

National Human Rights Institutions in the EU Member States

Strengthening the fundamental rights architecture in the EU I

This report relates most closely to article 47, right to an effective remedy, as enshrined in the Charter of Fundamental Rights of the European Union.

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Foreword

The fundamental rights architecture in the European Union has developed over time and continues to evolve. Regular ‘health checks’ on this situation are needed, not least when great change is taking place. This report is one of four by the European Union Agency for Fundamental Rights (FRA) that looks at closely related issues, institutions, and EU legislation, which contribute to the overarching architecture of fundamental rights in the European Union: namely, the Racial Equality Directive, and the monitoring mechanisms of equality bodies, data protection authorities, and national human rights institutions (NHRIs).

These three sets of monitoring bodies at the national level are highly relevant for the FRA, since it is specifically mandated to cooperate with, for example, governmental organisations and public bodies competent in the field of fundamental rights in the Member States – including national human rights institutions with the aim of improving ‘joined up’ cooperation between the national level and the EU level. It is the need for an ever more efficient protection and promotion of fundamental rights at the national level, in particular, coupled with European and international mechanisms, which forms the basis for considering the fundamental rights architecture in the European Union.

This report maps the situation in EU Member States with a view to the crucial role played by NHRIs in the field of fundamental rights. In all Member States – those with NHRIs in compliance with the Paris Principles, as well as those lacking an NHRI – the report reveals a rather fragmented setting with a variety of institutions promoting and protecting aspects of human rights in various ways. This is of particular concern in those Member States that lack an NHRI that could ensure that gaps in mandates or powers are addressed.

The report finds that EU Member States should all benefit from NHRIs that go above and beyond the minimum standards laid down in the Paris Principles; NHRIs in EU Member States should be guaranteed a transparent and representative structure along with a clear profile that boosts their credibility and thus increases the impact of their work; NHRIs in Europe need to be better enabled to cooperate among themselves and with EU and international mechanisms; and there is a need to revisit the overall fundamental architecture at the national level with a view to ensuring efficiency, effectiveness, and coherence.

In several Member States restructuring or establishment of NHRIs is in progress, and it is our intention that this Report may also contribute to those processes. The Treaty of Lisbon has created the impetus for reinforcing the fundamental rights architecture through EU accession to the European Convention on Human Rights, and conferring legally binding status on the Charter of Fundamental Rights. In this setting, NHRIs have an ever more important role to play in the European Union’s fundamental rights architecture.

Morten Kjaerum

Director

Executive Summary

Domestic protection of human rights

Human rights are first and foremost to be addressed at the national level. National human rights institutions (NHRIs) play an important role in the human rights architecture at the national level, through, for example, monitoring compliance, conducting research, initiating preventive measures, and awareness-raising.

Regional mechanisms, such as the European Court of Human Rights, have essential roles to play. The volume of cases reaching an institution such as the Court, further underscores the need for improved remedies at the national level. According to the Annual Report of the Court (2009), the number of applications lodged against the 27 EU Member States averages more than 16,000 a year over the last decade (ranging from fewer than ten to more than 3,000 applications by country and year). Moreover, the number of violations upheld by the Court in 2009 against the 27 EU Member States, was more than 700. The range varied from none in two Member States, to more than 150 in others; with two Member States having over 100 findings against them and five having over 50 violations. This shows the clear need for strengthened mechanisms at the national level, including greater recourse to NHRIs.

This report by the European Union Agency for Fundamental Rights (FRA), is intended to identify gaps and concerns in the fundamental rights architecture in the European Union. Data protection authorities, equality bodies, and national human rights institutions all constitute a cornerstone in this architecture. In fact, four of the 16 accredited NHRIs in EU Member States also serve as Equality Bodies as provided for by EU law (Belgium, The Netherlands, Slovakia, and United Kingdom).

This report will also increase awareness in EU institutions and in EU Member States of NHRIs and to underscore their importance as a central part of a comprehensive fundamental rights architecture in the European Union. With the Treaty of Lisbon, the accession to the European Convention on Human Rights, and the legally binding nature of the Charter of Fundamental Rights, a more comprehensive and systematic promotion and protection of fundamental rights should be supported within the European Union – which must include NHRIs.

A relatively low level of awareness of NHRIs worldwide has been identified in a recent survey by the United Nations. The study included NHRIs in Europe and identified a clear need to raise awareness on the issue. The lack of awareness has also been highlighted by the European Group of NHRIs in their “Strategic Plan” covering 2009 and 2010. Knowledge of and confidence in various human rights complaint mechanisms is scarce. A large EU-wide survey of 23,500 people from minority groups conducted by the FRA – the European Union Minorities and Discrimination Survey (EU-MIDIS) – revealed that over a third of respondents who had been discriminated against on grounds

of their ethnic minority or immigrant background, did not know how or where to report their experiences (“EU-MIDIS at a Glance”, Figure 4, page 9; see also EU-MIDIS Data in Focus report number 3 on ‘Rights Awareness’).

EU Member States also have a relatively fragmented approach to monitoring compliance with various human rights guarantees. This is highlighted, for instance, by the European Parliament in a 2008 resolution, stating that it is a “patchwork of legislation . . . lacking a common method of implementation . . . [leading to people not being] sufficiently aware of their rights” (Resolution of 20 May 2008 on progress made in equal opportunities and non-discrimination in the EU, Recital E in OJ C 279E, 19.11.2009, p. 23).

There is a need for a more comprehensive approach, with efforts and resources focused on key institutions, such as a visible and effective NHRI in each Member State. Again, the above European Parliament Resolution, also makes reference to the need for “adequately resource[d] and empower[ed] independent bodies . . . so that they can perform their role effectively and independently” (Paragraph 19). This is not to say that specialised bodies, such as equality bodies or data protection authorities, should inevitably be part of a single NHRI. Yet, there is a need for an overarching body that can ensure that all issues are addressed by some entity, that gaps are covered and that human and fundamental rights are given due attention in their entirety.

National human rights institutions and the ‘new architecture’

The aforementioned FRA survey of minorities, EU-MIDIS, identified respondents’ lack of redress as a major concern. Other projects by the FRA related to the Racial Equality Directive and the Data Protection Directive also examine independent monitoring at the national level through specialised bodies, as foreseen in both instruments. In addition, ongoing FRA studies on access to justice and the ‘joining up’ of local and national human rights protection seek to further contribute to the picture of available remedies for violations of fundamental and human rights where, once again, the role of NHRIs is essential.

Moreover, from the perspective of the FRA, given its advisory role on fundamental rights to EU institutions and Member States, links with the national level are prerequisites for effective activities. The founding Regulation of the Agency requires members of the Management Board appointed by Member States to be independent persons “having high level responsibilities in an independent national human rights institution or other public or private sector organisation.” (Articles 12(1)(a)). The cooperation of the FRA with NHRIs is, moreover, mandated in the Regulation (Article 8(2)(a)). This institutionalised cooperation is indicative of the importance of NHRIs for the promotion and protection of fundamental rights

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and how the FRA forms part of the new fundamental rights architecture in the European Union.

The need for stronger European cooperation among NHRIs is also emphasised in the earlier mentioned UN survey on NHRIs. In essence, this reinforces a reciprocal and joined-up structure between the national, European, and even international levels. NHRIs bring independent expertise to the national level and a local perspective to European and international fora, and they transfer international standards to a more concrete national level. NHRIs achieve the latter as they directly monitor compliance with international human rights standards, and as they contribute with their local knowledge to the activities of the treaty bodies mandated under the 'core' United Nations human rights treaties (to which all EU Member States are party) to monitor implementation.

NHRIs also operate as hubs within countries, by linking actors, such as government agencies with civil society. By making these connections, NHRIs contribute to narrowing the "implementation gap" between international standards and concrete measures. NHRIs also help to ensure that the indivisibility and interdependence of the full spectrum of human rights is given effect.

Fundamental rights obligations under the EU treaties do not only address EU institutions but also those of Member States when implementing EU law. For this reason, well-functioning NHRIs also have a positive effect on the EU legal system. Additionally, for the European Union, the now legally binding Charter of Fundamental Rights, the accession of the EU to the European Convention on Human Rights, and the overall implications of the Lisbon Treaty, including a more proactive duty to fight discrimination across all EU policies and activities, make an efficient fundamental rights system at the national level even more important.

To ensure that fundamental rights for the people living in Europe are real, there is a need for a stronger fundamental rights architecture, that can offer a 'one-stop-shop' or at least a portal to a set of institutions and mechanisms, that is sufficiently independent and empowered, and that can make a genuine difference on the ground.

This comparative report is based on a mapping of NHRIs and analogous entities in the EU-27. It describes the Paris Principles ("Principles relating to the status of national institutions: Competences and Responsibilities"), the minimum standards for NHRIs; explains the accreditation system based on these principles; analyses the NHRIs in Member States; and explores the relevance of NHRIs in the context of European Union law. The report, moreover, describes the profile of various bodies at the national level with remits related to human rights. The report also offers good practices from and Opinions on possible improvements to NHRIs in EU Member States.

Due to the variety of national systems it is impossible to do justice to the finer details of the operations of all these entities. The report is not seeking to directly compare the impact of the respective NHRIs. Rather, it provides a mapping of the legal status, powers, functions, and mandates of these bodies – features that certainly have a strong, though indirect, effect on actual promotion and protection of human rights.

The analysis of the NHRIs in this report mainly draws on 27 national reports produced by the FRA's group of legal experts (FRALEX). This comparative report is in turn based on a draft by members of the Austrian FRALEX team. FRALEX was set up in 2007, and is composed of highly qualified legal experts in the field of fundamental rights in each of the Member States of the EU. FRALEX delivers a variety of reports, analyses and studies at the national and comparative level, which are used as background material for FRA publications (for example, on homophobia and child trafficking). For further information see <http://fra.europa.eu/fraWebsite/research/fralex/fralex_en.htm>.

Opinions

The European Union Agency for Fundamental Rights has formulated the following opinions based on the findings and comparative analysis contained in this report:

Beyond the Paris Principles

All EU Member States should have NHRIs with a sufficient level of independence, powers, and a mandate related to the full spectrum of rights – at minimum the rights covered by the EU Charter of Fundamental Rights – as well as other relevant European and international instruments. NHRIs should also be equipped with strong preventive powers, and sufficiently resourced to be able to collect data and conduct research and awareness-raising. When possible, NHRIs should have quasi-judicial competence to hear and consider complaints and petitions, including powers to establish facts, compel the production of evidence, and summon witnesses. NHRIs must be fully independent and guaranteed a sufficient infrastructure with adequate funding so as to ensure the highest attainable level of operations irrespective of changes in the political leanings of successive governments, economic downturns, or perceived sensitivity of the matters they address. NHRIs should have a separate budget line and legislative prescription of adequate resources, with clear goals and measurement of performance. In this way, NHRIs are equipped for efficient promotion and protection of human rights. The Paris Principles should be taken as the very minimum standard for NHRIs in the European Union.

Transparent yet visible

An NHRI should be a prestigious and visible entity which should serve to boost its credibility and efficiency. In particular, it should have a title that includes “human rights” or possibly “fundamental rights” in its wording. An NHRI should, moreover, be or include a broad collegial body reflecting the composition of society, as far as possible, within the existing legal framework.

An NHRI should be headed by an individual appointed on the basis of his or her personal merit. The selected individual or, as the case may be, jointly with others in leadership positions, should have experience in the field of fundamental rights and possess administrative and management skills. Members of an NHRI (commissioners or equivalent), shall possess “appropriate experience in the management of public or private sector organisations and, in addition, knowledge in the field of fundamental rights” (FRA founding Regulation, Article 12).

NHRIs should select their members – serving in their individual capacity rather than as representatives of an organisation – through a transparent and efficient recruitment procedure so as to ensure trust and secure broad representativeness in terms of gender, political and other opinion, and participation of minorities. They should also benefit of a stable mandate. An NHRI should have the capacity to select and employ its own staff; secondment should not be the dominant feature, particularly with regards to senior posts.

Stronger European cooperation

NHRIs should be supported to contribute effectively to European and international human rights mechanisms, such as the various Council of Europe and UN monitoring mechanisms, as well as effective interaction with the FRA. In this way they can facilitate an improved ‘joined-up’ approach between the national, European, and international structures. This should be done by strengthening regional cooperation of NHRIs through supporting the establishment of a permanent entity for the European Group of NHRIs that, on a full time basis, could undertake the following: coordinate joint efforts; support the establishment of new NHRIs when needed; offer advice in establishment processes and during challenging periods; offer training and technical exchange and support. A further possibility for such regional cooperation could include assessing the impact of various models and methods of operation, systematic collection of more comparable data (enabling more systematic analysis), and closer follow-up of recommendations by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) to ensure progressive improvements of NHRIs in Europe.

A coherent architecture at the national level

Where no NHRI exists, the EU and its Member States should jointly support all national monitoring bodies, including equality bodies and data protection authorities, to explicitly comply with the relevant Paris Principles and their authoritative interpretation as laid down by the ICC. To the extent that existing ombudsmen are not also serving as NHRIs, their independence and mandate should be revisited with a view to compliance with the Paris Principles.

The EU and its Member States should also jointly work towards ensuring the inclusion of a clear reference both to the Paris Principles as well as the need for a comprehensive approach to monitoring in the wording of relevant proposals for EU legislation, such as the possible horizontal directive on equal treatment across all grounds of discrimination, a clear reference to the Paris Principles and the need for a comprehensive approach to monitoring. Equality bodies and NHRIs, and other relevant bodies, should be clearly encouraged to cooperate when these entities are not one and the same.

When adding specific mandates under various EU directives, consideration should also be given to promoting existing NHRIs as an alternative to the establishment of new specialised bodies, while ensuring that enlarged mandates are matched with enhanced capacity. There is a clear need to adopt a more comprehensive approach to human rights at the national level, with efforts and resources focused on key institutions – such as a visible and effective overarching NHRI that can act as a hub to ensure that gaps are covered and that all human rights are given due attention.

List of abbreviations

APF	Asia Pacific Forum of National Human Rights Institutions
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EU-MIDIS	European Union Minorities and Discrimination Survey
FRA	EU Agency for Fundamental Rights
FRALEX	FRA group of legal experts, composed of highly qualified legal experts in the field of fundamental rights in each of the Member States of the EU
GO	General Observation (ICC SCA)
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
OHCHR	(UN) Office of the High Commissioner for Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
NDPB	Non-departmental public body
NGO	Non-Governmental Organisation
NHRI (NHRIs)	National Human Rights Institution(s)
NPM	National Preventive Mechanisms (under OP-CAT)
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SCA	(ICC) Sub-Committee on Accreditation
UN	United Nations
UNGA	United Nations General Assembly
UPR	Universal Periodic Review

Abbreviations specific to particular Member States are generally not included

1. Introduction¹

National Human Rights Institutions (NHRIs) in the form of, most notably, human rights commissions, ombudsmen, or institutes, are indeed central for the promotion and protection of human rights.² When properly established and well running, they “are key elements of a strong, effective national human rights protection system.”³ Already at the World Conference on Human Rights (Vienna, 1993),⁴ states agreed on the need for the establishment of NHRIs and for ensuring their effective functioning by guaranteeing, for example, sufficient independence and a broad human rights mandate. This applies to all UN Member States, including Member States of the European Union.

The effective functioning of NHRIs, serving as links between the international and regional human rights machinery within the national context, correlates to what have become known as the Paris Principles⁵ (the Principles) – which constitute universally recognised minimum standards for NHRIs.⁶ On the basis of the criteria established in the Principles it can be said that as of December 2009, out of the 27 EU Member States, 16 have a recognised NHRI. Of these 16 Member States, only ten⁷ have NHRIs currently accredited as fully compliant with the Principles.

Accreditation is a collective effort by NHRIs worldwide under the auspices of the International Coordinating Committee of National Institutions for the Promotion and Protection of

Human Rights (ICC).⁸ The ICC includes member organisations that are either accredited as fully (A-status) or not fully (B-status) compliant with the Principles. A third level, C-status, does not grant membership to the ICC, and these institutions are therefore accredited as observers.⁹

Differentiating between (A-status) NHRIs and Equality Bodies or Data Protection Authorities

NHRIs, equality bodies, and data protection authorities are all meant to be independent monitoring bodies.

Equality bodies and data protection authorities have a focused and narrow mandate while an NHRI has a broader human rights mandate.

NHRIs have minimum criteria laid down in an international instrument, the Paris Principles, while the standards for equality bodies and data protection authorities are formulated in EU directives.

Equality bodies and data protection authorities should be independent but the criteria for determining ‘independence’ are not specified in the respective EU directives.

Monitoring of compliance with the criteria of ‘independence’ is undertaken for NHRIs by an international entity (ICC).

1 This comparative report is based on a draft by members of the Austrian FRALEX team, Manfred Nowak and Margit Ammer. FRALEX was set up in 2007, and is composed of highly qualified legal experts in the field of fundamental rights in each of the Member States of the EU. FRALEX delivers a variety of reports, analyses and studies at national and comparative level, which is used as background material for FRA publications.

2 See for example, UN Office of the High Commissioner for Human Rights (OHCHR) (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*; Commonwealth Secretariat (2001): *National Human Rights Institutions: Best Practice*; Venice Commission / Council of Europe (2010, forthcoming) *Vademecum on the Ombudsman*; EU Network of Independent Experts on Fundamental Rights (CFR-CDF) (2004) *Opinion 1. On equality bodies – sometimes being identical to NHRIs – see Equinet (2008) Between Impartiality and Responsiveness: Equality Bodies and Practices of Independence*; and European Commission (2006) *Catalyst for Change? Equality bodies according to Directive 2000/43/EC*.

3 Report of the United Nations Secretary-General to the UN General Assembly, A/64/320, 24 August 2009, paragraph 99.

4 Vienna Declaration and Programme of Action, I 36 (2): “encourages the establishment and strengthening of national institutions, having regard to the “[Paris] Principles . . . ”. (UN Doc. A/CONF.157/23, 12 July 1993.) Already as early as 1946, the United Nations was promoting the establishment of some form of human rights entity at the national level.

5 “Principles relating to the status of national institutions: Competences and Responsibilities”, defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by the Commission on Human Rights, Resolution 1992/54, in 1992 and by the General Assembly Resolution 48/134, in 1993.

6 International Council on Human Rights Policy (2005) *Assessing the Effectiveness of National Human Rights Institutions*, p. 5.

7 Northern Ireland and Great Britain are counted together as both form part of a single Member State (the United Kingdom). Additionally, the A-Status for the Swedish NHRI lapsed at the end of 2008. The new Swedish Equality Ombudsman is reportedly in the process of submitting an application for accreditation.

The different classifications for accreditation used by the ICC (and its Sub-Committee on Accreditation, SCA) are:¹⁰

- A: In full compliance with each one of the Principles
- B: Not fully in compliance with every Principle or insufficient information provided to make a determination
- C: Not a member of the ICC and participates as an observer only

In addition, NHRIs may be un-accredited, as they may not have applied for accreditation or may have lost accreditation.¹¹ NHRIs or analogous entities may of course, for various reasons, choose not to participate in any ICC activities.

8 With its incorporation under Swiss law in 2008, the name had to be supplemented with “Association” before the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. According to Art 3 of the Statute (31 July 2008, amended 21 October 2008 and 24 March 2009) however, the official logo with the name of the ICC retains the old name without ‘Association’ and in practice the name remains as it was before the incorporation.

9 This is so according to Paragraph 5 of the Rule of Procedures of the SCA, incorporated under ICC Statute Art 59. The same effect of observer could also be achieved through Art 50.6 of the Statute, allowing for NHRIs to be invited to participate as an observers. There are very few C-status institutions. Within the EU, only the NHRI in Romania has received this status, and in Europe outside of the EU, also Switzerland.

10 Previously there were also other categories, for example, A with reserve.

11 NHRIs are reassessed by the ICC every five-years.

National Human Rights Institutions in the EU Member States

An overview is provided for the Member States with NHRIs below (Table 1).¹² To be accredited by the ICC, an application from the NHRI in question is required. This means that human rights institutions in a given country are not by necessity a member of the ICC and some Member States do not even have an entity akin to an NHRI. The ICC accreditation process is supported by the UN Office of the High Commissioner for Human Rights (OHCHR).¹³

Table 1: NHRIs in EU Member States by Accreditation Status

Status	EU Member States
A	Denmark, France, Germany, Greece, Ireland, Luxembourg, Poland, Portugal, Spain, United Kingdom (with an NHRI in its constituent countries: Great Britain, Northern Ireland and Scotland ¹⁴)
B	Austria, Belgium, the Netherlands, Slovakia, Slovenia
C	Romania
Not accredited	Bulgaria, Cyprus, the Czech Republic., Estonia, Finland, Hungary, Italy, Latvia, Lithuania, Malta and Sweden ¹⁵

(Source: ICC Chart of the Status of National Institutions, 2 June 2009, <http://www.nhri.net> updated as of December 2009)

1.1. The Paris Principles and accreditation

The intention underlying the Paris Principles was the promotion of genuinely independent NHRIs to protect international human rights standards at the national level. To this end an instrument was drafted aimed at guaranteeing the effectiveness and independence of NHRIs with respect to the following: competence and responsibilities; composition and guarantees of independence and pluralism; methods of operation; and, where applicable, the ability to receive and act upon complaints.

The Principles are the universally recognised primary source establishing minimum standards for the effective functioning of an NHRI. The ICC applies these Principles to determine the accreditation status of NHRIs, whereby full compliance with the Principles warrants an A-status. A-status leads to voting rights in the ICC and active participation in international fora, most prominently in the UN Human Rights Council. B-status leads to membership of the ICC with a right to participate and speak at the general meetings of the ICC, but without the right to vote and the right to attend the UN Human Rights Council but not the right to speak.

12 Worldwide there are 63 institutions in all accredited as fully compliant (A-status) and another 12 with B-status. For a detailed global overview, see for example, UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*.

13 See <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx> (17.11.2009); see also for example, UN General Assembly (2009) *Report of the United Nations Secretary-General to the UN General Assembly, A/64/320*, 24 August 2009, para 5.

14 The Scottish Commission has been recommended for A-status by the ICC SCA, and an approval is expected by the ICC Bureau in late May 2010.

15 The A-Status for the Swedish NHRI (JämO) lapsed late 2008 and at present there is no accredited NHRI in Sweden.

Recently, the process of accreditation has been strengthened, and now includes an appeal process, greater transparency, more rigorous preparations before accreditation sessions, and more focused recommendations provided to NHRIs in order to ensure their compliance with the Paris Principles. The ICC is also seeking to ensure a wider distribution of their recommendations and a greater involvement in their activities of regional coordinating committees for NHRIs.¹⁶

Although the Paris Principles are not binding in international law, in practice, the document is regarded as the most authoritative instrument in this area. Given the credibility they enjoy – not the least through references in international treaties and in European Union legislation (see further below) – the Principles enjoy a high standing. Their aim is to ensure institutions' independence from the government so as to maintain their legitimacy and credibility as independent human rights bodies free to determine their own priorities and activities and, in doing so, seek to maximise the effective promotion and protection of human rights. These Principles are continuously being authoritatively updated and detailed by the ICC, through General Observations on key elements.¹⁷

1.2. NHRIs in the EU 27

A distinction is often made between different types of NHRIs such as commissions, ombudsmen, and institutes. EU-wide there are 11 A-status NHRIs (located in ten Member States),¹⁸ which comprise all types of institutions. Accordingly, the type of an institution does not have direct implications on the potential for accreditation as an A-status NHRI.¹⁹ Rather, national contexts may decide a particular form of NHRI is more appropriate and hence more efficient for the promotion and protection of human rights.²⁰

In EU Member States, as well as worldwide, the number of NHRIs with A-status (see Table 2 below) has increased over the last 20 years. In a decade (1999-2009) the number across the globe has increased from 15 to 65 while in the EU from five to 11, in ten different EU Member States. Several Member States are, however, in the planning phase of creating more fully

16 UN General Assembly (2009) *Annual report of the United Nations Secretary-General to the UN Human Rights Council, A/HRC/10/55*, 26 January 2009, paragraphs 5-10.

17 These General Observations are developed by the Sub-Committee on Accreditation (SCA), but for simplicity, ICC is used.

18 According to ICC SCA General Observation 6.6, one NHRI per member state is preferred but special situations might enable more than one to be accredited (such as for Northern Ireland, Britain, and Scotland) but if so, arrangements have to be in place to ensure that there is only one joint vote from the NHRIs in one Member State. With the 2007 Decision Paper, the ICC SCA has become increasingly rigorous and is not inclined to accredit several institutions from one state with limited mandates (such as previously four thematically mandated ombudsmen in Sweden).

19 On ombudsmen, see Venice Commission / Council of Europe (2010, forthcoming) *Vademecum on the Ombudsman*.

20 On the role of NHRIs in Europe, see: M. Kjærøum (2000) "The Experiences of European National Human Rights Institutions", in B. Lindsnaes et al (eds) *National Human Rights Institutions: Articles and Working Papers*, The Danish Centre for Human Rights. More generally, see: M. Kjærøum (2004) "National Human Rights Institutions Implementing Human Rights", in: M. Bergsmo (ed) *Human Rights and Criminal Justice for the Downtrodden*, Martinus Nijhoff Publishers, available online at: <http://www.nhri.net/pdf/NHRI-Implementing%20human%20rights.pdf> (09.02.2010); and M. Kjærøum (2007) "National Human Rights Institutions: A Partner in Implementation", in L. Muller (ed.) *The First 365 Days of the United Nations Human Rights Council*, Swiss Foreign Ministry.

fledged NHRIs,²¹ such as the Netherlands,²² Italy,²³ Belgium,²⁴ and Finland.²⁵ In Scotland, a third NHRI in the United Kingdom (after the Northern Ireland and the British commissions) has been recommended for A-status by the ICC SCA, and an approval is expected by the ICC Bureau in late May 2010. While the ICC was in place prior to 1999, a firm accreditation system was only introduced from that time. A precursor to the present accreditation system had been in place since the mid-nineties.²⁶

Table 2: EU Member States with an NHRI, by year of receiving A-status (1999-2008)

Year of A-Status	NHRIs Granted A-status
1999	Denmark, France, Poland, Portugal, (Sweden) ²⁷
2000	Spain
2001	Greece
2002	Luxembourg
2003	Germany
2004	Ireland
2006	Northern Ireland (UK)
2008	Great Britain (UK)
2010	Scotland (UK) – expected

(Source: ICC Chart of the Status of National Institutions, 2 June 2009, <http://www.nhri.net> updated as per ICC meeting November 2009)

While, as mentioned above, only some Member States have NHRIs accredited with the ICC, all 27 Member States have some form of monitoring bodies with a human rights remit. While NHRIs and various specialised mechanisms, such as equality bodies in Member States are making important contributions to the promotion and protection of human rights, there is still a significant need for institutions that satisfy the conditions for accreditation. Two of the main challenges that NHRIs or analogous entities in the Member States are facing include achieving and maintaining a satisfactory level of independence as well as an

adequate mandate and sufficient resources for dealing with a broad range of human rights issues.

While few of the non-accredited institutions in the Member States have a sufficiently broad mandate to cover all human rights, in some countries several institutions with more narrow mandates focusing on particular themes, such as discrimination or the rights of the child etc, could cover human rights generally by bringing together their individual mandates. However, with a variety of bodies engaged in partial performance of the functions that collectively would be typical of an NHRI, there is a risk of insufficient coordination and overlapping mandates. In the absence of a broadly mandated NHRI a number of areas may be unintentionally omitted or neglected, with consequent detrimental effects for the promotion and protection of human rights.²⁸ To the extent that ombudsmen are not also serving as NHRIs, criteria relating to independence and mandate should be revisited with a view to compliance with the Paris Principles. Ombudsmen institutions in Member States without NHRIs should be encouraged to apply for accreditation with the ICC.

Among the accredited institutions, the main concerns of the ICC include the absence of a broad mandate including both promotion and protection of human rights.²⁹ The absence of a clear mandate to engage in promotional activities would commonly apply to ombudsmen whereas the lack of a mandate to engage in protection activities is typical for institutes and commissions with an advisory role. Other issues concern insufficient independence from the government in the selection and appointment of the governing bodies and in the allocation of budgets.

During the last six years, of the four institutions in EU Member States that have applied for accreditation two have received A-status, those in Northern Ireland (Northern Ireland Human Rights Commission) and Great Britain (the Equality and Human Rights Commission). The NHRI in Slovakia was granted B-status and Romania received C-status. Taking re-accreditation into account during the same period, another nine NHRIs in EU Member States maintained their A-status: namely, Germany, Ireland, Luxembourg, Denmark, France, Greece, Poland, Portugal, and Spain, even though two of them (Luxembourg and Greece) were due for special review in late 2009.³⁰

Among all the institutions in EU Member States, whether they enjoy A- or B-status, one obvious point must be further highlighted: ten of the 17 NHRIs actually include “human rights” in their title. Given that promotion is a key part of a

21 UN General Assembly (2009) *Report of the United Nations Secretary-General to the UN General Assembly*, A/64/320, 24 August 2009, paragraph 43.

22 The Equal Treatment Commission (CGB) is expected to be expanded into an NHRI by January 2011.

23 A draft law was approved in April 2007 by the Chamber of Deputies but remains to be endorsed by the Senate. A draft was introduced in the Senate in late 2009 and discussed in February 2010. See also Italy in the United Nations Universal Periodic Report (UPR) process, UN General Assembly (2010) *Draft Report of the Working Group on the Universal Periodic Review, Italy*, A/HRC/WG.6/7/L.3, 11 February 2010, paragraph 7.

24 See for example, the proposal in: La Commission Belge des Droits Fondamentaux (without date) *présentation et projet d'accord*, <http://www.justicepaix.be/IMG/pdf/2006-CBDFondamentaux.pdf> (24.11.2009).

25 Speech by Minister of Justice Tuija Brax on 3 September 2009, stating that the government supports the idea of setting up an NHRI and that the Ministry of Justice established a committee on 26 June 2009 to prepare the matter.

26 The ICC was established in 1993, see UN Commission on Human Rights, E/CN.4/1994/45, 23 December 1993, paragraph 6.

27 The A-status for the Swedish NHRI (JämO) lapsed in late 2008, so for the time being there is no accredited institution in Sweden.

28 A clear geographical division, such as in the United Kingdom, with each NHRI having a broad human rights mandate within its respective geographical remit, with arrangements for co-ordination and a single vote in ICC proceedings, does not risk such thematic lacunae.

29 Based on the Reports and Recommendation by the ICC SCA available at: <http://www.nhri.net> (under Global / ICC Accreditation / Previous Sessions of the Sub-Committee on Accreditation) (21.10.2009).

30 During the re-accreditation of the Luxembourg Commission a downgrading to B-status by the end of 2009 was eminent unless certain documentary evidence could be presented. Since the Luxembourg Commission provided this, it maintained its A-status, however. Highlighted as problematic were: pluralism, nomination of commissioners, tenure and functional immunity of commissioners, absence of full-time membership, adequate funding and budgetary autonomy, and the relationships with civil society. Some of these issues were deemed addressed during the March 2009 session of the ICC SCA, but The Greek Commission is being screened regarding concerns over inadequate funding for core functions.

comprehensive mandate, including human rights in the title to an NHRI seems to be an essential step.

The EU can contribute to rights protection at the national level by promoting a more comprehensive approach – avoiding fragmentation and seeking synergy and collaboration – while simultaneously requiring Member States to secure national monitoring mechanisms in various specific fields (such as racial equality and data protection). At a minimum, where more than one body exists in a Member State these must be encouraged to cooperate sufficiently to be able to offer anyone seeking advice or redress a portal or a ‘one-stop-shop’ for all human rights issues. This should be done to facilitate access and to reduce public frustration.

The EU could also provide support in the accreditation processes, similarly to the UN at the international level, and to the work of the European Group of NHRIs in the ICC.³¹ When cooperating with NHRIs, closer collaboration between the UN OHCHR, the Council of Europe, and the European Union (in particular the FRA) is also essential to ensure coherent and consistent development.

1.3. The Union and international law

In the area of European Union law, certain EU directives require the establishment of monitoring mechanisms, such as the Racial Equality Directive, which refers to a “body or bodies for the promotion of equal treatment”.³² This directive also states that “[t]hese bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals’ rights.” These bodies shall have the competence to “provide independent assistance to victims of discrimination in pursuing their complaints about discrimination,” to conduct “independent surveys concerning discrimination,” and to publish “independent reports and making recommendations on any issue relating to such discrimination.”³³

When compared with the Racial Equality Directive, the Gender Equality Directive on Goods and Services displays similar language in the corresponding parts,³⁴ and the Gender Equality Directive (recast), in turn, has identical language to that of the latter directive.³⁵ The Data Protection Directive

similarly requires supervision at the national level with “complete independence”.³⁶ A detailed reference to the role of the Paris Principles in the design of monitoring mechanisms related to the draft Equal Treatment Directive (Horizontal Directive) has been proposed by the European Commission³⁷ as well as, in even stronger terms, by the European Parliament.³⁸

On a comparative note, to ensure the Agency’s independence from both EU institutions and Member States, the EU explicitly refers to the Paris Principles in the founding Regulation of the FRA on the composition of its Management Board.³⁹ A clear promotion of these standards in other instruments, such as those relating to independence at the national level, would be consistent with this approach.

At the global level several UN treaties call for the establishment of NHRIs or similar entities.⁴⁰ The 1965 convention against racial discrimination includes the possibility for a state to “establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction” (Article 14(2)).⁴¹ The 2002 optional protocol to the torture convention (OP-CAT, Article 3) calls for a “national preventive mechanism”,⁴² and the 2006 Convention on the Rights of Persons with Disabilities (CRPD, Article 33(2)) requires an “independent mechanism”. The latter convention calls for the national implementation mechanism to “promote, protect and monitor” and states that parties shall take the Paris Principles into consideration when setting up such an entity (33(2)). OP-CAT similarly refers to the Principles (18(4)). Moreover, the ‘Disability Convention’, calls for the full participation of “[c]ivil society, in particular persons with disabilities and their representative organizations”

31 On the need for this, see for example, European Group of the ICC (without date) *European Group ‘Strategic Plan’ 2009-2010*, Goal 2, p. 4.

32 2000/43/EC, 29 June 2000, Article 13: “body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.”

33 Article 13(2).

34 2004/113/EC, 13 December 2004, Article 12: “body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex” (emphasis added).

35 2006/54/EC, 5 July 2006, Article 20.

36 1995/46/EC, 24 October 1995, Article 28. Compare this with, for example, the Return Directive, 2008/115/EC, 16 December 2008: “an effective forced-return monitoring system.” 8(6). See also the FRA report on data protection authorities: *Data Protection in the European Union: the role of National Data Protection Authorities, Strengthening the EU fundamental rights architecture* (2010), in particular section 4.1.1. on independence.

37 The Draft Directive, see COM(2008) 426 final, 2 July 2008, recital 28: “In exercising their powers and fulfilling their responsibilities under this Directive, these bodies should operate in a manner consistent with the United Nations Paris Principles relating to the status and functioning of national institutions for the protection and promotion of human rights.”

38 The Parliament even argues for the principles of independence and adequate resources to be explicitly referred to in the text of the Directive (see Amendment 69, Parliament report A6-0149/2009, 20 March 2009). See also support on this in the Opinion (14 January 2009) from the European Economic and Social Committee, para 3.4.1.

39 Council of the European Union (2007) *Council Regulation (EC) No 168/2007*, 15 February 2007, Recital 20.

40 Even during the drafting of the two 1966 covenants (on civil and political rights and on economic, social and cultural rights respectively), considerations were made to include a requirement to designate or establish “national commissions on human rights” to “perform certain functions pertaining to the observance [of the two covenants]”; see section C, UNGA Res. 2200 (XXI), December 1966, where the GA requests the examination of this issue, as implementation measures related to the two covenants.

41 The Working Methods (Section B) of the Committee on the Elimination of Racial Discrimination includes relations with NHRIs and grants “accredited” NHRIs the possibility to provide information in relation to State Reports to the Committee; see: <http://www2.ohchr.org/english/bodies/cerd/workingmethods.htm> (09.02.2010).

42 The Nairobi Declaration states in paragraph 39 that NHRIs should be considered as national preventive mechanisms, “only if the necessary powers and resources are made available to them”. Adopted at the Ninth International Conference of NHRIs, Nairobi, Kenya, 21–24 October 2008, <http://www.nhri.net/2008/Nairobi%20Declaration%20-%20ENGLISH.pdf> (20.11.2009).

in the monitoring process.⁴³ UN Treaty Bodies as well as regional monitoring mechanisms have further stressed the Paris Principles in the operations of NHRIs. UN and regional mechanisms have also issued various recommendations related to NHRIs.⁴⁴

43 See further the thematic study by the OHCHR on the structure and role of national mechanisms for the implementation and monitoring of the Convention, for example, “[NHRIs] established on the basis of the Paris Principles are natural core entities of the monitoring framework at the national level” para 78, A/HRC/13/29, 22 December 2009.

44 See for example, Committee on the Elimination of Racial Discrimination (CERD) (1993) *General Recommendation No. 17*, 25 March 1993; Committee on Economic, Social and Cultural Rights (1998) *General Comment No. 10*, 1 December 1998; CERD (2002) *General Recommendation No. 28*, 19 March 2002, Paragraph 2(a); and CERD (2009) *General Recommendation No. 33*, 29 September 2009, paragraph 1(g); Council of Europe / Committee of Ministers (1997) *Recommendation No. R (97) 14 On the Establishment of [NHRIs]*, 30 September 1997; Council of Europe / Committee of Ministers (1997) *Resolution (97) 11, On Co-operation between [NHRIs] of Member States and between them and the Council of Europe*, 30 September 1997; European Commission against Racism and Intolerance (ECRI) (1997) *General Policy Recommendation No. 2: On Specialised Bodies to combat Racism, Xenophobia, Antisemitism and Intolerance at National Level*, 13 June 1997. See also NGO recommendations, such as the very detailed: Amnesty International (2001) *Recommendations on [NHRIs]*, 1 October 2001.

2. Legal Basis

2.1. The development of the concept of NHRIs

The formal basis for the concept of NHRIs dates back to 1946.⁴⁵ What were to be termed National (Human Rights) Institutions (or NHRI) were conceived of as entities at the national level contributing to the adherence to United Nations human rights standards and strengthening communication between the UN and its member states.⁴⁶ Efforts followed by the UN to promote human rights at the national level.⁴⁷ At that time, however, only a handful of states chose to establish some form of human rights body. With the changing political climate at the end of the Cold War, the Second World Conference on Human Rights was convened in Vienna (1993). One of the results of the conference was a renewed commitment to the establishment of NHRIs, now with great pressure from civil society.

In preparation for the 30th anniversary (1978) of the Universal Declaration of Human Rights (1948), the UN General Assembly endorsed a list of commemorative activities, including the establishment of “national or local institutions for the promotion and protection of human rights”⁴⁸ and the organisation of a special seminar on this topic to be convened in Geneva.⁴⁹

The “Seminar on National and Local Institutions for the Promotion and Protection of Human Rights”, was held from 18–29 September 1978 and concluded with the development of guidelines for NHRIs.⁵⁰ These guidelines listed a number of functions for NHRIs, including: information and education; issuing recommendations and advice to the government; reporting regularly to the authorities on compliance; conducting fact-finding, investigating complaints, and issuing concrete remedies in individual cases, including the power to summon witnesses and access evidence; promoting the incorporation of human rights provisions into national constitutions; realising economic, social and cultural rights;

cooperating with civil society; assisting in state reporting procedures under treaties; and facilitating research.

As for the structure, the 1978 Guidelines specified that NHRIs should: be founded in law or in the constitution; be autonomous and impartial; and have a composition that reflected the make-up of society. Members of an NHRI should be appointed for a fixed term without the possibility of arbitrary removal. Moreover, an NHRI should be adequately staffed, operate regularly, be accessible and, when appropriate, establish local or regional branches. The Guidelines indeed highlighted almost all the criteria that came to be incorporated into the Paris Principles.⁵¹

Renewed encouragement to establish NHRIs was given the following year,⁵² by emphasising the importance of “integrity and independence” as well as the role NGOs could play in an NHRI.⁵³

2.2. Legal developments

The next major leap for NHRIs came in 1991, with the development of the Paris Principles. Under the auspices of the UN Commission on Human Rights, a group of NHRIs met in Paris from 7–9 October 1991 and agreed on a set of principles guiding the criteria for NHRIs. These guidelines were subsequently approved by the Commission,⁵⁴ and – half a year after the Vienna World Conference on Human Rights – also by the UN General Assembly (UNGA).⁵⁵ In setting up or designating an NHRI, the right remained, however, for “each State to choose the framework” that was “best suited to its particular needs at the national level”.⁵⁶

With the 1993 Second World Conference on Human Rights in Vienna, another important step was taken for NHRIs.⁵⁷ For the first time, they were allowed to participate as such and

45 ECOSOC promoted the establishment in member states of “local human rights committees within their respective countries to collaborate with them [ECOSOC] in furthering the work of the Commission on Human Rights”, Resolution 2/9 (21 June 1946), para 5. ECOSOC followed up with a call for “national advisory committees on human rights”, E/RES/772(XXX), 25 July 1960, B, and E/RES/888(XXXIV), 24 July 1962, F.

46 For a description of the process from 1946 and onwards, see for example, B. G. Ramcharan (1979) “The Role of Regional, National and Local Institutions: Future Perspectives”, in B. G. Ramcharan (ed.) *Human Rights: Thirty Years after the Universal Declaration*, Martinus Nijhoff, p. 246.

47 In 1959, “A Memorandum on National Advisory Committees on Human Rights”, submitted by ECOSOC to the HR Commission (UN Doc. E/CN.4/791, 23 November 1959), proposed the monitoring of human rights problems at the national level, advising and supporting the government on human rights issues, and the organisation of conferences and seminars. In 1962, ECOSOC highlighted the tasks of conducting human rights studies, advising the government, and enriching public opinion (ECOSOC-Resolution 888 (XXXIV) F [24 July 1962]).

48 UN General Assembly (1977) A/RES/123(XXXII), 16 December 1977, Annex, 1(e).

49 UN General Assembly (1977) A/RES/123(XXXII), 16 December 1977, Annex, 2(b).

50 “Seminar on National and Local Institutions for the Protection and Promotion of Human Rights”, 18–29 September 1978, Geneva, United Nations, UN Doc. ST/HR/SER.A/2, paras. 184 et seq (II. Structure). Comments were solicited by the UN General Assembly on the guidelines, A/RES/46 (XXXIII), 14 December 1978, paragraph 2.

51 Principles relating to the status and functioning of national institutions for protection and promotion of human rights, UN General Assembly (1993) *Resolution A/RES/48/134* (20.12.1993) available at: <http://www2.ohchr.org/english/law/parisprinciples.htm> (02.09.2008).

52 UN General Assembly (1979) A/RES/34/49, 23 November 1979, Paragraph 1.

53 Paragraphs 2 and 3. The UN Commission on Human Rights decided to include the topic of NHRIs on their regular agenda, Res. 24 (XXXV), 14 March 1979.

54 UN Commission on Human Rights (1992) *Resolution 1992/54* (03.03.1992), Economic and Social Council (1992) *Official Records of the Economic and Social Council*, Supplement No. 2, E/1992/22, Annex I.

55 Principles relating to the status and functioning of national institutions for protection and promotion of human rights, UN General Assembly (1993) *Resolution A/RES/48/134* (20.12.1993) Annex, see also UN Doc. E/CN.4/1992/43 (16.12.1991).

56 UN General Assembly (1993) *Resolution 48/134*, paragraph 12. See also UN General Assembly (1993) *Vienna Declaration and Programme of Action*, part I, paragraph 36, UN Doc. A/CONF.157/23 (12.07.1993).

57 The first was held in Tehran, Iran, in 1968, commemorating 20 years since the adoption of the UDHR, during the International Year for Human Rights. See UNGA Res 2442 (XXIII), 19 December 1968.

to take the floor during the plenary meeting.⁵⁸ Moreover, the Vienna Declaration and Programme of Action reaffirmed “the important and constructive role” played by NHRIs which comply with the Paris Principles, and encouraged their “establishment and strengthening”.⁵⁹ The Conference further contributed to a framework conducive to the establishment and strengthening of NHRIs: the Vienna Declaration and Programme of Action recommended the United Nations General Assembly (UNGA) to consider the establishment of a High Commissioner for Human Rights,⁶⁰ and appealed to governments and other institutions “to increase considerably the resources” devoted to NHRIs.⁶¹ It further called for the UN to strengthen its efforts to support states wishing to establish NHRIs,⁶² and encouraged existing NHRIs to cooperate with each other and to exchange experiences bilaterally, through regional arrangements and the UN.⁶³ In addition, the Conference led to the informal creation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) that has since become formalised.⁶⁴

As noted above, several UN treaties call for the establishment of NHRIs or similar entities. UN Treaty Bodies as well as regional monitoring mechanisms have further stressed the Paris Principles in the operation of NHRIs. In a 1993 General Recommendation the Committee on the Elimination of Racial Discrimination advised governments, to “establish national commissions or other appropriate bodies, taking into account ... the [Paris] principles”.⁶⁵ Similarly, the Committee on Economic, Social and Cultural Rights, in a 1998 General

Comment, remind states that “Article 2 (1) of the Covenant obligates each State party ‘to take steps ... with a view to achieving progressively the full realization of the [Covenant] rights ... by all appropriate means’. The Committee notes that one such means, through which important steps can be taken, is the work of national institutions”.⁶⁶ The Committee also stresses the need to “ensure that the mandates accorded to all [NHRIs] include appropriate attention to economic, social and cultural rights”.⁶⁷ Finally, the Committee on the Rights of the Child, in a 2002 General Comment, states that “Independent national human rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention”.⁶⁸ The Comment also provides details about mandate and powers, establishment processes, resources, pluralistic representation, and so forth, saying that these issues “fall within the commitment made by States parties upon ratification to ensure the implementation [of the treaty]”.⁶⁹

The various UN treaty bodies’ Concluding Observations in response to state reports submitted under the respective treaty increasingly stress the need for NHRIs. UN Special Procedures mandate holders (such as Special Rapporteurs and Working Groups) have similarly recommended that states establish or reinforce existing NHRIs.

NHRIs are promoting human rights not only through work at the national but also international level: they may be heard during important UN human rights deliberations and contribute to the development of international treaties.⁷⁰ Examples of such treaties are the UN Convention on the Protection and Promotion of the Rights of Persons with Disabilities (CPRD) and the Optional Protocol to the Convention against Torture (OP-CAT).⁷¹ NHRIs play a crucial role in addressing the ‘implementation gap’

58 Prior to the 1993 Vienna Conference, only participation by states and accredited NGOs was envisaged at international UN-sponsored meetings. An ad hoc arrangement through interventions from the UN, national institutions and their governments (Canada, France and Australia) made the participation possible. See Canadian Human Rights Commission (as Chair of the ICC) (2008) *Fifteen Years after Vienna: Achievements and Challenges since the World Conference on Human Rights*, Background Paper presented to the International Conference “Global Standards Local Action” on the Occasion of the 15th Anniversary of the World Conference on Human Rights, 28–29.08.2008, Vienna (in the following: *Fifteen Years after Vienna* [2008]) pp. 6-7.

59 UN General Assembly (1993) *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23 (12.07.1993), part I, paragraph 36: “The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights... The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the ‘Principles relating to the status of national institutions’ and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.”

60 The Office of the High Commissioner supports NHRIs in many ways, in particular through its National Institutions Unit (NIU) within the OHCHR. See further below.

61 UN General Assembly (1993) *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23 (12.07.1993), part II, paragraph 74.

62 UN General Assembly (1993) *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23 (12.07.1993), part II, paragraph 84.

63 UN General Assembly (1993) *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23 (12.07.1993), part II, paragraphs 85-86.

64 The informal arrangement was formalised in Tunis 1993. Its role was among other things to assure the acceptance of NHRIs in international arena. For details see V. Aichele (2004) *Nationale Menschenrechtsinstitutionen in Europa*, Berlin: Deutsches Institut für Menschenrechte, p. 11. Since 1993, nature and mandate of ICC has evolved considerably, it is now an actor in its own right and defines itself as “a strong, credible, and influential international human rights actor, in the promotion and strengthening of NHRIs” providing “leadership in the promotion and protection of human rights”. See 20th Session of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) (2008) *ICC (Voting Members) Business and Planning Meetings: Record of Decisions*, 14.04.2008 and 17.04.2008 (in the following: *ICC Record of Decisions April 2008*) decision 2 (ICC Mission Statement). At this time the ICC was also formally incorporated under Swiss law.

65 CERD (1993) *General Recommendation 17, ‘Establishment of national institutions to facilitate implementation of the Convention’*, 13 March 1993, para 1.

66 Committee on Economic, Social and Cultural Rights (1998) *General Comment 10, ‘The role of national human rights institutions in the protection of economic, social and cultural rights’*, 14 December 1998, 1.

67 Committee on Economic, Social and Cultural Rights (1998) *General Comment 10, ‘The role of national human rights institutions in the protection of economic, social and cultural rights’*, Para 4.

68 UN Committee on the Rights of the Child (2002) *General Comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child*, paragraph 1: reference to Art. 4 CRC obliging States parties to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention”, 15 November 2002.

69 UN Committee on the Rights of the Child (2002) *General Comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child*, paragraph 1: reference to Art. 4 CRC obliging States parties to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention.”

70 For example, right to participate and speak in their own right from a designated seating area during the deliberations of the UN Human Rights Council (HRC) and other UN organs. See: J. Lynch (2009) “Fifteen Years after Vienna: The Role of National Human Rights Institutions”, in: W. Benedek, C. Gregory, J. Kozma, M. Nowak, C. Strohal, E. Theuermann (eds) *Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights*, Wien, Graz: Neuer Wissenschaftlicher Verlag, p. 160.

71 The Nairobi Declaration (Ninth International Conference of NHRIs) of 24 October 2008 states in paragraph 39 that NHRIs should encourage ratification of the OPCAT.

by monitoring the effective implementation of international human rights standards at the national level.⁷²

However, key challenges are still present at the national level. In general, these include a lack of political support; a high level of government influence in the appointment processes, in the NHRI's activities, or its resource allocation; as well as a weak protection mandate resulting in weakened credibility. It might also be difficult for NHRIs to maintain a cooperative relationship with the government when ensuring the implementation of its recommendations.⁷³ In addition, difficulties exist with the engagement of NHRIs at the international level. According to the recent OHCHR survey of NHRIs, global engagement with international and regional human rights mechanisms – particularly in following-up on recommendations – remains “significantly underdeveloped” and reflects “limited familiarity with these systems.”⁷⁴ While NHRI participation in the Universal Periodic Review (UPR) process of the UN Human Rights Council was considered to be “high”, interaction with treaty bodies was described as “moderate”, interaction with Special Procedures mandate holders as “low”, and interaction with other international mechanisms as “minimal.”⁷⁵ These points show the limited capacity of NHRIs permitting them to interact at different levels.

2.3. The Paris Principles

The Paris Principles⁷⁶ are the main normative source for NHRIs, establishing minimum standards required for their effective functioning.⁷⁷ The ICC applies these Principles as benchmarks to determine the accreditation status of NHRIs (as well as re-accreditation or special review, see below). A-status accreditation, meaning full membership in the ICC, provides the right to speak in international fora, for example the UN Human Rights Council. As B-status entails only partial compliance with the Principles, no voting rights in the ICC are granted and such institutions only have the right to attend sessions of the UN Human Rights Council without the possibility to make interventions.

UN bodies continuously emphasise the importance of the Paris Principles and recognise the need to further ensure their application.⁷⁸ Thus, even though these internationally defined Principles do not constitute binding international law, “in practice a country's policy choices are now limited.”⁷⁹

General Observations issued by the ICC Sub-Committee on Accreditation (SCA), formally adopted by the ICC, serve as interpretive tools for the Paris Principles.⁸⁰ However, as NHRIs come from different legal and democratic cultures, flexibility in interpretation is sought.⁸¹ The Principles ensure the institution's independence from the government, thus removing suspicions about the motives certain states may have in establishing NHRIs.⁸²

An NHRI should, according to the Principles,⁸³ have various characteristics, such as: competence to both promote and protect human rights, as broad a mandate as possible, and a mandate established in a constitutional or legislative act. In fulfilling its responsibilities an NHRI should be able to, *inter alia*, advise on any matter to government, parliament, and any other competent body, promote and ensure harmonisation of national legislation with international human rights instruments, cooperate with international and national organisations and institutions, and increase public awareness.

The Principles seek to ensure an institution's independence from the government with functions and powers aimed at promotion and protection of human rights. This is guaranteed by a binding legislative act securing existence, pluralistic composition, sufficiently broad competence, and by state funding. The Paris Principles are organised under four main headings: “Competence and responsibilities”, “Composition and guarantees of independence and pluralism”, “Methods of operation”, and the fourth heading, comprising additional principles for commissions with quasi-judicial competence, is named “Quasi-jurisdictional competence.”⁸⁴

72 UN Secretary-General, *Report on national institutions for the promotion and protection of human rights, A/HRC/7/69 (in the following UNSG Report A/HRC/7/69)* p. 5, paragraph 4; UN High Commissioner for Human Rights, *Annual Report 2007, A/62/36*, pp. 5-6, paragraph 15. See also V. Aichele (2004) *Nationale Menschenrechtsinstitutionen in Europa*, Berlin: Deutsches Institut für Menschenrechte, p. 9, refers to: UN/Centre for Human Rights (1995) *National human rights institutions: a handbook on the establishment and strengthening of national human rights institutions for the promotion and protection of human rights, Professional Training Series no. 4, New York/Geneva (in the following: UN Handbook [1995])*, paragraphs 207 et seq.

73 G. Magazzeni (2009) “The Role of OHCHR in Promoting National Human Rights Institutions”, in W. Benedek, C. Gregory, J. Kozma, M. Nowak, C. Strohal, E. Theuermann (eds) *Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights*, Wien, Graz: Neuer Wissenschaftlicher Verlag, p. 174.

74 UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, p. 5.

75 UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, p. 42.

76 The Paris Principles are attached in the Annex to this report.

77 International Council on Human Rights Policy (2005) *Assessing the Effectiveness of National Human Rights Institutions*, p. 6. For a critical perspective on the Paris Principles, see: International Council on Human Rights Policy (2nd ed 2004) *Performance & Legitimacy: National human rights institutions*, pp. 107 et seq.

78 See for example, Commission on Human Rights (2005) *National Institutions for the Promotion and Protection of Human Rights*, Resolution 2005/74 (20.04.2005), paragraph 2.

79 J. Lynch (2009) “Fifteen Years after Vienna: The Role of National Human Rights Institutions” in W. Benedek, C. Gregory, J. Kozma, M. Nowak, C. Strohal, E. Theuermann (eds) *Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights*, Wien, Graz: Neuer Wissenschaftlicher Verlag, p. 164. Lynch further argues on p. 164: “[...] today it can be said that a legitimate human rights institution can only be one that conforms fully with the Paris Principles.” (Emphasis in the original text).

80 ICC (2009) *Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions*, Version 4, June 2009, available at: http://www.nhri.net/2007/Statement_of_Compliance_May_2007_En.pdf (09.02.2010), p. 3. The first general observations date back to October 2006; further observations were subsequently developed. These General Observations are attached. See also UN General Assembly (2009) *Report of the Secretary-General*, 24 August 2009, A/64/320, para 105.

81 In order to ensure this flexibility, principles on how to interpret these General Observations were developed. See ICC (2008) *Report and Recommendations of SCA*, 21.-23.04.2008, Annex 4.

82 J. Lynch (2009) “Fifteen Years after Vienna: The Role of National Human Rights Institutions” in: W. Benedek, C. Gregory, J. Kozma, M. Nowak, C. Strohal, E. Theuermann (eds) *Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights*, Wien, Graz: Neuer Wissenschaftlicher Verlag, pp. 158-159.

83 The Paris Principles are attached in the Annex.

84 Quasi-jurisdictional competence was a mistranslation and the meaning was quasi-judicial, see: B. Burdekin (2007) *National Human Rights Institutions in the Asia-Pacific Region*, Brill, p. 24 (note 37).

2.4. The role of NHRIs

An NHRI can serve as a hub to link various actors (such as NGOs and government institutions) at the national level, but also to link the national level with the international human rights system.⁸⁵ The role of NHRIs under particular treaties has also been highlighted above. While being *national* human rights institutions, the NHRIs' mandate and function devolve in many cases from their state's *international* obligation to 'respect', 'protect' and 'fulfil' human rights.⁸⁶ NHRIs are considered as one of the "effective mechanisms for promotion and protection of human rights" required by international human rights instruments.⁸⁷ The High Commissioner for Human Rights affirms that an NHRI is a "key component of effective national human rights protection systems".⁸⁸ UN treaty bodies emphasise that NHRIs have become increasingly crucial partners in narrowing the implementation gap by monitoring how international human rights treaties are being put into practice.⁸⁹ The strengthening of national protection systems has become a central issue in the context of recent human rights reforms at UN level, given the need for the national level to take the lead in preventive strategies.⁹⁰

As far as prevention is concerned, NHRIs are important, as they are able to take proactive measures, specifically in areas such as the prevention of ill-treatment and torture during detention. Judicial bodies with more reactive forms of protection are less relevant in such contexts. Thus, NHRIs play a significant role in strengthening the rule of law and in the administration of justice, for example by contributing to reform and consolidation

of judicial and security institutions or improving and reforming prisons.⁹¹

NHRIs may also help to ensure that the indivisibility and interdependence of all human rights is given effect by including a broad mandate covering the full spectrum of rights.⁹² Moreover, NHRIs bring independent expertise and a local perspective to regional and international fora.

85 See for example, G. Magazzeni (2009) "The Role of OHCHR in Promoting National Human Rights Institutions", in: W. Benedek, C. Gregory, J. Kozma, M. Nowak, C. Strohal, E. Theuermann (eds) *Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights*, Wien, Graz: Neuer Wissenschaftlicher Verlag, p. 169.

86 See for example, J. Lynch (2009) "Fifteen Years after Vienna: The Role of National Human Rights Institutions" in: W. Benedek, C. Gregory, J. Kozma, M. Nowak, C. Strohal, E. Theuermann (eds) *Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights*, Wien, Graz: Neuer Wissenschaftlicher Verlag, p. 157, with regard to the situation prior to the Vienna World Conference 1993. See also, for example, G. de Beco (2007) *National Human Rights Institutions in Europe*, CRIDHO Working Paper 2007/01, also published in *Human Rights Law Review* Vol. 7, Nr. 2, pp. 331-370.

87 For example, Art. 2 ICCPR requires States to "adopt such legislative or other measures as may be necessary" to ensure that rights are given effect. Art. 3(a) and (b) ICESCR provide that States have to ensure that persons whose rights are violated have effective remedy as determined "by competent judicial, administrative or legislative authorities, or by any other competent authority of the legal system of the State".

88 UN High Commissioner of Human Rights, *Annual Report 2007*, A/62/36, pp. 5-6, paragraph 15. UN Commission on Human Rights (2005) *National Institutions for the Promotion and Protection of Human Rights*, Resolution 2005/74 (20.04.2005), paragraph 1.

89 See UN Committee on the Elimination of Racial Discrimination (CERD) (1993) *General Recommendation No. 17 on the Establishment of national institutions to facilitate implementation of the Convention*; and CERD (2002) *General Recommendation No. 28 on the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, paragraph 2 (a)*; CERD (2005) *General recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, paragraph 5 (j)*; UN Committee on the Rights of the Child (2002) *The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child*, CRC/GC/2002/2.

90 See B.G. Ramcharan (ed.) (2005) *The Protection Role of National Human Rights Institutions*, Martinus Nijhoff.

91 Compare M. Nowak (2009) "Background Paper – Challenges to National Implementation of International Human Rights Standards", in: W. Benedek, C. Gregory, J. Kozma, M. Nowak, C. Strohal, E. Theuermann (eds) *Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights*, p. 128. The ninth International Conference of NHRI of October 2008 was dedicated to the topic "The role of NHRIs in administration of justice".

92 Accordingly, the Human Rights Commission called upon States "to ensure that all human rights are appropriately reflected in the mandate of their national human rights institutions when established". UN Commission on Human Rights (2005) *National Institutions for the Promotion and Protection of Human Rights*, Resolution 2005/74 (20.04.2005) paragraph 5.

3. Accreditation procedure

The principal purpose of the ICC is the promotion and strengthening of NHRIs “in accordance with the Paris Principles” and the provision of “leadership in the promotion and protection of human rights”⁹³ Only NHRIs with full membership of the ICC, possess a range of rights including voting rights in the General Meeting of Members,⁹⁴ the International Conference of NHRIs⁹⁵ or Conferences of the Regional Groupings, and full participation rights in international fora such as the UN Human Rights Council.⁹⁶ Section 5 of the ICC Statute (Articles 10-23) provides rules on “Paris Principles Accreditation”.

In order to determine membership, i.e. full compliance with the Paris Principles, the ICC mandated the Sub-Committee on Accreditation (SCA)⁹⁷ to carry out the accreditation process. The SCA meets twice a year to review and analyse applications for accreditation, periodic re-accreditation (Article 15, ICC Statute)⁹⁸ and special reviews (Article 16, ICC Statute).⁹⁹ The accreditation process is supported by the UN Office of the High Commissioner for Human Rights.¹⁰⁰

In April 2008 the accreditation process was amended in accordance with the *Decision Paper on the Review of ICC Accreditation Procedures for NHRIs* in order to strengthen its

credibility and efficiency (in particular by becoming more rigorous, transparent and timely).¹⁰¹ The accreditation process thus became more thorough in assessing how effectively NHRIs exercise their mandate and engage with the international human rights system.¹⁰² In more detail, the process of accreditation was strengthened by introducing an appeal process, greater transparency, more rigorous preparations before accreditation sessions, and more focused recommendations provided to NHRIs in order to ensure their compliance with the Paris Principles. Through these reforms the ICC also seeks to ensure a wider distribution of their recommendations and a greater involvement in their activities of regional coordinating committees for NHRIs.¹⁰³ In the following pages the application process as amended by the *Decision Paper 2008 on the Review of ICC Accreditation Procedures for NHRIs* is presented.

Applicants are required to apply to the ICC Chairperson¹⁰⁴ and submit a detailed statement of compliance with the Paris Principles¹⁰⁵ and further documentation¹⁰⁶ to the ICC Secretariat at the OHCHR (National Institutions Unit, NIU).¹⁰⁷ The OHCHR

93 See ICC (2008) *Statute*, 30.07.2008, last amended on 24.03.2009, Art. 5. Art. 2 ICC Statute gives the ICC legal personality independent of its members. The ICC statute is available at: <http://www.nhri.net/2009/ICC%20Statute%20-%20FINAL%20as%20at%20Apr09%20ENGLISH.pdf> (17.09.2009); formerly ICC, *Rules of Procedure*, last amended 24.10.2006 (in the following: *ICC Rules of Procedure*); preamble. Apart from that, ICC assists NHRIs under threat, fosters education and training opportunities, develops and manages knowledge, develops guidelines and policies, and organises conferences. *ICC Record of Decisions April 2008*, Decisions 3.1.1 and 3.1.2.

94 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2008) *Statute*, 30.07.2008, last amended on 24.03.2009, Art. 38.

95 ICC (2002) *Rules of Procedure of International Conferences of National Institutions for the Promotion and Protection of Human Rights*, April 2002, Art. 5. The Rules of Procedure are available at: <http://nhri.net/2009/Conference%20rules%20final%20ENG.pdf> (17.09.2009).

96 Human Rights Council (2007) *Resolution 5/1, Institution-building of the United Nations Human Rights Council* (18.06.2007), Annex, part VII (Rules of Procedure), rule 7 (b): “Participation of national human rights institutions shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005, while ensuring the most effective contribution of these entities.” In Resolution 2005/74, the Commission on Human Rights decided to introduce modalities for allowing accredited NHRIs “to speak, as outlined in the report, within their mandates, under all items of the Commission’s agenda [...] to allocate dedicated seating to national institutions for this purpose and supporting their engagement with all the subsidiary bodies of the Commission.” (Commission on Human Rights (2005) *National Institutions for the Promotion and Protection of Human Rights*, Resolution 2005/74 (20.04.2005), paragraph 11 (a)).

97 The ICC SCA is composed of four members, i.e. one representative of the four regional groupings (Europe, Africa, Asia-Pacific, the Americas); it was established by the ICC rules of procedure and will (including its SCA Rules of procedure) remain in existence also after the introduction of the new ICC Statute, see: ICC (2004) *Rules of Procedure for the ICC Sub-Committee on Accreditation*, adopted by ICC members at its 15th session (14.09.2004) in Seoul; amended by ICC members at its 20th session (15.04.2008) in Geneva, ANNEX 1 to the ICC Statute, rule 2.1. Currently the four members are the NHRI of Germany (chair), Rwanda/Morocco, Republic of Korea and Canada (see ICC (2009) *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, 26.-30.03.2009, rule 1.2.).

98 Re-accreditation applies to already existing accredited institutions.

99 Re-examination of an institution is considered bona fides if circumstances have changed, for example, revisions in founding legislation.

100 See <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx> (17.11.2009); see also for example, UN General Assembly (2009) *Report of the United Nations Secretary-General to the UN General Assembly, A/64/320* 24 August 2009, para 5.

101 ICC Working Group on Accreditation (2008) *Decision Paper on the Review of ICC Accreditation Procedures for National Human Rights Institutions (NHRIs)*. The Decision Paper was adopted at the 20th ICC session in April 2008; it was also decided to amend the ICC SCA Rules of Procedure accordingly (ICC (Voting Members) Business and Planning Meetings: Record of Decisions, 14.04.2008 and 17.04.2008, Decisions 8.1 and 8.2). For details compare also Human Rights Council (2008) *Annual Report of the UN High Commissioner for Human Rights* and Reports of the OHCHR and the Secretary-General: *Process currently utilised by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to accredit national human rights institutions in compliance with the Paris Principles and to ensure that the process is strengthened with appropriate periodic review and ways and means of enhancing participation of national human rights institutions in the work of the Human Rights Council, A/HRC/7/70*, 18.01.2008.

102 ICC (2009) *Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions*, Version 4, June 2009, available at: <http://www.nhri.net/2009/Guidelines%20for%20accreditation%20application%20June%202009%20ENGLISH%20.pdf> (17.09.2009) p. 1. See also ICC Working Group on Accreditation (2008) *Decision Paper on the Review of ICC Accreditation Procedures for National Human Rights Institutions (NHRIs)*, March 2008 (adopted by the ICC in April 2008 at its 20th session); the Working Group proposed to measure the effectiveness by indicators for each criteria set out in the Paris Principles, for example, considering input of national stakeholders (part IV, p. 21). For background information with regard to the accreditation process see J. Lynch (2009) “Fifteen Years after Vienna: The Role of National Human Rights Institutions” in: W. Benedek, C. Gregory, J. Kozma, M. Nowak, C. Strohal, E. Theuermann (eds) *Global Standards – Local Action: 15 Years Vienna World Conference on Human Rights*, Wien, Graz: Neuer Wissenschaftlicher Verlag, pp. 163-166.

103 UN General Assembly (2009) *Annual report of the United Nations Secretary-General to the UN Human Rights Council, A/HRC/10/55*, 26 January 2009, paragraphs 5-10.

104 Until 2010 the Chief Commissioner of the Canadian Human Rights Commission, thereafter the Chief Commissioner of the New Zealand Human Rights Commission.

105 ICC (no date) *Template for the Statement of Compliance with the Paris Principles* available at: <http://www.nhri.net/default.asp?PID=608&DID=0> (17.09.2009).

106 For example, legal founding documents, recent annual report, documents on organisational structure and annual budget.

107 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2008) *Statute*, 30.07.2008 last amended on 24.03.2009, Art. 10 (former *ICC Rules of Procedure*, Art. 3 (c)). See also ICC (2009) *Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions*, Version 4, June 2009, p. 1. The applicant is responsible to ensure that correspondence and application materials have been received by ICC Secretariat. See ICC Sub-Committee on Accreditation (2009) *General Observations*, Annex 1 to Guidelines for Accreditation Version 4, June 2009, rule 6.1. (g). Information submitted has to be in one of the working languages of the ICC, i.e. English, French or Spanish (Guidelines for Accreditation, Version 4, June 2009, p. 2).

shares the file with the four ICC SCA members and prepares a summary,¹⁰⁸ which forms – alongside the statement of compliance – the basis for discussions during the SCA meetings.¹⁰⁹ During deliberations, contact persons representing applicant NHRIs are not allowed to be present but have to be available by phone.¹¹⁰ The SCA formulates recommendations concerning compliance with the Paris Principles (in law and in practice) and forwards them to the applicant NHRIs, which has the opportunity to respond within 28 days.¹¹¹ Afterwards, the OHCHR submits the report and the recommendation of the ICC SCA to the 16 ICC voting members who take the ultimate decision, i.e. approval or rejection within twenty days.¹¹² A specific procedure regulates cases in which ICC members do not agree with the SCA recommendation.¹¹³

The ICC accredits NHRIs either as fully compliant (A-status), not fully compliant (B-status) or failing to comply (C-Status) with the Principles. An overview of A-status (sorted by year of accreditation) NHRIs worldwide is provided below (Table 3).¹¹⁴

Table 3: States with an NHRI, by year of receiving A-status (1999-2008)

Year of A-Status	Number of States	NHRIs Granted A-status (EU Member States in bold)
1999	14	Denmark, France, Poland, Portugal, (Sweden) , ¹¹⁵ Australia, New Zealand, India, The Philippines, Argentina, Canada, Costa Rica, Mexico, Panama, Peru
2000	8	Spain , South-Africa, Bolivia, Togo, Indonesia, Malawi, Senegal, Honduras
2001	7	Greece , ¹¹⁶ Ghana, Rwanda, Columbia, Morocco, Uganda
2002	8	Luxembourg , ¹¹⁷ Malaysia, Mauritius, Venezuela, Ecuador, Guatemala, Niger, Nepal

108 The summary is also shared with OHCHR desk officers (who are invited to provide their views during ICC SCA meeting) and UN field presences, and the NHRI concerned. See ICC (2009) *Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions*, Version 4, June 2009, p. 2.

109 ICC (2009) *Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions*, Version 4, June 2009, p. 2.

110 ICC (2009) *Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions*, Version 4, June 2009, p. 3.

111 ICC (2009) *Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions*, Version 4, June 2009, p. 3.

112 For details regarding this procedure see: International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2008) *Statute*, 30.07.2008 last amended on 24.03.2009, Art. 12.

113 See International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2008) *Statute*, 30.07.2008 last amended on 24.03.2009, Art. 12 ICC; ICC (2004) *Rules of Procedure for the ICC Sub-Committee on Accreditation*, adopted by ICC members at its 15th session (14.09.2004) in Seoul; amended by ICC members at its 20th session (15.04.2008) in Geneva, ANNEX 1 to the ICC Statute, rule 6.1.

114 Worldwide there are in all 65 institutions accredited as fully compliant (A-status) and another 12 with B-status. For a detailed global overview, see for example, UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*.

115 The A-status for the Swedish NHRI (JämO) lapsed late 2008.

116 A with reserve in 2000.

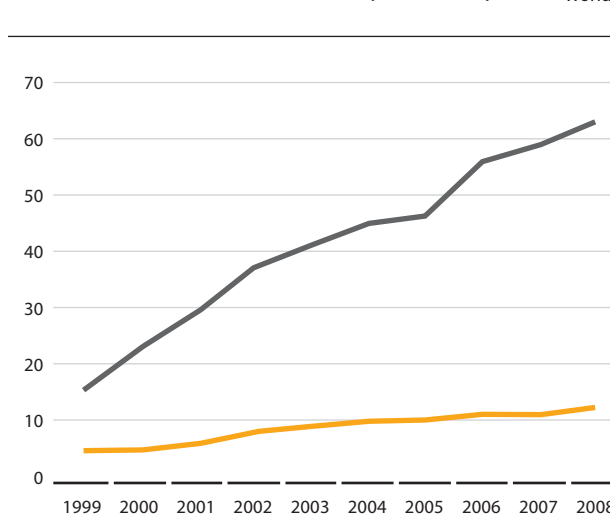
117 A with reserve in 2001.

Year of A-Status	Number of States	NHRIs Granted A-status (EU Member States in bold)
2003	4	Germany , ¹¹⁸ Paraguay, Mongolia, Algeria
2004	5	Ireland , ¹¹⁹ Republic of Korea, Bosnia and Herzegovina, Albania, Thailand
2005	1	Kenya
2006	11	Northern Ireland (UK) , Jordan, El Salvador, Nicaragua, Azerbaijan, Namibia, Tanzania, Zambia, Norway, Egypt, Armenia
2007	2	Georgia, Afghanistan
2008	4	Great Britain (UK) , Timor-Leste, Croatia, Russia
2010	1	Scotland (UK) – <i>expected</i>

(Source: ICC Chart of the Status of National Institutions, 2 June 2009, <http://www.nhri.net> updated as per ICC meeting November 2009)

The total number of A-status NHRIs worldwide, as well as in EU Member States, has increased dramatically over the last decade (through 2008), from 15 to 65 worldwide and from five to 11 within the EU. Figure 1 below illustrates these developments.

Figure 1: Increase in number of A-status NHRIs: World total and EU Member States (1999-2008)



The accreditation of NHRIs is periodically reviewed, at least every five years ('re-accreditation').¹²⁰ NHRIs are contacted by the OHCHR indicating a deadline for submission of the new application, i.e. four months before a scheduled ICC SCA-

118 A with reserve in 2001.

119 A with reserve in 2002.

120 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2008) *Statute*, 30.07.2008 last amended on 24.03.2009, Art. 15 ("Periodic Re-accreditation") that mentions A-status but through a 2009 decision, also those with B-status are similarly reviewed; see also diagram in the: ICC (2009) *Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions*, Version 4, June 2009, p. 4. For the ICC SCA Re-Accreditation Schedule 2009-2013 (as of June 2009) see http://www.nhri.net/2009/Calendar%20March%202009%20-%20Nov%202013%20_updated%20JUNE09_%20Final.pdf (17.09.2009).

National Human Rights Institutions in the EU Member States

session.¹²¹ Applications submitted after the deadline are not considered and result in a suspension of the accreditation.¹²² The consideration of a re-accreditation application can be deferred for a maximum period of one year¹²³ and only if a written justification for deferral containing “compelling and exceptional” reasons (in the view of the ICC Chairperson) is provided.¹²⁴ Withdrawal of an application for re-accreditation does not stop the re-accreditation from proceeding.¹²⁵

3.1. Classification

The different accreditation classifications used by the ICC reflect its rules of procedure.¹²⁶

- “A: Voting Member – Fully in compliance with each of the Paris Principles”;¹²⁷
- “B: Non-Voting Member – Not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination”;¹²⁸ such NHRIs have the right to participate as observer in open meetings and workshops of the ICC.
- “C: Not in compliance with the Paris Principles”;¹²⁹ these NHRIs may, with consent of the ICC, also participate in meetings or workshops as observers.¹³⁰

Prior to the adoption of the ICC Statute in October 2008, “A(R) (accreditation with reserve)” classification was also granted in cases where the preliminary analysis indicated compliance with the Principles but insufficient documentation was submitted to warrant an A-status classification.¹³¹

By 1 January 2010, 65 NHRIs have A-status worldwide,¹³² among these 11 institutions in ten EU Member States.¹³³ Thirteen NHRIs worldwide, out of which five are in EU Member States, have B-status. The number of NHRIs and the degree to which NHRIs worldwide comply with the Paris Principles have increased considerably.

3.2. Special review

The ICC Chair or the SCA may initiate a special review if “it appears that the circumstances of any NHRI that has been accredited with an A-status under the former Rules of Procedure may have changed in a way which affects its compliance with the Paris Principles”.¹³⁴ An NHRI can be placed under review for a maximum period of one and a half years. During the period of review, the NHRI concerned may submit information to demonstrate its full compliance with the Paris Principles and all privileges connected with the existing accreditation status remain in place. Following this period, accreditation lapses unless concerns expressed by the ICC (SCA) have been adequately addressed.¹³⁵

3.3. Assessment of NHRIs in EU Member States

The ICC accreditation and review processes of NHRIs in EU Member States highlights the most significant causes of concern.

The concerns that have been raised by the ICC in relation to NHRIs with A-status in EU Member States over the last three years (2007-2009) are tabulated in Figure 2. It is possible to identify areas that appear to be generally weak among NHRIs in EU Member States, such as the mandate, pluralism, selection and appointment, and adequate funding.

121 ICC (2009) *Guidelines for Accreditation & Re-Accreditation of National Human Rights Institutions to the International Coordinating Committee of National Human Rights Institutions*, Version 4, June 2009, p. 2.

122 ICC Sub-Committee on Accreditation (2009) *General Observations*, Annex 1 to Guidelines for Accreditation Version 4, June 2009, rule 6.1. (b). See also International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Statute*, 30.07.2008 last amended on 24.03.2009, Art. 19. Suspension is possible up to one year during which time the NHRI may submit its application for re-accreditation. Afterwards, the accreditation status lapses (see *ICC SCA General Observations*, rule 6.2. (c)). An NHRI with suspended A-status is not entitled to vote in the ICC and participate in the international fora, for example, the UN Human Rights Council (*ICC SCA General Observations*, rule 6.4).

123 After one year, the status lapses (International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Statute*, 30.07.2008 last amended on 24.03.2009, Art. 20; *ICC SCA General Observations*, Annex 1 to Guidelines for Accreditation Version 4, June 2009, rule 6.2. (b)).

124 ICC Sub-Committee on Accreditation (2009) *General Observations*, Annex 1 to Guidelines for Accreditation Version 4, June 2009, rule 6.2. (a).

125 See case of the Ombudsman of Sweden, which withdrew its application for re-accreditation on the basis of an ongoing effort to merge all existing specialised Ombuds institutions. ICC (2007) *Report and Recommendations of the SCA*, 22.-26.10.2007, p. 8, rule 3.16.

126 ICC (2004) *Rules of Procedure for the ICC Sub-Committee on Accreditation*, adopted by ICC members at its 15th session (14.09.2004) in Seoul; amended by ICC members at its 20th session (15.04.2008) in Geneva, ANNEX 1 to the ICC Statute, rule 5; compare also ICC Statute, Art. 1.1.

127 ICC (2004) *Rules of Procedure for the ICC Sub-Committee on Accreditation*, adopted by ICC members at its 15th session (14.09.2004) in Seoul; amended by ICC members at its 20th session (15.04.2008) in Geneva, ANNEX 1 to the ICC Statute, rule 5.

128 ICC (2004) *Rules of Procedure for the ICC Sub-Committee on Accreditation*, adopted by ICC members at its 15th session (14.09.2004) in Seoul; amended by ICC members at its 20th session (15.04.2008) in Geneva, ANNEX 1 to the ICC Statute, rule 5.

129 ICC (2004) *Rules of Procedure for the ICC Sub-Committee on Accreditation*, adopted by ICC members at its 15th session (14.09.2004) in Seoul; amended by ICC members at its 20th session (15.04.2008) in Geneva, ANNEX 1 to the ICC Statute, rule 5.

130 ICC Statute does not mention this status at all (compare Art. 1(1)).

131 See: ICC SCA (2008) *Report and Recommendations of the SCA*, p. 1, paragraph 1.6.

132 Another two institutions have A(R)-status.

133 As of November 2008, the United Kingdom has three NHRIs: in Great Britain the Equality and Human Rights Commission; in Northern Ireland the Northern Ireland Human Rights Commission and in Scotland the Scottish Human Rights Commission, the latter with expected A-status received in March 2010. Accreditation status of Sweden lapsed due to merging of institutions into one NHRI, effective 01.01.2009. See Chart of the Status of National Institutions accredited by the ICC, as of 02.06.2009, available at: http://www.nhri.net/2009/Chart%20of%20the%20Status%20of%20NIs%20_2%20June%202009__final.pdf (18.09.2009).

134 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2008) *Statute*, 30.07.2008 last amended on 24.03.2009, Art. 16(2) (former *ICC Rules of Procedure*, rule 3 (g)). The regular re-accreditation process is deferred until the review is completed.

135 ICC SCA (2009) *General Observations*, Annex 1 to Guidelines for Accreditation Version 4, June 2009, rules 6.3. (a)-(c).

Figure 2: ICC assessment of A-status NHRIs in EU Member States, 2007-2009

ICC General Observations Areas raised as in particular problematic are shaded in grey	DENMARK	FRANCE	GERMANY	GREECE	IRELAND	LUXEMBOURG	POLAND	PORTUGAL	SPAIN	UNITED KINGDOM	
										NIHRC	EHRC
Year of Review Session	2007	2007	2008	2007	2008	2009	2007	2007	2007		2008
1. Competence and responsibilities											
1.1 Establishment											
1.2 Human rights mandate											
1.3 Encouraging ratification of treaties											
1.4 Interaction with the International Human Rights System											
1.5 Cooperation with other human rights institutions											
1.6 Recommendations											
										N/A	
2. Composition and guarantees of independence and pluralism											
2.1 Ensuring pluralism											
2.2 Selection and appointment of the governing body											
2.3 Government representatives											
2.5 Immunity											
2.6 Adequate Funding											
2.7 Staff											
2.8 Full-time Members											
2.9 Guarantee of tenure for members of governing bodies											
2.10 Administrative regulation											

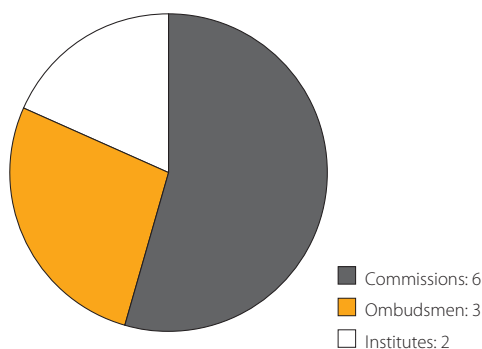
4. Comparative overview

The comparative overview of the law and practice in EU Member States in the present chapter is based on 27 National Reports drafted by the members of FRA's group of legal experts (FRALEX). References to sources of domestic law and practice are also based on the national reports.

4.1. Typology of NHRIs

Any comparison among NHRIs is bound to be problematic. Many diverging contextual features make comparison difficult. The use of a typology that emphasises main functions is however helpful to get an overview of such variety, although it will inevitably involve simplification. The Paris Principles are silent on any classification of NHRIs, and the structures and mandates of the accredited institutions differ considerably.¹³⁶ Categorisations in literature often distinguish between single-member as opposed to multi-member institutions, types of human rights mandate, main functions, or the political and legal traditions within which they operate.¹³⁷

Figure 3: Proportion of Types of NHRIs in EU Member States



Common typologies are constituted by commissions, ombudsmen and institutes (Figure 3 above).¹³⁸ Out of 11 A-status NHRIs in EU Member States, six are commissions (in five Member States), three are ombudsmen, and two are institutes. This simple typology is used in elaborating on the NHRIs with A-status, below. Commissions include the NHRIs in

136 V. Aichele (2004) *Nationale Menschenrechtsinstitutionen in Europa*, Berlin: Deutsches Institut für Menschenrechte, pp. 12-13. See also V. Aichele (2003) *Nationale Menschenrechtsinstitutionen: ein Beitrag zur nationalen Implementierung von Menschenrechten*, Frankfurt am Main, pp. 102, 110.

137 See for example; International Council on Human Rights Policy (2005) *Assessing the Effectiveness of National Human Rights Institutions*, p. 5: This report mentions "mandate", "organisational composition", "political and legal traditions within which they operate"; and the description of characteristics, in: UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, p. 9.

138 See for example, V. Aichele (2004) *Nationale Menschenrechtsinstitutionen in Europa*, Berlin: Deutsches Institut für Menschenrechte, pp. 12-13, distinguishing also between commissions and committees. Cf. OHCHR (without date) *Fact Sheet No. 19, National Institutions for the Promotion and Protection of Human Rights*, available at: <http://www.ohchr.org/Documents/Publications/FactSheet19en.pdf> (13.10.2009), distinguishing between commissions, ombudsmen, and specialised bodies.

France, Greece and Luxembourg, which are mainly advisory and especially active in promotion, in addition to commissions with a broader set of powers, including promotion and protection. Ombudsman institutions are typically single members, appointed by parliament, and charged more generally with oversight of the administration. Institutes are entities focusing on evidence based advice.

Figure 4: A typology of NHRIs in EU Member States

Type of NHRI	Member States
Commissions	Ireland Northern Ireland (UK) Great Britain (UK)
Advisory commissions	France Luxembourg Greece ¹³⁹
Ombudsman institutions	Poland Spain Portugal
Institutes	Denmark Germany

4.2. Accredited NHRIs by Member State

Out of 27 EU Member States, ten have a fully accredited¹⁴⁰ NHRI (A-status), five have been awarded B-status ('observer status'),¹⁴¹ one has a C-status-institution (non-compliant with the Paris Principles) and ten Member States have various bodies with a human rights-related remit but none having applied for accreditation by the ICC. An overview is provided below with regard to NHRIs in the EU Member States (Table 4) with A-, B-, or C-status.¹⁴² The annex includes an overview of independent public bodies with a human rights remit in EU Member States without NHRIs.

139 The Greek Commission has however recently received powers that go beyond advice, actually being authorised to receive cases under certain circumstances

140 Compare rule 5 of the *Rules of Procedure for the ICC Sub-Committee on Accreditation*, adopted by ICC members at its 15th session (14.09.2004) in Seoul; amended by ICC members at its 20th session (15.04.2008) in Geneva, ANNEX 1 to the ICC Statute: "A: Voting Member – Fully in compliance with each of the Paris Principles".

141 Compare rule 5 of the *Rules of Procedure for the ICC Sub-Committee on Accreditation*, adopted by ICC members at its 15th session (14.09.2004) in Seoul; amended by ICC members at its 20th session (15.04.2008) in Geneva, ANNEX 1 to the ICC Statute: "B: Non-Voting Member – Not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination".

142 Worldwide there are in all 65 institutions accredited as fully compliant (A-status) and another 13 with B-status. For a detailed global overview, see for example; UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*.

Table 4: NHRIs in EU Member States by Status

EU Member States	National Institution	Status
Austria	Volksanwaltschaft [Ombudsman Board]	B
Belgium	Centrum voor Gelijkheid van Kansen en voor Racismebestrijding / Centre pour l'égalité des chances et la lutte contre le racisme [Centre for Equal Opportunities and Opposition to Racism]	B
Denmark	Institut for Menneskerettigheder [The Danish Institute for Human Rights (DIHR)]	A
France	Commission Nationale Consultative des Droits de l'Homme (CNCDH) [National Consultative Human Rights Commission (NCHRC)]	A
Germany	Deutsches Institut für Menschenrechte (DIMR) [German Institute for Human Rights (GIHR)]	A
Greece	Εθνική Επιτροπή για τα Δικαιώματα τοθ Ανθρώπου (ΕΕΔΑ) [National Commission for Human Rights (GNCHR)]	A
Ireland	Irish Human Rights Commission	A
Luxembourg	Commission Consultative des Droits de l'Homme du Grande-Duché de Luxembourg (CCDH) [Consultative Commission on Human Rights of Luxembourg]	A
Netherlands	Commissie Gelijke Behandeling (CGB) [Equal Treatment Commission]	B
Poland	Rzecznik Praw Obywatelskich (RPO) [Commissioner for Civil Rights Protection]	A
Portugal	Provedor de Justiça [Ombudsman Office]	A
Romania	Român pentru Drepturile Omului (IRDO) [Romanian Institute for Human Rights (RIHR)]	C ¹⁴³
Slovakia	Slovenské národné stredisko pre ľudské práva [Slovak National Centre for Human Rights]	B
Slovenia	Varuh človekovih pravic [Human Rights Ombudsman]	B
Spain	Defensor del Pueblo Español [Ombudsman]	A
Great Britain (UK)	Equality and Human Rights Commission (EHRC)	A ¹⁴⁴
N. Ireland (UK)	Northern Ireland Human Rights Commission (NIHRC)	A
Scotland (UK)	Scottish Human Rights Commission	A

143 Romania is listed at <http://www.nhri.net> as having no status but a formal overview at the same site updated as of June 2009 records C-status

144 United Kingdom is equipped with two additional regional commissions, for Northern Ireland, and for Scotland (the Commission has been recommended for A-status by the ICC SCA, and an approval is expected by the ICC Bureau in late May 2010). The ICC SCA has taken a position on multiple institutions representing one country: the ICC SCA recognises in GO 6.6 – developed in response to the situation in United Kingdom – that while it is preferable to have only one NHRI per country, there are situations where more than one might qualify for accreditation. If this is the case, arrangements must be in place to ensure that these are able to vote with one vote only in the ICC. With the stricter approach following from the 2007 Decision Paper, accreditation of several institutions from one state with limited mandates is unlikely to be approved. The A-accreditation of the 'joint mandate' of the four Swedish specialised ombudsmen therefore lapsed at the end of 2008. Similarly, in Switzerland, a restricted mandate institution was accredited B in 1999, while another institution with a restricted mandate was accredited with C in 2009.

4.2.1. A-status

Since the present form of accreditation was set up in 1999, the number of A-status NHRIs in EU Member States has grown steadily, with about one per year (see Table 5).

Table 5: NHRIs Granted A-status in EU Member States by State

Year of A-Status	Number of NHRIs	NHRIs Granted A-Status in EU Member States
1999	5	Denmark, France, Poland, Portugal, (Sweden) ¹⁴⁵
2000	1	Spain
2001	1	Greece
2002	1	Luxembourg
2003	1	Germany
2004	1	Ireland
2006	1	Northern Ireland (UK)
2008	1	Great Britain (UK)
2010	1	Scotland – <i>expected (UK)</i>

Commissions

Commissions¹⁴⁶ with a relatively strong protection mandate can be found in the United Kingdom and in Ireland.¹⁴⁷ These commissions are multi-member institutions taking decisions by consensus. A particular advantage of this type of institution is typically a very broad human rights mandate, and wide ranging functions and powers going from investigation of human rights violations to education and public relations, participation in judicial procedures, and review of potential legislation.¹⁴⁸

In the course of the Northern Ireland peace process, which ended the many years of unrest and resulted in the *Belfast/Good Friday Agreement* of 1998, two human rights commission were envisaged, one for Northern Ireland and one for Ireland. These two commissions were entrusted with the task of working together to improve the protection of human rights in Ireland as a whole. A *Joint Committee* linking the two bodies has been established to examine – as provided for in the *Belfast Agreement* – the human rights situation for the entire island of Ireland.

The Northern Ireland Human Rights Commission (NIHRC) came into existence in 1999 and has been a fully accredited NHRI

since 2006.¹⁴⁹ The NIHRC has one full-time Commissioner and at present nine part-time Commissioners.

The Irish Human Rights Commission (IHRC) was established in July 2001 and has enjoyed A-status since 2004.¹⁵⁰ The IHRC has 15 Commissioners. It has recently been re-elected as chair of the European Group of Human Rights Institutions for the second consecutive time.¹⁵¹ A governmental proposal to merge – as part of a broader cost-saving exercise – the Commission with four other statutory bodies faced heavy criticism.¹⁵²

The Equality and Human Rights Commission (EHRC) is the first human rights commission for Great Britain (England, Scotland and Wales) and took over the powers and functions of three previously existing specialised commissions.¹⁵³ The EHRC commenced operating on 1 October 2007 and received A-status in January 2009. The Commission is under a general duty to work towards the development of a rights-based society where equality and anti-discrimination principles have become fully accepted.¹⁵⁴ It does not deal with human rights issues within the competence of the recently established Scottish Commission, but has full responsibility for equality and anti-discrimination issues in Scotland. The British Commission has two full-time Commissioners and 15 part-time Commissioners.

The Scottish Human Rights Commission (SHRC) assumed full legal powers and became operational in 2008, and has been recommended for A-status by the ICC SCA, and an approval is expected by the ICC Bureau in late May 2010. The Scottish Commission is competent to deal with human rights issues affecting the devolved (quasi-federal) administration of Scotland and to assist in developing a 'culture' of human rights.¹⁵⁵ The Commission currently has one full-time and three part-time Commissioners.

¹⁴⁵ The A-status lapsed in 2008 and an application for accreditation for the new merged body has not yet been submitted.

¹⁴⁶ Commission refers to the entity as a whole, including commissioners and staff unless otherwise specified. Commissioners serve as a collegial decision-making body (the commission), that is charged with steering the work of the commission.

¹⁴⁷ Also to be found in many states in Africa and the Asia-Pacific, for example, Australia, Benin, Cameroon, Indonesia, India, South Africa, Togo, Uganda.

¹⁴⁸ V. Aichele (2004) *Nationale Menschenrechtsinstitutionen in Europa*, Berlin: Deutsches Institut für Menschenrechte, pp. 12-13. See also: International Council on Human Rights Policy (2nd ed 2004) *Performance & Legitimacy: National human rights institutions*, p. 4. However, in the United Kingdom, the British Equality and Human Rights Commission is precluded from taking human rights action in relation to matters concerning areas of responsibility devolved to the Scottish Parliament and Government, such as education and health (falling within the remit of the Scottish institution). It has full responsibility for equality legislation and related issues in Scotland.

¹⁴⁹ B-status from 2001; its mandate overlaps to some extent with the mandate of the Equality Commission of Northern Ireland; however, the NIHRC would not play an active role in enforcing anti-discrimination law and would lack the mandate to intervene in this area.

¹⁵⁰ A(R)-status in 2002 and 2003. The Human Rights Commission (Amendment) Act 2001 put the Commission on a statutory footing. The Constitution Review Group in 1996 recommended the establishment of a Human Rights Commission in Ireland with legislative rather than constitutional status and that, after a period of existence, the desirability of affording it constitutional status should be further considered. Constitution Review Group (1996) *Report of the Constitution Review Group 1996*, Chapter 17; available at: <http://www.constitution.ie/publications> (30.08.2008).

¹⁵¹ In order to ensure a fair balance of regional representation on the ICC, regional groupings were established (see Art. 31(1) *ICC Statute*).

¹⁵² Equality Authority, Equality Tribunal, Data Protection Commissioner and the National Disability Authority. Other relevant bodies include an Ombudsman for Children and a Mental Health Commission.

¹⁵³ i.e. the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission. The ICC deferred the accreditation procedure until spring 2009.

¹⁵⁴ United Kingdom/Equality Act 2006, Sec. 3. The EHRC may assess the compliance of public authorities with "positive equality duties". It is also granted the power to enter into (and to enforce via legal action if necessary) binding agreements with other bodies who undertake to avoid discriminatory acts. The Commission is able to seek an injunction to prevent someone committing an unlawful discriminatory act, Equality Act 2006 c.3 (16.02.2006), s.24. The previous Equal Opportunities Commission had only the power to seek an injunction against bodies with a previous 'track-record' of illegal discrimination, and even then this power was limited. See the complex provisions of s. 73 of the Sex Discrimination Act 1975.

¹⁵⁵ United Kingdom/Scottish Commission for Human Rights Act 2006. Section 2 of the Act provides that the general duty of the Commission is "through the exercise of its functions under this Act, to promote human rights and, in particular, to encourage best practice in relation to human rights".

An essentially advisory form of commission exists in France, Luxembourg and Greece.¹⁵⁶ These are also multi-member institutions composed, inter alia, of civil society actors¹⁵⁷ and have a broad human rights mandate.¹⁵⁸ Regarding their functions, the focus is on giving advice to the government and providing input in the legislative process; they do not usually handle individual complaints and have fewer investigatory powers.

The *Commission Nationale Consultative des Droits de l'Homme* (CNCDDH) [National Consultative Human Rights Commission (NCHRC)] is the only French independent public body with general human rights competence.¹⁵⁹ It has been accredited as an A-status NHRI since 1999.¹⁶⁰ In order to avoid overlaps the Commission does not engage in areas dealt with by other bodies,¹⁶¹ as there is a range of other bodies with specific mandates.¹⁶² Research is not a main feature of this type of commission, but the French NHRI does perform research tasks, such as thematic reports.

The *Commission Consultative des Droits de l'Homme* du Grand-Duché de Luxembourg (CCDH) [Consultative Commission on Human Rights of Luxembourg (CCHR)] is modelled on the French NHRI.¹⁶³ It is a consultative organ to the Luxembourg Government and is supervised by the Prime Minister.¹⁶⁴ The

CCHR became operational in 2000 and has been fully accredited since 2002.¹⁶⁵

The Greek National Commission for Human Rights (GNCHR) has held A-status since 2001; due to concerns regarding budget autonomy in the course of the re-accreditation process in 2007, the ICC decided to re-examine its accreditation in October/November 2009 rather than in 2012.¹⁶⁶

Ombudsman institutions

The ombudsman institution¹⁶⁷ derives from the original Scandinavian model dealing mainly with individual legal protection, with particular focus on the handling of complaints of maladministration.¹⁶⁸ Fully accredited ombudsman institutions can be found in Spain, Poland, and Portugal.¹⁶⁹ Sweden had an institution enjoying A-status but this was lost during a reform that merged the four specialised ombudsmen represented in the ICC into one new institution.¹⁷⁰ This new institution, the Swedish *Diskrimineringsombudsmannen* (DO) [Equality Ombudsman], has not yet applied for accreditation with the ICC.¹⁷¹ Sweden also has a Parliamentary Ombudsman, an independent office, with ombudsmen elected by the Parliament. This is in contrast to the former specialised ombudsmen as well as to the new merged institution, and to all independent government agencies headed by an ombudsman appointed by the government.¹⁷²

156 This type exists for example also in Egypt, Morocco and Senegal. The Commission in Greece has recently, however, expanded its powers to include receiving and acting on individual complaints under certain circumstances.

157 For example, the French institution currently has 64 decision-making members, the NHRI of Luxembourg a maximum of 22 members, the Greek NHRI 30 members. They usually gather in sub-committees according to thematic topics.

158 See also: International Council on Human Rights Policy (2nd ed 2004) *Performance & Legitimacy: National human rights institutions*, p. 4.

159 The Commission consultative pour la codification du droit international et la définition des droits et devoirs des États et des Droits de l'homme Consultative [Commission for the codification of international law and the definition of the rights and duties of States and of human rights] was created by decree on 27.03.1947. During René Cassin's presidency, the Commission progressively extended its scope and came to be known as the Commission nationale consultative des droits de l'homme [National Consultative Commission of Human Rights, NCHRC]. The Commission was revived in 1984 and provided the Minister of External Relations with opinions on France's actions in the human rights field. As from 1986, the Commission's mandate also covered human rights issues at the national level. The main areas of work are however racism, anti-Semitism and xenophobia, the rights of non-nationals (immigration and asylum), and justice and security (freedom deprivation).

160 Re-accreditation in 2007.

161 For example, the priority topics of the French NHRI are racism, anti-Semitism and xenophobia. It does not deal in detail with discrimination, privacy and rights of the child as these areas are covered by other authorities (High Authority against Discrimination and for Equality, French Data Protection Authority, the Children's Ombudsman and the ombudsman dealing with individual complaints and being ex-officio member of the NCHRC). However, their activities are not coordinated in a specific manner.

162 There are at present also four other public bodies addressing specific issues that are not dealt with in detail by the French Commission: the High Authority against Discrimination and for Equality, the French Data Protection Authority, the Children's Ombudsman, and the Ombudsman dealing with individual complaints. The latter is also an ex-officio member of the NCHRC. In July 2008 the French Constitution was modified (new article 71(1)), establishing a Defender of Rights (*Le Défenseur des droits*) that will supplement the Commission and replace the Ombudsman and the Children's Ombudsman. The legislation required for its operation is not yet in place (see <http://www.senat.fr/dossierleg/pj08-610.html> (06.01.2010)). A law was also passed in 2007, setting up a *Contrôleur général des lieux de privation de liberté* (CGLPL) in line with the requirements under the OP-CAT for a national preventive mechanism.

163 In 2001 A(R)-status. Other independent public human rights bodies not accredited by the ICC are the Children's Rights Ombuds-committee, the National Data Protection Commission, the Ombudsman, the Centre for Equal Treatment and the National Commission on Ethics for Life and Health Sciences.

164 CCHR, *Rapport Annuel de la CCHR 2000*, pp. 11-12.

165 In 2001 A(R)-status. The A-status was due for review in 2009. Other public human rights related bodies are the *Ombuds-Comité fir d'Rechter vum Kand* (ORK) [Children's Rights Ombudscommittee (CRO)], the *Commission nationale pour la protection des données* (CNPD) [National Data Protection Commission (NDPC)], the *Médiateur* [Ombudsman], the *Centre pour l'Égalité de Traitement* [Centre for Equal Treatment (CET)] and the *Commission Nationale d'Éthique pour les Sciences de la Vie et de la Santé* [National Commission on Ethics for Life and Health Sciences (NCELH)].

166 The Committee convened for the first time in 2000; (in 2000 it was granted A(R)-status). Other independent public bodies are the Greek Ombudsman and the Hellenic Data Protection Authority.

167 See also: International Council on Human Rights Policy (2nd ed 2004) *Performance & Legitimacy: National human rights institutions*, p. 4.

168 On the importance of coordinating between ombudsmen not being NHRIs and independence of ombudsmen, see: UN General Assembly (2009) *Report of the United Nations Secretary-General to the UN General Assembly*, A/64/320 24 August 2009, paragraph 109.

169 Similar institutions also exist in, eg. Albania, Bosnia-Herzegovina, Portugal and several countries in Latin America. While not being a 'national' human rights institution, the European Ombudsman is mandated to investigate complaints about maladministration in the institutions and bodies of the EU (such as the Commission, Council of the EU and the European Parliament; only the Court of Justice, the Court of First Instance, and the Civil Service Tribunal acting in their judicial role do not fall within his jurisdiction). It is elected by the European Parliament and conducts inquiries on the basis of complaints but can also launch inquiries on its own initiative. See <http://ombudsman.europa.eu/home/en/default.htm> (08.09.2008).

170 Only one of these four, the Equal Opportunities Ombudsman (*Jämställdhetsombudsmannen*, JämO), was actually accredited with A-status even though all four ombudsmen were formally participating in the ICC. On 1 January 2009 the four were merged into the 'Ombudsman against Discrimination' / Equality Ombudsman (DO), see <http://www.do.se/Other-languages/English/The-Equality-Ombudsman--a-united-force-for-human-rights/> (14.10.2009).

171 The new Swedish Equality Ombudsman is mandated to combat discrimination and promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age, see: Sweden/Discrimination Act, Sweden/Swedish Code of Statutes 2008:567; Sweden/Act concerning the Equality Ombudsman, Sweden/Swedish Code of Status 2008:568, both were issued on 05.06.2008, published on 25.06.2008 and entered into force on 01.01.2009. Government Offices of Sweden, Ministry of Integration and Gender Equality (2009) *New anti-discrimination legislation and a new agency, the Equality Ombudsman. Fact Sheet January 2009*, available at: <http://www.regeringen.se/content/1/c6/11/80/10/4bb17aff.pdf> (19.09.2009). Seven different laws against discrimination were also merged and somewhat updated into the new single Act.

172 On the Parliamentary Ombudsman (JO), see <http://www.jo.se> (14.10.2009).

As ombudsman institutions are typically single-member institutions, they encounter difficulties with regard to the pluralism requirement. They have to secure pluralism in other ways, for example, through governing bodies or the election system. At times ombudsmen have specifically defined mandates in a system of interrelated institutions, for example in the areas of discrimination, children's rights or data protection.¹⁷³

The Polish *Rzecznik Praw Obywatelskich* (RPO) [Commissioner for Civil Rights] has been accredited with A-status since 1999.¹⁷⁴ The Commissioner does not exercise a typical advisory function in relation to the government although they makes statements to different public bodies, including organs with legislative functions. It opened local branches in Wrocław, Gdańsk and Katowice since a substantial number of complaints were received from those areas. The Commissioner is now to become the National Prevention Centre under the Optional Protocol to the torture convention (OP-CAT). There are also three other relevant specialised public bodies in Poland: the Commissioner for Children's Rights, the General Inspector for the Protection of Personal Data and the Commissioner for Citizen's Rights.

The *Provedor de Justiça* [Portuguese Ombudsman] was created in 1975. This institution is elected by a two-thirds majority of the Parliament and the Ombudsman has the same legal status as a judge. The Ombudsman has been accredited with A-status since 1999.¹⁷⁵ The Ombudsman does not have a pronounced role in advising the state. Other relevant bodies include the Commission for Citizenship and Gender Equality, the Commission for Equality in Labour and Work, the Data Protection Authority, and the High Commissioner for Immigration and Ethnic Minorities.

The Defensor del Pueblo Español [Spanish Ombudsman]¹⁷⁶ is a high commissioner of the *Cortes Generales* [Spanish Parliament] entrusted with the functions of protecting, promoting and guaranteeing rights and liberties of any person against any

actions of the Spanish public authorities. This mechanism has been accredited as an NHRI with A-status since 2000.¹⁷⁷ This experience brought about the setting up of (currently 13) ombudsmen in the 17 *Comunidades Autónomas* [Autonomous Communities] whose activities are coordinated with the activity of the Spanish Ombudsman.¹⁷⁸ The Spanish Ombudsman gives advice to the Parliament but not directly to the government. Other independent human rights public bodies in some Autonomous Communities are the *Defensores del Menor* [Ombudsmen for Children], the *Agencia Nacional de Protección de Datos* [National Data Protection Agency]. At the universities, *Defensores* [Ombudsmen] are in charge of rights and liberties of any person belonging to the University environment, i.e. students, teachers and support staff. The universities' ombudsmen receive complaints and attempt to find acceptable solutions.

Institutes

Institutes which serve as NHRIs exist in Denmark and in Germany.¹⁷⁹ Their functions focus on research, human rights education, and documentation, and also provision of advice to the government. Institutes usually do not have any investigatory powers or individual complaints mechanisms.¹⁸⁰ Both institutes have a broad human rights mandate. The institutes both have a structure that includes a board.¹⁸¹

The *Institut for Menneskerettigheder* [The Danish Institute for Human Rights (DIHR)] is the principal organisation in Denmark for monitoring and advising on human rights. It has held A-status since 1999.¹⁸² The DIHR is part of the Danish Centre for International Studies and Human Rights, which also includes a sister institute, the Danish Institute of International Studies.¹⁸³ Since 2003, the DIHR has been a specialised equality body

173 For example, in Poland the Commissioner for Civil Rights is empowered to investigate alleged acts of maladministration; other areas are dealt with by the Commissioner for Children's rights or the General Inspector for the Protection of Personal Data.

174 Re-accreditation took place in 2007. According to the National Report on Poland, there is a risk that the Commissioner "may take advantage of making a political career"; for example, participation in the presidential elections. Apart from that, at times, the incumbent Commissioner makes "public statements which are not related to his [...] role but express his point of view" and "may sometimes spoil the image of this institution" (for example, public statement claiming that it would be constitutional to introduce in Poland the compulsory castration of paedophiles in Poland). The Commissioner is now to become the National Prevention Centre under the OPCAT. There also exist three other specialised independent public bodies in Poland which have not been granted any status by the ICC: the Commissioner for Children Rights, the General Inspector for the Protection of Personal Data and the Commissioner for Citizen's Rights.

175 Re-accreditation took place in 2007. Other institutions are the Commission for Citizenship and Gender Equality, the Commission for Equality in Labour and Work, the Data Protection Authority, or the High Commissioner for Immigration and Ethnic Minorities.

176 The Spanish Ombudsman was envisaged in the Spanish Constitution in order to strengthen democracy and the rule of law in the new political democratic system (Art. 54); Spain/Constitución (29.12.1978). English version of the Spanish Constitution is available at: http://www.defensordelpueblo.es/web_ingles/index.asp?destino=informes2_ingles.asp (28.08.2008). It became operational in 1981 through the enactment of the Organic Law on the Ombudsman Spain/Ley Orgánica 3/1981 as amended by Spain/Ley Orgánica 2/1992 (05.03.1992) and Spain/Ley Orgánica 10/1995 (23.11.1995). English version of the Organic Law 3/1981 available at: http://www.defensordelpueblo.es/web_ingles/index.asp?destino=informes2_ingles.asp (28.08.2008).

177 Re-accreditation 2007; the Ombudsman became operational in 1981; it is a high commissioner of the Spanish Parliament tasked with protecting rights and liberties of any person against any actions from the Spanish public powers.

178 There exists a system of cooperation with other State institutions in charge of protection of rights and liberties: In order to coordinate their activities, a Law on the Relations between the Ombudsman and similar institutions of the Autonomous Communities was enacted. Further, cooperation and coordination agreements exist with all High Commissioners of the Autonomous Communities.

179 This type is also to be found in Norway.

180 Before 2009, the DIHR had the power to handle individual complaints, though this power has since been transferred to the Board of Equal Treatment.

181 The DIHR forms part of the Danish Centre for International Studies and Human Rights (DCISM), of which the Institute for International Studies is also a part, but has a specific Board responsible for matters relating to substantive and professional issues for example, research strategy, that meets four to five times per year. The Council on Human Rights (meeting twice a year) discusses overall principles guiding the activities of the institute and to ensure that activities are in accordance with its objective. The Executive Director is responsible for the day-to-day professional management of the DIHR. Similarly, the GIHR is composed of a Board, a Board of Trustees and a General Assembly.

182 Last re-accreditation took place in 2007. The DIHR, in its present form, has existed since 01.01.2003 (based on the Act governing the Establishment of the Danish Centre for International Studies and Human Rights, Denmark/Act No. 411 (06.06.2002)). It continues the mandate vested in the Danish Centre for Human Rights established in 1987 by a Parliamentary decision.

183 The DIHR carries out many international projects and programmes in order to develop and implement human rights on an international basis in cooperation with State authorities, independent and academic institutions as well as with civil society. The goal of realising human rights is facilitated through long-term partnerships in strategically selected areas. The themes and activities focus on "Civil Society and Networks"; "National Human Rights Institutions"; "Access to Justice"; "Academic Cooperation"; "Reform of Law and State" and "Access to Information".

on the basis of Article 13 of Directive 2000/43/EC on racial equality.¹⁸⁴

The *Deutsches Institut für Menschenrechte (DIMR)* [German Institute for Human Rights (GIHR)] was founded in 2001 after the *Bundestag*, the First Chamber of the Federal Parliament, unanimously called for its establishment. It has been accredited with A-status since 2003. In 2009 legislation was adopted to provide the Institute with the mandate to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities.

4.2.2. B-status

Out of 27 EU Member States, five countries (Austria, Belgium, the Netherlands, Slovakia and Slovenia) have bodies which have only been granted B-status by the ICC.

In Austria, out of a number of official mechanisms dealing with certain areas of human rights, an institution with a constitutional foundation,¹⁸⁵ the *Volksanwaltschaft* [Ombudsman Board] was granted B-status in 2000. It was the first mechanism (1977) to have a fixed mandate in human rights protection and promotion. It is a collegial organ of three members nominated by the three largest parties in Parliament; it is mainly entrusted with complaints against deficiencies in public administration. The Ombudsman Board is also a candidate to become a 'national preventive mechanism' under the Optional Protocol to the torture convention (OP-CAT).¹⁸⁶ Other relevant bodies include the *Menschenrechtsbeirat (MRB)* [Human Rights Advisory Board (HRAB)],¹⁸⁷ the *Gleichbehandlungskommission (GBK)* [Equal Treatment Commission (ETC)],¹⁸⁸ the *Gleichbehandlungsanwaltschaft (GAW)* [Ombud for Equal Treatment (OET)],¹⁸⁹ the *Datenschutzkommission (DSK)* [Data

Protection Commission (DPC)],¹⁹⁰ the *Rechtsschutzbeauftragte (RSB)* [Commissioners for Legal Protection (CLPs)],¹⁹¹ the *Kinder- und Jugendanwaltschaften* [Ombuds-offices for Children and Youth],¹⁹² the *Justizombudsstellen* [Justice Ombuds-offices],¹⁹³ the *Patientenanwaltschaften* [Patient Advocacies and Representations],¹⁹⁴ and the *Monitoringausschuss zur Überwachung des UN Übereinkommens über die Rechte von Menschen mit Behinderungen* [Monitoring Mechanism for the Rights of Persons with Disabilities (MC)].¹⁹⁵

To varying degrees, the independence of such institutions is grounded in law; their mandates differ widely, their functions range from merely advisory functions to examination of individual complaints. The discrepancies are even greater in cases where the mechanisms are based on state legislation in a federal system, in this case on nine different legal foundations. The 'uncontrolled growth' of bodies of non-judicial legal protection has repeatedly come under criticism.¹⁹⁶ In context of the planned ratification of OP-CAT, it has been proposed to transform one of the entities into the Austrian 'National Preventive Mechanism', thus taking the opportunity to establish a broad-mandated NHRI.¹⁹⁷

In Belgium, the *Centrum voor Gelijkheid van Kansen en voor Racismebestrijding / Centre pour l'égalité des chances et la lutte contre le racisme* [Centre for Equal Opportunities and Opposition to Racism] was granted B-status in 1999. There are also a number of other independent public human rights bodies with competence limited to a specific human right or a specific area: the Federal Ombudsman [Le Médiateur fédéral / De federale Ombudsman], the Institute for the Equality of Women and Men [Institut pour l'égalité des femmes et des homes / Instituut voor de gelijkheid van vrouwen en mannen], the National Commission for the Rights of the Child [Commission nationale pour les droits de l'enfant / Nationale commissie voor de rechten

184 Council of the European Union (2000) *Council Directive 2000/43/EC on Equal Treatment Irrespective of Race and Ethnic Origin*. However, the mandate to review complaints was transferred as of 01.01.2009 to the new *Ligebehandlingsnævnet* [Complaints Board for Equal Treatment] which handle complaints about cases of differential treatment (in and outside the labour market) on the grounds of gender, race, skin, colour, religion, faith, political opinion, sexual orientation, age, disability or national, social or ethnic origin. This complaint organ will be placed within an existing independent administrative complaints structure, the National Social Appeals Board, which is placed within the Ministry of Welfare. Information available at: <http://www.ankestyrelsen.dk/artikler/default.asp?page=141> (19.11.2008).

185 Art. 148 (a-j) Austrian Federal Constitution, Austria/BGBl I/1930, last amended by Austria/BGBl I 100/2003 (01.01.2004) and Austria/BGBl I 2/2008 (01.01.2008).

186 This is envisaged in the governmental programme for the legislative period 2008–13 (section E.7.), available at: <http://www.bka.gv.at/DocView.axd?CobId=32965> (18.09.2009).

187 It was established at the Ministry of the Interior in 1999 after repeated recommendations of the European Committee for the Prevention of Torture (CPT). Its primary aim is to advise the Minister of Interior in sensitive human rights issues. It is founded on Austria/Sec. 15 (a) *Sicherheitspolizeigesetz (SPG)* [Security Police Act (SPA)]; originally, this provision had the rank of constitutional law.

188 It was established in 1979 and is mainly concerned with equal payment for women and men. In 2004, due to the transposition of the Racial Equality Directive 2000/43/EC and the Framework Directive 2000/78/EC the Commission's mandate was expanded; it further resulted in the division of the body into three senates.

189 The amendment of the Equal Treatment Act in 1991 first provided for the establishment of the Ombud for Equal Treatment of Women and Men (now being the OET I). In 2004, the OET I was expanded also due to the transposition of the RED and the Framework Directive, and the Ombud for Equal Treatment of Women and Men took over the coordination of the OET as a whole.

190 It was created in 1980 under the *Datenschutzgesetz (DSG)* [Austria/Data Protection Act]. It is a governmental authority charged with data protection and is also the Austrian supervisory authority for data protection. Due to the transposition of the Data Protection Directive 95/46/EC, the new Austrian Data Protection Act 2000 effected certain changes in the mandate of the Commission.

191 To date there exist three CPOs on the basis of ordinary laws: one within the administrative framework of the Ministry of Justice (1997), the second within the Ministry of the Interior (2000) and the third within the Ministry of Defence (2001). Their task is to control interferences with fundamental rights occurring through surveillance measures undertaken by security or criminal police and by military authorities.

192 Between the late 1980s and the early 1990s, nine State and one Federal Ombuds-offices were set up.

193 They are situated at the four Courts of Appeal and took up office at the end of 2007.

194 From 1991 to 2001, nine Patient Advocacies or Representations were established in the Federal States.

195 With entry into force of the UN Convention on the Rights of Persons with Disabilities in May 2008, the Federal Disability Act was amended, providing for a Monitoring Committee on the Rights of Persons with Disabilities.

196 B. Ch. Funk (2008) "Menschenrechtsbeirat, OPCAT und Nationaler Präventionsmechanismus in Österreich. Entwicklungen im kommissarischen Grundrechtsschutz", in: A. Bammer et al. (eds.) (2008) *Rechtsschutz Gestern-Heute-Morgen, Festgabe zum 80. Geburtstag von Rudolf Machacek und Franz Matscher*, Vienna, pp. 121-127.

197 M. Nowak and H. Tretter (2007), "Vorschläge zur Errichtung einer nationalen Menschenrechtsinstitution in Österreich", in: *Journal für Rechtspolitik*, Vol. 15, pp. 1-10. The HRAB is not limited to monitor torture and ill-treatment, but is concerned with all human rights of detainees and other persons subject to actions of law enforcement bodies, and consequently has a broader mandate than required for the NPM. However, currently the close links of the HRAB to the Interior Ministry seem to be in conflict with the requirement of independence; a transfer of the body under the responsibility of Parliament, possibly under a common roof with the Ombudsman Board, has been suggested.

van het kind], the Commission for the Protection of Private Life [Commission de la protection de la vie privée / Commissie voor de bescherming van de persoonlijke levenssfeer], and the High Council of Justice [Le Conseil supérieur de la Justice / Hoge Raad voor de Justitie]. A number of bodies also exist at the regional level.¹⁹⁸ The creation of a fully accredited NHRI has been on the agenda for several years¹⁹⁹ and a proposal was finally submitted in 2006 by a group of human rights NGOs providing for the creation of a national commission via a so-called ‘cooperation agreement’ between the federal state and the federated entities.²⁰⁰ However, the government has not taken further action. Declarations by subsequent governments, formed after the elections of June 2007, did not mention the proposal.²⁰¹

In the Netherlands, the *Commissie Gelijke Behandeling* (CGB) [Equal Treatment Commission] was granted B-status in 1999. Currently, the ground for an NHRI eligible for A-status is being prepared, where the CGB will form the basis for an equality and human rights commission, with 9–12 commissioners, and a full-fledged human rights mandate. A draft law was prepared during the autumn of 2009 and the new commission is expected to be operational in 2011.²⁰² In addition, the National Ombudsman, the *College bescherming persoonsgegevens* (Cbp) [Data Protection Authority] and the *Adviesraad Internationale Vraagstukken* [Advisory Council on International Affairs] are other relevant public institutions.

In Slovenia, the *Varuh človekovih pravic* [Human Rights Ombudsman] – a constitutional body – was established in December 1991²⁰³ and became operational in 1995. It has been accredited with B-status since 2000. The Ombudsman institution is deemed to be working well and efficiently and for this reason no steps have been taken towards reaching an A-status

classification.²⁰⁴ There are also other public bodies devoted to specific human rights: the *zagovornik načela enakosti* [Advocate of the principle of equality]²⁰⁵ and the *informacijski pooblaščenec* [Information Commissioner]²⁰⁶ entrusted with the supervision of the *Zakon o zaščiti osebnih podatkov* [Personal Data Protection Act].²⁰⁷

The Slovak National Centre for Human Rights was established in 1993. Its founding act entered into force in 1994.²⁰⁸ After having obtained C-status in 2002, it was accredited as a B-status institution in 2007.²⁰⁹ Other bodies are the Public Defender of Rights and the Centre for Legal Aid.

4.2.3. C-status

Of the 27 EU Member States, only Romania has an institution that has been granted C-status. In Romania, the Romanian Institute for Human Rights and the Ombudsman are the principal public bodies with a role in guaranteeing human rights; the former was granted C-status in 2007.²¹⁰ Aside from these two bodies, there exist other public bodies with mandates in protecting particular aspects of human rights²¹¹ and with varying degrees of independence.²¹²

4.3. Independence and pluralism

As previously mentioned, the Paris Principles require that an NHRI be established by a constitutional or other legislative act. Three additional factors operate to ensure independence: firstly, pluralism in the composition of an NHRI, secondly a suitable infrastructure (in particular adequate funding and budget autonomy) and thirdly, a stable mandate of the NHRI’s members expressed through appointment and dismissal conditions and the exclusion of voting rights for government representatives within governing bodies of NHRIs.²¹³

In the following pages, the fully accredited (A-status) institutions will be analysed in the context of these four areas. Given the

198 At the level of the Flemish Community and the Flemish Region there are the Flemish Ombudsman Service and the Commissary for Children’s Rights; at the level of the French Community there are the Ombudswoman and the Delegate General for the Rights of the Child, and finally the Ombudsman at the level of the Walloon Region.

199 In 2003, in a declaration addressed to the Parliament, the Government announced the establishment of a Commission on Human Rights. A working group was set up in the Office of the Prime Minister. See: House of Representatives (2003) Parliamentary Documents, extraord. session 2003, no. 51–20/1, p. 77, available at: <http://www.dekamer.be/FLWB/PDF/51/0020/51K0020001.pdf> (16.11.2008). See also: Reply of Mr Verhofstadt, Prime Minister, to Mme Vautmans, Parliamentary Reports, House of Representatives, Commissions, 2006–07, no. 51–COM 1195, 07.02.2007, p. 2.

200 The proposal was drafted by Olivier De Schutter and Gauthier de Beco. The text (in Dutch) is available at: http://www.mensenrechten.be/main.php?item_content=497 (19.11.2008). According to the proposal, the Commission would be composed of 11 members elected by the federal Senate, eight of which would be nominated by the federal government and the community and the regional governments, and the remaining three by the human rights NGOs. This means that the agreement would have to be adopted by the parliamentary assemblies and governments or executive bodies of the following entities: the federal State, the Flemish Community, the Flemish Region, the French Community, the Walloon Region, the German speaking Community, the Region of Brussels-Capital, the French Community Commission of Brussels and the Common Community Commission of Brussels.

201 See reply of the Minister of Justice to the written question of Ms Nyssens, Parliamentary Questions and Answers, House of Representatives, 2007–08, no. 52–11, pp. 1757–1759.

202 See the explanatory note at <http://www.internetconsultatie.nl/collegevoormensenrechtenengelijkebehandeling/document/58> (05.03.2010) and the draft law at <http://www.internetconsultatie.nl/collegevoormensenrechtenengelijkebehandeling/document/57> (05.03.2010), both were published on 11 December 2009.

203 Art. 159, Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991). On basis of this provision, the National Assembly adopted the *Zakon o varuhu človekovih pravic* [Human Rights Ombudsman Act] laying down the Ombudsman’s competences in December 1993. Slovenia/Human Rights Ombudsman Act 71/93 (14.01.1994).

204 Information gained through informal contacts with the Office of the Human Rights Ombudsman.

205 This body was established by the *Zakon o uresničevanju načela enakega obravnavanja* [Implementation of the Principle of Equal Treatment Act], Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007).

206 This body was established by the *Zakon o informacijskem pooblaščenecu* [Information Commissioner Act], Slovenia/Information Commissioner Act 113/05 (31.12.2005).

207 Slovenia/Personal Data Protection Act 59/99 (23.07.1999).

208 Act on Establishing the Slovak National Centre for Human Rights. Slovakia/zákon 308/1993 (15.12.1993).

209 <http://nhri.net/2008/6%20-%20Report%20Sub-Committee%20October%202007%20FINAL-English.pdf> (25.08.2008). The ICC SCA refers to the General Observation on ‘Human rights mandate’, in particular a broad mandate to protect human rights; to the General Observation on ‘Competence and responsibilities’; on ‘Composition and guarantees of independence and pluralism’; on ‘Methods of operation’, on ‘Adequate funding’.

210 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2007) *Report and Recommendations of the Sub-Committee on Accreditation*, p. 6, paragraph 3.5.

211 The National Report mentions following areas: combating discrimination, promoting equal opportunities, rights of persons with disabilities, children’s rights, Roma rights, rights of victims of trafficking, and the protection of personal data.

212 According to the National Report, some are subordinated to the Ministry of Labour, to the General Secretariat of the Government or to the Ministry of Interior.

213 On the importance of independence, see report of the United Nations Secretary-General to the UN General Assembly, A/64/320 24 August 2009, paragraphs 109–110. See also UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, pp. 52–53.

expected A-status accreditation of the Scottish Human Rights Commission in May 2010, this Commission is included in some of the more general comparisons. When relevant, references to the earlier A-status NHRI in Sweden as well as its successor institution and the Swedish Parliamentary Ombudsmen are also included.

4.3.1. Solid legal foundation

The following commissions have been established by legal acts setting out their mandates: Ireland,²¹⁴ Northern Ireland,²¹⁵ Great Britain,²¹⁶ Scotland,²¹⁷ France,²¹⁸ Greece,²¹⁹ and Luxembourg²²⁰. The following ombudsman institutions have their foundation, including their mandates, in the constitution, and specified in organic laws: Poland,²²¹ Portugal,²²² and Spain^{223, 224}

As was the case for the Swedish Equal Opportunities Ombudsman (JämO), the new Equality Ombudsman (DO) is appointed by the government appointed with an ordinary law as its founding instrument.²²⁵ The Parliamentary Ombudsman (JO), in contrast, enjoys constitutional status.²²⁶

With regard to institutes, the Danish Institute for Human Rights was established by a legal act.²²⁷ The German Institute for Human Rights, however, is not founded on formal law but on a

unanimous decision of the Parliament with the specific mandate being set out in its statutes.²²⁸

4.3.2. Pluralism in the composition

Pluralism ensures credibility and representativeness.²²⁹ The following description of the commissioners does not take account of the staff employed with the commissions.²³⁰

Members of the Irish Human Rights Commission (IHRC) must have relevant experience or qualifications and the composition of the Commission has to “broadly reflect the nature of Irish society”. At least seven out of the 15 members of the Commission have to be female and not less than seven must be male. The Commission includes human rights legal researchers, legal practitioners, persons from the voluntary and community sectors, and so forth.

At least one Commissioner of the 15-Commissioner British Equality and Human Rights Commission should be a person with a disability, and the Commission is also required to have a Disability Committee.²³¹

The commissioners of the Scottish Human Rights Commission come from legal, NGO and academic backgrounds and must have human rights expertise; the composition reflects gender balance. No government representatives or members of the Parliament sit on the commissions in the United Kingdom.

Those commissions with a predominantly advisory function of are multi-member institutions satisfying the pluralism requirement. The French National Consultative Human Rights Commission is currently composed of 64 Commissioners from different backgrounds, representing a diversity of schools of thought. Thirty Commissioners come from main the human rights or humanitarian NGOs and from trade union confederations. Thirty members are chosen on the grounds of their recognised competence in the human rights field, including representatives of the Parliament. The latter representatives may call the independence of the body into question. Representatives of the Prime Minister and of relevant ministers can also participate in the work of the Commission but only in an advisory capacity.

The Luxembourg Consultative Commission on Human Rights is composed of a maximum of 22 members, including a president and vice-president and is pluralistic with respect to its competencies and skills, as well as to the background of its members. Current members include lawyers, professors,

214 Ireland/2000 Human Rights Commission Act, 2001 Human Rights Commission Act.

215 United Kingdom/Northern Ireland Act 1998 (UK).

216 United Kingdom/Equality Act 2006.

217 United Kingdom/Scottish Commission for Human Rights Act 2006.

218 France/2007 Law on the National Consultative Commission of Human Rights.

219 Greece/Law 2667/1998 (as amended by Laws 2790/2000, 3051/2002, 3156/2003) and Rules of Procedure.

220 Until very recently established solely under a governmental regulation.

On 22.10.2008, a bill containing the legislative formalisation of the existing governmental regulation was voted into law (Luxembourg/Loi du 21 novembre 2008 portant création d'une Commission consultative des Droits de l'Homme au Grand-Duché de Luxembourg (10.12.2008)).

221 The Polish Constitution (adopted on 02.04.1997), which contains different guarantees with regard to the Ombudsman: Art. 80 contains the individual right of every person to lodge a complaint, Article 208 defines the scope of the Commissioner's mandate, Articles 209-212 stipulate different guarantees of its institutional independence. Poland, Ustawa z dnia 15 lipca 1987 r. o Rzeczniku Praw Obywatelskich [Poland/Law of 15.07.1987 on the Commissioner for Civil Rights], Dziennik Ustaw [Journal of Laws] 14/2001, item 147.

222 The Portuguese Constitution of 1976 (Art. 23). The Constitution stipulates that the Ombudsman should hear complaints about civil service abuses and make appropriate recommendations to Parliament, Government and Public Administration. Law 9/91.

223 The Spanish report refers to Article 54 of the Spanish Constitution of 27.12.1978. Organic Law 3/1981 of 6 April 1981 on the Ombudsman, Spain/Ley Orgánica 3/1981 (06.04.1981), amended by Organic Laws 2/1992 (Spain/Ley Orgánica 2/1992 (05.03.1992) and 10/1995 (Spain/Ley Orgánica 10/1995 (23.11.1995)).

224 Generally on the legal bases for ombudsmen in Europe, see <http://www.omeurope.info> (24.11.2009).

225 The present legislation includes the Discrimination Act (Sweden/Diskrimineringslag, 2008:568, 05.06.2008) and the Act on the Equality Ombudsman (Sweden/Lag om Diskrimineringsombudsmannen, 2008:568, 05.06.2008).

226 One of four constitutional acts, Regeringsformen (Instrument of Government). JO is institutionalised in 12(6), see also 12(8). Riksdagsordningen (The Riksdag Act) with provisions related to the JO in 8(11) occupies a level between constitutional law and ordinary law. See also the Act with Instructions for the Parliamentary Ombudsmen (Sweden/Lag med instruktion för Riksdagens ombudsmän, 1986:765.)

227 The 2002 Act governing the Establishment of the Danish Centre for International Studies and Human Rights. The Institute is the successor to the Centre, which had been established only by Parliamentary Decision. The 2002 Act created a legally binding basis, renamed the institution and changed the administrative structure which is now shared with the Danish Institute for International Studies. The Paris Principles were reprinted in the appendix to the bill in English and Danish.

228 Decision by the German Parliament on 7.12.2000. The Statutes (Satzung des eingetragenen Vereins Deutsches Institut für Menschenrechte), revised 07.06.2006, available: http://www2.institut-fuer-menschenrechte.de/webcom/show_page.php/_c-436/_nr-1/i.html (20.10.2009).

229 See the relatively poor performance of NHRIs in this regards: UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, pp. 10, 19 and 51.

230 The composition of staff was not part of the research that the FRA commissioned from FRALEX.

231 Paragraph (3) of Part 1 of Schedule One provides that the Secretary of State must appoint a commissioner who is a disabled person: [...] Part 5 of Schedule One of the 2006 Act makes provision for the establishment of a special disability committee within the organisational structure of the EHRC, to which the Commission's responsibilities that relate to disability issues is to be delegated.

psychologists and social workers. It has one government representative with a consultative vote.

The 30 members of the Greek National Commission for Human Rights are representatives of the administration (drawn from different ministries), trade unions, political parties, and NGOs. They are judges, professors of public and international law, persons involved in human rights protection appointed by the Prime Minister, and come from bodies such as the Data Protection Authority. As with the French Commission, the inclusion of representatives of ministries and political parties may call independence into question.

Ombudsmen institutions – typically being one-person institutions – have greater problems satisfying the pluralism requirement and reflecting the composition of society. Pluralist representation can, however, still be achieved to some extent, for example, through the submission of candidate proposals by minority parties (as in the case of the Polish Commissioner),²³² the requirement of a qualified majority in Parliament (as in the case of the Portuguese²³³ and the Spanish²³⁴ Ombudsmen) or through the consultation of different expert groups, such as an advisory council (as in the case of the Polish Commissioner).²³⁵

The institutes aim at reflecting pluralism in the composition of boards and staff. Out of the 13 members of the board of the Danish Institute for Human Rights, six members are appointed by the Council for Human Rights (another organ of the institute), six by university representatives and one by the staff; at least two members appointed by the Council must have been associated with ethnic minorities or a humanitarian organisation operating in areas of significance for ethnic minorities.²³⁶

The Board of Trustees of the German Institute for Human Rights represents civil society (notably human rights NGOs, the media, academia),²³⁷ the international human rights machinery,²³⁸ the Human Rights Committee of the Parliament, and the government (without voting rights). Eight board members are

female, eight are male. Both the federal level of government and the state level are represented.

The points of view of volunteer organisations, public authorities, researchers and other individuals and particularly interested groups, including ethnic minorities, are represented through the composition of the Council for Human Rights of the Danish Institute. The German Institute further tries to achieve pluralist representation through its participatory action research model, which requires consultation with a wide range of NGOs representing different interests, opinions and groups.

4.3.3. Infrastructure

As far as infrastructure is concerned, in the context of budgetary resources, all commissions are dependent on their respective government for the amount of funding but independent in the use they wish to make of the funds. In the Irish Commission's case, funding is granted by the Minister of Justice, Equality and Law Reform upon submission of an estimate with the consent of the Minister for Finance. The budget was recently cut by 32 per cent despite an increasing number of complaints and expanding workload.²³⁹

Funding for the Northern Ireland Human Rights Commission is allocated by the executive through the provision of an annual budget (under a separate budget line) deciding on the amount. While the Commission exercises its powers and functions in an independent manner, similarly to the Irish Commission,²⁴⁰ it has to submit annual reports on how it spends its public funds to the Secretary of State, which is then presented to the Parliament. The Secretary of State must approve the amount allocated to salaries and any staffing recruitment decisions made by the Commission. While it lacked funding in its early stages, the budget is currently considered to be "sufficient [...] to maintain its own offices, infrastructure and staff".²⁴¹ However, funding is also obtained from external sources.²⁴²

The British Equality and Human Rights Commission is allocated a budget from the Secretary of State but has financial autonomy in how to spend its budget. However, it has to report annually to the Secretary of State, explaining how it has spent its budget, and may only appoint staff according to guidelines on staff numbers and salaries. Its annual budget is now deemed "sufficient for the Commission to maintain its own offices, infrastructure and staff". The Commission can also obtain funding from external sources.

The annual budget for the Scottish Commission, which constitutes a separate budget line, is subject to approval by the Scottish Parliament, and its annual accounts are scrutinised by the Scottish Parliament and the Auditor General.

Those commissions with a predominantly advisory role do not tend to possess a separate budget. The budget of the Greek Commission is incorporated into the budget of the General

232 "Pluralist representation is achieved [...] through the appointment procedure. The Law on Commissioner provides that the Speaker of the Sejm or a group of at least 35 parliamentary deputies may propose candidates for the position of the Commissioner. It means that also smaller parliamentary clubs can present their own candidates." (according to the Polish national report).

233 A "two-thirds majority in Parliament is required for him/her to be elected, thus guaranteeing wide representation" (according to the Polish national report).

234 In Spain, the Ombudsman is elected by the Parliament (consisting of two chambers). A Parliamentary Committee proposes the candidate or candidates for the post of the Spanish Ombudsman. According to the Spanish report, the qualified majorities (three fifths majority of the Members of each House of the Parliament) required for the election of the Ombudsman "guarantee the political pluralism and the participation of the parliamentary minorities".

235 "The Council is composed of a group of experts active in the Polish public life and representing different professions, academia or non-governmental organizations. The Council meets occasionally on special seminars in Nieborów. It is only an advisory body, which has been created solely on the basis of decision of the Commissioner. Its composition is not specially regulated – it is rather matter of personal invitation by the Commissioner. The Council advises on the general issues, and in daily practice it does not have a significant impact on the Commissioner's activity. In addition, the current Commissioner has created a couple of expert teams dealing with a certain problem and advising on best solutions to be adopted in Poland" (according to the Polish national report).

236 The Board is responsible for all matters relating to substance and professional issues including research strategy.

237 Members have different academic backgrounds (for example, law, political science, history, sociology).

238 UN expertise (especially concerning Treaty Bodies) and experience with the European Court of Human Rights is represented.

239 The Commission has 15 Commissioners and 13 staff members.

240 Reporting to the Minister for Justice, Equality and Law Reform.

241 This is according to the National Report. Currently, it has one full-time and nine part-time commissioners, a Chief Executive and ca. 21 full-time staff members.

242 For example, the British Council, various charitable organisations and international organisations, which is usually linked to the implementation of specific projects.

Secretariat of the Government and authorisation has to be sought for any expenses going beyond the 'operational' costs (for example, travelling expenses for meetings, or funds for organising conferences).²⁴³

The budget of the French Commission forms part of the Prime Minister's budget, and a major part of the expenses (for example, premises, communication facilities) is directly covered by the office of the Prime Minister.²⁴⁴ However, according to the French report, the allocated funding is "freely managed".²⁴⁵

The founding law of the Greek Commission provides for three posts of specialised academic staff on renewable private employment contracts for a term of three years, one executive secretary and three posts for secretarial and technical support.

In contrast to the commissions of France and Greece, the budget of the Luxembourg Commission is a separate item in the national budget. The budget is insufficient to pay for research performed by external experts such as legal research. The Commission currently employs one full-time and one part-time staff member.²⁴⁶

The Polish Commissioner is both organisationally and financially independent from other state authorities.²⁴⁷ Its budget is directly covered by the state budget.²⁴⁸ The budget of the Spanish Ombudsman is a separate item of the Parliamentary Budget and is assigned as a separate budget line.²⁴⁹ In Sweden, all decisions regarding the budget of the Parliamentary Ombudsman are made by the Parliament. The budget of the government appointed Equality Ombudsman is decided by the government.²⁵⁰

In the course of the re-accreditation of the Danish Institute in 2007, the ICC stressed the importance of adequate sustainable funding to address core domestic responsibilities and activities, and criticised Denmark for devoting too much attention to international matters.²⁵¹ The German Institute

receives non-earmarked funding from three Federal Ministries, which are represented in the Board of Trustees.²⁵²

4.3.4. Stability of mandates

The commissions are dependent on the executive to a certain degree. Members of the Northern Ireland Commission as well as the British Commission are appointed by a government minister and remain accountable to him/her. They may be dismissed by this minister under certain circumstances prescribed by law²⁵³ and subject to judicial and political controls. The Irish Commission is administratively linked to a government department of Justice, Equality and Law Reform.²⁵⁴

Stability is guaranteed through commissioners serving in a full-time capacity appointed to a term of office for a renewable period of time. With regard to the Irish Commission, one full-time Commissioner is appointed for a maximum term of five years; other Commissioners on a part-time basis for a period of three years at most but determined at the time of appointment by the government. The British Commission has two full-time Commissioners (the Chair as well as the Chief Executive, who *ex officio* is a Commissioner) and up to 15 part-time Commissioners, appointed for a period of between two and five years. Stability of the mandate is further guaranteed through the right of the commissions to appoint their own staff; however in case of the Northern Ireland and the British commissions, appointment is subject to the approval of the Secretary of State. In contrast, the members of the Scottish Human Rights Commission are appointed by the Parliament (the Chair formally also by the Head of State) and may only be dismissed by a two-thirds majority of the Parliament. The Commissioners serve a fixed term of up to five years, with the possibility of one renewal.

The commissions in France and Luxembourg are characterised by involvement of the Prime Minister in appointment, supervision and dismissals.²⁵⁵ In contrast, the members of the Greek Commission are appointed by the various bodies represented in the NHRI (and not by the administration). The President and Vice-Presidents are elected from among the commissioners, and representatives of ministries have no voting rights. The members of these three commissions are appointed for a three-year term. Members of the commissions can only be dismissed in specified circumstances.²⁵⁶ The mandates of the members are renewable and not revocable as long as

243 In October 2007, the ICC SCA raised concern regarding the adequacy of funding, "in particular with regard to the process for the approval of core functions and to recruit staff". It stated that it would consider this issue at its October 2009 session. It further stressed "the need for the NHRI to provide for adequate resources for staff, and for sufficient staffing" and referred to its General Observation on "Full time members". See ICC (2007) *Report and Recommendations of the SCA*, 22–26.10.2007, p. 4, paragraph 3.5.

244 In context of the re-accreditation of the French NHRI in 2007, the ICC SCA noted in item 2: "It refers to the General Observation on 'Adequate funding', in particular with regard to financial autonomy and to enable the NHRI to have its own staff and premises." See ICC (2007) *Report and Recommendations of the SCA*, 22–26.10.2007, p. 4, paragraph 3.4.

245 It is mainly used to meet the member's expenses, and to fund research projects or various events such as conferences.

246 See the National Report.

247 See the National Report.

248 In 2007 it had a staff of 256. However, in context of re-accreditation procedure in 2007, the ICC SCA noted with concern that "one of the positions required by law, namely that of deputy commissioner, remains vacant". ICC (2007) *Report and Recommendations of the SCA*, 22–26.10.2007, p. 6, paragraph 3.10.

249 The Ombudsman is assisted by two Deputy Ombudsmen and has a permanent staff of 176.

250 See the National Report. There is a constitutional prohibition (Regeringsformen (Instrument of Government) 11(7)) against governmental interference in decisions of individual cases or interpretations of the law of an administrative agency. It has been argued, that the prohibition of ministerial involvement in individual cases is buttressed by a widespread culture of independence among administrative agencies, and the constitutional rules on access to official information.

251 See ICC (2007) *Report and Recommendations of the SCA*, 22–26.10.2007, pp. 3-4, item 1, paragraph 3.3.

252 Ministry of Justice (40 per cent); Ministry of Foreign Affairs (30 per cent); Ministry for Economic Cooperation and Development (30 per cent).

253 For example, unwilling or unable to perform functions, convicted of a criminal offence, bankruptcy; having failed without reasonable excuse to discharge functions for a three month period.

254 See criticism by Thomas Hammarberg, the Council of Europe Commissioner for Human Rights: Commissioner for Human Rights (2008) *Report by the Commissioner on his Visit to Ireland 26-30 November 2007*, CommDH(2008)9, Council of Europe, paragraph 19.

255 With regard to the French Commission, see the criticism of the ICC SCA in context of the re-accreditation in 2007: ICC (2007) *Report and Recommendations of the SCA*, 22–26.10.2007, p. 4, paragraph 3.4, item 1: "It refers to the General Observation on the 'Selection and appointment of the governing body', in particular the continuous involvement of the Prime Minister office in relevant issues related to the Commission." In item 3, the ICC SCA referred to the General Observation on "Full time members".

256 For example, the French Commission in the case of unforeseen difficulties (*empêchement*) or of failure recorded by the Commission board, for example, absence from three consecutive meetings of the plenary assembly.

they retain the qualities for which they were appointed. The members of the Luxembourg Commission are volunteers and receive €25 as compensation for attendance of a meeting.

The Polish, Portuguese, and Spanish NHRIs are appointed by the Parliament for a fixed period of four (Portugal) or five years (Poland and Spain), which is normally renewable.²⁵⁷ They enjoy parliamentary immunity.²⁵⁸ They may be dismissed only in certain circumstances stipulated by law.²⁵⁹ Incompatibility rules exist for all three NHRIs in order to ensure their independence, for example incompatibility with certain political positions. Moreover, the timing of appointment may guarantee independence, for example through ensuring that the mandate of a person appointed by the Parliament, does not correspond with the parliamentary term.

Regarding the Danish institute, no member of the board is appointed by the government, but by universities, the Council of Human Rights composed of and staff; they are appointed for a period of four years and may be re-appointed for one additional period.²⁶⁰ The members of the Board of Trustees of the German Institute are also appointed for a period of four years.²⁶¹

Good practice²⁶²

A solid legal foundation which clearly sets out the mandate has been provided, for instance, for the Spanish Ombudsman with its foundation in the Constitution and an organic law.

The Scottish Commission is accountable only to the Parliament. The annual budget is subject to approval by the Scottish Parliament, and its annual accounts are scrutinised by the Scottish Parliament and the Auditor General. In the exercise of its functions, the Commission is not to be subject to the direction or control of any member of the Scottish Parliament, any member of the Scottish Executive, or of the Parliament itself. Moreover, unlike the Northern Ireland and British commissions, the Scottish Commission is not a non-departmental public body (NDPB), but a body corporate which is entirely independent of government and accountable directly to the Scottish Parliament.²⁶³ The annual budget of the Scottish Commission is separate and subject to approval only by the Scottish

Parliament. Similarly, the budget of the Spanish Ombudsman has a separate budget line from the Parliamentary Budget.²⁶⁴

The members of the board (responsible for substantial and professional issues including research strategy) of the Danish Institute are appointed by different entities: six of the 13 by a Council for Human Rights (a body of the institute), another six from the academic field (two each by three academic institutions: the rectors of Copenhagen and Aarhus universities, and the Council of Rectors of the Danish universities), and one by the staff of the Institute. Diversity is also achieved through the composition of its Council for Human Rights, which reflects the points of view of volunteer organisations, public authorities, researchers and other individuals and groups particularly interested, including ethnic minorities.

Due to the large number of members, the French Commission represents numerous perspectives: 30 out of its 64 members come from NGOs and trade unions, some of the members are government representatives (in an advisory capacity) which make it easier for the body to act as platform for interaction between civil society and government. However, there is an apparent risk that such a large commission will raise concerns as to efficiency in decision making.

The founding laws of the commissions in the United Kingdom and Ireland require them to be representative of the community and to be diverse in terms of, for example, professional background, ethnic origin, religious belief, and to maintain a gender balance. The requirement contained in their mandates to cooperate with civil society is an additional positive feature. The British Commission includes a person with disabilities and has a specific committee on disability. At least two members of the board of the Danish Institute must be associated with ethnic minorities or humanitarian organisations operating in areas of significance for ethnic minorities.

Incompatibility rules, for example with certain political positions, exist for the Polish, Portuguese, and Spanish ombudsmen in order to ensure independence.

4.4. Mandate and powers

As reaffirmed in a 2006 UN General Assembly Resolution, “national institutions have a crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights”. Therefore states should ensure that “all human rights are appropriately reflected in the mandate of their national human rights institutions when established”.²⁶⁵ In such a way, the indivisibility and interdependence of all human rights – as stressed in paragraph 5 of part I of the Vienna Declaration and Programme of Action – can be ensured.

257 The Polish Commissioner is appointed for a five year renewable term, which is longer than the term of the Parliament. Thus, the Commissioner appointed by one ruling majority controls the compliance with human rights of the next government.

258 i.e. not to be subjected to penal liability or deprived of liberty without the consent of the Parliament for opinions expressed or acts committed in performing his/her duties; in all other cases, and while he/she continues to perform his/her duties unless caught *in flagrante delicto* and where his/her detention is indispensable to secure proper proceedings.

259 For Poland, these cases are: (1) the Commissioner has refused to perform his/her function, (2) he/she has become permanently incapable of performing the office due to a medically certified ailment, disability or physical incapacity; (3) he/she has acted against their oath, and consequently in violation of the Constitution.

260 After this, reappointment is possible only after a lapse of period of at least four years.

261 On details regarding the appointment procedure, see above regarding pluralism.

262 The identification of examples of ‘good practice’ acknowledges the value of a practice and contributes to supporting a culture of continuous progress. However the identification as ‘good practice’ does not imply that the respective practice has been directly scrutinised in depth by the Agency.

263 Schedule 1 (Section 3) to the Scottish Commission for Human Rights Act, 2006, explicitly guarantees the functional independence of Commission.

264 All decisions regarding the budget of the Swedish Parliamentary Ombudsman are made by the Parliament.

265 UN General Assembly (2006) *National institutions for the promotion and protection of human rights, A/RES/60/154 (23.02.2006), paragraph 5*. See: UN Commission on Human Rights (2005) *National Institutions for the Promotion and Protection of Human Rights*, Resolution 2005/74 (20.04.2005). See also UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, pp. 4, 32, 49, 51, 54-55.

Commissions generally have a broad mandate. In this regard, the Irish Commission is mandated to protect and promote rights guaranteed by the Constitution or by any treaty to which Ireland is a party.²⁶⁶ Similarly, the Northern Ireland and British commissions have interpreted their mandates to include the protection of the full range of human rights recognised in national law as well as human-rights treaties ratified or acceded to by the United Kingdom, including instruments not formally incorporated into United Kingdom law.²⁶⁷ Particular regard must be paid to rights contained in the European Convention on Human Rights (ECHR).²⁶⁸ Similarly, the mandate of the Scottish Commission covers human rights recognised in the ECHR and 'other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.'²⁶⁹

Priority areas in legal and investigatory work concern human rights which are underdeveloped or inadequately enforced. This is the case for the Irish Commission.²⁷⁰ Similarly, the Scottish Commission has to pay particular regard to the "human rights of those groups in society whose human rights are not, in the Commission's opinion, otherwise being sufficiently promoted."²⁷¹ Strategic priorities for the Northern Ireland Commission include ensuring compliance with certain key provisions of the ECHR and "addressing the legacy of human rights violations in the past in Northern Ireland", "promoting education and dialogue", and ensuring respect for human rights within counter-terrorism initiatives. Priority areas of the British Commission for the next three years, according to its business plan for 2008/09, focus on equality and human rights challenges and involvement of the public, especially people from disadvantaged communities.²⁷²

The three commissions in the United Kingdom are responsible only for a certain geographical area and for certain substantive areas. In this regard, the British Commission is precluded from taking 'human-rights action' in matters that are within the mandate of the Northern Ireland or the Scottish Commissions, for example education and health in Scotland (i.e. matters 'devolved' to the Scottish Parliament and the Scottish government). However, it has full responsibility for equality and anti-discrimination in Scotland, as these matters have been 'reserved' to the United Kingdom Parliament.²⁷³

As an example of a broad and clear mandate, the Scottish Commission has the power to review any area of the law of Scotland or any policies and practices of any Scottish public authority. The Commission also has specific powers to conduct inquiries and to intervene in civil legal matters. The power to conduct an inquiry into the policies and practices of Scottish public authorities includes the power to require evidence under oath and the production of documents and other information. As part of an inquiry the Commission can enter places of detention, without notice, in order to conduct an inspection the place of detention and to interview any person detained there. The Commission can even refer anyone that obstructs the exercise of its powers under an inquiry to the Court of Session (the highest civil court in Scotland), which will deal with the matter as if it were a case of possible contempt of court.²⁷⁴

The three commissions have a mainly advisory role and cover a broad range of human rights. The French Commission has four sub-commissions working on specific human rights matters.²⁷⁵ Priority topics include racism, anti-Semitism and xenophobia. Four other specialised public bodies address specific human rights issues not dealt with in detail by the Commission.²⁷⁶

The Greek Commission covers the full spectrum of human rights, and is split into five Sub-Commissions.²⁷⁷ In general, factors influencing agenda-setting include the urgency of a matter, the seriousness of violations involved, publicity gained, and the numbers of individuals affected.

The Luxembourg Commission attempts to cover all areas but is obliged to focus on a certain number of pertinent areas, such as immigration, asylum, minors in prison, the protection of personal data, human rights education, prisons and torture. This prioritisation is due to financial and personnel limitations.

The mandate of ombudsman institutions is typically to protect and defend basic rights and freedoms against constrictions

266 "The Commission's powers and functions are set out in the Human Rights Commission Act 2000 and the European Convention on Human Rights Act 2003. These Acts confer a wide-ranging competence on the Commission to promote and protect human rights as defined both in the Irish Constitution 1937 and in international human rights agreements to which Ireland is a party." It further notes that "the European Convention on Human Rights, which Ireland ratified in 1953, was 'given further effect' in Irish law by the European Convention on Human Rights Act 2003. This Act brought about a form of incorporation of the ECHR using the interpretative model of incorporation at a sub-constitutional level." (According to the Irish report.)

267 In this regard, the United Kingdom national report mentions: "In establishing the NIHR, s.69 of the *Northern Ireland Act 1998* refers to the Commission as working to ensure the 'protection of human rights'. The NIHR has therefore interpreted its mandate in theory and in its practice as working to protect the full range of human rights recognised in Northern Irish law as well as international human rights instruments, including those of the United Nations and the Council of Europe."

268 With regard to the British Commission, the United Kingdom report states: "S.8 of the *Equality Act 2006* gives the EHRC a wide-ranging mandate to promote compliance with, and understanding of, human rights in Britain. This includes rights contained in international instruments which have not been formally incorporated into United Kingdom law, as well as all the UN and European instruments which the United Kingdom has ratified, included those relating to socio-economic, cultural, equality and children's rights, although the Commission is to pay 'particular regard' to the ECHR rights. In addition, s.7 of the 2006 Act also extends the EHRC's mandate across all the anti-discrimination grounds. [...] The ECHR also plays a special role with regard to the Northern Ireland Commission, since it is empowered to bring proceedings under the United Kingdom *Human Rights Act 1998* where an individual has been subject to an alleged violation of his or her ECHR rights."

269 United Kingdom/Scottish Commission for Human Rights Act 2006, article 2(2)(b).

270 The Irish national report mentions, for instance, prevention of degrading treatment due to the poor physical conditions and rehabilitation services in Irish prisons; the recognition of Travellers as an ethnic minority; greater protection of immigrants and victims of human trafficking; ensuring that legislation on civil partnership meets best international practice.

271 United Kingdom/Scottish Commission for Human Rights Act 2006, article 2(4)(b).

272 See Equality and Human Rights Commission (2008) *Bringing People Together. Business Plan 2008/9*, p. 12.

273 According to the United Kingdom report, "the two Commissions are expected to enter into a memorandum of understanding setting out their respective roles".

274 United Kingdom/Scottish Commission for Human Rights Act, 2006, Sections 8 *et seq.*

275 The four are: human rights and the development of science / human rights education; racism/discrimination; national matters; and international law and humanitarian action.

276 The High Authority against Discrimination and for Equality, the French Data Protection Authority, the Ombudsman, and the Children's Ombudsman. The activities of these independent public bodies are not coordinated in a specific manner. However, the Ombudsman is an ex-officio member of the French Commission. The French report mentions the existence of a "Coordination and reflection committee" within the NIHR, which coordinates the work.

277 The five are: Civil and political rights; social, economic and cultural rights; the application of human rights to aliens; the promotion of human rights; international communication and cooperation

imposed by any actions from the public administration.²⁷⁸ The mandate is typically limited to ensuring that public administration serves general interests objectively and without any arbitrariness. Normally, ombudsman institutions can only intervene in cases where public administration has been involved.

The thematic focal areas of the Polish Commissioner, an ombudsman institution according to the typology used here, include criminal law, social security, civil law, property management, administrative law, housing, economic law, consumer rights, employment law, rights of soldiers and officers of public services, operation of public administration, protection of health protection, aliens' rights, and the rights of families, children and persons with disabilities.²⁷⁹

Priority topics for the Spanish Ombudsman are the protection of children, defence and internal affairs, justice and domestic violence, administration of the economy, immigration and foreign affairs; public functions and employment, territorial regulation, health and social policy, education and culture. The Ombudsman's competence covers all bodies and authorities of the central government, the autonomous community administrations as well as local administrations.²⁸⁰

The annual report from the Portuguese Ombudsman to the Parliament incorporates categories such as the environment and natural resources, including urban planning and housing; economic and financial affairs, including consumer protection; social affairs; armed forces and security forces; judicial affairs; political and constitutional affairs, rights and liberties; the rights of vulnerable groups.

The mandate of Danish Institute encompasses "human rights recognised at any given time by the international society, including in particular those laid down in the United Nations Universal Declaration, conventions adopted by the United Nations and the Council of Europe, and the civil rights contained in the Danish Constitution."

Similarly, the statute of the German Institute does not limit subject matters (however, with regard to limitations of functional competencies, see further below). The German Institute has worked on human rights related to societal learning processes; strengthening NHRIs; discrimination; economic, social and cultural rights; human rights in the context of security policy; contemporary forms of slavery; human rights of refugees and migrants; as well as human rights and development cooperation.

Good practice

Most NHRIs have a broad mandate or have interpreted their mandates to include either all human rights or all human rights included in treaties to which the state in question is a state party.

For example, the broad powers of the Scottish Commission – to review any area of the law and any policies or practices of any Scottish public authority, coupled with the mandate to conduct inquiries (including requiring evidence under oath and the production of documents and other information) – establishes a strong basis for effective protection. Additionally, the Scottish Commission can refer anyone who obstructs an inquiry to the highest civil court in Scotland.²⁸¹

4.5. Monitoring and data collection

The NHRIs assessed in this report apply different methods of monitoring and data collection. The Irish Commission monitors and collects data by conducting inquiries (upon complaints received or on its own initiative, labelled enquiries in Ireland) when clearly linked to at least one of its functions (for example, reviewing the adequacy and effectiveness of laws and practice). The, as of yet unused, power of the Commission to institute class-action type proceedings provides for further possibilities to protect human rights. The Commission sometimes relies on data gathered from external sources,²⁸² but verifies such data by conducting individual interviews.²⁸³ Local NGOs have the opportunity to brief the Commission. However, the Commission has no compulsory power to visit places of detention, but may do (and has done so with the consent of the relevant authority).²⁸⁴

The commissions in the United Kingdom (Great Britain, Northern Ireland, and Scotland) monitor human rights violations by carrying out investigations in relation to their functions. In particular, the British Commission conducts inquiries into human rights and equality issues but also formal investigations on whether specific individuals have violated anti-discrimination law. In this context, all these bodies possess powers to compel evidence, for example the testimony of members of the

278 Thus, in general they do not scrutinise activities of judges, the Parliament or the Government. The Spanish national report notes in that regard: "The mission of the Ombudsman is to protect and defend basic rights and public freedoms on behalf of citizens against any actions from any administration. The Ombudsman ensures that the public administration acts in accordance with the provisions in Article 103(1) of the Constitution, serving general interests objectively and acting in accordance with the principles of efficiency, hierarchy, decentralization, coordination and complete submission to law, expressly forbidding any arbitrariness." The Portuguese national report reads as follows: "[The] Provedor de Justiça, the Portuguese Ombudsman can investigate Public Administrative bodies regardless of whether they are central, local or regional entities. The [Ombudsman] can, without prior notice being given, carry out inspections of public services, prisons and military facilities [...]. The [Ombudsman] cannot start judicial procedures except those mentioned above. The [Ombudsman] is not entitled to investigate Parliament, the Government, Regional Parliaments and Regional Governments. However, he has the power to investigate the activities of administrative bodies. For example, the [Ombudsman] cannot investigate a Ministry but can conduct an inquiry into the activities of a department dependent on the Government. The [Ombudsman] has no authority to scrutinise the activities of judges."

279 Some human rights areas are covered by other bodies, for instance the protection of children's rights and personal data protection. The Commissioner is still competent to act in these areas.

280 Some human rights areas are covered by other bodies, for instance personal data protection, for example, Spanish Data Protection Agency (a body under public law with its own legal personality and legal capacity acting independently of the public administrations in the performance of its tasks). However, the right to data protection as constitutional right still falls also under the Ombudsman's mandate.

281 United Kingdom/Scottish Commission for Human Rights Act, 2006, Sections 8 *et seq.*

282 For example, the Department of Social Welfare and Family Affairs,

283 For example, inquiry into the Old Age Contributory Pension system in Ireland.

284 Each prison in Ireland has a Visiting Committee which monitors the situation in the prison and drafts an annual report thereon.

public and representatives of agencies (Northern Ireland).²⁸⁵ The Scottish Commission may not conduct inquiries into policies or practices in relation to a particular case, rather it is limited to inquiries into general activities. The Northern Ireland Commission and the Scottish Commission can also monitor human rights violations through their power to visit places of detention in the context of an inquiry.²⁸⁶ The British Commission does not have such powers.

As to the mainly advisory commissions, these do not systematically monitor human rights violations and rely largely on external information. For example, in its report on racism, anti-Semitism and xenophobia the French Commission relies on official data provided by a range of ministries.²⁸⁷ The Luxembourg Commission cooperates on occasion with civil society and exchanges information with other public bodies.²⁸⁸ While the Greek Commission does not have a specific mechanism for monitoring human rights violations of its own initiative, it has however taken up a number of situations.²⁸⁹

The main source of information for Ombudsman institutions is typically investigations, such as in the context of individual complaints, own-initiative investigations and visits (for example, of detention centres).²⁹⁰ The ombudsman institutions analysed here all possess corresponding powers.²⁹¹ The Portuguese Ombudsman has also established a hotline in order to help children at risk, prevent offences against children and ensure sufficient family care.

Institutes do usually not handle individual complaints and do not have powers to conduct on-site investigations, such as the inspection of detention centres. For the most part they rely on external sources of information in 'monitoring' compliance of legislative or political processes with human rights.²⁹² The German Institute monitors legislative, judicial, and political

processes. Monitoring is also carried out through 'follow-up conferences' on the basis of Concluding Observations of UN Treaty Bodies. In 2007, the Council of Europe Commissioner for Human Rights recommended "the strengthening of the institute's monitoring functions, which are currently very limited. The institute should be authorised to carry out structural and factual monitoring".²⁹³ In 2009 legislation was adopted to provide the Institute with the mandate to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities.

Good practice

The Irish Commission is not only explicitly mandated to "keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights,"²⁹⁴ but also to monitor human rights violations in a variety of ways. Irish NGOs representing interests of diverse groups are given the opportunity to brief the Commission. The Commission has also organised various seminars which serve to provide a public forum for individuals and organisations to raise their concerns regarding the general compliance of the State with various human rights requirements. It conducts inquiries, and focuses its work on the basis of trends identified in the complaints it receives, and focuses work in that direction. When relying on external data as part of inquiries, it verifies information by conducting individual interviews.

The Northern Ireland Commission is explicitly mandated to investigate allegations of human rights abuses (including visits to places of detention) and was recently given new investigative powers, including the power to compel the production of evidence and to summon witnesses. In addition, similarly to the Irish Commission, it may also commission research into human rights issues, which could uncover violations. Further, it is mandated to monitor and advise on the effectiveness of human rights legislation.

NHRIs should play an active role in the prevention of all human rights violations.²⁹⁵ On this note, it has been recognised that monitoring places of detention contributes to the prevention of torture.²⁹⁶ Further, the UN General Assembly encouraged governments to provide NHRIs with "more autonomy and

285 However, they are also subjected to procedural requirements (for example, reports following an inquiry must not make reference to the activities of an identifiable person – unless it is necessary in order for the report to reflect the results of the inquiry adequately (the British and Scottish commissions).

286 This new power granted by the *Justice and Security Act 2007* has – according to the National Report – been used several times already; the report mentions that "[I]n these visits, Commissioners spoke to staff and detainees and raised issues of human rights concern".

287 Other independent public bodies mentioned in the French report such as the Ombudsman, the High Authority against Discrimination and for Equality, the French Data Protection Authority and the Children's Ombudsman also monitor human rights violations (see also chapter on individual complaints procedures).

288 The Commission regularly exchanges information with the Ombudsman, the Centre for Equal Treatment, the ORK and the CNPD concerning work in progress and future projects.

289 In the framework of its general competence as an advisory organ to the State and its specific competence of constant monitoring the situations of human rights in Greece (article 1 par. 5 (a) Law 2667/1998) the GNCHR follows any developments in the area of human rights in Greece.

290 The Polish report mentions inspections of local government bodies, hospitals, remand centres, police short-term detention facilities, military units, units of the Border Guards, refugees centres and immigration detention centres.

291 For example, compelling evidence, entering penitentiaries. Public authorities are under a legal obligation to cooperate.

292 The Danish Institute relies on for example, findings of the Parliamentary Ombudsman, surveys and statistics conducted by other organisations or ministries. The Institute can also, like any other organisation, apply for access to documents or conduct interviews or apply for permission to access different facilities or contact other stakeholders and obtain information. Such public information is normally used as part of analysing whether a certain act or a certain practice is in accordance with human rights obligations. The cases in *Hvidbog om Ægtefællesammenføring i Danmark* [The Whitebook on Spouse Reunification] (2004) were collected through access to public documents.

293 Commissioner for Human Rights (2007) *Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Germany, 9-11 and 15-20 October 2006*, CommDH(2007)14, paragraph 30.

294 Ireland/Human Rights Commission Act, 2000, section 8(a), cf. the identical wording in the Northern Ireland Act, 1998, section 69(1).

295 See also UN General Assembly (2006) *National institutions for the promotion and protection of human rights, A/RES/60/154 (23.02.2006) paragraph 8*: "Encourages national institutions for the promotion and protection of human rights established by Member States to continue to play an active role in preventing and combating all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international Instruments."

296 UN High Commissioner for Human Rights, *Annual Report 2007, A/62/36*, pp. 5-6, paragraph 15 refers with regard to "[d]etailed information on activities undertaken by OHCHR with respect to national human rights institutions" to UN Human Rights Council (2007) *Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human Rights Council" Report of the Secretary-General on national institutions for the promotion and protection of human rights, Summary, A/HRC/4/91 (08.02.2007)*, p. 19, paras. 85-88 mentioning projects implemented to strengthen the capacity of NHRIs with a view to prevent torture.

independence, such as by giving them an investigative role or enhancing such a role.²⁹⁷

4.6. Individual complaints procedures

None of the commissions in Ireland and the United Kingdom have direct adjudicatory functions concerning complaints of human rights violations.²⁹⁸ Focus is rather on the detection and prevention of systemic human rights violations and powers include conducting inquiries and the possibility to providing legal advice and representation to persons wishing to take legal action under certain conditions laid down in their founding instruments.²⁹⁹ Due to resource constraints, certain categories of cases are prioritised. The Irish Commission, for example, prioritises cases with significant implications, cases of urgency, or cases of particularly serious human rights violations. Similarly, the Northern Ireland Commission adopts a strategic approach to cases, and selects a number for which they offer more comprehensive legal support.³⁰⁰

Many individual enquiries of the Northern Ireland Commission are resolved after initial advice and informal negotiations have occurred through, for example, telephone help lines or correspondence.³⁰¹ Many of the cases supported by the Commission have reportedly led to changes in public policy and practice.

The British Commission can choose to support an individual alleging discrimination before courts and tribunals, or to provide alternative forms of legal support and advice (cases of a potentially strategic nature are referred to the Legal Committee deciding on provision of legal support). However, with some limited exceptions, the Commission is not mandated to provide legal representation to individuals bringing cases under human rights law which do not involve a claim under the anti-discrimination legislation.³⁰²

The Scottish Commission does not have any adjudicatory role in respect of individual complaints. It may provide some basic advice to individuals seeking information on their human rights,

but is not mandated to render assistance to any person in connection with any claim or legal proceedings; however, it may conduct inquiries, visit places of detention and intervene in civil legal proceedings.

Commissions with mainly an advisory focus, such as those in France and Luxembourg are not mandated to and do not handle individual complaints in any formal sense. The same was also true for the Greek Commission, but with legislative changes in 2006 and 2009, in response to EU directives, the mandate has been enlarged to include individual complaints.³⁰³

Ombudsman institutions do not typically handle cases explicitly concerning human rights, but focus more generally on maladministration. Nevertheless, a major focus for these institutions is to deal with individual complaints. These complaints concern infringements of public freedoms and liberties including arbitrary exercises and inaction by public bodies, although such issues often overlap with human rights violations.

Competence to deal with individual complaints is restricted due to the responsibility of judicial or other relevant authorities. For example, with regard to the Spanish Ombudsman, complaints are not accepted when the events relate to a case pending before a court. When admissibility criteria have been satisfied,³⁰⁴ submission of a complaint is free of charge and not bound by any formal requirements.³⁰⁵ The minimum required content of an individual complaint incorporates the identity of the applicant and a description of the issue.

Once an application for further proceedings is accepted, ombudsman institutions may typically either investigate or request its examination by relevant bodies.³⁰⁶ Usually, the entity against which the complaint has been lodged is informed. When investigating the case, the ombudsman institutions have broad investigative powers, for example the right to conduct on-site inspections, view files, and order expert evaluations and testimonies (Polish Commissioner and Spanish Ombudsman). Failure to cooperate can be made public in the Spanish Ombudsman's annual or special report.³⁰⁷ If an infringement is established, the Ombudsman may issue a recommendation to the authority concerned or its superior authority. The authority must reply within a certain period of time (for example in response to the Polish Commissioner, within 30 days) on actions

297 UN General Assembly (2006) *National institutions for the promotion and protection of human rights*, A/RES/60/154 (23.02.2006), paragraph 9: "Notes with satisfaction the efforts of those States that have provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps."

298 For example, the Equality Commission for Northern Ireland has the power to support individual cases involving issues of anti-discrimination law.

299 For instance, the Irish Commission can only provide such assistance if it is not available through the civil or criminal legal aid schemes. Inadmissibility criteria seek to avoid duplication with other bodies.

300 The Joint Committee on Human Rights in Northern Ireland is of the view that "it is impractical for human rights commissions to have a leading role in providing legal assistance to individuals bringing human rights claims ... [there is a need] for a strategic casework function, aimed at developing the law and disseminating human rights principles, rather than achieving redress for individuals". See Joint Committee on Human Rights (2003) *Fourteenth Report*, 15.07.2003, paragraph 57.

301 For example, the Northern Ireland Commission receives approximately 1,000 new legal inquiries every year, many of which are processed through the telephone helpline. While the number of inquiries is increasing (due to higher media coverage), less formal applications for legal assistance are registered due to greater effectiveness by Commission staff in conducting informal interventions and mediation in disputes.

302 For the individuals whose applications cannot be supported, advice is provided through its helpline and online resources. In addition, the NHRI contributes with funds to external organisations that provide legal help and advice (in 2008, it announced that it would be providing over £10 million of grant-aid to voluntary organisations, including £3.3 million to over 70 advice-giving organisations).

303 Greece/ Laws 3304/2005, 3488/2006, and 3769/2009.

304 For instance, in Spain anonymous complaints, complaints made in bad faith or manifestly unfounded claims are inadmissible. Submissions must be made within one year from the time of becoming aware of the acts constituting the alleged violation. Rejections must be made in writing and give reasons.

305 Complaints can be submitted verbally or in writing (as in the case of the Polish Commissioner), or even electronically by filling in a simple form on the web page (as with the Portuguese Ombudsman); complaints must be signed on ordinary paper (as for the Spanish Ombudsman). Attendance by a lawyer or solicitor is not required to bring an individual complaint to any of those three NHRIs.

306 According to the Polish report, this includes informing public bodies such as the police, public prosecutors or state agencies or professional agencies or request the *Sejm* to refer the matter to the Supreme Chamber of Control. The Portuguese report mentions that the Public Prosecutor is informed whenever a complaint involves a crime.

307 The Spanish report states: "Refusal or failure on the part of the civil servant or his/her superiors responsible for sending the initial report requested may be considered by the Ombudsman as a hostile act which obstructs his/her functions. He/she shall immediately make such an act public and draw attention to it in his/her annual or special report, as the case may be, to Parliament."

taken to redress the situation. The Ombudsman may further approach the superior entity if action taken is considered to be inappropriate or insufficient and can use the media to highlight the issue.

Some ombudsmen also have the right to challenge individual acts and acts of a general nature before courts (for example the Polish Commissioner) as well as the right to intervene in proceedings before constitutional courts or request an advisory opinion in order to clarify the meaning of relevant legal provisions.³⁰⁸

In Sweden, a distinction has to be made between the Parliamentary Ombudsman, with complaints procedures similar to that described above and the Equality Ombudsman.³⁰⁹ The latter has the right to bring an action before a labour or a civil court, as applicable, in several types of cases.³¹⁰

Between 2003 and 2009 the Danish Institute was the body designated for the promotion of equal treatment and effective protection against discrimination on grounds of racial or ethnic origin.³¹¹ Thus, it was mandated to assist victims of discrimination, to deal with individual complaints on racial discrimination both within and outside the labour market. This function was taken over 1 January 2009 by the Board of Equal Treatment.³¹²

The German Institute is not mandated to deal with individual complaints. In practice, however, it provides informal practical assistance regarding competent institutions without issuing concrete advice on the substance. The Institute also maintains a record of communications with persons seeking advice.³¹³

Good practice

The strategic litigation used by, for instance, the Irish and the Northern Ireland commissions, highlights issues of the greatest importance. The interpretation of the mandate of the Northern Ireland Commission to include the power to intervene, with a court's consent, in legal proceedings to promote human rights has been approved by the House of Lords. The British

Commission is explicitly granted this power and has made use of it, as has the Irish Commission. The initiation of judicial review proceedings is another feature of the British Commission, permitting it to promote compliance with the European Convention on Human Rights.

4.7. Reporting

All commissions produce annual reports as well as reports on special topics.³¹⁴ The Irish Commission is required to submit annual activity reports to the Minister of Justice, Equality and Law Reform who in turn ensures copies are delivered to the Parliament. These annual reports give detailed account of the Commission's work during the preceding year, as well as insights into their procedures and focus for the following year. The Commission also issues periodic reports and opinion papers on topical human rights issues, or more specific submissions and observations on legislation or policies. The different publications are freely available online.³¹⁵

The main method used by the Northern Ireland and British commissions to report on their work involves the development special reports on particular issues. These reports are published periodically as the commissions complete an inquiry or research. The Northern Ireland Commission additionally brings out the *NIHRC Review* three times a year, containing analyses of important human rights issues, its annual business plan and a strategic plan (renewed every three years). Moreover, both these commissions publish newsletters. The British Commission also issues codes of practice, providing guidance to employers and service providers on how to comply with specific parts of British anti-discrimination law.

The commissions of France, Luxembourg, and Greece also publish annual reports.³¹⁶ For example, the French Commission issues two annual reports: one on racism, anti-Semitism and xenophobia³¹⁷ and one on their activities.³¹⁸ In addition, the Commission regularly publishes thematic studies,³¹⁹ at time as requested by the government.³²⁰ The Luxembourg Commission makes its reports and advisory opinions available to the general public.³²¹

308 The Polish Commissioner may demand the initiation of civil proceedings, investigatory proceedings in criminal cases, lodge a motion to punish, or reverse decisions in quasi-administrative proceedings with the same powers as vested in public prosecutors, or to lodge an extraordinary appeal against any final decisions.

309 The complaints are not bound by any formal restrictions, but the office generally only accepts complaints that are written and signed. Anonymous information, such as anonymous phone calls, are not treated as individual complaints, but can form the basis of an own-initiative investigation. Individual complaints are handled in three stages. First, a general assessment in order to find if the complaint within its competence and whether admissibility criteria have been satisfied (about half of the complaints are dismissed as inadmissible). Secondly, the public agency involved is asked to provide answers to a number of questions and the individual complainant is given the opportunity to comment upon the official reply – another 40 % of the complaints are closed at this point. The rest of the complaints are investigated (ca. 10 %, currently amounting to 500-600 each year) and can result in a sanction, for example, prosecution, disciplinary procedures or public criticism; the last one being the most used (95 % or more). Criminal prosecution is rare.

310 Sweden/Discrimination Act, Chapter 6 (1) and (2).

311 As set out in Article 13 of the Racial Equality Directive 2000/43/EC.

312 In addition to the court, the Danish report notes that other bodies relevant in relation to complaints on human rights violations and cases of discrimination include the Parliamentary Commissioner for Civil and Military Administration in Denmark, The Refugee Appeals Board, and the Danish Data Protection Agency.

313 Other public bodies, such as the Petitions Committee, the Petitions Committee for military staff as well as the Anti-Discrimination Office, accept individual claims and process them in accordance with their mandates.

314 Annual reports are encouraged for all NHRIs, see ICC SCA GO 6.7 (in the Annex of this report).

315 For example, On the importance of socio-economic rights, or sentencing procedures.

316 For example, The annual report of the Greek Commission contains its decisions and resolutions adopted, reports of the Ministries represented in the NHRI, presentations giving an overview of its participation in conferences, its contribution to the drafting and implementation of international human rights instruments, its meetings with representatives of the state, international organisations and foreign delegations.

317 This report aims at establishing trends in racist acts in France, including an analysis of the data collected from various official sources and recommendations to the government.

318 The activity report presents the organisation and work of the Commission, in particular of its sub-commissions (for example, activities, recommendations, opinions and publications).

319 On average three thematic studies are published a year, with a size ranging from a few pages to more than 400 pages. Topics have included polygamy, asylum, or mental disabilities and human rights.

320 The French Commission often refers to the reports of other independent bodies (for example, reports on discrimination published by the High Authority against Discrimination and for Equality).

321 For example, through distribution to the members of the Chamber of Deputies, State advisors and the press in parallel with its official transmission to the Government. It also holds press conferences to present its advisory opinions and annual reports containing all of its communications over the course of a given year.

Likewise, ombudsman institutions also publish annual and special reports, and are under a legal obligation to report annually to the Parliament on their activities.³²²

As for institutes, the Danish Institute, in addition to its annual reports, issues many other reports on specific topics. The annual report is presented to the Parliament Standing Committee on Legal Affairs.³²³ The Institute also provides inputs across different media such as newspapers, interviews, TV-spots, and newsletters. The German Institute only has a reporting obligation in relation to its Board of Trustees – but not to the government or Parliament. Nevertheless it does issue an annual activity report.³²⁴ Unlike the Danish Institute, it does not publish annual reports on the human rights situation in Germany. Instead, the Institute issues publications with various target audiences, such as studies (aimed at academics, journalists, parliamentarians) and handbooks (for lawyers and activists), policy papers and essays (addressing members of parliament, the general public or specific target groups).

Good practice

All the A-status NHRIs assessed in this report publish annual activity reports. These constitute a means, for instance, to put pressure on governments to comply with recommendations. Additionally, the report of the Danish Institute on the human rights situation in Denmark is commendable. It explains legislative proposals and examines critiques of Denmark issued by UN treaty bodies and the ECtHR. In this way, awareness of the human rights situation in Denmark is raised in a manner accessible to broader society, and the connection with the international human rights system is emphasised.

Similar to the Danish Institute, the Northern Ireland Commission issues a magazine analysing human rights issues in Northern Ireland. In addition, the Commission also publishes an annual business plan and a strategic plan is elaborated in consultation with stakeholders. The publication of codes of practice by the British Commission provides guidance to employers and service providers.

4.8. Advisory function

The commissions in Ireland and the United Kingdom are all mandated to give advice to the government (including in

the context of the legislative process),³²⁵ and in the case of Northern Ireland also to the Parliament.³²⁶ The Irish Commission has powers in connection with the legislative process.³²⁷ It also has the power to make recommendations on its own motion to the government (for example regarding issues that have come to its attention through other aspects of its work or through public sources). It also comments generally on the approach the government should take following a “declaration of incompatibility”,³²⁸ as it did for example when recommending new legislation recognising the rights of transsexuals.

The Northern Ireland Commission has the power to provide advice on its own initiative or on request to both the executive (here the Secretary of State) and the legislature (United Kingdom Parliament, Northern Ireland Assembly).³²⁹ Although it does not have a formal role in the parliamentary process and cannot submit legislative proposals, the Commission provides advice to the executive regarding legislative acts and other measures to protect human rights.³³⁰ The *Belfast Agreement* tasked the NHRI to advise the United Kingdom government on

322 In Poland, the report is submitted to the *Sejm*, i.e. a chamber of the Parliament. For example, the reports of the Portuguese Ombudsman include statistical data on complaints received, on judicial procedures initiated at the Constitutional Court or recommendations issued by the Ombudsman. In Sweden, the Parliamentary Ombudsman submits an annual report to the Parliament containing statistics, comments on general trends and its most important decisions. This report is printed in an official publication, distributed to all governmental authorities and also available at <http://www.jo.se> [19.09.2008].

323 The latter report explains legislative proposals, statements, and initiatives within the field of human rights in Denmark and examines critiques and decisions concerning Denmark published for example, by the UN Treaty Bodies or the ECtHR. The report is divided according to ECHR-rights but also rights of different groups, for example, women, children, refugees, disabled persons, and ethnic minorities.

324 This is a public document in German and English and made available on internet but also in hard copy.

325 For example, with regard to the Northern Ireland Commission, making recommendations to the Secretary of State for improving its own effectiveness and ensuring the adequacy of its powers and functions (the National Report reads as follows: “S.69 of the *Northern Ireland Act 1998* sets out the NIHR’s specific functions. These include keeping “under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights”; making recommendations to the Secretary of State for improving its own effectiveness and ensuring the adequacy of its powers and functions; advising the Secretary of State and the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights, either as soon as reasonably practicable after receipt of a general or specific request for advice; or “on such other occasions as the Commission thinks appropriate”; advising the Northern Irish Assembly whether a Bill is compatible with human rights; offering assistance to individuals; bringing proceedings involving law or practice relating to the protection of human rights; and promoting the understanding and awareness of the importance of human rights in Northern Ireland. For these purposes, the Commission may undertake, commission or provide financial or other assistance for research and educational activities; conduct such investigations as it considers necessary or expedient to fulfil its functions; and may decide to publish its advice and the outcome of its research and investigations.”)

326 For example, advising the Northern Irish Assembly whether a Bill is compatible with human rights.

327 It has the power to advise the government on legislation and legislative proposals upon its own initiative or on request (for example, recommendation on how relevant international and constitutional human rights standards can be reflected in Irish Legislation).

328 Due to the primacy of Constitutional Rights over rights enshrined in the ECHR in Ireland, an Irish court is not obliged to give effect to Convention rights if they conflict with rights established under the Constitution. Therefore, the European Convention on Human Rights Act (2003), that incorporated the ECHR into Irish Law allows the High Court or the Supreme Court to make, what is termed, a “declaration of incompatibility” where it is not possible for the court to apply a provision in compliance with Ireland’s obligations under the ECHR. Such a declaration, however, does not affect the validity of the said law and it is not with the courts, but with the legislature to rectify the incompatible nature of the provision. See K. O’Higgins, ‘Evaluation of ECHR incorporation into Irish Domestic Law’, in: European Commission for Democracy through Law (Venice Commission) (2007) *Conference Paper*, CDL-JU(2007)034, available at [http://www.venice.coe.int/docs/2007/CDL-JU\(2007\)034-e.pdf](http://www.venice.coe.int/docs/2007/CDL-JU(2007)034-e.pdf) (30.10.2009).

329 In the past, it provided – according to the National Report – “significant and influential advice to the United Kingdom Parliament and Northern Ireland Assembly” on the legislative proposal, such as the bill that became the *Police (NI) Act 2003* or other criminal and juvenile justice legislation, including the anti-terrorism acts of 2001, 2005 and 2006.

330 The National Report mentions that the NHRI for instance provided advice on a draft Bill of Rights for Northern Ireland. In 2001, as required by its founding law, the NHRI provided advice to the Secretary of State as to the adequacy and effectiveness of its own mandate, powers and functions.

the possibility of drawing up a new Bill of Rights for Northern Ireland.³³¹

The British Commission has very similar powers to the Northern Ireland Commission.³³² The Scottish Commission advises the Scottish government and Parliament in a similar manner.

All three remaining commissions are consultative organs of their respective government and thus contribute to the legislative process as advisors. The French Commission advises the government on any project affecting human rights and suggests measures to be taken.³³³ It also addresses opinions to the Parliament on its own initiative. Its reports, opinions and recommendations are made public on its website and published in its annual activity report, together with the possible replies by the government or relevant authorities.

The Greek Commission commonly discusses on its own initiative the compatibility of the legislation or administrative practice with human rights standards, and recommends specific measures, such as legislative reform. While the Commission is mandated to play a role in the legislative process by commenting upon bills (on its own initiative or upon request), none of the relevant bills has been submitted to the Commission so far. Nonetheless, in order to exercise its mandate, the Commission has commented on bills it did not receive officially and on bills that had already been passed into law. All the Commission's reports, decisions and resolutions are communicated to the competent authorities and the public.

The Luxembourg Commission advises the government and, consequently, contributes to the legislative process. Sometimes it is contacted before the relevant ministry publishes the bill. The Commission drafts most of its advisory opinions on its own motion, but the government is requesting these with greater frequency. All opinions, communiqués, reports and annual reports are made publicised through the press and published through the Commission's website. Press conferences presenting advisory opinions and reports are well attended.

Ombudsman institutions are not always explicitly granted the power to advise the government or legislature (for example the Polish Commissioner).³³⁴ However, they often do so via their recommendations resulting from investigations. In addition, they can indirectly provide advice indirectly by exercising their

power to appeal to the Constitutional Court, if they believe a given legal provision is unconstitutional.

The Polish Commissioner makes general pronouncements indicating problems in existing law and practice to government organs. The Commissioner may also address pronouncements concerning legislative acts to the Speaker of the *Sejm* or the *Senat* at any stage of the legislative process. However, these general pronouncements have only been partly successful. The Commissioner may also participate in constitutional review and challenge a legal act before the Constitutional Tribunal.³³⁵

The Portuguese Ombudsman has the power to make recommendations to administrative bodies highlighting shortcomings and proposing remedies.³³⁶ However, these recommendations do not typically contribute to the legislative process. The Ombudsman may also challenge a legal act before the Constitutional Court.

The Spanish Ombudsman advises the Parliament, but not the government directly.³³⁷ The Ombudsman's power to challenge the constitutionality of legislation can lead to a decision declaring a law invalid.

In Sweden, before a bill is presented to Parliament, the government submits all relevant legislative proposals for comments to the Equality Ombudsman. These comments are published on the Ombudsman's website. Proposals for legislative changes occur less often.³³⁸ Similar to the Equality Ombudsman, the Parliamentary Ombudsman is frequently requested to comment on governmental legislative initiatives before these are submitted to Parliament. Occasionally, the Parliamentary Ombudsman also makes proposals for legislative changes (mainly as a consequence of its investigations).

Both the institutes in Denmark and Germany provide advice to the Parliament and government, also on their own initiatives. The advisory function of the Danish Institute has evolved over the years.³³⁹ Its inputs are used in political and public debate, which may result in legislative initiatives.³⁴⁰ The Institute is systematically consulted as part of the legislative process when related to human rights and it may also analyse bills on its own initiative.³⁴¹ Additionally, the Danish Institute is on occasion

331 This bill should – according to the Belfast Agreement – “reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience”, and supplement the rights protection offered by the ECHR.

332 It may provide advice to the executive and legislative (United Kingdom Parliament, where appropriate also Northern Ireland Assembly, Scottish Parliament, Welsh Assembly) on any matter relating to human rights and anti-discrimination law (for example, campaigning for the introduction of legislation via parliamentary briefings) but does not have a formal role in the parliamentary process. There is no formal procedure stipulating how the Parliament should respond to any advice offered.

333 It “regularly delivers, on request or on its own initiative, public opinions on bills and government projects” and recommends for example, changes to the legislation (in particular in the humanitarian law field and on issues related to discrimination, racism, xenophobia and anti-Semitism). They are sometimes followed by a reply from the government”.

334 The Polish report states: “The Commissioner is not directly vested with the power to advise the government, but rather to scrutinise its actions. However, de facto he/she carries out the advisory function indicating to all branches of the government the shortcomings of the existing law and practice. [...]”

335 There are two options: the Ombudsman can initiate the proceedings on his/her own or he/she can join in the proceedings that have been initiated through the lodging of a constitutional complaint.

336 Such recommendations are then forwarded to the Speaker of the Parliament, to the Prime Minister and the Ministers directly involved and, where applicable, to the Presidents of the Regional Legislative Assemblies and to the Presidents of the Governments of the Autonomous Region. See: Portugal/Law 9/91, Article 29.

337 The government has a specific organ to carry out this advisory function, i.e. the Council of State. However, according to the Spanish report, “the Ombudsman may in the course of performing his/her duties, on his/her own initiative or in response to a request from the party concerned, make recommendations also to the government, what can lead to legal amendments”. There is evidence that the Ombudsman has influenced the legislative process in the past.

338 The Swedish report mentions for example that the Children's Ombudsman was “instrumental in having the principle of the best interest of the child included” into several laws, for example, the Parental Code.

339 It is also invited to participate in public hearings at the Parliament, for example, regarding human rights consequences of draft laws on counter-terrorism, trafficking, and treatment of psychiatric patients.

340 For example, The UN Committee against Torture and CPT supported by DIHR, have over the years, heavily criticised Denmark's use of solitary confinement, and Parliament has progressively restricted this practice.

341 The Danish Institute conducts a legal analysis and a human rights assessment. From 2007 this scheme also encompasses equal treatment impact assessment.

represented in expert committees preparing draft legislation.³⁴² The Institute also contributes to reports on specific topics elaborated by expert standing committees.

The German Institute has a general mandate to advise, including providing advice to the government. Its involvement varies from the provision of mere background data to more specific and extensive information. While the institute comments on national and EU legislation from a human-rights perspective and thus influences policy-creation, its mandate does not provide for any special powers in relation to the legislative process. In that regard, the Council of Europe Commissioner for Human Rights has recommended to strengthen that the institute's consultative role in the process of drafting legislation with human rights relevance be strengthened.³⁴³ The Institute has repeatedly participated in public as well as non-public parliamentary hearings. All its publications are widely distributed.³⁴⁴

Good practice

The Danish Institute is systematically consulted in the legislative process, and is also represented, although on an ad hoc basis, in expert committees entrusted with the preparation of draft legislation, for example on the incorporation of the UN human rights conventions into Danish law.

Similarly, in Sweden, the government automatically submits all legislative proposals to the Equality Ombudsman as well as to the Parliamentary Ombudsman for comments before a bill is presented to Parliament.

4.9. Research

All commissions in Ireland and the United Kingdom are authorised to conduct or commission research.³⁴⁵ Research should inform their work, help them to identify strategic areas of intervention³⁴⁶ or perform an informed analysis of important human rights concerns available to state actors and the public.³⁴⁷ Research is further conducted in relation to individual inquiries. The Irish Commission has outsourced research but has recently also created new research positions in order to strengthen in-house capacity. This research commonly includes empirical data. In addition, the Commission also conducts comparative legal and policy analysis of other jurisdictions

and carries out thematic studies with regard to the *de facto* situation of certain vulnerable groups.³⁴⁸ The Northern Ireland Commission contracts an independent researcher or research unit, who will work with the Commission staff on the final research report.³⁴⁹

In its business plan the British Commission placed a great deal of emphasis on research, which is regarded as essential to identify factors contributing to discrimination or other challenges to basic rights.³⁵⁰

The French Commission regularly publishes studies on human rights in general as well as on specific topics. It also organises and participates in various conferences.³⁵¹ The Commission is also developing a doctoral scholarship on themes related to business and human rights, in cooperation with companies and legal experts.

For the Luxembourg and Greek commissions, in contrast, research is not a prioritised task. To date, the Greek Commission has not engaged in any major research, even though this is included in its mandate. Its research activities are – subject to a few exceptions – limited to needs analysis for substantiating its recommendations in the framework of its decisions. Further, even though its founding instrument mandates the Commission to organise a Documentation Centre on Human Rights, this has not been realised. Both shortcomings are mainly due to a lack of resources.

The Luxembourg Commission currently does not have the resources to undertake any major research efforts. Nonetheless, at times it is able to request research.

None of the ombudsman institutions are explicitly mandated to conduct research. However, from time to time they issue publications on pertinent topics. The Polish Commissioner has taken initiatives to establish research teams that are to assist in identifying shortcomings in human rights protection.³⁵² The Portuguese Ombudsman has published research papers,³⁵³ and there also exist publications by members of the Ombudsman Office in their individual capacity.³⁵⁴

Special reports of the Spanish Ombudsman often become the basis for legal reforms. The Ombudsman cooperates with

342 For example, in questions concerning equality legislation and on the incorporation of the UN human rights conventions into Danish law.

343 Council of Europe Commissioner for Human Rights (2007) *Report by the Commissioner for Human Rights, Thomas Hammarberg, on his visit to Germany, 9-11 and 15-20 October 2006*, CommDH(2007)14, paragraph 30: “[...] The Commissioner also recommends that the institute's consultative role in the process of drafting legislation which impacts on human rights is enhanced. The institute should be able to issue opinions and recommendations on proposed legislation in a timely and informed manner.”

344 Upon publication of new research, the GIHR prepares specific distribution lists of relevant actors and organises press conferences.

345 The Scottish Commission is expected to commission or carry out research in a similar manner as the British and Northern Ireland commissions.

346 The Irish report mentions for example that “[R]esearch undertaken or commissioned by the Commission particularly seeks to identify areas of human rights concern upon which there is limited or out-of-date information.”

347 In that regard, for example, the Irish report reads as follows: “The Commission undertakes its own research in order to inform its own work and to make informed and critical analysis of key human rights concerns in Ireland available to the Government and the public in general.”

348 The Irish report mentions, for example, that the NHRI initiated research to examine implementation of Ireland's obligation to protect economic, social and cultural rights, in order to identify “specific measures that the Commission could address under its mandate”.

349 The National Report mentions, for example, treatment of women in prison, hospital deaths, the treatment of the mentally ill, the rights of victims of violence and their families, the detention of juveniles.

350 According to the United Kingdom report, between November 2007 to May 2008, 27 research projects in nine topic areas have been initiated. In the past, the Commission contracted with university research units to research the impact of the Human Rights Act 1998 in case law, the change observed in the culture of public sector organisations and the role played by complaints bodies in promoting human rights standards.

351 The proceedings of certain conferences are made available on its website.

352 Results are to be submitted to State organs and are consulted over with NGOs. According to the Polish report, one such research teams recently prepared a draft law on general provisions of administrative law.

353 For example, in 2008 on children and adolescents in public and private institutions.

354 For example, “The [Ombudsman] in defence of the Environment” (2000); “Human Rights and the Ombudsman” (2007); “The [Ombudsman] in the defence of the Constitution” (2008).

universities and promotes research through the setting up of specialised university professorial positions or Chairs.

In Sweden, even though the Parliamentary Ombudsman is able to commission independent research, this option is generally not exercised. The Equality Ombudsman conducts research mainly to provide background information when commenting on draft legislation as well as occasional research cooperation on specific topics.

The mandate of the Danish Institute includes independent and self-supporting research. The research is categorised in relation to the focal areas of the operational departments.³⁵⁵

The German Institute focuses on applied research.³⁵⁶ So far, the Institute has conducted a significant amount of research geared towards different audiences and covering a broad range of topics. Since the majority of publications address a national audience, research is issued mainly in German. Many of the publications try to make complex topics accessible to non-academics and to stimulate public debate in a human rights-friendly direction.

Good practice

The Irish Commission seeks to inform its research output through empirical data from human rights activists in the field. The German Institute combines an analysis of structural human rights problems based on literature and jurisprudence with practical recommendations; it tries to make use of a synergy between project work and research. Through its research it tries to make complex topics accessible to a non-academic audience.

4.10. Cooperation with civil society

The Irish Commission is mandated in its founding instrument “to consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it sees fit.”³⁵⁷ The Commission has worked closely through a partnership bringing together the government and NGOs, for example in collaborating in the consultation process for the National Plan of Action against Racism.³⁵⁸ It also cooperates in the area of human rights education with NGOs and teachers’ organisations. The Commission also hosts conferences attended by representatives from major NGOs and government ministries.³⁵⁹

The Northern Ireland Commission is mandated to consult with NGOs, social partners and community groups when preparing its strategic plan on the future direction of its work. It often seeks civil society perspectives in developing its position on specific issues through consultation processes, for example in the preparation of ‘shadow’ reports to the UN human rights monitoring bodies or for research.³⁶⁰ The British Commission works closely with civil society in a similar manner.³⁶¹ The Scottish Commission is also provided with similar powers.

As to the three commissions with a more advisory mandate, members include representatives from civil society. The French Commission cooperates with civil society when preparing studies or reports. Due care is exercised in the use of official data, and the Commission relies on a variety of sources. It also involves civil society in the preparation of its opinions.

The Greek Commission, in addition to having members representing civil society, further convenes meetings with NGO representatives when dealing with particular human rights topics.³⁶²

The Luxembourg Commission cooperates with civil society on an *ad hoc* basis. It liaises with local offices of international human rights NGOs and non-profit associations and foundations.³⁶³ The Commission does not cooperate with trade unions.

Ombudsman institutions are not always explicitly mandated to cooperate with civil society and usually do not do so on a systematic or regular basis. However, they normally liaise with civil society in order to receive information for their individual case-work or to inform the public about their work. The cooperation of the Polish Commissioner with civil society (in formal or informal ways) has a legal basis in its organic law. The Commissioner organises meetings with different NGOs in order to exchange experiences and to receive information on cases. Additionally, the Commissioner works together with civil society in the framework of the National Prevention Mechanism established under OP-CAT.

The Portuguese Ombudsman is not explicitly mandated to engage in cooperation with civil society.³⁶⁴ The Spanish Ombudsman offers lectures and speeches, and meets regularly

355 The Danish report mentions the areas “Rule of law”, “Freedoms and Civic Participation”, “Justice and Equal Treatment” and “Human Rights and Business”. The research projects include studies of vulnerable groups (for example, asylum seekers, prisoners and people with disabilities); counter terrorism measures and human rights; citizenship; religious freedom; case law of the European Court of Human Rights; human rights indicators, and challenges posed to human rights by the information society.

356 Publications typically combine an analysis of structural human rights problems with practical recommendations. The analysis is based on literature, jurisprudence of national and other courts.

357 Ireland/Human Rights Commission Act, 2000, article 8 (c).

358 A Commissioner of the Irish Commission (together with representatives from different social partners including employers’ associations, trade unions, government departments and NGOs) is member of the Steering Group. It has also cooperated with the Equality Authority. The Irish Commission established a sub-committee on Racism with the Northern Ireland Commission to deal with the issue on the whole island.

359 For example, most recently at the conference regarding the OP-CAT, which was attended by the Minister for Justice, Equality and Law Reform.

360 For example, The organisation of a ‘Bill of Rights Forum’ (2007) bringing together representatives of community groups and NGOs with members of political parties to discuss the form and content of a Bill of Rights; it also has the power to assist and finance other organisations in the performance of its functions, including its research functions. It has also established a Human Rights Practitioners Group including advice workers, equality officers, solicitors and academics, who meet four times per year on an informal basis to discuss and share information on human rights issues.

361 It has consulted with community groups and NGOs in the preparation of its strategic plan and its legal strategy policy.

362 The Greek report mentions, for instance, meetings with the Homosexual and Lesbian Community of Greece, representatives of the NGO ‘Doctors of the World’, and representatives of immigrant workers. Consultations were also held, for example, on the protection of rights of persons living with HIV/Aids, human rights issues related to mental health, and the right to education for children with disabilities and special needs.

363 The National Report mentions, for example, the occasion of the 60th Anniversary celebration of the UDHR.

364 The Portuguese report only mentions the relationship between public bodies and civil society and with regard to the topic of the integration of migrants, which constitutes “an important task” for the High Commissioner for Immigration and Ethnic Minorities.

with groups of citizens or NGOs, for example in the field of prevention of torture or racism.

The Swedish specialised ombudsmen have outreach functions as part of their mandates in order to provide information on how related laws are being applied in practice.³⁶⁵

The Danish and German institutes regularly cooperate with a variety of civil society actors³⁶⁶ and they also include members of civil society on their boards. The Danish Institute has an ongoing dialogue with NGOs and civil society. Since 2003, the Institute awards the annual MIA-prize (“Diversity in the workplace”) to private and public companies that have contributed significantly to the promotion of diversity and equal treatment in the workplace. The Danish Institute also participates in various networks relating to vulnerable groups or specific human rights issues.

The German Institute has formal relationships with civil society. Its statutes require a number of positions on the Board of Trustees to be held by representatives of civil society.³⁶⁷ NGOs are invited to all conferences, workshops, seminars and other events organised by the Institute. In turn, the Institute is often invited to participate in NGO events. The Institute also co-organises events with NGOs.³⁶⁸ Moreover, the Institute offers facilities to NGOs which make effective use of this. The institute – although not participating in ‘parallel reporting’ to UN Treaty Bodies – tries to raise NGOs’ awareness on the options and methods of effective parallel reporting through workshops.³⁶⁹ It exchanged views with NGOs related to the Universal Periodic Review of Germany before the UN Human Rights Council.³⁷⁰

The important role of cooperation with civil society has been recognised by the UN General Assembly.³⁷¹

Good practice

Commissions typically cooperate very closely with civil society, not least through a clear mandate to this effect and the possibility of including civil society representatives on the commission.

The Irish Commission hosts round tables attended by NGOs and government representatives so that the government’s approach is also informed by the views also of NGOs. Furthermore, cooperation with human rights NGOs and teachers’ organisations in the area of human rights education is a commendable initiative.

The Northern Ireland Commission involves civil society, not only in projects, but also in planning the future direction of its work: it consults with NGOs, social partners and community groups in preparation of its strategic plan. Similarly, the British Commission, as well as the Scottish Commission, consults with community groups and NGOs in the preparation of its strategic planning.

The German Institute holds formal relationships with civil society and a number of positions on the Board of Trustees are held by representatives of civil society. It advises civil society in its efforts to engage in ‘shadow’ reporting. The exchange of opinions with civil society enables the institute to consolidate its own position towards the government.

The Danish Institute has an ongoing dialogue with NGOs and civil society in Denmark on a wide range of human rights issues; it awards an annual prize to private and public companies that have contributed to the promotion of diversity and equal treatment in the workplace. It participates in various networks relating to vulnerable groups or specific human rights issues.

4.11. Promotion of international treaties

All commissions regard promotion of international treaties as a crucial element to be included in their mandates. However, this function is not always explicitly laid down in their founding legislation. The Irish Commission sees itself mandated to encourage the ratification of international treaties and to enhance harmonisation of national laws.³⁷² In practice, it regularly encourages the state to ratify international instruments (for example in a thematic report)³⁷³ and urges the government to amend national provisions in order to bring them closer to compliance.³⁷⁴

365 For example, the previous Ombudsman against Ethnic Discrimination should – according to its founding law – “in contacts with employers and affected unions promote good relations between different ethnic groups in working life”. The separate Children’s Ombudsman (still in existence) mandated to represent the rights and interests of children and young people in public debate and to “assemble knowledge” on the living conditions of children and young people, maintains regular contacts with children and young people, visiting schools and youth clubs. Twice a year responses are sought through sample school classes to a specific questionnaire survey.

366 For example, the Danish Institute cooperates with non-discrimination and human rights NGOs, the Bar Association, consumer organisations, trade unions, the Federation of Danish Industries, education institutions, public schools, law firms as well as with members of the Board and the Council (where civil society organisations are represented). It also collaborates with the Ombudsman and participates in regular consultations with the Equal Opportunity Board, NGOs, and other relevant institutions.

367 The German report mentions the example of the Forum Human Rights (the major network of human rights NGOs in Germany) which holds three seats in the Board of Trustees.

368 The national report mentions as examples events on the International Criminal Court, human rights in peace operations, torture and torture prevention, CEDAW, and forced marriages.

369 In some of these workshops UN treaty body members were themselves present. According to the national report, “NGOs have repeatedly expressed their appreciation of the usefulness of those workshops”.

370 The review of Germany took place at the 4th UPR session 2-13 February 2009.

371 UN General Assembly (2006) *National institutions for the promotion and protection of human rights, A/RES/60/154 (23.02.2006), paragraph 19*: “Recognises the important and constructive role that civil society can play, in cooperation with national institutions, for better promotion and protection of human rights.”

372 It interprets its consultation and advisory functions to include the promotion of international treaties.

373 The Irish report reads as follows: “This was seen recently, for example, in its submission to the Government regarding the Immigration, Residence and Protection Bill 2008 where it urged them to ratify the Palermo Protocol, the Council of Europe Convention on Trafficking and the UN CRC Optional Protocol.”

374 The “Dualist” tradition of the Irish Constitution of 1937 means that an international agreement remains un-ratified until national law is actually compliant with the requirements of such instruments. The Irish report mentions in this regard the Commission’s observations regarding the Immigration, Residence and Protection Bill 2008 and further states: “As part of their submissions to the Government on the Criminal Justice (Trafficking in Persons and Sexual Offences) Bill 2007, the Commission made notable suggestions for improvements which would both increase the protections in question and bring Ireland closer to the ratification of [...] the Council of Europe Convention on Trafficking and the Optional Protocol to the United Nations Convention on the Rights of the Child.”

Similarly, the three commissions in the United Kingdom are not given any express role to promote compliance with international human rights treaties, but interpret their mandates extensively in this regard.³⁷⁵ In practice, the commissions often take steps to encourage the ratification of international human rights treaties and ensure harmonisation.³⁷⁶ The commissions typically do so by monitoring the extent to which treaty rights are complied with, raising awareness of the treaty, liaising with relevant NGOs, commenting on draft government reports to UN treaty bodies, submitting their own 'shadow' reports to such bodies, attending treaty body sessions, using the treaty body's observations to push for change, and making statements before the UN Human Rights Council. In addition, some commissions have focused on promoting compliance with the ECHR and encouraging implementation of judgments of the ECtHR.³⁷⁷

The French Commission's mandate incorporates the promotion of ratification of international human rights instruments.³⁷⁸ The Commission also supports the state in its reporting obligations towards UN treaty bodies and other organs of international organisations³⁷⁹ and cooperates with the UN as well as with regional institutions and national institutions in other countries.³⁸⁰

The Greek Commission is competent to examine the compliance of Greek legislation with international human rights law and to deliver opinions to state organs. The Commission has examined compliance and has also repeatedly recommended that Greece become party to international and regional human rights treaties.³⁸¹ The Commission has also been asked to advise

the government on state reports submitted under various human rights treaties.

The revised founding instrument of the Luxembourg Commission includes a reference to the promotion of treaties.³⁸² So far, it has monitored the ratification and harmonisation of national legislation through its opinions.³⁸³ The Commission also advises on government reports to regional and international human rights bodies. UN bodies moreover regularly contact the Commission for input on Luxembourg's compliance with its obligations under international treaties.³⁸⁴

None of the ombudsman institutions possess an explicit mandate to promote international treaties; however, the ombudsmen's recommendations frequently encourage states to become party to treaties. The Polish Commissioner promotes the ratification of international treaties, and interprets national provisions in the light of international standards.³⁸⁵ International human rights standards form points of reference in statements to authorities and in motions to take legislative initiatives.³⁸⁶ The Spanish Ombudsman frequently refers to the harmonisation of Spanish law with international human rights law.³⁸⁷ The Portuguese Ombudsman does not have any powers in this area.³⁸⁸

In Sweden, neither the government-appointed specialised ombudsmen nor the Parliamentary Ombudsman are obliged to refer to provisions of human rights treaties that have not been incorporated into national law.³⁸⁹ However, all statutes must comply with the European Convention on Human Rights, which is incorporated at constitutional level. Representatives of the ombudsmen can participate (and have done so) in the drafting of treaties,³⁹⁰ or comment upon governmental proposals to ratify a particular treaty (thereby 'encouraging' ratification).

The Danish Institute promotes ratification of international human rights treaties through its annual reports, parallel ('shadow') reports to UN treaty bodies and through intervention in the public debate and in the media. It engages continuously

375 According to the United Kingdom report, the Northern Ireland Commission interprets its mandates to promote awareness and understanding of human rights to include the rights recognised in international human rights instruments. However, the (non-accredited) Scottish Commission is given an express power to promote compliance with human rights recognised in international human rights treaties ratified by the United Kingdom. It is expected to adopt a similar approach to international human rights treaties as the British and Northern Ireland commissions.

376 For example, through public statements of support for ratification, parliamentary briefings and organising conferences and seminars to encourage greater awareness of the treaties in question. The British Commission has done so for instance with regard to the UN Convention on the Rights of Persons with Disabilities.

377 For instance by intervening in relevant national court cases.

378 The French report mentions that the NHRI "insisted that France should ratify the Optional Protocol to the Convention against Torture signed in 2005 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The Commission also underlined the need for reforms or revisions of the Constitution to conform with international instruments such as the second protocol to the International Covenant on Civil and Political Rights." It further notes that the sub-Commission on International Matters followed-up on the ratification of the CRPD.

379 The French report reads as follows: "The CNCDH also delivers opinions or contributions to the reports France has to present to United Nations organs and committees and to regional institutions. For instance, it reviewed the draft periodic report for the Committee on Economic, Social and Cultural Rights. In 2006, it also contributed to the drafting of the government's replies concerning the follow up on the three CERD recommendations."

380 For example, in 2006 it was an observer during the negotiation of the CRPD and has participated in the UPR process of France.

381 The Greek report mentions that the NHRI has recommended the ratification, *inter alia*, of the Optional Protocol to the CRC on the involvement of children in armed conflict (ratified in 2003), the Rome Statute of the International Criminal Court (recommended in December 2000, ratified in May 2002), Protocol No 12 to the ECHR Providing for the General Prohibition of Discrimination (recommended in February 2002), Protocol No 13 to the ECHR Concerning the Abolition of the Death Penalty in All Circumstances (recommended in April 2002, ratified in November 2004), OPCAT (recommended in January 2004), the CoE Convention on Action against Trafficking in Human Beings, and the OP CRC on the Sale of Children, Child Prostitution and Child Pornography (both recommended in March 2006, the latter ratified in September 2000).

382 Luxembourg/Loi du 21 novembre 2008 portant création d'une Commission consultative des Droits de l'Homme au Grand-Duché de Luxembourg (21.11.2008), article 3 (2), La Commission suit les processus de ratification des instruments internationaux relatifs aux droits de l'Homme, d'harmonisation de la législation, des règlements et pratiques au niveau national avec ces instruments et de leur mise en oeuvre.

383 In its 2008 advisory opinion regarding the bill on free movement and immigration, it encouraged the Government to adopt several bills on human trafficking, and ratify the Palermo Protocol.

384 The Commission advised the government to transpose the Council of Europe Convention on Human Trafficking (Convention on Action against Trafficking in Human Beings and its Explanatory Report, Warsaw, 16 May 2005, No. 167). The Commission also took part in the third UPR session of the UN Human Rights Council in December 2008.

385 According to Article 87 (1) of the Polish Constitution international agreements belong to universally binding legal norms in the Polish legal system.

386 Instruments most frequently referred to are – according to the Polish report – the ICCPR, the ECHR, CRC, CAT but also Recommendations of the Council of Europe's Committee of Ministers. In most of its interventions it refers to the jurisprudence of the ECtHR.

387 The Spanish report mentions as example the harmonisation with the CRPD including its Optional Protocol.

388 According to the National Report.

389 Thus references to the case law with regard to the ICCPR or the ICESCR seldom occur. However, it is part of the mandate of the Children's Ombudsman to ensure compliance with the CRC.

390 For example, the Disability Ombudsman actively participated in the work leading to the adoption of the CRPD.

engaging with relevant stakeholders to ensure harmony between national legislation and practices and international human rights law. The Institute also reviews legal proposals, and advises the public on the human rights complaints systems. In order to disseminate the findings of UN treaty bodies and international courts, a collection of documents is available online.

The German Institute envisages the promotion of ratification and implementation of international human rights standards as a logical part of the competences and tasks of an NHRI. For instance, the ratification and implementation of the OP-CAT is a major issue for the Institute. The Institute also encouraged the ratification of the CRPD and has engaged in activities aiming at the full implementation of other relevant treaties. The European Convention on Human Rights with the jurisprudence of the ECtHR is promoted through systematic references in studies and opinions.³⁹¹

Good practice

While, for instance, none of the commissions in Ireland and the United Kingdom are explicitly mandated to promote international treaties, they all interpret their mandates to include such a function and regularly encourage the state to ratify international instruments and to change national provisions in order to bring them closer to compliance.³⁹²

The Northern Ireland Commission monitors the implementation of treaties and raises awareness in this regard. It further liaises with relevant NGOs, comments on draft government reports to the treaty body, submits its own parallel reports to UN treaty bodies, attends treaty body sessions, and uses the findings from the treaty bodies to press for change. In addition, the Commission has placed considerable emphasis on promoting compliance with the European Convention on Human Rights and encouraging full and prompt implementation of judgments of the ECtHR.

The British Commission has adopted a similar approach but has also intervened in several court proceedings to argue in favour of interpretations of national law best reflecting international human rights standards.

The German Institute helps to establish a link between national NGOs and the international human rights systems by its capacity-building efforts to make NGOs engage in the drafting of parallel ('shadow') reports.

4.12. Human rights education and awareness-raising

Many NHRIs engage in various forms of human rights education, awareness-raising, and research.³⁹³ All the Commissions are mandated to promote awareness and understanding of human rights and regard this as one of their core functions. Given its objective to promote a culture of human rights, the Irish Commission emphasises awareness raising, in the education field, with particular focus on rights that typically receive less attention, such as economic, social and cultural rights and the rights of vulnerable groups. Together with other actors, the Commission engages in several projects related to human rights education³⁹⁴ and training.³⁹⁵ However, the Irish Commission is concerned about the lack of human rights education for, in particular, law enforcement and civil service officials. The Commission promotes greater knowledge and understanding of human rights issues through coverage in the media,³⁹⁶ discussions at conferences and seminars and the public launch of its reports.³⁹⁷ Moreover, it supports human rights NGOs and community or voluntary organisations working on human rights awareness and education issues, irrespective of controversial topics which may be at issue.

The Irish Commission is currently undertaking a study of human rights education in Ireland in order to assess the nature and extent of human rights education activities in Ireland in the framework of the United Nations World Programme for Human Rights Education. The study aims to map the nature and extent of human rights education at all levels of formal (primary, secondary, and adult) and non-formal (including youth and community) education, and in programmes for continuing professional development (including teachers, the judiciary, the legal profession and civil servants). The purpose of the study is to inform the Commission's own policy and strategy on human rights education, and to advise the government on the development of a national strategy and plan of action for human rights education in Ireland.

The Northern Ireland Commission prioritises human rights education and training and has commissioned reviews of human rights education in Northern Ireland.³⁹⁸ Furthermore, the Commission highlights relevant UN resolutions and guidance on human rights training and has established a special section on its website providing resources for educators. The Commission also supports NGOs and community groups in the provision of human rights training and regularly organises conferences

391 According to the German report, the NHRI also "worked on several EU related projects (transposition of EU law, border management, advising the government in the context of the German EU Presidency, amongst others) with the aim to promote the widely unknown EU system for human rights protection and to raise awareness for the need for human rights oriented control of EU developments". Further, the GIHR has, according to this report, "also played an active role in the full transposition of EU anti-discrimination directives".

392 For example, in its submissions to the Government on the Criminal Justice Bill 2007, the Irish Commission made suggestions bringing Ireland closer to the ratification of the Council of Europe Convention on Trafficking and the UN Optional Protocols to the Convention on the Rights of the Child.

393 On the relatively low level among European NHRIs, see: UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, pp. 34-35, 56.

394 For example, The cross-border *Lift-Off Project* aiming at the mainstreaming of human rights education in the primary education systems of Northern Ireland and Ireland.

395 For example, Collaboration in a week-long training course in 2006 on "Women and Economic, Social and Cultural Rights".

396 According to the Irish report, the Irish Commission has received "extensive coverage" for its contribution to debates on children's rights, the rights of de facto couples, family courts, detention conditions, life sentencing, "extra-ordinary rendition", as well as for its roles as *amicus curiae*.

397 Much of its work is presented in a reader-friendly format for editors of media publications by way of press releases.

398 For example, Evaluation of the human rights components of the training programme for the Police Service of Northern Ireland. Establishment of a Bill of Rights in Schools Project which provides 18 lesson plans for pupils aged 11 to 14 years and 15 to 18 years.

and seminars, including an annual human rights education programme. Through its press releases, its publication of the magazine *NIHRC Review* and of information on the rights of individuals,³⁹⁹ media work and interventions in public debates, it tries to heighten awareness on human rights issues.⁴⁰⁰

The British Commission uses its website, press releases and media publicity, and publishes a briefing on developments in the field of equality and anti-discrimination to raise public awareness and make information available on rights related to freedom from discrimination.⁴⁰¹ It further drafts Codes of Practice providing guidance on the interpretation of anti-discrimination law to be taken into account by the courts. Its website contains educational material for schools and community groups on discrimination and diversity, and information for legal advisers. The Commission supports the *Walktalk* initiative bringing people from very different backgrounds together through a funded walk from Leeds to Central London.

The Scottish Commission is explicitly mandated to promote awareness and understanding of human rights and has adopted a similar approach to the other commissions in the United Kingdom.

Awareness-raising forms part of French Commission's mandate as well. The Commission participates in the formulation of national education programmes and collaborates with teacher training institutions to organise regular conferences on human rights.⁴⁰² Awareness about human rights is also raised via the organisation of conferences and the granting of awards (for example the annual French Republic Prize of Human rights and the René Cassin Human Rights Prize).

The Greek Commission also engages in human rights education, training and awareness-raising activities. One human rights education programme focuses on specific target groups, for example the police force, civil servants, lawyers, journalists and students.⁴⁰³ Other activities include the organisation of conferences,⁴⁰⁴ and the production of a TV advertisement regarding racism. However, several initiatives and ideas have not yet been put into practice due to lack of support by the authorities and the lack of resources.

The Luxembourg Commission most notably provides the authorities with measures and programmes of action for the promotion of human rights at different levels, especially in schools. The Commission has been working with the Ministry of National Education to include human rights in its curricula. A new teaching specialisation which includes human rights education has been created, and the introduction of a new

curriculum for moral and social education based on human rights has been discussed. The Commission has also been involved in initiatives on how to provide human rights training to members of the police force and individuals working in detention centres. Other awareness-raising activities include the publication of advisory opinions on human rights education.

Ombudsman institutions are typically not explicitly mandated to engage in human rights education or awareness-raising but are nevertheless do so at times. For example, through information on their mandate (such as how to file a complaint) or by giving lectures and engaging in other forms of activities.

The Polish Commissioner is regularly quoted in the media, and supports law clinics at law schools providing free-of-charge legal assistance,⁴⁰⁵ engages in programmes carried out by civil society organisations, and organises and participates in conferences.

The Portuguese Ombudsman does not focus on activities promoting human rights. However, the annual report is made available to the general public.

The Spanish Ombudsman does not have an explicit competence to engage in human rights education or awareness-raising, although several of its activities do have an educational element including recommendations, special reports on education, responding to complaints and handling investigations.⁴⁰⁶ The Ombudsman also engages with civil society via several activities related to human rights education and awareness, for example through a Human Rights Prize, a human rights drawing competition for school children, and lectures at universities. A section on the website "The Ombudsman in your classroom" explains in a simple way the basics of human rights and Ombudsman institution in a simple and accessible manner.

The two institutes (in Denmark and Germany) emphasise human rights education. The Danish Institute is engaged nationally and internationally, through courses on human rights, workshops and seminars targeting different professional groups and as part of a curriculum. An example of such groups is the police academy. Programmes carried out with partners abroad feature strong educational components. The Institute also provides information to the general public on human rights issues such as procedures for submitting a complaint to UN treaty bodies and the ECtHR. The institute is required under its mandate to ensure a publicly accessible library and documentation facilities relating to human rights. The website includes information on judgments, concluding observations and reports, which are of relevance for Denmark.

The German Institute has a distinct human rights education section, and organises and participates in conferences and training events. The main target groups of the training activities include professionals working in human rights sensitive areas, such as the police, judges, prosecutors, the military, but also social workers, journalists, teachers and other multipliers.

399 For example, in 2007 a comprehensive guide for migrant workers setting out their legal rights and entitlements.

400 It also sponsors an annual prize for the best student human rights dissertations and runs an internship programme for students.

401 It also has a YouTube Channel with stories of persons, who have been discriminated against.

402 It is also involved in a training module on the protection of human rights at the National School of Administration.

403 For example, Translating the UN High Commissioner for Human Rights' Pocket Book on Human Rights for the Police of the into Greek. The Greek report also states that the NHRI tries to intensify its cooperation with the Ministry of National Education regarding human rights education at primary and secondary schools.

404 The national report mentions the co-organisation of a conference on the CRPD in Greece (2007).

405 At present there are 13 agreements with academic and four with non-academic bureaux.

406 According to the Spanish report, "[n]o other independent public body fulfils this role in Spain either".

Good practice

The Northern Ireland Commission has prioritised human rights education in schools and support for human rights training provided by NGOs. The Commission's review of human rights education in Northern Ireland is commendable as it assists in its formation of a future strategic approach. Moreover, the Commission provides resources for educators on its website.

The Irish Commission envisages the promotion of human rights awareness as central to its objective of creating a culture of human rights. Thus, in particular, it promotes knowledge of economic, social and cultural rights and the rights of vulnerable groups. The Commission supports human rights NGOs and community and voluntary organisations working on human rights awareness and education issues, even if controversial themes are concerned. The mapping of human rights education in all levels of formal and non-formal education, and in programmes for continuing professional development, is to result in pertinent recommendations to the government on the development of a national strategy and action plan for human rights.

The British Commission drafts Codes of Practice, which contain guidance on the interpretation of anti-discrimination law. It also supports initiatives bringing people from different backgrounds together.

The German and Danish institutes' strong focus on human rights education, informed by well-developed research, is commendable. The German Institute has a distinct human rights education section and organises or participates in training for key target groups.

Finally, an example from the Swedish specialised ombudsmen is noteworthy: One of the ombudsmen initiated a mutual exchange with Roma groups, during which the Roma received education about their rights and provided information about their situation and details concerning discrimination experiences.⁴⁰⁷ Among other things, this led to a substantial increase in the number of successful cases in court.

4.13. International outlook and cooperation

Outside the EU, there are many NHRIs that are worthy of being studied as models for improvement. NHRIs in Australia, Canada, India, South Korea, Mexico (even more so, that of Mexico City),⁴⁰⁸ and South Africa are often mentioned – some of them will be briefly presented below.⁴⁰⁹ The Asia Pacific Forum of NHRIs constitutes a notable example of regional cooperation among NHRIs through an established organisation, and will also be outlined below.

The Australian Human Rights Commission⁴¹⁰ and the Indian National Human Rights Commission⁴¹¹ have broad mandates and wide-ranging powers. Both commissions cover a wide spectrum of human rights and have the power to receive individual complaints and to conduct public inquiries. They are active in human rights education and awareness-raising, providing advice to courts, the legislature and government, and undertaking and coordinating research. Both commissions also work closely with other NHRIs, in particular through the Asia Pacific Forum of NHRIs.⁴¹²

The (South) Korean National Human Rights Commission is “committed to the fulfilment of human rights in a broad sense, including the dignity, value and freedom of every human being, as expressed in human rights treaties to which Korea is a state party.” It analyses draft statutes, policies and practices and issues opinions thereon. It is mandated to inspect detention facilities and to investigate human rights violations and discriminatory practices. In the course of investigation, it may request relevant information from entities and professionals.⁴¹³ Moreover, the Commission issues proposals for preventive measures.

410 The Australian Commission was originally accredited with A-status in 1999 and re-accredited as A-status institution in October 2006. More information regarding the NHRI is available at: <www.hreoc.gov.au/about/publications/brochure/info_sheet2009.html> (05.10.2009). Accordingly, the Australian NHRI has five strategic goals: to “take a leadership role by being visible, courageous and influential on human rights issues”, to “support and inspire others to contribute in a meaningful way to advance human rights”, to “help all people in Australia to understand and exercise their rights and to respect the rights of others”, to “hold individuals, organisations and government responsible for their human rights obligations”, “a collaborative, innovative and supportive way of working that enhances the quality and impact of what we do”. The Australian NHRI has responsibilities deriving from the Australia/Age Discrimination Act 2004, Disability Discrimination Act 1992, Australian Human Rights Commission Act 1986, Sex Discrimination Act 1984, Racial Discrimination Act 1975; further to a certain extent from the Australia/Native Title Act 1993 (performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner) and the Australia/Workplace Relations Act 1996 (performed by the Sex Discrimination Commissioner). The NHRI's four key areas are providing education and raising public awareness about human rights, handling complaints of discrimination and breaches of human rights, researching human rights issues and contributing to policy developments, legal advocacy on human rights issues. While inquiring into complaints, the Commission has all the powers of a civil court trying a suit under the Code of Civil Procedure. It has its own investigative staff; it is open to the Commission to utilise the services of any officer of the Government. The Commission has in a number of cases involved NGOs in the investigation work.

411 The Indian Commission was re-accredited as an A-status institution in October 2006. More information is available at: <http://www.nhrc.nic.in/> (05.10.2009). The focus of the Indian NHRI's work is – according to information stemming from its website – “inquiring into complaints”, which “have [...] enabled it to move the concerned authorities for systemic improvements”. However, it also mentions that it would “actively seek[s] out issues in human rights which are of significance, either *suo motu*, or when brought to its notice by the civil society, the media, concerned citizens, or expert advisers. Its focus is to strengthen the extension of human rights to all sections of society, in particular, the vulnerable groups”. While its mandate encompasses civil and political, as well as economic, social and cultural rights, special attention would be given to “[A]reas facing terrorism and insurgency, custodial death, rape and torture, reform of the police, prisons, and other institutions such as juvenile homes, mental hospitals and shelters for women”. Apart from pressing for the provision of primary health facilities or safe drinking water, food and nutrition, it has been active in the promotion of the rights of vulnerable groups, in particular the Scheduled Castes and Scheduled Tribes, the disabled, women subjected to violence, minorities and the rights of displaced populations.

412 For further assessment, see: International Council on Human Rights Policy (2nd ed 2004) *Performance & Legitimacy: National human rights institutions*, pp. 62 et seq (Indian Commission) and pp. 72 et seq (Australian Commission).

413 This Commission was re-accredited as A-status institution in November 2008. Information available at: <http://www.humanrights.gov.kr/english/index.jsp> (05.10.2009). Among its five goals are to “improve human rights protection for the underprivileged and underrepresented, establish human rights standards and practices consistent with universal norms; improve accessibility and efficacy of remedial action against human rights violations and discriminatory practice; foster public understanding of human rights by enhancing education programs; develop the role and authority of the Commission in overall human rights matters”.

407 Now merged into the new Equality Ombudsman.

408 See for example; International Council on Human Rights Policy (2nd ed 2004) *Performance & Legitimacy: National human rights institutions*, pp. 37 et seq.

409 For an overview of NHRIs world wide, see for example, B. Burdekin (2007) *National Human Rights Institutions in the Asia-Pacific Region*, Brill; Commonwealth Secretariat (2007) *Comparative Study on Mandates of National Human Rights Institutions in the Commonwealth*; and International Council on Human Rights Policy (2nd ed 2004) *Performance & Legitimacy: National human rights institutions*.

Among the regional groups, only the two in the Asia Pacific and Africa have permanent secretariats: the Asia Pacific Forum of NHRIs in Sydney⁴¹⁴ and the Network of African NHRIs in Nairobi.⁴¹⁵ The secretariats of the European Group⁴¹⁶ and the Network of the Americas,⁴¹⁷ in contrast, rotate with regional chairmanships. At the moment, they are located on the premises of their member NHRIs in Ireland and Venezuela, respectively. There are obviously advantages and disadvantages with regard to separate, permanent secretariats as opposed to those that rotate. However, the Asia Pacific Forum of National Human Rights Institutions (APF) has been widely praised for, *inter alia*, its support in promoting close cooperation among the NHRIs in the region and in establishing independent and effective NHRIs, for being able to pool and direct resources to institutions in need, and to provide training courses as well as offer thematic focus on areas in need of attention.⁴¹⁸

In this context, collective cooperation among the NHRIs in Europe deserves attention.⁴¹⁹ Similar to the APF, Equinet provides a forum of cooperation for the European equality bodies.⁴²⁰ In order to strengthen the role of NHRIs in the UN Human Rights Council, through coordinated contributions, closer joint work between NHRIs would be necessary.⁴²¹ Thus, there is a further need for regional collaboration within the ICC. A report from the European Group to the ICC in March 2009, concerning the collective activities of NHRIs in Europe, includes

an impressive list as a promising starting point:⁴²² elaboration of a declaration on cooperation of NHRIs with other actors, including the Council of Europe and the EU (the FRA, for example through membership on the Management Board of the Agency);⁴²³ a joint bi-annual strategic plan, including work on the role of NHRIs as national preventive mechanisms under the OP-CAT;⁴²⁴ and *amicus curiae* to the ECtHR, with a joint submission in a first case, relating to intellectual disability.⁴²⁵

A more permanent structure, such as the Asia Pacific Forum, maintaining proactive cooperation among NHRIs in Europe would improve capacity on many levels. NHRIs in Europe would be able to better coordinate their actions at EU, Council of Europe, and UN levels. This would provide mutual support to secure independence and sufficient resources at the national level. It would also contribute to channelling substantive, strategic, or technical know-how among NHRIs in the region and beyond; and such a permanent structure would thus greatly contribute to a better implementation of human rights.

414 See <http://www.asiapacificforum.net> (3.11.2009).

415 See <http://www.nanhri.org> (3.11.2009).

416 No dedicated website exists.

417 See <http://www.redindhca.org> (3.11.2009), even though the site is not up to date, activities mentioned include, workshops and seminars on the right to education, migration, torture, rights of indigenous peoples, rights of persons with disabilities, right to a clean environment, reproductive rights.

418 See for example; International Council on Human Rights Policy (2nd ed 2004) *Performance & Legitimacy: National human rights institutions*, p. 101. See also the ongoing three-year research project to be concluded in 2010 aimed at analysing the impact of the APF and including an assessment of the APF as a potential role model for other regions <http://www.ahrcentre.org/content/Activites/APFproject.html> (3.11.2009).

419 The UN General Assembly has recommended that NHRIs to convene regional meetings, see UN General Assembly (2006) *National institutions for the promotion and protection of human rights, A/RES/60/154 (23.02.2006), paragraph 17*: "Welcomes the continuation of the practice of national institutions convening regional meetings in some regions, and its initiation in others, and encourages national institutions, in cooperation with the United Nations High Commissioner for Human Rights, to organise similar events with Governments and non-governmental organizations in their own regions." See also: UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, p. 41. Also the Council of Europe Committee of Ministers has recommended Member States to promote such co-operation. Council of Europe, Committee of Ministers (1997) *Recommendation No. R (97) 14 of the Committee of Ministers to Member States on the Establishment of independent National Human Rights Institutions (30.09.1997)*, recommendation lit c); available at: <https://wcd.coe.int/ViewDoc.jsp?id=589191> (02.10.2009). The recommendation reads as follows: "The Committee of Ministers [...] Recommends that the governments of member states: [...] promote co-operation, in particular through exchange of information and experience, between national human rights institutions and between these institutions and the Council of Europe, in accordance with Resolution (97) 11 of the Committee of Ministers".

420 The European Network of Equality Bodies in the EU, <http://www.equineteurope.org> (13.01.2010).

421 See for example, report of the UN General Assembly (2009) *United Nations Secretary-General to the UN General Assembly, A/64/320 24 August 2009*, paragraphs 70 et seq and paragraph 106. On the need for awareness among NHRIs on international human rights mechanisms, see: UN OHCHR (2009) *Survey on National Human Rights Institutions: Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, p. 43.

422 Available via <http://www.nhri.net/2009/ICC%2022%20Record%20of%20Discussions%20-%20final%20JUL09.pdf>, (12.11.2009). See pp. 15-16, Examples of separate action by European NHRIs in relation to the Nairobi Declaration are also included.

423 See the Dublin Declaration 2008 of the European Group, Para I(4), <http://www.nhri.net/2009/ITEM%207-Regional%20Report%20NHRIs%20Int%20&%20Regl%20Engagement%20-%20EUROPE-%20french.pdf> (22.11.2009).

424 Article 17 of the Optional Protocol to the Convention against Torture, requires state parties to have independent national monitoring for the prevention of torture at the national level. On encouragement for NHRIs to have this role, see: UN General Assembly (2009) *Report of the United Nations Secretary-General to the UN General Assembly, A/64/320 24 August 2009*, paragraph 96.

425 In February 2008, the Irish Human Rights Commission applied to the ECtHR to allow an intervention as *amicus curiae* on behalf of the European Group of the ICC in DD v Lithuania. Application No. 13469/06. Leave was granted and the brief was submitted in April 2008, Report of the European Group to the ICC (on file with the FRA).

5. Conclusions

5.1. States without A-status NHRIs

In 11 EU Member States (Bulgaria, Czech Republic, Estonia, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, Finland and Sweden) no human rights bodies with ICC status exist at the present time. These Member States may well have independent public institutions devoted to human rights, but such institutions, for a variety of reasons, have not sought accreditation or are no longer accredited. Another five EU Member States (Austria, Belgium, the Netherlands, Slovakia, Slovenia) have only B-status NHRIs, and the Romanian NHRI has C-status. Two tables in Annex 1 list those Member States with accredited NHRIs, and those Member States with other bodies, where none is an accredited NHRI.

In the following pages an overview of the substantive coverage by the existing bodies in the EU Member States lacking an A-status NHRI will be provided, along with a description of the coordination between these bodies. The situation in countries without A-status NHRIs will be compared to that in countries possessing such institutions. All of the 17 Member States which lack a fully accredited NHRI have a variety of bodies with widely differing mandates. Firstly, there will be an overview of the six EU Member States with accredited NHRIs followed by a brief presentation of ten Member States lacking any accredited body.⁴²⁶

In Austria, a large variety of bodies with different levels of independence cover a wide range of human rights areas (for example, the right to good administration, the right to non-discrimination, the right to privacy/data protection), as well as human rights of particular vulnerable groups (for example, persons with disabilities and detainees).⁴²⁷ The Human Rights Advisory Board (Menschenrechtsbeirat), which was established in 1999 with a view to introducing a mechanism for inspecting conditions of detention in police establishments⁴²⁸ and monitoring the observance of human rights by law enforcement agencies is, for example, not mandated to monitor detention establishments outside the authority of the Ministry of the Interior. The rights of detainees in detention establishments under the authority of other ministries (i.e. Ministry of Justice, Defence and Health)⁴²⁹ are not covered by any mandate of any independent public body, and neither are economic social and cultural rights or the rights of immigrants or refugees.⁴³⁰

Belgium counts a small number of independent bodies with competences limited to a specific human rights area (for example, the right to non-discrimination and equality of different vulnerable groups including persons with disabilities, and regarding sexual orientation; rights of aliens, integration of immigrants, human trafficking; rights of the child; protection of private life). These bodies exist at different levels (federal level,⁴³¹ Flemish Community and Flemish Regional level,⁴³² French Community level,⁴³³ Walloon Regional level⁴³⁴). Gaps exist with regard to monitoring the rights of disabled persons even though the equality body, the Centre for Equal Opportunities and Opposition to Racism (ICC B-status), covers this group from a non-discrimination point of view. No special bodies aimed at monitoring compliance with economic, social and cultural rights or the rights of detainees exist.

In the Netherlands a variety of bodies exist. The National Ombudsman has a broad mandate and is competent to deal with acts and omissions of public administration⁴³⁵ (for example prohibition of discrimination, secrecy of communication, respect for the home, privacy, prohibition of unlawful deprivation of liberty).⁴³⁶ The Equal Treatment Commission (ICC B-status) has a mandate that includes discrimination on grounds of disability and age. Other bodies address areas such as the right to privacy/personal data protection (Data Protection Authority), and human rights in the context of foreign policy (Advisory Council on International Affairs). There are no bodies covering economic, social and cultural rights, the rights of persons with disabilities outside the area of non-discrimination,⁴³⁷ and the rights of the child. However, a children's ombudsman institution is in preparation.⁴³⁸

In Slovenia, aside from the Human Rights Ombudsman (ICC B-status),⁴³⁹ the only human rights areas covered are non-discrimination/equality (Advocate of the principle of equality) and personal data protection (Information Commissioner). No other body exists that is explicitly dedicated to the protection of persons with disabilities (apart from the non-discrimination

426 Even though Sweden currently lacks an accredited NHRI and has been included in the earlier analysis it will not be mentioned in the following section. This categorisation is due to the fact that Sweden did have an A-status NHRI whose status lapsed at the end of 2008. A new merged body was set up on 1 January 2009, and an application for accreditation is expected from this new body.

427 The UN Committee on the Elimination of Racial Discrimination commented, stating that "[Austria] has adopted around 30 different laws on non-discrimination . . . [which raises concern] about the scattered character of this legal framework and its complexity, due to the different procedures and institutions with each of the discrimination laws". UN Doc. A/63/18. See also paragraph 45 on the concern over limited resources of the Ombudsman for Equal Treatment.

428 Such as police detention centers or police stations.

429 Such as prisons (*Justizanstalten*) and psychiatric/social welfare establishments.

430 Immigrants or refugees, however, come within the scope of competence of the Human Rights Advisory Board if they are held in administrative detention.

431 The Belgian report mentions the following bodies at federal level: Federal Ombudsmen, the Centre for Equal Opportunities and Opposition to Racism (B status), the Institute for the Equality of Women and Men, the Commission for the Protection of Private Life (a data protection commission), and the High Council of Justice.

432 The Belgian report mentions among bodies at the Flemish Community and Flemish Regional level the following bodies: Flemish Ombudsman Service and the Commissary for Children's Rights.

433 The Belgian report mentions the Ombudswoman and the Delegate General for the Rights of the Child as bodies at French Community level.

434 The Belgian report mentions in that regard the Ombudsman.

435 According to the Dutch report, the National Ombudsman Act stipulates that he may review "the conduct of the executive, i.e. ministries, local public authorities, the police, and other *bestuursorganen* [administrative organs], unless these have been expressly excluded".

436 The Dutch report reads with regard to the National Ombudsman as follows: "In reviewing complaints, he applies a code of good administration which has been developed by his office over the years. The code includes compliance with fundamental rights: the prohibition of discrimination; secrecy of communication; respect for the home; privacy; prohibition of unlawful deprivation of liberty; and finally the category 'other human rights'."

437 Related to persons with disabilities, see however The Dutch Council of the Chronically Ill and the Disabled [Chronisch Zieken en Gehandicaptenraad] <http://www.cg-raad.nl/home.php> (12.01.2010).

438 On youth, see however the National Youth Monitor, <http://jeugdmonitor.cbs.nl/en-GB/menu/home/default.htm> (12.01.2010).

439 The Slovenian report reads as follows: "[...] the Ombudsman mandate is defined broadly as encompassing a protection of all human rights and basic freedoms in matters involving all state and local authorities."

aspect), to the protection of economic, social and cultural rights or to the rights of detainees.

In the Slovak Republic, in addition to the Public Defender of Rights (Ombudsman) covering the right to good public administration, the National Centre for Human Rights (ICC B-status) is competent in the area of non-discrimination (including rights of persons with disabilities) and human rights in general (including rights of children, immigrants or refugees).⁴⁴⁰ However, the founding law uses only vague terms ("providing services in the field of human rights") without explaining the details of such an activity. The Centre for Legal Aid does not deal with human rights specifically.⁴⁴¹ There exists no other institution monitoring other relevant areas, such as, for instance, the rights of detainees.

In Romania, bodies such as the Ombudsman, the National Council for Combating Discrimination or the National Authority for the Oversight of Use of Personal Data have relatively limited mandates. The Ombudsman may defend individual rights and freedoms in relation to public authorities (including the rights of detained persons). The Romanian Institute for Human Rights (ICC C-status) has a rather general human rights mandate which is not restricted to certain topical areas.⁴⁴² Other public bodies protect specific human rights aspects, such as anti-discrimination, rights of persons with disabilities, rights of the child, rights of minorities (such as the Roma), victims of trafficking, and protection of privacy. However, only the National Council for Combating Discrimination and the National Authority for the Oversight of Use of Personal Data are more independent institutions. The other bodies are subordinated to different ministries.⁴⁴³

Bulgaria has both an Ombudsman and an equality body (Commission for Protection against Discrimination). In practice, the Ombudsman does not adequately cover issues related to the protection of minorities (especially Roma) and many other specific human rights. Accordingly, the equality body, which covers all discrimination issues, is perceived as more proactive and efficient in the protection of vulnerable groups than the Ombudsman. No independent public body monitors the situation concerning the rights of immigrants or refugees, the rights of persons with disabilities or economic, social and

cultural rights. The rights of detained persons and children are at times covered through the work of the Ombudsman.

In Cyprus, the right to good public administration, anti-discrimination,⁴⁴⁴ the rights of the child⁴⁴⁵ and the right to privacy (data protection)⁴⁴⁶ are covered by different bodies. Limitations on the protection of human rights exist, for example, because the equality body is integrated with the Commissioner for Administration institution (Ombudsman) and lacks a separate budget and staff.⁴⁴⁷ Certain areas are not covered by any competent body, for example rights of persons with disabilities, the rights of detainees and refugees. While the National Institute for the Protection of Human Rights (ETHNOPAD) is mandated to promote human rights in a proactive manner, it is dependent on the government, as it lacks a legislative framework and is restricted by resource constraints.⁴⁴⁸ A shortcoming of the human rights protection framework is that there exists no systematic consultation with civil society.

In the Czech Republic, the original mandate of the Public Defender of Rights (Ombudsman) was restricted to the area of maladministration.⁴⁴⁹ However, since 2006 it includes individual complaint handling activities and envisages systematic preventive visits to all places of detention (a National Preventive Mechanisms (NPM) under the OP-CAT). The Ombudsman is also

444 According to the Cypriot report, the Ombudsman and the two departments comprising the Equality Body are headed by the same person, have a single budget, are housed in the same premises and the staff performs the tasks allocated to them with some division of labour. It is "unlikely that changes will be introduced to them to enable them to meet the requirements of an accredited national human rights institution". According to the national report, "the Ombudsman apart from issues of maladministration has a wide human rights mandate and covers matters of equality between men and women, and equality and enjoyment of human rights and freedoms irrespective of race, ethnic origin, community, language, religion, political and other beliefs, special needs, age and sexual orientation". The Equality Body (the Anti-discrimination Body and the Equality Authority) covers "discrimination forbidden by law, which includes discrimination on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin"; however, "sanctions in the form of maximum fines it can impose are so minor that puts into question whether they can act as a genuine deterrent of discrimination"; further, the national report questions "whether the duties of the Equality Body performed by the Ombudsman are properly discharged is a matter of that is open to dispute".

445 According to the Cypriot report, the Commissioner for the Rights of Children is mandated "to protect and promote children's rights" and is competent *inter alia* "to represent children and their interests at all levels".

446 According to the Cypriot report, the Data Protection Commissioner is competent "to issue recommendations to those responsible of processing data, whether public or private and to decide on all regulations regarding the processing and protection of personal data".

447 The Cypriot report mentions that "the Equality Body cannot be genuinely independent and comply with the aim of the anti-discrimination acquis, unless it is separated from the Ombudsman to carry out its duties in more effective way."

448 The National Organisation for Human Rights is mandated "to promote and protect human rights with the provision of information and the sensitisation of public opinion on human rights" including advising the government, monitoring legislation and promoting international treaties.

449 The Czech report reads as follows: "According to Sec. 1 paragraph 1 of the Act on the Public Defender of Rights, the Public Defender of Rights works to defend persons in relation to the actions of authorities and other institutions listed in this Act, should such actions be inconsistent with the law, in contradiction to the principles of a democratic State of law (rule of law) and good administration, and also in the event of inaction by these authorities, thereby contributing to the defence of fundamental rights and freedoms. [...] Its competence applies to ministries and other administrative authorities having competence over the entire territory of the Czech Republic, administrative authorities subordinated to such authorities, the Czech National Bank when acting as an administrative authority, the Council for Radio and Television Broadcasting, and bodies of municipal authorities when performing state administration. The scope of activity extends also to the Czech Police, Czech Army, Castle Guard, the Czech Prison Service unless specified otherwise below, and also to facilities performing custody, imprisonment, protective or institutional care, protective therapy as well as to public medical insurance organisations."

440 The Slovakian report reads as follows: "[...] Centre shall fulfil all duties within the field of human rights and fundamental freedoms, including children's rights. The mission of the Centre was significantly broadened by the Anti-discrimination Law in 2004 when new definitions and more specific assignments were added to the law. Since then the Centre shall execute its duties within the field of general human rights protection, as well as in specific area of anti-discrimination."

441 The Centre for Legal Aid grants legal assistance for persons of low income in civil law cases.

442 According to the national report referring to the institute's founding instruments, the institute is mandated "to promote and ensure a better knowledge of human rights in general and human rights issues and how they are enforced in other countries, especially in European countries". The institute "has a very general and extensive mandate concerning human rights issues", but is "limited [...] in regard to the practical means of exercising this mandate" (for example, no processing of individual petitions, it does not "actively advocate for the enforcement of human rights on specific issues").

443 The National Report mentions the following bodies, which are subordinated to different ministries: National Agency for Roma, Department for Interethnic Relations, National Authority for Persons with a Disability, National Authority for the Protection of Child's Rights, National Agency for Equal Opportunities, National Agency for the Protection of Family, National Agency against Trafficking in Persons.

gaining new competences as an equality body.⁴⁵⁰ It partially covers the rights of persons with disabilities, immigrants, and children.⁴⁵¹ However, bodies pursuing a proactive human rights approach in connection with vulnerable groups are missing.

In Estonia, independent public bodies cover maladministration (Chancellor of Justice), anti-discrimination (Gender Equality and Equal Treatment Commissioner) and data protection (Estonian Data Protection Inspectorate).⁴⁵² Notwithstanding the lack of formal coordination mechanisms between these bodies, informal exchange of information does take place, and the Chancellor of Justice is obliged to cooperate with other institutions in regard to equality and equal treatment matters. The Chancellor of Justice also provides a national preventive mechanism under OP-CAT and conducts unannounced on-site visits of prisons, detention facilities, care institutions, psychiatric hospitals, military units, and so forth. No public bodies are charged with promoting the rights of persons with disabilities, immigrants, refugees or children.

In Finland, most thematic areas are covered, although an independent NHRI is missing and the fragmented nature of the current structures hampers human rights protection. Aside from the Parliamentary Ombudsman, four specialised ombudsmen exist: one on equality between men and women,⁴⁵³ one on ethnic discrimination,⁴⁵⁴ one on children; and one on data protection. Moreover, specialised advisory panels within ministries are in place, such as the Advisory Boards on Human Rights (within the Ministry of Foreign Affairs)⁴⁵⁵ the Advisory Board on Romani Affairs,⁴⁵⁶ and the Equality Board Council for Gender Equality. The National Discrimination Tribunal is an independent tribunal examining cases of discrimination based on ethnic origin (excluding discrimination in employment).⁴⁵⁷ Academic human rights institutes also perform certain functions typical of an NHRI, such as human rights research contracted by

government agencies and through the provision of opinions on draft laws.

In Hungary, good public administration,⁴⁵⁸ rights of national and ethnic minorities,⁴⁵⁹ data protection⁴⁶⁰ and environmental rights/rights for future generations⁴⁶¹ are covered by different ombudsmen. The right to non-discrimination is covered by the Equal Treatment Authority, which also cooperates with the Minorities Ombudsman. The Independent Police Complaints Board investigates violations and omissions committed by police and border guards if they concern fundamental rights set out in the Police Act.⁴⁶² While the General Ombudsman and Minorities Ombudsman may only act with regard to violations committed by public authorities, the Data Protection Ombudsman and the Green Ombudsman can also act in relation to acts of private entities. While the rights of persons with disabilities and children are not covered by a separate body, their rights are partially covered by the General Ombudsman and the Equal Treatment Authority.

In Italy, the areas of non-discrimination on account of race or ethnic origin (including the rights of Roma, Sinti and Nomadic communities),⁴⁶³ and the right to privacy (personal data protection) are covered by independent public bodies.⁴⁶⁴ The rights of persons with disabilities, of immigrants and of the child are not covered by any separate institution mandated to pursue a proactive approach; they are partially covered by the equality body.

In Latvia, the Ombudsman is an important human rights body. Its office is divided into four departments: 1. human rights (civil and political rights, social and economic rights, criminal law divisions); 2. prevention of discrimination (as equality body in order to fulfil the requirements of the Racial Equality

450 In June 2009, the Czech Parliament's Chamber of Deputies overturned the veto of the Czech president with regard to the Anti-discrimination Act. The law also establishes the Public Defender of Rights as the new Czech anti-discrimination body – those provisions will enter into force six months after its publication in the Official Collection of Laws (information available at: <http://www.non-discrimination.net/content/media/CZ-10-2008%20Template%20Flash%20Report%20The%20Deputy%20Chamber%20overturned%20presidential%20veto.pdf> (05.10.2009)). The Czech report also mentions that the Act on courts and judges, which entered into force in October 2008, gives the Ombudsman the power "to propose the launch of disciplinary proceedings against court chairpersons and deputy chairpersons". This will "enable the Defender to deal with the performance of court chairpersons not in connection with individual cases, but to assess their performance as managers, in particular in respect of excessive delays of proceedings".

451 The Czech report mentions that the Ombudsman has no legal powers to promote international human rights treaties (even though it may use informal authority to recommend such measures) and that his activities do not comprise "activities aiming solely at the awareness raising or education" (but they are included in most of activities). It cooperates with civil society on a broad basis (it often works together with NGOs and the academic community).

452 The Gender Equality Commissioner was replaced by the Gender Equality and Equal Treatment Commissioner as of 01.01.2009.

453 Its office is located administratively within the Ministry of Social Affairs and Health.

454 Its office is located administratively within the Ministry of the Interior.

455 It consists of representatives from ministries, political parties, human rights NGOs and academic human rights research institutes. It serves as a communication channel on human rights issues between the Ministry for Foreign Affairs and NGOs by organising for example, seminars and keeps up with national and international human rights issues.

456 It operates in conjunction with the Ministry of Social Affairs and Health and is tasked to enhance equal participation of the Roma population in Finnish society, to improve their living conditions and socio-economic position and to promote their culture.

457 Its decision has the same legal effect as a judgment rendered by a court of law.

458 Parliamentary Commissioner for Civil Rights (General Ombudsman).

459 The Parliamentary Commissioner for the Rights of National and Ethnic Minorities (Minorities Ombudsman) is responsible for acting in relation to constitutional irregularities emerging in relation to minority rights.

460 Parliamentary Commissioner for Data Protection and the Freedom of Information (Data Protection Ombudsman).

461 Parliamentary Commissioner for Future Generations (the Green Ombudsman).

462 For example, identity checks, custodial measures, physical force, handcuffing, use of fire arms. Based on an investigation, the Board makes a recommendation to the National Chief of Police, who delivers the decision on the individual complaint but may only divert from the Board's recommendation on the basis of detailed argumentation. There are parallel lines of authority (primarily with the General Ombudsman, but also the Minorities Ombudsman, Data Protection Ombudsman) but the legislation does not provide for resolution of competence conflicts.

463 The National Office against Racial Discrimination is mandated to prevent and condemn acts which "create multiple discriminatory effects"; to remove discriminatory situations; to promote positive actions, such as training courses; and to monitor the effective application of the principle of equal treatment. However, its decisions are not binding; the Italian report mentions the need for stronger powers of mediation and more effective powers of inquiry and adequate annual financing. Further the mandate is limited only to the fight discrimination on account of race and ethnic discrimination.

464 The National Report also mentions the Communications Regulatory Authority ensuring information pluralism.

Directive);⁴⁶⁵ 3. children's rights; 4. good governance.⁴⁶⁶ The Ombudsman can also conduct visits to closed institutions. The human rights department focuses on individual complaints, in particular regarding the rights to fair trial and private life, social security and housing issues. While the work of the Ombudsman addresses the protection of vulnerable groups such as persons with disabilities, immigrants, refugees or children in theory, the Ombudsman does not pursue a proactive approach regarding the protection of their rights.

In Lithuania, the areas of good public administration (Seimas Ombudsmen), the right to equality (Equal Opportunities Ombudsman), and the rights of the child (Ombudsman for Children) are covered. The Seimas Ombudsmen can be considered to be more reactive than proactive (and preventive) in its approach to human rights. Similarly, there are no bodies with a proactive approach towards the rights of persons with disabilities, immigrants or refugees. Other institutions include the State Data Protection Inspection and the Law Institute (research and monitoring of human rights issues).

In Malta, specific bodies cover areas such as the rights of the child,⁴⁶⁷ equality and elimination of discrimination on grounds of gender, racial or ethnic discrimination,⁴⁶⁸ rights of persons with disabilities,⁴⁶⁹ data protection,⁴⁷⁰ the right to non-discrimination in the field of employment,⁴⁷¹ and freedom of expression.⁴⁷² There are no institutions dedicated to the protection of the rights of immigrants, or refugees, and no competent bodies in the fields of economic, social and cultural rights. The only institution that operates as a broader human rights body is the Ombudsman, which, *inter alia*, investigates complaints regarding maladministration. Other bodies include the Commissioner for Children, the National Commission for

Persons with Disabilities, and the National Commission for the Promotion of Equality for Men and Women.⁴⁷³

5.2. Comparison: states with and without A-status NHRIs

EU Member States without A-status NHRIs typically have a variety of bodies with widely differing mandates in place. Such bodies focus their work on a specific topic, a specific right, a specific target group or a specific function. Almost all countries have Ombudsman institutions typically investigating areas of maladministration and pursuing a rather reactive approach to human rights protection and promotion.

Moreover, these bodies only fulfil some of the functions and often without the wider human rights mandate as required by the Paris Principles.⁴⁷⁴ In many cases, human rights education and awareness-raising, promotion of human rights treaties, or interaction with civil society – all of which are core functions of an NHRI – are either not explicitly stipulated in their founding instruments or not carried out due to resource constraints.

In particular, the lack of coordination between the bodies within a state leads to overlapping mandates and, consequently, to the omission of certain areas. This poses a major obstacle to the effective protection of human rights. Member States with federal structures face additional coordination problems.

Currently, only areas harmonised through EU legislation, such as equality and data protection, are covered by bodies with similar mandates and functions across Member States. Consequently, the human rights protection systems in Member States without A-status NHRIs are typically fragmented since most of the existing institutions each exercise only a narrow mandate. Some of the existing bodies have mandates that would theoretically allow for broader fields of activities, but in practice they are confined to the most basic components due to resource constraints and excessively narrow descriptions of their mandates and functions. Also, typically, no systematic and comprehensive mechanism exists in order to guarantee adequate coordination of various human rights activities. Moreover, many of the bodies briefly described above also lack sufficient independence and pluralism. Consequently, there is a clear need to have a more comprehensive approach to fundamental rights mechanisms at the national level.

In contrast, A-status NHRIs are established by a formal act of parliament, vested with an official mandate, and tasked with specific functions for which they receive funding from the state. Such NHRIs are typically quite broadly mandated. Even if they do not cover all thematic areas, they do coordinate with other bodies to ensure a comprehensive coverage. In order to make

465 According to the Latvian report, this department should fulfil "the role of the designated institution under the Racial Equality Directive 2000/43/EC. However, [...] in practice it is only a department within the Ombudsman Office, not a separate institution, and it is not the head of the department, but the Ombudsman who is formally responsible for its work, together with all other Ombudsman areas of mandate. The Prevention of Discrimination Department covers all types of discrimination on all grounds, and initiates cases on the basis of received complaints, as well as by its own initiative. In 2007, complaints were mostly received about discrimination on grounds of state of health, race and ethnicity, and gender. Forty-one cases out of 42 initiated by the initiative of the Ombudsman were on the ground of gender."

466 The Latvian report states, that this department "fulfils a function which before was not in the competence of the NHRI or any other institution, by reviewing complaints on every case where the state or municipal institutions or officials allegedly have not performed their duties in compliance with the order set by the law. Good governance includes fair and impartial examination of issues within a reasonable time-limit, the right of a person to be heard, the right to be acquainted with case materials, the right to ask for a motivated decision, as well as for compensation of damages, etc. The creation of the Good Governance Department could serve to relieve some of the burden of the Administrative court; however, as the recommendations of the Ombudsman are not binding, the practical impact of work of that department on individual cases is still unclear."

467 Office of the Commissioner for Children.

468 National Commission for the Promotion of Equality for Men and Women.

469 National Commission Persons with Disability.

470 Data Protection Commissioner.

471 Employment Commission.

472 Broadcasting Authority.

473 The Maltese report states: "[...] Their task is to ensure equality of treatment amongst the various sectors in society. While they do have an investigative function (being also able to investigate actions by private persons and not just public authorities) their role is more educational with the aim of generating equality within society. Their investigative function and authority to provide remedies is more limited [...] these Commissions generally depend on the cooperation of the Police in enforcing any remedial action they deem necessary."

474 For example, individual complaints procedures only in regard to the right to good administration or right to non-discrimination/equality; monitoring, awareness-raising and promotion of international treaties only with regard to the rights of the child.

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the best use of their resources, NHRIs often establish strategic plans that focus their work on human rights that are considered to have been overlooked or inadequately enforced.

Moreover, fully accredited NHRIs usually maintain close relationships with various civil society actors (which is also an element required for A-status classification). Some NHRIs have a variety of actors represented in their structures, further facilitating such an exchange.

A-status NHRIs are also mandated, or interpret their mandate in such a way as to allow them, to interact with the international human rights system, contributing by linking the national and the international levels, and to provide assistance on the implementation of international standards at the national level.

Furthermore, fully accredited NHRIs possess functions enabling them to play a preventive role with regard to human rights violations. Monitoring and research, as well as close links with civil society, allow them to form an overview of the human rights situation. Awareness raising and human rights education aim at making individuals aware of their rights and available remedies. Through their advisory role NHRIs contribute to making state actors more aware of sensitive human rights issues. The preventive function of NHRIs is further fostered by their mandates to interact with the international human rights system.

Several EU Member States that currently lack an A-status NHRI are considering their establishment. For instance, the Netherlands have committed to expand the mandate of the existing Equal Treatment Commission to create a full fledged NHRI by 2011. In Italy, the text of a draft law was approved in April 2007 by the Chamber of Deputies but remains to be endorsed by the Senate. A committee was set up in Finland in 2009 to look into the details of a future NHRI. Also in Belgium, there are plans to establish an NHRI.

Certainly, an NHRI should not duplicate the work of existing human rights bodies, or dilute already scarce budgetary resources by the introduction of yet another institution. Rather, the establishment of an NHRI should support and connect the work already in existence by ensuring a coherent, coordinated, and comprehensive approach to human rights promotion and protection. Furthermore the experience gained in other bodies should also be capitalised upon. This could be done by ensuring that these entities are represented in the NHRI, or that coordination between these bodies is secured by an NHRI with an overarching mandate.⁴⁷⁵

⁴⁷⁵ See: UN General Assembly (2009) *Report of the United Nations Secretary-General to the UN General Assembly, A/64/320* 24 August 2009, paragraph 109 in relation to ombudsmen, but also more generally on the role of NHRIs as a central human rights body.

Annexes

Overview of NHRIs and Similar Entities in EU Member States

NHRIs with ICC-status

EU Member States	Status	NHRI (in English)	NHRI (in vernacular)	Website
Austria	B	Ombudsman Board	Volksanwaltschaft	www.volksanw.gv.at
Belgium	B	Centre for Equal Opportunities and Opposition to Racism	Centrum voor Gelijkheid van Kansen en voor Racismebestrijding / Centre pour l'égalité des chances et la lutte contre le racisme	www.diversiteit.be
Denmark	A	The Danish Institute for Human Rights (DIHR)	Institut for Menneskerettigheder	www.humanrights.dk
France	A	National Consultative Human Rights Commission (NCHRC)	Commission Nationale Consultative des Droits de l'Homme (CNCDH)	www.cncdh.fr
Germany	A	German Institute for Human Rights (GIHR)	Deutsches Institut für Menschenrechte (DIMR)	www.institut-fuer-menschenrechte.de
Greece	A	National Commission for Human Rights (GNCHR)	Εθνική Επιτροπή για τα Δικαιώματα τοῦ Ἀνθρώπου (ΕΕΔΑ)	www.nchr.gr
Ireland	A	Irish Human Rights Commission (IHRC)	Irish Human Rights Commission / An Coimisiún um Chearta Duine	www.ihrc.ie
Luxembourg	A	Consultative Commission on Human Rights (CCHR)	Commission Consultative des Droits de l'Homme (CCDH)	www.ccdh.public.lu
Netherlands	B	Equal Treatment Commission	Commissie Gelijke Behandeling (CGB)	www.cgb.nl
Poland	A	Commissioner for Civil Rights Protection	Rzecznik Praw Obywatelskich (RPO)	www.rpo.gov.pl
Portugal	A	Ombudsman Office	Provedor de Justiça	www.provedor-jus.pt
Romania	C ⁴⁷⁶	Romanian Institute for Human Rights (RIHR)	Institutul Român pentru Drepturile Omului (IRDO)	www.irdo.ro
Slovakia	B	Slovak National Centre for Human Rights	Slovenské národné stredisko pre ľudské práva	www.snslp.sk
Slovenia	B	Human Rights Ombudsman	Varuh človekovih pravic	www.varuh-rs.si
Spain	A	Ombudsman	Defensor del Pueblo Español	www.defensordelpueblo.es
Great Britain (UK)	A ⁴⁷⁷	Equality and Human Rights Commission (EHRC)		www.equalityhumanrights.com
Northern Ireland (UK)	A	Northern Ireland Human Rights Commission (NIHRC)		www.nihrc.org
Scotland (UK)		Scottish Human Rights Commission		www.scottishhumanrights.com

⁴⁷⁶ Romania is listed at <http://www.nhri.net> as having no status but a formal overview on at the same site updated as of June 2009 records C-status

⁴⁷⁷ Great Britain is equipped with two additional regional NHRIs, for Northern Ireland, and for Scotland. The Scottish Commission has been recommended for A-status by the ICC SCA, and an approval is expected by the ICC Bureau in late May 2010.

Institutions in EU Member States without ICC-status NHRIs

EU Member States	Entity (in English)	Entity (in vernacular)	Website
Bulgaria	Parliamentary Ombudsman (Public Advocate)	Омбудсман на Република България (Граждански защитник)	www.ombudsman.bg
	Protection Against Discrimination Commission (PADC)	Комисията за защита от дискриминация (КЗД)	http://kzd-nondiscrimination.com/start/index.php?lang=en
Cyprus	Commissioner for Administration (Ombudsman)		www.ombudsman.gov.cy
	National Institute for the Protection of Human Rights (ETHNOPAD)		www.olc.gov.cy
	Commission for the Rights of Children		
Czech Republic	Data Protection Commissioner	Γραφείου Επιτρόπου Προστασίας Δεδομένων Προσωπικού Χαρακτήρα	www.dataprotection.gov.cy
	Public Defender of Rights / Ombudsman	Veřejný ochránce práv	www.ochrance.cz/
	The Office for Personal Data Protection	Úřad pro ochranu osobních údajů	www.hrad.cz/en/president-of-the-cr/presidential-decisions/appointments-dismissals-decisions/the-office-for-personal-data-protection.shtml
Estonia	Estonian Institute of Human Rights (EIHR)	Eesti Inimõiguste Instituut	www.eihr.ee
	Chancellor of Justice	Õiguskantsler	www.oiguskantsler.ee
	Gender Equality Commissioner	Soolise võrdõiguslikkuse volinik	www.svv.ee
	Data Protection Inspectorate	Andmekaitse Inspektsioon	www.dp.gov.ee
Finland	Parliamentary Ombudsman	Eduskunnan oikeusasiamies	www.oikeusasiamies.fi
	Ombudsman for Equality	Tasa-Arvovaltuutettu	www.tasa-arvo.fi/en
	Ombudsman for Minorities	Vähemmistövaltuutettu	www.ofm.fi
	Ombudsman for Children	Lapsiasiavaltuutettu	www.lapsiasia.fi/
	Advisory Board on Human Rights	Kansainvälisten ihmisoikeusasiain neuvottelukunta	http://formin.finland.fi/public/default.aspx?nodeid=31364&contentlan=2&culture=en-US
	Data Protection Ombudsman	Tietosuojavaltuutetun toimisto	www.tietosuoja.fi
Hungary	Parliamentary Commissioner for Data Protection and Freedom of Information	Adatvédelmi Biztos	http://abiweb.obh.hu/dpc/
	Parliamentary Commissioner for Future Generations	Jövő Nemzedékek Országgyűlési Biztosa	http://jno.hu/en/
	Parliamentary Commissioner for the Rights of National and Ethnic Minorities	Nemzeti és Etnikai Kisebbségi Jogok Biztosa	www.kisebbségiombudsman.hu
	Parliamentary Commissioner for Civil Rights (General Ombudsman)	Állampolgári Jogok Országgyűlési Biztosa	www.obh.hu
	Equal Treatment Authority	Egyenlő Bánásmód Hatóság (EBH)	www.egyenlobanasmod.hu/
Italy	National Office Against Racial Discrimination	Ufficio Nazionale Antidiscriminazioni Razziali (UNAR)	www.pariopportunita.gov.it/index.php?option=com_content&view=article&id=121&Itemid=126
	Data Protection Authority	Autorità Garante per la Privacy	www.garanteprivacy.it
Latvia	Ombudsman's Office	Tiesībsarga birojs	www.tiesibsargs.lv
	Data State Inspectorate	Datu valsts inspekcija	www.dvi.gov.lv/eng/

EU Member States	Entity (in English)	Entity (in vernacular)	Website
Lithuania	Seimas Ombudsmen	Seimo kontrolierių įstaiga	www.lrski.lt/index.php?l=EN
	Equal Opportunities Ombudsman	Lygių galimybių kontrolieriaus tarnyba	www.lygybe.lrs.lt/
	Children's Ombudsman	Lietuvos respublikos vaiko teisiu apsaugos kontrolieriaus istaiga	www3.lrs.lt/pls/inter/vaikai
	State Data Protection Inspectorate	Valstybinė duomenų apsaugos inspekcija	www.ada.lt/index.php?lng=en
Malta	National Commission for the Promotion of Equality for Men and Women		www.equality.gov.mt/page.asp?p=8527&l=1
	Office of the Ombudsman		www.ombudsman.org.mt/index.asp
	Office of the Commissioner for Children	Ku Kummissarju għat-Tfal	www.tfal.org.mt/
	National Commission for Persons with Disabilities	Kummissjoni Nazzjonali Persuni b'Dizabilita	www.knpd.org/
	Office of the Data Protection Commissioner		www.dataprotection.gov.mt/
Sweden	Equality Ombudsman	Diskrimineringsombudsmannen (DO)	www.do.se
	Parliamentary Ombudsmen / Ombudsmen of Justice	Justitieombudsmännen / Riksdagens ombudsmän (JO)	www.jo.se
	The Children's Ombudsman	Barnombudsmannen (BO)	www.bo.se
	The Swedish Data Inspection Board	Datainspektionen	www.datainspektionen.se

Principles relating to the Status of National Institutions (The Paris Principles)

Adopted by General Assembly resolution 48/134 of 20 December 1993

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - a. To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicise them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - i. Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - ii. Any situation of violation of human rights which it decides to take up;
 - iii. The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - iv. Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - b. To promote and ensure the harmonization of national legislation, regulations and practices with the

international human rights instruments to which the State is a party, and their effective implementation;

- c. To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- d. To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- e. To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
- f. To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- g. To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society)⁴⁷⁸ involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
 - a. Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
 - b. Trends in philosophical or religious thought;
 - c. Universities and qualified experts;
 - d. Parliament;
 - e. Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be

⁴⁷⁸ This is a mistranslation from French (*société civile*) and ought to read civil society.

to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- a. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- b. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- c. Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations;
- d. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- e. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- f. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- g. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas.

Additional principles concerning the status of commissions with quasi-judicial competence⁴⁷⁹

A national institution may be authorised to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- a. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- b. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- c. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- d. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

479 "Quasi-judicial competence" was a mistranslation from the original French version and the meaning was "quasi-judicial"; see B. Burdekin (2007) *National Human Rights Institutions in the Asia-Pacific Region*, Brill, p. 24 (note 37).

ICC SCA, General Observations

1. Competence and responsibilities

1.1. Establishment of national institutions: An NHRI must be established in a constitutional or legal text. Creation by an instrument of the Executive is not adequate to ensure permanency and independence.

1.2. Human rights mandate: All NHRIs should be mandated with specific functions to both protect and promote human rights, such as those listed in the Paris Principles.

1.3. Encouraging ratification or accession to international human rights instruments: The Sub-Committee interprets that the function of encouraging ratification or accession to international human rights instruments, set out in the Paris Principles, is a key function of a National Institution. The Sub-Committee therefore encourages the entrenchment of this function in the enabling legislation of the National Institution to ensure the best protection of human rights within that country.

1.4. Interaction with the International Human Rights System: The Sub-Committee would like to highlight the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NHRIs making an input to, participating in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NHRIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NHRIs.

1.5. Cooperation with other human rights institutions: NHRIs should cooperate with statutory institutions and other institutions, such as NGOs, established for the purpose of promoting or protecting human rights and should demonstrate that this occurs in their applications to the ICC Sub-Committee.

1.6. Recommendations by NHRIs: NHRI recommendations contained in annual, special or thematic human rights reports should normally be discussed within a reasonable amount of time, not to exceed six months, by the relevant government ministries as well as the competent parliamentary committees. These discussions should be held especially in order to determine the necessary follow up action, as appropriate in any given situation. NHRIs as part of their mandate to promote and protect human rights should ensure follow up action to recommendations contained in their reports.

2. Composition and guarantees of independence and pluralism

2.1. Ensuring pluralism: The Sub-Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub-Committee emphasises the importance of National Institutions to maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications.

The Sub-Committee observes that there are different ways in which pluralism may be achieved through the composition of the National Institution, for example:

- a. Members of the governing body represent different segments of society as referred to in the Paris Principles;
- b. Pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates;
- c. Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
- d. Pluralism through diverse staff representing the different societal groups within the society. The Sub-Committee further emphasises that the principle of pluralism includes ensuring the meaningful participation of women in the National Institution.

2.2. Selection and appointment of the governing body: The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasises the following factors:

- a. A transparent process
- b. Broad consultation throughout the selection and appointment process
- c. Advertising vacancies broadly
- d. Maximizing the number of potential candidates from a wide range of societal groups
- e. Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.

2.3. Government representatives on National Institutions: The Sub-Committee understands that the Paris Principles require that Government representatives on governing or advisory bodies of National Institutions do not have decision making or voting capacity.

2.4. Staffing by secondment: In order to guarantee the independence of the NHRI, the Sub-Committee notes, as a matter of good practice, the following:

- a. Senior level posts should not be filled with secondees;
- b. The number of seconded should not exceed 25% and never be more than 50% of the total workforce of the NHRI.

2.5. Immunity: It is strongly recommended that provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI.

2.6. Adequate Funding: Provision of adequate funding by the state should, as a minimum include:

- a. the allocation of funds for adequate accommodation, at least its head office;
- b. salaries and benefits awarded to its staff comparable to public service salaries and conditions;
- c. remuneration of Commissioners (where appropriate); and
- d. the establishment of communications systems including telephone and internet.
- e. Adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the organization's operations and the fulfillment of their mandate.

Funding from external sources, such as from development partners, should not compose the core funding of the NHRI as it is the responsibility of the state to ensure the NHRI's minimum activity budget in order to allow it to operate towards fulfilling its mandate.

Financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control.

2.7. Staff of an NHRI: As a principle, NHRIs should be empowered to appoint their own staff.

2.8. Full-time Members: Members of the NHRIs should include full-time remunerated members to:

- a. Ensure the independence of the NHRI free from actual or perceived conflict of interests;
- b. Ensure a stable mandate for the members;
- c. Ensure the ongoing and effective fulfillment of the mandate of the NHRI.

2.9. Guarantee of tenure for members of governing bodies

Provisions for the dismissal of members of governing bodies in conformity with the Paris Principles should be included in the enabling laws for NHRIs.

- a. The dismissal or forced resignation of any member may result in a special review of the accreditation status of the NHRI;

- b. Dismissal should be made in strict conformity with all the substantive and procedural requirements as prescribed by law;
- c. Dismissal should not be allowed based on solely the discretion of appointing authorities.

2.10. Administrative regulation

The classification of an NHRI as a public body has important implications for the regulation of its accountability, funding, and reporting arrangements.

In cases where the administration and expenditure of public funds by an NHRI is regulated by the Government, such regulation must not compromise the NHRI's ability to perform its role independently and effectively. For this reason, it is important that the relationship between the Government and the NHRI be clearly defined.

3. Methods of operation

4. Additional principles concerning the status of commissions with quasi-jurisdictional competence

5. Additional issues

5.1. NHRIs during the situation of a coup d'état or a state of emergency:

As a principle, the Sub-Committee expects that, in the situation of a coup d'état or a state of emergency, an NHRI will conduct itself with a heightened level of vigilance and independence in the exercise of their mandate.

5.2. Limitation of power of National Institutions due to national security:

The Sub-Committee notes that the scope of the mandate of many National Institutions is restricted for national security reasons. While this tendency is not inherently contrary to the Paris Principles, it is noted that consideration must be given to ensuring that such restriction is not unreasonably or arbitrarily applied and is exercised under due process.

5.3. Functioning of an NHRI in a volatile context:

The Sub-Committee acknowledges that the context in which an NHRI operates may be so volatile that the NHRI cannot reasonably be expected to be in full conformity with all the provisions of the Paris Principles. When formulating its recommendation on the accreditation status in such cases, the Sub-Committee will give due consideration to factors such as: political instability; conflict or unrest; lack of state infrastructure, including excessive dependency on donor funding; and the NHRI's execution of its mandate in practice.

6. Procedural issues

6.1. Application processes: With the growing interest in establishing National Institutions, and the introduction of the five-yearly re-accreditation process, the volume of applications to be considered by the Sub-Committee has increased dramatically. In the interest of ensuring an efficient and effective accreditation process, the Sub-Committee emphasises the following requirements:

- a. Deadlines for applications will be strictly enforced;
- b. Where the deadline for a re-accreditation application is not met, the Sub-Committee will recommend that the accreditation status of the National Institution be suspended until the application is considered at the next meeting;
- c. The Sub-Committee will make assessments on the basis of the documentation provided. Incomplete applications may affect the recommendation on the accreditation status of the National Institution;
- d. Applicants should provide documentation in its official or published form (for example, published laws and published annual reports) and not secondary analytical documents;
- e. Documents must be submitted in both hard copy and electronically;
- f. All application related documentation should be sent to the ICC Secretariat at OHCHR at the following address: National Institutions Unit, OHCHR, CH-1211 Geneva 10, Switzerland and by email to: nationalinstitutions@ohchr.org; and
- g. It is the responsibility of the applicant to ensure that correspondence and application materials have been received by the ICC Secretariat.

6.2. Deferral of re-accreditation applications: The Sub-Committee will apply the following policy on the deferral of re-accreditation applications:

- a. In the event that an institution seeks a deferral of consideration of its re-accreditation application, a decision to grant the deferral can be taken only if written justifications for the deferral have been provided and these are, in the view of the ICC Chairperson, compelling and exceptional;
- b. Re-accreditation applications may be deferred for a maximum of one year, after this time the status of the NHRI will lapse; and
- c. For NHRIs whose re-accreditation applications are received after the due date or who have failed to submit their applications, their accreditation status will be suspended. This suspension can be in place for up to one year during which time the NHRI may submit its application for re-accreditation. If the application is not submitted during this time, the accreditation status will lapse.

6.3. NHRIs under review: Pursuant to article 3(g) of the ICC Rules of Procedure, the ICC Chair or the Sub-Committee may initiate a review of an NHRI's accreditation if it appears that the circumstances of that NHRI may have changed in any way which affects its compliance with the Paris Principles. Such a review is triggered by an exceptional set of circumstances considered to be temporary in nature. As a consequence, the regular re-

accreditation process will be deferred until the review is completed.

In its consideration of NHRIs under review, the Sub-Committee will apply the following process:

- a. An NHRI can be under review a maximum of one and a half years only, during which time it may bring information to the Sub-Committee to demonstrate that, in the areas under review, the NHRI is fully compliant with the Paris Principles;
- b. During the period of review, all privileges associated with the existing accreditation status of the NHRI will remain in place;
- c. If at the end of the period of review, the concerns of the Sub-Committee have not been satisfied, then the accreditation status of the NHRI will lapse.

6.4. Suspension of Accreditation: The Sub-Committee notes that the status of suspension means that the accreditation status of the Commission is temporarily suspended until information is brought before the Sub-Committee to demonstrate that, in the areas under review, the Commission is fully compliant with the Paris Principles. An NHRI with a suspended A status is not entitled to the benefits of an A status accreditation, including voting in the ICC and participation rights before the Human Rights Council, until the suspension is lifted or the accreditation status of the NHRI is changed.

6.5. Submission of information: Submissions will only be accepted if they are in paper or electronic format. The Statement of Compliance with the Paris Principles is the core component of the application. Original materials should be submitted to support or substantiate assertions made in this Statement so that the assertions can be validated and confirmed by the Sub-Committee. No assertion will be accepted without material to support it.

Further, where an application follows a previous recommendation of the Sub-Committee, the application should directly address the comments made and should not be submitted unless all concerns can be addressed.

6.6. More than one national institution in a State: The Sub-Committee acknowledges and encourages the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive national human rights institution.

In very exceptional circumstances, should more than one national institution seek accreditation by the ICC, it should be noted that Article 39 of the ICC Statute⁴⁸⁰ provides that the State shall have one speaking right, one voting right and, if elected, only one ICC Bureau member.

480 Formerly Rule 3 (b) of the ICC Rules of procedure.

In those circumstances the conditions precedent for consideration of the application by the Sub-Committee are the following:

- a. Written consent of the State Government (which itself must be a member of the United Nations).
- b. Written agreement between all concerned national human rights institutions on the rights and duties as an ICC member including the exercise of the one voting and the one speaking right. This agreement shall also include arrangements for participation in the international human rights system, including the Human Rights Council and the Treaty Bodies.

The Sub-Committee stresses the above requirements are mandatory for the application to be considered.

6.7. NHRI annual report: The Sub-Committee finds it difficult to review the status of an NHRI in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo review by the Sub-Committee. The Sub-Committee stresses the importance for an NHRI to prepare and publicise an annual report on its national situation with regard to human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

Adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) by email after the meeting of March 2009.

These four reports by European Union Agency for Fundamental Rights (FRA) look at closely related issues, institutions, and EU legislation, which contribute to the overarching architecture of fundamental rights in the European Union. The building blocks of this fundamental rights landscape are the data protection authorities and national human rights institutions (NHRIs), as well as Equality Bodies set up under the Racial Equality Directive (2000/43/EC).



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