



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**SUPPORTING
OMBUDSMAN
COOPERATION IN THE
EASTERN PARTNERSHIP
COUNTRIES**

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DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

STUDY

**SUPPORTING OMBUDSMAN COOPERATION IN THE
EASTERN PARTNERSHIP COUNTRIES**

Abstract

This study has been commissioned by the European Parliament as an input to the analysis of the international, in particular European Union's, assistance to national human rights institutions in the countries of the Eastern Partnership. Since the calls on Belarus so far have failed to result in the establishment of such an institution in this country, the study focuses only on Armenia, Azerbaijan, Georgia, Moldova and Ukraine. While noting the strengthening of the standing and a considerable progress in work of the analyzed institutions, the study refers to the assessments presented by them, as well as to external opinions that emphasize the need to continue programmes of support offered to these institutions. Such support is relevant to both the capacity-building, including networking and exchange of good practices, and ensuring appropriate impact and independence of these institutions within the state structures. In this context, the study proposes several steps to be taken by the EU, and in particular by the European Parliament. The guiding idea of these suggestions is the adoption of a focused and streamlined strategic approach, envisaging a time-frame for the European Union's engagement which would allow for achieving sustainable results.

This study was requested by the European Parliament's Committee on Subcommittee on Human Rights.

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1. THE PURPOSE AND SCOPE OF THE STUDY:

The implementation of human rights at the country level is one of the priority areas of the European Union to be achieved? not only in its member states but also in the third countries. Among the latter, particular attention is paid to the situation in those countries that closely cooperate with the EU whereby the countries of the close neighbourhood take especially prominent part.

On a number of occasions, the European Parliament has also demonstrated its own interest in this respect. Recently, the Parliament has decided to assess in more detail the potential of cooperation and assistance offered to the national human rights institutions (NHRIs) in the countries of Eastern Partnership. Several arguments may be raised to justify such an interest. *Firstly*, these institutions, if appropriately positioned and equipped, may play a key role as vehicles for the progress in the promotion and protection of human rights, and more broadly: democratic governance. *Secondly*, anticipating the findings of this study, one can say that in the last 10 years the countries of the Eastern Partnership have witnessed considerable developments in the work of such mechanisms. *Thirdly*, since – what may also be anticipated – there is still large room for further improvements and the elimination of shortcomings in their work, it is timely and important to reflect on appropriate tailoring of the cooperation programmes during the years to come.

In order to base its relevant policy discussions and recommendations on comprehensive analysis, the European Parliament has decided to carry out an analysis of the subject. The present study on “Supporting Ombudsman Cooperation in Countries” has been externally commissioned to facilitate this process within the Parliament.

The study is based on information and materials published by the NHRIs and obtained from various actors involved, in particular the European Union, including the EU Delegations in the countries concerned; the Office of the UN High Commissioner for Human Rights; the Council of Europe; the Office of Democratic Institutions and Human Rights of the OSCE, as well as from the non-governmental organizations. Since there is no unified documentation system concerning technical cooperation programmes benefiting the NHRIs in the countries of Eastern Partnership, the final verification of available data may still require further input from those institutions. The study benefited in this respect from the meeting held by the Sub-Committee on Human Rights of the European Parliament with the participation of the representatives of the relevant the NHRIs on 17 October 2011 in the seat of the Parliament.

Finally, it is also to be emphasized that the border-line between projects, which have been developed to support NHRIs, and those, which address various aspects of the protection and promotion of human rights, is frequently crossed by specific initiatives. Projects related to various aspects of the promotion and protection of human rights often *implicite* address NHRIs and have an indirect impact on their work. This is to be kept in mind while analyzing international or national assistance to NHRIs and the work of the latter.

2. INTERNATIONAL RECOGNITION OF NATIONAL HUMAN RIGHTS INSTITUTIONS

The last two decades have brought a shift of the focus in the international strategy of the protection of human rights from standard-setting to standard-implementation. This process has been underlined by the clear recognition of the subsidiarity of the international mechanisms and procedures vis-à-vis the national systems of the human rights protection. Strengthening of the latter has moved to the centre of international and regional assistance programmes.

In 1993, the II World Conference on Human Rights in Vienna reiterated the importance of NHRI for the protection of human rights by recommending: "The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in 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' [so called 'Paris Principles' – see below] 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."¹ The UN Secretary General underlines that "NHRIs compliant with the Paris Principles are essential to national human rights protection systems and are important counterparts for the OHCHR. They can play a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level, a role which is increasingly recognized by the international community."²

The term "National Human Rights Institution" covers a variety of bodies:

an ombudsman: a single-member institution which has the longest history, going back to the first ombudsman ever of the type familiar to us currently, was established in Sweden in 1809. As derived from the original Scandinavian model, in some countries the ombudsman has a specifically defined mandate – maladministration, ethnic discrimination, gender discrimination or children's rights – in a system of interrelated ombudsman institutions. In some others, ombudsman covers the whole range of human rights.

a national commission on human rights – a collective institution whose mandate is likely to include investigation of complaints, education and review of potential legislation. Among many examples, one can mention Indonesia, India, South Africa, Togo, Benin, Cameroon and Uganda.

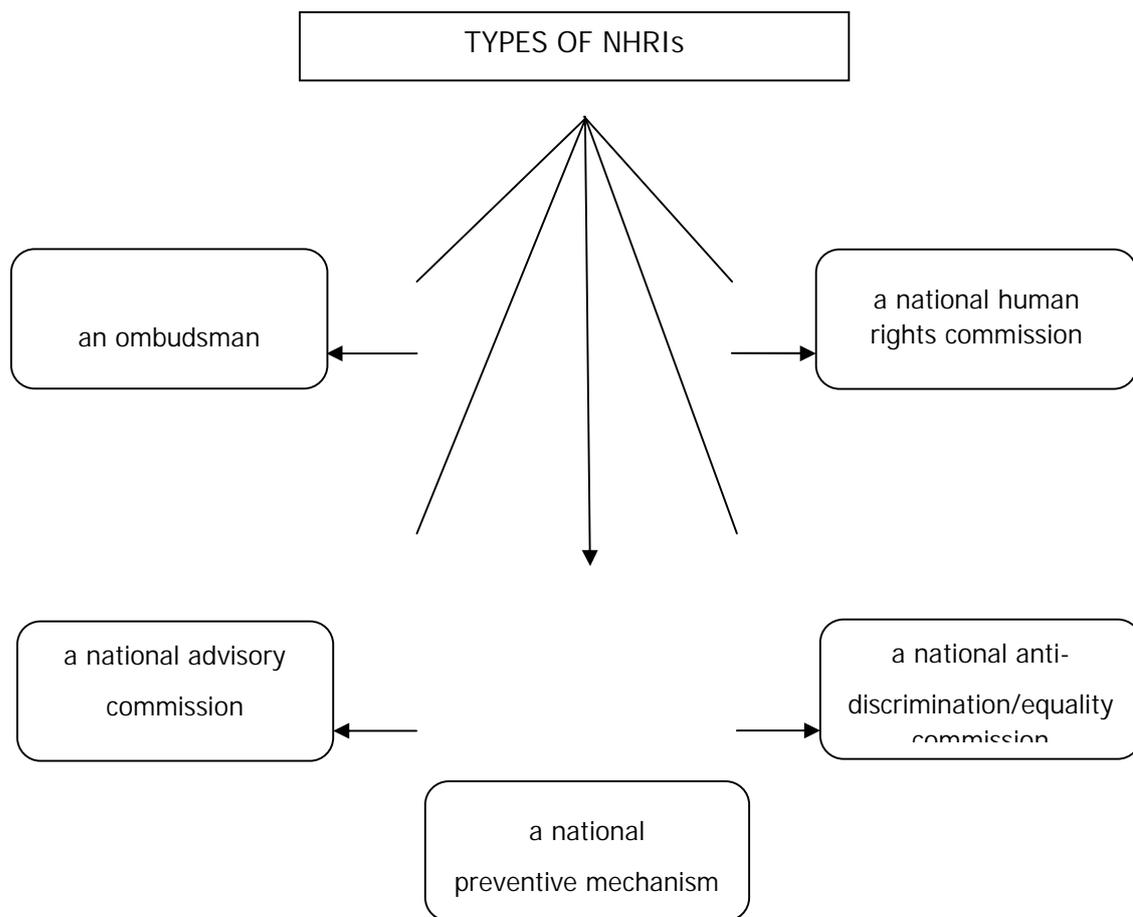
a national advisory commission on human rights – an institution similar to the national commission mentioned above, but with no mandate to investigate complaints. It is oriented primarily towards advising the government on matters of human rights policy. Examples include France and Morocco.

a national anti-discrimination/equality commission: also similar to a national human rights commission, but entrusted with a mandate confined to discrimination issues. Examples include: Canada, Australia and New Zealand

a national preventive mechanism (NPM): established under the Optional Protocol to the International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which, under Article 19, provides that such mechanisms shall be at least granted the power to regularly examine the treatment of the persons deprived of their liberty, make recommendations to the relevant authorities, and submit proposals and observations concerning existing or draft legislation. As NPM may act either institutions specially set up to play this role or the relevant tasks may be assigned to the existing NHRIs.

¹ § 36 of the Vienna Declaration and Programme of Action, part. II.

² Report of the UN Secretary-General "National institutions for the promotion and protection of human rights", A/HRC/13/44, 15 January 2010. § 4.



National human rights commissions have blossomed over the last 20 years. The collective nature of the commissions allows different sectors of the society to participate in their work, which is generally seen as their strength. However, the freedom from the need to struggle for a common denominator, which is necessary in a collective body, is widely recognized as the advantage of the ombudsman. This freedom may strengthen the effectiveness of the intervention undertaken on behalf of rights holders. Many ombudsmen also address the participatory deficit by interacting with actors representing who represent various circles of the society. In an attempt to combine the assets of various types of national human rights institutions, some countries have established both the ombudsman and the national commission.

3. INTERNATIONAL STANDARDS AND ACCREDITATION

3.1 Paris Principles

Already in 1992, the United Nations General Assembly endorsed „Principles relating to the Status of National Institutions“, widely referred to as “The Paris Principles”.³ This document offers the only globally accepted set of requirements to be met by the NHRI. Despite the variety of forms which NHRIs take in different countries, according to these Principles, all of them should, in particular:

³ General Assembly resolution 48/134, annex.

- be set up under the constitution or other legislative acts of the country (not by an instrument of the executive),
- be vested with competence to promote and protect human rights,
- operate independently of, in particular, the executive,
- submit recommendations, proposals and reports to the Government or parliament on any matter relating to human rights,
- receive individual or group complaints of human rights violations and act upon them,
- promote the compliance of national laws and practices with international human rights standards, through, *inter alia*, encouraging the ratification and implementation of international human rights standards,
- contribute to the interaction of national authorities with international human rights mechanisms and procedures,
- cooperate with other human rights institutions and organizations, including NGOs,
- promote human rights education and dissemination of relevant information, and thus contribute to the raising of human rights awareness,
- ensure the pluralist representation of social forces (of civilian society) engaged in the protection and promotion of human rights.

The Paris Principles have been referred to in various UN documents which have shed additional light at their content and applicability. In particular, they have been interpreted in General Observations elaborated by the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC) and adopted by the latter in June 2009 (revised in May 2011). This document placed particular emphasis on the composition and other aspects of pluralism and independence of NHRIs.

3.2 The international accreditation system of NHRIs

During the last two decades, the United Nations has developed a system of certification for the NHRIs. The system is managed by the aforementioned Sub-Committee on Accreditation, supported by the Office of the High Commissioner for Human Rights. The observance of the Paris Principle in law and practice is the basis for the accreditation and its grading. So far 95 NHRIs from all regions of the world have requested accreditation. They have been categorized in three status groups:

status "A" means that the given NHRI acts in compliance with the Paris Principles;

status "B" means that the NHRI is not fully in compliance with the Paris Principles; and

status "C" means non-compliance with the Paris Principles.

An accredited NHRI is subject to a re-accreditation process every five years.

In view of the accreditation assessment, the compliance by the NHRI with the Paris Principles is fully satisfactory only in a half of the EaP countries. Apart from Belarus which does not have an active NHRI, also in Azerbaijan and Moldova these/such institutions are apparently facing problems, in particular in the context of their independency. This matter will be addressed in more detail below, in a chapter related to specific NHRIs.

The current accreditation status of the NHRIs in the countries of Eastern Partnership

Armenia	Human Rights Defender of Armenia – status „A” granted in October 2006.
Azerbaijan	Human Rights Commissioner (Ombudsman) - status “A” since October 2006; however, the status was placed under Special Review for October 2010; the proposal by the Sub-committee on Accreditation is to lower the status to “B”; the final decision of the ICC is pending due to the protest by the Commissioner.
Georgia	Office of Public Defender of Georgia (Ombudsman) – status “A” since October 2007.
Ukraine	Ukrainian Parliament Commissioner for Human Rights – status “A” since March 2009; upgraded from “B” granted in 2008.
Moldova	The Centre for Human Rights of Moldova – status „B” since November 2009.
Belarus	is the only country in the discussed group that does not have any national human rights institution.

By virtue of the rules established by the International Coordinating Committee of NHRIs, institutions fully matching the Paris Principle may belong to regional groups. Accordingly, NHRIs from **Armenia, Azerbaijan, Georgia and Ukraine** together with 30 other similar institutions from the region belong to the European Group of NHRIs, which, thanks to conferences and thematic working groups, contributes to cooperation and coordination among those institutions. One of its recent coordinated steps has been the elaboration of “Response of the European Group of National Human Rights Institutions: EU Accession to the ECHR. CDDH-UE March 15-18 2011.”

4. NATIONAL HUMAN RIGHTS INSTITUTIONS AS PARTNERS OF INTERNATIONAL ACTORS – THE POLICY FRAMEWORK

4.1 United Nations

The United Nations intergovernmental bodies, in particular the General Assembly and the Human Rights Council (formerly: the Commission on Human Rights) have recommended, on a number of occasions, that the Member States establish and/or strengthen their NHRI. Consequently, NHRIs have also become one of the key actors within the international system of the human rights protection. Within the United Nations, they are one of the major partners in international dialogue. They also serve as an important source of information for the Human Rights Council and its special procedures, as well as for the human rights treaty bodies. In its recent resolution, the Council again underlined “the important role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism, in both preparation and follow-up, and the special procedures, as well as in the human rights treaty bodies.”⁴

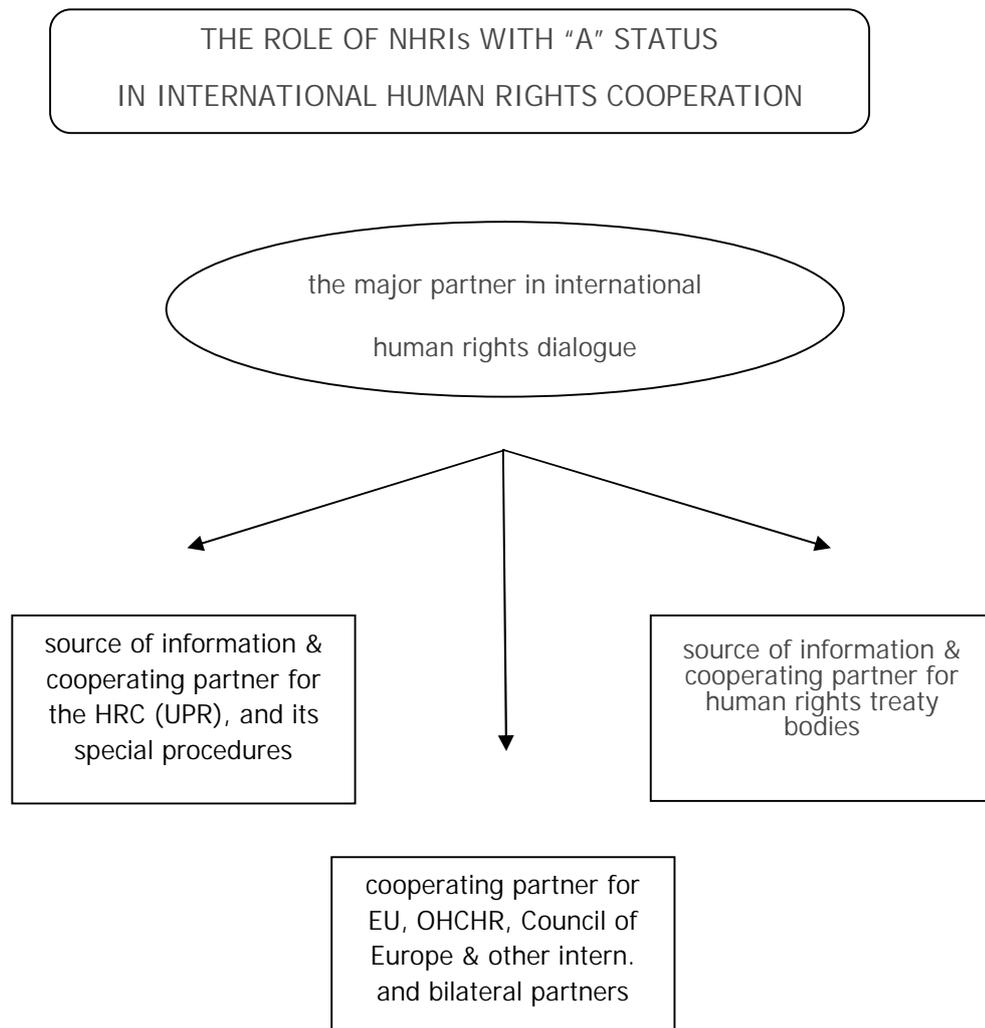
The treaty monitoring bodies acting under the ten UN core human rights treaties benefit from independent information and assessments of State Parties’ human rights records submitted by NHRIs in a format of so called “shadow reports” or otherwise shared. The treaty bodies also seek cooperation with NHRIs as key actors in implementing their recommendations at the country level, as well as one of the channels of contacts with the civil society. In this context, the Committee on Economic, Social and

⁴ HRC resolution on “National institutions for the promotion and protection of human Rights” - A/HRC/17/L.18, § 8.

Cultural Rights and the Committee on the Rights of the Child dedicated special General Comments on the role of NHRIs.⁵

In the recognition of the role of NHRIs, those institutions, which enjoy “A” status, have been granted special rights within Human Rights Council proceedings, including a right to⁶:

- make oral statements and submit written statements under all substantive agenda items of the Human Rights Council,
- submit documents, which are then issued with official symbol numbers of the HRC, such as reports, policy papers, etc.,
- take separate seating in all sessions.



According to the Human Rights Council resolution on the Review of the work and functioning of the Human Rights Council submitted to the General Assembly for endorsement,⁷ the NHRI with “A” status

⁵ Respectively: General Comment No. 10 on “The role of national human rights institutions in the protection of economic, social and cultural rights” and General Comment No. 2 (2002) on “The role of independent national human rights institutions in the promotion and protection of the rights of the child.” – www.ohchr.org.

⁶ According to the HRC resolution 5/1.

from the country concerned is also entitled to intervene immediately after the governmental representative during the interactive dialogue which follows the presentation of a country mission report by a special procedure mandate holder.⁸ "A" status NHRIs have also the right to nominate candidates for special procedures mandates established by the Human Rights Council.⁹

4.2 European Union

The European Union has recognized the importance of the NHRIs in its several policy decisions, instruments and project documents. In the context discussed in this paper, focus will be put in particular on: a) Eastern Partnership, b) the European Neighbourhood and Partnership Instrument (ENPI), and c) European Instrument for Democracy and Human Rights (EIDHR), as frameworks relevant to NHRIs and countries under our consideration.

Eastern Partnership

Joint Declaration of the Prague Eastern Partnership Summit (7 May 2009) underlines that this Partnership "will be based on commitments to the principles of international law and to fundamental values, including democracy, the rule of law and the respect for human rights and fundamental freedoms, as well as to, market economy, sustainable development and good governance." One of its four thematic panels is related to democracy, good governance and stability. The Partnership "builds on and is complementary to existing bilateral contractual relations."¹⁰ This means that the goals of the Partnership should be achieved with the help of existing EU instruments. The Prague Declaration also provides that the "The European Union will develop Comprehensive Institution-Building Programmes individually with each partner country in order to improve their administrative capacity, including through training, technical assistance and any appropriate innovative measures."¹¹

European Neighbourhood and Partnership Instrument (ENPI)

The Strategy Paper of the Eastern Regional Programme adopted in the framework of the European Neighbourhood and Partnership Instrument for the years 2007 – 2013 reiterates that one of the primary goals of the European Union is "to promote democracy and human rights, in addition to prosperity, solidarity, security and sustainable development worldwide."¹² At the same time, the Strategy Paper reaffirms that "The EU's development policy is driven by the overriding objective of poverty reduction with the complementary aims of promoting good governance and respect for human rights." From the perspective discussed here, the commitments of the Strategy Paper to use the EU Democracy and Human Rights Instrument for its implementation also constitute an important potential vehicle for cooperation with and support for NHRIs in the Eastern Partnership countries.

European Instrument for Democracy and Human Rights (EIDHR)

The purpose of this Instrument is to provide support for the promotion of democracy and human rights in non-EU countries. In a the toolbox of the EU in this area, EIDHR is complementary in nature to geographical and thematic EU programmes offering assistance

⁷ A/HRC/RES/16/21.

⁸ *Ibid.* § 28.

⁹ *Ibid.* § 22 a.

¹⁰ 8435/09 (Presse 78), § 1 and 11.

¹¹ *Ibid.* § 6.

¹² http://ec.europa.eu/world/enp/pdf/country/enpi_eastern_rsp_en.pdf, § 1.3.

at national, regional and international levels and serves to reinforce them.¹³ Under its objective 2, the Strategy focuses on “Strengthening the role of civil society in promoting human rights and democratic reform, in supporting the peaceful conciliation of group interests and consolidating political participation and representation.” While addressing the Multiannual programming from 2007 to 2010, the Strategy identified creation of an ombudsman as one of its desirable outcomes.¹⁴

The European Union Agency for Fundamental Rights sees NHRIs as part of its main stakeholders which is reflected in the Agency’s work programmes developed in recent years. Consequently, it also includes steps that states take with a view to strengthening or creating NHRIs key developments in the area of access to justice.¹⁵ This leads to the involvement of NHRIs in various FRA projects requiring such input. Last year, the Agency published its comprehensive and very interesting survey of NHRIs in all member states.¹⁶ This study does not, however, embrace other countries with which the EU maintains close cooperation, including countries of the Eastern Partnership. The Agency is planning to continue hosting annual meetings with the NHRIs, the Equality Bodies, and Ombudsman Institutions of the member states.¹⁷ However, equivalent institutions from the third countries have not been involved in this process.

4.3 Council of Europe

The Council of Europe initially put a strong emphasis on the institution of ombudsman. Already in its Recommendation 757 adopted in 1975, the Parliamentary Assembly called on the Council of Ministers to encourage Member States, “which have not yet done so, to consider the possibility of appointing at national, regional and/ or at local level persons discharging functions similar to those of existing Ombudsmen and Parliamentary Commissioners.” The Council in its Recommendation No. R (85) 13, adopted on 23 September 1985, recommended to member states “to consider the possibility of appointing an *ombudsman* at national, regional or local level or for specific areas of public administration;” and “to consider empowering the *ombudsman*, where this is not already the case, to give particular consideration, within his general competence, to the human rights matters under his scrutiny and, if not incompatible with national legislation, to initiate investigations and to give opinions when questions of human rights are involved [...]”.¹⁸ Since the eighties of the last century, the Council of Europe has also engaged itself in the support for the collective bodies – the national human rights commissions. Noting their global expansion, the Council of Ministers included them into its policy documents. In essential in this respect Recommendation No. R (97) 14,¹⁹ the Council acknowledged the value of the representative character of national human rights commissions and recommended that the governments of Member States “consider, taking account the specific requirements of each member

¹³ European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2007 – 2010; DG RELEX/B/1 JVK 70618.

¹⁴ *Ibid.* § 76.IV.

¹⁵ FRA – European Union Agency for Fundamental Rights, Fundamental rights: challenges and achievements in 2010, Annual Report, Luxembourg: Publications Office of the European Union, 2011, p. 141.

¹⁶ National Human Rights Institutions in the EU Member States, Luxembourg: Publications office of the European Union, 2010.

¹⁷ FRA – European Union Agency for Fundamental Rights, Annual Work Programme 2012, p. 50.

¹⁸ Compare also the relevant resolutions of the Congress of Local and Regional Authorities expressing support for the establishment of ombudsmen at the local and regional levels – the last one: Resolution 191 (2004) of the Congress of Local and Regional Authorities on Regional ombudspersons: an institution in the service of citizens’ rights.

¹⁹ Recommendation No. R (97) 14 of the Committee of Ministers to member states on the establishment of independent national institutions for the promotion and protection of human rights. Compare also Explanatory memorandum to Recommendation No. R (97) 14 of the Committee of Ministers to member states on the establishment of independent national institutions for the promotion and protection of human rights.

State, the possibility of establishing effective national human rights institutions, in particular human rights commissions which are pluralist in their membership, ombudsmen or comparable institutions”.

In 2003, the Parliamentary Assembly drew a list of characteristics of the institution of ombudsman and recommended to Member States the establishment, preferably at the constitutional level, of the institutions bearing these characteristics. This list of characteristics is fully compatible with the Paris Principles while being tailored more specifically to the profile of an ombudsman. According to the Parliamentary Assembly, an ombudsman should *inter alia* be:

- independent, in particular as regards the receipt of complaints and decisions to launch and pursue investigations, preparation and presentation of recommendations and reports, and publicity;
- appointed by parliament in an exclusive and transparent procedure ensuring that the incumbent is a qualified and experienced individual of high moral standing and political independence;
- politically neutral and not engaged in any other remunerated activities;
- enjoy personal immunity against any disciplinary, administrative or criminal proceedings or penalties relating to the discharge of official responsibilities, other than dismissal by parliament for incapacity or serious ethical misconduct;
- guaranteed sufficient resources for discharge of all responsibilities;
- entitled to prompt and unrestricted access to all information necessary for the investigation;
- accessible for those seeking his/her assistance;
- entitled to confidentiality of action;
- empowered to give opinions and make proposals on proposed legislative or regulatory reforms relevant to human rights.²⁰

4.4 OSCE Office of Democratic Institutions and Human Rights

At the 1990 Copenhagen meeting of the Conference on the human dimension of the CSCE, the participating States committed themselves to “facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law [...]”²¹ The work of NHRIs constitutes a standing agenda item at the annual OSCE

Human Dimension Implementation Meetings and hence, these meetings provide another forum for contacts and exchange between those institutions.

In 2007, the OSCE established a Focal Point for Human Rights Defenders and National Human Rights Institutions. The Focal Point has been tasked with monitoring the situation of human rights defenders, including NHRIs, in the OSCE region and promoting and protecting their interests. The definition of “human rights defenders” employed by OSCE is broad and includes not only NHRIs of all types, but also NGOs (both national and international) and individual persons active in the field of human rights protection. The Focal Point has engaged into cooperation with a wide variety of partner institutions, including among others the Council of Europe, the UN High Commissioner for Human Rights, and

²⁰ For more detailed list of ombudsman’s characteristics see Recommendation 1615 (2003)²⁰ of the Parliamentary Assembly : The institution of ombudsman, § 7.

²¹ § 27 of the Document of the 1990 Copenhagen meeting of the Conference on the human dimension of the CSCE.

international NGOs. As a result of the Focal Point's activities, ODIHR published two reports on the situation of human rights defenders in the OSCE region: "Human Rights Defenders in the OSCE Region: Our Collective Conscience" (2007) and "Human Rights Defenders in the OSCE Region: Challenges And Good Practices" (2008).

5. NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE EASTERN PARTNERSHIP COUNTRIES

ARMENIA *Human Rights Defender*

1. Legal basis and the guarantees of independence

The NHRI in Armenia was established by the Law of the Republic of Armenia on Human Rights Defender, which entered into force on 1 January 2004 as part of a major reform of constitutional law (further: 2004 Law; subsequently amended). The revision of the Armenian Constitution in 2005 gave this institution a constitutional rank by providing that „Everyone shall have the right to receive [...] the assistance of the Human Rights Defender for the protection of his or her rights and freedoms.“ (Article 18). The Constitution also proclaimed the independence of the Defender and set forth the essential guarantees to that end, including the election of the Defender by the National Assembly and ensuring the same immunities as for the parliamentarians (Article 81.3). The 2004 Law further states that the mandate holder shall not be subordinated to any state or local self-governing body or official, nor shall be obligated to provide clarifications, not even as a witness, about the nature of a complaint or a document in his/her possession (Article 5). The Defender also enjoys security and social guarantees.

2. Appointment

The candidates for the Human Rights Defender can be nominated by groups of at least one fifth of the members of Parliament. After the introduction of an amendment to the 2004 Law in 2006, the President may no longer propose candidates for the office. The candidates must be of at least 25 years of age, have Armenian citizenship, live in the country for at least 5 years and be held in high esteem by the public. Notably, the requirements do not call for the candidates to hold any academic degree or have any experience in the field of human rights. The term of office of the Armenian ombudsman is 6 years and the relevant legal acts do not clearly state whether a person might be re-elected. The Defender is irrevocable, but his/her powers might be terminated in case of death, a convicting verdict of a court, expatriation, resignation, or a court finding the mandate holders to be legally incapable, missing or deceased.

3. Mandate and powers

According to Article 83.1 of the Constitution, the Human Rights Defender is vested with the mandate to defend human rights and freedoms against violations by state and local self-government bodies and officials. Human rights as enshrined in the Armenian Constitution and international treaties to which Armenia is a party provide the basis on which the Defender performs his/her functions. He/she may not intervene in judicial processes, nor consider complaints in cases which fall under the purview of a court.

Within the Defender's mandate (interpreted on the basis of law and practice) fall:

- extending protection to individuals claiming their rights and freedoms,
- strengthening the observance of rights and freedoms,
- enhancing the effectiveness of guarantees and mechanisms for the protection of human rights and fundamental freedoms,

- improving the legal protection of people,
- enhancing the human rights awareness in the country,
- acting as National Preventive Mechanism under the OPCAT (since 2008 - a special department and an advisory Torture Prevention Expert Council implement this mandate).

To that end, the Defender may:

- act on complaints from individuals, including relevant investigations, as well as on his own initiative (*ex officio*),
- initiate constitutional control of normative acts,
- review draft laws related to human rights prior to submission to the Parliament,
- as part of the complaint procedure, access premises, documentation and information from any state institution,
- as a result of the complaint procedure, demand from the relevant authorities to take actions to stop/address violations,
- recommend that the authorized state agencies execute disciplinary or administrative penalties or file criminal charges against the officials who violated human rights and/or the 2004 Law,
- make other submissions to state and local authorities concerning the protection of human rights,
- develop activities with a view to promoting human rights, including those in the area of education and awareness raising.

The Defender can conduct investigations *ex officio*, intervene in judicial processes. He/she cannot consider complaints in cases which fall under the purview of a court.

4. Interaction

This is the constitutional duty of State and local self-government bodies and officials to cooperate with the Human Rights Defender (Article 83.1). Bodies whose action is subject to the Defender's investigation are obliged to provide necessary assistance. The exclusive powers of the Parliament related to the election of the Defender should give the mandate holder a high standing vis-à-vis other authorities and within the civil society. However, the Defender's reports demonstrate an increasing need for effective cooperation from state authorities, in particular the Parliament, with the Defender's office.

The ombudsman is in contact with local NGOs, however the reports do not indicate details of this interaction.

There is a regularly updated Defender's website in Armenian, English and Russian. The Defender publishes annual reports, which are available on the office's website. Apart from the annual reports, the ombudsman issues ad-hoc reports, memoranda, newsletters and Armenian translations of publications on human rights.

The Office actively participates in various international NHRIs cooperation platforms.

5. Assessments by external partners

In 2008, the Sub-Committee for Accreditation of the ICC granted "A" status to the Human Rights Defender for compliance with the Paris Principles.

The HRC Universal Periodic Review reports refer to the challenges in reaching out to communities and the need to strengthen partnership with civil society institutions. The UPR recommendations which enjoyed the support of the Government dealt *inter alia* with the need to increase the monitoring of human rights by the Defender, to expand the work in regions, to establish capacities for addressing child issues, and to ensure resources for the NPM. The CEDAW and the CRC recommended establishment of special positions to deal with women and children rights

6. Capacities and assistance

There are no local Defender's offices. The Defender employs approximately 40 permanent staff who is granted the status of public officials and enjoy judicial immunities. the Defender's office is wholly funded from the state budget passed by the National Assembly. The annual reports show decreasing funding for the Office in recent years.

The Defender participates in cooperation with and receives support from several foreign partners, including: the United Nations (via UNDP and UNICEF), the Council of Europe and the European Union through joint projects (in particular through the "Peer to Peer I and II" projects, specifically aimed at strengthening the NHRIs), OSCE/ODHIR (principally through the local OSCE facilities in Yerevan). The Defender's office benefited also from the EU funded projects: „Support to the Office of the Human Rights Defender of the Republic of Armenia" (1m EUR), „Effective protection of human rights through the Human Rights Defender's Institute as a National Preventive Mechanism in accordance with the Optional Protocol of the Convention against Torture (OPCAT)" (300k EUR). The Defender has been invited to participate in the Polish-French Project for the NHRIs in the Eastern Partnership countries (see below). Individual EU Member States have also provided their support to the Defender in the framework of twinning projects.

AZERBAIJAN *the Commissioner for Human Rights*

1. Legal basis and the guarantees of independence

The 1995 Constitution of Azerbaijan provides for the establishment of the Commissioner for Human Rights. However, the Constitutional Law on the Commissioner for Human Rights of the Republic of Azerbaijan, which actually set up this office, was adopted by the Parliament in 2001 (further: 2001 Law; subsequently amended). The first Commissioner assumed her duties in 2002. The Constitution does not determine the Commissioner's mandate nor provide guarantees of his/her independence. At the same time, the Constitution vests the exclusive power to nominate the candidates for the office with the President of the State, which brings the mandate holders close to the Executive. The Constitutional Law on the Commissioner for Human Rights proclaims the independence of this institution, declaring that the Commissioner is subject "only to the Constitution and laws of the Republic of Azerbaijan". Guarantees of the independence include irrevocability (with exceptions provided above), an array of immunities (inviolability, judicial immunity), guarantees of non-interference from other state or local self-government bodies and social and financial guarantees. The ombudsman's mandate and activities are not subject to suspension in the event of a state of emergency or martial law." There are problems with re-accreditation at the "A" status level because of independence problems – see below.

2. Appointment

The Commissioner for Human Rights is elected by the Parliament from among three candidates, each of them nominated by the President. The candidates must be of at least 30 years of age, have Azeri citizenship, represent high moral standards, higher education and experience in the field of human rights protection. The term of office is 7 years and the incumbent may be re-elected only once. The Commissioner may be revoked from his/her post by a qualified majority of the Parliament in the event of violation of incompatibility provisions or in the event of complete incapability to perform the duties. The Chairperson of the Parliament has the power to declare termination of the Commissioner's office in the event of death, resignation or a convicting verdict of a court.

3. Mandate and powers

According to the Article 1.1 of the 2001 Law, the Commissioner is vested with the mandate to defend human rights and freedoms against violations by state and local self-government bodies and officials. However, any activities of the President of the Republic of Azerbaijan, the parliamentarians and the judges are exempt from the Commissioner's competence. Human rights as enshrined in the Azeri Constitution and international treaties to which Azerbaijan is a party provide the basis on which the Commissioner performs his/her functions.

Within the Commissioner's mandate (interpreted on the basis of law and practice) fall:

- extending protection to individuals claiming their rights and freedoms,
- strengthening the observance of rights and freedoms,
- enhancing the effectiveness of guarantees and mechanisms for the protection of human rights and fundamental freedoms,
- contributing to the consistency of law with the constitutional provisions on rights and freedoms and thus, improving the protection of people,
- enhancing the human rights awareness in the country,
- acting as National Preventive Mechanism under the OPCAT (since 2009).

To that end, the Commissioner may:

- act on complaints from individuals, including investigations. The Commissioner may not act on his/her own initiative (*ex officio*);
- as part of the investigation, access premises, documentation and information from any state institution, including penitentiary and detention centres; receive necessary information, documents and materials; assign fact-finding tasks to relevant bodies;
- demand to be received without delay by heads and other officials of government and municipal bodies, commanders of military units, by officials of penitentiary institutions and detention centres,
- as a result of an investigation, demand from the respective body to take actions to stop/address identified violations whereby the addressees are obliged to submit within ten days written information on the measures taken – in the event of an unsatisfactory response the Commissioner may apply to the superior authorities or launch a criminal or disciplinary offence proceeding,
- apply to a court of justice with a view to protecting the rights and freedoms violated by a decision or an act or omission of a governmental or municipal body, or an official,

- submit motions to the President with regard to granting pardon, citizenship and political asylum,
- submit motions to the Parliament with regard to the adoption or review of laws with a view to implementing human rights and freedoms and may also submit a motion to the Parliament with regard to declaring amnesty,
 - apply to the Constitutional Court in events where the rights and freedoms of a person are violated by legislative acts in force and initiate constitutional control of normative acts.

Since 2010, a special procedure was established for complaints related to the violation of the right to obtain information in accordance with Azeri laws of public access to state and municipal information.

4. Interaction

The Commissioner's reports highlight the need for increased cooperation with state authorities. Bodies that are subject to the Defender's investigation are obliged to provide necessary assistance. However, there are no provisions for enforcing the assistance or inflicting any penalties/fees on state officials who fail to provide such assistance.

The Commissioner cooperates with local NGOs, however the annual reports do not mention any specific NGOs involved in interaction with the Commissioner.

The Commissioner publishes annual reports. The reports are exhaustive and provide detailed information on all the critical fields of her activity. Apart from the annual reports, the Commissioner issues ad-hoc and special reports as well as other publications related to human rights. The Commissioner maintains a human rights library for the interested public at her main office in Baku. There is a regularly updated Commissioner's website in Azeri and English, as well as a 24/7 hotline.

The Office actively participates in various international NHRIs cooperation platforms.

5. Assessments by external partners

In 2006, the Sub-Committee for Accreditation of the ICC granted "A" status to the Commissioner for compliance with the Paris Principles. In 2010, the Sub-Committee decided to lower the status to "B". Issues raised in the recommendation for lowering the status include questions regarding the Commissioner's independence from the executive and the re-appointment procedure. This decision has been challenged by the Commissioner and the case is pending within the ICC procedure.

The CRC recommended establishment of special positions dealing with children rights. Certain observations made by Council of Europe's Venice Commission in 2001 regarding the 2001 Law seem to remain valid, especially in respect to the limitations of ombudsman's powers *vis a vis* the executive.

6. Capacities and assistance

The Commissioner has established a dedicated counsellor on gender equality. In addition to the headquarters in Baku, the Commissioner also maintains three local offices. The Commissioner employs currently *circa* 60 permanent staff who enjoy judicial immunities. The Office is wholly funded from the state budget passed by the Parliament. Both the Commissioner's reports and external documentation indicate sufficient funding and staffing.

The Commissioner participates in cooperation with and receives support from several foreign partners, including: SIDA ("Capacity building of the Ombudsman Institution in Azerbaijan", 2005), OSCE/ODHIR ("Creation of a hotline and of an investigation group for the prevention of torture in the places of detention", 2004), UNICEF ("Protection of Children's Rights", 2004), the Council of Europe and the European Union joint projects (in particular through the aforementioned "Peer to Peer I and II" projects, specifically aimed at strengthening the NHRIs). In 2010, the EU launched a Twinning Light project

“Support to the enhancement of the capacity of the Ombudsman administration and to the development of awareness on Human Rights and Discrimination” (Reference nr: AZ09/ENP-PCA/JH/09) with a budget of 250k EUR. The Defender has been invited to participate in the Polish-French Project for the NHRIs in the Eastern Partnership countries (see below). Individual EU Member States have also provided their support to the Defender in the framework of twinning projects.

GEORGIA *the Public Defender*

1. Legal basis and the guarantees of independence

The 1995 Constitution of Georgia provides for the establishment of the Public Defender of Georgia. Its Article 43 states that the Public Defender is tasked with “protection of human rights and fundamental freedoms within the territory of Georgia”, shall “be authorized to reveal facts of the violation of human rights and freedoms and to report on them to corresponding bodies and officials”. More specific legal framework for the office was established by the Organic Law of Georgia on the Public Defender, which was passed by the Georgian Parliament in May 1996 (further: 1996 Law; subsequently amended). The first Public Defender assumed his responsibilities in 1998.

The Constitution states that he/she is elected for a fixed tenure by the parliament and that imposing impediments to his/her activity shall be punishable by law. The independence of the Defender was explicitly proclaimed in the 1996 Law, making this office “bound only by the Constitution, international treaties and agreements of Georgia, universally recognized principles and rules of international law, the present law and other legislative acts.” Specific guarantees of independence include: judicial immunity (which may be revoked by the Parliament under specific circumstances), personal safety guarantees, exemption from liability for opinions and views expressed as part of Defender’s duties, the right to refuse testimonies or disclosure of information.

2. Appointment

The Public Defender is elected by the Parliament. Candidates may be nominated by the President of Georgia, parliamentary factions or a group of at least 6 MPs who do not belong to any faction. Candidates for the office must possess Georgian citizenship. However, no requirements regarding minimum age, education, academic and professional experience or moral standards have been established by law which is uncommon in the region. The Defender is elected for a 5-year term and may be re-elected once. The Defender is irrevocable during the term of office, however the mandate is terminated in case of resignation, death, inability to perform duties for 4 months, sentenced by a final verdict of a criminal court, and accepting or holding an office incompatible with the position of Public Defender.

3. Mandate and powers

According to Article 43 of the Constitution, the Public Defender is mandated to supervise the protection of human rights and fundamental freedoms as enshrined in the Constitution of Georgia and international treaties to which Georgia is a party.

Within the Public Defender’s mandate (interpreted on the basis of law and practice) fall:

- extending protection to individuals claiming their rights and freedoms,
- strengthening the observance of rights and freedoms of all persons in Georgian territory by state authorities and local self-government bodies, and thus ensuring the their implementation,
- revealing violations of human rights and overseeing the redress of such cases,
- enhancing the human rights awareness in the country,

- acting as National Preventive Mechanism under the OPCAT (since 2009 - a specialized unit has been set up within the office to deal with relevant matters).

To that end, the Public Defender may:

- act on complaints from individuals, including relevant investigations
- take action within the mandate on his/her own initiative (*ex officio*),
- access, as part of the investigation, the premises of any relevant state or local self-government body, request from them documents, information and explanations, obtain access to documentation in a judicial proceeding,
- submit legislative proposals and draft laws on human rights,
- propose for the Parliament to set up an ad hoc parliamentary human rights investigation commission,
- make recommendations to the relevant bodies regarding redress of human rights violations,
- propose initiation of criminal investigations or disciplinary procedures,
- act as *amicus curae* in judicial proceedings,
- lodge a constitutional complaint with the Constitutional Court, employ both state and independent experts and advisors,
- in the event of finding his own powers insufficient to deal with a given case, the Defender may appeal to the President of Georgia and request him to take steps necessary to redress the violations.

4. Interaction

Bodies whose action is subject to Public Defender's investigation are obliged to provide necessary assistance. Any obstruction in the work of the Public Defender is an administrative offence punishable by law.

The Defender cultivates close contacts with local NGOs. Both the annual reports, special reports and the updates of Defender's website indicate extensive interaction with them.

It is the duty of the Public Defender under 1996 Law, to publish annual reports, which are available on the office's website in English and Georgian. The reports cover all the critical fields of ombudsman's activity. Apart from the annual reports, the Defender publishes ad-hoc and special reports, i.a. a report on human rights situation in the wake of 2008 South Ossetian conflict. A library of legal and human rights publications and documents has been made available to the general public at the Defender's premises. The Defender's office maintains a regularly updated website in Georgian and English. It is noteworthy that the Defender intensively uses social media as a means of communication.

The Office actively participates in various international NHRIs cooperation platforms.

5. Assessments by external partners

In 2007, the Sub-Committee for Accreditation of the ICC granted "A" status to the Commissioner for compliance with the Paris Principles. The CAT noted the agreement between the Ministry of Internal Affairs and the Public Defender authorizing unannounced visits to any detention facility. The CRC welcomed the Child's Rights Centre of the Office of the Public Defender, but regretted that it did not have adequate resources. It urged Georgia to establish an independent complaint mechanism for children.

6. Capacities and assistance

The Public Defender has set up special structures to deal with selected areas of particular importance, including for the function of the national preventive mechanisms under the OPCAT, the Tolerance Centre – the Council of National Minorities and the Council of Religions, the Centre for Disability Rights, the Centre of Children’s Rights, and the Centre for Women’s Rights. In addition to the headquarters in Tbilisi, the Public Defender maintains six local offices.

The 1996 Law provides for a single Deputy Defender. The Defender employs currently over 70 permanent staff, roughly half of who are granted the status of public officials and enjoy judicial immunities. The Defender’s office is wholly funded from the state budget. The 1996 Law makes any reduction of the funding dependent on the Defender’s consent.

The Public Defender participates in cooperation with and receives support from several foreign partners, including: United Nations (via OHCHR, UNDP and UNICEF), Council of Europe and European Union joint projects (in particular through the “Peer to Peer Projects I and II” projects specifically aimed at strengthening the NHRIs). The Defender cooperated with the OSCE/ODHIR office in Tbilisi up until its closure in 2008. The Office has also benefitted from a specific EU project (EuropaAid): „ Support to the Public Defender's Office in Georgia” (1.4m EUR), which was carried out in the years 2008-2010 (enhancement of the procedure to handle individual complaints). The Defender has been invited to participate in the Polish-French Project for the NHRIs in the Eastern Partnership countries (see below). Individual EU Member States have also provided their support to the Defender in the framework of twinning projects.

MOLDOVA *the Parliamentary Advocates*

1. Legal basis and the guarantees of independence

The 1994 Moldovan Constitution does not mention a NHRI, which is a unique situation in the countries under review. The legal framework for such an institution was established by two acts of the Parliament: the 1997 Law on Parliamentary Advocates (further: 1997 Law; subsequently amended) and the 1998 Statute of the Centre for Human Rights of Moldova (further: 1998 Statute). Under this legal framework, the Moldovan NHRI has been established as a compound and collegial body, once again a unique solution among the countries concerned. At heart of this structure are the Parliamentary Advocates (currently of at least three mandate holders), who are supported in their activities by the Centre for Human Rights of Moldova, which acts as their staff and technical resource.

The Law on Parliamentary Advocates states that both the Advocates and the CHRM are independent from state and local authorities. The Law guarantees personal security and inviolability, which covers Advocates’ residences, offices, transportation and communication means, correspondence, documents and personal property. The Advocates are also granted a judicial immunity that may be revoked by the Parliament. The immunity is not applicable if the Advocates are caught red-handed when perpetrating a criminal offence?. The Parliament has the power to issue a vote of no confidence to a Parliamentary Advocate by a qualified majority. A proposal for such a vote can be brought for by the President of the Republic or a group of at least twenty members of Parliament. Grounds for a no confidence vote include the non-compliance with the Advocate’s duties. The Moldovan NHRI has a “B” status because of its *inter alia* independence problems – see below.

2. Appointment

The Parliamentary Advocates are elected by the Parliament from among the candidates nominated by the President of Moldova, the Government or a group of 20 MPs. The Advocates are appointed for a fixed 5-year term with possibility of being re-appointed once. Any citizen of the Republic of Moldova

over 35 years of age with higher legal education and knowledge in the area of human rights and freedoms, who are held in high regard by the society may become a Parliamentary Advocate. Apart from the vote of no confidence, a Parliamentary Advocate may be removed from the office by the Parliament in case of resignation, reaching the retirement age, inability to fulfil his/her duties as result of illness lasting more than 4 months or indictment by a court resulting in suspension of official duties.

3. Mandate and powers

According to Article 1 of the 1997 Law, the Parliamentary Advocates guarantee the observance of the citizens' constitutional rights and freedoms by the central and local public administration bodies, institutions, organizations and enterprises, irrespective of the type of ownership, public associations, as well as officials at all levels. Human rights as enshrined in the Constitution of Moldova and international treaties to which Moldova is a party provide the basis on which the Advocates perform their functions. The Parliamentary Advocates may not consider complaints in cases which fall under the purview of civil, criminal, administrative and labor courts.

Within the Advocate's mandate (interpreted on the basis of law and practice) fall:

- extending protection to individuals claiming their rights and freedoms,
- strengthening the observance of rights and freedoms,
- preventing violations of human rights and freedoms,
- enhancing the human rights awareness in the country,
- submitting suggestions for improving the effective legislation of the Republic of Moldova in the area of human rights and freedoms,
- acting as National Preventive Mechanism under the OPCAT (since 2006 - a specialized unit has been set up within the office to deal with relevant matters).

To that end, the Parliamentary Advocates may:

- act on complaints from individuals, with the exemption of cases that could be reviewed by criminal, civil, administrative or labour courts,
- take action on human rights violations on their own initiative (*ex officio*) but only in the event of severe and widespread violations,
- make a presentation to a court considering a case of a violation of constitutional rights and freedoms with a view to defending the interests of the complainant,
- report possible breaches of law within the judiciary to the Superior Council of Magistrates (a control and supervisory body within the judicial branch),
- as part of the complaint procedure, request from state and local self-government bodies assistance, access to premises, documentation and information,
- in the event of established violations of human rights, recommendations and requests regarding redress of violations, issue general comments on the situation or request disciplinary actions to be brought against the persons responsible,
- in the event of violation resulting from an administrative act, bring such an act before the administrative courts,

- submit normative acts relevant to human rights and supposedly inconsistent with the Constitution or generally accepted principles of international law for control by the Constitutional Court,

4. Interaction

State and local self-government bodies are obliged to cooperate with the Parliamentary Advocates in the framework of the investigations conducted by the latter. Any interference or hindrance in the actions of the Parliamentary Advocates, including intentionally ignoring their recommendations and requests is considered an administrative offence. In general, however, the Parliamentary Advocates' reports systematically indicate problems with cooperation and communication with state bodies.

The Parliamentary Advocates inform about their intensive contacts with local NGOs.

The Parliamentary Advocates are obliged to publish annual reports, which are available on the office's website in English, Romanian and Russian. The reports are exhaustive and detail all the critical fields of ombudsman's activity. Apart from the annual reports, the Advocates publish ad-hoc and special reports. The Moldovan NHRI maintains a website in English, Romanian and Russian.

The Office actively participates in various international NHRIs cooperation platforms.

5. Assessments by external partners

The Sub-Committee on Accreditation of the ICC has granted the Parliamentary Advocates of Moldova and the Centre for Human Rights of Moldova status "B" for partial compliance with the Paris Principles in 2008. Issues raised in the accreditation process include: funding and technical capabilities, deficiencies in the legal framework, lack of transparency and independence in the appointment procedure. Some reviews of the activities of the NHRI in Moldova note that the complex structure of this institution is not helpful because it leads to the confusion of mandates, undermines the effectiveness of action, and opens the door to undesirable interferences. The HRC expressed concern that the Centre for Human Rights of Moldova was inadequately funded and that the majority of complaints addressed to it were not investigated, while the CERD recommended that the Government consider establishing an independent national human rights institution fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights. While welcoming the appointment of the ombudsman of children (the Child's Advocate), the CRC recommended that the Republic of Moldova ensure that the Advocate had adequate resources to exercise his or her mandate effectively. The CAT recommended that the Government clarify what constituted the national preventative mechanism on torture, and strengthen the independence and capacity of parliamentary advocates and the national preventative mechanism to carry out regular and unannounced visits to all detention places. The HR Committee made similar recommendations.

Expert reports facilitated for by the UNDP (2009) and jointly by the CoE and the EU under the "Democracy Support Programme In Moldova" programme (2008) recommend inter alia: writing the institution in the Constitution, improved technical and financial support, overhaul of the appointment process and transformation into a monocratic body.

6. Capacities and assistance

Special units and hotlines have been established by the Parliamentary Advocates to carry out the functions of the national preventive mechanism under the OPCAT and to act on special children's rights. In addition to the headquarters in Chisinau, the Parliamentary Advocates also maintain three local offices.

The Parliamentary Advocates and the Centre currently employ about 40 permanent staff, out of projected 55, who enjoy judicial immunities. The office is funded from the state budget passed by the Parliament. Both the ombudsman's reports and external documentation indicate a critical lack of funds and technical resources, to the point of impeding the mandate of the institution.

The Moldovan HRI participates in cooperation with and receives support from several foreign partners, including: the United Nations (via UNDP), the Council of Europe and the European Union through their joint projects (the "Democracy Support Programme In Moldova" programme and the "Peer to Peer I and II" projects, specifically aimed at strengthening the NHRIs). The Moldovan HRI has been invited to participate in the Polish-French Project for the NHRIs in the Eastern Partnership countries (see below). Insofar, there have been no EU twinning projects directly involving the Moldovan NHRI.

UKRAINE *the Parliament Commissioner for Human Rights*

1. Legal basis and the guarantees of independence

The 1996 Constitution of Ukraine established the Parliament Commissioner for Human Rights without, however, moving into its basic features. Under Article 101 "Parliamentary oversight of the protection of human and citizen constitutional rights and freedoms shall be conducted by the Parliament Commissioner for Human Rights." The essential characteristics of the institution are laid down in the Law on the Ukrainian Parliament Commissioner for Human Rights which came into force on 1 February 1998 (further: 1998 Law; subsequently amended).

Article 4 of the 1998 Law proclaims that "The Commissioner shall be independent of other state bodies and officials in the exercise of his or her operation." The mandate of the Commissioner cannot be terminated or restricted in the event of expiration of the mandate of the Parliament or its dissolution (self-dissolution), declaration of martial law or the state of emergency. The 1998 Law explicitly forbids any interference with the Commissioner's activities. The Commissioner enjoys immunity from any persecution or disciplinary procedure, which may be waived only by the Parliament. The Commissioner cannot hold any other offices or positions. The Parliament has the power to recall the Commissioner in the event of violation of the oath, breach of incompatibility clause, termination of Ukrainian citizenship or a permanent inability to comply with the duties.

2. Appointment

The Commissioner is elected by the Parliament. Candidates may be nominated by the Chairperson of the Parliament or groups of at least one fourth of the deputies. The candidate must be of at least 40 years of age and citizen of Ukraine for the last 5 years, fluent in the official language, possess high moral qualities and experience in the field of human rights. The executive plays no formal role in the appointment procedure and has no means of control over the ombudsman. The term of office of the Commissioner is 5 years and there are no limits regarding re-election. The term is terminated automatically in the event of a resignation, death, or a court verdict which finds the Commissioner guilty of a crime.

3. Mandate and powers

According to Article 101 of the Constitution, the Commissioner is mandated to act on behalf of the Parliament in supervising the protection of constitutional rights and freedoms. Human rights as enshrined in the Constitution of Ukraine and international treaties to which Ukraine is a party provide the basis on which the Commissioner performs his/her functions. The Commissioner may not intervene in judicial proceedings, nor consider complaints in cases which are under the purview of a court.

Within the Commissioner's mandate (interpreted on the basis of law and practice) fall:

- extending protection to individuals claiming their rights and freedoms,
- strengthening the observance of rights and freedoms,
- preventing violations of human rights and freedoms,
- contributing to harmonization of the Ukrainian law with the Constitution of Ukraine and adopted international standards of human rights protection,
- enhancing the human rights awareness in the country,
- protecting personal data, and
- acting as National Preventive Mechanism under the OPCAT.

To that end, the Commissioner may:

- act on complaints from individuals,
- take action on a motion from the Parliament and on their own initiative (*ex officio*) but in the latter case only in the event of severe and widespread violations of human rights,
- as part of the complaint procedure, request from state, local self-government and private bodies assistance, access to premises, documentation and information
- in case of established violations of human rights, may issue recommendations and requests regarding redress of violations, issue general comments on the situation or request disciplinary actions to be brought against the persons responsible
- appeal to the Constitutional Court of Ukraine with regard to the issue of conformity between normative acts and the Constitution of Ukraine
- appeal to a court for the protection of the rights and freedoms of persons who are unable to do so for themselves.

4. Interaction - Protection and empowerment

State bodies are obliged to cooperate with the Commissioner. Refusal to cooperate, hindrance or provision of misinformation constitute an administrative offence, and in severe cases a criminal offence.

Under the 1998 Law it is the duty of the Commissioner to publish annual reports. However, no reports have been made available on the ombudsman's website in the last couple of years. The Commissioner holds regular meetings, conferences, roundtables and broadcasts in order to maintain contacts with right holders and media. The office publishes analytical documents on topics related to human rights.

The office reports on the Commissioner's cooperation with number of national NGOs and other stakeholders from within the civil society, including several state universities and other scientific institutions. The Commissioner has also signed the Agreement on Cooperation with the Federation of Trade Unions of Ukraine.

The Commissioner maintains a website available in Ukrainian and English.

The Office actively participates in various international NHRIs cooperation platforms.

5. Assessments in recommendations by external partners

In 2008, the Sub-Committee on Accreditation of the ICC initially granted the Commissioner "B" status for partial compliance with the Paris Principles. In 2009, the Sub-Committee conducted a re-accreditation review based on an application submitted by the Commissioner and awarded status "A" for full compliance with the Paris Principles.

6. Capacities and assistance

Pursuant to the 1998 Law, the Commissioner set up an advisory group in order to support the office's activities and research. The Commissioner established four local offices, There is also a 24 hour hotline.

The Commissioner employs currently over 110 permanent staff, who are granted the status of public officials. The annual reports indicate that the staffing level is adequate. The office is funded from the state budget passed by the Parliament. However, in practice the budgetary proposals concerning the level of funding are made by the Ministry of Finance. In the recent years, the Commissioner has reported a drastic decrease in funding which in 2009 and 2010 covered respectively 38.3% and 65.2% of the amount required by the office.

The Commissioner participates in cooperation with and receives support from several foreign partners, including: the United Nations (via the UNDP Project "Integrity in Action: Governance Programme"), the Council of Europe and the European Union joint projects (in particular through the "Peer to Peer I and II projects", specifically aimed at strengthening the NHRIs), OSCE/ODHIR (principally through the OSCE office in Kiev). The Commissioner has been invited to participate in the Polish-French Project for the NHRIs in the Eastern Partnership countries (see below). Support has also been provided by bilateral projects. For example, the Commissioner was involved in a bilateral cooperation project with the Polish ombudsman in the year 2009.

Table 1: SUMMARY OF CHARACTERISTICS OF NHRIs IN THE EASTERN PARTNERSHIP COUNTRIES²²

Country	Armenia	Azerbaijan	Georgia	Moldova	Ukraine
Institution name	Human Rights Defender	Commissioner for Human Rights	Public Defender	Parliamentary Advocates, Centre for Human Rights	Parliament Commissioner for Human Rights
Launching the office	2004	2002	1998	1998	1998
Accreditation grade	A	A(B)	A	B	A
Legislation level	Constitutional	Constitutional	Constitutional	Act of Parliam.	Constitutional
Body type	Monocratic	Monocratic	Monocratic	Collegial	Monocratic
Deputies	0	0	1	4	0
Staff (approx.)	40	60	70	40	110
Appointing body	Parliament	Parliament	Parliament	Parliament	Parliament
Candidates nominated by	Parliament	President	Parliament, President	Parliament, President	Parliament
Majority of votes for the appointment	3/5	2/3	Simple	Simple	Simple
Term of office	6 years	7 years	5 years	5 years	5 years
Re-appointment	No indication ²³	Once	Once	Once	Unlimited
Dismissible by a vote of no confidence	No	No	No	Yes	No
May act ex officio	Yes	No	Yes	Yes	Yes
Areas excluded from control	Judiciary	President, deputies, judiciary	None	None	None
State bodies obliged to assist NHRI	Yes	Yes	Yes	Yes	Yes
Assistance enforceable	Yes	No	Yes	Yes	Yes
Recommending criminal proceedings	Yes	Yes	Yes	Yes	Yes
Recommending disciplinary proceedings	Yes	Yes	Yes	Yes	Yes
Legislative initiative	Yes	Yes	Yes	Yes	Yes
Initiation of constitutional control	Yes	Yes	Yes	Yes	Yes
Annual reports	Yes	Yes	Yes	Yes	Yes

²² Information compiled based on G. Kucsko-Stadlmayer (ed.) *European Ombudsman-Institutions and their Legal Basis* Vienna 2008

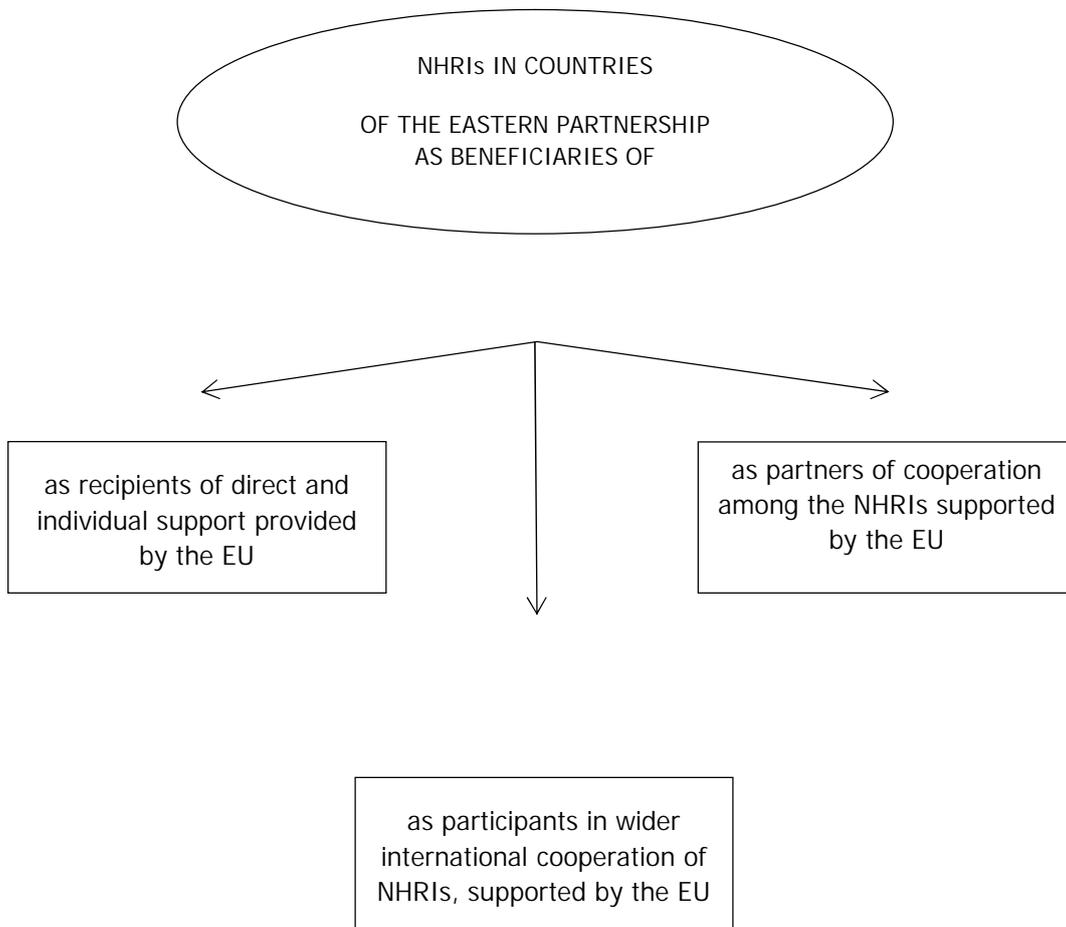
²³ The 2004 Law does not provide a conclusive regulation on the matter.

6. TECHNICAL COOPERATION – CAPACITY BUILDING PROGRAMMES

All major international partners have developed technical cooperation programmes that provide support and assistance to NHRIs and thus facilitate their capacity-building. Summary information concerning such programmes is presented below, with a special focus on NHRIs in the countries of the Eastern Partnership.

6.1 European Union

NHRIs in European countries may benefit from technical cooperation programmes in three ways presented in the following diagram:



As recipients of direct and individual support provided by the EU, the NHRIs benefit from projects addressing a wide range of institutional needs, from the review of relevant legislation and strengthening of the independence of NHRIs, assessment and strengthening of NHRIs' substantive capacities, through building of regional infrastructure to the purchase of vehicles. As an interesting example may serve here support to the establishment of a case management system for handling individual complaints by the Public Defenders Office in Georgia. The project implemented by a Georgian IT company has shortened the average time needed for handling the case, reduced paper claim, and, as a consequence, enhanced the quality of action. While included in various programmatic frameworks (instruments), such projects are orchestrated by the EU Delegations in specific countries.

Individual NHRIs from the Eastern Partnership countries also cooperate with partner institutions from the EU Member States in the framework of several twinning projects. The Polish-French initiative presented below under a separate heading combines the features of a twinning project with the multilateral cooperation among NHRIs from these two countries with NHRIs from the Eastern Partnership countries.

Cooperation among the NHRIs under survey may potentially receive support from the European Union. **In response to launching the Eastern Partnership, the European Commission established so called** Council of Europe facility within the Democracy and Human Rights Instrument.²⁴ It should “contribute to supporting the reform processes the six partner countries through a multilateral approach and to facilitating approximation to the Council of Europe and EU standards in core areas covered by the Eastern Partnership. [...] It will allow for the mobilization of Council of Europe expertise, peer to peer advice and the exchange of best practices among participating countries. It will also serve as a framework for multilateral activities (e.g. capacity-building, training) implemented by the Council of Europe and co-financed by the European Union in view of responding to the priorities mentioned in the Joint Declaration of the Prague Eastern Partnership Summit.”²⁵ However, in the available documentation of this very important programme, there are no specific references to NHRIs.

NHRIs in the Eastern Partnership countries may finally benefit from the support offered by the EU to wider international cooperation of NHRIs, aimed at enhancing their institutional and thematic expertise. Among relevant initiatives, the central place is occupied by the Joint European Union – the Council of Europe Peer-to-Peer Program, entitled in its first phase (2008-2009): “Setting up an active network of independent non-judicial human rights structures”²⁶ and in its second phase (2010-2012): “Promoting national non-judicial mechanisms for the protection of human rights and especially the prevention of torture.”

NHRIs under survey also receive support from the EU via the Office of the UN High Commissioner for Human Rights. In 2010, the European Commission provided to OHCHR almost 7 million US\$ in the framework of Democracy and Human Rights Instrument. This contribution is *inter alia* used by OHCHR to support the international cooperation platform for NHRIs as well as to assist individual NHRIs.

6.1.1 Polish-French Project “Co-operation between Ombudsmen from Eastern Partnership Countries (EaP) of the European Union”

The project entitled “Co-operation between Ombudsmen from Eastern Partnership Countries (EaP) of the European Union” was initiated in 2009 by the Polish Human Rights Defender in cooperation with the Defender of Rights of the French Republic (former *Médiateur*). Its purpose was to enhance the capabilities of the discussed institutions²⁷ as a contribution to the Eastern Partnership’s goals of strengthening democracy and stability in the target countries. The project aims to engage other national authorities (such as courts and tribunals, local self-government bodies), NGOs and civil society stakeholders as partners to NHRIs. Thematically, the Project is based on an annually changing focus: 2009 - preparatory and introductory activities, 2010 - “Year of Solidarity”, 2011 - “Year against violence and discrimination”, 2012 - “Year of basic civil liberties”, and 2013 - “Year of Rule of Law”. In this framework, the implementation activities have embraced so far:

²⁴ Council of Europe Facility (CRIS: 2010/22192).

²⁵ *Ibid.* Action Fiche for ENPI East Regional Action Programme 2010 Part II.

²⁶ CommDH/NHRS(2008)12.

²⁷ See the 2009 project report, available in Polish <http://www.rpo.gov.pl/pliki/12659781290.pdf> . A brief summary of the project is available in English at <http://www.rpo.gov.pl/pliki/12659746020.pdf>

- organization of a series of trainings on human and citizen rights protection,
- analysis of national legislations in terms of their adjustment to the European standards of protection of rights of an individual,
- promotion of the implementation of torture prevention and prisoners' situation monitoring mechanisms,
- promotion of principles stemming from the European Code of Good Administrative Behaviour,
- scientific projects and research.

Insofar, representatives of Armenia, Azerbaijan, France, Georgia, Moldova, Poland, and Ukraine have actively participated in the Project. The financial support granted by the Polish Ministry of Foreign Affairs has amounted to 172 000 € which has covered expenditures in the period from 2009 to 2011. Some additional financing has been provided by the Office of the Polish Human Rights Defender's budget. The Project has not received insofar any financial support from the EU or other regional or international organizations.

The twinning character of the Polish-French Project was welcomed by the participating partners as giving a good opportunity to develop a fruitful peer-to-peer cooperation, based *inter alia* on the experience of the Polish Human Rights Defender gathered during the period of democratic transformation. However, in order to exploit its full potential, the project would require substantial improvement in funding. Optimally, the EU which is increasingly interested in the promotion of NHRIs in the close neighbourhood, and in particular in the Eastern Partnership countries, may wish to consider the possibility of granting financial support to this Project.

6.2 United Nations

The Office of the High Commissioner for Human Rights closely collaborates with all relevant actors to assist them in the establishment and strengthening of the existing NHRI. The Office's particular concern is to promote compliance with the Paris Principles. To that end, the Office offers technical assistance in various forms to the institutions which need it and facilitates cooperation and interaction between the institutions at the international and regional levels. As the Report of the Secretary-General underlines: "OHCHR encourages the sharing of good practices among NHRIs, supports the strengthening of their regional networks, and facilitates their access to United Nations country teams and other relevant partners."²⁸ Within this framework, OHCHR also provides support to the International Coordinating Committee which includes such institutions from about 80 countries from all regions.

OHCHR offers technical cooperation assistance for NHRIs worldwide. According to the Survey on National Human Rights Institutions carried out by OHCHR, many NHRIs need technical assistance related to organizational and resource management, knowledge of the international human rights system, relationships with public bodies and civil society, and the follow-up of NHRI recommendations by their respective Governments.²⁹

As the last five UN Secretary-General reports indicate, the NHRIs in the Eastern Partnership countries have benefited from several OHCHR projects addressing their needs. For example, in 2009 OHCHR provided assistance for activities aimed at the establishment of a NHRI in Belarus. In the same year, OHCHR ensured technical advice on amendments to the law relating to the Office of the Public

²⁸ Report of the UN Secretary-General "National institutions for the promotion and protection of human rights", A/HRC/13/44, 15 January 2010. § 2.

²⁹ *Supra*, § 6.

Defender of Georgia, to increase its compliance with the Paris Principles and the requirements of a national preventive mechanism established in accordance with the Optional Protocol to the Convention against Torture. Also in 2009, OHCHR provided legal advice on strengthening the enabling law of the Centre for Human Rights of Moldova and on the compliance of the Centre with the Paris Principles in connection with the accreditation process carried out by the International Coordinating Committee. In 2007, OHCHR organized capacity-building and awareness training workshops for staff of the regional offices of the Office of the Ombudsman in Azerbaijan and selected organizations of the civil society. Some of the NHRIs from this group of countries also attended workshop or other kinds of meetings facilitated by OHCHR. Generally, OHCHR action depends largely on the political willingness of national partners. It seems that there is room for strengthening the involvement of OHCHR if supported by actors with a stronger political standing among the Eastern Partnership countries such as the European Union or its Member States.

6.3 Council of Europe

The Council of Europe has been involved in assistance to the creation and development of NHRIs in the CoE Member States for decades. Several of its structures including the Commissioner for Human Rights, Human Rights Directorate, and Venice Commission for Democracy through Law have put cooperation with and assistance to NHRIs on their respective agendas. The Council has also placed strong emphasis on horizontal cooperation among NHRIs. In 1997, it decided “to institute, in the framework of the Council of Europe, regular meetings with national human rights institutions of member states to exchange views and experience on the promotion and protection of human rights in their areas of competence;”³⁰ In 1999, the responsibility “to facilitate the activities of national ombudsmen or similar institutions in the field of human rights” in the Council of Europe Member States was vested with the Human Rights Commissioner.³¹ The last of the biannual meetings of European NHRIs organized in the follow-up to this recommendation was held in 2004 in Berlin.

At present, the Council hosts the European NHRIs network (currently 50 NHRIs) which involves annual meetings on: workshops and seminars focusing on selected themes, structural issues and the involvement of NHRIs in the implementation of the ECHR and the judgments of the European Court of Human Rights, coaching the setting up and development of national preventive mechanisms against torture. NHRIs from the Eastern Partnership countries participate in this network and benefit from the assistance offered within its framework.³² The aforementioned Joint EU–CoE Peer to Peer Programme has recently been the main vehicle used by the Council of Europe for the implementation of this programme.³³ Its first phase was aimed at facilitating cooperation among European NHRIs compliant with the Paris Principles, with a special focus on non-EU member States. The successor of this programme - **Peer-to-Peer II** - continues to serve the promotion of **national non-judicial mechanisms for the protection of human rights. Its special focus is, however, the promotion and strengthening of the NPM, as envisaged by the Optional Protocol to the UN Convention against Torture** and Other Cruel, Inhuman or Degrading Treatment or Punishment. Legislative Support and National Human Rights Structures Division, Directorate General of Human Rights and Legal Affairs serves as its implementing agency.

³⁰ Resolution (97) 11 on co-operation between member states’ national institutions for the promotion and protection of human rights, and between them and the Council of Europe.

³¹ Article 3 “d” of the Resolution (99) 50 of the Committee of Ministers “The mandate of the Commissioner for Human Rights of the Council of Europe,” adopted by the Committee of Ministers on 7 May 1999.

³² Archivio Pace Diritti Umani - <http://unipd-centrodirittiumani.it/en/attivita/Setting-up-an-active-network-of-independent-non-judicial-human-rights-structures/437> .

³³ <http://www.jp.coe.int/CEAD/JP/default.asp?TransID=196> .

6.4 OSCE Office of Democratic Institutions and Human Rights

ODIHR is engaged in encouraging and supporting the establishment of networks of human rights defenders, strengthening the relationship between NHRIs and civil society, and providing support to the creation and functioning of newly established NHRIs. It also undertakes to provide guidance, advice and technical assistance to NHRIs designated as National Preventive Mechanisms under the Optional Protocol to the UN Convention against Torture. These activities are carried out via OSCE local facilities that benefit from their on-the-ground experience and knowledge of local situation.³⁴ As a consequence, the approach applied by OSCE/ODIHR varies from country to country that helps to ensure the most adequate tailoring of activities to specific local needs.

³⁴ Currently, OSCE maintains a mission to Moldova, a Project coordinator for Ukraine and local offices in Yerevan (Armenia) and Baku (Azerbaijan). A local office in Tbilisi (Georgia) was shut down by OSCE in 2008

7. CONCLUDING OBSERVATIONS

1. Human rights as a theme (principle) permeate all relevant EU programmes. It is difficult to draw the border-line between human rights projects that are NHRIs relevant and those that are not. All of them, directly or indirectly, affect the work of NHRIs.
2. NHRIs are perceived by the EU competent bodies as partners and frequently referred to in their policy documents as relevant actors. It is not entirely clear, however, whether these references have any practical impact on cooperation with NHRIs.
3. Two programmes specifically target NHRIs in the Eastern Partnership countries:
 - a. the Joint European Union – Council of Europe Peer-to-Peer Program, currently (2010-2012) aimed at promoting national non-judicial mechanisms for the protection of human rights, with the special focus on the prevention of torture. This programme has contributed to: i) the development of a functional network of NHRIs established in European countries, ii) the enhancement of the exchange of good practices in various substantive human rights areas for which NHRIs are responsible, iii) the establishment of national preventive mechanisms against torture, iv) the capacity-building of NHRIs.
 - b. b) the Polish-French Project “Cooperation of Ombudsmen in the EU Eastern Partnership Countries”, initiated by the Human Rights Defenders in both countries with a view to establishing a framework for knowledge and experience sharing among NHRIs from the Eastern Partnership Countries. The implementation of this initiative has contributed to strengthening cooperation among the NHRIs involved and thus, to the enhancement of their capabilities.
4. Potentially, support for the NHRIs in countries of the Eastern Partnership might be provided in the framework of the aforementioned, and adequately operationalized, Council of Europe facility established by **the European Commission under the Democracy and Human Rights Instrument** with a view to assisting the reform processes in **the Eastern Partnership countries**. Also, the aforementioned concept of the Comprehensive Institution-Building Programmes, envisaged by the 2009 Joint Declaration of the Prague Eastern Partnership Summit, provides potentially a framework for steps to address the needs of NHRIs in this group of countries.
5. Assistance to NHRIs is largely offered on a rather ad hoc basis – it does not seem to be based on a thorough needs assessment providing a basis for a comprehensive strategy to help each individual NHRI to become a sustainable mechanism of the human rights protection, acting effectively and efficiently.
6. There is room for improvement by giving NHRIs a stronger standing within coordinated efforts undertaken by international, regional and bilateral partners involved in cooperation programmes at the country level.

8. RECOMMENDATIONS

1. The NHRIs in the countries of the Eastern Partnership have a considerable time of experience in both the implementation of their mandates and in international cooperation behind them. The first of these institutions assumed their responsibilities in 1998 (Georgia, Moldova and Ukraine). Yet, cooperation offered by international organizations and bilateral partners continues to be vital for enabling the NHRIs under consideration to fully exploit their potential and comply with the Paris Principles.
2. In this context, it would be essential to develop a consistent European Union strategy (strategic approach) with a view to strengthening the capacities, autonomy and independence of NHRIs in accordance with the Paris Principles. Such a strategy should:
 - a. lead to the recognition of NHRIs across policies, programmes and projects on cooperation with the Eastern Partnership as crucial actors in the area of human rights, the rule of law and democracy,
 - b. be based on a coordinated and targeted approach, involving actors from within and outside the European Union, such as the Council of Europe, the OSCE, OHCHR, and UNDP, as well as from non-governmental organizations and civil society,
 - c. follow the already implemented and principally effective double-track concept combining assistance offered to individual NHRIs with the support for networking among the NHRIs concerned,
 - d. be implemented within a timeframe needed for ensuring the sustainability of results.
3. In the light of the NHRIs reports, such a strategy may target, in particular:
 - a. strengthening the autonomy of the NHRIs in substantive, procedural and organizational terms and their effectively guaranteed independence, in particular from the executive power,
 - b. equipping the NHRIs with the powers as well as substantive and organizational capacities to carry out their mandates, in the areas of analysis, intervention, prevention, and the promotion of the rights and freedoms,
 - c. enhancing effectiveness and efficiency of handling complaints lodged by rights holders,
 - d. strengthening the authority of the NHRIs among their domestic counterparts, in particular the parliament and various branches of the government, including law enforcement agencies and social services,
 - e. maintaining effective links with the civil society, in particular with disadvantaged, excluded and vulnerable groups.
4. While formulating the overarching strategy for cooperation with NHRIs from the Eastern Partnership countries, it would be relevant to assess the current validity of issues raised in a series of Foreign Policy Briefing Papers on EU assistance to the EaP countries, published on behalf of the European Parliament's Committee on Foreign Affairs in 2008.

5. With a view to effectively assisting the NHRIs from the Eastern Partnership countries and facilitating networking and cooperation among them, steps should be taken to better utilize the potential of the already undertaken initiatives.
6. The European Union should consider the establishment of a framework for supporting the initiative by the Polish and French ombudsmen to create a twinning network specially designed for the NHRIs in the Eastern Partnership countries. Ensuring a sound financial basis for this initiative may give it a much needed impulse.
7. It could also be within this Polish-French initiative that common thematic priorities may be identified. The exchange of experience and peer to peer sharing of good practices may be helpful to all those involved.
8. Further participation of NHRIs from the Eastern Partnership countries in all-European and international programmes and projects carried out by various actors should be strongly encouraged, as e.g. in the EU-CoE Peer-to-Peer project under which two all-European networks were set up and are being nurtured, one for the general-purpose NHRIs and one of the National Preventive Mechanisms against torture. As the relevant projects are about to end relatively soon, it would be essential to ensure their continuation or follow-up and thus, the sustainability of results.
9. The European Parliament may consider its greater involvement in generating a conducive climate of support for the NHRIs from the Eastern Partnership countries by, *inter alia*, promoting the concept of the development and implementation of the aforementioned strategy aimed at strengthening the capacities and impact of these institutions and encouraging cooperation of various, in particular European, partners with the NHRIs from the region.
10. The European Parliament may also wish to make the compliance with the Paris Principles by NHRIs and EU support for these institutions a standing item on the agenda of the Parliamentary Cooperation Committees established in the framework of cooperation with the countries of Eastern Partnership.
11. European Fundamental Rights Agency should be encouraged to integrate NHRIs in the Eastern Partnership countries into its relevant analysis, programmes and activities. This would enable the NHRIs to benefit from the expertise gathered by this Agency.

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