

# National authorities must respect international standards on the Selection and Appointment of the Head of a National Human Rights Institution (NHRI)

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## 1. Executive Summary

Due to the current situation faced by the Polish Commissioner for Human Rights (Polish NHRI), ENNHRI reiterates that relevant international standards must be respected during the selection and appointment of new Heads of NHRIs and during any associated transitional period. This is necessary to ensure the independence, pluralism and effectiveness of NHRIs.

In particular, ENNHRI reiterates the following points:

- The constitutional procedures for the selection and appointment of the new Polish Commissioner for Human Rights must not be circumvented.
- Relevant international standards, such as the UN Paris Principles and the SCA General Observations, must be respected during the selection and appointment of new Head of NHRIs.
- Selection and appointment processes must be transparent, participatory, and based on pre-determined and objective criteria. They must ensure the NHRI can fulfil its mandate in an independent and effective manner.
- In particular, vacancies should be widely publicised, the process should include candidates from a wide range of societal groups and ensure broad consultation.
- Changes to the legislative provisions affecting NHRIs - including in relation to the selection, appointment, and mandate of Head of NHRIs – require a careful consideration of its compliance with the UN Paris Principles and prior effective consultation with all parties concerned, including a strong role for the NHRI itself.
- The direct appointment of the head of the NHRI, without a clear, transparent, merit-based and participatory selection and appointment process, would severely impact on the independence, effectiveness, and public confidence in the NHRI.

The Polish NHRI is internationally accredited with A-status, indicating its full compliance with the [UN Paris Principles](#). ENNHRI stresses the importance of guaranteeing an enabling environment for the independent and effective work of the NHRI.

## 2. Background

In October 2020, ENNHRI published an [Opinion](#) on the international standards and regional practices applicable to the transitional period during the selection and appointment of the Head of a NHRI. The present document is a reminder of several points made in that Opinion and is motivated by the current situation faced by the institution of the Polish Commissioner for Human Rights (Polish NHRI).

On 9 September 2020, the term of the Polish Commissioner for Human Rights ended. Pursuant to Article 209.1 of the Polish Constitution, the new Commissioner is appointed by the Sejm with prior approval of the Senate on the application of the Marshal of the Sejm or a group of 35 deputies. Despite attempts following the prescribed procedure, a new Commissioner has not yet been appointed at the time of writing.

According to Article 3.6 of the Law on the Polish Commissioner for Human Rights, the current Commissioner performs his duties until the new Commissioner takes up their position. ENNHRI [had advanced](#) that this provision is compatible with applicable international standards and is the most common transitional arrangement in European countries for internationally accredited NHRIs of the Ombudsman-type. The Polish Constitutional Tribunal is expected to rule on the constitutionality of this provision on 10 March 2021. Regardless of its outcome, relevant international standards must be respected for the selection and appointment of the new Head of the Polish NHRI.

The [UN Paris Principles](#), adopted by the UN General Assembly Resolution 48/134, set out the international minimum standards that must be met for NHRIs to be recognised as independent and effective. To clarify the meaning and scope of the UN Paris Principles, the Global Alliance of NHRIs ([GANHRI](#)) has adopted [General Observations](#), which reflect GANHRI's Sub-committee on Accreditation's ([SCA](#)) application of the UN Paris Principles in the international accreditation process of NHRIs, as supported by the UN Human Rights Office.

The Office of the Polish Commissioner for Human Rights is an A-status National Human Rights Institution, lastly [accredited](#) in November 2017, as in full compliance with the UN Paris Principles.

As recognised by the [European Commission](#), the [European Parliament](#), the [EU Council](#) and the [Council of Europe](#), A-status NHRIs are fundamental actors for the exercise of checks and balances in each European country and a core actor in ensuring respect for the rule of law, democracy and fundamental rights. The independent work of the Polish NHRI was highlighted in the [country chapter](#) for Poland of the 2020 European Commission's report on the rule of law.

### 3. Selection and appointment must be transparent, participatory, ensure independence and continuity of work of the NHRI

Relevant authorities must take steps to ensure that the selection and appointment of a new Head follows pre-established procedures which are in line with the UN Paris Principles. In the case of the Polish NHRI, this process is enshrined in the Polish Constitution, and has been [found](#) to be in line with international requirements by the SCA. The constitutional procedures for the selection and appointment of the new Polish Commissioner for Human Rights must not be circumvented.

The UN Paris Principles and SCA [General Observation 1.8](#) refer to the cornerstone principles of independence and transparency when it comes to the selection and appointment of Head of NHRIs and requires the “formalisation of a clear, transparent and participatory selection and appointment process of the NHRI’s decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate”.

The SCA also [requires](#) that the assessment of applicants must be on the basis of pre-determined, objective and publicly available criteria, which promotes the merit-based appointment of candidates, limits the capacity for undue interference in the selection process, and serves to ensure the appropriate management and effectiveness of the NHRI.

More specifically the SCA demands processes that include requirements to: “(1) publicize vacancies broadly; (2) maximise the number of potential candidates from a wide range of societal groups; (3) promote broad consultation and/or participation in the application, screening, selection and appointment process; (4) assess applicants on the basis of pre-determined, objective and publicly available criteria; and (5) select members to serve in their own individual capacity rather than on behalf of the organisation they represent.”

The SCA also stresses that NHRIs must be independent from government in its structure, composition, decision-making and method of operation. In order to avoid conflicts with the independence of NHRIs, “members of parliament, and especially those who are members of the ruling political party or coalition, or representatives of government agencies, should not in general be represented on, nor should they participate in decision making” of NHRIs.

In its [report](#) on NHRIs, the EU’s Agency for Fundamental Rights has emphasised the importance of selection and appointment processes that ensure greater transparency and that are open to the widest possible range of applicants.

The standards applicable to Ombudsman Institutions also point to the need to ensure independence, transparency and a merit-based approach during the selection and appointment

process. The Council of Europe's [Venice Principles](#) advances that the "Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution". A recent Recommendation of the Committee of Ministers ([CM/Rec\(2019\)6](#)) also states that "the process of selection and appointment of the head of an Ombudsman institution should promote its independence".

The [EU Standards for Equality Bodies](#) also recognises the importance of guaranteeing the independence of persons holding leadership positions.

#### **4. International standards applicable in case of changes of NHRI regulation during appointment, selection, or transition**

Changes to the legislative provisions affecting the functioning and independence of the NHRI during the selection and appointment process - including in relation to the selection, appointment, and mandate of Head of NHRIs – require a careful consideration of its compliance with the UN Paris Principles and prior effective consultation with all relevant parties concerned, including a strong role for the NHRI itself. This is necessary to ensure that the independence and effectiveness of an NHRI is not negatively affected, in line with the UN Paris Principles, the SCA General Observations, the [Venice Principles](#), and the [opinion](#) of the EU's Agency for Fundamental Rights.

The Sub-Committee on Accreditation (SCA) may initiate a Special Review where it appears that the circumstances of an NHRI may have changed in a way that affects compliance with the UN Paris Principles, such as when the enabling law of the NHRI has been amended significantly or if national authorities circumvent constitutional provisions that seek to guarantee the independent and effective work of the NHRI.

The direct appointment of the Head of the NHRI, without a clear, transparent, merit-based and participatory selection and appointment process, would severely impact on the independence, effectiveness, and public confidence in the NHRI.

#### **5. Conclusion**

International standards require that the independence, pluralism and effectiveness of an NHRI is respected at all times, including during the selection and appointment of a new Head of NHRI and during any associated transitional period. ENNHRI is available for any further clarification on the applicable international standards.

## About ENNHRI

ENNHRI, the European Network of National Human Rights Institutions, brings together 46 members across Europe to enhance the promotion and protection of human rights in the region. The Office of the Polish Commissioner for Human Rights is a member of ENNHRI.

ENNHRI works alongside partners to support European NHRIs in their work to promote and protect human rights in the region, including the Office of the UN High Commissioner for Human Rights (OHCHR), the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Council of Europe (CoE), including the CoE Commissioner for Human Rights and Venice Commission, the European Union, including its Agency for Fundamental Rights (FRA), the Global Alliance of NHRIs (GANHRI), the International Ombudsman Institute (IOI), and the European Network of Equality Bodies (Equinet).