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## 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

*(Adopted by the Committee of Ministers on 31 March 2021 at the 1400<sup>th</sup> meeting of the Ministers' Deputies)*

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The Committee of Ministers of the Council of Europe, under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1),

Considering that effective, pluralist and independent national human rights institutions (NHRIs) are among the pillars of respect for human rights, the rule of law and democracy;

Recognising that a NHRI is a State-mandated body, independent from the government, with a broad constitutional or legislative mandate to promote and protect human rights and accredited on a regular basis according to its compliance with the Paris Principles;<sup>1</sup>

Recalling that NHRIs are human rights defenders and that they contribute to the promotion and protection of other human rights defenders and to a safe and enabling space for civil society;

Recalling also the Committee of Ministers' Decision "A shared responsibility for democratic security in Europe – The need to strengthen the protection and promotion of civil society space in Europe" (Helsinki, 17 May 2019) to further strengthen the Council of Europe's mechanisms for the protection of human rights defenders, including the Secretary General's Revised Private Office procedure on human rights defenders interacting with the Council of Europe;

Recognising that effective NHRIs are an important link between government and civil society, insofar as they help bridge the potential protection gap between the rights of individuals and the responsibilities of the State;

Welcoming the significant increase in the number of accredited<sup>2</sup> independent NHRIs<sup>3</sup> in Council of Europe member States since the adoption of Committee of Ministers' Recommendation Rec(97)14 on the establishment of independent national institutions for the promotion and protection of human rights;

Underlining the great potential and impact of independent NHRIs for the promotion and protection of human rights in Europe, in particular for the effective implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, the Convention) including third party intervention before the European Court of Human Rights (on the basis of the Article 36, paragraph 2, of the Convention) and communication with regard to the supervision of the execution of judgments under Article 46, paragraph 2, of the Convention;

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<sup>1</sup> Principles relating to the status of national institutions (the Paris Principles), adopted by the United Nations General Assembly on 20 December 1993 in its Resolution 48/134 on national human rights institutions for the promotion and protection of human right and interpreted by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI) in its General Observations, <https://ganhri.org/accreditation/>.

<sup>2</sup> <http://ennhri.org/our-members/>.

<sup>3</sup> NHRIs may cover Ombudsman institutions, human rights commissions, hybrid institutions (which combine several mandates, including that of equality body), and human rights institutes and centres, etc.

Acknowledging the importance of continued support by the Council of Europe and other international stakeholders to NHRIs and welcoming the well-established co-operation between the Commissioner for Human Rights of the Council of Europe and NHRIs, as well as the European Network of National Human Rights Institutions (ENNHRI), as foreseen in the Commissioner's mandate under Resolution Res(99)50 on the Council of Europe Commissioner for Human Rights;

Acknowledging further the importance of the co-operation between NHRIs and ENNHRI, and of their co-operation with the Council of Europe<sup>4</sup> and other national and international stakeholders;

Bearing in mind the broad international support for the development, strengthening, protection and recognition of and co-operation with NHRIs,<sup>5</sup> not only by the Council of Europe, but also by the United Nations, the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) and the European Union;

Recognising the diversity of NHRIs, which reflects the diversity of the countries and regions they serve;

Emphasising at the same time that it is vitally important that any such institution be established and function in full compliance with the minimum standards contained in the Paris Principles, in particular with regard to its:

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

Expressing grave concern about the challenging working conditions, threats, pressures and attacks which NHRIs and their members and staff are at times exposed to in member States;

Wishing to build on Recommendation Rec(97)14, which is henceforth replaced by the present instrument,

Recommends that the governments of member States:

1. take all necessary measures to establish and, when established, maintain and strengthen an independent NHRI in accordance with the Paris Principles. In this context, States could draw on technical assistance such as that from ENNHRI and regional and international bodies to build on existing best practice;
2. ensure an enabling legal framework and a conducive institutional and public environment for NHRIs to carry out their activities effectively for the protection and promotion of all human rights and fundamental freedoms, and co-operate with them;
3. ensure that the principles set out in the appendix to this recommendation are implemented in relevant domestic law and practice;

<sup>4</sup> ENNHRI has observer status in several Council of Europe intergovernmental committees.

<sup>5</sup> In addition to Recommendation Rec(97)14, in particular:

- Committee of Ministers' Resolution Res(97)11 on co-operation between national human rights institutions of member States and between them and the Council of Europe;
- Committee of Ministers' Recommendation CM/Rec(2018)11 to member States on the need to strengthen the protection and promotion of civil society space in Europe;
- Committee of Ministers' Recommendation CM/Rec(2019)6 to member States on the development of the Ombudsman institution;
- Parliamentary Assembly Resolution 1959 (2013) on "Strengthening the institution of ombudsman in Europe";
- Congress of Local and Regional Authorities Resolution 327 (2011) on "The office of Ombudsperson and local and regional authorities";
- European Commission for Democracy through Law (Venice Commission), Principles on the protection and promotion of the Ombudsman institution ("The Venice Principles");
- European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 2 (revised) on Equality Bodies to combat racism and intolerance at national level;
- United Nations General Assembly Resolution 48/134 and the interpretation of the Paris Principles developed by GANHRI;
- UN General Assembly Resolutions 65/207, 67/163, 69/168, 71/200 and 72/186 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights;
- ENNHRI, Guidelines on ENNHRI Support to NHRIs under Threat, February 2020. For further ENNHRI documents, see <http://ennhri.org>.

4. ensure that these principles are interpreted in line with the specific recommendations and General Observations of the GANHRI Sub-Committee on Accreditation;
5. evaluate on a regular basis the effectiveness of the measures taken in the implementation of the appendix to this recommendation, including through consultation and dialogue with NHRIs;
6. explore the ways of developing a stronger role for and meaningful participation of NHRIs and ENNHRI in the Council of Europe for the enhanced promotion and protection of human rights, the rule of law and democracy;
7. ensure, by appropriate means and action – including, where appropriate, translation – a wide dissemination of this recommendation among competent authorities and stakeholders;
8. examine, within the Committee of Ministers, the implementation of this recommendation no later than five years after its adoption.

#### *Appendix to Recommendation CM/Rec(2021)1*

### **I. Establishment of NHRIs**

1. Member States should ensure that NHRIs are in place and that they are established, accredited and function in full compliance with the Paris Principles. The choice of the model of these institutions should be made by each State in the light of its organisation, particularities and needs. These institutions should be directly and easily accessible to everyone. Particular attention should be paid to persons who may not be aware of the existence of NHRIs, who may have difficulties in accessing NHRIs or who may be in a vulnerable situation.
2. Member States should provide a firm legal basis for NHRIs, preferably at the constitutional level, and/or in a law which defines the mandates and functions of such institutions, guarantees their independence and provides them with the means necessary to accomplish their functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on NHRIs, in particular the Paris Principles and their interpretation developed by GANHRI's Sub-Committee on Accreditation.

### **II. Strengthening of NHRIs**

3. Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, *inter alia*, to:
  - monitor and analyse the human rights situation in the country, publish reports on these findings and address recommendations to public authorities at national, regional and local levels and, when applicable, to private entities, and present an annual report to the relevant authorities, including before parliament, for its consideration;
  - freely address public opinion, raise public awareness on human rights and carry out education and training programmes;
  - fully address all alleged human rights violations by all administrative authorities, other relevant State entities and, when applicable, private entities;
  - have unfettered access to all relevant premises, including places of deprivation of liberty, and to all relevant individuals, in order to be able to carry out a credible examination of all issues covered by their mandate and to all relevant information, subject to possible restrictions stemming from the protection of other rights and legitimate interests and with due respect for the confidentiality of information obtained;
  - monitor existing and draft policies and legislation with human rights implications before, during and after their adoption in order to advise the State about the impact of such policies and legislation on human rights and on the activities of human rights defenders, including by making relevant and concrete recommendations;

- contribute to an effective justice system for all, through awareness-raising measures and facilitating access to rights and remedies and, as applicable, by providing legal assistance, being a party before the courts or, when applicable, receiving individual complaints;
- encourage the signature, ratification of and accession to international human rights treaties and contribute to the effective implementation of such treaties, as well as related judgments, decisions and recommendations as well as to monitor States' compliance with them.

4. The process of selection and appointment of the leadership of a NHRI should be competence-based, transparent and participatory, in order to guarantee the independence and pluralist representation of these institutions.<sup>6</sup> It should also be based on clear, predetermined, objective and publicly accessible criteria. The duration of the appointment should be clearly set out in the founding legislation, so that the leadership posts of the NHRI do not stay vacant for any significant period of time.

5. To ensure independence, the enabling legislation of a NHRI should contain an objective dismissal process for the NHRI leadership, with clearly defined terms in a constitutional or legislative text. The dismissal process should be fair and ensure objectivity and impartiality and should be confined to only those actions which impact adversely on the capacity of the leaders of NHRIs to fulfil their mandate.

6. Member States should provide NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities.

7. NHRIs should have the authority to determine their staffing profile and recruit their own staff, as well as sufficient resources available, in order to fulfil their mandate, so as to permit the employment and retention of staff and to ensure that they receive adequate training.

8. Member States should ensure that NHRIs enjoy adequate access to information and to policy makers and legislators, including timely consultations on the human rights implications of draft legislation and policy strategies. NHRIs should also be consulted, in a timely manner, on draft legislation and policies that affect their mandate, independence and operation.

9. Member States should implement the recommendations of NHRIs and are encouraged to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame, to develop processes to facilitate effective follow-up of NHRI recommendations, in a timely fashion and include information thereon in their relevant documents and reports.

10. When member States grant NHRIs additional competences to perform functions foreseen by international conventions in the field of human rights, such as the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Convention on the Rights of Persons with Disabilities, the NHRI should have access to sufficient resources to develop the capacity to effectively discharge its functions, including having appropriately qualified and trained staff.

### **III. Securing and expanding a safe and enabling environment for NHRIs**

11. Member States should ensure that NHRIs can operate independently, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of impartiality, integrity, transparency and fairness.

12. Member States should foster awareness and the co-operation of all relevant public authorities in relation to the mandate, independence and role of NHRIs, including through training and awareness-raising activities.

13. Member States should take all measures necessary to protect and support NHRIs against threats and harassment and any other forms of intimidation, including through ensuring functional immunity. Any cases of alleged reprisals or intimidation against NHRIs, their membership and staff, or against those who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.

14. Member States should ensure that confidential information collected by NHRIs in the context of their mandate is privileged and is not unduly made public.

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<sup>6</sup> Paris Principles, section "Composition and guarantees of independence and pluralism", paragraph 1, and General Observation 1.8. of GANHRI's interpretation of the Paris Principles.

#### **IV. Co-operation and support**

15. Member States should take effective measures to enable NHRIs to communicate and co-operate with, in addition to the various levels of administration in the member States, in particular:
- a. counterpart institutions, where appropriate through networking and exchange of information and practices, as well as through regular meetings such as those taking place within the framework of ENNHRI and GANHRI;
  - b. civil society stakeholders, in particular non-governmental organisations and human rights defenders, who should enjoy easy and safe access to NHRIs as part of an enabling environment;
  - c. other human rights structures, including regional, local and/or specialised institutions, notably Ombudsman institutions and equality bodies and their respective networks, where appropriate through jointly organised activities;
  - d. international and regional organisations working in related or similar fields.
16. Member States should encourage and consider sponsoring the development of co-operation programmes with the Council of Europe to ensure permanent knowledge-sharing among NHRIs, in order to strengthen their contribution to the effective implementation of the European Convention on Human Rights and other relevant instruments.
17. Member States should seek new ways and means of strengthening the role and meaningful participation of NHRIs and ENNHRI within the Council of Europe with a view to increasing its openness and transparency, including access to information, activities and events.