ENNHRI European Network of National Human Rights Institutions

The state of the rule of law in the European Union

Reports from National Human Rights Institutions

2024

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About

This report is the result of the fifth 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 – 2024

Disclaimer

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Executive Summary

This report focusing on the state of the rule of law in the European Union (EU) has been published by the European Network of National Human Rights Institutions (ENNHRI) - a network connecting all National Human Rights Institutions (NHRIs) across the EU and the Council of Europe region. Through this joint rule of law reporting, NHRIs continue their strategic engagement with regional rule of law mechanisms. This report also contributes to the European Commission's consultations on its 2024 Rule of Law Report.

The report comprises an overview of trends and challenges in the rule of law identified by ENNHRI members across EU countries and ENNHRI's key recommendations. Moreover, it presents country-specific chapters zooming in to the national situation of the rule of law in the EU Member States, with a particular focus on the system of checks and balances and the impact of securitisation on the rule of law and human rights.

NHRIs are independent, state-mandated bodies with a broad human rights mandate, established in line with UN Paris Principles. The independent and effective NHRIs are 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.

In the report, ENNHRI's members from the EU Member States underline **persisting challenges** affecting the rule of law and human rights environment, namely:

- Inconsistent and insufficient follow-up by State authorities to the European Commission's country specific rule of law recommendations which results in the **need to strengthen the effective implementation of recommendations issued by the European Commission**;

- Some progress regarding the establishment of the NHRIs in line with the UN Paris Principles in the EU countries without one, apart from Italy. Furthermore, **numerous issues negatively impact the enabling space for NHRIs**, including: an unsatisfactory level of consultations with NHRIs by national authorities in view of relevant legislative and policy-making processes and 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 attacks on NHRIs.

- **Weakening of the system of checks and balances**, including by undermining the legitimacy and authority of judiciary; excessive use of accelerated legislative procedures; insufficient time for public consultations; lack of human-rights impact assessment; obstacles in the access to information; insufficient resources for all independent institutions and a low level of the implementation of their recommendations; as well as continued attempts to shrink civic space and human rights defenders activities.

- **The impact of securitisation on the rule of law and human rights**, namely restrictive measures introduced in numerous EU Member States in response to securitization of migration as well as threats of terrorism, raising concerns over their lack of compliance with human rights principles, including proportionality and their impact on, for example, freedom of assembly, association, expression and the right to privacy.

- **The unsatisfactory level of the effective and timely implementation of European Courts' judgments**, which is caused by the financial, legal, structural and organisational obstacles identified across EU Member States.

Based on the findings of ENNHRI members across the EU Member States, ENNHRI has formulated the following **key recommendations** to the European Commission, as well

as other relevant regional actors, such as the Council of Europe, and the EU Member States:

1. Further advance the implementation of the European Commission's recommendations on the rule of law by state authorities, in a timely manner and in cooperation with NHRIs;

2. Firmly support the establishment and enabling space for independent and effective NHRIs which are key element of healthy checks and balances;

3. Safeguard and strengthen other checks and balances across the EU;

4. Ensure the effective implementation of European Courts' judgments, in consultation with NHRIs and civil society;

5. Ensure a human rights-based approach with regard to securitisation;

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 explained in more details in the next section.

ENNHRI's key recommendations

1. Further advance the implementation of the European Commission's recommendations on the rule of law by state authorities, in a timely manner and in cooperation with NHRIs

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

- Continue annual rule of law reporting and strengthen the implementation of the European Commission's country-specific recommendations by:
    - proposing a timeline for the implementation process by state authorities;
    - developing a dedicated, transparent mechanism to monitor the implementation process, which would assess whether EU Member States address identified shortcoming through genuine reform efforts;
    - cooperating with national, regional and international human rights actors, including NHRIs, in the drafting and the monitoring of the implementation of the EC recommendations.
- Initiate infringement proceedings and apply the rule of law conditionality regulation in the case of the persistent lack of the implementation of recommendations concerning structural rule of law challenges;
- Include country-specific recommendations in the European Commission's rule of law report on the enlargement countries covered by the report and engage with relevant stakeholders such as NHRIs while monitoring the implementation progress.

ENNHRI recommends the **Council of the European Union** to:

- Assess the implementation of Commission's recommendations during country-specific rule of law dialogues at the Council level in a systematic manner;
- Engage with NHRIs in the rule of law dialogue – in line with 2023 Presidency conclusions on the evaluation of the annual rule of law dialogue.

ENNHRI recommends the **European Parliament** to:

- Continue its efforts to set out a timeline, targets and concrete actions for the implementation of the Commission's recommendations and to detail the possible consequences in the event of non-compliance in line with the European Parliament's report on the European Commission's 2023 Rule of Law Report.

Moreover, ENNHRI recommends **EU Member States** to:

- Include NHRIs in country-specific rule of law dialogues at the national level (in particular in parliamentary debates), and consult NHRIs to determine the most relevant rule of law and structural fundamental rights issues to be addressed in the current domestic context;
- Continue and further strengthen support to and cooperation with NHRIs to address rule of law issues, including by ensuring adequate funding.

2. Firmly support the establishment and enabling space for independent and effective NHRIs which are key element of healthy checks and balances

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

- **Adopt a European Commission Recommendation on NHRIs** to support the establishment of a strong and independent NHRI in each EU Member State to strengthen a healthy system of checks and balances at the national level, raising awareness about the role of NHRIs in advancing the EU's common values of

fundamental rights, democracy and the rule of law (art. 2 TEU), while clarifying what is expected from EU Member States to ensure a strong and independent NHRI is in place.

- Continue to call for the establishment of NHRIs in full compliance with the UN Paris Principles in the EU Member States where they do not exist yet;
- Present key challenges faced by NHRIs across EU Member States in its report in a systematic manner and underlining that EU Member States should ensure:
    - transparent, merit-based and pluralistic selection and appointment of heads of NHRIs as well as transparent and objective dismissal procedures;
    - 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;
    - timely and reasoned responses and effective follow-up by state authorities to NHRI recommendations, as well as access to information for NHRIs.

Also, ENNHRI recommends the **European Parliament** to:

- Further recognise and address the challenges faced by NHRIs in EU member States in your ongoing work in the area of the rule of law, including in the European Parliament's follow-up to the European Commission's annual rule of law report.

Furthermore, ENNHRI:

- Calls on Italy 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 Malta, Romania and the Czech Republic to swiftly advance with the adoption of legislative amendments aligning with UN Paris Principles, as well as provision of adequate additional resources, in consultation with ENNHRI associated members from these countries concerned, to enable them to function as NHRIs in compliance with the UN 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. Safeguard and strengthen other checks and balances across the EU

ENNHRI recommends the **European Commission** to:

- Ensure transparent, timely and meaningful public consultations within EU law- and policymaking processes;
- Conduct human rights impact assessments of EU legislation and policies, in consultation with relevant human rights actors, including NHRIs;
- Develop a European Civil Society Strategy and meaningfully monitor the implementation of the European Commission's 2023 Recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes;
- Support and concretely advance on the development of an 'EU Human Rights Defenders protection mechanism', to swiftly detect and act in response to attacks against HRDs, including cases of reprisals against HRDs (including NHRIs) for their work on the implementation of the EU fundamental values/ acquis.

Moreover, ENNHRI recommends **EU Member States** to:

- Ensure transparent, timely, inclusive and meaningful consultations, including of NHRIs, in law- and policy-making processes, while avoiding the excessive use of expedited legislative processes;

- Ensure timely and effective implementation of national and European courts' judgments by overcoming structural, financial and political obstacles;
- Ensure effective access to data and information to NHRIs in line with their legal mandate, both online and offline, as well as to other relevant stakeholders and the wider public;
- Foster an enabling environment for all independent public institutions playing a role in ensuring checks and balances, such as NHRIs, supreme audit institutions, data protection authorities, ombudsperson institutions and equality bodies;
- Ensure enabling space for civil society organisations and human rights defenders by:
    - establishing effective national HRD protection laws and mechanisms;
    - eliminating any undue restrictions on their functioning – in particular rules on registration and dissolution of civil society organisations, reporting & transparency obligations, criminalization of activities;
    - eliminating obstacles in access to funding, including from foreign sources;
    - implementing the European Commission's 2023 Recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes.

4. Ensure the effective implementation of European Courts' judgments, in consultation with NHRIs and civil society

ENNHRI recommends the **European Commission** to:

- Continue reporting on the implementation of European Courts' judgments in each EU Member State, with a particular focus on the judgments addressing rule of law issues, and to consider further highlighting its relevance such as through including in country-specific recommendations;
- Follow up on the implementation of European Courts' 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, and, where relevant, follow-up through enforcement measures such as blocking of EU funds;

ENNHRI recommends **EU Member States** to:

- Implement the European Courts' judgments (in particular Grand Chamber/ leading judgments), by tackling financial, legal, structural and organizational obstacles which impact the effective and timely implementation;
- 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 the participation of different stakeholders such as NHRIs and civil society;
- Make available judgments and decisions issued by the European Courts as well as information about steps taken by a state to implement those judgments (such as national action plans), in an open and accessible manner, including translation into national languages;

In light of the recognised potential and roles of NHRIs to advance the implementation of European Courts' judgments, ENNHRI recommends the **EU** and the **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 the implementation of European Courts' judgments;
- Provide sufficient resources and capacity building opportunities for NHRIs on the implementation of European Courts' judgments, including through ENNHRI.

5. Ensure a human rights-based approach with regard to securitisation

Considering the impact of securitisation on human rights and the rule of law, ENNHRI recommends:

The **European Commission** to:

- Conduct human rights impact assessments of laws and policies which bear relevance for national security and law enforcement activities, including timely and meaningful consultations with NHRIs and other relevant stakeholders;

EU Member States to:

- Implement a human-rights based approach to drafting of laws and policies in the area of security to identify risks of violation of human rights and mitigate them at an early stage, this includes drafting and implementing of migration laws and policies to secure the right to international protection and address migrants' vulnerability and ensure that the public discourse and responses to security threats do not contribute to xenophobia and racial discrimination;
- Conduct human rights impact assessments of national laws and policies concerning national security, including timely and meaningful consultations with NHRIs and other relevant stakeholders;
- Ensure legality and oversight of power, paying particular attention to drafting and amending of national laws aimed at strengthening and expanding powers of law enforcement authorities;
- Ensure that any restrictions on human rights, including on freedom of assembly, freedom of expression and the right to privacy, imposed to address security threats, comply with the principles of proportionality, legality, necessity, non-discrimination, transparency and accountability;
- Safeguard a human rights-based approach while using new technologies, such as surveillance, including ensuring the right to privacy and data protection;

- Foster a conducive environment for NHRIs, including access to data, to ensure their meaningful participation in consultations on national security-related legislation; and follow up on their advice on human rights compliance.

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

ENNHRI recommends the **European Commission** to further identify and recognise the systematic nature of fundamental rights violations across EU Member States and address them and their interrelated character to the deterioration of the rule of law in its report, for instance by dedicating a separate chapter (fifth pillar) in its annual rule of law report on structural fundamental rights violations across the EU.

Introduction

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 30 ENNHRI members in 26 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 are established and function with reference to the UN Paris Principles and 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.

NHRIs are unique because 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 the 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. Moreover, strong and independent NHRIs in compliance with the UN Paris Principles have become an indicator for a healthy rule of law in European countries. The vital role of NHRIs in upholding human rights and the rule of law has been recognised by a wide range of actors, including the European Union, Council of Europe, and United Nations. 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, the Council Conclusions on strengthening the application of the Charter, and on the application of the EU Charter of Fundamental Rights: promoting trust through effective legal protection and access to justice.

The European Commission in its 2023 Rule of Law Report reiterated that NHRIs are core elements of the system of checks and balances. Thus, the European Commission in its second edition of country specific recommendations invited the EU Member States to establish NHRIs in line with UN Paris Principles in countries where there are no accredited NHRIs yet (in the Czech Republic, Italy, Malta, Romania) and to strengthen the enabling environment for NHRIs (in Croatia, Lithuania, Poland). Such recognition in Commission's report of the role NHRIs as part of checks and balances might be further addressed through **a dedicated European Commission Recommendation on National Human Rights Institutions** which would raise awareness about the role of NHRIs in advancing the EU's common values of fundamental rights, democracy and the rule of law (art. 2 TEU), while clarifying what is expected from EU Member States to ensure a strong and independent NHRI is in place.

Rule of law reporting by NHRIs – methodology

Besides being themselves an indicator of the state of rule of law, independent and effective NHRIs are also 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, and NHRIs' broad mandate to promote and protect human rights, NHRIs are in a key position to report to and participate in rule of law monitoring initiatives in a consistent manner.

Building on their monitoring functions, cooperation with state and non-state actors and their role as a bridge between the state and general public, NHRIs have great potential in raising awareness, mobilising support and maximising impacts of international and regional actors' efforts to safeguard the rule of law 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, and helping policy makers, at national, regional and international level, identify the most appropriate responses and interventions.

In view of this, ENNHRI has been supporting and advancing NHRIs' engagement in regional rule of law mechanisms, including in particular the EU, based on a common methodology and coordinated approach. As a result, since 2020 ENNHRI has published annual 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' insights on the state of the rule of law across the region.

ENNHRI's reporting has successfully ensured its timely response to annual consultations by relevant counterparts (EU rule of law monitoring cycle, EU annual report on implementation of the Charter, Enlargement Package, UN Secretary-General report on NHRI reprisals,). This 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.

Under the ENNHRI Strategic Plan 2022-2025, more effective promotion and protection of human rights, rule of law and democracy is prioritised. To increase the impact of

ENNHRI's joint work on the rule of law, ENNHRI developed an updated methodology. It envisages an annual targeted rule of law reporting, focuses 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. Moreover, a broader report zooming into all aspects of the situation of rule of law will be developed every 4 years in the beginning of the new ENNHRI's strategic plan. Therefore, ENNHRI's 2024 annual rule of law reporting covers more in-depth the following topics:

- NHRIs and their enabling space;
- implementation of recommendations, in particular issued by the European Commission and ENNHRI and its members in annual rule of law reporting as well as actions undertaken by NHRIs to facilitate the implementation at the national level;
- structural human rights issues affecting the rule of law through reporting on the implementation of European Courts' judgments;
- the impact of securitisation on human rights and the rule of law as ENNHRI's thematic priority for 2024;
- other rule of law issues of specific relevance in members' national context;
- in-depth analysis on one key priority area of rule of law, which in 2024 is the system of checks and balances.

In 2024, ENNHRI's report ensures more in-depth analysis on the system of checks and balances with a view to feed into regional developments as means to advance progress on the ground, including:

- analysis and recommendations concerning checks and balances carried out by the European Commission within its rule of law monitoring cycle in the EU as well as within Enlargement Package and Eastern Partnership;
- 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;

- follow-up to the European Commission's 2023 report on the application of the Charter of Fundamental Rights in the EU concerning effective legal protection and access to justice.

More targeted ENNHRI annual rule of law reporting supports effective advocacy and meaningful engagement with regional stakeholders and other actors to achieve positive change for the rule of law, human rights and democracy across the region. Therefore, on the basis of ENNHRI's rule of law reporting, ENNHRI continues its contribution to regional policy and standard-setting initiatives relevant to the rule of law, as well as strengthening the capacities of NHRIs to uphold the rule of law and to protect human rights in each European country.

Notably, this year ENNHRI's joint reporting met almost complete response rate from ENNHRI members from EU Member States. For those EU Member States where ENNHRI has no member, the ENNHRI Secretariat provided information on the progress concerning the establishment of an NHRI.

Overview of trends and challenges

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

This is the second time that ENNHRI's report reflects on the follow-up given by national authorities to regional actors' recommendations. The effective and timely implementation of such recommendations constitutes a crucial step in advancing rule-of-law compliance and human-rights protection across the EU. This holds true not only in respect of recommendations that concern NHRIs' setting up and functioning but also in respect of all other recommendations related to upholding and securing the rule of law compliance at domestic level.

NHRIs' input mostly concerns follow-up to recommendations made by the European Commission (EC) in its annual rule of law reports. ENNHRI welcomes the inclusion of country-specific recommendations by the European Commission in its rule of law reporting as this significantly advances the actionability of the European Commission's rule of law monitoring, while bringing concrete impact on the ground.

The EC recommendations concern the areas of justice system, the anti-corruption framework, media pluralism and freedom, as well as other institutional issues related to checks and balances. Some progress has been noted in connection with their implementation and this is encouraging. However, what also clearly transpires from the national reports is **lack of consistency of state authorities' approach**. Moreover, in respect of some issues, ENNHRI members considered that there has been **no follow-up at all**, which should give cause to great concern.

Authorities' reaction to recommendations concerning the **justice system** has been mixed. On the one hand, according to the Finnish NHRI, ambitious proposals for improvement in this area have been submitted, while the report of the Polish NHRI analysed at length the wide-ranging reforms introduced in this connection in its country. Also, the Greek NHRI noted some progress regarding the acceleration of the administration of justice linked to initiatives at the legislative level. However, in other EU Member States progress has been slow. Although the concerns expressed by different NHRIs about their countries' systems of justice vary considerably, there are several common themes: the adequacy of resources and legal guarantees of independence, as well as – in some states – the limited possibilities of review of their Attorney General's decisions.

The Croatian, Danish, German and Portuguese NHRIs reported an increase in resources for justice systems and so did the Spanish NHRI in respect of the Attorney General's Office. Announcements going in the same direction have been made in Finland and Belgium reports. However, one of Belgium's ENNHRI members (FIRM-IFDH) has criticised the conditionality attached to budget growth and the Danish NHRI has taken issue with some of the reforms introduced to promote efficiency in the administration of justice. As regards legal guarantees of independence, the Slovak and Spanish NHRIs have drawn attention to a lack of sufficient safeguards or the stalling of the reform of their countries' judicial councils. While some progress has been achieved in Finland in assessing the system of lay judges, Sweden is still grappling with this issue. The Greek NHRI reports no progress in ensuring the 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. Moreover, the Slovak NHRI continues to express concern about judges' being open to prosecution for bending the law. The NHRIs from Cyprus and Slovakia reported little headway in connection with possibilities of review of their countries' Attorney General's decisions.

Other justice issues in respect of which individual NHRIs have reported some positive developments are the following: enhancing the efficiency of the tax and administrative courts in Portugal, the amendment of the Crime Victims Compensation Act in Slovenia and the enactment of the law on the organisation of legal aid in Luxembourg.

As regards the **anti-corruption framework**, there have been positive developments in connection with asset disclosure in Cyprus and the competent authority has seen staff growth. Spain has enacted a law on some whistleblowers' protection. Croatia has enacted legislation on lobbying and Latvia has been in the process of doing so through introduction of lobbying-related registers. However, the Slovak NHRI has reported no progress or even regression in the field of the fight against corruption.

According to some NHRIs, there have also been positive developments in the field of **media pluralism and freedom**. For instance, this includes: the ratification by Belgium of the Tromsø Convention is underway; Croatia's National Plan for the Development of Culture and the Media contains provisions on strategic lawsuits against public participation (SLAPPs); Estonia has set in motion a legal-review procedure in connection with the effective implementation of the right to information; and Poland has been trying to redress the situation at the national television and radio. There has been no progress, however, for example, in connection with journalists' safety in Greece and Slovakia, the right to information in Germany, and the initiation of legislative process in Greece to counter SLAPPs in follow up to the European Commission's recommendation.

When reporting on **other institutional issues related to checks and balances**, some ENNHRI members reported on **civic space** issues. Thus, the German NHRI drew attention to lack of progress in connection with the tax-exemption system for non-profit organisations and the Swedish institution reported that civil society organisations increasingly experienced an uncertainty in funding. The Greek NHRI highlighted the burdensome formal requirements affecting the functioning of civil society organisations (CSOs), in particular those working in the area of migration. Moreover, the Slovak NHRI

referred that despite the improvements promised by the Government as regards the legislative process and public participation in the procedure for adopting statutory proposals, there has been no concrete steps to ensure it and the use of the accelerated legislative procedures without proper public participation persists. The Greek NHRI also reported on the lack of sufficient time ensure for public consultations of draft laws and the accelerated legislative procedure frequently being used without proper or any justification. The Danish NHRI discussed the reform of the law governing access to public-administration documents, which has been underway.

ENNHRI members also reported on the progress in relation to the **EC country-specific recommendations concerning NHRIs.** More specifically, those recommendations address the establishment of NHRIs in the countries where there is no accredited NHRI yet or ensuring enabling space for NHRIs functioning in several EU countries.

Thus, on the one hand, ENNHRI member from the Czech Republic – Public Defender of Rights – drew attention to the risk that the bill aiming to convert the institution into an accredited NHRI might not guarantee full respect for the Paris Principles. The Polish NHRI stressed that its funding remains insufficient and continues to stress vague legal grounds for dismissal of the head of the NHRI and other regulatory gaps. The Croatian NHRI raised concerns over the newly established mechanism on the level of implementation of the Ombudswoman recommendations and continued obstacles in access to information. On the other hand, the Lithuanian NHRI has reported positive developments concerning its financial resources. Also, ENNHRI member from Romania reported on the progress of seeking its accreditation.

ENNHRI recommends the European 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, insufficient follow-up by state authorities of NHRI recommendations and obstruction and intimidation in the context of carrying out their work. Moreover, the European Commission should continue to urge the final four EU Member States to

advance on establishing accredited NHRIs. Finally, the European Commission should further highlight in its annual rule of law report and its country chapters the key role NHRIs play in monitoring and addressing the rule of law situation in the EU Member States.

In order to secure enabling space for effective, independent and pluralistic NHRIs in EU Member States**, ENNHRI encourages the European Commission to adopt a dedicated Recommendation on NHRIs**. Such a European Commission Recommendation would raise awareness about the role of NHRIs in advancing the EU's common values of fundamental rights, democracy and the rule of law (art. 2 TEU), while clarifying what is expected from EU Member States to facilitate a strong and independent NHRI is in place.

NHRIs' follow-up actions supporting implementation of regional actors' recommendations

NHRIs play a key role in monitoring and supporting the implementation of regional actors' recommendations, including in particular those issued by the European Commission in its annual rule of law reports. It is not only in line with the UN Paris Principles which require NHRIs to engage with international actors and to report on the implementation of international obligations. This also enhances NHRI's recognition as an important actor to monitor and report on, as well as issue recommendations on how to advance the rule of law compliance in both regional and domestic context. Thus, ENNHRI invites the European Commission to further build upon the added value of NHRIs' engagement in the rule of law mechanisms, including by further engaging with them within national rule of law dialogues and rule of law report consultations.

Thanks to their broad mandates, ENNHRI members engage in a range of activities to support the process of implementation of regional actors' rule of law recommendations to bring about change on the ground in relation to the rule of law.

In addition to **monitoring** how other state authorities have reacted to regional actors' recommendations, NHRIs themselves take initiatives with a view to promoting their implementation. One way of achieving this is by integrating such recommendations in their everyday work, as pointed out by the NHRIs of Cyprus, Estonia, Greece, Lithuania and Romania.

The same objective can be achieved via **dialogue with the competent authorities**, as reported by the ENNHRI members of Croatia, Denmark, Greece, Luxembourg, Poland and Romania; by **disseminating the recommendations** and **raising public awareness** through dedicated events or the media, as did the Danish, French, Greek, Polish and Slovak NHRIs; through **participation in relevant public consultations**, as did ENNHRI members from Croatia, Finland, Ireland, Poland and Sweden; and by issuing **opinions** on the underlying issues, as did the ENNHRI members from Belgium, Finland and Poland.

It is important that NHRIs have the internal capacity to support implementation. While the Irish NHRI has invested considerable efforts in creating this, the NHRI of Luxembourg has underlined **insufficient resources to carry out such dedicated activities**.

Naturally, ENNHRI members pay particular attention to recommendations issued by regional actors about their own regulatory framework and functioning, as evidenced by ENNHRI members from Romania (in the context of seeking accreditation as an NHRI) as well as from the Czech Republic, which referred extensively to an expert roundtable organised to advance on the Public Defender's transition into an NHRI.

Finally, NHRIs can promote implementation of regional actors' recommendations by referring thereto in their **reports to various international monitoring mechanisms**. This is the practice of, for example, the NHRIs of Ireland, Luxembourg and Slovakia. NHRIs have been raising rule-of-law issues in all relevant regional and international fora, which shows that European and UN supervision can be mutually reinforcing. This was

pointed out, inter alia, in the Austrian report, which raised concerns over the lack of implementation of UPR recommendations. Naturally, many NHRIs – including the Polish NHRI – stressed the need to comply with the findings of international human-rights monitoring mechanisms, of which the NHRIs are the natural national institutional partners.

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

The state authorities' follow-up given to NHRIs' own recommendations concerning the rule of law usefully reflects and complements the regional actors' ones, as they are based on NHRIs' unique knowledge of the national set-up and challenges in their domestic context. As a result, they can act as an additional lever for further progress towards rule of law compliance and human rights protection.

Naturally, **many of the recommendations in question concern the NHRIs' position within each country's institutional landscape**. In this connection, one could mention the ENNHRI member from Sweden recommendations about compliance with the UN Paris Principles; those by the NHRIs of Estonia and Luxembourg concerning their involvement in the preparation of statutory proposals; and the recommendations by the German NHRI calling for a public dialogue on its report and its participation in parliamentary hearings.

Some ENNHRI members, including from Cyprus, have been quite positive about the follow-up provided to their recommendations. Some – including ENNHRI members from Belgium, Estonia and Germany – were, however, rather critical because of **insufficient implementation of their recommendations**. This issue should be further addressed by state authorities as well as the European Commission within its rule of law mechanism.

NHRIs' establishment, independence and effectiveness

ENNHRI welcomes the European Commission (EC) 2023 Rule of Law Report which reaffirms the important role of National Human Rights Institutions (NHRIs) as vital part of national checks and balances. In particular, ENNHRI underlines the high importance of the EC country-specific recommendations concerning the establishment of NHRIs in the EU countries where there is no accredited NHRI yet (in the Czech Republic, Italy, Malta, Romania) and to strengthen the enabling environment for existing NHRIs in several EU countries (namely Croatia, Lithuania and Poland).

As reported in the previous chapter, ENNHRI notes the positive impact of the EC recommendations concerning some states. At the same time, ENNHRI invites the European Commission to consider more consistent integration of the challenges faced by NHRIs in other EU Member States in its recommendations. These challenges concern a transparent, merit-based and pluralistic selection and appointment of heads of NHRIs as well as transparent and objective dismissal procedures; adequate resources for NHRIs and independent budget allocation; timely and reasoned responses and effective follow-up by state authorities to NHRI recommendations, as well as access to information for NHRIs. Moreover, ENNHRI encourages the European Commission to further engage with state authorities, NHRIs and ENNHRI to facilitate timely and effective follow-up to its recommendations at national level.

Beyond further recognition of the challenges faced by NHRIs in the EC annual reporting and a lack of accredited NHRIs in 4 EU countries, ENNHRI stresses the need for the European Commission to strengthen its support for independent and effective NHRIs in each EU Member State.

ENNHRI firmly believes that the Commission should further support the establishment and functioning of independent and effective NHRIs in each EU Member State and their meaningful contribution to relevant EU initiatives, legislation and processes, through the adoption of a **European Commission's Recommendation on NHRIs**.

Building on existing EU-wide policy documents, country-specific rule of law recommendations on NHRIs, and existing consultation and engagement practices, a dedicated European Commission's Recommendation on NHRIs would:

Reiterate and clarify in one document the key role of NHRIs for the implementation of the EU acquis concerning fundamental rights, democracy and rule of law;

- Reiterate and advance how individual NHRIs in EU Member States and ENNHRI as a collective can meaningfully engage in EU (Commission) initiatives and procedures in the area of rule of law, democracy and fundamental rights;
- Clarify the key standards applicable across all EU Member States to ensure strong and independent NHRIs which can advance the implementation of the EU acquis.

In doing so, the European Commission Recommendation might build on and complement existing international and regional standards on NHRIs at the United Nations (the UN Paris Principles and international accreditation), and at the Council of Europe (Committee of Ministers Recommendation 2021/1), specifically in the EU context.

A dedicated EU-wide EC recommendation on NHRIs would enhance awareness across EU Member States of NHRIs' mandates and role, including with regards the implementation of the EU acquis. It would also contribute to the promotion of NHRIs in EU Member States and the prevention of threats to NHRIs. Lastly, it would support that a strong and independent NHRI which can effectively carry out its mandate, will be in place in each EU Member State and will advance the implementation of the EU acquis on rule of law, democracy and fundamental rights.

International accreditation status and SCA recommendations

Since ENNHRI's last rule of law report, **one NHRI from an EU member state has been reviewed** by the Sub-Committee on Accreditation (SCA). Namely, the German NHRI was reaccredited with A-status in October 2023.

Throughout 2024, 6 other institutions in EU members states will be reviewed by the SCA. This includes the institutions in Lithuania, Portugal, Spain, which will be considered for reaccreditation in March and April 2024. During the second SCA session of 2024, the periodic reaccreditation of Denmark and Greece will be considered by the SCA. In Sweden, the accreditation status of the Swedish Institute for Human Rights will be considered for the first time in the second SCA session. Following the accreditation of the Swedish Institute, the Swedish Equality Body has indicated it will give up its B-status accreditation.

There have been **some developments in EU member states without an accredited NHRI**. In Czechia, there are concrete steps towards possible legislative amendments aimed at broadening and strengthening the mandate of the Czech Public Defender to that of a fully-fledged NHRI and to pave the way for its future accreditation.

In 2023, in Romania, the Romanian Institute for Human Rights and the Romanian Ombudsman have both reapplied for accreditation. Their applications are pending consideration by SCA of their fulfilment of Rule 6.3 of the SCA Rules of Procedure, regarding applications by more than one NHRI in a state.

In addition, in February 2024, the Maltese Ombudsman joined ENNHRI. In doing so, the institution committed to taking steps towards accreditation as an NHRI in compliance with the Paris Principles.

Following these developments, Italy is now the only EU member state in which there is no institution working towards compliance with the Paris Principles with a view to accreditation as an NHRI. ENNHRI has been 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 concrete prospects of a legislative proposal being close to adoption.

Follow-up to SCA recommendations and relevant developments

The country reports pointed to **the need for input by other actors to achieve full implementation of some SCA recommendations**. For example, while some recommendations call for practical adjustments in the work of an NHRI and can be implemented by the institution itself, others require actions from the state, for which international and regional 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.

In this context, the implementation of recommendations from the SCA lie often in the hands of the national parliament or government. NHRIs are encouraged to advocate for these actors to take steps towards realising the SCA recommendations, and across the EU, NHRIs are taking active steps in doing so. However, in cases where the implementation of the SCA's recommendation requires action by national authorities, 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

NHRIs need a broad constitutional or legislative mandate, which will define their functions, guarantee their independence and provide them with the competences to promote and protect human rights. In the Czech Republic, the enactment of a legislation ensuring that the regulatory framework of the ENNHRI member is compliant with UN Paris Principles is still pending. Particular attention should be paid in this

connection to the process of selection and appointment of the head of the NHRI. The NHRI of the Netherlands also needs a proper statutory basis for its recently acquired competence to act as a National Preventive Mechanism (NPM).

On the one hand, some NHRIs have seen their **competences expanded**. One of Belgium's NHRIs (FIRM) has become the national focal point on SLAPPs and the federal-level NPM, as well as received a mandate to support whistleblowers. The NHRI of Cyprus monitors human-rights compliance in the implementation of EU funding programmes; and the NHRI of Denmark has started supporting the NPM on its monitoring visit in Greenland. All this has been reflected in the institutions' regulatory framework. On the other hand, the setting up of a Human Rights Institute in Flanders has resulted in the restriction of one of Belgium's NHRIs (Unia) competence.

As regards the expected changes in the scope of the NHRIs' mandates, the Irish NHRI is expected to be assigned an NPM role by the Act that will ratify the Optional Protocol to the UN Convention against Torture. This will be an addition to the competences of the NHRI, which – quite significantly – started functioning in 2024 as the independent monitoring mechanism of the UN Convention on the Rights of Persons with Disabilities (UN CRPD).

In some EU Member States, ENNHRI members reported on **developments leading to strengthening NHRIs' regulatory frameworks.** For instance, legislation has been introduced in Slovenia and Greece to ensure the **financial independence** of its NHRIs. There have been developments in the same direction in Slovakia, which formally confirmed the independence of the NHRI's reports and recommendations on discrimination. The changes in the Danish NHRI's regulatory framework strengthened the independence of the institution by introducing obligatory resignation of a board member in case of election to the parliaments. Moreover, there have been amendments to the rules governing the Lithuanian NHRI's appointment. However, most ENNHRI members from the EU countries have not reported any regulatory-framework changes.

Some ENNHRI members from EU Member States **called on relevant state authorities to introduce necessary changes in the NHRIs' regulatory frameworks** to strengthen them. Quite significantly, the Swedish ENNHRI member called on the state authorities to further enhance its regulatory framework in line with UN Paris Principles. The Slovenian NHRI has called for more clarity concerning its mandate to protect some vulnerable groups. The Finnish NHRI has called for an amendment specifying that it has three components, the Human Rights Centre, its Human Rights Delegation and the Parliamentary Ombudsman. NHRIs also need proper investigative powers, as recalled by ENNHRI member from Belgium (Unia).

Moreover, some ENNHRI EU members pointed out the **need to introduce necessary safeguards concerning the selection and appointment of heads of NHRIs and their dismissal procedures**. Thus, the Lithuanian NHRI advocated for additional safeguards against abusive dismissal of its head while the ENNHRI member from Sweden underlined the need to clarify the rules for appointment and dismissal of its board members. The NHRI from Poland continued to raise concerns over vaguely specified grounds for the dismissal of the head of the institution in the law. The NHRI from Poland also pointed out that it is unclear who heads the NHRI after the end of term of the head of institution when the successor is not yet appointed.

NHRI enabling and safe environment

The importance of a proper regulatory framework cannot be overstated. However, NHRIs – to be able to function properly in practice – also need a safe and enabling environment, as pointed out in particular by the NHRIs of Austria, Cyprus, Germany, Hungary, Ireland, the Netherlands and Portugal.

Some ENNHRI members – for example from Belgium, Cyprus, Estonia, Latvia, and Slovakia – have been subject to **attacks, hate speech, or intimidation**, a phenomenon that is facilitated by the spread of social media. These attacks give rise to legitimate concerns, especially when they have been orchestrated by influential politicians, as in

Estonia and Sweden – the latter concerning questioning of the ENNHRI member existence, or when they amounted to breaches of their staff's human rights, as was the case in Latvia. In Cyprus, the Auditor General of the Republic inopportunely tried to influence the parliamentary procedure for the NHRI's head's reappointment, without, however, any success.

In order to operate in a safe and enabling environment, NHRIs evidently need **adequate financial and human resources**. This aspect has been stressed in most national reports. On a positive note, the NHRI of Hungary has been able to establish six regional outposts and set up a Disability Advisory Board, composed of experts, working along his office's General Directorate of Disability.

Many NHRIs have expressed dissatisfaction about the extent of their **access to law-making and policy-making processes with human-rights implications**. This includes lack of invitation for NHRIs to provide feedback as well as short deadlines set by state authorities to submit any input by NHRIs.

Moreover, numerous ENNHRI members, including from Croatia, the Czech Republic, Luxembourg, Poland, Slovakia, Slovenia, and Spain, considered that the effectiveness of their work is challenged by the **lack of sufficient follow-up to their recommendations**. The Spanish Ombudsman/NHRI publishes in its annual report the list of the non-cooperative administrations and maps them in the institutional website. The Spanish Criminal Code envisages penalties for those authorities or officer who hinders an investigation by the Ombudsman. At the same time, the ENNHRI member from Sweden expressed concern that it is determined by the government how many and which legislative proposals the ENNHRI member is required to provide feedback on.

While the French NHRI has complained about its limited impact on the formulation of human-rights policies and legislation, on a positive note, it considered that the feedback it receives on its opinions shows willingness for dialogue. The Spanish NHRI and one of

the Belgian ENNHRI members (FIRM-IFDH) has reported that they have conducted further actions (for example the power to request explanations, instigate criminal proceedings) in case of a lack of cooperation from state authorities. As for the Cypriot NHRI, it was generally satisfied with the response to its requests for information, however, in some instances state authorities' responses were delayed.

Some ENNHRI members from EU countries pointed out to the obstacles in NHRIs' **access to information**. For instance, the Croatian NHRI has also raised concerns about its access to the data on irregular migrants in the Minister of Interior's information system. The Luxembourgish NHRIs reported the lack of access to disaggregated data which hindered carrying out the mandate of the NHRI in an effective way. Finally, the Croatian's report underlined the importance of **public and timely discussions on NHRIs' annual reports**.

Checks and balances

Independent and effective NHRIs are a crucial part of the overall system of healthy checks and balances in the EU countries. The importance of establishing and ensuring enabling environment for NHRIs was particularly stressed by the European Commission. In its rule of law reports, the European Commission recognised NHRIs as a key and indispensable element of the system of checks and balances in democratic countries and underlined that a threat to NHRIs is a threat to the rule of law.

Moreover, NHRIs also play an important role in monitoring and responding to any challenges affecting the healthy functioning of the overall system of checks and balances. In this year's ENNHRI report, ENNHRI members paid particular attention in their reporting to the problems that should be addressed by national authorities and the European Commission to ensure effective system of checks and balances across the EU, and therefore safeguard the rule of law in EU Member States.

Separation of powers

The concept of the rule of law is interlinked with those of democracy and human rights. Respect for all three presupposes a system of checks and balances. One of the most significant foundation of checks and balances is the principle of separation of powers.

Any discussion of a state's compliance with this principle should start from the **independence of the judiciary**. This has been imperilled in some EU countries. In Poland, for example, the legality of the appointment of some 2030 judges has been under serious questioning. An appointment procedure is needed that would ensure the courts' independence from the executive and legislative branches of government. This is not an issue only in Poland but also in other EU countries, such as Sweden in so far as its lay judges are concerned.

Abiding by court decisions is quintessential for the rule of law. The latter has been challenged in several EU countries. In Slovenia, the authorities refused to comply with a Constitutional Court judgment regarding judges' salaries. In Luxembourg, a decision banning begging was issued in circumstances that showed lack of respect for judicial precedent. The Polish and Belgian authorities failed to abide immigration-related court rulings. Moreover, in Brussels an adoption of the ordinance created practical difficulties for disabled persons, despite a court ruling issued beforehand finding that imposing such additional burdens amounted to discrimination.

In other countries, some politicians **questioned the legitimacy of the courts** in general (as in the Netherlands) or commented in a negative way on court rulings (as in Sweden).

The above do not constitute, however, the only attempts to rein in judicial power. **The right to an effective remedy can be cancelled out**, either by restrictively interpreting locus standi, as signalled by the NHRI of Luxembourg, or by delaying tactics, as it happened in France when decisions banning pension-reform demonstrations were issued at a time when it was practically impossible to challenge them.

The position of the judiciary may, conversely, be enhanced by broadening the possibilities of constitutional review, as suggested by the NHRIs of Finland and the Netherlands, or by empowering national courts to make preliminary references to the Court of Justice of the European Union (CJEU), as suggested by the one of Luxembourg. In any event, the infrastructure (e.g. buildings), tools and resources put at the disposal of the judges need improving, as signalled by ENNHRI members from Belgium, Cyprus, Slovenia and Luxembourg.

Undermining the authority of the judiciary is not the only threat to the principle of separation of powers. The **legitimacy of the legislative power** can be undermined by the **failure to address some election-related issues**. This risked happening in Germany where voting had to be repeated in some polling stations during federal and state parliamentary elections. Moreover, the NHRI of Estonia has called for enhanced regulation of electronic voting and the Polish NHRI for the removal of a problematic Electoral-Code provision on counting votes cast abroad. The Croatian NHRI has stressed the need for consensus on the reform of electoral districts. Electoral reform may be needed but, in some EU countries, this has made it more difficult for small or regional parties to get their candidates elected, as signalled by the Slovak and German NHRIs, risking the weakening the overall party system. The failure to set the financing of political parties on a transparent basis and create appropriate supervisory mechanisms represented another such risk, according to the Estonian NHRI.

Other threats to the parliamentary system came from voting tactics within Parliament itself (such as voting only in line with the agreed parties' position), as stressed by the NHRIs of Luxembourg and France – the latter referring to the recent experience of the immigration bill. The executive also sometimes tries to bypass Parliament, as in the case of the begging ban in Luxembourg.

Attempts to exert political influence over the civil service and the police constitute another inroad into the system of separation of powers, as shown, for instance, in Ireland. The Swedish NHRI has also drawn attention to the creation of an inquiry

function within the Prime Minister's Office, which risks competing, in practice, with the independent inquiry function that has always existed. In a parallel development, the Slovak government has become responsible for the appointment of the chairpersons of the statistical office and the health-care surveillance authority, who moreover may now be removed more easily than in the past. In the same EU member state, several institutions have become part of central government. The Belgian report referred to problems of compliance with the decisions of independent bodies processing prisoners' complaints. The Danish NHRI drew attention to the absence of supervision over the collection and onward transmission of bulk data. Finally, the Polish NHRI has expressed reservations as to the manner in which the management and supervisory boards of the three main state media have been replaced.

The process for preparing and enacting laws

The principle of the rule of law requires quality, transparency and inclusiveness of the process for preparing and adopting laws. Achieving this is also lies in the focus of the NHRIs which, in their work and reports, pay particular attention to law-making processes.

Only in very few EU Member any positive developments or no concerns in this respect were reported by ENNHRI members. Among the exceptions one finds the NHRIs of Spain and Cyprus, the latter having stressed the benefits of e-consultation on bills, which has been introduced in its country.

The reasons why the vast majority of NHRIs expressed concerns are many. The Finnish, German, Portuguese, Slovenian and Swedish ENNHRI members have stressed the **insufficient time for public consultation**, while the French, Latvian and Swedish ENNHRI members have drawn attention to the **lack of proper human-rights impact assessments**. This was also a preoccupation for the ENNHRI member from Romania who also pointed to the problem of transparency – it drew a distinction between different phases of the consultation process, feeling excluded from the later - more

important - ones. In Croatia, the NHRI has complained about the fact that, in its country, the composition of the groups that prepare the bills to be submitted to Parliament is often unknown. Keeping the NHRI involved in the process of preparing bills can be, of course, salutary as, on occasion, the public may have superficial reactions to some of them, as shown again by the Romanian experience with the cybersecurity bill.

The Croatian and Slovenian NHRIs have stressed the need to consult separately institutional stakeholders on bills affecting them. In the same vein, several ENNHRI members – such as from the Czech Republic, Ireland and Romania – have called for more effective participation of people with disabilities in the preparation of legislative initiatives concerning their rights and protection. ENNHRI members from Finland and Sweden have drawn attention to the risks associated with neglecting, in the legislative process, views of the Council on Legislation and the Constitutional Law Committee.

The pace of the legislative initiatives has proven, in general, difficult to follow in Sweden, while ENNHRI members from France, Poland, Slovakia, Slovenia and Sweden have complained about **too frequent use of the accelerated procedures**. In the Czech Republic, recourse has been had to private members' bills to cut consultation time short, while the Estonian NHRI has drawn attention to the negative effects of linking the passing of bills to a vote of confidence.

Problems of public participation in the law-making process may also arise at the local level. This issue has been taken up in the reports of the Estonian, Romanian and Spanish ENNHRI members, which have stressed the positive role that civil-society organisations (CSOs) may play in the adoption of local-government regulations. Similarly, CSOs should also be able to raise urban-planning concerns, as pointed out in the Irish and Romanian contexts.

Access to information

Being able to defend the rule of law, as well as human rights and democracy, presupposes access to all relevant public information. While the situation in many EU

countries is overall satisfactory, in some EU countries the obstacles in access to public information persist.

For instance, the NHRIs of Cyprus and the Netherlands have drawn attention to **delays in the provision of information**. In other countries, as in Spain, **access to information was frequently denied**, which gave rise to intense litigation. The Romanian ENNHRI member has stressed the problem of excessive length of such litigation. Its report and the Belgian one provided useful insights into the reasons advanced by the authorities for denying access to information. State secrets and the General Data Protection Regulation (GDPR) were, quite often, too readily invoked. On other occasions, the Romanian authorities have refused access because the wording of certain regulations does not expressly authorise it, while the Estonian authorities sometimes set unlawful and unjustified information access restriction.

The NHRI of Denmark has drawn attention to proposals that would unduly restrict access to information by trying to overprotect civil servants, also against what was defined vaguely as harassment. The NHRI of Luxembourg has reported practical hindrances to the exercise of the right in question (a journalist being prevented from interviewing social workers). The Polish NHRI intervened in numerous court proceedings challenging **unjustified restrictions in access to public information**.

In addition to the above, some NHRIs have also stressed the need to **place the right to access to information on a firm legal footing**. While such a regulatory framework exists in most EU countries, it remains a desideratum in Belgium, Latvia and Luxembourg and this is what the NHRIs of these states are militating for.

Independence and effectiveness of independent institutions (other than NHRIs)

NHRIs are usually part and parcel of a system of independent institutions, the proper functioning of which provides yet another effective defence for healthy system of checks and balances, and therefore for the rule of law. Attempts to undermine the independence of other institutions may become thus an indirect threat for the NHRIs

themselves. This is why this issue figures prominently in many reports from ENNHRI members from EU Member States.

Some NHRIs have been able to successfully advocate, through their recommendations, in favour of strengthening other independent institutions. This has been the case with the Estonian NHRI and the Data Protection Inspectorate as well as the Gender Equality and Equal Treatment Commissioner of its country. It has also been the case with the Intelligence Ombudsmen in Lithuania.

Other NHRIs have reported less positive developments. In Spain, Parliament has not yet examined the bills on the Independent Authority for Equal Treatment and Non-Discrimination and the Independent Authority for the Protection of Whistleblowers. The reform of the Parliamentary Ombudsmen of Sweden resulted in proposals for constitutional changes that would strengthen the protection of the Ombudsmen. However, other proposed changes on e.g. terms of office and procedures for removal do not fully live up to the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles). Finally, the ENNHRI member from Romania noted that certain civil society organisations expressed concerns about changes to the internal procedures of the National Council for Combatting Discrimination.

Some independent institutions have faced problem with **insufficient resources** to carry out their mandate. This is, for instance, the case with the Slovak National Preventive Mechanism (NPM), the Ombudsman and equality body of Luxembourg and the Freedom of Information Commissioners in Germany, at both federal and state level.

In addition to being given adequate resources, some independent institutions **require further strengthening of their regulatory framework**. Thus, the German Freedom of Information Commissioners should have their legal powers enhanced. Similarly, the equality body's scope of competence needs to be widened in Luxembourg and the monitoring function of the Parliamentary Ombudsman in Sweden needs further review

in relation to monitoring of private actors. Finally, in Croatia the rules on specialised Ombudsmen need to be changed so that Parliament's failure to adopt their annual reports should not automatically result in their dismissal.

In Belgium, three independent institutions – the Central Monitoring Council for Prisons, the Data Protection Authority and the Institute for the Equality between Women and Men – have recently come **under pressure**. There have been proposals making it more difficult to examine prisoners' complaints, issue timely opinions on data protection issues and cooperate with prosecutors in discrimination cases. Moreover, in Greece members and staff of the Hellenic Authority for Communication Security and Privacy (ADAE) faced **harassment and intimidation** from governmental and judicial authorities.

Other issues of concern are the **low level of implementation of the independent authorities' recommendations**. This is the case in Slovenia as well as an attempt to undermine the independence of the Antimonopoly Office in Slovakia.

As regards **forward-looking proposals**, the NHRI of Luxembourg considered that widening the scope of competences of the equality body and granting it the power to go to courts would improve the level of implementation of its recommendations; and the NHRI of the Netherlands calls for support for the work of the independent state commission on the rule of law.

Strong and healthy checks and balances require also cooperation between independent institutions, including NHRIs. For example, the NHRI of the Netherlands reassuringly referred to the regular contacts it maintains with all new actors, including the National Coordinator against Discrimination and Racism as well as the State Commission on Discrimination. Among the remaining issues, one should mention the complexity of the institutional environment within which Belgium's and Finland's ENNHRI members operate and the supervision that the Chancellor of Justice continues to have via-à-vis the ENNHRI member from Sweden.

Enabling environment for civil society and human rights defenders

The rule of law compliance across the EU requires healthy checks and balances in which civil society space and human rights defenders (HRDs) can thrive and are protected. While NHRIs are human rights defenders themselves, they also have a mandate and role in promoting and protecting other human rights defenders. Notably, Council Conclusions recognise that civil society organisations (CSOs) 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 European 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.'

The below findings from NHRIs regarding the challenges in the area of civic space only confirm the crucial importance of the European Commission's need for further actions to support human rights defenders and civil society space in the EU. This includes deepened focus on this issue within EC annual rule of law reporting, its recommendations and, finally, further policy initiatives to support and strengthen civic space and ensure human rights defenders' protection across the EU.

ENNHRI members report on numerous **attempts to undermine civic space and human rights defenders' activities**, taking various forms. This includes intense criticism of HRDs has which as a chilling effect and leads to self-restraint. The French NHRI has referred, in this connection, to the **stigmatisation and demonisation of human rights defenders**, even by high-ranking politicians. The Greek NHRI also noted that the situation of HRDs has deteriorated, including due to **harassment** faced and even criminal persecution for acts committed in the performance of their job. **Hate speech** has also been resorted to against HRDs during the electoral campaign in Slovakia. The NHRI of the Netherlands has drawn attention to a trend of political parties questioning

the legitimacy of independent civil-society actors, while the NHRI of Luxembourg has commented on the exaggerated way state authorities reacted to criticism.

There have also been instances of the authorities' trying to impose **administrative burdens** on CSOs or reducing their financial support. The Romanian ENNHRI member, for example, drew attention to overly bureaucratic procedures and restrictions on donations. The Slovak and Greek NHRIs has also referred to administrative and bureaucratic burdens. The Polish NHRI has taken issue with the imprecise nature of the rules on tax liability of NGO board members. The Belgian report referred to strict policies in terms of budget allocation. Similar policies have affected CSOs advocating for women's rights in Ireland.

An especially worrisome trend has to do with the **strict measures against environmental defenders engaging in peaceful civil disobedience**, adopted in several EU countries, including France, Germany and Sweden. This concerning trend has also been highlighted in the recent outcomes report concerning the protection of environmental defenders and their freedoms of expression, peaceful assembly and association across Europe, issued by ENNHRI, the French National Consultative Commission on Human Rights (CNCDH) and the UN Special Rapporteur on Environmental Defenders under the Aarhus Convention. The French NHRI has also complained of judicial harassment of HRDs working on migration issues.

Numerous ENNHRI members raise concerns over **violation of freedom of assembly**. In general, demonstrations and counterdemonstrations are too easily banned, as stressed by the French, German and Polish NHRIs. The ground for this has been prepared in Germany by legislation allowing for restrictions on assemblies to be imposed by the states, as well as by the federal authorities. France's and Germany's NHRIs have also complained about the excessive use of force to disperse demonstrators. This is compounded by a lack of requirement for law-enforcement officers to bear clear and visible identification during policing of demonstrations and the political stigmatisation of HRDs according to the Polish and French NHRIs. There is also increased security

rhetoric around demonstration, with the Croatian NHRI raising concerns about the lack of information on the security issues that made demonstrations more difficult in one of Zagreb's central squares, while the Polish NHRI has expressed concerns about unwarranted identity checks during public assemblies. The limitations on freedom of assembly arising from securitisation narrative is also reported on later in this report – in the chapter on the impact of securitisation on the rule of law and human rights. The NHRI of Lithuania has complained about the police allowing protesters to disrupt LGBTQI-friendly events. Finally, the NHRIs of Germany and the Netherlands have drawn attention to what really amounts to content-based restrictions on freedom of assembly (for example pro-Palestinian ones in the case of Germany).

Attacks on journalists seem to be geographically fairly widespread, as they are mentioned in the reports from Belgium, Finland, Greece, the Netherlands and Romania. Belgium's NHRIs point out, in this connection, the particular vulnerability of female journalists. The Belgian report also stresses that harsher penalties against the perpetrators of attacks on journalists could help curtail the phenomenon. Moreover, the law should better protect journalistic sources, according to the ENNHRI member from Romania. Moreover, according to the Finnish NHRI, journalists facing legal proceedings should not be penalised financially by having to pay tax on support they have received from employer, which ultimately can impact freedom of expression. SLAPPs have also been reported in Estonia, France and Poland. In a parallel development, Belgium has been trying to criminalise malicious attacks on government authority, which cover incitement not to comply with the law.

The Belgian national report also referred to unilateral court applications to restrict industrial action, while the Polish and the Finnish NHRIs, respectively, stress the need to protect freedom within associations and foreign human rights defenders. The NHRIs of France and Luxembourg considered that civil society should be better involved in the formulation of human rights-related public policies and national action plans.

In the light of the above, it is not surprising that the twin issues of civil-society space and human rights defenders receive increasing attention in the work of most NHRIs. The Belgian and Slovak ENNHRI members have commissioned dedicated studies in this respect, while the Polish NHRI has joined court proceedings concerning peaceful protests, abortion-related banners and deforestation, in favour of several NGOs. The Polish NHRI has also appealed for funding for HRDs catering for the needs of the most vulnerable groups. Other ENNHRI members, including from Belgium and Romania, have started acting as focal points on SLAPPs – for which additional resources are needed. And the Croatian NHRI has been calling for a National Plan for the Creation of an Enabling Environment for Civil Society.

NHRIs play a key role in fostering dialogue with civil society even in countries where CSOs and HRDs do not experience particular problems. Indeed, cooperation with civil society and HRDs is a key aspect of the NHRIs' compliance with the Paris Principle. Good practices of civil-society involvement in NHRI work abound; one could indicatively refer to the numerous committees set up by the Irish NHRI and the Cypriot NHRI's efforts to facilitate the interface with organisations of persons with disability. All the above constitutes clear evidence of the symbiotic relationship between NHRIs and CSOs.

Impact of securitisation on the rule of law and human rights

Securitisation is a process happening across EU Member States, as state authorities increasingly present certain national or regional developments as security issues. This leads to States introducing measures aimed at addressing those perceived security threats. These state's responses to threats and security risks might have a heavy impact leading to the restriction of fundamental rights and freedoms and to the violation of the rule of law, when human rights principles are not abided to. Sometimes, the restrictive measures introduced in response to potential or even alleged security threats serve short-term political gains.

Numerous ENNHRI members, including from Belgium, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Lithuania, Luxembourg, Poland, Romania, Slovakia, Slovenia, Spain and Sweden reported that securitisation affected the rule of law and human rights in their respective countries as well as their own work in these fields.

The securitisation narrative has resulted in the instrumentalisation of a wide variety of issues, including the COVID-19 pandemic, terrorism, organised crime, migration and the war against Ukraine, as it has been pointed out, inter alia, by ENNHRI members from Estonia, Finland, Germany, Poland and Sweden. The NHRI from Slovakia reported that all these topics are described as threats and resulted in **anti-HRDs discourse,** calling for limiting their work and posing it as negatively affecting the security of population.

Numerous ENNHRI members from EU countries reported on challenges in their countries in the area of national security and **migration**. Finland, Slovakia, and Spain reported an increase in public statements on the negative effects of irregular migration. Further, the French NHRI has stressed the resultant risk of stigmatisation of the entire migrant population.

Some EU countries have not shied away from strict measures. Finland has effectively closed parts of its borders, therefore significantly limiting the right to seek international protection. Latvia has triggered the border guards' legislation with the aim of strengthening national border security and curbing irregular migration, but, as a result, also limiting access to the asylum procedure. Greece, Lithuania and Poland have resorted to pushbacks of migrants, the former with express statutory authorisation.

Moreover, the number of people in immigration detention has increased and the conditions of migrant accommodation have worsened, as stressed in the Belgian and Slovenian reports. One of Belgium's ENNHRI members (Myria) has drawn attention to the fact that foreign detainees without residence rights do not enjoy equal access to measures of conditional release. The Portuguese NHRI has also signalled changes in the institutional migration-management set-up and in the system of residence permits. The

Danish NHRI has complained about general and indiscriminate data retention. Finally, and rather worryingly, the NHRIs of Germany and the Netherlands have drawn attention to the risk of discrimination creeping into the application, respectively, of the legislation on clan crime and removal of citizenship.

ENNHRI members from EU Member States also pointed to the impact of **anti-terrorism laws and policies** on the rule of law and fundamental rights. New legislation has been introduced in Germany against clan crime and in Sweden against terrorism, which included broad and vague terms which might lead to disproportionate impact on fundamental rights. Changes to the criminal code in Belgium, and prospective changes to the criminal procedure in Luxembourg pursue the same securitisation logic. In Sweden, an inquiry was carried out to assess the circumstances and procedures in which it should be possible for a witness to testify anonymously. Statutory changes introduced in Germany to facilitate the banning of protests, especially those concerning environmental issues, give cause for concern. In Romania, the human rights violations could occur given that the draft law on public assemblies was not discussed further and it does not integrate international and regional standards in terms of public assemblies.

The amendments to the policing legislation, which have **strengthened and expanded police powers**, were introduced in many states, including Latvia, Germany, Ireland, Luxembourg and Sweden. These concern the power to establish ad hoc stop and search zones and the use of new technology (including digital recording, automated recognition systems, drones and anti-drone equipment) and explosives. In Ireland, traditional police powers to arrest, search premises and detain have also been expanded.

Additional concerns affecting the **right to privacy** are expressed in the Belgian report about the creation of a common database related to terrorism, extremism and radicalisation, in the Polish report about the use of spyware Pegasus and the Cypriot NHRI report on the EU media-services proposal and its provisions on monitoring

software-use. The Greek NHRI raised concerns over the use of technologies by intelligence services which may limit fundamental rights.

The securitisation logic favours, among many things, **measures of a non-criminal law nature to secure the public order**, such as preventive surveillance and stay bans (in Sweden), orders prohibiting individuals from taking part in demonstrations (in Belgium), preventive action against road blockers (Germany) and certain sports fans (in Poland) and even internment (in Belgium). ENNHRI members – including those from Belgium, Germany, Greece, Poland and Romania – reported that the securitisation context had resulted in **excessive or even abusive use of powers by police forces**.

NHRI's actions to promote and protect fundamental rights and rule of law in the context of national security and securitisation

Numerous ENNHRI members from the EU countries have addressed the above-mentioned challenges of securitisation's impact on the rule of law and fundamental rights in their work.

For instance, NHRIs increased **monitoring** of places of detention, borders and forced returns in Portugal and Spain. Actions have also been taken in individual cases related to court proceedings in migration context, police abuse, secret surveillance and the practical difficulties related to the functioning of associations during the COVID-19 pandemic by the Polish NHRI. The Greek NHRI has a 'Recording Mechanism of Incidents of Informal Forced Returns' in place and issues reports on the basis of data collected through interviews with victims.

Moreover, ENNHRI members from EU Member States analysed the impact of securitisation on the rule of law and human rights in their reports, **opinions** and recommendations. Thus, ENNHRI's member from Romania has adopted an opinion on the assembly law; the Lithuanian NHRI – on the protection-of-the-borders law; the French NHRI – on relations between the police and the population; the Latvian NHRI an opinion on freedom of expression; the ENNHRI's member from Sweden' opinions on

numerous proposed laws such as on surveillance, stay-bans, anonymous witnesses and stop-and-search zones and Belgium's NHRIs (FIRM-IFDH and Unia) – three opinions on the criminal-law changes and the common database mentioned above.

NHRIs' **recommendations** concern responses to attacks on HRDs, pointing out a lack of the proportionality of measures taken, and the restructuring of the National immigration and Borders Service have been issued, respectively, by the Slovak and Portuguese NHRIs. The Greek NHRI addressed state authorities in relation to the informal forced returns of migrants. The German NHRI has made proposals on federal police legislation and the Irish one has reacted to legislative proposals to reform the internal and external oversight of the Irish police force. The NHRI of Denmark has published a brief on data retention, raising concerns over a serious interference on the right to respect for private life and the protection of personal data. Moreover, the Dutch NHRI has made public statements on illegitimate protest bans and the law on removing Dutch citizenship, while the Luxembourgish NHRI has criticised the disproportionate begging ban.

Other NHRIs, namely from Germany, Portugal and Slovakia, have prepared **studies and reports**, respectively, on the response of the police to climate protests, migration management and hate speech. Moreover, the French NHRI has set up a working group on proliferation of cameras and drones for the surveillance of public spaces and the growing use of AI for image analysis. Finally, the Portuguese NHRI has organised training for prison guards on the topic of human rights of persons deprived of liberty.

Providing human rights advice, in the form of opinion, recommendations, statement or report, to those actions taken by the state authorities, ENHHRI's members aimed at emphasising the need for their compliance with human rights principles.

In general, NHRIs have stressed the importance of independent inquiries as an essential safeguard against law-enforcement violence and abusive behaviour and of proper data-collection as a necessary means of measuring the impact of securitisation.

The variety of responses to securitisation reflects not only differences in the challenges faced in each EU Member State but also certain divergences in the NHRIs' institutional set-up and organisational culture. Some NHRIs place, for example, emphasis on individual cases and even engage in litigation whenever this is allowed by their mandates. The focus of the work of others lies in monitoring activities (such as visits to places of detention or the border), at the same time many concentrate their efforts on general recommendations, studies and awareness-raising. The variety of responses can become a source of mutual learning and the exchange of good practices may lead to enhanced NHRIs' capacity to respond to the impact of securitisation on the rule of law and human rights, as envisaged at ENNHRI's NHRI Academy organised in June 2024.

Implementation of European Courts' judgments

The track record of the implementation of European Courts' judgments is an important indicator for the proper functioning of the rule of law in a country. This has been already consistently recognised by the European Commission in its rule of law reports. The timely and effective implementation of judgments is also a crucial element of healthy checks and balances in the country. Moreover, judgments in their subject-matter may tackle specific rule of law issues, such as concerning independence and impartiality of judiciary, the right to a fair trial as well as structural fundamental rights issues affecting healthy rule of law national frameworks.

This year again, ENNHRI ensures a dedicated focus on the topic of the implementation of judgments issued by European Courts – namely the European Court of Human Rights (ECtHR) and the Court of the Justice of the European Union (CJEU). ENNHRI members from EU Member States followed up on the information they had already provided in ENNHRI's last year report and reflected on national developments concerning the implementation of European Courts' judgments by state authorities.

The full implementation of the often raises complex issues. This is because states are not only required to eliminate the effects of the human-rights violation in the individual

case that has led to their conviction. In addition, they have to take general measures preventing similar violations from occurring in the future.

It is, therefore, a matter of concern that few ENNHRI members have been in a position to report substantial (in the case Spain) or some (in the case of Finland, Greece and Sweden) progress towards compliance with judgments of the European Court of Human Rights (ECtHR). Overall, there are **serious implementation gaps**, as particularly stressed by the NHRIs from the Netherlands, Portugal and Slovakia.

In principle, ENNHRI members from EU countries have not reported on challenges in relation to the payments of compensation awarded by the ECtHR. However, similarly as reported last year by ENNHRI, difficulties in complying with the ECtHR's judgments arise when their full implementation involves the introduction of new regulations or administrative practices, large financial burdens and investments or, more generally speaking, substantial reform. For example, this has been aptly observed by the Estonian NHRI.

The failure to implement ECtHR judgments that concern the functioning of national **justice-systems** is particularly important as regards the subject matter of the rule of law principle. Some ENNHRI members have drawn attention, in this connection, to lack of compliance with judgments that concern the length of proceedings in Belgium, the absence of a redress system for victims of abuse in Ireland and the number of violations of the right to fair trial in Croatia. An EU country's failure to abide by ECtHR's judgments that finds a violation in respect of its authorities' failure to abide by national courts' judgments is, of course, of special concern, as stressed in the Belgian report. ENNHRI members from Belgium have also reported problems of compliance with CJEU judgments dealing with justice issues (a judgment regarding the legal professional privilege).

Other important European Courts' judgments awaiting full implementation concern **migration issues** (in Belgium, Denmark, Germany and Spain), detention (in Belgium,

and Croatia and Greece), freedom of religion (in Lithuania), the rights of psychiatric patients (in Denmark), housing legislation (in Croatia) and LGBTQI issues (in Lithuania).

Finding the right strategies for ensuring implementation is of crucial importance. NHRIs report that some supreme courts' judgments have acted as a lever for compliance, as in Estonia and Germany. The question of European Courts' judgments' implementation has also been included in NHRIs' reporting under various human-rights mechanisms, as pointed out by the Estonian NHRI.

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

NHRIs are recognised stakeholders for ensuring the effective implementation of the ECHR and the EU acquis (including the EU Charter of Fundamental Rights), and in this context engage on implementation of European Courts' judgments. While European Courts' judgments' implementation is the responsibility of state authorities, NHRIs have an important role to play in this process thanks to their independence, broad mandate and unique human rights expertise.

NHRIs engage in the implementation process at the European level, for example by submitting so called **rule 9 submissions** to the Council of Europe Committee of Ministers, to evidence in an independent and objective way the state of play regarding the execution of concrete judgments issued by the ECtHR. ENNHRI reiterates, however, that further efforts should be undertaken by the Council of Europe 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.

NHRIs also dedicate their efforts to support the effective and timely implementation of European Courts' judgments at domestic level, namely by **engaging with state authorities** responsible for this process – including governments and parliaments. NHRIs' recommendations on this matter should be duly taken into account and followed-up by state authorities to enhance the implementation process. NHRIs also **raise awareness** of this rule of law issue among other stakeholders such as civil society

and the wider public. This is to support efforts of other actors in improving the track record of execution of judgments.

It is of utmost importance that NHRIs have the capacity to follow the issue properly. There exist some promising schemes in this respect, such as the objective indicators in the form of the rule of law conceptual framework and the rule of law tracker put in place by the Slovak NHRI. This should be contrasted with the lack of sufficient capacities of some ENNHRI members, including in Luxembourg, to undertake action in connection with the implementation of European Courts' judgments. Naturally, this calls for the need to ensure adequate NHRIs' budgets according to each country's domestic arrangements.

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

This year's ENNHRI report dedicates more in-depth focus on specific rule of law areas, namely NHRIs independence and effectiveness, checks and balances, securitisation and its impact on the rule of law and human rights, implementation of regional actors' recommendations and European Courts' judgments). However, ENNHRI members from EU countries also reported on other structural rule of law and fundamental rights issues, as deemed relevant for their national context. The challenges discussed therein do not exhaust all the problems arising in the area of the rule of law in the EU, however – from the point of view of NHRIs those matters should also be addressed urgently and thoroughly by relevant stakeholders.

Justice system is another area of additional rule-of-law concerns, as evidenced by the report of the NHRIs from Cyprus, Germany, Luxembourg and Slovakia. Thus, the Cypriot NHRI noted delays in the administration of justice. The Slovak NHRI has drawn attention to attempts to weaken whistleblower protection and the need to curb some of the Attorney General's powers. NHRIs from Luxembourg and Germany advocated for improvements in the collection of data concerning the criminal-justice system and in databases containing case-law and legislation. Other reports deal with migration-

related problems such as the Irish state's failure to provide for the basic needs of recently arrived asylum seekers, in respect of which the NHRI of Ireland has brought court proceedings.

Freedom of speech is also one of them. Many NHRIs, including those of Poland, Romania, Slovakia and Slovenia, have stressed the need to defend media pluralism, including the local press. The channelling of public funding can play a huge role in this respect. Journalists' employment needs to be protected and so does freedom of expression of civil servants.

Hate speech, as underlined by EU ENNHRI members, represents a major threat in most EU countries. The adequacy of criminal-law responses continues to be widely discussed. Denmark has tightened its legislation on Coran-burning, an issue on which the Danish NHRI took a public stance on several occasions. ENNHRI members from Belgium considered that their country's criminal legislation does not provide an adequate response to some forms of hate speech, while the Finnish report referred to the debate concerning the need to criminalise 'targeting'. The latter report also discussed the new linguistic strategies of the populist right. On this topic, the German NHRI considered that the rise of the far right represents the single most important challenge for the rule of law and human rights in its country.

The problem of **racism** and **discrimination** has also received considerable attention in the reports of many NHRIs. The Austrian NHRI recalled that a national action plan against racism is still missing. The Spanish NHRI has referred to violence against women and a Belgian ENNHRI member (FIRM-IFDH) deplored gender imbalances within the journalists' profession. In a similar vein, the Lithuanian NHRI drew attention to the fact that the Istanbul Convention has not been ratified and to the absence of legislation on same-sex partnerships. Finally, the Irish NHRI raised concerns about a lack of equality data.

Finally, the impact of **digitalisation and AI** on the rule of law and human rights is another issue of common concern, as stressed by ENNHRI members from Belgium, Denmark, Romania and Spain. The Belgian and Danish ENNHRI members have advocated in favour of a public registry on artificial intelligence uses by public authorities and impact-assessments in this area. The ENNHRI member from Romania focused on the risks associated with deepfakes. Finally, the Danish NHRI raised concerns over mass collection of open-source data.

Country Reports

Austria

Austrian Ombudsman Board

Establishment, 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. 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 Austrian Ombudsman Board (hereinafter "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 organisations and human rights defenders, including those working on the rights of vulnerable groups.

Follow-up to SCA recommendations and relevant developments

As recommended by the SCA, the Austrian Ombudsman Board has continued to enhance and formalize its working relationships and cooperation with civil society organisations and human rights defenders in 2023 through the following initiatives:

The AOB, together with the Department of Forensic Medicine of the Medical University of Vienna and the Association of Autonomous Austrian Women's Shelters (AÖF) organised the lecture series "One Woman in Five". This campaign, which brings together academics, representatives of women's refuges and students, illustrates that one in five women living in Austria have been exposed to sexual or physical violence (kindly see the articles "To watch: "Doubly disadvantaged? - A life free of violence for all women!" and "Ombudsperson Gaby Schwarz: showing civil courage as a means of combating violence against women", both articles are only available in German).

Furthermore, the AOB organised an NGO Forum in which public authorities, civil society organizations, academics and affected persons discussed the topic of poverty alleviation and shared experiences (see the article "NGO-Forum 2023: Ombudsman Board connects people affected by poverty with authorities - Article - Ombudsman Board", only available in German).

In 2023, the AOB also closely collaborated with the representatives of the Disability Ombudsman, the Independent Monitoring Committee for the Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) and the NGO Austrian Initiative for Independent Living through the "NGO Sounding Board". The Sounding Board is meeting quarterly to identify possible common areas of work with the goal to build or strengthen alliances among institutions. All organizations collaborated in the country review process of the UN Committee on the Rights of Persons with Disabilities (UN CRPD). Together, they coordinated their submissions to the UN CRPD and their press work (kindly see the article "Press Conference on the official county review of Austria by the UN CRPD Committee").

In November 2023, the AOB cooperated together with the Austrian League of Human Rights and launched an UPR Online-Tool. This tool is accessible to anyone and shows the status of the implementation of the human rights recommendations in Austria (see the article "New Monitoring Tool shows where Austria falls short in terms of Human Rights").

Overall, the approachability of the AOB has been confirmed in the 2023 APA/OGN Confidence Index (only available in German), which asks a specific number of people whether they trust an institution or not. The balance resulted in a score of plus 58 for the AOB, showing that the AOB is the most trusted public institution in Austria.

Regulatory framework

The national regulatory framework applicable to the institution has not changed since January 2023.

NHRI enabling and safe environment

The AOB is independent from the entire state administration, the federal government and the governments of the Laender (provinces). Its independence is constitutionally guaranteed by Article 148a para 6 Federal Constitutional Law. The AOB is not subject to any instructions from administrative, judicial or legislative bodies. Furthermore, the three Ombudspersons are not accountable to parliament and they have the same liability as the members of the Federal Government (Article 148g para 6 Federal Constitutional Law). For the performance of their duties, the three Ombudspersons are solely subject to legal liability before the Constitutional Court (Article 141 para 1 lit. e, Article 142 para 2 lit. b, Article 148g para 6 Federal Constitutional Law ; §§ 72 et seq. Constitutional Court Law).

According to Article 148b para 1 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 the authorities' records by the AOB and the suspension of official confidentiality measures towards the AOB.

According to Article 148c Federal Constitutional Law in conjunction with Section 6 Ombudsman Act 1982, 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.

Pursuant to the Act on the Implementation of the OPCAT 2012, the AOB has appointed seven interdisciplinary expert commissions. These 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).

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.

All recommendations are being included in the annual reports and special reports of the AOB, which are to be 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 subsequent plenary sessions of the Parliament. The Ombudspersons are entitled to participate in the debates and to speak on their reports (Article 148d para 2 Federal Constitutional Law).

Additionally, the AOB may also comment on any proposed draft legislation or ordinance according to Section 1 para 2 item 4 Ombudsman Act 1982.

Furthermore, the AOB's budget has been steadily increased in recent years. In 2023, the AOB had a budget of EUR 14,600,000, in 2024, the planned budget is EUR 15,400,000 (kindly see the article "Ombudsman Board: Budget to increase by 5.5% in 2024", only available in German). In 2023, the AOB had 93 permanent full-time positions at its disposal, meaning that including part-time staff and trainees, there were around 100 people employed by the AOB. The AOB thus has sufficient resources to carry out its mandate. In conclusion, in the last year as in previous years, the AOB has not faced situations in which it perceived itself as under threat.

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

In November 2023, the Austrian League for Human Rights (the League) submitted their Midterm Report of civil society regarding Austria's 3rd UPR Cycle. To support the publication of the League's report, the AOB held together with the League a press conference. According to the UPR report of the League, there is a severe lack of the implementation of UPR recommendations. See the report here.

See to the report Additionally, the AOB works relentlessly on the enshrinement of fundamental social rights. Implementing social rights into the constitution would make them more enforceable and would improve the situation especially for sick and old people as well as for homeless people. Therefore, Ombudsperson Achitz recommends reintroducing a genuine minimum income instead of social assistance (kindly see the article "Minimum subsistence level required" and the Special report on fundamental social rights, both are only available in German).

Lastly, the AOB often receives complaints about and - through the monitoring by its commissions - discovers conditions in institutions for people with disabilities, which show the lack of implementation of the UN CRPD. Therefore, Ombudsman Achitz in 2023 publicly emphasized how important it is to take part in the state review process of the UN CRPD together with the Monitoring Committee, the Disability Ombudsperson and representatives of the community such as the Disability Council and the Austrian Initiative for Independent Living to put pressure on politicians to fully implement the UN CRPD (kindly see the article "Before State review: Austria defaults on UN Convention on the Rights of Persons with Disabilities", "State review of Austria on the Convention on the Rights of Persons with Disabilities by the UN Committee of Experts", both articles are only available in German, and the Concluding observations on the combined second and third reports of Austria).

Belgium

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

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

Myria (Federal Centre for the analysis of migration flows, the protection of fundamental rights of foreigners and the fight against human trafficking)

Combat Poverty, Insecurity and Social Exclusion Service

Central Monitoring Council for Prisons (CTRG-CCSP)

Foreword

This country-specific report was written by four ENNHRI members: the Federal Institute for the Protection and Promotion of Human Rights (FIRM-IFDH), Unia, Myria, and the Combat Poverty, Insecurity and Social Exclusion Service. Additionally, one non-ENNHRI Member, the Central Monitoring Council for Prisons (CTRG-CCSP), co-wrote the report as well. It also received additional input from three independent public human rights institutions: the Data Protection Authority (APD-GBA), the Institute for the Equality between Women and Men (IGVM-IEFH) and the Flanders Human Rights Institute (FLANHRI). FLANHRI has been established in 2023 as a regional independent supervisory institution for human rights and discrimination for the competences of the Flemish region and community. This report was coordinated by FIRM-IFDH.

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 2023 rule of law report, the European Commission made four recommendations to Belgium to improve its domestic rule of law. The first two recommendations concerned the reform of its integrity framework (focusing on rules for gifts and benefits for members of Parliament and on revolving doors policies) and lobbying. The institutions working on this report have not worked on those issues in 2023 and thus will not comment on their follow-up by Belgian authorities. The following section will therefore focus on the Commission's other two recommendations, namely the need for better financing for the justice system and access to official documents.

1. **Adequate human and financial resources for the justice system**

In 2023, the Commission recommended to "[f]*urther continue efforts made to provide adequate human and financial resources for the justice system as a whole, taking into account European standards on resources for the justice system*.". A similar recommendation had already been made in 2022.

Thanks to EU Recovery Instrument funding, Belgium's Minister of Justice has announced that the additional resources planned by this legislature to strengthen the judiciary amount to 300 million € per year (including 50 million for digitalization) between 2020 and 2024. In its 2023 contribution to the European Commission's stakeholders' consultation, FIRM-IFDH expressed concerns over the Minister of Justice's 'carrot-and-stick' approach to these funds, conditioning the allocation of additional financial resources with the fulfilment of certain measurable objectives. This criticism stemmed from the difficulty of measuring the outcomes, the weakening of the separation of powers induced by such an approach and risks to the quality of the work performed to reach those objectives. The intention to continue developing such an approach appears

to have been maintained throughout 2023 but little data is publicly available on its outcomes.

The Commission should urge the Belgian State 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 the independence of the judiciary, nor impede citizens' effective access to justice. Furthermore, the conditionality should avoid leading to sanctions for understaffed and underfunded courts and tribunals if they fail to meet the objectives due to lack of resources.

2. Access to official documents

The Commission also repeated its 2022 recommendation to "strengthen the framework for access to official documents, in particular by improving request and appeal processes, taking into account European standards on access to official documents."

Ratification at the federal level of the Council of Europe Convention on Access to Official Documents ('Tromsø Convention') is underway. The federal government submitted a draft law to parliament, which is currently pending in the parliament's commission on foreign affairs. Legislation assenting to the Convention had already been adopted by the federated entities.

The Government submitted a legislative proposal to parliament in 2023 aimed at improving right to access to official documents. The bill currently remains under consideration. In spite of some positive elements, including the expansion of the law to previously uncovered entities, office staff, this legislative proposal appears to fall short of the necessary reforms. Among other things, the general regime regarding access to documents and the specific regime concerning access to environmental documents – as well their respective appeal bodies – are not merged, and the general appeal process is yet to be strengthened (including allowing for binding decisions). It should also be made clear that refusal grounds, meaning that a refusal is only acceptable if concrete circumstances justify the use of this refusal ground.

3. Other crucial rule of law issues

In addition to the recommendations made by the Commission, a number of major concerns regarding respect for the rule of law remained unresolved in 2023, and tended to worsen:

- Prison overcrowding;
- The judicial backlog in both civil and criminal courts;
- The lack of care for internees whose numbers continue to rise;
- And finally, the non-enforcement of judgements by Belgian authorities. This issue has been critically illustrated by the condemnations of the State's refusal to provide asylum seekers with a dignified reception.

These points are examined more closely below.

NHRIs' follow-up actions supporting implementation of regional actors' recommendations

In 2023, the Federal Advisory Committee on European Affairs of the Belgian Parliament (which brings together members of the House of Representatives and the Senate) held two hearings on the follow-up to the European Commission's Rule of Law reports, in the presence of Justice Commissioner Didier Reynders. The 2022 report was discussed on January 10 2023 and the 2023 report on December 5. FIRM-IFDH took part in the second hearing, presenting ENNHRI 2023 report on the state of the rule of law in Europe – a chapter on Belgium, developed by FIRM-IFDH in coordination with its partners and raising a number of concerns about the rule of law challenges in Belgium, such as the deliberate non-compliance with national and European judgments by State authorities.

Other actions were also undertaken throughout 2023 in order to support implementation of last year's recommendations, including on the provision of adequate resources for the justice system and the reform of the right to access to official documents.

1. **Adequate resources for the justice system**

In May 2023, FIRM-IFDH reiterated its conclusion with respect to the "immediate penal transaction" mechanism in its memorandum towards elections. The immediate penal transaction mechanism allows a police officer to demand a (monetary) penalty to be paid immediately by the (alleged) perpetrator of an offence. Following a new law introduced in 2023, refusing an immediate penal transaction is ground for an "order to pay" from the public prosecutor. This allows the prosecutor to order the payment of a sum to an offender who has not accepted a penal transaction. FIRM-IFDH called for the abolition of the immediate penal transaction mechanism. Failing that, it recommends that its application be more limited. . Despite FIRM-IFDH's recommendations, the law allowing the combination of the immediate penal transaction and the order to pay was nonetheless adopted in July 2023.

2. **Access to official documents**

In 2022, FIRM-IFDH issued an advisory opinion on two – nowadays still pending – legislative proposals submitted by members of parliament regarding the reform of access to official documents , as well as an advisory opinion upon the request of the Minister. FIRM-IFDH called for the ratification at the federal level of the Council of Europe Convention on Access to Official Documents ('Tromsø Convention'), which is currently underway as the federal government has submitted a legislative proposal to parliament.

State authorities follow-up to NHRIs' recommendations regarding rule of law

FIRM-IFDH, Unia, Myria, CTRG-CCSP and the Combat Poverty Service's 2023 Rule of Law Report contains 17 recommendations aimed at improving the rule of law in Belgium. A number of these recommendations are related to issues examined at greater depth hereunder, such as the independence and effectiveness of the two National Human Rights Institutions (Unia and FIRM-IFDH), access to official documents, protection of human rights defenders and civil society. This section therefore only examines the state of affairs of some recommendations not mentioned otherwise.

1. **Provide FIRM-IFDH with a legal right to access all relevant public premises, including places of deprivation of liberty, and to all relevant individuals.**

Such a provision is currently not foreseen in the Act of 12 May 2019, but was part of the Sub-committee on accreditation's (SCA) recommendations regarding FIRM-IFDH. This recommendation was emphasized several times in discussions between FIRM-IFDH and the Government, including regarding the forthcoming reform of the Act of 12 May 2019, which intends to create a National Prevention Mechanism in Belgium. This recommendation remains unimplemented so far.

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

This recommendation was the main theme of FIRM-IFDH's 2022 annual report. The tendency to use administrative law instead of criminal law has continued. In 2023, the Government suggested introducing an administrative ban on entering certain recreational areas and a reform of penal transaction mechanisms. Both reforms would again expand the scope of administrative measures that could be taken against an offender and would replace some criminal proceedings.

3. **Creation of a public registry on AI to be used 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. So far, this registry has not yet been created.

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

Along the same lines, Belgian authorities should systematically notify individuals when AI is being used 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 affecting 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 decision-making process was only partly automated. 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 on 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.

Addressing automated human rights violations will mean reconsidering the gaps in the material scope (e.g. the civil law concept of services does not include all forms of publics service). It would also mean adapting and revisiting some of the core concepts to respond to the changing nature of the violations. For example, the shift of the burden of proof (as stated in article 28 of the anti-discrimination Act) is complex specifically in an AI context because, where there is a complete lack of transparency, there are no opportunities to substantiate a suspicion of discrimination. In an automated context, effective redress is even more challenging. Therefore, cooperation between the relevant enforcing institutions will be vital. National authorities should support NHRIs and ensure that they have adequate and meaningful powers to address the new challenges posed by AI.

5. CTRG-CCSP's systematic follow-up procedure

In 2023, CTRG-CCSP has initiated a procedure to systematically follow-up on its recommendations, in consultation with the prison administration and the Régie des Bâtiments/Regie der Gebouwen, which is responsible for real-estate infrastructure in prisons. The aim of this procedure is to account for all initiatives taken to implement each of the recommendations detailed in CTRG-CCSP's reports or its advisory opinions.

NHRIs' establishment, independence and effectiveness

International accreditation status and SCA recommendations

Belgium currently has two NHRIs accredited with B-status, signifying partial compliance with the Paris Principles.

In March 2023, the SCA accredited FIRM-IFDH with B-status. At that time, the SCA included recommendations in relation to the NHRI's human rights mandate, annual report, pluralism, selection and appointment, and adequate funding. Further information on the recommendations and the actions undertaken in follow up are detailed in the section below.

When the SCA accredited Unia with B-status, it included recommendations in relation to human rights mandate, interaction with the international human rights system, selection and appointment, full-time members, and functional immunity.

FLANHRI was created in 2022 with a broad human rights mandate within the competences of the Flemish Region and the Flemish Community. FLANHRI works in collaboration or in complementarity with other public institutions, both at the federal and the regional level.

Follow-up to SCA Recommendations and relevant developments

FIRM-IFDH

In March 2023, GANHRI's Sub-Committee on Accreditation (SCA) decided to accredit FIRM-IFDH with a B status. Its accreditation was accompanied by a number of core recommendations:

1. **Residual-federal mandate**

The SCA recommends that FIRM-IFDH's residual-federal mandate be expanded and strengthened through changes to its enabling Act or through other legal instruments. It also notes that the 2019 Act and the federal government's declaration provides for FIRM-IFDH's future inter-federalization. As this legislature's term is coming to an end, this will not be realised under the current government. FIRM-IFDH advocates (pp. 56-57) for relevant authorities to draw up a cooperation agreement extending its mandate to cover matters falling within the competence of the Communities and Regions (with the exception of matters falling within the competence of the Flemish Region and the Flemish Community, for which the FLANHRI is competent, as well as the regional and community mandates of Unia and the Combat Poverty Service).

2. **Unannounced and free access to inspect and examine public premises**

The SCA recommends providing FIRM-IFDH with an unannounced and free access to inspect and examine any public premises, such as places of deprivation of liberty, as well as any documents, equipment, and assets without prior notice. FIRM-IFDH recommends that its legal mandate be strengthened by providing a right to access to all relevant premises, including places of deprivation of liberty, and to all relevant individuals. Such a provision is currently absent from the law and no such reform has been announced.

3. **Annual report**

The third SCA recommendation suggests an amendment to FIRM-IFDH's enabling law to ensure that Parliament discusses and considers its annual, special, and thematic reports. The new draft law creating a National Prevention Mechanism within FIRM-IFDH provides for a yearly discussion of its report within Parliament.

4. **Pluralism and diversity and implication of civil society**

The SCA recommends that FIRM-IFDH advocates for the formalization of processes that ensure that pluralism and diversity are reflected in its composition and/or work.

Pluralism, according to the SCA, refers to broader representation of national society, with consideration given to ethnicity, minority status, and persons with disability. The new draft law stipulates that FIRM-IFDH's board of directors must be composed in a way as pluralist and diverse as possible. If adopted, it would also state that FIRM-IFDH must ensure that pluralism and diversity are reflected in its composition or its activities.

Unia

Given the fragmented landscape of existing Belgian equality bodies and NHRIs, 'A' status is not possible in Belgium, without a cooperation agreement between the federal state and the various communities and regions, or the (potentially asymmetrical) inter-federalization of an institution.

Regulatory framework

FIRM-IFDH

1. Support to whistleblowers

The national regulatory framework concerning FIRM-IFDH has evolved in the last year. FIRM-IFDH was recently given an additional competence of supporting whistleblowers under the new Belgian federal whistleblower legislation (pursuant to EU Directive 2019/1937). According to the two laws, FIRM-IFDH's new competence has four main components: be an information center for whomever requires information on whistleblowers' protection; provide support measures to whistleblowers, including legal, financial, psychological, practical, media and social support; conduct an evaluation of the legal framework on whistleblowing; and promote a whistleblower-friendly culture. FIRM-IFDH received an additional budget to conduct this mission. In 2023, FIRM-IFDH received 126 such individual requests, resulting in providing information to 55 individuals, the redirection of 53 cases to other institutional actors, and the implementation of support measures for 18 individuals. FIRM-IFDH has established lists of professionals such as lawyers, psychologists, media trainers, and coaches willing to assist whistleblowers. FIRM-IFDH is also working on developing its network to strengthen collaboration with partners and enhance the impact of its work on the topic.

FIRM-IFDH has also conducted presentations to several groups (unions, integrity network, etc.) outlining its legal missions. It has published several articles in legal journals on the missions of FIRM-IFDH with regard to whistleblowers. Finally, an information campaign has been launched in February 2024.

2. **NHRI appointed focal point on SLAPPs**

In February 2023, FIRM-IFDH was appointed by the Ministry of Justice as national focal point on the fight against Strategic Lawsuits against Public Participation (SLAPP, pursuant to EU Recommendation 2022/758).

3. **Draft bill on the creation of an independent prevention mechanism under OPCAT**

On December 21, 2023, a draft bill amending the Act of 12 May 2019 establishing a Federal Institute for the Protection and Promotion of Human Rights was submitted to the federal Parliament to establish an independent prevention mechanism at the federal level within the FIRM-IFDH, in conformity with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Belgium signed the OPCAT in 2005 but has not ratified it so far. The prevention mechanism envisaged will be an autonomous department within FIRM-IFDH that works closely with other independent public institutions already monitoring places of deprivation of liberty and/or certain persons deprived of their liberty (CTRG-CCSP, Myria and the Police Standing Committee). Its competence will be limited to places of deprivation of liberty falling under the federal competence, such as prisons, detention centres for migrants, and police cells.

4. **FIRM-IFDH's mandate**

Finally, FIRM-IFDH's mandate has not yet been expanded to matters under the competence of the Brussels Region, the French and German Communities and the Walloon Region, nor has FIRM-IFDH received the competence to handle individual complaints. Both of these measures were recommended by the Sub-Committee on accreditation in its 2023 decision and were envisaged by the federal government.

Unia

1. Legal basis

Unia has a legal basis in the form of a cooperation agreement between the Communities, the Regions and the Federal State. This agreement has the same legal rank as a law. On March 15, 2023, the Flemish Region and Community withdrew from the cooperation agreement and established FLANHRI, the Flanders Human Rights Institute, transferring Unia's former tasks for all matters under the competences of the Flemish Authority, with implications on the available budget and scope of actions by Unia. This was a political decision and was agreed upon in the Flemish coalition agreement from 2019 to 2024 (p. 111). Unia remains responsible for all federal competences in the entire territory of Belgium (i.e. Flanders as well as in Brussels and Wallonia).

2. Amendment of anti-discrimination legislation

In addition, Belgian anti-discrimination legislation was amended in 2023. The amendment includes better compensation for victims of discrimination, the introduction of the concepts of "cumulative" and "intersectional" discrimination, and the recognition of discrimination by association and discrimination based on a perceived criterion.

FLANHRI

1. Creation and mandate of FLANHRI

On October 28, 2022, the Flemish Parliament adopted the founding decree for a new Human Rights Institute in Flanders (FLANHRI), closely modelled after the UN Paris Principles and SCA's General Observations. The Flemish Parliament appointed the Board of Directors in February 2023, after an open procedure. The institute became operational on March 15th.

FLANHRI has a broad mandate to safeguard and promote all human rights, including non-discrimination in all matters falling within the competences of the Flemish Community and the Flemish Region, including unilingual Flemish institutions in Brussels

(eg. schools, daycare…). FLANHRI has assumed the Flemish responsibilities previously held by the Flemish Ombudswoman on Gender and Unia. FLANHRI also has similar (mainly policy advisory) powers as FIRM-IFDH for all matters relating to human rights with regard to Flemish competences. The establishment of FLANHRI creates a quasi-tribunal and promotion-type institute, while at the same time expanding the mandate to all human rights within Flemish competences. The Flemish Government at the same time invested significant additional resources, more than quadrupling the original budget. FLANHRI includes a quasi-jurisdictional organ, the Litigation Chamber, based on the Dutch model ("College voor de Rechten van de Mens"). In cases of potential discrimination, individuals can file a complaint with FLANHRI, following initial assistance. Individual complaints first undergo mediation between parties, and if mediation proves unsuccessful or impossible, the Litigation Chamber can render a non-binding judgment.

FLANHRI also handles all human rights complaints and questions within the competences of the Flemish government, by informing the public, raising awareness, conducting research, and advising government(s), either on demand or on its own initiative on the issue of human rights. Furthermore, FLANHRI explicitly carries a mandate to promote, protect, and oversee the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), adopted on December 13, 2006.

The legal framework applied during the mediation procedure and by the Litigation Chamber to determine whether discrimination has occurred, was established much earlier, in the Framework Decree of 10 July 2008 on equal opportunities and equal treatment. There is an ongoing regulatory process to amend the Flemish anti-discrimination policy on various points:

- Personnel and material scope, including an expansion of the protected grounds;
- Forms of discrimination;
- Justification grounds;

- Positive action;
- Enforcement, including an increase in the compensation fees and the addition of criteria that may lead to an increase or decrease of the fee (e.g., compliance with measures recommended by FLANHRI Litigation Chamber).

NHRI enabling and safe environment

FIRM-IFDH

1. Advisory opinions on legislative proposals

FIRM-IFDH is regularly asked by the executive and Parliament to provide advisory opinions on legislative proposals. In 2023, FIRM-IFDH issued advisory opinions (of which 12 upon request of Parliament or the Government). FIRM-IFDH is regularly in contact with parliamentarians, the Government and public authorities to present and discuss its recommendations. Nevertheless, FIRM-IFDH does not automatically receive feedback from the authorities. While the Act of 12 May 2019 allows FIRM-IFDH to request written explanations regarding the follow-up of these opinions, recommendations and reports (art. 6 §3), the Institute has not used this possibility yet.

2. Opinions, recommendations and parallel reports

FIRM-IFDH closely collaborates with public bodies promoting human rights, by issuing joint opinions, recommendations, parallel reports to UN Treaty bodies, etc.

Several reports were drafted in 2023, including to the European Committee of Social Rights, the UN Human Rights Council and the European Commission. Furthermore, FIRM-IFDH addressed several "Rule 9" submissions to the Council of Europe's Committee of Ministers regarding the follow-up of some judgments issued by the European Court of Human Rights (ECtHR) against Belgium.

Unia

Unia, as other human rights institutions in Belgium, operates in a complex institutional environment with six different state-level authorities. This situation raises numerous

questions on the limits of each authority's competences and on citizens' rights under each legislation.

1. **Involvement in the legislative process**

In addition, the willingness of the executive power to create new regulatory frameworks or modify existing ones varies greatly depending on the political actors involved and the topics raised. In some cases, Unia was heavily involved in the legislative process and its views were taken into account, such as with the codification of anti-discrimination regulations by the Brussels-Capital Region, the French Community Commission (COCOF) and the Common Community Commission (COCOM). Other legal projects, such as the revision of the Criminal Code, did not actively involve Unia and it was very challenging to receive feedback to its recommendations. This disparity in the executive and legislative branches accessibility in the legislative process means that Unia's impact depends largely on the willingness of policymakers to be open to its recommendations.

2. **Impact of VMRI's creation on Unia's mandate**

The creation of the FLANHRI affected Unia's mandate: matters within the competence of the Flemish Region and Community previously falling within the mandate of Unia are now under the mandate of FLANHRI. Under the Belgian constitutional framework, this also includes complaints handling on these matters for unilingual Brussels institutions. The Belgian Council of State expressed reservations about the creation of this new structure, pointing to the increasing complexity of the human rights landscape in Belgium: «*The fact that a separate institution will be established for the Flemish Community and the Flemish Region together, in place of the role currently played by Unia in this regard, has the consequence that persons wishing to address such an institution will have to orient themselves in an increasingly complex landscape (…). This will probably be most evident in the territory of the bilingual Brussels-Capital Region (…).*» The criterion to define the competent equality body in Brussels (and Flanders as well) is not the language of the resident (Dutch or French). It is

determined by the facts concerned. Socio-cultural institutions in Brussels, amongst others, can be a Flemish institution, used by French speaking citizens. Given the importance of the socio-cultural and educational institutions of the Flemish Community in Brussels (VGC), there is a risk this will have an impact on the actual level of protection of Brussels residents. Unia and FLANHRI have different mandates to respond to human rights violations (see p. 26), including in the capacity to take legal action before a court in individual cases and mediation possibilities.

3. **Expressions of hatred in political discourse**

In addition, expressions of hatred in political discourse, which are not always legally condemnable but fuel polarization, have become more common. The upcoming elections in June and October has renewed the debate about the role of Unia. Not all electoral programs have been published at the time of writing but the far-right Vlaams Belang party already proposes to abolish Unia.

FLANHRI

Given the recent establishment of FLANHRI, definitively assessing whether state authorities provide an enabling environment for independent and effective operations is premature. In its first operational year, FLANHRI has published several advisory opinions on draft legislation, including one at its own initiative. It also launched a publicity campaign and received and handled more than 900 complaints. One issue which needs to be closely monitored is the evolution of the allocated budget of the FLANHRI, especially after the originally planned startup years (2023-2024).

NHRI's recommendations to national and regional authorities

Study and implement investigative powers for equality bodies

In its final report, the Commission for the Evaluation of Federal Anti-Discrimination Legislation recommended that the possibility of granting investigative powers to federal equality bodies (Unia, IGVM-IEFH) be studied (recommendation 51). These bodies currently find it difficult to have access to all relevant elements of an individual's file, and

it is not uncommon for incriminating evidence to be deliberately concealed, with the result that it is sometimes difficult to prove discrimination. One solution would be to give equality bodies investigative powers. The FLANHRI has such powers where public services are concerned (Art. 22, FLANHRI decree). The European Commission has deemed this competence necessary in its 2022 proposal for a directive on standards for equality bodies.

Financial stability

FLANHRI recommends to the Flemish Parliament that it ensures a robust and stable budget for the Institute. Adequate financial resources are essential to facilitate FLANHRI's operational capabilities and guarantee its autonomy. This recommendation can also be replicated for all other public independent human rights institutions at federal, regional and Community level.

Interfederal cooperation agreement to extend FIRM-IFDH's competences and to clarify relations with other human rights institutes

FIRM-IFDH recommends the adoption of a cooperation agreement that would extend its mandate to matters falling within the competences of the Communities and Regions (with the exception of matters falling within the competences of the Flemish Region and the Flemish Community, for which the FLANHRI is competent). This agreement should include provisions for the cooperation with existing human rights institutes already competent for regional and community matters, such as Unia, the Combat Poverty Service and FLANHRI. Lastly, FIRM-IFDH should be given the competence to receive and handle individual complaints, as was stated in the 2020 Federal Government Agreement.

Checks and balances

Separation of powers

The separation of powers is one of the most fragile aspects of the rule of law in Belgium. Several reasons can be pointed out, including the chronic underfunding of the

justice system which leads to a severe backlog of court cases and/or the lack of enforcement of judgments against Belgian authorities. Additionally, a number of laws, practices and trends gradually shift competences from the judiciary to the executive. The following section focuses on this erosion of separation of powers.

Chronic judicial understaffing

The attribution of adequate resources and staff to courts and tribunals remains an important issue. Recently, following a terrorist attack in Brussels, the government announced opening several job positions in the Brussels Prosecutor office. Prior to this decision, the office was severely understaffed with 95 prosecutors instead of the 119 provided by law. While this particular decision is positive, it also shows that staffing of the judiciary is highly contingent on political will. This is illustrated by a recent condemnation of the State by the Brussels first instance tribunal due to the excessive length of proceedings in the Brussels family tribunal. In November 2023, the Court of appeal of Brussels further condemned the Belgian State to open all job postings for judges and judicial personnel normally provided for by law. As a result, Belgian authorities published all job postings in February 2024.

Establishing a National Prevention Mechanism

Taking into account the specific Belgian context, ratification of the OPCAT by Belgium requires that not only the federal government but also each of the federated entities appoint an independent prevention mechanism. Close consultation and cooperation between the different prevention mechanisms will be paramount to ensure the efficiency, coherence and uniformity of the OPCAT-system in Belgium.

Administrative approach to deal with public order

In recent years, Belgium has seen an expansion of administrative law instruments to deal with public order disturbances and criminal phenomena: e.g. preventive administrative measures taken to address the risks of radicalization or local powers to impose so-called municipal administrative sanctions, area bans and preventive demonstration bans.

This trend continued into 2023. On November 16, 2023, the federal Parliament adopted the Act on the municipal administrative approach.. This Act introduces the possibility for municipalities to refuse, suspend or withdraw a business license or to close down a business in case of an identifiable serious risk that it might be used to commit criminal offences or for money laundering purposes. A bill pending in parliament provides for the possibility of imposing an administrative ban to enter recreational areas (and adjacent areas) for up to ten years for persons having committed certain infractions, such as not respecting a steward's orders or throwing one or several objects on the ground, during a visit to such an area.

FIRM-IFDH has issued negative advisory opinions regarding both bills. This broader trend of expanding administrative law powers is concerning, as it shifts the power to adopt individual measures (potentially) restricting fundamental rights from the judiciary to the executive. Executive decisions do not provide the same safeguards in terms of independence and procedural guarantees as judicial ones. This is inadequately compensated for by the possibility of challenging the measures before the courts. Furthermore, preventive measures can often be adopted on the basis of a mere risk of future disturbance rather than on proven blameworthy conduct. According to FIRM-IFDH, more restraint in empowering the executive further is desirable.

Scan-cars and the rights of persons with disabilities

In July 2022, the Brussels regional Parliament undermined the rights of people with disabilities in its push for automated parking control using scanner vehicles ("scan-cars"). The case dates back to May 2, 2022, when the President of the Brussels first instance tribunal ruled that the system of automated parking control using scanner vehicles, as used by the Brussels regional parking agency Parking.brussels, led to indirect discrimination on the basis of disability, since it required additional steps for people with disabilities that were not provided for in the legislation. These steps were either pre-register using a mobile application or the specific button on the available parking meter; or contest the fee received. The judge ordered Parking.brussels to put an

end to this discrimination. Unia was a party to the case. However, the Brussels Parliament has since revised the Parking Ordinance, and now requires people with disabilities to register digitally in order to benefit from free parking. The ordinance now requires disabled people to pre-register digitally. The procedures for pre-registration vary from one municipality to another. For municipalities where parking is managed by Parking.brussels, this has to be done via a whitelist, the pay and display machine, via an app or website, or via SMS. Other municipalities are only obliged to offer pre-registration via a whitelist. Unia has attempted to reverse this amendment by questioning MPs, meetings with the Mobility minister's cabinet, publishing a press release and drafting an advisory opinion, without success. The legislator did not conceal that this amendment was introduced in order to circumvent the finding of discrimination made by the beforementioned court decision, and thus to neutralize the enforcement of the judgment handed down. In 2023, Unia continued to question this practice in detail and considers it a threat to the principle of the separation of powers.

Prisoners' right to complaint under threat

Since October 1st, 2020, prisoners have been able to lodge a formal appeal against decision made by their prison director. The Act of Principles also allows them to appeal against the failure to make a decision when the director is legally required or reasonably expected to make a decision. CTRG-CCSP has been entrusted by the Act with the responsibility of organizing this right to complaint. The complaints and appeals commissions, set up and supported by CTRG-CCSP, are independent and impartial jurisdictions dealing with these complaints.

In 2023, 4,165 complaints were submitted, compared with 2,394 in 2022 (see p. 36) and 1,794 in 2021 (see p. 43). This increase will sooner or later require an adaptation of the relevant legal provisions, both in terms of procedures and organisation, to ensure that complaints continue to be handled properly. Furthermore, an examination of the new case law highlights that a number of decisions by complaints commissions are slow to be implemented, or even, more worryingly, are ignored. However, the Act of Principles

provides that any decision by the complaints commission is enforceable even in case of an appeal, unless otherwise decided by the president of the appeals commission, who may suspend its enforcement in whole or in part. Failure to enforce a decision can be the subject of a new complaint but questions arise as to whether such a complaint can be considered well-founded.

Any failure by authorities to enforce a judicial decision, such as a decision of the complaints commission, is a violation of the rule of law.

Security clearances for magistrates

In February 2023, the federal government approved the first reading of a draft law requiring a security clearance and regular security checks for magistrates. The measure would aim to better protect the judiciary against feared infiltrations by criminal organizations. Upon request of the Minister of Justice, the High Council of Justice raised a number of concerns in an advisory opinion dated April 11, 2023. The High Council pointed out that such a requirement would weaken the separation of powers, since the control would be made by organs of the executive power. It would impair the competence of the High Council itself, which will only be able to recommend for appointment magistrates who have cleared the security checks. The draft law could also constitute a violation of the right to a fair trial, the principles of legality, of legal certainty and would require disproportionate means in order to achieve its objectives, given the existence of other forms of integrity control for magistrates. This criticism echoes similar concerns raised by the Council of Europe's Consultative Council of European Judges in a 2018 opinion, as well as by the European Commission's 2023 Rule of Law Report on Belgium.

No further development has been reported on this draft law since the publication of the High Council's advisory opinion.

Disciplinary proceedings against judges

Several new law proposals have been introduced in Parliament in 2023 in order to reinforce rules regarding disciplinary procedures applicable to judges and prosecutors.

Law proposals differ from draft laws as they are not introduced in Parliament by the government, but by a member of the Parliament.

One of the law proposals would create a permanent disciplinary prosecution office, which would be able to open disciplinary investigations against magistrates and start proceedings before a non-permanent disciplinary tribunal. As with other prosecution offices, the disciplinary prosecution office would not be fully independent from the executive order, even if efforts have been made to improve this aspect compared with other prosecution offices: contrary to other prosecution offices, it would not be placed under the authority of the Minister of Justice but under the joint authority of the College of Courts and Tribunals and the College of the Public Prosecutor (whose members are under the authority of the Minister of Justice). Its members would be nominated by the government following a recommendation by the High Council of Justice.

The disciplinary prosecutors would be given the competence to appeal against the decision of the chef de corps (chief magistrate) not to inflict a sanction or only a light penalty against a magistrate guilty of a disciplinary offence. This law proposal would also reinforce the independence of the disciplinary tribunal – meaning reinforcing its independence from the magistrates' themselves – by involving external actors such as the Batonniers (chiefs) of the Bar associations and law professors as judges (conseiller) of the disciplinary tribunal.

In general, the law proposals seem mostly intended to break from the tradition of magistrates' disciplinary proceedings being conducted wholly by magistrates themselves, in order to improve both the effectiveness of the proceedings and its appearance of impartiality for the larger public. Yet, it also risks weakening the separation of powers and the independence of the judiciary. In other European Member States, the creation of permanent disciplinary prosecution offices has sometimes been used to make a judiciary more compliant with the executive's wishes. While some guarantees are here provided to avoid such an outcome, there remains cause for concern.

The process for preparing and enacting laws

A number of laws, processes and practices restrict the participation of vulnerable stakeholders within the procedures to prepare and enact laws and policies in Belgium. Three examples are examined below.

The right to vote for people with disabilities

On March 28, 2023, a new Act "containing various amendments on elections" was adopted. This new law amended the law on guardianship. As of October 1st, 2023, a tribunal must explicitly and systematically decide (on the basis of a comprehensive checklist) whether a person with a disability is capable to exercise his or her political rights, including the right to vote and stand for election. The tribunal can now deprive the person of his or her right to vote without justification and without being specifically asked to. This is likely to make it more difficult for people with disabilities to exercise their right to vote, especially given judges' practice of ticking off the entire checklist, which often entails the deprivation of an unproportional amount of rights for the disabled person in question, without an individual and appropriate assessment. With this new law, the right to vote becomes even further out of reach for people with disabilities. This reform is a clear step backwards and is contrary to what the Government had previously announced in its Federal Disability Action Plan. Indeed, the Plan's "measure 119" aimed to "investigate how to minimize the suspension of the exercise of the right to vote among protected persons". Moreover, the danger of a broad interpretation of the "exercise of political rights" lurks around the corner, further constraining related rights. Unia considers the Act of 28 March 2023 a clear violation of the constitutional right of people with disabilities to full inclusion in society.

Equal treatment of all types of hate speech

Only racist and xenophobic hate speech can currently be prosecuted in criminal (correctional) courts. All other forms of hate speech (disability, age, gender, etc.) fall within the jurisdiction of the Court of Assizes, meaning a costly and complicated procedure involving a jury trial. This rule, originally intended to protect press freedom

from political prosecution, has resulted in de facto impunity for hate speech other than racist or xenophobic ones. This problem also concerns cyber hate, i.e. hate speech spread through social media. Any solution requires to amend article 150 of the Constitution, following which xenophobic and racist hate speech falls within the jurisdiction of the ordinary criminal courts and all other forms of hate speech belong to the Court of Assizes' jurisdiction. However, the complex procedure for amending the Constitution and the lack of understanding of the need for this amendment by the Government and Parliament leads the judiciary to apply de facto a different treatment to equal situations, since racist and xenophobic hate speech are currently easier to prosecute than other forms of hate speech. On December 21st, 2021, a decision (nr. 2021/6615) by the Brussels first instance tribunal pointed out that the article 150 protection raises questions regarding the right to an effective remedy, the right to respect for private and family life - including reputation - and freedom of expression.

Gender mainstreaming

IGVM-IEFH has found a lack of scrutiny and evidence-based policy-making in the process for preparing and enacting laws and policies. The Act of 12 January 2007 on Gender mainstreaming requires the integration of a gender perspective in all actions of the federal Government, including in the preparation of laws and policies, in order to ensure that the specific situations of women and men are taken into account. The Act has led to numerous progresses, including pinpointing where the integration of the gender perspective has yet to happen correctly. The Act on Gender mainstreaming requires that a regulatory impact assessment (RIA) is performed for legislation and regulation submitted to the federal Council of Ministers. While some RIAs are carried out properly, past evaluations have underlined that the RIA checklist is often not answered adequately. Very little use is made of gender-disaggregated data to ensure that the RIA is made in an evidence-based way. Inadequate RIA use has important consequences on the integration of a gender perspective for policy preparation.

Access to information

Too little progress on access to public documents reform

As mentioned above, FIRM-IFDH issued an advisory opinion on two pending legislative proposals submitted by members of parliament in 2022, as well as an advisory opinion upon the request of the Minister of the Interior. In 2023, the government subsequently submitted its own legislative proposal to parliament, which remains under consideration as well. In spite of some positive elements – including the expansion of the law to previously uncovered administrative entities –, this legislative proposal still falls short of reforms deemed necessary, including to the (current) advisory appeal body tasked with overseeing refusals to access to documents. Among other recommendations, FIRM-IFDH underlines that this appeal body should be given a broader mandate, more resources and decision-making powers.

An expanded definition of state secrets at odds with the proportionality principle and press freedom

The new Criminal Code has expanded the definition of 'state secrets'. FIRM-IFDH has noted in an advisory opinion on the proposal for a new Criminal Code that this would consequently expand the scope of the existing crimes of disclosing and receiving state secrets. According to FIRM-IFDH, the government has not demonstrated the need for this expansion, invoking vague grounds of changing social and political context to justify it. Moreover, the definition is very broad and contains several ambiguities, making it difficult, in practice, to know what is punishable and what is not. The new provision therefore also poses a risk to press freedom, as journalists could be prosecuted for receiving and disclosing certain information without even necessarily realizing the information can be qualified as a state secret.

The need for a journalistic exception for data processing and the right to film police officers

FIRM-IFDH has also advocated for the implementation of the so-called 'journalistic exception' (Art. 85, §2 GDPR) in national legislation in a way that makes it clear that

non-professional journalists may rely on certain data processing exceptions. The current provision in Belgian law leads to uncertainty in this regard.

FIRM-IFDH also recommends that a separate legal framework is created clarifying the rules regarding the filming of police officers by citizens and establishing the basic principle that everyone has the right to film police officers in the course of their duties, even if exceptions to this rule are possible.

Concerns regarding time frames for transparency request in Flanders

FLANHRI notes that, in Flanders, time frames for a transparency request are legally defined (article II.26 – II.51 decree of December 7, 2018 regarding the administrative decree). Everyone (any individual, legal entity, or group thereof) may submit a request for transparency. A transparency request must be responded to within a maximum period of 20 calendar days, extendable to 40. In the event of an appeal against the decision, the appellate body must communicate its decision within 30 calendar days, extendable to 45. The governmental entity possessing the information shall implement the decision within 15 calendar days of receiving the appellate body's decision.

While these time frames may not appear unreasonably long, there are situations where a quicker decision period is required. As highlighted in the European Commission 2023 Rule of Law Report, response time for transparency requests remain a persistent issue according to the Flemish Association of Journalists. FIRM-IFDH underlined similar findings at the federal level in its 2022 advisory opinion on the reform of the law on access to public documents.

Independence and effectiveness of independent institutions (other than NHRIs)

The Central Monitoring Council for Prisons (CTRG-CCSP), the Institute for the Equality between Women and Men (IGVM-IEFH) and the Knowledge Center of the Data Protection Authority (APD-GBA) have reported laws, practices or legal processes negatively impacting or threatening their independence or effectiveness.

CTRG-CCSP: reform of the Act of Principles

At the end of April 2023, CTRG-CCSP was informed of the finalization of a draft law aimed at comprehensively reforming the Act of Principles. The Act of Principles organizes CTRG-CCSP's control powers as well as the prison supervisory commissions it supports and coordinates. It also establishes the prisoners' right to complaint, also organized by CTRG-CCSP. The draft law would bring significant changes to CTRG-CCSP's functioning as well as restricting prisoners' right to complaint. Among other changes, the scope of application would be narrowed, admissibility requirements tightened, investigative possibilities limited and the enforceability of the decisions curtailed. Drafted without consulting CTRG-CCSP, the draft project has been criticized in great detail by CTRG-CCSP, as well as by FIRM-IFDH. The draft law appears to have been temporarily abandoned for the time being, likely due the coming elections. Indeed, electoral time frames make it impossible to complete such a reform before the end of the legislature. However, this project is likely to find itself back on the agenda at a later date.

IGVM-IEFH: Suspension of the collaboration provisions of the joint circular on the prosecution of discrimination

To improve the practical application of various anti-discrimination legislations, a joint circular from the Minister of Justice, the Minister of the Interior, and the College of General Prosecutors was adopted in 2013, namely COL13/2013 regarding the policy on research and prosecution in the field of discrimination and hate crimes (including gender-based discrimination).

This circular establishes the collaboration between the Public Prosecutor's Office, Unia, and IGVM-IEFH. COL13/2013 is currently undergoing revision to improve its practical application and address field-observed challenges. During these revisions, questions arose regarding the compatibility of certain of its provisions with GDPR requirements. These include the systematic transmission to Unia and IGVM-IEFH of court hearing

dates, judicial decisions, and the contact details for reference magistrates and police officers.

Following these discussions and in view of legal uncertainty regarding the consequences of GDPR application on the collaboration established by COL13/2013, the College of Prosecutors General decided on December 1st, 2023, to suspend the application of the current circular's collaboration provisions pending a thorough examination of the issue. A new circular was adopted on January 18th but Unia and IGVM-IEFH have not yet been informed whether the GDPR issue has been resolved. As a result, no announcement of court hearing dates or judgments are being given to Unia and IGVM-IEFH anymore. This situation hinders IGVM-IEFH and Unia from properly fulfilling their legal missions of supporting victims of discrimination, intervening in judicial procedures resulting from the application of anti-discrimination laws, and publishing anonymized judicial decisions.

APD-GBA's Knowledge Centre: shorter deadline for APD-GBA's missions puts the institution under pressure

A new law has been adopted bringing significant changes to the functioning of the Data Protection Authority (APD-GBA), including shorter deadlines to issue advisory opinions and to authorize access to communication metadata. According to APD-GBA's Knowledge Centre, those changes raise significant challenges for the fulfilment of its missions.

The time frame to issue an advisory opinion has changed from a standard 60 days – 15 days in case of a motivated emergency – to 30 (default notice period) or 60 days, and only 5 days in case of a motivated emergency. The 5-days deadline appears extremely difficult to fulfil, if not impossible. These time frames are significantly shorter than those applicable to comparable national data protection authorities in other countries. For example, the emergency procedure for the French Data Protection Authority, CNIL, is set at one month, whereas their standard procedure foresees two months (which may be extended by one additional month). The reduction in the time frame within which

the APD-GBA must issue its opinions threatens to negatively impact its capacity to exercise its a priori control, as anchored in Article 81 of the GDPR.

The Government aims to align the time frame for APD-GBA's advisory opinions with those of the Council of State. Yet, the two institutions have very different operating methods and means. For example, the current DPA law requires collegial decision-making for opinions, until the end of the term of office of the current external members. Furthermore, it is striking that the authority requesting the opinion can impose its own time frame on APD-GBA, without allowing to adapt it to the volume or complexity of the issue.

APD-GBA can issue authorizations for access to communication metadata relating to data traffic or to locations for purposes that do not fall within the criminal sphere (eg. data collected for scientific research purposes). The new law also sets particularly short deadlines for APD-GBA to issue its authorization: 10 days from the time the request for authorization has been completed (art. 18§3). Once again, tight deadline will put the institution under pressure to monitor this type of request, the volume of which is currently unknown.

Enabling environment for civil society and human rights defenders

ENNHRI's 2023 Rule of Law Report's country chapter on Belgium particularly focused on the numerous human rights challenges faced by civil society and human rights defenders in Belgium. Topics included safety of journalists, protection of the right to strike, intimidation of human rights defenders, etc. Several of these themes are reviewed and updated below.

Defend the Defenders

In its study "Room for Human Rights Defenders", FIRM-IFDH surveyed 159 Belgian civil society organizations. The majority of the respondents rated favorably the quality of Belgium's civic space. Yet, 55% of them stated they had been subjected to intimidation or aggression at least once in 2020-2022. The respondents report facing mainly legal intimidation (24%), negative media campaigns (22%), cyber-attacks (19%) and political

sanctions (17%). 25% of the respondents stated they had faced difficulties in funding their operations,18% in participating in the political process and 15% had been subjected to political pressure.

The study also showed that pressure exerted on employees or volunteers working for the organizations is more likely to be perpetrated by people from the public than from political actors, while the opposite is true for acts committed against the organizations (as a legal entity).

Threats and intimidation against civil society weaken its resilience and its ability to play its role effectively. While most organizations explain that they have never (or only sporadically) adapted their strategic objectives, working methods or activities as a result of these pressures, they emphasize that this context can have psychological, emotional and safety consequences for workers that should not be underestimated. Coping mechanisms need to be put in place to support them. The full report of this research will be published in 2024.

FIRM-IFDH's appointment as SLAPP focal point

In 2023, the Minister of Justice appointed FIRM-IFDH as 'focal point' under the EU Recommendation 2022/758. FIRM-IFDH also participates as an observer in the Belgian anti-SLAPP working group, that brings together (legal) practitioners, academics and others to discuss ongoing SLAPP developments. FIRM-IFDH is currently preparing to publish information regarding SLAPP on its website and will inform the public on what are SLAPPs and existing support and remedies.

The year was also marked by the use of emergency unilateral applications before several tribunals to limit public participation, in particular against journalists exposing political scandals and to evict undocumented migrants occupying public buildings, as denounced by the French-speaking Human Rights League.

Administrative and judicial prohibitions to participate in demonstrations

As mentioned in ENNHRI's 2023 Rule of Law Report, the Minister of the Interior issued a circular in August 2022 clarifying that the municipal authorities have the competence to take preventive measures prohibiting a specific person from participating in a demonstration. The ban must be based on concrete indications that this person aims to disturb public order. In 2023, the government introduced in parliament a draft law allowing for a judicial demonstration ban for persons having committed certain offences in the context of a demonstration, in order to prevent disturbances.

FIRM-IFDH issued negative advisory opinions regarding both the administrative (by the municipal authority, as addressed by the aforementioned circular) and the proposed judicial demonstration bans. The necessity of such new instruments has not been demonstrated, taking into account the existing possibilities to prosecute offences committed during demonstrations and the chilling effect resulting from preventive restrictions on freedom of assembly. The circular clarifying the municipality competence to ban demonstration also lacks an adequate legal basis.

In January 2024, due to large mobilization of civil society and the opposition, the government withdrew the draft articles on the judicial demonstration ban.

New criminal offence of malicious attack on government authority

FIRM-IFDH issued an advisory opinion in the context of the reform of the Criminal Code, emphasizing the risks of incorporating a new criminal offence of malicious attack on government authority. It is considered that this offence, which also covers incitement not to comply with the law, would allow for disproportionate restrictions being imposed on the freedom of expression and demonstration, and could particularly be used to stifle calls for civil disobedience. The bill has been amended by the federal parliament, adding a condition that the perpetrator must be impairing the binding force of the law or the rights or authority of constitutional institutions and to be directly inducing failure to comply with a law. The list of grounds for prosecution has also been restricted, even

if it remains too broad. Finally, the sanctions have been mitigated. The new Criminal Code, including this new offence, has been adopted by Parliament.

The new offence remains concerning from a human rights point of view, even if its impact has been somewhat reduced. The amended version represents some progress over the original text and makes it less likely to be applied to social protest or civil disobedience. However, the criticism that the offence adds little to the existing legal framework (because calls for violence etc. are already punishable, among other things) remains relevant.

Abuse of unilateral judicial proceedings to restrict human rights

In 2023, there has been a stark increase in unilateral applications to start judicial proceedings with negative consequences for the enjoyment of certain human rights. In those procedures, an application is brought forward under an emergency procedure and only the requesting party is heard before the judge issues his or her ruling. Such applications were notably used in labour law, in the context of several disputes between trade unions and several large retail chains. The employers made extensive use of unilateral emergency applications, which were – at least in part – favorably received by the courts and made it possible to prohibit certain strike-related actions. In 2011, however, Belgium was condemned by the European Committee of Social Rights for the abusive use of unilateral emergency applications to prohibit collective action (C.S.C., F.G.T.B. and C.G.L.S.B. v. Belgium, September 13, 2011). The European Committee found that the failure to summon both parties to the hearing was a violation of the right to a fair trial, and that their recurrent use showed the existence of a structural problem in Belgium.

FIRM-IFDH denounced the renewed use of unilateral applications to curtail human rights in an opinion published on May 23, 2023. The authorities have not yet reacted to put an end to this violation of fundamental rights. Some of these decisions have been overturned on appeal, with courts noting the abuse of the emergency unilateral procedure.

Online transphobic and hate speech on social media

IGVM-IEFH is concerned by the dissemination of transphobic and sexist hate speech online on social media and the extremely limited actions it can use against them. This content can be easily spread in a minimum amount of time and read by thousands of users. Sexist and transphobic hate speech in written form are almost never prosecuted, even when punishable.

As mentioned heretofore, these offences are considered press offences, as defined by Article 150 of the Constitution. The perpetrator of an offense that meets the elements of a press offense, not inspired by racism or xenophobia, often enjoys criminal immunity. Therefore, the Belgian legislator needs to amend the Constitution to treat discriminatory press offenses as lesser offenses that can be brought before an ordinary criminal court, regardless of the type of discriminatory motive behind them.

Budgetary restrictions for civil society

The place and role of civil society are undermined by strict policies in terms of budget allocation. Civil society must be able to play an independent role in informing policy-makers about its experience of human rights violations.

NHRI's recommendations to national and regional authorities

a. Guarantee prisoners' right to complain to the full extent of the possibilities detailed in the Act of Principles, and implement it diligently by the prison administration.

b. Amend article 150 of the Constitution in order to allow efficient prosecution of non-racist hate speech off- and online.

c. Reform the legal framework applicable to access to official documents, in the following ways:

   - Simplify the legal framework by integrating the different legal bases into one unique act;

- Broaden the duty to find and communicate certain information by public authorities;
- Strengthen the appeal bodies existing 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 recommends 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;
- Finally, create an emergency procedure that allows for the speedy delivery of the requested documents if the facts of the case justified it to be urgently considered.

Impact of securitisation on the rule of law and human rights

Securitisation narratives and practices are a growing trend in Belgium, as in other European countries. 2023 was a particularly active year for legal proposals aiming at improving public security, sometimes with a lack of concern for their human rights impact. Many of those changes were introduced as part of the Criminal Code reform, and others can be included within ongoing concerns regarding anti-terrorism legislation, police attitude towards minorities and internment of mentally disabled individuals.

1. Criminal Code reform

The new Criminal Code has introduced several new offences that could pose serious human rights issues. Three were highlighted in FIRM-IFDH's second advisory opinion to Parliament on the proposal for a new Criminal Code: expanding the definition of state secrets; the malicious attack on government authority; and glorification of terrorism. Both the expanded definition of state secrets and the malicious attack on government

authority have been discussed heretofore but the new offence against glorification of terrorism has not.

Establishing a criminal offence against glorification of terrorism significantly extend the scope of terrorist offences, at the risk of having a disproportionate impact on freedom of expression, both directly – by prohibiting certain speech – and indirectly, through a chilling effect. Other human rights – such as the right to freedom of assembly, the right to work, right to free movement, the right to privacy – are also likely to be severely impacted, given the wide-reaching effects of terrorism offences on a large swath of domains. To enshrine the prohibition of glorification of terrorism is all the more objectionable given that Belgian law already contains an offence against direct and indirect incitement to commit terrorist acts. This new offence therefore logically prohibit non-inciting glorification. Furthermore, the penalties initially proposed were so severe that some terrorist offences could be punished less severely than the glorification thereof. For these reasons, FIRM-IFDH has urged the legislator not to criminalize that does not amount to incitement of terrorism. The proposal has been adopted at the end of February 2024. The adopted law amended the proposal to reduce the severity of the penalties and requiring an intent to create a risk of a terrorist offence.

The new Criminal Code also focuses on the importance of a more diversified range of sanctions and of the individualization of punishment. It recognizes the need to constructively address underlying problems that condemned persons face and that have contributed to the criminal behavior in specialized institutions outside prisons. The new Code involves both a new principal sentence called 'treatment under deprivation of liberty' and a new additional sentence called 'extended follow-up'. In an opinion on the preliminary draft bill, FIRM-IFDH identifies a number of issues with these new sentences, such as the absence of an appeal on the merits against decisions of the sentence application court and the absence of an expert opinion at certain stages of the procedure. Finally, FIRM-IFDH pointed out the risk of an endless accumulation of sentences, which could lead to possible human rights violations. Taking into account the need for sufficient capacity in the care circuit outside prison to implement these new

sentences and the already existing deficit, the entry into force of these new sentences will be postponed until January 1st, 2035 at the latest. This will further multiply the number of people and the diversity of profiles in secure care facilities.

2. **Security measure for the protection of society**

In addition, on February 22, 2024, the federal Parliament approved a draft law that introduces a new security measure for the protection of society. The measure has much in common with internment and is closely linked to it in terms of scope and implementation. It risks reproducing the problems identified by the ECtHR in the L.B. v. Belgium case: the deprivation of liberty of people with a disorder in prison-like institutions for an indefinite period of time, without any real plan of care. Unia is concerned since this new security measure legalizes the possibility of locking up for life people who do not suffer from a mental disorder that eliminates their ability to reason.

3. **Common database related to Terrorism, Extremism and Radicalisation Process**

The Government has also submitted to Parliament a bill on the "common Terrorism, Extremism and Radicalisation process database" (in which the data of entities involved in acts relating to terrorism, extremism and violent radicalism are recorded) and on the functioning of local security task forces (LTF). Both APD-GBA and FIRM-IFDH were asked to give an opinion on the draft law.

APD-GBA's advisory opinion focused on data processing carried out by authorities outside the remit of the Supervisory Body for Police Information (COC) and the Standing Intelligence Agencies Review Committee (Committee I). With regard to the arrangements for access by certain authorities to the data they need to carry out their duties, the legislator has to require technological solutions to comply with the standards protecting fundamental freedoms and not to legalize access to unnecessary data in order to adapt to the operation of an existing technological solution.

APD-GBA made several additional observations, concerning:

- the foreseeability of certain provisions (e.g. with regard to the capacity in which a mayor is likely to be the recipient of personal data covered by the draft);
- the fact that the new legal framework should cover not just one database, but all the processing operations provided for in the draft; and
- the shortcomings in demonstrating that a measure is necessary and proportionate (e.g. with regard to the recording of data on the biological or adopted children of a terrorist fighter, aged between 0 and 18, with a view to "ensuring follow-up", or with regard to the mere mention of tragic events to justify increased interference).

APD-GBA has also indicated that it welcomes the legislative framework for LTFs.

FIRM-IFDH also noted that the draft law would be an improvement compared with the current situation because it would provide a proper legal basis for the common database. FIRM-IFDH also raised concerns regarding the database's impact on human rights. First, the database would include individuals based on speech which is neither criminalized nor an incitement to terrorism, which is likely to pose a threat to freedom of expression. Second, the databank provides for insufficiently effective remedies for the individual which was the subject of the surveillance, even though both the Belgian Constitutional Court and the European Court of Justice (CJEU) have found important flaws in the right to effective remedies regarding the database. Lastly, there are a number of concerns regarding children's rights, including the registration of children as young as 12 years old in the database and the registration of children that are not suspected of being radicalized or extremists but have lived in an area controlled by jihadists in the past.

4. Violence by police officers

Police violence remains a concern. The OSCE Handbook on Democratic Policing stipulates that police forces should collect and analyze complaint data in order to identify and address the causes of police misconduct (§ 91). Yet statistical data on the number and nature of complaints filed still remains limited or unavailable. Cases of

police misconduct remain underreported, and complaints made to other bodies are not included in figures published by the Standing Police Monitoring Committee. 'Institutional racism' in policing does receive increasing attention from Belgian press, civil society and certain political parties.

5. Internment

Contrary to the legislator's intentions with the Act of 5 May 2014 concerning internment (which had reduced the scope of the internment measure) and despite numerous convictions by the ECtHR, the number of internees is increasing year after year, especially in Flanders. Since 2019, the number of new internment decisions has been higher than the number of final releases. Unia notes a lack of preventive measures and, in particular, a lack of accessible health care and treatment. In addition, the quality of forensic psychiatric expert testimony, which advises the judge on mental disorders, is inadequate due to a shortage of experts to conduct the examinations, and insufficient time allotted for the examinations.

The average daily population in prison has increased from 537 internees in 2019 to 891 in June 2023 (these figures were provided to Unia by the Justice Cabinet via the General Directorate on Prison Establishments in September 2023). A stay in prison damages their care trajectory, due to the lack of care and treatment focused on autonomy and reintegration (pp. 28-32). Despite the Minister of Justice's statement in 2020 (p. 26) that internees do not belong in prison, the number of available places in facilities or units for the protection of society within prisons has continued to increase in recent years, reaching 642 in 2023.

The presence of internees in prisons is a direct result of the ongoing shortage of places in placement facilities and regular sector facilities. Detention facilities are saturated and occupied by a public for which these facilities were not originally designed: a significant number of internees remain in facilities that do not meet their needs and profile, either in terms of care or security. In response, the Minister of Justice has increased the

number of places in prisons and intensified care in these places, without prioritizing an increase in the number of places in ordinary care facilities.

NHRIs' actions to promote and protect human rights and rule of law in the context of national security and securitisation

Unia monitors the implementation of the UN Convention on the Rights of Persons with Disabilities. It fulfils this mission by submitting recommendations at the national level (on draft laws, on the reform of Book I of the Criminal Code, etc.), as well as at the international level, e.g. in the context of the Universal Periodic Review, the parallel report submitted to the UN Committee on the Rights of Persons with Disabilities during the evaluation of Belgium and the revised Belgian Action Plan. In October 2022 and June 2023, Unia formulated an advisory opinion on various proposals for legislative amendments in the context of the Criminal Code reform. From the perspective of the UN Convention, Unia regrets that the reforms introduce measures that are intrinsically linked to the presence of a mental disorder. Thus, they treat individuals differently based on the existence of a disability and are therefore discriminatory in nature. In addition, the measures respond to security objectives rather than the idea of equal treatment within the criminal justice system. This intrinsic link with mental disorder was reflected during the parliamentary debates concerning the Criminal Code reform (for example, p. 4) This policy is not in line with the United Nations Committee's guidelines on Article 14 of the UN Convention (freedom and security of the person). These guidelines strongly emphasize that the principle of the UN Convention prohibits any deprivation of liberty based on an actual or perceived disability, even if the disability is accompanied by another justifiable reason, such as posing a danger to society or the existence of a care need. The new Criminal Code introduces new punishments and security measures based on the person's mental condition which therefore constitute a discrimination.

In July 2023, Unia, in a joint Rule 9 communication with FIRM-IFDH and CTRG-CCSP, responded to the Belgian Action Plan to the Council of Europe's Committee of Ministers

(which is responsible for the follow-up of judgements before the ECtHR) in the cases L.B. and W.D. v. Belgium. The Committee of Ministers largely followed Unia, CTRG-CCSP and FIRM-IFDH's conclusions, finding that Belgium was not making sufficient progress in relation to care facilities for interned people residing in Belgian prisons. The Committee asked its secretariat to draft an interim resolution to be adopted in December 2024 if no tangible progress has been made by then.

In December 2023, Unia published a report on the reintegration of internees, containing 66 recommendations to the competent authorities, after having interviewed 91 internees and 113 professionals between 2021 and 2023. The report states that the fundamental rights of internees are not respected due to several systemic failures. In particular, their rights to care and full participation in society are violated in several areas.

FIRM-IFDH also voiced its concerns about the impact of securitization on human rights in a number of advisory opinions issued in 2023. In addition to the above-mentioned opinions on the reform of the Criminal Code and common database on terrorism, FIRM-IFDH worked on OPCAT ratification with a view to creating a National Prevention Mechanism in Belgium. FIRM-IFDH's recommendations on securitization and human rights have also been the subject of advocacy, including through the dissemination of briefing notes and its 2024 elections memorandum and meetings with political parties, relevant ministerial cabinets and civil society.

NHRIs' recommendations to national and regional authorities

a. Given their indeterminate duration, both internment and the new security measure introduced by the Criminal Code reform fail to meet the principles of legality and proportionality. These measures should be made time-limited.

b. Since many internees are placed in places where they are deprived of their liberty (at best in a placement facility, at worst in a prison), the availability of places in ordinary care facilities must be increased so that each internee is placed in a facility that matches his or her actual risk profile and care needs. The

challenge is to ensure a smooth care pathway for all concerned and to strike a balance between occupancy and availability.

c. Under the current conditions, a prison can in no way be considered a place of care. It disrupts already fragile lives. It must be forbidden as a place of residence, even temporarily, for internees.

Implementation of European Courts' judgments

The ENNHRI 2023 Rule of Law Report laid its focus on the issue of non-implementation of European judgments - i.e. those handed down by the European Court of Human Rights (ECtHR), the Court of Justice of the European Union (CJEU) and, to a lesser extent, the decisions by the European Committee of Social Rights (ECSR). This issue is particularly important in Belgium, which is currently facing a real crisis of the rule of law, due to the refusal of some governments – both the federal government and certain regional governments – to enforce court rulings finding a violation of human rights. Authorities condemned by a tribunal, or a court simply refuse to comply with the judicial decision. This problem concerns both European courts' decisions and judgments handed down by national courts in support of international and European law – including several thousand definitive rulings by courts and tribunals regarding asylum seekers' right to reception. The following section examines the (non-)implementation of a number of decisions handed down by the European Courts, as well as certain decisions rendered by Belgian courts concerning issues linked to European law.

This issue has become exacerbated in 2023, with statements by some members of the federal government announcing their explicit refusal to implement judicial decisions. Additionally, the implementation of most leading European judgments has seen little to no progress and several major issues have worsened, including prison overcrowding and lack of care for people in psychiatric wings of prisons.

The issue was raised by Justice Commissioner Didier Reynders during the parliamentary hearing on December 5, 2023, as well as by leading civil society organizations and independent public institutions including FIRM-IFDH, Myria and several others. Yet, no

concrete steps have been taken by the government or Parliament to address the non-implementation of judgments, despite apparent recognition of the problem by those same authorities. Generally, non-implementation of judgments, especially key leading ones, has been rising for several years in Europe, as found by the Legal and Human Rights Committee of the Council of Europe's Parliamentary Assembly in its 8th, 10th and 11th report on the implementation of judgments issued by the ECtHR.

1. **European Court of Human Rights' judgments**

Bell – excessive length of proceedings

Despite some efforts by authorities, no progress can be attested with respect to the problem of excessive length of judicial proceedings. A study conducted by the College of Courts and Tribunals to assess the needs in terms of staffing of the Courts and Tribunals was published on February 20, 2024. One of its main findings shows that a 43% increase in the number of magistrates is required just to allow the judges and prosecutors to deal with the amount of cases in a timely manner. Additional hires are likely required in order to deal with the massive case backlog. Efforts by the College to produce accurate statistics on the length of judicial proceeding are ongoing but have yet to produce adequate measurement of the length of proceedings before first instance tribunals. In the meantime, a severe judicial backlog persists in some courts with cases being scheduled up to 2040. Other tribunals are furthermore at risk of closing due to a lack of judges.

Measures taken by authorities to reduce the length of investigations and prosecution include the "immediate penal transaction" mechanism. This mechanism enables police officers to offer a person suspected of having committed an offence to pay a penal transaction. The payment is made through the police officer by means of a payment terminal, a QR code via mobile phone or a bank transfer within 15 days. FIRM-IFDH found that the mechanism lacked a legal basis, challenged the principle of separation of powers, and threatened the rights of individuals.

Furthermore, there remains a lack of adequate statistical data on the redress procedure against excessive length of proceedings, which is based on the general non-contractual responsibility regime. This procedure enables a litigant to claim compensation when he or she has experienced a judicial procedure that exceeded a reasonable delay. Redress procedures to complain about the excessive length of judicial proceedings should be treated with special diligence by the authorities as, by definition, they follow an already too long procedure. On September 5, 2023, the ECtHR condemned Belgium for the excessive length of the redress procedure for excessive length of proceedings (Van den Kerkhof v. Belgium). For these reasons, FIRM-IFDH considers it necessary for the Belgian State to provide statistical data on the domestic redress procedure against excessive length of judicial proceedings.

Camara – reception of asylum seekers

More than 6 months after the ECtHR's Camara judgment, court rulings ordering accommodation and assistance to asylum seekers are still systematically not enforced by Belgian authorities. The Council of State's judgment of September 13, 2023 ordering the suspension of the 'instruction' of the State Secretary on Asylum and Migration to exclude isolated men from the asylum reception system and prioritise the reception of women and families, is not enforced either. On December 19, the State Secretary confirmed that the illegal practice remains in place, despite Belgian authorities having been convicted up to 8595 times by labour courts. This results in a humanitarian crisis, with scores of people, especially men, living in dire circumstances deprived of shelter and exposed to serious health risks. In January 2024, 3055 persons were registered on the waiting list to get a place in a reception facility. Moreover, the Belgian authorities continue to refuse to pay the penalties ordered by the labour courts for non-compliance with court judgments (currently amounting to 35 million euro). On February 2, 2024, the Brussels Court of Appeal allowed several civil society organizations to seize up to 2,9 million euros on the Federal Agency for the Reception of Asylum Seekers's accounts due to unpaid penalty payments. Secretary of State on Asylum and Migration, Nicole de Moor, publicly announced that Fedasil would contest the decision.

Vasilescu – prison overcrowding

In 2023, the Council of Europe's Committee of Ministers again highlighted the structural problem of prison overcrowding and the lack of effective domestic remedies to complain about the resulting human rights violations. The Committee noted the authorities' commitment to implement various initiatives, such as organizing stakeholders' consultation or improving detainees' right to complaint, to remedy the situation and announced it would resume reviewing the situation in December 2024.

It is essential to take, in the very short term, necessary measures to reduce prison overcrowding so that at least one bed is available for each prisoner. Then prison overcrowding should be reduced to a level that does not exceed the capacity of each prison.

L.B. and W.D. – internment in prison psychiatric wings

The L.B. and W.D. group of cases is discussed in the section on securitisation. Given the ongoing increase of internees in prison, in 2023, the Committee reiterated that the structural problem of internment concerns the prolonged holding of internees in prison psychiatric wings without appropriate therapeutic supervision, which affects the effectiveness of the preventive remedy, due to a lack of suitable places in care facilities outside the penitentiary system and of qualified staff in prisons. As with Vasilescu, the Committee decided to resume consideration of this follow-up by December 2024 at the latest.

2. Court of Justice of the EU

El Dridi – Prison sentence for illegal residence

In ENNHRI's 2023 Rule of Law Report, Myria noted that that there were still concerns about the non-implementation of the CJEU case-law subjecting to certain conditions the imposition of prison sentences for illegal residence. Non-execution of these decisions has continued in 2023. It took more than 12 years after the CJEU El Dridi judgment for the Court of cassation to render a judgment correctly applying EU case-

law. A recent bill takes this case law into account in cases of illegal residence on the territory. However, it also provides for a prison sentence for illegal residence if the person has already been subjected to a detention measure or a less coercive measure that ended before the person could be removed from the national territory (pp. 89-90). This seems to contravene the CJEU case-law, which requires that the detention or coercive measure must have reached the end of its maximum term as opposed to only having been initiated .

Order of Flemish Bar Associations – cooperation in the field of taxation

On December 8, 2022, the CJEU answered a preliminary ruling request from the Belgian Constitutional Court regarding the case Order of Flemish Bar Associations v. the Flemish Government. The case revolved around the obligation for attorneys to notify other intermediaries, as stipulated in the Flemish Decree of 21 June 2013, which transposed Council Directive 2011/16/EU on administrative cooperation in the field of taxation. The CJEU determined that this obligation encroached on legal professional privilege, was unwarranted and contravened the fundamental right to uphold confidentiality in lawyer-client communications.

Consequently, on July 23, 2023, the Belgian Constitutional Court annulled key provisions of the decree. Attorneys were relieved from the obligation to inform non-client intermediaries and allows them to maintain legal professional privilege when reporting on specific tax constructions. However, in the Constitutional Court's ruling, there are unresolved issues pending answers from the Court of Justice of the EU. These pertain to the commencement and conclusion of the deadline for fulling the reporting obligation, the definition of the term "intermediary" which currently lacks clarity and the obligations and presumptions of aggressive tax planning. Further clarification from the CJEU is needed to comprehensively grasp the broader legal implications of the ruling.

Hakelbracht – protection against retaliation for discrimination complaints

Following the CJEU Hakelbracht judgment, the federal antidiscrimination law has been amended to ensure greater protection for witnesses and victims of discrimination.

Consequently, the law reinforced the prohibition to adopt detrimental measures against a person due to the filing or the content of a report, complaint, or legal action for an alleged violation of anti-discrimination legislation. The prohibition was broadened to include witnesses of the discrimination and individuals that have provided advice, assistance, or support to this person, among others. Furthermore, the protection can now be invoked without de any specific formal conditions.

The author of a detrimental measure must pay financial compensation to the person against whom it was adopted. Additionally, if the retaliation was adopted within the context of employment and working conditions, the protected person may ask to be reinstated in his or her previous function instead of financial compensation. The law does not compel the employer to accept such request.

While the federal Parliament has now implemented the Hakelbracht judgment, modifications still need to be made to Regional and Community antidiscrimination legislation in order to fully comply with European case law. IGVM-IEFH underlines that it is particularly the case for the French Community, where the notion of a "complaint" – a condition to trigger the protection mechanism – is defined in a restrictive way.

3. Belgian Constitutional Court

The Belgian authorities failed to fully implement the Constitutional Court's 2017 judgment stating that foreign detainees without residence rights in Belgium should have equal access to measures of conditional release and preparation for social reintegration. They cannot be excluded on the basis of their residence status. In practice, many foreign detainees are excluded from these possibilities, as was observed by Myria and CTRG-CCSP during a 3-day visit of the prison of Tongeren in 2023.

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

FIRM-IFDH, Unia, CTRG-CCSP, Myria and the Combat Poverty Service also stepped-up their efforts in 2023 to increase their participation to international rule of law mechanisms, including through several Rule 9 submissions. Those Rule 9 submissions were sent to the Council of Europe's Committee of Ministers regarding the execution of

the Vasilescu (prison overcrowding, by CTRG-CCSP and FIRM-IFDH) and L.B. and W.D. (internment, by Unia, FIRM-IFDH and CTRG-CCSP) cases. FIRM-IFDH follows up on the Bell group of cases, regarding the excessive length of judicial proceedings. In March 2023, FIRM-IFDH met with the Council of Europe's Department for the Execution of Judgments of the ECtHR to discuss the Bell case. While initially scheduled for December 2023, the evaluation of the case was postponed to June 2024. FIRM-IFDH will submit a new Rule 9 submission in anticipation of this evaluation.

CTRG-CCSP particularly highlighted prison overcrowding in its 2023 action plan. It held a colloquium on prison overcrowding, as well as on the problems directly linked to overcrowding and the various ways of remedying them in November 2023. At the same time, CTRG-CCSP paid particular attention to plans to build new establishments, including new prisons, presented by the Minister of Justice as small units likely to provide better conditions for those sentenced to less than 3 years.

FIRM-IFDH, Unia, IGVM-IEFH and the French-speaking Children Rights Commissioner (Délégué général aux droits de l'enfant) sent a simplified report to the European Committee on Social Rights regarding the execution of its decisions by the Belgian State. The report particularly noted that Belgian authorities had made little to no progress in any of the five convictions examined in the report.

Finally, several public human rights institutions, including Myria and FIRM-IFDH, have repeatedly called on public authorities to act regarding the reception crisis, in particular stressing the risks to the rule of law. FIRM-IFDH held a symposium with Unia, Myria, CTRG-CCSP and the Combat Poverty Service in December 2023 for the 75th anniversary of the Universal Declaration of Human Rights which focused on the impact of the asylum reception crisis on the rule of law and the situation of internees.

NHRI's recommendations to national and regional authorities

L.B.

- Analyze the reasons for the sharp increase in the number of people in psychiatric institutions (from 537 in 2019 to 886 in 2023).

- Transfer people currently in psychiatric institutions to appropriate care facilities, giving priority to the ordinary care facilities.
- Avoid forensic psychiatric centers becoming the dominant model and being used to the detriment of extending (or maintaining) ordinary care provision (in more open residential structures).

Bell

- Commit to providing sufficient staff and resources to courts and tribunals. Additional resources should be allocated to help clear the backlog of particularly affected courts and tribunals. These resources should not be conditional on performance standards decided by the executive in order to avoid threatening the independence of the judiciary.
- The Commission should request data on disposition time. The data should account for the disparities between judicial districts and include all Belgian judicial jurisdictions and provide specific data on redress procedures for excessive length of proceedings.

Vasilescu

- Implement the Council of Europe's recommendations on prison overcrowding without further delay. These include giving priority to reducing the prison population rather than increasing capacity; reducing the use and duration of pre-trial detention to a strict minimum and ensuring that each person incarcerated has a minimum living space both in individual cells and in collective cells. This latest recommendation should be completed with the royal decree of 3 February 2019, which provides for a minimum space of 10m² for an individual cell and 12 m² for a two-person cells. These minimums must be respected.

Camara

- Enforce all judgments condemning the State. Provide asylum seekers with the reception their dignity entitles them to.

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

Artificial intelligence and transparency

FIRM-IFDH reiterates its findings with respect to the opacity regarding the uses of artificial intelligence by public authorities. While some authorities are reportedly using the technology, they do not have an obligation to divulge the use of those systems, their functioning and how they are used. This creates an accountability gap which prevents the assessment of potential human rights violations. FIRM-IFDH and Unia have both recommended the creation a public register of authorities' uses of artificial intelligence.

Unia is also concerned about the impact of the use of technology on media freedom, and legal systems without sufficient safeguards are a cause for concern. It is currently impossible to measure/monitor well the extent to which AI systems (i.e. content moderation and curation) negatively impact media freedom. In addition, given the lack of transparency in the use of AI in the public sector, Unia has difficulty in accurately assessing the extent to which the government is already using AI in the judiciary and acting accordingly. As part of its new strategic plan, Unia wants to pay particular attention to the polarizing effects of AI and other emerging technologies. The Belgian newspaper Le Soir reported on December 11 that Amazon automatically recommends books that deny climate science, criticize women's rights, and generally push a far-right agenda. For example, a search for "covid" returns 80% of denialist literature. As part of its mandate to deal with complaints and self-referrals, Unia is currently considering how to address the social impact of this recommendation system, possibly through a legal clinic with the University of Leuven.

Threats and violence against journalists

Belgian journalists have been confronted with increased violence in recent years, as highlighted in surveys, studies and parliamentary discussions. In June 2023, the French-speaking (AJP) and Flemish (VVJ) professional Journalists' Associations published their third study 'Portrait of Belgian journalists' surveying almost 1400 journalists on a variety

of subjects, including threats and violence they had experienced. 55,8% of journalists reported having been confronted with transgressive behaviours, including verbal violence (41,3%), threats and intimidation (29,2%), sexually transgressive behaviours (7,1%) and physical violence.

The picture gets considerably darker when distributed by gender: 64,1% of female journalists reported having been targeted by transgressive behaviours, compared with 51,4% of male journalists. The difference is mainly due to much more prevalent forms of sexual transgressive behaviours (18,6 % of female journalists, compared to 1,2% of male journalists), discrimination (14,8% of female journalists compared to 4,4% of male journalists). Physical violence also appears to have a gendered component: twice as many men were victims (6,6 % to 3,2% for women). Concerns over increasing online intimidation against female journalists, especially those of color, arise as well, as illustrated by other studies and highlighted in FIRM-IFDH's 2023 contribution to the European Commission stakeholders' consultation on the rule of law.

This situation is particularly problematic given that there are significantly more male than female journalists : 2/3 of journalists in Belgium are male, a noticeable difference with comparable countries such as France (45% of female journalists) or Italy (42%). The gender imbalance considerably worsens for older journalists : women constitute slightly more than half (51,7%) of journalists under 35 years old, this drops precipitously for next age category (35-44) with 35,7% to 64,3%. Only 22,6% of journalists over 55 are female. The median age for a journalist in Belgium is 46 years old. This drop does not seem to be only – or principally – attributed to past exclusions of female journalists, since there are slightly more female journalists in the 45-54 age bracket than in the 35-44 one. The threats and experiences of violence and the difficulty to combine journalism with a family life – in a society where women still undertake the lion share of household and child-rearing tasks – are likely to be contributing factors.

Journalists are currently not included in the (former) Criminal Code among those professionals performing a societal function – e.g. medical professionals, police officers

– against whom violence may lead to harsher sentences. The new Criminal Code has added journalists to that list of professions (future art. 79). Following the adoption of the Criminal Code, murder (future art. 103 bis), incitement to suicide (future art. 109 and 110), torture (future art. 115/1), inhumane treatment (future art. 122/1) and violence (future art. 189) against a journalist will be more severely punished than against a person not exercising such a societal function. Because there is currently no specific qualification of facts for violence against journalists within the police nomenclature, the General National Database does not include at present information on the number of registered complaints.

In addition, Belgium's transposition of the GDPR regarding the processing of personal data for journalistic purposes (art. 85 GDPR) has been criticised by the legal doctrine. Belgium opted for a strict definition of the notion of journalist, which is now contrary to the case law of the CJEU (Buivids v. Datu valsts inspeckcjia). Under Belgian law, only persons who are subject to "journalistic ethics" (déontologie/deontologische regels) are allowed to invoke the exemptions provided for journalists by the GDPR. However, the CJEU has a broader definition which encompasses – for example – citizen journalists as well.

NHRI's recommendations to national and regional authorities

Public registry on AI uses by public authorities

Create a registry of AI uses by public authorities, describing the AI and how it is used by public authorities. It should also include information on the AI learning capacity, as well as information on the datasets used to train it.

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

Systematically notify individuals when they use AI to assist decision-making processes for individual decisions, in order to increase transparency and allow individuals to request additional human oversight.

Protection of journalists

Facilitate data collection on the number of complaints regarding violence against journalists in the police's General National Database; Include specific measures to fight all types of on- and offline violence against female journalists in national action plans, paying special attention to intersectional vulnerabilities. Currently, Currently, the 2021-2025 National Action Plan against Gender Violence identifies female journalists as particularly vulnerable to cyberviolence, but does not include specific measures. identifies female journalists as particularly vulnerable to cyberviolence, but does not include specific measures.

Bulgaria

Ombudsman of the Republic of Bulgaria

NHRIs' establishment, independence and effectiveness

International accreditation status and SCA recommendations

In The Ombudsman of the Republic of Bulgaria was re-accredited with A-status in March 2019. 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 violation 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.

Croatia

Ombudswoman of the Republic of Croatia

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 recommendations issued within the Rule of law Report, the Ombudswoman of the Republic of Croatia (hereinafter "ORC") monitored the implementation of some of these measures.

Remuneration of justice system actors

In its 2023 Rule of Law Report, the European Commission recommended that the Republic of Croatia (hereinafter "RC") continue structural efforts to address the remuneration of judges, state attorneys and judicial staff, taking into account European standards on resources and remuneration for the justice system. With regard to this, in December 2023, the new Act on the Salaries in the Civil and the Public Service was adopted, followed by a series of regulations adopted in February 2024 to regulate the matter in more detail. This has resulted in a certain increase in the salaries of the court clerks, albeit not to a large degree. Following the first strike of the judiciary in the spring of 2023 which was the result of the unfavorable working conditions in the judiciary, the Decision on the payment of a salary supplement to civil servants and employees in the judicial bodies was adopted on July 27, 2023, resulting in an increase in their salaries.

In the context of judges, the strike ended with an agreement to increase the salaries of municipal, administrative and commercial court judges, municipal state attorney's deputies and presidents of all courts employing more than 20 judges and municipal and

county state attorneys employing more than 20 deputies through the adoption of the Amendments to the Act on the Salaries and Other Material Rights of Judicial Officials.

As there was a delay in the drafting of an indexation model and the gradation of the judges' salaries, a "white strike of judges" was organized in January 2024 as an expression of dissatisfaction with the current situation and was joined by the Association of Croatian State Attorney Officials as well. This resulted in an urgent parliamentary procedure for the proposal of the Law on Amendments to the Act on the Salaries and Other Material Rights of Judicial Officials, which improved the material rights of judicial officials. Accordingly, there was an increase in the salaries of judicial officials at the regional level and of certain material rights of judicial officials, such as: the right to compensation for transportation costs to and from work, an annual award for the Easter and Christmas holidays, a gift for a child up to the age of 15, a holiday allowance and the right to medical check-ups were granted.

Comprehensive legislation on lobbying

As regards the recommendation for the RC to adopt comprehensive legislation in the area of lobbying including persons with top executive positions, and set up a public register of lobbyists, the Law on Lobbying was adopted in March 2024. It is set to include the introduction of the Registry of lobbyists and a definition of the lobbied persons. The Ombudswoman participated in the public consultations on the Draft Bill and provided opinions and recommendations.

Address SLAPPs

Another EC recommendation was to make further efforts to address the issue of strategic lawsuits against public participation targeted at journalists, including by reviewing the legal provisions on defamation and encouraging wider use of procedural rules that allow dismissing groundless lawsuits, taking into account the European standards on the protection of journalists.

The working group set up by the Ministry of Culture and the Media, gathering experts from various fields, with the aim of identifying the avenues for early identification and

the prevention of misuse of lawsuits against journalists has continued its work. The National Plan for the Development of Culture and the Media for the period 2023-2027 contains a measure aimed at the early detection and elimination of SLAPP suits and is to be implemented via the new Media Act (not adopted yet).

Follow-up on NHRI recommendations

When it comes to the recommendation pertaining to the ORC, namely for the RC to further improve the follow-up to recommendations and ensure a more systematic response to information requests of the Ombudsperson, mixed responses have been recorded.

When it comes to the implementation of the Ombudswoman's recommendations, the ORC did not receive data on the implementation from the Governmental office for Human Rights and Rights of National Minorities (written responses regarding each recommendation and the bodies' assessment of fulfillment) by the time of submitting this text. According to the data available, the implementation of the recommendations from the 2022 Report stands at approximately the same level as in the previous year – approximately 44 % of recommendations implemented or partially implemented.

In the previous EC Rule of Law reporting cycle the ORC reported on the establishment of the Government's Council for Human Rights as a body bringing together state institutions, CSOs and enabling the ORC's participation. The sessions held by the Council have provided space for the discussion on the ORC's recommendations with the aforementioned stakeholders. In 2023, the Council continued its work and held sessions on the topics of hate speech and hate crime, on the dealing with the impact of the earthquakes having struck Croatia in 2020 on human rights, the progress in the implementation of the National Plan for Human Rights Protection and Promotion and on the 75th anniversary of the UN's Universal Declaration of Human Rights. The Council regularly invites the ORC to its sessions and the session on hate crimes and hate speech as well as that on the effects of the earthquakes on human rights of the citizens were focused on the ORC's recommendations in this area. In 2023, a joint conference on the

occasion of the 75th anniversary of the Universal Declaration was organized by the Office of the Deputy Prime-Minister, the Ombudswoman and Human Rights House Zagreb.

In 2023, the Government's Office for Human Rights and the Rights of National Minorities had resumed with the practice of monitoring the implementation of the Ombudswoman's recommendations (a task within the Office's mandates, but not having been implemented in practice since 2015). The Office had, in dialogue with the ORC, developed a new methodology, i.e. a new questionnaire that has been sent to the ministries and the government offices, intended to be used to assess their own implementation of the ORC's recommendations. The inputs are to be collected by the Office and submitted to the ORC. However, in practice there seem to be some obstacles, as the Office for Human Rights and Rights of National Minorities has not been able to provide this information (information on the implementation of recommendation for 2022 Report) to the Ombudswoman in time for the preparation of her Annual Report for 2023.

Access to information by the NHRI

As regards access to the information stored in the Ministry of Interior's information system, during 2023, the Ombudswoman's National Preventive Mechanism (NPM) officers made visits to three border police stations. On two occasions they were denied access to the data in the MoI's information system as well as to the printouts of the data from the information system they requested. On one of the visits, they were accompanied by SPT's officers and were given access to all of the requested data.

Public and timely discussions on the Ombudswoman's reports

It is important to note that the trend of stalling with the discussions on the Ombudswoman's reports in the plenary session of the Croatian Parliament has continued; thus, neither the institution's annual report for the year 2022, nor the Special Report on the Impact of COVID-19 on Human Rights and Equality have been discussed in the plenary. The Committee on Human Rights and the Rights of National Minorities

discussed the 2022 Annual Report and adopted a conclusion urging the Croatian Parliament to discuss the Ombudswoman's 2022 annual report in its plenary session by December 15, 2023. As the Ombudswoman has stressed previously, timely discussion of the institution's reports are crucial for the debate to be relevant, for the addressees to be able to respond to the recommendations and for the ORC to be able to receive timely feedback on them and be able to utilize it in her work.

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

Public consultations on the Law on Lobbying

The ORC participated in the public consultations on the Law on Lobbying, stressing, among other, that the entry into the Register of lobbyists be mandatory for all those engaging in lobbying, regardless of whether they receive remuneration or not, and emphasizing the importance of the legal definition of lobbyists to include both national and foreign natural and legal persons.

Public consultations on amendments to the Criminal Code Furthermore, the ORC contributed to the public consultations related to the amendments to the Criminal Code. The amendments were announced by the Government in early 2023, introducing a new criminal offense of the unauthorized disclosure to the public of the content of investigative or evidentiary actions. Journalists reacted to the announcement, asserting that it would jeopardize media freedom, the right to be informed as well as public interest. In her comments in the public consultations, the ORC pointed to the insufficient clarity of the legal provision and the need for its elaboration in a manner that would protect the rights of the defendants (presumption of innocence) and the rights and interests of victims of crimes related to public disclosure/speaking to the media. Special attention must also be paid to the need for exclusion from criminal liability in cases of disclosure of the information in questions of public interest, including paying special attention to whistleblowing cases. The proposal was subsequently amended so as to expressly exclude the liability of journalists, amendments were made

regarding the defendants and victims as well as the persons disclosing information in the predominantly public interest. However, the Ombudswoman indicated there are still issues remaining regarding the assessment of the public interest, in particular regarding whistleblowers and the necessity to better harmonize the Criminal Code with the Whistleblower Protection Act (in which the disclosure of irregularities is required to be in the public interest, not the predominantly public interest).

Participation in working groups

The ORC has continued participating in the working group set up by the Ministry of Culture and the Media with the aim of identifying the means for early identification of SLAPP suits and combatting their use against journalists in the RC.

Participation in the Government's Council for Human Rights

As mentioned above, both the ORC's participation in the work of the Government's Council for Human Rights as well as its participation in the development of the Office for Human Rights' new methodology for ORC's recommendations monitoring among other things enable the ORC to support the implementation of the EC's Rule of Law Report recommendations issued to the RC.

In the period June 2022 – February 2024, together with the EU Fundamental Rights Agency (FRA), ENNHRI and seven national human rights institutions (Bulgaria, Slovakia, Poland, Cyprus, Slovenia and Latvia), the ORC participated in the regional project Supporting National Human Rights Institutions in monitoring fundamental rights and the fundamental rights aspects of the rule of law. As part of the project's activities, the ORC organized regional discussions on the rule of law: a lecture for university students in Rijeka, a discussion on the role of regional and local authorities in the context of the rule of law, discussion on the role of human rights defenders in the context of the protection of the rule of law, as well as a national discussion (in online format) on the implementation of the EC's rule of law recommendations to Croatia. The last event brought together the representatives of the ORC, the civil sector, the state administration and the EC.

In early 2024 the ORC once again took part in the EC's structured dialogue with national stakeholders as part of the Rule of Law Report drafting cycle.

In more general terms, the ORC 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.

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

The ORC reports below on the follow-up by state authorities to the NHRI's recommendations on the rule of law:

1. **To debate annual reports of the Ombudswoman in a timely manner in the Croatian Parliament.**

Neither the institution's annual report for the year 2022 nor the Special Report on the Impact of COVID-19 on Human Rights and Equality, have been discussed in the plenary session of the Parliament. It has only happened in front of the parliamentary Committee on Human Rights and the Rights of National Minorities despite the conclusion adopted by the said Committee urging the Croatian Parliament to discuss the Ombudswoman's 2022 annual report in its plenary session by December 15, 2023.

2. **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.**

The recommendation has been implemented only partially and the implementation was context-specific (the presence of SPT's officers together with the ORC's NPM at the site of the visit).

3. **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 at 3.**

The funds for a fourth deputy have been earmarked in the 2024 Ombudswoman's Budget. A public call was issued, and the candidate selected by the ORC, the

Ombudswoman then submitted a proposal for approval of the election to the Croatian Parliament. However, the process has not yet been concluded and the candidate has not yet been elected/approved by the Parliament.

4. **To the Government of the RC, to adopt the National Plan for the Creation of the Enabling Environment for the Civil Society.**

The recommendation has not been implemented. Although the working group intended to draft the document has been set up, it has not met for over a year and the process is stalling.

5. **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.**

Certain activities in that regard have been included in the Draft Action Plans for Human Rights Protection and Promotion and for Combatting Discrimination for the period 2024 and 2025; however, they have not been adopted yet.

Establishment, 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 . 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 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

Whistleblower protection mandate

As for the SCA recommendation regarding the Whistleblower protection mandate, the Ombudswoman was granted additional staff (advisers) but not an additional Deputy. As stated above, the Ombudswoman initiated the procedure for the election of the 4th deputy. However, the outcome depends on the decision by the Croatian Parliament. If selected, the additional deputy will contribute to the implementation of the SCA recommendation in question. Furthermore, with the recent Whistleblower Protection Act of April 2022 enabling the whistleblowers to freely decide whether to submit the report of irregularities to a confidential person appointed by the employer or directly to the ORC, the number of external reports of irregularities in 2022 increased by 60.37% compared to the year before and the ORC opened 57 new cases of external reporting in 2023. Thus, the addition of another higher-level employee would contribute to ensuring effective and timely action in all of the institution's mandates.

Reform of the pay system in the public sector

A recent reform of the pay system in the public sector raised the question of the level of pay in terms of who decides and how which post is comparable to which other and what the level of pay should be. Namely, the purpose of this reform was to ensure equal pay for equal work. However, the analysis conducted prior to legislative changes was not publicly available and it is not clear how level of pay was set for each position. Furthermore, there was no prior consultation with Ombudswoman institution on the

proposed changes by the Ministry of Judiciary and Public Administration which was leading the reform. This was particularly challenging in relation to the salaries of the advisers to the Ombudswoman, who are civil servants. Eventually the level of pay of advisers was raised, although not to the degree the ORC might wish. On the other hand, salaries of the Deputies to the Ombudswoman, who are state officials and whose pay is regulated by different external rules, did not increase and are now equal or in some cases lower than the salaries of advisers, even though the degree of responsibility is significantly higher. The level of pay can be seen as a question of independence (independent institutions determining independently, as well as these positions and institutions being adequately assessed and valued within the system) and effectiveness (higher pay leading both to more motivation of those currently working, preventing leaving as well as attractiveness of the posts of advisers and Deputies in the future).

Regulatory framework

In 2023, a new law on civil servants and a new law on the salaries of civil servants and public service employees came into force. In early 2024, a series of bylaws was adopted regulating certain matters further. These introduced the changes in the process of the employment of civil servants as well as their salaries. Those changes are applicable to the staff of the Croatian NHRI.

The New Civil Servants Act that came into force on 1 January 2024 contains provisions on establishment of a centralized employment system. It is envisioned as an information system in which the recruitment is planned, applications for internal competitions and public competitions are submitted and candidates are tested electronically, as well as invited for interviews. It will be important to monitor the effects of the new system once it enters into use so that it does not lead to the effect of decreasing the ORC's autonomy in the selection of its employees and in ensuring representation within its workforce.

The new normative framework regulating the salaries in the civil service was envisaged so as to increase the salaries for most of the categories of civil servants. However,

notably, the relevant bylaws were not adopted in consultation with the ORC, and they envisaged the salaries of the officers of several independent institutions, including the ORC, to remain at the same level, despite of the salaries of other categories with similar job complexity increasing. As this might have been read as a form of pressure on the said independent institutions, when it comes to its officers, the ORC reacted and the disbalance was partially corrected to an extent.

NHRI enabling and safe environment

Participation in public consultations

The ORC regularly participates in public consultations on draft bills and national strategic documents and participates in the work of some of the working groups. Public consultations are generally accessible to everyone via the electronic platform e-građani (e-citizens). However, the ORC has been pointing out the need for the provisions of the draft bills to be explained better by the institution proposing them, for the inputs in the e-consultations to receive responses if or how the feedback received was followed up and for these responses to include sound argumentation. The lack of timely and reasoned response is often present in relation to ORC's opinions as well. It has also been pointing out the need for the consultations to last for sufficiently long periods of time and for the participants to be notified of any changes in the commenting periods.

Follow-up to NHRI recommendations and issues of access to data

The level of follow-up to the ORC's recommendations depends on the addresses, with some being more responsive than others. For example, in her 2022 Annual Report, the Ombudswoman issued a recommendation to the Ministry of Health to provide requested information and documentation to the Ombudswoman in the cases in which she is handling a complaint. The issue of the access to the data in MoI's electronic system persists.

Establishment of the Government's Human Rights Council

As mentioned above, the establishment of the Government's Human Rights Council is a step forward in the dialogue between the ORC and state institutions. The new model of ORC's recommendations monitoring still needs to be assessed.

Human and financial resources

When it comes to the budget and staffing, as mentioned above, the process of the selection of the fourth deputy has been initiated but is dependent on the decision of the Croatian Parliament. The number of other staff and the budget have not changed much.

The new normative framework regulating the salaries in the civil service and the lack of consultation with the ORC and several other independent institutions in the drafting of the relevant bylaws might be read as a form of pressure on independent institutions. As explained above, through the dialogue with the competent state body the disbalance was corrected to an extent.

NHRI's recommendations to national and regional authorities

The Croatian NHRI recommends national authorities to:

- Discuss annual reports of the Ombudswoman in a timely manner in the Croatian Parliament;
- Ensure unannounced and free access to all data needed for the Ombudswoman's s work on protecting the human rights of irregular migrants;
- Ensure a functional mechanism for collecting information on the implementation of the Ombudswoman' recommendations;
- Ensure adequate salaries within the Ombudswoman's institution.

Checks and balances

Separation of powers

Act on the Electoral Districts for the Election of Members of the Croatian Parliament

In 2023, the Act on the Electoral Districts for the Election of Members of the Croatian Parliament was adopted in Croatia, the Constitutional Court having previously repealed the law regulating the matter. It was the Court's reasoning that the provisions of the previous law lead, in practice, to the violation of the equal right to vote, guaranteed by the Constitution. It pointed, furthermore, to the significant discrepancy between the number of adult citizens of the Republic of Croatia according to the Census and the number of voters entered into the Registry of Voters: according to the census, there are 3,177,740 adults with habitual residence in the Republic of Croatia, whereas the Registry of Voters contains 496,925 additional persons.

Following the entry of the Draft Bill into the legislative procedure, numerous objections were voiced, many of them coming from constitutional experts. They pointed to the draft Bill not paying attention to the rules of the so-called geographical cartography of the electoral districts when delimiting them from one another to insufficiently defined rules for delimitation (i.e. the determination and the harmonization of the borders of the electoral districts), to the aforementioned discrepancies between the Census and the Registry of Voters. Furthermore, the critics asserted that the drafting process had not been transparent and depoliticized due to the fact that the Government failed to establish a drafting working group and did not make the names of the persons drafting the act public.

The Ombudswoman took part in the public consultations, noting that this piece of legislation ought to be based on expert analyses and accepted by the Croatian Parliament by, if possible, a wider consensus of the parliamentary majority and of the minority. She underscored the recommendation given by the Venice Commission in its Code of Good Practice in Electoral Matters, that the drafting of electoral legislation be

conferred on a special expert committee with the possible participation of the parliamentary majority and the opposition, i.e. the fact that achieving a higher level of social consensus would be preferable when adopting this act regulating the right to vote as a fundamental human right and one of the stalwarts of a democratic society.

The Government justified its actions claiming that this was only a minor adjustment of the electoral legislature, i.e. only an adjustment in the delimitation of the electoral districts that was necessary due to the Constitutional Court's decision, and asserting that it would involve the experts in case it enters into a big reform of the electoral legislature considered necessary by the constitutional experts.

The need for accessible communication on the work of judiciary

The public's perception of the work of the judiciary is conditioned, in part, by the manner in which judicial bodies communicate about their work. This is why, in the Report for 2022, the NHRI reiterated the recommendation to the Judicial Academy that they should, together with media representatives, design and implement training for editors and journalists. Although the Judicial Academy, in cooperation with the Croatian Journalist association, agreed to hold six trainings on the topic "Media monitoring and reporting on the work of the judiciary" for journalists and editors, due to low turnout, the trainings were not held. Unfortunately, it is a missed opportunity for better mutual understanding of the judiciary and the media.

Election of the Attorney General

In November 2023, a public call for the position of the Attorney General of the Republic of Croatia was published. During the procedure for the election of the Attorney General, there was a heated public debate on whether the elected candidate should undergo security clearance and who is/was supposed to initiate it, considering that he did not pass a (new) security clearance before the election itself. The aforementioned was emphasized in the context of questioning the suitability of the chosen candidate.

The process for preparing and enacting laws

According to the data by the Governmental Office for Legislation, during 2023, state administration bodies, in their capacity as expert holders, sent a total of 127 planned and unplanned draft bills in the first reading, to the Government of the Republic of Croatia.

According to information from the Information Commissioner, public authorities generally do not publish the composition of the working groups, set up to draft legislative acts, regardless of whether they are state administration bodies, local self-government units or legal entities with public authority. Working groups usually include members from state administrations, academia, CSOs or some other experts. CSOs have highlighted that it is unclear how members of working groups are chosen.

Access to information

Since 2018, the ORC has been experiencing refusal of the MoI to provide its NPM officers with direct access to its data on irregular migrants in its information system. The ORC has reported on it, both in its annual reports as well as in the dedicated rule of law reports, issuing recommendations to the MoI. In 2023, out of three visits to border police stations, on two occasions the ORC's employees were both denied direct access to the data in the MoI's information system as well as to the printouts of the data from the information system they requested. On one of the visits, they were accompanied by SPT's officers and were given access to all of the data they requested.

Also, the NHRI repeatedly had to ask the Ministry of Health for information during the ORC's proceedings in cases, because the Ministry did not provide the NHRI with complete or timely information. The Croatian NHRI therefore issued a recommendation to the Ministry of Health to deliver the requested information and documentation relating to the Ombudswoman's cases to the Ombudswoman on time in the 2022 Annual Report.

Independence and effectiveness of independent institutions (other than NHRIs)

There were no initiatives taken during 2023 that would pose challenges in relation to the founding legislation of independent institutions. However, the challenge which remains is the legal provisions in the founding regulations concerning specialized Ombuds institutions (Ombudswoman for Gender Equality, Ombudswoman for Children and Ombudsman for Persons with Disability), which state that the non-adoption of annual reports of those institutions by the Croatian Parliament automatically results in the dismissal of their heads.

Furthermore, creating the new normative framework regulating the salaries in the civil service and regarding the selection of new staff, especially without proper consultation, may impact both independence and effectiveness. As explained above, through the dialogue with the competent state body the disbalance was partially corrected to an extent regarding the salaries of the advisers, and the situation regarding new recruitment remains to be seen.

Enabling environment for civil society and human rights defenders

Persisting challenges regarding civil society space

The civil society space in the Republic of Croatia remains, as before, narrowed. The national plan for the creation of favorable conditions for the functioning of the civil society has not been adopted yet, and the working group set up for its drafting in mid-2021 has not met for over year. Same as in the previous years, civil society organizations point to the difficulties in the functioning of the institutional framework geared towards state collaboration with the civil society, the lack of funding for human rights promotion and protection and combatting discrimination, their watchdog, advocacy and similar activities as well as administrative burden connected with the project financing.

CSOs still assess their participation in the decision-making as more formal than substantial and meaningful.

A number of CSOs active in the area of asylum and migration were denied the possibility to organize and execute various activities in the reception centers and detention for foreigners during the course of the COVID-19 pandemic and it has not been restored yet.

Environmental CSOs point to breaches of their rights as enshrined in the Aarhus Convention (i.e. the right to access to information, participation of the public in decision making, access to justice in environmental matters) and SLAPP suits they are exposed to due to their activities in the area of environmental protection.

NHRI's work to support enabling environment for civil society organisations and human rights defenders

The ORC's activities geared towards the creation of a favorable environment for the work of the OCDs are manifold. The institution receives and works on their complaints, communicates regularly with members of the civil society both via its institutionalized channels (the ORC's Human Rights Council which includes two members of the civil society and through its network of eleven CSOs comprising its antidiscrimination network) and ad hoc, via joint activities and meetings. Furthermore, the institution participates in the working group set up to draft the new national plan for the creation of favorable conditions for the functioning of the civil society, participated in the working group for the drafting of the new National Plan for Human Rights Protection and Promotion and Combatting Discrimination, which for the first time includes the term human rights defenders, and is taking part in the working groups drafting the action plans for its implementation. Additionally, it regularly participates in public consultations on various laws and regulations and advocates for solutions that will enable a sound framework for the work of CSOs in their various areas of activity.

Furthermore, through her work the ORC regularly brings CSOs around the table with state authorities. Hence, a joint conference organized by the Deputy Prime minister, ORC and Human Rights House (a network of NGOs) is an example of good practice. It brought together key stakeholders in human rights protection and provided the

opportunity to discuss human rights infrastructure and institutions in Croatia as well as to focus on the rights of older persons.

NHRI's recommendations to national and regional authorities

The Croatian NHRI recommends to national authorities to:

- Create a favourable normative and institutional framework for the functioning of the civil society;
- Put in place normative framework regulating SLAPPs, enabling their early recognition and elimination.

Impact of securitisation on the rule of law and human rights

Closing of St. Mark's Square to the public

St. Mark's Square in Zagreb is the address of the most important state institutions and also a common location of protests. Since November 2020, based on the Regulation amending the Regulation on the Designation of Protected Persons, Facilities and Spaces, it has been fenced off for security reasons based on classified information, and thus closed to the public. GONG, a civil society organisation, has been advocating for its re-opening for several years now. Although the holding of public gatherings at this location is not prohibited (they can be held in accordance with the provisions of the Act on Public Gatherings), GONG believes that the fencing excessively limits the freedom of assembly. For this reason, in July 2023, GONG submitted to the Constitutional Court a request for a review of the constitutionality of the Regulation amending the Regulation on the Designation of Protected Persons, Facilities and Spaces. The Constitutional Court rejected the request (Constitutional Court decision no. U-II-3503/2023), pointing out that it is not within the jurisdiction of that court to assess the application of laws and other regulations, as these are assessed in the matters of concrete protection of human rights and fundamental freedoms via the instrument of a constitutional lawsuit.

The decision was reached with one concurring and five dissenting opinions.

The concurring opinion pointed out that the disputed amendment to the Regulation, due to the necessary security measures, implies certain restrictions. They, however, are not of such a nature as to lead to a violation of the constitutional right to the freedom of public assembly. This is because gatherings in that area have been held regularly since the entry into force of the contested amendments to the Regulation and their messages have reached their addressees.

However, in their dissenting opinions the judges stressed that, in line with the Constitution, issues such as this one can only be regulated by law. This is because they lead to the restriction of human rights to peaceful assembly and the freedom of movement. Likewise, as they point out, the current solution leads to a somewhat permanent restriction of the use of the public space of the local squares and streets. These are a common good the free use of which is also guaranteed by the Constitution as a fundamental freedom and which the citizens of the Republic of Croatia must be able to enjoy freely. Thus, the judges believe the restrictions can only be prescribed by the law, not by by-laws. Furthermore, in their opinion, the public needs to be informed at least about the most general facts related to the security reasons for which this measure was introduced. In reality, however, since these are considered classified data, the public is deprived of the said information.

Implementation of European Courts' judgments

Out of the total of 27 judgments that the European Court of Human Rights (ECtHR) issued against the Republic of Croatia in 2023, a violation of the Convention was found in 24. Out of the judgments in which at least one violation of the Convention was found, the largest number – a third of the cases adjudicated (14) - refers to the violation of Art. 6. – the right to a fair trial, which, among others, includes the right to access the court and the reasonable length of the court proceedings. A third of all cases against the Republic of Croatia that are in the process of execution relate to some form of violation of Art. 6., of which almost 70% are the so-called clone-judgments related to repeated

violations that have already been previously established in one of the leading judgments.

In 2023, the ECtHR issued several judgments against the Republic of Croatia in which it found violations of the right of prisoners to adequate prison conditions and the right to receive adequate compensation for being held in inadequate conditions, which issue was closed based on earlier enforcement measures, however, similar problems were again detected in that area.

Statileo Group v. Croatia

In relation to the leading cases, the Republic of Croatia implemented general measures to amend the legislation in the context of the execution of the judgments from the Statileo Group, which refer to the issue of the protected rents. A law was adopted in March 2024 that aims to correct the consequences of the unfair distribution of the social and financial burden. These were caused by the housing legislation reform to the detriment of the apartment owners. At the same time, this reform enables protected tenants to exercise the right to a home. The Ombudswoman took part in public consultation on the draft Law as well as in the discussions in Croatian Parliament's Committee, with substantial number of her recommendations taken up.

Challenges affecting the execution of ECtHR judgments

In November 2023, a delegation from the Council of Europe Department for the Execution of Judgments of the European Court of Human Rights (DEJ) paid an official visit to Croatia to consider the issues in the execution of ECtHR judgments in the Republic of Croatia. On that occasion, a meeting was held with representatives of the executive and judicial authorities, parliamentarians and members of the Expert Council for the Execution of ECtHR judgments, also attended by the Deputy Ombudswoman. As part of the visit of the DEJ delegation, a session of the Subcommittee for the Implementation of Judgments of the European Court of Human Rights of the Parliamentary Assembly of the Council of Europe was held in the Croatian Parliament on the topic of "Reykjavik follow-up: The role of the Parliamentary Assembly of the

Council of Europe and parliamentarians in improving the timeliness and the effectiveness of the implementation of the judgments of the European Court for Human Rights".

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

National Council of Experts for the Execution of the Court's judgments

The ORC 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. The ORC's participation in its work includes both the monitoring role as well as providing comments on the concrete action plans for the execution of ECtHR's judgements in the cases against Croatia.

The Croatian NHRI's Rule 9 submission

In 2023, the ORC submitted a Rule 9 submission to the CoE Department for the execution of judgments regarding the case of M.H. and Others v. Croatia (application no. 15670/18, Judgment of 23 September 2021, final on 04 April 2022). The aim was to both provide the additional context, data and information resulting from years of casework, NPM visits and cooperation with many stakeholders as well as to provide suggestions to help enhance the Action Plan and thus create stronger guarantees for the respect and protection of international human rights standards in Croatia.

Recommendations and participation in the public consultation processes

Furthermore, the ORC contributes to the implementation of ECtHR judgments also through recommendations and participation in the public consultation processes, where the Ombudswoman uses ECtHR case-law to build her recommendations in relations to the draft bills and policy documents.

The Croatian NHRI's annual reports

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 case-law. 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.

Cyprus

The Commissioner for Administration and the Protection of Human Rights

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

Recommendations issued by regional actors concerning state actors

The Institution is aware of the following measures taken by state actors in response to regional actors' recommendations:

The European Commission in its 2023 EU Rule of Law Report – a country chapter on Cyprus, recommended that a possibility to review the decisions of the Attorney General should be included in the national legal system. Accordingly, the Institution is aware of the fact that there are ongoing discussions in view of the implementation of this recommendation. Specifically, the Law Office of the Republic of Cyprus is considering the possibility to establish control mechanisms over its decisions. Discussions are expected to continue in subsequent parliamentary sessions.

Regarding the European Commission's recommendation on asset disclosure for elected officials, the Institution is aware of discussions around the enactment of legislation on this matter. During parliamentary discussions, the need for transparency was emphasised. The consultations are ongoing. Specifically, for strengthening and enhancing the financial reporting system, amendments have been introduced on the Laws on the asset declaration of the President, ministers and members of Parliament

(Law 49(I)/2004), and on the asset declaration of the so-called publicly exposed persons (Law 50(I)/2004). The approval of these amendments by the Plenary of the House of Representatives is pending.

Regarding the recommendation on the newly established Independent Authority for Anti-Corruption, the Institution is aware of the fact that the Authority has taken steps to strengthen its operational capacity by recruiting new staff.

Recommendations issued by regional actors concerning the Institution

The recommendations of regional actors concerning the Institution in Cyprus and its role in strengthening the rule of law, often refer to the need to strengthen the Institution's resources and ensure its independence.

In consideration of these recommendations, the Institution has undertaken a multifaceted approach to fortify its independence and resource base. Recognising the pivotal role that adequacy of resources plays in upholding human rights standards, the Institution conducted a comprehensive review of its human resources structure. Accordingly, the Institution proceeded to the strategic recruitment of seven new officers, who joined the Institution in August 2023, in addition to five more Officers that were recruited during 2020-2021. These recruitments are crucial and have strengthened the Institution's capacity to address emerging human rights challenges effectively and timely, whereas the diverse expertise brought by these officers spans various disciplines, providing an additional well-rounded and comprehensive approach to the Institution's mandate.

The Institution remains open to ongoing dialogue with regional actors, recognising the collective responsibility to advance the protection of human rights, as a rule of law manifestation.

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

The Commissioner for Administration and the Protection of Human Rights in Cyprus supports the implementation of recommendations on the rule of law issued by regional actors through its work on the protection of human rights, both as an Ombudsman Institution, and as a National Human Rights Institution.

The regional actors' recommendations function as a reference point for the Institution, as the Commissioner's Reports/Interventions are oftentimes referring to the reports of regional actors (EU, UN, Council of Europe).

Throughout 2023, the Institution published several reports on human rights issues, which promote the rule of law. Specifically, under several mandates, the institution conducted investigations into numerous human rights issues upon the submission of complaints, as well as independent investigations.

Indicatively, the Institution intervened and issued recommendations for complaints regarding CRPD/the rights of persons with disabilities (accessibility, education, citizenship, health, work etc.) [See files No. C/N 836/2023, File No. C/N 1398/2022, File No. C/N 696/2023 & C/N 699/2023, File No. C/N 412/2022, File No. C/N 1990/2021, File No. C/N 507/2022, File No. Aut. 3/2023, C/N 1802/2022, File No. C/N 1576/2022, File No. C/N 1619/2022, File No. C/N 1086/2019, C/N 1732/2020, C/N 542/2022, C/N 1804/2022, C/N 1806/2022], gender discrimination [See files No. C/N 2030/2020, C/N 248/2021, C/N 725/2021, C/N 726/2021, C/N 727/2021, C/N 728/2021, C/N 729/2021, C/N 799/2022, C/N 1168/2022, C/N 932/2023], hate speech/hatred [See files No. Aut. 9/2023, No. Aut. 2/2023], racially motivated attacks against migrants [See files No. Aut. 12/2023, No. Aut. 8/2023], work life balance [See file No. Aut. 5/2023], migrant rights [See files No. C/N 557/2021, File No. EMPT 2/2023 & Aut. 11/2023], prisoners' rights [See file No. EMPT 1/2023] etc.

In addition to Reports and Recommendations, and under its mandate to promote the respect of human rights, throughout 2023, the Institution carried out regular trainings

and awareness-raising seminars to members of the Police on human rights, discrimination, and diversity-related issues, as well as regarding sexual harassment in the workplace to personnel of public authorities. Moreover, the Commissioner participated and expressed views in several discussions held in Parliamentary Committees on issues pertaining to its competence.

Importantly, the Commissioner participated in a regional Project led by the European Union Agency of Fundamental Rights (FRA), funded by EEA Norway Grants. The project aims to provide support to NHRIs of seven member states of the European Union, in monitoring fundamental rights and the fundamental rights aspects of the rule of law. The Institution's active role in this Project showcases its strong dedication to the protection of fundamental rights as enshrined in the Charter, as well as its contribution to the reinforcement of the rule of law within Cyprus.

The Project, which was completed on February 29th, 2024, focused on three areas:

a. Enhancing the use of the EU Charter of Fundamental Rights by NHRIs and strengthening their role in its enforcement at national level, including by building the capacity of NHRI staff in using EU fundamental rights law in their work.

b. Strengthening NHRIs' capacity in monitoring fundamental rights and the rule of law, by increasing their engagement with relevant EU mechanisms and by promoting national dialogues on fundamental rights and the rule of law.

c. Developing the capacity of NHRIs to monitor fundamental rights compliance in the implementation of EU funds, as foreseen by newly applicable EU law.

In 2023, within the framework of the regional Project, the Institution provided educational trainings and seminars regarding the application of the EU Human Rights Law and, particularly, the EU Charter of Fundamental Rights. Furthermore, the Institution organised a media campaign on raising public awareness of the EU Charter of Fundamental Rights.

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

The Institution actively intervened in numerous cases in 2023. Through these interventions, the Institution proposed changes and issued recommendations. In many cases, the Institution's recommendations have been implemented. Nevertheless, there have been cases where the implementation of the Institution's recommendations still remains under review by the relevant authorities.

In any case, the Institution remains proactive in its pursuit of positive outcomes, consistently seeking follow-ups from the relevant authorities on its suggestions and recommendations. This commitment to ongoing engagement contributes to achieving positive responses from competent authorities.

Following up on the last year's report regarding the Institution's recommendations to national authorities and the need to take measures on certain aspects, the following should be mentioned:

- **Acquisition of Cypriot citizenship**

In 2023, the Institution intervened in a complaint regarding the rejection of an application of naturalisation on the basis of the applicant's disability and subsequent "lack of full capacity", recommending that the relevant legislative provision that enabled such discrimination to take place should have been amended [File No. C/N 1990/2021, available here].

Among the Institution's observations/recommendations, was the need for issuance of clear regulations/guidelines regarding the applicable procedure, the need for the re-evaluation of the assessment process and the relevant criteria, and the need to clarify vague criteria.

Accordingly, the state proceeded with several legislative amendments of the Civil Registry Law of 2002 (Law 141(I)/2002), which also determines the granting of the Cypriot citizenship.

Additionally, in the amendments, a provision has been included in the Civil Registry Law (3rd Table), which provides that the Minister of Interior may, for humanitarian reasons, allow the submission of an application for naturalisation by a person who does not meet the criterion of "full capacity".

- **"Pournara" Asylum Seekers' First Reception Center**

In 2022, the Institution submitted a report [File No. NPM 1/2022 and Aut. 2/2022, available here] regarding the reception conditions provided to people who reside in the "Pournara" asylum seekers' first reception center. The Institution recommended that the implicated authorities should a) take steps to improve the Centre's infrastructure, b) take measures to examine asylum applications without delays, and c) initiate procedures to identify or create other reception places to which all unaccompanied minors would be moved to without further delay.

Accordingly, the European Commission partnered with the Cypriot authorities and the International Organization for Migration, and is now financing large-scale upgrades in the Pournara Center.

It is expected that by 2025, the new center in Limnes will add 1,000 places to the national reception capacity. Moreover, upgrades in the Kofinou Reception Centre, ensuring better reception conditions and additional capacity for 150 residents in over 70 units, were financed by the European Union Agency for Asylum (EUAA). The new facility was inaugurated on 6 July 2023.

Additionally, the Ministry of Interior proceeded to implement several changes in the assessment system of asylum applications. Specifically, the Asylum Service recruited 25 additional asylum application examiners, with the ultimate goal of shortening the examination time of asylum applications.

It should be noted that in March 2022 Report, the Institution informed that, at the time, 2280 people were residing in the Center, although its capacity amounted to only 1200 people. Importantly, by mid-December 2023, 932 people were residing in the Centre.

The reduction of the number of people residing in "Pournara" indicates that the overpopulation issue has been alleviated.

- **Assault of migrants working in food delivery**

Concerning the Institution's Report about an incident where several teenagers assaulted migrants working in the food delivery industry, no charges were pressed against them. Nevertheless, the Police informed the Institution that several actions would be taken regarding the raising of awareness among Police staff regarding such incidents, and that a brochure was going to be prepared in different languages to inform various groups regarding their right to submit complaints to the Police.

- **Racial attack**

Regarding the Institution's Report about a Cypriot man physically attacked and racially abused an African woman while she was holding her infant [File No. Aut. 10/2022, available here], the Institution was informed that in line with its recommendations, the Police investigated it as a racially motivated offense, and prosecuted the perpetrator on offenses also related to racism and xenophobia, assault causing actual bodily harm, and gender-based violence.

- **Accessibility of persons with disabilities to services and health providers offered through the General Health System (GHS)**

Following the submission of a Report under Commissioner's mandates as the Independent Mechanism for the Promotion, Protection and Monitoring of the UN Convention on the Rights of People with Disabilities and as an Equality Body, regarding the lack of accessibility of persons with disabilities to services and health providers offered through the GHS, consultations were held with stakeholders and the Commissioner issued a binding recommendation to the Ministry of Health and the Health Insurance Organization, with which they complied. Specifically, and, in accordance with Commissioner's binding recommendation, the Ministry has prepared, in cooperation with the representative organisations of persons with disabilities, a draft

list of accessibility criteria and standards to be met by all the hospitals and medical centres that are affiliated to and/or wish to be affiliated to the GHS.

Establishment, 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, after being deferred in June 2021.

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's recommendation has been fully implemented, considering that the Human Rights Advisory Committee has been established and holds regular meetings. The most recent meeting of the Advisory Committee was held on 12 February 2024.

The SCA also called for strengthened adequate funding of the NHRI. 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.

Follow-up to SCA Recommendations and relevant developments

The SCA recommendations regarding the Institution mainly concerned the need to continue advocating for an increase of its budget allocation, and the need to ensure that the Human Rights Advisory Committee is functional. Additionally, it was recommended that the Institution should continue to enhance and formalise its working relationships and cooperation with a wide range of civil society organisations and human rights defenders, including those working on the rights of various groups.

These recommendations have played a pivotal role in influencing the trajectory of the Institution, as well as a guiding force, which reinforced the Institution's commitment to continuous improvement, inclusivity, and responsiveness in its pursuit of promoting and protecting human rights.

a. Regarding the SCA recommendations on the increased budget allocation by increasing the number of officers in a higher level, it is reported that, after the recruitment of seven new officers in August 2023, we addressed a letter to the competent Authority of the Republic, within the Ministry of Finance, asking for additional positions of senior staff, as a result of these recommendations, reflecting the Institution's dedication to strengthening its capacity and adaptability.

b. Regarding the Human Rights Advisory Committee, it is reported that the Institution extended invitations to a broad spectrum of NGOs to participate in the Committee. The NGOs that currently participate in the Committee represent and promote the rights of various groups, ensuring a comprehensive and inclusive dialogue on human rights issues. The inclusion of NGOs with specialised focuses ensures a nuanced understanding of the challenges faced by different segments of society. This approach not only enriches the discussions within the Human Rights Advisory Committee, but also enhances the overall effectiveness of the Institution in promoting and protecting human rights.

c. The systematic engagement with a wide array of actors, including civil society organisations, human rights defenders, and other services working on human rights, has been instrumental in broadening the Institution's understanding of the diverse challenges faced by different segments of the society. In 2023, the Institution participated in numerous discussions before the Parliamentary Committee on Human Rights, which concerned, amongst others, matters of gender-based violence, the rights of HIV-positive individuals, and human trafficking. Additionally, during 2023, the Commissioner conducted several meetings with different actors who play a role in the protection of human rights, including the Commissioner for Gender Equality for exchanging views and to discuss means of cooperation on equality issues, the Association for the Protection of the Rights of Prisoners and Released Persons, state actors responsible for healthcare, bar associations.

Regulatory framework

The national regulatory framework applicable to the Institution changed in 2023. Importantly, by virtue of the decisions No. 94.440 of the Committee of Ministers, dated 22/02/2023, and 13/09/2023, monitor fundamental rights compliance in the implementation of EU funds, in accordance with the new EU mechanism, established by Regulation (EU) 2021/1060.

Based on this mandate, the Institution is involved in the procedures established by relevant authorities who engage in EU-funded programmes, in order to ensure that these programmes comply at all stages with the Charter of Fundamental Rights in the EU. Acting as NHRI and Equality Body, the Institution advises and guides the relevant authorities in making decisions about their compliance with the provisions of the Charter and provides relevant guidance. The Commissioner also receives complaints on the matter. In case a programme does not comply with the Charter's provisions, the Institution issue recommendations and/or specific measures for the rectification of the raised issues, aiming at the programme's compliance with the Charter.

NHRI enabling and safe environment

The Cypriot NHRI's mandate to investigate and report human rights issues stems mainly from the Law on the Commissioner for Administration of 1991 (Law 3/1991). Under Article 8 of Law 3/1991, all relevant public authorities are under an obligation to provide all relevant information sought by the Commissioner in the frame of his/her duties. Importantly, an officer's refusal to provide information to the Commissioner when such information is requested, constitutes a disciplinary offense of breach of duty.

Regarding the exercise of the Institution's competence in independently examining human rights issues, and preparing relevant reports with opinions, proposals, and suggestions, the public authorities' cooperation is essential. State authorities, in general, provide a satisfactory space for the Institution to carry out its mandate, and is provided with adequate access to the requested information. However, there are cases in which public authorities' responses are delayed.

Also, the public authorities sometimes send to the Institution information that is inadequate and/or needs to be further clarified. This issue remains a challenge for the investigation process. However, the Institution tries to combat this challenge by proceeding to follow-up procedures, whereby reminder letters, amongst others, are sent to the relevant authorities, requesting that they submit the needed information in a prompt and comprehensive way. Additionally, in the last year, the Commissioner submitted three Special Reports by virtue of Article 8(8) of Law 3/1991, reporting an authority's failure to assist the institution in its work [File No. C/N 1483/2022, C/N 1858/2022 and C/N 1338/2022].

Furthermore, as mentioned previously, as a NHRI, the Institution is oftentimes invited to meetings conducted by Committees of the House of Representatives to discuss legislative and policy processes.

Additionally, in cases where the cooperation of different human rights bodies is essential in the efficient promotion of human rights protection, the Commissioner cooperates with the relevant bodies.

In 2023, the Institution has not faced any situation in which it perceived itself under any threat.

However, it should be noted that the Auditor General, as he did in previous years, attempted to intervene in the independence of the Institution. This time, his interventions were in the form of substituting and influencing the decisions of the Legislative and Executive Powers.

More specifically, the Auditor General attempted to interfere without having any jurisdiction in the process of selection and appointment of the new Commissioner in April 2023, when he tried to substitute the decision of the Legislative and Executive Powers in both ways, by a letter addressed to the President of the Republic and by distributing the same letter to the members of the House of Representatives. In particular, after the Council of Ministers decision, following a transparent and open call for applications, to recommend to the President of the Republic the reappointment of the current Commissioner, the Auditor General attempted to substitute his decision and to pre-empt the decision of the House of Representatives by providing false and defamatory information in a letter, without the Commissioner knowing its content (she found it out later), and without having the right to answer, even though the accusations were directed against her personally. It was clearly an attempt to shape the opinion of the Members of Parliament against the head of the Cypriot NHRI without having any competence to interfere in any way, as an action against the Rule of Law, in democratic societies.

Finally, the House of Representatives approved the reappointment of the Commissioner for another term by an overwhelming majority.

NHRI's recommendations to national and regional authorities

The NHRI submits the following recommendations aimed at fortifying the autonomy and efficacy of the Institution:

- **Operational efficiency enhancement:**

The NHRI advocates for a proactive approach to reinforce cooperation with all relevant state authorities. The commitment to transparency and cooperative dialogue between the state authorities and the NHRI is pivotal in fostering an environment conducive to the protection and promotion of human rights. The establishment of a collaborative approach will ensure that the NHRI and the national authorities cooperate to maximise the benefits from the Institutions' expertise under its various mandates.

Recognising the significance of expeditious information exchange, the NHRI urges the national authorities to uphold their legal obligation by responding promptly to the Institution's requests and inquiries. Furthermore, particular emphasis should be placed on ensuring that the responses are also comprehensive, and accurate.

- **Implementation of decisions:**

The NHRI recommends a robust and expeditious approach to the implementation of its recommendations, recognising the critical importance of translating policy into action. The national authorities should establish mechanisms for regular monitoring of the NHRI's recommendations' implementation progress and report such progress to the Institution. By adopting the NHRI's recommendations, national authorities demonstrate their commitment to the effective protection and promotion of human rights.

- **Transparency:**

The NHRI recommends a commitment to transparency as a foundational principle in the state authorities' communications with the Institution. National authorities are encouraged to ensure that decision-making processes, outcomes and justification on practices and individual decisions are well-documented and easily accessible when communicated with the NHRI. All relevant documents, policies, and decisions should be promptly shared with the Institution, allowing the latter to effectively engage in the process under its mandates.

Checks and balances

Separation of powers

The Institution reports that it has not found any evidence of laws, processes, and practices that negatively affect the separation of powers, reduce the accountability of state authorities, or impact on the fairness of the electoral process.

The process for preparing and enacting laws

The Institution has not found any evidence of laws, processes and balances that undermine checks and balances regarding the process for preparing and enacting laws.

Importantly, the Institution is aware of a key development regarding the inclusion of all relevant stakeholders during this process, through the introduction of the e-consultation platform, which serves as a mechanism for engaging with civil societies, different groups, state authorities, and other agencies.

Enabling environment for civil society and human rights defenders

In response to last year's report, the Institution addressed the need for more efficient consultations with civil societies during parliamentary discussions. A significant stride in this direction is the establishment of the e-consultation platform, grounded on the principles of public dialogue, and aimed at capturing diverse perspectives and recommendations on matters of common interest.

This innovative platform is designed to engage not only governmental services responsible for implementing and executing proposed legislation, but also other agencies and social entities directly or indirectly impacted by the legislation under discussion. The entire consultation process aligns closely with the principles guiding the Improvement of the Regulatory Framework ("Better Regulation"), aiming at an inclusive and transparent approach to discussions around proposed legislation.

In recognising the importance of the civil society's presence in human rights protection, the Institution has issued several recommendations, for example its ex officio report [File

No. A.S.A. 5/2016, available here] regarding the state authorities' obligation to consult representative organisations of persons with disabilities on matters relating to disability issues.

The Institution actively seeks to engage with civil society through several stages of its work. This is often done by investigating complaints that are brought to the Institution by NGOs active in human rights protection.

Also, efforts are made to establish channels of communication and collaboration with civil society organisations, allowing for participation in discussions and consultations. Specifically, the Institution cooperates with NGOs in organising conferences, seminars, round-table discussions and other events, with a view to raise awareness regarding human rights issues or provide information and share knowledge concerning specific human rights matters. Additionally, the Commissioner and her officers participate in events or projects organised or coordinated by civil society organisations; they also collaborate in projects and programs for training. Indicatively, it is mentioned that the Institution, acting as the Independent Mechanism for the Promotion of the Rights of Persons with Disabilities, has regular consultations and meetings with organisations promoting the rights of persons with disabilities.

NHRI's recommendations to national and regional authorities

The Institution's key recommendations to national authorities regarding the strengthening of the system of checks and balances in Cyprus are as follows:

- **Legal Frameworks:**

Conduct periodic reviews of legal frameworks governing checks and balances to ensure their relevance and effectiveness in addressing emerging challenges and consider amendments or reforms to address any gaps.

- **Legal Procedures:**

Legal procedures and documentation should be more accessible and understandable to the public, so that citizens are able to effectively navigate the legal system. Furthermore, the issue of long delays in the judicial proceedings should be addressed; this should

happen notwithstanding several reforms in the justice system, aiming to alleviate the problem.

- **Performance Reports:**

Each national authority should publish comprehensive and easily accessible reports on their performance, highlighting key achievements, challenges, and areas for improvement. These reports can provide the basis for a constructive dialogue and improvement.

Impact of securitisation on the rule of law and human rights

The Institution has identified that Article 4 of the Proposal of the European Parliament and the Council establishing a common framework for media services in the internal market (European Media Freedom Act), has prompted active discussions within the Parliament.

The said article protects journalistic sources and prohibits monitoring software use, except in cases of serious crime investigations subject to stringent conditions. Specifically addressing the freedom of journalists, Article 4 has become a focal point of debate, with concerns raised about its legality and constitutionality. Ongoing deliberations aim to scrutinise the potential implications of this provision, evaluating its conformity with the legal and constitutional framework in Cyprus. The discussions emphasise the importance of upholding media freedom, while ensuring compatibility with established legal principles.

No other evidence was found in laws, policies, and practices aiming to increase securitisation, which negatively affect the rule of law in Cyprus.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

During 2023, the Institution did not receive any complaints regarding issues of securitisation. Nevertheless, the Institution endeavours to remain updated regarding these issues, and will intervene accordingly to safeguard the effective protection of

human rights in case that any restrictions to human rights is considered to be violating the principles of legality, necessity and proportionality.

NHRI's recommendations to national and regional authorities

The Institution's recommendations to national authorities on the ways to counter the negative impact of securitisation on human rights and rule of law in Cyprus are as follows:

- **Human rights trainings**

National authorities should prioritise comprehensive and ongoing human rights training for their personnel, which will emphasise the importance of respecting and upholding human rights standards, especially when securitisation issues arise.

- **Impact assessments**

National authorities should apply integrated comprehensive impact assessments, as a standard practice, when considering securitisation issues, which should evaluate the potential human rights and rule of law implications. Through this process, authorities will have the opportunity to proactively identify and address any adverse effects of securitisation on human rights issues, in light of the principles of proportionality, legality and necessity.

Implementation of European Courts' judgments

European Court of Human Rights decisions

There are currently seven leading judgments pending implementation, including *two* new final leading judgments since the Institution's last ENNHRI report in 2023. Below, the decisions pending implementation on the leading cases are briefly introduced:

Case Name	App. No.	Final Judgement Date	Theme(s)	Update(s)
2023				
Khokhlov v. Cyprus	53114/20	13/09/2023	The case concerns the unreasonable length of the applicant's detention pending extradition to Russia in 2018-2020 and lack of speedy review in this respect.	The action plan/report is awaited by 13/03/2024.
Loucaides v. Cyprus	60277/19	06/03/2023	Unfairness of criminal proceedings brought against the applicant for interfering with judicial proceedings	Feedback given to the authorities on 25 July 2023. Questions identified as regards individual and general measures are being discussed bilaterally with a view to submission of a consolidated action report.
2013 – 2022				
Drousiotis v. Cyprus	42315/15	05/10/2022	Unjustified interference in 2011 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.	On 14 July 2023 the authorities submitted an Action Report (see DH-DD(2023)876), which is currently under assessment.

Nicolaou v. Cyprus	29068/10	28/05/2020	Failure to conduct an effective investigation into a conscript's death of 2005.	An updated action plan is awaited.
DANILCZUK v. Cyprus (leading)	21318/12	03/07/2018	Poor conditions of detention.	Bilateral consultations are ongoing in relation to the outstanding questions under the general measures with a view to the submission of a consolidated Action plan in due course.
Foutas Aristidou v. Cyprus	11990/15	07/06/2022	Length of criminal proceedings.	On 28 April 2023 the authorities submitted an Action Plan (see DH-DD(2023)559). In this case, the just satisfaction was paid, and the impugned proceedings ended in 2014. General preventive measures have been adopted at a prosecutorial and judicial level.
Vassiliou and Others v. Cyprus	58699/15	30/11/2021	Failure to inform the applicants of the progress of the investigation into the disappearance of a relative during the 1974 Turkish invasion in the northern part of Cyprus, his possible death and location of the body in common grave.	Bilateral consultations are ongoing in relation to certain outstanding questions under the general measures with a view to the submission of a consolidated Action plan/report in due course.

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

The Commissioner has intervened in some instances in matters related to issues raised in European Courts' decisions.

Specifically, regarding the issues on the conditions of detention, the Commissioner has conducted numerous visits to detention centers, and issued reports with recommendations.

Additionally, in the frame of the institution's investigations, whenever a case before a European Court is relevant, such case is used/cited in the analysis of the Commissioner's relevant intervention.

NHRI's recommendations to national and regional authorities

The Institution recommends the following in relation to the enhancement of the implementation of European Courts' judgments:

- **Development of standardized procedures and guidelines**

The national authorities should formulate transparent and standardized procedures and guidelines for the execution of European Courts' judgments. Such procedures and guidelines should clearly delineate the steps, responsibilities and timelines involved, and should be easily accessible to legal practitioners, government officials, and the public.

- **Conduct impact assessments**

The national authorities should implement a system of impact assessments to evaluate the practical implications and consequences of European Courts' judgements. This involves analysing the potential effects on legislation, policies, and affected individuals or entities. Through this procedure, national authorities will be able to address any challenges, anticipate implementation issues, and tailor their approach to ensure the practical implementation of the judgment.

- **Facilitate capacity building**

Invest in ongoing training and capacity-building programs for legal professionals and implicated authorities involved in the implementation process. Enhancing the skills and

knowledge of those responsible for executing judgments ensures a more proficient and practical approach.

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

The Institution welcomes the various efforts made by national authorities to respect human rights issues in line with its interventions. Relevantly, the Institution expresses its satisfaction with the steps taken for reforming the justice system, including the efforts to digitalise the procedural aspects of the judicial cases as the issue had long remained a persisting structural issue with negative impacts on the rule of law.

NHRI's recommendations to national and regional authorities

The Institution recommends that the promotion of cooperation within national authorities and other stakeholders working on issues affecting human rights, protection of the rule of law and human rights is strengthened and institutionalised. Inter-institutional collaboration ensures a comprehensive understanding of human rights issues and facilitates well-informed and coordinated responses to human rights challenges.

Czech Republic

Public Defender of Rights (Ombudsman) 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 2023 Rule of Law Report's Country Chapter on the rule of law situation in Czechia, the European Commission has recommended that Czechia continues to advance the legislative changes to establish a National Human Rights Institution taking into account the UN Paris Principles. Similar recommendation was given by the Council of Europe Commissioner for Human Rights, which also included the adequate resourcing of the planned Children's Ombudsman.

The Minister for Legislation of the Government has prepared a draft law amending the Act on the Public Defender of Rights (No. 349/1999 Coll.) and submitted it to an inter-ministerial comment procedure. The procedure lasted until the end of 2023.

The draft law envisages entrusting the Public Defender of Rights with the mandate of an NHRI, alongside with establishing a new position of the Children's Ombudsman who is intended to share the Office of the current Defender.

ENNHRI has provided an advisory opinion in February 2023 with positive feedback concerning the proposal, considering the draft legislation as not containing any elements that are fundamentally inconsistent with the Paris Principles. However, changes have been introduced during the comment procedure and further changes are

to be expected during the governmental and parliamentary discussions of the amendment.

There has also been a delay in the legislative procedure. The Government has not yet reviewed the proposal. Considering the current state of play, the amendment will probably not enter into force before 2025.

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

The Public Defender of Rights has organized a roundtable "Establishment of a National Human Rights Institution (NHRI) in the Czech Republic: Current Issues" in September 2023, with an active participation of distinguished national and international experts on human rights-related issues and the Minister for Legislation. The aim of the roundtable was to discuss issues connected with the establishment of an NHRI in the Czech Republic and the current draft law.

The roundtable was organized within a four-year project "Strengthening the Public Defender of Rights' activities in human rights protection" funded by EEA Norway Grants. The project will be concluded in the beginning of 2024. One of its purposes was to prepare the institution of the Public Defender of Rights for its possible transition into an NHRI and Children's Ombudsman.

Establishment, 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. 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.

ENNHRI has provided informal advice to the Public Defender on the possible amendments and has consistently reaffirmed its willingness to advise and support 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 regulatory framework regarding the Public Defender of Rights has not changed. A legislative proposal has been drafted and is awaiting approval by the Government (see above).

NHRI enabling and safe environment

State authorities continue to ensure an enabling environment to the Public Defender of Rights. His opinions and recommendations are mostly taken into consideration and followed up by the authorities concerned.

A few issues are nonetheless of concern.

There is a systemic problem regarding the Public Defender of Rights' recommendations addressed to the Government and the Chamber of Deputies of the Parliament. These recommendations are usually acknowledged, however, no specific action is taken to tackle them. This generally applies to recommendations to amend existing legislation or to introduce new legislation.

The ongoing trend of restricting financial resources of the Office of the Public Defender of Rights needs to be mentioned too. The expenditure budget for 2024 contains a requirement of a 5% reduction in operating expenses and 2% reduction in salary expenses. At the same time the Office has not received sufficient funding for staff salaries. The Office will therefore have to use the funds intended for personal allowances and remuneration for major tasks to cover the tariff salaries. As in the last year, there is also a risk that the Office might struggle to pay its staff full public-sector salaries (as prescribed by the law) and personal allowances that have been already granted to them.

In view of the draft legislation to transform the Defender into an NHRI and establish a Children's Ombudsman sharing the Office, it is not possible to reduce resources available to the Public Defender of Rights. The Defender has warned against establishing these institutions without adequate resources that would allow them to perform their duties meaningfully.

NHRI's recommendations to national and regional authorities

The Government should ensure that the establishment of the NHRI and the Children's Ombudsman will be accompanied by adequate additional resources that would allow a meaningful exercise of both the existing and new duties.

Checks and balances

The process for preparing and enacting laws

The Public Defender of Rights is not an NHRI and does not conduct broad human rights monitoring. He monitors the rights of people with disabilities under the Convention on the Rights of Persons with Disabilities (CRPD). In this regard the Public Defender of Rights points to insufficient involvement of people with disabilities in the legislative process. In order to assess the true needs of people with disabilities it is necessary for the state authorities to engage with real people, who can talk about their daily experiences and needs, e. g. through self-advocacy.

The Public Defender of Rights has been focusing on supporting self-advocacy groups in order to strengthen their participation in the implementation of policies and legislation that concern people with disabilities.

The Public Defender of Rights also points to a trend of using the legislative initiative of individual deputies of the Parliament instead of the regular legislative process. This allows the Government to circumvent the demanding preparatory works, consultations, and inter-ministerial comment procedure at the expense of the overall quality of the passed legislation and participation of relevant stakeholders.

Denmark

The Danish Institute for Human Rights

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

Adequate human and financial resources for the justice system

In the Country Chapter on the rule of law situation in Denmark 2023, the European Commission recommends Denmark to ensure adequate human and financial resources for the justice system in the next multiannual framework based on the increases in 2023 and taking into account European standards on resources for the justice system.

On 22 November 2023, the Danish government and all members of the Danish Parliament (Folketinget) made an agreement on the economy of the courts from 2024 to 2027. With the agreement, the parties will give the courts a substantial financial boost of approximately DKK 2.3 billion, which aims to tackle the problem of long case-processing time. In addition, the parties will implement a number of changes that aims to improve the efficiency of the administration of justice based on recommendations from the Rørdam Committee and recommendations from the Danish Council of Administration of Justice (Retsplejerådet).

However, it is the assessment of the Danish Institute for Human Rights (hereafter also referred to as "the Institute") that a number of the initiatives considered by the committee entails setbacks in terms of legal certainty. This concerns the initiative to expand the use of judgments in absentia and the measure that certain criminal cases should be processed without the use of lay judges. Furthermore, the Institute is

concerned with the proposal to raise the current limit for when a civil case can be appealed to the High Court without permission from the Appeals Permission Board, from DKK 20,000 to DKK 50,000.

Reform of the Access to Public Administrative Documents Act

Further, in the 2023 Rule of Law Report, the European Commission recommends Denmark to advance with the process to reform the Access to Public Administrative Documents Act in order to strengthen the right to access documents, in particular by limiting the grounds for rejection of disclosure requests, taking into account the European standards on access to official documents.

On 11 January 2024 the Danish Parliament (Folketinget) made an agreement to set up an expert committee tasked to submit proposals for amending the Access to Public Administrative Documents Act. In particular, the committee shall focus on the rules that regulate access to documents in the political decision-making processes, e.g. the so-called ministerial service rule (section 24) and the parliamentary politician rule (section 27, no. 2).

The committee is tasked to submit a proposal that entails a greater access to documents in the political decision-making processes, including professional assessments. In this connection, the committee's proposal must consider that a certain level of protection must be maintained for internal political decision-making processes, including in relation to internal government discussions.

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

To support the implementation of the recommendations, the Danish Institute for Human Rights published a news piece on the Institutes website on the European Commission's 2023 Rule of Law Report. The news piece had a particular attention to the recommendation concerning adequate resources for the justice system, but also highlighted the recommendation on public access administrative documents.

Further, the Executive Director of the Institute has engaged in dialogue with senior officers at the Danish Ministry of Justice and made the Institute available to engage in the work of the expert committee on amending the Access to Public Administrative Documents Act.

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

In the ENNHRI 2023 Rule of Law Report the Danish Institute for Human Rights gave, among others, two recommendations to address challenges regarding the use of artificial intelligence:

- 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 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.

In October 2023, the Danish Data Protection Agency published guidelines for public authorities on the use of AI in data processing. The guidelines include guidance on the need for public authorities to carry out data protection impact assessments whenever an AI system is likely to pose a high risk on the violation of human rights.

Also in October 2023, the Danish Data Protection Agency published a mapping on the use of AI system among the public authorities.

The mapping shows that the use of artificial intelligence is not yet widespread. Among the solutions in use, authorities have made basic considerations, such as identifying a legal basis for processing personal data, but the authorities find it more difficult to comply with the more complex requirements of data protection rules, such as conducting impact assessments.

The Institute is concerned with the findings of the mapping. Thus, the Institute recommends that the Danish government and Parliament (*Folketinget*) introduce a legal requirement for public authorities to conduct impacts assessments when the authorities put in use systems with artificial intelligence. The impact assessment must cover all use of the system from end-to-end.

Establishment, 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. 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. In October 2020, the Human Rights Council of Greenland adopted guidelines to regulate the selection process.

Further, the SCA acknowledged that there is a relevant body of Danish jurisprudence defining 'personal and professional integrity'. 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. 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.

Regulatory framework

The Danish Institute for Human Rights notes the following changes of its regulatory framework within the reporting period:

The Danish Parliamentary Ombudsman is designated as the National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The task is carried out in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights. On 28 December 2023, the Ministry of Justice promulgated royal decree no. 1802 which provides a legal basis for DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights to collaborate with the NPM on inspection visits in Greenland in the same way as in Denmark.

On 6 October 2023, a revision of the Institutes' bylaws entered into force. The changes to the bylaws were instigated by the Board of Directors of the Danish Institute for Human Rights. To further enhance the independence of the governance structure of the Institute, article 9(2) of the bylaws was strengthened. The article further strengthens the independence of the Institute since it was added that board members should resign in case of election to the Danish Parliament or the Greenlandic Parliament (Inatsisartut). Other changes include the use of more gender-neutral language and virtual participation in board meetings.

NHRI enabling and safe environment

The Danish Institute for Human Rights stresses that the state authorities continue to sufficiently ensure its independence.

Checks and balances

Separation of powers

In January 2023, The Danish Minister of Defence ordered that the Danish Intelligence Oversight Board (*Tilsynet med Efterretningstjenesterne/TET*) should stop overseeing the

collection and onward transmission of bulk data intercepted by Danish Defence Intelligence Service (*Forsvarets Efterretningstjeneste/FE*). The decision followed a disagreement between FE and TET on the scope of TET's authority to supervise FE's processing of bulk data.

According to Danish law, it is the Minister of Defence who has the competence to determine the interpretation of the legal framework for FE, including the scope of TET's supervision. However, the decision is controversial, as it appears from the annual reports by TET from 2015 to 2021 that TET, in general, has kept oversight of FE's processing of bulk data (*see TET's Annual Reports on FE from* 2015 to 2021).

In the Institute's view, the decision is problematic as what follows from the case law from the European Court of Human Rights is that collection and processing of bulk data by a secret intelligence service must be subject to independent and legal review (see *Big Brother Watch and Others v. The United Kingdom*, para. 356).

Access to information

On 12 December 2023, the Danish government began a public consultation on a draft law amending the Danish Access to Public Administrative Documents Act and the Danish Public Administration Act. To protect civil servants from threats and harassment, the government has proposed to extend the grounds for rejection of access to information. The motivation behind the draft law is that information about the employee's name can - with the help of social media or the internet in general - be used to search for other information about the employee, e.g. about the employee's private residence, family relationships or hobbies, which can be misused to exert pressure or harassment etc. against the employee. The proposal lowers the threshold for when a request is presumed to serve an unlawful purpose or can be defined as harassment.

Further, the government has proposed that, in certain cases, it should be possible for authorities to use anonymisation by excluding the name of certain employees when

applying for access to information about individuals' employment relationships in the public sector.

The Danish Institute for Human Rights recognises that public employees should not be subjected to violence, threats, intimidation, or harassment when they are doing their job and that the draft law would follow a legitimate purpose in this case. However, at the same time it is important to ensure transparency in public administration, as far as possible, and allow the introduction of restrictions only when the aim cannot be obtained by less intrusive measures.

Overall, it is the assessment of the Institute that the proposed amendments do not sufficiently balance, on the one hand, the need for openness in public administration and, on the other hand, the need to protect certain particularly vulnerable public employees against harassment, etc.

To prevent unduly limitation to access to information, the Institute delivered a consultation response to the Ministry of Justice on 16 January 2024. In the consultation response the Institute recommends that:

- The proposed extension of grounds to reject access to documents under the Danish Access to Public Administration Act due to risk of harassment is to be deleted.
- Public authorities' ability to ensure effective anonymisation of selected public employees must appear directly in the wording of the Danish Access to Public Administration Ac Freedom of Information Act and the Danish Public Administration Act.
- It is clarified in the draft law that anonymisation should only be used in exceptional cases.
- Access to information on names should not be limited for the media and recognised research institutions.

Further, on January 19 2024 the Institute published a news piece on its website with the above-mentioned critique that also included the Institute's recommendations for the government.

NHRI's recommendations to national and regional authorities

With regards to the human rights obligation of oversight of interception and processing of bulk data by a secret intelligence service the Danish Institute for Human Rights recommends:

- The Danish courts should be granted jurisdiction to settle disagreements between FE and TET on the interpretation of the legal basis of the intelligence services.

On access to information from state authorities and public documents the Danish Institute for Human Rights recommends:

- The proposed extension to reject access to documents under the Danish Access to Public Administration Act due to risk of harassment should not be adopted.
- Access to information on names should not be limited for the media and recognised research institutions.

Impact of securitisation on the rule of law and human rights

Data retention

A securitization narrative also lies behind the yearly prolonging of the duty on telecommunication companies to put in place general and indiscriminate data retentions despite it being a serious interference on the right to respect for private life and the protection of personal data. Such a duty was once again prolonged from March 2023 until March 2024.

The Danish Institute for Human Rights assess that the criteria for putting in place general and indiscriminate retention of data is at risk of violating EU law. This is so, as the criteria in the Danish rules on data retention 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.

Improper treatment of writings with significant religious significance for a recognised religious community

On 7 December 2023, the Danish Parliament passed a law that criminalises improper treatment of writings with significant religious significance for a recognised religious community.

The law was motivated by recent burnings of the Koran that – according to the Danish government - have meant that Denmark, in many parts of the world, was increasingly seen as a country that facilitates the mockery and denigration of other countries and religions. According to the government, burnings of the Koran can have major consequences that fundamentally damage Denmark and the interests of likeminded countries in the world. Furthermore, the law was motivated by information from the Danish Security and Intelligence Service (PET) that had stated that the recent Koran burnings also have had an impact on the current terrorist threat level has intensified from an already high level (see the preparatory works pertaining to the law, page 2).

It is the assessment of the Danish Institute for Human Rights that the law does not overly restrict freedom of speech. However, because of the level of discretion in the ban, the Institute is still concerned that the law can pose challenges for law enforcement authorities and for individual citizens who may be deterred from expressing otherwise lawful criticism of power and religion for fear of punishment. The Institute finds it positive that the law and its application will be evaluated three years after its entry into force, as was recommended in the Institute's consultation response.

Trials against Claus Hjort Frederiksen and Lars Findsen

In Denmark, Former Minister of Defence, Claus Hjort Frederiksen, was, similarly to former Head of the Danish Defence Intelligence Service (*Forsvarets*

Efterretningstjeneste/FE) , Lars Findsen, accused of violating his duty of confidentiality by, on several occasions, disclosing secrets of importance to national security. During the trial against Claus Hjort Frederiksen, the prosecution had requested an entirely private hearing because certain elements of the case were confidential and because it was not possible to divide the trial into an open and a closed part. The request was contested by the accused who both claimed to be innocent.

In a decision on 27 October 2023, the Supreme Court stated that the prosecution had not presented sufficiently concrete arguments that could justify that the case should take place completely out of the public sphere. The Supreme Court also stated that the criminal case concerned information about a cable collaboration between FE and the American NSA, which at the time had to be considered publicly known. The request for a private hearing could only be accepted for those parts of the trial that were not already known to the public.

Moreover, during the trial against Lars Findsen, the prosecution would not hand over the indictment to him on the grounds that he would violate his duty of confidentiality in relation to the content of the indictment.

In a decision on 12 October 2023, the Supreme Court stated that the prosecution had not presented any specific information that gave reason to fear that Lars Findsen would violate his duty of confidentiality in relation to the content of the indictment. On this basis, the Supreme Court found that Lars Findsen was entitled to receive the indictment.

It is the view of the Institute, that in both above-mentioned cases the prosecution attempted to keep trials closed without any real reasoning. This practice is concerning in relation to the right to a fair trial in cases that revolves around national security.

After the abovementioned decision the prosecution service decided to withdraw the indictments against both the accused. This was decided after FE had informed the prosecution service that FE no longer considered it reassuring to make the highly classified information that the cases concerned available for the criminal cases.

Consequently, the courts did not give rulings on the substance of the cases.

Conditions and rights of detainees

The Danish Institute for Human Rights notes the negative impact of securitisation on the human rights of persons deprived of their liberty in Denmark. This has led to a severe pressure on the Prison and Probation Service in Denmark which affects the conditions and rights of detainees in its the institutions (see Numbers from the Prison and Probation Service – First Quarter 2023, page 3. In recent years, the number of inmates has increased, while prison and detention capacity has not kept pace.

In 2022, the Danish Prison and Probation Service had to manage an average occupancy rate of 99.6 percent. This puts pressure on the physical environment, with common rooms being taken over and double-bunked cells being established (see the answer from the Danish Minister of Justice to question no. 200 (Alm. del) from the Danish Parliament's Committee on Legal Affairs).

The Institutes considers it to be paramount to ensure the necessary correlation between prison capacity, the number of inmates, the number of prison officers and the tasks of prison officers to limit the risk of human rights violations.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

Data retention

To combat general and indiscriminate data retention, the Danish Institute published a legal brief on the issues connected with the rules and practice vis-a-vis data retention on 11 September 2023. In the legal brief the Institute recommends that:

- The Danish government and the Danish Parliament (Folketinget) ensure that the legislation only allows for the general and indiscriminate data retention in extraordinary situations as established by the Court of Justice of the European Union

- The Danish government and the Danish Parliament ensure in the future law that the data retention of citizens within defined geographical areas does not in practice include virtually all citizens in Denmark.

Moreover, the Institute presented the conclusions of the legal brief in a news piece the same day.

Further, on 18 January 2024 the Institute has submitted a consultation response on new draft legislation on the subject.

Improper treatment of writings with significant religious significance for a recognised religious community

The Institute submitted two consultation responses as the draft law was presented twice with different wording (see links above). The Institute also published a news piece when the first draft law was presented with the Institute's initial assessment of the draft law.

Moreover, the Institute's Executive Director, Louise Holck, participated in a online debate on freedom of speech hosted by DJØF (Union for social science and business economics graduates).

NHRI's recommendations to national and regional authorities

The Danish Institute for Human Rights recommends that:

- The Danish Government and the Danish Parliament (Folketinget) ensure that the legislation only allows for the general and indiscriminate data retention in extraordinary situations as established by the Court of Justice of the European Union.
- The Danish Government and the Danish Parliament (Folketinget) ensure the necessary correlation between prison capacity, the number of inmates, the number of prison officers and the tasks of prison officers to limit the risk of human rights violations.

Implementation of European Courts' judgments

In the ENNHRI 2023 Report on the state of the rule of law in Europe, the Danish Institute for Human Rights flagged the judgment in the case of Aggerholm v. Denmark, which raises certain issues related to general measures taken by the authorities to ensure its effective implementation.

As also mentioned in the same report, the Danish Institute for Human Rights submitted a joint statement under Rule 9 together with two NGOs (Dignity and Better Psychiatry) in 2022. In 2023, the Institute and the two NGOs have submitted another Rule 9 statement. The parties have argued for the Danish Government to allocate more resources to the psychiatry field in order to enable the institutions to work on reducing the use of physical restraints measures in psychiatric wards and to introduce effective legal guarantees supporting the overall principles of the Danish Mental Health Act.

The case of Savran v. Denmark concerns a Turkish national diagnosed with paranoid schizophrenia, who entered Denmark in 1991 when he was six years old. Following a criminal conviction, he received an expulsion order combined with a permanent ban on re-entry in 2009. In 2015 the High Court upheld the expulsion order. The Court found a violation of ECHR Article 8, as the decision not to revoke the expulsion order in 2015 constituted a disproportionate interference with the applicant's right to private life, since the authorities had failed to take into account and to properly balance the interests at stake. The authorities had not had due regard to the fact that he was exempted from punishment on account of his mental illness, the fact that between 2009 and 2015 he had undergone medical treatment for his mental disorder, or the strength of his ties to Denmark as compared to those to Turkey. After the decision of the European Court of Human Rights, The Special Court of Indictment and Revision denied the request to reopen and reassess the expulsion decision, because the applicant has not consented to the resumption of the revocation proceedings. With reference to this case, the Government of Denmark is in the process of amending the Danish Administration of Justice Act, so that a case can be reopened in order to comply with a final judgment

from the European Court of Human Rights, also when the convicted has not consented to the case being reopened.

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.

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

Concerns about intelligence services' mass collection of data

The Danish Institute for Human Rights is concerned of the human rights challenges caused by the intelligence services' mass collection of data from so-called open-source intelligence.

Private companies have developed advanced digital tools that can use a name or email address to create detailed personal profiles based on data taken from people's digital behaviour. These tools are made available to intelligence services for a fee.

The data is aggregated from many different open sources online, e.g. social media and other publicly available sources. Further, data can be aggregated by buying data sets from so-called data brokers. This data sets can contain billions of data points that originate from sources such as cookies, commercial data and location data. This data can expose the interests and actions of a person draw a very precise profile of a person's private life. However, with this type of data collection, there is no requirement for a court order as the information is considered to have been acquired via freely available sources.

In the Institute's view, the Danish government and Parliament must introduce legal guarantees in relation to mass collection of information by the intelligence services, including open-source intelligence. They must, inter alia, establish independent prior

checks, for example in the form of a court order, when the intelligence services use keywords to filter mass-collected information.

Complaints regarding police personnel

In Denmark, complaints regarding police personnel can be lodged with the Independent Police Complaints Authority. After receiving a complaint and making an initial assessment of the facts of the case, the Authority decides to investigate the case either as (1) a complaint over the conduct of the police officer, or (2) as a criminal case.

Cases regarding "complaints over conduct" are investigated and decided solely by the Authority, cf. Chapter 93b of the Administration of Justice Act (*Retsplejeloven*). When making a decision in a case, the Authority may criticize the conduct of the police officer in question, if it finds that his or her conduct was not in accordance with applicable rules. On the basis of this criticism, the employer of the police officer can decide to impose disciplinary sanctions, e.g. a warning or reprimand, depending on the severity of the criticism.

Cases regarding police conduct that may amount to a criminal offence are investigated by the Authority, cf. Chapter 93c of the Administration of Justice Act. After the investigation is finished, the case is passed on to the Regional Prosecutor, who ultimately decides whether to bring charges against the police person in question or not.

Thus – as in the case of complaints over prison personnel – the focus of the police complaints system is whether there is a basis for pursuing a criminal or disciplinary case against the individual police person, rather than whether there is state responsibility for inhuman or degrading treatment of the complainant. In the view of the Institute, the Authority does simply not currently have adequate legal basis to process cases distinctly related to inhuman or degrading treatment (unless such cases fall within the types of cases described above).

To summarize, the Institute is concerned that several incidents of inhuman or degrading treatment may take place that are not identified or effectively investigated, because

they fall outside the scope of the Danish system for handling complaints over police and prison personnel.

NHRI's recommendations to national and regional authorities

The Danish Institute for Human Rights recommends that:

- The Danish Government and Parliament amends the legal framework to require a court order when intelligence services use keywords to filter mass-collected information.
- The Danish Government and Parliament gives the Independent Police Complaints Authority a clear mandate to investigate and decide on cases regarding state-responsibility for inhuman and degrading treatment.

Estonia

The Chancellor of Justice

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 European Commission's 2023 EU Rule of Law report, two recommendations were highlighted for Estonia. One of them encouraged Estonia to advance efforts to ensure the consistent and effective implementation of the right of access to information, with consideration to European standards on access to official documents. The other recommendation focused on establishing an enforcement mechanism for guidelines concerning conflicts of interest.

In mid-October, the Ministry of Justice dispatched letter to various ministries and the Government Office, seeking input on potential revisions to the Public Information Act to assess the necessity for changes (see also the news "Justice ministry sounding out stakeholders on classified information rules change"). The letter was based on the goal agreed in the Action Program of the Government of the Republic to submit an analysis and possible proposals regarding the implementation of the Public Information Act by March 2024.

However, responses gathered by mid-November indicated a lack of interest among the agencies in enhancing the transparency of their activities. The majority of ministries provided explicit recommendations to restrict public access to information and broaden the scope for classifying documents from concerned parties (see, e.g., the news "Estonian ministries would like to restrict public access to many documents"). The

responses from the ministries drew intense criticism from the media, the Secretary of State, as well as experts, civil society representatives and researchers. Also, the Chancellor of Justice has repeatedly emphasised that public availability of public information should be the rule and classifying it as for internal use only, should only happen in exceptional circumstances.

As stated by the Ministry of Justice, the engagement of ministries in examining the practical implementation and challenges of the Public Information Act constitutes just the initial phase of the analysis and does not mean that the wishes of the ministries will become law. The plan is to include all key stakeholders in subsequent discussions, including representatives from the media, universities, and various interest groups. Following the completion of the analysis, a decision will be made on whether and how the Act will be modified. This decision is anticipated for the spring of 2024. See also the news "Ministry: Suggestions for increased confidentiality won't be directly incorporated into the bill.".

The Chancellor of Justice remains vigilant in monitoring developments concerning the Public Information Act.

With regard to the second recommendation, the Chancellor of Justice lacks information regarding the measures taken by the state to strengthen enforcement mechanisms for guidelines related to conflicts of interest. In Estonia, the Ministry of Justice is responsible for fighting and preventing corruption in cooperation with the police and other agencies and manages the pertinent information.

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

The Chancellor of Justice ensures the respect for the rule of law by monitoring societal developments and addressing petitions from individuals. The broad mandate of the institution enables an intervention when legislation conflicts with the Constitution or when the state unjustly restricts fundamental rights. Additionally, the Chancellor

oversees authorities' adherence to good administration principles in their interactions with the public.

During 2023, the Chancellor of Justice submitted 22 proposals and memorandums to the Riigikogu, ministries, and local governments, urging them to align legislation with the Estonian Constitution or initiate new legislative measures. The latter concerned, for example, the Chancellor of Justice's proposal to the former Minister of Health and Labour to establish legal regulations concerning patient restraint, as the existing regulations are insufficient and unclear. This problem has emerged during the Chancellor of Justice's inspection visits to health institutions, with medical professionals also raising concerns about the matter. Half of the proposals presented by the Chancellor of Justice have been implemented, with the rest still in progress.

The Chancellor did not submit any new requests to the Supreme Court for constitutional analysis in this reporting year but provided 13 opinions during ongoing constitutional review proceedings. These opinions covered various topics, including residence permit issuance, forensic psychology examination fees, police officers' pensions, nursing home expenses, and nature conservation property restrictions.

Besides, the Chancellor of Justice made 61 recommendations to the state and local authorities to adhere to the principles of legality and good administration. While generally acknowledged and implemented by the authorities, some recommendations requiring substantial reforms or additional resources await effective follow-up. For instance, following inspection visits to open prisons, the Chancellor of Justice observed and highlighted in the recommendation to the Ministry of Justice and the prisons that the severely restricted access to information and communication technology for inmates in open prisons hinders their reintegration into society. The Chancellor added that addressing this issue necessitates a systematic and comprehensive approach, it is not only a matter of law implementation practice. In response to the recommendation, the Ministry of Justice formulated amendments to the Imprisonment Act and other relevant laws, which were subsequently submitted to the Riigikogu for consideration.

Some matters brought to the attention of the Chancellor are being resolved in the course of the Institution's internal proceedings. In the previous year, a total of 38 such cases were reported. If an institution promptly adjusts its practices or rectifies unconstitutional provisions following the Chancellor of Justice's request for clarification or remarks, the proceedings have been considered concluded without formal proposals or recommendations.

The Chancellor of Justice also responded to inquiries from members of the Riigikogu regarding the correlation between the adoption of a law and a vote of confidence, as well as the Constitutional limits to the Riigikogu's paralysis as organised by the opposition. Additionally, the Chancellor explained procedural restrictions under the Anti-corruption Act to local government officials and submitted a corresponding report to the Legal Affairs Committee of the Riigikogu. The Chancellor also drew the attention of the Riigikogu to the issues related to the supervision of political party financing.

On its own initiative, the Chancellor's Office checked the organisation of Riigikogu elections for residents of general care homes who wish to exercise their right to vote, focusing on the secrecy and verification of identity documents during the voting process. While no significant violations of electoral law that would have provided grounds to challenge the election results were identified, some observations were made and sent to the State Electoral Office.

Furthermore, in its annual report for 2022/2023, the Chancellor of Justice dedicated a chapter to matters concerning the rule of law. The opinions of the Chancellor of Justice are also published on its website.

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

Unfortunately, not many positive developments can be pointed out in the areas of recommendations made by the Chancellor of Justice in the previous ENNHRI rule of law report.

The field of AI has seen positive efforts from both authorities and the media to educate the officials and the public about AI's risks and opportunities. However, domestic AI

regulation is still pending, awaiting the adoption of the relevant European Union and Council of Europe legislations.

After the Riigikogu elections in the spring, the proposed legislation for the state budget, designed to enhance the independence of the budget application process for constitutional institutions from the Government of the Republic, was put on hold due to the obstruction conducted by the opposition in the Riigikogu. Fortunately, this did not hinder the Riigikogu from approving the allocation of extra financial resources to constitutional institutions in their 2024 budgets.

Setbacks occurred in issues related to the separation of powers and the involvement of interest groups in the legislative process. The new Government of the Republic initiated significant tax and family benefits reforms without prior debate in the Riigikogu and without the involvement of representatives of society. The adoption of the draft legislation, which was followed by a vote of confidence in the government, led to extreme obstruction by opposition parties in the Riigikogu, causing a months-long paralysis of parliamentary proceedings and the initiation of related legal disputes in the Supreme Court. The outright obstruction in Riigikogu did not end until the beginning of 2024.

In the previous rule of law report, the Chancellor of Justice discussed the wish of various politicians and political parties to restrict the voting rights of citizens of the Russian Federation and Belarus in local government council elections. The Chancellor of Justice underscored that Article 156(2) of the Estonian Constitution extends the right to participate in local elections to individuals permanently residing within the local authority's boundaries and not exclusively to Estonian citizens. The Prime Minister Kaja Kallas, answering the Riigikogu members' questions, stated that the coalition wants to proceed with this issue and is analysing the possibilities of amending the Constitution accordingly.

Establishment, independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Chancellor of Justice was accredited with A-status in December 2020. 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 reappointment.

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 of the Chancellor of Justice, it is necessary to emphasize that the President of the Republic in Estonia is an independent, non-political institution, actively involved in ensuring a non-political process for the selection and appointment of the Chancellor of Justice. The law mandates specific criteria that the Chancellor's candidate must possess, including the necessity of having a law degree, demonstrating high moral character, and being an experienced and recognized lawyer in society. The candidate's personal impartiality must be beyond doubt. These criteria must be taken into consideration by the President.

The President usually consults all parliamentary political parties, the legal community and civil society before proposing a candidate to the Riigikogu. Individuals are also allowed to submit their candidacy freely. For the appointment as Chancellor of Justice, a candidate must secure a majority of votes in the Riigikogu. Since Estonia has a multi-party system necessitating the establishment of a coalition, the votes from several parliamentary parties and non-political agreement between the coalition and the opposition is necessary. Until now, candidates for the position of Chancellor of Justice have consistently garnered support from a wide range of political spectrum. Altering the process of appointing the Chancellor of Justice requires an amendment of the Constitution of Estonia. However, amending the Constitution is a highly exceptional decision that can be undertaken only in extraordinary circumstances.

Concerning the recommendation to promote the ratification of regional and international human rights instruments, the Chancellor of Justice interprets its mandate broadly and has provided practical recommendations accordingly. For instance, the Chancellor of Justice has suggested the State to ratify Optional Protocol 3 to the UN Convention on the Rights of the Child and has referenced international recommendations, general comments, and other human rights instruments in its opinions.

Regulatory framework

The national regulatory framework applicable to the Chancellor of Justice has not been changed since January 2023.

NHRI enabling and safe environment

The institution of the Chancellor of Justice has maintained a strong position in society, with its opinions and proposals being mostly well-regarded. Despite attempts by a right-wing populist party to diminish the role of the Chancellor of Justice and the courts in political debates, these statements have not found support from other political parties or wider society. The institution's strong position in society is underscored by research indicating the consistently high credibility of non-political constitutional institutions in Estonian society.

Additionally, towards the end of the preceding year, the Riigikogu decided to allocate extra financial resources to all constitutional institutions in their 2024 budgets, resulting in an €85,000 increase in the annual budget of the Chancellor of Justice.

NHRI's recommendations to national and regional authorities

The Chancellor of Justice urges state authorities to revise the State Budget Act, aiming to enhance the procedural independence of constitutional institutions, including the Chancellor of Justice, from the Government of the Republic.

Checks and balances

Separation of powers

Temporary obstruction in the Riigikogu

Following the parliamentary elections in the spring, a new coalition government assumed office and promptly initiated tax reforms and reduction of benefits for families with many children. As mentioned previously, the coalition implemented these changes in the Riigikogu through a vote of confidence in the government, thus bypassing discussions in the Riigikogu, with the interest groups and society. This approach sparked

public outrage and active obstruction in the Riigikogu until the end of 2023, effectively halting the regular work of the Riigikogu for six months and attempting to prompt extraordinary elections.

As the Board of the Riigikogu started to employ organizational measures to overcome the obstruction, representatives of the Riigikogu opposition parties appealed to the Supreme Court. The court ruled that the rights of the applicants were not violated, affirming the authority of the Board of the Riigikogu to implement organizational measures to restore normal operations in case of obstruction. The Supreme Court also clarified that, not only excessive obstruction but also, the frequent connection between bills and a vote of confidence in the government can neutralize the Riigikogu.

Furthermore, the Chancellor of Justice had to clarify legal issues related to votes of confidence and obstruction multiple times, both in the media and to members of the Riigikogu and other applicants. The Chancellor of Justice condemned the non-inclusive approach adopted by the new coalition and other violations of the rules of procedure and explained that the paralysis of the Riigikogu's work threatens the constitutional order.

Financing and supervision of political parties

In connection with the general elections, the Chancellor of Justice also drew attention to the shortcomings of the supervision over financing of political parties and the failure of the previous Riigikogu and the Government to address enduring issues in this area. Efforts were made two years ago with the aim to establish a more effective basis for the Political Parties Financing Surveillance Committee to oversee party financing around the 2023 Riigikogu elections. However, despite the potential benefits of fair competition and overall political party credibility, these initiatives stalled due to political deadlock.

Although funding oversight works effectively in regulated areas, parties exploit the so-called grey area for a competitive edge. A prominent example involves promoting a political worldview through non-partisan associations, capitalizing on activity patterns and preferences of voters. Though parties acknowledge these affiliated organizations

and even complain about them, the law doesn't mandate their registration or supervision. Consequently, legally, partisan affiliates don't officially exist in Estonia. This situation deliberately creates unsolvable challenges for supervisory bodies, it not only undermines their credibility but also tarnishes the reputation of political parties and the broader functionality of Estonia's constitutional democracy.

Adoption of state budget

In addition to the aforementioned topics, the Chancellor of Justice has highlighted concerns related to the adoption of the state budget. According to § 115 of the Estonian Constitution, the Riigikogu is responsible to take decisions on state revenues and expenditures. The essential requirement to fulfil this constitutional duty is the Riigikogu's ability to ascertain for what expenses and for what purpose it authorizes the Government of the Republic to use the money. The Parliament must also have the opportunity to correct the budget before it is adopted and, later to check how the funds have been used. Unfortunately, the shift from a cost-based budget to an activity-based budget has complicated the general comprehension of the state's planned expenses, leading to a significant transfer of decision-making power over the state budget from the Riigikogu to ministers, which is not in accordance with the Constitution.

Access to information

While there has been extensive media discourse on the accessibility of public information in recent years, the Chancellor of Justice has received only a few petitions on the matter. This is likely because the Data Protection Inspectorate is the primary supervisory authority in the field.

Above all, the role of the Chancellor of Justice has been to clarify the obligations of authorities and the rights of individuals arising from the Public Information Act. In 2023, for instance, the Chancellor of Justice responded to a query from a member of the Riigikogu regarding the activities of the Ministry of Education and Research in restricting access to information.

Independence and effectiveness of independent institutions (other than NHRIs)

Data Protection Inspectorate

In the previous reporting period, several complaints were lodged with the Chancellor of Justice regarding the activities of the Data Protection Inspectorate. Issues included the Inspectorate's failure to respond to applications and unlawful extensions of deadlines. Since the Inspectorate justified the situation by a lack of resources, and the delay in responses indicated that this critical situation had been going on for a long time, the Chancellor urged the Inspectorate and the Ministry of Justice to collaboratively address the problem. As a positive result, the Inspectorate received additional money in its annual budget to increase salaries as well as recruit new staff.

Gender Equality and Equal Treatment Commissioner

In mid-February 2023, Christian Veske assumed office as the new Gender Equality and Equal Treatment Commissioner, having been selected through an open competition in December 2022. A notable feature of this selection process was the evaluation of the candidates by a diverse expert committee, comprising representatives from various target groups. Led by the Secretary-General of the Ministry of Social Affairs, the committee included members from the Estonian Chamber of Disabled People, strategic partners in the realms of equal treatment and gender equality, the Office of the Chancellor of Justice, the Top Civil Service Excellence Centre of the Government Office, and the Gender Equality Council of the Ministry of Social Affairs.

An encouraging trend worth noting is the consecutive increase of the budget allocated to the Gender Equality and Equal Treatment Commissioner in both 2023 and 2024. The Office of the Gender Equality and Equal Treatment Commissioner is staffed by six people.

Enabling environment for civil society and human rights defenders

There have been minimal instances of SLAPPs in Estonia, but a significant case emerged in 2023. The so-called "eastern transport" scandal unfolded in August when the Estonian Public Broadcasting reported that Stark Logistics, a transport company partially owned by Arvo Hallik (husband of the Prime Minister Kaja Kallas), continued its

operations in Russia, contravening the principles of the Government's guideline. This guideline, introduced by Kallas in December 2022, prohibited Estonian state-owned enterprises from conducting business with Russia. It was also alleged that Kallas provided a €350,000 loan to her husband's holding company, Novaria Consult, which held a 24.8% stake in Stark Logistics.

In an article, published in the newspaper Eesti Päevaleht, Valdar Parve analysed the source of Kallas' loan to Hallik and questioned whether it aimed to profit from Russian business. The article presented a metaphorical pun suggesting Hallik's secret ownership in Kallas' business. In response to the article, Arvo Hallik filed €1,500 damages claim and received an apology along with the money.

Critics, including journalists and lawyers, strongly condemned the lawsuit, labelling it as a SLAPP case.

NHRI's recommendations to national and regional authorities

- The Chancellor of Justice advises authorities to uphold the principle of separation of powers and support robust independent institutions.
- Additionally, the Chancellor recommends the state and local authorities enhance collaboration with civil society and professional organizations in shaping policies and laws.
- Furthermore, the Chancellor suggests that the Riigikogu create a more effective foundation for the Political Parties Financing Surveillance Committee to oversee party financing.

Impact of securitisation on the rule of law and human rights

In its annual activity report for 2022/2023, the Chancellor of Justice expressed concern that the restriction of fundamental rights with the pretext of extraordinary circumstances has become more and more prevalent. Previously, this was driven by the terrorist threat, then economic collapse, followed by the pandemic. Currently it seems that the next major threat to human rights and constitutionality will indeed arise because of the

noticeable wider public's consent to violating the Constitution in the interests of security and safety. Even when a restriction is warranted, it is occasionally enforced without preceding public discussions or, at times, in contravention of the law.

One such example concerns the expansion of the Nursipalu military training area. The Russian aggression against Ukraine has prompted the necessity to enlarge the military training area of Nursipalu in Võru County. The Chancellor clarified that, as per § 32(1) of the Constitution, the state can acquire land suitable for Defence Forces training, including through expropriation. However, even in situations of security risk and exceptional circumstances (§§ 3, 10, and 13 of the Constitution), adherence to the law is imperative when expanding a training area and acquiring land. If the state dispossesses someone of their home in the public interest, fair and constitutional compensation must be sufficient to obtain an equivalent dwelling.

The state neglected to utilize legal options for expanding the Nursipalu training area, such as initiating national spatial planning or planning proceedings. This failure resulted in a lack of clarity regarding the reasons, necessity, and legal basis for the expansion, leaving many people uninformed. Eventually, the Riigikogu helped to speed up the geographical expansion by amending the Weapons Act. This amendment introduced an exceptional provision allowing the Government, based on a risk assessment proposal by the Minister of Defence, to decide to establish or expand a training area without spatial planning proceedings. The amendment also brought the possibility for individuals to submit proposals and objections in open proceedings under the Administrative Procedure Act.

The Chancellor concluded that the provisions added to the Weapons Act align with the Constitution. Although the Planning Act doesn't apply to the exceptional establishment or expansion of a training area, individuals have now the opportunity to participate in proceedings, express their opinions, and contest the order in an administrative court.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

Based on her mandate, the Chancellor of Justice has analysed the compliance of laws with the Constitution and the legality of the actions of authorities and made proposals and recommendations accordingly. The submission of reports and memoranda to the Riigikogu and other institutions and the work of expressing opinions in the media have also been an important part of the work of the Chancellor of Justice.

NHRI's recommendations to national and regional authorities

The Chancellor of Justice emphasizes that the principles arising from the Constitution must be followed even in times of crises.

Implementation of European Courts' judgments

Emphasizing a positive advancement in the enforcement of decisions from earlier reporting periods, one can highlight the Supreme Court's reliance on judgments from the European Court of Human Rights (ECtHR).

For instance, the Supreme Court, drawing on the ECtHR ruling in the Kalda v. Estonia case, orchestrated a shift in case law regarding a short meeting with the spouse in a prison without a glass partition (case no. 3-15-1781). The Supreme Court ruled that the prison's decisions were unlawful regarding the petitioner's requests for a short meeting with their spouse without a glass partition. The court also emphasized that the prison has discretion in reviewing such applications and that any denial must be fully justified.

The observations of the Chancellor of Justice have also proved that the respect for the rights of children of prisoners in domestic court rulings seems to have increased, possibly influenced by the Deltuva v. Lithuania case. In this case, the ECtHR asserted that decisions involving children must prioritize their best interests and that children have the right to maintain regular and ongoing contact with a parent in prison.

In the 2021 case of R.B v. Estonia, the ECtHR found that Estonia had violated Articles 3 and 8 of the Convention for failing to ensure the protection of children's rights during

criminal proceedings. The ECtHR stressed the importance of safeguarding children's testimonies in both pre-trial and trial processes, emphasizing that child-friendly measures should not undermine the weight of their statements without compromising the right to a fair trial. The Court ascertained the state's failure to advise the 4-year-old child of her duty to tell the truth and her right not to testify against her father, leading to the exclusion of her testimony and father's acquittal of sexual abuse merely the strict application of procedural law. The ECtHR identified significant flaws in the state's response, citing a lack of consideration for the complainant's special vulnerability as a young child and the necessity to provide effective protection for her as an alleged victim of sexual crimes.

After the judgment of the ECtHR, the representative of the Chancellor of Justice alerted Ministry of Justice officials to the need to analyse the adequacy of protection for child victims in criminal proceedings. The Chancellor of Justice also made a similar recommendation to the state in the 2023 report submitted to the UN Committee on the Rights of the Child. Yet, the required analysis remains outstanding. However, one positive aspect to highlight is that prosecutors affirmed in the Estonian Public Broadcasting program "Pealtnägija" in March 2023 a shift in their practices following the ECtHR decision. They assured that they now inform all children, regardless of age, about their duty to tell the truth and their right not to testify against close relatives. Nevertheless, they also acknowledged the challenge of explaining these rights to 3-4-year-old children and expressed uncertainty about whether children comprehend their meaning.

In 2023, the ECtHR issued three judgments that identified violations of the principles outlined in the Convention by Estonia.

In the case of Schmidt and Šmigol v. Estonia, applicants challenged the consecutive enforcement of disciplinary punishments resulting in prolonged periods of solitary confinement in Viru Prison, alleging a violation of Article 3 of the Convention. The Court found that the practice of using solitary confinement as a disciplinary measure for long

and consecutive periods is incompatible with Art 3, save for exceptional circumstances and as a measure of last resort, and ruled in their favour.

The Tepljakov v. Estonia case revolves around the conditions of detention in the Pärnu Arrest House, where the applicant experienced varying periods of pre-trial detention between August 2016 and December 2018. The European Court of Human Rights found violations of both Article 3 and Article 8 of the Convention.

At the time of writing of this report, the judgments had not entered into force yet.

In the case of I.V. v. Estonia, the ECtHR unanimously found a violation of Article 8 of the Convention. The case involved a father's attempt to contest the adoption of his biological son by another man in Estonia, amidst paternity proceedings in Latvia. The Court concluded that the Estonian authorities had failed to strike a fair balance between the interests of the applicant and his son in both the adoption proceedings and subsequent attempts to annul the adoption. However, the ECtHR did not find it necessary to annul the adoption, recognizing that such a measure would not be in the best interests of the child. The Court also refrained from requiring any modifications to current laws.

Overall, it should be noted that Estonia faces no challenges in compensating damages. The greater difficulty lies in implementing court decisions when it involves the introduction of new regulations, administrative practices, large investments, or substantial reforms.

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

In Estonia, different state institutions are responsible for handling the substantive implementation of the European Courts' judgements. The role of the Chancellor of Justice does not involve a direct overseeing the execution of the judgements by Estonian authorities. Nevertheless, through her actions, the Chancellor has played a part in their effective implementation, particularly by consistently citing court rulings in its proposals and recommendations to the authorities.

For instance, in the reporting year, the Chancellor of Justice referred to the decision of the ECtHR in the case of Jankovskis v. Lithuania in its opinion to the Supreme Court on the use of information and communication technology in prisons.

In the report of the visit to Tartu Prison, the Chancellor of Justice criticized the arrangement of short-term meetings where the inmate and their family and children are generally separated by glass booths. The Chancellor emphasized that such separation, without clear justification, has been consistently condemned by the European Court of Human Rights (e.g., the decision in Kalda v. Estonia, paragraphs 6-7).

The Chancellor of Justice has also cited judgments of the European Court of Human Rights in her recommendations and proposals, such as those regarding the quality of health treatment and strip searches in prisons, the prisoner's obligation to work, the reduction of family benefits, the holding of a public meeting and public event on property given for public use, and the legal recognition of same-sex partners, among other things.

NHRI's recommendations to national and regional authorities

Ensure effective substantive implementation of the rulings from the European Courts.

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

Electronic voting in elections

Based on the Supreme Court's judgment, which concerned the reliability of the electronic voting system, the Chancellor of Justice alerted the Riigikogu to the necessity of enhancing the regulation of electronic voting in elections. The legislator holds the responsibility to establish thorough regulation in election laws, addressing critical aspects of elections to maintain control and public trust. Organizational, procedural, and substantive law requirements are essential for achieving this goal. The current reliance on subordinate acts (e.g. regulations, orders, or guidelines) for defining electronic voting rules may pose challenges in obtaining a comprehensive understanding of these regulations.

Local government engagement with interest group

In 2023, the Chancellor of Justice primarily focused on local governments in relation to their engagement with interest groups.

For instance, when analysing a petition submitted to the Chancellor, it appeared that the Tartu Rural Municipal Council had failed to follow the public involvement requirements in place when organising a public event. The Chancellor explained to the Municipal Council that the authorization of a public event is an administrative procedure, requiring the involvement of individuals whose rights or duties may be affected. This discretionary decision must align with the limitations of authorization, the purpose of discretion, and general legal principles, considering relevant facts and legitimate interests. Therefore, the rural municipality government, in its decision-making, must consider the interests of residents living near the event and the related impacts on them. The Chancellor also addressed similar issues with the Haapsalu City Government.

Another issue concerned the involvement of the residents of the municipality in the preparation of the budget strategy. The Chancellor clarified to the Kuusalu Rural Municipality Government that, according to the Local Government Financial Management Act, budget strategy preparation, processing, adoption, and publication must adhere to the guidelines in § 37^2(5) of the Local Government Organisation Act. This provision explicitly mandates the organization of public debates by the rural municipality and city government during the formulation of budget strategies. While local authorities have the flexibility to determine the debate's format, it's crucial to distinguish between the right to submit proposals and an actual public debate. The latter necessitates justifying objectives and choices in the budgetary strategy, along with an overview of expressed opinions. Participation and discussion in public debates extend to everyone, surpassing the submission of drafts to authorities and their affiliated agencies.

NHRI's recommendations to national and regional authorities

The Chancellor of Justice emphasizes the importance for state authorities to:

- Maintain strong independent institutions and civil society.
- Guarantee the conformity of laws with the Constitution and international agreements.
- Safeguard the right to good administration.

Finland

Finnish Human Rights Centre (FHRC) and its Human Rights Delegation (HRD), Parliamentary Ombudsman

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

As recommended by the European Commission in its 2023 Rule of Law Report – a country chapter on Finland, the previous and current Government have taken steps towards the development of the justice system. Appointed in February 2023, a new working group (titled 'Rule of Law Guarantees and Development of the Judicial System', in Finnish 'Oikeuslaitostyöryhmä') is - by 2027- set to deliver its proposals pertaining to the future of the administration of justice in Finland. However, proposals by the same working group for constitutional changes regarding strong independence of the judiciary are due already by the end of February 2025. Based on the 2022 Government report on the Administration of Justice, the working group can also be expected to tackle surmounting problems concerning the length of the judicial proceedings, high cost of trials and underfunding of the justice system.

In October 2023, the working group, which is divided in 6 subgroups, published its work plan which includes approximately 140 action points, ranging from procedural improvements to crime victims' general standing, to changes in the court system structure, the Constitution or entire legislation concerning migration and to improvement of the public trust in the authorities. One of the action points is to assess

the system of lay judges, to which the European Commission paid particular attention in its 2023 report.

Alongside with the long-term goals to improve independence, efficiency and quality of the justice system, the Government aims to increase the resources of the administration of justice gradually. In its statement, the Parliamentary Committee on Legal Affairs welcomed this additional funding, which will strengthen personnel resources, thereby reducing backlogs and shortening processing times. However, the Committee was also concerned that according to the Government's fiscal plan, there will be operational cost savings allocated to the Ministry of Justice's main budget category starting from 2025, totalling approximately 18 million euros by the end of the budget period. The Committee considered it important that, in order to meet possible savings obligations, adjustments in operations or reductions in resources should not be directed towards personnel resources of various actors in the administration of justice.

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

As the work to develop the administration of justice in Finland is currently ongoing, the Finnish National Human Rights Institution (hereinafter: FNHRI) continues to monitor Government's actions and progress in this field. Information will be entered to the Finnish Human Rights Centre's (FHRC) online database, which contributes to the FHRC's statements, reports and initiatives regarding rule of law. The Finnish Human Rights Centre's Human Rights Delegation has also issued a statement on its key priorities for the Government's programme 2023–2027, highlighting structural problems such as the length of court proceedings and reminding that resources of the justice system need to be ensured.

In relation to the courts, the Parliamentary Ombudsman gave his statement to a memorandum drafted by the Ministry of Justice. The memorandum explores the option to reduce the composition of administrative court judges from three to two judges. The

Ombudsman considered it important that the three-judge composition should remain as the general rule in the legislation. Referring to statements by the Parliament's Constitutional Law Committee, he noted that three-judge compositions contribute to a more multifaceted review and strengthen legal protection.

The Parliamentary Ombudsman also gave the Ministry of Justice a statement relating to the report on the selection procedure for lay judges. The Ombudsman emphasised that the appointment of lay judges has been for several years one of the issues on the Ombudsman's list of 10 most significant fundamental rights problems in Finland. In the Ombudsman's view, taking into account the separation of powers as well as the independence of the judiciary, it seems quite clear that politicians should not be involved in the selection of lay judges at all despite the political nature of the subject. The Ombudsman concluded that the rationale for maintaining the lay judge system should be critically reassessed.

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

Relating to one of the FNHRI's recommendations, the Finnish Human Rights Centre is closely monitoring whether the new Government upholds and strengthens the rule of law and human rights in its domestic, foreign and security policy. As elaborated further in this report, hate speech and targeting of human rights actors, journalists and academics is an increasing concern in Finland.

Government's planned or already realised measures aiming to maintain or increase security also pose questions to the realisation of human rights and rule of law. These measures include the closing of Finland's eastern land border, explained later in the report. Moreover, the Government stated, in the programme published on 20 June 2023, that it will examine the practices, measures and effectiveness of the Danish approach to combating gang and organised crime. The Minister of the Interior has stated that the 'Danish approach' includes granting extended 'stop and search' powers to the police in designated areas to combat juvenile delinquency and gang crime. In the

public discourse, the phenomenon of juvenile delinquency and gang crime is associated with immigrant youth. FHRC notes that Government plans carry a high risk of ethnic profiling.

In light of these developments, comprehensively developing and strengthening existing human rights structures, which consist of the two supreme guardians of the law (Chancellor of Justice and Parliamentary Ombudsman), the NHRI, several specialised ombudsmen and the Non-Discrimination and Equality Tribunal, is ever more topical in Finland. The new Government presented in its programme a few initiatives related to some of these actors, mostly focusing on the identification of possible overlaps (see also the report's section on NHRI and follow-up to SCA's recommendations) and the aim of creating savings.

One of these initiatives reads as follows: 'The Government will examine the duties of specialised ombudsmen to identify possible overlaps and any potential for savings in this respect.' Based on the initiative, the Government decided to move forward with a legislative proposal discontinued by the previous Government due to lack of funding. According to the new act (adopted in December 2023), a new agency will be created, and start its work in 2025. Certain administrative services previously provided by the Ministry of Justice to the specialised ombudsmen and some other authorities are transferred to the agency. The legislative tasks, powers, and independent status of the ombudsmen will remain unaffected.

One of the objectives of the new act is to free capacity for substantive work of the authorities. While this is welcome, the FNHRI does not see that the structural independence of these actors from the Ministry of Justice will be increased by creating a separate administrative agency (see statements by the FHRC and Parliamentary Ombudsman). The Ministry will still be in charge of procedures relevant to the independence of the ombudsmen, including results-based management. In addition, the FHRC has argued that the establishment of a new agency should not under any

circumstances lead to a decrease in resources allocated to the specialised ombudsmen's tasks.

Establishment, 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 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. 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

In March 2023, the Finnish Human Rights Centre and the Parliamentary Ombudsman met with representatives of the Ministry of Justice to discuss on changes to the Parliamentary Ombudsman's Act. The proposed changes included, as recommended by SCA:

- Explicitly stipulate the structure of the FNHRI
- Right to submit Finnish Human Rights Centre's report to the Parliament

During the spring 2023, the Ministry of Justice provided its proposals for the new Government's programme. One of the proposals was titled 'Strengthening the National Human Rights Institution'. The Ministry suggested that the need to strengthen and clarify the status and tasks of the FNHRI would be assessed.

Following the Parliamentary elections, the Finnish Human Rights Centre submitted information to the negotiations on the new Government's programme. As part of its statement (available by request), the FHRC highlighted that the possibility to submit a report by the Centre on the state of fundamental and human rights in Finland could result in more systematic discussion on human rights at the Parliament. Several NGOs have also suggested this possibility for the FHRC in their joint proposals for the Government programme.

In the adopted Government's programme it is stated that '[t]he division of tasks between the national human rights institutions (the Human Rights Centre, the Parliamentary Ombudsman and the Human Rights Delegation) will be clarified in order to eliminate overlaps.' The FNHRI would again like to underline that there is only one NHRI in Finland, composed of the Finnish Human Rights Centre, its Human Rights Delegation and the Parliamentary Ombudsman. As mentioned above, each part of the

FNHRI have separate tasks according to the law. At the time of writing this report, FNHRI didn't have information on the implementation of this Government objective or the planned timeline for it.

Regulatory framework

There have been no changes in the regulatory framework of the Finnish NHRI since January 2023.

NHRI enabling and safe environment

FNHRI has been able to conduct its tasks independently and effectively. Nevertheless, the institution is closely monitoring the general atmosphere regarding other human rights actors who have legislative tasks to promote, monitor and/or protect different human rights. Hate speech towards the actors, especially those who actively engage in societal debates as part of their duties, is more and more common (see the chapter on checks and balances below for more information). As part of its work on foresight and resilience, the Finnish Human Rights Centre is considering threats related to the hardening attitudes on human rights.

Concerning resources of the FNHRI, the Finnish Human Rights Centre's and the Parliamentary Ombudsman's budgets increase for the year 2024. For the years 2025–2027 budget cuts are expected but are in line with the Government's general aim to produce savings in the State's economy. The NHRI is not specifically targeted by these cuts and its functioning is not impacted by them.

When it comes to the FNHRI's access to legislative processes, some improvements are required. Especially the possibility to engage in the national consultation of draft EU legislation impacting on human rights or human rights actors requires proactiveness from NHRI. On some occasions, the information on the consultation has been discovered only afterwards through Government's communication to the Parliament (so called 'U-letters').

NHRI's recommendations to national and regional authorities

- The three components (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.
- Finnish Human Rights Centre should have the mandate to table its reports to the Parliament for discussion.
- FNHRI should have better access to the national consultations of draft EU legislation impacting on human rights or human rights actors.

Checks and balances

Separation of powers

The role of the parliamentary Constitutional Law Committee in reviewing human rights compliance of governmental legislative propositions

The role of the parliamentary Constitutional Law Committee in ensuring in advance that laws comply with international human rights agreements has raised some concerns, especially when it has assessed the Government's legislative proposals aimed at implementing its social welfare cuts policy. (See for example Government's proposal HE 73/2023 vp and proposal HE 75/2023 vp.) These legislative proposals entail significant reductions in benefits and index freezes, with their impacts largely affecting the most vulnerable segments of the population.

In its statements regarding the proposals, the Constitutional Law Committee emphasised, referring to its previous statements, that states having ratified the European Social Charter are committed to protecting the social and economic rights defined in the treaty. Furthermore, Finland has committed to the Additional Protocol to the Charter on the system of collective complaints. The Constitutional Law Committee reiterated its very serious approach to the observations made in the monitoring practice of the European Social Charter. In the Committee's opinion, the Government should

promptly initiate a thorough examination of the matter. (See Statement of the Constitutional Law Committee PeVL 15/2023 and Statement of the Constitutional Law Committee PeVL 16/2023.) There isn't, however, any other mention in these statements of human rights and no analysis of the implications of the proposed legislation to the implementation of those rights. According to academics, the Committee has in its deliberations also failed to consider the principle of non-retrogression.

It is equally important to note that Finland has received several observations and recommendations from human rights bodies on shortcomings regarding social rights, especially inadequacy of the level of social security. (See UN Committee on Economic, Social and Cultural Rights and European Committee on Social Rights.) Considering these observations, and the role of the Constitutional Law Committee, a thorough analysis of the human rights implications of the proposed legislation by the Committee would have been appropriate.

Possible need to amend the Section 106 of Finland's Constitution

The discussion on the need to amend Section 106 of the Finnish Constitution is still ongoing in Finland. According to the Section, courts have the duty to refrain from applying a provision of a law if it is in obvious conflict with the constitution. However, the requirement of a manifest conflict may have set the threshold of the application of Section 106 too high. The working group on 'Rule of Law Guarantees and Development of the Judicial System' set up by the Ministry of Justice for the years 2023–2027 has suggested the removal of the requirement of obviousness to be considered as part of its work plan. The Finnish Human Rights Centre has published a report on the matter in 2021.

The process for preparing and enacting laws

To afford decision-makers and stakeholders a holistic picture on the impacts of proposed legislation, the Government and the Ministry of Justice have in 2023 issued updated guidelines concerning impact assessments in law drafting, including human

rights impacts. According to the guidelines, for successful assessment, concrete impacts should be analysed with the help of empirical assessment methods, where focus is drawn to the practical realisation of human rights in people's every-day lives. This includes impacts on poverty, unemployment, or the health of the populace. Consequently, while assessing the compliance of bills with constitutional norms and international human rights obligations remains essential during the drafting process, legalistic scrutiny alone is insufficient for a properly conducted human rights impact assessment.

Although featuring prominently in the Government's guidelines, meaningful impact considerations relating to human rights appear quite sporadically in the actual drafting. Measures have been taken to educate drafters on human rights implications, although time constraints and deficient resources allotted to drafting remain recurring concerns.

Neglecting human rights during law-drafting in favour of political expediency is thus a concern that warrants attention in Finland. Stringent, politically set timetables have hampered stakeholders, including human rights and civil society actors' capability to provide input, despite their consultative and vital role in the drafting process. At worst, impacts are so defectively assessed that the stakeholders are left to draw their own conclusions on impacts. Coupled with political urgency, this is often not only practically unfeasible but also constitutes rather undue delegating of state responsibilities, in terms of rule of law. Alarmingly, stakeholders have been given as little as five days to provide consultative inputs on major Government proposals, instead the usual recommended minimum of 6–8 weeks.

The abovementioned was witnessed with the Government's proposals concerning major revisions in social security (considered also in the chapter above). As noted by the Finnish Council of Regulatory Impact Analysis in October 2023, human rights impacts were meagrely assessed during the process despite numerous proposed austerity measures on unemployment benefits, housing benefits and social assistance. Further troubling was the way how the Government primarily conducted its impact assessment

individually for proposed changes, ending up ignoring many disadvantages the bills will cumulatively signify in terms of human rights realisation, once enacted. Pertaining to these proposals, the Finnish Human Rights Centre has forwarded its criticism to the parliamentary Social Affairs and Health Committee, commenting the lacking and occasionally misleading nature of the assessments on socio-economic impacts to the poorest section of the population, i.e. those most adversely affected by the proposals.

Independence and effectiveness of independent institutions (other than NHRIs)

As described in other sections of the report, different human rights actors face more and more inappropriate criticism when conducting their legislative tasks. Taking into consideration these developments, the Finnish Human Rights Centre has undertaken several initiatives.

The Human Rights Delegation of the FHRC provides a forum of exchange for different human rights experts representing independent authorities, civil society, academia and businesses. Permanent members to the Delegation include both supreme guardians of the law and all specialised ombudsmen. In September 2023, the Finnish Human Rights Centre organised a retreat for the Delegation members with discussions on several topical issues, such as polarisation in the society and its consequences. The idea was to share experiences and consider possible actions by human rights actors.

In addition, the Human Rights Delegation has been involved in the foresight work of the Finnish Human Rights Centre. In April 2023, the Delegation members participated in small workshops where different scenarios for 2040 prepared by the Centre were discussed. The participants elaborated further the impacts of different scenarios on the realisation of human rights and reflected on how to prevent or support certain developments. The workshops provided the members with an opportunity to apply foresight-based thinking and share comments on the scenarios. The FHRC hopes that its work on foresight, and at more concrete level on resilience, can also benefit other human rights actors in better preparing to possible threats.

Enabling environment for civil society and human rights defenders

Protection mechanism for human rights defenders still lacking

The development of a mechanism for protection of human rights defenders has not proceeded during 2023. The previous Government started preparing a humanitarian visa for human rights defenders, activists and journalists, but whether the initiative will proceed under the new Government is unclear. In October 2023, the Finnish Human Rights Centre highlighted in a statement submitted by its own initiative to the Parliament's Foreign Affairs Committee, that a permanent mechanism for the protection of human rights defenders is needed and resources for its development should be granted. The need for EU member states to improve access to visas for human rights defenders has also recently been highlighted by the UN Special Rapporteur (SR) on the situation of human rights defenders. During a visit to Finland in September 2023, the SR discussed this topic with the FHRC's Human Rights Delegation.

It also to be noted that in March 2023, the National Union of Students in Finnish Universities of Applied Sciences (SAMOK) and the National Union of University Students in Finland (SYL) established a Students at Risk association, with a grant from the Ministry of Foreign Affairs. The aim of the association is to offer students with the opportunity to continue studies at a Finnish higher education institution if in their home countries they are denied the right to education or other human rights due to their activities as human rights defenders. This is a very welcome initiative, but the Finnish Human Rights Centre will continue to advocate for a broader and more permanent national protection mechanism for human rights defenders.

Precedent by Supreme Administrative Court exposes journalists to unreasonable financial risks

In December 2023, Finland's Supreme Administrative Court gave a ruling which raised concerns about journalists being exposed to significant financial risk because of their work. According to the Court's ruling, financial aid paid by employers to support

journalists facing legal charges is taxable income. The ruling related to the case reported about last year, where two journalists were found guilty of disclosing state secrets in an article published in the newspaper Helsingin Sanomat in 2017.

Finland's Association of Editors, The Council for Mass Media in Finland, The Finnish Media Federation, and The Union of Journalists in Finland have stated that the decision could reduce investigative journalism, lead to self-censorship by reporters and have a similar effect as SLAPPs, with journalists being subjected to an unreasonable financial burden because of their work. In the case in question, the legal fees amounted to more than two million euros, which as taxable income means that the journalists would have to pay hundreds of thousands in taxes. The ruling does not only concern journalists and the media sector, and similar issues could arise also in other fields of work.

Whereas the employer in the present case decided to compensate the additional tax costs to the journalists, the ruling nevertheless poses a dangerous precedent and has provoked calls for amendments in the tax legislation.

NHRI's recommendations to national and regional authorities

- Commit to properly conducted and systematic human rights impact assessments in law drafting by allocating sufficient personnel and time resources for it and by ensuring meaningful stakeholder consultation;
- 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.

Impact of securitisation on the rule of law and human rights

Following the 2022 amendment to the Border Guard Act, the Government can decide on the centralisation of asylum applications to one or more border crossing points in a situation where there is information or reasonable suspicion on instrumentalisation of migration. This amendment was applied for the first time in November 2023 due to

information and observations by Finnish authorities that Russian actors had started facilitating the arrival of migrants to Finland's eastern land border.

The Chancellor of Justice oversees the legality of actions by the Government. In accordance with his mandate and with access to classified intelligence information, the Chancellor (or his deputy) provided their legal opinions to the Government in this case. When the Deputy Chancellor of Justice stated on 21 November that there were not sufficient legal grounds to close all eastern land border crossing points at that stage, he was publicly criticised by some members of the parliament (see here and here). One of the MPs belonging to the party represented in the Government speculated on the possibility to dismiss the Deputy Chancellor of Justice.

After the Minister of Finance had expressed dissatisfaction to the Deputy Chancellor's decision in her blog, the Prime Minister had to underline that members of government shouldn't assess the actions of guardian of the law. According to the Minister of Finance, the Deputy Chancellor of Justice had considered the border situation from the perspective of access to asylum even though, in her opinion, national security should be prioritised.

Due to the discussion surrounding the situation of suspected instrumentalisation of migration, the FNHRI is concerned that certain politicians have questioned the system of checks and balances. The President of the Supreme Administrative Court has brought forward similar concerns. He considered demands to dismiss the Deputy Chancellor of Justice as dangerous because the Deputy's position did not please some political decision-makers.

Similarly, the juxtaposition of national security and Finland's international human rights obligations seem to have taken up more and more space in the political discourse. In December 2023, the Prime Minister stated that the possibility to return asylum seekers in certain situations back to Russia without considering their applications should be further explored as part of different means to respond to developments at the border.

Already before that, following Finland's decision to temporary close all eastern land border crossing points on 30 November, the Council of Europe Commissioner for Human Rights had sent a letter to the Minister of the Interior. The Commissioner highlighted that full closure could potentially violate the principle of non-refoulement and prohibition of collective expulsions and requested additional information on how Finnish authorities deal with persons who irregularly enter Finnish territory and try to seek asylum.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

As explained above, in this case the Chancellor of Justice has been the key rule of law and human rights actor due to his task in providing independent legal opinions for Government's decision-making. As part of its mandate, the Finnish Human Rights Centre has been monitoring the situation at the eastern border, including Government's actions and discussion related to them. The FHRC has discussed with and shared information to regional stakeholders such as FRA and its Justice, Digital and Migration Unit and Frontex's Fundamental Rights Office.

After the closure of crossing points on 30 November the Parliamentary Ombudsman received around 50 complaints about the closure. The complaints were not investigated based on the fact that the Chancellor of Justice had given his opinion on the legality of the closure. There were indications that the complaints were coordinated between the complainants.

NHRI's recommendations to national and regional authorities

- Protect non-refoulement and other non-derogable rights such as the prohibition of torture and inhuman or degrading treatment or punishment in all circumstances, including changing security contexts.

- To ensure genuine consolidation of national security interests and human rights, thoroughly pre-assess human rights impacts and risks of relevant draft legislation and Government's and other authorities' decisions aiming to enhance security.
- Strengthen and support the independence of human rights actors who oversee and monitor the actions of the Government and ensure their resources.

Implementation of European Courts' judgments

At the end of 2023, Finland had 6 judgments from the ECtHR pending implementation (2 leading judgments). During 2023, the Government managed to close 12 cases, of which 7 were leading cases, mainly by providing missing information on the implementation status.

One of the leading judgments and the remaining 4 repetitive judgments pending implementation concern *ne bis in idem* problematic, violation of the right not to be punished twice, as the applicants were subject to both criminal and administrative taxation proceedings concerning partly or entirely the same facts.

One of the leading cases, X. v. Finland (application no. 34806/04) was examined under enhanced procedure before the Committee of Ministers. The case 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 had not fully taken place, more than 10 years on. The Committee of Ministers examined the status of implementation and reasons for its delay in December 2021 and March 2023. The case was examined again in March 2024 and based on the updated action report provided by government, the Committee of Ministers considered that Finland had taken the necessary measures to give effect to the judgment.

Two further complaints on the same issue (E.S. v. Finland, application no. 23903/20 and H.H. v. 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.

In cases like X. v. Finland, where the required legislative changes are in process for a long time and not proceeding, there is usually lack of political will to prioritise these reforms combined with lack of resources and lack of uniform understanding on the importance of the full implementation. In this particular case, the law including changes to availability of legal remedies concerning forced medication in psychiatric hospitals was adopted by the Parliament in December 2023 and came into force 1 April 2024.

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

Again, in January 2023 the Finnish Human Rights Centre submitted Rule 9 communication on the case of X v. Finland. In early 2023 FNHRI held discussions with the Department for Execution of Judgments of the ECtHR during their country visit, specifically on the case of X v. Finland.

In May 2023, the FHRC participated in a discussion and prepared an extensive brief on the case of X. v. Finland for discussion organised by the International Department of the Parliament. Other participants included members of parliament and representatives of the Ministry for Foreign Affairs and Ministry of Social Affairs and Health.

In 2023 the Deputy Chancellor of Justice has requested the Ministry for Foreign Affairs to inform him on the reasons for the continued delay in the implementation of the ECtHR judgments as well as actions taken to improve the implementation of the judgments. The decision is pending.

NHRI's recommendations to national and regional authorities

- Take urgent measures to finalise the remaining implementation, and reporting thereof, of judgments of the European Court of Human Rights;

- Ensure sufficient resources for the office of the Government Agent to enable speedy reporting on the implementation of any future judgments to avoid delays;
- 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

During the past year, racism, hate speech and online targeting of journalists have been matters of concern which have been actively debated in Finland. The debate started from media reports about racist writings by some of the newly appointed ministers, dating a few years back. Journalists who reported about the topic were subjected to smear campaigns and online hate speech. One journalist was directly targeted by members of parliament belonging to the Finns Party and the National Coalition Party (both currently in Government), in their social media posts. One of the MPs was appointed Minister of Economic Affairs a couple of days later. The Council of Europe Commissioner for Human Rights published a statement condemning such smear campaigns and attacks directed at individuals, expressing concern for its potential chilling effect on the press. The police has launched a criminal investigation regarding the matter.

As a response to the public debate on racism, the Government published a statement on promoting equality, gender equality and non-discrimination in August 2023. The importance of taking active measures to tackle racism and discrimination was further proven by the FRA report Being black in the EU (2023), which showed that people of African descent often experience racism in Finland. The Finnish Human Rights Centre provided a statement to the working group developing the Government's statement. The FHRC highlighted the State's duty to effectively implement judgments and recommendations received from monitoring mechanisms under the UN, the Council of Europe, and relevant national bodies, as well as duly implementing EU legislation

concerning equality and discrimination. Shortcomings in these areas have continuously been raised. The Finnish Human Rights Centre will be monitoring the implementation of the Government's statement and has included it as one of the priority areas in its advocacy work for 2024 (FHRC action plan).

At the end of the previous Government's term, the Ministry of Justice explored needs to amend criminal law to improve tackling of targeting. (Targeting refers to systemic harassment of a person in the form of mass actions on e.g., online platforms because of his or her work or social duties.) The assessment published in 2022 found that there are grounds for criminalisation. The current Government decided not to proceed with separately criminalising this phenomenon or further exploring the possibility, stating that targeting can already come within the legal definition of other crimes (such as public exhortation to an offence, dissemination of information violating personal privacy, defamation, illegal threat, stalking or coercion).

The question of criminalising targeting divides opinions of legal experts. The definition of the crime/its delimitation would be challenging and require significant balancing to avoid overlaps with existing criminalised offences and unnecessary restrictions on freedom of speech, and to ensure that the crime would be judicable in practice. These challenges were raised by the Parliamentary Ombudsman in a statement concerning the assessment, submitted at the request of the Ministry of Justice. However, many actors agree that targeting is a growing problem which threatens rule of law and freedom of speech, and that the existing legislation is not applied effectively to tackle the issue.

According to the Finnish Human Rights Centre, further polarisation of the public debate and increased hate speech do not only risk creating a chilling effect on journalists and the press, but more broadly on civil society. NGO representatives and academics have also reported a rise in hate speech and smear campaigns targeting them and expressed concern for their impact on freedom of speech (see for example article by newspaper Helsingin Sanomat, communication from a meeting of the Human Rights Delegation, and statement by the Research Council of Finland).

The FHRC would also like to point out that academics and media in Finland have highlighted linguistic strategies widely applied in right-wing populist discourse to undermine human rights and the rule of law. Neologisms or familiar words imbued with irony and sarcasm are used in a systematic way to question the validity of human rights and international treaties. Messaging includes double meanings and is deliberately directed towards different publics with multiple reading options to raise negative emotions and create divisions between "us" and "them". While such linguistic strategies trace their origins to social media platforms replete with hate speech, their use has spread to public and political discussion and mainstream media to influence popular opinion at large.

NHRI's recommendations to national and regional authorities

- Ensure a concrete follow-up to the statement on promoting equality, gender equality and non-discrimination
- Effectively prevent and tackle targeting of journalists, NGO representatives and academics, but also independent human rights actors.

France

French National Consultative Commission on Human Rights (CNCDH)

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 French National Consultative Commission on Human Rights (hereafter "CNCDH") proceeded to disseminate the recommendations resulting from the European Commission 2023 Rule of Law report, both among its members and through its communications tools.

The CNCDH recommends to national and European authorities to widely disseminate and promote the rule of law report because it remains very unknown to the general public overall, particularly by members of civil society. This will allow different stakeholders to send their written contributions, thus contributing to strengthening the process.

The CNCDH also recommends that national authorities consult the members of civil society when sending their input as part of the process of contributing to the EC report.

Establishment, 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. 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

Follow-up to SCA Recommendations and relevant developments

It should be noted that the human resources of the NHRI increased in 2023 with the arrival of a new employee within the Secretariat. Another person is also planned to join in 2024.

Regulatory framework

The national regulatory framework applicable to the institution has not changed since January 2023.

NHRI enabling and safe environment

The CNCDH notes that it is still not systematically informed on the preparations of legislative and regulatory acts and public policies that are related to human rights and rule of law. Nevertheless, the Government provided written answers to CNCDH opinions that show a will for dialogue from the public authorities on the recommendations issued by the CNCDH.

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 CNCDH to carry out its tasks effectively and in particular with regard to the various mandates conferred to the institution as independent rapporteur on various subjects.

NHRI's recommendations to national and regional authorities

The CNCDH recommends to the state authorities:

- To provide the French NHRI with the required financial and human resources so that it can effectively carry out all its tasks and mainly its mandate as independent rapporteur.
- That the CNCDH shall be consulted in advance, or at least be informed systematically, of the preparation of legislative and regulatory texts and public policies, in particular those that are directly related and affect human rights.
- That the CNCDH must continue to be associated in an even more effective manner in the preparation of the various reports that France must submit within the framework of the international and European bodies for the protection of human rights as well as in the follow-up of the recommendations emanating from these different bodies.

Checks and balances

Separation of powers

The CNCDH also often expresses its concerns regarding the weakness of the impact assessments that must accompany the bills tabled by the government. They are more akin to a justification of the orientations of the text rather than a stage of reflection prior to action. The CNCDH renewed its criticism recently about the draft law on immigration.

Concerning the freedom of peaceful assembly and association, the CNCDH noted a lack of information for citizens, which undermined their right to an effective remedy: during the strong social mobilizations against the pension reform, several demonstrations were banned at the last moment by the public authorities, making referral and judicial review difficult in practice. On 4 April 2023, the Administrative Court of Paris, seized by several associations, ordered the administrative authority to publish its orders within a period which allows effective access to the judge. This requirement was confirmed by the High Administrative Court in December: in the event of a prohibition of demonstration "it is up to the administrative authority to proceed, to the extent of the possible, to these various information measures within a period making it possible to use the administrative judge usefully, in particular the judge of summary proceedings (...)".

The process for preparing and enacting laws

The CNCDH regularly deplores the frequent use of the accelerated legislative procedure by the government, restricting the time for discussion and debate in Parliament. This occurred for example, in 2023, with the draft law regarding the experimentation of automated surveillance video or the draft law on immigration.

In general, civil society stakeholders are very rarely involved in the making of public policies. For example, in its Opinion adopted on November 30, 2023 devoted to the evaluation of the national action plan for equal rights, against hatred and anti-LGBT+

discrimination (2020-2023), the CNCDH looked at the modalities of the design of the next national action plan (2023-2026), and particularly, it deplored the lack of real consultation with civil society organisations.

Enabling environment for civil society and human rights defenders

The CNCDH adopted an Opinion on November 30, 2023 concerning human rights defenders through which it highlighted the various issues facing defenders in France (CNCDH, Avis sur les défenseurs des droits de l'homme (A-2023-5)). Among the most notable issues, the NHRI notes:

1. **Judicial harassment**

Practices of judicial harassment have been observed against defenders of migrants' rights and those linked to environmental causes. As an example, some defenders were criminally prosecuted because they had provided humanitarian aid to migrants or because of their opposition to environmental projects such as megabasins which are very large structures built within the agro-industry framework, to store water. "Les Soulèvements de la terre", a movement for the defense of rights linked to the earth, was the subject of a dissolution by decree adopted on June 21, 2023, by the Council of Ministers, because, according to the government, the movement called for and participated in acts of violence (Décret du 21 juin 2023 portant dissolution d'un groupement de fait). This decree was subsequently suspended by the summary judges (juges des référés) and finally cancelled by the Council of State on November 9, 2023, considering that there was an absence of incitement to violence against people making this dissolution disproportionate regarding the real scope of these provocations.

2. **Freedom of Assembly**

As part of the 2023 pension reform, demonstrations organized by unions were banned. A prefectural decree, prohibiting trade union organizations from any demonstration and gathering around a high school in the town of Saintes, was, for example, adopted

on May 3, 2023, during the visit of the President of the Republic to the town, fearing that public order would be disturbed.

Some demonstrations were also violently repressed, and some participants were arrested by the police. This occurred especially in March 2023 where police proceeded to hundreds of arrests of protestors. In addition, during these events, charges for, intimidation toward civilians, racist unjustified arrests, violence against peaceful non-protestors civilians and disproportionate use of force were brought against the BRAV-M, a motorized law enforcement unit.

On the 12th of October 2023, the Ministry of the Interior prohibited any kind of Demonstrations in support of the Palestinian cause. Through a telegram addressed to all prefects, the Minister ordered the ban of these demonstrations, alleging that they are all likely to generate public order disturbances (*Télégramme du ministre de l'intérieur et des outre-mer du 12 octobre 2023 relatif aux conséquences des attaques terroristes subies par Israël depuis le 7 octobre 2023*). The judge of the Council of State, urgently seized by an association, rejected the appeal against this telegram and recalled that it is only up to prefects to assess, on a case-by-case basis, whether there is reason to prohibit a demonstration which cannot be based solely on the telegram or on the sole fact that the demonstration aims to support the Palestinian people. The prefects nonetheless followed these instructions such as in Paris, where several decrees ordered the ban of demonstrations in support of Palestine, alleging terrorism apology from the protestors. The Paris administrative Tribunal annulled on October 19, a ban on a demonstration in the capital, whereas they constituted a serious and manifestly illegal infringement of the freedom to demonstrate (*Tribunal administratif de Paris 19 octobre 2023 / n° 2323990*).

3. Stigmatization

Multiple campaigns of stigmatization and demonization of defenders can be observed, which contributes to the polarization of public debate, to disinformation and the weakening of the situation of certain categories of defenders (See for example the

intimidation campaigns against the Franco-Palestinian jurist and activist Rima Hassan En soutien à Rima Hassan et aux voix (pro)palestiniennes, February 2024). On June 15, 2023, several United Nations experts expressed their concern about the trend toward stigmatization and criminalization in France of people and civil society organizations working to defend human rights and the environment, which seems to be increasing and used to justify excessive, repeated and amplified use of force against them. Furthermore, a letter was sent by the president of the CNCDH on April 7, 2023 following the declarations of the Minister of the Interior on April 5, 2023 during an audition before the Senate. Responding to the criticisms addressed against the Ligue des droits de l'homme (LDH), the Minister said that an examination of the public subsidy granted to the LDH could be appropriate, following their unfounded criticism relating to the management policing in Sainte Solline and the appeal that the LDH has exercised against a prefectural order prohibiting arms on the Sainte Solline site.These associations are presented by the Minister as agitators, delinquents and even terrorists, which leads to a dangerous questioning of the usefulness and value of the actions of human rights defenders.

4. SLAPPs

In addition, the so-called legal abusive proceedings known as SLAPP (Strategic Lawsuits Against Public Participation), are sometimes used to intimidate and silence defenders, journalists and whistleblowers. They are increasing in France, particularly concerning the work of multinationals as seen with the proceedings initiated by the multinational Total against Greenpeace. These processes are most often lengthy and expensive, aiming above all to intimidate the defenders or exhaust them financially.

5. Freedom of association

In 2023, an association committed to the fight against corruption, Anticor, lost its approval allowing it as an association to take legal action. Only three anti-corruption associations have so far benefited from this approval in France (Anticor, Transparency

International and Sherpa). To qualify for approval, an association must meet several criteria: to exist for at least five years, to have sufficient members, and demonstrate its experience in the fight against corruption and have internal functioning consistent with its statutes. Anticor's approval, obtained in 2015, was renewed in 2021 but the approval highlighted some breaches of the required criteria (not all well-founded). Seized of the approval, the court canceled it and the government did not renew it afterwards, without justification. The association appealed against this implicit refusal.

Since 2015, Anticor's actions allowed to refer cases to a judge in cases dismissed by the prosecution, or to relaunch "slow motion" investigations. Even before the announcement of the refusal to renew Anticor's approval by the executive, this procedure was already the subject of criticism. Many civil society actors, as well as magistrates, are calling for an independent administrative authority, and not the government, to decide on approval requests.

Impact of securitisation on the rule of law and human rights

Concerning migrant people, the CNCDH expresses its concern about the stigmatization of migrant people in public debate, exacerbated by the climate of suspicion and hostility towards migrants and the associations that support them. This situation was particularly accurate in the debates on the immigration law that has been adopted in January 2024 (*LOI n° 2024-42 du 26 janvier 2024 pour contrôler l'immigration, améliorer l'intégration*). The bill for this law was presented as a response to tragic events, while it should have proposed a reasonable and organized approach to migration. In any case, the CNCDH warns against the link that is sometimes made in the public debate between insecurity and immigration, that tends to promote racist preconceived ideas and discrimination, but also worsens the situation of migrants in France.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

Due to the proliferation of cameras, fixed and airborne (drones), for the surveillance of public spaces, and the growing use of AI for image analysis, the CNCDH has formed a working group on this subject and will deliver its opinion in June 2024.

In the face of the police violence observed in 2023 during the maintenance of order during protests against pension reform, and also in reaction to the increasing number of people killed by the police following a refusal to obey a police order to stop, the CNCDH published an opinion in October 2023 on relations between the police and the population (*CNCDH, Avis sur les rapports entre police et population (A - 2023 - 2)*). This opinion calls on public authorities on the need to undertake a certain number of reforms already formulated in February 2021: in particular, to review the legal framework for identity checks (to remedy discriminatory checks), to improve police training and to guarantee effective remedies against police abuse.

Moreover, the CNCDH expressed, in a letter addressed to deputies on 14 February 2023, its concerns with regard to a certain number of provisions contained in the draft bill relating to the 2024 Olympic and Paralympic Games:

- the terms of conservation and use of genetic characteristics collected to fight against doping (art. 4): the genetic tests provided for athletes will make it possible to compare their genetic fingerprints to detect substitutions of samples or blood transfusions. There are also more intrusive techniques for examining genetic characteristics aimed at detecting natural genetic mutations or the use of genetic doping techniques;
- the authorization of body scanners, particularly intrusive, for any sporting, recreational or cultural event bringing together more than 300 spectators (art. 11);
- the increased repression of intrusions into sports venues likely to disproportionately penalize non-violent militant actions (art. 12);
- the generalization of the requirement for a prior administrative investigation for all participants in the Olympic Games (employees and volunteers) (art. 10), with

the use for this type of investigation to prevent radicalization of a terrorist nature (FSPRT), about which the CNCDH had expressed reservations in the past (*CNCDH, Avis sur la prévention de la radication (Opinion about the prevention of radicalisation), 18 May 2017*);

- the experimentation with augmented video surveillance in public spaces (art. 7).

Implementation of European Courts' judgments

For several years, the CNCDH and the national preventive mechanism have closely followed the action plans and reports of the French government with regard to the execution of the case JMB c. France, 30 January 2020 (about unworthy detention conditions and lack of effective preventive recourse).

The measures adopted by France to deal with the problem of prison overpopulation - targeted by the European Court in its judgment - are insufficient, as evidenced by the growing incarceration rate in France. Furthermore, the law adopted to respond to the lack of effective remedy is not appropriate. In January 2024, the CNCDH and the Contrôleur général des lieux de privation de liberté (CGLPL) transmitted their observations to this effect to the Committee of Ministers (it is the third time they intervene about this case within the Rule 9 procedure).

Otherwise, the president of the CNCDH sent a letter to the Prime Minister, on 9 December 2023, following the expulsion of an Uzbek national to his country of origin even though the European Court of Human Rights (ECtHR) had opposed it. The ECtHR judges had, in fact, informed the French authorities through a provisional measure (Rule 39 Order), pronounced last March and reaffirmed by a letter (October 30), that this person should not be subject to expulsion to this country, due to the inhuman and degrading treatment to which he risked being exposed if he returned, as long as the ECtHR had not ruled on the merits of the case.

As the High Administrative Court itself noted in its judgment of 7 December 2023, the expulsion decision of the Ministry of the Interior constituted a violation of the European Convention on Human Rights (*Conseil d'État, Juge des référés, 07/12/2023, 489817*). This is very worrying to the CNCDH as, in an unprecedented manner in France from a member of the government, the minister assumed it and claimed it as such.

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

Justice system

Underfunding

One the challenges of the French justice system is its underfunding. CNCDH welcomes the adoption of the law on organizing and planning the justice system (LPJ) (*Loi n° 2023-1059 du 20 novembre 2023 d'orientation et de programmation du ministère de la justice 2023-2027*) in which the multi-year trajectory of the justice budget for the period of 2023-2027 is increased. The budget will increase from 9.6 billion euros in 2023 to 10.8 billion euros at the end of the four-years, this comes out to an increase of 21% over the five-year period. This increase is a step in the right direction given the problems of underfunding in the justice system.

Civil liberties and a right to a fair trial

Some provisions of the Ministry of Justice's 2023-2027 Orientation and Programming Act and the November 20, 2023 Organic Law are likely to have a negative impact on civil liberties and a right to a fair trial.

The Organic Law empowers the government to overhaul the Code of Criminal Procedure within the next two years.

Under the new criminal procedure, the adoption of measures - such as extending the scope of home searches by law enforcement outside of legal hours, the use of intrusive telecommunications technologies during police investigation, or the remote activation

of a connected device for real-time geolocation - raises serious concerns over possible violation of human rights, notably, the rights of the defense and the right to privacy.

Moreover, the phenomenon of diversion from the courts is becoming more widespread, posing a risk of infringement of the right of access to a court and a judge. For example, the procedure for seizure of remuneration in civil law is now handled by judicial commissioners rather than judges.

Furthermore, the law recalls that the freedom of expression of magistrates is restricted by the ethical obligation of reserve and discretion. Restricting this freedom must not compromise the independence of magistrates in the performance of their duties, nor limit their freedom of association. Finally, other provisions give the Minister of Justice extensive powers to assess and hold magistrates accountable, thereby creating the risk of compromising the principle of the separation of powers and the independence of the judiciary.

Judicial impartiality

The lack of impartiality, real or apparent, of the Court of Justice of the Republic (*Cour de justice de la République*) was once again highlighted during the acquittal in November 2023 of the Minister of Justice, who is said to have taken advantage of his role as minister to take sanctions against magistrates against whom he had past grievances.

This special jurisdiction, responsible for judging ministers for acts committed in the exercise of their functions, is composed of 3 magistrates and 12 members of Parliament, 6 deputies and 6 senators. In other words, a political leader is judged by a court composed mainly of his peers. An apparent lack of impartiality discredits the decisions adopted by this court.

Media freedom

A case raises concerns about the protection of journalists' sources and, more broadly, about the media's freedom of expression. In 2021, a journalist revealed the aid provided

by the French state to Egypt, by providing the country with intelligence, to repress and bomb smugglers' vehicles. An investigation was opened in 2022 for breach of the national defense secrecy. In September 2023, the journalist was placed in police custody for 48 hours, and her apartment was searched and her phone and personal computer's data seized to identify her sources. Out of the ten elements of evidence seized by the police after the search, seven were declared lawful by the criminal procedural judge of liberties and detention.

With regard to persisting human rights issues impacting the national rule of law environment, the NHRI would like to mention the **discriminatory identity checks** and the lack of administrative and judicial remedies available to victims.

Germany

German Institute for Human Rights

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

Provide adequate resources for the justice system

The GIHR notes that there were no nationwide adjustments to judges' salaries. Only federal judges benefited from small increases agreed in a collective agreement, which was transposed into national legislation within the framework of the Act on the adjustment of federal salaries and pensions for the years 2023 and 2024 and on the amendment of other civil service regulations (BBVAnpÄndG 2023/2024), issued in December 2023.

Introduce a legislative footprint

The Bundestag recently passed a law amending the lobby register. Although there are still points of criticism, such as the continued exemptions for churches and trade unions, the changes have been broadly welcomed. In future, it should be more transparent , which legislative procedure the lobbyist is targeting and how the lobbyist is financed (including f. ex. income, amount of public funding, donations and membership fees). The reform also closes a loophole: Until now, influences have often been concealed by using agencies to advocate towards government and MPs. In future, lobby organisations will no longer be able to commission a number of agencies to circumvent the disclosure requirement. With regard to the revolving doors, Section 3 I No. 3

LobbyRG has increased transparency when high-ranking mandate holders and office holders move into interest representation activities (revolving doors) by requiring the disclosure of current and previous offices and mandates. This innovation is to be welcomed, as it leads to a disclosure of the revolving door effect. At the same time, no cooling off periods have been created. In this respect, the revolving door effect is not prevented.

Create a legal basis for a right to information of the press

There was no legal initiative for a right to information for the press during the reporting period, although the government fractions had planned this in the coalition agreement (see p. 99). The media policy spokesman of the SPD parliamentary group in Bundestag, member of parliament Helge Lindh, said in an interview in June 2023 that an initiative from Parliament to strengthen the rights of the press and media vis-à-vis federal authorities would be a good gesture though. Although, the federal government could also initiate a draft, a bill from parliament "would be the ideal case for us", he underlined. He also added that the draft could also include a paragraph to prevent intimidation lawsuits against the press.

Adapt the tax-exempt status for non-profits

There has still been no progress in taking forward the plan to adapt the tax-exempt status of non-profit organisations.

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

The NHRI's recommendation issued in ENNHRI's 2022 and 2023 Report on the state of the rule of law in Europe, 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.

Establishment, independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The German Institute for Human Rights was reaccredited with A-status in October 2023. The SCA acknowledged the extensive work carried out by the GIHR to strengthen its human rights protection mandate, including through increased funding for monitoring, including the establishment of national rapporteur mechanisms on the Council of Europe Conventions on Violence against Women and Domestic Violence and on Trafficking in Human Beings, the development of an advocacy strategy for amending the GIHR law, and making permanent the National CRC Monitoring Mechanism. It encouraged the GIHR to continue to advocate for appropriate amendments to its enabling law to strengthen its protection mandate, for making permanent the two rapporteur mechanisms, and to strengthen and seek formalization of its engagement with the Federal Parliament including participation in Parliamentary hearings.

Further, with regards to the institution's selection and appointment process, acknowledging the continued engagement of the GIHR with the Parliament, the SCA encouraged the GIHR to continue to advocate for the formalization and application of a consistent and uniform process that includes requirements to publicize vacancies broadly, including in the context of the Federal Parliament's ongoing process of revising its rules of procedures.

Finally, the SCA encouraged the GIHR to continue its advocacy for the necessary changes in its governance structure with regards to political representatives on the Board of Trustees, as well as in relation to the term of office of the Board of Directors, and accordingly amend the law.

Follow-up to SCA Recommendations and relevant developments

The GIHR does not have any relevant developments to report yet. This is due to the short timeframe since the re-accreditation of GIHR (October 2023) and the compilation of this report (January 2024).

Regulatory framework

No changes to the applicable national regulatory framework since January 2023.

NHRI enabling and safe environment

Overall, the environment in which the Institute operates is supportive and the Institute considers itself able to carry out its work independently and effectively. At the same time the Institute reiterates its concerns from previous submissions that with regard to access to the legislative and policy process - the deadlines for providing input to such processes are oftentimes very short (a few days). This applies especially in the field of migration law. This makes it difficult for the Institute as well as civil society actors to provide quality input.

NHRI's recommendations to national and regional authorities

As mentioned in previous submissions, the Institute recommends to the federal parliament that in its next revision of its rules of procedure it includes a provision whereby the Institute is invited ex officio to parliamentary hearings (standing invitation), is invited to submit a written statement on all draft laws with human rights implications and that these statements will be circulated as official parliamentary documents.

On the state level the Institute recommends that states provide a legal basis as well as permanent and sufficient funding when they designate the Institute as monitoring body under art. 33 CRPD.

Additionally, the Institute recommends that the federal parliament implements the SCA recommendation to make the National Rapporteur Mechanisms on trafficking in human

beings and on gender-based violence permanent. Both mechanisms are currently established within the Institute but financed as four-year projects. The funding for both mechanisms should be incorporated in the budget of the federal parliament thereby making them permanent.

Checks and balances

Separation of powers

The botched elections to the state parliament and the Bundestag in Berlin in 2021 continued to have impact on the everyday lives of people in the capital in 2023. Following a decision by the Berlin Constitutional Court in 2022, the elections to the House of Representatives were repeated on 12 February 2023. According to the court, incorrect, missing or hastily copied ballot papers, too few ballot boxes, long queues with hours-long waiting times caused the problems. In around half of the 2,256 polling stations, people were still voting after the official closing time. As a result, appeals against the election were lodged with the Berlin Constitutional Court. A different government constellation emerged in Berlin after the election. Concerning the Berlin votes to the Bundestag, the Bundestag decided in November 2022 that new elections were to be held in 431 Berlin constituencies out of over 2000. The fraction of the Christian Democratic Union (CDU) in Bundestag filed a complaint against this decision in front of the Federal Constitutional Court. On December 23rd 2023 the Federal Constitutional Court decided that the decision of the Bundestag was largely correct, but saw the need to vote again in 455 constituencies. The Constitutional Court also examined the individual electoral errors and determined for the future what can still be considered a valid election. It ruled that it would have been necessary to equip the polling stations better so that excessive waiting times for voters could be avoided. According to the court an excessive waiting time was to be assumed if voters had to wait longer than an hour.

The GIHR informs that in 2023, the biggest electoral law reform in the history of the Federal Republic of Germany was passed. The explanatory memorandum to the bill refers in particular to the constant enlargement of the German Bundestag, which is seen as problematic for the parliament's ability to work.

The German electoral system is a combination of the election of candidates in 299 constituencies by first-past-the-post ("Erststimme") and proportional representation of state party lists ("Zweitstimme"). In the past, "Überhangmandate" (overhang mandates) occurred when a party won more direct mandates in constituencies in the first-past-the-post vote than its list result. In order to restore the balance of power between the parties in Parliament, these overhang seats were compensated for by additional seats. This was realized by increasing the number of seats of the parties until the parties' proportion of seats in the Bundestag roughly corresponds to their "Zweitstimme" results. As a result, the number of MPs has risen above the previous statutory target of 598 to the current figure of 736.

The aim of the new regulation is to reliably limit the number of seats to 630. In future, the proportion of members will be determined solely by the proportional representation of state party lists ("Zweitstimme").

The "Grundmandatsklausel" (basic mandate clause) has also been abolished. In the past, this clause meant that parties that won three direct mandates would definitely enter parliament - even if they received less than five percent of the second votes (see here). Currently the Left Party is only represented in the Bundestag by means of this clause.

The reform has been the subject of controversial debate in parliament and also among legal experts. Criticism was levelled at both the legislative process and at the under-representation of small and regional parties.

The process for preparing and enacting laws

As already mentioned in the ENNHRI 2023 report on the state of the rule of law in Europe, ministries, on both federal and Länder level, regularly request written comments from civil society organisations (CSOs) and the GIHR on draft legislative proposals. The GIHR notes that as in previous years, the timeframe for submitting responses still varies greatly. This is partly due to the urgency of the legislative process - but it also occurs without any apparent urgency and without the short deadline being explained. The deadlines for comments are often far too short to allow real participation. This was particularly criticised in the legislative process for the new Act on the Federal Foreign Intelligence Act (BND Act), as CSOs were only given 24 hours to prepare a statement. Also, in the field of asylum and migration legislation, the time spans were again very short. For example, the timespan for statements on the draft bill of a law designating Georgia and the Republic of Moldova as safe countries of origin the deadline was only two working days. The catholic and protestant churches explained in their joint statement to the federal Ministry of Interior and Home Affairs for example that it is not possible to examine the content of the draft bill in depth and obtain information from local partners. The approach undermines the important function of the participation procedure without any recognisable reason for doing so, since the implementation of the proposed regulation is not urgent.

Access to information

In Germany, only a small proportion of case law is available in publicly accessible databases. This is particularly true of the lower courts' jurisprudence. As a result, it is difficult to gain a full picture of court practice. In order to facilitate targeted research into court decisions on gender-based violence, the GIHR has launched the "Rechtsprechungsdatenbank ius Gender & Gewalt". The database includes both case law that is already publicly available and case law that has been submitted by practitioners.

Independence and effectiveness of independent institutions (other than NHRIs)

The GIHR notes that the powers and resources of the ombudsmen called "Freedom of Information Commissioners" on federal level and on the level of the *Länder* are inadequate and need to be strengthened. According to a report by the non-profit organisation "Frag den Staat", the recommendations of the "Beauftragten für die Informationsfreiheit" (Freedom of Information Commissioners) are often ignored by public authorities on federal level and on the level of the *Länder*. There is a lack of resources and powers to deal with complaints effectively.

Enabling environment for civil society and human rights defenders

In 2023, several state measures have been taken to restrict forms of civil disobedience. Protests by climate activists have been particularly affected and have resulted in numerous criminal investigations and court trials. Road block protests often involve charges of coercion, resistance to law enforcement officers, or dangerously obstructing traffic. In some cases, courts have sentenced activists to short prison terms of two or three months without probation. While the extent to which prison sentences are being used cannot be conclusively assessed due to a lack of empirical data, this shows a worrying trend towards harsh punishment for climate activism.

The initial suspicion of forming or supporting a criminal organisation (Section 129 of the German Criminal Code) formed the basis for a nationwide search of the premises of members of the climate organisation "Die letzte Generation" (The Last Generation). The Potsdam District Court and the Munich Regional Court endorsed house searches, although there was a lively legal debate about the proportionality of such measure.

In addition, several of the communication channels and the press telephone of "Die letzte Generation" have been under surveillance by the public prosecutor's office in Munich for several months. The GIHR highlighted this issue in its Annual Report on the Development of the Human Rights Situation in Germany (July 2022 - June 2023, pp. 83-99).

As part of the first federalism reform in 2006, legislative competence for assembly law was transferred to the Länder. Many Länder have made use of this possibility and have enacted legal restrictions on freedom of assembly in state assembly laws. One example is North Rhine-Westphalia's assembly law, against which a constitutional complaint has been lodged with the State Constitutional Court of North Rhine-Westphalia. Another example is a current draft law in Saxony, which is subject to similar criticism for, f. ex. the lack of a provision that obliges police in plain clothes to identify themselves to the assembly leader (Section 22(2) of the SächsVersG (Saxony Assembly Act) See e.g. Seel, Der Strafverteidiger 2023, s. 784-791; here and here.

The police took measures to prevent people from participating in road blockades or similar protests. The continued use of preventive detention is of particular concern from a human rights perspective.

Recent developments also point to increased state restrictions of pro-Palestinian demonstrations. According to media reports, some pro-Palestinian demonstrations have been largely peaceful. At other demonstrations, crimes were committed, often motivated by anti-Semitism.

Several demonstrations were banned because of possible anti-Semitic statements and possible criminal offences. Some individual bans were upheld by administrative courts in summary proceedings (decision of the Administrative Court of Berlin and the Higher Administrative Court of Hesse). In other decisions, bans have been lifted in summary proceedings. The GIHR notes that restrictions and bans on assemblies may be justified in individual cases in order to prevent anti-Semitic offences. However, a general ban on demonstrations (as in Hamburg, for example, by a general administrative act) does not meet the strict conditions when such a ban may be imposed and it does not provide for the possibility to conduct a proper balancing of interests within the individual case. This constitutes an unacceptable restriction on the right to freedom of assembly.

NHRI's recommendations to national and regional authorities

- GIHR recommends that stakeholders be given sufficient time to review draft legislation for legal and practical problems. Only then do consultations make sense and only then can findings and experiences from practice contribute to improving the regulations.
- The GIHR recommends that preventive detention should not be used to prevent the mere participation in peaceful protest such as sit-down demonstrations even if these could cause significant traffic disruption. Any preventive detention must be used with utmost restraint and in strict compliance with the right to liberty; in particular the duration of detention must be kept to a minimum.

Impact of securitisation on the rule of law and human rights

The GIHR notes that in 2023, numerous cases of disproportionate use of force at assemblies by the police have been documented. Recently, some sections of the police have been using techniques of violence known as 'pain grips'. According to media reports, police have repeatedly used threats and pain grips against climate activists during road blockades to force or facilitate the evacuation of the street.

In the absence of explicit legal regulations, there are considerable concerns about the legal permissibility of pain grips. In individual cases, they may constitute a violation of the principle of proportionality and the prohibition of torture under Article 3 ECHR.

In response to critique that criminal investigations of police violence are not sufficiently independent, as most of the case work is done by police officers under supervision of the public prosecution authorities, several federal states have established independent police complaints bodies in the recent years. These bodies, called police commissioners, are ombudspersons who are elected by majority vote of the state parliaments. The police commissioners process complaints against the police, shall support citizens and mediate conflicts with the police to find a consensual solution. Some of the

commissioners have the power to independently investigate complaints by, for example, accessing documents, hearing witnesses or experts, and inspecting premises. However, these investigations are not criminal investigations, but parallel procedures, the findings of which can be transferred to the competent public prosecution authority that has to decide then if it opens a criminal investigation. At the federal level, the coalition parties had tabled a bill to establish a police commissioner in charge of overseeing the Federal Police, the Federal Criminal Police Office and the Police of the German Bundestag which was adopted in January 2024.

At the end of 2023, an extension of police powers was discussed in the context of the reform of the Berlin Police Act. It provides for the use of dash cams, body cams and tasers. It has been widely criticised.

In Bavaria, a controversial section of the state police act, which provided for preventive detention of up to two months, was found not to be unconstitutional per se by the State constitutional court (Bayerischer Verfassungsgerichtshof) in June. The provision was taken to court by public interest litigation. Decisions on concrete individual cases are pending.

At the federal level, intelligence legislation was amended to limit data sharing of the intelligence authorities with the police, other authorities, private entities and international organisations (see here and here). The amendment was required by the Federal Constitutional Court which had found in September 2022 that provisions of the Federal Act on the Protection of the Constitution (Bundesverfassungsschutzgesetz) on data sharing were disproportionate and too vague.

In recent years, several federal states have been working on integrating automated recognition systems into police work. Recently, a journalistic investigation revealed that the Bavarian State Office of Criminal Investigation had been testing software from the US company Palantir for several months without any legal basis. In the recent years, the states of Hesse, Hamburg and North-Rhine Westphalia have enacted regulations

governing its use. However, the relevant provisions in the former two states were declared unconstitutional by the Federal Constitutional Court in February 2023. The provisions did not presuppose a sufficiently concrete danger and therefore did not justify any interference with the right to informational self-determination, i.e. the fundamental right to determine the use of one's own personal data derived by the Federal Constitutional in 1983 from art. 1 (1) (human dignity) and art. 2 (1) (personal freedom) of the German Basic Law.

New technological interventions, often initially used in pilot projects, raise new human rights issues. In Hamburg, for example, “intelligent” video software is being tested to automatically record and film potentially incriminating behaviour at certain locations. Critics have argued that this type of surveillance would particularly affect homeless people. Another example is the real-time facial recognition system used at the German-Polish border in Saxony to combat cross-border crime. The GIHR is critical of the increasing normalisation of the use of conventional video surveillance. Risks of human rights violations are in particular high when there is no legal basis for the use of new technologies and algorithms. The extent of the restriction on the right to information must be fully taken into account when introducing such measures.

The GIHR is concerned about the Federal Ministry of the Interior's initiative to combat 'clan crime'; the term clan is understood as referring to vague characteristics such as ethnicity or common descent. This term is based on scientifically unfounded assumptions about certain dangerous ethnic groups and ultimately serves racist narratives. Although the term "clan crime" was not mentioned in the current draft bill to tighten the Deportation Act, critics point to a clear link between the discussion and the proposed legislation. One of the aims of the draft law is to make it easier to deport foreigners who are suspected of being members of a criminal organisation.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

GIHR has taken up the topic of police complaints offices in a publication that analyses the work of the German police commissioners of the Länder. The focus is on the question of what contribution the police commissioners make to the protection of human rights and what recommendations can be derived from the experience to date for the current plans to establish further offices. It has also published a statement on the Act on the Restructuring of the Federal Police Act. The issue of restrictions on freedom of assembly, using the example of the state response to climate protests, was presented in the GIHR Human Rights Report.

NHRI's recommendations to national and regional authorities

- The Institute recommends to ensure that the use of police force must be proportionate. Thus, the police should be obliged to exhaust non-violent means to disperse peaceful protest on legitimate grounds. Allegations of ill-treatment have to be investigated effectively. All federal states should establish independent police complaints bodies and provide them with adequate powers and resources.
- The GIHR recommends that new surveillance technologies should be deployed by the police only with a proper legal basis and after an independent human rights impact assessment has found that no risks exist for privacy, non-discrimination and other human rights that are relevant for the context of future deployment.

Implementation of European Courts' judgments

With regard to the CJEU judgement on the general and indiscriminate retention of traffic and location data mentioned in the 2023 Report, the following developments have taken place:

The Federal Administrative Court (Bundesverwaltungsgericht) has now declared the data retention provisions in Section 175 (1) sentence 1 in conjunction with Section 176 TKG (Section 113a (1) sentence 1 in conjunction with Section 113b TKG old version) to be inapplicable and contrary to European law (see here).

Despite the Ministry of Justice's intention to introduce new regulations and the so-called 'quick freeze' model, i.e. that data retention is only ordered in case of a suspicion that a serious crime was committed to allow detailed investigations at a later stage, there is still no concrete implementation of this.

There have been no new developments to date regarding the CJEU judgment on family reunification mentioned in ENNHRI's 2023 Report. The Institute recently highlighted this in a statement on the reform of the Aufenthaltsgesetz (German Residence Act) (see page 14 of the statement).

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

The rise of the right-wing extremist party AFD as a threat to Germany's liberal-democratic system

In 2023, Germany witnessed the rise of the Alternative for Germany party (AfD), which poses a significant threat to the liberal-democratic order of the Federal Republic of Germany. Under German constitutional law, the liberal-democratic order (freiheitliche demokratische Grundordnung) comprises some fundamental principles such as the respect of fundamental and human rights, the sovereignty of the people, separation of powers, accountability and legal obligation of the executive, independence of the judiciary, a multi-party system, and equal opportunities for political parties.

The AfD is represented in the Bundestag, as well as in all state parliaments except for two (Schleswig Holstein and Bremen, where they were not allowed to run for formal-legal reasons).

In the 2023 state elections, the AfD secured 14.6 percent of the vote (ranked 3rd) in Bavaria, 18.4 percent (ranked 2nd) in Hesse, and 9.1 percent in Berlin. Apart from the high number of seats in parliaments, the danger posed by the AfD to the liberal democratic order is also evident in its significant role in the competition for top municipal positions in some regions. In June 2023, the AfD has won a district council election for the first time in Germany's Sonneberg, located in Thuringia (see here and here). In early July 2023, the AfD won the election for a full-time mayor for the first time in Raguhn-Jeßnitz, a town in Saxony-Anhalt.

In December 2023, an AfD candidate won the election for mayor of Pirna, a town in Saxony. By the end of the year 2023, the party was polling between 18 and 23 % in federal level election polls (known as the Deutschlandtrend).

The party's programme is based on a national-ethnic concept of the people, which differentiates between people according to racist categories and thus deviates from the concept of the people in the Basic Law and is not compatible with Article 1 (1) of the Basic Law. Above all, the programme leads to a denial of elementary legal equality. It does not accept the dignity of the human being in the sense of Article 1 (1) of the Basic Law but professes the primacy of a national-ethnically defined people. It undermines the inherent dignity of every person and seeks to create a legally marginalized status for individuals who are not part of the national-ethnic defined "people".

The German history has demonstrated that the democratic order of a state can be destroyed when inhumane positions are not met with vigorous opposition, and thus spread and prevail. According to Article 21 of the German Constitution (Grundgesetz), and based on historical experience, it is permissible to ban a party that seeks to abolish the guarantee of Article 1, Paragraph 1 of the Basic Law, which protects the liberal democratic order, as a last resort. An analysis conducted by the German Institute for Human Rights in June 2023 indicates that the legal prerequisites for a ban under Article 21 of the Basic Law are met.

The analysis shows that the AfD party is increasingly adopting the policy advocated by Björn Höcke, the AfD's state and parliamentary leader in Thuringia. Höcke, who openly aims for a rule inspired by National Socialism, has come to significantly influence the orientation of the AfD as a whole. He does not have to hold a position at federal level, as he is already a leading voice in the party with many supporters nationwide (see here, p. 40 – 48). Moreover, the analysis makes clear that in the case of the AfD there are concrete indications that make it at least possible that the party's actions can be "successful" (for the discussions at the level of the Länder see here). The AfD takes an active and systematic approach to realising its anti-constitutional intentions. This includes, for example, cooperating with other right-wing extremist actors who support it in achieving its anti-constitutional goals.

By obtaining numerous mandates in parliaments, the AfD has gained significant opportunities to influence society. Given its substantial presence in some German federal states and regions, it seems plausible that the party may expand its successes. The growing number of seats held by the AfD in several federal states and regions represents a significant threat to the liberal democratic foundation of the country.

Antisemitism and racist hatred in the weeks following Hamas' attack on Israel

There is growing concern about the increasing prevalence of anti-Semitic ideas and acts in Germany in the aftermath of the Hamas attack on Israel on 07 October 2023. In a press release, the German Institute for Human Rights has called on politicians and society in Germany to oppose anti-Semitic and racist hatred and violence. The Institute welcomes that the Bundestag and the Federal Government as well as numerous civil society organisations, including Muslim associations, have strongly condemned the acts of violence committed by Hamas against the people of Israel and violence against Jews in Germany. At the same time, the Institute is concerned about the attribution of anti-Semitism to the Arab or Muslim population in Germany as a whole. Such attributions are racist and ignore the fact that anti-Semitism also exists among the German population.

There is evidence to suggest that anti-Semitism as well as racist hatred is widespread in Germany. According to a study by the Friedrich Ebert Foundation, 16.5 per cent of those surveyed believe that Jews today seek to exploit the Nazi past, 19 per cent partially agree with this accusation (page 164). According to a recent study of the situation in Berlin one in seven people believes that the 'influence of the Jews is too great'. The study also shows that anti-Muslim attitudes are common in Berlin, with 20 per cent displaying an anti-Muslim, racist mindset.

In the weeks following Hamas' criminal attack on Israel on 07 October 2023, both anti-Semitic and anti-Muslim attacks have increased in Germany. For example, the "Anti-Semitism Reporting Centre" points out that between 7 October and 9 November, on average 29 anti-Semitic incidents took place every day. The incidents during this period include three cases of extreme violence, 29 assaults, 72 cases of damage to property, 32 threats, and 854 cases of abusive behaviour. The Alliance against Islamophobia (CLAIM) has also highlighted an increase in anti-Muslim racism in Germany documenting 187 cases of violent anti-Muslim attacks, insults, threats and discrimination in the period from 9 October to 29 November 2023.

NHRI's recommendations to national and regional authorities

- The GIHR recommends that all entities authorised to submit an application (Bundestag, Bundesrat and Federal Government) before the Federal Constitutional Court (Bundesverfassungsgericht) should prepare for a procedure and get ready to submit an application. Against the backdrop of the immense threat to the liberal-democratic order of the Federal Republic of Germany it is fundamentally important that the Federal Constitutional Court examines whether the conditions for a ban are met.
- The GIHR calls on all democratic parties to refrain from cooperating with the AfD on any level of political activity (on the federal level, on the level of the Ländern and on municipal level).

- The GIHR recommends that policymakers and civil society organisations oppose anti-Semitic and racist hatred and violence. In order to address and prevent existing social conflicts, for examples in schools, there is a need for a stronger debate on anti-Semitism and racism in schools and adult education, including and especially through continuous human rights education.

Greece

Greek National Commission for Human Rights

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 explicit reference to its work by the European Commission (EC) in the 2023 EU Rule of Law Report - Country Chapter on the rule of law situation in Greece. The EC takes note of GNCHR's input on the efficiency of the justice system (p. 9), the quality of the legislative process (p. 23) and Law 5002/2022 on the secrecy of communications. Furthermore, the EC highlighted the significant role that the Greek NHRI plays in the checks and balances system. The strengthening of the GNCHR's mandate and of its administrative capacity in 2022 are cited as well as an explicit reference to the Recording Mechanism of Informal Forced Returns that operates under the GNCHR since 2022. The Recording Mechanism's existence is evaluated as a positive development in Greece, aiming to boost accountability for reported human rights violations at borders.

On the recommendations part, there is no EC's targeted recommendation concerning the Greek NHRI. The following were the EC's recommendations to Greece for 2023:

- Take steps to 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 taking into account European standards on judicial appointments. [**Recommendation 1**]

- Step up efforts to establish a robust track record of prosecutions and final judgments in corruption cases, including high-level corruption. [**Recommendation 2**]
- Take forward the process of adopting non-legislative safeguards and start the legislative process in relation to the protection of journalists, building on the activities initiated by the Task Force, in particular as regards abusive lawsuits against journalists and their safety, in line with the adopted Memorandum of Understanding and taking into account European standards on the protection of journalists. [**Recommendation 3**]
- Ensure the effective and timely consultation in practice of stakeholders on draft legislation, including by allowing sufficient time for public consultation. [**Recommendation 4**]
- Take further steps to evaluate the current registration system for civil society organisations, including by initiating a structured dialogue with CSOs, and assess whether there is a need to amend it. [**Recommendation 5**]

On **Recommendation 1**, there is no progress made in 2023 since an amendment of the Constitution is required to enable Greece abiding with this recommendation. This is a standard recommendation from the previous cycles of rule of law monitoring. The Greek Constitution (art. 90 para. 5) provides that the appointments of the highest positions of the Greek judiciary are done by presidential decree, following a recommendation by the Council of Ministers. Since 2010 (Law 3841/2010), the Conference of the Presidents of the Parliament is involved in the appointment procedure. European standards developed within the Council of Europe require that "the authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers" (para 46 of Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe of 17 November 2010 'Judges: independence, efficiency and responsibilities'). These rules are applicable in Greece with respect to the

selection and career of judges up to the position of member of each High Court (Council of State, Supreme Court and Court of Auditors). The only exception concerns the appointment of President and Vice-Presidents of these Courts.

Regarding the overall ongoing reform of the Greek justice system, as mentioned in the 2023 ENNHRI's Rule of Law Report, the national recovery and resilience plan foresees a number of measures on the improvement of the efficiency of the justice system. In December 2023, the European Commission's preliminary assessment noted a satisfactory fulfillment of milestones and targets related to the third payment request by Greece. Under the general measure of digitalisation of archives and relevant services, a subproject on the digitilisation of the archives of the Justice System is previewed. In 2023, delays have been noted in the award of the relevant contract. According to the Digital Transformation Bible 2020-2025, 28 projects are foreseen for the development, integration and improvement of digital tools related to the access and management of legal information, the operation of court proceedings and in general the improvement of the functioning of the judicial system. One project regarding the audit services of the Court of Auditors for General Government agencies is in progress while the other 27 are scheduled. It shall be noted that the digitilisation of the Justice Systems is also a priority at the EU level. In November 2023, the European e-Justice Strategy 2024-2028 was adopted as well as two legislative acts, a Regulation on the digitilisation of judicial cooperation and access to justice and an accompanying Directive.

Improving the efficiency of the justice system involves foremost the acceleration of the administration of justice, which is a major drawback for the proper functioning of the justice system in Greece. The GNCHR had identified previously in its rule of law reports that the main challenge of the justice system with an impact on the system of rule of law is the excessive length of court proceedings. Acceleration of the administration of justice constitutes a separate measure under the national recovery and resilience plan. It is comprised by several elements, ranging from a revision of the judicial map across Greece (covering all branches of the judiciary), to the creation of a judicial police, the

introduction of an array of procedural and training measures and the introduction of a judicial performance tool for the provision of financial incentives to judicial clerks. In 2023, progress were made on these with the adoption of Law 5028/2023 on the reorganisation of the judicial districts of administrative courts, the organization of telematic hearings, the conversion of transitional seats, the establishment of telematic offices and other urgent provisions of the Ministry of Justice and sundry provisions, the issuance of implementing and delegated acts of Law 4963/2022 on the formation of a judicial police and other urgent provisions of the Ministry of Justice (PD 6/2023 establishing the Directorate of Judicial Police, four regional services of the Judicial Police, organic positions of the Judicial Police and defining the competencies of its regional services, PD 31/2023 providing for the uniforms and individual equipment of the police sector personnel of the judicial police, JMD 19943oik/2023 on the introductory training of the Judicial Police personnel) and the award of a tender for technical support for the development of a Judicial Performance Tool. In addition, alongside the revision of the judicial map in Greece, the construction of nearly zero-energy judicial buildings or the upgrading (renovation) of the existing ones is foreseen.

Recommendation 3 relates to the protection of journalists from abusive lawsuits, intimidation, threats and attacks. The GNCHR is aware of the establishment of the Task Force for the protection and empowerment of journalists established under the Minister of State (Secretariat General for Media and Communication) (new term in September 2023 by Secretary's General Decision nr. 8883/2023 published in Government's Gazette 5598/B/21.9.2023). In an event organised by the International Training Centre for the Safety of Journalists and Media Professionals, the Secretary General announced the introduction of a special module on the safety of journalists to three university departments of media studies. In March 2024, Greece voted in favor of the adoption of the new European Media Freedom Act in the Council's meeting.

On the specific issue of protection of journalists against practices of strategic lawsuits against public participation (SLAPPs), Greece has not adopted any legislative measures.

According to the State, within the Task Force, the Panhellenic Association of Journalists Union established a SLAPPs Observatory in Greece for monitoring corresponding incidents. Through the collection of data, the Observatory set up a communication channel with the persecuted journalists and the monitoring of corresponding incidents, and is able to provide assistance and formulate positions, in cooperation with POESY's members, aiming at contributing to the overall treatment of the SLAPP lawsuits phenomenon.

The GNCHR informs that the new Criminal Code (following amendments introduced by Law 5090/2024) providing stricter penalties for various offenses and limiting the suspension of sentences on appeal for misdemeanours was interpreted by journalists' unions as posing a risk for journalists to serve prison sentences for defamation. In Greece, defamation is treated as a misdemeanour within the penal code, as well as within the civil code. In cases involving the convictions of journalists for defamation, appeals to higher courts have in the past overturned the first instance rulings. State's reply to an alert by the Safety of Journalists Platform of the Council of Europe clarifies that by virtue of the recent amendment to the Greek Penal Code, the act of simple defamation was removed from the Greek penal Code and now only the act of libel concerning the dissemination of knowingly false information that may harm the honour or reputation of another, foreseen in article 363, remains punishable. However, the GNCHR is of the opinion that the level of protection in Greece is below European standards in this particular field. According to the Council of Europe's Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors "*member States which have defamation laws should ensure that those laws include freedom of expression safeguards that conform to European and international human rights standards, including truth/public-interest/fair comment defences and safeguards against misuse and abuse, in accordance with the European Convention on Human Rights and the principle of proportionality, as developed in the relevant judgments of the European Court of Human Rights*" (par. 6). State's reply explicitly refers to the binding out-of-court procedure which imposes an obligation to address the

medium and ask for the correction of an offensive publication within 10 days in order for the lawsuit against such publication to be admissible (art. 15 Law 5085/2024). Nevertheless, amended art. 5 of Law 1178/1981 applies only to civil lawsuits (and not criminal complaints on the same ground) and is also subjected to certain exceptions.

As of April 2024, the Council of Europe's Safety of Journalists Platform had identified two cases of impunity for murder of journalists, Sokratis Giolias and Giorgos Karaivaz. Greece has provided a reply on both cases. Over the course of 2023, nine active alerts were identified and two other alerts remained without reply by the end of 2023, relating to attacks on physical safety and integrity of journalists, detention and imprisonment of journalists, harassment and intimidation of journalists, impunity and other acts having chilling effects on media freedom. The Mapping Media Freedom platform of the European Centre for Press and Media Freedom recorded 23 cases of attacks, threats or violations against the freedom of the press, journalists and media in 2023.

The GNCHR received information in 2023 that journalists who cover migration issues are often faced with abusive lawsuits for the exercise of their profession, while verbal attacks or hate speech by official State bodies or individuals with the tolerance of State bodies are also common. At least one journalist had in the past been put under surveillance by the National Intelligence Service for reporting on a story of a migrant girl.

On 25 January 2024, the hearing on the case of Grigoris Dimitriadis against media and journalists took place. This case has been characterized by journalists' associations and international media as SLAPPs against those that exposed the National Intelligence Services' practice on extended wiretapping of politicians, journalists and other prominent figures. On 10 January 2024, the case of *Koukakis v. Greece* on surveillance of journalists due to reasons of national security and its compatibility with Article 8 of the ECHR was communicated by the European Court of Human Rights to the Government of Greece.

On 7 February 2024, the European Parliament adopted a resolution on the rule of law and media freedom in Greece, noting, among other points of concern, that:

- there is no discernible progress in the investigation into the murder of the journalist George Karaivaz on behalf of law enforcement and the judiciary; and
- many journalists face physical threats, verbal attacks, including from high-ranking politicians and ministers, the violation of their privacy with spyware, and SLAPPs, which may lead to sanctions such as exorbitant fines, resulting in a chilling effect for them.

Such were also the findings of the LIBE Committee of the European Parliament regarding press freedom in Greece, following its mission to Athens in March 2023.

The Greek Supreme Court issued Decision 2/2024 on 15 February 2024 in response to the EP resolution. The Court, sitting in Administrative Plenary format, recalled that judicial officials are bound by the rule of law and perform their functions in line with the Constitution. The Decision, adopted by majority, criticises the EP resolution, among others, for making sweeping statements without putting forward evidence and for engaging in impermissible interference in the work of the Member State's prosecution service and courts.3 The decision has been described as 'unprecedented' by the President of the Plenary of Greek Bar Associations and civil society. It is worth noting that a minority of 13 judges opposed the issuance of the decision on the ground that the Administrative Plenary of the Court has no competence to conduct an assessment of the European Parliament resolution, since the resolution does not constitute a legal issue falling within its competence.

A mission of the Media Freedom Rapid Response also visited Greece between 25 and 27 September 2023 and met with a variety of media stakeholders. They reported on four significant systemic, in their view, challenges for press freedom in Greece: arbitrary surveillance, threats to the safety of journalists, abusive lawsuits as well as economic and political pressures. All the above create a "toxic and dangerous environment for critical

and independent reporting". In view of their findings, they formulated a number of recommendations to the Government, the media community and the journalist unions and associations.

Recommendation 4 concerns the quality of legislation and legislative process. Articles 74 and 75 of the Greek Constitution and Law 4622/2019 on the Executive State: organisation, operation and transparency *of the Government, governmental bodies and central public administration* provide for legislative drafting and good law-making procedures (Chapter C) which are further specialized in the Legal Methodology and Regulatory Impact Analysis Manuals and art. 85 of the Standing Orders of the Hellenic Parliament. The General Secretariat for Legal and Parliamentary Affairs as well as the intra-governmental Committee of Scrutiny of the Legislative Process monitor the compliance of the Government with the principles of good legislation. Within the Parliament, the Scientific Service that gives opinions on bills and parliamentary committees to which bills are introduced by the Government are responsible for the observance of the said principles. The GNCHR informs that effective protection of fundamental rights requires not just laws but good laws. The quality of legislation affects the quality of the functioning of the State and the lives of citizens. Therefore, the observance of the rules and procedures on good legislation serves the essence of the legislative work, the respect for the Constitution, EU and international law, and the rule of law in general.

In its advisory work over the years, the Greek NHRI has consistently pointed out incomplete or selective observance of the principles and procedures of good legislation, a fact with a negative impact on the effectiveness, coherence, understanding and accessibility of the legislation on fundamental rights. On the particular issue of effective and timely consultation of draft bills with the NHRI, NGOs and other stakeholders, the GNCHR notes that the standard practice in Greece is to launch an online public consultation of draft bills for 7 days, under the exceptional expedited procedure of art. 61 Law 4622/2019 without, however, any justification as to the shortening of the normal

period which is 14 days. In 2023, in most cases, the legislative initiatives with an impact on human rights followed this expedited procedure, like the new Migration Code (Law 5038/2023). Other draft bills, such as the anti-bullying law have been on public consultation for 15 days. The amendments to the Greek Penal Code were put under consultation for 1 month.

The Regulatory Impact Assessment Manual 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". In 2023, in contrary to the above provisions, none of the Ministries introducing bills to the Parliament have previously sent it to the Greek NHRI for its expert opinion. Nevertheless, 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 the process. In 2023, the GNCHR submitted its written views on the following bills with an impact on human rights: (1) anti-bullying law (5029/2023), (2) new Migration Code (5038/2023), (3) amendment of labour law (5053/2023).

More particularly on its comments to draft L. 5053/2023 regulating labour issues, the GNCHR noted that there has not been a timely institutional information and consultation of the Ministry of Labor with social partners, i.e. the representatives of employees and employers (tri-partite consultation) which is part of the European social acquis and expressly provided in Directive (EU) 2019/1152 (recital 7). The GNCHR encouraged the Ministry to restitute the previous good practice of setting up tripartite representation working groups in a timely manner when incorporating EU law.

It shall be recalled that the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament at the conclusions of its recent mission to Greece called on the Greek Authorities to ensure real and meaningful consultation procedures.

In addition, two worrying trends, contrary to the good law-making principles stated above still persisted in 2023:

- the introduction of last-minute amendments related or not to the subject matter of the draft bill; and
- the introduction of massive omnibus bills. For instance, Law 5053/2023 *on strengthening work - Incorporation of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 - Simplification of digital processes and strengthening of the Work Card - Upgrading the operational function of the Ministry of Labor and Social Affairs of Insurance and the Labor Inspection* includes "Other emergency regulations" that regulate issues such as the payment of seniority in the private sector and the adjustment of employee salaries, the granting of insurance capacity in areas affected by natural disasters and the supplementary state budget for fiscal year 2023.

Recommendation 5 is a follow-up recommendation from the previous monitoring cycle (the EC 2022 Rule of Law Report) whereby a risk against the freedom of operation of civil society organizations due to the burdensome registration requirements has been identified. The solution proposed was to ensure proportionality in the implementation of recurring laws. In 2023, the EC recommended further that a dialogue between authorities and CSOs must be initiated in order to review, if necessary, and within a participatory process the applicable legal framework on registration of CSOs.

The Greek NHRI informs that CSOs operating in Greece must comply with different formalities depending on their field of action; CSOs registers exist in the Ministry for Foreign Affairs, the Ministry for Internal Affairs, the Ministry for Labour and Social Affairs and the Ministry for Migration and Asylum, serving different aims. The GNCHR is mostly concerned on the inconsistent and non-transparent practice of the Administration interpreting in a different way in each individual case the criteria of art. 78 of Law 4939/2022. The GNCHR received in 2023 relevant complaints; more examples can be

found in the Joint Civil Society Submission to the European Commission on the 2024 Rule of Law Report (pp. 43-44).

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. This has led to a "de-legalization" of prominent NGOs active in the refugee and migration field struggling to comply with the increased formalities of the two registers (one for the NGOs and another for their members) kept at the Ministry for Migration and Asylum. CSOs that have undergone these registration procedures characterize them as "heavy" (information received by the GNCHR during the hearing on human rights defenders, see below). Legal aid is necessary as well as the investment of a significant number of human resources to prepare the file and follow-up, since in most of the times, the Administration asks for additional documents and formalities. This is a long exhausting procedure that negatively impacts on smaller CSOs or voluntary associations that don't have the means to respond to the requirements and are discouraged from applying. Increased formalities and fewer funding opportunities has led many NGOs and CSOs either to leave from Greece or reduce their presence in the field, especially on the islands. In a recent field visit of the GNCHR in Samos, the delegation noted the limited presence of NGOs operating within the Closed Controlled Reception Centre – in comparison with previous years despite the big number of residents and their increased needs in terms of legal aid, medical care, social services, non-food items, educational and recreational activities.

In the spirit of the EC's Recommendation, the GNCHR has recommended to national authorities to review the fragmented and ineffective legal framework governing the Registers of the Ministry for Migration and Asylum and establish transparent and uniform criteria with a view to safeguarding the public interest and the smooth functioning of civil society organisations. The Greek NHRI informs that, to its knowledge, in 2023, the Secretary General for the Reception of Asylum Seekers convened two meetings with NGOs and CSOs working in the field of asylum and migration to discuss

common issues of interest, among them also the amelioration of the registration system for CSOs. To date, the GNCHR is not aware of any concrete proposal tabled by the Ministry for Migration and Asylum to this end.

In its 2023 Rule of Law Report, the Greek NHRI informed on two pending cases before the Council of State:

- One questioning the legality of the registration requirements for CSOs operating in the migration and refugee field provided in the Ministerial Decision issued by power of art. 191 of Law 4662/2020 – which was later incorporated into Law 4939/2022. The hearing took place on 2.12.2022 and the decision has not been yet published.
- Another questioning the legality of mandatory registration requirements and sanctions for trade unions provided in the Ministerial Decision implementing Law 4808/2021. In 2022, the Council of State declared them contrary to art. 8 of the EU Fundamental Rights Charter and the General Data Protection Regulation. The case is now pending before the Plenary of the same Court after an appeal.

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

The Greek NHRI has a pluralistic composition, comprising of 20 experts nominated by institutions whose activities cover the field of human rights: independent authorities, trade unions, bar associations, NGOs, universities and research institutions. Since 2021, the Parliament, Ministries and political parties represented in the Hellenic Parliament are represented at the GNCHR through the appointment of liaison officers. In addition, the Greek NHRI operates the Racist Violence Recording Network (RVRN) (with the UNHCR Office in Greece) and the Recording Mechanism of Informal Forced Returns which are comprised of several non-governmental organisations and civil society actors.

Taken the above asset into consideration, the Greek NHRI informs that it has a unique standing as a bridge builder between the State and civil society. In follow-up to the EC's

and ENNHRI's recommendations on the enabling space of civil society and human rights defenders, the GNCHR undertook these activities/actions:

- In March 2023, the GNCHR submitted its Observations on Greece's draft reply to the list of issues prior to the submission of its 3rd periodic report on the implementation of the ICCPR. It has extensively referred to the situation of human rights defenders in Greece commenting Greece's reply to questions regarding institutional racism and the freedom of expression, peaceful assembly and freedom of association, in the spirit of relevant recommendations addressed to the Greek authorities by other UN and/or regional bodies.
- In April 2023, the RVRN's Annual Report for 2022 was presented at a press conference. It is reminded that the RVRN records incidents of racist violence against vulnerable groups, including human rights defenders; human rights defenders that provide support to individuals and communities who possess protected characteristics and may face targeted discrimination on account of this association. The findings of the Annual Report for 2022 were presented and discussed among a variety of stakeholders that attended the event. The trend of targeting human rights defenders, within Greek territory, especially those operating at the borders was depicted. Moreover, it was concluded that racism and targeting of human rights defenders erode victims' safety and sense of justice.
- In November 2023, the GNCHR has organised, pursuant to par. 4 of art. 18 of Law 4780/2021, a closed oral hearing on the protection of human rights defenders working in the refugee and migration field in Greece. The following stakeholders were invited to attend: state authorities, international organisations, scientific associations and NGOs. The objective of this hearing was for GNCHR members to form a substantiated opinion on current challenges and institutional responses to this matter. In addition to the information received in the above hearing, a working meeting between GNCHR members and journalists covering refugee and migrant issues took place in order to better understand the

particularities of media professionals as human rights defenders. All the above information taken into consideration, the Greek NHRI issued a *Statement on the human rights defenders working in refugee and migration field* [in Greek].

- January 2024, the GNCHR facilitated a tri-partite meeting between the European Commissioner for Home Affairs Yiva Johansson, the Greek NHRI and CSOs on migration matters in Greece, during the Commissioner's country visit. This initiative was welcomed by both parties. An open dialogue on a wide range of migration matters affecting Greece took place. The Greek NHRI considers this activity as a best practice to be replicated in the future, serving at the utmost its role as a bridge builder between civil society and authorities (in this particular case, regional authorities).

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

In the GNCHR's statute law, it is provided that "at the end of each year, the Ministries 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 of Law 4780/2021). This provision is being partially implemented by the Ministries (à la carte). In 2023, to the GNCHR's knowledge, the following recommendations were being addressed by the state authorities: (a) the Ministry of National Defence withdrew art. 62 of draft Law 5018/2023 regarding the amended composition of the Special Committee for the examination of applications for alternative civil service made by conscientious objectors pursuant to GNCHR's relevant recommendations and (b) the Ministry of Labour and Social Security took, in the spirit of the recommendations made by the GNCHR on health and safety of employees, a number of legislative, procedural and administrative measures (Law 4997/2022, PD 34/2022, Ministerial Decision 29510/1-4-2022, Joint Ministerial Decision Δ1α/ΓΠ.οικ.24415/4-5-2022, Ministerial decisions P/49550/1405/20-5-2022, 73066/2022, 80016/17-8-2022, Joint Ministerial Decision 105583/911-22, Circular

56163/15-6-2022 [*information received in 2023 for the year 2022). There is no information as to the implementation of rule of law recommendations.

Establishment, independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Greek National Commission for Human Rights (GNCHR) was last re-accredited with A-status in March 2017. 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 in the second session of 2024.

Regulatory framework

The Greek NHRI informed in ENNHRI's 2022 Rule of Law Report on the profound legislative amendments introduced by Law 4780/2021 to the GNCHR's founding legislation (Law 2667/1998). During 2022, the GNCHR had been in a transition period. In 2023 this period ended. Delegated acts provided by Law 4780/2021 were issued. In addition, the GNCHR is vested with a new Organisation, after the issuance of Presidential Decree 74/2023. Finally, since December 2023, the Greek NHRI operates with full financial autonomy as an independent authority under the Greek national legislation.

NHRI's recommendations to national and regional authorities

Despite the GNCHR's upgrade into an independent authority, its increased budget and staffing, there is still room for improvement in relation to establishing a stable institutional dialogue with executive, legislative and judicial authorities, implementing follow-up procedures to consultative, monitoring and education work and overcoming bureaucratic obstacles that impact on the GNCHR's efficiency. To this end, the GNCHR would like to address the following recommendations to state authorities:

- Timely and meaningful consultation to draft bills and draft reports to international and regional monitoring bodies, including the draft national rule of law report which is not shared for comments;
- Standing invitation to the GNCHR to all sessions of parliamentary committees addressing human rights issues;
- Institutionalised follow-up procedure (reasoned reply) to GNCHR's recommendations;
- Better understanding of the GNCHR's unique standing as an NHRI and increased responsiveness to its requests on budget, staffing and membership.

Checks and balances

Independence and effectiveness of independent institutions (other than NHRIs)

As mentioned above, the GNCHR consists of 20 experts, among them five persons appointed by independent authorities. In its 2022 Rule of Law Report, the Greek NHRI informed on the restrictions by Law 5002/2022 to the mandate of the Hellenic Authority for Communication Security and Privacy (ADAE) which is a GNCHR member and a constitutional independent authority. In 2023, harassment and intimidation of ADAE's members and staff from governmental and judicial authorities was reported by its President to the GNCHR Plenary. The Greek NHRI issued a Statement [in Greek] denouncing the unconstitutional selection and appointment of new members of the National Council for Radio and Television (NCRT) and the ADAE and the serious impediments that ADAE faces in the execution of its mission. Indicative of these is the summoning of two members of ADAE as suspects for the offence of leaking sensitive state secrets to a journalist under surveillance from National Intelligence Services. The GNCHR concluded that the unhindered and without interference operation of the independent authorities and the securing of the personal and functional immunity of their members constitutes an undisputable rule for the smooth running of a State in accordance with the rule of law. The members of the independent authorities should not be prosecuted for the performance of their duties. The Greek NHRI informs that the Athens Bar Association submitted before the Greek Council of State an application for annulment of the Ministry of Justice's decision on the appointment of ADAE and NCRT on grounds of unconstitutionality. The criminal case against the former member of ADAE was closed in February 2024. The European Parliament in its Resolution of 7 February 2024 on the rule of law and media freedom in Greece noted with great concern the "increasing pressure" to independent authorities such as ADAE owing to their work concerning the EYP's illegitimate wiretapping and the suddenly replacement of its board members by the Greek Parliament on the eve of the ADAE's decision to impose a fine on the EYP.

The GNCHR published in 2023 an extended report (Reference Report) on the institutional control of security and intelligence services [in Greek]. The role of security and intelligence services to fight crime and protect national security is vital. On the other side, their work affects the enjoyment of human rights and imposes restrictions on ensuring the privacy of communications and personal data protection, which constitute the two pillars of the rule of law. The question that arises, taking into account the wiretapping scandal in Greece as reported in the 2022 Rule of Law Report, is how the authorities can use data and technology to combat crime and for reasons of national security in a manner that fully respects the fundamental rights enshrined in international and national law, such as the right to family life, the right to private life, the freedom of thought, freedom of opinion and expression, personal data and privacy of communications. In this regard, the issue of the supervision and control of the intelligence services, i.e. their accountability to independent authorities, the judiciary and executive power is of major importance.

Concerning ADAE, which was initially established as a constitutional guarantee for the protection of privacy of communications, it has assumed in the course of its operation control responsibilities; ADAE carries out controls either to ensure that the legal conditions for the lifting of privacy of communications are observed, or to ascertain whether extra-institutional wiretapping takes place. In Greece, the ex-post general control on cases involving the lifting of privacy of communications rests with independent authorities or parliamentary committees, whereas control of individual cases falls usually upon the judiciary. Along with ADAE's control powers, the Greek legislative framework provides for an *ex-ante* control by judicial officers over the lifting process of privacy.

Enabling environment for civil society and human rights defenders

Greece does not currently have a law specifically aimed at the protection of human rights defenders or that recognizes the legitimacy of their work, nor does it contain a concrete definition of human rights defenders. The GNCHR has in multiple times

advocated for the enacting of a special law on recognition and protection of human rights defenders as well as the establishment of a focal point for human rights defenders within the NHRI (ENNHRI's rule of law report 2022 – Country report: Greece). In March 2023, the Report of the UN Special Rapporteur on the situation of human rights defenders after her visit to Greece (from 13 to 22 June 2022) has been presented at the Human Rights Council. She noted that human rights defenders are generally free to conduct their work in Greece and in most areas, without intimidation or harassment. However, human rights defenders promoting and protecting the rights of migrants, asylum-seekers and refugees, including human rights lawyers, humanitarian workers, volunteers and journalists, have been subjected to smear campaigns, a changing regulatory environment, threats and attacks and the misuse of criminal law against them to a shocking degree. In follow-up to these worrying findings, the Greek NHRI convened a joint meeting of its First Sub-Commission for Civic and Political Rights and Third Sub-Commission for the Application of Human Rights to Third Country Nationals, along with an oral hearing of relevant stakeholders on the protection of human rights defenders working in the refugee/migration field in Greece (see above). Based on information received during the hearing and other information available to the Greek NHRI through its regular monitoring work, the GNCHR is of the opinion that recently the situation of human rights defenders has deteriorated. In particular, in the refugee and migration field, complaints have been formulated by humanitarian organisations about their work being hindered through practices of harassment of their staff, the cultivation of a hostile environment - in law and in practice, incidents of arbitrary arrest and/or detention of human rights defenders or even initiation of a criminal persecution for acts committed in the performance of their job.

The GNCHR compiled all available international and European standards and formulated concrete urgent recommendations to the State in its *Statement on the human rights defenders working in the refugee and migration field* [in Greek]. The recommendations read as follows:

- Show zero tolerance towards incidents of harassment, attacks, manifestations of hate speech and every other form of targeting human rights defenders, attributable to state actors, by adopting a coherent prevention policy of similar phenomena, taking the utmost account of the Racist Violence Recording Network (RVRN) Recommendation on supporting actions to counter hate speech and institutional racism against refugees, migrants and their defenders.
- Refrain from conducting criminal prosecutions against organisations or other groups of human rights defenders, in respect of providing humanitarian aid to third-country citizens or exercising their professional duties (for instance as attorneys at law or as journalists).
- Ensure the unhindered exercise of journalism and adopt measures introducing protection and compensation for victims of strategic lawsuits against public participation (SLAPPs) in the framework of the implementation of the Recommendation issued by the EC in its 2023 Rule of Law Report.
- Ensure an enabling environment through the institutional framework for the operation of civil society organizations and other defenders of human rights, taking into account with due seriousness the repeated Recommendations of international and European bodies. In this context, the conditions for the registration of non-governmental organizations and their members in the Registers of the Ministry of Immigration and Asylum should be immediately revised so that they do not disproportionately burden the activities of the organizations, in accordance with EC's recommendation.
- Finally, the GNCHR calls on the State to take seriously into consideration and without further delay the repeated Recommendations addressed by international and European bodies, on the establishment of an institutional framework to underpin the functioning of civil society organisations and other groups of human rights defenders.

NHRI's recommendations to national and regional authorities

The role of independent authorities as independent oversight mechanisms of the democratic functioning and integrity of the governmental authorities shall be strengthened and not interfered with. Based on GNCHR's research, while in law the system of checks and balances is adequate (a combination of parliamentary, independent authorities and judiciary oversight), in practice there is a perceived interference with the independence of these bodies and a lack of adequate tools and funds to perform their mission.

On the specific issue of the oversight and control over intelligence services that constituted the subject-matter of a GNCHR Reference Report in 2023, the Greek NHRI formulated the following recommendations:

- the need for transparency in the functioning of intelligence services. Despite the fact that intelligence services frequently pursue activities involving the processing of especially sensitive content of certain highly classified information that cannot be disclosed to oversight bodies, under no circumstances, however, shall the secret nature of the intelligent services which is related to their operational action, correspond to their failure to provide information and accountability for their actions to the oversight bodies. Furthermore, publishing regular reports on the oversight of intelligence services practices, would help to strengthen the transparency of their operation. The Greek NHRI proposed the institutionalization of a preventive mechanism through sample control on cases involving the lifting of privacy of communications.
- the respect of the principle of proportionality by informing the person under surveillance thereof, in due time after the surveillance ended. The role of justice becomes crucial for speedy investigation of cases for which the principle of proportionality may have not been observed.
- Institutional frictions between justice and independent authorities are caused due to unclear boundaries between independent bodies and judicial and

executive authorities over oversight and control of intelligence services; a clear legal framework that will provide effective safeguards for the protection of privacy while ensuring accountability and transparency is needed.

Finally, the GNCHR would like to reiterate its standard recommendation (which is also a RVRN's recommendation and the UN Special Rapporteur's on the situation of human rights defenders) that a special national law on the recognition (definition) and protection of human rights defenders in Greece should be adopted. Even if human rights defenders are protected under constitutional or other general or per professional category provisions, a new special legal framework would add, according to the UN Special Rapporteur, "legal guarantees, visibility and recognition for individuals and groups dedicated to human rights, shielding them from attacks, including undue restrictions on their work".

Impact of securitisation on the rule of law and human rights

The Greek NHRI informs that it is not working *per se* on the subject of securitisation of human rights. However, this topic falls under the broader category of security and human rights that the GNCHR often confronts in the execution of its duties. In 2023, security issues impacted four human rights topics:

Use of illegal spyware/surveillance

The GNCHR places particular emphasis on the critical role that intelligence services play in law enforcement work and the protection of national security. Especially in light of terrorist threats, transnational organized crime and the possibilities arising from new technologies to carry out cyber-attacks, the already complex work of these agencies helps to protect citizens from many serious threats. However, the work of intelligence services may affect the free enjoyment of fundamental rights and, in any case, places serious limitations on ensuring the privacy of communications and the protection of personal data, which are enshrined in Article 8 of the European Convention on Human

Rights, articles 7 and 8 of the Charter of Fundamental Rights of the European Union as well as articles 9, 9A and 19 of the Greek Constitution. After all, ensuring the confidentiality of communications and the protection of personal data are two of the pillars of the rule of law. In view of all these and in accordance with the principle of proportionality and the need to ensure the role of the constitutionally established Independent Authorities, such as the Hellenic Authority for Communication Security and Privacy (ADAE) and the Hellenic Data Protection Authority (PDPA), which appoint members to the Plenary of the GNCHR, the Greek NHRI published in 2023 a special thematic Report on the institutional framework for the supervision of intelligence services [in Greek]. The European Parliament in its Resolution of 7 February 2024 on the rule of law and media freedom in Greece formulated a number of recommendations to the Greek authorities in relation to the illicit use of the surveillance technology such as Predator Spyware to which the GNCHR adheres. In fact, the European Parliament stressed that there is an illegitimate instrumentalisation of the term 'national security threat' as a justification for the unacceptable wiretapping and surveillance of political opponents, including MEPs.

Police violence

In Greece, there have been instances where policing measures have been perceived as excessively strict or disproportionate and discriminatory. Notably, concerns have arisen over the use of excessive force by police during protests and in the management of public gatherings, highlighting issues around the right to peaceful assembly and freedom of expression. For example, on November 11, 2023, a 17-year-old Roma was fatally shot by a police officer in Boeotia. According to the official announcement, the police officer has been suspended and is already facing criminal prosecution for intentional homicide with potential malice and illegal execution of a warning shot. Civil society denounced that there is a "normalization of illegal police violence" regarding the case, following the previous deaths by police of two Roma young persons in 2021 and 2022 and a young Syrian refugee in 2023. These incidents raise serious concerns on the

boundaries set by Article 3 of Law 3169/2003 on the use of service weapons by police authorities. Similarly, excessive police violence was recorder towards a journalist covering a march in Larisa in September 2023 (see relevant Announcement of the Board of the Journalists' Union of Macedonia-Thrace). According to the latest report by the Greek Ombudsman published in October 2023 as the National Mechanism for the Investigation of Arbitrary Incidents, the de-escalation of the pandemic and the subsequent lifting of restrictive measures, which were enforced by security bodies, are reflected in the total number of cases in 2022. The vast majority of them were forwarded by the Hellenic Police, however the number are low in comparison with the previous year (a 30% reduction). It is also noteworthy that citizens' reports to the National Mechanism increased by 47% the last years (in comparison to 2019). The European Parliament in its Resolution of 7 February 2024 on the rule of law and media freedom in Greece expressed its deep concern about the many cases of excessive use of force by police services against minority groups and peaceful protesters, the above mentioned killings of three young Roma and the lack of proper police and judicial investigations over deaths involving police officers in duty, such as the death of LGBTIQ+ activist Zak Kostopoulos in 2022. According to the established and standing positions of the GNCHR (see relevant Statement) "public safety constitutes a systematic goal and a prerequisite for a democratic society as it is only through this that fundamental and systematically protected human rights such as the right to life, the right to health, free development of personality, freedom of expression, the right to assembly, and the protection of personal property are entrenched. The maintenance of legality constitutes a prerequisite for the tangible respect of these rights. However, the state, and specifically the Hellenic Police, as a holder of power, bears a significant responsibility in how it should specifically legislate, thereby ensuring that the monopoly of legitimate force never exceeds the absolutely necessary measure in light of the circumstances. The unnecessary or disproportionate use of force and measures of repression constitutes a violation of the state's duty from within, while it severely infringes upon fundamental rights, with the foremost of these being human dignity.

Repeated incidents of violence, moreover, reinforce an endemic culture of humiliation that must be stopped. Additionally, the very idea of social cohesion through the maintenance of citizens' trust towards the Hellenic Police mandates the elimination of such incidents by the force itself in cases where they occur. The GNCHR calls on everyone to adhere to legality and to the unreserved, tangible respect of the rights of all those living in the Greek territory, for the protection of which the Greek State bears the primary responsibility".

Juvenile delinquency

During 2023, the GNCHR identified a worrying trend on the rise of juvenile delinquency. According to a Press Release from the Hellenic Police, a total of 1,353 minors were arrested for various offenses, and a total of 1,201 case files were formed for an equal number of cases only in September 2023. In this context, the draft law of the Ministry of Justice "Interventions in the Criminal Code and the Code of Criminal Procedure to speed up and improve the quality of the penal trial - Modernization of the legislative framework to prevent and combat domestic violence " tried to address the above described phenomenon by including stringent penal measures not only for adults but also for minors. The government submitted in the late days of 2023 the draft law for the amendment of the Criminal Code and Criminal Procedure into public consultation without prior consultation and discussion with stakeholders involved in criminal justice nor the Greek NHRI. Among other legal arrangements, the draft law stipulates detention of minors in a special juvenile detention facility for the commission of any felony without the precondition of violence, even in the case of aggravated theft, which creates a problem of proportionality. In addition, the draft law foresees an increase in the duration of their stay above from eight to ten years. Moreover, according to this draft law, the court's ability to confine a young adult in a special detention facility is significantly limited. This response to juvenile delinquency in Greece is being framed primarily through the lens of security and public order as issues of security threats, leading to a response that prioritizes control and containment over other considerations

particularly the rights of minors in this case. These measures, as described, emphasize punishment and containment without necessarily addressing the underlying causes of juvenile delinquency or considering the long-term impacts on the minors' development and rights. As the GNCHR pointed out in the relevant debate in the Parliament in February 2024, the spirit of the draft law amending Penal Law is 'more prison time for more people', which includes minors as well. By extending punitive measures to minors, the legislation not only signals a move towards more stringent penal policies but also illustrates how securitization influences legal frameworks, prioritizing incarceration over alternative, more rehabilitative approaches. This raises significant concerns about the balance between security and human rights, especially for vulnerable populations like minors.

Informal forced returns of third country nationals

On migration management, the issues of security pertain the handling of situation at borders in case of hybrid threats or instrumentalisation of migrants. Back in March 2020, Greece was faced with a pressure at its land borders with Turkey which resulted into closing its borders and suspending access to asylum for one month. Following the situation at the Eastern European borders with Belarus in 2021, a proposal for a Regulation on situations of instrumentalisation of migrants was tabled by the European Commission. These security concerns underpin the recently adopted EU Crisis and Instrumentalisation Regulation.

In Greece, as in other countries whose borders are at the same time the EU's external borders, authorities have been given the dual role of policing and controlling both national and external EU borders. At the same time, broader geopolitical complexities in the Eastern Mediterranean converge with matters of foreign policy and security for Greece given the tense relationships with neighbouring counties. Inside this vortex of multiple pressures Greek Authorities must respond in a way that guarantees both the effective surveillance and control of the national borders, which are at the same time the external EU borders, and the effective access to international protection of asylum

seekers who have entered the EU Member States, as well as act in compliance with the legal procedures regarding reception and identification of third country nationals, the European Convention of Human Rights and the EU Charter of Fundamental Rights.

Following two key findings: (a) the absence of an official and effective data collection mechanism on alleged incidents of informal forced returns on national level, and (b) the need for coordination among the various stakeholders who record, on their own initiative, allegations of informal forced returns by the alleged victims making recourse to their services, the GNCHR decided to establish a Recording Mechanism of Informal Forced Returns in 2021, which became operational in 2022 as mentioned in the 2023 Rule of Law Report. In December 2023, the Recording Mechanism of Incidents of Informal Forced Returns published its Annual Report 2022, presenting detailed quantitative and qualitative data on incidents of informal forced returns recorded during 2022. The term 'informal forced returns' encompasses alleged pushbacks of asylum seekers and refugees, as well as any other form of forced removal of third-country nationals from Greek territory conducted irregularly and summarily, without following legal procedures for the removal of third-country nationals. Between February 2022 and December 2022, the Recording Mechanism recorded testimonies through personal interviews with the alleged victims, about 50 incidents of informal forced returns, which according to the alleged victims occurred in the period between April 2020 and October 2022. According to the testimonies, the total number of the alleged victims involved in these incidents, amounts to a minimum of 2.157 persons, including 214 women and 205 children, as well as persons with special needs, like persons facing medical problems, persons with disabilities, elderly people etc. Based on these findings, the Recording Mechanism formulated a number of recommendations addressed to Greek authorities and extended an invitation to all parties concerned, i.e. national authorities, law-enforcement agencies, European and international Institutions, civil society organizations and local authorities, to engage in an open dialogue and stable cooperation, with a view to commit to collective efforts to address the challenges

related to migration as well as to the reception and integration of asylum seekers and refugees into Greek society and the EU.

NHRI's recommendations to national and regional authorities

Authorities shall ensure that all security measures are subject to robust oversight by independent bodies, including NHRIs. This may involve reviews of the necessity, proportionality, and effectiveness of these measures on an individual case, after relevant complaints have been submitted to these bodies or on a larger scale when systematic issues have been raised by *proprio motu* investigations of independent authorities. Legal guarantees on the obligation of authorities to cooperate with the independent oversight bodies and on access to all documents that are necessary for the execution of their mandate are a prerequisite.

Implementation of European Courts' judgments

The Greek NHRI informs that Greece continues to maintain a satisfactory track record regarding the payment of just satisfaction ordered by the Court. The adoption of both individual and general measures varies, with frequent legislative amendments enacted in response to ECtHR judgments finding violations.

In September 2023, the Committee of Ministers ended its supervision of the *Rahimi* case regarding the mistreatment of unaccompanied minors due to inadequate living or detention conditions. This case, under enhanced supervision since 2011, concluded following the elimination of protective custody and the introduction of a new protective system for unaccompanied minors.

Indeed, the need for broad legislative reforms may account for the delayed implementation of the requisite general measures. However, even when enacted, legislative measures geared towards Convention compliance may not be effective in tackling systemic violations in law and practice. The Committee of Ministers welcomes progress in the right direction but remains unsatisfied with the level of systemic

compliance, especially regarding structural deficiencies in the justice, police, and prison systems. On the latter, the CPT reported, in August 2023, that no tangible progress had been made to address its concerns and expressed doubts about future improvements, while stressing that constructing new prisons alone is unlikely to provide a lasting solution.

In addition, the introduction of a new remedy in the Penitentiary Code to address poor detention conditions has yielded little to no practical result. Its application remains thin on the ground and the rejection rate exceeds 99.5%. A remedy adopted with a view to ensure Convention compliance is currently under scrutiny in the context of 27 applications lodged against Greece in 2023, which, *inter alia*, challenge its effectiveness. The GNCHR is currently preparing its own independent report on the situation in prisons. The Greek Ombudsman in its latest report as the National Mechanism for Investigating Incidents of Arbitrariness highlights the systematicity with which the same faults and shortcomings are recorded in the internal process of investigating disciplinary offenses and, therefore, their durability over time, despite the recommendations and repeated interventions of the Ombudsman The length of the judicial proceedings is far beyond the average in the CoE countries, according to the Minister of Justice. A draft law with a new judicial map is under elaboration with the aim to remedy this unsatisfactory situation in four years' term.

Furthermore, the GNCHR notes that particularities of the Greek legal system substantially hinder the reopening of cases both in law and in practice, thus impeding access to *restitutio in integrum*. In the specific context of Greece, it is proven that the imperative of *restitutio in integrum* in the implementation of judgments carries significant weight. Even in cases where proceedings can be reopened, there is often little to no substantive prospect of success in rectifying the consequences of the violation and ensuring a Convention-compliant outcome for the applicant. Domestic courts demonstrate reluctance to deviate from their initial findings, as exemplified in the *Bekir-Ousta* group. Furthermore, normative constraints, such as the prohibition of

reopening proceedings at the expense of the accused, hinder efforts to achieve *restitutio in integrum*, as demonstrated in cases like *Sidiropoulos and Papakostas* group. Similarly, the newly introduced remedy on poor detention conditions in response to the *Nisiotis* group, is sparingly employed and applications are rejected at an overwhelming rate.

Hence, apart from *Rahimi*, the groups of cases previously reported remain under supervision. More specifically, there are nine groups of leading cases pending before the Committee of Ministers, most under enhanced supervision due to the important structural and/or complex problems revealed therein:

- *Sidiropoulos and Papakostas* group (33349/10+) concerns the ill-treatment by law enforcement and the lack of effective investigations into death or ill-treatment in the context of law enforcement;
- *Nisiotis* group (34704/08+) relates to inhuman and/or degrading treatment based on poor detention conditions (overcrowded prisons, no ventilation, no personal space, lack of medical care, etc);
- *M.S.S.* group (30696/09+) relates to shortcomings in the examination of asylum requests, poor detention conditions, absence of adequate support upon release and absence of an effective remedy.
- *Beka-Koulocheri* group (38878/03+) relates to the non-compliance or significantly delayed compliance of the authorities with final judgments of the domestic courts;
- *Bekir-Ousta and others* group (35151/05+) relates to the refusal to register two associations and the dissolution of one association asserting that their aim was to promote the existence of an ethnic minority in Greece (as opposed to a religious one);
- *House of Macedonian Civilization and others* (1295/10) relates to the refusal to register an association due to the use of the word "Macedonian" and based on an alleged contravention of public order.

The competent national authority, i.e. the Legal Council of State, instituted a new, restructured Thematic Formation to focus on cases of the CJEU, ECtHR and foreign courts. Based on a decision of the Council's President, it was set to operate as of 6 March 2023. It has undertaken the dissemination of ECtHR judgments, by issuing, *inter alia*, a bulletin on the case of *B.Y. v. Greece*, which was further circulated by the Prosecutor of the Supreme Court.

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

The GNCHR maintains a long standing, multi-level cooperation with the European Court of Human Rights, promoting the work of the Court and contributing to the effective implementation of its judgments in Greece.

The GNCHR has undertaken the translation of the Court's thematic factsheets aiming to facilitate the dissemination of ECtHR case-law in Greece. In 2023, four factsheets were published in Greek, covering the topics of mass surveillance, climate change, trade union rights and prisoners' right to vote, currently available here.

In addition, the GNCHR addressed a letter to the Ministry of National Defence expressing concern about a draft provision modifying the composition of the board responsible for examining applications for conscientious objector status. The proposed change directly contravened ECtHR case-law, particularly *Papavasilakis v Greece*. The problematic provision was subsequently omitted from the final version of Law 5018/2023, which was then adopted without it.

In a dedicated section of its website, the GNCHR maintains and updates on a yearly basis a list of ECtHR judgments against Greece with explicit reference to their status of execution.

The GNCHR closely monitors the execution cycle against Greece, observing its progression from its initiation until the issuance of a final resolution by the Committee of Ministers. It communicates regularly with the Department for the Execution of

Judgements and exchanges with their team while on country visit. It has submitted in the past Rule 9 Communications to the Committee of Ministers and will do so in the future, when it will deem this needed. As an A-status NHRI, the Greek National Commission enjoys credibility and trust among both domestic and international stakeholders, including the Council of Europe organs.

At national level, the GNHCR is active on engaging the Parliament in discussions about substantial implementation of the ECtHR's jurisprudence in cases against Greece as well as GNCHR's recommendations on specific cases under enhanced supervision by the Committee of Ministers. In 2024, the GNCHR was invited to offer relevant insight before the Special Permanent Committee on monitoring the decisions of the European Court of Human Rights in the Hellenic Parliament.

Moreover, in terms of raising awareness, the GNCHR regularly conducts trainings to university students, civil servants, law enforcement agencies and justice professionals on the jurisprudence of ECtHR and the Court of the European Union. In 2023, training activities and raise-awareness messages focused on the CJEE and ECtHR jurisprudence concerning the human rights of third country nationals during reception.

Finally, the Greek NHRI monitors the execution of the European Court for Human Rights judgments and therefore puts particular emphasis on compliance with Rule 39 (Interim Measures) orders of the Court. In this framework, the GNCHR, informed by civil society organisations on seventeen cases of third countries nationals for whom interim orders have been issued by the ECHR in 2022, submitted, for every case, a written intervention to the competent Greek authorities recommending them to comply with the Court's respective interim orders. In response, the GNCHR received five follow-up letters by the Hellenic Police Headquarters and one by the Ministry of Citizen Protection. According to the information gathered by the GNCHR, out of the 17 cases, 8 were led to a successful outcome, meaning that the competent authorities managed to detect the applicants and provide them with food, water, clothing, and appropriate medical care. For more information see the Annual Report for 2022 (Chapter 5 (1)) of the Recording Mechanism

of Informal Forced Returns – which is considered as a best practice by the European Commission in its 2023 Rule of Law Report for Greece (p. 25).

NHRI's recommendations to national and regional authorities

NHRIs have the capacity to enhance awareness and knowledge among national authorities through reporting and training initiatives. For example, the GNCHR conducts training sessions for judges, prosecutors, judicial officers, and law enforcement agents, focusing on the ECHR and the EU Charter, including the dissemination of jurisprudence, to strengthen their understanding of and compliance with the relevant instruments. To this end, the GNCHR recommends the provision of sufficient and sustained resources to effectively carry out its mandate as bridge builder between international law and national practice, through the enhancement of the implementation of European Courts' judgments.

The implementation of general measures to address structural and complex problems is often hindered by a fragmented approach and a lack of coordination among domestic stakeholders, as evidenced in cases like the *Beka-Koulocheri* group. The GNCHR is of the opinion that there is a need for coordination across branches of government – legislative, executive, and judiciary– as well as within each branch to ensure a concerted and cohesive approach in the adoption and implementation. Without a cohesive and long-term national strategy, the problem of non-compliance persists, as fragmented measures, although nominally aimed at Convention compliance, fail to address the underlying structural issues within the domestic framework. In formulating the requisite strategy, authorities are encouraged to engage in open dialogue with stakeholders and consult relevant parties, including the NHRI, to enhance the strategy's effectiveness and increase its chances of success.

Hungary

Office of the Commissioner for Fundamental Rights of Hungary

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 institution of the Commissioner for Fundamental Rights of Hungary (hereinafter the "CFR") is regulated by the highest-level source of the Hungarian legal hierarchy, i.e. the Fundamental Law of Hungary. On the one hand, Article 30 of the Fundamental Law of Hungary enlists the activities performed by the CFR and explains the basic rules of the procedures to follow. The Act CXI of 2011 on the Commissioner for Fundamental Rights of Hungary (hereinafter "CFR Act") sets out his powers, responsibilities, the structure of the office, investigation activities performed in the context of fundamental rights protection and special procedures as well as general rules of procedure. According to the law, the Ombudsman institution is only responsible before the Parliament and is independent both from the executive and the judiciary. It is an efficient tool to eliminate the deficiencies of the self-controlling mechanisms of the State, safeguard the protection of fundamental rights, as well as control function of the Parliament. It is almost exceptional in Europe that the CFR and the Office are specifically mentioned in the Fundamental Law of the nation.

The Fundamental Law of Hungary reflects a more modern approach to the system of fundamental rights than the previous Constitution, one which adapts to the challenges of the 21st Century.

Now, the CFR protects the broadest possible range of human rights, beyond his classical ombudsman responsibilities of controlling public administration. To enforce the principle of equal treatment, he is also authorised to apply a wide range of sanctions in authority-related matters. It is important to emphasize the necessity of clearly defining the legal assurances for independence as outlined in the Paris Principles. These assurances are upheld not only within the Office of the Commissioner for Fundamental Rights of Hungary (OCFRH) but also within Hungarian legislation.

In the spirit of strengthening the level of rights protection, the legislator deemed the institution of the CFR suitable for being vested with the responsibilities of the existing anti-discrimination bodies. The extension of his powers was implemented by integrating the individual legal defence organs of the state that earlier used to operate independently from each other, with a view to ensuring a more efficient protection of human rights.

The powers of the CFR have been strengthened in four major areas that are especially important from a fundamental rights perspective in the past few years: first, in relation to police complaints, secondly, with regard to the enforcement of the principle of equal treatment, thirdly, with the tasks of, fourthly, in the area of whistleblower protection. Regarding the protection of persons with disabilities, as well as whistleblower protection, the significant extension of mandates took place in 2023. As a result of the extended mandates, Hungary saw the development of an exemplary system of protecting fundamental rights, which unifies the authority-related and ombudsman-type legal defence mechanisms, consequently, one that is flexible and suitable for remedying a wide range of infringements. The budgetary resources required for the performance of the tasks stipulated by the law were available during 2023.

General Directorate for Disability

The new extended UN Convention on the Rights of Persons with Disabilities (CRPD) mandate of the CFR, linked to the "General Directorate for Disability", should be highlighted. Pursuant to the amendment of the CFR Act effective as of 1 January 2023 (see Section 1(3) of the CFR Act), the "CFR" ensures the performance of the tasks of the independent mechanism as set out in Clause 2, Article 33 of the CRPD.

Even before the amendment of this act, the CFR was responsible for paying special attention to supporting, protecting and controlling the implementation of the tasks set out in CRPD. However, with the new provision taking effect, he can protect the fundamental rights of persons with disabilities even more efficiently, by involving civil society, especially the persons with disabilities and the organisations representing them.

The responsibilities of the independent disability mechanism under CRPD are fulfilled by a separate organisational unit of the Office, i.e. the General Directorate for Disability (hereinafter referred to as: "the Disability Directorate"), which was set up on 1 January 2023. During the implementation of the tasks of the independent disability mechanism, the CFR acts either in person, or through his authorised staff members, and he may authorise other experts to participate in the performance of his tasks on a permanent or ad hoc basis as well.

Client Service and Department for the Protection of Whistleblowers

Hungary implemented Act XXV of 2023, aligning with Directive (EU) 2019/1937, establishing protections for whistleblowers. The Hungarian Ombudsman oversees a secure electronic system for reporting public interest disclosures and abuses since 24 July 2023. Disclosers may opt for anonymity, with their data accessible only to the CFR.

Reports and attachments are forwarded to relevant investigating bodies within 8 days to safeguard disclosers from retaliation. The Act enables to report abuses and broaden

the scope of disclosures. Government bodies, appointed based on their responsibilities, must establish abuse reporting systems.

State bodies (currently 18) run external reporting channels, in line with the Act and relevant government decree, and provide comprehensive information on whistleblower protection. Internal reporting channels are mandated for state bodies and municipalities. The CFR administers an internal abuse reporting system since 24 July 2023. Employees can report abuses internally, ensuring comprehensive whistleblower protection in Hungary.

Anti-discrimination measures in education

The Commissioner for Fundamental Rights of Hungary plays a pivotal role in recent legislative developments aimed at fostering cooperation between universities, research institutions, and the economy. Act LXXXV of 2023, effective 14 December 2023, amends various laws to enhance this interconnection. Notably, amendments to Act CLI of 2011 granted the Constitutional Court broader powers, including providing preliminary interpretative opinions on EU matters, ensuring the protection of national sovereignty and identity.

Additionally, measures have been implemented to address the welfare of disadvantaged children in education. Act XCII of 2023 mandates monitoring of primary school demographics, penalizing schools with significantly fewer disadvantaged pupils than the municipal average with reduced subsidies. School operators must ensure equitable distribution of disadvantaged children in new schools or classes.

Integrity authority

The CFR highlights the Integrity Authority's crucial role in overseeing the use of EU budget funds, as mandated by Act XLIV of 2022. The Authority's efforts ensured transparency and accountability, exemplified by the issuance of reports such as the Annual Analytical Integrity Report. This report examines various aspects of public

procurement, regulatory efficacy, and the control system for EU funds, demonstrating compliance with legal obligations.

Furthermore, the establishment of the Anti-Corruption Task Force, composed of representatives from both non-governmental stakeholders and public authorities, underscores Hungary's commitment to combating corruption. Task Force members undergo a rigorous selection process, ensuring their effective participation in the body's functions, which include analysis, proposal, and decision-making.

In legislative matters, Act LXXXV of 2023, effective 14 December 2023, amends laws to strengthen the collaboration between universities, research institutions, and the economy. Amendments to Act CLI of 2011 grant the Constitutional Court the authority to provide preliminary opinions on the interpretation of fundamental rights and freedoms protected by the Constitution in cases before the Court of Justice of the European Union.

However, legislative processes were temporarily affected by the special emergency legal regime declared in response to the armed conflict and humanitarian disaster in Ukraine during 2022 and 2023. This led to a temporary postponement of legislative negotiations. The CFR highlights the importance of maintaining due diligence in legislative procedures.

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

In 2023, the Office of the Commissioner for Fundamental Rights of Hungary (OCFRH) demonstrated its dedication to promoting and safeguarding fundamental rights through comprehensive reports and collaborative efforts with public entities. The CFR concluded 4597 cases, receiving cooperation from relevant entities in addressing identified shortcomings in fundamental rights. Additionally, the CFR issued 67 legislative opinions, 55 general comments of legislation, and 65 constitutional complaints, with ongoing monitoring of legislative implementations. This commitment to collaboration

and active monitoring highlights the OCFRH's dedication to upholding the rule of law and protecting fundamental rights in Hungary.

General Directorate of Disability

In 2023, the newly established General Directorate of Disability addressed 74 individual complaints. Additionally, the CFR initiated 42 ex-officio inquiries, including cases concerning a substantial collective of individuals with disabilities. 11 investigations were designated as follow-up inquiries, with 5 concluded within the year.

One notable ex-officio investigation scrutinized 26 residential and day-care institutions for individuals with disabilities and psychiatric patients, resulting in 4 reports highlighting instances of non-compliance with fundamental rights. Recommendations were primarily directed towards institution proprietors and administrators, with one case involving the Ministry of the Interior.

The CFR also expressed opinions on draft legislation concerning disability and proposed amendments to legislation governing disability organization. Moreover, the CFR conducted an ex-officio investigation into 26 institutions, ensuring diverse representation by visiting facilities in varied locations and of different types.

Client Service and Department for the protection of Whistleblowers

The Complaints Act in Hungary expands whistleblower protection beyond the Directive's scope while adopting a restrictive approach to defined subject matters. Designated governmental bodies, outlined in Government Decree No. 225/2023, are appointed based on relevant responsibilities outlined in the Directive's Annexes and Complaints Act. The legislation's efficacy is evidenced by a significant increase in cases received by the Office in 2023, totalling 575 cases compared to previous years. The CFR is responsible for conveying aggregated statistical data to the European Commission by March 31 of the subsequent year and engaging in collaborative discourse with them.

General Directorate of police Complaints

In 2023, the CFR issued 80 reports, including those meticulously prepared by the General Directorate of Police Complaints (GD). Notably, 45 reports stemmed from ex-officio proceedings, primarily focusing on school guard activities in Csongrád-Csanád and Bács-Kiskun counties. Additionally, there were 32 reports on complaints against police measures and 2 on the penitentiary system, with one report related to misdemeanour proceedings.

Among these reports, the CFR identified instances of maladministration in 18 cases and provided recommendations. Encouragingly, authorities acknowledged and accepted these recommendations in 15 cases, committing to necessary decisions and implementations.

One significant report concerned a follow-up visit to the Hajdú-Bihar County Remand Prison by the National Preventive Mechanism. The CFR requested measures to address overcrowding, pest control, cell repairs, and improve living conditions, all of which were acknowledged by the Hungarian Prison Service (BVOP).

Additionally, an inquiry has been initiated in response to numerous prisoner complaints, encompassing matters related to contact, visitation, permissible items within cells, and the mandatory bail payment for prisoners' telephones. The CFR recommended measures in his comprehensive report to ensure compliance with screening rules, respect for human dignity during admission of visitors, and proper physical contact during family visits. The BVOP acknowledged and implemented these recommendations.

General Directorate for Equal Treatment

In 2023, the General Directorate for Equal Treatment (GDET) in Hungary handled a total of 490 cases, including 248 officially initiated cases and 242 non-authoritative cases aimed at providing information and insights to clients. Of the 164 decisions rendered, 91

pertained to substantive aspects, with 21 acknowledging infringements, 70 rejecting applications, and 11 resolved through settlement. Fines were imposed in 4 cases, with disabilities being the most identified infringement, particularly in healthcare accessibility.

Breaches of equal treatment were observed in various sectors, including healthcare, maternity/paternity, nationality, movement of goods and service utilization, social security and health, education and training, and employment. Administrative proceedings were conducted in 18 cases.

The GDET actively examines draft legislation related to equal treatment and rectifies regulatory gaps identified during administrative enforcement. The CFR initiated procedures in 2021 to ensure equitable access to adult general practitioners for individuals with disabilities, leading to legal actions against 16 municipalities. Despite warnings, several municipalities have yet to ensure complete accessibility, prompting continued oversight and intervention by the CFR.

Department of public law

In 2023, the Department of Public Law highlighted various ongoing practices and cases. The CFR played an influential role in legislative processes, offering opinions on 65 draft laws, nearly double the amount from previous years. Notably, the CFR provided meaningful opinions on 20 draft laws to promote fundamental rights enforcement.

One significant opinion related to Act XXV of 2023 on Complaints, Disclosures in Public Interest, and Related Rules on Reporting Abuses. The CFR emphasized the need for clear regulation, establishment of a competent organization, and allocation of necessary budgetary resources for effective abuse reporting. Additionally, the CFR proposed amendments to the National Anti-Corruption Strategy and collaborated with the Ministry of Culture and Innovation on the protection of children with special needs and disabilities in play schools.

During the process of amending Act XXXI of 1197 on the Protection of Children and the Administration of Guardianship, discussions were held with experts from the Ministry of Culture and Innovation to define rules for the separation of children with special needs in play schools. Similarly, while drafting amendments to criminal and related laws, the CFR highlighted concerns regarding hindrances to detainee reintegration, leading to consultations with the Ministry of Interior to modify regulations to ensure fundamental rights enforcement in 2023.

Subsequently, the Ombudsman's report on Case No. 51/2023 revealed inadequate regulation in play school education. The investigation revealed that provisions in a Ministry decree allowed special needs children to be educated separately without statutory authorization. This lack of regulation extended to partial separation, further breaching principles of the rule of law and equal treatment. The Commissioner recommended legislative remedies, which were accepted by the Ministry of Culture and Innovation.

The CFR's reports also addressed issues concerning the rule of law and legal certainty. For instance, report No. AJB-1084/2023 focused on the regulation of special consultants in expert evidence proceedings. The CFR identified deficiencies in ensuring impartiality and requested the Minister of Justice to examine potential amendments to address the shortcomings.

Overall, the CFR's involvement in legislative processes and its proactive approach to addressing legal deficiencies underscore its commitment to upholding fundamental rights and the rule of law in Hungary.

Department for equal opportunities and children's rights

In 2023, the Department for Equal Opportunities and Children's Rights addressed a wide range of cases, focusing on protecting the rights of vulnerable groups. The CFR issued 35 reports through the Department, covering critical areas such as child protection, education, social affairs, elderly affairs, health, and social security benefits.

These reports contained a total of 103 recommendations, initiatives, and other measures aimed at advancing and safeguarding fundamental rights.

One area of focus was the examination of child protection institutions, including children's homes and specialized children's homes. The CFR emphasized the vulnerability of institutionalized children and families and conducted frequent monitoring to ensure transparency and compliance with legislation.

Another significant effort involved assessing the functionality of the foster care system and the rights of fostered children. As a result of CFR's inquiry, legislative amendments were enacted to increase foster parent benefits. Additionally, collaborative efforts were initiated to establish unified criteria for selecting foster parents and to ensure proposals for contact with the child's relatives are made in the child's best interests.

Regarding homelessness, the CFR recognized homelessness as a fundamental right issue and annually scrutinized the functionality of the homelessness care system, particularly during the winter crisis period. The Winter-Spring Crisis Report of 2023 highlighted the impact of energy exposure and proposed concrete measures for consideration.

In the domain of elderly affairs, the CFR addressed complaints about the operations of a county nursing home and the care provided to residents. The report identified deficiencies related to documentation and restrictive measures impacting residents' rights to health self-determination. In response, the Government Office mandated the institution to rectify deficiencies and provide additional training to relevant staff.

In healthcare, the CFR scrutinized institutional practices related to psychiatric care, focusing on documentation, emergency care, safeguard rules, and the complaint mechanism. The CFR issued principled recommendations in two cases under investigation, both concerning psychiatric care.

Renovation of children's homes

It is worth highlighting the proactive initiatives led by Dr. Ákos Kozma, Commissioner for Fundamental Rights of Hungary (CFR), in enhancing the welfare and living conditions of vulnerable children. This collaborative approach has resulted in the modernization of several children's homes since 2021, demonstrating a commitment to safeguarding the rights and welfare of vulnerable children beyond mandated responsibilities.

The renovation of children's homes in Hungary in 2023 was fronted by the CFR. Two notable renovations took place at the Ipolypart Fészek Children's Home in Balassagyarmat and the Szent Benedek Group Home operated by the Saint Agatha Child Protection Service of the Szeged-Csanád Diocese.

At the Ipolypart Fészek Children's Home, which accommodates children aged 12-18, comprehensive care is provided, along with aftercare services for those aged 18-25. The CFR conducted an inspection in September 2023 and recommended renovation based on the findings. The project was initiated following the recommendation of the Nógrád County Police Headquarters. The renovation was successfully completed through voluntary efforts from staff at both the Nógrád County Police Headquarters and the Borsod-Abaúj-Zemplén County Police Headquarters.

Similarly, the Szent Benedek Group Home in Szeged-Csanád Diocese was found to be in need of renovation during an inspection in October 2023. The renovation project for this children's home was also successfully concluded in 2023, demonstrating the commitment to improving the living conditions for children under the care of these institutions.

The CFR's commitment to continuing initiatives to renovate children's homes in 2024 reflects a dedication to ensuring that these facilities provide safe and suitable environments for the children they serve.

Regional Offices

The establishment of six regional offices in Hungary by the CFR has facilitated the exchange of best practices in human rights. Hosting delegations and experts has showcased the initiative's ambition. In 2023, the offices received 3,323 citizens' inquiries, demonstrating their significant impact and resonance with the public.

Status of people freeing from the war in Ukraine in 2023_

The special emergency legislation enacted in 2022 and 2023 to address the conflict in Ukraine has significantly affected legislative consultations. The need to swiftly address urgent legal matters has changed the procedural dynamics of consultation, as highlighted in the CFR's report to Parliament in March 2023. The report emphasized the importance of seeking input on draft legislation during critical periods.

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

Expanded CRPD Mandate (as of 1 January 2023)

The CFR ensures the performance of tasks related to the independent mechanism under Article 33 of the UN Convention on the Rights of Persons with Disabilities (CRPD). This involves active engagement with civil society, particularly persons with disabilities and organizations representing them.

Collaboration with Civil Organizations

The CFR continues to work collaboratively with Civil Organizations, particularly through the Disability Advisory Board and Civil Consultative Body and his work at the borders affected by the Russia-Ukraine war. These collaborations involve seeking recommendations for on-spot visits and assessing institutions, ensuring a participatory approach to addressing issues related to fundamental rights.

Cooperation with State Authorities

In 2023, there is evidence of successful collaboration with state authorities, as seen in the renovation project for a children's home. The project involved voluntary efforts from staff at both the National Police Headquarters, the Hungarian Prison Service and National Forest Companies. This collaboration highlights the capacity of public organizations to work together for the greater good, emphasizing the protection of fundamental rights and human rights.

Continued International Cooperation and Advocacy

The CFR maintains a strong emphasis on international cooperation, engaging with organizations and partners to advocate for human rights at global forums. Regular updates and communication with international human rights protection institutions continue, including weekly newsletters distributed through the ENO (European Network of Ombudsmen) and the IOI (International Ombudsman Institute). This ongoing communication is vital for updating and engaging with the global ombudsman community on fundamental rights matters. In 2024, the CFR remains committed to prioritizing communication with national and international partners, highlighting the importance of fostering collaborative relationships and active engagement with global entities in fundamental rights.

Measures to ensure comprehensive school desegregation

The CFR has actively addressed the issue of school segregation, leveraging the expertise of the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities of Hungary and drawing from the procedural insights of the General Directorate for Equal Treatment. The institution's sustained efforts in this regard are exemplified by the enactment of Act XCII of 2023, specifically focused on anti-discrimination measures within the realm of public education, as detailed in point I.1.

Establishment, 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. 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'. 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. The NHRI challenged this recommendation before the GANHRI Bureau, in accordance with Article 12 of the GANHRI Statute. This challenge was not successful, and the decision became final on 17 May 2022.

Follow-up to SCA Recommendations and relevant developments

The Commissioner for Fundamental Rights of Hungary (CFR) emphasizes the circumstances surrounding the downgrade of the Hungarian NHRI's accreditation status. The NHRI was downgraded to B-status in March 2022 after the SCA recommended it in June 2021. Despite challenges to this decision, it was upheld, finalizing in May 2022. The NHRI asserts its adherence to UN Paris Principles and plans to seek reaccreditation. The CFR highlights the strict selection criteria for their appointment, emphasizing independence and legitimacy.

Changes in the regulatory framework include the integration of responsibilities outlined in the UN Convention on the Rights of Persons with Disabilities (CRPD), with plans for an Independent Disability Mechanism. The CFR underscores its authority in environmental law cases, ensuring the protection of future generations' interests.

Independence and effectiveness are emphasized, with proceedings solely subject to Hungarian law.

The nomination process for the CFR and Deputy Commissioners is outlined, with nominations by the President of Hungary and proposals made by the CFR, respectively. Despite claims leading to the B-status reclassification, the CFR seeks dialogue with relevant parties.

Practices instituted by the Office of the Commissioner for Fundamental Rights aim to enhance communication and exchange of best practices nationally and internationally. In this context, it is pertinent to highlight certain practices instituted by the Office of the Commissioner for Fundamental Rights of Hungary (OCFRH) to enhance its international and national communication, as well as to facilitate the exchange of best practices:

"FRANET - Tender

A significant milestone involves the Office of the Commissioner for Fundamental Rights of Hungary, in collaboration with the National University of Public Service, securing the FRANET tender from the European Union Agency for Fundamental Rights (FRA). This achievement underscores the close cooperation between the CFR,

and the FRA, wherein ongoing reports, and commentary on the state of fundamental rights and the rule of law in Hungary are regularly submitted. In compliance with requests from the agency, the OCFRH consistently supports the endeavours of the FRA. This support is manifested through the provision of comprehensive technical materials, data reports and analyses to the Fundamental Rights Agency.

ENNHRI Small Grant: Cooperation with A-status institutions

In his contribution to the ENNHRI 2023 Rule of Law Report, the CFR emphasized his commitment to fostering dialogue with both national and international organizations to exchange valuable experiences and gain direct insights into the state of the rule of law between the organisations concerned. In alignment with this commitment, the

implementation of the “Small Grant” for the “Cooperation and Exchange Program with Other ENNHRI Members and Internal Capacity Building” has been initiated.

This initiative enabled the CFR to actively engage with other institutions falling under the "A" category. The CFR designated experts to conduct study visits in two selected partner institutions.

The initial visit occurred at the Office of the Commissioner for Fundamental Rights of Hungary on 31 October 2023, following a prearranged agreement with the partner institution. Following the visit, the Polish partner institution provided a detailed account on its website. The second study visit is scheduled to transpire at the National Ombudsman of the Netherlands on 31 January 2024. The exchange of experiences and the initiative to acquaint oneself with various institutions constitute integral components of the future plans outlined by the CFR.

Visiting the Polish Office of the Commissioner for Fundamental Rights

On 31 October 2023, a delegation from the OCFRH conducted a study visit to the Office of the Commissioner for Fundamental Rights of Poland (“OCFR of Poland”), aimed at fostering the exchange of experiences among national human rights institutions. The visit encompassed three working sessions with the participation of representatives from the OCFR of Poland.

During these sessions, various aspects were deliberated, including the legal foundations governing the OCFR of Poland, its competences, organizational structure, and collaborative efforts with non-governmental organizations and international entities. The Polish experts also shared insights into the Commissioner for Fundamental Rights of Poland’s initiatives concerning refugees from Ukraine to Poland and the situation on the Polish-Belarusian border. Furthermore, discussions revolved around the experiences of the independent body for equal treatment, with a particular focus on its endeavours on behalf of individuals with disabilities, monitoring the implementation of the UN

Convention on the Rights of Persons with Disabilities, and safeguarding the rights of LGBTQ+ individuals.

***Let's build bridges!* International conference**

In line with the priorities outlined above, to assist awareness-raising, international cooperation and communication, the Office of the Commissioner for Fundamental Rights of Hungary orchestrated an international conference on human rights protection issues titled *"Let's Build Bridges: Working Together to Protect and Promote Human Rights in Challenging Times."* This event took place on 1 December 2023, as part of the ENNHRI's tender.

The conference featured distinguished speakers, including several ENNHRI partners. International contributors such the Ombudsman of the Republic of Serbia, the Deputy Ombudsperson of Romania, and a leading expert of the Commissioner for Fundamental Rights of Poland. Representing the OCFRH, Balázs Könnyid, Secretary General, Dr. Elisabeth Sándor-Szalay, Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities, and the heads of two professional departments (Equal Treatment Department, OPCAT NPM Department) delivered presentations during the event. Moreover, notable Hungarian speakers included several experts as well on related topics to human rights protection. Various NGOs and universities were invited by the CFR.

The international conference exceeded expectations with 220 attendees, reaching maximum seating capacity. Despite the challenges of high demand, his staff effectively managed the over-subscription. The conference aimed to promote ENNHRI's interests in human rights protection, rights awareness, transnational cooperation, tolerance, acceptance, and advocacy. Speakers were selected based on ENNHRI's values, focusing on promoting human rights protection and mainstreaming rights awareness. The Office prioritized reaching experts from NGOs and universities in Hungary, collaborating with national universities to publicize the event through their websites and internal systems.

Informative Materials

In the frame of the ENNHRI Small Grant in 2023, the OCFRH received support from ENNHRI and the European Commission to its proposal, namely, to launch four informative materials to support capacity building: to enhance the communication and partnership between the ENNHRI members and the global community of National Human Rights Institutions as well with other stakeholders. Through providing of four publications, the OCFRH had the opportunity to share its latest achievements and main activities in the field of protecting and promoting human rights more effectively.

Considered as an improvement, now these activities and milestones of the OCFRH can be shared with even more international partners in written form.

Tender for IOI Regional Subsidies, 2023

The CFR participated in the co-funded initiative "Connecting Ombudsman Procedures and Citizens" facilitated by the International Ombudsman Institute (IOI). The CFR promoted its newly established regional offices in six cities through this initiative, as reported in the IOI's Annual Report of 2023. Additionally, in 2023, the CFR began the "Regional Subsidies" project, which included a rights awareness lecture for civil partners and NGOs in Debrecen. The event highlighted mandate changes related to the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) and offered attendees the chance to visit the fully accessible office of the General Directorate of Disability and interact with staff.

National drawing and literature competition

In 2023, the CFR, launched a national drawing and writing competition titled "*Everyday Life after COVID, the World I live in*" in collaboration with the OPCAT National Preventive Mechanism (OPCAT NPM). The competition aimed to gather insights into the experiences of individuals in detention centers, prisons, social institutions, and children's homes during the COVID-19 pandemic. Nearly 1000 entries from over 100 institutions

were received. Winners were awarded certificates and monetary rewards during a commendation ceremony on 6 October 2023, at the CFR headquarters. In addition to the competition, an international conference was organized on October 16, 2023, bringing together students and academics at the CFR Office. Guest speaker the SPT's Country Rapporteur for Hungary, discussed the relationship between national NPMs and the SPT, offering insights into the work of the SPT.

Expert engagement and advancing legal awareness initiatives

The CFR regularly hosts visits from international human rights experts to discuss various issues related to fundamental rights protection. Notable visits in 2023 included those from the Council of Europe's Group of Experts on Trafficking in Human Beings (GRETA), General Rapporteur Christophe Lacroix focusing on LGBTQ+ rights enforcement, European Commission representatives on migration and asylum, and a delegation from the European Committee for the Prevention of Torture (CPT). Additionally, the CFR engaged in educational outreach by delivering a lecture to legal trainees from Germany and providing internships to university students. Furthermore, the CFR participated in a Council of Europe workshop and round table addressing media regulators, equality, and freedom discrimination concerning the Roma community.

List of Visits:

- Visit of the Group of Experts on Actions Trafficking in Human Beings, Council of Europe (3 March 2023)
- Visit of General Rapporteur Christophe Lacroix (4 April 2023)
- Visit of the European Commission's experts on European Migration and Asylum (11 April 2023)
- Visit of the CPT Delegation (24 May 2023)
- Lecture to Legal Trainees from Germany (26 October 2023)
- Internships for University Students (Ongoing)

- Council of Europe's Workshop and Round Table regarding Media Regulators and Equality and Freedom Discrimination for Roma (7-8 November 2023)

International Meeting of Ombudspersons

In response to the humanitarian crisis resulting from the Russia-Ukraine war, the CFR has taken proactive measures to safeguard human rights and support individuals affected by the conflict in 2023 as well. These efforts include establishing temporary regional offices near the Hungarian-Ukrainian border, providing legal and humanitarian assistance, distributing information in multiple languages, and engaging in oversight activities to ensure effective support for refugees. The CFR has also facilitated dialogue and collaboration with international partners (1, 2, 3…), including hosting an international meeting of Ombudspersons and visiting the border with representatives from various countries. Additionally, the CFR has reported his activities to the Ukrainian Ombudsman, emphasizing the assistance provided by his office to those displaced by the conflict.

Regulatory framework

General Directorate of Disability

The CFR is mandated to execute duties related to the independent mechanism under Article 33(2) of the UN Convention on the Rights of Persons with Disabilities (CRPD), as per the Act on the Rights of Persons with Disabilities amendment effective from 1 January 2023. The staff of the Department, operating as an independent unit within the General Directorate, were selected based on criteria including knowledge or experience in disability issues and opportunities for personally affected or differently abled candidates.

The General Directorate of Disability operates from a geographically separate location in Debrecen, emphasizing barrier-free accessibility and safe, healthy working conditions.

The Debrecen Regional Office and GD building are fully compliant with accessibility requirements, enabling complainants with disabilities to manage their affairs in person.

Complainants can submit petitions orally at regional offices or headquarters, and in writing through the client gate, email, or post. Information on the Disability Directorate's responsibilities and relevant laws is available on the Office's website.

To enhance efficiency in fulfilling CRPD mandates, the CFR established a Disability Advisory Board comprising professional experts and delegates from disability organizations and civil society, fostering cooperation and informing disability-related tasks.

General Directorate of Police Complaints

On 30 November 2022, Act L of 2022 was enacted, amending various laws to enhance Hungary's security. This legislative framework also included modifications to certain provisions of the CFR Act. Consequently, commencing 1 January 2023, the Commissioner for Fundamental Rights of Hungary saw an expansion of capacities and powers, specifically to fulfil the functions of the independent mechanism outlined in Article 33(2) of the CRPD Additionally, select aspects of the organizational structure of the OCFRH underwent alterations.

The changes extended to the General Directorate of Police Complaints ("GDPC"). It is led by the General Director of Police Complaints. It is imperative to note that these amendments were solely of an organizational nature, and the tasks and powers of the unit, now designated as the General Directorate, remained unaffected.

Subsequently, with the enactment of Act XXV of 2023 on Complaints, Notifications of Public Interest, and Rules for Reporting Abuses on 25 July 2023, alterations were introduced to the regulations governing the CFR's involvement in handling complaints and notifications of public interest directed to state and local government bodies.

However, these modifications had no impact on the structure or responsibilities of the GDPC.

Client Service and Department for the Protection of Whistleblowers

As previously highlighted, a development in the realm of whistleblower protection at a guaranteed standard is the enactment of Act XXV of 2023 on Complaints, Disclosures in Public Interest, and Related Rules on Reporting Abuses (hereinafter referred to as the "Complaints Act") in Hungary on 24 July 2023. This legislation ensures the implementation of the Directive 2019/1937/EC of the European Parliament and of the Council dated October 23, 2019, concerning the safeguarding of individuals reporting violations of EU law (hereinafter: the "Directive") into Hungarian law. The system administered by OCFRH aligns with the definition of an external reporting channel as outlined in the Directive.

In accordance with Hungarian legislation, the Hungarian Ombudsman offers a neutral external channel, denoted as a "protected electronic system", for the submission of whistleblower reports related to public interest and, as of 24 July 2023, abuse reports. The efficacy of the whistleblower protection regulation and its reform is underscored by the notable increase in the number of cases received by the Office in 2023 compared to preceding years, amounting to a total of 575 cases.

NHRI enabling and safe environment

Public authorities are mandated to assist and cooperate with the work of the Commissioner for Fundamental Rights of Hungary ("CFRH") to ensure it is able to conduct its work independently and effectively.

The participation of relevant public authorities in investigations is deemed appropriate, and these authorities, along with various human rights bodies, have promptly furnished the necessary information, data, and responses to recommendations. The OCFRH has

actively engaged in the legislative process, with its recommendations during the consultation on draft legislation duly taken into consideration.

In 2023, the essential budgetary resources required for the execution of legislative tasks were made available. Remarkably, the Office of the Commissioner for Fundamental Rights of Hungary remained insulated from political attacks. Any critiques, provided they contribute to enhancing efficiency and professional protection of fundamental rights, are not only welcomed but also earnestly considered.

The proposal for a decision regarding the adoption of the report on the activities of the Commissioner for Fundamental Rights of Hungary and his deputies in 2022 received parliamentary approval with 119 votes in favour, 35 against, and 7 abstentions in December 2023.

In relation to this question, the OCFRH would like to highlight the following relevant practice and observation from one of its separate departments. The General Directorate for Equal Treatment (GDET) is adequately equipped with the necessary resources, budget allocation, and personnel to conduct official proceedings, whether initiated upon request or ex officio, addressing violations of equal treatment. Currently, a team of nine legal experts is entrusted with the responsibility of overseeing administrative and judicial reviews of decisions. In the year 2023, the GDET effectively handled a total of 480 cases, comprising 248 administrative proceedings and 232 cases involving the provision of information on available remedies in cases of equal treatment violations, as well as on the activities of the GDET.

Draft legislation impacting the requirement of equal treatment is routinely submitted to the GDET for consultation, either directly or through another unit within the OCFRH. Notably, in response to recommendations from the Commissioner for Fundamental Rights of Hungary regarding legislative matters, the GDET promptly rectified a regulatory deficiency identified during its enforcement activities. Furthermore, the GDET initiated a consultation process with the CFR on outstanding issues, particularly focusing

on concerns related to segregation in crèches. Significantly, the GDET has successfully conducted its operations without encountering any situations perceived as threatening.

NHRI's recommendations to national and regional authorities

As previously mentioned, the institution of the CFR is governed by the highest-level source in the Hungarian legal hierarchy, namely the Fundamental Law of Hungary. According to the rationale behind this legislation, the CFR, an ombudsman institution attached to the Parliament, operates independently from both the executive and judicial branches, serving as an efficient mechanism to address deficiencies in the self-regulating mechanisms of state power. While the budgetary resources required for 2023 were made available, it is imperative to underscore the need to legally enshrine guarantees of independence, as laid out in the Paris Principles – which is provided for to a high degree by Hungarian legislation.

It is crucial to emphasize the necessity of codifying the legal guarantees of independence in accordance with the Paris Principles. The legal provisions should secure the CFR's continuity in Office after the expiration of their term until a new CFR is elected by Parliament. Legislation addressing these proposals would serve as additional safeguards to the numerous ones already in place and further fortify the robust human rights protection framework operating in Hungary.

Checks and balances

Separation of powers

In the year preceding the parliamentary elections, the Commissioner for Fundamental Rights of Hungary issued a statement expressing staunch support for fundamental constitutional values that he still considers to be of importance. He deemed it his duty to underscore that the collective responsibility for upholding the rule of law and safeguarding the constitutional values achieved during and after the regime change rests on the shoulders of all citizens.

Emphasizing that the rule of law stands as a hard-earned fundamental value, imperative for the protection of fundamental rights and the preservation of democracy, the CFR stressed that its respect is indispensable for the proper functioning of the country and the well-being of its people.

The democratic rule of law, rooted in a plurality of principles and values, thrives on open discussions.

However, certain tenets of the rule of law must not only be legally enshrined but also enjoy widespread societal acceptance, forming the bedrock for the functioning of society within a democratic framework.

The CFR conveyed his conviction that the rule of law transcends being merely a legal framework; it embodies the authentic content and value of the state. Its comprehensive implementation is in the best interest of society as a whole, necessitating the broadest consensus on a conscious commitment to the fundamental values of the rule of law.

The CFR underscored that a shared dedication to the constitutional order and fundamental values is crucial for social peace and prosperity. The CFR affirmed the continued relevance of the statement, expressing the commitment to act in accordance with the stated position.

In relation to this question, the OCFRH would like to highlight the following relevant practice and observation from one of its separate departments. In the course of its operations, the General Directorate for Equal Treatment (GDET) has not identified any evidence indicating the existence of legislation, procedures, or practices that compromise the separation of powers. Decisions resulting from its administrative procedures are subject to judicial review, a process frequently invoked by individuals.

An inherent challenge the Office may encounter is the potentially prolonged procedural process involved, particularly considering that decisions before the Curia typically entail a longer timeframe compared to those in an average court setting.

The process for preparing and enacting laws

In the context of legislative consultation, it is noteworthy that the special emergency legislation declared in 2022 and 2023, in response to the armed conflict and humanitarian disaster in Ukraine, has had a notable impact on the customary practice of legislative consultation. The legislator, aiming to swiftly address urgent legal situations requiring regulation, prioritized the expeditious response over the usual process of negotiating legislation.

The Commissioner for Fundamental Rights of Hungary ("CFR"), recognizing the importance of meaningful and timely legislative consultation, brought attention to the legislator's obligation in this regard. This concern was articulated in the CFR's report on activities presented to Parliament in March 2023.

In the course of their duties, the expert staff of the CFR did not identify any legislation, procedures, or practices undermining the separation of powers. Decisions resulting from administrative procedures conducted by the GDET are subject to judicial review, frequently invoked by clients. However, the Budapest-Capital Regional Court does not consistently align with these decisions, leading to annulment and the initiation of a new administrative procedure. A challenge lies in the fact that the judicial procedure is a one-stage process, featuring only a limited number of extraordinary appeals against the decisions of the Budapest-Capital Regional Court.

These observations highlight the impact of emergency legislation on the legislative consultation process and underscore potential challenges in the judicial review of decisions, emphasizing the need for ongoing scrutiny and potential reforms to address identified issues.

In relation to this question, the OCFRH would like to highlight the following relevant practice and observation from one of its separate departments. Under Articles 21-30 of the CFR Act, the Commissioner for Fundamental Rights of Hungary (CFR), aided by Office staff, conducts thorough investigations as necessary. Cooperation from relevant

entities, including those under investigation such as police forces, Counter-Terrorism Centre, and prison services, is actively sought, facilitating effective investigations.

In 2023, CFR and General Directorate for Police Complaints (GDPC) staff conducted on-the-spot inspections of police, border protection services, school police, and penitentiary systems in collaboration with OPCAT. 80 reports were issued by the CFR, including those related to school police activities, complaint proceedings against police measures, and penitentiary system issues. Recommendations were made in 18 reports to rectify or prevent fundamental rights violations, with authorities accepting and acting upon recommendations in 15 instances.

Access to information

Access to data of public interest is safeguarded by Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information.

The Commissioner for Fundamental Rights of Hungary has not identified any practices that impede the application of the legal guarantees established by this act during their procedures.

The CFR's is committed to ensuring the effective implementation of the right to access information and uphold the principles of informational self-determination and freedom of information as enshrined in the law.

Enabling environment for civil society and human rights defenders

Within the realm of civil society engagement, the CFR endeavours to underscore the following exemplary practices:

Disability Advisory Board

As previously indicated, in pursuit of enhancing the efficacy of executing his mandate under the CRPD, pursuant to Section 39/P of the CFR Act, the Commissioner for

Fundamental Rights of Hungary ("CFR") has established a Disability Advisory Board, hereinafter referred to as the "Advisory Board."

The Advisory Board, consisting of 28 members representing various organizations related to disability-advocacy , held its inaugural session in Budapest on 3 October 2023. At subsequent sessions, the General Directorate for Disability was presented in Debrecen, and comprehensive inquiries into various disability-related issues were discussed. Investigations in 2023 focused on barrier-free accessibility, patient transport, guardianship records, and employment conditions. Unannounced visits were made to institutions, with findings reported by the CFR. Emphasis was placed on promoting independent living and inclusion in the community.

The CFR encouraged closer cooperation with the Advisory Board for identifying disability issues in 2024. Sign language and scribal interpreters were provided for meetings in compliance with legislation and requests. Staff from the General Directorate for Disability participated in national and international conferences, sharing their experiences and contributing to training materials aimed at enforcing the rights of persons with disabilities in judicial procedures.

Civil Consultative Body

In 2014, the Commissioner for Fundamental Rights established the Civil Consultative Body (CCB) to integrate the knowledge of organizations treating persons deprived of liberty. CCB members serve three-year terms, offering suggestions, proposing visits to places of detention, and providing feedback on NPM reports. In 2021, the CCB was expanded from 8 to 15 members to ensure broader representation. Members include various organizations such as medical associations, religious bodies, and civil liberties groups. In 2023, under the CFR's direction, two meetings were held where updates on NPM activities and experiences from visits to institutions were shared. The successful implementation of the OPCAT Special Fund project and initiatives to assist individuals fleeing the Russia-Ukraine conflict were discussed. In the meeting held on 19 December

2023, Secretary General of the Office of the Commissioner for Fundamental Rights, briefly presented Report No AJB-1262-29/2023. This report, issued under the general competence of the Ombudsman, focused on the work of the NPM and delved into the details of the introduced system of visitor reception in prisons.

Workshops

In 2023, the OCFRH hosted two significant workshops aimed at addressing various issues related to human rights and legal practices.

The first workshop focused on foster care and related matters, bringing together professionals from diverse backgrounds, including government agencies, social welfare offices, psychologists, and civil service providers. The participants emphasized the importance of collaboration among professionals, ensuring clear communication with foster parents, and utilizing knowledge and tools effectively within the system.

The second workshop, organized in response to recommendations from the European Committee for the Prevention of Torture (CPT), aimed to address challenges related to detention and imprisonment for misdemeanors. Participants included representatives from the OCFRH, CPT members, legislative bodies, law enforcement agencies, and professional organizations. Discussions covered various aspects, including legal guarantees for detainees, compensation in misdemeanor cases, treatment of vulnerable groups, information dissemination, alternative sanctions, and contemporary issues related to deprivation of liberty.

The OCFRH will compile a summary of the issues discussed and propose comprehensive solutions, including legislative measures, to relevant ministries.

List of Workshops:

- Workshop on Foster Care and Related Matters (23 May 2023)
- Workshop on Detention and Imprisonment for Misdemeanors (Date not specified)

NHRI's recommendations to national and regional authorities

The CFR assumes a pivotal role in upholding the rule of law and fundamental rights, contributing significantly to the system of checks and balances. It is imperative to underscore, within this context, the necessity of codifying legal provisions that guarantee the independence principles concerning a national human rights institution articulated in the Paris Principles.

The legal provisions should secure the tenure of the CFR beyond the expiration of their term until a successor is duly elected by Parliament. Enacting legislation to encompass these proposals would fortify the robust human rights regulatory framework already in place.

Impact of securitisation on the rule of law and human rights

In the assessment provided by the Commissioner for Fundamental Rights of Hungary, no practices of concern by public bodies within this domain have been identified throughout the course of the proceedings. However, it is noteworthy to emphasize that the CFR has consistently furnished the European Union Agency for Fundamental Rights ("FRA") with ongoing data pertaining to the circumstances of refugees affected by the war in Ukraine in 2023. It is crucial to underscore that the conflict in Ukraine, coupled with Russia's aggression, has presented a myriad of human rights challenges along the Hungarian-Ukrainian border.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

The CFR prioritizes protecting vulnerable individuals within the rule of law framework, ensuring their grievances are heard. Personnel actively assist refugees at temporary regional offices near the Ukrainian-Hungarian border, providing legal and humanitarian aid. Promptly responding to challenges at the border, CFR personnel travelled to provide direct assistance to refugees within 48 hours in February 2022. Since then, the

CFR has continued to offer support by establishing temporary regional offices and disseminating information online in 2023 as well. The CFR initiated an inquiry into institutions serving refugees, focusing on vulnerable groups like children and persons with disabilities. Simultaneously, the National Preventive Mechanism inspects places of detention on the border, evaluating accommodation conditions and assessing broader impacts on social care institutions. Staff conduct thorough inspections, document conditions, and interview residents and staff to ensure protection and prevent mistreatment.

NHRI's recommendations to national and regional authorities

Strengthen Multilateral Humanitarian Partnerships:

Building on the swift and exemplary response of the Commissioner for Fundamental Rights of Hungary, Dr. Ákos Kozma, it is crucial for national and regional authorities to enhance multilateral and national cooperation. Collaborating with experts and other NHRIs and Ombudspersons, international organizations, and NGOs particularly in the context of relevant challenges, will not only address the immediate concerns but also contribute to long-term stability. The CFR's commitment to direct help underscores the importance of fostering partnerships that prioritize the humanitarian aspect of security crises.

Integrate Human Rights Monitoring into Security Measures:

Drawing inspiration from the proactive measures taken by the CFR Dr. Kozma and his team, authorities should integrate human rights monitoring seamlessly into security measures. In the context of the Russian–Ukrainian conflict, this entails ensuring that legal and humanitarian aid is provided promptly to those in need. The CFR's model of on-site presence, regular updates on their website, and engagement on social media platforms sets a precedent for real-time monitoring, offering valuable insights into the evolving situation and addressing the multifaceted needs of vulnerable groups, such as children, persons with disabilities, and the elderly.

Strengthen Accountability Mechanisms and Inquiry Initiatives:

Building on the OCFRH's exemplary initiative to inquire into the institutions serving refugees and asylum-seekers, authorities should strengthen accountability mechanisms. This involves conducting comprehensive inquiries, particularly focusing on vulnerable groups affected by the conflict. The CFR's ongoing monitoring and follow-up actions demonstrate the importance of sustained efforts in evaluating the conditions of accommodation, preventing mistreatment, and understanding the broader implications of the conflict on social care institutions. Authorities should replicate such inquiries to ensure transparency, accountability, and a rights-based approach in addressing the impact of security measures on vulnerable populations.

The persistent efforts of the Office of the Commissioner for Fundamental Rights of Hungary, led by the Commissioner, and the dedicated personnel at the border, underscore the urgency and compassion required in addressing the ongoing challenges. Despite a current state of calm, the CFR remains vigilant, recognizing the active conflict and the potential for a significant influx of displaced individuals, reinforcing the need for sustained attention and collaborative action.

Implementation of European Courts' judgments

The Commissioner for Fundamental Rights of Hungary monitors decisions by European Courts during his investigations. It is the Government that is tasked with formulating and submitting legislation based on these decisions. The CFR aids the legislator by highlighting constitutional standards and international obligations during legislative deliberations. In the reports and technical papers issued by the CFR reference is made to pertinent case-law from the Court of Justice of the European Union whenever opportunities to do so arise.

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

The implementation of judgments of the European Courts is not within the official capacities and powers of the Commissioner for Fundamental Rights of Hungary. Nevertheless, the CFR monitors judgments issued by European Courts as well as the implementation within his procedures and investigations.

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

The overall state of the rule of law in Hungary has significantly improved through institutional changes and responsive measures following the recommendations from the European Commission regarding the rule of law. Please note that the linked press organs have increased its audience in the year of 2023.

Moreover, the Office of the Commissioner for Fundamental Rights of Hungary (OCFRH) wishes to bring attention to pertinent practices and observations from its Department for Equal Opportunities and Children's Rights. A key focus in safeguarding human rights involves the protection of vulnerable patients, notably psychiatric patients. In 2023, the Commissioner for Fundamental Rights of Hungary ("CFR") issued significant recommendations in two cases under investigation.

In response to a complaint from a non-governmental organization (NGO), the CFR probed the utilization of psychiatric monitoring in two cases. The CFR emphasized that without informed consent, voluntary access to care cannot be deemed, and voluntary patients should not be subjected to restraint, deeming their confinement to a closed ward an unlawful practice.

The report underscored that emergency treatment rules apply in cases of dangerous behaviour during medical treatment, necessitating court notification. The quality of information provided to patients and their relatives was deemed crucial for care process traceability, and thorough investigation of ill-treatment complaints was deemed

essential. To prevent identified abuses, the CFR issued recommendations to the concerned hospital managements and the chief medical officer.

In another case, the CFR identified post-healthcare treatment abuses, such as prolonged physical restraints on a patient not in a psychiatric ward, constituting a violation of the prohibition of degrading treatment and the right to personal liberty. The report emphasized the avoidance of restraints whenever possible to ensure non-violent care and proportionality. Among its measures, the CFR recommended the Ministry of Justice to adopt rules on the use of restrictive measures in inpatient healthcare institutions for patients not treated in psychiatric wards.

In 2023, the CFR placed special emphasis on the transparency of children's rights, examining legal regulations and practices concerning children's protection within the rule of law framework. A comprehensive inquiry, based on extensive data, analysis, and on-site interviews, delved into the functioning of the foster care system, the performance of the foster care profession, and the rights of children in care. The published report identified shortcomings, systemic issues, and outlined a detailed, comprehensive set of recommendations directed towards relevant Ministries, maintenance agencies, and national child protection bodies. Financial and funding constraints, as well as issues within the foster care domain, were identified as contributors to the identified shortcomings in the protection and care of children.

For further details, the complete report of the Commissioner for Fundamental Rights of Hungary is available in Hungarian here.

Ireland

Irish Human Rights and Equality Commission

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

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

Below is a list (non-exhaustive) of the Irish Human Rights and Equality Commission's (hereinafter: the Commission) work to support the implementation of recommendations made on the rule of law by regional actors and by the Commission:

- General Scheme of the Defamation (Amendment) Bill: The Commission engaged internally on the State's publication of the General Scheme of the Defamation (Amendment) Bill. This draft legislation includes the insertion of new anti-Strategic Litigation against Public Participation (SLAPP) measures. The Commission focused on the insertion of these new anti-SLAPP measures and agreed on its positions in an internal positions paper. To note, the position paper will not be published, it will be used to inform engagement with the State on this legislation as required.
- Civil Legal Aid Submission: The Commission made a submission to the Independent Review of the Civil Legal Aid Scheme. This review was initiated by the state and is the first time the scheme will be reviewed in its more than 40-year history. The Commission's 2022-2024 Strategy Plan specifically highlights the need to broaden access to Legal Aid in order to fulfil our human rights

obligations and this submission reiterated that equal access to justice is a cornerstone of a fair democracy. The Commission outlined key recommendations required to bring the current system into line with best human rights and equality policy.

- Submission on the Review of the Equality Acts: The Commission made a submission on the Review of the Equality Acts in July 2023. This is the second submission the Commission has made as part of the ongoing review of the Equality Acts in Ireland. In its first submission to the Equality Acts Review in 2021, the Commission highlighted the structural inequalities which were exacerbated due to the Covid-19 pandemic and called on the State to ensure the next generation of equality legislation adopted a proactive model of promoting equality by combating all emerging and cumulative forms of discrimination, addressing the procedural and accessibility issues impacting on access to justice, and ensuring awareness of rights.

  As part of the Commission's second submission in 2023, the Commission established an 'Advisory Committee on the Future of Equality Legislation' ('the FELAC'). The FELAC brought relevant legal and civil society experts together with Commission members to assist the Commission in identifying and examining the key issues that must be addressed to build a more comprehensive and effective framework of equality legislation and to support equality infrastructure. The Commission's submission built on its previous submission and sets out over 55 specific recommendations on access to justice and legal aid; on exemptions under the Equality Acts; on protected grounds; on positive duties; on positive action and measuring effectiveness and data collection. It also recommends the introduction of a 'purpose and principle clause' to guide implementation of the law.

- Submissions on the establishment of a Domestic, Sexual, Gender-Based Violence Agency: The Commission published its legislative observations on the General Scheme of the Sexual and Gender-Based Violence Agency Bill in July 2023. The

Commission's submission sets out 47 recommendations, amongst them calling for the Agency to be victim and survivor centered, for a review of the Third National Strategy on DSGBV to expand on refuge services (including specialist shelter for victims and survivors of human trafficking), adequate provision of specialist support services, and for the systemic and adequate collection of disaggregated data, not only to document the prevalence of DSGBV, but to inform the legal and policy framework surrounding the issue.

The Commission also submitted a Parallel Report to the Committee on the Elimination of Discrimination against Women in September 2023 . In this submission, the Commission recommended that the Committee ask the State to provide updated information on the establishment and work of the statutory Domestic, Sexual and Gender-Based Violence agency to address concerns about its independence, mandate, monitoring function and resourcing and plans to implement the recommendations in GREVIO's baseline evaluation report. The Committee published its list of issues and questions for its periodic report of Ireland in November 2023. The list of issues includes the Commission's recommendations regarding data collection and the independence, mandate, monitoring and resourcing of the Agency.

Establishment, 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. 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 policymakers, society, and government departments on the ratification of the UN OPCAT and provided views on the establishment 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 predetermined 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 Commission has a statutory responsibility under the Assisted Decision-Making (Capacity) (Amendment) Act 2022 as the Independent Monitoring Mechanism of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The Assisted Decision-Making (Capacity) (Amendment) Act 2022 fully came into force in Ireland in April 2023 and as of January 2024 the Commission's newly established UNCRPD IMM unit has become operational.

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 which legally requires all EU Member States to have National Rapporteurs or equivalent mechanisms). In September 2023, the 'Trafficking in Human Beings in Ireland: Second Evaluation of the Implementation of the EU Anti-Trafficking Directive' was published. This is the second national report since the Commission was appointed in this role.

The Irish Government published the General Scheme of the Inspection of Places of Detention Bill in June 2022, however, a draft Bill has not yet been published. The purpose of this legislation 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.

The Commission previously made a Submission on the General Scheme of the Inspection of Places of Detention Bill in which it called for the ratification of OPCAT urgently given that there are currently no independent inspection systems at the domestic level for Gardaí stations, prison transit, court detention, military detention or for certain types of *de facto* detention in voluntary settings.

NHRI enabling and safe environment

Public Sector and Human Rights Duty ('the Duty'): Section 42 of the Irish Human Rights and Equality Commission Act 2014 imposes a legal obligation on public bodies to have regard to the need to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work. It puts equality and human rights in the mainstream of how public bodies execute their functions. The Duty has been an important feature of Ireland's legislative framework on human rights and equality since 2014.

Building on the recommendations made in ENNHRI's 2023 Report regarding the Duty, the Commission has called for legislative reform to ensure a stronger Duty with effective enforcement mechanisms, including by strengthening requirements for reporting compliance with the Duty; expanding the Duty to include schools and other educational establishments; and mandating the collection of adequate disaggregated data to enable ongoing assessments of effectiveness (see, submission on the Review of the Equality Acts in July 2023).

The Commission has also highlighted to the State recommendations made by the Committee on the Elimination of Discrimination against Women ('the Committee') in 2017 for the Irish State to utilise the Duty to promote the mainstreaming of gender equality in all areas and sectors. In its Parallel Report to the Committee in 2023, the Commission recommended the Committee ask the State to outline the legislative and administrative measures it will adopt to progress the full and effective application of the Duty in Ireland, in line with the recommendations from the Commission. The Committee

published its list of issues and questions for its periodic report of Ireland in November 2023 and the list of issues includes the Commission's recommendations regarding the Duty.

The Commission continues to advocate for the Duty to be strengthened and awaits the State's follow up to its recommendations.

NHRI's recommendations to national and regional authorities

- The Commission recommends that the State pursue legislative reform to ensure a stronger Public Sector Equality and Human Rights Duty with effective enforcement mechanisms, including by strengthening requirements for reporting compliance with the Duty; expanding the Duty to include schools and other educational establishments; and mandating the collection of adequate disaggregated data to enable ongoing assessments of effectiveness.(See pgs. 70-71 of the submission on the Review of the Equality Acts in July 2023).
- The Commission recommends that the State should issue a formal communication, in the form of a circular, to public bodies to advance compliance with the Public Sector Duty, in line with the Commission's guidance.
- The Commission recommends that the State publish the Inspection of Places of Detention Bill without delay and ensure that the Commission's recommendations on the General Scheme of the Bill are incorporated into same.

Checks and balances

Separation of powers

In its Submission on the Policing, Security and Community Safety Bill, published in March 2023, the Commission raised concerns in relation to the independence of the police from executive control under the proposed legislation and called for the powers of the executive in this regard to be clearly defined and accompanied by appropriate safeguards to minimise political influence. The Commission also called for the

independence of the new policing oversight bodies to be strengthened, and for further safeguards regarding the level of Ministerial discretion in decisions which affect the functioning of these accountability mechanisms.

The process for preparing and enacting laws

- Submission on the Review of the Education for Persons with Special Educational Needs ('EPSEN') Act 2004: The Commission made a submission to the review of the EPSEN Act 2004 in March 2023. In this submission, the Commission identified that the current legislation, policies and practices concerning the education of students with educational needs, do not align with the vision of an inclusive education system as set out in international standards, including the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child.

  The Commission made specific recommendations in this submission for the meaningful consultation with and direct involvement of disabled people, included disabled children, through their representative organisations, including those representing children, in the review of the EPSEN Act 2004; as well as in the development, implementation, monitoring, reporting, evaluation and reviewing of the legislation, policies, practices and decisions concerning inclusive education. The Commission also recommended the EPSEN Act 2004 be amended to include the right to participation as a guiding principle for all decisions and actions made under the Act.

- Correspondence with the Department of Children, Equality, Disability, Integration and Youth: The Commission engaged with the Minister for Children, Equality, Disability, Integration and Youth, via official correspondence, on shortcomings it identified in the Assisted Decision-Making (Capacity) (Amendment) Act 2022. The Commission issued its first correspondence in January 2023 and received a

response from the Minister in September 2023. The Commission issued further follow-up correspondence reiterating its areas of concern.

The Commission highlighted in its correspondence its concern at the limited consultation with, and participation of, persons affected by this legislation. The Commission noted the Department's view that the consultation process was not as comprehensive as it would have wanted due to the need to move quickly in passing the legislation. However, the Commission reiterated its concerns that the consultation and engagement with disabled people and Disabled Persons Organisations (DPOs), in line with the CRPD, was too limited. The Commission advised the Minister of its view that consideration needs to be given to how the CRPD principle on participation is given effect in the monitoring of the implementation of the legislation, and in the development of other disability-related legislation.

Access to information

The Commission continues to highlight that there are considerable shortfalls in equality data available in Ireland. The Commission reiterated its calls for the State to develop and roll out disaggregated equality data collection in a number of publications and submissions throughout 2023. These include (but are not limited to) the following: Submission to the Department of the Taoiseach on the European Semester 2023, Ireland and the Sustainable Development Goals – Parallel Report, Independent Review of the Civil Legal Aid Scheme, Review of the Equality Acts in July 2023, legislative observations on the General Scheme of the Sexual and Gender-Based Violence Agency Bill, the Submission on the General Scheme of the Policing, Security and Community Safety, Policy Statement on Care.

The Commission recognises the importance of equality data in understanding the equality challenges and in the development of evidence-informed policy and strategy, driving change towards a more inclusive society. The Commission has recommended

the development and roll out of disaggregated equality data collection, processing and communication systems across all relevant public bodies in order to monitor the effectiveness and impact of legislation, policies and practices in Ireland, and that the relevant bodies publish statistics and analysis on an annual basis. Under IHREC's Public Sector Duty, all public bodies in Ireland have responsibility to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans.

As part of the Commission's work on equality data, the Commission hosted an equality data event in June 2023. The event was called 'Towards Equality Data for All' and brought together a range of experts, advocates and stakeholders for a collaborative discussion on the challenges and opportunities for the collection and use of equality data. The event was delivered in the context of the recent momentum in the area of equality data, including the work of the EU Subgroup on Equality Data, and Irelands forthcoming National Equality Data Strategy 2023-2027.

Enabling environment for civil society and human rights defenders

The Commission continues to support civil society and human rights defenders through a number of activities:

- CEDAW Parallel Report: The Commission submitted a parallel report in September 2023 to inform the List of Issues Prior to Reporting being adopted by the Committee on the Elimination of Discrimination against Women ('the Committee') at its 88th Pre-Sessional Working Group meeting, in advance of its forthcoming examination of Ireland's compliance with the UN Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW'). In this report, the Commission reiterated the importance of civil society in monitoring the implementation of CEDAW in Ireland and the Committee's emphasis of the importance attached to civil society input in the reporting process. However, the Commission noted that the State has withdrawn funding for Irish civil society

organisations to attend the State reviews in Geneva and called on the Committee to question the Irish State whether it intends to provide financial and other support to facilitate the participation of civil society in the upcoming CEDAW review. In addition, the Commission highlighted ongoing concerns about the supports provided to civil society and community development organisations working in women's rights and equality, particularly due to persistent underfunding, and called on the Committee to question the State on its plans to increase the allocation of multi-annual resources to women's rights organisations, including community development and grassroots organisations, in successive budgets, in line with core and programme funding needs and the current rates of inflation. In its List of issues and questions prior to the submission of the eighth periodic report of Ireland, the Committee has asked the State to provide information on State funding schemes for NGOs and the share of these funds devoted to women's rights and gender equality in the past five years; and plans to increase the allocation of multi-annual resources to women's rights organisations.

- Legislative observations on the General Scheme of the Sexual and Gender-Based Violence Agency Bill: In its submission, published in July 2023, the Commission made recommendations for a statutory basis for the Agency to consult appropriately with, and consider recommendations from, civil society organisations.
- ICESCR Guide: In June 2023, the Commission produced and published a Guide to Reporting under the International Covenant on Economic, Social and Cultural Rights aimed at civil society. This guide gives a brief introduction to the International Covenant on Economic, Social and Cultural Rights (ICESCR), explains the reporting process, and sets out the importance of civil society engagement involvement in reporting to provide its perspective on the extent to which Ireland is meeting its international human rights obligations.

- Submission on the Planning and Development Bill 2022: In October 2023, the Commission published its observations on this legislation which proposes *inter alia* reforms in relation to judicial review proceedings involving planning and development matters. The Commission noted that in order to protect and advance human rights and equality in the planning and development system, it is necessary for there to be effective public participation in the formation of legally binding measures that have a significant effect on the environment and the public must have wide access to justice. Significant restrictions on access to justice in this area will negatively impact the public's ability to safeguard their rights. The Commission made recommendations in relation to proposed reforms to the notice procedure, the legal standing of non-governmental organisations, and the right of appeal.
- In 2023, the Commission commissioned research into whether the Irish Constitution might protect a right to collective bargaining, and/or facilitate the protection of such a right in statute. The research paper concluded that a statutory right of this sort can be enacted in a constitutional manner, provided appropriate safeguards are in place in the legislation. The report also highlighted the requirement on Ireland to transpose the EU Directive on Adequate Minimum Wages by November 2024.
- Human Rights and Equality Grant Scheme 2023-2024: 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 the 2023-2024 funding are informed by the priorities set out in the Commission's Strategy Statement 2022-2024. 30 organisations have been awarded a total of €400,000 in funding for projects under the Human Rights and Equality Grants Scheme 2023.
- Advisory Committees:

    a. 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) to 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.

b. DAC: 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".

NHRI's recommendations to national and regional authorities

1. The Commission recommends that the State develops the collection and use of disaggregated equality data, including on the grounds of age, sex, disability, geographical location, ethnic origin, nationality and socioeconomic background and fully implements all European Commission guidance on the collection and use of equality data.
2. The Commission recommends that the Irish Government ensure the adequate and meaningful participation of structurally vulnerable groups in the

development, implementation, monitoring, reporting, evaluation and review of its legislation, policies, practices and decision-making.

3. The Commission recommends that that civil society groups are supported in participating in the development, implementation, monitoring, reporting, evaluation and review of legislation, policies, and practices.

Impact of securitisation on the rule of law and human rights

The Commission continues to have substantial concerns with regard to the adequacy of safeguards and the effectiveness of independent oversight of policing powers emerging in the policing legislative framework in Ireland. Two Bills relating to police powers and policing oversight are currently still in the legislative process, namely the Garda Síochána (Powers) Bill and the Policing, Security and Community Safety Bill. The Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 is also still in the legislative process and the Commission has raised concerns with the search warrant powers being set out in this legislation. If enacted as currently drafted, these Bills will significantly expand the powers of members of An Garda Síochána (the Irish police force).

In addition, the Garda Síochána (Recording Devices) Bill was enacted and signed into law in December 2023 and the Irish Government announced in December 2023 its intention to progress with legislation as a matter of priority for An Garda Síochána to use facial recognition technology (FRT).

The Commission has been engaging with the policing legislative framework on an ongoing basis as it emerges in Ireland and made the following legislative submission in 2022:

- Submission on the General Scheme of the Garda Síochána (Powers) Bill (May 2022)– 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.

- Submission on the General Scheme the Garda Síochána (Digital Recording) Bill (April 2022) : The Garda Síochána (Recording Devices) Act was enacted and signed into law in December 2023. The Commission had previously raised concerns about this legislation 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. In addition, the Commission had 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. In December 2023 Government approval was given to publish legislation to amend the Garda Síochána (Recording Devices) Act to allow An Garda Síochána to use Facial Recognition Technology in specific circumstances.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

Submission on the General Scheme of the Policing, Security and Community Safety Bill (March 2023) – The Commission raised concerns with the proposals to reform the internal and external oversight of An Garda Síochána. The proposals do not guarantee sufficiently independent and effective oversight and complaint mechanisms, which may impact on public confidence in An Garda Síochána. Whilst the Commission welcomed the establishment of the role of the Independent Examiner to provide oversight of and continually review security legislation, the Commission raised concerns that the

Independent Examiner's role does not also include oversight of the use of the powers under the legislation.

NHRI's recommendations to national and regional authorities

1. The Commission recommends that the Irish Government consider how the development of the new policing legislative framework ensures human rights and equality concerns regarding adequacy of safeguards and effectiveness of independent oversight mechanisms are appropriately balanced against police powers.
2. The Commission recommends that the Government allow due time for consideration of the Garda Síochána (Recording Devices) (Amendment) Bill 2023 and its compliance with key human rights and equality standards, including the proposed EU Artificial Intelligence Act and the draft Council of Europe Convention on artificial intelligence, human rights, democracy, and the rule of law.

Implementation of European Courts' judgments

O'Keefe case

In ENNHRI's 2023 Report on the state of the rule of law in Europe, the Commission noted that the State had not implemented a human rights compliant redress scheme for victims of abuse in State schools following the O'Keefe judgment of the European Court of Human Rights in 2014. This is still the case. The previous ex gratia scheme closed on 1 July 2023. The Irish Government submitted a report to the CoE Committee of Ministers in July 2023, however, no further update has been provided to the Committee of Ministers.

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

The Commission considers that compliance with the decision in O'Keefe v. Ireland remains to be implemented. The Commission repeated its request in its January 2023 Rule 9 Communication to the Council of Europe Committee of Ministers for the case to be transferred to enhanced supervision so 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.

NHRI's recommendations to national and regional authorities

1. The Commission recommends that the 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, nonrecurrence and memory processes.
2. The Commission recommends that the Irish State commit to a clear time-bound implementation plan for the O'Keeffe judgement to ensure the provisions of an adequate and effective redress scheme.
3. 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.

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

In December 2023, the Commission brought proceedings before the High Court in its own name, seeking to address the Irish State's failure to provide for the basic needs, including shelter, of people recently arrived in Ireland and seeking asylum. The High Court granted the Commission leave to judicially review the Minister for Children,

Equality, Disability, Integration and Youth (the 'Minister'), Ireland and the Attorney General. The Commission brought these proceedings under section 41 of the Irish Human Rights and Equality Commission Act 2014 which provides that the Commission may institute proceedings in any court of competent jurisdiction for the purpose of obtaining relief of a declaratory or other nature in respect of any matter concerning the human rights of any person or class of persons. In these proceedings, the Commission is seeking a High Court declaration that the State's failure to provide for the basic needs of International Protection applicants is in breach of the EU Charter of Fundamental Rights, the European Convention on Human Rights and/or the Irish Constitution. This legal action seeks to compel the State to fulfil its legal obligations to provide for the basic needs of International Protection applicants, including the provision of shelter, food and access to basic hygiene facilities. It also seeks declarations from the Court that the failure to provide for the basic needs of International Protection applicants breaches the human rights of the people affected.

Italy

Establishment, 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.1 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. 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.

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- 2

discrimination. 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 was 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.

Latvia

Ombudsman's Office of the Republic of Latvia

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 2023 Rule of Law Report, the European Commission recommends to Latvia to ensure the effective implementation of the legislation on lobbying, including the setting up of a special lobby register.

The Latvian NHRI informs that a Law on Transparency of Interest Representation was adopted on 13 October 2022 and entered into force on 1 January 2023.

The law stipulates that lobbyists and public administration representatives must follow several obligations from the moment the law enters into force. For example, the lobbyist is obliged to disclose the represented person and the representative of the public authority is prohibited from providing benefits to individual lobbyists.

The law, taking into account financial and efficiency considerations, provides for the gradual creation of the "Register of Interest Representation" (lobbyists' register) and the "System for Declaring Interest Representation" (registers reports on lobbying cases) - they must be implemented, and the new lobbying system must start working from 1 September 2025.

Currently, legal framework for various technical issues - areas of lobbying, additional information to be included in the register, technical access to the declaration system – is

being developed. It is expected that the regulation will be adopted in the first half of 2024.

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

No specific were measures taken in the country to follow-up on the institution's recommendations regarding rule of law, issued in the ENNHRI 2023 Report on the state of the rule of law in Europe.

Establishment, independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Ombudsman of the Republic of Latvia was reaccredited with A-status in December 2020. 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.

The Amendments to the Ombudsman Law envisage that the Ombudsman shall be approved 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 candidate nominated for the office of the Ombudsman shall submit a signed consent to apply for the office of the Ombudsman and a concept note of proposals on solutions regarding human rights and good governance. Prior to the sitting of the Saeima, during which the Ombudsman will be approved in office, the candidates nominated for the role shall be heard at the Human Rights and Public Affairs Committee of the Saeima.

The Amendments to the Ombudsman Law also provide 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.

NHRI enabling and safe environment

There have been cases where private individuals exercise their fundamental constitutional rights, such as the right to appeal to an institution, but exercise these rights dishonestly. There is no doubt that individuals have the right to apply to the

institution and receive a substantive answer, but there have been cases when personal data protection requirements are being violated. Employees of the Ombudsman's Office are being filmed without consent and conversations have been broadcasted online. Representatives of the Ombudsman's Office have explained the rights as well as the obligations to the individuals. Despite this, persons have continued violating data protection requirements. In such situations, several employees have encountered unfair use of rights, insults, and verbal aggression.

A lawyer of the Ombudsman's Office, who participated in the court hearings as a witness, was defamed on the Internet (news portals and social media). One of the court participants also leaked the data of the lawyer on the Internet.

NHRI's recommendations to national and regional authorities

The institution recommends national and/or regional authorities to strengthen the independence and effectiveness of the institution through an increase of the budget every year.

Checks and balances

Separation of powers

The human rights monitoring of the institution has found evidence in processes, practices and laws of issues that erode the separation of powers and reduce the accountability of state authorities The institution organises regular discussions, organises visits in closed type institutions (such as prisons, psychiatric hospitals, detention facilities for detained foreigners, nursing homes, and orphanages) and schools on these topics. In many cases the practices – for example concerning living conditions, the right to privacy of residents, access to healthcare services and availability of leisure activities – have been changed. The regular practice of the institution is to initiate a verification case, with recommendations being issued at the end. The closed type institutions have to follow these recommendations.

Constitutional reviews have been submitted to Constitutional Court by the institution in cases when the legal norm does not correspond to the Constitution of Latvia. In most cases, the Constitutional Court satisfied the claim of the Ombudsman.

Lawyers of the Ombudsman's office take part in the sittings of the Committees of the Saeima (Parliament) on legislative proposals.

The process for preparing and enacting laws

The recent geopolitical situation has caused the Parliament and the Government to adopt regulatory acts through an accelerated legislative procedures ~~urgency~~ more frequently, and without fully analysing their impact on human rights. For example, regarding the extension of the state of emergency at the border between Latvia and Belarus, the Ombudsman inquired whether alternative solutions have been considered and evaluated, the reasons as to why they were recognized as impossible, and other aspects.

Access to information

The Ombudsman gave an opinion on the related draft laws "Amendments to the Law on Official Secrets", "Amendments to the Freedom of Information Law" and "Amendments to the Criminal Law", the main purpose of this was to transfer information for official purposes, which until then was regulated in the Freedom of Information Law, to the regulation of the Law on Official Secrets, classifying it as the fourth degree of secrecy of official secrets.

The Ombudsman pointed out that the law "On Official Secret" should include a clear procedure on how a private person, including journalists, can request, contest or appeal classified information that has been granted the status of "State secret" At the same time, the Ombudsman drew attention to the need to provide for judicial oversight in such categories of cases.

The Parliament (Saeima) agreed with the Ombudsman's considerations, and the procedure for contesting and appealing provision of information for official service purposes was incorporated into the Law "On Official Secret".

Regarding the above-mentioned amendments, the Ombudsman also issued an opinion on the draft Cabinet Regulations "Rules for the protection of classified information of the official secret, the North Atlantic Treaty Organization, the European Union and foreign institutions", regulating the protection procedures for the needs of the information service. Several of the Ombudsman's proposals for legislative acts were supported in inter-institutional meetings.

Enabling environment for civil society and human rights defenders

There have been cases when Ombudsman has received negative letters from society when a representative from the Ombudsman's office has commented on human rights issues that could be considered controversial and those comments have been expressed publicly (for example when providing comments to the media). For example, after a lawyer from the Ombudsman's Office provided an opinion to the press on legislative amendments regarding migration and its compatibility with human rights they were compared to a threat to a national security.

Impact of securitisation on the rule of law and human rights

The Ombudsman issued an opinion on the draft law "Amendments to the law "On the police"", granting police officers the right to use drones, anti-drone equipment, as well as explosives in conditions of increased danger. The purpose of the draft law is to ensure the possibility for State Police to prevent or stop threats of increased risk quicker and more efficiently to ensure personal and public safety, as well as national defence. The draft law has not yet been adopted.

Aside from this, Amendments to the State Border Guard Law were adopted. They were prepared with the aim of strengthening national border security and curbing irregular

migration, however, at the same time, they also limit access to the asylum procedure and are contrary to European Union law. During the adoption of the law, the Ombudsman pointed to these issues several times and presented an alternative proposal, however, the amendments were still made in the end, while the NHRI's recommendations were not implemented.

Regarding freedom of speech, the Ombudsman had to actively follow the legislative process to point out those cases where a restriction of this freedom could be disproportionate as was the case for amendments made to the State Administration Structure Law, which provided for the requirement of certain level of loyalty to the state for persons employed in state administration. Meaning that an employee of a state institution has a duty to be loyal to the Republic of Latvia and its Constitution; is prohibited from expressing public opinion or performing activities which are directed against the territorial integrity, sovereignty and independence of a democratic state or the constitutional system. Such a requirement is permissible and also exists in other EU countries. However, the initial offer also provided for references to the opinion of the democratic system of other countries. The Ombudsman, after evaluating the initial legislative proposal that was submitted to the Parliament, concluded that the potential enforcement of the norm would be too broad and would potentially create a disproportionate restriction of the right to freedom of expression, and called on the Parliament to omit this reference to other countries. The Ombudsman's proposal was supported, and the norm was adopted in a wording consistent with human rights.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

The Ombudsman actively participates in the debates in the Parliamentary commissions through his proposals and assessment of the national security and securitisation situation in Latvia.

Implementation of European Courts' judgments

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

In November 2023, a representative of the Ombudsman' Office participated in the capacity-building seminar "Executing judgments of the European Court of Human Rights: how can national human rights institutions get involved?" The seminar was organized by ENNHRI, the European Implementation Network and the Council of Europe Department for the Execution of Judgments of the European Court of Human Rights. The aim of the seminar was to build the capacity of national human rights institutions (NHRIs) to contribute to the implementation of judgments of the European Court of Human Rights. Although the Ombudsman has not yet made any Rule 9 submissions, knowledge of this tool can be useful in the future should the need arise.

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

Positive development towards gender equality

The Ombudsman points out that Latvia ratified the Istanbul Convention in December 2023 to help fight all violence against women, including domestic violence, more effectively, as well as gradually eradicate various stereotypes rooted in traditional gender roles.

New form of civil partnership

On November 9, the Parliament (Saeima) adopted amendments to eight laws envisaging the introduction of a new Partnership institution in Latvia – a new way to legally strengthen relations between two adults, including same-sex couples, and provide social and economic protection for them. Amendments to the laws are expected to come into force on July 1, 2024.

Human-rights themed events and discussions

The Ombudsman developed a presentation for 10th grade students at several secondary schools on the respect of the EU Charter of Fundamental Rights and the Constitution of the Republic of Latvia. The purpose of the presentation is to encourage students to think about what respect is, how to treat fellow human beings respectfully, regardless of their gender, age, sexual orientation and/or disability. The presentation also aims to dispel gender-related stereotypes and encourages the general public to think about respect on a broader scale such as respect for the environment and respect for the country. During the presentation, the influence of stereotypes on our understanding and decision-making and how to avoid them was discussed Students are given practical tasks with the aim of recognizing cases of discrimination. Three schools were given this presentation in 2023.

Representatives of the Ombudsman's Office participated in the school project "Ready for life" and read lectures on election literacy, reading legal texts, freedom of speech and hate speech, as well as on the risks of becoming a victim of human trafficking.

Lectures on the risks of human trafficking were given also to representatives of State and local municipalities' institutions; in cooperation with the CSOs, lectures were read for professionals and CSO volunteers on asylum rights and current judicial practice regarding migration.

On 29 November 2023 the Ombudsman's Office organised an online discussion with the EU Agency for Fundamental Rights (FRA) and ministries regarding the role of national human rights institutions in compliance with fundamental rights in the implementation of European Union funds and the "Ombudsman's Guide to applying the New Obligatory Charter Conditionality".

On 12 December 2023 the Ombudsman held a discussion for legal experts regarding the EU Charter of Fundamental Rights in the Latvian legal space, where professionals

discussed the role of the Charter as a tool for the protection of human rights and its implementation in the Latvian legal system.

Lithuania

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

The European Commission's Rule of Law Report - Country Chapter on the rule of law situation in Lithuania, published in July 2023, states that there is no further progress on providing adequate human and financial resources for the functioning of the Office of the Parliamentary Ombudspersons and once again emphasises the necessity to ensure adequate resources, taking into account European standards on resources for Ombuds institutions and the UN Paris Principles.

Taking into consideration the financial aspect, it should be mentioned that in 2023 amendments to the laws on the remuneration of Seimas Ombudspersons and State politicians and state officials were adopted, which led to changes in the wages of the Seimas Ombudspersons.

The Law amending the Law on Remuneration of State Politicians and State Officials adopted on 25 May 2023, among other things, established a new wage rate for the Seimas Ombudspersons. From 1 January 2024 a rate of 3.5 or 3.4 is applied when calculating the wage of the Head of the Office or the Seimas Ombudsperson and is equalled to the salary of judges of the Court of First Instance.

According to the Law on the Approval of the Financial Indicators of the State Budget and Municipal Budgets of the Republic of Lithuania and determining the state budget allocations to the Seimas Ombudspersons' Office for 2024, an additional EUR 64,000 was allocated to cover two vacant positions in the Human Rights Division of the Seimas Ombudspersons' Office, which assists the Seimas Ombudspersons in carrying out the functions of the national torture prevention and national human rights institution.

In this way, concern expressed in the reports of the European Commission on the Rule of Law, the United Nations Committee on Economic, Social and Cultural Rights, the UN Committee against Torture, the UN Human Rights Council, and the reports of the Executive Directorate of the Counter-Terrorism Committee regarding the insufficient financing of the Seimas Ombudspersons' Office, which had created conditions for limiting the independence and efficiency of the institution's activities, was finally taken into account.

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

The Seimas Ombudsperson's Office initiated the National Preventive Mechanism (NPM) monitoring visit (2 May 2023 report on Hepatitis B, Hepatitis C, Tuberculosis, HIV/AIDS And Sexually Transmitted Infections Prevention And Access to Treatment for These Diseases in Places of Deprivation of Liberty No NKP-2023/1-2) in order to follow up on the recommendations of the European Committee for the Prevention of Torture (CPT), to find out how and whether the recommendations are being implemented, and to encourage the State to take measures to move forward in implementing the CPT's recommendations by issuing follow-up recommendations. The Seimas Ombudsperson's Office is following up on the implementation of recommendations made by the CPT and the Seimas Ombudsperson's Office.

In its report of 25 June 2019 on the CPT's visit to Lithuania in 2018, the CPT expressed its deep concern about the prevalence of drug use and related violence in places of

detention. The Committee was concerned about the extent of intimidation and ill-treatment of prisoners, as well as the high risk of prisoners developing drug dependence and being infected with human immunodeficiency virus (HIV) and hepatitis C through the use of injection equipment during their detention. The CPT noted that the worst situation at the time of the Committee's visits was at Marijampolė Prison (from 1 January 2023 - Marijampolė Prison of the Lithuanian Prison Service) (hereinafter referred to as "Marijampolė Prison"), "Marijampolė Prison", Alytus Prison (from 1 January 2023 - Alytus Prison of the Lithuanian Prison Service)", "Alytus Correctional Home (from 1 January 2023 - Alytus Prison of the Lithuanian Prison Service) and Pravieniškės Correctional Home (from 1 January 2023 - Pravieniškės 1 Prison of the Lithuanian Prison Service) (hereinafter referred to as "Pravieniškės 1 Prison"). According to the CPT, drugs were readily available to prisoners in these establishments, opioid substitution treatment was still not being provided and harm reduction measures such as syringe and needle exchange, condom distribution, etc. had not been implemented. To find out how the prevention of communicable diseases is ensured in the above-mentioned places of detention, as well as the prevention of communicable diseases and addiction to injected narcotic drugs, psychotropic or other psychotherapeutic substances or toxic substances with the assistance of an expert, from the Coalition of NGOs "I Can Live", carried out thematic inspections in Marijampolė Prison, Alytus Prison and Pravieniškės Prison No. 1.

The main findings were that:

- The lack of human resources identified in Marijampolė Prison, Alytus Prison and the lack of adequate provision of personal health care in the personal health care units of Pravieniškės Prison No. 1 may lead to violations of the right to quality and accessible personal health care, and the inadequate provision of this right in places of detention may lead to the risk of inhuman and degrading treatment;
- The organisation and implementation of the prevention of Hepatitis B, Hepatitis C, Tuberculosis, HIV/AIDS and Sexually Transmitted Infections in Marijampolė

Prison, Alytus Prison and Pravieniškės Prison No. 1 are inadequate. This may lead to inadequate conditions for timely prevention of the spread of communicable diseases and the related negative consequences for the health of prisoners;

- Hepatitis B, Hepatitis C, Tuberculosis, HIV/AIDS and sexually transmitted infections are officially reported in Marijampolė Prison, Alytus Prison and Pravieniškės Prison No. 1.

However, in the absence of data on the prevalence of some diseases (especially hepatitis C) and the extent of their treatment in the institutions, in addition to the refusal of treatment by a large number of persons diagnosed with HIV/AIDS and the difficulties in transporting patients to Pravieniškės Prison no. 2 for consultations with specialists, the efficiency of the organisation of the treatment of infectious diseases is questionable. This leads to the risk that the further spread of infectious diseases is not prevented and that the treatment and rehabilitation of prisoners suffering from injecting drug addiction diseases is not adequately ensured, which may lead to a violation of the right to quality and accessible personal health care.

Establishment, independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Seimas Ombudspersons' Office of the Republic of Lithuania was accredited with A-status in March 2017. 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 Ombudsmen's 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.

Follow-up to SCA Recommendations and relevant developments

The re-accreditation of the Seimas Ombudspersons' Office will take place during SCA session of 29 April to 3 May 2024.

Regulatory framework

The changes in the regulatory framework, as has been previously mentioned, encompass adoption of the Law amending Articles 6, 7, 9, 10, 19, 22, 25, 28 and Chapter V of the Law on Seimas Ombudspersons (hereinafter – LSO) and supplementing it with Article 9(1). Article 6 of the LSO (Requirements for the Seimas Ombudsperson) establishes an additional requirement for the Seimas Ombudsperson to have at least five years of experience in the field of protection of human rights and freedoms. Under a new provision of the Article 7 of the LSO the Speaker of the Seimas shall submit a nomination for a Seimas Ombudsperson to the Seimas not later than three months before the expiry of the term of office of the incumbent Seimas Ombudsperson. Where the powers of the Seimas Ombudsperson have been terminated on the grounds set out in points 2 (when he/she resigns) to 6 (more than half of the Members of the Seimas express no confidence in him/her) of Article 9(1) of the LSO, the Speaker of the Seimas shall submit a nomination of a Seimas Ombudsperson not later than one month after the expiry of the powers of the Seimas Ombudsperson. In addition, situations regarding continuation of Seimas Ombudspersons' mandates after expiry of their term were regulated by stating that after expiration of the term the Ombudsperson shall continue his/her duties until a new Ombudsperson is appointed. It was supplemented by part 5

stating that in case the powers of the Seimas Ombudsperson who performs the duties of the Head of the Seimas Ombudspersons' Office have been terminated in accordance with point 1 of paragraph 1 of this Article, this Seimas Ombudsperson shall continue to perform the duties of the Head of the Seimas Ombudspersons' Office until a newly appointed Seimas Ombudsperson takes up the duties of Seimas Ombudsperson.

Following change of Article 10 of the LSO, as of 1 January 2024, the Seimas Ombudspersons are allowed to receive remuneration for participating in the projects funded by the European Union, international organisations or foreign countries, or in development cooperation projects which involve pedagogical or creative activity relating to the protection and dissemination of human rights or the improvement of activities of ombudspersons' institutions.

Following the amendments of the LSO that came into force on 1 January 2024, the Board of the Seimas no longer has a power to approve the maximum number of positions of civil servants and employees who work under employment contracts and receive wages from the state budget. The right to establish the number of positions is transferred to the Head of Office, acting withing the limits of the allocated budgetary assignations. The new Article 9(1) establishes that each of the two Ombudspersons act as deputies *inter se* in situations when one of them is on annual leave, is on a foreign business trip or has a sick leave. The absence of this provision used to create certain uncertainty as to which procedure should be followed in case of temporary absence of one of the Ombudspersons, as only the procedure for acting as Head of the Office was regulated.

NHRI enabling and safe environment

State authorities are well aware of the Seimas Ombudspersons' mandate to investigate complaints and provide recommendations. However, they are sometimes not fully aware of the other functions of the Seimas Ombudspersons' Office as the national human rights institution, for example. Moreover, other state institutions often

misunderstand the Seimas Ombudspersons' Office role and status, often misunderstanding it as being part of the executive branch and an entity of public administration.

When it comes to an implementation of the NHRI's recommendations, following subparagraph 3 of Article 20 of the Law on Seimas Ombudspersons' (LSO), a proposal (recommendation) of the Seimas Ombudsperson must be considered by the institution or agency, or official to whom this proposal (recommendation) is addressed. The latter must report back no later than within 30 days from the receipt of the recommendation, to the Ombudsperson about possible actions to remedy the situation, especially if the Ombudsperson finds a shortcoming or a violation of human rights.

It is to specify that most of the recommendations made by the Seimas Ombudspersons are followed. In practice, as concerns implementation of recommendations following investigation of complaints or letters of mediation it can be said that more than 95% of the Ombudspersons' recommendations are respected and well followed; as concerns implementation of recommendations provided after performed monitoring visits under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), no less than 80 % have been followed.

If needed the Ombudspersons follow up with authorities on their recommendations first through discussions and seeking co-operation (by arranging the conferences, meetings, round-table discussions, inviting the experts, scientists, etc.).

In the case of a negative response, the Ombudsperson may follow up the situations by initiating an own initiative investigation about the failure to act upon the Ombudsperson's recommendation and use the media attention thus gained to reach a satisfactory outcome.

As regards ensuring of enabling and safe environment for the Seimas Ombudspersons to independently and effectively carry out their work, attention should be paid to one of

the grounds for the termination of the powers of the Seimas Ombudspersons established in the LSO. According to Article 9(1)(6) of the LSO, the powers of the Seimas Ombudspersons are terminated when the Seimas expresses no confidence in the Seimas Ombudsperson by a qualified majority (more than half of the Members of the Seimas). The grounds for no-confidence vote by Members of the Seimas, however, are not detailed in either the LSO or the Seimas Statute, so it can be concluded that the Seimas (more than half of its members) can express no confidence in the Seimas Ombudsperson on any basis. In order to ensure the greater independence of the Seimas Ombudspersons, there have been many discussions on the amendment of the above-mentioned provision of the LSO, providing a list of clear and reasonable conditions for removing the Seimas Ombudsperson from his/her duties, as provided for in 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). It should be emphasized that the establishment of such legal regulation in the LSO would ensure effective and real implementation of the principle of independence of Seimas Ombudspersons from other state authorities.

NHRI's recommendations to national and regional authorities

The Seimas Ombudspersons' Office recommends:

- To ensure independent and effective functioning of the Seimas Ombudspersons' Office by allocating sufficient resources as well as strengthen the mechanisms for the promotion and protection of human rights and the promotion of good governance and respect for the rule of law.
- To ensure that the procedure for appointing the Seimas Ombudsperson is in line with the Paris Principles.

Checks and balances

Separation of powers

Directly no such issues were identified, however, concerns remain as to observation of the Constitution and international commitments, as well as those related to the membership in the EU, when adopting and implementing legislation related so called "instrumentalised migration".

In 2022, the Seimas Ombudsperson submitted an opinion to the Constitutional Court of the Republic of Lithuania in Constitutional Justice Case No 4/2022 on the compatibility of certain provisions of the Law on Intelligence Ombudsmen of the Republic of Lithuania with the provisions of Article 7 Para.1 of the Lithuanian Constitution, emphasising certain deficiencies of the law, including absence of requirement to have legal background and (or) experience in the field of human rights for at least one of the two Intelligence Ombudsmen (only experience in national security was established as a requirement). Even though the Constitutional Court did not address the issue, in 2023 the Law on Intelligence Ombudsmen was amended to include relevant requirement, thus creating preconditions for more effective performance of the mandate with human rights-based approach.

In 2023, the Seimas Ombudsperson also submitted a written opinion to the Constitutional Court in the case concerning the provisions of the Law on the Legal Status of Foreigners relating to the temporary accommodation of an asylum seeker in the Foreigners' Registration Centre during a state of emergency. The Seimas Ombudsperson argued that the contested legal regulation established a situation in which individuals in temporary accommodation facilities were not given the right to move freely in the territory of the Republic of Lithuania (which is equivalent to *de facto* detention). This occurs under undefined procedures, for a disproportionately long time (up to 6 months), without any formal decision and automatically, i.e. without individualising each case and not assessing the necessity of the detained person. In

addition, no possibility to appeal such *de facto* administrative detention before a court was established, leading to situations where such appeals could be submitted only based on Constitution directly. Based on Constitutional, EU and international standards the Seimas Ombudsperson argued that such legal regulation did not comply with constitutional guarantees for deprivation of liberty and the requirements arising from the principle of the rule of law, including clarity and proportionality. The Constitutional Court ruled that these provisions conflicted with the Constitution.

Furthermore, in 2023, for the first time in institutions' history, the Seimas Ombudspersons' Office presented a position to the European Court of Human Rights regarding the administrative detention of migrants in Lithuania and the material conditions in detention sites visited during NPM visits (case of S. M. H. v. Lithuania, application No 27915/22). In this case an Iraqi citizen who had the status of an asylum seeker at the time of the submission of the petition complains to the European Court of Human Rights about the restriction of freedom of movement after he was transferred to temporary accommodation places in Druskininkai, Rudninkai and Kybartai, as well as about the conditions of detention there. According to the applicant, Lithuania violated his right to freedom and the right not to suffer inhumane treatment. The Seimas Ombudsperson, referring to the Torture Prevention Reports of the Seimas Ombudspersons' Office regarding ensuring the human rights and freedoms of foreigners under the established circumstances, emphasized in her appeal to the European Court of Human Rights that the level and nature of the conditions of detention of foreigners housed without freedom of movement and the actual restrictions applied to them were equivalent to *de facto* detention. Moreover, for some time the conditions at the Kybartai Foreigners' Registration Center amounted to inhumane and degrading treatment.

Access to information

The Seimas Ombudspersons' Office received 53 complaints in the area of access to information, of which 37 were refused to be examined (e.g. as the complaints were

anonymous or concerned information that the institutions were not obliged to provide an information), 16 were examined, 8 were accepted as justified, 4 were rejected as unjustified and 5 were terminated.

Enabling environment for civil society and human rights defenders

There were no systemic attempts against civil society, but at least one incident should be mentioned, as this incident relates to the existing legislation.

In September 2023, there was a worrying situation when the police allowed counter-protesters to disrupt an assembly organised by LGBTQI rights organisation and did not interfere nor prevent it. The aim of the assembly was to advocate for abandonment of a controversial provision in the Law on the protection of minors against the detrimental effect of public information. According to the law, one of the types of public information that is considered having a detrimental effect on minors is one "which expresses contempt for family values, encourages the concept of marriage and family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania". Previous application of this provision led to suppressing freedom of expression on discriminatory grounds (see ECtHR GC judgment of 23 January 2023 in Macatė v. Lithuania, application No. 61435/19). Even though the pre-trial investigation was instituted, it was discontinued on the basis that no significant damage was done to the protesters. The Ombudsperson initiated an own initiative investigation into the matter, which had to be suspended during the pre-trial procedures, and was currently renewed.

Another incident concerned a situation where the police removed #SaveMisha posters left by protesters near the Georgian embassy. The protesters advocated for the possibility of a former Georgian President to receive medical treatment abroad. The Ombudsperson conducted an own-initiative investigation and found that the police lacked sufficient grounds to remove the posters. Even though the police stated that it acted in order to prevent violations of public order, these posters contained no vulgar,

offensive or other prohibited elements. Therefore, the Ombudsperson issued a recommendation to the police to exercise caution and take into account the requirements of the freedom of expression in the future.

NHRI's recommendations to national and regional authorities

The Seimas Ombudspersons' Office recommends relevant authorities to ensure that in all situations decisions restricting certain rights of individuals are conducted in accordance with human rights standards; ensure adequate human rights impact assessment as well as timely consultation with general public and cooperation with human rights experts in light of possible violations (restrictions) of human rights and freedoms.

Impact of securitisation on the rule of law and human rights

The securitisation discourse in politics and the media was predominant, leading to political and institutional measures oriented towards national security. Special national security measures were taken against migrants from Belarus and Russia, including increased identity checks and the revoking or suspension of visas. The pushback policy continued, even as the flow of migrants from the Belarusian border decreased.

The most worrying development, in 2023, the Seimas passed the amendments of the Law on the State border and its protection that legalised the pushbacks of migrants at the border during a state of emergency and a state of national emergency.

Art. 4, par. 13 of the Law on the State Border and its Protection provides that in the event of a declared state of emergency due to a mass influx of migrants, and to ensure the national security and public order of the Republic of Lithuania, the Government may, on the proposal of the National Security Commission, decide that migrants, who intend to cross or have crossed the State border at places not designated for this purpose or at places designated for this purpose but who have violated the procedure for crossing the State border and who are in the border area, shall not be admitted to

the territory of the Republic of Lithuania. This provision shall be applied individually to each such foreigner. If it is established that the foreigner is fleeing from armed conflicts within the meaning of the Government Decision, persecution within the meaning of the UN Convention relating to the Status of Refugees or is seeking to enter the territory of the Republic of Lithuania for humanitarian purposes, the provision on the exclusion of foreigner from the territory of the Republic of Lithuania shall not apply. The presence on the territory of the Republic of Lithuania of a foreigner who has crossed the State border at places not designated for this purpose or at places designated for this purpose but who has violated the procedure for crossing the State border, shall not be considered as a presence on the territory of the Republic of Lithuania. Foreigners who are not admitted to the territory of the Republic of Lithuania shall be subject to an assessment of the need for assistance and, in case of need for assistance, shall be provided with the necessary emergency medical or humanitarian assistance. The procedure for implementing the Government decision referred to in this paragraph, to refuse entry to the territory of the Republic of Lithuania to foreigners and for assessing the need for assistance, shall be determined by the Head of the State Border Guard Service.

However, the Ministry of the Interior has drafted a decree that would implement amendments to the law to allow for the arrest of migrants trying to enter Lithuania illegally. According to the law, the government can grant such authorisation on the recommendation of the National Security Commission. The Commission includes most cabinet ministers. To balance the interests of national security and the rights of migrants, the Law also provided that the reversal does not apply if it is established that the foreigner is fleeing armed conflict as defined in the Government's decision, as well as persecution as defined in the UN Convention Relating to the Status of Refugees, or is seeking to enter the Republic of Lithuania's territory for humanitarian purposes (Art. 4, par. 13). However, the Ministry of the Interior argues that there are "no objective grounds" for establishing a list of armed conflicts, as this would create an "attraction factor" for instrumentalised migration.

The Seimas Ombudsperson presented her findings and comments to the Parliamentary committees stating that pushbacks were not in line with the State's obligations under the norms of asylum law and human rights standards, especially the principle of non-refoulment. Furthermore, the Seimas Ombudsperson on several occasions criticised the lack of information on how individuals are screened at the border concerning their vulnerability and expressed the need to establish an effective and transparent procedure for identifying victims of trafficking at the border.

Additionally, in 2023 the Seimas Ombudsperson submitted a written opinion to the Constitutional Court and a submission to the European Court of Human Rights regarding the automatic de facto detention of irregular migrants in Lithuania, as reported in the previous chapter.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

The Seimas Ombudsperson submitted a position paper to the Committee on Human Rights of the Seimas on the draft amendment to the Law on the State Border and its Protection of the Republic of Lithuania, which establishes the procedure for the admission of foreigners who have crossed the border illegally ("pushbacks"). The Seimas Ombudsperson stressed that the policy of "pushbacks" should be criticised both for its incompatibility with the obligations of the Republic of Lithuania under the European Convention on Human Rights (ECHR) and its Additional Protocols, as well as with the obligations arising from the Republic of Lithuania's membership in the European Union.

Also, comments and proposals to the Seimas Committee on Human Rights on the draft amendment to the Law on Legal Assistance to Foreigners to implement the judgment of the Court of Justice of the European Union of 30 June 2022 in the case of *M.A. v. Lithuania* were provided. The Seimas Ombudsperson welcomed the intention to repeal the provisions of the law which allowed asylum seekers to be detained during a state of

war, a state of emergency or a state of emergency due to a mass influx of foreigners, simply because they were illegally present on Lithuanian territory. At the same time, the Seimas Ombudsperson drew attention to the problems with the legal regulation in force at the time, which provided for the temporary accommodation of irregular migrants without the right to move freely in the Republic of Lithuania (*de facto* equivalent to detention).

The Seimas Ombudsperson submitted a statement to the Constitutional Court in a constitutional case on the provisions of the Law on the Legal Status of Foreigners, according to which, at the time of mass influx of foreigners, asylum seekers were accommodated for up to six months in temporary accommodation facilities without the right to freedom of movement on the territory of the Republic of Lithuania. The Seimas Ombudsperson noted that the contested legislation did not provide for a reasoned decision on the temporary accommodation of asylum seekers whose applications were being urgently examined (which amounted to detention). The Seimas Ombudsperson noted that the contested legislation did not provide for a reasoned decision to be taken on the temporary accommodation of asylum seekers whose applications are under urgent examination (which is de facto tantamount to detention), nor does it provide for a procedure for appealing against this measure. The contested legislation also did not make it possible to assess the individual situation of each person as far as possible and does not ensure that a person's right to liberty is not restricted beyond what is necessary to achieve public interest objectives.

NHRI's recommendations to national and regional authorities

First and foremost, constitutional norms and international obligations should be strictly respected by both the legislative and executive branches of government. Regional authorities, especially the EU, should take a clear position on the rules to be followed by national governments in crisis situations. Unfortunately, in the case of Lithuania, with the so-called "irregular migration crisis", the authorities received the acquiescence of the EU political leadership on the measures taken "to secure the EU's external border". This

acquiescence served to legitimise decisions that were not in line with current EU law on international protection.

Implementation of European Courts' judgments

In its judgment of 8 June 2021 in the case of the Ancient Baltic Religious Community "Romuva" v. Lithuania (Application No. 48329/19), the European Court of Human Rights (ECtHR) found violations of Article 14 (prohibition of discrimination) of the ECHR, in conjunction with Article 9 (freedom of thought, conscience and religion) and Article 13 (right to an effective remedy). The ECtHR emphasised that it did not accept that the existence of a religion professed by the majority of the population, or merely the perceived tension between the applicant community and the majority religion, or the opposition of the authorities of that religion, could constitute an objective and reasonable ground for refusing to grant the applicant community the status of a religious community recognised by the State.

After examining the circumstances of the case, the ECtHR found that, in refusing to grant State recognition to the applicant community, the State authorities had failed to provide a reasoned and objective explanation as to why the applicant community should be treated differently from other religious communities which were in a correspondingly similar situation, and that the members of the Seimas who had voted against State recognition had not been neutral and impartial in the exercise of their legislative powers.

On 29 September 2022 the draft Seimas resolution "On granting state recognition to the ancient Baltic religious community "Romuva" was again discussed in the Seimas but was rejected by three votes and returned to the Seimas Human Rights Committee for further development. The Ancient Baltic Religious Community "Romuva" has appealed to the Committee of Ministers of the Council of Europe (CoE) to launch enhanced monitoring of the European Court of Human Rights (ECHR) ruling, after the Seimas refused to grant it recognition once again in October 2022. Amendments to the Law on

Religious Communities and Societies adopted by the Seimas following the ECtHR ruling stipulate that the Seimas' decision not to grant state recognition to a religious community must state the grounds and reasons why the religious community does not have a foothold in society, its teachings or practices are contrary to the law or decency.

On 19 September 2023, the Seimas again debated the draft resolution on the recognition of the ancient Baltic religious community "Romuva", and the members of the Seimas again refused to grant state recognition to this religious community, but did not give any reasons, so the decision of the ECHR was not implemented.

The Lithuanian NHRI also note the problem of a lack of political will to implement the decisions of the European Court on Human Rights, especially concerning so called sensitive issues. The law providing for autonomy-based administrative procedure for recognition of gender identity has not been adopted (L. v. Lithuania) and the state recognition of the ancient Baltic religious community Romuva has not been granted (Romuva v. Lithuania). Despite the judgment in the case of Macatė v. Lithuania, the Parliament refused to repeal the provisions of the Law on the protection of minors against the detrimental effect of public information that could be used in order to censure positive ideas and information about same-sex families and LGBT+ people.

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

As mentioned above, Ombudsperson provided a position to Parliamentary Committees concerning draft laws intended to implement the EUCJ judgment in the case of M. A. v. Lithuania. The Ombudsperson took the position that even though the Law on the legal status of foreigners was amended by striking out the provision that during mass influx of migrants, asylum requests by irregular migrants are not accepted, at the same time pushbacks were introduced into the law on State border and its protection.

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).

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

No pressing challenges that would require urgent action were identified in the field of the rule of law, including media freedom, justice systems and anti-corruption.

However, there are some main pressing structural human rights issues that still persist. The Istanbul Convention still has not been ratified by the Seimas. In addition, the Law on Civil Unions, which would legitimise existing partnerships of same-sex couples and provide them with further safeguards, has not been adopted.

NHRI's recommendations to national and regional authorities

The Seimas Ombudspersons' Office recommends the following:

- Support/enhance political dialogue on rule of law (security and justice) needs, norms and standards;
- Support/enhance national assessment of needs, gaps and capacity, in relation to international standards and good practice;
- 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.
- 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.

- Regional authorities should encourage national authorities to cooperate with national human rights bodies in developing human rights agenda and strategies to combat human rights volition and find policy resolutions to human rights problems.
- 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.

Luxembourg

Consultative Human Rights Commission of Luxembourg

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 2023 Rule of Law Report has been discussed in Parliament in the presence of Commissioner Didier Reynders. However, the Consultative Human Rights Commission of Luxembourg (CCDH) has not received any information regarding measures specifically taken to follow-up on the recommendations issued by regional actors, including the European Commission. The CCDH is not aware of any follow-up measures related to the evaluation of the new legislation on lobbying, the access to official documents or the improvement of the legislative decision-making process by making it more inclusive.

Concerning the reform of the legal aid system, the law of 7 August 2023 on the organisation of legal aid was adopted by Parliament, and entered into force on the 1st of February 2024. The CCDH has not conducted an in-depth assessment of the legislation so it cannot evaluate whether it is sufficient to guarantee everyone's access to justice. However, a civil society organisation reported to the CCDH that it welcomed the fact that the scope of the legal aid system has been widened but also found that the reform did not address other obstacles. It still requires filling out long and complex questionnaires, as well as gathering documents certifying for example the non-existence

of ownership if the applicant is not of Luxembourgish nationality. These bureaucratic requirements might discourage some people from introducing a request for legal aid.

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 as well as during its meeting with the European Commission on rule of law. Due to its limited resources, the CCDH was not able to engage in more specific actions in supporting the implementation of regional actors' recommendations.

However, since January 2023, when publishing an opinion on a legislative proposal, the CCDH systematically asks the government for an exchange of views on it in order to foster a more participative and evidence-based approach in the legislative process.

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

Last year, the CCDH was on very few occasions invited by Ministries to discuss its opinions on legislative proposals tabled by Government. These discussions are nonetheless quite rare and seem to depend on the Minister involved. So far, only the Minister of Internal Security (Greens) and the Minister of Justice (Greens) of the previous government proactively reached out to the CCDH to discuss a preliminary draft law on restricting the right to assembly or the reform of the juvenile justice and the draft grand-ducal regulation on the organisation of prison regimes respectively. It remains to be seen if the new government will continue this path.

The CCDH has not noticed any other follow-up measures.

Establishment, 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. 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 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.

Follow-up to SCA Recommendations and relevant developments

While the follow-up of its opinions remains very limited, the CCDH is aiming to improve its own assessment of this follow-up. It is for example planning on sending questionnaires to the government asking for explanations on the extent to which its recommendations have been or are going to be taken into account in the legislative process. The CCDH is also considering requesting lawmakers to introduce an obligation for the authorities to respond to its recommendations in a timely manner, as recommended by GANHRI's Sub-Committee on Accreditation (SCA).

The CCDH is also, whenever possible, asking for more funding.

Currently, the CCDH is administratively attached to the Government. In 2023, the CCDH had internal discussions on the possible attachment to Parliament. It concluded that, in order to strengthen its independence, improve the resources at its disposal and be even more consistent with the spirit of the UN Paris Principles, an administrative link with the Parliament instead of the Government would be preferrable. It is also considering the possibility to institute a professional full-time human rights defender presiding the CCDH. In 2023, the CCDH met with the then Prime Minister and the then president of Parliament to discuss these topics. Moreover, the CCDH is currently working together with Parliament to include the CCDH in a draft legislative proposal aimed at reforming the institutions already attached to Parliament (Centre for Equal Treatment, Ombudsman and Ombudsman for children and youngsters). So far, the CCDH has received positive feedback regarding this planned institutional reform. However, since this project is at a very early stage, it is still unclear to what extent the mission, functioning, role, and competences of the CCDH will change. The CCDH has established an internal working group in order to discuss these changes and put forward concrete solutions to be included in the above-mentioned draft legislative proposal.

Regulatory framework

The national regulatory framework has not changed.

NHRI enabling and safe environment

Compared to 2022, the situation remained largely unchanged in 2023. While there have not been any flagrant obstacles, the enabling environment is still in need of improvement.

Access to disaggregated data remains particularly problematic and has in some cases even worsened. For example, the existing tools of the judiciary are still inadequate for data and statistics collection purposes. The prosecution services are unable to gather

disaggregated data and establish statistics because of the inadequacy of the tools at their disposal. Due to legislative changes related to data protection, which entered into force in 2023, the public prosecution services informed the CCDH, which is also the National Rapporteur on human trafficking under the EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims, that they are no longer able to communicate important information related to human trafficking cases, which would allow the CCDH to verify and establish statistics on its own. As a result, it is quite difficult, sometimes even impossible, for the CCDH to carry out its missions. This is a structural problem in Luxembourg which is not limited to the judiciary. An overhaul of the resources and tools at the disposal of all relevant authorities is necessary to allow for adequate data collection. Otherwise, evidence-based decision making will also remain quite difficult.

Moreover, it might be worth noting that in June 2023, the CCDH sent a letter to the Minister of Public Service regarding the current requirement of Luxembourgish nationality for all the employees of the CCDH's Secretariat. According to the Ministry of State, this requirement originates from the grand-ducal regulation of 12 May 2010 which indicates which jobs/positions involve direct or indirect participation in the exercise of public authority, and are therefore reserved exclusively to persons of Luxembourgish nationality. In its letter, the CCDH underlined the principle of free movement of workers inside the EU (also see the report of the CET and the University of Luxembourg, p. 34) and argued that the provisions were in any case inapplicable to the CCDH, especially since it has a particular status as an NHRI which cannot be compared to a public administration. So far, the CCDH has not received any answer from Government.

While the CCDH has not had any significant negative experiences regarding its resources, more ample resources would of course help improve its monitoring abilities. The CCDH is still occasionally forced 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 these compared to the institutions attached to the Parliament (CET, OKAJU, Ombudsperson).

NHRI's recommendations to national and regional authorities

- Attach the CCDH to the Parliament, while making sure that it remains in line with the Paris Principles. An overhaul of the CCDH's resources and functioning could further improve its ability to carry out its mandate effectively and independently.
- Legally oblige the Government and the Parliament to respond to the CCDH's recommendations or requests and justify their (in)actions (at the very least give a timely and reasoned response).
- Improve data collection and access to information requested by the CCDH.

Checks and balances

Separation of powers

Judicial oversight is generally rather rare in Luxembourg. This could be due to multiple obstacles which render access to justice difficult. The issues raised by the CCDH in ENNHRI's 2023 rule of law report have not been addressed yet.

NGOs who try to hold state authorities accountable are confronted with major difficulties when it comes to proving legal standing ("intérêt à agir") before administrative courts. For instance, in 2023, four Luxembourgish associations active in the defence of human rights lodged an action for annulment in their own names together with a request for a safeguard measure before the administrative tribunal (the case was about the refusal to house single men falling under the Dublin procedure). By order no. 49692 of 24 November 2023, the President of the administrative tribunal rejected the request for suspension of the contested act because the judges considered that the associations had no interest in bringing an action against an administrative decision unless they could show that their members themselves were affected by the

contested measure. This reasoning is in line with the usual practice of Luxembourg courts, which have a very restrictive interpretation of the right to bring an action.

Moreover, judges might not always sufficiently consider relevant international, EU and European human rights law as they seem to be reluctant to refer preliminary questions to the Court of Justice of the European Union ('CJEU', 'the Court'). The NGO Passerell did an in-depth study of the number of preliminary questions addressed to the Court. Their research shows that for the 1.176 cases of administrative and tax litigation from a one-year period (2 May 2022 to 2 May 2023), the Administrative Tribunal and the Administrative Court received 29 requests for preliminary rulings for the Constitutional Court and 27 for the CJEU. Of these 27 requests for preliminary rulings, none was accepted by the national courts. This result may indicate that Luxembourg's administrative judges make little use of the legal mechanisms established by EU law. The result is hardly more satisfactory as far as the Constitutional Court is concerned, since only three questions were submitted in total, specifically in areas relating to environmental protection, wealth tax and the promotion of officials in the Directorate-General for Internal Security.

The recent developments regarding the introduction of a begging ban in the capital of Luxembourg are straining the separation of powers and the rule of law. This issue is further explained in the subchapter on 'the process for preparing and enacting laws' below.

It might be worth noting, that in Luxembourg, members of Parliament vote along their political party's line, with only few exceptions reported in the past decades. The members of the governing parties therefore rarely question, let alone oppose, decisions made by their political colleagues in the Government. While this is a widespread practice in democracies, it does not necessarily encourage a rule of law culture and parliamentary oversight.

The process for preparing and enacting laws

There have not been any notable improvements since the CCDH's contribution to last year's ENNHRI's rule of law report.

On the contrary, recent developments show a lack of evidence-based policy making by the new government. In March 2023, the municipal council of Luxembourg City decided to introduce a new article 42 in its local police regulation to prohibit any form of begging in the city centre, from Monday to Sunday from 7 a.m. to 10 p.m. Some forms of "aggressive" or "organised" begging were already prohibited before, either on national or local level. In May 2023, the then Minister of Home Affairs refused to approve the regulation because of concerns related, among others, to human rights violations. The municipality decided to lodge an appeal which was still pending in December 2023, when the new Minister of Home Affairs, barely two months in office, overturned the previous decision without waiting for the ruling of the administrative tribunal and, according to information available to the CCDH, without any prior consultation of stakeholders (such as NGOs, streetworkers, human rights institutions, Police, prosecution services, officials of other relevant Ministries). On the Minister's orders, the Police began enforcing the measure in January 2024.

This decision has been widely criticised over the last months (see for example the statement of the CCDH). Apart from major human rights concerns, the decision-making process as well as the lack of a legal basis are particularly worrying. According to article 37 of the Luxembourgish Constitution, only a "law" (legislative act adopted by parliament) may limit "public freedoms" ("libertés publiques"). The begging ban introduced by the municipality is a municipal regulatory act, which cannot be qualified as a "law". The Minister for Home Affairs first referred to a decree from 1789 which generally states that the municipality needs to guarantee "cleanliness, salubrity and tranquillity in streets, public places and buildings". As this approach was criticised for being in violation with the ECtHR's and the Constitution's criteria of legality, the Minister invoked article 563 point 6 of the Criminal Code, dating back to 1879, which explicitly

punished "vagrants and people found begging". However, this anachronistic article has been interpreted by the courts and the public prosecution as having been abolished since 2008. Some members of the government, the parliament and the capital's local council (belonging to the same governing political parties) subsequently publicly questioned the judiciary's role in interpreting the laws voted by parliament and refused to accept the judicial decisions adopted by the Court of appeal which clearly stated that the article in question was abolished. Numerous actors from many different sectors and backgrounds (Human rights experts, Police, Public Prosecution, President of the Constitutional Court, streetworkers and civil society organisations, academia and the CCDH) have voiced their concerns about the political discourse, the policy-making process, the lack of a legal basis and, to various degrees, about the inadequacy of the measure itself. Neither the municipality, nor the government, have accepted to review their approach. The Prime Minister supported the inaccurate view that there "*is a divergence of interpretation that must be clarified by judges*" and that "*it is part of the rule of law that the Supreme Court should be respected when it makes a judgment in this matter*" – thus disregarding the fact that judges have already clarified the issue in multiple rulings (of first and second instance) and implying that rulings of lower courts do not need to be respected. In an interview, the president of the constitutional court subsequently condemned this political discourse and reminded that "*a jurisprudence (…) must be respected, regardless of the court instance that pronounced the judgment*". Nonetheless, the measure remains in place and is still being executed, which seriously weakens the rule of law and undermines the public's trust in the justice system.

Access to information

In the context of the recent begging ban in Luxembourg's capital, a journalist was not allowed to interview a streetworker by herself – representatives of the city of Luxembourg were present at all times. The journalist was also not allowed to accompany the streetworkers because of "concerns related to the respect for private life". This line of reasoning has in the past also been used to prevent CCDH members

from talking to refugees who might have been able to share their experiences and potential complaints against the administration with the CCDH. It must be noted however that the municipal council of Luxembourg recently announced that their representatives will, from now on, only be present during press interviews if this was explicitly requested by journalists.

Access to judgments online is still insufficient as the online database remains incomplete – a preselection is done by state authorities. All judgments should be made public (albeit anonymised), otherwise it is impossible to analyse the case law. In the words of the Luxembourgish judge of the European Court of Human Rights, Georges Ravarani, « *it's up to those who analyse the case law to decide what they find interesting in it* » (see the interview in Lëtzebuerger Land, 22.12.2023).

Access to legislation online has slightly improved. However, some pieces of legislation, which have been modified numerous times, are still not consolidated. This makes it difficult for legal practitioners, judges, and the public to have access to and apply the law. It would also be useful to link relevant case law to the legislation (e.g. on Legilux; Legifrance could serve as a good practice).

There is still no legal right to access to information for journalists. During the 2024 new year's reception, the prime minister announced his intention to finally propose a draft legislation (before summer 2024) introducing the right to access to information for journalists. It remains to be seen if and to what extent this announcement will be followed-up upon.

Independence and effectiveness of independent institutions (other than NHRIs)

The situation remains largely unchanged. Both the Ombudsperson and the equality body still need more competences and resources.

The recent national study on racism (pp. 101-103) and some civil society organisations have underlined that associations and victims of discrimination might hesitate to

contact the Centre for Equal Treatment (CET) because of a perceived lack of representativity concerning its board and employees, limited resources and field of competences (e.g. limited number of grounds of discrimination they can react upon ; lack of legal standing) and doubts about the effectiveness of its work in finding an appropriate response to a concrete situation.

A first draft of a legislative proposal concerning the Ombudsman, the Ombudsman for children and youngsters (OKAJU) and the CET is currently being elaborated. These three institutions are administratively attached to the Parliament. The future law would, among others, widen the scope of competences of the CET, in line with the Proposal for an EU Council Directive on standards for equality bodies, as well as ECRI's recommendations and those of numerous national stakeholders.

Enabling environment for civil society and human rights defenders

The situation remains largely unchanged since ENNHRI's previous rule of law report. There have been a couple of isolated incidents, however.

Recently, the Minister of Home Affairs, in the context of the begging ban in the capital, suggested that one of his critics, an artist, had incited an act of vandalism against his private property by publishing a text and an AI generated picture criticising the Minister's decision to authorise the begging ban. The Minister of Culture on the other hand, without taking sides, reminded that the mission of culture, in all its forms, is to be critical of society and societal issues.

A member of parliament published a post on social media threatening a caricaturist who criticised the Minister of Home Affairs' above-mentioned insinuations. The member of parliament later explained that his post was "intentionally being misinterpreted". The president and one of the vice-presidents of parliament informally met with the member, but since the acts happened outside of the premises of the parliament, the parliament does not seem to have any means at its disposal to reprimand its member. However,

the political parties appear to have agreed to consider developing a deontology code for the members of parliament.

The president of the CCDH recently publicly denounced remarks made by another member of parliament (of one of the governing political parties) who made discriminatory remarks about Roma and criticised the CCDH's work in a video. Subsequently, a member of the far-right political party published a post telling the president of the CCDH and "*woke leftgreen Hysterics*" to remain silent.

When developing National Action Plans (NAP), Luxembourg's ministries remain very reluctant to adopt a truly participatory approach. Often, there are only meetings prior to the development of the NAP, but no follow-up. Civil society and human rights defenders rarely have the possibility to access, let alone comment, on draft NAPs, or to receive feedback on why some of their recommendations were not included in the NAPs. This has been the case, among others, in the context of the NAP on gender equality, the NAP on the rights of persons with disabilities, the NAP on children's rights and, most recently, the NAP on combating racism which is currently being developed.

NHRI's recommendations to national and regional authorities

- Review and improve access to justice for victims of human rights violations and their representatives, such as NGOs;
- Improve access to information (such as the consolidated version of laws, case-law, etc);
- Improve the resources and tools at the disposal of the judiciary and offer qualitative and continuous human rights training.

Impact of securitisation on the rule of law and human rights

The begging ban in Luxembourg's capital can be seen as the result of a securitisation narrative. The ban further fragilizes people in need and potentially punishes victims of

human trafficking instead of protecting and supporting them, thus violating the principle of non-punishment of victims of coerced crimes.

The government announced in its coalition agreement (p. 109) the introduction of a measure that expedites proceedings ("comparution immédiate") potentially at the price of the rights of the defendants, in particular if it reduces their ability to prepare their defence. Experts (such as the Procureure Générale d'État or human rights experts) have voiced concerns about this measure and pointed at the situation in Belgium where in 2002 the constitutional court found that a similar legislation ("snelrecht") was discriminatory and infringed upon the rights of the defendants (article 6 of the ECHR). It remains to be seen if and how the government intends to introduce this measure.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

The CCDH published a statement on the begging ban and its president intervened in press interviews.

NHRI's recommendations to national and regional authorities

- Evidence and human rights-based policy making is crucial to avoid laws, processes and practices which negatively impact human rights and/or the rule of law;
- Adopting a participatory approach involving key stake- and rightsholders before presenting legislative initiatives is key.

Implementation of European Courts' judgments

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

The CCDH systematically reminds policymakers of the relevant case-law in its opinions, reports, etc. Recent examples are the CCDH's statement on the begging ban put in place in the capital of Luxembourg or the CCDH's report on human trafficking where it

highlighted relevant ECtHR case-law on the non-punishment principle for victims of human trafficking who are coerced into committing crimes.

NHRI's recommendations to national and regional authorities

- Improve access to justice for victims of human rights violations and other relevant actors (such as the Equality body, NGOs) which in turn could improve the follow-up of European Courts' case-law by raising the possibilities for victims to hold Luxembourg's authorities accountable;
- Study the (non-)referral of preliminary questions to the ECtHR and the CJEU, and take measures to overcome potential obstacles in this regard (e.g. training for justice professionals).

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

As already reported in the CCDH's contribution to last year's ENNHRI rule of law report, access to justice remains insufficient in Luxembourg. As a reminder, the CCDH, as well as regional (GRETA, GREVIO, ECRI) and international expert groups (UN B&HR working group) or treaty bodies (CAT, CERD, CRC, CEDAW), repeatedly urged the government and parliament to assess and improve access to justice, including courts. No positive changes can be reported in this regard. There has been no progress regarding the development of a legal framework for an effective witness protection system. This is still seriously hampering access to courts and the work of the police. NGOs and other bodies are still not financially or legally empowered to support or act on behalf of the victims. Access to compensation for victims of crimes, such as victims of human trafficking, is still insufficient. Financial investigations, seizures and confiscations need to be improved in number and in thoroughness. The benefits gained by criminals and the damage suffered by victims are often inadequately assessed by the judges. The judgments generally do not sufficiently explain or justify their refusal to grant the damages claimed by the victims (see, for instance, GRETA, §60).

Moreover, judges sometimes use pejorative language and reasoning contrary to international and European human rights standards. For instance, in a ruling issued by the administrative tribunal in October 2023 rejecting an application for international protection, the judges shockingly took into account the behaviour of a victim of female genital mutilation and of forced marriage as a minor : „*The tribunal also noted that the threat brandished by the plaintiff's husband that she would have to undergo a second excision should be seen in the context of her attitude - perceived as problematic by her husband – of not getting involved in the household, not eating and refusing to have sexual relations with her husband (...)*". This inacceptable reasoning is particularly incompatible with EU law in the light of the recent judgment of the ECJ in case C-621/21. It must be noted that this is not an isolated case. Victims of gender-based violence, for example, have only limited access to justice because of the authorities' lack of understanding of this phenomenon.

NHRI's recommendations to national and regional authorities

Improve access to justice (e.g. create a legal framework for an effective witness protection programme, empower NGOs to support victims before the courts, invest human rights institutions such as the equality body with the power to go to courts, strengthen the training of justice professionals such as lawyers, judges and public prosecution).

Malta

Office of the Parliamentary Ombudsman

Establishment, 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 an NHRI. This recommendation has featured prominently during the Universal Periodic Review of Malta. On July 2019, the Bill on the Human Rights and Equality Commission was presented to the Maltese Parliament, which would establish an NHRI. ENNHRI, alongside civil society organisations and other actors, has supported the establishment of a Maltese NHRI and advised national actors in their efforts. Prior to the submission of the bill to Parliament, the Council of Europe's Venice Commission published its Opinion on the draft bill.

Upon the dissolution of the Thirteenth Legislature on February 20, 2022, all items on the agenda of the House of Representatives, including its select and standing committees, automatically lapsed. This process encompassed various motions, such as those proposing the enactment of Bills, including the Equality Bill and the Human Rights and Equality Commission Bill. Therefore, these bills required reintroduction in the new legislative session for further consideration and potential enactment. To date, no bills relating to the establishment of a National Human Rights Institution had been proposed in Parliament.

In February 2024, the Office of the Parliamentary Ombudsman of Malta joined ENNHRI. In doing so the institution is committed to taking proactive steps towards accreditation as an NHRI compliant with the Paris Principles.

Over the past months, the Office of the Ombudsman has significantly intensified its efforts to establish a fully-fledged NHRI in Malta. The Office of the Ombudsman proposed to the Malta Government how to integrate NHRI functions within its existing framework, suggesting an extension of its current mandate to encompass a broader spectrum of human rights responsibilities.

The Ombudsman Act 1995 empowers the office to address issues related to public administration's unjust, oppressive, or discriminatory actions, providing a solid foundation for expanding its human rights remit. Furthermore, the office operates with a high degree of independence, supported by adequate resources and financial autonomy, ensuring its ability to uphold and advocate for these expanded responsibilities effectively.

ENNHRI is closely monitoring developments in the country and stands ready to support its member institution as well as to provide its expertise on the establishment and accreditation of NHRIs to relevant stakeholders in Malta.

Netherlands

Netherlands Institute for Human Rights

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

There were no specific recommendations concerning the Netherlands Institute.

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

The European Commission recommended the Netherlands to continue the comprehensive follow-up to the childcare allowances affair. In the past year, the Netherlands Institute, in its role as the Equality Body has ruled in several such cases that the Dutch Tax Authority had indirectly discriminated on the basis of race. In addition, the Netherlands Institute designed an e-learning for civil servants working at the Dutch Tax Authority to raise awareness about and overcoming bias. In addition, the Netherlands Institute has regular meetings with government officials on a broad range of human rights related issues and regularly gives advice on legislative proposals made by the government.

Establishment, 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. 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.

Regulatory framework

From 2024 onwards, the Netherlands Institute has become the National Preventive Mechanism under the Optional Protocol to the UN Convention Against Torture and

other Cruel, Inhuman or Degrading Treatment or Punishment. However, this additional task has not (yet) been codified in the regulatory framework.

NHRI enabling and safe environment

The Netherlands Institute considers that state authorities ensure a sufficiently enabling environment for it to execute its tasks and mandate. There are no particular challenges related to the rule of law environment in the Netherlands that impact the Institute's functioning.

NHRI's recommendations to national and regional authorities

In line with the SCA's recommendations, the Netherlands Institute recommends extending the applicability of the Equal Treatment Legislation to the Caribbean territories of the Netherlands. At present, this legislative process is underway and the legislative proposal has been sent to the Parliament for debate. Furthermore, the Netherlands Institute underlines the SCA's recommendation that the NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. This is particularly relevant when the NHRI's mandate is broadened, as is the case with the Netherlands Institute becoming the NPM and extending its mandate as an Equality Body to the Caribbean territories of the Netherlands.

Checks and balances

Separation of powers

The Netherlands Institute has not found any evidence of laws, processes and practices that erode the separation of powers, reduce the accountability of state authorities or impact on the fairness of the electoral process.

The process for preparing and enacting laws

The Netherlands Institute has not found any structural issues with laws, processes and practices that undermine checks and balances in relation to procedures for preparing and enacting laws and policies.

Access to information

The Netherlands Institute has not found any structural issues with laws and processes that unduly limit access to information from state authorities and to public documents. However, the response to requests for information under the Public Government Act often exceeds the time limit set in the law.

Independence and effectiveness of independent institutions (other than NHRIs)

The Netherlands Institute has not found any structural issues with laws, processes and practices that negatively impact the independence and/or effectiveness of independent institutions other than NHRIs. The Institute does note that in recent times , new actors have appeared on the landscape, including the National Coordinator Against Discrimination and Racism, and the State Commission on Discrimination. There is regular contact between these actors and the Netherlands Institute, as well as with other independent institutions such as the Ombudsman and the Data Protection Authority.

Enabling environment for civil society and human rights defenders

Concerns raised by the Netherlands Institute in previous years' ENNHRI Rule of Law Reports regarding the freedom of assembly and the freedom to protest remain unaddressed. In 2023, the Netherlands Institute reported that under the Dutch Public Assemblies Act (Wet openbare manifestaties) planned assemblies needed to be pre-notified to the public authorities. Despite this being a procedural requirement allowing authorities to assess security risk and make timely arrangements to facilitate the protest, increasingly, there is a risk that the right to freedom of assembly gets subjected to content-based restrictions. Also claims that restrictions are "necessary in a democratic

society" should be subjected to stricter scrutiny. In the case of Laurijsen and Others v. the Netherlands, (Applications nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17), the European Court of Human Rights concluded on the 21 of November 2023 [*not yet final*] an interference of the Netherlands with the applicants' rights which cannot be said to have been "necessary in a democratic society" and was thus in breach of Article 11 of the Convention,, as the authorities had not carried out the required "fair balance" test.

NHRI's recommendations to national and regional authorities

The Netherlands Institute recommends the national authorities to facilitate protests as much as possible and to not use a procedural requirement to subject them to content-based restrictions.

At present, the Dutch government is considering introducing the possibility for courts to examine the compliance of laws with the constitution. This would remedy the current absence of constitutional review in the Netherlands. Article 120 of the Dutch Constitution still reads that "[t]he constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts." This means that even if a court comes to the conclusion that the law that it has to apply is flagrantly unconstitutional, it still will be obliged to apply that law (unless this would contradict fundamental human rights as protected by the European Convention of Human Rights or other directly applicable international Treaties).

While the Netherlands Institute supports the initiative to introduce constitutional review, it recommends that courts will be allowed to examine laws in the light of all constitutional rights, rather than only civil and political rights, as is proposed in the Government's policy document.

Impact of securitisation on the rule of law and human rights

The Netherlands Institute has seen an increase in mayors, in charge of public order, pre-emptively prohibiting protests, arguing that the protest would pose a threat to public order. This has been the case for civil disobedience actions.

In addition, a temporary law is in force that authorized the Minister of Justice to revoke Dutch nationality, without any judicial scrutiny, of any person who travels abroad to participate in a terrorist organization was made permanent. This measure only targets Dutch citizens of foreign descent who hold multiple nationalities, as it may not lead to statelessness. The Netherlands Institute considers that this law is discriminatory in nature.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

The Netherlands Institute has regular meetings with government officials to discuss a broad range of human rights and regularly advises on legislative proposals. In addition, with regard to the right to protest, The Netherlands Institute published a statement, emphasizing the government's obligation to facilitate protests as much as possible. In addition, the Netherlands Institute presented a letter voicing its concerns about the law to revoke Dutch nationality.

NHRI's recommendations to national and regional authorities

- Oblige authorities to give explicit, relevant and convincing arguments as to why measures limiting fundamental rights are considered to be "necessary in a democratic society";
- Strengthen judicial review of measures restricting fundamental rights and open the possibility of constitutional review (see above);
- Increase free legal assistance to citizens in order to enhance access to justice.

Implementation of European Courts' judgments

There have not been any notable developments since the 2023 ENNHRI Report. As such, the cases of Murray (Application number 10511/10), Corallo (Application number 29593/17), and Maassen (Application number 10982/15) are still not fully executed.

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

In its activities to advance implementation at national level, both to the Parliament and to the government officials, the Netherlands Institute consistently emphasizes the importance of implementation of these judgments.

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

The Netherlands Institute has noticed a trend of political parties questioning the legitimacy of independent actors, such as judges, media and civil society, for example by calling journalists 'scum' or referring to the Parliament as 'fake'.

NHRI's recommendations to national and regional authorities

At present, an independent 'State Commission' is working on recommendations for the rule of law. The Netherlands Institute recommends national authorities to give follow-up on the issues they identify.

Poland

Commissioner for Human Rights

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 believes that public authorities have made initial efforts to address the underlying issues highlighted in reports issued by ENNHRI or other regional actors, such as the European Commission in its 2023 Rule of Law Report. However, it is difficult to assess the effectiveness of these actions at this stage.

First, the European Commission, in its 2023 Rule of Law Report, recommended strengthening the rules and mechanisms to enhance the autonomous governance and editorial independence of public media, taking into account European standards in this sphere. The Minister of Culture and National Heritage's actions aimed at introducing staff and management changes in State-owned broadcasting companies, such as Polish Television (Telewizja Polska S.A.) and Polish Radio (Polskie Radio S.A.) can be seen as a way to address the EC recommendation. These changes were intended to address irregularities in the public broadcasters' functioning. In particular, in recent years, Polish public media have failed to ensure pluralism, impartiality, balance, and independence in their messaging. It is also important to note that the model for appointing members of management and supervisory boards of the public broadcasters, as outlined in the Act of 30 December 2015 amending the Broadcasting Act, does not ensure the independence of public media from political authorities. This Act was reviewed by the

Constitutional Tribunal, which found that its provisions were inconsistent with the Constitution since it deprived the National Broadcasting Council of the powers necessary for that body to carry out its function of "upholding freedom of expression, the right to information and the public interest in broadcasting" (Article 213 of the Constitution) and transferred them to the newly established National Media Council (judgment of the Constitutional Tribunal of 13 December 2016, case no. K 13/16). Therefore, it must be acknowledged that the legitimacy of the management and supervisory boards appointed after the Constitutional Tribunal's judgment by the National Media Council was based on an unconstitutional legal norm, as the National Broadcasting Council did not participate in the appointment procedure.

However, according to the Commissioner for Human Rights, the way these changes were introduced in December 2023 may raise questions about their legality. Therefore, the Commissioner has expressed his position on the matter to the Minister. Additionally, the Commissioner has reiterated the importance of implementing the Constitutional Tribunal's judgment and the necessity to provide the National Broadcasting Council with the competencies to appoint and dismiss the authorities of Polish Television and Radio (see also the Commissioner's motion from 8/01/2024).

Second, the EC, in its Report, expressed serious concerns related to the independence of the National Council for the Judiciary (NCJ) that need to be addressed.

The Minister of Justice has presented a draft law aimed at reforming the National Council of the Judiciary. According to the proposed changes, judge-members of the NCJ will no longer be elected by the Sejm, but by all the judges in elections organized by the National Electoral Commission.

The Commissioner believes that this draft is a positive step towards implementing the standards set by the ECtHR and the CJEU into the Polish legal system. However, it does not address the main systemic issue, which is the status of around 2,300 judges appointed at the request of the National Council of the Judiciary between 2018 and

2023. Consequently, the draft requires some adjustments to fully realize the legislator's intentions, uphold individual rights, and consider the input of civil society in the judicial appointment processes.

Third, the EC recommended separating the function of the Minister of Justice from that of the Prosecutor-General and continuing efforts to ensure functional independence of the prosecution service from the Government.

In this context, it should be noted that the Ministry of Justice announced the introduction of a separation of the function of the Minister of Justice from that of the Prosecutor General. The draft legal changes have not been published yet.

Regarding the recommendation on the financial independence of the Commissioner's office, it should be noted that despite an increase in the Commissioner's budget for 2023, the funding remains insufficient in relation to the institution's needs. Therefore, the Commissioner has requested a budget increase for 2024. Ultimately, the parliament allocated additional funds for the Commissioner's Office, but they may still turn out to be insufficient in view of the planned assignment of new competencies regarding the implementation of the EU directive on the protection of whistleblowers (see *infra* II.).

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

The Commissioner for Human Rights continuously takes actions to protect the rule of law within the framework of his constitutional and statutory powers. In particular, he supports the implementation of his rule of law recommendations by:

- Sending official letters (with recommendations) to State authorities and issuing opinions on draft legal acts related to the judiciary and more generally, rule of law problems. In these recommendations, not only specific solutions are analysed, but also key problems regarding the rule of law in Poland are highlighted;

- Promoting the NHRI's recommendations in oral exchanges and meetings with representatives of State authorities and relevant experts;
- Giving interviews in the press, radio, television, and on Internet portals.

Establishment, independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Polish Commissioner for Human Rights (CHRP) was last re-accredited in March 2023. The SCA acknowledged the efforts of the CHRP in discharging its mandate effectively, despite the challenging context in which it operates.

The SCA noted that the CHRP has engaged in a wide range of activities to promote human rights, including the establishment of the Centre of Societal Projects. At the same time, the SCA reiterated its 2017 recommendation for the CHRP to continue interpreting its mandate in a broad manner and to advocate for amendments to its enabling legislation to give it a more comprehensive mandate to promote human rights.

Moreover, the SCA recommended that the CHRP continues its efforts to conduct follow-up activities to ensure that the State responds to its recommendations and upholds its protection obligations.

Additionally, with regards to the selection and appointment of the Commissioner, the SCA advised that the CHRP advocates for changes to its enabling law to ensure that the position of the Commissioner for Human Rights does not remain vacant after the mandate of a Commissioner expires and that the selection and appointment process is launched in a timely manner. Further, the SCA recommended that the NHRI advocates for the formalisation and application of a selection process for the Commissioner, which would fulfil the requirement to publicise vacancies broadly, maximise the number of candidates from a wide range of society groups; promote broad participation; and assess applicants based on objective, publicly available criteria.

The SCA recommended that the NHRI takes further steps to ensure pluralism in its staff composition, and further notes that ensuring pluralism through staff that are representative of the diverse segments of society is particularly relevant for single member NHRIs, such as Ombuds institutions.

Finally, the SCA recommended that the CHRP advocates for the funding necessary to ensure it can effectively carry out its mandate.

Follow-up to SCA Recommendations and relevant developments

The information provided in the ENNHRI's report from 2023 remains valid. In particular, the Commissioner continues to actively engage with the OHCHR, GANHRI, ENNHRI, and other NHRIs, as well as relevant stakeholders at international, regional, and national levels, in order to continue strengthening its institutional framework and working methods.

Additionally, as mentioned previously, the Commissioner advocates for an increase in its budget so that it can effectively carry out its mandate.

Regulatory framework

The regulatory framework of the Commissioner for Human Rights has not changed since January 2023.

NHRI enabling and safe environment

The remarks provided in the 2023 report are still valid. In particular, the cooperation of the Commissioner for Human Rights with other public institutions is generally adequate, but there is room for improvement. The Commissioner still observes negative examples of formulating official answers to the Commissioner's inquiries in a vague and imprecise manner with unreasonable delay.

Additionally, the excessively hasty processing of statutes by the Parliament, particularly in the area of the justice system and independence of the judiciary, without proper and

adequate consultations with the Polish NHRI, civil society organizations, and other public institutions remains unresolved.

To ensure the proper functioning of the Office of the Commissioner, it is necessary to provide adequate financing. It is worth noting that the Commissioner's budget for 2024 is higher than the amount requested by the Commissioner, which will ensure, at least partially, a raise in remuneration for the office employees. Nevertheless, due to the planned role of the Commissioner's Office in the act to transpose the EU directive on the protection of persons who report breaches of Union law (whistleblowing), it will be necessary to provide additional financing for the Office of the Commissioner for Human Rights.

In the Commissioner's opinion, amending article 7 (2) and (4) of the Act of 15 July 1987 on the Commissioner for Human Rights, which states that the Sejm may dismiss the Commissioner by a 3/5 majority of votes in the event of "betrayal of the oath" is essential to guarantee independent and effective fulfilment of the NHRI's mandate. 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.

Moreover, in 2023, 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 indicating 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.

NHRI's recommendations to national and regional authorities

The recommendations of the Commissioner for Human Rights in Poland remain unchanged from 2023 and include the following:

- Increasing the number of field offices of the Commissioner for Human Rights to allow citizens to have direct contact with the NHRI's legal professionals, to whom they can file complaints about the violation of their rights or freedoms. It is particularly necessary to increase the number of offices in the eastern part of Poland. Currently, the Commissioner is based in Warsaw, and apart from that, the Commissioner's field plenipotentiaries are only located in three places: Katowice, Wrocław, and Gdańsk.
- Further increasing 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 grounds of "betrayal of the oath";
- A clear definition of who will manage the work of the NHRI Office in the event that the term of office of the Commissioner expires and there are difficulties in appointing the successor (see the Constitutional Tribunal judgment in case K 20/20);
- Inviting and taking into consideration the NHRI's recommendations/opinions on draft laws by the State authorities, as well as ensuring adequate time for public consultations.

Checks and balances

Separation of powers

Contested legality of the appointment of judges

The problem of the status of 2,300 judges, who were appointed in a procedure without sufficient guarantees of independence from the legislative and executive branch, remains unresolved. The root cause of this problem is the composition of the National

Council of the Judiciary (NCJ), which decides on the selection of candidates for judges. Currently, 23 of the 25 members of the National Council of the Judiciary are appointed by political powers (the government and the parliament), including 15 judicial members who are elected directly by the Sejm. In the light of the case law of the Polish Supreme Court, the European Court of Human Rights and the Court of Justice of the European Union, judges appointed under this new procedure may not meet the minimum requirements in terms of their independence and the necessity that the court is established by law. As a consequence, the validity of the judgments issued by those judges may be questioned. This poses a serious threat to legal certainty.

In 2023, the Commissioner for Human Rights continued to call on the parliament and the government to reform the procedure of judicial appointments, guaranteeing the independence of the NCJ from the legislative and executive authorities and establishing a temporary mechanism enabling the resumption of proceedings in cases decided by judges whose legality of appointment raises doubts (see the summary of the interview with the Commissioner).

Similarly, the problem concerning the status of 3 out of 15 members of the Constitutional Tribunal (Mariusz Muszyński, Justyn Piskorski, Jarosław Wyrembak), who were appointed by the Sejm in 2015 in violation of Art. 194 (1) of the Constitution, as they took the seats of other previously and duly appointed judges, remains unsolved.

Art. 194 (1) of the Constitution states that the Constitutional Tribunal shall be composed of 15 judges chosen individually by the Sejm for a term of office of 9 years from amongst persons distinguished by their knowledge of the law. No person may be chosen for more than one term of office. Mariusz Muszyński, in December 2015, was appointed by the eight-term Sejm to a post that was occupied, as the seventh-term Sejm had already appointed three judges of the Constitutional Tribunal in October 2015. The eighth-term Sejm did not have the authority to proceed with his appointment. Jarosław Wyrembak and Justyn Piskorski had replaced two other deceased members who had been appointed by the eighth-term Sejm to positions that were already filled.

As a result, their appointment was affected by the same fundamental defects as in the case of Mariusz Muszyński. In 2023, the European Court of Human Rights (ECtHR) once again ruled that the judgment of the Constitutional Tribunal issued with the participation of one of these three persons violated the right to a fair trial (Article 6 of the European Convention on Human Rights) (see: the ECtHR judgment of 14 December 2022, M.L. v. Poland). In 2023, the Commissioner for Human Rights repeated calls for the implementation of the ECtHR judgments.

Contested transfer of judges

It is also worth mentioning that in 2023, the Commissioner received complaints from three appeal judges accusing the President of the Court of Appeal in Warsaw of failing to respect the ECtHR's interim measures of 6 December2022 in the case of these three judges of the Court of Appeal in Warsaw. In those interim measures, the ECtHR granted the suspension of the execution of the decision to transfer judges Ewa Gregajtys, Ewa Leszczyńska-Furtak and Marzanna Piekarska-Drążek from the criminal department to the labour and social security department of the Warsaw Court of Appeal. The Commissioner for Human Rights demanded explanations from the president of the Court of Appeal, who stated that the interim measures had no legal basis and even if they had, they are applicable only to the government and legislature. The Commissioner continues to monitor the situation.

Elections

Moreover, the Commissioner sent a statement with a proposition to the Speaker of the Sejm and the Speaker of the Senate to remove from the Electoral Code a provision which may infringe the essence of right of those who vote abroad. The questioned provision states that ballots which are not counted by the electoral commission within 24 hours of the end of voting, are considered null and void.

The process for preparing and enacting laws

The Commissioner's remarks from 2023 on the expedited legislative processes and lack of timely public consultations remain valid.

Additionally, it is worth mentioning that at the end of 2023, after the parliamentary elections, the new government replaced the management and supervisory boards of the three main State media (Polish Television, Polish Radio, and the Polish Press Agency). The replacement was carried out by the Minister of Culture and National Heritage on the basis of the provisions of the Commercial Companies Code, which allow the general meeting of shareholders to replace the company's governing bodies. However, the legality of this action raised doubts in light of the Broadcasting Act, which expressly provides that the management boards and supervisory boards of state media are appointed by the National Media Council.

In the opinion of the Commissioner, however, the abovementioned provisions are unconstitutional, because in the light of the judgment of the Constitutional Tribunal of 2016 (K 13/16) the managers and board members should be appointed by the National Broadcasting Council, a constitutional body responsible for protection of freedom of speech, right to information and public interest in the media (Article 213 of the Constitution), which in 2016 has been arbitrarily deprived of any competences in this area. It is not permissible for State media authorities to be appointed directly by members of the government. The Commissioner addressed this matter to the Minister of Culture, pleading for the implementation of the Constitutional Tribunal's judgment and a comprehensive reform of the State media. Without a doubt such reform is necessary, but it should be carried out in compliance with the provisions of the law, in a proper legislative procedure: a statute implementing constitutional requirements should be prepared, which should be subject to public consultations and discussion involving both chambers of parliament and the President of the Republic.

Access to information

The Commissioner observes situations where the right to access public information has been restricted, and takes appropriate actions provided for by law - either ex officio or upon request.

The Commissioner exercises his right to join administrative proceedings concerning access to public information. For example, the Commissioner joined proceeding in the case of refusal of the Local Government Appeal Council to provide information on the remuneration of its president, vice-president, office manager and chief accountant .

Furthermore, the Commissioner intervened in cases where citizens or journalists were denied access to city council sessions or sessions of the Sejm.

The Commissioner has also been active in promoting transparency in the procedure for appointing members to the National Council of the Judiciary. The Commissioner for Human Rights has joined legal proceedings before administrative courts to challenge the refusal to disclose lists of those who supported candidates in the procedure for appointing members to the NCJ. The administrative courts shared the Commissioner's position, ruling that these lists should be made public. The Commissioner has also been involved in a case before the Constitutional Tribunal regarding the interpretation of Article 11c of the NCJ Act. At the Commissioner's request, the Tribunal has discontinued the proceedings, affirming that this provision does not justify withholding public information in the form of lists of judges supporting a candidate for the National Council of the Judiciary.

In addition, the issues that negatively affect access to public information mentioned in the 2023 report, including the Supreme Court First President's motion of unconstitutionality of certain provisions of the law on access to public information of 2001, remain valid.

Enabling environment for civil society and human rights defenders

Freedom of assembly

In 2023, the Commissioner continued his work to protect the right to spontaneous manifestation and counter-manifestation as falling within the constitutional freedom of assembly. The Commissioner addressed the Commander-in-Chief of the Warsaw Metropolitan Police regarding a request from the Wolna Brygada Opozycji Association about the systematic restriction of freedom of public assembly in relation to the meetings organized by the Association near the cyclical assemblies held on the 10th day of each month to commemorate the victims of the Smolensk plane crash in 2010. In this case, the Commissioner emphasized that, in the light of the Article 57 of the Constitution of the Republic of Poland, the freedom of public assembly includes the right to organize peaceful counterdemonstrations and publicly present views contrary to another public assembly taking place at the same time. The expression of views by the participants of the peaceful counterdemonstration should not be a reason for the police to intervene against the participants.

Identification of law enforcement

The Commissioner for Human Rights reiterated his motion to amend the provisions of a regulation on police officers' uniforms, so 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. Unfortunately, the Commissioner's motion was denied. The Ministry explained that the exemption from the requirement for police officers to wear individual identification, in certain situations specified by law, is necessary due to the nature of their service. Existing regulations allow police officers to perform their official duties in civilian clothing, ensuring their ability to safely and effectively carry out their assigned tasks while also providing citizens with information about the status of the individual carrying out specific activities towards them.

Unwarranted identity checks during public assemblies

The Commissioner also intervened in connection with the practice of police officers checking citizens' IDs. In a letter to the Police Commander-in-Chief, the Commissioner pointed out that police officers who decide to check the documents of people participating in a legally held assembly and who have not committed a crime or offense, violate the constitutional freedom of assembly, as well as the informational autonomy, as stated in Art. 51 sections 1 and 2 of the Constitution of the Republic of Poland.

SLAPPs

The Commissioner's remarks on strategic lawsuits against public participation (SLAPPs) from 2023 remain valid. As pointed out in the 2023 report, the Commissioner for Human Rights alerted that abusive legal proceedings, which may be qualified as SLAPPs, have also been reportedly brought against investigative journalists. Eventually, the Supreme Court found the investigative journalist accused of defamation for sending questions to the company's press office not guilty.

Freedom of association

The Commissioner undertook various general initiatives to protect freedom of association particularly regarding sports associations. For example, the Commissioner successfully intervened when it came to his attention that the regulation of the Polish Motor Association limited the participation in competitions of sportspersons who recently obtained Polish citizenship. The Commissioner also raised concerns regarding the rules present in various associations' regulations on penalties for "criticism" of the association, judges, or event organiser, as potentially violating freedom of speech. Finally, the Commissioner also pointed out that rules introduced by the Polish Cycling Association, wherein its members were obliged to sign non-disclosure agreements for the duration of 20 years, could also violate freedom of information and speech.

Interventions in civic space issues

In addition to the activities mentioned above, the Commissioner intervened in several individual cases related to civic space, including joining court proceedings. These activities included, among others:

- Filing a cassation appeal in three cases related to the penalty for a peaceful protest against the march of the "cursed soldiers". The Supreme Court allowed two appeals submitted by the Commissioner for Human Rights and dismissed one;
- Filing a cassation appeal in a case concerning punishment for displaying a banner with a vulgar inscription at a protest following the Constitutional Tribunal's judgment on abortion. The Supreme Court found the citizen not guilty;
- The Commissioner submitted five cassation appeals regarding penalties for entering the Białowieża Forest during deforestation in 2017. The Supreme Court allowed the Commissioner's cassation appeals.

Interventions in support of an enabling space for NGOs

The Commissioner also took action to support the operation of non-governmental organizations in Poland. This included appealing for funding for NGOs helping people affected by homelessness, and pointing out imprecise regulations regarding the rules of liability for tax liabilities of members of the management boards of non-profit NGOs.

NHRI's recommendations to national and regional authorities

The Commissioner recommends to:

- reform the National Council of the Judiciary by ensuring its independence from the legislative and executive branches;
- establish a mechanism for assessing the legality of the appointments of judges of all courts and the Constitutional Tribunal;

- restore the powers of the National Broadcasting Council to appoint and dismiss supervisory boards and management boards of State media, as well as creating additional guarantees of the fairness of the selection of appropriate candidates.

Impact of securitisation on the rule of law and human rights

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

Impact of Covid-19 on the freedom of association

In terms of securitisation, the Commissioner undertook actions to mitigate the limits on freedom of association introduced by COVID-19 regulations. Namely, following a complaint by Polskie Towarzystwo Turystyczno-Krajoznawcze ('PTTK', Polish Tourist Society), the Commissioner successfully intervened with the Minister of Justice to extend the deadlines for organising elections for the boards of associations. Due to the advanced age and digital exclusion of many of its members, PTTK was unable to organise the elections online and, due to the complex structure of the organisation, it needed more time for the in-person elections held first at local level, then at regional level, and finally at national level than the pandemic restrictions allowed.

Excessive use of force by law enforcement

The Commissioner also dealt with various cases of limitations in access to sports venues for some sports clubs' supporters following securitisation policies. The Commissioner received several complaints, mainly from football club supporters, stating that they were excluded from entering a match held by the opposing team without a justified cause or that they were scrutinized during the match by police using excessive force. The Commissioner took actions to clarify these cases.

The Commissioner observed further incidents of excessive use of force by police officers. For example, the Commissioner addressed the Chief Commander of Police

regarding the police intervention concerning a Member of Parliament. The MP was subjected to direct coercive measures by the police, including the use of physical force to bring her to a police car where she was detained. The incident occurred in Otwock during a pre-election meeting held by the Prime Minister. The MP, who was from the opposition party, used a megaphone to present her critical view against the government. Despite informing the police that she was an MP and enjoyed constitutionally guaranteed immunity, they intervened and failed to verify her status until after using force against her. The Commissioner expressed concerns about whether there were factual and legal grounds for the police officers to intervene and use physical coercion.

The Commissioner also took action in the case of police intervention in a hospital towards a woman who disclosed to her doctor that she had taken abortion pills, and this information was reported to the police, resulting in police intervention. The Commissioner's doubts concerned the legality of the search as well as the legality of disclosing medical information to the police.

In addition, the Commissioner monitors the practice of police officers using tasers. According to information provided to the Commissioner by the police, in 2020, there were 327 cases of taser use (with no negative assessments recorded, meaning that internal police procedures did not confirm that the cases of taser use were unlawful). In 2021, there were 282 cases of taser use (with 2 negative assessments recorded). In 2022, there were 306 cases of taser use (with 2 negative assessments recorded).

Intervention in Pegasus spying case

The Commissioner for Human Rights also intervened in the case of the use of the Pegasus spying system. In his motion to the Minister of Interior and Administration, the Commissioner pointed out that, according to the standards of the Constitution and international law, means for operational control cannot be used for purposes that have not been specified in the law. He underlined that there are no provisions in Polish law

that would allow for the use of programs operating in such a way as Pegasus. In particular, the law does not allow for security breaches (hacking) and intercepting or using communication messages.

In 2023, the Commissioner continued his work concerning the legal grounds for the operation of the special services. The Commissioner believes that the rules regulating operational and reconnaissance activities of special services do not meet constitutional and European standards. In another motion to the Ministry of Interior and Administration, the Commissioner expressed concern about the potential for the law to be abused against citizens during operational actions and information gathering.

It is worth emphasizing that between 2010 and 2020, the police and other services submitted requests to order an inspection and record conversations or an application for operational control concerning a total of 62,795 people. The court's consent was granted for requests and applications concerning 60,495 people (96.33% of the total).

The Commissioner particularly sees the need to introduce an obligation to inform individuals about operational and reconnaissance activities undertaken against them and to obtain information about them, regardless of whether they are suspected of violating the law or are third persons who have become the object of control accidentally. Notifying the individual at the stage of performing operational and reconnaissance activities and collecting information would obviously expose the activities to ineffectiveness. Therefore, the legislator should ensure subsequent notification of these activities.

The Commissioner is also concerned about information indicating a tendency to expand both the powers of the services and the list of services authorized to conduct surveillance. An example of this tendency is the adoption of the Act of 22 July 2022, amending the Act on the Prison Service and certain other acts, which extended the competences of Prison Service officers, expanded control powers, and established the Internal Inspectorate of the Service.

Polish-Belarusian border and migration crisis

Moreover, the Commissioner for Human Rights has appealed to public authorities, emphasizing the need to cease the use of pushbacks on the Polish-Belarusian border. In the Commissioner's opinion, the provisions allowing for pushbacks are inconsistent with EU and international law as well as Polish acts.

The Commissioner for Human Rights has also intervened in individual cases of migrants. For instance, the Commissioner for Human Rights appealed to the Provincial Administrative Court regarding the ban on sending items - including humanitarian supplies - across the border introduced by the voivode. The court, in its judgment, agreed with the Commissioner's position.

Furthermore, the Commissioner for Human Rights intervened in the case of deporting a foreigner who, according to the Polish authorities, posed a serious threat to the security of the Polish State despite the ECtHR issuing an interim measure temporarily prohibiting such deportation from happening.

NHRI's recommendations to national and regional authorities

The Commissioner recommends to:

- Ensure that national regulations are in line with European standards for privacy protection in relation to the activities of secret services through effective monitoring and implementation of relevant national and European Courts' judgments;
- Ensure effective follow-up on the opinions and recommendations of the Commissioner for Human Rights regarding the impact of secret surveillance on human rights and the rule of law;
- Ensure that national regulations are in line with European standards regulating pushbacks through effective monitoring and implementation of relevant national and European Courts' judgments.

Implementation of European Courts' judgments

The judgments of the European Courts indicated in the 2023 report remain unimplemented. Moreover, in 2023 and 2024, the ECtHR and the CJEU issued new important judgments against Poland, namely:

- ECtHR, judgment in the case of Tuleya v. Poland, applications nos. 21181/19 and 51751/20 (rule of law);
- ECtHR, judgment in the case of Wałęsa v. Poland, application no. 50849/21 (rule of law);
- ECtHR, judgment in the case of M.L. v. Poland, application no. 40119/21, (rule of law, access to legal abortion);
- CJEU, judgment of 9 January 2024 in joined cases C-181/21 and C-269/21 (rule of law).

Recently, there have been initial attempts to implement some of the European Courts' judgments, particularly those related to the rule of law. All of the planned legal reforms indicated below are currently under consultation and have not yet passed through the parliament. For instance, the Ministry of Justice has proposed amendments aimed at reforming the National Council of the Judiciary, which represents at least a partial implementation of the judgments of the ECtHR in cases such as Reczkowicz v. Poland, Dolińska-Ficek and Ozimek v. Poland, Wałęsa v. Poland, as well as judgments of the CJEU in joint cases C-585/18, C-624/18 and C-625/18, and in the case C-824/18.

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

The Commissioner actively monitors and advocates for the implementation of European Court judgments in Poland. His actions in this regard include:

- Participating in the work of the inter-ministerial Team for the European Court of Human Rights, by, among other things, presenting his motions and opinions;

- Issuing recommendations to relevant State authorities and emphasizing the need for the implementation of European Courts' judgments. Additionally, the Commissioner intervened in cases of non-implementation of the interim measure issued by the ECtHR;
- Disseminating information about judgments in the Commissioner's publications (e.g. in annual reports on its activity).

NHRI's recommendations to national and regional authorities

The Commissioner recommends the national authorities to:

- Ensure an 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.

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

The most pressing challenges were highlighted in the previous chapters of this report.

In the context of media freedom, the Commissioner would like to emphasise that there is also a pressing need for actions regarding the local media (see the Commissioner's motion to the Ministry of Culture). Detailed statutory regulations for the publishing and financing of local press by local government units, similar to the regulations for public media at the national level, should be established. Specifically, there should be a prohibition on editorial and content control by local government bodies.

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 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 police officers and employees of places of detention.

Portugal

Office of the Ombudsperson

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 2023, the efforts to increase human resources in the justice system continued. As for non-judicial staff, 200 judicial officers and 19 legal advisers to Magistrates' Support Offices began their duties in the support offices for the courts. The procedure for hiring 135 magistrates (52 judges for the judicial courts, 31 magistrates for the Administrative and Tax Courts and 52 for public prosecutors) was authorized.

Legal diplomas to improve the efficiency of the administrative and tax courts were approved, such as: i) The exceptional regime for encouraging the resolution of pending judicial cases in Administrative and Tax Courts; ii) the creation of specialized sub-sections in the second instance of Administrative and Tax Courts.

In 2023, a Ministerial Order was issued to regulate the legislation that, in 2021, established new mechanisms to control the electronic distribution of proceedings (in the judicial administrative and tax jurisdiction). That legislation came into force on 11 May 2023.

Portugal has developed an anti-corruption legal framework, whose effectiveness depends on the full operationality of the National Anti-Corruption Mechanism and the Transparency Entity.

Its mission is to promote transparency and integrity in public action and to ensure the effectiveness of policies to prevent corruption and corruption-related offences. It was established in 2021 and installed on 6 June 2023. The sanctions regime laid down in the General Regime for the Prevention of Corruption came into force, also in June 2023.

In 2023, some staff was appointed to the National Anti-Corruption Mechanism. However, at the end of 2023, it was reported in the media that this organization did not have enough support staff to respond to the body's duties. The recruitment of this staff has been facing constraints caused by the legal obligation to resort to public sector workers.

The installation of the Transparency Entity, established in 2019, will take place once the necessary human and material resources are guaranteed and the operation of the electronic platform.

In 2023, some progress was made. The President and 2 members took office on 15 February 2023. The draft Regulation for standardizing procedures for the computerized registration of unique declarations of income, assets, interests, incompatibilities, and impediments of holders of political offices, high public offices, and equivalent positions was submitted for public consultation.

However, the verification of declarations on paper is still being conducted by the Public Prosecutor's Office at the Constitutional Court and on November 2023, the Parliament recommended the government to take measures to ensure the functioning of the Transparency Entity.

There were no recommendations issued by regional actors on the Ombudsperson concerning the rule of law.

Establishment, 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. On 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, as well as mandating it as the National Preventive Mechanism (NPM).

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 that the 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 included a recommendation on the dismissal process for the Deputy Ombudspersons.

The periodic accreditation of the Portuguese NHRI will be considered by the SCA in April 2024.

Follow-up to SCA Recommendations and relevant developments

In Portugal, only the Ombudsperson is elected by Parliament, as outlined in the Constitution. In addition, the dismissal of the Ombudsperson, is governed 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). The dismissal of the deputies is therefore linked to the nature of their appointment as senior positions within the institution.

Regulatory framework

Independence of the Ombudsperson

The national regulatory framework applicable to the Office of the Ombudsperson has not changed since January 2023. All guarantees of independence mentioned in the 2023 ENNHRI rule of law report are still in force. According to the Constitution (Article 23 (3)) and the Statute of the Ombudsperson (Article 1 (1)), the Ombudsperson is an independent State body elected by the Parliament by a two-thirds majority of votes. Moreover, the Statute explicitly reaffirms and guarantees the complete independence of the Ombudsperson in the performance of his/her duties (see Article 1 (4), and Article 7). This means that he or she cannot receive instructions from any other body, institution, or entity, including the Government.

Moreover, the Statute (Article 5) determines that the appointment as Ombudsperson may only fall upon a citizen who, besides meeting the conditions required for being elected a Member of the Parliament, enjoys a well-established reputation of integrity and independence. Article 11 of the Statute stipulates that the incumbent shall be subject to the same incompatibilities that apply to the court of law judges in office (paragraph 1) and prohibits him or her from holding any position within the bodies of political parties or associations, as well as from engaging in any public political party activities (paragraph 2).

The Ombudsperson is also endowed with a set of other important personal, institutional, functional, and organizational guarantees, provided for by the Statute that cement and strengthen the independence and autonomy of the institution.

NHRI enabling and safe environment

There were no significant changes in the environment in which the Ombudsperson operates that would impact the independent and effective fulfilment of its mandate.

There were no challenges related to the rule of law environment in Portugal with an impact on the work of the institution.

State authorities sufficiently ensured an enabling environment for the Ombudsperson to independently and effectively carry out her work. The practice confirms the complete respect of public authorities for the independence, integrity, and credibility of the Office of the Ombudsperson in the performance of its duties.

The participation of the Ombudsperson in the process of drafting laws and other regulations takes place on a regular basis, normally upon request of a parliamentary committee for the submission of a written opinion of for an 'in-person' hearing before the committee. The NHRI can point out shortcomings in legislation, issue recommendations concerning its interpretation, amendment, or revocation, or suggest the drafting of new legislation – i.e. legislative recommendations. It can also request the Constitutional Court to declare the unconstitutionality or illegality of any legal provisions and to rule on cases of unconstitutionality due to a legislative omission.

The legal framework of the Ombudsperson includes strong provisions to ensure that national authorities are required to cooperate with and respond to the requests of the NHRI. Further, it enshrines an obligation for addressees of the recommendations to provide a reasoned and timely response. The Ombudsperson may, at any time, by her initiative, address the parliament, if public administration authorities are failing to implement recommendations or refuse to cooperate with the Office of the Ombudsperson. In general, recommendations and remarks made by the Ombudsperson were well received and followed by their addressees, in 2023.

The Office of the Ombudsperson has sufficient resources (appropriate budget and staffing) to perform its functions and to fulfil its mission and mandate independently, as established by the Constitution and the law.

Checks and balances

The guarantees and safeguards described in the previous ENNHRI Rule of Law Reports remain in place. The Portuguese Constitutional system provides a strong and serious regime of checks and balances between the three branches of government.

Separation of powers

In general, the principle of separation of powers, including the independence of the judiciary, as well as the fundamental rights and freedoms, including freedom of expression, freedom of assembly, and freedom of the press, were safeguarded in 2023.

In the Rule of Law Index 2023, Portugal scored 75% for civic participation, 79% for freedom of expression, and 85% for freedom of association.

Impact of securitisation on the rule of law and human rights

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

The Portuguese Ombudsperson undertook actions, in 2023, to promote human rights and the rule of law in the context of national security and securitisation.

The Ombudsperson closely monitored the restructuring of the Portuguese Immigration and Borders Service (SEF) and the transferring of its administrative competencies to a new administrative body (the Agency for Integration, Migration and Asylum or "AIMA"), and the transferring of the remaining border-police related competencies to other security forces. The first thematic report which includes recommendations for the transition period, was published in July 2023.

Only time will tell whether the intended institutional separation between administrative activity and border policing and criminal investigation will actually bring good results in

combating human trafficking and hosting migrants and asylum seekers guaranteeing their integration in society.

In the abovementioned report the, the Ombudsman noted that the process of restructuring of the Portuguese Immigration and Borders Service was carried out without proper public debate and in the absence of any study or independent report to support it, namely weighing the benefits from the perspective of home security and criminal investigation against the costs of wasting the know-how and expertise of a specialized border police service and the complexity of an effective coordination between multiple police forces.

Furthermore, the Ombudsman expressed concern about the fact that the legislator did not take into account that, from the migrant's perspective, the trust that has existed for years between migrants and those who work at the High Commission for Migration – an entity which has now been absorbed by the new Agency (AIMA) and has been absolutely essential for the effectiveness of the reception and integration policy - cannot be replicated in a model in which the body responsible for promoting migrants' rights is precisely the one with the power to decide on the possible irregularity of the migrant's situation, and which may even order their removal from national territory. Measures to reestablish such firewalls are needed in order to ensure that undocumented migrants are not inhibited from reaching out to the new Agency seeking assistance for the protection of their rights (access to health service, schools, and other social service institutions). The Ombudsperson remains alert on the topic.

The Ombudsperson has specific responsibility for monitoring places of detention since it was designated "NPM" under the OPCAT. The NPM conducted regular visits to prisons, pretrial detention areas and juvenile detention facilities, migrants' detention centers and police stations.

In 2023, the NPM's Report on the Public Security Police was published, addressing concerns widely signalled by the European Committee for the Prevention of Torture

and Other Inhuman or Degrading Treatment or Punishment. This concern was highlighted in a report an ad hoc visit to Portugal focused on strengthening the protection of detained individuals against ill-treatment by law enforcement officers.

Aligning its activities with these concerns, the NPM intensified monitoring of detention facilities managed by law enforcement services, prioritizing visits to establishments of the Public Security Police. The conditions of detention of individuals in vulnerable situations (foreigners, individuals with psychological disorders, and minors) and their treatment were taken into consideration.

During 2023, the Ombudsperson was also involved in initiatives aimed at promoting human rights and the rule of law in the context of national security and securitization, an example of which was the NPM's participation in the Initial Training Course for Prison Guards 2023 with a presentation on "People Deprived of Liberty and Human Rights".

Implementation of European Courts' judgments

The number of implemented cases by Portugal is 503 (this number includes all judgments and decisions from the European Court of Human Rights, including friendly settlements, where the Council of Europe's Committee of Ministers has decided that all necessary follow-up measures have been taken).

On 7 December 2023, Portugal had 16 leading judgments of the ECtHR pending implementation. There were 15 leading judgments pending on 7 December 2022.

On average, the time that leading judgments had been pending implementation was five years and one month, an increase compared to an average of three years and ten months in 2022.

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),

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 main issues raised by the cases brought before the Committee of Ministers (under ongoing supervision) are access to a court; fairness of judicial proceedings; enforcement of domestic judicial decisions; and length of judicial proceedings.

Lately, the judgments of the ECtHR concern conditions of detention in prison establishments.

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 (see the judgment of 3 December 2019 of the European Court of Human Rights, in the case of Petrescu v. Portugal, no. 23190/17).

In 2022, in 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 (see the 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).

Already in 2024, a new judgment concerning conditions of detention was delivered by the ECtHR (see the judgment of 9 January 2024 of the European Court of Human Rights, in the case of Miranda Magro v. Portugal, no. 30138/21). The case was about the preventive detention of a mentally ill person, exempted from criminal responsibility, at a prison hospital's psychiatric unit, in inadequate conditions and without appropriate assistance and care, pending placement in an appropriate mental health facility. In addition, the Court also held that there was a violation of Article 5 § 1 of the Convention. The judgment expressly cites Reports of the Ombudsperson in her role as NPM (para. 51-57). The Court, while taking dure note of the positive steps

recently taken in national legislation to favour the placement of persons with mental disorders in mental health facilities in the wider health system, made it clear that the enactment of legislation will not in itself solve the problems, as effective measures are needed to implement and enforce the provisions. Portugal is required to take general measures to address structural nature of issues arising in context of the enforcement of preventive detention measures in prison facilities. Necessary steps must be taken as a matter of urgency to secure appropriate living conditions and the provision of suitable and individualised forms of therapy to mentally ill persons to support their possible return and integration into the community.

It should be noted that, in 2023, a new Mental Health Act was approved (Law no. 35/2023, of July 21), which still needs to be implemented.

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

The Portuguese prison system is facing pressing challenges such as the difficult living conditions for inmates due to overcrowding in some prisons.

On 31 December 2023, the overall occupancy rate of prisons decreased slightly but remained at more than 90% of its capacity which is an indicator of imminent prison overcrowding, according to the Council of Europe's indicators.

The NPM in its annual reports has pointed out problems associated with overcrowding: the reduction of space per person, the lack of privacy, the impossibility of providing occupational activities, and the potential to contribute to greater conflict between inmates. In addition, accommodation in the Portuguese prison system continues to occur mainly in collective spaces, i.e. in cells with plural occupancy and dormitories.

The waiting time for the acquisition of residence permits for migrants is another pressing challenge in the area of the rule of law and human rights. In general, the high volume of requests for appointments, combined with the lack of resources, made it impossible to satisfy all the requests addressed to the Portuguese authorities in time.

After closely monitoring the situation, a thematic report was published in July 2023, with some suggestions and recommendations and the Ombudsperson remains seized of the matter.

In the justice system, despite some improvements, the length of court proceedings persists as a structural challenge. Data show that the disposition time for civil and commercial cases registered a decrease in all instances. In administrative cases, the disposition time has also decreased in all instances, while remaining high, in particular in the second instance, where it remains above 830 days.

Equity in access to legal aid is also a challenge. According to the Portuguese Bar Association, an average of 400 requests for legal protection were received every day from citizens who could not afford a lawyer. Portugal grants legal aid based on the applicant's income. Most requests are accepted, but thousands of applications are still rejected every year on the basis that their income is too high to benefit from legal aid. The Ombudsman has received complaints about delays in processing requests and the complexity of the application forms used by applicants. Some complaints were introduced by inmates, in the context of disciplinary procedures.

Romania

Romanian Institute of Human Rights

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 May 2023, the Ministry of Justice had announced the establishing of a high-level expert group to analyse how to implement the recommendations of the Venice Committee issued in Opinion no. 1105/2022, on the modifications of the justice system following the adoption of the three Laws concerning the justice system in 2022. To this day no report of the high-level expert group has been made public.

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

The Romanian Institute for Human Rights (RIHR) has had meetings with representatives of the human rights committees of the Chamber of Deputies and Senate on ENNHRI`s 2022 report on the state of the rule of law and the contribution of the Institute in this document. At the same time, RIHR has informed the Ministry of Foreign Affairs on ENNHRI`s 2023 rule of law report.

In view of the Commission's recommendations, the RIHR has also had discussions with representatives of human rights committees of Parliament and the Secretary General of the Chamber of Deputies to find a solution to amend the law of the Institute. In this regard, a dialogue with ENNHRI was also held, which resulted in an address to the

Parliament and the Government on behalf of ENNHRI. Regarding the accreditation process, the Institute is in dialogue with the People's Advocate (Ombudsman) to find a partnership formula that complies with the requirements of Article 6. 3 (ii) of the SCA Regulation.

RIHR promotes a rule of law culture in different ways. First, it contributes to the ENNHRI rule of law report and currently it is an associate partner in the ROLL project – Rule of law for lawyers ran by the International Commission of Jurists – European Institutions. As an associate partner, the Institute participated in two workshops organised in 2023 which analysed international standards on the independence of the judiciary, and, mainly, the appointment procedures, an overview of international legal standards on judges' freedom of expression and association, and challenges and opportunities for strategic litigation to ensure access to judicial systems that are independent and effective. The Institute, together with Romanian lawyers, presented the specific context of Romania.

RIHR will also contribute to the drafting of the final report of the project, which will focus on strengthening judicial independence and the rule of law through strategic litigation.

At the same time, the Institute organises training courses for different types of beneficiaries, with a special focus on schools and high schools, inter alia to promote a human rights culture. The training sessions have featured information on judicial proceedings before the European Court for Human Rights and its case law; they are usually developed for students, but also teachers. Other training activities addressed to the same audience are aimed at providing information on: the statutes of national human rights institutions (NHRIs) and international standards, such as the Paris Principles; various types of NHRIs, given that currently there are four such institutions in Romania; and the specific mandate of the Romanian Institute for Human Rights.

Moreover, the RIHR organises internships for students of different universities: the Bucharest University of Economic Studies (ASE) – Faculty of administration and public management, National School of Political Science and Public Administration, Faculty of Law and Faculty of Political Science of Bucharest University, as well as the Faculty of Law of Titu Maiorescu University. In general, students receive information on the international human rights system, the national human-rights regulatory framework and institutions with human rights responsibilities, as well as the role of the Institute in promoting and protecting human rights.

Establishment, 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. The SCA has provisionally placed the consideration of accreditation of an NHRI in Romania on the schedule for the second session of 2024, pending an agreement on cooperation between the two institutions. Currently, both the Ombudsman and RIHR have submitted their request for accreditation to the SCA. In this regard, the SCA has reiterated the cumulative conditions provided by Article 6.3 of the SCA Rules of Procedure.

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.

Follow-up to SCA Recommendations and relevant developments

With regards to the recommendation (see EU Commission Rule of Law Report – Country Chapter, page 3) to step up efforts to obtain the accreditation of a National Human Rights Institution taking into account the UN Paris Principles, RIHR has begun the process of signing an agreement with the Ombudsman (Romanian People's Advocate) according to Article 6.3 of the SCA Rules of Procedure. Both RIHR and the Ombudsman have a general mandate in the field of human rights, however each of them have different powers. In this sense, as opposed to RIHR, the activities of the Ombudsman do not include research, trainings or awareness campaigns. RIHR reiterates that it has the obligation to follow the Paris Principles and to take all steps to be accredited by the Accreditation Sub-Committee of GANHRI. This is because Article 2 of Law no. 9/1991 on the functioning of the Institute provides that one of the mandates of RIHR is to inform public opinion abroad and international bodies about the practical ways in which human rights are ensured and respected in Romania; also because of the Institute's status as an associate member of ENNHRI since 2013.

Also, it is worth mentioning that the UN Committee on Economic, Social and Cultural Rights adopted its Concluding observations on the sixth periodic report of Romania, at its 29th meeting, held on 1 March 2024. The Committee notes the information on the different mandates and activities of the Romanian Institute for Human Rights, the Ombudsperson and the National Council for Combating Discrimination. At the same time, the Committee recommended that the State party adopts legislative measures, particularly in relation to Law No. 9/1991 on the Establishment and Functioning of the Romanian Institute for Human Rights, to bring the Romanian Institute for Human Rights into full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including by further strengthening its independence and by providing it with adequate financial and human resources to effectively and independently carry out its mandate.

Regulatory framework

The national regulatory framework applicable to RIHR has not changed since January 2023.

NHRI enabling and safe environment

The situation described in 2023, both in the ENNHRI rule of law report and in the European Commission rule of law report, on the status of RIHR, the legal framework and its available financial and human resources has not changed. In this context, ENNHRI has sent a letter to Romanian authorities - Ministry of Justice and the speakers of the two chambers of the Parliament – to express its concerns on the lack of a favourable environment for the functioning of the Romanian Institute for Human Rights. ENNHRI has recommended that the Romanian authorities take urgent measures to address the current situation.

At the same time, the Institute highlights that notwithstanding the recently adopted Law no. 296/2023 on fiscal-budgetary measures to ensure Romania's long-term financial sustainability, its budget proposal for 2024 was approved, with approximately the same budget as in 2023.

The Institute is carrying out its mandate with difficulties. There are staff shortages, especially taking into account the extension of its mandate, as a Focal point on the SLAPP Recommendation, which would require a change in the legal framework for the Institute's functioning.

NHRI's recommendations to national and regional authorities

It is recommended that RIHR, given its expertise in the field, be involved regularly in the process of drafting policies and legislation with human rights implications. It is also recommended that the Institute be given the necessary independence to carry out its mandate in a manner that respects impartiality, integrity, transparency and fairness.

Checks and balances

Separation of powers

CSOs criticised the changes to the Law on the authorisation of construction works, to the Law on administrative disputes and to the Law on territorial and urban planning (the latter as amended by Law No 102/2023) which restrict the right of CSOs to challenge building permits and comment on urban planning documents by shortening different relevant deadlines. This law was mentioned in the previous Rule of Law report (Please consult EU Commission Rule of Law report 2023, Country Chapter – Romania, page 29), but at that moment it had not been promulgated by the President.

The process for preparing and enacting laws

With regard to procedures and practices that could affect checks and balances, the Institute notes that policies adopted at national level do not always take into account all relevant stakeholders.

According to Article 7 of Law No 52/2003 on transparency in decision-making, public authorities should set a minimum period of 10 calendar days for receiving written proposals, suggestions or opinions on a piece of draft legislation submitted to public debate. According to reports received from civil society, draft legislation is published to satisfy the requirements of transparency of decision-making; however public authorities limit the time for consultation to a maximum of 10 days, independently of the complexity of the proposals and the amount of work needed to process them properly. By way of example, APADOR-CH reported that in October 2023, the Ministry of Internal Affairs opened for public debate a "legislative package drafted with the aim of protecting the interests of the community, protecting the fundamental rights and freedoms of the individual and increasing public safety", containing three draft laws to amend seven laws and ordinances currently in force. The laws regulate the status of police officers and gendarmes, the fight against drug abuse and amendments to the

traffic code. According to APADOR-CH, the Ministry of Interior gave civil society only ten days to submit proposals for such a large-scale initiative, which is a short period considering the complexity of the draft legislation. (Please see the opinion of APADOR-CH in this regard, in Romanian).

Although CSOs take part in public debates organised by the authorities and prepare comments and proposals when various regulations are in the consultation phase, once they are submitted there is lack of communication and transparency of any follow-up. For example, the National Council of Disability in Romania, member of European Disability Forum (EDF), notes a lack of responsiveness on the part of the public authorities as regards the steps to be taken to respect the rights of people with disabilities (Please see the petition addressed by the National Council of Disability in Romania to the Ministry of Labour, available in Romanian). Some NGOs have also noted that in debates on draft laws, where they exist, the time allocated to present opinions can be limited, making it impossible to effectively communicate remarks.

Also, the rules on how explanatory memorandums of draft laws should be prepared at government level (including ministries) are not always followed. In this respect, RIHR notes that in the case of draft laws originating at government level, the explanatory memorandum contains a section on the impact on human rights. This section is often left empty, including in the case of laws that have a considerable impact on human rights (e.g. Law on pre-university education; see, the explanatory memorandum of the proposed law, page 30, in Romanian)

However, since last year the Secretariat General of the Government has started the process of drafting a guide on human rights impact assessment so that this section can be completed accordingly. In this regard, as mentioned in last year's Rule of Law Report (see ENNHRI Rule of Law report, Country Chapter – Romania, page 3), the General Secretariat of the Government has set up a working group to develop this document, with RIHR being one of the main partners involved in this project. Thus, this year, the draft guide is to be evaluated so that it can be implemented at the level of government.

RIHR can provide training within the services of the ministries that are involved in the procedure of drafting the explanatory memorandum of draft legislation. However, it should be noted that this procedure only applies to draft legislation prepared by the Government, and there is no similar requirement for legislative proposals drafted at Parliament level.

At the same time, it must be noted that in the case of the new legislation on cybersecurity CSOs have observed that public consultations have resulted in a draft that was more "dangerous" than the initial one.

At the same time, there are cases where public consultations at the local level do not always allow representatives of CSOs to participate in meetings. For example, a representative of an association in a county in Romania was not allowed to participate in a meeting of the local council due to "the lack of space".

Access to information

There are cases when institutions or other bodies do not always respond positively to requests of access to information; as a result, there are court actions as in the case of NGOs and journalists who tried to obtain information related to the financing of political parties or even PhD theses. One of the reasons authorities/institutions invoke for not providing such information is the GDPR. At the same time there are public institutions which restrict access to information through administrative acts that only grant access to certain documents; opinions of the Public Health Agency Branches on matters relating to public investment projects, or control documents of the Environmental Agency have, for example, not been listed among the documents that may be consulted.

On the other hand, the Institute notes that the drafting of a new Administrative Procedure Code is underway, which will include provisions on transparency in decision-making (the current legislation includes: Law no. 544/2001 on access to information of public interest, Law no 52/2003 on decisional transparency - and Government Decision

no. 27/2002 on petitions). At the end of 2023, the preamble of the Code was adopted by Government Decision no. 946/2003, which provides at point IV. h) that "the Code must guarantee respect for the fundamental rights of the citizen, in particular the right to participate in decision-making and the right to information, at least at the level of current legislation, without derogations from the spirit of the normative acts to be codified".

Independence and effectiveness of independent institutions (other than NHRIs)

At the end of 2023, the National Council for Combating Discrimination (NCCD), Romania's equality body, submitted a draft amendment to its internal procedures for examining petitions. The amendment in question contains elements that may have a negative impact on certain categories of persons/groups of persons. Thus, according to an analysis by an NGO, parties or witnesses who do not speak Romanian must ensure themselves the presence of an authorised translator. This restricts their ability to participate in the proceedings effectively. The same NGO draws attention to the fact that, according to the proposed provisions, a legal person is allowed submit a request to the NCCD in its own name as opposed to that of its members even in cases concerning discrimination on the basis of grounds that can only concern natural persons, such as "race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, disability, chronic non-contagious disease, HIV infection, belonging to a disadvantaged category (...)". However, it is questionable whether a legal person can be discriminated on grounds that can only be attributed to persons. (Please see the opinion of the Center for Legal Resources, in Romanian)

It is also important to note that since 2023 the Romanian Institute for Human Rights, along with the Advocate of the People (Ombudsman) and the National Council for Combatting Discrimination are members of the Committee on the Charter of Fundamental Rights of the European Union. The Committee is a partnership-based body, without legal personality, under the coordination of the Ministry of Investments and European Projects, having the role of providing guidance, through

recommendations, to the managing authorities in handling and resolving complaints and cases of non-compliance with the provisions of the Charter.

Enabling environment for civil society and human rights defenders

Many NGOs consider that the procedure for the establishing and functioning of an NGO is considerably bureaucratic, considering, for example, a lack of unitary practice at the level of courts or institutions, the lack of clarity of the legislation and the lack of digitalisation(Please see the report of the Center for Not-for-profit Law).

At the same time, in 2023 the Government passed new fiscal legislation (GEO no. 115/2023) which restricts NGOs' ability to receive sponsorship. According to the new provisions they can only receive donations that correspond to up to 3.5% of the tax that individual donors pay on income derived from wages and salaries. Thus, NGOs can no longer receive donations from self-employed persons or independent professionals. At the same time, the new provisions also specify a new procedure for NGOs that receive sponsorship; the technical details were not defined yet.

Regarding the role of RIHR as Focal Point on the SLAPP Recommendation

In 2023, the Institute tried to obtain a grant from ENNHRI in order to facilitate the activities as Focal Point on the SLAPP Recommendation. Although the project was selected for EU funding, given that the Institute's functioning law dates back to 1991 and the RIHR Director has the status of a tertiary authorising officer, the Institute encountered a number of difficulties in finding legal solutions to access these funds. However, the Institute has held a debate on the SLAPP Recommendation and on its role as focal point with representatives of CSOs, Lawyers and the Ministry of Justice. At the same time, the Institute has also discussed with lawyers working in the field of SLAPPs/intimidation/threats, as well as with representatives of the Superior Council of Magistracy in order to find ways in which to collect statistical data on SLAPPs. The Institute has also discussed the topic of data collection with representatives of CSOs.

The last year has seen an increase of attacks on journalists, one of the most known cases being the one against Emilia Șercan (For further information, please see here). At the same time, misinformation and disinformation has been on the rise; there are, for example, networks of websites and Facebook pages that emulate the appearance of independent publications, but post exclusively propaganda or even fake content (please see Misreport Newsletter 19).

Given the rise of AI in many areas, and the fact that this technology may be used in order to create various online content, it should be noted that there are no national provisions specifically targeting deepfakes; however, there are other legal instruments that can be used to contain them (Please see Misreport newsletter no. 155).

The Romanian Institute for Human Rights has participated in a debate on the state of the media in 2023 (organised by the Centre for Independent Journalism). The participants stressed the relationship between the influence that political parties and others powerful actors exercise in practice and the precarious position of local media. In this connection, it should be noted that there is no transparency about political parties' spending the public financing they receive on mass media). In a case opposing a CSO and a political party, the court has decided that the political party should provide information on the way it spent state subsidies in 2020; however, the party has not respected the decision of the court. The CSO submitted another request to the court for the non-execution of the judgement, but the proceedings are still pending.

Impact of securitisation on the rule of law and human rights

In December 2022, a new law on cybersecurity was adopted, Law no. 58/2023 on the cybersecurity and cyber defence of Romania, as well as for amending and supplementing certain normative acts. CSOs have expressed their concerns on this new legislation as it requires security incidents to be reported within 48 hours and the storage of large amounts of data for a long time, and it also imposes high fines. Considering that the law targets, according to Article 3 (c), "networks and systems

owned, organised, operated or used by central and local government authorities and institutions, other than those referred to in point (a), and by natural persons and legal persons providing public services or services of public interest, other than those referred to in point (b)", it could also apply to watchdog NGOs and journalists due to its broad scope. The law was referred to the Constitutional Court, however the majority of judges decided the rejection of constitutionality complaints put forward by the Ombudsman and a group of Members of Parliament. However, there was a separate opinion which suggested that the Court should have accepted that certain provisions of the law infringe fundamental rights. The complaints were referring to the wide scope of application, the fact that the category of persons under Article 3 (c) will be defined by the Ministry for Research, Innovation and Digitalisation, the lack of clarity in defining cyber threats and cyberattacks.

Another law criticised by CSOs was the one that modified the Criminal Code on the disruption of public order and peace during protests. The new provisions state that "the act of a person who, in public, by threats or serious attacks on the dignity of persons, disturbs public order and peace is punishable by imprisonment from 3 months to 2 years or a fine" and that "The act of a person who, in public, by violence committed against persons or property, disturbs public order and peace shall be punished by imprisonment for a term of one to five years." The matter was referred to the Constitutional Court by a number of Members of Parliament, who considered that the penalties provided for risked upsetting the general balance struck in the Criminal Code between the severity of the offences and the sanctions threatened. They referred as an example to the fact that unintentional manslaughter is punishable by imprisonment of one to five years. The Constitutional Court dismissed the complaints on unconstitutionality. However, CSOs expressed their worries about the tendency to introduce repressive measures to control and prevent natural demonstrations in a living democracy. At the time of the parliamentary debates on the draft law, the fact that the penalty for "serious attacks on the dignity of persons" is maintained in the Criminal Code, as such a rule risks violating not only citizens' exercise of the fundamental right to

public assembly, but also the right to free expression. (Please see the opinion of NGOs, in Romanian)

At the same time, at the beginning of 2024 NGOs expressed their concerns towards the actions of law enforcement authorities which limit the freedom of expression and the freedom of assembly and association. Specifically, they found it disproportionate to bring an activist to the police station following a Facebook post criticising the presence of firearms in the context of protests organised by transporters. Questions were also raised considering that she was brought from an address different than her residence. Moreover, there was criticism of the police actions to open criminal cases for incitement circulating on Whatsapp groups of those participating in the transporters' protest, as well as the fact that there was an attempt to block participation in the protest. According to NGOs, such actions jeopardise the freedom of assembly and to participate in protests, a fundamental right in a democratic society.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

In 2022, RIHR has been asked to submit an opinion on a draft law on public assemblies, in which the Institute outlined existing international provisions and recommendations on public assemblies. This draft law is still in the legislative process and there are no recent developments.

NHRI's recommendations to national and regional authorities

National authorities should have regard to the Human Rights Committee's General Comment No. 37 on the right to peaceful assembly. This document clarifies the meaning of Article 21 of the International Covenant on Civil and Political Rights, explaining the measures that national authorities should consider in the context of peaceful assembly.

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

NGOs in Romania complain about the length of proceedings relating to the exercise of the right to information which, in some cases, has an impact on the exercise of this right. At the same time, NGOs raise the issue of the relationship between media freedom and the public funding of political parties; the latter use various methods to fund certain media (for more information, please consult the report issued by ActiveWatch – "Political parties, money and the media - a toxic relationship".

Moreover, there has been an intense public debate about journalists laid off from a widely circulated daily newspaper because the owners of the media trust were interested in promoting the gambling industry (Please see the press release signed by 80 NGOs).

In terms of media freedom, it should also be noted that journalists are sometimes under pressure to disclose sources of information, which is contrary to the rules of the profession (Please see ActiveWatch,"Pushing for exposure of sources. Ethical and legal rules").

Slovakia

Slovak National Centre for Human Rights

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 2023 EC Rule of Law report seven recommendations were addressed to Slovakia. Concerning the judiciary, the recommendations aim at ensuring sufficient safeguards for the independence of the members of the Judicial Council and safeguards for the offence of bending the law. No progress has been made, however, in the Programme Statement (p. 65), the new government established in 2023 proposes to abolish or amend the offence of bending the law.

Concerning the fight against corruption, the EC recommended to introduce a legal regulation of lobbying, to strengthen the legislation on conflicts of interest and asset declarations, to strengthen coordination between law enforcement authorities and to assure the objectivity of prosecutorial decisions. The government undertook to strengthen transparency, to prepare anti-corruption legislation to regulate lobbying and to introduce uniform rules for the asset declarations (Programme Statement, p. 70). In December 2023, the government introduced an amendment to the criminal law system through an accelerated legislative procedure intending to amend substantive as well as procedural law. The most notable changes include:

- lowering the penal rates for property and economic crimes;
- reducing the penal rates for crimes committed by public officials;

- the abolishment of the Special Prosecutor's Office of the Slovak Republic;
- changes to the legal position of the cooperating person and the suspect. (for more information see chapter: Other challenges in the areas of rule of law and human rights)

A draft amendment to the Criminal Procedure Code was submitted by the political opposition as well, to limit the powers of the General Prosecutor by establishing the right of a prosecutor and a police officer to appeal an order of the General Prosecutor annulling a binding decision in a pre-trial proceeding and by narrowing the grounds for issuing such an order.

Regarding media freedom and pluralism, the EC recommended to continue the process of establishing safeguards to improve the safety of journalists and to strengthen the rules and mechanisms concerning the independence of public service media. The government declared that it would enforce the legal and economic framework for the division of Radio and Television of Slovakia into two independent public media institutions or consider other solutions to ensure independent and objective public media and journalism. Concerning the safety of journalists, no measures were introduced (Programme Statement, p. 70).

In the system of checks and balances, the EC recommended to ensure public consultation in the law-making process. The government is committed to guarantee a stabilised legislative environment in the context of improving the business environment by reducing the accelerated legislative process (Programme Statement, p. 11-12). In connection with the tasks of the Ministry of Justice of the Slovak Republic, an increase in public participation in the adoption of laws is mentioned (Programme Statement, p. 68).

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

The Slovak National Centre for Human Rights (hereafter "the Centre") reported on the rule of law through the ENNHRI reporting mechanism and subsequently participated in a technical meeting with representatives of the European Commission. Upon the technical meeting, the Centre provided further written information to the questions of the European Commission. The information about the publication of reports regarding rule of law, including the EC Report, is published on the website of the Centre, and has been disseminated through social media.

As part of the project "Supporting National Human Rights Institutions in Monitoring Fundamental Rights and the Fundamental Rights Aspects of the Rule of Law", the Centre organised a Rule of Law Festival in 2023. The Festival took the form of a discussion during business brunches in Bratislava and in the regions of Banská Bystrica and Košice. In Bratislava, the Festival was organised in cooperation with the EU Commission Representation in Slovakia and divided into three sessions, on the following topics:

- space for civil society;
- protection of journalists;
- human rights structures and public policy-making.

In the regions, the festival focused on the space for civil society and protection of journalists within the rule of law.

During each event, a special section was dedicated to the EU Commission Rule of Law Review cycle. The Centre introduced the participants to the mechanism under which ENNHRI and NHRIs contribute to the EU Commission's reports via joint annual reports on the state of the rule of law in Europe. Particular attention was paid to the report prepared by the Centre and the recommendations issued in this report. The EC Representation presented their reporting mechanism on the rule of law. Moreover, the

chapter on Slovakia included in the ENNHRI joint rule of law report was translated into Slovak, printed and distributed to participants of the Festival as well as through other channels to increase its visibility and accessibility. The Festival reached out to a wide audience. Representatives of state authorities, civil society, journalists or even the private sector participated in the Festival.

The Centre is actively involved in the UN Universal Periodic Review mechanism. On the occasion of Slovakia's upcoming review, the Centre sent its individual submission to the UN Human Rights Council, reflecting on the recommendations issued in 2019. Some of the recommendations also concerned rule of law issues, particularly:

- media freedom and the protection of journalists – attention was brought to hate speech and harassment and absence of SLAPP regulation;
- civic space – the Centre reported on constricted democratic space for civil society and human rights defenders, including fragmented regulation and inadequate funding;
- human rights violations against minorities - including the rights of Roma women or LGBTI+ people.

The Centre also sent its alternative report to the UN Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights, including situation concerning LGBTI+ people, Roma, journalists and space for CSOs.

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

In ENNHRI's 2023 Report on the state of the rule of law in Europe, the Centre issued seventeen targeted recommendations regarding all areas of the rule of law. The recommendations were addressed to various state authorities. In particular, four were addressed to the National Council of the Slovak Republic, three were general recommendations issued to the national authorities and regional actors, two recommendations regarded the Ministry of Justice of the Slovak Republic, two were issued to the government, one was issued to the Ministry of Labour, Social Affairs and

Family of the Slovak Republic, one concerned public figures in general, one was issued to the European policy makers, one particularly to the members of the EU parliament, one was issued to the Representative of the Slovak Republic before the European Court of Human Rights and one to the Representative of the Slovak Republic before the Court of Justice of the European Union. The recommendations were divided into six categories, particularly:

- impact of 2022 rule of law reporting;
- independence and effectiveness of the NHRI; human rights defenders and civil society space;
- implementation of European Courts' judgments;
- artificial intelligence;
- other challenges in the areas of rule of law and human rights.

Similarly to the recommendations of the EC, implementation of the recommendations issued by the Centre remains a challenge due to non-binding character and reluctance of state authorities to address them. The turbulent political situation in 2023 in Slovakia, with early termination of the government, appointment of technocratic government and pre-elections, did not provide space for structural reforms and implementation of recommendations. Out of all 17 recommendations, only two were fully implemented, two were partially implemented or followed up on and thirteen remain unimplemented or cannot be adequately assessed. (see Annex 1)

Establishment, 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. 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 it 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 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 are 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.

Moreover, 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 Centre was accredited with B-status in March 2014 (SCA Report, March 2014). Since then, the Centre has not applied for a review of its accreditation status due to the fact that the legislative framework has not been significantly amended in order to implement the SCA recommendations.

As reported in ENNHRI's 2023 Report, some issues raised by the SCA in 2014 have now been addressed either by internal regulations (such as more transparent open process of electing the Executive Director) or through government support (such as the increase of financial resources).

The budget of the Centre has been gradually increased. Compared to 967 002 Eur in 2023, the Centre has been allocated 1 071 000 Eur in 2024 which represents more than a 10 % increase. The increased budget includes financial resources to sustain the two expert positions created under the project Strengthening National Human Rights Institutions in Monitoring Fundamental Rights and the Fundamental Rights Aspects of the Rule of Law funded by Iceland and Norway through the EEA and Norway Fund for Regional Cooperation and implemented between October 2022 and February 2024.

In October 2023, the Centre underwent elections of Executive Director as the three-year tenure of the Executive Director ended in November 2023. The position was openly announced, together with conditions for applying and conditions for the nomination by members of the Administrative Board. The hearing of candidates was open to public and streamed online. The vote was private but the results were announced publicly. The former Executive Director was re-elected and has now been serving her second consecutive term.

Regulatory framework

The Act No. 110/2023 Coll. Amending and supplementing the act on Public Defender of Rights as amended and amending and supplementing certain other acts, which entered into force on 1 May 2023, brought about a minor amendment of the Act on Establishment of the Centre (Act No. 308/1993 Coll. on Establishment of the Slovak National Centre for Human Rights). The amendment, specified in Article 1.2 h that the reports and recommendations prepared and published by the Centre concerning discrimination are *independent*. The Centre considers this amendment merely as a formal clarification, as the reports produced by the Centre, both under its NHRI and under its NEB mandate, are prepared independently and include independent targeted recommendations to different stakeholders and national authorities. According to the information provided by the Ministry of Justice of the Slovak Republic, the amendment was adopted in line with the recommendations of the European Commission addressed to the Slovak Republic within the EU Pilot 4446/13/JUST procedure and concern the mandate of the Centre as equality body (Explanatory Note to the amendment, p. 14). Apart from this minor amendment, there has been no change to the national regulatory framework.

NHRI enabling and safe environment

As reported in ENNHRI's 2023 Report, in order to be able to effectively monitor compliance of national laws and policies with human rights obligations, the Centre considers it crucial to be granted a status of obligatory commenting entity to legislative proposals as part of a broader mandate to submit opinions, comments and recommendations on both legislative and non-legislative initiatives to relevant authorities.

Under the applicable rules, the Centre on its own initiative provides comments to legislative proposals that may have an impact on human rights or the principle of equal treatment, with the status of "general public". Thus, the authorities are not obliged to

address these comments and further discuss them with the Centre. The level of engagement depends on the ministry concerned and legislation proposed. For instance, in 2023, the Ministry of Justice of the Slovak Republic published preliminary information about a prepared amendment of the Antidiscrimination Act. The Centre submitted its statement supporting the amendment, underlying the main gaps in the current legislation and requested its participation in the legislative process. In response, the Ministry requested the Centre to comment on the prepared amendment prior to its submission to the inter-resort commentary procedure, thus ensuring participation of the Centre and the inclusion of its expertise in the early stages of preparation of the amendment.

On the other hand, when the same Ministry submitted the proposal of Act on Fiduciary Proclamations, introducing the opportunity of appointing another person, including a partner, as a legal 'confidant'. Under the proposal, the legal confidant is a person who, for example, could act on behalf of the person in cases where this person has limited legal capacity.

However, this proposal was mainly submitted as a way to address lack of legal recognition of same-sex couples and criticised as inappropriate and insufficient, the comments of the Centre remained unaddressed by the Ministry without any reasoning. In its comments, the Centre called for the Ministry to recall the proposal as it did not reflect the positive obligation of the state under the right to private and family life as determined in Fedotova and others v. Russia and did not provide a specific legal framework for recognition of same-sex couples as it did not reflect crucial life situations and the its establishment was not a dignified form of recognition of same-sex unions (instead of mutual proclamation before the civil registry it had a form of unilateral proclamation before the notary public). The proposal was submitted to the parliament in the original wording disregarding comments from human rights organisations and CSOs, however, it was later recalled by the technocratic government appointed by the President.

In order to establish more effective cooperation with the parliament, in autumn 2023, the Centre initiated discussions with the newly appointed chair of the Committee for Human Rights and National Minorities, referring also to the Belgrade Principles.

As addressed above, the Centre´s budget has been gradually increased to address the staffing needs and increased activities. In 2023, the main challenge concerning the budget was that, upon the establishment of the new government in October 2023, it was uncertain whether the agreement reached previously between the Centre and the Ministry of Finance of the Slovak Republic would be observed. The budget was finally approved at the end of December 2023, in line with the previous communication.

Besides some negative and hateful comments on social media under the posts of the Centre reflecting on its work on LGBTI+ rights and gender equality, in 2023 the Centre also faced negative reactions to flags displayed in the windows of its premisses to support the most vulnerable groups in society (rainbow flag, trans flag, Roma flag, Ukrainian flag and flag for the Orange the World campaign). The Center received complaints from several individuals requesting the flags to be removed, especially with regards to the Ukrainian flag and the rainbow flag.

NHRI's recommendations to national and regional authorities

- 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 ensure effective participation of the Centre in discussions on the possible legislative amendments of its legal and institutional framework, 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 the 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 in order to strengthen the mandate, independence and effectiveness of the Centre as national equality body as well.

Checks and balances

Separation of powers

Amendment to the Competence Act

In December 2023, the parliament adopted an amendment of Act No. 575/2001 Coll. on the organisation of government activities and the organisation of the central state administration and certain acts ("Amendment to the Competence Act") through an accelerated legislative procedure. One of its most significant reforms, impacting the concept of independence, is the transfer of the right to appoint and dismiss the chairpersons of the Statistical Office of the Slovak Republic and the Health Care Surveillance Authority from the president to the government.

The amendment also introduces a new ground enabling the government to remove the chairpersons of the two bodies practically any time, verbatim "in the event of conduct, which raises or is likely to raise doubts as to the personal, moral or professional qualifications for the performance of his or her duties." The new rules shall also apply retroactively to the chairpersons appointed under the previous legislation. The amendment further introduces that the Slovak Information Service and the Regulatory Office for Network Industries will be classed as bodies of central state administration.

This fundamental change is to be carried out without any previous expert discussion and preparation and could jeopardize the public interest in the proper functioning of these bodies. The President of the Slovak Republic raised concerns about the amendment and vetoed it. She, among others, argued that the amendment makes the Statistical Office and the Health Care Surveillance Authority politically accountable to the government for the performance of their duties and the amendment does not take into account the case law of the Constitutional Court of the Slovak Republic, according to which the law cannot entrust the appointment and removal of high-ranking state officials to the government but must entrust it to the president. On 16 January 2024, the parliament overrode the veto of the president and adopted the Amendment to the Competence Act.

Discussions are currently underway to change the electoral system to eight electoral districts. According to the Constitution of the Slovak Republic, the territory of the Slovak Republic constitutes one electoral district for elections to the National Council of the Slovak Republic. To amend this provision of the Constitution, a constitutional majority of 90 MPs votes is required. The Programme Statement of the Government indicates that it is prepared to set up an expert group to evaluate alternatives for legislative changes for the elections to the National Council of the Slovak Republic, with a focus on changing the number of electoral districts. Opinions within both the coalition and the opposition are polarized on this issue. The critics of the current electoral system say that it benefits parties build upon a strong political leader who is well known, while the 8-disctrict electoral system would bring regional representation and voice. On the other hand, the common argument against the new electoral system is mostly that it would strengthen the strong parties and weaken the small ones that often do not have regional structures and representatives.

Amendments to the Criminal Code and the Whistleblowing Act

In December 2023, the government submitted to the parliament an amendment of the Criminal Code and an amendment of the Whistleblowing Act, both through an

accelerated legislative procedure without involving stakeholders and expert authorities with relevant competence. The government has been facing widespread protests against the amending proposals that have been strongly criticized by the opposition as well as other stakeholders. Nine Slovak MEPs sent a letter to the European Commission to warn against the "unprecedented attack on the rule of law" in Slovakia. The European Chief Prosecutor concluded that the amending proposals constitute a serious risk of breaching the rule of law.

One of the most significant changes the amendment to the Criminal Code proposes is the abolishment of the Special Prosecutor's Office that has exclusive jurisdiction over serious crimes, such as terrorism, crimes against the EU's financial interests, organized crime or corruption, including high profile cases linked to officials from the ruling political party. According to the proposed amendment, cases pending before the Specialized Criminal Court will be transferred to regional prosecutor's offices. One of the cases is the murder of investigative journalist Ján Kuciak and his fiancée, that is currently under appeal. The Council of Prosecutors consisting of regional prosecutor's offices argue that they are not prepared to take over the agenda of the Special Prosecutor's Office, and that its abolition would lead to weakening of the fight against serious organized crime and corruption. The amendment also aims to modify the statute of limitations and to fundamentally reduce penalties for corruption and economic crimes, of which several people close to the ruling party are accused. The government argues that penalties are disproportionately high and need to be brought into line with neighbouring countries. All corruption and economic crimes, irrespective of their scope, will have a maximum penalty of ten years and in each case a fine or suspended prison sentence may be imposed. The Special Prosecutor warns that the modified statute of limitations in combination with reduced penalties will result in time-barring of dozens of criminal cases under the jurisdiction of the Special Prosecutor's Office, including serious high-profile cases.

Excessive use of Section 363 of the Criminal Procedure Code that allows the annulment of any final decisions of lower-ranking prosecutors or the police by the General Prosecutor, if such decision or the related procedure breached law, continues. In 2023, charges against several high-profile political figures, including the current Minister of Defence of the Slovak Republic, have been cancelled. In April 2023, an MP submitted to the parliament an amending proposal on strengthening the position of the General Prosecutor through Section 363. The amendment proposed, among others, to prevent the filing of indictments and the issuance of substantive decisions in the preparatory proceedings during proceedings pending under Section 363. The proposal was withdrawn.

The process for preparing and enacting laws

In December 2022, the government amended the Rules of Legislative Procedure of the Government of the Slovak Republic, which regulate law-making in Slovakia. Among the changes introduced, the possibility to collect signatures to show public support of comments to proposed legislation via paper signature forms or online petition websites was removed. Public support could only be raised through the online portal SLOV-LEX.sk. The comments themselves could no longer be submitted in writing but only through the online portal. The amendment was criticised as limiting the right to public participation at law-making as the online portal is very complicated and unknown to the general public. It also precludes participation of 14% of households without access to the internet. More than 85 organisations, including the Centre, appealed to the government to remove the adopted changes. In June 2023, the interim technocratic government adopted a new amendment, removing the obstacle to collect signatures to show public support of comments by online petition websites or through paper signature forms.

The Centre is concerned by the excessive use of accelerated legislative procedures. In 2023, such a procedure was proposed or adopted in 22 cases, 15 of them since the establishment of the new government. The accelerated legislative procedure was

adopted or requested also in cases of significant reforms, such as the proposed reform of the Criminal Code, the Whistleblowing Act or the Competence Act (explained more in detail under "checks and balances") The general justification, suggested without further explanation or reasoning, was that the current legislation causes risks of human rights violations due to e.g. abuse of the whistle-blower protection by police officers, or the urgent need to establish a new Ministry of tourism and sports of the Slovak Republic by an amendment of the Competence Act. The excessive use of this procedure has been contested also by an informal association of 20 employers' organisations, businesses and commercial chambers "Rule of Law Initiative", which appealed to MPs not to support such proposals to protect transparency of legislative procedure and secure proper social dialogue.

The proposed Amendment to the Criminal Code introduces large-scale systematic changes and is thus likened by some experts to a recodification. According to its Explanatory Memorandum, the urgency of adopting the amendment through an accelerated procedure stems from the necessity to adopt legislative measures following infringement procedures of the EU and to address the reservations of the European Commission. The government further justifies the accelerated legislative procedure by alleged systemic bias and gross violations of human rights by the Special Prosecutor's Office, which, the government claims, is evidenced by 30 decisions of the Constitutional Court of the Slovak Republic. However, no evidence of such decisions has been submitted so far. The President indicated that due to the absence of any real grounds for an accelerated proceeding, she will consider using her veto power and filing a motion in the Constitutional Court. The necessity to change the Whistleblowing Act through an accelerated procedure is also justified by alleged presence of exceptional circumstances in which fundamental rights and freedoms or security may be threatened, supposedly by abuse of the whistle-blowers protection by police officers that could endanger the functioning off the Police Force. As of January 2024, the opposition has been using parliamentary obstructions to stall for time in protest.

Access to information

In June 2023, the parliament adopted a new Act on Consumer Protection. Through an amending proposal of MP Milan Vetrák, the new Act also amended Article 13(1) of the Civil Code adding that reasonable satisfaction always includes at least an apology, if it is proven that unjustified interference was caused by publishing or sharing of false information about a natural person, even if the person who did so relied on trustworthiness of information source and did not double check whether the information is true. It was criticised as possibly limiting the journalists work, for instance by burdening them with responsibility for publishing false statements made by politicians. The Act on Consumer Protection was vetoed by the President of the Slovak Republic for several reasons including the contested amendment of Article 13(1) of the Civil Code. The President contested the provision under the freedom of expression and the right to information and argued that it sanctions without distinction both those subjects spreading disinformation as well as press information, interfering with the work of journalists who share and comment on statements and opinions of third persons, including public persons. In November 2023, the new government adopted the proposal of new Act on Consumer Protection and submitted it to the parliament. The contested provision is not included.

In November 2023, the new Prime Minister announced that the Office of the Government of the Slovak Republic has been reviewing accreditation of all media with access to its premisses. According to the Prime Minister, the review concerns the observance of the obligation to inform the public truly and universally (see media article). Subsequently, the Prime Minister informed that the government ceases any communication with certain media outlets, in particular the TV Markiza, Denník N, SME and online media Aktuality.sk. According to the Prime Minister, these media outlets fail to provide true, universal and timely information about the activities of public bodies, mainly the government and the Prime Minister. Journalists from the media concerned are still allowed to access the Office of the Government but they are not given

responses to their requests and questions (see media article). These mainstream media have been traditionally seen as critical to government. The Centre believes that the steps of the current government significantly interfere with media freedom and right to access to information.

Independence and effectiveness of independent institutions (other than NHRIs)

An amendment of the Act No. 564/2001 Coll. on Public Defender of Rights, establishing a national preventive mechanism ("NPM") under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, entered into force on 1 May 2023. The powers of NPM are divided among three institutions, the Public Defender of Rights, the Commissioner for Children and the Commissioner for Persons with Disabilities, while the Public Defender of Rights has the coordinating role. The Public Defender of Rights communicated its concerns over the proposed financial and personal resources allocated to the three institutions for the period of first three years of functioning. The main reservation was that the Analysis of impacts on the budget of public administration, on employment in public administration and funding of the proposal for 2023-2025 reflected assessments prepared in 2021, thus insufficient in the current conditions. The same position was maintained by the Public Defender of Rights during the adoption of its budget in December 2023. The Centre believes that insufficient funding of the new mandate added to the institutions can have negative impact on their independence and effectiveness. The Centre recommended financial, material and personal strengthening of the institutions within the legislative procedure and raised its concerns in the alternative report submitted to the UN Committee against Torture in March 2023.

In December 2023, the government submitted to the parliament an amendment of the Act on protection of competition implementing the EU Digital Markets Act, thus adjusting the competences of the Antimonopoly Office of the Slovak Republic as well as the above reported amendment of the Competence Act. An amending proposal of an MP for a coalition party SNS proposed significant changes to the election, appointment

and dismissal of Chairman and Vice-Chairman of the Antimonopoly Office of the Slovak Republic. The amending proposal was criticised by the Antimonopoly Office itself as well as by the opposition for affecting the independence of the office by giving the power to elect the Chairman solely to the government (currently appointed by the president upon proposal of the government) and limiting the transparency of the selection procedure (see media article). The Antimonopoly Office turned to the European Commission contesting that the proposal is contrary to the EU law (see press article). Consequently, the proposal was withdrawn, and the changes were not adopted (see press statement).

Enabling environment for civil society and human rights defenders

In December 2023, the Centre published a thematic report on democratic space for human rights defenders ("HRDs") in Slovakia, based on interviews conducted with 26 women HRD, LGBTI+ HRD, Roma HRDs and HRDs with disabilities. It reported on main challenges, including prevalence of hate speech and harassment (including some instances of serious threats to life), lack of sustainable financing, lack of transparent participatory processes, administrative and bureaucratic burdens and impact of these challenges on HRDs' mental health. In particular, women and LGBTI+ HRDs reported on the serious negative impact of ongoing hate speech from political and religious representatives. Respondents also encounter strong "anti-gender movements" and rhetoric, which have moved from fringe ultraconservative or ultra-right-wing forums into the mainstream and have been taken up by state administration employees, top politicians and the general public.

The increasing intensity of hate speech was prevalent during the 2023 parliamentary election campaign. The Centre reported on the occurrence of hate speech on Facebook profiles of the most popular Slovak political representatives, with a focus on online hate speech against Roma, LGBTI+ people and Muslims. The Center also monitored pervasive hateful attacks directed at HRDs and civil society, which included their purported association with "liberal extremism", or undermining their credibility and

trustworthiness, in particular by labelling human rights NGOs as "Soros" organizations. Environmental HRDs were also targeted and referred to as "eco-terrorists" by several MP candidates (see the NHRI's report on hate speech, p. 19).

In particular, a new MP and a proposed candidate for Minister of Environment of the Slovak Republic, Rudolf Huliak incited to "hang" an environmental expert (see media article). The President of the Slovak Republic has decided not to appoint Mr. Huliak due to him not recognizing a scientific consensus on climate change and publicly approving violent statements against environmental HRDs (see press release).

In October 2023, the Prime Minister of the Slovak Republic announced an intent to enact legislation to designate NGOs that receive financing from abroad as "foreign agents" (see media article). In addition, in January 2024 the Minister of Culture of the Slovak Republic announced on the Ministry's Facebook page that the Ministry will stop supporting any "progressive" NGOs, including LGBTI+ NGOs and engaged in hateful slander campaign against LGBTI+ HRDs as "parasiting" on the Ministry's budget and "sexualizing children". The video and related posts were later deleted from the Ministry's page (see for more information post of NGO Saplinq). In November 2023, the Minister of Labour, Social Affairs and Family of the Slovak Republic announced an intent to abolish the possibility to assign the 2 % of the income tax to NGOs. The intent was later retracted, however the Minister announced that only NGOs with "noble objectives" will receive state support (see media article).

NHRI's recommendations to national and regional authorities

- To the Government of the Slovak Republic and the National Council of the Slovak Republic to refrain from the excessive use of accelerated legislative procedure limiting public debate and participation of stakeholders concerned and wider public at the adoption of legislation and policies.
- To the state authorities to refrain from adopting measures negatively affecting independence and effectiveness of independent institutions, including by adding

them new mandate and tasks without appropriate funding, increasing the government´s control over appointment of their leadership or significantly changing their mandate without participative legislative procedure and involvement of the institution concerned.

- To the Government of the Slovak Republic to ensure efficient protection of human rights defenders to prevent and investigate harassment and intimidation, threats, violence and other restrictions of rights, including from politicians and adopt sustainable and long-term financial and administrative support to all human rights defenders without discrimination.

Impact of securitisation on the rule of law and human rights

As mentioned, the portrayal of minorities, including LGBTI+ people and human rights civil society organizations, as a security threat was used as a political strategy by some political parties during the 2023 parliamentary election campaign. For instance, a far-right political party *Kotlebovci – People's Party Our Slovakia* ran a visual campaign with the title *"We will protect Slovakia from LGBT and gender!"* (see media article). Several political parties engaged in portraying civil society organizations as a threat to national values or statehood, including through a discourse that NGOs being funded from abroad (such as from the United States) aim to influence the elections (see media article). In their report on the pre-election monitoring of Facebook, the NGO Globsec also noted that the popularity of electoral campaign posts was aided by creating enemies or threats, which included LGBTI+ people and migrants (p. 8).

In its programme statement, the government underlined that, as the previous governments had ignored "illegal migration", the new government will *"react decisively in order to protect the citizens of the Slovak Republic from the negative impact of illegal migration on internal security"* (p. 4) and will adopt new measures and changes in domestic legislation, as the *"mass migration of citizens from many countries in Asia and Africa to Europe"* will be one of the main security challenges in the near future (p. 75).

The Government also noted the need to strengthen "community security", including by involving more police force in "problematic areas" (p. 77).

In a public statement delivered on the country's Southern borders with Hungary, in October 2023 the Prime Minister of the Slovak Republic announced the government's readiness to use all available forces, including the police force and the army as a reaction to "illegal migration". The control of a border crossing Čunovo-Rajka involved a major demonstration of power including armoured vehicles, water cannon and police dogs and horses.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

The Centre published a report on hate speech used by politicians on their social media platforms during the 2023 parliamentary election campaign. The Center, amongst others, monitored the perception of minorities as a threat. The Centre identified several ongoing narratives labelling Roma, LGBTI+ people and Muslims as a security issue, including labelling LGBTI+ people as a threat to the majority due to them spreading and forcing an "LGBTI+/trans ideology", labelling migrants and Muslims as an existential threat to nation or threat to national values or criminalizing minority identities (p. 27-31).

In June 2023, the Centre, as a member of the Slovak Republic's Government Council for Human Rights, National Minorities and Gender Equality proposed a resolution regarding the ongoing parliamentary election campaign. In the resolution, the Centre recommended to all political parties, MP candidates and other actors involved in the campaign, including churches to refrain from any attacks against fundamental freedoms and hate speech against minorities, including national and ethnic minorities, LGBTI+ people and people on the move. It also recommended to abstain from promoting and disseminating misinformation on gender equality,

including regarding violence against women and protection of reproductive rights. The resolution was unanimously adopted by the Council.

NHRI's recommendations to national and regional authorities

- To the Government of the Slovak Republic and members of the National Council of the Slovak Republic to refrain from public expressions that lead to legitimization of hate speech and dehumanization of minorities, including LGBTI+ people, Roma or migrants and refrain from labelling minorities as a threat to national security or national values.
- To the Government of the Slovak Republic to ensure that public bodies, including enforcement authorities comply with international human rights standards and obligations in their treatment of people on the move and combat hate speech and all forms of racism and discrimination against people on the move.

Implementation of European Courts' judgments

As of 17 January 2024, a total of 630 judgments of the European Court of Human Rights ("ECtHR") concerning Slovakia were transmitted for supervision. Out of 630 judgments, 21 were delivered in the period between 11 February 2023 and 17 January 2024. Currently, there are 561 closed cases and 69 that are still pending. Out of the pending cases, 29 were identified as leading cases, 31 as repetitive cases and 13 are dealt with via friendly settlement. Out of the 29 pending cases identified as leading cases, the following 4 cases are under enhanced supervision of the Committee of Ministers of the Council of Europe:

In the case of R.R. and R.D., concerning the excessive use of force in a police operation in a Roma neighbourhood in June 2013, following an ineffective investigation of the events and lack of investigation into alleged racist motives in their planning, the authorities provided information on individual measures on 30 January 2023. On the

same date, the General Prosecutor's Office ordered that the prosecution be resumed, pointing also to the failure of the authorities to investigate the alleged racist motives in the planning of the police operation. The last examination was carried out by the Committee of Ministers in March 2023. According to the decision adopted, additional measures are yet to be taken.

In the case Maslák (no. 2) v. Slovakia, concerning the applicant's unlawful placement in a high security unit while serving a part of his prison sentence between 2015 and 2018, the action plan submitted on 9 January 2023 is under assessment.

In the case Zoltán Varga v. Slovakia, concerning the implementation of a surveillance operation in 2005-2006, without adequate legal safeguards against abuse, the applicants made submissions on 24 January 2023, on 30 May 2023 and on 7 December 2023. The authorities replied in a communication of 16 October 2023, stating that on 30 January 2023, the Supreme Court of the Slovak Republic quashed the judgment of the Regional Court in Bratislava and returned the case to the court; the proceedings are pending. On 12 October 2023, the Constitutional Court granted the reopening of the proceedings pending before the Constitutional Court. An Addendum to the Action Plan regarding individual measures was submitted on 19 December 2023.

The case P.H. v. Slovakia concerns the authorities' failure to protect the physical well-being of the applicant, an unaccompanied Roma minor in police custody, in an incident in which she fell from the second-store window of a police station and suffered grave injuries. On 30 October 2023, authorities submitted an Action plan on individual and general measures, indicating that on 3 February 2023, just satisfaction was paid, however, the General Prosecutor's Office concluded that reopening of the prosecution would not be in accordance with the Criminal Procedure Code of the Slovak Republic. The judgment was analyzed by the Criminal Division of the General Prosecutor's Office, and its "methodological generalization" (guide for implementation) was sent to all regional prosecutor's offices and discussed at a working meeting with chief prosecutors of all regional prosecutor's offices and subsequently with subordinate prosecutors.

In 2023, the Court of Justice of the European Union ("CJEU") issued 2 judgements concerning requests for a preliminary ruling from Slovak courts concerning the interpretation of the concept of international carriage under the Montreal Convention and concerning unfair terms in consumer credit contracts (see the judgments here and here). In addition, the CJEU issued a judgement under Article 258 of TFEU concluding that the Slovak Republic has failed to fulfil its obligations under EU law, in particular Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC.

Throughout the reporting period, the European Commission brought 2 actions against Slovakia for failing to fulfil its obligations (see here and here). In April 2023, the European Commission decided to refer Slovakia to CJEU "for failing to effectively tackle the issue of segregation of Roma children in education".

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

In connection with the forced and coercive sterilizations of Roma women between 1966-1989 and 1990-2004, which have been confirmed by judgments of the ECtHR, the Centre has submitted its alternative reports to several international human rights bodies in 2023 (CAT report, p. 10-13; CEDAW report, p. 3-4; ICCPR report, p. 10-11; UPR report, p.4).

In March 2023, the Ministry of Justice of the Slovak Republic introduced a Legislative intent of the law on financial compensation for women sterilized in violation of the law to the inter-departmental commentary procedure. It proposed a one-off compensation of EUR 5 000 to a "physical persons who underwent sterilization in violation of the law in the period from 1 July 1966 to 31 December 2004 in a medical facility in the territory of the Slovak Republic." The Centre raised several issues in the inter-departmental commentary procedure, including recommendation to increase the amount of the

financial compensation to EUR 10 000, introduce the right to submit a request in the language of national minorities and proposes that the Ministry of Justice of the Slovak Republic be the decision-making authority in the proceedings. The Centre further recommended to include in the law a direct establishment of the presumption of illegal sterilization, therefore in practice reversing the burden of proof. The Centre recommended that the deadline for submitting the request for financial compensation be set at 5 years as opposed to the proposed 2 years. A similar draft legislation was introduced as an MP proposal in April 2023. In June 2023, the Centre sent a letter to MPs addressing the shortcomings of the draft law, which it had raised in relation to the legislative intent (the plan to start preparing the legislation) submitted to the inter-departmental commentary procedure previously. Neither proposal was adopted, including due to end of the regular meeting of the National Council of the Slovak Republic in June 2023. A draft legislation on compensation for women sterilized in violation of the law was also submitted to the parliament in November 2023. The proposal reflects the recommendation to increase the amount of the financial compensation to EUR 10 000. If the draft proposal proceeds to a second reading, the Centre will send a letter to the parliamentary committees addressing the shortcomings of the draft law.

Furthermore, the Centre continues to monitor the performance of Slovakia with regard to the implementation of judgments of the ECtHR via two objective indicators in the rule of law conceptual framework and the rule of law tracker.

NHRI's recommendations to national and regional authorities

- To the Government of the Slovak Republic to fully, effectively and timely implement the judgments of the European courts.
- To the Ministry of Justice of the Slovak Republic to raise awareness on the importance of the implementation of European Courts' judgments and make available to the public, in an accessible manner, European Courts' judgments and information on action taken by the state to implement those judgments.

- To the Ministry of Justice of the Slovak Republic to carry out consultations with the NHRI and civil society organization to advance the implementation of European Courts' judgments.

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

With regard to persisting structural human rights issues and their impact on the national rule of law environment, the government lost the vote of trust in the parliament in December 2022. Consequently, the president, entrusted with executing certain functions of the government, and the Speaker of the parliament convocated, upon a resolution of the parliament of 31 January 2023, pre-elections to be held on 30 September 2024 (see press release). In May 2023, following the political crisis where several ministers resigned, the president appointed a technocratic government, with limited competences to propose laws mainly to implement reforms to reach milestones under the Recovery Plan of the Slovak Republic, prepare measures to stabilise public finances and to calm down the polarised social and political situation (see media article).

According to the Explanatory Memorandum to the Amendment to the Whistleblowing Act, legislative changes are necessary due to overuse or abuse of whistleblower protection. The Amendment modifies the definition of qualified notification. Originally, a qualified notification is understood to be a notification which could contribute or has contributed to clarification of a severe anti-social activity (criminality) or to identifying or finding its perpetrator guilty. The new definition proposes the condition that such notification must concern a person with who the notifying person is in an employment or similar relation or with who he/she got into contact at work or in relation to work activity. However, this condition of necessity is according to the Whistleblower Protection Office not fulfillable in most cases. The amendment also introduces the obligation to provide reasons for the decision granting whistleblower protection, with an indication of the possibility to review. Compared to the current entitlement of the employee to request review of a negative decision, the amendment introduces the right

of the employer to request such a review even if protection was granted. In criminal proceedings, the General Prosecutor will decide on the employer's or employee's request for review. Under the explanatory memorandum, this change provides guarantees of independence and impartiality of decision-making. The General Prosecutor will thus have the power to overturn the decision to grant protection as a new form of termination of the protected whistleblower status. One of the most significant changes introduced is the exemption of police officers from the regime of whistleblower protection. The proposal retroactively annuls the protection granted to police officers under the current legislation. It seemingly targets a group of elite police officers who were put off-duty by the new Minister of Interior despite granted protection. Some of them returned to active duty based on court decisions. The amendment also introduces the possibility for the employer to request a review of a protection granted under the current legislation, whereby it will be possible to revoke decisions on granting protection not meeting the conditions set out in the amended Whistleblowing Act.

Furthermore, the Centre is concerned about the strong presence of alternative media spreading disinformation in Slovakia. Their power and reach have grown since the parliamentary elections in October 2023. Their critical approach towards the new government is completely absent. According to a representative survey for Transparency International Slovakia, one in seven Slovaks ranked alternative media among the main sources of information on the topic of corruption. In statements on corruption and the rule of law coming from the alternative media, more people leaned towards the “alternative answer” in all five statements.

NHRI’s recommendations to national and regional authorities

- To the Government of the Slovak Republic and the National Council of the Slovak Republic to refrain from submitting legislative proposals that severely limit whistleblower protection and jeopardize the detection of corruption crimes, and

to the National Council of the Slovak Republic to reject the proposed amendment to the Whistleblowing Act.

- To the Government of the Slovak Republic and the National Council of the Slovak Republic to ensure that stakeholders, expert authorities and wider public are involved in the preparation of legislative changes impacting the protection of whistleblowers.
- To the Government of the Slovak Republic to invest in tools for identifying and fighting disinformation and fake news, adopt effective measures to improve digital literacy among the general public and to support independent professional journalism to encourage news literacy.

Slovenia

Human Rights Ombudsman of the Republic of Slovenia

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 Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman) has closely monitored the measures taken by Slovenian authorities to follow-up on the recommendations concerning rule of law, issued by the European Commission in its 2023 EU Rule of Law Report as well as in its 2022 EU Rule of Law Report concerning Slovenia. The Ombudsman supported and promoted the need for a dialogue and specific action with the aim that the responsible authorities adopt needed legislative or other measures.

The Ombudsman welcomes that, after years of recommendations 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, the needed amendment was finally adopted in June 2023 (Official Gazette of the Republic of Slovenia, No. 76/2023) and controversial Article 5 was changed in a way, that compensations are not limited to Slovenian and EU citizens but that also non-EU citizens are entitled to them.

However, Ombudsman assessment is, that in general the implementation of the proposed recommendations was poor and slow and that a broader public and expert

debate on the needed changes or reforms was too often deficient, extremely short or without involving all relevant stakeholders.

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

The Ombudsman is concerned that in addition to five European Commission's recommendations on the rule of law from its 2022 EU Rule of Law Report, also the recommendations made in ENNHRI's 2023 Report on the state of the rule of law in Europe (a country chapter on Slovenia) have remained largely unimplemented. With this aim the Ombudsman repeats most of its recommendations from its 2023 Report:

Slovenian NHRI's recommendations to support the implementation of European Courts' judgments and the Decisions of the Constitutional Court of the Republic of Slovenia

The Ombudsman reiterates its recommendation made in 2022 and 2023 ENNHRI Rule of Law Report regarding Slovenia as well as in its Annual Reports for 2020 (pp. 29-30, 2021 (see: Summary of Work in English, pp. 7 and 8) and 2022 (page 2 and 6) that responsible authorities ensure effective implementation of the declaratory decisions 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 several times that, following the example of the mechanism it established to implement the judgments of the European Court of Human Rights (the ECtHR), it establishes a similar inter-governmental coordination mechanism (in which external stakeholders participate as well) 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.

- The Ombudsman recommends again that the Ministry of Justice ensure that action reports and action plans about the execution of judgments of the ECtHR against Slovenia are also available in Slovenian. The Ministry of Justice rejected

this recommendations in the Government's Responding Report to the 2022 Annual Report of the Ombudsman in September 2023 with the argument that the communication with the Council of Europe is in English and that the action reports and action plans are published on the webpage of the Ministry of Justice (Government's Responding Report to the 2022 Annual Report of the Ombudsman in September 2023, p. 50). While the Ombudsman is aware that there is no formal international requirement to translate action plans and reports into national language, the institution is of the view that due to the importance of the implementation of the ECtHR judgments for the individuals, general public and for respecting the rule of law and human rights this argumentation is not in compliance with the Public Use of the Slovene Language Act, in particular its Articles 1, 2, 5 and 6.

- The Ombudsman recommends again 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. In Government's Responding Report to the 2022 Annual Report of the Ombudsman in September 2023 (page. 49-50) the authorities in general agreed with the recommendation and at the meeting between representative of the Ministry of Justice and State Attorney's Office they agreed that the State Attorney's Office, in cooperation with other stakeholders, would prepare a project proposal for the translation of leading judgments. So far, the Ombudsman is not aware of any developments in this regard.

Slovenian NHRI's recommendations on how to improve the independence, quality and efficiency of the justice system in Slovenia

- The Ombudsman reiterates its recommendation 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.

- The Ombudsman recommends again that the authorities 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. Despite the recognition that this is a current issue for years and despite several activities of the Ministry of Justice and other actors, no positive results are in place in practice; therefore, further solutions need to be found with the aim to provide preliminary solutions as soon as possible, while also working on sustainable solutions for the future.

Establishment, 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. 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 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 financial independence of the Slovenian NHRI, the recommendation on ensuring requisite safeguards for budgetary autonomy of the independent bodies was formally implemented through the adoption of the Amendments to Public Finance Act in late June 2023 (Official Gazette of the Republic of Slovenia, No. 67/2023), which also enforced the Constitutional Court Decision (decision No. U-I-474/18 of 10 December 2020, Official Gazette of the Republic of Slovenia, no. 195/2020). However, in practice, there are still concerns that very little has changed in practice, especially related to consultations on draft budget proposal conducted by the Ministry of Finance. While the Ministry in practice somehow bypassed the new procedure in negotiations for 2024 and 2025 budget, the Government and the Parliament nonetheless, at the end respected the Financial Autonomy of the Ombudsman.

No other legislation changes concerning the SCA recommendations have been adopted so far. On 22 June 2023, the Government published its proposal for Amendments to the Human Rights Ombudsman Act for public consultations, which closed in August 2023. While the Ombudsman had been in a dialogue with the Ministry of Justice aiming to amend the Human Rights Ombudsman Act in line with the above mentioned recommendations as well as Principles on the protection and promotion of the Ombudsman Institution adopted by the Council of Europe (the Venice Principles), such bilateral consultations have been obstructed after the end of public consultations. In January 2024 the Ombudsman addressed the letter to the Ministry of Justice, requesting the information on the further proceedings as well as envisaged changes, based on public consultations. The Ombudsman expects that his proposals and recommendations are taken into account in a final proposal of amendments by the Government to the Parliament. However the Ombudsman is disappointed that the new draft, which was received on 23 February 2024, does not follow his recommendations in large extend, but rather introduces some novelties in elections/appointments of the head of

institution and deputy-ombudspersons, which depart from the Venice Principles and the established democratic standards. The proposed amendments addressed also some aspects of the appointment of deputy-ombudsman for children rights.

However, the proposal did not address the SCA recommendation on the lack of specific legislative provisions giving explicit competence of the NHRI to encourage ratification or accession to human rights treaties. The Ombudsman supports this recommendation and proposes in its contribution during public consultations to adequately implement such recommendation. In practice, the Ombudsman regularly (more or less successfully) calls for ratification or accession to human rights treaties, i.e. for many years the Ombudsman has pleaded for ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OPICESCR), which has not yet been ratified by Slovenia and the responsible Ministries make several unsubstantiated arguments and excuses – while Slovenia ratified all other individual complaint mechanisms under other human rights treaties.

Regulatory framework

As mentioned above the Act amending the Public Finance Act (Official Gazette of the Republic of Slovenia, No. 67/2023) on 28 June 2023 was adopted. Article 20 of the Public Finance Act was amended in a way that new paragraph 3 was added, which reads as follows:

"(3) Notwithstanding the previous paragraph, in the event that the government fails to reach an agreement with the National Assembly, the National Council, the Constitutional Court, the Human Rights Ombudsman and the Court of Auditors, it shall include in the draft budget a proposal for a financial plan proposed by the National Assembly, the National Council, the Constitutional Court, the Human Rights Ombudsman or the Court of Auditors, as well as the proposal of the financial plan proposed by the government in its explanation."

In addition, Article 40 (Measures to balance the budget) was amended, in order to provide the following:

"(2) In addition to the measures from the previous paragraph, the government can also determine that direct users, except for the National Assembly, the National Council, the Constitutional Court, the Ombudsman or the Court of Auditors, must obtain the prior consent of the ministry responsible for finance in order to conclude a contract."

In this regard the Ombudsman expects that these provisions would be reflected in practice in additional procedures and with the aim to ensure the financial autonomy also in practice, when negotiating the budget.

NHRI enabling and safe environment

The Ombudsman is concerned that the share of laws adopted by urgent procedure in Parliament continues to be high. This also results in short or even extremely short public consultations, including insufficient consultations with NHRIs and other relevant stakeholders, on draft laws by the Government. Their duration was mostly shorter than the recommended 30 to 60 day period, which counters the 2009 Parliament Resolution on the normative activity.

The Ombudsman recommended to the Government and its Ministries, as the main legislation-drafting authorities, to act transparently and in accordance with the principle of good administration and to reasonably include during the legislation drafting procedures those persons and entities whom proposed draft legislation or regulations directly affect, before a public debate takes place" (Recommendation No. 1 (2022, ongoing task). However, the Government and the Ministries fail to involve various stakeholders in the early phases of the drafting procedures, arguing that public debate is sufficient means of ensuring participation of the stakeholders, even if the new regulations directly address their rights or competences.

Such practice was e.g. introduced in 2022 with amendments to Radiotelevizija Slovenija Act in 2021, where Article 17(3) was amended in a manner that the Ombudsman appoints one member of the RTVSLO Council, a representative of the public, on the basis of a public call to non-governmental organizations in the field of the protection of human rights and freedoms. However, the Ombudsman was never consulted on such a proposal of the extension of its mandate. Another current example is proposed novel of the Mass Media Act (ZMed-1). The proposed ZMed-1 was given to public consultations on 12 December 2023 and was opened for public discussion and comments until 3 February 2024. The proposal, *inter alia*, aims to give additional responsibilities to the Ombudsman: under proposed Article 34(4), the competent inspector may (also) consult with the Ombudsman before issuing a temporary measure to remove or prohibit the dissemination of controversial content; nevertheless, the inspector is not bound by the opinion of the Ombudsman. However, the Ombudsman was not previously consulted on this proposal. During the public consultations, the Ombudsman assessed that the proposal was not adequate in many respects: First, the Ombudsman points out that media publishers are not the bearers of public authority or public powers over which the institution has jurisdiction under the Constitution and laws. It is controversial and not acceptable that the Ombudsman could start hearing cases based on the initiative of the authorities (which the inspectors undoubtedly are), since it was established precisely to protect the rights of individuals from the authorities. The proposed regulation would also be controversial from the point of view of the legally established independence and autonomy of the Ombudsman in his work (Article 4 of the Human Rights Ombudsman Act). Based on the proposed solutions, the Ombudsman should give "opinions, views or instructions" on the basis of the inspector's initiative, i.e. he should deal with the matter in respect of which the said inspection authority decides to contact him. The Venice Principles namely, e.g. in point 14, state that "The Ombudsman may not receive or follow the instructions of the authorities."; in item 16, e.g. also explicitly stated that such an institution must have the "discretionary right to investigate cases on his own initiative

or on the basis of a complaint" (it would not be possible to talk about this right in the case of the inspector's initiative), etc.

The Ombudsman also reminded the Ministry of Culture of the Republic of Slovenia (MK) about its several times repeated recommendation to amend Article 8 of the Mass Media Act (ZMed) in force, in relation to combating hate speech, which was not sufficiently addressed in the proposed draft law. It does not even appear from the draft law that the Ombudsman's recommendation was even taken into consideration during its preparation. The Ombudsman estimates that the proposed Article 34(1) of the ZMed-1 proposal, which amends and supplements the existing and still valid Article 8 of the ZMed on the prohibition of incitement to inequality, violence and war and incitement to hatred and intolerance, is more specific and thus gives greater legal certainty, therefore represents progress compared to the existing regulation. However, since the proposed solutions do not include sanctions for the media that allow the publication of hate speech, according to the Ombudsman, this is a bad message to the media, as it will still be considered that the violation of the mentioned provision does not result in any responsibility of the media. The Ombudsman has been warning for years that regulation without an appropriate sanction is not effective. In this sense, he expects a significant step forward, which the aforementioned legislative proposal does not demonstrate. The Ombudsman suggests reconsidering the fact that ZMed-1 would define a violation of the first paragraph of Article 23 (when it is legally established) as a minor offence under Zmed-1 and, as a result, would also determine a fine for the media (e.g. at least comparable to what is defined, e.g., for actions contrary to Article 34 (protection of children)). The Ombudsman even published a first comprehensive analyses on «Criminal prosecution of hate speech in Slovenia according to Article 297 of the Criminal Code (KZ-1): Analysis of prosecutorial practice in prosecuting the crime of public incitement to hatred, violence and intolerance in the period 2008-2018 » in 2021, which was also not adequately taken into consideration.

Such attitude and action in is unacceptable and also contrary to the Council of Europe 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 and the Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution. Ombudsman expects and recommends that such practice of adopting legislation, where regulations are prepared without a meaningful dialogue with institutions and groups to which they pertain, ends. Such practice is not transparent, does not reflect the principle of good administration and also negatively affects the rule of law in decision-making procedures.

Further, 30 years after the adoption of the Human Rights Ombudsman Act, the Ombudsman position is that it is time that its provisions are also synchronised with the Venice Principles, adopted by the Venice Commission in 2019. It is high time that the Ombudsman in Slovenia be assigned greater jurisdiction regarding the monitoring of the situation of various vulnerable groups. Hence, the Ombudsman strives for amendments to the law which will enable a more efficient operation of the institution in ensuring the rights of people with disabilities, victims of human trafficking and children's rights. The Ombudsman expects that the Government considers its recommendations and proposals and forwards the coordinated proposed new amendments to the Human Rights Ombudsman Act to the National Assembly for further consideration. However, the Ombudsman is of the view that existing act offers sufficient ground and guarantees for its operation and would not support solutions, which would undermine existing standards of its operation. In case of doubt of the compliance of amendments with the Venice Principles, the Ombudsman is considering making a referral to the Venice Commission. Until today, the Venice Commission has adopted opinions on the legal frameworks of operation of human rights ombudsman institutions in numerous states.

Lastly, the Ombudsman observes that the level of implementation of its recommendations is particularly low in matters, where more ministries or governmental

departments would need to interact, cooperate or adopt a common approach, solution, or mutually agreed legislative amendment. Consequently the Ombudsman recommended that the Government finds a systematic solution of better coordination of its activities in the field of human rights (Ombudsman's Recommendation No 1(2022)).

NHRI's recommendations to national and regional authorities

The Ombudsman recommends to national authorities to:

- Establish special coordination within the Government, which would deal with recommendations of the Ombudsman pertaining to multiple government departments and prepare a uniform standpoint and work plan for the realization of such recommendations.
- Consult the Slovenian NHRI, other independent institutions, civil society and other relevant stakeholders in an early stage of the legislation drafting procedure and before public consultations take place, when envisaged changes directly refer to the competences and/or mandate of the institutions or when they directly affect the rights of specific groups.

Checks and balances

Separation of powers

The Ombudsman agrees with the warnings of the representatives of the judiciary on its dependence on the other two branches of government for an important part of its operation, and with regard to the necessity of regulating the appropriate salary of judges to ensure their independence, which is also pointed out by the Decision of the Constitutional Court number U-I-772/ 21 of 1 June 2023, by which it was determined that the regulation of judges' salaries is inconsistent with the constitutional principle of judicial independence. The Ombudsman therefore encourages the Government and the Ministry of Justice to continue with activities aimed at improving the position of the

judiciary, including the adoption of appropriate normative legal provisions to ensure the (suitable and adequate) salaries of judges and to eliminate problems in ensuring the appropriate level of salaries of other court personnel. The deadline for the enforcement of the Decision of the Constitutional Court expired on 4 January 2024, however the decision was not enforced. This was followed by the protest of the judges due to the non-implementation of the central requirement from this decision, namely that the National Assembly had to eliminate the identified inconsistency with the Constitution of the Republic of Slovenia within six months, or by January 4, 2024. The courts and judges had announced long before what the consequences of non-compliance would have been; only urgent matters would have been handled by the courts. This is something that the other branches of government knew and could have prevented the matter. In view of judiciary there was more than enough time to implement the Constitutional Court decision. However, the Ministry of Justice and the Government had been of the view that the reform would be part of the broader negotiations on the new salary system of the public sector, which were ongoing; consequently the Government and the Parliament were aware that they would be late with the implementation of the above mentioned decision of the Constitutional Court.

The Ombudsman reminded through public media that he had recalled on several occasions, that non-enforcement of the judgments of the Constitutional Court was a systemic problem in Slovenia and represents a major violation of the rule of law. There are several non-implemented decisions of the Constitutional Court (28 at the end of 2021. Some of them are ignored for more than 10 years. Also the Decision of the Constitutional Court No. U-I-474/18 of 10 December 2020 on Financial Autonomy of four independent institutions, including of the Ombudsman, was not enforced by the deadline posed by the Constitutional Court, which was 23 December 2021; however after several calls and recommendations, including the recommendation issued by the European Commission in its 2022 Rule of Law Report, it was only enforced on 28 June 2023, i.e. more than one year and a half later.

The Ombudsman therefore urges the Authorities to immediately take all necessary steps to implement all non-enforced judgments of the Constitutional Court. It has already recommended the establishment of the Government's coordination mechanism – as explained above.

The process for preparing and enacting laws

The Ombudsman is concerned that the Ministries and the Government do not allocate sufficient time for consultations on draft laws. For example, in connection with the preparation of the new Long Term Care Act, the Ombudsman has repeatedly emphasized that the existing situation has been inadequately addressed and that, above all, there is a lack of a vision of a long-lived society, which, among other things, requires the operation of various forms of assistance. It is clear that it was useful to set up, from the beginning of the process, an active working group broadly composed of various stakeholders that would have looked for better solutions.

The Ombudsman welcomed the establishment of the special working group. He attended all the working meetings as an external observer (he could not be a full party to the proceedings, since affected citizens could later on ask him to exercise his powers over issues that had been dealt with by the working group). And he positively evaluated the exchange of opinions of various parties who in practice are faced with the issue of long-term care.

The working group was in the middle of its meetings looking for legal solutions. It was about to hold its 4th session and look at the first 60 articles of the proposed text. However, the Ombudsman received information that the Government had decided to submit the entire text of the ad-hoc proposal for interdepartmental consideration.

After two days, the second (new) version was submitted for public hearing, and the deadline for comments in the public consultations was only seven days (five working days). This was quite unusual and caused a risk in the adoption of considered, determined and appropriate solutions. Due to continued time pressure, the comments

received during the public consultations were not properly addressed in the Ombudsman's opinion; this raises serious concerns regarding the meaningful involvement of the public in the adoption of the legislative process. Hence the Ombudsman's overall concern about the method of adopting the law.

Independence and effectiveness of independent institutions (other than NHRIs)

The Slovenian NHRI observes the practice of a general low level of implementation of recommendations of independent institutions, such as the Ombudsman and the equality body, by the authorities, which negatively impacts the effectiveness of independent institutions.

Enabling environment for civil society and human rights defenders

The Slovenian NHRI actively promotes the importance of monitoring human rights and rule of law situation in Slovenia. In this regard it also promoted that Slovenia properly implements recommendations of the international monitoring bodies under various human rights treaties. The Ombudsman notes that the majority of his recommendations concerning persons with disabilities remain unrealised. For example, the recommendation that the Government drafts a legislative proposal as soon as possible for the Republic of Slovenia to establish an independent mechanism to promote, protect and monitor implementation of the Convention on the Rights of Persons with Disabilities (CRPD) in accordance with Article 33(2) of the Convention still has not been implemented – while the Ombudsman as an A-Status NHRI has offered several times to undertake such responsibility. Due to the latest information by the Ministry of Justice, the Government again refused to propose that such a mandate would be conducted by the Slovenian NHRI. The current situation is not in favour of persons with disabilities. The Ombudsman reports on his activities regarding the rights of persons with disabilities every two months, in order to stress that.

NHRI's recommendations to national and regional authorities

The Ombudsman recommends:

- That the Government establishes an inter-governmental coordination mechanism to provide expert support for the implementation of declaratory decisions of the Constitutional Court of the Republic of Slovenia, similar to the co-ordination mechanism it established to implement judgments of the European Court of Human Rights.
- That the Government on an annual basis reports to the Parliament on its activities regarding the enforcement of all non-enforced decisions of the Constitutional Court of the Republic of Slovenia and adopts the action plans with clear deadlines on the implementation of all non-enforced decisions of the Constitutional Court.
- That the Government establishes a webpage on the execution of the Decisions of the Constitutional Court of the Republic of Slovenia, with all relevant data, similar to the webpage on the execution of judgments of the European Court of Human Rights.

Impact of securitisation on the rule of law and human rights

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

The Ombudsman reiterates its key recommendations to national authorities, especially to the Ministry of the Interior, included in its 2021 National Report on the Human Rights Situation of Migrants at the Borders based on investigations of police procedures conducted in relation to migrants at various locations. In September 2023 the Ombudsman informed the public on its findings regarding the situation in the Asylum home in Ljubljana. The Ombudsman informed about the intolerable conditions in the Vič Asylum in Ljubljana. Unfortunately, the problem of overcrowding in the asylum

centre has been ongoing for a long time, and the authorities have been looking for solutions for too long, about which the Ombudsman of the Republic of Slovenia often warns the government and demands appropriate measures. The Ombudsman believes that the system of accommodation and care for migrants must be prepared for increased arrivals of international protection applicants (asylum seekers). Otherwise, even more demanding and even more difficult situations may arise, both from the point of view of ensuring human rights and protecting the public interest (e.g. in the field of public health). The Ombudsman also emphasizes that ensuring fast (but at the same time fair) procedures for international protection contributes to reducing the number of applicants for international protection and the resulting overcrowding of available capacities. The Slovenian NHRI strongly condemns all attempts by countries to respond to the arrival of international protection seekers with illegal rejection (pushbacks), as well as with other violations of human rights, including violations of the right to dignity by not providing decent and sufficient accommodation capacities.

Already in the spring, the Human Rights Ombudsman called on the Government of the Republic of Slovenia and its President to do everything necessary to ensure additional spatial capacities of the Government Office for the Support and Integration of Migrants (UOIM) for housing seekers of international protection. In its response, the government presented its efforts and emphasized that it is aware of the strain on accommodation capacities, especially the Asylum Home in Vič, which is why, as they wrote, it will continue to take all necessary measures to that end. The Ombudsman expects quick and effective measures from the government in the form of adequate accommodation capacities to protect the dignity and safety of the people housed in the asylum.

Implementation of European Courts' judgments

The Slovenian NHRI informs that the 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 the Action Plan was submitted to the Committee of Ministers on 16 June 2022 and a Revised Action Plan was submitted on 24 March 2023.
- 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 was submitted on 1 February 2023.
- Dolenc v. Slovenia, Application No. 20256/20, Judgment of 20 October 2022, concerning Article 6(1) of the Convention, where an Action Plan was submitted on 23 July 2023.
- Gregor Rutar in Rutar Mareting d.o.o., Application No. 21164/20, Judgment of 15 December 2022, concerning Article 6 (1), where an Revised Action Report was submitted on 14 December 2023.
- Letonje v. Slovenia, Application No. 10397/20, Judgment of 6 July 2023, concerning Article 6(1) of the Convention, where an Action report was submitted on 12 January 2024.
- Bavčar v. Slovenia, Application No. 17053/20, Judgment of 7 September 2023, which is not yet final.

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. The Ombudsman has so far

not felt the need to make a so-called Rule 9 submission because of the regular dialogue with the authorities / ministries and meaningful cooperation within the Intergovernmental Working Group on the Execution of Judgments of the ECtHR.

On 6 October 2023, the Council of Europe Department for the Execution of Judgments of the European Court of Human Rights visited Slovenia. The Department also separately met with the Slovenian NHRI. On 13-14 November 2023, and in follow up to the Reykjavik Declaration, a representative of the Slovenian NHRI participated in the meeting of the Parliamentary Assembly (PACE) Sub-Committee on the implementation of judgments of the European Court of Human Rights, held in the Parliament of the Republic of Croatia in Zagreb. The NHRI presented good practice example of Slovenia regarding the national coordination structures on the implementation of judgments of the ECtHR and the role of the NHRIs.

NHRI's recommendations to national and regional authorities

The Ombudsman repeats its recommendation concerning the translation of Action Plans and Action Reports into Slovenian language in order to make the entire ECtHR judgments' implementation process more accessible to a general public and more transparent and fully in line with Slovenian legislation on the use of Slovenian language by public authorities.

The Ombudsman also proposes to the National Assembly to establish a practice that the Government would annually report to the National Assembly on the state of the execution of the ECtHR judgments. This would not only involve more the national parliament into the process, but also give political dimension and importance to the process of enforcement of ECtHR judgments.

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

Justice system

With recommendation no. 55 (2022), the Ombudsman recommended that the judiciary continue to strengthen confidence in its work by ensuring trials without unnecessary delays, while maintaining high quality and fairness of decisions. The Ombudsman encouraged the competent authorities of the executive power to ensure the necessary financial, personnel and spatial conditions for the work of the courts. This recommendation is still pending implementation and, therefore, the Ombudsman reiterates it. The need for its implementation is also pointed out by individual cases that were tackled by the Ombudsman in 2023 and are presented in the Ombudsman's Annual Reports. The material aspect of judicial independence was specifically highlighted also by the Constitutional Court of the Republic of Slovenia in decision no. U-I-772/21 dated 1 June 2023, which concluded that the regulation of judges' salaries is inconsistent with the constitutional principle of judicial independence. The Constitutional Court set a six-month deadline for the legislator to eliminate the identified unconstitutionalities, taking into account that the legislator and the Government have been familiar with the issue in question for a long time. Nevertheless, this decision of the Constitutional Court was not executed within the time limit that was set, which is worrying.

On the occasion of the judges' and prosecutors' protest at the beginning of 2024, the Ombudsman warned again that non-enforcement of the judgments of the Constitutional Court is a systemic problem in Slovenia and represents a major violation of the rule of law. The Ombudsman emphasized that the decisions of the Constitutional Court must be implemented within the deadline or as soon as possible, regardless of whether we agree with them or not, as this is the essence of respecting the rule of law. The Ombudsman highlighted its recommendation from 2020 (page 30) that the government should establish a mechanism to coordinate the execution of decisions of

the Constitutional Court, which would provide professional support to decision-makers. This recommendation of the Ombudsman was also explicitly highlighted by the European Commission in its Rule of Law Report - a country chapter on Slovenia. The government unfortunately rejected it for the third time in its responsive report, stating that it is sufficient that each Ministry takes responsibilities under its competences.

The Ombudsman also draws attention to the importance of adequate premises for the exercise of judicial functions. To this end, it supports activities for the construction of a new courthouse in Ljubljana, a project that is unfortunately stagnating. When purchasing a building for some courts in Ljubljana on Litijska cesta, there was suspicion of corruption in the public-tender procedure. The matter is currently being investigated by the Commission for the Prevention of Corruption (KPK) and the National Investigation Agency (NPU).

Media freedom

The Ombudsman recalls the importance of the media freedom and of transparency of media ownership. In this aspect the already mentioned proposed new mass Media Act (ZMed-1) is of utmost importance. It needs to be recalled that several comments were made. The Ombudsman expects that the new Media Act will strengthen both the free operation of the media and the actual transparency of their ownership. It is in favour of complete transparency in the operation of the media, which is why the Slovenian NHRI sees no reason to include in the official records ownership information "only" about persons who have at least a five percent ownership share or a share in the owner's capital or assets. The Ombudsman expects clarifications in this regard and consideration of the introduction of complete transparency of media ownership. The Ombudsman expects that all these issues will be adequately regulated by the amendment to the Media Act.

The Ombudsman also points out that progress is also needed with regard to the transparency of the management of state funds and funds of local communities for

advertising in media houses. As the European Commission warns Slovenia, the country does not have clear and transparent principles regarding the payment of media content, which is particularly worrying at the municipal level.

Last but not least, the Ombudsman also points to the impermissible precariousness of the journalistic profession, which limits the freedom of journalists and reduces the quality of their work. Care for journalists is also care for the right to freedom of expression, so the state should find appropriate normative solutions to limit the precariousness of journalistic work.

NHRI's recommendations to national and regional authorities

The Ombudsman recommends:

- that the National Assembly of the Republic of Slovenia implement the decision of the Constitutional Court no. U-I-772/21 of June 1, 2023, and thus eliminates the identified discrepancy in the regulation of the salary position of judges.
- to the Ministry of Justice to continue activities to improve the position of the judiciary in the direction of more efficient proceedings.

Spain

Spanish Ombudsman

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

Some of the recommendations made to Spain in the 2023 European Commission Rule of Law report included:

- **Strengthen the status of the Attorney General's Office**: In 2023, Spain reformed and expanded the staff of the Public Prosecutor's Office, by adding 70 new staff members to the team, to adapt it to the new legal framework (Royal Decree 311/2023, of 25th April). Two new prosecutors´ offices were created, one for human rights and democratic memory, and a prosecutors' office against hate crimes and discrimination in accordance with Law 15/2022 on equal treatment and non-discrimination.. This prosecutor's office coordinates experts and promotes training to respond effectively to crimes that threaten plural and diverse coexistence.
- **Renew the Judicial Council**: The Ombudsman has no official position on the best system to elect members of the General Judicial Council, although it has expressed its opinion on the advisability of renewing them on time, in accordance with the Constitution and the Organic Law of the Judiciary.
- **Adopt legislation on lobbying**: The Council of Ministers approved the first reading of the Draft Law on Transparency and Integrity in the Activities of

Interest Groups in November 2022, but before it could be submitted to the second reading for its referral to the Spanish Parliament, the new elections were called on 29th May 2023, the Parliament was dissolved, and the legislative initiative declined On 31 January 2024, the Minister for Digital Transformation and Public Service included, among the initiatives for the current legislature, the improvement of the transparency of public administrations and the regulation of interest group activities and good governance committed to in the Spanish Recovery, Transformation and Resilience Plan, which establishes the strategy for channelling European funds to rep air the damage caused by the COVID-19 crisis, establishes that this regulation should enter into force in the fourth quarter of 2024.

In addition, Law 2/2023, of 20th February, regulating the protection of whistleblowers who report regulatory infringements and the fight against corruption was passed and entered into force in Spain to comply with Directive (EU) 2019/1937 of the European Parliament and of the Council, and is in line with the IV Open Government Plan 2020-2024. The main features of the law include the creation of channels to report violations, allowing authorities to report illegal acts for investigation. In addition, the law ensures protection for those who report these violations, fostering a safe environment for reporting without fear of retaliation. In summary, the law establishes a legal framework that protects the whistleblower and guarantees the effectiveness of reports. As part of this legislation, the Independent Whistleblower Protection Authority (I.W.P.A.) was established to receive and follow up reports. The I.W.P.A is regulated in the act, but it has not been developed yet.

Follow-up to recommendations of international bodies:

The Second National Human Rights Plan (2023-2027) was approved in June 2023, and reinforces Spain's commitment to the United Nations and the international community.

The Plan is implemented within the framework of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993. The Declaration established the indivisible and interdependent nature of economic, social, cultural, civil and political rights, and recommended that States develop National Plans to fulfil their collective responsibility to promote and protect the rights and dignity of people worldwide. Spain has thus complied with this international recommendation through a process of dialogue with civil society and the Spanish NHRI to allow feedback on the above plan.

In addition, during 2023, a debate took place on the amendment of article 49 of the Spanish Constitution as regards the terminology used to refer to persons with disabilities, in particular to adapt it to that of the UN 2006 Convention on the Rights of Persons with Disabilities (CRPD). The intention was to replace the existing reference to "physically, sensorially and mentally handicapped" people contained in the Spanish Constitution of 1978, with the new and most widely accepted terminology of "people with disabilities". This amendment was formally adopted by the Spanish Congress of Deputies (lower chamber) on 18 January 2024.

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

The Ombudsman closely monitors the actions of the state administrations in relation to the recommendations made by regional actors. The institution regularly meets and cooperate with main regional actors at technical and institutional level.

Establishment, independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Spanish NHRI was last reaccredited with A-status in May 2018. 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.

The Spanish NHRI will undergo its periodic re-accreditation by the SCA in April 2024.

Follow-up to SCA Recommendations and relevant developments

The Ombudsman, in follow-up to being re-accredited with A-status in 2018, is currently in the reaccreditation phase again.

The Ombudsman's involvement as a bridge between civil society and state authorities has increased significantly. For instance, in 2023, the Ombudsman intervened as an interested third party, pursuant to the Regulation of the European Committee of Social Rights, within the framework of collective complaint procedure No 206/2022. This procedure deals with Cañada Real Galiana, a succession of informal settlements near Madrid, where several inhabitants have not had any electricity supply for several years. This is an issue of great social relevance and concern for this institution. The Ombudsman's involvement in this context has been instrumental in highlighting the challenges and needs of Cañada Real's inhabitants through its recommendations addressed to all the administrations involved.

On the other hand, the Spanish NHRI has participated in the Committee against Torture's and the UN Committee on the Elimination of Discrimination against Women' 's cycles of review for Spain. I The NHRI has also made its contributions to the Committee on the Rights of the Child in the elaboration of preliminary questions that will give rise to Spain's report in 2024.

Lastly, it should be noted that, as NHRI, the Ombudsman has issued a report on sexual abuse in the Catholic Church and the role of the public authorities in such cases, which contains recommendations to both the executive and the legislature in order to respond to victims (see executive summary).

Regulatory framework

There have not been any changes in the law/ framework of the Spanish Ombudsman institution.

Only at a regional level, Legislative Decree 1/2023 of the Basque Country establishes that citizen complaints on which the Basque Institute for Women cannot act must be referred to the institution of the *Ararteko* (Basque Ombudsman) or the Spanish Ombudsman, taking into account their respective areas of competence.

NHRI enabling and safe environment

The independence and effectiveness of the Spanish Ombudsman is guaranteed by its legal and constitutional regulation as a high commissioner of the Spanish Parliament and by having an adequate budget linked to it. This regulatory relationship with the Spanish Parliament, the only body to which it must report on its activities, provides the institution with the necessary budgetary stability to carry out its functions for the benefit of citizens independently and transparently.

Moreover, in general, cooperation with the Ombudsman is safe and fruitful although, as published on the Ombudsman's website, some administrations do not collaborate sufficiently with the institution for whatever reason. Making these cases public helps to raise awareness, thus strengthening the mechanisms of transparency and democratic quality.

Furthermore, failure to cooperate with the Ombudsman is a criminal offence, which is one of few examples in the world. Article 502.2 of the Spanish Penal Code punishes any authority or civil servant who does not cooperate with the Ombudsman as a disobedience offender. This legal power has rarely been used as a consequence of the principle of ultima ratio.

Checks and balances

The Ombudsman considers that the rule of law, the separation of powers and its checks and balances are working properly in Spain. In accordance with its legal system, the actions of the Ombudsman as High Commissioner of the Spanish Parliament, appointed by the latter to defend fundamental rights, are focused on the defence of human rights, with the power to formulate warnings, recommendations, reminders of their legal duties and suggestions for the adoption of new measures to the authorities and officials of the Public Administrations.

Separation of powers

In 2023, there were legislative, regional and local elections without any notable incident. The Spanish Ombudsman supervise the administration through complaints and through wider supervision.

Furthermore, no laws or other regulations related to the separation of powers have been adopted which have given rise to appeals of unconstitutionality or which have been recommended for amendment.

The process for preparing and enacting laws

Some irregularities have been detected in local regulatory processes. For instance, in urban planning (see page 313 of 2022 Annual Report). These irregularities are not overly significant due to their scarcity and the highly regulated nature of local authorities´ competences. In these cases, the administration has been reminded of its legal obligations regarding participation of civil society in law-making through timely and meaningful public consultations.

Access to information

There is a high level of litigation on the topic of access to information, which indicates a certain lack of respect for the culture of transparency by some branches of public administration, despite the great efforts being made to improve it (mainly legislative development, training of officials, and the growing interest of civil society and the culture of transparency). These conflicts arise especially with regard to environmental issues, urban planning, selective processes, or locally, among others (See, for instance, section 16.7 and 17.1 and 2 of the Annual Report of 2022).

In order to improve this situation, the Spanish NHRI has issued recommendations in relation to publicity, transparency (actions have been initiated with the Transparency Council based on citizen complaints), and the obligation of the administration to respond to requests for information.

Independence and effectiveness of independent institutions (other than NHRIs)

The Law 15/2022, of 12th July on equal treatment and non-discrimination, created, an Independent Authority for Equal Treatment and Non-Discrimination which should have been established in January 2023. Furthermore, the deadline set by Law 2/2023 on the protection of whistleblowers and anti-corruption, for the establishment of the Independent Authority for the Protection of Whistleblowers is March 2024. To date both authorities have not been established.

Enabling environment for civil society and human rights defenders

No serious and widespread structural problems related to disproportionate or unwarranted actions by the authorities towards civil society have been identified. The Ombudsman does not have the power to assess the actions of the courts of justice, and therefore cannot make a strict assessment of the existence of strategic lawsuits against public participation (SLAPPs). However, the Ombudsman remains concerned about the impact it may have on the quality of democracy and the monitoring of European initiatives on this issue.

The Ombudsman maintains an ongoing daily-based dialogue with civil society stakeholders through meetings, participation in public forums or through the processing of specific complaints, which are particularly useful for improving the administrations' monitoring work. It is possible to follow the Ombudsman and other Ombudsman staff´s agenda at the institution website.

NHRI's recommendations to national and regional authorities

The Ombudsman considers that the rule of law, the separation of powers and its checks and balances and guarantees are functioning adequately in Spain and has therefore not made recommendations specifically aimed at improving the system of institutional checks and balances, but rather the supervisory recommendations made aiming at

improving or amending the performance of the administrations in relation to citizens' rights.

Impact of securitisation on the rule of law and human rights

Close monitoring of the actions of the State Security Forces and Corps is carried out by the Spanish NHRI in securing the borders, in the areas of deprivation of liberty in the field of migration and borders (Immigration Detention Centres-CIE, Temporary Foreigners Attention Centre-CATE, Asylum and Admittance Halls at airports), as well as in the process of forced return.

In general, it should be noted that the reception of migrants is one of Europe's greatest challenges, and one in which securitisation is most evident. Thus, strengthening the humanitarian reception system, improving migration flow management processes and reinforcing the international protection system are priorities for the Spanish Ombudsman, especially where there is a high risk of limiting rights due to the influence of narratives that promote the security approach over the human rights approach.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

Regarding the dialectic between "securitisation" and human rights, the Ombudsman considers that the administration must first be able to act in these critical situations in a manner consistent with human rights and the values of a social and democratic state governed by the rule of law. Personal dignity, which must always be ensured, presupposes the safeguarding of a number of inherent rights, such as life, physical and moral integrity, privacy, liberty, security and the right to non-discrimination.

To promote and guarantee respect for human rights in this context, the Ombudsman carries out unannounced visits to areas of special interest (borders or places of deprivation of liberty), produces monographic reports and participates in different collaborative and dissemination spaces for its recommendations. See, for instance,

sections 2, 3.4, 4.6… from the 2022 Annual Report. See also the reports of the National Preventive Mechanism.

NHRI's recommendations to national and regional authorities

The Ombudsman has repeatedly maintained that processes related to the entry and reception of migrants must always be addressed from a human rights-based approach. In this regard, this NHRI has made a number of recommendations, including:

- To improve the conditions of the holding rooms where rejected persons and applicants for international protection are held, and the assistance provided at the Madrid airport border. (text)
- To establish a specific channel or contact point within the law-enforcement forces and bodies to facilitate the formalisation of complaints, the collection of data on people who have disappeared during their migratory journey and the provision of assistance, information and accompaniment to the families and relatives of these people. (text)
- To improve and guarantee legal assistance to migrants, establishing a system that ensures a sufficient number of interpreters, both male and female, in order to avoid discrimination based on gender and language of origin. (text)

Implementation of European Courts' judgments

There is a reasonably high level of enforcement of judgments in Spain. For example, 6 pending ECtHR cases were executed in 2023, and the Council of Europe's average execution rate (75%) is maintained.

With regard to the most important cases currently pending implementation, and monitored by the CoE's Committee of Ministers, the Department for the Enforcement of Judgments of the European Court of Human Rights has identified the following issues:

- **Migration Issues**: Lack of effective remedy with suspensive effect for thirty persons of Sahrawi origin to challenge an expulsion decision, highlighting the risk of ill-treatment or death upon return to Morocco (AC and Others -6528/11).
- **Functioning of the justice system**: Failure to avoid double criminal prosecution in criminal matters related to administrative sanctions (Saquetti Iglesias - 50514/13).
- **Freedom of expression**: Prison sentence for public mockery of a photograph of the King and Queen of Spain (Stern Taulats and Roura Capellera -51168/13-).
- **Protection of family life**: Weaknesses in decision-making processes affecting family life, especially in case of three children placed under administrative guardianship as their own mother had requested, but separated from their father against their will, as criminal proceedings were pending against him for domestic violence following a complaint by his wife (Haddad-16572/17).

The recent judgment of the Court of Justice of the European Union (CJEU), Second Chamber, of 14th September, in case, is a significant ruling in the field of gender equality and non-discrimination. The CJEU ruled that Spanish legislation granting a pension supplement exclusively to women is contrary to European Union law and represents direct gender-based discrimination. This verdict highlights the violation of the principle of equal treatment of men and women in social security under EU law.

The judgment means that Spain must amend its legislation to ensure compliance with EU gender equality principles by removing the gender limitation on entitlement to pension supplements. Furthermore, it provides that men who have been harmed by this discriminatory regulation are entitled to redress, including both recognition of the right to receive the pension supplement and retroactive financial compensation and reimbursement of legal costs, including court costs and legal fees.

Finally, the judgment emphasises the need for the Spanish authorities to adjust their administrative procedures to comply with the CJEU ruling, thus ensuring respect for equality rights and protection against gender-based discrimination in the field of social

security and pension benefits. At this time, there are disagreements between the Social Security administration and the Ombudsman regarding the temporal scope of the effects of the sentence. An upcoming Supreme Court ruling should clarify this issue (See p.232 2022 Annual Report).

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

The State has an obligation to comply with the final judgments of the European Court of Human Rights and to implement any measures necessary to ensure that they are enforced, to stop the violation of the right and remedy the damage caused by such violation. However, the state decides how to do this, unless the ECtHR has ordered specific measures or actions. The Ombudsman's task, in such cases, is to examine whether or not relevant and sufficient administrative measures have been taken to stop the harm, and whether or not redress has actually occurred, or measures have been taken to ensure that this happens.

However, when it comes to a damage caused by a court ruling, the Ombudsman's supervisory role is very limited, as these are sub-iudice matters in which it cannot interfere (principle of judicial independence art. 117CE), and can only rely on the intervention of the Public Prosecutor's Office (which is a party to the proceedings), informing it of the analysis it has made, or the measures the Ombudsman advises should be adopted, to ensure compliance and respect for citizens' rights by the State.

However, the influence of ECtHR rulings on the work of the Ombudsman is clear, not so much in terms of specific cases, but because the reference to the ECtHR and its interpretation of ECHR rights is constantly used in its writings to the administration as a criterion of authority and as a binding interpretation of the fundamental rights of the Spanish Constitution.

When processing individual complaints, the doctrine established by the European courts is studied when monitoring the actions of administrations, as has continued to be the case throughout 2023, for example, with the gender gap reduction allowance that the

judgment of 12th December 2019 of the Court of Justice of the European Union recognised for male ascendants.

The recommendations made in areas in which European case law exists are limited to the protection of the interests of citizens concerned in the ongoing investigation, and recommendations to the authorities for the necessary amendments to avoid similar situations. To this end, the legal basis for any specific complaint related decision is taken in accordance with the European Courts case law, always in the case of administrative actions, as the Ombudsman is not competent to assess or supervise Court´s decisions.

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

In Spain there are still a number of structural problems related to human rights on which much progress has been made in recent years, but which continue to be of concern to the Ombudsman and are a priority for action:

- Violations of children's and adolescents' rights, particularly in terms of sexual abuse, but also in relation to child poverty, school segregation, youth emancipation and housing problems. (See pages 33, 41, 196, 241, 251, 259... of the 2022 Annual Report. See also the report on sexual abuse in the Catholic Church)
- Violence against women. In 2023, 56 women were murdered by their partners or ex-partners in Spain. 1,238 women in total since 2003 (Spain is one of the few countries that keeps official public records). Despite advanced legislation and increased awareness, murders continue to occur and are the greatest manifestation of the structural inequality between men and women. (Page 187)
- The problems arising from new technologies and education, as well as those arising from the relationship between Artificial Intelligence and human rights. (See, e.g. Ethical and legal dimensions of artificial intelligence within the framework of the Rule of Law. Cuadernos Democracia y Derechos Humanos 16; Ed. Universidad de Alcalá y Defensor del Pueblo)

- Protection of the elderly and persons with disabilities. Progress has been made towards a less paternalistic system since Law 8/2021, but this remains a priority issue for the Ombudsman. (Pages 85, 213, 225, 242, 246, 248…)
- Relationship between human rights and culture and the issues at stake (freedom of expression, access to culture, etc.) (Page 210…)

NHRI's recommendations to national and regional authorities

The annual report for 2023 and the Ombudsman's website include all the recommendations issued by the Spanish NHRI that are aimed at improving the processes of action of the administrations, verifying their legality, improving the quality of regulations in accordance with the constitutional standard and eliminating practices that could have a negative impact on the exercise of human rights, always in relation to citizens and especially to the vulnerable groups and collectives mentioned in the previous questions.

Sweden

Swedish Institute for Human Rights

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 issued in its 2023 Rule of Law Report several recommendations to Sweden. Below the Swedish Institute for Human Rights (the Institute) provides information on the implementation of those recommendations by national authorities.

Recommendation: Ensure that the nomination system of lay judges safeguards their independence, taking into account European standards on judicial independence.

The Institute is not aware of any concrete steps taken by the government to adhere to the recommendation by the European Commission. The issue was however, to some degree, brought up during the year in an inquiry about public assigned counsels. As part of the assignment certain issues relating to the participation of lay judges in decisions of the migration courts was to be looked into. The inquiry concluded that a reason why the assignment of lay judges to some extent is perceived as political is the strong connection it has to the political parties. It is the political parties that nominate the lay judges, and the political parties largely have internal rules that require membership for nomination. Even though the investigator came to the conclusion that there is no need for further measures to clarify that the assignment of lay judges is not

political, the investigator concluded that a better alternative to strengthen the political independence of the lay judges would be to deprive the political parties of the power of nomination and develop a new recruitment model. However, since the nomination and appointment system of lay judges was not part of the terms of reference of the inquiry, the investigator did not analyse the issue further. Thus, the need to examine the system of politically appointed judges and propose a new recruitment model remains.

It should also be noted that the 2020 Committee of Inquiry on the constitution that was tasked with investigating for example the need to further strengthen the independence of courts and judges in the long term did not in their report, that was submitted during the year, look into the matter of lay judges.

Recommendation: Evaluate the scope, impact and implementation of the rules relating to revolving doors that cover top executive functions in the Government.

In 2022 the government initiated an inquiry of the Act concerning restrictions when ministers and state secretaries transition to non-state operation ("the Restrictions Act"). The purpose of the inquiry was to evaluate the Restrictions Act from 2018, as well as to consider whether the categories of people subject to the regulation should be expanded, if the restriction period should be extended, and, whether sanctions should be introduced. Further, the inquiry should map the prevalence of moves from public to non-public employment and activities. It should also propose generally applicable restriction regulations and consider who should be bound by such regulation.

On 28 August 2023, the results of the inquiry were presented in a report. In the report it is concluded that the Restriction Act on an overall level has fulfilled its purpose and has had certain self-regulating effects. It finds that the duty of notification appears to have been complied with. The inquiry proposes generally applicable regulations on, 1) the duty to notify the employer before a move to a job outside the public sector, 2) restrictions in the form of a waiting period and 3) compensation entitlements for employees subject to transitionary restrictions. The inquiry suggests that a new Act,

containing both regulations concerning restrictions for government ministers, state secretaries and heads of government agencies and the generally applicable regulations, should replace the current Restrictions Act. The new Act should enter into force on 1 January 2025.

Recommendation: Continue efforts to ensure that the on-going reforms to the legal framework for the funding and operation of civil society organisations do not unduly affect civil society engagement.

In 2023, civil society organisations increasingly experienced an uncertainty in funding. Many organisations argue that this is due to economic factors, but also political decisions. One such example is the new Swedish development cooperation policy which was adopted in December 2023.

On a broader scale, several organisations note that funding is becoming more directed towards civil society organisations as service providers rather than those providing voice to a broader group. An example of the latter is the cancelled funding to ethnic based organisations and some public education programmes. Furthermore, the demands on civil society organisations to comply with regulations regarding financial reporting and audit have increased and the government has in a report to the Parliament accounted for initiatives it has embarked on to enhance financial follow up and control. Criticism has been raised by civil society organisations that argue that focus is rather on control than on trust. This can also be seen in the continued debate around the so called "democratic governance criteria" which have been proposed as criteria for state funding to civil society organisations. A proposal was presented by the previous Government but withdrawn by the new Government following the election in September 2022. The criteria were supposed to be presented in 2023, but now seem to have been pushed back to early parts of 2024.

Hate crimes and harassments targeting members and representatives of civil society organisations continue to be a major problem. This poses challenges not only to the

organisations themselves as they have to put in place systems to manage potential threats against them, but also to the society as a whole when voices are silenced. During the past years, efforts have been made to protect civic space and support actors such as politicians, journalists, public officials and artists. For example, in 2023 the criminal code in Sweden was amended in a way that crimes targeting journalists should be seen as more aggravating which will be considered when the sentence is decided. It is noted that a similar rule does not exist in relation to civil society representatives.

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

In order to ensure that lay judges both act, and are perceived to be able to act, independently in relation to the political parties, the Institute has twice during the year proposed to the government that a special investigator should be appointed with the task to investigate how a new recruitment system for lay judges should be designed without the involvement of the political parties. The proposals have been submitted as part of the Institute's referral responses in consultation processes for new and changed legislation.

The inquiry report about the Restriction Act (i.e. regarding rules relating to revolving doors) is currently being circulated for consultation. The Institute is one of the consultation bodies and will submit its response in February 2024. The response will be available on the Institute's website.

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

Recommendation 1: To engage on the forthcoming findings of the Institute´s gap analysis on adherence to the Paris Principles and criteria for reaching A-status;

Initiatives taken by the Institute

During 2023, the Institute has taken a series of initiatives to convey the content of the recommendation and request corresponding follow-up from the government. The first

initiatives took place in the spring, with the launch of the Annual Report for 2022 on April 3, 2023. It provided a detailed account of the Institute's preparations for accreditation up to that point and drew attention to potential needs for supplementing the enabling law in some areas assessed as weak from the perspective of the Paris Principles. Information about the preparations and a reminder of the impending supplementation needs were also included in the management's handover and oral presentation of the report to the government the same date.

On April 14, the Institute submitted a formal request for accreditation and membership in GANHRI (Request for accreditation, reg.no: 1.4.1-199/2023), the receipt of which was confirmed on April 17.

Information about the preparations and a reminder of the impending supplementation needs were also subject to a special presentation during the minister and her staff's visit to the Institute on April 19, 2023, and during the management's meeting with the Parliamentary Committee on the Constitution in May 2023.

On June 14, the Institute asked ODIHR for a legal opinion on the enabling law of Institute. The legal opinion was finalized on August 28 (after OHCHR commented on the draft) advocating, among other things on the need for strengthening the Institute's independence and financial autonomy.

On October 18 the Institute hosted a High-Level Webinar on the Paris Principles which focused on the possible measures needed to ensure a satisfactory outcome for the accreditation process. Following interventions by the minister, the chairperson of the Parliamentary Committee on the Constitution, civil society, OHCHR, ENNHRI and GANHRI, ODIHR presented its legal opinion, and the Raoul Wallenberg Institute presented the preliminary conclusions from its analysis.

Therefore, on October 23, the Institute turned again to the GANHRI Sub-Committee, on Accreditation (SCA) declaring itself ready to have its application reviewed and assessed

during the autumn meeting in 2024, a proposal confirmed by ENNHRI shortly thereafter.

Finally, on December 5, the Board of the Institute decided to update its recommendations to the government on this matter. On 24 January 2024, the Institute submitted a letter to the government ("Behovet av att stärka implementeringen av Parisprinciperna" - reg. no. 3.4.2-31/2024), drawing attention to the immediate need to further enhance the implementation of the Paris Principles in view of the legal opinion from ODIHR and the Institute's application for international accreditation and membership in GANHRI, both in the short and long term.

Initiatives taken by other stakeholders

As reported in the 2023 ENNHRI Rule of Law report, shortly after the Annual Report for 2022 was launched, a representative of the government's coalition partner, the Sweden Democrats, stated that the Institute should be closed. Shortly thereafter, during an open question session in the Parliament, the Prime Minister also expressed that the future of the Institute may be questioned, citing the current needs for economic austerity and public expenditure cuts. This stance was reiterated by the responsible minister during the subsequent visit to the Institute on April 19.

As a result of the stance taken by the government the Institute received important support from the international community. The Institute provided relevant stakeholders with written updates followed by bilateral meetings facilitated by ENNHRI's role and contacts in the field.

In the latter part of April, OHCHR, FRA, and ENNHRI publicly expressed support for the Institute's independence and financial autonomy. The Council of Europe, ODIHR, GANHRI's representation, the EU Commission and the Nordic sister institutions also showed interest in the development. In addition, UN High Commissioner for Human Rights Mr. Volker Türk confirmed his support for the work of the Institute in his bilateral contacts with the government.

The information campaign continued nationally. On May 2, the Swedish civil society published an open letter to the Prime Minister, signed by more than 55 leaders of various non-governmental organizations. The letter is titled "Not an Ordinary Authority" and advocates that the government must provide the conditions necessary for the Institute to continue working and developing its operations in line with the Paris Principles.

After a longer period of concern, which began with the Prime Minister's statement on April 13 in an open session in the parliament, the government finally manifested its support for the recommendation in the budget proposal, presented on September 20. Therein, the government elaborates relatively extensively on the Institute's basis in the Paris Principles and describes the steps and application towards membership in GANHRI. The government further claims that the Institute should continue to play a central role in the Swedish human rights structure "... by comprehensively monitoring, investigating, and reporting on how human rights are respected and realized in Sweden." The budget allocation is in the same order of magnitude as in previous years, with a forecast of a slight increase in the following years, i.e., 2025 and 2026.

The stance in the budget proposal was also conveyed by the responsible minister's presence and statement at the Institute's High-Level Webinar on the Paris Principles on October 18.

Recommendation 2: To improve protection against hate crimes as well as inflammatory and racist manifestations;

In recent years, Sweden has witnessed a spate of Quran-burnings resulting in rioting and calls for a ban on burning religious texts. These events have brought to the fore questions regarding the limits of Sweden's extensive right to freedom of expression.

During the summer, the government tasked a special investigator to review whether national security should be considered when granting permits for public gatherings (for

example to burn the Quran) in accordance with the Public Order Act. The findings of the investigation will be presented in July 2024.

During the year, a first judgement from a Swedish court was issued examining whether Quran-burnings constitute hate crime (Linköping District Court, Case B 1406-21). The case involved the burning of a Quran wrapped in bacon in front of a mosque. The event was filmed and the clip, accompanied by a soundtrack of anti-Muslim music, was spread on social media. As such, the case included a number of elements that, considered together, were deemed to amount to the crime agitation against a population Group ("hets mot folkgrupp"). As of yet, however, there have been no judgements determining whether other public burnings of the Quran constitute crime.

During the year the Institute also took note of inflammatory statements made by members of Parliament as a consequence of the Quran-burnings. For example, in reaction to calls for boycotts of Sweden from Islamic groups, the Chair of the Committee on Justice for example publicly stated that if this is their attitude Sweden should "burn another 100 Qurans". At the end of the year statements by the leader of the Sweden Democrat's party provoked strong reactions and received a lot of media attention when he at a conference argued for an immediate stop to the construction of mosques and for starting to confiscate or demolish existing mosques where anti-democratic, anti-Swedish, homophobic, anti-Semitic propaganda or general misinformation about Swedish society was spread.

The Institute notes that during the year some initiatives were taken by the government to work to fight racism and hate crime, particularly aimed at combating antisemitism. The Swedish Public Management Agency (Statskontoret) presented its findings as a follow up to the Swedish national action plan against racism, similar forms of hostility and hate crime. The report criticised the plan as being too weak, lacking concrete goals and unclear as to what authorities are covered by the plan and how such authorities should mainstream their work to fight racism and hate crime. Furthermore, following up on another assignment given to it by the Government, the Swedish Crime Victim

Authority (Brottsoffermyndigheten) presented public information on how individuals can report crimes committed with Islamophobic motives.

In early 2023, a high-level working group was established within the Government offices consisting of several State secretaries from different ministries as well as representatives of Jewish civil society organisations and Government agencies. The role of the working group is to improve the conditions for Jewish life and prevent and combat antisemitism in Sweden, through enhanced cooperation and dialogue. Following the attacks on 7 October 2023, this type of support was intensified. Increased funding was given to authorities like the Living History Forum (a Swedish agency working for democracy and equality between all people using lessons learned from the Holocaust), academia and Jewish civil society organisations.

On 10 January 2024 the inquiry into a national strategy to strengthen Jewish life in Sweden was submitted to the government. In June 2022, a special investigator was given the task of submitting proposals for a national strategy for strengthening Jewish life in Sweden with a focus on the transmission of Jewish culture and Yiddish to today's young people and to future generations. In addition to this, the inquiry was for example tasked with describing the conditions for living a Jewish life in Sweden based on Sweden's international commitments regarding the protection of national minorities and minority languages.

With the aim of ensuring enhanced compliance of EU Council framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, an inquiry was presented with suggested amendments to relevant criminal legislation in Sweden.

Recommendation 3: Improve adherence to good practice and/or due process requirements when it comes to draft legislation, stakeholder consultations with NGOs and follow-up of UN Human Rights Treaty Bodies' recommendations.

The trend of short deadlines for the submission of opinions from referral bodies has continued. The government has expressed a determination to further speed up the legislative process as part of a drive to tackle serious crime. The Institute has expressed concerns regarding rushed drafting processes, including inter alia inadequate analysis of the human rights implications of legislative proposals.

During the first year of its existence, the Institute was not included as a referral body in a systematic manner in the legislative process. This has been pointed out to relevant ministry and the Institute is now more frequently included as a referral body. There were however still a few inquiries relevant to the Institute's mandate that the Institute did not receive in 2023. The Institute nevertheless submitted responses to these inquiries. These responses were not automatically published on the website of the Swedish Government Offices which is something that the Institute would advocate for, in order to ensure broad access to the Institute's analysis. The Institute has however been in dialogue with relevant Ministries in order to rectify this oversight and have noted that the Institute's referral responses now have been published.

The Institute notes that there is a lack of systematic and clear handling of the recommendations that Sweden receives from the UN treaty bodies and from special procedures. This is partly due to the fact that the reporting and follow-up involve different ministries which makes it difficult to monitor the work that is being done. During the year the Institute raised the issue both at a meeting with the leadership of the Ministry of Employment (which is the ministry that has the overall responsibility for coordinating the implementation of human rights in Sweden), and at a meeting with the interdepartmental working group for human rights, which consists of representatives from several different ministries. The Institute raised that it would be crucial to create a structure for dealing with recommendations in the field of human rights, with the involvement of government authorities, municipal and regional actors, as well as independent actors such as civil society and the Institute. This is in line with a recommendation in a letter from the UN High Commissioner for Human Rights to the

Swedish Minister of Foreign Affairs in December 2020 urging Sweden to establish a national mechanism for reporting and follow-up in relation to all recommendations received from all international and regional human rights mechanisms and to all treaty obligations. The issue will be followed up by the Institute in different ways in the future, including in the continued dialogue with the Ministry of Employment.

In relation to adherence to UN Human Rights Treaty Bodies' recommendations, the Institute notes for example that the Government has taken steps to lower the age for criminal responsibility by appointing a special investigator to carry out an inquiry and suggest changes to the juvenile criminal justice system. This is in direct contradiction of a recommendations from the UN Committee on the rights of the Child in its Concluding observations on the combined sixth and seventh periodic reports of Sweden. The Committee urges Sweden to maintain the minimum age of criminal responsibility at 15 years of age.

Establishment, independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Swedish Institute for Human Rights was created and commenced operations on 1 January 2022. It was established with reference to the UN Paris Principles. The Institute is a non-accredited associate member of ENNHRI.

The Swedish Institute for Human Rights will be considered by the SCA for first time accreditation during the SCA fall session of 2024.

Follow-up to SCA Recommendations and relevant developments

On April 14, 2023, the Institute applied for the first-time accreditation and in October, SCA decided that the application would be processed and assessed during its fall session of 2024.

During the preparations, the Institute has been guided by SCA's general observations, obtained a specific legal opinion on the enabling law from ODIHR, and held bilateral discussions with experts from OHCHR, GANHRI's representation in Geneva and ENNHRI regarding the requirements for A-status. Since October 2022, the Institute is an associate member of ENNHRI and has had regular exchanges of experiences regarding the accreditation system with sister institutions in the Nordic region.

Regulatory framework

The enabling law or other parts of the regulatory framework has not changed since January 2023.

Note however that the Institute in January 2024 submitted a letter to the government, drawing attention to the need to further enhance the implementation of the Paris Principles.

NHRI enabling and safe environment

In line with ODIHR's legal opinion, completed after OHCHR's comments on the draft, and the Institute's own gap analysis, the mandate should be considered sufficiently broad and robust to meet the Paris Principles. Further, the Institute has sufficient powers - explicit or implied - to fulfil that mandate operationally. This conclusion assumes however that the mandate is understood in accordance with SCA's recommendation to interpret the mission extensively, rights-based, and purposefully.

Secondly, regarding the composition and the pluralism of the Institute, the conclusion is also positive. The Institute now has three distinct organs:

- The Board, with 7 members with expertise in the field of human rights and experience in qualified work within civil society, the judiciary and legal practice, and/or research and higher education who are nominated by the Advisory Council the Swedish Bar association, and Academia and higher research and formally appointed by the government.

- The Director and the Office with approximately 30 employees with high education in the field of human rights and extensive professional experience.
- The Advisory Council, with 20 prominent representatives from various human rights movements in civil society.

Concerning the Institute's independence, the situation is a bit more complicated. The starting point is that the Institute acts entirely independently and autonomously regarding its activities and the design of the non-regulated forms of organization, in other words the institute decides over its internal forms of its organisational set-up (units, departments, staffing etc). This means that the Institute, without oversight or guidance from the government or other external actors, makes its own operational priorities, completes its reports, upholds partnerships, including internationally, recruits and sets salaries for employees, and so on.

However, there are some deficiencies in the appointment process for the Board, primarily related to the steps between the nomination by the nominating actors, as mentioned earlier, and the appointment, which is made by the government. The Institute does not claim that it has been a problem in practice. Still, on the basis of the legal framework, there is not sufficient detail as regards the government's ranking of the nominations received or what specific preferences are used to ensure diversity and anchoring with other human rights actors in the Board, taken as a whole.

The Institute also believes that the rules for dismissal should be clarified, both for the Board Members and the Director.

Regarding potential rule of law issues, the Institute particularly wants to draw attention to one issue. The government does not exempt the Institute from the condition that applies to other government authorities, which is that the government determines how many and which legislative proposals they should provide opinions on. This could potentially lead to an indirect control of resources and operations of the Institute, especially during the high legislative pace that currently prevails in Sweden. In addition,

the government's approach contains an unspoken signal about what would be the human rights priorities for new legislation. However, the Institute's response will be to only submit substantial opinions on legislative proposals relevant to the Institute's own priorities, while others will only receive a very short reply.

Finally, there is a need for a guarantee that the Institute's reports are considered by the Parliament and not just the government. The authority to submit reports to the Parliament is missing in the law but has nevertheless proven possible to achieve in practice. However, the Institute believes it is such an important issue that it cannot be solely protected by good practice.

As regards threats against the Institute and as reported above, from April 13 to September 20, 2023, the situation was that the government questioned the significance of a Swedish NHRI on economic grounds, a stance further supported by the coalition partner Sweden Democrats for political reasons, expressing the opinion that Sweden has no problems with racism and discrimination. Since the responsible minister did not confirm continued funding for the Institute in both open and closed meetings with the Institute, and during the EU conference on the institutional protection of human rights during crises in Lund on April 20-21, 2023, the Institute assessed that it could be under a threat.

Above all, the Institute became very concerned that this stance resulted in a complete lack of transparency and foresight in the budget processing during 2023. The situation stood in stark contrast with the Paris Principles and SCA's general observations, stating that the funding needs of national NHRI institutions should be assessed on neutral and mandate-based evaluations. A similar reasoning is also found in the preparatory work for Swedish law, hence making the government's standing problematic also in the domestic legal context.

It should also be noted that the Institute did not receive an explanation of why its own budget proposal was not followed. It amounted to SEK 63 million for 2024 and was

justified by statements about staffing needs in the preparatory work for the enabling law.

However, apparently, the threat diminished after the government presented the budget proposal for 2024 on September 20, 2023, in which it confirmed the previous government's commitment to fully comply with the Paris Principles and the Institute's important position in that regard, along with a budget allocation that does not imply significant changes compared to the previous year.

NHRI's recommendations to national and regional authorities

The following two recommendations are formulated with a view to increase the implementation of the Paris Principles ahead of the SCA consideration of the accreditation request from the Institute, scheduled for the fall of 2024. This does not imply that there are no additional needs relevant to ensuring the independence and effectiveness of the Swedish NHRI.

Recommendation 1:

The government is urged to act in accordance with the Institute's specific submission on the immediate need to strengthen the implementation of the Paris Principles, including by:

- Instructing the 2023 Freedom and Rights Committee with the additional task of developing proposals for constitutional protection for the Institute's mandate, independence and premise on the Paris Principles.
- Ensuring adequate and long-term funding for the Institute in accordance with the provisions of the Paris Principles on budget management and the Venice Commission's recommendation on minimum guarantees for funding independent ombudsman institutions.

- Clarifying appointment and dismissal rules regarding the Institute's board members, which can be initially addressed through written procedures in the short term and subsequently clarified through legislation.

Recommendation 2:

The Parliamentary Committee on the Constitution is encouraged to establish written procedures for receiving, tabling and handling reports from Institute, in particular its Annual Reports.

Checks and balances

Separation of powers

Salary criteria for non-political civil servants

The Swedish Government Offices are comprised primarily of non-political civil servants who remain in their positions irrespective of which political parties are in government. During the regular salary process at the end of the year, media outlets reported that one of the criteria on which salary levels were to be based was 'working toward the goals of the Tidö-agreement', the political agreement between the ruling coalition and the Sweden Democrat party. The criterion was added after the negotiations between the local union and the employer had been finalised. According to the tradition of political neutrality of civil servants the salary structure should be founded on the principle of meritocracy. Voices have been raised that the added criterion appears to be attempted political interference in the civil service.

Political influence on courts

During 2023, a few cases have been reported where politicians have publicly commented on individual judgements. One example is when the chair of the Parliamentary Committee on Justice commented on a court case. This was heavily criticised by for example judges particularly from the perspective of rule of law

principles, including the independence of the judiciary. Another example that raises questions regarding political influence of courts concerns lay judges. In the aftermath of a heavily criticised verdict the connection between lay judges and political parties came to light. In the verdict, a man was acquitted by the Court of Appeal for Western Sweden in a case involving the rape of a ten-year-old girl. The verdict was strongly condemned and received media attention. A week after the verdict was announced, the two lay judges who had participated in the Court of Appeal's decision left their positions. They had both been appointed after nomination by the Social Democrats and resigned after being called to a meeting with the Social Democrats in Gothenburg.

In order to ensure that lay judges both act, and are perceived to be able to act, independently in relation to the political parties, the Institute has in two referral responses during the year proposed to the government that a special investigator should be appointed with the task to investigate how a new recruitment system for lay judges should be designed without the involvement of the political parties.

The process for preparing and enacting laws

The legislative pace in for instance the fields of criminal law and migration law has been high for several years. However, it has escalated since the current Government came into office in 2022 and started implementing the political agreements in the so-called Tidö agreement. The Institute, amongst several other actors, has therefore continued to raise concerns that reforms, in e.g. criminal law and procedure, of recent years need to be evaluated before new reforms are initiated, and has expressed concerns that inquiries into related areas in many cases are running in parallel. The result is that inquiry reports often fail to adequately conduct and present analyses of the impact proposals may have on human rights, and that the proposed legislation will be unclear and difficult to apply with legal certainty.

Nevertheless, in his Statement of government policy on 12 September 2023, the Prime Minister argued that legal reform processes must be quicker. One of the measures to

resolve this is to establish a new inquiry function within the Prime Minister's office that are supposed to conduct quicker "targeted inquiries", possibly twice as fast, but with maintained high standards of legal precision. The new system has not been evaluated, but risks, in the view of the Institute, resulting in inquiries being conducted in a way that does not live up to the Swedish legal tradition of legislative proposals, as a rule, undergoing thorough analysis and evaluation of inquiry bodies operating independently of the Government and often involving co-opt experts, officials and politicians.

Before the Government adopts a position on the recommendations of an inquiry body, its report is referred for consideration to, amongst others, central government agencies and special interest groups. The referral process is supposed to provide the Government with feedback on the proposals, and the consequences of their implementation, from a number of actors offering a diversity of perspectives. In this manner, the referral process strengthens democracy and the rule of law. A meaningful referral process is preconditioned on the various actors having sufficient time on their hands to analyse the proposals and submit comments. In several cases in 2023, the time allocated for comments has been very short without the Government providing persuasive arguments for this. In a judicial preview published on 30 December 2022, the Council on Legislation (Lagrådet) argued that the referral process for a bill concerning secrecy related to electricity support, did not live up to the constitutional requirements for preparation of legislation and that the bill for that reason could not serve as a basis for legislation. In this particular case, the effective time given to the referral bodies to prepare comments was half a working day (the time allowed for comments is normally three months). Another example of a rushed referral process concerned a proposal for introduction of so-called security zones allowing for increased possibilities for the police to conduct stop-and-search measures of individuals and vehicles only was open for comments for five weeks over the Christmas and New Year holiday.

It can also be noted that during the year, the Institute and other actors also criticized the Government for deciding to fund the construction of special youth prisons before the referral process for establishing such prisons in law had come to an end.

Council of Legislation

The task of the Council on Legislation (the Council) is to examine bills that have been referred to them and to issue opinions on the proposed bills. Only the Government and the parliamentary committees can request opinions from the Council. It should be noted that the review by the Council is not in itself a prerequisite for new legislation to be decided upon or applied. It is ultimately the Government that initiates and is responsible for the preparation of legislative proposals, and the Parliament, which decides on new laws, that are responsible for the quality of the legislation. The reviews of the Council are presented in the form of statements and are not binding for the government or Parliament. The reviews focus on for example how the proposed bill relates to the constitutional laws and the legal order in general, how the proposal's provisions relate to each other and on rule of law issues, including the quality of the preparatory work.

In a survey launched in January 2023 conducted by the Confederation of Swedish Enterprise (Svenskt Näringsliv), it is established that 23.5 percent of the bills referred to the Council between 2006 and 2022 were criticized. In 4.8 per cent of the opinions, the Council chose either to reject all or part of the bill or stated that all or parts of the proposal could not form the basis for legislation.

According to the survey, the Council writes an average of 125 opinions per year, which corresponds to about 25 percent of the laws adopted in a normal year. According to the report it is not possible to see any systematic differences in quality in the legislative proposals between different governments during the period. The proportion of critical opinions is at the same level throughout the period examined.

A crucial part of the concept of rule of law is that laws and regulations should hold high quality. Without a proper preparation process and solid impact analyses this cannot be guaranteed. The review however shows that the government's proposed bills often fail in relation to for example proper preparation processes. Even though the views and recommendations of the Council are not binding on the Government or Parliament, they are considered of crucial importance to ensure that legislation live up to constitutional requirements. The views of the Council on Legislation have still been disregarded in some instances. For example, the Government decided to go ahead with the introduction of a new terrorism offense criminalizing involvement in a terrorist organization, even though the Council deemed the proposal to be too unprecise. The same proposal has also been questioned by several UN Special Rapporteurs in a letter to the Government of Sweden in July 2023

New internal inquiry function within the Prime Minister's office

When the Government wants to introduce a new law, an independent inquiry or committee is usually appointed to investigate the issue. During the year the Prime minister however presented plans to establish a new a function within the coordination office in the Prime Minister's Office to take on targeted inquiry assignments. One of the goals of the new function is to shorten the investigation time. The Institute is concerned with how the new function will affect the independence of the inquiries.

Access to information

In early November, the Institute was invited to support a forthcoming paper by the UN Special Rapporteur on Environmental Defenders with a basic follow-up on the situation of environmental defenders in Sweden. The invitation came a few days after his intervention at the National Network for Human Rights Specialists, a regular on-line forum organised by the Institute. The follow-up focused on the potential threats and violations that Swedish environmental defenders claim they face in their efforts to ensure respect for the Aarhus Convention, where the right to information holds a

central position. In the communication with the special rapporteur the institute highlighted relevant parts of its 2023 Annual Report where it is stated (page 66) "In 2022, there were numerous climate protests in Sweden utilizing civil disobedience as a method. Activists, citing the climate emergency, blocked motorways and thoroughfares, attaching themselves to aircraft, roadways, and bridges. Several activists faced arrest and prosecution, including charges of sabotage and disobeying a police order. Some activists have received prison sentences." Furthermore, "According to several civil society organizations, there has been a recent shift in the classification of crimes related to civil disobedience, transitioning from disobeying police orders and arbitrary actions to sabotage. In a statement from September 2022, Amnesty, Civil Rights Defenders, and Greenpeace argued that the sabotage classification of climate protests and civil obedience is new and could lead to sanctions that are no longer proportionate to the act committed."

The Institute has encouraged the Special rapporteur to visit Sweden next year.

Independence and effectiveness of independent institutions (other than NHRIs)

The Parliamentary Ombudsmen has undergone a review in recent years, and a new law ("the Act with Instructions for the Parliamentary Ombudsmen") governing the work of the Parliamentary Ombudsman entered into force on 1 September 2023. The review also resulted in proposals for constitutional changes that would strengthen the protection of the Ombudsmen, inter alia through ensuring that decisions to remove an Ombudsman from office will require a qualified parliamentary majority of 3/4 and must be supported by more than half of the members of Parliament. However, other proposed changes on e.g. terms of office and procedures for removal do not fully live up to the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles). For instance, the length of a term will be six years rather than seven years as recommended in the Venice Principles. The new law also allows for re-election which is not in line with the Venice Principles. Moreover, the new law fails to

provide an exhaustive list of conditions that sets out when removal from office may be allowed.

When the bill was voted on, the Parliament made a statement calling on the Government to conduct a review of all forms of regular monitoring, to ensure that the Ombudsmen's role as an extraordinary monitoring body is strengthened.

In its referral response to the proposals, the Institute called for a further review on the Ombudsmen's mandate to monitor private actors, and a strengthened functional independence of the Ombudsmen's OPCAT unit.

In 2023, the 2020 Committee of Inquiry on the Constitution (the Committee) issued its final report. The Committee was an all-party committee tasked with investigating the procedure by which the Constitution could be amended and the need to further strengthen the independence of courts and judges in the long term.

In the final report, it is proposed that the requirement to obtain an opinion from the Council on Legislation should be extended to include constitutional amendment proposals regarding fundamental freedoms and rights. In its referral response to the proposal the Institute supported this proposal.

In the final report it is also proposed that the current provision on the administration of justice in the constitutional law is to be amended to make it clear that justice is administered by independent courts. In its referral response to the proposal the Institute supported the proposal, but highlighted the importance of introducing a provision in the constitution stating that courts should not only be independent, but also impartial.

The Committee furthermore proposed that that Chancellor of Justice's (JK) supervisory duties regarding courts and judges be abolished. The Institute supported this proposal in its referral response but highlighted that, for the same reasons as courts should be excluded from JK's supervisory duties, it should be clarified that also the Swedish Institute for Human Rights should be excluded from such supervision.

Enabling environment for civil society and human rights defenders

Questions about the protection of the rights of individuals and civil society organisations involved in climate and environmental issues were raised during the year, including in relation to protests using civil disobedience as a method (for example through blocking highways in rush hour traffic). In 2023, the environmental defenders have increasingly been prosecuted for disobedience of law enforcement and more severe crimes such as sabotage. Jurisprudence is uneven and the application of the law is not clear, hence there have been both dismissals and convictions. Several civil society organisations and legal experts have criticised the application of the rules on sabotage, arguing not only that it is disproportionate to the activities, but also that it should be restrictively applied as the constitutionally protected freedom of assembly should outweigh the disruption of traffic. Furthermore, 2023 has seen an increased polarized debate in media in relation to environmental defenders' peaceful civil obedience actions.

The Institute has been engaged in the issue of environmental defenders primarily through dialogues with the environmental defenders themselves who are involved in, or support, peaceful civil obedience. The Institute has also during the latter parts of 2023, had dialogues with the Special Rapporteur on Environmental defenders, Michel Forst, to share information of the developments in Sweden.

- NHRI's recommendations to national and regional authorities
- Appoint a special investigator with the task to investigate how a new recruitment system for lay judges should be designed without the involvement of the political parties.
- Amend the legislation so that the Institute for Human Rights is excluded from the Chancellor of Justice's (JK) supervisory duties.

Impact of securitisation on the rule of law and human rights

Gang-related violence is one of today's biggest social problems in Sweden. The violence affects not only the gang members, but also their families, friends and neighbours. It also affects many in the general public who have their everyday lives restricted through increased insecurity, and who, in the worst case, risk becoming direct victims of violence.

During the last ten-year period, the number of confirmed cases of fatal violence in which firearms were used has gradually increased, from 25 cases in 2013 to 63 cases in 2022. In 2023, 53 persons were killed in shootings and 149 explosions took place around the country. That is on average one fatal shooting per week and explosions almost every second day.

The Institute is very concerned with the gang-related violence in Sweden. It is crucial that the government takes relevant measures to increase security in society and stops the violence. In this work, however, it is of utmost importance that the measures taken adhere to Sweden's human rights obligations as regulated in the Swedish constitutional laws and the international conventions that Sweden has ratified.

During the year the Institute expressed concern with a number of individual legal proposals (as explained further below). However, even if the Institute has been critical towards several individual proposals, it is the general trend and the effects of the proposals combined that is overall worrisome. There is a risk that the new proposed legislation combined will have huge negative implications on Sweden's human rights track record, rule of law and the democratic society in general. The Institute is concerned with the high legislative pace which often results in that inquiry reports often fail to adequately carry out proper human rights impact assessments. Below are a few examples of legislative proposals put forward by the government during the year aimed at increasing security in different ways in Sweden (note that the list is not exhaustive):

Expanded opportunities to use coercive preventive measures

In 2023, new legislation was introduced allowing for preventive surveillance by the police outside of criminal investigations. This was made possible by expanding the legislation allowing for such surveillance for prevention of crimes falling under the remit of the Swedish Security Service, such as terrorist offences and espionage. Since 1 October 2023 it is also possible for the police to get a permit to conduct preventive surveillance when there is a real risk of criminal activities being conducted within an organization or a group of persons. The criminal activities must involve serious crimes, such as murder, abduction and serious drug offences. In its referral response the Institute questioned whether the measures are necessary and proportionate to the restriction of personal integrity that the measures entail, and that the cumulative effect on crime prevention measures ought to be evaluated and reviewed before new measures are being introduced. The Institute fears that some of these measures may have different impact on individuals depending on e.g. their age, place of living or origin, and that the risks of new tools put in place with a view to combat the current wave of organized crime and gang-related violence being made permanent. The Institute questioned whether the safeguards for the measure are effective. One such safeguard is the involvement of public legal representatives when deciding on permission to use secret surveillance measures. These public legal representatives are not representing the suspect per se but supposed to be a safeguard against unwarranted intrusions into his or her personal integrity. However, figures show that appeals from the public legal representatives on the use of covert surveillance measures are almost non-existent.

Law on preventive stay-bans

With the aim of increasing safety and reducing crime, it is proposed that it should be possible to limit the right of individuals to visit certain areas of society, even without them having been sentenced to a penalty for a crime. In its referral response the Institute advised against the proposal since it was of the opinion that the proposed law

would risk violating in particular the freedom of movement. The proposal meant that an individual, that was not even suspected of having committed a crime, could be banned to visit a certain area (including where he/she lived or worked) for up to six months by a decision of a prosecutor, i.e. without a court decision.

A new act regulating when witnesses can be examined anonymously

An inquiry was carried out to assess the circumstances and procedures in which it should be possible for a witness to testify anonymously. In its referral response the Institute advised against the proposal since it was of the opinion that an application of the law in accordance with the intention of the legislator and the case-law of the European Court of Human Rights, is unlikely to lead to the intended results, namely, to reverse the trend with the increased gang violence and break the culture of silence. On the contrary, the Institute concluded that there could be a risk that the proposed legislation would make it more difficult to get individuals to testify since numerous witnesses might request to be anonymous as a pre-condition to testify. The Institute also pointed out problematic issues with the proposed law in relation to for example general fair trial rights principles, the principle of equality of arms and the right to have adequate time for the preparation of defence.

New regulation introducing stop-and-search zones

An inquiry was commissioned to assess and propose how a system with stop-and-search zones (security zones) could be introduced in Sweden. The Institute advised against the proposal for several reasons. Firstly, the consultation period for the proposal was extremely short and took place over the Christmas break which limited the opportunity for many important actors to carry out an in-depth analysis of the proposal and submit referral responses. The Institute highlighted the importance of sufficient time for the consultation process, in particular in relation to proposals that concern fundamental human rights. The Institute was furthermore of the opinion that new regulation could not be considered to be necessary in a democratic society since it was

doubtful how effective the regulation would be to decrease the gang violence. Further, the Institute was also of the opinion that in case the regulation was introduced it should be the courts who decide on introducing stop-and-search zones (and not the police) and that there should be a geographically limited maximum area defined in the law. The Institute finally highlighted the risk of discrimination when the law would be applied since the police could stop-and-search individuals in the zones that they thought were part of a criminal gang based on for example their clothes or their general behaviour.

Another area that is relevant for review in relation to securitisation and rule of law is initiatives taken to counter terrorism. The Institute notes:

Terrorism Offences Act

The Government's Bill 2022/23:73 concerning special criminal provisions for participation in a terrorist organisation entered into force in June 2023. In July 2023, several UN special rapporteurs wrote a letter to the Government of Sweden questioning the changes in the Terrorism Offences act concerning the introduction of special criminal provisions for participation in a terrorist organization. The rapporteurs held that the legislation is overly broad and may have negative and disproportionate impacts on the exercise of freedom of opinion and expression, freedom of peaceful assembly and association, as well as the right to privacy. They asked the Government to review and reconsider key aspects of the law to ensure that it complies with Sweden's international human rights law obligations. In its response of 26 July 2023, the Government argued that the provisions are compatible with both the Swedish constitutional provisions safeguarding these rights as well as the European Convention on Human Rights.

NHRI's actions to promote and protect human rights and rule of law in the context of national security and securitisation

During the year the Institute:

- Submitted several referral responses to proposed legislation for example in relation to: 1) expanded opportunities to use coercive preventive measures, 2) law on preventive stay-bans, 3) a new act regulating when witnesses can be examined anonymously and 4) new regulation introducing stop-and-search zones
- Issued press-releases about some of its referral responses and were invited to comment in media, including on both state television and radio.
- Published a longer article on its website regarding human rights and the gang-violence highlighting different human rights aspects of the issue.
- Highlighted the importance of adherence to human rights in times of crises at the EU High-level Conference on Institutional Protection of Fundamental Rights in Times of Crises, in Lund, Sweden 20-21 April.

NHRI's recommendations to national and regional authorities

- Introduce clear rules that legislative inquiries must include impact analyses on how proposals relate to Sweden's human rights obligations.
- In its important work to increase security in society and stop the gang-related violence, the government must ensure that proposed measures comply with Sweden's human rights obligations as regulated in the Swedish constitutional laws and the international conventions that Sweden has ratified.

Implementation of European Courts' judgments

On 7 June 2023, the Committee of Ministers who supervises the execution of final judgments of the European Court of Human Rights (European Court) declared that

Sweden had executed the judgment of the European Court in the case Arlewin against Sweden dated 1 June 2016 (application number 22302/10).

In May 2021, the European Court of Human Rights delivered its judgement in the case of Centrum för Rättvisa vs Sweden (application number 35252/08). The case concerned the Swedish legislation on bulk interception and its compatibility with article 8 of the European Convention on Human Rights. The European Court found a violation of article 8 primarily due to a lack of sufficient so called "end-to-end" safeguards that would provide effective guarantees against the risk of abuse. In essence, the European Court found shortcomings in relation to three areas of Swedish legislation, 1) absence of rules on destroying intercepted material that does not contain personal data, 2) absence of a clear requirement in the bulk interception legislation to consider the privacy interest of individuals before deciding to transmit intelligence material to foreign partners and 3) the absence of an effective ex post facto review. In 2022, the Government commissioned an inquiry to review the Swedish legislation on bulk interception and as a part of this, suggest legislative amendments to ensure implementation of the judgement in the European Court of Human Rights. As a result of the inquiry an interim report was presented in 2023 primarily focusing on the European Court case and the three identified shortcomings.

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

Following the interim report presented by the Government-commissioned inquiry in 2023, the Institute, as one of the assigned referral bodies, provided comments. The two main concerns raised by the Institute concerned the process around communicating data to other governments and international organisations, and the ex post facto review.

In terms of transferring data abroad, the Institute supported the suggested inclusion of a proportionality assessment where personal integrity is weighed against the purpose of the transmission before transferring it to a foreign recipient but felt that there were

insufficient safeguards in place to ensure a minimum level of protection of personal data on the side of the foreign recipient.

In terms of the ex post facto review, the inquiry proposed that an independent decision-making body would be placed under the existing Swedish Foreign Intelligence Inspectorate but at the same time being independent from it. The Institute rejected this suggestion questioning its independence. Lastly, and with the aim of protecting individual interests and contributing to addressing misconduct, the Institute suggested the inclusion of a security clearance lawyer that would take part in the ex post facto review.

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

For several years the criminal policy in Sweden has taken a more repressive direction, with tougher and extended punishments and increased powers for law enforcement agencies. 2023 further boosted this development and basic rule of law principles were challenged. For example, several proposals for legislation focused on restricting fundamental rights and freedoms of non-convicted individuals as a preventive measure, for example expanded opportunities to use coercive preventive measures, law on preventive stay-bans and the introduction of stop-and-search zones.

A consequence of the increasingly repressive direction and harder penalties is an increase in the number of people incarcerated. It should be noted that the Prison Service is already flagging an unsustainable situation and the situation will increase the risk that inmates' rights are not respected. In addition, rehabilitation and reintegration into society after serving a sentence will be more difficult. The Correctional Service is planning a huge expansion, from today's 9,000 prison and detention places to 27,000 within ten years.

As mentioned above, 2023 was characterized by a high pace of legislation, especially in criminal policy - despite the fact that it concerns complex legislation that could

potentially be in conflict with Sweden's international commitments. It is important that such legislation is carefully investigated and considered, which requires time and resources.

Finally, and as also noted above, even though many proposals should be criticized from a human rights perspective, it is not necessarily the individual proposals or statements that is the major problem. It is the overall trend and all the proposals combined that could pose risks to the foundation of the Swedish democracy and principles of rule of law by more substantively limiting the individual's human rights.

The legal protection against discrimination in several areas including the police, courts and many public agencies remains weak. An inquiry has proposed some positive changes to strengthen the protection against discrimination in the entirety of public sector to create a protection as wide as possible. The inquiry has this far, however, not led to legislative or other changes. The institute notes that the International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement in their report after their visit to Sweden recommends "the amendment of the Anti-Discrimination Act so that it fully applies to the conduct of State agents, including law enforcement and officials in the criminal justice system as a whole."

ANNEX I – Overview of contributing ENNHRI members 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 and effectiveness	Checks and balances	Impact of securitisation	Implementation of European Courts' judgments	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)[1]	No status						
3. Bulgaria	Ombudsman of the Republic of Bulgaria	A status						

[1] Central Monitoring Council for Prisons (CTRG-CCSP) is not an ENNHRI member.

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*							

16. Latvia	Ombudsman's Office of the Republic of Latvia	A status	✓	✓	✓	✓	✓	✓
17. Lithuania	The Seimas Ombudspersons' Office of the Republic of Lithuania	A status	✓	✓	✓	✓	✓	✓
18. Luxembourg	National Human Rights Commission of Luxembourg	A status	✓	✓	✓	✓	✓	✓
19. Malta	The Office of the Parliamentary Ombudsman in Malta	No status						
20. The 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 ENNHRI members

Country	NHRI	Contact (name)	Contact (email)
Austria	Austrian Ombudsman Board	Hannah Suntinger Chrissy Ebeling	aobint@volksanwaltschaft.gv.at
Belgium	FIRM-IFDH (Federal Institute for the Protection and the Promotion of Human Rights)	Martien Schotsmans	msch@firm-ifdh.be
Belgium	Unia (Interfederal Centre for Equal Opportunities and Opposition to Racism)	Patrick Charlier Els Keytsman	patrick.charlier@unia.be els.keytsman@unia.be
Belgium	Myria (Federal Centre for the analysis of migration flows, the protection of fundamental rights of foreigners and the fight against human trafficking	Koen Dewulf	Koen.Dewulf@Myria.be
Belgium	Combat Poverty, Insecurity and Social Exclusion Service	Henk Van Hootegem	henk.vanhootegem@cntr.be
Belgium	Central Monitoring Council for Prisons	Marc Neve	marc.neve@ccsp-belgium.be
Croatia	Ombudswoman Institution of the Republic of Croatia	Sanja Salkić	sanja.salkic@ombudsman.hr
Cyprus	Commissioner for Administration	George Kakotas Kyriacos Kyriacou	gkakotas@ombudsman.gov.cy kkyriakou@ombudsman.gov.cy

	and the Protection of Human Rights	Melina Tringidou	mtringidou@ombudsman.gov.cy
Czech Republic	Public Defender of Rights of the Czech Republic	Marek Kosík	marek.kosik@ochrance.cz
Denmark	Danish Institute for Human Rights	Theis Thorbjørn Bigandt	thbi@humanrights.dk
Estonia	Office of the Chancellor of Justice	Kertti Pilvik	kertti.pilvik@oiguskantsler.ee
Finland	Finnish Human Rights Centre and its Human Rights Delegation Parliamentary Ombudsman	Elina Hakala	elina.hakala@ihmisoikeuskeskus.fi
France	French National Consultative Commission on Human Rights	Michel Tabbal	michel.tabbal@cncdh.fr
Germany	German Institute for Human Rights	Nele Allenberg	allenberg@dimr.de
Greece	Greek National Commission for Human Rights	Eva Tzavala	etzavala@nchr.gr
Hungary	Office of the Commissioner for Fundamental Rights	Vivien Kozma	kozma.vivien@ajbh.hu
Ireland	Irish Human Rights and Equality Commission	Deirdre Malone	directorsoffice@ihrec.ie
Latvia	Ombudsman's Office of the Republic of Latvia	Evita Berķe	evita.berke@tiesibsargs.lv
Lithuania	The Seimas Ombudspersons' Office of the Republic of Lithuania	Vytautas Valentinavičius	vytautas.valentinavicius@lrski.lt ombuds@lrski.lt
Luxembourg	National Human Rights	Max Mousel Rhéa Ziade	max.mousel@ccdh.lu rhea.ziade@ccdh.lu

	Commission of Luxembourg		
Netherlands	The Netherlands Institute for Human Rights	Jos Silvis	j.silvis@mensenrechten.nl
Poland	Office of the Commissioner for Human Rights	Anna Białek	anna.bialek@brpo.gov.pl
Portugal	Office of the Ombudsperson (Provedor de Justiça)	Cristina Sá Costa	Cristina.sacosta@provedor-jus.pt
Romania	Romanian Institute for Human Rights	Marius Mocanu	marius.mocanu@irdo.ro
Slovakia	Slovak National Centre for Human Rights	Zuzana Pavlíčková	pavlickova@snslp.sk
Slovenia	Human Rights Ombudsman of the Republic of Slovenia	Simona Drenik Bavdek	simona.drenik-bavdek@varuh-rs.si
Spain	Spanish Ombudsman (Defensor del Pueblo)	Ángel Gabilondo Pujol	defensor@defensordelpueblo.es
Sweden	Swedish Institute for Human Rights	Andreas Ljungholm	andreas.ljungholm@mrinstitutet.se

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