

# National Human Rights Institutions and Challenges for a Candidate Country on the Way to Accession to the European Union

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## Executive Summary

- ▶ This policy brief relates the importance of National Human Rights Institutions (hereinafter NHRIs) in the functioning of the human rights protection system. Beyond national borders, it is also appropriate to note the modalities of collaboration between NHRIs and regional human rights protection systems, particularly at the European Union level.
- ▶ It analyses the main challenges of NHRIs for a more comprehensive approach, for more visibility, efficiency and for more adequate human and financial resources. These principles should be considered as the only way to perform their mandate independently and in full compliance with the Paris Principles.

## Introduction

In accordance with the Paris Principles; the Vienna Declaration and Plan of Action, the National Human Rights Institutions (hereinafter NHRIs) are governmental bodies established by a constitutional or legislative act, whose functions are specifically aimed at promoting and protecting human rights. These NHRIs are classified into three main categories:

- Human Rights Commissions
- Ombudsman
- Specialized National Institutions aimed at protecting the rights of particular vulnerable groups such as ethnic minorities, indigenous peoples, refugees, women or children.

The responsibilities of NHRIs include to submit to the

government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them. NHRIs also contribute to publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

In the European Union, there are several NHRIs. These are characterized by national legislative and organizational particularities, which create a fragmentation in the human rights monitoring system. Nevertheless, notwithstanding the choice of name and



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organizational model, most European NHRIs are characterized by an autonomy vis-à-vis the public authorities that create them, which guarantees a certain objectivity in the accomplishment of the mission that is naturally recognized.

Beyond national jurisdiction, NHRIs are also called upon to collaborate with other regional human rights systems, as is the case in Europe with the European Committee of Social Rights and the European Court of Human Rights in Strasbourg. The latter can consult an NHRI by asking it to make observations or recommendations on a given human rights situation. By acting as such with the regional human rights systems, the NHRIs participate in the construction of a European system for the protection and promotion of human rights.

## 1. Legal basis of NHRIs: Paris Principles - Vienna Declaration and Programme of Action

NHRIs have their legal basis in a UN General Assembly resolution that led to the adoption of the Paris Principles in 1993. Several other documentary sources also provide insight into the status and functioning of these institutions, including the Vienna Declaration and Programme of Action of the same year.

In 1992, the UN Commission on Human Rights approved a set of internationally recognized principles relating to the status, powers and functioning of NHRIs (UN Commission on Human Rights Resolution 1992/54 of 3 March 1992 "Principles relating to the status of national institutions"), known as the Paris Principles. They were subsequently endorsed by the UN General Assembly in 1993. They set out the basic guidelines recommended by the United Nations for the establishment of a NHRI. Regarding the methods of operation, NHRIs shall freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner. In the same vein, NHRIs shall develop relations with the non-governmental organizations devoted to promoting and protecting human rights, for economic and social development, combating racism, protecting particularly vulnerable groups (especially children, women, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

On the other hand, the World Conference on Human Rights (held in Vienna in June 1993) was a real

turning point and resulted in the Vienna Declaration and Programme of Action, a joint initiative to strengthen human rights action around the world. It also provided an opportunity to make concrete recommendations to strengthen and harmonize the follow-up capacity of the UN system, and to advocate for the establishment of a UN High Commissioner for Human Rights by the General Assembly, which subsequently created the post on 20 December 1993. Under the Vienna Declaration and Programme of Action, the participants to the World Conference on Human Rights reaffirmed their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights. In the same vein, it is recognized also that the international community should devise ways and means to remove the "current" obstacles and meet challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting therefrom throughout the world and as well it recognized that all human rights are universal, indivisible, interdependent, and interrelated.

The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. As per Article 5 of the Vienna Declaration, the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. Article 36 of this declaration encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework that is best suited to its particular needs at the national level.

NHRIs develop their national actions and organize themselves in an autonomous way, by multiplying international and regional conferences, and by drawing up common positions, demonstrating their vitality and their dynamism.

## 2. Organization of NHRIs from Europe: Fragmentation of National Identities

Today there are several NHRIs in Europe, which are characterized by heterogeneity in organization and operation. The models of Albania and the Netherlands are specifically interesting in this context.

a. People's Advocate in Albania



People's Advocate (Avokat i Popullit) was established in 2000 and its mission is defending the rights, freedoms and lawful interests of individuals from unlawful and incorrect acts or omissions of public administration bodies as well as third parties acting on its behalf.

People's Advocate acts on the basis of the complaint or request submitted to his office. It also operates on its own initiative, in special occasions, which are communicated to the public. It is not the Ombudsman who decides directly himself to re-instate the rights of petitioners, but he makes recommendations to remedy the violation of the right by a public administration body which has caused the violation. In cases where the relevant body does not respond to the recommendations of the Ombudsman, the latter may address gradually to higher bodies in hierarchy up to the Assembly (Parliament) with a report proposing concrete measures for restitution of the violated right.

Peoples Advocate has a special mandate as well as National Preventive Mechanisms (NPM) and the purpose of the NPM section is the implementation of regular visits to all areas of public institutions where the freedom of the individual is limited as well as to psychiatric and infectious hospitals, military bases and units, in the Regional Border and Migration Directories and other centres' housing illegal migrants and trafficked persons.

In 2011, the Institute was awarded A-status (re-accredited in 2014 and 2021) by the Global Alliance of National Human Rights Institutions (hereinafter GANHRI), formerly known as International Coordinating Committee for national human rights institutions (hereinafter ICC), This constituted international recognition that the Paris Principles are being fulfilled.

#### b. Netherlands Institute for Human Rights

In order to fulfil UN resolution 48/134, the Netherlands Institute for Human Rights (hereinafter « NIHR ») was established in 2012. The NIHR explains, monitors and protects human rights, promotes respect for human rights (including equal treatment) in practice, policy and legislation, and increases the awareness of human rights in the Netherlands.

All powers of the former Equal Treatment Commission (CGB) were transferred to the Institute. In 2014, the Institute was awarded A-status by the GANHRI former ICC, recognition thereof that the Paris Principles are fulfilled. The NIHR seeks to improve the human rights situation in the Netherlands and thereby contributes to create a society in which the observance of human rights is assured for all

those who find themselves the country or within the Dutch sphere of influence. The idea is that everyone in that society can participate with freedom and dignity without hindrance from prejudice or discrimination and can develop his or her full potential.

### 3. Role of NHRIs in the Process of European integration

The term "European integration" refers to the ever-increasing economic and political cohesion between the States of the European Union (EU).

Thus, any State in the European Union that respects the values of the EU – as set out in the Treaty on European Union (TEU) – and is committed to promoting them, can apply to become a member of the EU. The first step for the State concerned is to meet the accession criteria, defined at the European Council meeting in Copenhagen in 1993, and often referred to as the "Copenhagen criteria". These were reinforced at the Madrid European Council in 1995 and later confirmed by the Lisbon Treaty. They establish a number of democratic, economic and political conditions that must be met by countries wishing to join the EU:

- (i) The presence of stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- (ii) The existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the EU;
- (iii) The ability to take on and implement the obligations of membership, including adherence to the aims of political, economic and monetary union. In addition, in December 2006, the European Council adopted a fourth condition through the "Renewed Consensus on Enlargement" to support the Copenhagen criteria: the EU's absorption capacity. This element does not depend on the candidate country but on the Union itself, which must be ready to welcome one or more new countries under good conditions: decision-making capacity, sufficient budget, etc.

In view of the above, there seems to be no link between the role of NHRIs and the process of European integration.

Nevertheless, a close look at the political criteria for EU integration (i.e., the presence in the candidate State of stable institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities) reveals a similarity with the



mission of the NHRIs. As a reminder, according to the Paris Principles and the Vienna Declaration and Programme of Action, NHRIs are vested with the competence to protect and promote human rights. In other words, NHRIs are among the stable institutions that contribute to guaranteeing human rights, respect for minorities and their protection.

In my opinion, it is essential for candidate countries to demonstrate during the process of negotiation their willingness for implementation of complex reforms in many areas including reforms in human rights. In the light of the above the candidate country can provide for example, that it has already established a NHRI, even if it does not yet comply with the Paris Principles (in terms of its rating), and those measures are being taken to achieve this compliance.

#### 4. Challenges faced by NHRIs in protection and promotion of human rights

In a report entitled "National Human Rights Institutions. History, Principles, Roles and Responsibilities" published in 2010, the United Nations noted that the number of NHRIs has surged, largely as a result of United Nations support for these NHRIs on the ground. While all NHRIs should have a broad mandate to protect and promote human rights, this growth has brought with it substantive and operational challenges. In light of these challenges, NHRIs and those who work with them must be able to understand the broader context in which they operate in order to be effective. Targeted and effective support for NHRIs is necessary if they are to achieve their mission. Thus, four challenges were particularly highlighted in the report:

(i) The first challenge is rapid growth and institutional diversity. Depending on the region, the country and its legal system, the mandates and powers of NHRIs vary widely. Some institutions, such as public protection offices and ombudsmen, have human rights mandates, although many do not. Some States have added other types of mandates, such as maladministration or anti-corruption, resulting in "hybrid" institutions. In some countries, States have divided human rights responsibilities among several bodies with different mandates—gender commissions, for example.

(ii) The second challenge is thematic diversity. NHRIs are, inter alia, helping to ensure the compliance of national laws and practices with all international human rights norms; supporting Governments to ensure implementation; monitoring and addressing at the national level core human rights concerns such as torture, arbitrary detention, human trafficking and the human rights of migrants; supporting the work of human rights defenders; and contributing to eradicating all forms of

discrimination. It is by addressing all of these various themes that NHRIs prove to be an "essential element" of any strong and effective national human rights protection system.

(iii) The third challenge is the need for minimum standards (i.e. a set of universal or international criteria) so that NHRIs, regardless of their structure or mandate, can be assessed fairly and accredited. This is the importance of the accreditation role of the Paris Principles, which has been entrusted to the International Coordinating Committee of NHRIs. In general, many NHRIs created nationally go through a few years to be accredited, in terms of getting a good rating ("A"). Several European NHRIs have not yet achieved this rating, such as the Federal Human Rights Institute of Belgium.

(iv) The fourth challenge relates to the importance of core protection activities. These include general activities relating to the prevention of torture and arbitrary detention, detention monitoring and the protection of human rights defenders. It is understood that in countries where human rights are often, all too easily violated, core protection activities are also quite important, and NHRIs are sometimes much overburdened.

In addition to the above, there is another challenge, namely "accountability". Indeed, NHRIs must report regularly (usually annually) on all aspects of their work. This obligation often derives from the legislations that create these institutions. NHRIs should be accountable not only to the government body to which the NHRI reports directly (e.g., a parliamentary committee), but also to the public at large. The publication of annual reports is an essential component of accountability. However, in order to be accessible to a wide audience, these reports should be published in national languages and disseminated in a variety of formats, such as concise summaries, press releases and public presentations. Through these reports, NHRIs must also report on the sources of their income and the purpose of their expenditures. They should disclose their administrative and operating costs, as well as their programs and activities. It should be noted, however, that this reporting requirement should not substantially undermine the independent character of an NHRI, in contradiction with the Paris Principles.

NHRIs may face other challenges, such as technical assistance needs (technical, material and normative capacity building), funding and resource management issues, difficulties and limitations encountered in facilitating access remedies for human rights violations, etc.

All in all, in order to enable NHRIs to comply with the requirements of the Paris Principles as well as the Vienna Declaration and Programme of Action, it is imperative that national public authorities and technical and financial partners be mobilized and contribute to raising these



different challenges. In the EU Member States also have a relatively fragmented approach in monitoring compliance with various human rights guarantees and this is highlighted in different resolutions (e.g. 2019/2125(INI)) of the European Parliament. These resolutions often bring into attention the lacking of a common method of implementation of the recommendations but bearing in mind the role of the NHRIs, there is a need for a more comprehensive approach, more visibility and efficiency for NHRIs in each EU Member State; more adequate human and financial resources, as the only way to perform their mandate independently and in fully compliance with the Paris Principles.

## 5. Conclusion and recommendations

NHRIs are a vital part of the country level human rights protection system and they do not replace the duty of

States to implement fundamental rights, but can provide independent suggestions and country-specific recommendations and can serve as an independent monitoring mechanism for the state delivery of their fundamental rights commitments.

Governance could consider more funding opportunities to help NHRIs develop and exercise their mandate and could consider a special focus for the countries in process to join the EU as Albania for increasing the available analysis and evidence base to check compliance with the Charter for fundamental Rights when transposing and implementing EU legislation

In my opinion it is very necessary for harmonization and regular exchange of the best practices and challenges related to NHRIs, which could allow mutual learning on how to best enhance the effectiveness, independence and impact of the NHRIs to make best use of them in an EU context.



## Further reading

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