the transparency of the media ownership, it informed that enhancing media plurality and

independence and protection of journalists was part of the Strategy of Cultural Policy until 2030.<sup>35</sup>

### State authorities follow-up to NHRI's recommendations regarding rule of law

The Slovak NHRI notes that in ENNHRI's 2022 Report on the state of the rule of law in Europe, the Centre has issued 23 specific recommendations to the national and regional actors concerning all areas of the rule of law.

The recommendations issued by the Centre addressed to numerous state authorities. In particular, six were issued to the Government, six were issued to the Ministry of Justice, three were general recommendations issued to the national authorities and regional actors (one of these was issued also specifically to the Office of the Government), two recommendations concerned public figures in general, one was issued to the Ministry of Labour, Social Affairs and Family of the Slovak Republic, one was issued to the Ministry of Culture of the Slovak Republic, one was issued to the National Council of the Slovak Republic, one was issued to the Ministry of Education, Science, Research and Sports, one to European policy makers, and one to the law enforcement authorities.

The recommendations were divided into several categories, in particular, implementation of the 2022 Rule of Law Report; independence and effectiveness of the NHRI; human rights defenders and enabling space for civil society; the system of checks and balances; functioning of the justice system; media freedom, pluralism and safety of journalists; fight against corruption; and impact of measures taken in response to COVID-19 on the national rule of law environment.

Similarly, to the recommendations of the EC or other regional actors, the implementation of the recommendations issued by the Centre remains a challenge. Out of all recommendations issued by the Centre, only two were fully implemented, three were partially implemented or followed up on and 17 remain unimplemented.<sup>36</sup>

## NHRI's follow-up actions supporting implementation of regional actors' recommendations

The Slovak NHRI informs that throughout its regular monitoring and reporting activities, the Centre has been closely following the fulfilment and implementation of the recommendations on rule of law and for the purposes of the national data collection for the ENNHRI Rule of law Report 2023, where needed, it specifically approached relevant entities inquiring about the state of implementation and activities taken in order to effectively follow-up on the recommendations.

For example, as regards the recommendation on the introduction of specific measures regulating lobbying, which has been the subject of recommendation coming from GRECO as well, the Centre approached the Office of the Deputy Prime Minister for Legislation and Strategic Planning, to monitor the activities taken regarding successful implementation of the recommendation.<sup>37</sup> However, no reply was received.

As regards the crime of abuse of law and the criminal liability of judges, despite no progress in terms of legislative amendments, the Centre has inquired about the state of prosecutions and ongoing proceedings. According to the official information received from the Office of the Special Prosecutor of the Slovak Republic, in 2022, there were charges brought against one perpetrator and a criminal prosecution was initiated against one unknown perpetrator. The prosecutions are ongoing.<sup>38</sup>

The Centre also followed up with the Ministry of Culture which is the leading entity responsible for the implementation of two of the recommendations of the EC and several recommendations of the Centre concerning media freedom, pluralism and safety of journalists. The Ministry of Culture has provided extensive information on the progress achieved in the implementation of the recommendation.<sup>39</sup> Besides specific follow-up initiatives, the Centre has actively supported and enhanced the importance of

the recommendations issued through its engagement with various international, regional and national stakeholders, including monitoring bodies. In addition, the Centre pays particular attention to the effective and efficient follow-up and implementation of recommendations issued by international and regional bodies. As a result, the Centre included this aspect also in its created rule of law conceptual framework and methodology for the newly created rule of law tracker. The main objective of the rule of law tracker is to monitor and evaluate on the state of the rule of law in Slovakia. In addition, the rule of law tracker provides relevant and comprehensive information on the state of the rule of law in Slovakia to the general public and relevant stakeholders, including state authorities. In particular, when conducting national data collection for the created rule of law tracker, the Centre will focus on monitoring and evaluating the state of implementation of recommendations of international and regional monitoring bodies in specifically selected rule of law areas, such as in the area of fight against corruption or media freedom, pluralism and safety of journalists.<sup>40</sup>

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Slovak National Human Rights Centre was accredited with B-status in March 2014.<sup>41</sup> On that occasion, the SCA noted that the NHRI has a clear mandate to promote and protect human rights, but with an emphasis on equality and discrimination. Acknowledging that the NHRI interprets its mandate broadly to encompass all rights, the SCA encouraged the Centre to advocate for legislative changes giving them the power to: submit opinions, recommendations, proposals and reports on any human rights matter to the Government; promote and ensure harmonisation of national legislation, regulations and practices with international human rights instruments to which Slovakia is a party; create awareness of human rights norms through teaching, research and addressing public opinion; encourage ratification or access to international human

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rights instruments; and effectively investigate complaints of human rights violations. The SCA noted that the Administrative Board, one of the two bodies of the SNCHR together with the Executive Director, is made up of members selected by nine separate appointing authorities, each of which can define its own selection criteria. The SCA encouraged the Centre to advocate for the formalisation of a clear, transparent, and participatory selection and appointment process of decision-making body, in relevant laws, regulations or binding administrative guidelines. Further, the SCA took the view that the arrangements for the appointment of members did not ensure pluralism in the composition of the Administrative Board. It encouraged the Centre to ensure that its membership and staff is representative of the diverse segments of society. Additionally, the SCA pointed out that the enabling legislation of the NHRI does not explicitly include provisions to protect the members from legal liability for the actions undertaken and decisions made in good faith in their official capacity. Further, the SCA noted, that according to the enabling law, membership of the Administrative Board can be terminated by recall of the appointing authority. The SCA emphasized that dismissal should not be solely dependent on the discretion of appointing authorities. It encouraged the Centre to advocate for the formalisation of a dismissal process in which: dismissal is made in strict conformity with all procedural and substantive requirements prescribed by law; grounds for dismissal are clearly defined and appropriately confined only to actions adversely impacting the members' capacity to fulfil their mandate; and where appropriate, the legislation should specify the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction.

### **Follow-up to SCA Recommendations and relevant developments**

The Slovak NHRI reports, on a positive note, that some issues raised by the SCA in 2014 have now been addressed. These include the fact that, at the time, one member of the

Administrative Board, who also had voting rights on the Board, was a member of Parliament, which is now no longer the case.

Similarly, concerns raised by the SCA regarding the adequacy of the Centre's funding have also been addressed, as the Centre has recently been financially strengthened: in particular, its budget was increased in 2021 and, for 2022, the Centre was allocated a subvention from the public budget in the amount of 944 287 Euro, including capital expenditures for modernization of the registry and IT systems. The unspent sum of capital expenditures was moved to 2023. In 2023, the Centre's budget was further increased to 967 002 Eur. The increase covers increased salary costs considering valorisation of salaries as well increased costs of energies and services. Despite no changes in the legislation, the internal Rules of Procedure of the Administrative Board were updated making the procedure of election of the Executive Director more transparent and open.

With regard to the possibility of the dismissal of the member of the Administrative Board, the Slovak NHRI clarifies that according to the Act on the establishment of the Centre, the entity that appointed the member of the Administrative Board can only dismiss him or her if he is not present at 3 consecutive sessions of the Administrative Board without specific justification.

### **Regulatory framework**

The Slovak NHRI informs that no changes in its regulatory framework were introduced in 2022.

The Centre, however, stresses that its regulatory framework should be strengthened to ensure its full compliance with the Paris Principles.

Namely, the Slovak NHRI states that its current human rights mandate includes a range of promotion competences, however, the protection competences are not sufficiently

provided. In this regard, the Slovak NHRI explains that it should be granted competence to receive complaints concerning human rights violations in general. So far, the Slovak NHRI has the competence, to handle complaints concerning only in the area of discrimination under its equality body mandate. The Slovak NHRI stresses that in order to strengthen access to justice for victims of human rights violations, the power to receive complaints alleging human rights violations as well as the violations of the principle of equal treatment, shall be accompanied by strong and effective powers to investigate the complaints and gather evidence.

The Centre should also be granted a status of obligatory commenting entity to legislative proposals, especially impacting the enjoyment and protection of human rights and fundamental freedoms, including the principle of equal treatment. This power should form part of a broader mandate of the Centre to submit its opinions, comments and recommendations on both legislative and non-legislative initiatives to relevant authorities. Although the Centre already monitors legislative procedure and on its own initiative provides comments to proposals that may have impact on human rights or the principle of equal treatment, the authorities are not obliged to address these comments and further discuss them with the Centre, as currently, the Centre formally submits these comments as part of general public.

The Slovak NHRI notes that despite being a member of various advisory bodies and committees at the national level, the efforts of state authorities should be increased to achieve greater inclusion of the Centre in newly formed working groups or committees working on issues falling within the mandate of the Centre, including its involvement in the creation of action plans, etc. In particular, the Centre should be granted a clear role in monitoring the Nationwide Strategy for Human Rights Protection and Promotion<sup>42</sup> and be involved in the process of its actualisation.

In this line, the Slovak NHRI highlights that there is also a need for legislative guarantees to ensure more effective follow-up on the Centre's opinions and recommendations resulting from its monitoring and reporting activities. For instance, a mechanism ensuring that state authorities, in particular the Parliament or its Human Rights Committee, consider the Centre's annual report on human rights should be included.

Regarding the independence of the Centre, a legislative guarantee to secure that the budget of the Centre won't be subject to disproportionate cuts would strengthen the financial stability of the Centre. Moreover, considering the recommendations of GANHRI Sub-Committee for Accreditation (SCA), the independence and pluralism of the Centre shall be strengthened through changes in the appointment procedure of members of Centre's Administrative Board.

### Enabling and safe space

The Slovak NHRI informs that access to and participation in the legislative procedures is very limited for the Centre. As reported previously, the state authorities are not obliged to consult the legislative or non-legislative proposals with the Centre, neither are they bound by its recommendations and opinions of the Centre.

The status of entity which provides obligatory comments within legislative procedure - adoption of laws and policies – proposed by the ministries, would entail the Centre to be notified of all proposals and be able to submit substantial comments that would need to be discussed in a formal procedure. The Centre now submits comments to draft laws and policies on its own initiative and the authorities are not obliged to address them. It depends solely on willingness of state authorities, whether these comments would be considered and whether they would lead a legislative debate with the Centre.

The good practice can be identified with regards to the preparation of amendments to Act No. 245/2008 Coll. on Education and Upbringing (the School Act) as amended<sup>43</sup>.

The amendment implements reforms under the Recovery and Resilience Plan of the Slovak Republic, mainly concerning desegregation of schools and measures promoting inclusive education of children with special education needs. After raising several comments to the original proposal, the Centre was invited by the Ministry of Education, Science, Research and Sports of the Slovak Republic to discuss them and several comments were accepted. In terms of policies, the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities which is responsible for the preparation and monitoring of the Strategy of Roma Equality, Inclusion and Participation until 2030 and thematic action plans thereunder. This Office fully engaged the Centre in the preparation of these strategic documents in 2021. In 2022 it actively facilitated cooperation among the Centre and other entities to ensure effective implementation of tasks vested upon the Centre under the action plans.

Furthermore, the Slovak NHRI informs that while the Centre has been a member of various advisory structures at the national level, such as the Government Council for Human Rights, Gender Equality and National Minorities and its thematic committees, the authorities not always grant it access to expert groups and committees established to address issues, which may have impact on human rights and which often lack any representation of human rights structures (such as the Centre, the Public Defender of Rights or the Commissioner for Children or the Commissioner for Persons with Disabilities). For instance, in 2022, the Government proposed the creation of the Government Council for Inclusion of Marginalised Roma Communities<sup>44</sup> composing of different state and non-state stakeholders. The Centre commented that the membership excluded human rights bodies and representative organisations of Roma and respectively suggested additional members. Even though the consultations terminated in November 2022, until now the results were not publicly communicated.

Furthermore, the NHRI underlines that it has also been an active voice in advocating for women's rights in relation to continuous and repetitive attempts to restrict the sexual and reproductive rights of women in Slovakia as well as ensuring equal treatment and protection of rights of LGBTI+ people.<sup>45</sup> For instance, the Centre openly criticised the legislative attempts to restrict reproductive rights of women, addressed MPs with a letter recommending them not to support the proposals in the parliament with argumentation why such proposals are contrary to human rights standards, posting blog posts<sup>46</sup> on the topic and reported on the issues to national<sup>47</sup> and international stakeholders.<sup>48</sup> With regards the rights of LGBTI+ people, the Centre published an open letter of recognition of the work done by LGBTI+ organisations on the occasion of IDAHOBIT<sup>49</sup>, condemned the terroristic attack against the LGBTI+ community in Slovakia in October 2022<sup>50</sup> and actively promoted stronger protection of LGBTI+ rights in media and at public events<sup>51</sup> as well as displayed rainbow flags at its office on the occasion of Pride 2022 and upon the tragic terrorist attack. As a result of activities in these areas, the employees of the Centre have received harassing emails, often containing hate speech or hatred narratives from general population. For instance, upon the initial post on the official website of the Centre and its Facebook profile condemning the war in Ukraine and expressing support to the people in Ukraine and the Ukrainian NHRI,<sup>52</sup> harassing and hate emails were received by most of the employees. Negative comments often entailing hate speech also appear in related discussions under the posts of the Centre on social medias or at its blog in relation to the work in the areas of gender equality, LGBTI+ rights or the rights of Ukrainian refugees and the war in Ukraine. The Centre believes that this trend is a result of a long-term negative political discourse against certain human rights issues lead mostly by politicians. Consequently, such incidents have negative impact on the perception of safety of employees of the Centre. It is worth noting that in the current legislation, the NHRI staff does not enjoy any special protection as compared to general public. Hence

general regulation of Act no. 300/2005 the Criminal Code, as amended (“Criminal Code”) concerning hate speech (linked to Article 140 para. e) of the Criminal Code defining hate motive applicable to certain crimes) and a crime of dangerous electronic harassment under Article 360b of the Criminal Code could be raised.

Regarding budget challenges, the Slovak NHRI points to the uncertainty over the adoption of the public budget for 2023 that accompanied the political crises in the country at the end of 2022. This also led to concerns over funding of the Centre if the public budget was not adopted and the country would face budgetary provisory. Until the second half of December 2022, it was not clear whether the budget allocated to the Centre for 2023 would be adopted, which also impacted the planning of activities for the next year.

### **Developments relevant for the independent and effective fulfilment of the NHRIs’ mandate**

The Slovak NHRI states that in general, the Centre has been actively and timely responding to the current human rights challenges in the country.

The Centre devoted large part of its activities towards mitigating the consequences of the influx of Ukrainian refugees upon Russia’s armed attack on Ukraine since February 2022. For instance, the Centre conducted monitoring activities at the train stations, hotspots and registration centres or meeting with national authorities with the aim of further reporting the situation and identified challenges to international and regional bodies.<sup>53</sup> The Centre also prepared specific leaflets for victims of discrimination and those seeking legal assistance or general guidance on temporary protection and asylum, which are available in English, Russian, Slovak and Ukrainian.<sup>54</sup> The Slovak NHRI has also been actively involved in several national and international working groups working on the issues of protection of rights of persons fleeing from Ukraine in order to

exchange experience and relevant information. For instance, the Centre is also currently a co-chair of the UNHCR's Task Force on Protection from Sexual Exploitation and Abuse, where it closely cooperates with the members of the task force and provides expertise on issues of sexual harassment.

In August 2022, the Centre submitted its alternative report to the UN Committee on the Elimination of the Racial Discrimination within the review of the 13th periodic report of Slovakia. In its submission, the Centre addressed the need to bring the national legislative framework in line with the Paris Principles and recommended renewing efforts to adopt legislative amendments providing full compliance of the Act on the Centre with the Paris Principles as a result of a transparent participatory process as well as continuing with strengthening of its financial resources to allow the Centre to effectively implement its wide mandate with adequate financial and staff resources.<sup>55</sup>

Moreover, in January 2023, when asked to provide its opinion on the proposals of EU directives on the standards for equality bodies for the Ministry of Justice of the Slovak Republic, the Centre used the opportunity to refer to the need to ensure compliance with other international standards governing its functioning as NHRI and equality body, including the Paris Principles or the ECRI General Policy Recommendation No. 2 in its submitted opinion.

Within annual negotiations with the Ministry of Finance of the Slovak Republic concerning the budget of the Centre for the upcoming year, in 2022, the Centre also requested increased financial resources to be able to effectively implement its broad mandate. There has consequently been a minor increase in the budget of the Centre for the year 2023, which only covers the increased staff costs necessary for valorisation of salaries of already employed staff.



The Centre states it successfully increased its expert capacities by two temporary job positions funded under the project Supporting National Human Rights Institutions in Monitoring Fundamental Rights and Fundamental Rights Aspects of the Rule of Law funded by EEA and Norway Grants under the Fund for Regional Cooperation. The Centre aims to negotiate with the Ministry of Finance of the Slovak Republic to have these two positions sustained from the public budget also upon termination of the project in February 2024 to enhance the capacities of the Centre.

### NHRI's recommendations to national and regional authorities

Regarding the independence and effectiveness of the NHRI, the Centre recommends:

- To the Ministry of Justice of the Slovak Republic to enhance its efforts to increase full compliance of the Centre with the Paris Principles and to include the Centre in discussions on the possible legislative amendments of the legal and institutional framework of the Centre, including Act of the Slovak National Council No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights.
- To the Ministry of Justice of the Slovak Republic to enhance the independence and effectiveness of the Centre by placing more emphasis on the general obligation of relevant entities to cooperate with the Centre in all areas of its mandate, including an explicit mandate of the Centre to request response from the relevant state entities to the Centre's opinions and recommendations and a mandate of a compulsory commenting entity to legislative proposals ensuring review of their impact on human rights and equality.
- To the Government of the Slovak Republic and the Ministry of Justice of the Slovak Republic in particular, to facilitate smooth adoption of proposed directives on standards for equality bodies at the European level and ensure their

prompt transposition and effective implementation at the national level once adopted.

## Human rights defenders and civil society space

### Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities

#### Access to Funding

The possibility to provide funding from the state budget to CSOs is regulated in the general Act No. 523/2004 Coll. on budgetary rules of public administration. Pursuant to Section 8a of the Act, subsidies may be granted from the state budget to natural persons and legal entities in accordance with the State Budget Act for the relevant financial year.

The entities that may provide subsidies include the chapter administrator, a state administration body whose revenues and expenditures are connected to the chapter administrator's budget and, if provided for by law, another budgetary organisation. Subsidies shall be granted only on the basis of a special regulation and on the basis of an individual CSO application.<sup>56</sup>

The act mandates the various institutions linked to the budget to grant subsidies based on specific legislation linked to their competence. This means that the legislation is significantly fragmented as competences differ. There is at least one legal act for each of the fourteen ministries. Consequently, no central system for coordinating all funding opportunities is available to CSOs or human rights defenders.<sup>57</sup> This results in further fragmentation even within each sector. Fragmentation may create an obstacle for CSOs or human rights defenders that engage in various areas of public life, needing to apply for various funding schemes.

After a visit to Slovakia in July 2022, the European Economic and Social Committee reported that the access to funding on national level is very difficult for CSOs and that the available funding is only project-based.<sup>58</sup> The 2021 Civil Society Organization Sustainability Index confirmed that the financing of operations conducted by CSOs is project-based which causes the inability for most of the CSOs to attain true financial stability. This also, places a heavy administrative burden on CSOs and makes it difficult to build long-term capacities.<sup>59</sup>

Moreover, as reported in November 2020, the Parliament enacted an amendment to Act No. 544/2010 Coll. on subsidies within the competence of the Ministry of Labour, Social Affairs and Family of the Slovak Republic, as amended, (“Act on subsidies”).<sup>60</sup> The amendment created problems with the allocation of subsidies in the field of gender equality which remains within the competence of the Ministry of Labour, Social Affairs and Family of the Slovak Republic.<sup>61</sup> It has been previously reported by the Centre that such legislation restricts the eligibility of potential applicants and beneficiaries. The restriction of access to financial subsidies for organizations working on topics such as gender equality, violence against women or protection and promotion of LGBTI+ rights remains a challenge. The disbursement of funding through public subsidies schemes continues to benefit only selected organizations, excluding those working on issues related to the above-mentioned topics.<sup>62</sup>

### Negative impact on the LGBTI+ community

In 2022, the Centre’s monitoring and reporting identified several practices that could negatively impact civil society space, LGBTI+ human rights defenders continued to work in an atmosphere of hatred and hostile attitudes, which led to personal security risks and a lack of recognition for their indispensable work in promoting and protecting human rights of LGBTI+ persons.

The conservative discourse, combined with the lack of political will to improve the protection and promotion of the rights of LGBTI+ persons, goes beyond preservation of status quo and will result in further deterioration of human rights protection of LGBTI+ people. Throughout the year, several legislative proposals were introduced which aimed to further stigmatize LGBTI+ persons and restrict their rights, creating a hostile environment for people belonging to the LGBTI+ community as well as LGBTI+ human rights defenders and activists.

In October 2022, Slovakia witnessed the murder of two LGBTI+ persons. The murders were later classified as acts of terrorism.<sup>63</sup> Slovak CSOs, supported by other actors, including the NHRI, addressed an open call to politicians with several concrete recommendations aiming to “ensure the equality and safety of LGBTI+ people, their families and children so that they can live in our country without fear and hatred.” Recommendations included specific references to the fight against disinformation about LGBTI+ persons in online space, the inclusion of information about human rights of LGBTI+ people in schools, the creation of services and community spaces for LGBTI+ people, as well as legal recognition for LGBTI+ couples and families.<sup>64</sup>

### Negative impact on women’s rights

With regards to the risks posed to women human rights defenders working on the topics of sexual and reproductive rights, the Centre published a chapter on restrictions to safe civic space, including the principle of equal treatment, in its annual Report on the observance of human rights in the Slovak Republic for the year 2021.<sup>65</sup> Although not a representative research, women human rights defenders reported facing several personal or organizational risks. These include stigmatization, hateful comments on social media, barriers to funding and administrative barriers, barriers in participation and negative impacts of these on the defender’s work and health. The research was conducted in the context of ongoing retrogressive legislative proposals aiming to

further restrict access to sexual and reproductive rights. With regards to these, the Council of Europe Commissioner for Human Rights drew attention to the negative impact of the proposed legislation on women's rights, and expressed concern that these repeated legislative attempts were creating an "increasingly hostile environment for human rights defenders in Slovakia who focus on issues of women's sexual and reproductive rights and gender equality in general."<sup>66</sup> While such legislative attempts continued to be proposed in 2022, the Centre continued to monitor their negative impact on the civil society space, especially on work of women human rights defenders.

### **Access to and involvement of civil society actors in law and policy making**

#### Accelerated legislative procedure

In its Section 89, Act 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic regulates the accelerated legislative procedure, which is permitted in one of the clearly defined.<sup>67</sup> The Covid-19 pandemic was assessed as being an exceptional situation during which many legal acts were adopted through the accelerated legislative<sup>68</sup>

However, there is an alarming abuse of the accelerated legislative procedure is. In 2022, the Constitutional Court of Slovak Republic ruled that the specific conditions under which the recourse to accelerated legislative proceedings were not complied with in the case of the adoption of a particular act concerning the financing of children's leisure time. It further stated that the use of abbreviated or accelerated deliberations for the drafts of acts on systemic changes, to avoid a meaningful discussion that would otherwise be necessary, is also criticized by the Venice Commission as an interference with the rule of law regarding the principles of transparency, inclusiveness, democratic legitimacy, and responsibility.<sup>69</sup>

#### Participation

There are also significant limits to participation in relation to the legislative procedure in the Parliament. Draft acts proposed by members of the Parliament (MPs) are not subject to the interdepartmental commentary procedure of governmental proposals, during which general public and civil society actors can submit their opinions on draft acts. While the NHRI respects the right of legislative initiative of the legislator, it has been observing certain abuses of this power to circumvent a public debate when MPs propose significant legislative amendments or new drafts through the Parliament.

Coalition MPs repeatedly submit laws to limit the sexual and reproductive rights of women without public debate with experts on these topics.<sup>70</sup> In January 2023, the same situation occurred in relation to a draft act amending Act No. 532/2010 Coll. on Radio and Television of the Slovak Republic, which has an impact on media freedom and was not discussed with the relevant experts and general population prior to the submission.<sup>71</sup>

Moreover, in December 2022, the Parliament adopted a legislative amendment on environmental impact assessment.<sup>72</sup> The President vetoed the Act, noting her concerns with the unclear and chaotic legislative process curtailing the expert participatory process and the text going against European legislation and standards regarding environmental protection and the Aarhus Convention.<sup>73</sup> The legislative process as well as the legislation curtail the rights of the public in relation to decision-making processes in environmental protection, for instance in particular, it severely restricts the rights of public to influence development in their neighbourhood by narrowing the procedural standards for the protection of the affected public in the building approval procedure.<sup>74</sup> The Centre believes that the law would potentially also curtail the activities of environmental human rights defenders and their possibility to engage in transparent and participatory decision-making on environmental issues. The Parliament overruled the President's veto in February 2022.

The Centre monitors the use of the accelerated legislative procedure in its rule of law tracker. The ratio between the number of legislative proposals submitted directly through the Parliament and the total number of all legislative proposals concerning human rights must be monitored in the category of the open government and government bound by law area of the rule of law tracker. The accelerated legislative procedure should remain as legislative tool reserved for exceptional circumstances and not to bypass public participation.

### **Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)**

#### Abuse of laws and intimidation

In 2022, several instances revealed attacks on human rights defenders and other actors, namely journalists, by public figures. Three incidents regarding journalist were reported to the Mapping Media Freedom Monitor. All three incidents were categorized as verbal attacks (discredit) emanating from the leader of the leading political party, namely the Minister of Finance of the Slovak Republic (“Minister of Finance”).

On 12 September 2022, the Minister of Finance published a post on social media, in which he smeared and personally attacked the editor-in-chief of a Slovak newspaper Denník N. The editor-in-chief had commented on the election pledges made by the Minister’s party to fight against corruption and had pointed out that these had not been upheld. The reaction of the Minister of Finance was met with great criticism from the media community. Even though the published piece was critical, it did not contain inappropriate language. Shortly after the publication of the article, the Minister of Finance published an online response to defend his record by attacking the editor’s denigrating language, personal insults, and unfounded claims.<sup>75</sup> In September 2022, the Minister of Finance attacked the media again and accused them of being corrupt while speaking in the Parliament.

Moreover, the Minister of Finance spoke again in the Parliament on 29 September 2022 and linked the work of the country's journalists and media organisations to Nazi propaganda. The statement was given during a speech regarding a vote of confidence regarding his position.<sup>76</sup> The comments were met with large criticism from the media community, media freedom organizations as well as public figures from his own ruling party<sup>77</sup> and as a response, a group of editors issued a statement condemning the comments.<sup>78</sup>

Moreover, on 12 October 2022 the Minister of Finance pledged to weed out journalists who he considered to be corrupt as part of his public service to the country during a radio interview.<sup>79</sup>

In October 2022, as a reaction to the recent attempts of the Minister of Finance to discredit the media, several international media freedom and journalistic groups issued a joint statement condemning the recent attacks on journalists by the Minister of Finance.<sup>80</sup> The European Centre for Press and Media Freedom, Reporters Without Borders, the European Federation of Journalists, the International Press Institute, the Italian think-tank OBC Transeuropa, the Dutch regional NGO Free Press Unlimited and the independent media support Organisation Article 19 signed the statement.

### Lack of regulation for SLAPPs

Currently, there is no legislation in Slovakia that provides protection from SLAPPs for defendants acting in the public interest. Slovakia does not have any statistics regarding SLAPPs cases and there is no separate legal act regulating SLAPPs. However, general legal instrument, as prescribed for instance, in Act No. 160/2015 Coll. Civil Procedure Code as amended or Act No. 300/2005 Coll. Criminal Code, as amended used as



instruments of defence in proceedings are available as a form of legal protection in SLAPPs cases. These include, for instance the manifestly unfounded action and the crime of false accusation.

In 2021, the Ministry of Culture of the Slovak Republic issued preliminary information on the beginning of legislative work on the constitutional act on media freedom.<sup>81</sup>

According to the preliminary information, the draft of the act under preparation aims "to ensure free and safe exercise of the journalistic profession and to guarantee the protection of journalistic sources operating in the digital environment on the same level as it is guaranteed traditional print media in media." Preliminary information does not expressly stipulate introducing specific legislative protection against SLAPPs.

Protection should be provided by legislating on the fundamental rights and obligations of journalists, media information providers and public authorities. Furthermore, transparency of media ownership, editorial independence of journalists and free access to information without discrimination should be ensured.<sup>82</sup>

As a follow up on the implementation of recommendations and as part of active monitoring of the Centre, the Slovak NHRI requested the Ministry of Culture to provide further information on steps taken to fulfil recommendations from the European Commission with emphasis on the protection of journalists. According to the Ministry of Culture, protection of journalists will be included in a Strategy to prevent criminality and other antisocial activities in Slovakia until 2028. Concerning SLAPPs and -according to the Ministry of Culture - Slovakia takes active part in EU and Council of Europe initiatives through a representative of the Ministry of Culture. Moreover, in February 2023, a conference on protection of journalists was organized by the Ministry of Culture.

Enhancing media plurality and independence and protection of journalists is part of the Strategy of Cultural Policy 2030, which has recently been prepared by the Ministry of Culture. According to this strategy, the measures included should contribute to improvement of the conditions for free exercise of the journalistic profession.

## **Measures undertaken by State authorities to protect and promote civic space**

### Positive impact on civil society space

The Civil Society Sustainability Index shows that a positive impact on freedom of association has been made by the introduction of a comprehensive public register of information on NGOs. The registry was introduced with the aim to contribute towards the increase of transparency in the sector. The launch of the register took place on 1 January 2021 under Act No. 346/2018 on the Register of Non-Governmental Non-Profit Organisations and on Amendments and Additions to Certain Acts.<sup>83</sup> Pursuant to the Act, an electronic collection of deeds and documents of NGOs was also made public on 1 January 2023. The electronic collection includes a digital form of all key documents related to registered NGOs. This is supposed to create greater transparency and credibility in the non-profit sector.<sup>84</sup>

### Recent amendment of the Freedom of Information Act

In September 2022, the former Minister of Justice of the Slovak Republic introduced another amendment to Act No. 211/200 Coll. on Free Access to Information amending and supplementing certain other acts (Freedom of Information Act) as amended, to the interdepartmental commentary procedure, to increase the transparency of public administration.

According to the press release of the Ministry of Justice, the amendment introduces a completely new definition of an obliged person (a person who has the obligation under

the Freedom of Information Act to provide information/answer the requests for information) and extends the obligations under the Act to state-owned companies and subsidiaries of state-owned companies. It also introduces mandatory disclosure of information on persons seeking public office as well as on public officials themselves. The obligation to publish all amendments to compulsorily published contracts is explicitly laid down, while the exemption for non-disclosure of their annexes is abolished and the period of compulsory publication of contracts is extended to 10 years. The exemption from publication of contracts by the National Highway Company is deleted. The proposed material aims to introduce legislation that would make studies and analytical material produced thanks to public funds more widely available than at present.<sup>85</sup> An evaluation of the inter-ministerial comment procedure is currently underway.<sup>86</sup>

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Centre has taken several initiatives to promote and protect an enabling space for civil society and human rights defenders. Besides the specific focus on the enabling of space for women human rights defenders as part of the Report on the Observance of Human Rights, Including the Principle of Equal Treatment in the Slovak Republic for the Year 2021<sup>87</sup>, the Centre actively participated in several high-level discussions; increased its advocacy; as well as organized activities aimed at CSOs.

To mark the International Day Against Homophobia, Biphobia, Intersexism and Transphobia in May 2022, the Centre sent an open letter to the organisations that, despite working in often unfavourable conditions, contribute to improve the status and protection of the rights of LGBTI+ people in Slovakia and expressed its gratitude for their work.<sup>88</sup>

Moreover, in October 2022, the NHRI successfully implemented a project to support the engagement of CSOs in the European Social Charter mechanism "Enhancing the use of the reporting procedure in the European Social Charter in Slovakia with main focus on Group 4 on children, families and migrants) funded by the Council of Europe.<sup>89</sup> One of the outputs of the project was a small seminar for CSOs aimed at building capacity, networking and information gathering, followed up by a joint call to action advocating for ratification of non-accepted provisions of the Group 4 Articles.<sup>90</sup> Additionally, in December 2022, the Centre co-organized a roundtable on "How Human Rights Activists Live", in cooperation with the Neon Collective Organization, where representatives of the Slovak NHRI presented the Centre's research on democratic space for environmental activists and activists and for women activists and journalists working in the field of sexual and reproductive rights.

Lastly, in September 2022, the Centre co-organized a meeting of experts on economic and social rights across Europe, including representatives from Council of Europe, FRA, ENNHRI and Equinet. The meeting focused on providing a space to discuss common challenges in the protection of economic and social rights in Europe.

### **NHRI's recommendations to national and regional authorities**

The Slovak National Centre for Human Rights recommends:

- To national state authorities to focus on complementing legislative measures aimed at increasing the support and safety of journalists and human rights defenders, as well as civil society organizations with the adoption of additional measures focusing on raising awareness and knowledge on the work of human rights defenders, as well as better monitoring cases of threats.
- To all public figures to refrain from aiming unjustified attacks and threats to civil society, human rights defenders and media.

- To the Ministry of Labour, Social Affairs and Family of the Slovak Republic and other national authorities administering grant schemes for civil societies to ensure that funding for civil society organizations available from grant schemes administered nationally are equally available to all civil society organizations irrespective of focus of their work.

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

#### Non-implementation of the ECtHR judgments

State authorities' effective follow-up and willingness to implement the judgments of European Courts concerning Slovakia remains low, including for instance, those addressing structural problems concerning human rights and the protection of fundamental freedoms.

In the period between 1 January 2022 and 10 February 2023, eighteen judgments were delivered by the European Court of Human Rights (ECtHR) concerning Slovakia<sup>91</sup>.

According to the Council of Europe Department for Execution of Judgments of the ECtHR, 605 total judgments had been delivered over the years and up until 10 February 2023 concerning Slovakia. Seventeen judgments identified a complex problem and two judgments a structural problem. Out of the 605 judgments, 200 were dealt with via a friendly settlement, 1 as friendly settlement with undertakings, 110 as leading and 290 as repetitive cases.

Currently, there are 546 cases closed and 59 still pending. Out of all the pending cases, 14 are new, 41 are under the standard procedure and 4 cases are under the enhanced procedure.<sup>92</sup> Out of the pending cases, 24 were identified as leading cases, 23 as repetitive cases, 8 are dealt with via friendly settlement.

### Judicial activity of the CJEU concerning Slovakia:

In 2022, three actions for the country's failure to fulfil its obligation were brought before the CJEU.<sup>93</sup> In addition, in 2022, the General Court issued three orders dismissing the actions seeking annulments of EC's decision.<sup>94</sup>

### Judgments of the Court of Justice:

In the period between 1 January 2022 and 10 February 2023, the Court of Justice issued 3 judgments where it found that Slovakia failed to fulfil its obligations under EU law.<sup>95</sup>

### Judgment of the General Court:

Throughout the reporting period, the General Court issued one judgment dismissing the action, seeking to annul the decision of the Fifth Board of Appeal of the EU Intellectual Property Office.<sup>96</sup>

### Decisions of the Court of Justice concerning requests for a preliminary ruling:

During the reporting period, the Court of Justice issued three rulings concerning requests for a preliminary ruling submitted by the national courts in Slovakia. In one of the cases, concerning the interpretation of Articles 4(3) TEU, 82 TFEU and 47 and 50 of the Charter of Fundamental Rights of the European Union, the Court of Justice found that it clearly had no jurisdiction to answer the question referred to it.<sup>97</sup> In another case, concerning the interpretation of provisions in Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC. By an order issued in June 2022, the Court of Justice removed the case from the register as the District Court of Prešov withdrew its reference.<sup>98</sup> In the third case, concerning the interpretation of Council Directive

93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, the Court of Justice found the reference for a preliminary ruling manifestly inadmissible.<sup>99</sup>

Requests for a preliminary ruling:

In addition, two requests for a preliminary ruling were lodged in 2022. One request was made by the District Court of Prešov concerning the interpretation of provisions of Regulation (EC) No. 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators, and the Convention for the Unification of Certain Rules for International Carriage by Air.<sup>1</sup> The second request was lodged by the District Court of Bratislava II concerning the interpretation of provisions of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public work contracts, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007. The subject issue of the main proceedings concerns compensation for damage caused in the exercise of public authority as a result of an unlawful decision to exclude a tenderer from a public procurement procedure, with the damage consisting in the loss of opportunity to earn profit by performing the contract.<sup>100</sup>

### **Leading European Courts' judgments awaiting implementation**

There were 24 cases identified as leading cases under ongoing supervision.<sup>101</sup>

Leading cases under ongoing supervision:

- *Case Chocholac v. Slovakia* (App. No. 81292/17)<sup>102</sup>

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<sup>1</sup> CJEU, Case C-283/22: Request for a preliminary ruling, 26 April 2022, Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62022CN0283&qid=1676554862869>.

- Case *Maslak v. Slovakia* (no. 2) (App. No. 38321/17)<sup>103</sup>
- Case *Adamco v. Slovakia* (No. 2) (App. No. 20877/19)<sup>104</sup>
- Case *Al Alo v. Slovakia* (App. No. 32084/19)<sup>105</sup>
- Case *Salmanov v. Slovakia* (App. No. 40132/16)<sup>106</sup>
- Case *Mucha v. Slovakia* (App. No. 63703/19)<sup>107</sup>
- Case *Ringier Axel Springer Slovakia, a.s. v. Slovakia* (no. 4) (App. No. 26826/16)<sup>108</sup>
- Case *Zoltán Varga v. Slovakia* (App. No. 58361/12)<sup>109</sup>
- Case *Hájovský v. Slovakia* (App. No. 7796/16)<sup>110</sup>
- Case *KOM, spoločnosť s ručením obmedzením v. Slovakia* (App. No. 56293/15)<sup>111</sup>
- Case *Kuc v. Slovakia* (App. No. 17101/19)<sup>112</sup>
- Case *Shiksaitov v. Slovakia* (App. No. 56751/16)<sup>113</sup>
- Case *Besina v. Slovakia* (App. No. 63770/17)<sup>114</sup>
- Case *R.R. and R.D. v. Slovakia* (App. No. 20649/18)<sup>115</sup>
- Case *A.P. v. Slovakia* (App. No. 10465/17)<sup>116</sup>
- Case *M.M.B. v. Slovakia* (App. No. 6318/17)<sup>117</sup>
- Case *Adamco v. Slovakia* (App. No. 45084/14)<sup>118</sup>
- Case *Mory and Benc v. Slovakia* (App. No. 3912/15)<sup>119</sup>
- Case *Visy v. Slovakia* (App. No. 70288/13)<sup>120</sup>
- Case *Balogh and Others v. Slovakia* (App. No. 35142/15)<sup>121</sup>
- Case *Javor and Javorova v. Slovakia* (App. No. 42360/10)<sup>122</sup>
- Case *Draft - ova a.s. v. Slovakia* (App. No. 72493/10)<sup>123</sup>
- Case *Harabin v. Slovakia* (App. No. 58688/11)<sup>124</sup>
- Case *Maxian and Maxianova v. Slovakia* (App. No. 44482/09)<sup>125</sup>

Out of these 24 pending cases identified as leading cases, 3 are under enhanced supervision of the Committee of Ministers of the Council of Europe.

The case of **R.R. and R.D. (20649/18)**<sup>126</sup> concerns the excessive use of force in a police operation carried out in June 2013 in a Roma neighbourhood. The case is also connected with ineffective investigation of these events and racist motive behind planning the operation (substantive and procedural violation of Article 3), lack of effective investigation into the alleged racist motives in the planning of the operation (violation of Article 14 in conjunction with Article 3). The Slovak authorities provided an updated action plan on 29 November 2022<sup>127</sup> and information on the individual measures on 31 January 2023<sup>128</sup> which are currently under assessment.



The case of **Maslák (no. 2) v. Slovakia**<sup>129</sup> concerns the applicant's unlawful placement in high security regime while serving part of his prison sentence. In this case, the ECtHR found that such placement under the high-security regime had not been in accordance with the law and Article 8(2), in the light of the failure of the domestic system to afford adequate legal protection against abuse. An action plan was submitted on 9 January 2023 which is under assessment.<sup>130</sup>

The case of **Zoltán Varga v. Slovakia**<sup>131</sup> concerns the implementation of a surveillance operation in 2005-2006 without adequate legal safeguards against abuse, due to the practically unfettered power exercised by the Slovak Intelligence Service. The ECtHR noted the lack of clarity of applicable jurisdictional rules on ensuring compliance by the Slovak Intelligence Service with relevant provision on destruction of primary material obtained in breach of law and found a violation of Article 8. An action plan was submitted on 12 May 2022<sup>132</sup> and the case was discussed at bilateral consultation with the authorities. The authorities submitted additional information 21 December 2022<sup>133</sup> which are under assessment.

According to the statistical overview of the implementation of judgments of ECtHR, Slovakia lags behind on the implementation of judgments of the ECtHR and this remains problematic. Full implementation requires structural and significant changes. Moreover, some cases, including those under enhanced supervision, are also part of political discourse and their implementation require political willingness and adoption of financial measures.

For instance, in the case of **R.R. and R.D v. Slovakia** concerning the excessive use of force during a police operation carried out in 2013 in a Roma neighbourhood, general measures to be taken concern the use of force during arrest and police detention, investigation of the disproportionate use of force and the lack of investigation into

racist motives and attitudes. The authorities provided an initial action plan in June 2021, an updated version published in November 2022 and a communication published in March 2022. Last examination was carried out by the Committee of Ministers in June 2022. According to the decision taken during the last meeting of the Committee of Ministers, some measures have yet to be taken. The measures include providing statistical or monitoring information on specific steps taken to combat ill-treatment during arrest or custody and racist motives in general.<sup>134</sup>

In the case of **Javor and Javorová v. Slovakia**, according to the ECtHR, compensation proceedings attached to criminal proceedings are supposed to enjoy the same protection against excessive length provided that the claim is raised against a specified defendant, as it is guaranteed in civil proceeding in general. The ECtHR criticized the practices of the Slovak Constitutional Court that refused to guarantee the same level of protection to compensation proceeding attached to criminal proceedings before charge was brought against a specific person. The action plan on the execution of this judgment was submitted to the CoE's Committee of Ministers by the authorities in October 2016. The latest information from the authorities concerning the Constitutional Court's case-law was submitted in May 2021. Comments of the Department for the Execution of Judgments were sent in February 2022. A revised action plan or report is currently awaited.<sup>135</sup>

In the case of **Maxian and Maxianova group v. Slovakia**, the leading case and its following repetitive cases, concerning the excessive length of proceedings, enforcement proceedings or administrative judicial proceedings that are examined by the civil courts, an updated action plan was submitted in 2017. The latest updated action report was submitted in July 2021. Subsequently, comments were sent to authorities by the Department of execution in July 2021. Currently, revised action plan or report is awaited.<sup>136</sup>

## NHRI's actions to support the implementation of European Courts' judgments

The Centre has been closely following the judgments of the European Courts involving Slovakia, namely the ECtHR concerning cases including victims belonging to vulnerable groups. In this regard, the Centre welcomes the continuous efforts of civil society organizations representing the applicants in the cases before the ECtHR, which specifically concern violations of rights of individuals belonging to vulnerable groups.

Moreover, the Centre considers prompt, full and effective implementation of judgments of the European and international courts as an important pillar of a well-functioning state of the rule of law. For this reason, it monitors the performance of Slovakia with regard to the implementation of judgments of the ECtHR through two additional objective indicators in the "rule of law conceptual framework"<sup>137</sup> and the "rule of law tracker"<sup>138</sup>. According to the NHRI, the judgments of the ECtHR have a great potential to enhance the protection of human rights and freedoms at the national level. The "rule of law conceptual framework" and the "rule of law tracker" monitor adherence to the rule of law by tracking the country's performance in six selected areas, including the protection of human rights and fundamental freedoms. For each area, additional objective indicators were carefully selected to measure the state of the rule of law. Evaluation of the data collected for each indicator is based on comparison with a determined benchmark developed for each indicator.

The implementation of the ECtHR judgments was included among the important indicators that show the level of protection of fundamental human rights and freedoms in Slovakia. The established benchmark is the implementation of all judgments of the ECtHR. In addition, the NHRI also included an additional indicator focusing on monitoring the amount of compensation that Slovakia must pay per 100,000 inhabitants in relation with the non-compliance with the European Convention on Human Rights (ECHR). The benchmark for the evaluation of this indicator is the Council of Europe

average per 100,000 inhabitants.<sup>139</sup> Both indicators show that Slovakia does not comply with the benchmarks and it requires significant improvement. Namely, the number of pending cases to be implemented by Slovakia exceeds the benchmark, and the amount of compensation that Slovakia had to pay per 100,000 inhabitants for a particular year in relation to non-compliance with the ECHR also exceeds Council of Europe Member States average.

In addition, the additional indicator monitoring the performance of Slovakia for the protection of human rights and fundamental freedoms is also the indicator concerning the ratio between the number of violations of the ECHR by Slovakia concerning the vulnerable groups and those concerning general population. The established benchmark for this indicator is the ratio between the victims of criminal offences belonging to vulnerable groups and the overall victims of criminal offences. According to the evaluation, the ratio exceeds the benchmark and the status requires moderate improvement.

### **NHRI's recommendations to national and regional authorities**

The Slovak National Centre for Human Rights recommends:

- To the Government of the Slovak Republic to promptly, fully and effectively implement the judgments of the European courts.
- To the Representative of the Slovak Republic before the European Court of Human Rights to enhance the efforts to effectively communicate and further distribute judgments and cases concerning the Slovak Republic before the European Court of Human Rights to the wider public.
- To the Representative of the Slovak Republic before the Court of Justice of the EU to enhance the national data collection on activities concerning the proceedings and cases concerning the Slovak Republic before the Court of

Justice of the EU, for example, through a preparation of an annual information on these activities.

## Artificial Intelligence

### Impact of AI on human rights, democracy and rule of law

The Centre has continued to monitor new legislative proposals, measures or practices related to the use of artificial intelligence or new technologies. The Centre did not identify any specific proposals that could negatively impact the rule of law, democracy and human rights in the country. On the contrary, the Centre would like to highlight a good practice of the Ministry of Investment, Regional Development and Informatics of the Slovak Republic in this regard. Through the Ministry's Special Working Groups, a large network of experts, including the Centre and members of the civil society, were involved in the discussions surrounding ongoing drafts of the regional conventions on artificial intelligence.

### NHRI's actions to address challenges regarding the use of artificial intelligence

The Centre was engaged in consultations on the regional conventions on AI as a Member of ENNHRI and Equinet's working groups on artificial intelligence. The Centre sent several recommendations for the technical submission on the zero draft of the text of the Council of Europe Convention on Artificial Intelligence, Human Rights, Democracy and Rule of Law for the ENNHRI submission for CAI meeting in September 2022. The Centre also participated during ENNHRI and Equinet working groups meetings throughout the year. Discussion topics revolved around AI and human rights, including finding cases of algorithmic discrimination.

In June 2022, the Centre also participated in the NHRI Academy, organised by ENNHRI and ODIHR in Tirana, Albania focusing on human rights and artificial intelligence.

Following the NHRI Academy, the Centre conducted an in-house capacity-building

exercise and discussion focusing on strategic planning with regards to future potential cases of algorithmic discrimination in October 2022. The Centre also discussed an overview of avenues where the Centre can underscore potential human rights challenges with regards to AI

The Centre also actively participated as a member of the Special Working Group on Artificial Intelligence and Special Working Group on Digital Governance from the Ministry of Investment, Regional Development and Informatics of the Slovak Republic. The member also participated in the international conference “Human and Artificial Intelligence” organized by an EPP Member of the European Parliament.<sup>140</sup>

### **NHRI’s recommendations to national and regional authorities**

The Slovak National Centre for Human Rights recommends:

- To law and policy makers at the European level to ensure a human-rights based approach to artificial intelligence in the upcoming draft regional conventions on artificial intelligence, including through transparent and participatory engagement with national human rights institutions and equality bodies and their representative networks.
- To the relevant state authorities to ensure that national human rights institutions and equality bodies have substantial capacity to engage on protection and promotion of human rights with regards to artificial intelligence and protection of potential victims of algorithmic discrimination through capacity-building, financial support and sharing of knowledge and good practices. Other challenges in the areas of rule of law and human rights.

### **Other challenges in the areas of rule of law and human rights**

Dismissal of the Government of the Slovak Republic and the impact on the national rule of law environment

This report is part of the ‘Strengthening National Human Rights Institutions’ project funded by Iceland, Liechtenstein and Norway through the EEA and Norway Grants Fund for Regional Cooperation.

On 15 December 2022, the Government received a vote of no confidence issued by the Parliament<sup>141</sup> in accordance with Article 114(1) of the Constitution of the Slovak Republic (henceforth the “Constitution”)<sup>142</sup> in conjunction with Article 88 of the Constitution<sup>143</sup>. Following the dismissal of the Government by the President on 16 December 2022<sup>144</sup><sup>145</sup>, the President entrusted the Government with the exercise of limited constitutional<sup>146</sup> powers<sup>147</sup> until a new Government is appointed.<sup>148</sup> Hence, currently, the Government may exercise its functions only to the extent explicitly and exhaustively defined by the Constitution, while some of these powers are subject to the President's consent.

#### Amendments to the Constitution regarding the electoral term of the Parliament

In January 2023, the Parliament adopted a constitutional act<sup>149</sup> introducing a new mechanism for the early termination of the electoral term of the Parliament. While previously there had been three occasions on which the electoral term of the Parliament was shortened by a constitutional act<sup>150</sup>, these have not been explicitly regulated by the Constitution. This was found to be in compliance with the Constitution by the Constitutional Court.<sup>151</sup>

The adopted constitutional act introduces, in Article 73(3) of the Constitution, only the possibility for the National Council itself (not by the decision of the President as is already stipulated in Article 102(1)(e) of the Constitution<sup>152</sup>), to shorten its own electoral term based on a resolution adopted by at least a three-fifths majority of all MPs.<sup>153</sup> Taking into consideration the current political discourse, this new mechanism was seen as a necessary step to unblock the system that has been previously absent.

The Parliament subsequently also enacted a resolution, shortening its electoral term until 30 September 2023, when the early elections to the Parliament will take place.<sup>154</sup>

#### Unsuccessful referendum and the previous finding of the Constitutional Court

On 21 January 2023, a referendum was held in Slovakia concerning the possibility of early termination of the electoral term of the Parliament based on a referendum or by a resolution of the Parliament.

The original petition submitted by the citizens in August 2022 included two questions, the first concerning the amendment of the Constitution introducing the possibility to shorten the electoral term of the Parliament by a referendum or a resolution of the Parliament, the second question concerning an explicit order for the Government to resign without delay. The Centre perceived the attempts to introduce an explicit order for the Government to resign based on a petition of citizens to negatively impact the system of checks and balances and welcomed that the President, before declaring a referendum, had turned towards the Constitutional Court.

According to the Constitutional Court, if a referendum was valid and the proposal therein adopted (with the order for the Government to immediately resign), this would interfere with the constitutional regulation of the relationship between the Government and the Parliament. Not in the form of the change of a general rule, but as a one-off breach of the constitutional rules in force and interfering with the constitutional arrangements in Article 1(1) of the Constitution.<sup>155</sup> The second question was not found to be unconstitutional, and the President declared a referendum on the matter.<sup>156</sup> However, the referendum was unsuccessful under Article 98 of the Constitution<sup>157</sup>, as only 1 193 198 eligible voters participated.<sup>158</sup>

### **NHRI's recommendations to national and regional authorities**

The Slovak National Centre for Human Rights recommends:

- To the National Council of the Slovak Republic to ensure the participatory process during law-making, namely concerning the proposals to amend the



Constitution, by including a wider pool of subject in the discussion on the proposal, such as the academic experts, CSOs or other relevant stakeholders.

- To the National Council of the Slovak Republic to refrain from amending the Constitution through introducing amending proposals during the second reading of a proposal for a constitutional act in the legislative process.
- To the Members of the National Council of the Slovak Republic to refrain from constant and continuous attempts to amend the Constitution without providing a sufficient justification for such a proposal or an amendment in the explanatory report

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<sup>1</sup> See Slovak NHRI's [Activity Plan](#).

<sup>2</sup> see [Slovak National Centre for Human Rights](#)

<sup>3</sup> see 'Projects' section at the [Slovak National Centre for Human Rights](#)

<sup>4</sup> see [Rule of law tracker – SNSLP](#)

<sup>5</sup> see 'Projects' section at the [Slovak National Centre for Human Rights](#)

<sup>6</sup> see 'Projects' section at the [Slovak National Centre for Human Rights](#)

<sup>7</sup> See the 'Participation Index' by the Office of the Plenipotentiary for the Development of the Civil Society. (Index participácie), December 2022 (In Slovak)

<sup>8</sup> Slovak National Centre for Human Rights, '[Na vývoji v oblasti právneho štátu nám záleží - diskusia so zástupcami Európskej komisie](#),' available in Slovak.

<sup>9</sup> see [Slovak National Centre for Human Rights](#), (Právny štát ako hodnota, ktorú treba chrániť), 29 April 2022 (in Slovak)

<sup>10</sup> see '[Meeting with director of the European Union Agency for Fundamental Rights](#),' at [Slovak National Centre for Human Rights](#), May 2022 (in English)

<sup>11</sup> see [Slovak National Centre for Human Rights](#) ('Návšteva Európskeho hospodárskeho a sociálneho výboru') July 2022, (in Slovak)

<sup>12</sup> see [European Economic and Social Committee, Fundamental Rights and the Rule of Law, 'Report on the visit to Slovakia'](#), 7-8 July 2022, (in English)

<sup>13</sup> see [Slovak National Centre for Human Rights](#), '[The rule of law tracker has been launched](#)'

<sup>14</sup> see [Slovak National Centre for Human Rights](#), '[Thematic reports and other statements](#)'.

<sup>15</sup> see [GRECO, Compliance Report, Fifth evaluation round](#), 19 January 2022 (In English)

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- <sup>16</sup> see [GRECO, Compliance Report, Fifth evaluation round](#). 19 January 2022 (In English)
- <sup>17</sup> see [National Crime Agency, Action Plan for the Fight Against Corruption 2019-2023 \(Order No. 2/2020 of the Chief of Police\)](#). 19 January 2022 (in English)
- <sup>18</sup> see Regulation of the Minister of Interior No. 56/2020 amending and supplementing the Regulation on the Anti-Corruption Programme
- <sup>19</sup> [OECD Integrity Review of the Slovak Republic](#)
- <sup>20</sup> [Anti-Corruption Programme of the Office of the Government of the Slovak Republic](#) update as of 30 June 2022, July 2022 available in Slovak.
- <sup>21</sup> [European Commission, 2022 Rule of Law Report, Country Chapter on the rule of law situation in Slovakia, p. 3](#)
- <sup>22</sup> Whistleblower Protection Office, 'Správa o stave právneho štátu: Hlavnou prekážkou pri odhaľovaní korupciu na Slovensku je to, že ju neoznamujeme', July 2022, available in Slovak.
- <sup>23</sup> [Judicial Council of the Slovak Republic publication on the EC recommendations](#)
- <sup>24</sup> [Ministry of Justice of the Slovak Republic, 'Správa EK o stave právneho štátu: pre efektívnejšie vyšetrovanie korupčných káuz odporúča obmedziť právomoci generálneho prokurátora'](#), Press release, 13 July 2022, available in Slovak.
- <sup>25</sup> [National Council of the Slovak Republic, European Commission, 'Európska komisia dáva za pravdu hnutiu OĽANO'](#), Press conference, 19 July 2022, available in Slovak.
- <sup>26</sup> v AmCham Slovakia, Rule of Law Initiative, 'Iniciatívna za právny štát víta odporúčania Európskej komisie v správe o právnom štáte', Press release, 21 July 2022, available in Slovak at:
- <sup>27</sup> Slovak Bar Association, 'SAK k Správe o stave právneho štátu', 7 September 2022.
- <sup>28</sup> Slovak Bar Association, 'SAK k Správe o stave právneho štátu', 7 September 2022.
- <sup>29</sup> European Commission, 2022 Rule of Law Report, [Country Chapter on the rule of law situation in Slovakia](#), SWD(2022)525 final, 13 July 2022, p. 3-4.
- <sup>30</sup> Information received from the answer of the Office of the Special Prosecutor of the Slovak Republic to the Information Request sent by the Centre in January 2023.
- <sup>31</sup> Legislative Proceeding, [Preliminary Information on Lobbying Bill](#).
- <sup>32</sup> [Proposal](#) by the member of the National Council of the Slovak Republic Tomáš Valášek to issue an act amending and supplementing Act No. 301/2005 Coll. the Criminal Procedure Code, as amended, Press no. 1125, August 2022, available in Slovak;
- [Proposal](#) by the members of the National Council of the Slovak Republic Lukáš Kyselica and Milan Vetrák to issue an act amending and supplementing Act No. 301/2005 Coll. the Criminal Procedure Code, as amended, Press no. 1093, August 2022; [Proposal](#) by the group of members of the National Council of the Slovak Republic to issue an act amending and supplementing Act No. 301/2005 Coll. the Criminal Procedure Code, as amended, August 2022.
- <sup>33</sup> Via Iuris, [Signature campaign for the amendment of Section 363](#), [Stop Corruption Foundation](#)

<sup>34</sup> Information received from the Ministry of Culture of the Slovak Republic based on the request for information submitted by the Centre in January 2023.

<sup>35</sup> The Ministry of Culture of the Slovak Republic has further informed that measures to provide independence are also being taken regarding public service broadcaster. By adopting a new Act on media services, the process of election of general director of Radio and Television of Slovakia was transformed so the election is taken publicly. Additional, new proposal of act is introduced to completely transform process of election of general director, expand number of authorities of Public Television in order to guarantee compliance with ethical principles.

<sup>36</sup> For a more detailed overview of the follow-up on individual recommendations of the Centre, please see the table in Annex 1 – Recommendations of the Slovak National Centre for Human Rights.

<sup>37</sup> Information Request sent to the Office of Deputy Prime Minister by the Centre in January 2023

<sup>38</sup> Information received from the answer of the Office of the Special Prosecutor of the Slovak Republic to the Information Request sent by the Centre in January 2023

<sup>39</sup> Information received from the answer of the Ministry of Culture of the Slovak Republic to the Information Request sent by the Centre in January 2023

<sup>40</sup> See [Rule of Law Tracker](#)

<sup>41</sup> [SCA Report March 2014](#)

<sup>42</sup> Council of the Government of the Slovak Republic for Human Rights, Minorities and Gender Equality, 'Nationwide Strategy for Human Rights Protection and Promotion', available in Slovak at: Governmental Committee for Human Rights, National Minorities and gender equality.

<sup>43</sup> [Act amending and supplementing the Act No. 245/2008 Coll. on Education and Upbringing \(the School Act\) and amending and supplementing certain acts](#) as amended, LP/2022/502.

<sup>44</sup> [Proposal](#) for Establishment of the Council of the Government of the Slovak Republic for Inclusion of Marginalised Roma Communities, LP/2022/719.

<sup>45</sup> See for example, Slovak National Centre for Human Rights, '[Exchange of preliminary findings with the Council of Europe Commissioner for Human Rights](#)', 21 March 2022; Slovak National Centre for Human Rights, '[Stojíme po boku LGBTI+organizácií](#)', 17 May 2022, available in Slovak.

<sup>46</sup> Slovak National Centre for Human Rights, '[Kam až zájdu návrhy na obmedzenie prístupu k interrupciám](#)', blogpost, May 2022, available in Slovak.

Slovak National Centre for Human Rights, '[Nech smrť Agnieszky nie je "len" ďalšou správou z Poľska](#)', blogpost, January 2022, available in Slovak.

<sup>47</sup> Slovak National Centre for Human Rights, [Report on the observance of human rights including the principle of equal treatment in the Slovak Republic for the Year 2021, 2022](#).

<sup>48</sup> See e.g.: ENNHRI, [State of the rule of law in the European Union 2022](#), Slovakia, p. 461-462.

<sup>49</sup> Slovak National Centre for Human Rights, '[Stojíme po boku LGBTI+ organizácií](#)', May 2022, available in Slovak.

<sup>50</sup> See e.g.: Slovak National Centre for Human Rights, '[Stojíme pri LGBTI+ komunitě](#)', October 2022, available in Slovak.

- <sup>51</sup> See e.g.: Slovak National Centre for Human Rights, '[Aké sú hlavné výzvy v oblasti práv LGBTI+ ľudí?](#)', February 2023, available in Slovak; or Slovak National Centre for Human Rights, '[Prispeli sme k odbornej diskusii na tému postavenia transrodových osôb na Slovensku?](#)', January 2023, available in Slovak.
- <sup>52</sup> See for example, Slovak National Centre for Human Rights, '[Exchange of preliminary findings with the Council of Europe Commissioner for Human Rights](#)', 21 March 2022. Slovak National Centre for Human Rights, '[Stojíme po boku LGBTI+organizácií](#)', 17 May 2022, available in Slovak.
- <sup>53</sup> See for example, Slovak National Centre for Human Rights, '[Exchange of preliminary findings with the Council of Europe Commissioner for Human Rights](#)', 21 March 2022.; Slovak National Centre for Human Rights, '[Meeting with director of the European Union Agency for Fundamental Rights](#)', 27 April 2022. Slovak National Centre for Human Rights, '[Meeting with Special Representative of the Secretary General Leyla Kayaci](#)'. See also, European Union Fundamental Rights Agency, '[The war in Ukraine – Fundamental rights implications within the EU](#)', Bulletin 1, May 2022, p. 19.
- <sup>54</sup> Slovak National Centre for Human Rights, '[Information about providing legal assistance to persons fleeing from Ukraine](#)', 1 April 2022.
- <sup>55</sup> see [Slovak National Centre for Human Rights: 'Solidarity with Ukraine'](#), (Solidarita s Ukrajinou) 25 February 2022, (in Slovak)
- <sup>56</sup> see [Annual report on the application of the Charter for 2022, Input from Slovakia](#), December 2022, (in English)
- <sup>57</sup> [Annual report on the application of the Charter for 2022, Input from Slovakia](#)
- <sup>58</sup> see [Fundamental Rights and the Rule Of Law, Report on the visit to Slovakia](#), July 2022, (in English)
- <sup>59</sup> see [2021 Civil Society Organization Sustainability Index, Slovakia](#), October 2022 (in English)
- <sup>60</sup> see '[Act on subsidies](#)', Ministry of Labour, Social Affairs and Family of the Slovak Republic, (Vládny návrh zákona, ktorým sa mení a dopĺňa zákon č. 544/2010 Z. z. o dotáciách v pôsobnosti Ministerstva práce, sociálnych vecí a rodiny Slovenskej republiky v znení neskorších predpisov) December 2020, (in Slovak)
- <sup>61</sup> see [Ministry of Labour, Social Affairs and Family of the Slovak Republic](#), (Dotácia na podporu rovnosti žien a mužov a rovnosti príležitostí), (in Slovak)
- <sup>62</sup> see [Ministry of Labour, Social Affairs and Family of the Slovak Republic](#), (Dotácia na podporu rovnosti žien a mužov a rovnosti príležitostí), (in Slovak)
- <sup>63</sup> see [ILGA-Europe, 'Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People in Slovakia.'](#) 2021, (in English)
- <sup>64</sup> see [Call for support LGBTI+ people in Slovakia](#), ('Ide nám o život'), 2022, (in Slovak)
- <sup>65</sup> see [Slovak National Centre for Human Rights, 'Report on the Observance of Human Rights including the Principle of Equal Treatment in the Slovak Republic for the Year 2021'](#), pp. 87-96, 2021, (in English)
- <sup>66</sup> see [Council of Europe Commissioner for Human Rights, 'Letter to the Slovak National Council by Dunja Mijatovic.'](#) October 2021, (in English)

<sup>67</sup> see [Act 350/1996 Coll., the Act of the National Council of the Slovak Republic on the Rules of Procedure of the National Council of the Slovak Republic](#), (Právne predpisy, Zbierka zákonov Slovenskej republiky, Chronologický register, Ročník 1996-350-1996 Z.z. 01.01.2023) 1996 (in Slovak)

<sup>68</sup> see [Abbreviated legislative procedure in practice, Legal News](#) (Skrátené legislatívne konanie v praxi, Právne Noviny) June 2022, (in Slovak)

<sup>69</sup> see [Decision of the Constitutional Court PL. ÚS 13/2022](#) (Rozhodnutie Ústavného súdu PL. ÚS 13/2022), 2022, (in Slovak)

<sup>70</sup> see [Proposal of MP Martin Čepček of an Act amending and supplementing the Act No. 73/1986 Zb. on Abortions as amended and amending and supplementing certain acts](#) (Parlamentná tlač 990), (in Slovak) also see [Proposal of MPs Anna Andrejiová and Eva Hudcová of an Act amending and supplementing the Act No. 131/2010 Coll. on Funeral Services as amended and amending and supplementing certain acts](#) (August 2022), In Slovak

also see [Proposal of group of MPs of an Act on Pregnant Women Assistance Act](#), September 2022 (In Slovak)

<sup>71</sup> see [Proposal of MP Kristián Čekovský of an Act amending and supplementing the Act No. 532/2010 Coll. on Radio and Television of the Slovak Republic](#) January 2023, (In Slovak)

<sup>72</sup> see [National Council of the Slovak Republic, Act of 20 December 2022 amending Act No. 24/2006 Coll. on environmental impact assessment and on amending and supplementing certain Acts as amended, Press no. 1346](#) December 2022, (In Slovak)

<sup>73</sup> see [President of the Slovak Republic, 'Decision of the President of the Slovak Republic on return of the Act of 20 December 2022 amending Act No. 24/2006 Coll. on environmental impact assessment and on amending and supplementing certain Acts as amended, 30 December 2022'](#), December 2022, (in Slovak)

<sup>74</sup> see [Via Iuris 'Shameful EIA amendment against the public'](#), (Hanebná novela EIA proti verejnosti) 12 September 2022, (in Slovak)

<sup>75</sup> see [Mapping Media Freedom, 'Slovakia: Slovak Minister Igor Matovič launches tirade against Denník N editor online'](#), 19 September 2022, (in English)

<sup>76</sup> see [Mapping Media Freedom: Slovakia: Deputy Slovak PM likens modern journalists to servants of Hitler](#), October 2022 (in English)

<sup>77</sup> See for example, International Press Institute, ['Slovakia: Deputy PM's attack undermined government's broader efforts to strengthen press freedom'](#), 6 October 2022.

<sup>78</sup> See [Slovak Press Agency statement](#), ('Nebudeme mlčať. Šéfredaktori odmietli Matovičove útoky, neboli ticho ani keď na ich útočili Fico a Mečiar,') 30 September 2022, (in Slovak)

<sup>79</sup> see [Mapping Media Freedom: Slovakia: Slovak Finance Minister pledges to personally weed out journalists he views as corrupt](#), October 2022, (in Slovak)

<sup>80</sup> See for example, International Press Institute, ['Slovakia: Deputy PM's attack undermined government's broader efforts to strengthen press freedom'](#), 6 October 2022.

<sup>81</sup> see [Draft on the Constitutional law on media freedom](#) (Návrh ústavného zákona o slobode médií) 2022, (in Slovak)

Despite the fact that the preliminary information commenting stage was completed on 25 August 2021,

the legislative process did not reach the stage of submitting the actual draft law during 2022. The Ministry further informed us that it is not possible to determine the expected date of submission of this act to the interparliamentary procedure due to the current political situation.

<sup>82</sup> see [Preliminary information](#) (Predbežná informácia), (in Slovak)

<sup>83</sup> PONTIS Foundation: [The sustainability of CSOs in Slovakia is stable, according to the Civil Society Sustainability Index](#)

<sup>84</sup> see [Transparency of NGOs is becoming a reality](#) (Transparentnosť mimovládnych neziskových organizácií sa stáva realitou), January 2023, (in Slovak)

<sup>85</sup> see [Ministry of Justice: Amendment to the Info Act: another step towards increasing the transparency of public administration.](#) (Novela infozákona: ďalší krok k zvyšovaniu transparentnosti verejnej správy), September 2022, (in Slovak)

<sup>86</sup> [LP/2022/523 Act amending Act No. 211/2000 Coll. on free access to information and on amending and supplementing certain acts \(Freedom of Information Act\), as amended.](#)

<sup>87</sup> Slovak National Centre for Human Rights, [‘Report on the Observance of Human Rights, Including the Principle of Equal treatment in the Slovak Republic for the Year 2021’](#), April 2022.

<sup>88</sup> Slovak National Centre for Human Rights, [‘Open letter to support LGBTI civil society organizations’](#) (Otvorený list na podporu LGBTI organizácií občianskej spoločnosti), 17 May 2022 (in Slovak)

<sup>89</sup> see [Slovak National Centre for Human Rights, ‘Ongoing projects’](#), 2022, (in English and Slovak)

<sup>90</sup> see [Slovak National Centre for Human Rights, ‘The Centre trained civil society organizations on reporting on the European Social Charter.’](#) (in English)

<sup>91</sup> For more information about the judgments, please see Annex 2.

<sup>92</sup> see [ECtHR, Maslak v. Slovakia \(no. 2\), App. No. 3821/17, Judgment](#), 31 March 2022

[ECtHR, Zoltán Varga v. Slovakia, App. No. 58361/12, Judgment](#), 20 July 2021

[ECtHR, M.B. and Others v. Slovakia, App. No. 45233/17, Judgment](#), 1 April 2021

[ECtHR, R.R. and R.D. v. Slovakia, App. No. 20649/19, Judgment](#), 1 September 2020

<sup>93</sup> see [CJEU, Case T-58/22, Action brought on 31 January 2022 – Labaš v. EUIPO \(FRESH\)](#), 2022, (in English)

<sup>94</sup> see [CJEU, Case T-304/2, Order of the General Court](#), 15 February 2022, (in English)

<sup>95</sup> see [Court of Justice, Case C-342/21, Judgment of the Court of Justice](#), 9 February 2023, (in Slovak)

[Court of Justice, Case C-683/20, Judgment of the Court of Justice](#), 13 January 2022, (in Slovak)

[Court of Justice, Case C-661/20, Judgment of the Court of Justice](#), 22 June 2022, (in Slovak).

<sup>96</sup> see [CJEU, Case T-686/21: Judgment of the General Court](#), 14 September 2022, (in English)

<sup>97</sup> see [Court of Justice, Case C-710/20, Order of the Court of Justice](#), 8 July 2022, (in Slovak)

<sup>98</sup> CJEU, [Case C-12/22: Order of the President of the Court](#), 30 June 2022.

<sup>99</sup> see [CJEU, Case C-638/21, Order of the Court \(Tenth Chamber\)](#), 28 April 2022

<sup>100</sup> see [CJEU, Case C-547/22: Request for a preliminary](#), 17 August 2022



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- <sup>101</sup> Table of cases and groups of cases under enhanced supervision, [CoE, Committee of Ministers](#) and Slovak Republic, [Main Issues before the Committee of Ministers](#).
- <sup>102</sup> see [ECtHR, CHOCHOLAC v. Slovakia, App. No. 81292/17, Judgment](#), 7 July 2022, (in English)
- <sup>103</sup> see [ECtHR, MASLAK v. Slovakia \(no. 2\), App. No. 38321/17, Judgment](#), 31 March 2022 (in English)
- <sup>104</sup> see [ECtHR, ADAMCO v. Slovakia \(No. 2\), App. No. 20877/19, Judgment](#), 2 July 2022, (in English)
- <sup>105</sup> see [ECtHR, AL ALO v. Slovakia, App. No. 32084/19, Judgment](#), 10 February 2022 (in English)
- <sup>106</sup> see [ECtHR, SALMANOV v. Slovakia, App. No. 40132/16, Judgment](#), 20 January 2022, (in English)
- <sup>107</sup> see [ECtHR, MUCHA v. Slovakia, App. No. 63703/19, Judgment](#), 25 November 2022 (in English)
- <sup>108</sup> see [ECtHR, RINGIER AXEL SPRINGER SLOVAKIA, A.S. v. Slovakia, App. No. 26826/16, Judgment](#), 23 September 2021, (in English)
- <sup>109</sup> see [ECtHR, ZOLTÁN VARGA v. Slovakia, App. No. 58361/12, Judgment](#), 20 July 2021, in English
- <sup>110</sup> see [ECtHR, HÁJOVSKÝ v. Slovakia, App. No. 7796/16, Judgment](#), 01 July 2021, (in English)
- <sup>111</sup> see [ECtHR, KOM, SPOLOČNOSŤ S RUČENÍM OBMEDZENÝM v. Slovakia, App. No. 56293/15, Judgment](#), 2 September 2021, (in English)
- <sup>112</sup> see [ECtHR, KUC v. Slovakia, App. No. 17101/19, Judgment](#), 2 September 2021, (in English)
- <sup>113</sup> see [ECtHR, SHIKSAITOV v. Slovakia, App. No. 56751/16, Judgment](#), 10 December 2020, (in English)
- <sup>114</sup> see [ECtHR, BESIBNA v. Slovakia, App. No. 63770/17, Judgment](#), 15 April 2021, (in English)
- <sup>115</sup> see [ECtHR, R.R. and R.D. v. Slovakia, App. No. 20649/18, Judgment](#), 1 September 2020, (in English)
- <sup>116</sup> see [ECtHR, A.P. v. Slovakia, App. No. 10465/17, Judgment](#), 28 January 2021, (in English)
- <sup>117</sup> see [ECtHR, M.M.B. v. Slovakia, App. No. 6318/17, Judgment](#), 26 November 2021, (in English)
- <sup>118</sup> see [ECtHR, ADAMCO v. Slovakia, App. No. 45084/14, Judgment](#), 12 November 2019, (in English)
- <sup>119</sup> see [ECtHR, MORY AND BENC v. Slovakia, App. No. 3912/15, Judgment](#), 20 January 2019, (in English)
- <sup>120</sup> see [ECtHR, VISY v. Slovakia, App. No. 70288/13, Judgment](#), 16 October 2018, (in English)
- <sup>121</sup> see [ECtHR, BALOGH AND OTHERS v. Slovakia, App. No. 35142/15, Judgment](#), 31 August 2018 (in English)
- <sup>122</sup> see [ECtHR, JAVOR AND JAVOROVA v. Slovakia, App. No. 42360/10, Judgment](#), 15 September 2015, (in English)
- <sup>123</sup> see [ECtHR, DRAFT-OVA v. Slovakia, App. No. 72493/10, Judgment](#), 9 June 2015, (in English)
- <sup>124</sup> see [ECtHR, HARABIN v. Slovakia, App. No. 58688/11, Judgment](#), 20 November 2012, (in English)
- <sup>125</sup> see [ECtHR, MAXIAN AND MAXIANOVA v. Slovakia, App. No. 44482/09, Judgment](#), 27 July 2012, (in English)
- <sup>126</sup> see [ECtHR, R.R. and R.D. v. Slovakia, App. No. 20649/18, Judgment](#), 1 September 2020, (in English).
- <sup>127</sup> see [Communication from the Slovak Republic concerning the group of cases R.R. and R.D. v. Slovakia \(Application No. 20649/18\)](#), 29 November 2022, (in English and French)

<sup>128</sup> see [Communication from the authorities \(30/01/2023\) concerning the case of R.R. and R.D. v. Slovakia \(Application No. 20649/18\)](#), 31 January 2023, (in English and French).

<sup>129</sup> see [ECtHR, Maslák \(no. 2\) v. Slovakia, App. No. 38321/17, Judgment](#), 31 March 2022, in English

<sup>130</sup> see [Communication from Slovakia concerning the case of Zoltán Varga v. Slovakia \(Application No. 58361/12\)](#), 12 May 2022, (in English and French)

<sup>131</sup> see [ECtHR, Zoltán Varga v. Slovakia, App. No. 58361/12, Judgment](#), 20 July 2021, (in English and French)

<sup>132</sup> see [Communication from Slovakia concerning the case of Zoltán Varga v. Slovakia \(Application No. 58361/12\)](#), 12 May 2022, (in English)

<sup>133</sup> see [Communication from the authorities \(22/12/2022\) concerning the case of Zoltán Varga v. Slovakia \(Application No. 58361/12\)](#), 22 December 2022, (in English)

<sup>134</sup> see [R.R. AND R.D. v. Slovakia](#), (in English)

<sup>135</sup> see [JAVOR AND JAVOROVA v. Slovakia](#) in English

<sup>136</sup> see [MAXIAN AND MAXIANOVA v. Slovakia](#), (in English)

<sup>137</sup> Pim Albers, Lilla Ozoráková, '[Rule of law conceptual framework](#),' December 2022, Slovak National Centre for Human Rights.

<sup>138</sup> Slovak National Centre for Human Rights, '[Rule of law tracker](#)', available at:

<sup>139</sup> See the relevant rule of law tracker information [here](#).

<sup>140</sup> '[Human and Artificial Intelligence](#)' (Človek a umelá inteligencia), event on 11 November 2022 (in Slovak)

<sup>141</sup> National Council of the Slovak Republic, '[Proposal of a group of Members of the National Council of the Slovak Republic for a vote of no confidence in the Government of the Slovak Republic \(Parliamentary print no. 1334\). Vote on the motion for a vote of no confidence in the Government](#)', 15 December 2022, available in Slovak; National Council of the Slovak Republic, '[Proposal of a group of Members of the National Council of the Slovak Republic for a vote of no confidence in the Government of the Slovak Republic](#)', available in Slovak.

<sup>142</sup> According to Article 114(1) of the Constitution of the Slovak Republic: "The Government shall be responsible for the exercise of governmental powers to the National Council of the Slovak Republic. The National Council of the Slovak Republic may take a vote of no confidence at any time."

<sup>143</sup> According to Article 88(1)-(2) of the Constitution of the Slovak Republic: "(1) A proposal for a vote of no confidence in the Government of the Slovak Republic or in a member thereof shall be discussed by the National Council of the Slovak Republic, provided one fifth of its Members of Parliament so requires. (2) For vote of no confidence in the Government of the Slovak Republic or in a member thereof an absolute majority of all Members of Parliament shall be required."

<sup>144</sup> see 'Decision of the President of the Slovak Republic no. 231-2022-OP of 16 December 2022'. '[The President dismissed the Government of Eduard Heger](#)' ("Prezidentka odvolala vládu Eduarda Hegera"), Press release, 16 December 2022, (in Slovak)

<sup>145</sup> According to Article 115(1) of the Constitution of the Slovak Republic: "In the event that the National Council has passed a vote of no confidence or overrules its motion for a vote of confidence, the President shall dismiss the Government."



<sup>146</sup> Constitutional powers (as prescribed in Article 119 of the Constitution of the Slovak Republic shall be distinguished from the powers which the Government of the Slovak Republic derives from the regular norms with the force of law.

<sup>147</sup> For example, the Government of the Slovak Republic may decide on draft acts; on Government regulations; on the draft State budget and State financial account or on international treaties of the Slovak Republic the negotiation of which has been delegated to the Government of the Slovak Republic by the President of the Slovak Republic.

<sup>148</sup> According to Article 115(3) of the Constitution of the Slovak Republic, the President of the Slovak Republic entrusts the Government with the exercise of its powers until the appointment of a new Government only within the extent provided for in Article 119(a),(b),(e),(f),(m),(n),(o),(p) and (r). In case of the exercise of the powers in accordance with Article 119(m) which concerns the appointment and dismissal of other state functionaries in cases provided for by law and three members of the Judicial Council of the Slovak Republic and (r) which concerns other matters as may be provided by law, in each case, the prior consent of the President of the Slovak Republic is required.

For instance, according to Article 119(r) of the Constitution of the Slovak Republic, the Government may decide on the use of accelerated legislative procedure in accordance with Section 89(1) of Act No. 350/1996 Coll. on the Rules of Procedure of the National Council of the Slovak Republic, as amended.

<sup>149</sup> see [Constitutional act no. 24/2023 Coll. supplementing and amending the Constitution of the Slovak Republic no. 460/1992 Coll. as amended](#), (Časová verzia predpisu účinná od 26.01.2023), January 2023, (in Slovak)

<sup>150</sup> see [Constitutional act of the National Council of the Slovak Republic no. 70/1994 Coll. on the shortening of the term of office of the National Council of the Slovak Republic](#), 17 March 1994, (in Slovak) [Constitutional Act no. 82/2006 Coll. on the shortening of the term of office of the National Council of the Slovak Republic](#), 9 February 2006, (in Slovak) [Constitutional Act no. 330/2011 Coll. on the shortening of the term of office of the National Council of the Slovak Republic](#), 13 October 2011, (in Slovak)

<sup>151</sup> see [Finding of the Constitutional Court of the Slovak Republic of 7 July 2021, Case No. PL. ÚS 7/2021-150](#), July 2021, (in Slovak)

<sup>152</sup> Article 102(1)(e) includes four types of so-called anti-blocation mechanisms (predominantly related to inaction of the National Council) based on which the President may dissolve the National Council of the Slovak Republic.

<sup>153</sup> Article 84(4) of the Constitution of the Slovak Republic.

<sup>154</sup> see [Resolution no. 1958 of the National Council of the Slovak Republic on the shortening of the electoral term of the National Council of the Slovak Republic, Press no. 1429](#), 31 January 2023, (in Slovak)

<sup>155</sup> see [Finding of the Constitutional Court of the Slovak Republic of 26 October, case no. PL. ÚS 11/2022, paras. 87-88.](#) November 2022, (in Slovak)

<sup>156</sup> see [Decision no. 363/2022 Coll. of the President of the Slovak Republic on declaring a referendum](#), 4 November 2022, (in Slovak).

[President of the Slovak Republic, 'The President will declare the referendum to be held on 21 January 2023' \("Prezidentka vyhlási referendum na 21. Janurára 2023"\)](#), Press release, 3 November 2022, (in Slovak)

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<sup>157</sup> According to Article 98(1) of the Constitution of the Slovak Republic, *“The results of a referendum shall be valid provided an absolute majority of eligible voters have participated and the issue has been decided by an absolute majority of votes.”*

<sup>158</sup> “Referendum 2023: The results of the referendum were summarized by the Statistical Office of the Slovak Republic fully electronically in 3 hours,” (Referendum 2023: Výsledky referenda zosumarizoval Štatistický úrad SR plne elektronicky v priebehu 3 hodín”, 22 January 2023, available in Slovak [here](#).

## Annex 1 – Recommendations of the Slovak National Centre for Human Rights

Recommendations	Were they implemented?	Comments:
<b>Recommendations of the Slovak National Centre for Human Rights from ENNHRI report</b>		
<b>Impact of 2021 rule of law reporting</b>		
To European policy makers to actively engage with state authorities to support the independent monitoring of the state of rule of law as carried out by the Centre.	Yes	Visit of the EU commissioner for justice <sup>2</sup> Visit of the European Economic and Social Committee <sup>3</sup>
To state authorities, including the Office of the Government of the Slovak Republic, to increase transparency and the participatory process in the creation of proposals of measures for improvement in the rule of law area, including in the context of the work of specific working groups established to work on selected areas related to the rule of law, and ensure engagement with	No	

<sup>2</sup> The rule of law as a value to be protected <https://www.snsip.sk/aktuality/pravny-stat-ako-hodnota-ktoru-treba-chranit/> During visit of the EU commissioner for justice we attended discussion organized by EC representation in Slovakia. We discussed contemporary challenges regarding rule of law and key pillar of rule of law – functioning of justice system, corruption, media freedom as well as checks and balances

<sup>3</sup> Visit of the European Economic and Social Committee – <https://www.snsip.sk/aktuality/navsteva-europskeho-hospodarskeho-a-socialneho-vyboru/> we met with representatives of ad hoc group Fundamental rights and the rule of law European Economic and Social Committee to report our activities regarding fundamental rights protection as well as rule of law.

the relevant stakeholders, including the representatives of the NHRI and relevant civil society organizations.		
To state authorities, with respect to awareness raising activities concerning the European Rule of Law Mechanism, to also inform fully about the role of other institutions, including the NHRI and civil society organizations.	No	
<b>Independence and effectiveness of the NHRI</b>		
To the Government of the Slovak Republic to establish the Centre as an obligatory commenting entity to legislative proposals through amendment of relevant legislation	No	
To the Ministry of Justice of the Slovak Republic to enhance the efforts to increase full compliance of the Centre with the Paris Principles and to include the Centre in 10 discussions on the possible legislative amendments of the legal and institutional framework of the Centre, including Act of the Slovak National Council No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights	No	Ministry of Justice issued fourth Report on the implementation of the National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic, where it was stated that it is planned to cooperate more in the future with SNCHR. <sup>4</sup>

<sup>4</sup> Report on the implementation of the National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic, <https://rokovania.gov.sk/download.dat?id=230599663270423DA2903E84C5053BA2-58C40EFF8F3F878F061021612B664BE1>

<p>To the Ministry of Justice of the Slovak Republic to enhance the independence and effectiveness of the Centre by placing more emphasis on the general obligation of relevant entities to cooperate with the Centre in all areas of its mandate, including an explicit mandate of the Centre to request response from the relevant state entities to the Centre’s opinions and recommendations</p>	<p>No</p>	<p>The Centre does not have an explicit mandate to request response from the relevant state entities to its opinions and recommendations</p>
<p><b>Human rights defenders and civil society space</b></p>		
<p>To focus on complementing legislative measures aimed at increasing the support and safety of journalists and human rights defenders, as well as civil society organizations with the adoption of additional measures focusing on raising awareness and knowledge on the work of human rights defenders, as well as better monitoring cases of threats</p>	<p>No</p>	<p>In 2021, the Ministry of Culture of the Slovak Republic issued preliminary information on the beginning of legislative work on the constitutional act on media freedom. Act has not been proposed yet.<sup>5</sup> Concerning CSO there is no special system for reporting and monitoring threats or attacks on CSOs activists and rights defenders.<sup>6</sup></p>

<sup>5</sup> PI/2021/186 Draft Constitutional Law on Freedom of the Media <https://www.slov-lex.sk/legislativne-procesy/SK/PI/2021/186> Reported in the section concerning EC Recommendations – Ministry of Culture cannot predict the date of proposing the constitutional act due to the current political situation

<sup>6</sup> 2022 Charter Report - input from Member States – Slovakia, p. 3 [https://commission.europa.eu/system/files/2022-12/2022\\_charter\\_report\\_-\\_input\\_from\\_member\\_states\\_-\\_slovakia.pdf](https://commission.europa.eu/system/files/2022-12/2022_charter_report_-_input_from_member_states_-_slovakia.pdf) According to the report threats and attacks can be reported to the Slovak Police Force or to any prosecutor's office. The Slovak Republic has no experience with cases where separate and specific protection for CSOs or human rights defenders. Support to the victims is provided pursuant to the Act on Victim’s Rights.

To Ministry of Labour, Social Affairs and Family of the Slovak Republic and other national authorities administering grant schemes for civil societies to ensure that funding for civil society organizations available from grant schemes administered nationally are equally available to all civil society organizations irrespective whether they work on sensitive issues	No	There have been no legislative amendments conducted in order to change funding scheme addressing the recommendation in the last year. <sup>7</sup>
To the Government of the Slovak Republic to implement the relevant international and regional human rights standards on the protection of human rights defenders	No	
<b>Checks and balances</b>		
To the Ministry of Justice of the Slovak Republic and other relevant authorities to conduct preventive analysis of the proposals to amend the Constitution of the Slovak	No	No such amendment of the Constitution were proposed in 2022 <sup>8</sup>

<sup>7</sup> Act No. 544/20210 Coll. on subsidies under the competence of the Ministry of Labour, Social Affairs and Family of the Slovak Republic <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2010/544/>

<sup>8</sup> However, Constitutional finding of December 2022 on the annulment of the financial support to families proposed by the MF and adopted by the Parliament in accelerated legislative procedure. In the case the contested legislation was discussed in an abbreviated legislative procedure resulted in bypassing the relevant actors (Budgetary Responsibility Council, local government) in commenting on the legislation in question. With regard to the abbreviated legislative procedure, the Constitutional Court noted that the use of an abbreviated or expedited discussion of a proposal on systemic changes in order to avoid the otherwise necessary meaningful debate has been criticised by the Venice Commission, which considers it to be an interference with the rule of law regarding the principles of transparency, inclusiveness, democratic legitimacy and accountability (referring to Venice Commission Opinions No 845/2016, No 891/2017, No 1050/2021, No 930/2018). Decision of the Constitutional Court on the pro-family package (PL. ÚS 13/2022) from 13 December 2022: [https://www.ustavnysud.sk/ussr-intranet-portlet/docDownload/91100f87-7974-4b32-86b8-62f0dd03167f/Rozhodnutie%20-%20N%C3%A1lez%20PL.%20%C3%9A%2013\\_2022.pdf](https://www.ustavnysud.sk/ussr-intranet-portlet/docDownload/91100f87-7974-4b32-86b8-62f0dd03167f/Rozhodnutie%20-%20N%C3%A1lez%20PL.%20%C3%9A%2013_2022.pdf)

Republic in terms of the possible effects of these changes on the exercise of human rights and fundamental freedoms before the introduction of provisions restricting the powers of selected authorities affecting the system of checks and balances.		
To the Government of the Slovak Republic and the National Council of the Slovak Republic to improve the participatory process, including enhancement and greater attention paid to consultations of wider pool and more systematic inclusion of relevant stakeholders, including the NHRI, in the creation and drafting of legislation and policy documents	No	
To the National Council of the Slovak Republic to refrain from constant, rapid and arbitrary amendments of the Constitution of the Slovak Republic, which might create instability of the legal order and pose challenges in the system of checks and balances.	No	From 1 January 2022 to 31 January 2023, nineteen proposals have been submitted to change the Constitution.
<b>Functioning of the justice system</b>		
To the Ministry of Justice of the Slovak Republic and other relevant stakeholders to continue their efforts in seeking guidance from relevant regional advisory bodies on the	Partially	Currently prepared reforms concerning justice map are being conducted in accordance with recommendations issued by CEPEJ. <sup>9</sup>

<sup>9</sup> Reform of the judicial map [https://web.ac-mssr.sk/wp-content/uploads/2020/sudna\\_mapa/Reforma\\_sudnej\\_mapy\\_na\\_citanie.pdf](https://web.ac-mssr.sk/wp-content/uploads/2020/sudna_mapa/Reforma_sudnej_mapy_na_citanie.pdf)

compliance of proposed amendments and reforms with the European standards.		
To the Ministry of Justice of the Slovak Republic to ensure that the proposed reforms for legislative and non-legislative measures are drafted and created in a transparent way with effective participatory processes, including consultations of relevant national stakeholders, such as NHRI, civil society organizations, academics and independent experts, as well as are preceded by an impact assessment.	No	For example mending Act concerning Ombudsman of Slovak Republic was in interparliamentary procedure from 20 June 2022 till 11 July 2022. Evaluation on comments was carried out from 12 July 2022 till 19 August 2022. Out of 66 comments 30 were accepted and 7 were partially accepted <sup>10</sup>
To the Ministry of Justice of the Slovak Republic to ensure that the comments of the relevant national stakeholders on the proposed reforms are fully and transparently addressed	No	Comments on legislative reforms concerning reforms of judicial map are still under evaluation since 4 October 2021. <sup>11</sup>
<b>Media freedom, pluralism and safety of journalists</b>		
To the Ministry of Culture of the Slovak Republic to complete, without undue delay, the work on the	no	The Ministry of Culture of the Slovak Republic already issued preliminary information on the

<sup>10</sup> LP/2022/336 Act amending Act No. 564/2001 Coll. on the Public Defender of Rights, as amended and supplementing certain acts <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2022/336> Results of evaluation - [https://www.slov-lex.sk/legislativne-procesy?p\\_p\\_id=processDetail\\_WAR\\_portlet&p\\_p\\_lifecycle=2&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_cacheability=cacheLevelPage&p\\_p\\_col\\_id=column-2&p\\_p\\_col\\_count=1&processDetail\\_WAR\\_portlet&fileCooaddr=COO.2145.1000.3](https://www.slov-lex.sk/legislativne-procesy?p_p_id=processDetail_WAR_portlet&p_p_lifecycle=2&p_p_state=normal&p_p_mode=view&p_p_cacheability=cacheLevelPage&p_p_col_id=column-2&p_p_col_count=1&processDetail_WAR_portlet&fileCooaddr=COO.2145.1000.3).

<sup>11</sup> Legislative Proceeding LP/2021/505, List of comments: <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2021/505/pripomienky/zobraz>.



<p>preparation and enactment of a constitutional act on increasing the safety of journalists, as well as enlarge the participatory process of the creation of the constitutional act.</p>		<p>beginning of legislative work on the constitutional act on media freedom. Comments on the preliminary information were admissible in August 2021 (no comments on the process have been registered so far).<sup>12</sup></p>
<p>To all public figures to refrain from legislative harassment practices such as using strategic lawsuits against public participation or cases of defamation of journalists.</p>	<p>No legislation and data</p>	<p>The Slovak Republic does not have any statistics regarding SLAPPs. Concerning criminal proceedings, no conviction of a journalist has been registered for the current period.<sup>13</sup></p>
<p>To law enforcement authorities to refrain from practices using criminal procedures with the aim to detract journalists from reporting and promptly, impartially, independently and effectively investigate all crimes against journalists and to state authorities to take an active role in prevention of attacks against journalists.</p>	<p>no</p>	<p>The Ministry of Culture reported as answer to our request for information that protection of journalist is to be part of new strategy to combat criminality,<sup>14</sup></p>

<sup>12</sup> PI/2021/186 Draft Constitutional Law on Freedom of the Media <https://www.slov-lex.sk/legislativne-procesy/SK/PI/2021/186> As reported in the section concerning EC Recommendations – Ministry of Culture cannot predict the date of proposing the constitutional act due to the current political situation.

<sup>13</sup> European Rule of Law Report, 3<sup>rd</sup> Edition, Input from the Slovak Republic, p. 34 – 35 [https://commission.europa.eu/system/files/2022-07/sk\\_rule\\_of\\_law\\_report\\_2022\\_-\\_final.pdf](https://commission.europa.eu/system/files/2022-07/sk_rule_of_law_report_2022_-_final.pdf)

<sup>14</sup> Ministry of Culture proposed that methodology of police procedures on protecting journalists during high-risk occasions as well as mechanism on monitoring attacks on journalism is included in the Strategy to prevent criminality and other antisocial activities in Slovakia until 2028.

<b>Corruption</b>		
To the Government of the Slovak Republic to take active steps to implement recommendations from international and regional organizations and bodies, including GRECO and engage relevant stakeholder, including the NHRI and civil society organizations in the process.	no	The Centre reiterates the findings of the GRECO report published on 19 January 2022, in which GRECO concluded that the Slovak Republic satisfactorily implemented only two of the twenty-one recommendations issued in the Fifth Round Evaluation Report <sup>15</sup>
To public figures to present good practices and results achieved when informing the public with the aim to increase the trust of public in state authorities and creating a culture of zero-tolerance towards corruption.	partially	According to the 2021 report of office of protection of whistleblowers (published in 2022) activities were conducted to inform public including raise awareness campaign. <sup>16</sup>
<b>Impact of measures taken in response to COVID-19 on the national rule of law environment</b>		
To the Government of the Slovak Republic and relevant state authorities, when adopting measures to fight against COVID-19 to ensure their accessibility and clarity to general public	Yes	The Ministry of Economy of the Slovak Republic has prepared for you an interactive and user-friendly summary of all economic measures, which are the response of the Slovak Government to the consequences of

<sup>15</sup>GRECO, Compliance Report, Fifth evaluation round <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a5357b>

<sup>16</sup> Report on the activities of the Office for the protection of whistleblowers for the year 2021, p.61 and following <https://www.oznamovatelia.sk/wp-content/uploads/2022/08/vyrocnna-sprava-uradu-na-ochranu-oznamovatelov.pdf>; In 2022, we trained 1,766 people and conducted nearly 30 training sessions <https://www.oznamovatelia.sk/za-rok-2022-sme-zaskolili-1766-ludi-a-viedli-takmer-30-skoleni/>

		the crisis situation caused by the spread of the COVID-19 disease <sup>17</sup>
To the Government of the Slovak Republic to create compensatory instruments that minimize the economic impacts of restrictions on fundamental rights and freedoms adopted in connection with the COVID-19 pandemic on vulnerable groups and increase support from the already existing instruments	partially	The Ministry of Labour, Social Affairs and Family of the Slovak Republic provided humanitarian aid to natural and legal persons for the duration of the emergency situation caused by the coronavirus pandemic. <sup>18</sup>
To the Ministry of Education, Science, Research and Sports of the Slovak Republic, without undue delay, in cooperation with the Centre and interested stakeholders and representatives of vulnerable groups, to prepare a study on the negative impacts of measures in response to COVID-19 on children and to draw up a plan to mitigate negative long-term effects, including on mental health of children.	no	

<sup>17</sup> Ministry of Economy: Economic Measures: <https://podnikame.mhsr.sk/>

<sup>18</sup> The Ministry of Labour, Social Affairs and Family of the Slovak Republic: Humanitarian Help: <https://www.employment.gov.sk/sk/koronavirus-pracovna-socialna-oblast/humanitarna-pomoc/>

## Annex 2 – European Court of Human Rights Cases against Slovakia

Table 1 – Decided Judgments

Application number	Case	Date of Judgement	Subject matter of the Case	Link
43932/19, 43995/19	Katona and Závorský v. Slovakia	9 February 2023	Article 1 of AP 1 – peaceful enjoyment of possessions	<a href="https://hudoc.echr.coe.int/eng?i=001-222915">https://hudoc.echr.coe.int/eng?i=001-222915</a>
25436/21	Adamčo v. Slovakia	9 February 2023	Article 6(1) – concerning the excessive length of criminal proceedings	<a href="https://hudoc.echr.coe.int/eng?i=001-222924">:https://hudoc.echr.coe.int/eng?i=001-222924</a>
40124/21	Janočková v. Slovakia	9 February 2023	Article 6(1) – concerning the excessive length of civil proceedings	<a href="https://hudoc.echr.coe.int/eng?i=001-222925">https://hudoc.echr.coe.int/eng?i=001-222925</a>
63962/19	M.B. and Others v. Slovakia (No. 2),	7 February 2023	Article 3 –effective investigation - procedural aspect, Article 3 Degrading treatment, inhuman treatment – substantive aspect, Article 14+3 prohibition of discrimination and effective	<a href="https://hudoc.echr.coe.int/eng?i=001-223108">https://hudoc.echr.coe.int/eng?i=001-223108</a>

			investigation – procedural aspect – authorities failure to investigate possible racist motives	
7286/16	Potoczka and Adamčo v. Slovakia	12 January 2023	Article 8 private life – court warrant authorising telephone- tapping during criminal proceedings without reasoning not in accordance with domestic law, Article 13 lack of effective remedy	<a href="https://hudoc.echr.coe.int/eng?i=001-222143">https://hudoc.echr.coe.int/eng?i=001-222143</a>
28081/19; 29664/19	<i>Vasaráb and Paulus v. Slovakia</i>	15 December 2022	Violation of Article 6(1) right to a fair trial - fair hearing, Article 6(3)(d) rights of defence	<a href="https://hudoc.echr.coe.int/eng?i=001-221525">https://hudoc.echr.coe.int/eng?i=001-221525</a>
20913/21	<i>Kurcáb v. Slovakia</i>	15 December 2022	Article 6(1) excessive length of the restitution proceedings (civil) and Article 13 lack of effective remedy	<a href="https://hudoc.echr.coe.int/eng?i=001-221636">https://hudoc.echr.coe.int/eng?i=001-221636</a>
7918/19, 43062/20	<i>Balogh and Others v. Slovakia</i>	15 September 2022	Revision of the judgment of 16 December 2021 admitted	<a href="https://hudoc.echr.coe.int/eng?i=001-219129">https://hudoc.echr.coe.int/eng?i=001-219129</a>

37574/19	<i>P. H. v. Slovakia</i>	8 September 2022	Article 2 procedural aspect, Article 2 –substantive aspect	<a href="https://hudoc.echr.coe.int/eng?i=001-219068">https://hudoc.echr.coe.int/eng?i=001-219068</a>
81292/17	Chocholáč v. Slovakia	7 July 2022	Article 8 private life	<a href="https://hudoc.echr.coe.int/eng?i=001-218459">https://hudoc.echr.coe.int/eng?i=001-218459</a>
55617/17	<i>BTS Holding, a.s. v. Slovakia</i>	30 June 2022	Article 1 AP 1 peaceful enjoyment of possessions	<a href="https://hudoc.echr.coe.int/eng?i=001-218080">https://hudoc.echr.coe.int/eng?i=001-218080</a>
58359/12 27787/16 67667/1	Haščák v. Slovakia	23 June 2022	Article 8 -respect for private and family life	<a href="https://hudoc.echr.coe.int/eng?i=001-217805">https://hudoc.echr.coe.int/eng?i=001-217805</a>
52505/20, 52832/30	<i>Pjonteková and Petejová v. Slovakia</i>	23 June 2022	Article 6(1) – excessive length of civil proceedings	<a href="https://hudoc.echr.coe.int/eng?i=001-218024">https://hudoc.echr.coe.int/eng?i=001-218024</a>
20877/19	<i>Adamčo v. Slovakia</i> (No. 2)	2 June 2022	Article 6(1) – civil proceedings	<a href="https://hudoc.echr.coe.int/eng?i=001-217446">https://hudoc.echr.coe.int/eng?i=001-217446</a>
38321/17	<i>Maslák v. Slovakia</i>	31 March 2022	Article 8 – private and family life	<a href="https://hudoc.echr.coe.int/eng?i=001-216775">https://hudoc.echr.coe.int/eng?i=001-216775</a>
8116/19	<i>Kláčanová v. Slovakia</i>	31 March 2022	Article 6(1) excessive length of restitution (civil) proceedings and Article 13 lack of effective remedy	<a href="https://hudoc.echr.coe.int/eng?i=001-216721">https://hudoc.echr.coe.int/eng?i=001-216721</a>
32084/19	<i>Al Alo v. Slovakia</i>	10 February 2022	Article 6(1) criminal and Article 6(3)(d)	<a href="https://hudoc.echr.coe.int/eng?i=001-215746">https://hudoc.echr.coe.int/eng?i=001-215746</a>

40132/16	<i>Salmanov v. Slovakia</i>	20 January 2022	Article 5(1) unlawful detention on remand, Article 5(5)	<a href="https://hudoc.echr.coe.int/eng?i=001-215174">https://hudoc.echr.coe.int/eng?i=001-215174</a>

**Table 2 – Friendly settlements**

<b>Application number:</b>	<b>The Case</b>
21763/22	<i>Hradečná v. Slovakia</i>
22232/22	<i>Machovčíak v. Slovakia</i>
24694/22	<i>Varchula and Others v. Slovakia</i>
23973/22	<i>Magát v. Slovakia</i>
28236/22	<i>Tomášek &amp; Partners, s.r.o. and Tomášek v. Slovakia</i>
14926/22	<i>Bpt Leasing, a.s. v. Slovakia</i>
16123/22	<i>Novastyl s.r.o. v. Slovakia</i>
10212/22	<i>Bardúnová v. Slovakia</i>
55491/21	<i>Pavleje v. Slovakia</i>
59360/21	<i>Banykó v. Slovakia</i>
57667/21; 110/22; 988/22	<i>Mravcová and Others v. Slovakia</i>
57315/21	<i>Juriš v. Slovakia</i>
58228/21	<i>Sisák v. Slovakia</i>
52357/21; 53040/21; 53479/22	<i>Sand, s.r.o. v. Slovakia</i>

14099/18	<i>M.H. and Others v. Slovakia</i>
52518/21	<i>Križan v. Slovakia</i>
49457/21	<i>Cirkevný zbor evanjelickej cirkvi augsburského vyznania na Slovensku Bratislava v. Slovakia</i>
38811/21	<i>Brychta v. Slovakia</i>
38558/21	<i>Mikolaj v. Slovakia</i>
42497/21	<i>Klein v. Slovakia</i>
43450/21	<i>Lini s.r.o. v. Slovaki</i>
46924/21	<i>BPT Leasing, a.s. v. Slovakia</i>
34436/21	<i>Hajdu v. Slovakia</i>
34479/21	<i>Grauberd v. Slovakia</i>



## Slovenia

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### The Human Rights Ombudsman of the Republic of Slovenia

#### Impact of 2022 ENNHRI rule of law reporting

##### Impact on the Institution's work

The Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman, the Slovenian NHRI) informs that it has mainstreamed its findings and recommendations provided in the 2022 ENNHRI report on the state of the rule of law in Europe (2022 ENNHRI Rule of Law Report) throughout its work and advocacy, including in its Annual Report for 2021<sup>1</sup>, its presentation in the National Assembly and the National Council, at various bilateral meetings with state authorities (e.g. the prime minister, ministers, and other state officials) as well as with international actors, for example, in consultations with the European Commission, exchange of views with the European Economic and Social Committee and with other regional human rights bodies.

On 30 September 2022, the Ombudsman also actively participated at the Roundtable "Integrity in relation to legality and legitimacy", organized by the Anti-corruption Commission. At the roundtable with the participation of the President of the Republic of Slovenia, President of the Supreme Court, the Anti-Corruption Commission, Minister of Justice and other high officials where the Ombudsman highlighted the importance of the implementation of the recommendations given in the European Commission's 2022 Rule of Law Report, as well as in 2022 ENNHRI Rule of Law Report. The Ombudsman also expressed its concerns regarding the unimplemented decisions of the Constitutional Court as well as the NHRI's recommendations. Furthermore, the

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Ombudsman was also actively engaged with the Fundamental Rights and Rule of Law Group of the European Economic and Social Committee (EESC) and participated in this group's meeting visit to Slovenia in November 2022.

### Follow-up initiatives by the Institution

In 2022, the Ombudsman held meetings with the Minister of Justice to discuss implementation of the recommendations considering its Annual Report as well as in the 2022 ENNHRI Rule of Law Report.

### NHRI's Recommendations to national and European policy makers

- The Ombudsman recommends that the state authorities include the information on the implementation of the Ombudsman's recommendations from the 2022 ENNHRI Rule of Law Report in a yearly official report on the state of the rule of law in Slovenia, submitted to the European Commission.
- The Ombudsman repeats all its key recommendations to national authorities from the 2022 ENNHRI Rule of Law report on how to strengthen the independence and effectiveness of the Ombudsman, because all of them have remained unimplemented:
  - Implementation of the Constitutional Court decision No. U-I-474/18 of 10 December 2020 on the unconstitutionality of Public Finance Act<sup>2</sup> related to financing autonomy of the Ombudsman and three other independent institutions as soon as possible.
  - To adopt legislative amendments in collaboration with the Ombudsman on the position and operation of the NHRI in accordance with the recommendations of the Accreditation Committee (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) for Slovenia from December 2020.

- To adopt legislative amendments that would reflect international standards, as are defined in the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles) from 2019, adopted by the Venice Commission of the Council of Europe, and in the Resolution (A/RES/75/186) on the role of the Ombudsman and the mediator in the promotion and protection of human rights from 16 December 2020.

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities follow-up to regional actors' recommendations on rule of law**

The Ombudsman has closely monitored the measures taken in Slovenia to follow-up on the recommendations concerning rule of law, issued by regional actors (for instance, by the European Commission – 2022 EU Rule of Law Report). The Ombudsman is concerned that all six recommendations made by the Commission in its 2022 Rule of Law Report remain relevant. However, as part of the annual dialogue on the rule of law at the General Affairs Council (GAC), the ministers responsible for European affairs discussed on 15 December 2022 the Rule of Law Report of the European Commission of last July for Slovenia and four other Member States. The representative of Slovenia presented activities of the Government, while also the Commission in general recognized positive developments in Slovenia.<sup>3</sup>

The Slovenian NHRI states that regarding European Commission's recommendation to Slovenia to "ensure requisite safeguards for budgetary autonomy of the independent bodies", which was also specified in ENNHRI's 2022 Rule of Law Report on the Constitutional Court decision No. U-I-474/18 of 10 December 2020 on the unconstitutionality of Public Finance Act related to financing autonomy of the

Ombudsman and three other independent institutions as soon as possible. The NHRI informs that the deadline for implementation was due in December 2021 and remains unimplemented in April 2023. The Ombudsman, however, notes that in March 2023 the Ministry of Finance and the Government proposed to the National Assembly the amendments to the Public Finance Act, which in Articles 2 and 3 also address necessary legislative changes regarding the mentioned Constitutional Court decision.<sup>4</sup> However, the Ombudsman (NHRI) would like to indicate that the neither the Ministry of Finance nor the Government made any prior consultations with the Ombudsman or other independent institutions in question, regarding the text of the proposed amendments. . The NHRI also informs that the deadline for implementation was due in December 2021 and remains unimplemented in April 2023.

### **State authorities follow-up to NHRI's recommendations regarding rule of law**

The Slovenian NHRI notes that in 2022, Personal Data Protection Act<sup>5</sup> provided new legal grounds for processing personal data. The Paragraph 5 of Article 6, for example, provides that: the processing of personal data on national or ethnic affiliation in the public sector may be determined only exceptionally, for cases in which it is necessary for a decision on the personal status, rights, incentives and benefits of the individual to whom the personal data refer or for ensuring and promoting equal treatment, equal opportunities and guaranteed special rights of members of the national or ethnic community in the Republic of Slovenia, whereby the law determines the consent of the individual to whom personal data relates or determines the processing of data regarding which the individual freely defines himself. The Ombudsman notes that it was contained in the NHRI's long-term recommendation, also presented in 2022 ENNHRI Rule of Law Report. The recommendation was that "the competent authorities should adopt adequate legislation in order to enable and ensure systematic collection of disaggregated data as per protected personal grounds in all areas of social life with the

aim to accurately determine the situation and trends regarding equality in society and to promote equal treatment and equal opportunities when observing applicable national and international standards on personal data protection". Finally, the Slovenian NHRI call upon relevant authorities to use this new provision that allows to collect disaggregated data in Slovenia.

In the 2022 ENNHRI Rule of Law Report, the Ombudsman also called upon the implementation of the 2019 EU Whistle blowers Protection Directive. Furthermore, on the 23<sup>rd</sup> of January 2023, The National Assembly finally adopted the Act on the Protection of Whistle blowers (ZZPri),<sup>6</sup>The Act establishes system mechanisms for reporting violations of applicable regulations and ensure protection to the person reporting such violations.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Human Rights Ombudsman of the Republic of Slovenia was re-accredited with A-status in December 2020.<sup>7</sup> Among the recommendations, the SCA encouraged the Slovenian NHRI to advocate for the formalization and application of a selection and appointment process that includes requirements to broadly advertise vacancies, maximise the number of potential candidates from a wide range of societal group and educational qualifications, promote broad consultation and participation, and assess applicants based on pre-determined, objective and publicly available criteria. The SCA encouraged the Slovenian NHRI to advocate for the funding necessary to effectively carry out the full breadth of its mandate. The SCA also encouraged the NHRI to advocate for appropriate modifications to applicable administrative procedures to ensure that its independence and financial autonomy is guaranteed. Finally, while the SCA acknowledged that the Slovenian NHRI interprets its mandate broadly and carries out activities encouraging the state to ratify or accede to international human rights

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instruments, it encouraged the Ombudsman to advocate for legislative amendments to make this mandate explicit.

### Follow-up to SCA Recommendations and relevant developments

Regarding the SCA recommendation on selection and appointment, the Slovenian NHRI reports that, in practice, the call for applications for the Ombuds is made public and that there is consultation with representative of political parties.

In relation to the recommendation on financial autonomy, it is worth mentioning, as above, that on 10 December 2020, the Constitutional Court adopted the decision that certain provisions of the Public Finance Act, as much as they pertain to the National Council, Constitutional Court, Human Rights Ombudsman, and Court of Audit, are inconsistent with the Constitution (decision No. U-I-474/18 of 10 December 2020, Official Gazette of the Republic of Slovenia, no. 195/2020).<sup>8</sup> The Constitutional Court prescribed a deadline for its implementation, which expired on 23 December 2021. As of April 2023 the National Assembly has in legislative procedure a Government's proposal of the amendments to the Public Finance Act, which address also the mentioned Constitutional Court decision.

The Slovenian NHRI informs that there are ongoing discussions regarding the legislative amendments on the position and operation of the Ombudsman in accordance with recommendations of the Accreditation Committee (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) for Slovenia from December 2020, and on the position and operation of the Ombudsman in line with the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles from 2019, adopted by the Venice Commission of the Council of Europe, and in the Resolution (A/RES/75/186) on the role of the Ombudsman and the mediator in the promotion and protection of human rights. The Ombudsman is in a dialogue with the Ministry of Justice aiming to amend the Human Rights Ombudsman Act in line with the

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above mentioned recommendations. The Ombudsman expects that needed amendments are adopted by the National Assembly in 2023.

### Regulatory framework

The Slovenian NHRI informs that no changes were made to its regulatory framework since ENNHRI's 2022 Rule of Law Report, despite the NHRI's recommendations to do so, including in its annual reports as well as during the discussion of the reports in the National Assembly. However, the Government did not provide an action plan or an estimated data for the implementation of the recommendations.

The Ombudsman hopes that the relevant recommendations will be implemented in 2023, such as the recommendations from the 2022 ENNHRI Rule of Law Report – the country chapter on Slovenia by the adoption of the amendments to the Human Rights Ombudsman Act as well as, the recommendation of the European Commission to ensure budgetary autonomy for the independent bodies, including the Ombudsman. In Ombudsman's opinion, it is not enough to merely change practice, without proper legislative implementation of the relevant Constitutional Court's judgment.

### Enabling and safe space

The Slovenian NHRI informs that it considers that state authorities sufficiently ensure enabling space to independently and effectively carry out its work. However, the Ombudsman notes that during the last years some initiatives were made by individuals or organizations to establish additional special ombudsman institutions. The initiatives claim to establish a special child ombudsman, an ombudsman for elderly persons and tax-payers ombudsman. The NHRI informs that the protection of children rights, rights of older persons and of tax-payers falls within the competence of the Ombudsman in accordance with the Constitution and the Human Rights Ombudsman Act and that the establishment of new institution would cause duplication of competences and unnecessary duplication of work. At the same time, the Ombudsman notes that it

promotes the rights of all vulnerable groups, such as children, the disabled, the elderly, women, national and ethnic communities, LGBTIQ+, employees, the unemployed and foreigners. Despite it, the Ombudsman is supporting the efforts to strengthen its capacity in the mentioned fields through the allocation of additional staff and financial resources. NHRI recommends that its mandate is strengthened in the field of children rights in order to meet all standards for ombudsman for children rights from the European Network of Ombudsman for Children (ENOC) Statutes,<sup>9</sup> aiming to reach a full membership of ENOC.

In 2021 as well as in 2022, the Slovenian NHRI recommended the Government proposal to establish an independent body for promoting, safeguarding and monitoring the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) in accordance with paragraph two of Article 33 of the Convention. In this line, the NHRI offered to act as such institution based on its experience and the fact that it acts as an A-Status NHRI since January 2021. However, this recommendation remains unimplemented.

The NHRI informs that the current situation is not in favour of disabled persons (non-unified definition of disability, inadequate and too slow process of deinstitutionalization, inaccessibility of facilities for mobility impaired persons, various types of discrimination etc.), while Slovenia is entering the second cycle of the reporting under the Convention on rights of persons with disabilities (CRPD) in 2023. In December 2022, the Ombudsman participated in the public debate on the issue in the State Council, where a representative by the responsible Ministry ensured that the responsible Ministry would coordinate the efforts and prepare the draft law for further proceedings by end of June 2023. The Ombudsman declares willingness to cooperate with the Ministry, aiming to find a solution, which would be in line with the Conventional standards and in benefit of persons with disabilities in Slovenia.



## Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

The Ombudsman is preparing the publication of International Standards of its mandate which would include Slovenian language translations of the United Nations and Council of Europe principles and standards regarding Ombudsman Institutions, National Human Rights Institutions (NHRIs) including the Recommendation 2021/1 of the Committee of Ministers of the Council of Europe on NHRIs, and on specific mandates (National Preventive Mechanism, Ombudspersons for Children, CRPD body). The aim is to raise awareness on the need for national compliance with international and regional standards in legislation as well as in practice. The Slovenian NHRI notes that the publication with introductory note is planned to be published in Autumn 2023.

### NHRI's recommendations to national and regional authorities

The Slovenian NHRI reiterates the previous recommendations of the 2022 ENNHRI Rule of Law Report. Additionally, the Ombudsman recommends to the Ministry of Labour, Family, Social Affairs and Equal Opportunities and to the Government of the Republic of Slovenia to prepare an appropriate proposal, to the National Assembly to adopt appropriate legal bases to establish an independent body for promoting, protecting and monitoring implementation of the Convention on the Rights of Persons with Disabilities, in accordance with the second paragraph of Article 33 of this Convention.

## Human rights defenders and civil society space

### Access to and involvement of civil society actors in law and policy making

In 2022, the Ombudsman raised concerns regarding the process of drafting laws that are not in line with the right of civil society to participate in the adoption of environmental regulations.<sup>10</sup> For example, shortcomings include short deadlines for public hearings, subsequent substantial additions to proposed regulations and their insufficient justifications. In October 2022, the Slovenian NHRI also raised awareness to the United Nations Special Rapporteur for Human Rights and the Environment of such practices during their meeting. Similarly, in June 2022 the NHRI emphasized the necessity of transparency of procedures and public participation at the June working meeting with representatives of civil society organisations in the field of human rights, environment and space.

On the other hand, the NHRI informs that its recommendation was adopted by the National Assembly: The Act on ratification of the Council of Europe Convention on Access to Official Documents (ETS No. 205) in January 2023.

However, for many years the Ombudsman has pleaded for ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), which has not yet been ratified by Slovenia.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

Throughout 2022 the Human Rights Ombudsman had several meetings with representatives of civil society organisations and human rights defenders in the field of paraplegics and tetraplegics, autism spectrum disorder,<sup>11</sup> trade unions<sup>12</sup> and in protection of the environment.<sup>13</sup>

In September 2022, the Slovenian NHRI stresses that it published a second updated version of the Ombudsman's Short Guide on How and When to Complain to the UN Human Rights Treaty Bodies<sup>14</sup>. The aim of the 'HRI's Guide is to increase awareness of individuals, civil society and barristers of international human rights and to encourage

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their use in cases of alleged human rights violations under international human rights conventions. The Guide was distributed to the Slovenian Bar Association, civil society organizations and NGOs that can inform people about the various options for protection of their rights. In 2022, the Slovenian NHRI was informed of the first communication against Slovenia before the Committee on the Rights of the Child (CRC) where the NHRI made a request to submit a third-party intervention. The case (CRC Case No. 195/2022 and 196/2022) concerns an unaccompanied minor from Myanmar (of Rohingya ethnicity) who lived in a refugee camp in Bosnia and Herzegovina and made several attempts in 2020 and 2021 to cross Croatia and Slovenia irregularly. He was allegedly pushed back by Croatian Police several times and also once by Slovenian Police in July 2021. The allegations regarding his encounter with the Slovenian Police include lack of individualized assessment, failure to recognize him as a minor, ignoring of his asylum claim and violation of the principle of non-refoulement, which matches the kind of violations detected by the Ombudsman in other border procedures with migrants around the same time.

### **NHRI's recommendations to national and regional authorities**

The Ombudsman reiterates its key recommendations to national and regional authorities on how to better protect and support civil society actors, including human rights defenders, in Slovenia from 2022 ENNHRI Rule of Law Report. The Slovenian NHRI recommends that:

- The Ministry of the Interior shall implement the Ombudsman's recommendations included in its 2021 National Report on the Human Rights Situation of Migrants at the Borders<sup>15</sup>, based on investigations of police procedures conducted in relation to migrants at various locations.
- The Authorities should refrain from any activity which could violate laws and procedures, including strategic lawsuits against public participation (SLAPPs), to

intimidate civil society organisations, rights defenders and other actors, such as journalists working on matters of public interest.

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

The Ombudsman informs about an overall positive effectiveness of follow-up and implementation by state authorities of the European Court of Human Rights. . The NHRI states that from 309 unimplemented judgments at the end of 2015, the number was lowered down to six (6) at the end of 2022<sup>16</sup>, where judgment is final and two additional, where judgment is yet not final. The system of the Inter-governmental working group with the support unit at the Ministry of Justice and with specific role of State Advocate's Office is in general well-functioning in respect to individual as well as general measures. The Ombudsman monitors the enforcement and acts as an independent member of the mentioned Intergovernmental Group (two deputy-ombudspersons are members). The Ombudsman has also good contacts with European Implementation Network (EIN).

Furthermore, the NHRI informs that it has not yet used the Rule n° 9 submission. However, the Slovenian NHRI monitored practices of questionable use/implementation of the judgment in case *Krajnc v Slovenia*, where the Slovenian NHRI raised some concerns.<sup>17</sup>

The Ombudsman considers the implementation of the judgments of the Court of Justice of the European Union in Luxembourg (CJEU) as sufficient. In its opinion, EU law itself guarantees an effective implementation of CJEU judgments.

The Ombudsman also notes that the European Commission has commenced many infringement procedures against Slovenia, because it failed to comply with European Union directives related to air quality, wastewater treatment, the protection of

endangered birds, the prevention of major accidents involving dangerous substances, waste management and others. The Ombudsman calls for a timely transposition of EU directives into national legislation, especially in the field of environmental law.

### Leading European Courts' judgments awaiting implementation

The Slovenian NHRI informs that the leading cases of the ECtHR against Slovenia awaiting execution are the following:

- Pintar and Others v. Slovenia, Application No. 49969/14, Judgment of 14 September 2021, concerning Article 1 of Protocol 1 to the European Convention on Human Rights (cancellation of shares or bonds of former holders), where Action Plan was submitted to the Committee of Ministers on 16 June 2022<sup>18</sup>.
- Q and R v. Slovenia, Application No. 19938/20, Judgement of 8 February 2022, concerning Article 6 of the Convention (too long protracted custody proceedings), where an Action Plan is in preparation<sup>19</sup>.
- Ferhatović v Slovenia, Application No. 64725/19, Judgment of 7 July 2022, concerning Article 1 of Protocol 1 of the Convention (return of seized copper in criminal proceedings)<sup>20</sup>.
- Vizigirda v. Slovenia, Application No. 59868/08, Judgment of 28 August 2018, concerning Article 6 of the Convention (provision of interpretation in criminal proceedings against a citizen of Lithuania only in the Russian language), where Action Report was submitted to the Committee of Ministers on 15 June 2022<sup>21</sup>).
- Produkcija Plus Storitveno podjetje d.o.o., Application No. 47072/15, Judgement of 23 October 2018, concerning Article 6 (refusal of an oral hearing in the judicial protection procedure against a decision on a fine due to obstruction of the investigation), where Action Plan was submitted on 2 August 2019<sup>22</sup>.

### NHRI's actions to support the implementation of European Courts' judgments

The Ombudsman is regularly monitoring the enforcement of judgments of the European Court of Human Rights as this falls into the scope of human rights and rule of law issues. The Ombudsman cooperates with relevant ministries and other actors and when needed gives recommendations, support or criticism. Due to a dialogue with the ministries so far it was not needed that the Ombudsman would submit a so-called Rule 9 submission.

### **NHRI's recommendations to national and regional authorities**

Even though Slovenia has at present a good record of implementation of judgments of the European Court of Human Rights, the Ombudsman has made in 2022 some additional recommendations in order to increase transparency of proceedings, which for now remain unimplemented. Therefore, the Ombudsman raises these recommendations also in this report:

- The Ombudsman recommends that the Ministry of Justice ensures that action reports and action plans about the execution of judgments of the European Court of Human Rights against Slovenia are also available in Slovenian.
- The Ombudsman recommends that the State Attorney's Office and the Ministry of Justice ensure that, in addition to the judgments of the European Court of Human Rights against Slovenia, more important judgments of this Court against other countries are also available in the Slovenian language.
- The Ombudsman also reiterates its recommendation made in 2022 ENNHRI Rule of Law Report that responsible authorities should ensure effective implementation of decisions of the European courts as well as of the Constitutional Court of the Republic of Slovenia as a priority and within determined deadlines. The Ombudsman in this regard recommended to the Government that following the example of the mechanism it established to implement the judgments of the European the Court of Human Rights, it

establishes a mechanism to provide expert support for the implementation of declaratory decisions of the Constitutional Court and to inform public on the status of implemented decisions in a transparent manner, including regarding the ongoing activities of the competent authorities for their realisation.

## Artificial Intelligence

### Impact of AI on human rights, democracy and rule of law

The Slovenian NHRI informs that the Authorities should pay adequate attention to the human rights and rule of law aspects in the field of use of artificial intelligence (AI). This includes information to public (including to different minority groups) about the operation of algorithms, deep data and the impact of AI on the daily life of the people.

The Ombudsman welcomes that, in January 2023, the Ministry of Digital Transformation was established (before the Governmental Office for Digital Transformation had operated since 2021), with a mandate to monitor and analyse the state of digital transformation and the information society at the national level and prepares, coordinates and implements national measures and projects in the field of the information society and digital transformation of the economy, public administration, healthcare, justice, agriculture, education and other area<sup>23</sup>, it emphasizes that specific attention should also be given to the human rights and rule of law aspects. Ensuring anti-discrimination framework, especially when addressing the digitalisation of health system. On 30 March 2023 the Ombudsman also called that it is necessary that the technological development of artificial intelligence takes place within appropriate legal and ethical frameworks, which would strengthen the existing level of respect for human rights and fundamental freedoms of each individual and strengthen legitimate democratic processes.<sup>24</sup>

### NHRI's actions to address challenges regarding the use of artificial intelligence

The Slovenian NHRI also welcomes the opening of negotiations for a Council of Europe Convention on artificial intelligence, human rights, democracy and the rule of law, and considers such convention as an important opportunity to develop the first legally binding international instrument on AI. The NHRI informs it agrees that the convention should include clear and strong safeguards to protect individuals. In this sense, the NHRI highlights the active role of the Government of Slovenia, especially the Ministry of Justice at the European Level.

The Slovenian NHRI informs that it supports the European Commission's proposed EU Artificial Intelligence Act.

### **NHRI's recommendations to national and regional authorities**

The Ombudsman's key recommendations to national authorities in the field of AI is that at all levels state authorities, especially the newly established Ministry for Digital Transformation, give specific attention to the human rights and rule of law aspects of the digitalization of various systems and sub-systems of the society, including AI, through making human rights and rule of law impact assessments, which would include specific focus on vulnerable groups.

### **Other challenges in the areas of rule of law and human rights**

The Slovenian NHRI informs that during 2022 its activities regarding judiciary and court proceedings increased compared to the previous year.<sup>25</sup> The NHRI notes that the courts managed to adapt their operations quickly enough to the new conditions, i.e. to successfully counter the consequences of the coronavirus disease, so that in the court proceedings in connection with which petitioners turned to the Ombudsman, there were no notable delays for which individual courts are responsible for. The Ombudsman concludes that the reasons for a long duration of individual court proceedings were



frequently on the side of the parties to the proceedings, with exception in more complex (economic crime) cases.

The Slovenian NHRI informs that regarding the allegations against the impartiality of the individual judge, the Ombudsman informed the petitioners about their legal options as parties in court proceedings using the institution of disqualification of a judge. The right to an impartial and independent judge derives from the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). The Ombudsman submitted in March 2023 a third-party intervention concerning the right to a legal (natural) judge and a right to a fair trial (Article 6 of the Convention) in case X and Others v. Slovenia.

In the field of judiciary, the Ombudsman also notes the need to build a new court building that would unite the Ljubljana Local Court, the Ljubljana District Court and the Ljubljana Labour and Social Court. The need to build such a new building have been raised by the judiciary form almost 20 years and it has been more than 17 years since the Ministry of Justice has initiated the project to build a new court building in the capital. Currently the mentioned courts operate in several locations across the city, several of them being at improper locations. The Ombudsman noted progress in this regard during the last years; however, it also notes certain hesitation to continue the project.<sup>26</sup> The Slovenian NHRI understands that there is an urgent need for a new court building in Ljubljana. The Ombudsman stresses the Government, and the Ministry of Justice should present their support and a timeline for building the new court. The NHRI concludes that a court's proper premises can contribute to a proper administration of justice, including ensure better victim support.

In this sense, the Slovenian NHRI also monitors activities regarding the construction of a new men's prison and detention center in Ljubljana, as its construction should also be understood in relation to the proper execution of the judgment of the European Court

of Human Rights in case *Mandić and Jovič v Slovenia*<sup>27</sup>). In addition, the NHRI inform that it has for years advocated also the reconstruction of a women's prison in Ljubljana, which is the only female prison in Slovenia, while the conditions in the present premises do not meet all standards, also ensuring equal treatment of men and women.

Regarding the monitoring of anti-corruptions activities, the Ombudsman notes that in the Corruption Perceptions Index for 2022<sup>28</sup>, which reflects the perception of corruption in the country, Slovenia lost a point and achieve its lowest score to date in the ranking for 2022. Despite the index does not necessarily show the actual situation, further attention should be given to fighting corruption in Slovenia.

### **NHRI's recommendations to national and regional authorities**

The Ombudsman recommends to the Authorities to continue with the efforts to build a new court building in Ljubljana that would unite the Ljubljana Local Court, the Ljubljana District Court and the Ljubljana Labour and Social Court, and specifically to the Government and the Ministry of Justice to present a clear timeline in this regard.

The Ombudsman's also reiterates all key recommendations to national and regional authorities on how to improve the independence, quality and efficiency of the justice system in Slovenia form 2022 ENNHRI Rule of Law Report:

- To adopt additional measures to contribute to or assist in providing various forms of free legal aid outside the framework provided by the Legal Aid Act;
- To adopt an amendment to the Crime Victim Compensation Act (ZOZKD) which would determine the right to state compensation also for persons who are not citizens of the Republic of Slovenia and other EU countries;
- And finally, to do everything necessary to ensure a sufficient number of judicial experts in family matters (especial in the fields like clinical psychology or child psychology), because a lack of such judicial experts may lead to violation of children's rights.

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<sup>1</sup> [Annual Report for 2021](#)

<sup>2</sup> [Decision No. U-I-474/18 of 10 December 2020 on the unconstitutionality of Public Finance Act](#)

<sup>3</sup> See: [Slovenian Ministry of Foreign Affairs: The European Commission is satisfied with the progress in the field of the rule of law in Slovenia, 15 December 2022.](#)

<sup>4</sup> See: [Predlog zakonov – Zakon o spremembah in dopolnitvah Zakona o javnih financah.](#)

<sup>5</sup> [Personal Data Protection Act \(ZVOP-2\), Official Gazette of the Republic of Slovenia, No. 163/22.](#)

<sup>6</sup> <https://www.gov.si/novice/2023-01-27-zakon-o-zasciti-prijaviteljev-zvizgacev-sprejet-v-drzavnem-zboru/>, See: [Official Gazette of the Republic of Slovenia, No. 16/23.](#)

<sup>7</sup> [SCA Report December 2020](#)

<sup>8</sup> Official Gazette of the Republic of Slovenia, No. 196/2020 of 23 December 2020. See [here](#) and [here](#).

<sup>9</sup> [The European Network of Ombudspersons for Children Statutes as amended November 2020.](#)

<sup>10</sup> See: [Ombudsman's Annual Report for 2021, pp. 309-314.](#)

<sup>11</sup> See: [Pregled aktivnosti Varuha na področju človekovih pravic invalidov / oktober-december 2022.](#)

<sup>12</sup> See: [Varuh Svetina: "Vsakdo si zasluži, da delo opravlja v dostojnih delovnih razmerha", 25. 4. 2022.](#) See also: [RTV SLO, MMC: Sindikat policistov: Neodvisna preiskava Varuha vsaj delno oprala madež s policijskih uniform, 23. 9. 2022.](#)

<sup>13</sup> See: [Varuh in posebni poročevalec ZN za človekove pravice in okolje: "Za Slovenijo na področju izvajanja zakonov in politik velik izziv.", 10. 3. 2023.](#)

<sup>14</sup> <https://www.varuh-rs.si/en/news/news/ombudsmans-guide-on-complaints-to-the-international-treaty-committees/>

<sup>15</sup> [2021 National Report on the Human Rights Situation of Migrants at the Borders](#)

<sup>16</sup> [Annual Report 2022 of the Committee of Ministers on its supervision of the execution of the European Court's judgments, 6 April 2023, p. 80.](#)

<sup>17</sup> See: [Neustrezna implementacija sodbe ESČP, 15. 4. 2022.](#)

<sup>18</sup> [https://hudoc.exec.coe.int/ENG#%7B%22EXECIdentifier%22:%7B%22DH-DD\(2022\)665E%22%7D%7D](https://hudoc.exec.coe.int/ENG#%7B%22EXECIdentifier%22:%7B%22DH-DD(2022)665E%22%7D%7D)

<sup>19</sup> <https://hudoc.echr.coe.int/eng?i=001-215476>

<sup>20</sup> <https://hudoc.echr.coe.int/eng?i=001-218131>

<sup>21</sup> [https://hudoc.exec.coe.int/ENG#%7B%22EXECIdentifier%22:%7B%22DH-DD\(2022\)647E%22%7D%7D](https://hudoc.exec.coe.int/ENG#%7B%22EXECIdentifier%22:%7B%22DH-DD(2022)647E%22%7D%7D)

<sup>22</sup> [https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%7B%22DH-DD\(2019\)848E%22%7D%7D](https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%7B%22DH-DD(2019)848E%22%7D%7D)

<sup>23</sup> [Ministry of Digital Transformation.](#)

<sup>24</sup> See: [Varuh v Amsterdamu s Komsarko za človekove pravice Sveta Evrope Dunjo Mijatović o vplivu umetne inteligence na človekove pravice, 30. 3. 2023.](#)

<sup>25</sup> According to the statistical data for 2022 the Ombudsman handled in the broader field of justice 430 cases in 2022 (in 2021, there were 409 such cases) and in the narrower field of court proceedings 154

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initiatives in 2022 (while 148 in 2021). All together with phone-calls and conversations included, a total number of issues considered in 2022 was 814 (while in 2021 819).

<sup>26</sup> See: [Projekt nove sodne palace v Ljubljani zamrznjen, 12. 12. 2022, SiolNET.](#)

<sup>27</sup> <https://www.gov.si/novice/2020-06-05-svet-evrope-je-zakljucil-nadzor-nad-izvrsevanjem-se-5-sodb-escp-proti-sloveniji/>

<sup>28</sup> [Corruption Perceptions Index 2022](#)

## Spain

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### Defensor del Pueblo

#### Impact of 2022 ENNHRI rule of law reporting

##### Follow-up by State authorities

In 2022, the Spanish Ombudsman (Defensor del Pueblo) participated in the 2<sup>nd</sup> National Human Rights Plan's advisory commission.

This plan aims to remove the obstacles preventing the effective enjoyment of the rights contained in the Spanish Constitution, the Universal Declaration of Human Rights, the specific human rights treaties ratified by Spain, both UN treaties or European Treaties (European Charter of Fundamental Rights and also the European Social Charter), as well as in the 2030 Agenda for Sustainable Development, by strengthening and developing public policies and legislative measures. The Plan is expected to be published in the first months of 2023 and will be valid for five years.

In addition to the 16 Ministries involved, many other entities have participated in the process, including civil society organisations, social partners, stakeholders, universities, study and research centres, as well as Spain's Autonomous Communities, local institutions and the Defensor del Pueblo as the National Human Rights Institution accredited at the highest level. More than one hundred organisations have made contributions.

The Defensor del Pueblo has made contributions to successive drafts plan and has a representative that attends Advisory Commission meetings. After plan approval, the Defensor del Pueblo may participate in the subsequent follow-up process, in exercise of their ordinary functions concerning actions of the Public Administration.<sup>1</sup>

## Impact on the institution's work

The 2022 ENNHRI rule of law report contains a set of priorities, many of which had been already taken up by the institution.

In line with the recommendations of last year's report, the following items can be noted:

- In terms of the **independence and effectiveness of National Human Rights Institutions (NHRIs)**, it should be emphasized that the institution's budget increased by 11.87% compared to the previous year, allowing for recruit more staff and increasing efficiency. Moreover, the Spanish Parliament entrusted the institution to create an independent Commission to produce a report on sexual abuse in the Catholic Church and the role of the public authorities<sup>2</sup>. The advisory commission's start-up also needed this budget increase.
- With regard to **checks and balances**, the Ombudsman conducted an ex officio investigation to verify whether the alleged interception of communications using Pegasus spyware by Spain's National Intelligence Centre (Centro Nacional de Inteligencia – CNI) had been carried out in full compliance with the law. The results of that investigation confirmed the legality of the conduct of state authorities. However, the Defensor del Pueblo expressed some considerations to open a process of reflection on the reinforcement of existing judicial control, given the continuous development of technology. Twenty years have passed since Law 11/2002, of 6 May 2002, regulating the National Intelligence Center<sup>3</sup>, was adopted, and technology has evolved very rapidly in this period. This evolution, which is going to continue, should lead us to reflect on whether the existing judicial controls are now sufficient. These controls must be adapted to the new state of development of technology<sup>4</sup>.
- With regard to the functioning of **justice system**, the Defensor del Pueblo has continued to work and make recommendations to improve it. One of the recommendations is that lawyers convicted of gender violence are not appointed public defenders in proceedings for similar cases. Another recommendation

aimed to improve the access to legal assistance for vulnerable irregular migrants arriving by sea.

- In 2023 the Ibero-American Federation of Ombudsperson (Federación Iberoamericana del Ombudsperson – FIO) published its report on **human rights defenders**. The Ombudsman was involved in the report, which contains a number of important recommendations to protect the rights of these individuals and facilitate their freedoms of expression and association.<sup>5</sup>
- Regarding the **impact of the COVID-19 pandemic**, the level of healthcare that existed before the pandemic has not yet been restored. Many of this institution's actions aim to rectify that situation. Access to mental health services is also an ongoing concern. Difficulties also persist for citizens to obtain administrative appointments to make applications, requests, petitions, claims, appeals and to deal with the relevant Administrative departments. An illustrative case is that of the Social Security Department, to which the Defensor del Pueblo has requested to resolve the delays in granting appointments<sup>6</sup>.

### Follow-up initiatives by the institution

In general, in all the Ombudsman's initiatives and actions –whether these are the result of complaints received or ex officio actions or reports – the Institution's usual working method involves an exchange of positions, in writing, with the relevant authorities. This is frequently accompanied by meetings with civil servants and state and regional authorities, cooperation with civil society, research, requesting reports from the competent administrations and issuing recommendations and suggestions where appropriate, as well as dissemination and awareness-raising activities.

Following the pandemic, general public's visits to the Ombudsman's headquarters were resumed with the aim of promoting and divulging our work. In addition, open days have been held on special dates (Constitution Day, for example) and as part of

campaigns organized by other entities such as the Spanish Upper House (Congress) or the Madrid City Council.

The Ombudsman organized a conference on mental health during which experts and representatives of associations and civil society analysed issues such as the impact of Covid-19 on the mental health of the general public; the response capacity of the health system in primary care, hospitals and residential care; and what is expected of the new Strategy and the 2022–24 Action Plan<sup>7</sup>.

Besides, the Defensor del Pueblo has been closely following reconstruction work on the island of La Palma, which was affected by a volcanic eruption in 2021. The Ombudsman travelled to the island from 6<sup>th</sup> to 8<sup>th</sup> October 2022 to meet with representatives of different institutions and with associations of those affected, as well as to gather information to assess the administrative response to the disaster. The final recommendations were published in December.

The Defensor del Pueblo recognized that a notable regulatory effort has been made, which has allowed the implementation of a very broad set of repair and reconstruction measures in all the affected areas. The administrations are implementing the measures within reasonable timeframes. The volume of resources planned and mobilized so far is very significant and seems to be in line with the seriousness of the damage caused.

Likewise, this institution considers that the administrations involved are acting in a joint and coordinated manner. Nevertheless, the institution issued some recommendations to the government bodies to increase their efforts to resolve pending applications as soon as possible – especially those to aid people who lost their homes, if necessary by strengthening material and human resources and by detecting and correcting the causes of delays and difficulties in processing<sup>8</sup>.

Another example of the Ombudsman's constant interaction with the general public and government bodies can be found in the actions taken in relation to the events that took place on 24<sup>th</sup> of June at the Melilla border perimeter, where some migrants died, and



several hundred more were sent back without respecting migration legislation. The Ombudsman travelled to the Autonomous City of Melilla to gather statements on the events from the Spanish law enforcement agents, from the organizations working in the area, from the migrants who managed to reach Spanish territory and from the local authorities. Based on this information, the Ombudsman drew up some conclusions on the issue<sup>9</sup>.

The Ombudsman has embarked on a work programme with all of Spain's Autonomous Communities with a view to meeting with both regional, municipal and state authorities, focusing on the discussion of matters affecting public rights and freedoms as well as those related to complaints that affect to different Spanish administrative levels. The aim is to achieve greater efficiency in the processing of complaints from the general public by reducing response times in the regional reports send to the institution when processing complaints.

To this end, during 2022 the Defensor del Pueblo met with the regional ombudsmen of the Basque Country<sup>10</sup>, Galicia, Navarre<sup>11</sup>, Andalusia<sup>12</sup>, Extremadura<sup>13</sup> and the Canary Islands. In addition, this institution participated in the Ombudsmen's Coordination Conference held in León from 19<sup>th</sup> to 21<sup>st</sup> October 2022.

On the top of that, the institution is developing a new file management system that will also speed up response in general public files.

## **Implementation of regional actors' and NHRI's recommendations on rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation**

### **State authorities' follow-up to regional actors' recommendations on rule of law**

Regional actors have traditionally reiterated concerns over the NHRIs resources, requesting an increase. Positively, the budget for 2023 was increased by 11.87% over 2022, reaching a total of €20,917,800<sup>14</sup>.

Regarding Spanish authorities' follow-up to European Commission' Rule of Law report's recommendations about other constitutional institutions (such as General Prosecutor or General Council of the Judiciary), we find not appropriate to make a pronouncement.

The Constitution and our institutional Organic Act prevent the Ombudsman from statement about other constitutional institutions. Nor can it pronounce about the laws or the decisions of the legislator (unless it considers that a law is unconstitutional and decides to appeal it before the Constitutional Court) or the parliamentary groups agreements to obtain the qualified majorities needed to renewal the institutions, nor regarding the Judiciary.

The reason is respect for the constitutional role that corresponds to each of the powers and constitutional bodies, in order to maintain the checks and balances system envisaged in the Constitution. It should also be considered that the Constitution allows for several different models of functioning and renewal of these constitutional institutions and therefore the Defensor del Pueblo should not pronounce on the convenience of one model or another. The decision corresponds to the legislator.

### **State authorities' follow-up to NHRI 's recommendations regarding rule of law**

The ENNHRI's 2021 rule of law report had recommended improving rail communications affected by the pandemic. A process of global reorganization of public transport is currently being implemented to give greater coverage to rural Spain and reduce the gap in access to services and opportunities caused by scarce population levels in a part of the national territory. Such disparities disincentivize economic activity and the very survival of rural areas.

Measures had also been recommended to improve courts' caseloads and length of proceedings. In this regard, three laws are currently being processed in the Spanish Parliament:

- Draft Law on digital efficiency measures for the public justice service

- Draft Law adapting national legislation to Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on Eurojust and regulating conflicts of jurisdiction, international legal cooperation networks and staff working for the Ministry of Justice abroad.
- Draft Law on procedural efficiency measures for the public justice service

In the anti-corruption sphere, the following laws are currently being discussed in Parliament:

- Draft Law regulating the protection of persons who report on infringements of the law and regulating the fight against corruption.
- Draft Organic Law amending Organic Law 10/1995, of 23 November, on the Criminal Code, for the transposition of directives on the fight against fraud and counterfeiting of non-cash means of payment and on market abuse; and Organic Law 7/2014, of 12 November, on the exchange of information on criminal records and mutual recognition of judicial decisions in criminal matters in the European Union.

## **Independence and effectiveness of the NHRI**

### **International accreditation status and SCA recommendations**

The Spanish NHRI was last re-accredited with A-status in May 2018<sup>15</sup>. The Sub-Committee on Accreditation (SCA) welcomed the actions the Spanish NHRI took to implement its previous recommendation. Regarding selection and appointment, the SCA took the view that the selection process enshrined in the Law was not sufficiently broad and transparent in that it did not require the advertisement of vacancies, nor specified the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process of the Defensor. It encouraged the NHRI to advocate for changes in this regard. Moreover, the SCA encouraged the Spanish NHRI to ensure the ongoing and effective fulfilment of its mandate by guaranteeing staff security of tenure, which could be achieved through an

amendment to the law that explicitly provides for such security of tenure regardless of the election of a new Defensor. The SCA also recommended that there is a limitation in the enabling law to a re-election of only one additional term, as the legislation is currently silent on the number of times an individual can be re-elected. While acknowledging that, in practice, the Spanish NHRI leadership and staff are reflective of the principles of pluralism and diversity, the SCA continued to encourage the institution to advocate for the inclusion in its enabling law of a requirement to ensure that its composition is broadly reflective of all of the segments of Spanish society. The SCA further acknowledged that, at the time, the Spanish NHRI reported that it was not able to fully participate in all periodic reviews of Spain as a result of resource limitations. The SCA also noted the NHRI's view that it had not been allocated with sufficient funding to create new programs or strengthen existing ones. The SCA emphasized that, where an NHRI has been mandated with additional responsibilities, it must be provided with the adequate funding to effectively fulfil these duties. The SCA encouraged the Spanish NHRI to continue to advocate for the provision of adequate funding.

### **Follow-up to SCA recommendations**

The Spanish Constitution and the [Ombudsman Organic Law](#) guarantee pluralism in its election procedure and composition.

The Ombudsman is elected by the bicameral Parliament/ *Cortes Generales* (Congress and Senate) that represent the Spanish people, holder of national sovereignty, so his appointment enjoys the greatest possible democratic legitimacy. Its election requires a specially qualified parliamentary majority of three-fifths of the members of both chambers. Consequently, the main political groups with parliamentary representation necessarily have to agree to elect the head of the Ombudsman Institution, which guarantees that the appointment falls on representatives, freely elected periodically by direct and secret universal suffrage. All groups represented in Parliament can propose their own candidates for Ombudsman.

Since 1982, the personality of the successive ombudsmen and their deputies has always been expressive of the social, cultural and territorial plurality characteristic of Spain, offering a balance of representation widely recognized by social entities and civil society. To be Spanish Ombudsman, it is only required to be of legal age and enjoy of civil and political rights.

All the management positions of the Institution are contemplated in the Ombudsman Law. The governing functions correspond to the Ombudsman, assisted by two Deputies.

The Ombudsman and the Deputies convene regular meetings in the so-called Coordination Board, which includes the Defensor, the Deputies and the Secretary-General (who assists the Ombudsman in its duties, with voice and no vote), where they elaborate internal instructions on the functioning of the different services and areas of work. Furthermore, they meet with advisors and specialists to coordinate issues with a major social impact. The current Coordination Board is made up of two women and two men.

On the institution's website you can consult the curricula of all the authorities who have held the position of the Ombudsman or deputy throughout the history of the institution.

The institution, for the development of its constitutional functions, has its own staff at its service, which is made up of Area manager advisors, Technical advisors, clerks, assistants and subordinates. The recruitment policy is based on the principles required by the Constitution of equality, merit and ability. The institution's workforce has a high level of job stability.

The existing gender parity in the positions of responsibility of the Institution stands out, both in the members of the Coordination Board and in the appointments of the Area Managers and the staff of Advisors.

## **Regulatory framework**

The national regulatory framework applicable to the Spanish NHRI has not changed since the ENNHRI's 2022 report on the state of the rule of law in Europe.

The institution is satisfied with his regulatory framework, which considers sufficient and adequate, and also in general with the treatment and attention he receives from public administrations in Spain.

## **Enabling and safe space**

The state and local authorities sufficiently respect enabling space for the Spanish NHRI to carry out its work independently and effectively.

## **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

With regard to independence and effectiveness of the NHRI it should be emphasized that the institution's budget has been increased by 11.87% compared to the previous year, allowing for more staff to be recruited in all departments of the institution and increasing efficiency.

As Spanish Parliament entrusted the institution to create an independent Commission to produce a report on sexual abuse in the Catholic Church and the role of the public authorities, the budget's increase has made it possible to set up a specialised unit, the Victim Care Unit for victims of sexual abuse in the Catholic Church.

The Defensor del Pueblo also has new offices for this specialised unit and the National Preventive Mechanism against Torture.

## **NHRI's recommendations to national and regional authorities**

The Defensor del Pueblo recommends that:

- Response times from public administrations to the ombudsman should be reduced.

- Public administrations should ensure that the motivation of the reports they send to the Ombudsman in response to his requests is sufficient and relevant. The reports should enable the institution to clarify the issues raised.

## **Human rights defenders and civil society space**

### **Laws, measures and practices negatively impacting on civil society space and/or on human rights defenders' activities**

This institution has not noted any evidence of practices that could negatively impact on civil society space or reduce human rights defenders' activities during the processing of complaints.

### **Measures undertaken by State authorities to protect and promote civic space**

It should be noted that the process of approval of the 2nd National Human Rights Plan described in the first chapter of this country report, is underway. The Ombudsman has participated at its Advisory Commission in line with its status as a body of constitutional relevance in the Spanish institutional structure and in its capacity as the National Human Rights Institution.

### **NHRI's role in promoting and protecting civil society space and human rights defenders**

The Ombudsman maintains a constant dialogue with civil society, including NGOs, civil society platforms and actors such as trade union representatives or representatives of social, business or economic interests. The concerns raised by civil society actors are used to investigate matters or to open ex officio investigations, if they are well-founded and fall within the mandate of the institution.

## Implementation of European Courts' judgments

### Assessment of follow-up activities of State authorities

According to the latest data from the European Court of Human Rights (ECHR)<sup>16</sup>, published last January, Spain's execution rate of the ECtHR's rulings is three years and one month, below the average of the Member States of six years and two months. Spain is one of the countries that takes the least time to execute rulings handed down by the ECHR.

ECHR rulings have a twofold effect. Firstly, they oblige States to redress the harm caused to the individual whose rights have been violated, which usually takes the form of financial compensation. In Spain the enforcement of judgments is relatively rapid, as Spain pays compensation and appeal procedures usually last no more than one year.

The execution of ECHR judgments is more complicated when it involves legislative changes.

### Leading European Courts' judgments awaiting implementation

As of 31 December 2022, Spain had 21 ECHR rulings pending execution. Most of these concern shortcomings produced in the specific judicial process.

Altogether out of the 21 rulings pending execution in which Spain has received a negative judgment, the country has adopted measures in 18 of the cases<sup>17</sup>.

### NHRI's actions to support the implementation of European Courts' judgments

The Ombudsman's annual report 2022 –which is widely disseminated to the Spanish Parliament, government bodies and to the public – will include a section on the ECHR rulings concerning Spain. The section will provide the reasons why the State has received a negative judgment.

Internally, there is an agreement between the Defensor del Pueblo and the state lawyers acting before the European Court of Human Rights (ECHR). It consists in sending the Ombudsman the text of the ruling, its Spanish translation, and a summary each time a



ruling is handed down involving Spain. This practice is important to the Ombudsman so that it can make use of arguments from the ECHR when resolving complaints.

In the event of non-compliance with the obligation to transpose a European Directive on time, the Ombudsman often informs the governmental body about possible negative decisions of the CJEU. In addition, the institution points that in this case the European Directive has direct effect and can be invoked and requested in court by citizens.

## Artificial Intelligence

### Impact of AI on human rights, democracy and rule of law

The Spanish Ombudsman has not witnessed any relevant impact on human rights, democracy, and the rule of law in the use of AI. The only case detected in this area thus far is the use of the so-called BOSCO algorithm to determine the status of vulnerable electricity consumers, related to assistance to cover energy costs.

### NHRI's actions to address challenges regarding the use of artificial intelligence

The Spanish NHRI has addressed challenges in 2022 only in the case of the BOSCO algorithm. The algorithm essentially uses annual income tax as evidence of economic capacity, but when this declaration is not required because the applicant's income is too low, the algorithm automatically denies the person concerned vulnerable consumer status. Fortunately, the Spanish government has announced that it will modify the algorithm.

### Other challenges in the areas of rule of law and human rights

On the occasion of the Pegasus spyware investigation, given that the law in force dates from 2002, the possibilities of improving judicial control over the actions of the National Intelligence Centre (CNI) should be explored to reflect the modernisation of information and surveillances technologies<sup>18</sup>.

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<sup>1</sup> [Second Spanish National Human Rights Plan \(In Spanish\)](#)

<sup>2</sup> [Commission to produce a report on the allegations of sexual abuse in the Catholic Church](#)

<sup>3</sup> [Law 11/2002 Regulating the National Intelligence Centre \(In Spanish\)](#)

<sup>4</sup> [Spanish ombudsman control over the Centre for National Intelligence and its conformity with the constitution](#)

Please, also see [Letter of the Spanish Ombudsman to the CNI \(In Spanish\)](#)

<sup>5</sup> [Ibero-American Federation of Ombudsperson Report on Human Rights Defenders \(In Spanish\)](#)

<sup>6</sup> [Spanish NHRI request to Social Security Department to resolve delays in granting appointment](#)

<sup>7</sup> [Spanish Ombudsman letter on mental health day \(In Spanish\)](#)

<sup>8</sup> [https://www.defensordelpueblo.es/documentacion/resultados-busqueda-documentos/?palabra\\_clave=la+palma#s\\_documentos](https://www.defensordelpueblo.es/documentacion/resultados-busqueda-documentos/?palabra_clave=la+palma#s_documentos)

<sup>9</sup> [Ombudsman visit to Melilla \(July 2022, in Spanish\)](#)

Please, see also [Ombudsman visit to the Melilla authorities \(July 2022, in Spanish\)](#)

Please, see also [Spanish Ombudsman visit to Melilla's border with Morocco \(In Spanish\)](#)

And [Actions and measures of the State Security Forces and Corps in Melilla. \(In Spanish\)](#)

<sup>10</sup> [Spanish Ombudsman visit to the Basque Country](#)

<sup>11</sup> [Spanish Ombudsman visit to Navarra](#)

<sup>12</sup> [Spanish Ombudsman visit to Andalucia](#)

<sup>13</sup> [Spanish Ombudsman visit to Extremadura](#)

<sup>14</sup> [Budget of the Ombudsman for 2023 \(In Spanish\)](#)

<sup>15</sup> [SCA Report May 2018](#)

<sup>16</sup> [Statistics on Spanish cases at the European Court of Human Rights](#)

<sup>17</sup> [Latest European Court of Human Rights data concerning Spain](#)

<sup>18</sup> [Letter of the Spanish Ombudsman to the CNI \(In Spanish\)](#)

## Sweden

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### Swedish Institute for Human Rights

#### Independence and effectiveness of the NHRI

##### International accreditation status and SCA recommendations

A new institution, the Swedish Institute for Human Rights, was created and commenced operations on 1 January 2022. The Institute is a non-accredited associate member of ENNHRI.

This institution is not yet accredited, but it has been established with reference to the UN Paris Principles. ENNHRI provided comments on the legislative proposal to establish the Institute and stands ready to give further support towards its accreditation<sup>1</sup>.

On 14 April 2023, the institution submitted a request for accreditation and is currently working on a plan that will prepare it for the review, the date of which will be scheduled by the SCA during its October 2023 session.

The plan is divided in four phases. During the first phase, the preparatory phase, the Institute established an overarching program goal relevant to A-status, as well as a coordinating portfolio and an internal working group at the Institute. It became an associate member of ENNHRI and collected information and advice from the ENNHRI Secretariat, other NHRIs and experts, on the Paris Principles and accreditation process. The second phase has been named the analytical phase, which is ongoing at the time for the finalisation of this report, but soon near its completion. During this phase the Institute is carrying out a gap analysis, comparing current conditions for the Institute's legal framework, budget, programmes of operation, relations with the international and national human rights frameworks, its leadership body, staff members and the special mandate to monitor the implementation of the Convention on Rights of Persons with

Disabilities (the so-called article 33.2-mandate) with relevant requirements in the general observations of the Sub Committee on Accreditation in GANHRI. Once the analysis is completed and documented in an analytical report, the Institute will commence a third, prioritization phase, during which it will invite representatives from government, parliament, civil society and other stakeholders, including experts from the secretariats of ENNRHI and GANHRI to comment on the findings and proposed measures of the analysis.

As regards the legal framework, the Institute is considering two additional steps. To begin with, ODIHR has informed the institution about the possibility of requesting a legal review. The legal review would have the purpose of identifying measures which would further strengthen the legal protection of the institution. In addition, once the legal analysis is completed, there might be a need for a feasibility assessment as regards the legislator's willingness to initiate a process for amendments, considering that not more than two years have passed since the closure of very lengthy inquiry and adoption processes for the enabling law. Moreover, the latest signals from government are not overly positive. In early April, the Swedish Democrats stated it wanted to close the Institute and despite several requests for clarifications from the Institute and advocacy efforts from both international and local actors (e.g. an open letter to the Prime Minister signed by more than 47 NGOs), the government did not make any statements in support of the institute. Instead, it seems the government was using the institute as part and parcel of a wider but closed negotiation with the Swedish Democrats on the spring budget amendments and the spring budget proposal. The situation was not resolved during the finalisation of this report.

Notwithstanding the uncertainties and complexities of the current situation, the prioritization phase shall end with the adoption of an A-status-strategy, which also denotes the beginning of the fourth phase. Once the strategy has been completed to a level making the conditions for A-status conducive to success, the fifth phase, the accreditation phase, will commence.

Another institution, the Equality Ombudsman of Sweden, was accredited as a B-status NHRI in 2011.<sup>2</sup> However, it does not have a broad mandate to promote and protect human rights, with its mandate being restricted to matters of equality and non-discrimination. The Equality Ombudsman is no longer a member of ENNHRI due to the establishment of the Swedish Institute for Human Rights.

### **Regulatory framework**

On 1 January 2022, the enabling law of the Swedish Institute for Human Rights (the Institute) entered into force. The law<sup>3</sup> was amended on 1 September 2022. The amendments established an explicit obligation on behalf of all public authorities, including at sub-national levels, to cooperate with the Institute in the sense that upon a request they must provide information on measures undertaken to ensure human rights within their respective areas of responsibility. However, the judiciary is exempted from this obligation.

The enabling law gives the Institute a strong mandate and powers to act independently and effectively. However, to what extent the law meets all standards enshrined in the Paris Principles has not yet been considered by the GANHRI Sub Committee on Accreditation (SCA), as the Institute has not yet applied for A-status. On this aspect, the Institute has made full compliance with the Paris Principles an overarching goal and is carrying out a preparatory gap analysis, comparing the enabling law and other conditions relevant to the Institute's capacity with A-status requirements. The analysis is ongoing, and the final conclusions are yet to be done. Once ready, it will be transformed into an A-status-strategy with recommendations to the government relevant to any important gaps in the legal framework and commitments relevant to remaining capacity-building needs within the Institute.

Thus far, the gap analysis has helped the Institute to conclude that:

- There is no explicit provision in the enabling law or other parts of the legal framework concerning the need to table the Institute's reports in the national

parliament, including the annual reports (see further article 3 in the Law on the Institute for Human Rights). However, in a recent development, members of the Parliament's Constitutional Committee have demonstrated an interest in facilitating a solution.

- There is no explicit right enshrined in the enabling law or other parts of the legal framework for unannounced visits to all places of detention and closed institutions in Sweden, notwithstanding that the Institute, as well as the Swedish Child Ombudsman lacking a corresponding provision in its enabling law, have not been hindered to do so in practice. Further, the Swedish Parliamentary Ombudsman possesses full access and a constitutionally protected mandate of a national preventive mechanism according to international standards on the prohibition of torture;
- The nomination of members of the Institute's leadership body – its board – follows the process and criteria set forth in the Paris Principles. However, there might be a room for strengthening the formal rules and regulations governing the process, see further articles 7 – 9 in the Law on the Institute for Human Rights; and
- There is a need to assess to what extent the rather complex legal framework governing the Swedish civilian and military defence measures in a state of emergency or war would have to be amended in order to fully recognize the newly established Institute and avoid any the risk of imposing undue restrictions on its mandate and staff members.

In this context, it may also be important to echo the concerns raised by various UN Treaty Bodies in relation to gaps in the legal implementation of UN human rights conventions. This has to do with the principle of dualism in the Swedish legal system, meaning that following ratification, the legislator must act and incorporate or transform the treaty into national law in order for the standards to become enforceable. Even when the legislator has failed to transform the treaty standards into all relevant parts of the laws, such standards may still influence the interpretation of the laws, in accordance

with the jurisprudence-based principle of treaty-compliant interpretation of the law. The adherence to this principle is however weak in practice, albeit having been formulated and subsequently confirmed by the Supreme Court of Sweden.

The concerns especially relate to some standards of the International Covenants on Economic, Social and Cultural Rights<sup>4</sup>, which has not yet been fully transformed into domestic law, to be compared with the European Convention on Human Rights and the Convention on the Rights of the Child (CRC), which have been fully incorporated into domestic law. In essence this creates a rather unique hierarchy of international human rights standards when it comes to domestic application, as the CRC may prove to be a more successful platform for human rights advocacy on economic and social rights, than the international covenant.

This weakness does not prevent the Institute from promoting the full transformation or incorporation of the said treaties in national law and, until such a time, a more robust application of the treaty-compliant interpretation principle by courts and the public administration.

### **Enabling and safe space**

Until end of March 2023, the Institute had not been subject to any deliberate attempts on behalf of the government and state authorities to undermine neither the mandate, nor the activities of the Institute. However, on 6 April, three days following the release of its first Annual Report, a spokesperson for the Swedish Democrats stated his party wants to close the Institute, alleging that there are no problems with discrimination and racism in Sweden. Furthermore, the government did not make any counterreactions. To the opposite, during an open questioning session in Parliament a few days following the statement from the Swedish Democrats, the Prime Minister questioned the need for an “agency monitoring human rights in Sweden”. Next and in connection to the 20-21 April EU High Level Conference on Institutional Protection of Human Rights in Times of Crises, in Lund, the Minister for Gender Equality, also responsible for human rights

domestically, stated that she is not able to provide any answers as to the future of the Institute.

Until then, the government has demonstrated interest and support for the concrete activities of the Institute during its initial year of operations, as proven during the opening ceremony in May 2022 and the April 2023 launch of the Institute's first substantive annual report. Further, the Institute's own town of residence, Lund, was chosen as the venue for the High-Level EU Conference on Institutional Protection of Human Rights in Times of Crises, on 20 to 21 April 2023, co-hosted by the Swedish EU Presidency and the Fundamental Rights Agency, enhancing the participants knowledge about the Institute's coming-into-existence at European levels. The Institute has also been invited to stakeholder dialogues between the government and civil society in connection to the preparation of the state report to the Committee on the Elimination of All Forms of Racial Discrimination, although the Institute had to ask for it in writing. However, the Swedish Institute finds that there is still room for improvement regarding the government's role in ensuring an enabling space for the institution to carry out its monitoring mandate effectively.

For instance, the government has not acted on repeated recommendations from UN Treaty Bodies and other actors from the international community as regards the need to establish a national mechanism for reporting and follow-up on treaty body recommendations, which negatively affects the Institute's (and other human rights bodies') possibility of monitoring the implementation of human rights treaties and recommendations from international human rights mechanisms.<sup>5</sup>

Further, the government regularly includes the Institute in the list of actors invited to comment on draft legislation and other public inquiries affecting the implementation of human rights obligations. However, there are already some noticeable exceptions to this practice. For example, the Institute was not included in the list of actors being requested to provide an opinion on a pending draft law proposal on stricter rules for



immigrants as regards family reunification and humanitarian grounds for asylum<sup>6</sup>. This did not hinder the Institute from developing and filing an opinion on its own initiative.

There is also a tendency towards shorter deadlines for submissions of opinions on legal drafts, coupled with an increased presence of political will in the instructions for public commission of inquiries. For instance, a newly established commission of inquiry into the issue of visitation zones for the police was not tasked to consider *whether* but rather *how* visitation zones could be introduced in Sweden<sup>7</sup>.

This comes together with a broader concern from many legal scholars regarding a decline in the government's respect for opinions on draft laws from the national law council, an independent body charged with the preview of proposed legislation from the viewpoint of the Swedish constitution, including its Bill of Rights. More so, a set of draft laws around extraordinary measures in the field of criminal law have been weak in terms of assessing the principle of proportionality while limiting the rights of suspects and accused persons, a trend that the Institute has commented upon in legal opinions.

### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

In general terms, the Swedish environment is conducive to the effective fulfilment of the Institute's mandate and more broadly for human rights work.

In the Annual Report of 2023, the Institute placed emphasis on the goal and purpose of reaching A-status, at the same underlining that it cannot be taken for granted that the Institute would pass all relevant requirements from the GANHRI Sub Committee on Accreditation under the current conditions. During a meeting with the responsible Minister, in connection to the launching ceremony of the report, the Institute illustrated this stance by bringing the Minister's direct attention to standards in the UN Paris Principles relevant to the tabling of reports in the Parliament and detailed appointment procedures for leadership bodies.

Besides that, the Institute has not taken explicit and concrete action to follow up on issues or shortages related to compliance with the Council of Europe CM Recommendation 2021/1 on the development and strengthening of effective, pluralist and independent national human rights institutions.<sup>8</sup> The Institute is currently concluding the abovementioned gap analysis. On that basis, it envisages a prioritization process which would emanate in any relevant recommendations for the government, the parliament and other actors as concerns any remaining needs in strengthening the role and status of the Institute.<sup>9</sup>

### **NHRI's recommendations to national and regional authorities**

The Institute has not issued any public recommendations in this area. However, on a general note and within the context of this written reply, the views from the Swedish Institute to the national and regional authorities would be:

- To engage on the forthcoming findings of the Institute's gap analysis on adherence to the Paris Principles and criteria for reaching A-status;
- To improve protection against hate crimes as well as inflammatory and racist manifestations;
- Improve adherence to good practice and/or due process requirements when it comes draft legislation, stakeholder consultations with NGOs and follow-up of UN Human Rights Treaty Bodies' recommendations.

### **Human rights defenders and civil society space**

The Swedish community of human rights defenders is skilled, powerful and active at all levels of society. It comprises of several professional NGOs, other individuals acting independently, including within academia, as well as a relatively large and unique group of human rights specialists, which are civil servants with a specific knowledge in human rights and common mandate to minimize risks of human rights violations on behalf of their employers. Within this community, there is a relatively high degree of cooperation and coordination, as evinced by three national networks and regular joint information

meetings (co-hosted by the Institute). There are also researchers involved, assessing to what extent there is an emerging human rights profession in Sweden.

At current, there is an increasing concern within the community regarding the lack of respect for the rule of law and basic democratic values among some leading politicians and opinions-makers, in turn affecting public opinion on the role and status of whistle-blowers and civil society<sup>10</sup>.

On the basis of recommendations from human rights treaty bodies<sup>11</sup>, as well as the findings from a pre-election needs assessment mission of the OSCE Office of Democratic Institutions and Human Rights (ODIHR) to Sweden in May to June 2022<sup>12</sup>, the Institute has been able to confirm that indeed, according to an analysis undertaken by a Swedish media monitoring company on the request by the Institute, there was a very high presence of polarizing and xenophobic rhetoric in the campaigns for the September 2022 general elections in Sweden. Typically, the polarizing rhetoric pointed to problems among politically marginalised groups of the population, such as immigrant communities and the youth, blaming opponents for lack of solutions and the need for harsher measures. The Institute is concerned that the rhetoric may make normal people more inclined to place their blame about societal problems, including de facto challenges relevant to human rights, on other vulnerable parts of the population, rather than the responsible State authorities. It also increases a risk of politicization of human rights, negatively affecting human rights defenders and other persons engaged in the promotion and protection of human rights in Sweden.

The development is exacerbated by complicated laws on hate crimes, making it difficult to separate acts of hatred and racist speech from what would fall within the purview of freedom of expression. The grey zone has been openly abused for Islamophobia<sup>13</sup>, including in the context of Swedish NATO membership. It has also been abused to spur debate around an ongoing spike in deadly street violence, blamed by populists on failed integration policies which during the spring of 2022 emanated into violent clashes between counter-protesters and the Swedish Police.

There have also been some cases of open harassments of human rights defenders. One case in point was the aftermath to the NGO Civil Rights Defenders' human rights impact assessment of the Tidö agreement, an agreement that establishes the scope and means of cooperation between the political parties in government and the Swedish Democrats (SD). One of the senior politicians in SD reacted to the impact assessment with verbally assaulting the NGO and recommending the immediate withdrawal of all State-supported funding to the NGO.

The case should also be understood in the light of an alarming trend towards extensive cuts in the funding for civil society, coupled with an increase in the earmarking of the funds remaining. For example, due to the government's severe cuts in the so-called Information and Communication Fund, managed by the Swedish International Development Agency (SIDA), the Swedish UN Association<sup>14</sup> has had to terminate its rather sizeable program of "going glocal", structured around local advocacy for the implementation Agenda 2030 in Sweden. On top, the cuts of funds have also created difficulties for NGOs to engage in generic human rights advocacy other than what could be strictly related to the parallel reporting to the UN Treaty Body processes.

Associations for non-formal adult education is another part of civil society highly affected by the cuts in funding.

Further, during the fall of 2022 the Parliament adopted changes to the Freedom of Press Act (constitutional status) and criminal law, enabling prosecution of so-called espionage in foreign affairs. These changes could in principle enable prosecution of journalists and others who collect, communicate or handle sensitive information that may harm the reputation of Organizations and States which Sweden collaborates with abroad, e.g. NATO forces.

The Institute is concerned that the even though the laws came with an exception clause as regards "justified actions", which might cover human rights work, this clause is not specific enough to reach the threshold in SCA GO 2.3, on protection from criminal and

civil liability for official actions and decisions undertaken in good faith by NHRI-staff. Several leading freedom of information experts in Sweden, including the former director of the Institute, Mr. Anders Kompass, raised alarm about the legislation's potential negative impact on whistle-blowers and investigative journalists, ahead of the second reading of the proposal. However, this did not hinder the Parliament from passing the changes.

Finally, some politicians have started to question the long-term policy of an arm-length distance between politics and culture, which have caused concerns among artists and cultural workers as regards a risk for restrictions on the freedom and pluralism of cultural activities over time.

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<sup>1</sup> [ENNHRI contribution to consultations on the proposal for the establishment of a National Human](#)

<sup>2</sup> [SCA Report May 2011](#)

<sup>3</sup> [English Introduction to the Institute and its enabling law](#)

<sup>4</sup> [Concluding observations from the UN Committee on Economic, Social and Cultural Rights, see para. 6-7 on the domestic application of the Covenant](#)

<sup>5</sup> [Letter from UN High Commissioner for Human Rights to the Swedish government following 3rd cycle of Universal periodic Review, see para 1 page 2.](#)

<sup>6</sup> [Draft proposal on stricter rules for immigrants in the field of family reunification and humanitarian grounds for asylum \(Swedish\)](#)

<sup>7</sup> [Press release on launching an investigation into visitation zones \(Swedish language\)](#)

<sup>8</sup> [Recommendation CM/Rec\(2021\)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions](#)

<sup>9</sup> [Conference on Institutional Protection of Fundamental Rights in times of Crises \(europa.eu\)](#)

<sup>10</sup> [European governments continued weakening democracy in 2022, according to new report done by 45 civil liberties groups - Civil Rights Defenders \(crd.org\)](#)

<sup>11</sup> [Committee on the Elimination of All Forms of Racial Discrimination, Concluding observations on the combined twenty-second and twenty-third periodic reports of Sweden \(CERD/C/SWE/CO/22-23\), para. 10-11.](#)

<sup>12</sup> [OSCE Office of Democratic Institutions and Human Rights, Needs Assessment Mission Report, 31 May - 2 June 2022, Sweden](#)

<sup>13</sup> [Danish far-right leader banned from UK over threat to burn Quran in Wakefield - BBC News](#)

<sup>14</sup> [Swedish UNA: Budget cuts hurt the world's poorest people - United Nations Western Europe \(unric.org\)](#)

## ANNEX I – Overview of contributing NHRIs and of information provided on national situation per topic

EU Country	ENNHRI member	NHRI establishment /accreditation status	Implementation of recommendations on rule of law	NHRI Independence & effectiveness	HRDs and civil society space	Implementation of European Courts' judgments	Artificial Intelligence	Other rule of law and human rights challenges
1. Austria	Austrian Ombudsman Board	A status		✓				
2. Belgium	Federal Institute for the protection and promotion of Human Rights (FIRM-IFDH)	B status	✓	✓	✓	✓	✓	✓
Belgium	Interfederal Centre for Equal Opportunities and Opposition to Racism (Unia)	B status						
Belgium	Myria	No status						
Belgium	The Combat Poverty, Insecurity and Social Exclusion Service	No status						
Belgium	Central Monitoring Council for Prisons (CTRG-CCSP) <sup>19</sup>	No status						
3. Bulgaria	Ombudsman of the Republic of Bulgaria	A status	✓	✓	✓	✓	✓	

<sup>19</sup> Central Monitoring Council for Prisons (CTRG-CCSP) is not an ENNHRI member.

EU Country	ENNHRI member	NHRI establishment /accreditation status	Implementation of recommendations on rule of law	NHRI Independence & effectiveness	HRDs and civil society space	Implementation of European Courts' judgments	Artificial Intelligence	Other rule of law and human rights challenges
4. Croatia	Ombudswoman of the Republic of Croatia	A status	✓	✓	✓	✓	✓	
5. Cyprus	Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman)	A status	✓	✓	✓	✓	✓	✓
6. Czech Republic	Public Defender of Rights	No status	✓	✓				
7. Denmark	The Danish Institute for Human Rights	A status	✓	✓	✓	✓	✓	✓
8. Estonia	Chancellor for Justice	A status	✓	✓	✓	✓	✓	✓
9. Finland	Finnish Human Rights Centre Parliamentary Ombudsman	A status	✓	✓	✓	✓		✓
10. France	French National Consultative Commission on Human Rights	A status		✓	✓	✓	✓	✓
11. Germany	German Institute for Human Rights	A status	✓	✓	✓	✓	✓	✓
12. Greece	Greek National Commission for Human Rights	A status	✓	✓	✓	✓	✓	✓
13. Hungary	Office of the Commissioner for Fundamental Rights	B status	✓	✓	✓	✓		
14. Ireland	Irish Human Rights and Equality Commission	A status		✓	✓	✓	✓	✓
15. Italy	Currently no NHRI							

EU Country	ENNHRI member	NHRI establishment /accreditation status	Implementation of recommendations on rule of law	NHRI Independence & effectiveness	HRDs and civil society space	Implementation of European Courts' judgments	Artificial Intelligence	Other rule of law and human rights challenges
16. Latvia	Ombudsman's Office of the Republic of Latvia	A status	✓	✓	✓	✓	✓	✓
17. Lithuania	The Seimas Ombudspersons's Office of the Republic of Lithuania	A status	✓	✓	✓	✓	✓	✓
18. Luxembourg	National Human Rights Commission of Luxembourg	A status	✓	✓	✓	✓		✓
19. Malta	Currently no NHRI							
20. Netherlands	The Netherlands Institute for Human Rights	A status	✓	✓	✓	✓	✓	
21. Poland	Office of the Commissioner for Human Rights	A status	✓	✓	✓	✓	✓	✓
22. Portugal	Portuguese Ombudsman	A status	✓	✓	✓	✓	✓	✓
23. Romania	Romanian Institute for Human Rights	No status (applying)	✓	✓	✓		✓	✓
24. Slovakia	Slovak National Centre for Human Rights	B status	✓	✓	✓	✓	✓	✓
25. Slovenia	Human Rights Ombudsman of the Republic of Slovenia	A status	✓	✓	✓	✓	✓	✓
26. Spain	Ombudsman of Spain (Defensor del Pueblo)	A status	✓	✓	✓	✓	✓	✓
27. Sweden	Swedish Institute for Human Rights	No status (applying)		✓	✓			



## ANNEX II – List and contacts of contributing NHRIs

Country	NHRI	Contact (name)	Contact (email)
<b>Austria</b>	Austrian Ombudsman Board	Hannah Suntinger	<a href="mailto:aobint@volksanwaltschaft.gv.at">aobint@volksanwaltschaft.gv.at</a>
<b>Belgium</b>	FIRM-IFDH	Martien Schotsmans	<a href="mailto:msch@firm-ifdh.be">msch@firm-ifdh.be</a>
<b>Belgium</b>	Unia (Interfederal Centre for Equal Opportunities)	Marissa Fella	<a href="mailto:marisa.fella@unia.be">marisa.fella@unia.be</a>
<b>Belgium</b>	Myria	Koen Dewulf Mathieu Beys	<a href="mailto:Koen.Dewulf@Myria.be">Koen.Dewulf@Myria.be</a> <a href="mailto:mathieu.beys@myria.be">mathieu.beys@myria.be</a>
<b>Belgium</b>	Combat Poverty Service	Henk Van Hoote gem	<a href="mailto:henk.vanhoote gem@cntr.be">henk.vanhoote gem@cntr.be</a>
<b>Belgium</b>	Central Monitoring Council for Prisons	Marc Neve	<a href="mailto:marc.neve@ccsp-belgium.be">marc.neve@ccsp-belgium.be</a>
<b>Bulgaria</b>	Ombudsman of the Republic of Bulgaria	Katia Hristova-Valtcheva	<a href="mailto:k.hristova@ombudsman.bg">k.hristova@ombudsman.bg</a>
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