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Executive Summary

This report, focusing on the state of the rule of law in Europe, has been published by the European Network of National Human Rights Institutions (ENNHRI) - a network connecting all National Human Rights Institutions (NHRIs) across the Council of Europe (CoE) region. Through this joint reporting, NHRIs continue their strategic engagement with regional rule of law mechanisms.

The report comprises an overview of trends and challenges in the rule of law identified by ENNHRI members across Europe and ENNHRI's key recommendations. It presents country-specific chapters zooming into the national rule of law situation, 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 the UN Paris Principles. The independent and effective NHRIs are regarded by international and regional actors as indicative of the state's respect for the rule of law and checks and balances.

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

- Inconsistent and insufficient follow-up by state authorities to the regional actors' rule of law recommendations, pointing to a **need to strengthen the effective implementation of recommendations and decisions issued by those actors**;
- **Numerous issues negatively impacting 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 follow-up to NHRIs' recommendations; lack of adequate human and financial resources and financial autonomy to carry out NHRIs' mandates effectively; lack of transparent and objective criteria for the appointment and dismissal of heads of institutions; undue limitations in access to information; as well as, in some cases, harassment and attacks on NHRIs. On the other hand, there is some progress regarding the establishment of the NHRIs, in line with the UN Paris Principles, in countries without one.
- **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 restrict human rights defenders' activities.
- **The impact of securitisation on the rule of law and human rights**, namely restrictive measures introduced in numerous countries in response to securitisation of migration, threats of terrorism, as well as conflict in the regions; raising concerns over the lack of compliance of these measures with human rights principles, including proportionality, and their impact on, for example, freedom of peaceful assembly, freedom of association, freedom of 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 at national level.

Based on the findings of ENNHRI members, ENNHRI has formulated the following **key recommendations** to the relevant regional actors, such as the Council of Europe, the European Union, as well as state authorities:

1. Further advance the implementation of regional actors' recommendations and decisions 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 a key element of healthy checks and balances;
3. Safeguard and strengthen other checks and balances across the region;
4. Ensure the effective implementation of European Courts' judgments, in consultation with NHRIs and civil society;
5. Ensure a human rights-based approach 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.

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ENNHRI's key recommendations

1. Further advance the implementation of regional actors'

recommendations and decisions on the rule of law by state authorities, in a timely manner and in cooperation with NHRIs

To further advance the implementation of regional actors' recommendations on the rule of law by state authorities, ENNHRI suggests the **Council of Europe and the European Union** to:

- Refine their recommendations to provide concrete and actionable steps, along with an envisaged timeline for implementation by state authorities;
- Assist state authorities to establish and strengthen a dedicated mechanism to monitor and follow-up on state authorities' implementation of rule of law recommendations;
- Ensure that the implementation of recommendations is consistently addressed in dialogues and discussions held at national and regional level, including independent information provision by NHRIs;
- Consider, when available, initiating enforcement actions to support effective and timely follow-up to regional actors' recommendations and decisions and consider the lack of implementation of recommendations and decisions as evidence for triggering such enforcement actions.

ENNHRI also recommends that **relevant regional actors and national authorities**:

- 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 human rights issues to be addressed in the current domestic context;
- Involve and consult with NHRIs throughout the implementation of regional actors' recommendations and decisions concerning the rule of law and human rights, including by providing timely information on the progress of the implementation.

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

To support the establishment, independence and effectiveness of NHRIs in Europe, ENNHRI:

- Calls on European countries with no NHRI yet to establish NHRIs in full compliance with the UN Paris Principles, and to make use of ENNHRI's technical advice in doing so;
- Calls on European countries that have an NHRI to maintain and strengthen existing NHRIs in line with the UN Paris Principles, in consultation with their respective NHRI, including by effectively following-up to recommendations issued by the Global Alliance of

National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation (SCA);
- Encourages all pertinent international and regional organisations, namely the United Nations, the Council of Europe and the European Union, to support the establishment and strengthening of NHRIs across Europe, in consultation with NHRIs and ENNHRI.

In line with Council of Europe Committee of Ministers Recommendation 2021/1 on NHRIs, ENNHRI also recommends that **national authorities** provide and **regional actors** support:

- Timely and reasoned response(s) to NHRI recommendations and processes to facilitate effective follow-up by state authorities of NHRI recommendations;
- Adequate financial and human resources, including for accessible premises, for NHRIs to carry out their mandate independently and effectively, and ensure independent budget allocation;
- NHRIs' timely and adequate access to information, and to policymakers and legislators, including timely and adequate consultations on the human rights implications of draft legislation and policies;
- Preventing and addressing without delay any undue challenges and threats to NHRIs while carrying out their mandate, including harassment, attacks, and attempts to undermine the institution;
- Raising awareness of the role of NHRIs, including among the public.

3. Safeguard and strengthen other checks and balances across Europe

ENNHRI recommends that **regional actors**:

- Ensure transparent, timely and meaningful public consultations within regional law- and policy-making processes;
- Conduct human rights impact assessments of regional legislation and policies, in consultation with relevant human rights actors, including NHRIs;
- Strengthen the support, protection and empowerment of human rights defenders (HRD) and civil society organisations (CSOs), including through effective regional HRD protection mechanisms to swiftly detect and respond to attacks against HRDs.

ENNHRI recommends **national authorities** to:

- Ensure transparent, timely, inclusive and meaningful consultations, including with NHRIs, in law- and policy-making processes, while avoiding the excessive use of expedited legislative processes;
- Ensure effective access to data and information for relevant stakeholders, including NHRIs, both online and offline, as well as by the wider public;

- Ensure timely and effective implementation of national and European courts' judgments by overcoming structural, financial and political obstacles;
- Foster an enabling environment of all independent public institutions playing a role in ensuring checks and balances in addition to NHRIs, such as supreme audit offices, 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 regarding access to funding, rules on registration and dissolution of civil society organisations, reporting & transparency obligations, criminalization of activities;
    - ensure meaningful and timely participation of civil society in the development, implementation, monitoring, reporting and review of legislation, policies and practices.

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

ENNHRI recommends **regional actors** to:

- Strengthen follow-up mechanisms to monitor and counter the failure of state authorities to implement European Courts' judgments timely and effectively;
- Stress the importance of implementing the European Courts' judgments for a thriving society, and further increase awareness of the public, state authorities and other relevant actors on this issue.

ENNHRI recommends **national authorities** to:

- Implement the European Courts' judgments (in particular Grand Chamber/ leading judgments), by tackling financial, legal, structural and organizational obstacles which impact their 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 the 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 **Council of Europe** and **the EU**, as well as **state authorities** to:

- support the development of procedures of the CJEU and the ECtHR to strengthen meaningful participation of NHRIs, to facilitate meaningful engagement and consultation 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 to securitisation

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

Regional actors to**:**

- Conduct human rights impact assessments of regional laws and policies which bear relevance for national security and law enforcement activities, including timely and meaningful consultations with NHRIs and other relevant stakeholders;
- Develop guidance and tools on how to assess and address the impact of securitisation on human rights and the rule of law at regional and national levels;

State authorities 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, including with regards to migration and anti-terrorism;
- 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 that any restrictions on human rights, in particular freedom of peaceful 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;
- Ensure legality and oversight of power, and implement a human rights-based approach when drafting and amending national laws aimed at strengthening and expanding powers of law enforcement authorities;
- Safeguard the right to privacy and data protection while using new technologies, including surveillance;
- Foster a conducive environment for NHRIs to carry out their mandate

under all circumstances, including during armed conflicts and situations of emergency, to ensure their meaningful participation in consultations on national security-related legislation and policies, follow up on their advice on human rights compliance, as well as ensure NHRIs' access to information.

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

ENNHRI recommends the **relevant regional actors** to further identify and recognise the systematic nature of human rights violations across Europe and their interrelated character to the deterioration of the rule of law and tackle systemic human rights issues when safeguarding the rule of law.

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Introduction

About ENNHRI and NHRIs

The European Network of National Human Rights Institutions (ENNHRI) brings together 49 members. It provides support for the establishment and strengthening of National Human Rights Institutions (NHRIs) across the Council of Europe region, and is 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, parliaments and other state bodies. NHRIs' independence, pluralism, accountability and effectiveness are 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. Strong and independent NHRIs in compliance with the UN Paris Principles have become an indicator for a healthy rule of law in countries across the region. 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 United Nations, the Council of Europe, and the European Union. Such recognition is reflected in policy documents such as the UN Human Rights Council's Resolution on NHRIs, the Reykjavík Declaration of the 4th Summit of Heads of State, as well as the Council of Europe's Committee of Ministers' Recommendation on the development and strengthening of effective, pluralist and independent national human rights institutions. At the EU level, the crucial role of NHRIs is reaffirmed in the European Commission's annual rule of law reports, the EU Strategy to Strengthen the application of the Charter of Fundamental Rights in the EU, as well as in the field of external relations - within the EU Action Plan on Human Rights and Democracy, the EU Enlargement Package and the revised Eastern Partnership framework.

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 the 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, to 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 based on a common methodology and coordinated approach. Since 2020 ENNHRI has been publishing 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 ensured its timely response to annual consultations by

relevant counterparts (the EU rule of law monitoring cycle, the EU annual report on implementation of the Charter, the Enlargement Package, the UN Secretary-General report on NHRI reprisals). It has also been a basis for submissions to some specific thematic initiatives when they emerged (EU anti-SLAPP directive (2023), CoE Recommendation on countering SLAPPs (2023), EU Defence of Democracy Package (2023)). At the national level, ENNHRI's reporting has been used by members for their follow-up with actors they deemed relevant.

Under the ENNHRI Strategic Plan 2022-2025, more effective promotion and protection of human rights, the rule of law and democracy is prioritised. To increase the impact of ENNHRI's joint work on the rule of law, ENNHRI updated its methodology. It envisages an annual targeted rule of law reporting, focuses more on the implementation of recommendations derived from the reporting and only on certain rule of law areas, while further emphasising the interlinkage between human rights and rule of law. Also, a broader report looking at all aspects of the situation of the 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 last year's recommendations, in particular those 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.

More in-depth analysis on the system of checks and balances aims to feed into regional developments as means to advance progress on the ground. This includes contributing to analysis and recommendations concerning checks and balances carried out by the European Commission within its rule of law monitoring cycle in the EU and within the Enlargement Package, as well as by the European External Action Service in view of initiatives under the Eastern Partnership. The findings will also support continuous advocacy towards the regional strategy in support of civil society, as indicated in the current civil society and regional actors' proposals, and calls for stronger HRD protection mechanisms in Europe.

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. Based on its rule of law reporting, ENNHRI continues to contribute to regional policy and standard-setting initiatives relevant to the rule of law, and to strengthening the capacities of NHRIs to uphold the rule of law and to protect human rights in Council of Europe countries.

In 2024, almost all ENNHRI members contributed again to the ENNHRI's joint reporting. For those countries where ENNHRI has no member, the ENNHRI Secretariat provided information on the progress concerning the establishment of an NHRI.

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

State authorities' follow up to regional actors' recommendations on the 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 the rule of law compliance and human rights protection. This holds true not only in respect of recommendations that concern the setting up and functioning of NHRIs but also in respect of all other recommendations related to upholding and securing the rule of law compliance at domestic level.

Input from NHRIs based in the European Union (EU) and EU enlargement countries mostly concerns follow-up to recommendations made last year by the European Commission (EC) in its annual rule of law reports and the EU Enlargement Package. Some NHRIs reported on the follow-up to the rule of law recommendations issued by other regional actors, such as the Council of Europe (CoE) and UN treaty bodies.

The recommendations mostly concern justice system, the anti-corruption framework, media pluralism and freedom, as well as checks and balances. Some progress has been noted in connection with their implementation. However, what also clearly transpires from the national reports is **lack of**

consistency of state authorities' approach. In respect of some issues, ENNHRI members considered that there has been **no follow-up at all**.

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. However, in other countries progress has been slow. The concerns expressed by different NHRIs about their countries' systems of justice vary considerably but there are several common themes: the staffing of the courts and the adequacy of resources put at their disposal, legal guarantees of independence, the reform of judicial councils, the length of the proceedings, as well as – in some states – the limited possibilities of reviewing their Attorney General's decisions. The Albanian and Ukrainian NHRIs raised concerns about delays in the appointment of judges in many courts, especially lower ones and courts of appeal.

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. Similar changes have been noted in Finland and Belgium reports. 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 reforms introduced to promote efficiency in the administration of justice. As regards legal guarantees of independence, the Georgian, Slovak and Spanish NHRIs have drawn attention to a lack of sufficient safeguards or the stalling of the reform of their countries' judicial councils. In Ukraine, there has been progress with the appointment of members of the High Council of Justice, which has been able to resume the examination of disciplinary complaints, and the High Qualification Commission of Judges. While there have been positive developments 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. The Georgian NHRI has long advocated for the implementation of a democratic process in appointing court presidents. Such a process would involve judges from each individual court electing their own president, rather than the High Council of Justice making the decision on their behalf. The Slovak NHRI continues to express concern about judges being open to prosecution for bending the law.

While the Greek NHRI noted some progress regarding the acceleration of the administration of justice linked to initiatives at the legislative level, the Albanian ENNHRI member has again raised length of proceedings issues. 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 where individual NHRIs have reported some positive developments include 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 whistleblowers' protection. Hungary has extended its whistleblower protection mandate in alignment with Directive (EU) 2019/1937, establishing protections for whistleblowers and tasking the Hungarian Ombudsman and other entities with overseeing a secure electronic reporting system for public interest disclosures and abuses. Croatia has enacted legislation on lobbying and Latvia has been in the process of doing so through the introduction of lobbying-related registers. In Liechtenstein, proposals for court reform have been submitted for public consultation but not yet presented to the Parliament. The Slovak NHRI has reported no progress or even regression in the fight against corruption. The NHRI from Bosnia and Herzegovina has stressed the need to adopt the Draft Act on the Prevention of Conflict of Interest in Public Institutions.

According to some NHRIs, there have also been positive developments in the field of **media pluralism and freedom**. This includes: the ongoing process of ratification by Belgium of the Tromsø Convention; Croatia's National Plan for the Development of Culture and the Media that contains provisions on strategic lawsuits against public participation (SLAPPs); Estonia's legal review procedure in connection with the effective implementation of the right to information; and Poland's efforts to redress the situation in the national television and radio. There has been no progress 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 EC's recommendation.

When reporting on **other institutional issues related to checks and balances**, some ENNHRI members mentioned **civic space** issues. 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 (CSOs) increasingly experienced uncertainty in funding. The Greek NHRI highlighted the burdensome formal requirements affecting the functioning of CSOs, particularly those working on migration. The Slovak NHRI noted that despite the improvements promised by the government as regards the legislative process and public participation in the procedure for adopting statutory proposals, there have 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 the lack of sufficient time ensured for public consultations of draft laws and the accelerated legislative procedure frequently being used without proper or any justification. The Danish

NHRI discussed the current reform of the law governing access to public administration documents.

ENNHRI members also reported on progress in relation to the **regional actors' country-specific recommendations concerning NHRIs**, issued by the EC and the Sub-Committee on Accreditation (SCA). Those recommendations address the establishment of NHRIs in the countries where there is no accredited NHRI yet and aim to ensure the enabling space for NHRIs' functioning in several countries under this report.

On the one hand, the 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. Accreditation issues were also raised by the NHRIs from Azerbaijan, Montenegro and Romania. The NHRIs from Kosovo and Poland stressed that their funding remains insufficient (although the Polish NHRI noted receiving an increase in its budget for 2023). The Polish NHRI continues to stress vague legal grounds for the dismissal of its head. The same NHRI and the NHRI from Serbia refer to regulatory gaps. The latter also referred to the inadequacy of its premises. The NHRI from Kosovo* complained about delays in parliamentary proceedings related to the institution (appointment of one of the deputy heads and approval of the annual report) and stressed the need for increased cooperation with the country's Assembly. The Croatian NHRI raised concerns over the functioning of mechanism for the implementation of the Ombudswoman's recommendations. The same NHRI and the one from Ukraine complained about continued obstacles in access to information.

On the other hand, the Lithuanian NHRI reported positive developments concerning its financial resources and so has the one from Serbia concerning the implementation of its recommendations. The ENNHRI member from Azerbaijan reported on the expansion of its mandate to include ensuring the right to equality and preventing discrimination. The NHRI from Hungary has also reported an expansion of its mandate, in 2023, for the protection of persons with disabilities in accordance with the UN Convention on the Rights of Persons with Disabilities.

Finally, some NHRIs reported – in connection with the implementation of regional actors' rule of law recommendations – on progress made in the fight against gender-based violence (Bosnia and Herzegovina, Kosovo* and Moldova) and the sexual exploitation of children (Moldova), property (Albania and Kosovo*) and minority (Albania, Bosnia and Herzegovina, and Norway) issues and the overall human rights strategic framework (Bosnia and Herzegovina, Moldova and Scotland).

In view of the above and to support the existence and functioning of NHRIs in the region, ENNHRI recommends the Council of Europe to monitor and

encourage the full implementation of the Committee of Ministers Recommendation 2021/1 on NHRIs by the CoE member states. ENNHRI also urges the European Commission to adopt a dedicated recommendation on NHRIs as well as to further develop its country-specific rule of law recommendations to address the key issues faced by NHRIs.

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. It is in line with the UN Paris Principles which require NHRIs to engage with international actors and to report on the implementation of international obligations. It also enhances NHRI's recognition as an important actor to monitor, report on and issue recommendations on how to advance the rule of law compliance in both regional and domestic context. ENNHRI invites the relevant regional actors to further build upon the added value of NHRIs' engagement in the rule of law mechanisms, including by further engaging with them within relevant consultations at the national level.

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

In addition to **monitoring** how state authorities have reacted to regional actors' recommendations, NHRIs themselves take initiatives to promote 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, Moldova, Norway, Poland, Romania and Serbia; by **disseminating recommendations** and **raising public awareness** through dedicated events or the media, as did the Albanian, Danish, French, Greek, Polish, Scottish and Slovak NHRIs; through **participation in relevant public consultations and bodies**, as did ENNHRI members from Albania, Croatia, Finland, Hungary, Ireland, Moldova, Northern Ireland, Poland and Sweden; by issuing **opinions** on the underlying issues, as did the ENNHRI members from Belgium, Finland, Georgia, Great Britain, Poland and Scotland; and by referring to the implementation of regional actors' rule of law recommendations in their annual reports, as did the NHRI from Kosovo*, Northern Ireland and Norway.

NHRIs should have the internal capacity to support the implementation. While the NHRIs from Armenia, Azerbaijan, Ireland, Serbia and Türkiye have reported on their efforts to create this, the NHRI of Luxembourg has underlined insufficient resources to carry out such dedicated activities.

ENNHRI members pay particular attention to recommendations issued by regional actors about their own regulatory framework and functioning, as evidenced in particular by ENNHRI members from Bosnia and Herzegovina, Great Britain, Northern Ireland, Romania (in the context of seeking accreditation as an NHRI), Türkiye, and the Czech Republic, the latter referring 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, Moldova and Slovakia. NHRIs have been raising rule of law issues in all relevant regional and international fora, which shows that European and UN roles can be mutually reinforcing. This was pointed out, among others, in the Austrian report, which raised concerns over the lack of implementation of UPR recommendations. 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 NHRIs' recommendations regarding the rule of law

The state authorities' follow-up to NHRIs' own recommendations concerning the rule of law is crucial to ensure rule of law compliance on the ground. This also usefully complements state authorities' actions to implement regional actors' recommendations and decisions tackling rule of law challenges. NHRIs' rule of law recommendations are grounded in their unique knowledge of the national set-up and challenges in their domestic context. NHRIs can thus act as an additional lever for further progress towards rule of law compliance and human rights protection.

Many of the recommendations in this regard concern **the NHRIs' position within each country's institutional landscape**. Examples include recommendations issued by the ENNHRI member from Sweden asking for changes that would ensure 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. While the NHRI from Bosnia and Herzegovina has been positive about the authorities' response to several recommendations concerning its regulatory framework, budget and cooperation with civil society, the Albanian NHRI raised concerns about its mandate and the resources put at its disposal. The NHRI of Hungary has reported on their engagement with NGOs, highlighting the contributions of two advisory bodies: the Civil

Consultative Body and the Disability Advisory Board.

Some ENNHRI members, including from Cyprus, Hungary, Kosovo* and Ukraine, have been positive about the follow-up provided to their recommendations. Others – including ENNHRI members from Albania, Belgium, Estonia, Germany, Georgia, Moldova, Montenegro, Northern Ireland and Scotland – were rather critical because of **insufficient implementation of their recommendations**. This issue should be further addressed by state authorities and relevant regional actors.

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NHRIs' establishment, independence and effectiveness

International accreditation status and SCA recommendations

Since ENNHRI's last regional rule of law report, nine ENNHRI member NHRIs have been reviewed by the SCA. This includes the institutions in Azerbaijan, Bosnia & Herzegovina, Great Britain, Germany, Lithuania, Moldova, Northern Ireland, Portugal and Spain. The Russian Federation also came under review, but it is no longer an ENNHRI member: in April 2023, at an Extraordinary General Assembly ENNHRI members voted to exclude the Russian NHRI from the Network.

In October 2023, the NHRIs in Germany, Moldova and Northern Ireland were re-accredited with A-status. Further, the SCA decided to initiate a special review of Great Britain's Equality and Human Rights Commission, which - following a review by the SCA in May 2024 - has retained its A-status.

In the same session, following the suspension of its accreditation status by the GANHRI Bureau and a subsequent special review, the SCA recommended that the accreditation status of the Russian Commissioner for Human Rights be removed. The institution will have another opportunity to provide evidence of its conformity with the UN Paris Principles at the SCA session in October 2024.

In May 2024, the NHRIs Bosnia & Herzegovina, Lithuania, Portugal, and Spain were reaccredited with A-status. The SCA recommended that the Azerbaijan NHRI be reaccredited with B-status, noting with concern ongoing recommendations with regards to selection and appointment and addressing human rights violations. As prescribed under Article 12 of the GANHRI Statute, the Azerbaijan NHRI has challenged the SCA recommendation. Pending the consideration and outcome of this challenge by GANHRI's Bureau, the SCA

recommendation is not considered final and the NHRI retains its current status.

In October 2024, five ENNHRI members will be considered by the SCA. This includes the reaccreditation of the Georgian, Danish, Armenian and Greek NHRIs. The SCA will also consider, for the first time, the accreditation status of the Swedish Institute for Human Rights.

In the past year, there has been progress towards the establishment of an NHRI in compliance with Paris Principles in Iceland and the Czech Republic.

At present, there are 11 countries in the ENNHRI region without an accredited NHRI (Andorra, the Czech Republic, Iceland, Italy, Kosovo*, Liechtenstein, Malta, Monaco, Romania, San Marino, and Switzerland).

Seven of the 11 states have institutions that are members of ENNHRI and have committed to take steps towards accreditation (Andorra, the Czech Republic, Kosovo*, Liechtenstein, Malta, Romania and Switzerland). Since the last report, the Maltese Ombudsman Institution and Swiss Human Rights Institution have joined ENNHRI.

In the Czech Republic, 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. The ENNHRI member in Liechtenstein has expressed an intention to apply for accreditation in 2024. In Andorra, national authorities have expressed willingness to initiate amendments to strengthen the legislative basis of the institution.

In Romania, the Romanian Institute for Human Rights and the Romanian Ombudsman have both submitted request for accreditation. In May 2024, the SCA decided that the two institutions will not be invited to submit a full application for accreditation until all the requirements of Rule 6.3 of the SCA Rules of Procedure have been met. The SCA welcomed the conclusion of a memorandum of understanding between the two institutions, however, in line with the requirements of Rule 6.3, will wait to consider an application pending explicit written consent of the Government.

In the remaining four states where no ENNHRI member institution exists, there are varying levels of progress towards the establishment of an NHRI. In Iceland there is a concrete legislative proposal on the establishment of an NHRI. An existing institution in Monaco has been invited to join ENNHRI and take steps towards possible accreditation as an NHRI. In Italy, while ENNHRI has been informed of several legislative proposals at the level of the Chamber of Deputies, there is no clear indication as to real prospects of these being close to adoption. In San Marino, there has been no legislative proposal to create an NHRI.

Follow-up to SCA recommendations and relevant developments

While the information varies from country to country, most ENNHRI members have taken concrete steps to implement the SCA recommendations, and some made proposals to further strengthen their institutional framework.

In general, NHRIs reported a need for support by national actors – mostly government and parliament – when following-up on some SCA recommendations. Many SCA recommendations require actions that are not within the powers of NHRIs, such as legislative amendments or a budgetary increase. However, NHRIs have the responsibility of advocating for such actions to take place.

ENNHRI has a key role to play in supporting NHRIs when following up on SCA recommendations. Other regional actors, such as the Council of Europe and the EU, can liaise with NHRIs to further understand their needs and consider possible technical support. They can also encourage national authorities to consult with the NHRIs and work towards implementing relevant recommendations.

A few NHRIs have reported recent or upcoming legislative amendments in response to recommendations of the SCA. For example, the Ukrainian NHRI has presented legislative amendments to the Parliament which the aim to align with previous SCA recommendations. In North Macedonia, the NHRI sent a proposal for legislative amendments to the President of the Parliament, which could lead to stronger compliance with the UN Paris Principles. The NHRI in Luxembourg is working with the Parliament on possible institutional reforms in follow up to SCA recommendations.

Regulatory framework

NHRIs need a broad constitutional or legislative mandate which defines their functions, guarantees their independence and provides them with competences to promote and protect human rights. Several NHRIs have pointed to the need to have their regulatory framework strengthened. The ENNHRI member from Armenia considers that it could play a role in the ratification of human rights treaties. So does the member from Albania, which also needs the power to defend human rights in the private sector. In the Czech Republic, the enactment of legislation ensuring that the regulatory framework of the NHRI 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**, sometimes following the ratification/incorporation of human-rights treaties. This has been the case with the NHRIs of Hungary and Liechtenstein, in connection with the UN Convention on the Rights of Persons with Disabilities (UN CRPD), Scotland, in connection with the UN Convention on the Rights of the Child, and Azerbaijan, in connection with both these treaties. In addition, one of Belgium's NHRIs (FIRM-IFDH) has become the national focal point on SLAPPs, the federal level NPM and received a mandate to support whistleblowers. The mandate of whistleblower protection has also been expanded within the NHRI in Hungary. The NHRI of Cyprus monitors human rights compliance in the implementation of EU funding programmes; the NHRI of Denmark has started supporting the NPM in its monitoring visit to Greenland; the NHRI of Bosnia and Herzegovina has been given an NPM mandate; and the NHRI of Ukraine has been given supervisory powers over national minority and linguistic rights. 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 expects 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 its current competences, which include acting as the independent monitoring mechanism of the UN CRPD since 2024. The Scottish NHRI is also considering the implications of the Human Rights Bill for Scotland for its mandate. The Armenian NHRI was additionally mandated to receive complaints and applications from whistleblowers regarding violations of their rights by state bodies.

Several ENNHRI members reported on **developments leading to strengthening NHRIs' regulatory frameworks.** For instance, legislation has been introduced in Greece and Slovenia to ensure the **financial independence** of their NHRIs. There have been developments in the same direction in Slovakia, which formally confirmed the independence of NHRI's reports and recommendations on discrimination. Changes in the Danish NHRI's regulatory framework strengthened the independence of the institution by introducing the obligatory resignation of a board member in case of election to the parliament. There have been amendments to the rules governing the Lithuanian NHRI's appointment and those concerning the investigative powers of the NHRI of Azerbaijan when acting as an NPM.

Significant changes have also been introduced to the regulatory framework of the Moldovan NHRI. Although most of them are positive (e.g. having a whistleblower protection role and defending the rights of legal persons), the one concerning its immunity risks compromising the NHRI's independence. Other NHRIs that have raised concerns about negative developments in their

regulatory framework include Kosovo's*, which has complained about the application to its staff of rules on public-sector salaries that amounted to interference in its internal organisation and the tendency of vesting it with additional tasks that are frequently not in compliance with its constitutional powers. The Georgian NHRI has stressed the possible negative implications of the law on data protection, which may render its monitoring role more complicated in practice.

Most ENNHRI members have not reported any changes to their regulatory frameworks. Some have, nevertheless, **called on relevant state authorities to introduce necessary changes** to strengthen them. The Scottish NHRI has, for example, submitted a detailed list of proposed changes. The Swedish ENNHRI member has also called on 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. The NHRIs from Albania and Liechtenstein have thought that their immunity needed strengthening. The NHRI from Armenia has pointed out the need to clarify the rules concerning the timeframe for the election of its head. The NHRI from Great Britain has pointed out a certain asymmetry in its powers. NHRIs also need proper investigative powers, as recalled by ENNHRI members from Belgium (Unia), Northern Ireland (where the NHRI is still unable to visit places of detention without advance notice) and Scotland. The Georgian NHRI noted its limited access to case files of ongoing investigations carried out in cases of deprivation of life and ill-treatment. The NHRIs from Bosnia and Herzegovina, Great Britain and Montenegro stressed the need to ensure the **financial autonomy of the NHRIs** in terms of independent budget allocation.

Some ENNHRI members pointed out the **need to introduce necessary safeguards concerning the selection and appointment of heads of NHRIs and their dismissal procedures**. The Lithuanian NHRI advocated for additional safeguards against abusive dismissal of its head, and 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 legal grounds for the dismissal of the head of the institution. The NHRI also pointed out that it is unclear who heads the NHRI after the end of the term of the head of institution when the successor is not yet appointed. The NHRI from Armenia pointed out to inconsistencies in the rules concerning the timeframe for the election of its head, while the NHRI from Georgia underlined the need to increase transparency of the appointment of the NHRI head.

NHRI enabling and safe environment

To be able to function properly in practice, NHRIs need a safe and enabling environment, as pointed out by the NHRIs of Austria, Cyprus, Germany, Hungary, Ireland, the Netherlands, Portugal, Switzerland, and Türkiye.

Some ENNHRI members – for example from Armenia, Belgium, Cyprus, Estonia, Latvia, Moldova, and Slovakia – have been subject to **attacks, hate speech, or intimidation**, a phenomenon that is amplified by 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 Armenia, there is an orchestrated campaign against the head of the NHRI. In Cyprus, the Auditor General of the Republic attempted (unsuccessfully) to influence the parliamentary procedure for the NHRI's head's reappointment. In Moldova, the Police General Inspectorate attempted to interfere with the NHRI's work.

To operate in a safe and enabling environment, NHRIs need **adequate financial and human resources**. This aspect has been stressed in most national reports. On a positive note, the NHRIs of Albania, Liechtenstein, Moldova, Scotland and Serbia have reported an increase in resources. The NHRI of Hungary has also set up a Disability Advisory Board, composed of experts – including CSOs and professional bodies – working along its office's General Directorate of Disability and the Commissioner for Fundamental Rights of Hungary. NHRIs also need proper **premises**, as noted by those from Armenia, Moldova, Montenegro and Serbia. The NHRIs from Albania and Montenegro have also stressed the need for more flexibility in staff recruitment.

Many NHRIs have expressed dissatisfaction about the extent of their **access to law- and policy-making processes with human rights implications**. This includes a lack of invitation for NHRIs to provide feedback as well as short deadlines set by authorities to submit an input. Some positive developments have been reported by the NHRIs from Armenia, Azerbaijan, Liechtenstein and Ukraine who have a close collaborative relationship with both the executive and parliament.

Numerous ENNHRI members, including from Albania, Bosnia and Herzegovina, Croatia, the Czech Republic, Georgia, 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 non-cooperative administrative bodies and maps them in the institutional website. The Spanish Criminal Code envisages penalties for those authorities or officers who hinder an investigation by the Ombudsman. But similar provisions are lacking in Serbian legislation, as pointed out by this country's NHRI. Concerns have also

been expressed by the ENNHRI member from Sweden that it is determined by the government how many and which legislative proposals the NHRI is required to provide feedback on. On the other hand, the NHRI from Georgia noted that the Parliament adopted resolutions based on the NHRI recommendations, assigning state agencies to fulfil them; however, the NHRI reported that the level of their implementation remains low. The NHRI from Moldova noted the collaboration with the state authority to jointly develop a mechanism to monitor the implementation of the NHRI recommendations.

While the French NHRI has complained about its limited impact on the formulation of human rights policies and legislation, it considered that the feedback it receives on its opinions shows willingness for dialogue. The Norwegian NHRI also reports that it can carry its work in good conditions. The Spanish NHRI and one of the Belgian NHRIs (FIRM-IFDH) have reported that they have conducted further actions (for example the power to request explanations, instigate criminal proceedings) in case of non-cooperation from state authorities. The Cypriot NHRI was generally satisfied with the response to its requests for information, even if state authorities' responses were sometimes delayed.

Some ENNHRI members pointed to obstacles in NHRIs' **access to information**. In Armenia, Moldova and Ukraine, these obstacles are linked to the NHRI's access to conflict zones; for instance, the NHRI from Moldova reported that sometimes state authorities' responses did not provide requested information. The Croatian NHRI has also raised concerns about its access to data on irregular migrants in the Ministry of Interior's information system. The Luxembourgish NHRI reported the lack of access to disaggregated data which hindered carrying out the mandate of the NHRI in an effective way. Finally, the reports of the NHRIs of Croatia and Kosovo* underlined the importance of **timely discussions on their annual reports**.

Regional 2024

Checks and balances

Independent and effective NHRIs are a crucial part of the overall system of healthy checks and balances. The importance of establishing and ensuring enabling environment for NHRIs was particularly stressed by the regional actors. For instance, 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.

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 report, ENNHRI members paid particular attention to the problems that should be addressed by national authorities and regional actors to ensure effective system of checks and balances and therefore safeguard the rule of law in the region.

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. A 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 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 executive and legislative branches of government. This is an issue not only in Poland but also in other countries. The Scottish NHRI has raised concerns about proposals to involve the Scottish Government in the regulation of legal professional bodies and the Swedish NHRI about the appointment of lay judges. The Scottish NHRI has also expressed concerns about proposals to create a special sexual offences court that would, inter alia, increase the discretionary power of the head of the judiciary to dismiss judges from cases. In Moldova, there have been issues with the elections to the judges' and prosecutors' self-governing bodies. The Turkish NHRI has referred in general to ongoing reforms that are needed to ensure judicial independence.

Abiding by court decisions, essential for the rule of law, has been challenged in several countries, including Belgium, Bosnia and Herzegovina, Great Britain, Luxembourg, Poland, Serbia, Switzerland, and Ukraine. For instance, in Great Britain, the executive tried to bypass a Supreme Court ruling by introducing legislation declaring Rwanda to be a safe country. The Serbian NHRI also reported an issue with the implementation of administrative-court decisions. In Luxembourg, a decision banning begging was issued in circumstances that showed a lack of respect for judicial precedent. In Switzerland, the Senate's commission called on the government to declare as non-binding the groundbreaking judgment of the European Court of Human Rights in the climate case. The Polish and Belgian authorities failed to abide by immigration-related court rulings. In Brussels region (Belgium), an adoption of an 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 and Switzerland).

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, 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, or by violations of the right to proceedings of a reasonable length, as pointed out by the NHRIs from Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, Serbia and Ukraine.

In this connection, the Scottish NHRI has also raised the issue of the fair trial implications of legislative proposals related to sexual offences. The changes would do away with important safeguards for the rights of the accused.

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. Judges' salaries should also be preserved, and court proceedings were instituted to this effect in Kosovo* and Slovenia. In Slovenia, the competent authorities refused to comply with a Constitutional Court judgment concerning judges' salaries.

Undermining the authority of the judiciary is not the only threat to the principle of separation of powers. The tendency to bolster the powers of the executive represents another such threat. In several countries, the executive has been trying to bypass the Parliament. This has happened in the United Kingdom with regulations and guidance issued in the area of public order as well as in Luxembourg with the begging ban. The NHRI of Great Britain also considered that ministers had been recently given the power to amend definition by regulation, without the full parliamentary scrutiny. Furthermore, the NHRIs of Liechtenstein and Scotland have raised the issue of the continuous use of emergency powers introduced during the Covid-19 crisis.

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. The NHRI of Estonia has called for enhanced regulation of electronic voting. The Albanian, Armenian and Polish a NHRIs have complained about the electoral rights of prisoners, immigrants, earthquake victims and persons with disabilities. The Armenian NHRI has also

complained about the misuse of school premises during the election campaign. The application of martial law raises election issues in Ukraine. Several NHRIs have also raised the issue of hate speech in politics, including during election campaigns.

The Croatian NHRI emphasized that it would be beneficial to have a wider discussion and agreement on the reform of electoral districts. Electoral reform may be needed but, in some countries, this would make it more difficult for small or regional parties to get their candidates elected, as signalled by the Slovak and German NHRIs, risking weakening of 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. And the Moldovan NHRI complained about the misuse of administrative resources during local elections.

Other threats to the parliamentary system came from voting tactics within the 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 NHRI of Liechtenstein reported that the Constitutional Court dealt with the issue of MPs who change political affiliation.

Attempts to weaken special investigation authorities and 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 Georgian NHRI has drawn attention to shortcomings in the mandate of the special investigation authorities. 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. The Slovak government has become responsible for the appointment of the chairpersons of the statistical office and the healthcare surveillance authority, who may now also be removed more easily than in the past. In the same state, several institutions have become part of the 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 transmission of bulk data. Finally, the Polish NHRI has expressed reservations as to the way 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 to prepare and adopt laws. Achieving this also lies in the focus of the NHRIs which, in their work and reports, pay particular attention to law-making processes.

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

The ENNHRI members from Bosnia and Herzegovina, Finland, Germany, Georgia, Great Britain, Moldova, Portugal, Scotland, Slovenia and Sweden have stressed the **insufficient time for public consultation.** The Moldovan NHRI complained about the adequacy of explanatory reports that accompany legislative proposals. Similar concerns were expressed by the NHRI from Northern Ireland. The ENNHRI members from France, Great Britain, Latvia and Sweden have drawn attention to the **lack of proper human rights or equality impact assessments**. This was shared by the ENNHRI member from Romania who also pointed to the problem of transparency – it distinguished different phases of the consultation process, feeling excluded from the later, more important ones. In Croatia, the NHRI has noted the fact that, in its country, the composition of the working groups that prepare the bills to be submitted to Parliament is sometimes unknown. The NHRI of Great Britain has also raised concerns that significant amendments are often introduced late in the legislative process and recalled that there was no public consultation at all on the Illegal Migration Act 2023. The NHRI from Armenia reported on attempts to not consider comments that had been submitted by the CSOs in time. The NHRI from Azerbaijan also considered that there was room for improvement in respect of adequate CSO participation in the consultation process. Keeping the NHRI involved in the process of preparing bills can be 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 independent institutions on bills affecting them. Several ENNHRI members – such as those 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. The ENNHRI member from Sweden has drawn attention to the risks associated with neglecting, in the legislative process, views of the Council on Legislation.

The pace of the legislative initiatives has proven, in general, difficult to follow for the Scottish and Swedish NHRIs, while ENNHRI members from France, Kosovo*, Poland, Slovakia, Slovenia and Sweden have complained about **too frequent use of the accelerated procedures**. In the case of Kosovo*, this has resulted in the enactment of legislation that raises gender equality concerns and which the NHRI has challenged before the Constitutional Court. In the Czech Republic, actions have been taken to cut consultation time short in relation to the private members' bills, while the Estonian NHRI has drawn attention to the negative effects of linking the passing of bills to a vote of confidence. The Georgian NHRI expressed concerns about the use of

accelerated procedure in one case: the draft amendments to the law regarding freedom of peaceful assembly.

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 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. The situation in many countries under this review is overall satisfactory. In Kosovo*, for instance, there have been noticeable improvements since the appointment of a specialised Commissioner.

However, in some 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, including Albania, Azerbaijan, Estonia and Montenegro, **access to information was frequently denied**, while in Armenia access to information was denied in certain cases. In Spain this has given 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 insights into the reasons given 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. In Moldova and Ukraine, the right of access to information is restricted on national security grounds.

The Armenian and Moldovan NHRIs consider that there is discrimination in access to information against some social groups, including persons with disabilities and the families of missing persons. In Serbia, those living abroad cannot access, for technical reasons, land registry data. Furthermore, the Albanian NHRI has complained about a lack of transparency in the State Advocate's Office and the Scottish NHRI about changes in working practices in the civil service resulting from the pandemic.

The NHRIs of Denmark and Norway have 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, or by creating exceptions for internal documents. The NHRI of Azerbaijan has been trying to create awareness among state authorities of the relevant obligations and has

taken issue with their refusal to communicate information. The Polish NHRI intervened in numerous court proceedings challenging **unjustified restrictions on 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 countries, it remains insufficient in Belgium, Georgia, Latvia and Luxembourg and this is what the NHRIs of these states are working to challenge.

Independence and effectiveness of independent institutions (other than NHRIs)

NHRIs are usually a part of a system of independent institutions, the proper functioning of which provides yet another effective defence for a healthy system of checks and balances, and therefore for the rule of law. Attempts to undermine the independence of other institutions may thus become an indirect threat to the NHRIs themselves. This is why this issue features prominently in many reports from ENNHRI members.

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 and the Audiovisual Media Authority in Albania.

Multiple other NHRIs have reported challenges. The NHRI of Georgia has raised concerns about the effectiveness of the special investigation service and the independence and impartiality of the High Council of Justice. The NHRI from Kosovo* has had reservations regarding the draft law on the Independent Media Commission. The NHRI of Great Britain has expressed concerns about changes to the Data Protection Regulations. 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, including on 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 problems 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 levels. In Kosovo*, all independent institutions were affected by the Law on Salaries in the Public Sector.

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. In Greece, members and staff of the Hellenic Authority for Communication Security and Privacy (ADAE) reported facing **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. There is also 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 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 in Europe 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. The below findings from NHRIs regarding challenges in the area of civic space confirm the need for further actions by regional actors to support human rights defenders and civil society space in countries covered by this report.

ENNHRI members report on numerous **attempts to undermine civic space and human rights defenders' activities**, taking various forms. This includes intense criticism of HRDs which has a chilling effect and often 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. Similar concerns have been voiced by the Georgian NHRI. The Greek NHRI also noted that the situation of HRDs, especially those active in the field of migration, has deteriorated, including due to **harassment** and even criminal persecution they faced for actions that were part of their job. **Hate speech** has also been resorted to against HRDs in Armenia and 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 Greek and Slovak NHRIs have 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. Finally, Georgia has enacted legislation on foreign influence, which is expected to severely limit NGO and media activity, submitting them to undue stringent audits. On a positive, note, the Constitutional Court of Albania has struck down some provisions of the law on the registration of non-profit organisations that imposed burdens in the process of registration of NGOs.

Strict measures against environmental defenders engaging in peaceful civil disobedience were adopted in several countries, including Armenia, France, Germany, and Sweden. This 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 have raised concerns over **violations of freedom of peaceful assembly**. Demonstrations and counterdemonstrations are too easily banned, stressed the NHRIs from Albania, France, Germany, Great Britain and Poland. In Georgia, the authorities often intervene illegally by relying on the administrative offences code. The ground for this has also been prepared in Germany by legislation allowing for restrictions on assemblies to be imposed by the states, as well as by the federal authorities. Ukraine's and the United Kingdom's legislation have also been amended to allow for additional restrictions to freedom of peaceful assembly. Proposals to the same effect are pending in Armenia, while the authorities of Georgia use outdated administrative offences provisions to curb the freedom of peaceful assembly. Armenia's, 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 by the political stigmatisation of HRDs, according to the Polish and French NHRIs. There is also increased security rhetoric around demonstrations, with the Croatian NHRI working on a complaint regarding making demonstrations more difficult because of security concerns in a square where the Government and Parliament are located, while the Polish NHRI has expressed concerns about unwarranted identity checks during public assemblies. The NHRIs of Georgia and Lithuania have complained about the police allowing protesters to disrupt LGBTQI-friendly events. The NHRI from Albania has invested considerable efforts in ensuring free press coverage of demonstrations. Finally, the NHRIs of Germany and the Netherlands have drawn attention to content-based restrictions on freedom of peaceful assembly (for example pro-Palestinian ones in the case of Germany). The limitations on freedom of peaceful assembly arising from securitisation narrative are also reported on later in this report's chapter on the impact of securitisation on the rule of law and human rights.

Attacks on journalists appear geographically widespread, as they are mentioned in the reports from Albania, Belgium, Finland, Georgia, Greece, Kosovo*, the Netherlands and Romania. Belgium's NHRIs point out, in this connection, the vulnerability of female journalists. The Belgian report also notes that harsher penalties against the perpetrators of attacks on journalists could help curtail the phenomenon. The law should better protect journalistic sources, according to the ENNHRI member from Romania. 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 their employer, which can impact on freedom of expression. SLAPPs have also been reported in Armenia, 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 the right to strike, 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 light of the above, 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. The Scottish NHRI has stressed, in this connection, the need for information on how frequently legal processes are used to prevent exercise of freedom of expression, media reporting and public participation rights. And the Croatian NHRI has been calling for a National Plan for the Creation of an Enabling Environment for Civil Society. Lastly, the ENNHRI member from Switzerland considers engaging in raising awareness on the situation of human rights defenders.

Cooperation with civil society and HRDs is a key aspect of the NHRIs' compliance with the Paris Principles. NHRIs play a key role in fostering dialogue with civil society even in countries where CSOs and HRDs do not experience problems. Good practices of civil society involvement in NHRI work include the Public Councils on Women's and Children's Rights of the Armenian NHRI, the numerous committees set up by the Irish NHRI, the Forum of the ENNHRI member from Kosovo* and the Cypriot NHRI's efforts to facilitate the interface with organisations of persons with disability.

Regional 2024

Impact of securitisation on the rule of law and human rights

Securitisation is a process happening across states covered in this report, as state authorities increasingly present certain national or regional developments as security issues. Often this leads to states introducing martial law or

emergency legislation for unduly long periods of time, or other special measures aimed at addressing real or perceived security threats. The states' responses to threats and security risks might be lacking transparency and accountability and may have a long-term impact leading to restrictions of fundamental rights and freedoms and to violations of the rule of law principle.

Numerous ENNHRI members, including from Belgium, Denmark, Estonia, Finland, France, Georgia, 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. In case of Armenia, Azerbaijan, Georgia, Moldova and Ukraine, this included the context of **conflicts**.

The securitisation narrative has resulted in the instrumentalisation of a wide variety of issues, including terrorism, organised crime, migration and the Russian war against Ukraine, as it has been pointed out, inter alia, by ENNHRI members from Estonia, Germany, Moldova, Poland and Sweden. The NHRI from Slovakia reported that all these topics are described as threats and have resulted in **anti-HRDs discourse,** calling for limiting their work and posing it as negatively affecting the security of the population. There were similar developments in Georgia, with the foreign-influence law. On the other hand, the Finnish NHRI noted that in Finland, it is the instrumentalisation of migration by Russia that has strengthened the securitisation narrative, as migration has been perceived as a threat that needs urgent responses.

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

Some countries have implemented 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. In the United Kingdom, migration legislation has been enacted, which expressly allows for measures that may breach the country's international human rights obligations.

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. The Norwegian report refers to proposals allowing for migrant detention in the national interest. 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, 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 pointed to the impact of **anti-terrorism laws and policies** on the rule of law and fundamental rights. New legislation introduced in Germany against clan crime and in Sweden against terrorism includes 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. In Switzerland, the new counter-terrorism legislation also raises serious concerns over its human rights compliance.

The securitisation logic has also crept into the **regulations affecting freedom of peaceful assembly**. This is evident in the case of Armenia where martial law may provide an excuse for drastic restrictions on its exercise and in Georgia where information provided by the secret service about plans to destabilise the country was relied on to support an attempt to amend the Law on Assemblies and Demonstrations. In Ukraine, martial law also allows for limitations on the right to assembly. Statutory changes introduced in Germany to facilitate the banning of protests, especially those concerning environmental issues, were quoted by the German NHRI as a concern. In Romania, 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. Similar concerns led to amendments to the Georgian law on assemblies and demonstrations being vetoed by the President.

The amendments to the policing legislation, which have **strengthened and expanded police powers**, were introduced in many states, including Armenia, Bosnia and Herzegovina, Latvia, Germany, Ireland, Luxembourg, and Sweden. These concern the power to ban demonstrations and establish ad hoc stop and search zones as well as the use of new technology (including digital recording, automated recognition systems, drones and anti-drone equipment) and explosives in various police operations. In the case of Armenia, this was in the context of the restriction of freedom of peaceful assembly. In Ireland, traditional police powers to arrest, search premises and detain have been expanded.

Additional concerns affecting the **right to privacy** have been expressed in the Belgian report about the creation of a common database related to terrorism, extremism and radicalisation, the Georgian report about uncompleted investigations into allegations of illegal covert surveillance, the report from Great Britain about the increased use of facial recognition technology, 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 Russian invasion of Ukraine and the means used in it, one of which is propaganda, resulted in restrictions on freedom of expression in many countries. One example is the suspension of TV channels and websites in Moldova.

Finally, the Scottish NHRI refers to an ongoing inquiry into whether the measures introduced in response to the pandemic were strictly lawful, necessary, proportionate and time limited.

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), certain sports fans (in Poland) and even internment (in Belgium). In the United Kingdom, it has been proposed to transfer the power to make parole decisions for the most dangerous prisoners from the Parole Board to the Secretary of State. ENNHRI members – including those from Armenia, Belgium, Germany, Greece, Poland and Romania – reported that the securitisation context had resulted in **excessive or even abusive use of powers by police forces**.

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

Numerous ENNHRI members 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 Armenia, Portugal, Serbia and Spain. The Azerbaijani NHRI as NPM conducted visits to the detainees of Armenian origin in the context of conflict. Actions have also been taken in individual cases related to court proceedings in the context of migration, 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 based on data collected through interviews with victims. The NHRI from Northern Ireland regularly engages with independent monitoring mechanisms whose remit includes counter-terrorism powers. The ENNHRI members from Armenia and Scotland have intervened, on several occasions, to preserve the right to protest.

ENNHRI members have also analysed the impact of securitisation on the rule of law and human rights in their reports, **opinions** and recommendations. The NHRI from Great Britain has provided parliamentary briefings on various bills with securitisation implications. ENNHRI's members from Armenia, Georgia and Romania have adopted/commissioned opinions on the assembly laws. The Lithuanian NHRI has adopted an opinion 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** – those concerning 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 the federal police legislation. The Irish one has reacted to legislative proposals to reform the internal and external oversight of the Irish police force. The Norwegian has reacted to legislative proposals concerning migration detention. The NHRI of Denmark has published a brief on data retention, raising concerns over a serious interference in the right to respect for private life and the protection of personal data. 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.

NHRIs from Germany, Portugal and Slovakia have prepared **studies and reports** on the response of the police to climate protests, migration management and hate speech, respectively. 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.

By 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 different states but also certain divergences in the NHRIs' institutional set-up and organisational arrangements. For example, some NHRIs place emphasis on individual cases and even engage in litigation where 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 borders); 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.

Regional 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. The timely and effective implementation of judgments is also a crucial element of healthy checks and balances in the country. 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's report ensures a dedicated focus on the topic of the implementation of judgments issued by European Courts: the European Court of Human Rights (ECtHR) and the Court of the Justice of the European Union (CJEU). ENNHRI members followed up on the information they had already provided in last year report and reflected on national developments concerning the implementation of European Courts' judgments by state authorities.

The full implementation of the European Courts' judgments 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. They also must take general measures preventing similar violations from occurring in the future.

Only few ENNHRI members have been able to report substantial (in the case Spain) or some (in the case of Finland, Greece, Sweden and Ukraine) 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 Albania, Armenia, Georgia, the Netherlands, Portugal and Slovakia.

ENNHRI members have not reported on challenges in relation to the payments of compensation awarded by the ECtHR. However, similarly as reported last year, 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 substantial reforms. For example, this has been observed by the Estonian and the Ukrainian NHRIs.

The failure to implement ECtHR judgments that concern the functioning of national **justice systems** is particularly important as regards 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 and investigations into deaths in Northern Ireland, 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. A 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 a concern 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 European Courts' judgments awaiting full implementation concern **migration issues** (in Belgium, Denmark, Germany and Spain), deprivation of liberty (Georgia) or detention (in Belgium, Croatia, Greece and Ukraine), freedom of religion (in Lithuania), the rights of psychiatric patients (in Denmark), housing legislation (in Croatia), freedom from torture (in Serbia) and LGBTQI issues (in Georgia and Lithuania).

While the Georgian NHRI has pointed out problems in the functioning of its Parliament-based national implementation mechanism, the ENNHRI members from Northern Ireland and Scotland have called for the involvement of the Northern Ireland Assembly and the Scottish Parliament respectively in the process.

Finding the right strategies for ensuring implementation is of crucial importance. NHRIs report that some supreme courts' judgments have acted as a leverage 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.

NHRIs' 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 they engage in the 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 strengthen meaningful participation of NHRIs in the context of the implementation of ECtHR judgments and thereby building on their potential to advance the implementation.

NHRIs also dedicate their efforts to support the effective and timely implementation of European Courts' judgments at the domestic level, 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. NHRIs also **raise awareness** of this rule of law issue among other stakeholders such as civil society and the wider public.

NHRIs should 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. But some ENNHRI members, including in Luxembourg, lack sufficient capacity to undertake action in connection with the implementation of European Courts' judgments. This calls for the need to ensure adequate NHRIs' budgets according to each country's domestic arrangements.

Regional 2024

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

This year's ENNHRI report dedicates more in-depth focus on specific rule of law areas: 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 also reported on other structural rule of law and fundamental rights issues as relevant for their national context. The challenges discussed therein do not exhaust all the problems arising in the rule of law; however, from the point of view of NHRIs, those matters should also be addressed urgently and thoroughly by relevant stakeholders.

First, serious concerns have been expressed by several NHRIs, including those from Armenia, Azerbaijan, Cyprus, Georgia, Kosovo*, Moldova and Ukraine, about the human rights implications of armed conflicts (related, for example, to the right to life, property, freedom of movement, education, health and an adequate standard of living).

Justice system is another area of additional rule of law concerns, as evidenced by the report of the NHRIs from Albania, Bosnia and Herzegovina, Cyprus, Germany, Kosovo*, Luxembourg, Montenegro, Scotland, Serbia, Slovakia, Ukraine and the United Kingdom. Several NHRI, including those from Albania, Cyprus, Kosovo* and the United Kingdom, 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, Germany and Scotland advocated for improvements in the collection of data concerning the criminal justice system and in databases containing case-law and legislation. The NHRI from Northern Ireland considers that the Troubles (Legacy and Reconciliation) Bill does not comply with the United Kingdom's international obligations. Other NHRI 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 a concern. Many NHRIs, including those of Bosnia and Herzegovina, Poland, Romania, Slovakia, Slovenia and the United Kingdom, 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. So does the fight against misinformation, as highlighted by a study commissioned by the NHRI from Northern Ireland. Journalists' employment needs to be protected and so does freedom of expression of civil servants. The Albanian NHRI is especially concerned about restrictions on the press coverage of public events and proceedings instituted against journalists. The Georgian NHRI raised concerns not only about attacks on journalists, as mentioned above, but also about the suspension of accreditation for representatives of critical media. The NHRI from Bosnia and Herzegovina reported on the lack of adequacy of the relevant rules, especially regarding media entities.

Hate speech, as underlined by ENNHRI members, represents a major threat in most countries covered by this report, including Kosovo*, the NHRI of which published a report on the language used in public discourse. The adequacy of criminal law responses continues to be widely discussed across the region. Denmark has tightened its legislation on Qur'an 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 ENNHRI member from Switzerland pointed out the lack of comprehensive national anti-discrimination law. Several NHRIs, including those from Bosnia and Herzegovina and Spain, have referred to violence against women and a Belgian ENNHRI member (FIRM-IFDH) noted that violence against journalists has a heavy gender component in Belgium. 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 NHRIs from Ireland and Liechtenstein 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 Albania, Azerbaijan, Belgium, Denmark, Romania and Spain. The Albanian NHRI is especially concerned about citizens not having access to public services online. 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 the mass collection of open-source data.

Georgia 2024

Information from: Public Defender's Office of Georgia

Follow-up to last year's rule of law recommendations

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

The previous Rule of Law Report of the Public Defender's Office (hereinafter PDO) mentioned that the Parliament of Georgia drafted the amendment to the Organic Law on Common Courts in order to fulfil the EU candidacy requirement regarding the judiciary. The legislative changes were adopted in June 2023, and, in November, the European Commission published a report assessing the progress made by Georgia. It regarded the progress as limited. The report reads as follows: "In June 2023, Parliament adopted amendments to the Law on Common Courts and drafted additional amendments in September 2023 implementing some of the Venice Commission's recommendations. However, the most important recommendations of the European Commission and of the Venice Commission as stated in its consecutive opinions (of March 2023 and October 2023), notably regarding reforming High Council of Justice (HCJ) and recommendations regarding the Supreme Court were not addressed. Namely, further broader reforms to ensure the full independence, accountability and impartiality of all judicial and prosecutorial institutions, especially the HCJ need to be undertaken in line with European standards and the recommendations of the Venice Commission. In particular, improvements and additional safeguards concerning the functioning and powers of the HCJ are needed and an effective right of appeal for the selection of Supreme Court judges should be ensured by clarifying the binding nature of the Supreme Court decision for the HCJ. A broad justice reform remains outstanding. In particular, reforms to ensure the full independence, accountability and impartiality of all judicial and prosecutorial institutions, especially the Supreme Court, the Prosecutor General and the High Council of Justice (HCJ), need to be addressed. These Reforms need to be undertaken in line with European standards and the recommendations of the Venice Commission (Venice Commission)" (The European Commission, Georgia 2023 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement policy, page 20).

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

As noted in the previous Rule of Law Report, the PDO's representatives engaged with the judicial reform working group established within the Parliament to address the EU candidacy requirement regarding the judicial system. Unfortunately, most of the PDO's recommendations were not followed when drafting the amendment to the Organic Law on Common Courts. In December 2022, the PDO asked the OSCE/ODIHR to prepare a legal opinion on PDO's proposals that had not been taken on board. In response, the OSCE/ODIHR published its "Note on Several Issues relating to Judicial Reform"

in June 2023. According to the Note, “the questions raised by the then Public Defender of Georgia primarily aim at promoting greater legitimacy and credibility of the work and decisions of the High Council of the Judiciary (HCJ) in a context of allegations of lack of transparency and/or risk of corporatism, self-interest or cronyism within the said body. They also aim at enhancing the status, credibility, legitimacy, integrity, accountability and independence of judges, including of high-level judicial office-holders” (OSCE ODIHR, Note on Several Issues relating to Judicial Reform, June 2023, page 2). Moreover, the PDO engaged with various stakeholders to discuss challenges in the judicial system. The (former) Deputy Public Defender attended, for example, the 12th session of the EU-Georgia Parliamentary Association Committee in Brussels in June 2023 and spoke about, inter alia, the PDO’s involvement with the judicial reform working group. In September 2023, the Public Defender and the Deputies of the Public Defender held meetings with the officials from the U.S. Department of State and Department of Justice and representatives of various international organizations and discussed matters relating to the judiciary with them. Moreover, the Public Defender and First Deputy Public Defender took part in the Regional Conference on Improving the Rule of Law and Access to Justice for All in December 2023. At the event, they talked about topical issues pertaining to the judiciary. It is also noteworthy that, on February 20, 2024, the Deputies of the Public Defender took part in a working meeting held in Brussels , in the European Parliament, which dealt with the issues of the rule of law, democracy and human rights in the EU enlargement countries. The deputies provided Members of European Parliament with information about the PDO’s work in the area of the rule of law.

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

As already mentioned, the amendment to the Organic Law on Common Courts that was adopted in June 2023 did not reflect most of the PDO’s recommendations. Only one recommendation was partially taken into account in the amendment. In particular, the PDO suggested reintroducing prosecution against a judge and his/her dismissal by decision of the Disciplinary Panel of Judges of Common Court as grounds for recusing a judge from hearing a case under article 45 of the Organic Law. The aforementioned amendment only provides for criminal prosecution as a ground for recusing a judge (paragraph 1 of article 45 of the amended Organic Law on Common Courts).

Furthermore, the PDO’s recommendation to the Parliament to appoint non-judge members of the High Council of Justice has been partially implemented. Although all non-judge members were appointed, it seems doubtful that the newly selected members adequately, fully acknowledge fundamental problems within the judiciary (please view the video of the hearing of the Legal Issues Committee Part 1 from 2:34:53, in particular, 2:34:53-2:37:24, 2:37:26-2:40:03,

2:40:03-2:41:49, 2:41:49 – 2:44:57, 2:44:59-2:46:19, 2:46:20-2:48:24, 2:48:30, :50:43-2:53:50; the video of the hearing of the Legal Issues Committee Part 2 from 8:06, in particular, 8:06-20:50; the video of the hearing of the Legal Issues Committee Part 1 from 2:30:54, in particular, 2:30:54-2:32:34, 2:33:24-2:35:03, 2:35:04 – 2:37:37) and the appointments were carried out in a polarized environment.

Georgia 2024

Information from: Public Defender's Office of Georgia

Independence, effectiveness and establishment of NHRIs

International accreditation status and SCA recommendations

The Office of the Public Defender of Georgia was last re-accredited with A-status in October 2018.

Regarding its mandate, the SCA noted that the Anti-discrimination Law did not oblige private entities to provide information to the Public Defender and that the UN Committee on the Elimination of Racial discrimination expressed concerns that this may impact the PDO's ability to effectively examine cases of discrimination. The SCA also encouraged the PDO to continue to advocate for amendments to the law to make the provision of information by private entities and individuals mandatory.

Further, the SCA acknowledged that the PDO conducts follow-up activities to monitor the extent to which their recommendations have been implemented and encouraged the PDO to continue to do so. Further, the SCA encouraged the PDO to continue to ensure pluralism and diversity through its staff and cooperation with civil society.

Moreover, acknowledging that the PDO had reported that there were efforts underway to amend the Rules of Procedure of the Parliament to provide detailed procedures for the selection of the Public Defender, the SCA encouraged the PDO to continue to advocate for amendments for the formalisation and application of a selection process that is fully compliant with SCA standards.

Finally, the SCA encouraged the PDO to continue to advocate for the funding necessary to ensure it can effectively carry out its mandate, including their

mandated capacities as the NPM under the OPCAT, and as monitoring mechanism under the CRPD.

The Office of the Public Defender of Georgia has its re-accreditation scheduled for October 2024.

Follow-up to SCA Recommendations and relevant developments

The Office of the Public Defender (Ombudsman) of Georgia (hereinafter referred to as “PDO”) was re-accredited with “A” status in 2018. The SCA made 5 recommendations for PDO to further enhance its effectiveness and independence. Below is a short summary of the work and efforts made by PDO to ensure compliance with the SCA recommendations.

Anti-Discrimination Mandate

The SCA acknowledged that PDO has a broad mandate to promote and protect human rights, and that it exercises this mandate in practice, however, it was noted that the Anti-discrimination Law obliged public agencies to provide information to the Public Defender while private entities and individuals provided information to the Public Defender only on voluntary basis, and that the UN Committee on the Elimination of Racial Discrimination expressed concern that this may impact the ability of PDO to effectively examine cases of discrimination (CERD/C/GEO/CO/6-8). Therefore, the SCA encouraged PDO to continue to advocate for appropriate amendments to the Anti-discrimination Law to make mandatory the provision of information by private entities and individuals.

Organic Law on Public Defender was amended in 2019. According To amendments, in cases of discrimination Public Defender is entitled to request and immediately on no later than 10 days receive documents from natural persons, legal persons, other organizational entities, entities of persons without the status of legal person and entrepreneurs. Even though amendments were not made directly in Anti-Discrimination law, incorporating this provision in the Organic Law on Public Defender ensures that private entities and individuals are also obliged to provide requested information.

Recommendations by NHRIs

The SCA acknowledged that PDO prepares and publishes annual reports and conducts follow-up activities to monitor the extent to which the recommendations are implemented. The SCA encouraged PDO to continue to do so. Recently, a web system for monitoring the state of implementation of the recommendations/proposals issued by the Office of the Public Defender of Georgia has been developed and it works in test mode until December 2024.

The primary purpose of the web system is to make the process of monitoring the implementation of the recommendations and proposals issued by the Public Defender of Georgia more flexible. The web system also aims to strengthen the accountability of public institutions to comply with the Public Defender's recommendations and proposals. In addition, one of the purposes of the web system is to provide complex statistical data on the Public Defender's recommendations and proposals. It is also worth noting the creation of an exhaustive institutional memory on the recommendations and proposals. An additional purpose of the web system is to raise the level of knowledge among the employees of the Parliament of Georgia about the state of implementation of the tasks enshrined in the resolution adopted by the Parliament based on the Public Defender's annual report.

Pluralism and Diversity

Considering that PDO is a single member NHRI, the SCA considered that pluralism and diversity should be used by such means, as ensuring a diverse staff complement and cooperation with diverse societal groups. Therefore, SCA encouraged PDO to continue to ensure pluralism and diversity through its staff complement and cooperation with civil society.

Staffing and cooperation with civil society will be discussed in detail respectively in chapters 4.2 and 8.1, however, to sum up, it should be noted that staff of PDO consists of members from different social groups and recruitment process excludes any possibility of discrimination based on any ground. In addition, ethnic and religious minorities are represented in the work of the tolerance center, which has been operating under Public Defender since 2005. Apart from that, cooperation with Civil Society is ensured with formal and informal means. Civil Society is represented in all advisory councils established under PDO and is also involved in our work through ad hoc meetings that are held to discuss various issues related to PDO. Most recent example of this is the meetings that were organized by the Public Defender to discuss the future priorities of PDO and hear views and proposals from civil society, as well as meetings in the process of developing the strategy of PDO to ensure that the views and expectations of civil society is adequately incorporated in the future work of the Office.

Selection and Appointment

The SCA noted that the process of the selection and appointment of the Public Defender that was enshrined in the law in 2018 was not sufficiently broad and transparent and PDO needed to continue to advocate for amendments to ensure compliance with Paris Principle B.1.

Since 2018, Organic Law on the Public Defender and the Rules of Procedure of the Parliament has been amended several times.

On June 3, 2018, the Parliament officially launched the deliberations on the new draft version of the Rules of Procedure of the Parliament. Public Defender of Georgia was actively working with the committees and with respective MPs to include comprehensive procedure for the selection and appointment. As a result, the procedure of the election of the Public Defender was removed from the Organic Law on Public Defender and incorporated in the Rules and Procedures of the Parliament. New Rules of Procedure of the Parliament was approved on 14 December 2018. The law incorporated amendments made during constitutional reform in 2017 stipulated that the Public Defender is elected by three fifths of the total number of members of parliament which ensures that the candidate is not elected by just one political group. In addition, in 2017 the term of office of the Public Defender was lengthened to 6 years and reelection of the same person for two consecutive terms is no longer possible.

PDO has been advocating the necessity of relevant amendments in the regional and international fora as well. In particular, PDO has been actively involved in the work of the Council of Europe Steering Committee for Human Rights (CDDH) in drafting the Recommendation on the development and strengthening of effective, pluralist, and independent national human rights institutions. At the meeting held in Strasbourg in September 2019 PDO was represented by the First Deputy Public Defender who emphasized the issue of the lack of selection criteria for Public Defender in Georgian legislation. Namely, she underlined that the election of the Public Defender is a purely political process, ensuring participation of political parties only, therefore in order to safeguard the principle of pluralism in the selection process, the process itself should be formalized and include the following set of requirements:

- Publicizing vacancies broadly;
- Maximizing the number of potential candidates from a wide range of societal groups and educational qualifications;
- Promoting broad consultation and/or participation in the application, screening, selection, and appointment process;
- Setting pre-determined, objective and publicly available criteria.

It should be underlined that the abovementioned meeting was attended by the representatives of the Georgian government. The aforesaid opinion was also shared directly via official communication with the CoE’s Director General and Secretary to the Committee of Ministers. The Council of Europe Committee of Ministers adopted a Recommendation on the development and strengthening of effective, pluralist, and independent national human rights institutions back in March 2021. Issues on the selection and the appointment criteria for the NHRIs have been included in the text of the Recommendation, namely, the appendix to the recommendation states that selection and appointment of the leadership of a national human rights institution should be merit-based,

transparent and participatory to guarantee the independence and pluralist representation of these institutions as one of the criteria for strengthening the NHRIs. The importance of the implementation of this Committee of Ministers Recommendation on NHRIs has been raised by the Public Defender and First Deputy on numerous occasions during the meetings with CoE high level representatives, especially with regards to the standards on the selection and appointment of the Public Defender.

PDO has been advocating this issue with state officials as well. In 2020 the Parliament of Georgia started to work on the Open Parliament Action Plan 2020-2021. On 14 April 2020 the Public Defender proposed to integrate "Increasing the Transparency of the Selection of the Public Defender" in the action plan as an independent activity. Respective information and legal justification were sent in writing. During oral discussions organized around the draft Action Plan, the Chair of the Open Governance Permanent Parliamentary Council supported this idea. The Parliament adopted the Open Parliament Action Plan 2021-2022 in 2021. However, the PDO's proposal to increase the transparency of Ombudsman's election process was not reflected in the document as the Open Governance Permanent Parliamentary Council considered that it went beyond the Council's functions to address.

In 2022 temporary procedure for the election of the Public Defender of Georgia was included in the Rules of Procedure of the Parliament. This amendment was made to address the recommendation of the European Commission, which, after deliberations regarding the Georgia's application for the membership of the European Union, recommended that Georgia be granted candidate status after addressing key priorities, including to ensure that an independent person is given preference in the process of nominating a new Public Defender and that this process is conducted in a transparent manner to ensure the effective institutional independence of PDO. The temporary procedure included rule for the nomination of the candidates, their evaluation by 9-person working group consisting of representatives of civil society and academia (candidates were evaluated based on these criteria: honesty, impartiality, independence, high reputation, relevant professional knowledge, and practical experience in the field of human rights and fundamental freedoms), and extensive interviews by the Committee of Human Rights and Civil Integration of the Parliament which were broadcast live. This procedure was applied in 2022 and will be discussed in detail in chapter 3.2.

In 2022 the Public Defender was not elected, because none of the nominated 19 candidates received votes from the three fifths of the total number of members of the Parliament. Considering that this procedure was temporary and could have been used only in 2022, the Parliament reverted to the existing rules for the election of the Public Defender.

In the beginning of 2023 extensive consultations were held among

parliamentary groups regarding the candidate for the election. Considering that the public defender has to obtain endorsement from three fifths of the total number of Parliament members, the ruling party and the opposition have to reach consensus and substantive participation of the political minority has to be ensured. The need for the consensus was even more evident considering the pressure from the European Union to conduct the elections in a manner that would ensure the fulfillment of the recommendations of the European Commission and show that the goal for the State to have an independent and impartial Public Defender and political compromise can be reached. As a result of the consultations, on 28 February 2023 one of the political groups in the parliament (named “Citizens”) nominated the candidate for the elections - Mr. Levan Ioseliani, who was one of the leaders of the said group. Mr. Ioseliani was elected as a public defender on 7 March 2023 and will occupy this position until March 2029.

The Public Defender continues to advocate for the changes in the selection and appointment procedures. In October 2023 amendments in the Rules of Procedure of the Parliament were initiated pertaining to the election procedures of the various officials. The initiated amendments were technical in nature and did not include any substantial changes. The Public Defender addressed Parliament with the proposal to make substantial changes to the rules. The proposal refers to a number of international standards emphasizing the need to create more open, inclusive, and transparent rules for selection and appointment. The proposal refers to the SCA recommendation in detail, as well as the Paris Principles, Belgrade Principles, Venice principles, and 2019 Recommendation of the Committee of Ministers to Council of Europe member States on the development of the Ombudsman institution. The proposal also emphasizes that the practice of using similar procedures already exist in Georgian legislation pertaining to the selection and appointment of the board of trustees of the Public Broadcaster and State Inspector, which can be used as an example to amend the selection and appointment procedures for the Public Defender. Unfortunately, parliament did not consider the proposal and made only technical amendments to the rules. The Public Defender continues to further advocate necessary amendments.

Adequate Funding

The SCA encouraged PDO to continue to advocate for the funding necessary to ensure that it can effectively carry out its broad mandate.

The Public Defender has an independent budget and there is a separate budgetary article in the state budget of Georgia. Annually, usually in spring season, the Office starts preparing draft budget and submits it to the Ministry of Finances of Georgia.

The practice of numerous years shows that, when elaborating the budget,

there have been no restrictions or control in this regard of any kind on the Public Defender's Office by financial institutions and the Public Defender independently drafts the Office's budget for the next year based on needs.

Regulatory framework

The Parliament adopted a new Law on Personal Data Protection in June 2023. This new law will have negative implications for performance of the PDO's functions.

The new regulation, like the previous one, allows the PDO to process personal data not belonging to sensitive information to carry out its mandate. However, the processing of personal data belonging to sensitive information (special categories of data) requires the PDO to receive the data subject's written consent from him/her. The issue mentioned above could potentially impede the systematic monitoring activities of the PDO and hinder its ability to conduct proactive inquiries. For instance, when monitoring the situation of asylum seekers at the border, the PDO may be unable to obtain consent from asylum seekers who have already left the country. Therefore, the PDO will likely be unable to or find it more difficult to process their personal data needed to examine the border authorities' compliance with relevant human rights obligations.

A similar problem arises when it comes to minors under 16 whose personal data can be processed only with their legal representative's consent unless exceptions established by law apply. In cases of underage marriage, for instance, parents themselves are often violent towards their children and the requirement to receive parents' consent will hinder the PDO from obtaining information and protecting children's rights.

Analogously, upcoming regulations will pose challenges to carrying out NPM functions.

The PDO's previous Rule of Law Report noted the need to strengthen its regulatory framework by granting it access to the case files of ongoing investigations into alleged ill-treatment and/or deprivation of life (individuals who died under the state control). The previous ENNHRI's Rule of Law Reports provided relevant information concerning this issue, but there have been no significant updates since then.

NHRI enabling and safe environment

In terms of timely and reasoned response and follow-up to the PDO's recommendations, the Parliament adopts resolutions based on recommendations issued in the PDO's yearly parliamentary reports on situation of human rights and freedoms in Georgia. The resolutions constitute a form of

response to the PDO's recommendations as they assign tasks to different state agencies to fulfil the recommendations. The Parliament's 2022 resolution contained 292 tasks for different bodies. Only about 19% of the tasks were fully completed, 24% - partially completed and 36% - unfulfilled (the fulfilment of the 2023 resolution of the Parliament will be presented in the report of the Public Defender's Office in coming months).

Unfortunately, the Parliament's oversight over the level of fulfilment of the tasks is weak. This can be inferred from the fact that the same tasks are repeated in the Parliament's resolutions, i.e., remain unfulfilled by the authorities year after year. Although the Human Rights Committee of the Parliament is obliged, under its statute, to adopt a conclusion on the fulfilment of the tasks, the Committee has not adopted such a conclusion since 2020. It has also not held a parliamentary committee hearing on the reports of different agencies on the fulfilment of the assigned tasks in 2023 despite being obliged to do so under its statute.

NHRI's recommendations to national and regional authorities

The Public Defender's Office recommends to:

- Amend the Organic Law on Public Defender of Georgia to grant the PDO access to the casefiles of ongoing investigations into alleged ill-treatment and/or deprivation of life (individuals who died under the state control, for example, in penitentiaries, psychiatric centres, etc.) before the end of investigations.
- Ensure effective follow-up to the PDO's parliamentary recommendations and strengthen parliamentary oversight over the level of fulfilment of the tasks enshrined in Resolutions of the Parliament of Georgia.

Georgia 2024

Information from: Public Defender's Office of Georgia

Democracy - checks and balances, disinformation, and other topics

Separation of powers

The PDO would like to note the shortcomings in the mandate of the Special Investigation Service (SIS) which is an independent state investigation

authority of utmost importance to ensure accountability of law enforcement and public officers. The amended SIS Law and the amended Personal Data Protection Service Law adopted on 30 December 2021 abolished the State Inspector's Service, a body established in 2018 with the mandate to monitor the lawfulness of personal data processing and covert investigative activities as well as to carry out the investigation of alleged crimes by law-enforcement agencies. Instead, two separate institutions were created: the Personal Data Protection Service (hereinafter, the "PDPS") and the Special Investigation Service (hereinafter, the "SIS"). This reorganisation resulted in the early termination of the State Inspector's mandate. The new legislation was swiftly adopted by Parliament through an expedited procedure. No consultations, discussions, or public forums were initiated; similarly, no human rights impact assessment was provided.

It is concerning that the SIS jurisdiction was expanded to encompass crimes (e.g. encroachment upon freedom of speech and violation of the right to private life committed by any individual, etc.) which are relatively less important for the core function of the SIS. The extension of the SIS mandate risks diminishing the focus on serious crimes committed by law enforcement and may decrease the effectiveness of investigations. Furthermore, the SIS mandate does not cover crimes committed by the Prosecutor General, the Minister of Internal Affairs and the Head of the State Security Service (SSS). Moreover, if certain crimes, such as intentional killing and rape, are committed by prosecutors, they fall outside the SIS jurisdiction as the law stands now. To advocate for the improvement of the SIS mandate, the PDO recommended to amend the regulatory framework applicable to the SIS in its parliamentary report and the rule 9 communications submitted to the Committee of Ministers of the Council of Europe in 2023 and 2024. In this connection, the PDO welcomes a recently initiated draft law extending the SIS mandate to certain crimes committed by prosecutors. The PDO hopes that the bill will be adopted by the Parliament and that other shortcomings in the SIS jurisdiction will be resolved as well.

As for the State Security Service (SSS), the PDO's previous Rule of Law Report mentioned alleged illegal covert surveillance and interception by the SSS of a vast amount of personal information of civil society actors, diplomats and other individuals. The investigation launched into this case has not been completed, no one has been prosecuted and the number of officially recognized victims has remained the same, according to the latest information available to the PDO. Similarly, investigations into covert surveillance of an MP and other political figures have yielded no results yet. Such shortcomings in the investigations raise concerns regarding lack of accountability of the SSS. To help address this issue, the PDO has monitored the investigations and published its findings in its 2021 and 2022 parliamentary and special reports.

The process for preparing and enacting laws

In September 2023, a draft law amending the Law of Georgia on Assemblies and Demonstrations was initiated in the Parliament. The text of the draft law envisaged new grounds of restriction of the freedom of assembly by prohibiting putting up a temporary construction if: 1) it poses a threat to the participants in the assembly or demonstration or other persons, 2) it hampers normal functioning of an enterprise, institution or organization, 3) the assembly or demonstration is not substantially impeded without such a construction, 4) such a construction is not related to holding an assembly or demonstration, 5) it hampers the police from maintaining public order and security. The PDO issued a statement on the draft law, criticizing it as an unproportionate restriction of freedom of assembly and expression and noting that no weighty interest was put forward to justify the draft law.

Despite the criticism, the draft law was adopted in first, second and third readings pursuant to an accelerated procedure in the Parliament before being vetoed by the President of Georgia in October 2023. The application of the expedited legislative review was negatively assessed by the ODIHR in its Urgent Opinion prepared in response to the PDO's request to review the proposed amendments. The ODIHR's opinion reads that "the accelerated legislative procedure should not be used to amend the Law on Assemblies and Demonstrations, and should it be nevertheless used, special oversight should be in place, including a review clause" (ODIHR, Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code, November 2023, paragraph 69). The ODIHR also criticized paragraph 3 of article 117 of the Rules of Procedure of the Parliament of Georgia that provides for an expedited legislative process. According to the ODIHR, this provision does not stipulate "precisely and narrowly defined circumstances when the use of such a procedure may be invoked" (ibid, paragraph 66).

Access to information

The current legislative framework on the right to access public information is flawed. In particular, the General Administrative Code is outdated and does not meet modern standards and needs (the Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia 2020, pages 197-199). For example, the General Administrative Code fails to set standards for disclosure of classified information and contains a flawed definition of a public agency (Ibid, pages 197-198).

Despite serious shortcomings in the legislative framework, the government has yet to implement a comprehensive legal reform (e.g., by adopting a separate law on the right to access information). The obstacles to accessing information are also mentioned in the European Commission's 2023 Report on Georgia.

According to the Report, “access to public information is ensured by the legal framework. Its enforcement is mixed across various government institutions. The long-awaited review of the overall framework needs to be carried out to enhance the administrative capacity for effective enforcement. Publication of information – including publishing monitoring and activity reports – is uneven and needs to be significantly improved. The legal framework to effectively guarantee citizens’ rights to access to public information should be reviewed“ (The European Commission, Georgia 2023 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement policy, page 19). The Report also reads that “Considerable delays and a recurring refusal to access public information pose a serious challenge for media and CSOs, affecting the timeliness, accuracy and quality of their work and reporting” (ibid, page 37).

In its annual parliamentary reports, the PDO repeatedly recommended the Government of Georgia to finalize and initiate the draft law regulating the freedom of information and the accompanying legislative changes and to apply to the Parliament for ratification of the Council of Europe Convention on Access to Official Documents of 18 June 2009.

Independence and effectiveness of independent institutions (other than NHRIs)

The PDO studied the activities conducted by SIS in 2023. The PDO examined 55 criminal cases (46 terminated and 9 ongoing) investigated by the SIS. The examination reveals that investigations usually satisfy the effectiveness standards. Nevertheless, the following shortcomings in investigations should be singled out: considerable delays in interviewing public officials who are alleged perpetrators or witnesses, failure to check the reasons for non-existence of recordings of video surveillance at police facilities, failure to timely document inspections of obtained video recordings and mistakes in classifying ill-treatment. In particular, the PDO’s study of both terminated cases and ongoing criminal cases investigated by the SIS in 2023 focused on incorrect classification of ill-treatment. In one of the cases, for example, the victim who had been arrested claimed that police officers beat him and burnt a cigarette onto his body. The investigation was incorrectly launched under subparagraph “b” of paragraph 3 of article 333 of the Criminal Code of Georgia (exceeding official powers by using violence or a weapon) instead of a specific provision criminalizing ill-treatment (such specific provisions are contained in articles 1441-1443).

To support the effectiveness of the SIS, the PDO has repeatedly recommended amendments to legislative framework applicable to the SIS in its parliamentary report and the rule 9 communications (please view pages 11-12 above).

Moreover, to support the adequate functioning of the SIS in practice, the PDO addresses the SIS with proposals about shortcomings and steps to be taken within investigations and refers alleged cases of ill-treatment to this body (55 cases referred in 2023). Furthermore, the PDO has also been engaged in preparation of internal documents of the SIS, e.g., the instruction on the use of handcuffs and a recommendation on reacting to crime notifications. In addition, to help improve the aforementioned flawed practice of ill-treatment classification, the PDO published a special report identifying problems in legislation and practice and proposing recommendations to address them.

As mentioned before, the independence and impartiality of the High Council of Justice (HCJ) as well as the independence of individual judges is questionable. It is noteworthy that the Venice Commission referred to the possibility of vetting the HCJ for the first time in its October 2023 opinion (European Commission for Democracy through Law, Follow-up Opinion, CDL-AD(2023)033, par. 11). Similarly, the European Commission report states that a system of extraordinary integrity checks for candidates and persons currently appointed to all leading positions in the judiciary should be established (The European Commission, Georgia 2023 Report, pages 20-21). Moreover, institutional problems within the judiciary are indicated by statements of former judges about attempts to interfere in their work (the PDO's 2022 parliamentary report, pages 82-83) and a rejection of a life-term appointment of judge that was allegedly motivated by her decision and opinions being unacceptable to the HCJ. Finally, the PDO notes the Office of the Independent Inspector responsible for examining disciplinary misconducts of judges. Considering its importance, the PDO finds that the quorum for appointment of the Independent Inspector should be increased to 2/3 of the HCJ members. Moreover, the Independent Inspector must become obliged to publish financial declarations to minimize corruption risks.

Enabling environment for civil society and human rights defenders

The PDO's previous Rule of Law Report mentioned the initiation of the draft law on "Transparency of Foreign Influence" in the Parliament in 2023. The draft law was criticized by the PDO, hundreds of CSOs and international stakeholders. The bill was withdrawn after large protests on 7-9 March 2023. Unfortunately, the law enforcement engaged in mass (administrative) arrests of protesters and used unjustified, disproportionate force against peaceful demonstrators.

After the aforementioned protests, the officials have continued to discredit civil society. In July 2023, the (now former) chairman of the ruling party made a statement targeting the transparency of NGO funding. Moreover, the Parliament Speaker stated that "multimillionaire NGOs serve the interests of "their donors, not of the Georgian people". The PDO finds that such

discreditation damages civil society space and human rights defenders (HRDs). Unfortunately, the parliamentary majority reintroduced the aforementioned draft law on "Transparency of Foreign Influence" in April 2024. This has been met with large scale protests by the society and criticism by the international stakeholders (for examples, please view: "March for Europe – Protest against the "Foreign Agents" law; Stano: Agents Law Not in Line with European Values, EU Expectations). The draft law once again risks stigmatizing of CSOs and media organizations and hindering their activities.

The government has continued the practice of administrative arrests and trials of civil society actors and protesters under the pretext of petty hooliganism and non-compliance with a lawful order of a law-enforcement officer, i.e., offences under the outdated and flawed Administrative Offences Code of Georgia. Civil society representatives were arrested, e.g., during a protest on 2-3 June, 2023. The police claimed that texts of their banners criticizing the government were offensive and violated public order. The PDO submitted amicus curiae opinions on these arrests to the courts. The PDO found that the protesters should not have been held liable, as freedom of expression protects political messages not posing a real and immediate threat of violence. However, the national court fined protesters and recognized them as offenders.

Unfortunately, LGBT+ rights defenders are still unable to fully enjoy their freedom of expression and assembly. In particular, the Pride Festival was disrupted by hate groups on 8 July 2023. As it can be inferred from the MIA's statement, the MIA was aware of the risk of violence but it still failed to ensure the safety of the festival.

The PDO actively supports HRDs by reacting to violations against them, voicing their needs and engaging with various actors. In particular, the PDO discussed the situation of HRDs in Georgia at meetings with, for example, UN Special Rapporteur, the CoE Commissioner for Human Rights, U.S. Department of State representatives and other international organizations. The PDO also facilitated a roundtable between the authorities and CSOs where the need to establish effective ways of cooperation and decision-making was discussed. While meeting the Ministry of Internal Affairs representatives, the Public Defender addressed developments at protests of civil activists and the MIA's reactions thereto. The PDO also met CSOs separately to discuss pertinent human rights issues. To uphold HRDs' rights, the PDO prepared various documents, e.g., the aforementioned amicus curiae and the input for the UN Special Rapporteur on the situation of HRDs. Moreover, the PDO participated in the First Anti-SLAPP Conference in Georgia. Finally, the PDO issued public statements in support of HRDs.

NHRI's recommendations to national and regional authorities

The PDO recommends to national authorities to:

- Amend the SIS mandate/legislative framework in accordance with the PDO's recommendations;
- Carry out a proper reform of the judicial system in accordance with the recommendations of the PDO and relevant international actors (such as the EU, the Venice Commission, the OSCE/ODIHR);
- Adopt a new Code of Administrative Offences in compliance with international and constitutional human rights standards.

Georgia 2024

Information from: Public Defender's Office of Georgia

Securitisation's impact on the rule of law and human rights

The main security threat to human rights in Georgia is the Russian occupation of the Georgian territories. In November 2023, the SSS reported about a murder of a Georgian citizen and illegal detention of another Georgian citizen by the occupying forces on the occupied territory. In December 2023, alleged murder of a Georgian citizen by the occupying forces was again reported. Moreover, the de facto regimes in Tskhinvali and Abkhazia have continued illegal detentions of Georgian citizens (see, for example, the following articles: Two Georgian Citizens Illegally Detained by Russian Occupation Forces; Georgian Citizen Illegally Detained by Russian Occupation Forces).

The de facto regimes also impose prohibitions or regulations on crossing the so-called crossing points. For example, Enguri Bridge and the so-called crossing point of Saberio-Pakhulani were closed in April 2023. The PDO issued a statement noting that the Enguri bridge and the so called crossing point of Saberio-Pakhulani are a vital means for Georgians living in Abkhazia to access education, better-quality medical services, cheaper products, pensions and to visit family members and relatives. As for the right to education, teaching in Georgian at schools is completely prohibited in Gali and restricted in Akhalgori. This constitutes ethnic cleansing of Georgians in the occupied territories as parents have had to move to the Georgian controlled territories to enable their children to study in Georgian. The PDO emphasizes that Russia, as a state exercising control over the occupied territories, is responsible for these human rights violations and for bringing perpetrators to justice.

In the context of securitization and limits to freedom of assembly, the PDO would like to again refer to the amendment to the Law on Assemblies and

Demonstrations that was adopted by the Parliament but vetoed by the President and that envisaged new grounds of restriction of the freedom of assembly. The explanatory note of the amendment mentioned information obtained by the SSS about an alleged plan to destabilize the country and ensuing security risks as problems the amendment claimed to address. However, the PDO's assessment found that the interests (e.g., protection of public order) allegedly served by the amendment were ensured through legislative acts already in force and, therefore, the amendment lacked justification. Moreover, the ODIHR's Urgent Opinion reads that the proposed amendments "seek to address an alleged security risk that is temporary in nature – October-December 2023 as indicated in the Explanatory Note – by introducing restrictions that will continue to apply even after the potential security risks will cease, thereby questioning the proportionality of the contemplated measures. […] It is also unclear why the existing legal framework which already contains some provisions regarding the "artificial" blocking of the roadway by assemblies and police powers to deal with suspected explosive devices are deemed insufficient" (ODIHR, Urgent Opinion on Proposed Amendments to the Law of Georgia on Assemblies and Demonstrations and to the Administrative Offences Code, November 2023, page 3).

As for the issue of secret mass surveillance, please view the section on separation of powers for information on investigations into alleged surveillance by the State Security Service.

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

The PDO regularly monitors the situation of the conflict-affected population. In 2023, the PDO representatives visited several villages near the occupation line (for example, the villages Khurcha and Tskou, Zardiantkari, Ergneti and Chorchana, Gugutiantkari, Odzisi and Gremiskhevi, Kirbali and Nikozi) and received information about the locals' needs. The PDO advocates for addressing the needs of the conflict affected population. For example, the PDO submitted its annual input to the OHCHR pursuant to the Human Rights Council Resolution on "Cooperation with Georgia" in 2023. The PDO's submission contains information on the human rights and humanitarian situation in Georgia's occupied regions. Later, the Public Defender made a speech based on the submission during the presentation of the report of the United Nations High Commissioner for Human Rights on Cooperation with Georgia held in Geneva in 2023. Moreover, the Public Defender has raised the issue of occupation at meetings with various stakeholders, such as the CoE Commissioner for Human Rights and the UN Resident Coordinator in Georgia. It should also be noted that the Public Defender held a working meeting on the rights situation of conflict-affected population in October 2023. The meeting

was attended by representatives of the Office of the State Minister for Reconciliation and Civic Equality, State Security Service, Ministry of Foreign Affairs, Parliament, international and non-governmental organizations. The participants discussed the rights situation of the conflict-affected population, the main challenges and possible solutions, the main tasks of the peace policy and the role of the Georgian Government, international community, non-governmental organizations and the media in this process.

In regard to the aforementioned amendment to the Law of Georgia on Assemblies and Demonstrations, the PDO issued a statement, criticizing the draft law as an intense restriction of freedom of assembly and expression and noting that no weighty interest was invoked to justify it. Moreover, the PDO applied to and asked the OSCE/ODIHR to prepare a legal opinion on the amendment in October 2023. Following the PDO's request, the OSCE/ODIHR published its Urgent Opinion in November 2023.

As for the issue of alleged secret surveillance by the State Security Service, the PDO has monitored investigations into surveillance cases and published its assessments in its 2021 and 2022 parliamentary and special reports.

NHRI's recommendations to national and regional authorities

The PDO recommends to national authorities to:

- Refrain from initiating or adopting draft laws, that contravene national and international human rights standards (including the standards of freedom of assembly), under the argument of protecting legitimate interests, such as public order, security or prevention of destabilization.
- Investigate cases of alleged secret surveillance and eavesdropping by the State Security Service effectively, in compliance with relevant international standards.

Georgia 2024

Information from: Public Defender's Office of Georgia

Implementation of European Courts' judgments

As it can be seen from the statistics, there is a space for improving the level of

implementation of the ECtHR judgments delivered against Georgia. According to the statistics, there were 31 leading and 49 repetitive cases pending as of 7 December 2023 and the number of both types of pending cases increased in 2023 compared to the number in 2022. The lack of effectiveness of execution of the ECtHR judgments can also be observed from the usual repetition of problems already raised in previous cases before the ECtHR and noted in the process of implementation of these cases. This issue is clearly illustrated, for example, by the government's continuous failure to ensure the complete realization of freedom of assembly and expression of the LGBT+ community. Although the government should have adopted effective (preventive and reactive) measures to this end in the process of execution of the cases of Identoba group, the government again fell short of this obligation on 8 July 2023 when hate groups disrupted the Pride Festival.

Moreover, the government has yet to fulfil some of the PDO's repeated recommendations regarding, for instance, the implementation of the Tsintsabadze group of cases. To provide an example, the last 3 rule 9 communications of the PDO called on the government to amend the Order N633 of the Minister of Justice of Georgia to make amendments to the order so that a prisoner's consent to medical examinations is not a precondition for notifying the Special Investigation Service about possible violence/injuries suffered by prisoners. Thus, more efforts are needed from the government to address systemic obstacles to implementing the ECtHR judgments.

A mechanism for the monitoring of the execution of judgments of the ECtHR was first established in 2016 through an amendment by the Parliament to its Rules of Procedure. According to this amendment, the Government of Georgia is required prior to 1 April each year to present a report (the Ministry of Justice (MoJ) prepares this report) on the state of execution of judgments of the ECtHR. The Human Rights Committee of the Parliament of Georgia will, following the submission of the MoJ report, convene a meeting to which representatives of the MoJ are invited. At its meeting with representatives of the MoJ, the members of the Human Rights Committee will engage in discussion with them, ask them questions and seek clarifications and explanations regarding why specific measures have or have not to be taken with regard to the cases concerned. Representatives of the Office of the Public Defender and civil society are invited to hearings of the Human Rights Committee and sends alternate reports to the Human Rights Committee. However, there were no hearings in 2020 and 2021 and the joint hearing of 2020 and 2021 MoJ reports was held on 9 December 2022. Up to this date there was no hearing held at the Human Rights Committee regarding examination of 2022 Moj report. After the hearing, the Human Rights Committee will discuss the MoJ report in its session and prepare an opinion which is approved by majority of those present at its meeting. The number of Members of the Parliament attending the hearing is very low, which suggests a lack of interest in the work of the Human Rights Committee on the part of

MPs.

As for supervising the execution process on the national level, the PDO considers that the parliamentary oversight could be improved in following directions: Parliamentary committees should timely conduct reviews through hearings and debates, assessing progress and identifying challenges. Legislators should propose laws or amendments to enforce compliance with ECtHR rulings and address human rights issues. Members of parliament need to question government representatives, demanding prompt updates on ECtHR judgment implementation. There is also a need of more effective collaboration with civil society and the PDO which will enable MPs to monitor compliance and advocate for reforms alongside human rights activists. The nature of the opinion prepared by the Human Rights Committee tends to be predominantly evaluating in a positive manner what has been reported to it. Although it reproduces points made in alternate reports, these do not generally feature in actual recommendations made in the opinion of the Human Rights Committee. The value of submissions to the Human Rights Committee could be enhanced by its giving feedback to PDO and other authors of alternative reports as to whether or not they were helpful in those cases where it has not explicitly taken them on board.

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

To support the implementation of the ECtHR judgments, the PDO regularly submits rule 9 communications to the Committee of Ministers (CM) of the Council of Europe (CoE). The PDO has submitted 5 new communications (about the cases of Identoba, Tkhelidze and Tsintsabadze groups as well as the case of Merabishvili v Georgia) since 2023. In these documents, the PDO refers to the CM decisions on execution of judgments, comments on the government’s action plans/reports and assesses general measures adopted in the course of the execution process. Thereby, the PDO contributes to the supervision of implementation of cases to ensure that the supervision is conducted properly and not closed prematurely. As explained above, the PDO also prepares alternative reports on the aforementioned MoJ reports on the state of execution of judgments of the ECtHR.

Apart from the rule 9 communications, engagement with stakeholders is another way for the PDO to contribute to the implementation process. In May and June 2023, the PDO held meetings with the representatives of the CoE Department of Execution of Judgments of the European Court of Human Rights. The parties discussed the execution procedure and the rule 9 communications of the PDO at the meetings. The PDO finds exchange of information and experiences in such formats to be useful for its participation in the implementation process. Moreover, the PDO’s representatives attended a

working meeting on the oversight of the execution of the ECtHR judgments and decisions in Georgia in November 2023. The meeting was dedicated to the Draft National Execution Strategy and Action Plan prepared by the CoE experts and involved stakeholders from the CoE, the public bodies and civil society. The PDO's representative, as one of the speakers, presented the PDO's position on improving the domestic monitoring of execution by the Parliament. Moreover, the PDO's representatives engaged in discussion of matters covered by the Draft National Strategy, such as enhancing cooperation and coordination between the authorities, resolving the backlog of pending cases, etc. Furthermore, the PDO's representative participated in the following events organized by the Council of Europe in March 2024: the Conference on Parliamentary Oversight over the Execution of European Court of Human Rights Judgments in Georgia and the Steering Committee Meeting on the Project "Reinforcing national execution of the European Court's judgments by Georgia". Thus, the PDO contributes to the supervision of the implementation on both national and international levels.

NHRI's recommendations to national and regional authorities

The PDO recommends to national authorities to:

- Consider the assessments and follow/fulfil the recommendations that are expressed in the Rule 9 communications submitted by the PDO;
- Strengthen the implementation process by, inter alia, improving the parliamentary oversight and meaningfully engaging the PDO and civil society in the process.

The PDO recommends to regional authorities:

- Closely monitor the implementation of European courts' judgments in Georgia and publicly issue assessments on the execution process with a view to pressure or prompt the Georgian government to enhance implementation.

Georgia 2024

Information from: Public Defender's Office of Georgia

Other challenges to the rule of law and human rights

Media freedom

Unfortunately, the challenges affecting media freedom have remained unresolved. This problem is illustrated by the continued assaults on journalists, such as attacks against journalists of critical media companies “Formula” and “TV Pirveli” in September 2023 and an attack against one of “Formula’s” founders and TV presenter Mikheil Mshvildadze in June 2023. The investigation into the latter attack was launched by the MIA under paragraph 1 of article 126 of the Criminal Code of Georgia (beating or another type of violence causing a victim's physical pain). The PDO called on the Prosecutor’s Office to transfer the case from the MIA to the SIS for further investigation in order to determine whether the attack constituted a violent persecution for expressing an opinion. Indeed, indications of such a persecution can be inferred from the statement made by N.G. who claimed responsibility for the attack. According to the case files examined by the PDO, N.G. explained that he had attacked Mikheil Mshvildadze because the latter, in N.G’s words, “offended the Patriarchate, referred to the cross as a symbol of violence and protected homosexuals”. Thus, the attack had a hate motive as Mikheil Mshvildadze became its victim because of his publicly held opinions and positions. The PDO finds that violence motivated by hatred or intolerance against a person for expressing an opinion should be classified as a persecution committed with violence and because/on the grounds of an expressed opinion under subparagraph “a” of paragraph 2 of article 156 of the Criminal Code (Persecution committed using violence or threat of violence). However, investigative authorities did not apply this specific provision and did not reclassify the charges in Mikheil Mshvildadze’s case, thereby failing to legally assess an alleged discriminatory motive of the attack.

Apart from physical assaults, another negative development in terms of media freedom was the suspension of accreditation for representatives of critical media by the Parliament's Office. The media representatives claimed that the reason for the suspension was that they had expressed opinions or asked questions unacceptable to the ruling party. In this connection, the PDO considers the Rules for the Accreditation of Mass Media Representatives in the Parliament of Georgia, approved by the order of the Speaker of the Parliament in February 2023, to be partially problematic. In particular, these rules do not provide for an appeal mechanism. Moreover, the decision to suspend journalists’ accreditation did not specify the deadline or procedure for appealing it, contrary to the requirement of the legislation. The Public Defender called on the Speaker of the Parliament of Georgia to make changes to the aforementioned rules to ensure that the regulation did not cause an unjustified interference in the activities of media representatives.

LGBTIQ+ rights

Inadequate protection of rights of the LGBTIQ+ community is a persisting

systemic challenge. Despite its seriousness, the government has overlooked this problem on the policy level. In particular, the National Strategy for the Protection of Human Rights for 2022-2030 was adopted by the Parliament in March 2023 without including the needs of the LGBTIQ+ community. Although the National Strategy separately refers to (the needs of) other vulnerable groups, such as persons with disabilities, ethnic and religious minorities, the document does not mention the LGBTIQ+ community at all. This has been criticized by the European Commission. According to the latter's report, "the national strategy for the protection of human rights for 2022-2030 does not address LGBTIQ+ rights. The authorities fail to recognise and acknowledge the systemic nature of discriminatory patterns and inequalities affecting LGBTIQ+ persons, and this has resulted in significant gaps in the measures taken to address these concerns. There is an absence of concrete measures to support LGBTIQ+ persons, combating discrimination based on sexual orientation and gender identity" (The European Commission, Georgia 2023 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement policy, page 40). The European Commission's report called on the Georgian government to "adopt the Human Rights action plan ensuring also the rights of LGBTIQ+ persons" (ibid, page 28). However, there is no reference to the LGBTIQ+ community in the 2024-2026 Action Plan for Protection of Human Rights that was approved by the government in December 2023. Unfortunately, the new National Concept of Gender Equality also fails to mention the LGBTIQ+ community.

NHRI's recommendations to national and regional authorities

The PDO recommends to national authorities to:

- Investigate attacks or any other offences committed against media representatives effectively, in compliance with relevant human rights standards;
- Ensure that the specific needs of the LGBTI+ community are properly addressed through measures to be adopted on the basis of the current policy documents and are adequately reflected in future policy documents.

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