



# Effectiveness of National Human Rights Institutions in the Western Balkans

Montenegro, North Macedonia, Serbia

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## COMPARATIVE REPORT

(What is behind and)  
**Beyond the average?**

November 2019



## IMPRESSUM

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## Acronyms and Abbreviations

APDP-FA	Agency for Personal Data Protection and Free Access to Information (Montenegro)
CoE	Council of Europe
Commissioner	Commissioner for Information of Public Importance and Personal Data Protection (Serbia)
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CJEU	Court of Justice of the European Union
CPAD	Commission for Protection against Discrimination (North Macedonia)
CPE	Commissioner for Protection of Equality (Serbia)
CRD	Convention on the Rights of the Child
CRD	Civil Rights Defenders
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
EB	Equality body
ECRI	European Commission against Racism and Intolerance
FAI	Institution on Free Access to Information
FRA	European Union Agency for Fundamental Rights
GANHRI	Global Alliance of National Human Rights Institutions
GDPR	General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC)
EPI	European Policy Institute – Skopje
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KOMSPI	Commission for the Protection of the Right to Access to Public Information (North Macedonia)
MKD	North Macedonia
MNE	Montenegro
MS	Member States
NGO	Non-governmental Organisation
NHRI	National Human Rights Institutions
OHCHR	The UN Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SA	Supervisory Authority
SADP	Supervisory Authority for Data Protection
SRB	Serbia
UN	United Nations
UNHRC	UN Human Rights Committee
WB	Western Balkans

## INTRODUCTION

This regional report is the result of the research project which included independent institutions established by the state to protect and promote human rights in Montenegro, North Macedonia and Serbia.

The research took place in the period July – November 2019. Firstly, a comprehensive methodology for assessing and evaluating the effectiveness of national human rights bodies was developed, so as to enable ranking and regional comparability. Subsequently, independent experts for Montenegro, North Macedonia and Serbia conducted research, including data collection, analysis and ranking.

The three countries have established an ombudsperson as the main national human rights institution. In addition, specialized human rights bodies have been created that deal with non-discrimination/equality (EBs), data protection (SADP) and free access to information (FAI)<sup>1</sup> – some of them with double mandate.

From Montenegro, two double-mandate bodies are considered as NHRIs in the scope of this research: the Ombudsperson (having also the mandate of an EB) and the Agency for Personal Data Protection and Free Access to Information.

Four single-mandate bodies have been established in North Macedonia as NHRIs: the Ombudsperson, the Commission for Protection against Discrimination, the Commission for Protection of the Right to Free Access to Public Information and the Data Protection Directorate.

In Serbia, in addition to the Ombudsperson – Protector of Citizens (PC), the Commissioner for Protection of Equality and the Commissioner for Information of Public Importance and Personal Data Protection (Commissioner) have the role of an NHRI.

Effectiveness was assessed in four domains:

- (1) Independence and ability to work without pressure,
- (2) Availability of resources and capacities,
- (3) Information, accessibility and cooperation with other relevant actors, and
- (4) Mandate and powers.

The assessment was based on a previously defined set of indicators, derived from relevant international standards.

Research results per country were synthesized in three country reports, elaborated by Jelena Đankić (Montenegro), Biljana Kotevska (North Macedonia) and Ivana Krstić (Serbia). Based on these reports, this regional report provides a comparative overview of the NHRIs in Montenegro, North Macedonia and Serbia.

In this regional report we present the methodology, research findings, as well as recommendations. The research findings are presented comparatively per each domain. This approach was taken as it was considered more appropriate to focus on comparative analysis of the subject matters, resulting in a more comprehensive presentation of the *status quo*, while also providing and discussing the results per country within the domain.

## METHODOLOGY

### Background and rationale

#### *Development of NHRIs in the Western Balkans*

National human rights institutions in the Western Balkans were established in the context of transition to pluralist democracy. Human rights were the flagship of transition to pluralist democracy and have been at the core of the transition process. The start of the democratic transition processes in the Western Balkans coincided with the major efforts in the international community to strengthen the protection of human rights at the global level. In the early 1990s the United Nations started promoting National Human Rights Institutions (NHRIs), independent national agencies specifically designed to protect and promote human rights, in order to “bridge the gulf between international law and domestic practices”<sup>2</sup>.

However, these global trends did not have an immediate impact in the Western Balkans, as most countries in the region were part of the dissolution process of former Yugoslavia, accompanied by war, violence and massive infringements of human rights. Two of the countries covered by this research (Serbia and Montenegro) were involved in the wars of Yugoslav dissolution. North Macedonia managed to avoid the wars that followed the Yugoslav break-up, but experienced an inter-ethnic conflict in 2001, which had a major impact on the exercise of human rights in the country.

Only after the conflicts ended – in the late nineties and the beginning of the new millennium – the focus in the WB turned to establishment/re-establishment of the institutions, including the NHRIs.

<sup>1</sup> In this report, the term “NHRI” is used for all NHRIs included in the research. EB is used for the mandate of an equality body (anti-discrimination body), SADP – for the mandate of supervisory authority for data protection and FAI for the mandate for free access to public information.

<sup>2</sup> UN Centre For Human Rights, National Human Rights Institutions: A handbook on the establishment and strengthening of national human rights institutions for the promotion and protection of human rights, U.N. SALES NO E.95.XIV.2 (1995).

The Ombudspersons as bodies protecting human rights in the WB countries were established in the period 1996-2013.<sup>3</sup> All the WB countries established the Ombudsperson institution as a main national human rights body.

Table 1 presents human rights institutions in all WB countries, their year of establishment, their accreditation status with the Global Alliance of National Human Rights Institutions (GANHRI) and the year of its achievement/confirmation.<sup>4</sup>

Country	Title of the body	Year of establishment	Accreditation	
			Status	Year
Albania	Republic of Albania People's Advocate	2000	A	2011
Bosnia and Herzegovina	The Institution of Human Rights' Ombudsperson of BiH	1996	A	2001;2015
Kosovo	The Ombudsperson Institution of Kosovo	2000	Observer	
Montenegro	Protector of Human Rights and Freedoms – Ombudsperson	2013	B	2016
North Macedonia	Ombudsperson	1997	B	2011
Serbia	Protector of Citizens – Ombudsperson	2007	A	2010; 2015

The establishment and functioning of NHRIs in the Western Balkans has since then largely been under the influence of the European integration process, which includes the assessment of the NHRIs in its political conditionality.

Moreover, the EU conditionality has directly triggered the creation of specific human rights bodies – for data protection, free access to public information, non-discrimination, etc. While the countries had some autonomy in the manner of organising these functions and structuring the bodies, they had no choice in introducing them.

All the NHRIs became subject to rigorous monitoring and assessment by the European Commission – through their monitoring and reporting mechanism (findings presented in the Annual Report). Moreover, they are subject to the benchmarking mechanism where Member States have an increased role in addition to the European Commission. Since 2013 the EU established the “fundamentals first” approach, focusing on democracy and rule of law, and consequently more rigorous conditionality was introduced for the functioning of the NHRIs, which are all part of the “fundamentals first” approach.<sup>5</sup>

### Current context

The political landscape in the region is rather complex, and all the countries included in this research are experiencing backsliding in the state of democracy.<sup>6</sup>

This trend is not specific to the WB, it is rather a global trend, as illustrated by Freedom in the World, which “has recorded global declines in political rights and civil liberties for an alarming 13 consecutive years, from 2005 to 2018”.<sup>7</sup> The Report has recorded decline of the share of “free countries” to 44.1% in 2018 from 46.1% in 2008 and increase of “non-free” countries to 25.6% in 2018 from 21.8% in 2008. All countries subject to this research – Montenegro, North Macedonia and Serbia are in the group of “partly free” countries.

While the EU conditionality has been strengthened, the perspectives of EU membership for the WB countries are weakening, and the credibility of the EU commitment is fading<sup>8</sup>; consequently the external impetus for democratic reforms is waning, which can also have a direct impact on the performance of the NHRIs.

The EU conditionality is the main “umbrella” for the development of NHRIs in the WB. However, it serves as a “prism” through which the global standards are incorporated and embedded. Consequently, the functioning of the NHRIs is generally assessed in the context of international framework – under the UN, EU and CoE.

The economic context is also highly relevant for the effectiveness of the NHRIs, which need resources to fulfil their mandate. The general lack of resources on national level can be an excuse for not providing the adequate equipment for NHRIs that is essential for their capacity. While the WB are experiencing growth in GDP (3.8% in 2018), this growth is

<sup>3</sup> Croatia, which was part of the Western Balkans until its accession to the EU in 2013, established the Ombudsperson in 1993 and it has an A accreditation status.

<sup>4</sup> The countries that are subject to this research are bolded.

<sup>5</sup> Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2013-2014, Brussels, 16 October 2013 COM(2013) 700 final.

<sup>6</sup> Freedom House, country data, <https://freedomhouse.org/report/countries-world-freedom-2019>; assessed on 20 July 2019

<sup>7</sup> Freedom House, Democracy in Retreat, Freedom in the World Report 2019 (2019) p. 4.

<sup>8</sup> Jelena Džankić, Soeren Keil, Marko Kmezić (eds.), The Europeanisation of the Western Balkans; A Failure of EU Conditionality? (Palgrave, 2019).

not sufficient to ensure fast catching up with EU average.

## The state of monitoring and research on NHRIs in the WB

Systematic monitoring of NHRIs is a part of the already established comprehensive monitoring system by civil society organisations (CSOs) of the state of human rights in the WB. It has also become a part of the established system of independent civil society monitoring of the EU accession process, mainly through regular shadow reporting, as NHRIs are part of the EU conditionality. In recent years CSOs in the WB have begun to turn focus specifically to the issues related to effectiveness of independent bodies in the area of democracy and rule of law, seeing them as a potential stronger pillar and ally against authoritarian tendencies.<sup>9</sup>

The most relevant sources of independent monitoring are presented below, with a focus on the newest publications.

In Montenegro, research on the NHRIs is scarce. The NGO Network for the Affirmation of NGO Sector (MANS) recently published a report on the role and capacity of the Agency for Free Access to Information and Data Protection.<sup>10</sup>

In Serbia, a regular annual report on the state of human rights is published by the Center for Human Rights, which includes observations and assessments on the NHRIs.<sup>11</sup> In addition, an annual shadow report on the state of democracy in Serbia is published, including findings on the NHRIs.<sup>12</sup> There is also a comprehensive study on the effectiveness of anti-discrimination legal framework, including the work of the Commissioner for Protection of Equality (CPE).<sup>13</sup> The Coalition *Preugovor* has been regularly monitoring progress in Chapters 23 and 24 of the EU accession process, through structured monitoring of the implementation of the Action Plans for fulfilling the EU interim benchmarks, resulting in Alarm reports. The growing interest for issues relevant for the effectiveness of NHRI is evident in the recent Working report on the role and status of Ombudsperson and Commissioner for the Protection of Equality.<sup>14</sup> However, academic research literature on NHRIs is limited, with only one comprehensive study on independent institutions in Serbia.<sup>15</sup>

In North Macedonia, the European Policy Institute – Skopje has been publishing regular annual monitoring reports of Network 23 on Chapter 23 Judiciary and Fundamental Rights, including the NHRI's role in protection of fundamental rights.<sup>16</sup> A specific monitoring report on the Ombudsperson by NGO *Infocentar* from 2018 covered several aspects relevant for the institution's effectiveness – legal framework, regional offices, as well as communication and cooperation with NGOs and media.<sup>17</sup> The Non-discrimination Network has been monitoring the implementation of the Anti-discrimination Law since 2011, including the operation of the Commission for Prevention and Protection of Discrimination<sup>18</sup>, while the Helsinki Committee for Human Rights published an annual information bulletin on discrimination.<sup>19</sup> The think tank Analytica has set out a framework for monitoring the Commission on Free Access to Public Information and the Data Protection Directorate.<sup>20</sup> Annual reports of the European Network of Legal Experts in the Non-discrimination field analyse the compliance of the equality body with standards of the EU directives.<sup>21</sup>

A valuable source on the public opinion on the ombudsperson institution in the WB countries – on the level of public trust and independence – is the annual public opinion survey of the Regional Cooperation Council.<sup>22</sup> All monitoring efforts are funded by international donors; consequently the sustainability is questionable, as we have not recorded any systematic monitoring effort funded by national institutions.

Relevant global and regional reviews of literature do not record regional or national studies relevant for the three countries.<sup>23</sup> However, some research, also with donor support, has resulted in relevant comparative studies, such as a regional study on non-discrimination in 2016.<sup>24</sup>

<sup>9</sup> E.g. Ana Medarska-Lazova, Efficiency of Independent Human Right Bodies in the Republic of Macedonia, (Foundation Open Society Macedonia, 2017).

<sup>10</sup> Snežana Bajčeta and Vuk Janković, Analysis of the Role and Capacity of the Agency for Free Access to Information and Data Protection (in Montenegrin), (MANS, Podgorica, 2019) <http://www.mans.co.me/wp-content/uploads/2019/04/analizaAZZLP.pdf>.

<sup>11</sup> Vesna Petrović, ed. Human Rights in Serbia 2018: law, practice and international human rights standards, (The Belgrade Centre for Human Rights, Belgrade, 2019). <http://www.bgcenter.org.rs/bgcenter/eng-lat/wp-content/uploads/2014/01/Human-Rights-in-Serbia-2018.pdf>.

<sup>12</sup> Nikola Burazer, Aleksandar Ivković, Shadow Report, State of Democracy in Serbia 2018, Center for Contemporary Politics, Belgrade, 2018 <https://europeanwesternbalkans.com/wp-content/uploads/2018/10/Shadow-Report-State-of-democracy-in-Serbia-2018.pdf>.

<sup>13</sup> Equal Rights Trust, Equality in Practice, Implementing Serbia's Equality Laws, London, 2019, [https://www.equalrightstrust.org/sites/default/files/ertdocs/Serbia%20report\\_EN.pdf](https://www.equalrightstrust.org/sites/default/files/ertdocs/Serbia%20report_EN.pdf).

<sup>14</sup> Milijana Trifković, Dario Čurčić and Marko Vasiljević, Working report on the role and status of ombudsperson and commissioner for the protection of equality, (Belgrade, 2019) <https://cra.rs/wp-content/uploads/2019/01/Role-and-status-of-ombudsperson-and-commissioner-for-the-protection-of-equality.pdf>.

<sup>15</sup> Marko Davinić, Independent Controlling Bodies in the Republic of Serbia (Nezavisna kontrolna tela u Republici Srbiji), Dosije studio, Belgrade, 2018.

<sup>16</sup> Simonida Kacarska and Uranija Pirovska, eds., Shadow Report on Chapter 23 covering the period June 2018 – March 2019, European Policy Institute – Skopje, 2019, <https://epi.org.mk/wp-content/uploads/2019/05/Shadow-Report-Eng-1.pdf>.

<sup>17</sup> Biljana Bejkova and Uranija Pirovska, Civil Monitoring of the Ombudsman, Skopje, 2019, <http://nvoinfocentar.mk/wp-content/uploads/2018/04/Naroden-Pravobranitelj-Book-web1.pdf>.

<sup>18</sup> Igor Jadrovski, Jovana Jovanovska Kanurkova and Marija Gelevska, 'Извештај за имплементација на Законот за спречување и заштита од дискриминација [Report on the Implementation of the Law on Prevention and Protection against Discrimination]' (Мрежа за заштита од дискриминација 2019) [http://coalition.org.mk/wp-content/uploads/2019/07/Diskriminacija\\_web.pdf](http://coalition.org.mk/wp-content/uploads/2019/07/Diskriminacija_web.pdf).

<sup>19</sup> Macedonian Helsinki Committee, Annual Information Bulletin on Discrimination - 2018, (Skopje, 2019) (in Macedonian) <https://mhc.org.mk/reports/godishen-informator-za-diskriminacija-za-2018/>.

<sup>20</sup> Magdalena Lembovska, 'Основни документи за следење на работата на Комисијата за заштита на правото на слободен пристап до информации од јавен карактер и Дирекцијата за заштита на личните податоци [Basic Documents for Monitoring of the Work of the Commission for the Protection of the Right to Free Access to Public Information and the Data Protection Directorate]' (Analytica - think tank 2017).

<sup>21</sup> Biljana Kotevska, Country Report - Non-Discrimination: Republic of North Macedonia 2018 (European Commission 2019).

<sup>22</sup> Regional Cooperation Council, Balkan Barometer 2019, Public Opinion, Analytical Report, (Sarajevo, 2019) [https://www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_PublicOpinion\\_2019.pdf](https://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2019.pdf).

<sup>23</sup> Steven L.B. Jensen, Lessons from Research on National Human Rights Institutions, A desk review on findings related to NHRI effectiveness, (the Danish Institute for Human Rights, 2018) [https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/research/workingpaper\\_lessons\\_research\\_nhris\\_web\\_2018.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/research/workingpaper_lessons_research_nhris_web_2018.pdf).

<sup>24</sup> Legal Protection Against Discrimination in South-East Europe, Regional Study, Centre for South-East European Law School Network (2016).

## Aim of the research

The aim of this research is to assess the effectiveness of human rights institutions in Montenegro, North Macedonia and Serbia, based on a pre-defined set of indicators.

## Key terms

### ***National human rights bodies***

The definition of NHRI is based on the global standards. The definition has been developed within the UN system, where an NHRI is defined as “a body which is established by a Government under the constitution, or by law or decree, the functions of which are specifically designed in terms of the promotion and protection of human rights<sup>25</sup> or as “state bodies with a constitutional and/or legislative mandate to protect and promote human rights, that are part of the State apparatus and are funded by the State.<sup>26</sup>

Two elements of the definition can be distinguished:

- NHRIs are state bodies;
- Their mandate (constitutional or legislative) is to protect and promote human rights.

The NHRIs are neither judicial nor law-making, their nature is rather administrative.

The second element of the definition is their mandate – to protect and promote human rights. The mandate can be determined either in the Constitution or in law.

Consequently, in this research we apply the following definition of a NHRI:

***A National Human Rights Institution is a body established by the state with the mandate to protect and promote human rights.***

At global level, six structural models of NHRIs can be distinguished: commissions; ombudsperson institutes; hybrid institutions; consultative and advisory bodies; research institutes and centres; civil rights protectors; public defenders; and parliamentary advocates.

### ***Effectiveness of NHRIs***

The organisational theory provides different approaches to the definition of “effectiveness” – the goal approach, the resources approach, the internal process approach, and the strategic constituencies approach. The analysis of the current standards for NHRIs indicates that a combined approach has been applied in setting the framework for assessing the effectiveness of NHRIs.

Determinants and definitions of effectiveness are found both in international standards, as well as in academic literature.

ECRI defines that “effectiveness means that the equality body implements its functions and competences in a way and to a scale and standard that make a significant impact on the achievement of equality and the elimination of discrimination and intolerance.”<sup>27</sup>

Similar is the definition by the CoE Commissioner for human rights on national structures for promoting equality, which states that “Effectiveness requires that such structures are able to deploy all of their functions and powers to a scale and a standard that ensures impact and the full realisation of their potential.”<sup>28</sup>

The Report on Assessing the Effectiveness of National Human Rights Institutions identified the factors of effectiveness of NHRIs. The NHRIs tend to be more effective if they:

- Enjoy public legitimacy
- Are accessible
- Have an open organisational culture
- Ensure the integrity and quality of their members
- Have diverse membership and staff
- Consult with civil society
- Have a broad mandate
- Have an all-encompassing jurisdiction
- Have power to monitor compliance with their recommendations
- Treat human rights issues systemically
- Have adequate budgetary resources
- Develop effective international links
- **Handle complaints speedily and effectively.**<sup>29</sup>

25 U.N. Centre For Human Rights, National Human Rights Institutions: A handbook on the establishment and strengthening of national human rights institutions for the promotion and protection of human rights, U.N. SALES NO E.95.XIV.2 (1995).

26 Office of the United Nations High Commissioner for Human Rights, National Human Rights Institutions, History, Principles, Roles and Responsibilities, UN, 2010, p. 13.

27 Council of Europe, ECRI, General policy recommendation No 2: Equality bodies to combat racism and intolerance at national level, adopted on 7 December 2017, CRI(2018)06, Article 16.

28 Commissioner for human rights, CoE, Opinion of the Commissioner for human rights on national structures for promoting equality, CommDH(2011)2, Strasbourg, 21 March 2011

29 Richard Carver, Assessing the Effectiveness of National Human Rights Institutions, International Council on Human Rights Policy, Office of the United Nations High Commissioner for Human Rights, (Versoix, Switzerland, 2005).

The most recent trends in standards, as well as academic literature, tend to emphasise the impact of NHRIs and, in line with this, to determine the factors for effectiveness.

The CoE Commissioner for human rights classifies the main factors for effectiveness of equality bodies in the following manner:

- Depending on authorities: level of resources made available to the bodies and the functions accorded to them;
- Depending on the equality bodies: being strategic, accessibility of their services, stakeholder engagement in their work and networking.

The “functions” are sometimes more broadly defined as “mandate, tasks and powers”<sup>30</sup> or “functions and powers.”<sup>31</sup>

In the *evaluation of the effectiveness of NHRI* three approaches can be distinguished:

- Structural;
- Mandate-based;
- Impact-based.<sup>32</sup>

The structural approach, which dominated in the early years – in the 90s, focuses on the compliance of NHRI with the main legal norms – the Paris Principles. On the one hand, academic research points out to the importance of the institutional design for effectiveness of NHRIs<sup>33</sup>, while on the other it concludes that whereas the current standards (such as the Paris Principles) “provide a yardstick against which to measure compliance, the criteria by which performance should be assessed are less clear”.<sup>34</sup> However, studies have confirmed that “formal institutional safeguards influence human rights outcomes, in part because formal institutional design remains relatively stable over time.”<sup>35</sup>

The mandate-based approaches are essentially performance-based and focus on the success in performing the mandate of the NHRI.

Impact-based approaches focus on what effect an NHRI has on improving the respect for human rights. While recent definitions of effectiveness emphasise impact, this approach has most practical obstacles as it is difficult to isolate the factor of NHRI effectiveness as determinant for the status of human rights and “the lack of a general measure of respect for human rights means that determining the impact of an NHRI across the board is impossible at the present time.”<sup>36</sup>

Consequently, an approach to measuring effectiveness that combines the structural and the mandate-based approach is the only one feasible for the NHRI institutions in the given context and current state of development of and research on NHRIs in the Western Balkans.

Considering the context, the scope and the aim of our research, we define the **effectiveness** of the NHRI as “**the capability of the NHRI to independently perform its mandate and powers, with the aim to make a significant impact on the achievement of human rights**”.

## Scope of the research

The following institutions in Montenegro, North Macedonia and Serbia were included in this research:

Montenegro:

- Ombudsperson,
- Agency for Personal Data Protection and Free Access to Information;

North Macedonia:

- Ombudsperson,
- Commission for Protection against Discrimination,
- Commission for Protection of the Right to Free Access to Public Information,
- Data Protection Directorate.

Serbia:

- Ombudsperson (Protector of Citizens),
- Commissioner for Protection of Equality,
- Commissioner for Information of Public Importance and Personal Data Protection.

30 As in the CoE, ECRI, General policy recommendation No 2: Equality bodies to combat racism and intolerance at national level, adopted on 7 December 2017, CRI(2018)06.

31 As in the Regulation Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4/5/2016.

32 Julie A. Mertus, “Evaluating NHRIs: Considering Structure, Mandate, and Impact,” in Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions, Goodman, R. and Pegram, T. (eds.) (New York: Cambridge University Press, 2012) p. 75.

33 Katerina Linos and Tom Pegram, What works in Human Rights Institutions?, The American Journal Of International Law, Vol. 111:3 (2017), p. 679.

34 Sara Spencer, Context, institution or accountability? Exploring the factors that shape the performance of national human rights and equality bodies, Policy and Politics, Vol 42 No 1 (2014), p. 91.

35 Katerina Linos and Tom Pegram, What works in Human Rights Institutions?, The American Journal Of International Law, Vol. 111:3 (2017), p. 680.

36 Richard Carver, Measuring the impact and development effectiveness of national human rights institutions, A proposed framework for evaluation, (2014) p. 16. [https://www.academia.edu/27945167/Measuring\\_the\\_impact\\_and\\_development\\_effectiveness\\_of\\_national\\_human\\_rights\\_institutions\\_a\\_proposed\\_framework\\_for\\_evaluation](https://www.academia.edu/27945167/Measuring_the_impact_and_development_effectiveness_of_national_human_rights_institutions_a_proposed_framework_for_evaluation).

In the following table the bodies are presented per mandate for each country and year of establishment/awarding the mandate:

	Montenegro	Year of establishment/mandate awarded	North Macedonia	Year of establishment/mandate awarded	Serbia	Year of establishment/mandate awarded
<b>NHRI</b>		2003	Ombudsperson [Народен правобранител]	1997	Protector of Citizens (PC) [Zaštitnik građana]	2007
<b>Equality body</b>	Zaštitnik/ca ljudskih prava i sloboda Crne Gore [Ombudsperson]	2014	Commission for Protection against Discrimination (CPAD) [Комисија за заштита од дискриминација]	2010	Commissioner for Protection of Equality (CPE) [Poverenik za zaštitu ravnopravnosti]	2011
<b>Data protection supervisory authority</b>	Agency for Personal Data Protection and Free Access to Information (APDP-FAI) [Agencija za zaštitu ličnih podataka i slobodan pristup informacijama]	2009	Data Protection Directorate (DPD) [Дирекција за заштита на личните податоци]	2005	Commissioner for Information of Public Importance and Personal Data Protection (Commissioner)	2009
<b>Institution for free access to information</b>		2012	Commission of Protection of the Right to Free Access to Public Information (KOMSPI) [Комисија за заштита на правото на слободен пристап до информациите од јавен карактер]	2006	[Poverenik za informacije od javnog značaja i zaštitu podataka o ličnosti]	2005

## International standards related to NHRIs

The international standards and their interpretations are the basis for developing the indicators for evaluation of the effectiveness of the NHRI. In this section an overview of the relevant standards is presented.

### UN standards on national human rights bodies

The UN standards on national human rights bodies have been developed against the perceived need to develop instruments for effective implementation of the UN general framework for protection of human rights.

The main document, setting the standards is the General Assembly Resolution 48/134 of 20 December 1993 — Principles relating to the Status of National Institutions, widely known as the **Paris Principles**.<sup>37</sup>

The Paris Principles set up the following main criteria that NHRIs should fulfil:

- Mandate and competence: a broad mandate, based on universal human rights norms and standards;
- Autonomy from Government;
- Independence guaranteed by statute or Constitution;
- Pluralism;
- Adequate resources; and
- Adequate powers of investigation.

These criteria have been the primary basis for defining and further developing the domains of effectiveness of NHRIs.

The Paris Principles are an important example of UN normative influence — as “In developing the Paris Principles, the UN General Assembly used its principle leverage tool — normative influence — with far more specificity than is typical. In so doing, it triggered global diffusion of administrative agencies with highly specific safeguards.”<sup>38</sup>

Furthermore, the Paris Principle had an additional high impact on the functioning of the NHRIs around the world through the fact that “The UN system has strongly promoted the role of the SCA as a third-party monitor of NHRI

design integrity and performance. Delegation of monitoring duties to a third party can enhance compliance, especially where — as is the case of the SCA — a central body collects information from diverse sources and issues highly specific assessments in the form of letter grades to individual NHRIs”.<sup>39</sup>

The Global Alliance of National Human Rights Institutions (GANHRI), set up in 1993 as an international association of national human rights institutions (NHRIs) from all parts of the globe<sup>40</sup>, has developed a system of accreditation of national human rights bodies, through its Sub-Committee on Accreditation, granting A or B status to the applicants. The Sub-committee issues general observations, which are considered as “interpretative tools of the Paris Principle”.<sup>41</sup>

The General Observations are structured in two categories: 1. Essential requirements of the Paris Principles and 2. Practices that directly promote Paris Principles compliance.

1. “Observations on essential requirements of the Paris Principles” include the following issues:

1.1 The establishment of NHRIs; 1.2 Human rights mandate; 1.3 Encouraging ratification of or accession to international human rights instruments; 1.4 Interaction with the international human rights system; 1.5 Cooperation with other human rights bodies; 1.6 Recommendations by NHRIs; 1.7 Ensuring pluralism of the NHRI; 1.8 Selection and appointment of the decision-making body of NHRIs; 1.9 Political representatives on NHRIs; 1.10 Adequate funding of NHRIs; 1.11 Annual reports of NHRIs.

2. “Practices that directly promote Paris Principles compliance” are identified relating to the following issues: 2.1 Guarantee of tenure for members of the NHRI decision-making body; 2.2 Full-time members of an NHRI; 2.3 Protection from criminal and civil liability for official actions and decisions undertaken in good faith; 2.4 Recruitment and retention of NHRI staff; 2.5 NHRIs during the situation of a coup d’état or a state of emergency; 2.6 Limitation of power of NHRIs due to national security; 2.7 Administrative regulation of NHRIs; 2.8 Assessing NHRIs as National Preventive and National Monitoring Mechanisms; 2.9 The quasi-judicial competency of NHRIs (complaints-handling).<sup>42</sup>

Within the UN system, specific recommendations/interpretations have been issued for implementation of the UN human rights conventions that have direct impact on creating of specific NHRIs or broadening the mandate of the existing NHRIs.

The Committee on Economic, Social and Cultural rights has concluded that the role in promoting and ensuring the indivisibility and interdependence of all human rights “has too often either not been accorded to the institution or has been neglected or given a low priority by it” and therefore recommended that “full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions”.<sup>43</sup>

The Committee on the Rights of the Child, with responsibilities related to the implementation of the Convention on the Rights of the Child (CRC) stated that “every State needs an independent human rights institution with responsibility for promoting and protecting children’s rights”, which should be able “independently and effectively, to monitor, promote and protect children’s rights”.<sup>44</sup> Furthermore, it advised on the basic standards to be fulfilled by the NHRI (which are largely in line with the Paris Principles) and the activities it should pursue in the implementation of the rights of the child. The growing international commitments and activities in the area of the rights of the child resulted in creating specific institutions or broadening the mandate and creating specific units with the already existing NHRI (“general NHRI”).

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted in 2002, obliges State Parties to designate or establish an “independent national preventive mechanism” to prevent torture and stipulates that this shall be done with “due consideration” to the Paris Principles (Article 18 (4)).<sup>45</sup> In the WB countries this obligation was implemented mainly through incorporating this responsibility within the NHRI and establishing a national preventive mechanism within the institution.

The Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006, obliges State Parties in Article 33 (2) to take the Paris Principles into account when designating or establishing an “independent mechanism” to promote, protect and monitor the implementation of the Convention.<sup>46</sup>

The CoE encouraged the application of the Paris Principles in the CoE Member States through the Recommendation of the Committee of Ministers on the establishment of independent national institutions for the promotion and protection of human rights.<sup>47</sup> This brief document is not setting or interpreting standards, rather inviting the Member States to

<sup>39</sup> Ibid, p. 687.

<sup>40</sup> Until 2013 – International Coordinating Committee of national institutions for the promotion and protection of human rights (ICC).

<sup>41</sup> Global Alliance of National Human Rights Institutions, General observations of the Sub-Committee on Accreditation, adopted by GANHRI Bureau, 21 February 2018 [https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN\\_GeneralObservations\\_Revisions\\_adopted\\_21.02.2018\\_vf.pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf).

<sup>42</sup> Ibid.

<sup>43</sup> UN, Committee on Economic, Social and Cultural rights, Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights, General comment No 10: The role of national human rights institutions in the protection of economic, social and cultural rights, 14/12/1998, E/C.12/1998/25.

<sup>44</sup> UN, Committee on the Rights of the Child, General comment No 2 (2002), The role of independent national human rights institutions in the promotion and protection of the rights of the child, 15/12/2012, CRC/GC/2002/2.

<sup>45</sup> UN, OHCHR (2002), Art. 17.

<sup>46</sup> UN, Convention on the Rights of Persons with Disabilities (CRPD) (2006), Art. 33 (2). See also the OHCHR thematic study on the structure and role of national mechanisms for the implementation and monitoring of the Convention, for example, para. 78, A/HRC/13/29, 22 December 2009.

<sup>47</sup> CoE, Committee of Ministers, The 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, 30 September 1997.

<sup>37</sup> <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>.

<sup>38</sup> Katerina Linos and Tom Pegram, What works in Human Rights Institutions?, The American Journal Of International Law, Vol. 111:3 (2017), p. 688.

draw on the experience of human right commissions and the ombudspersons.

The Paris Principles, or more precisely the GANHRI General Observations are taken as a basis for the matrix of indicators in this Methodology, as the most recognised and highest global standard for NHRIs.

### **Specific standards for equality bodies**

In addition to the general framework on NHRIs, the UN bodies have recommended establishment of “national commissions or other bodies” charged with implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>48</sup>, which resulted in creation of specific commissions/bodies more specifically designated as “equality bodies” or incorporating this responsibility within the NHRI.

In European context, the equality bodies were created to respond to the more elaborated requirements for the implementation of the EU acquis related to non-discrimination – widely referred to as the “equal treatment directives”<sup>49</sup>, as well as the implementation of the European Convention on Human Rights (ECHR). In most European countries new bodies have been created to deal with equal treatment – multi-ground or single-ground. In some countries the national human rights institutions took over the mandate for promotion of equal treatment, thus becoming “multi-mandate” bodies.<sup>50</sup>

### **EU equal treatment directives**

The following equal treatment directives, which are obligatory for EU Member States, consist provisions on equality bodies:

- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Article 13);
- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Article 12);
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006; on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (Article 20);
- Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (Article 11).

Each of the directives contains an identical provision “1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of .....”. The directives explicitly allow that “these bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals’ rights”.

In addition to the general requirement for establishing or mandating a body, the directives set out the following mandatory responsibilities of these bodies:

- providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
- conducting independent surveys concerning discrimination,
- publishing independent reports and making recommendations on any issue relating to such discrimination.<sup>51</sup>
- The directives as obligatory EU law set out only minimum requirements for equality bodies, and they do not “guarantee complete independence, effectiveness, sufficient powers and adequate resources for equality bodies.”<sup>52</sup>

### **EU soft law**

Comprehensive standards related to equality bodies are set out in the Commission Recommendation of 22 June 2018 on standards for equality bodies, which stipulates that the equality bodies established in the MS in line with the equality directives should carry out their functions in an independent and effective way.<sup>53</sup> The document, which is of non-obligatory nature, “goes further in recommending a mandate that encompasses the grounds of gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation, in the areas of employment and occupation, access to and supply of goods and services, education, social protection and social advantages. This is in line with the pending proposal of 2 July 2008 for a Council Directive on implementing the principle of equal treatment between persons, which covers all these grounds and also reflects the situation already established for equality bodies in most Member States.”<sup>54</sup> These standards were developed following the observations provided by the EC in its reports on the implementation of the equality directives, as well as the European Parliament resolution of 2015, which called on the EC “to introduce common standards and checks to ensure the independence and effectiveness of national equality bodies”.

<sup>48</sup> Committee on the Elimination of Racial Discrimination, General Recommendation XVII, Establishment of national institutions to facilitate implementation of the Convention, (Forty-second session, 1993), A/48/18

<sup>49</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); and Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

<sup>50</sup> Neill Crawley, Equality bodies making a difference, (European Commission, 2018) p. 47.

<sup>51</sup> In addition, the Directive 2010/41/EU includes the responsibility of “exchanging, at the appropriate level, the information available with the corresponding European bodies, such as the European Institute for Gender Equality”.

<sup>52</sup> Equinet, Developing Standards for Equality Bodies, Working Paper, (2016), p.2.

<sup>53</sup> Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, C/2018/3850, OJ L 167 4.7.2018, Ch I, (2).

<sup>54</sup> Neill Crawley, Equality bodies making a difference, (European Commission, 2018) p. 121.

The Recommendation includes standards in the areas of mandate, independence, effectiveness, accessibility and coordination, categorized by domains as follows:

1. Mandate:
  - 1.1. *Grounds and scope covered by the equality bodies’ mandate*
  - 1.2. *Functions covered by the equality bodies’ mandate*
    - Independent assistance
    - Independent surveys
    - Independent reports
    - Recommendations of equality bodies
    - Promotion of equality
2. Independence and effectiveness
  - 2.1. *Independence*
  - 2.2. *Resources*
  - 2.3. *Complaint submission, access and accessibility*
3. Coordination and cooperation

### **CoE standards**

Comprehensive and elaborate standards on equality bodies are contained in the Opinion on equality bodies of 2011 of the Human Rights Commissioner of the Council of Europe.<sup>55</sup> In addition to the implementation of functions and powers they are accorded in line with legislation, this document puts focus to the advancement of their mandate and especially on the potential of the equality bodies for wider impact in society and encouraging social change. The document has a unique approach, since it examines the two key indicators of independence and effectiveness “in relation to the conditions created for such structures by external actors and in relation to the operation, the structures and the factors which lie within the control of these bodies”.<sup>56</sup>

The ECRI General Policy Recommendation No 2 revised in 2017 on equality bodies to combat racism and intolerance contains elaborate standards on NHRIs.<sup>57</sup> Along with the EC Recommendation of 2018, these standards “have created a new context full of potential for equality bodies” and “valuably address equality bodies as institutions with a necessary role to play in the creation of more equal, inclusive, cohesive, and democratic societies”.<sup>58</sup> The most recent trends in developing the standards for NHRIs clearly demonstrate the striving to develop the potential of the NHRIs for wider impact in society and encouraging social change.

The standards set in the EU soft law (Commission Recommendation of 22 June 2018) and the Opinion of the Human Rights Commissioner of the CoE on equality bodies of 2011, as well as the ECRI General Policy Recommendation No 2 revised in 2017 on equality bodies to combat racism and intolerance are taken as a basis for the matrix of indicators in this Methodology, as the most elaborate and highest standards for equality bodies. In addition, the explanations provided by FRA and CoE have been taken into account.<sup>59</sup>

### **Standards for Data Protection Authorities**

General Data Protection Standards, including standards for Data Protection Authorities are primarily developed at the level of the EU.

The principle of independence of the data supervisory authority is enshrined in the Charter of Fundamental Rights of the European Union – Article 8(3), which sets out that compliance with data protection shall be subject to control by an independent authority.<sup>60</sup>

An independent supervisory authority for data protection was introduced with the Data Protection Directive from 1995<sup>61</sup> and more widely elaborated in the new 2016 EU Regulation (General Data Protection Regulation – GDPR).<sup>62</sup>

The elaborated GDPR rules on the Supervisory Authority (SA) are classified in two categories: 1) independent status and 2) mandates, tasks and powers. The set standards relate to:

1. Independent status
  - 1.1. Independence
  - 1.2. General conditions for the members of the supervisory authority
  - 1.3. Rules on the establishment of the supervisory authority.

Independence is defined in terms of Supervisory Authority and its Members. The Supervisory Authority’s independence should be “complete” in performing its tasks and exercising its powers”. (Article 52, Par 1.) The notion of “complete independence” incorporates the previous judgements of the Court of Justice of the European Union (CJEU).<sup>63</sup> Its

<sup>55</sup> Commissioner for human rights, CoE, Opinion of the Commissioner for human rights on national structures for promoting equality, CommDH(2011)2, Strasbourg, 21 March 2011.

<sup>56</sup> Article 4.3.

<sup>57</sup> Council of Europe, ECRI, General policy recommendation No 2: Equality bodies to combat racism and intolerance at national level, adopted on 7 December 2017, CRI(2018)06.

<sup>58</sup> Niall Crawley, Equality bodies making a difference, (European Commission, 2018) p. 65.

<sup>59</sup> FRA and CoE, Handbook on European Non-Discrimination Law (2010).

<sup>60</sup> Charter of Fundamental Rights of the European Union, OJ EU 2012/C 326/02.

<sup>61</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data OJ L 281, 23/11/1995.

<sup>62</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4/5/2016.

<sup>63</sup> CJEU, C-518/07, European Commission v. Federal Republic of Germany [GC], 9 March 2010, CJEU, C-614/10, European Commission v. Republic of Austria, 16 October 2012, CJEU, C-288/12, European Commission v. Hungary [GC], 8 April 2014.

members should “remain free from external influence, whether direct or indirect, and shall neither seek nor take instructions from anybody” (Article 52, Par 2.). Incompatibility of actions and occupations for members is also prescribed (Article 52, Par 3.). The other provisions on independence are obligations of the Member State to ensure that the supervisory authority:

- is provided with human, technical and financial resources, premises and infrastructure necessary for effective performance of its tasks and exercise of its powers;
- chooses and has its own staff which shall be subject to the exclusive direction of the member or members;
- is subject to financial control which does not affect its independence and that it has separate, public annual budgets, which may be part of the overall state or national budget.

Strict conditions are set out for the members of the SA:

- They should be appointed in a transparent procedure. The Regulation does not prescribe that members are exclusively appointed by the Parliament; it provides the possibility that they are also appointed by the Government, President, or a special appointment body.
- Qualifications, experience and skills, in particular in the area of protection of personal data, are required from the members.
- GDPR prescribes that the duties of a member would end “in the event of the expiry of the term of office, resignation or compulsory retirement, in accordance with the law of the Member State concerned”.

A member shall be dismissed only in cases of serious misconduct or if the member no longer fulfils the conditions required for the performance of the duties.

- In line with the GDPR, the MS must regulate by Law:
- the establishment of each supervisory authority;
- the qualifications and eligibility conditions for appointment of member/s;
- the rules and procedures for the appointment of the member/s;
- the duration of the term of the member/s, which cannot be less than four years, except for the first appointment after the entry into force of the Regulation;
- whether and, if so, for how many terms the member/s of each supervisory authority shall be eligible for reappointment;
- the conditions governing the obligations of the member/s and staff of each supervisory authority, prohibitions on actions, occupations and benefits incompatible therewith during and after the term of office and rules governing the cessation of employment.

The most elaborate provisions of the GDPR relate to the tasks and powers of the Supervisory Authority. The tasks could be classified in the following categories:

- Monitoring:
  - In general the implementation of the Regulation
  - Developments relevant for data protection
  - Keeping of internal records of infringements
- Promoting awareness:
  - Of the public in general (with specific attention to children)
  - Of controllers and processors
- Advisory:
  - Advise national authorities
  - Advise on processing operations
- Handling complaints
- Investigations:
  - Conduct investigations on the application of this Regulation, including on the basis of information received from another supervisory authority or other public authority;
- Regulatory/authorisations:
  - Encourage the drawing up of codes of conduct pursuant to Article 40(1) and provide an opinion and approve such codes of conduct which provide sufficient safeguards, pursuant to Article 40(5);
  - Encourage the establishment of data protection certification mechanisms and of data protection seals and marks pursuant to Article 42(1), and approve the criteria of certification pursuant to Article 42(5);
  - Publishing the criteria for accreditation of a body for monitoring codes of conduct and of a certification body; conduct their accreditations;
  - Authorisation of contractual clauses and provisions referred to in Article 46(3);
  - Approving binding corporate rules pursuant to Article 47;
  - Adopt standard contractual clauses referred to in Article 28(8) and in point (d) of Article 46(2);
  - Establish and maintain a list in relation to the requirement for data protection impact assessment pursuant to Article 35(4);
- Information and cooperation:
  - Upon request, provide information to any data subject concerning the exercise of their rights under the Regulation and, if appropriate, cooperate with the supervisory authorities in other Member States to that end;

- Cooperate with, including sharing information, and provide mutual assistance to other supervisory authorities with a view to ensuring the consistency of application and enforcement of the Regulation;
- Contribute to the activities of the Board.

The SA powers precisely defined in the GDPR correspond to the tasks and are classified in three categories – a) investigative, b) corrective and c) authorisation and advisory powers.

The EU further “exports” the standards set in its bilateral agreements with third countries, and in the framework of the conditionality policy in general.

In the Council of Europe context, the sole Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108) did not originally provide for the setting up of national supervisory authorities. The 2001 Additional Protocol to Convention 108, however, enhanced the data protection guarantees by setting up supervisory authorities that “shall exercise their functions in complete independence”. Finally, the Modernised Convention 108+ from 2018<sup>64</sup> includes a chapter on supervisory authorities, which proclaims the principle of complete independence and sets out the mandate and powers these institutions should have. Its provisions, although less elaborate and more generalised, essentially correspond to the EU GDPR.

As this Convention is open for accession by non-Contracting Parties of the CoE, it is the only legally binding international instrument on data protection and is assessed as a potential for a universal standard.<sup>65</sup> In this Methodology the GDPR and the Convention 108+ are taken as main standards for setting the indicators for data protection supervisory authorities.

## Standards for bodies on free access to public information

Among NHRIs whose performance has been assessed in this research, the international legal framework on free access to public information is the least developed one in regard to independent authorities.

The primary source of the right to free access to public information is the International Covenant on Civil and Political Rights<sup>66</sup> (ICCPR), which provides that: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>67</sup>

The General Comment No 34 of the UN Human Rights Committee, adopted in 2011<sup>68</sup>, which is an authoritative interpretation on the scope and limits of the right to information under Article 19 of the ICCPR, further elaborated the free access to information, but still did not include any recommendation on independent bodies for free access to information.

The standards set out by the Committee have been further developed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his 2013 report to the General Assembly on the right to access information and its relationship with the right to truth.<sup>69</sup> In this Report the Special Rapporteur recommended that:

“101. National laws should establish the right to lodge complaints or appeals to independent bodies in cases in which requests for information have not been dealt with properly or have been refused”, and “103. States should, in particular, consider the appointment of a focal point, such as an information commissioner, to assist in the implementation of national norms on access to information or the creation of a State institution responsible for access to information. Such mechanisms could be mandated to process requests for information, assist applicants, ensure the proactive dissemination of information by public bodies, monitor compliance with the law and present recommendations to ensure adherence to the right to access information.”<sup>70</sup>

The joint declaration by the international freedom of expression rapporteurs from the UN, OAS, AU and OSCE on access to information and on secrecy legislation declared that “Those requesting information should have the possibility to appeal any refusals to disclose to an independent body with full powers to investigate and resolve such complaints.”<sup>71</sup>

The CoE Convention on free access to information does not entail an obligation to establish an independent body.<sup>72</sup> Implicitly, it notes that the review procedure could be “before a court or another independent and impartial body established by law.”<sup>73</sup>

An important document for free access to information is the UNECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (The Aarhus Convention), which is detailed in terms of

<sup>64</sup> CoE, Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No 223), 10 October 2018.

<sup>65</sup> European Union Agency for Fundamental Rights and Council of Europe, Handbook on European data protection law, 2018 Edition (2018), p. 24 and p. 28.

<sup>66</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>67</sup> ICCPR, Article 19.

<sup>68</sup> UN HRC, General comment No 34, Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011.

<sup>69</sup> UN, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/68/362, 4 September 2013.

<sup>70</sup> Ibid, p. 21.

<sup>71</sup> Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 6 December 2004, in Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression, OSCE, The representative on the freedom of the media, Vienna, 2013, p. 35.

<sup>72</sup> Council of Europe Convention on Access to Official Documents, CETS 205, 11 June 2008.

<sup>73</sup> Art 8, Par 2.

the rights and procedures for access to environmental information. However, just as the CoE Convention, it does not recommend, nor does it consist standards on independent bodies. As the European Community has acceded to the Convention<sup>74</sup>, the EU Member States are obliged to implement it.

The EU, through its conditionality policy, has favoured creation of independent bodies for free access to public information and it includes an assessment on their functioning in the Annual Report on the Western Balkan countries.

As there are no explicit international standards for independent bodies on free access to information, in this Methodology the general standards for NHRI are adapted for the matrix of indicators. In terms of powers and mandate – they have been derived from the content of the right to free access to information, as described in the standards above, focusing on:

- Monitoring and oversight of the implementation of the Law on Free Access to Information;
- Handling complaints;
- Promotion and training;
- Promotion of proactive dissemination of information by public bodies;
- Advisory role – recommendations, opinions and initiatives; instructions.

## Domains/dimensions of effectiveness of NHRI

Existing literature provides a variety of approaches to classification of domains/dimensions of effectiveness of NHRI.

The Report on Assessing the Effectiveness of National Human Rights Institutions has determined the following domains:

- a) Character of the national institution<sup>75</sup>
- b) Mandate
- c) Public accountability.<sup>76</sup>

Richard Carver, on the other hand, develops a slightly distinct approach that measures the effectiveness of NHRIs, classifying the following dimensions:<sup>77</sup>

- 1) Independence
- 2) Resources and planning
- 3) Diversity, civil society and accessibility
- 4) Mandate and powers.

The latter approach is most similar to the classification of domains provided in the call for experts for this research, which is the basis for the established classification:

- 1) Independence and ability to work without pressure,
- 2) Availability of resources and capacities,
- 3) Information, accessibility and cooperation with other relevant actors, and
- 4) Mandate and powers.

The third domain has been slightly modified – information and accessibility has been added to the title. This “broadening” of the domain enabled us to capture important aspects of the work of NHRI’s – such as standards on providing public information to citizens, accessibility to specific target groups, etc.

## Matrix of indicators

The matrix of indicators has been designed for each of the NHRIs.

The matrix of indicators includes:

- Domain;
- Indicators per domain;
- Explanation of value of indicators
  - *Indicators are tied to scores. Each value of indicator is described as a certain state/level of the indicator.*
- Data type
  - *What data is to be collected. For example, number of years of the mandate; existence of a legal provision; number of full-time employees at the NHRI, or annual budget of the NHRI as a percent of overall national budget.*
- Source of data
  - *Where the data is to be collected from: Constitution/law; another legal provision; strategic documents; public survey, etc.*
- Data collection method
  - *How the data is to be collected. The data will be mostly collected through desk research. It is important to*

<sup>74</sup> 2005/370/EC: Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, OJ L 124, 17 May 2005, p. 1–3.

<sup>75</sup> Includes independence.

<sup>76</sup> Richard Carver, Assessing the Effectiveness of National Human Rights Institutions, International Council on Human Rights Policy, Office of the United Nations High Commissioner for Human Rights, (Versoix, Switzerland, 2005)

<sup>77</sup> Richard Carver, Measuring the impact and development effectiveness of national human rights institutions, A proposed framework for evaluation (2014).

[https://www.academia.edu/27945167/Measuring\\_the\\_impact\\_and\\_development\\_effectiveness\\_of\\_national\\_human\\_rights\\_institutions\\_a\\_proposed\\_framework\\_for\\_evaluation](https://www.academia.edu/27945167/Measuring_the_impact_and_development_effectiveness_of_national_human_rights_institutions_a_proposed_framework_for_evaluation)

identify the existence of data, before the scoring exercise, so that a request for free access to information can be sent if data are not available from public sources. Consequently, request for free access to information is an alternative method of data collection.

- Value of indicators (MNE, MKD, SRB)
  - These are the scores given by the researches, based on the research.

### Indicators

The indicators have been defined based on the approach to the evaluation of effectiveness, which is a combined structural and mandate-based approach. The specific indicators per domain are constructed from the standards referring to the relevant bodies, which are elaborated under the Subtitle of the Methodology: *International standards related to NHRIs*.

While many indicators are identical for some bodies, or similar, they are still nuanced as the standards are different – especially related to the mandate and powers they have.

Both quantitative and qualitative indicators are applied in this research.

All indicators refer to the year 2018, which is taken as baseline. The only exceptions are indicators on public opinion polls, which can be dated three years back, as it was recognised that such polls are generally lacking in the region.

Indicators are presented in Attachment 1.

### Coding values and scoring

The coding methodology draws on the methodology established by Carver<sup>78</sup>. Consequently, the coding values have been set from 0-2. This approach was considered most applicable and relevant, as it provides a limited, but still sufficient range of options for definition of the indicators.

All scores feed into a scale which shows a measurement of each separate indicator per country, as well as per domain. The values of indicators are weighed, depending on the number of indicators per domain. In addition, some indicators have been broken down to sub-indicators, to capture the specifics of a particular issue.

The indicator per domain is estimated as a sum of the values of indicators in the domain. Finally, an overall indicator is estimated and an overall score of the effectiveness for each national human rights body in each country, which is a sum of the indicators per domain. Each domain participates equally in the final score – 25%, as all domains are considered equally important for the effectiveness of the NHRI. Consequently, the scale of indicators per country per body is 0-8.

If an NHRI body is a multi-mandate one, then it was scored both in terms of each mandate it has and as an institution. The score of a multi-mandate body as an institution is based on the average of the total sum of indicators per each mandate.

## Limitations to the Methodology

Relevant studies on international level, including developed methodologies with specific indicators are available, but similar research for the Western Balkans is lacking.

The standards taken as a basis for the indicators are the highest standards available at global or European level. Some of them are relatively new and only started to be applied at the European level very recently – such as the GDPR. Consequently, comparability with other research at global level will be limited to the indicators which are based on similar standards.

For qualitative indicators, an objective assessment by the national experts was needed, as well as to ensure consistency across the country assessments. What is common in the use of such methods, the assessment may be influenced by personal positioning of the expert. In the future, a panel of experts or peer review could contribute to alleviating these factors.

The selected indicators depended on the nature of the domain, but also on the availability of data and resources, such as time and researchers. Consequently, in the domains 1. Independence and ability to work without pressure and 4. Mandate and powers, more indicators are connected to the structural nature of these domains and are based on fulfilling standards that are legislative requirements, which, in the regional context seem easier to fulfil. This means that full proportionality in types of indicators between domains could not be ensured. Inclusion of proportionally more performance or qualitative indicators would probably change the final scores per domains.

The results of the research provide a snapshot for 2018, which was set as a baseline year. While this approach provides comparability between the countries and NHRIs, it could not fully take into account the complexity and dynamics of development of the NHRIs in the WB since their establishment. However, it presents a sound basis for further national in-depth and/or comparative research.

<sup>78</sup> Ibid.

# RESEARCH FINDINGS

## Effectiveness of NHRIs in Montenegro, North Macedonia and Serbia – general scores

The general scores per institution per country are within the range from the highest 5.33 (Commissioner for Protection of Equality – SRB) to the lowest 2.80 (Commission for Protection against Discrimination - MKD). Min: 0; Max: 8

MNE	Score <sup>79</sup>	MKD	Score	SRB	Score
<b>Ombudsperson</b>	5.17 (5.20; 5.13)	<b>Ombudsperson</b>	4.71	<b>Protector of Citizens</b>	4.99
<b>Agency for Personal Data Protection and Free Access to Information</b>	4.19 (4.18; 4.22)	<b>Commission for Protection against Discrimination</b>	2.80	<b>Commissioner for Protection of Equality</b>	5.33
		<b>Commission for Protection of the Right to Free Access to Public Information</b>	3.71	<b>Commissioner for Information of Public Importance and Personal Data Protection</b>	4.35 (4.37; 4.34)
		<b>Data Protection Directorate</b>	5.25		

Most of the bodies across the countries (six out of eight) have scored within the range 4.19-5.33. The average of the scores of all institutions in the three countries is 4.52, illustrating that they have scored slightly above the average of scores (4.00).

The average score per country is higher in Serbia (4.76) and Montenegro (4.68) than in North Macedonia – 4.12. The lower score for MKD is due to the weak legislative framework and inactivity of the Commission for Protection against Discrimination, as well as the lack of effectiveness of the Commission for Protection of the Right to Free Access to Public Information, which was practically non-operational in 2018.

The scores for multi-mandate bodies per each mandate are very similar, almost identical (the cases of the Ombudsperson and the Agency for Personal Data Protection and Free Access to Information in MNE and the Commissioner for Information of Public Importance and Personal Data Protection in Serbia). On the other hand, the allocation of mandates to separate bodies, which is the case in North Macedonia, does not seem to lead to more effective institutions performing those mandates. On the contrary, the difference in effectiveness per mandate in North Macedonia is the highest (2.45 points), as opposed to Montenegro (0.89) and Serbia (1.00).

The results indicate that the effectiveness of the institutions does not correlate to the years of existence of the institution itself. This (non)correlation leads to the conclusion that other factors, rather than the years of existence, are prevailing for the effectiveness of the institution.

Presented by rank, the scores of institutions are as follows:

Institution/country	General score ↓
	<i>min: 0; max: 8</i>
Commissioner for Protection of Equality – SRB	5.33
Data Protection Directorate – MKD	5.25
Ombudsperson – MNE	5.17
Protector of Citizens – SRB	4.99
Ombudsperson – MKD	4.71
Commissioner for Information of Public Importance and Personal Data Protection – SRB	4.35
Agency for Personal Data Protection and Free Access to Information - MNE	4.19
Commission for Protection of the Right to Free Access to Public Information - MKD	3.71
Commission for Protection against Discrimination - MKD	2.80

The ranking demonstrates highest convergence in scores of the Ombudsperson in the three countries – ranging from 5.17 in Montenegro to 4.71 in North Macedonia (difference of 0.46 points). On the other hand, high variances are

<sup>79</sup> For multi-mandate bodies the total score is presented first, while separate scores per mandate are presented in brackets.

observed in the effectiveness of the equality body – highest in Serbia (5.33) and lowest in North Macedonia (2.53 points) and the bodies for free access to public information and data protection – where divergence is highest between the two bodies in North Macedonia (2.45 points).

As to the lowest ranked institution – the Commission for Protection against Discrimination in North Macedonia, it should be noted that the new anti-discrimination law of 2019 brought many improvements to the legal framework, but since this research is a snapshot of 2018, these are not taken into regard.

## Effectiveness per domain

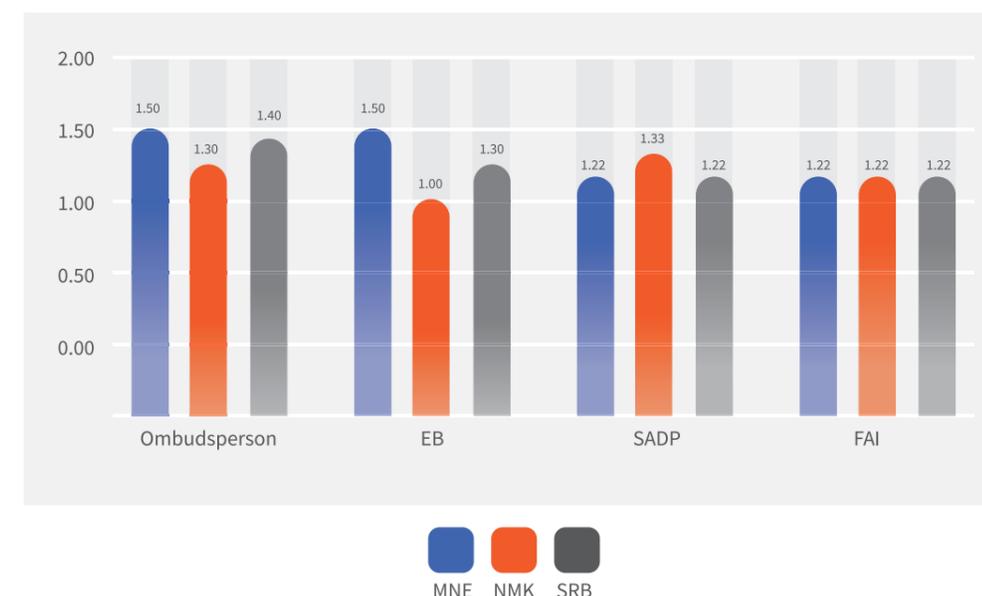
The comparative findings for all the mandates of the NHRIs for the three countries in each domain are presented here. The table below shows the average scores per domain: Min: 0; Max: 2

(1) Independence and ability to work without pressure	1.29
(2) Availability of resources and capacities	0.98
(3) Information, accessibility and cooperation with other relevant actors	1.01
(4) Mandate and powers	1.24

It is evident that the average scores are higher for independence and ability to work without pressure, as well as mandate and powers. This might be partly due to the more structural character of the indicators under these domains, as more indicators in these domains are defined on the basis of legal provisions, and not actual compliance/performance.

In the beginning of each section, the scores per mandate per country are presented. In the discussion that follows, the scores and findings for each indicator are elaborated. In the end of each section, the main conclusions are extrapolated.

### Domain 1: Independence and Ability to Work Without Pressures



The Ombudspersons scored very similar and highest in this domain: 1.3 to 1.5. The equality bodies scored between 1 and 1.5. The Montenegrin Ombudsperson scored highest – 1.5 and the Macedonian lowest – 1. The data protection supervisory authorities and institutions for free access to information scored very similarly: between 1.22 and 1.33. The relatively high scores in this domain are due to the fact that many of the indicators set for this domain are based on legal provisions, which are, on the other hand, based on relevant international standards.

The average value per institution for this domain is 1.29.

All NHRIs in the three countries have an **independent statutory basis**, which granted them all the highest score on this indicator (2). The Ombudspersons in the three countries are established by the Constitution, while all other NHRIs are established by law.”

The situation is somewhat different concerning the **appointment** process. Only in Montenegro the Ombudsperson satisfies the highest standard – appointment “by the legislature after public nomination, in participatory and transparent procedure”. The Montenegrin practice established since the law in 2014, foreseeing participation of civil society, requires parliamentary approval and a public nomination by the President and it can be emphasised as a best practice in the region regarding the institutions analysed herein. Both in Serbia and North Macedonia, when the appointment procedure for the Ombudspersons and the equality bodies comes to the responsible committee in the Parliament, it is very much closed and non-transparent, so they scored 1. The SADP and FAI bodies all scored high (2), as they are appointed by an independent body (Parliament), through a transparent procedure, but the standards are not explicitly set as to requiring the procedure to be “participatory”.

On **clear criteria for membership**, the Ombudspersons in Macedonia and Montenegro scored highest (2), since the law requires specific human rights expertise, while the Serbian law resorts to a more general provision of experience on legal affairs “within the competence of the PC” and consequently scored medium (1) in this indicator. Specific human rights expertise is required in both Serbia and North Macedonia for the equality body; however, in North Macedonia this is watered down by the ‘or social sciences’ education art,<sup>80</sup> which made the provision porous to unqualified persons.<sup>81</sup> The data protection supervisory authorities in all countries received a medium score (1), as none of the relevant laws requires a more specialised experience in data protection. The Macedonian Commission for Free Access to Public Information scored high (2), since the legal requirements are explicit as to the relevant experience in freedom of expression or public information.

The **term of office** for the Ombudsperson in North Macedonia (8) exceeds the length recommended by GANHRI (5-7 years), unlike Montenegro and Serbia, which scored 2 as their ombudspersons have mandates of 6 and 5 years, respectively. All the other NHRIs are also within the range for the highest score on this indicator, although the terms of office are different: the equality body, the SADP and the FAI institution in North Macedonia and the EB in Serbia – five years; the SADP-FAI in Montenegro – four years and the SADP-FAI in Serbia – seven years. For all the institutions in the three countries, the term of office may be renewed once, which is also in accordance with highest standards.

On **avoidance of conflict of interest**, only the Ombudsperson in Serbia received the highest score, as it refers to the special law regulating the conflict of interest, while all the other institutions scored medium (1), due to the vague legal provisions. Specific legal guarantees for extending the conflict of interest provision beyond the term of office for SADP and FAI institution are provided only in Montenegro, while in Serbia and North Macedonia such guarantees are lacking.

Related to **immunities**, all institutions of ombudspersons (for which the international standard for immunity has been established) scored medium (1). While general functional immunity is granted, no protection against threat and coercion is provided in the relevant laws.

Regarding the criterion **‘no instruction from government’**, the Ombudsperson in North Macedonia and in Serbia have the highest score attainable because of explicit provisions on prohibition of interference, albeit not specifically quoting “the Government”, but rather stating that “no one has the right to influence his/her work...”<sup>82</sup> All other institutions in the three countries got a medium score (1), as the laws contain only general legal provisions on independence.

All institutions, except for the Montenegrin Ombudsperson, received a medium score on **removal from office**, since the legal provisions are not assessed as clear enough to avoid arbitrariness in removal. In practice, the national authorities do not resort to removal, but rather to direct or indirect pressure, as shown by the scores on the indicator **submission/agreement to pressure**. The ombudspersons, the EBs in Serbia and Montenegro, as well as the SADP in North Macedonia showed no submission/agreement to pressure in 2018<sup>83</sup>. The EB and the FAI institution in North Macedonia, as well as the SPDP-FAI in Montenegro and in Serbia were all subject to pressure in 2018, which led to the medium score for the Montenegrin SADP-FAI (1) and lowest scores (0) for other institutions. All cases deserve specific attention and further analysis. In Montenegro the case referred to rejection of 90 requests for free access to information on finances of political parties submitted by NGO MANS, which occurred two days after the Special prosecutor for anti-corruption initiated an investigation on donations to the ruling Democratic Party of Socialists (DPS). The NGO maintained that free access to information had been politicised, in view of the upcoming local elections (May 2018).<sup>84</sup> In the case of the equality body in North Macedonia, the most contested case was the Opinion that CPAD adopted in the case of the runaway former Prime Minister - Nikola Gruevski. In the opinion, which was later used as one of the key proofs by Gruevski in his asylum claim in Hungary, the CPAD found that Gruevski was subjected to direct discrimination on grounds of personal and social status in the area of justice and administration.<sup>85</sup> In the case of the FAI institution in North Macedonia, the lack of appointment of commissioners practically resulted in blocking the functioning of the institution for more than six months in the course of 2018. By refusing to cooperate, the competent or controlled authorities often made it difficult or even impossible for the SADP – FAI in Serbia to take legal action, or the measures taken had no effect.<sup>86</sup>

Finally, on the indicator on **public opinion on independence**, none of the institutions managed to reach 50%, which was the set minimum, so all of them scored 0. The Montenegrin Ombudsperson is the closest to this minimum, as 49 % of the respondents considered the citizens independent, while in North Macedonian and Serbia this percentage is 33% and 31%.<sup>87</sup> The Balkan Barometer of the Regional Cooperation Council survey is the only public opinion poll available for the three countries, measuring public opinion on independence and trust in the Ombudspersons. No public opinion polls measuring opinion on independence or trust in other NHRIs in the region are publically available. It seems that the NHRIs themselves have not taken any actions to measure the attitudes of citizens towards them.

While the scores show little variance, it can be observed that this small variance refers to the score on the domain in general and not to all or majority of the indicators, as differences and nuances in separate criteria and for specific institutions are evident. This is particularly evident with the indicators on critical issues regarding independence – clear criteria for membership, appointment process, no instruction from the Government, removal from office, avoidance of conflict of interest. In all these indicators, which are based on legal provisions, there are significant differences between the countries and between the bodies. Only certain provisions on certain bodies can be extrapolated as best

80 ADL 2010 Art. 18.  
81 Biljana Kotevska, Macedonia Country Report, Effectiveness of NHRIs in the Western Balkans – Montenegro, North Macedonia, Serbia (Civil Rights Defenders, EPI, 2019)  
82 Serbia, Law on Protector of Citizens, Art. 2, para. 1.  
83 In Serbia pressure on the previous PC culminated in 2017, due to which he resigned from office.  
84 MANS, Transparency International: Odbijanje zahtjeva za pristup informacijama izaziva zabrinutost (2018). Available at: <https://www.mans.co.me/odbijanje-zajtjeva-za-pristup-informacijama-izaziva-zabrinutost/>  
85 Commission for Protection of Discrimination, Opinion No 0801-295/1 from 5 November 2018 (Комисија за заштита од дискриминација, ‘Мислење Бр. 0801-295/1 на Комисијата за заштита од дискриминација донесено на 05.11.2018).  
86 Commissioner for Free Access to Information and Data Protection, Annual Report 2018, 4.  
87 Regional Cooperation Council, ‘Balkan Barometer’ (2018), p. 118, Available at: [https://www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_PublicOpinion\\_2018.pdf](https://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2018.pdf)

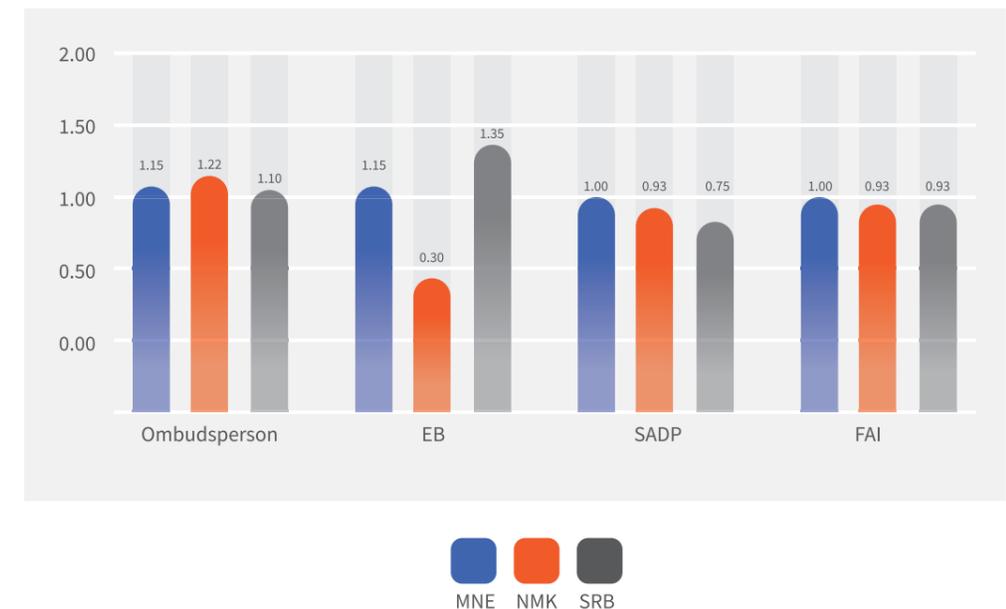
practices, but this cannot be generalised for any of the countries or types of bodies. Such a situation points to the lack of systematic approach towards the NHRIs in the region.

Comparative analysis leads to the conclusion that the statutory framework in the three countries has established the basis for independence, which is above the minimum. However, key challenges still pertain in the appointment process and the appointment criteria, which leave room for arbitrariness and influence. Challenges also remain regarding specific safeguard mechanisms for independence – such as absence of protection from threat or coercion, lack of explicit ban on instruction from the government, or insufficiently precise definition of conflict of interest.

The practice shows that authorities rather resort to explicit or implicit pressure than to removal, thus avoiding international criticism of direct interference in the independence of the NHRIs, but still effectively and essentially harming independence. This can be illustrated by the cases of the Serbian Protector of Citizens, who resigned following constant pressures in 2017 and the institutions’ persisting uncertainty as regards financial resources<sup>88</sup>, blockage of the institution by non-appointment of members as in the case of the Macedonian FAI<sup>89</sup>, etc.

Finally, little attention is paid to the legitimacy of the NHRIs. The public opinion on the independence of ombudspersons has still not reached 50% in any of the countries, while polls are lacking for all other NHRIs.

## Domain 2. Availability of resources and capacities



The average score per institution in this domain is 0.98, which is 0.31 points lower than for domain 1.

The Ombudspersons also had very similar scores in this domain: from 1.20 (Serbia) to 1.10 (North Macedonia). The variances are broadest for equality bodies. While the Serbian EB has the highest score in this domain – 1.35, the EB in North Macedonia has scored the absolute minimum of 0.30 (also from all domains). The Montenegrin Ombudsperson scored the same for this mandate, as well – 1.15. The score of the EB in North Macedonia is the result of two main factors: (1) the EB is, under the law, not allowed to employ people<sup>90</sup> and, basically, functions with the help of volunteers and “borrowed staff” from the Ministry of Labour and Social Policy, and (2) the EB has a very low budget (almost three times lower than the other lowest budget of a NHRI in the country – the budget of the FAI authority), which prevents the body from exercising most of its mandate.

The scores for data protection supervisory authorities and institutions for free access to information are again within the range of 0.75 to 1.00. These institutions scored lower than the ombudspersons in this domain.

Regarding the indicator **separate and independent budget**, three aspects were taken into account: whether the NHRI has a separate budget line; whether the Budget is decided by the Parliament (not Government); and whether the NHRI is involved in budgetary preparations. The Budget for all NHRIs in the three countries is decided by the Parliament. However, their involvement in budgetary preparations is mainly assessed as inadequate. In Serbia, all NHRIs have a separate budget line, which is not the case in North Macedonia, where this is the case only for the Ombudsperson. All NHRIs in the three countries have scored medium related to this criterion, except for the EB in North Macedonia which got the score 0. However, reports also indicate the underspending of budget resources, as was the case with the Ombudsperson in Montenegro.<sup>91</sup> In addition, the vast part of the budget is spent on salaries, as shown in the country report for Montenegro.

88 Ivana Krstić, Serbia Country Report, Effectiveness of NHRIs in the Western Balkans – Montenegro, North Macedonia, Serbia (Civil Rights Defenders, EPI, 2019).  
89 Biljana Kotevska, Macedonia Country Report.  
90 According to Article 30 of the ADL (2010), “the expert, administrative and technical tasks are to be conducted by the Commission [the commissioners themselves]”.  
91 Marijana Laković Drašković, Daliborka Uljarević, Boris Marić, Wanda Tiefenbacher and Maja Stojanović, Kratki vodič kroz zakonodavni i institucionalni okvir zaštite ljudskih prava u Crnoj Gori (Centar za građansko obrazovanje, 2015).

None of the NHRIs in the three countries got the highest score on the indicator **adequate financial resources**. Medium grade (1), meaning that the institution “had enough financial resources for some parts of its mandate, but not for all”, was given to all ombudspersons, as well as to equality bodies in Serbia and Montenegro and to SAMP-FAI Montenegro. SAMP-FAI in Serbia and the SAMP and FAI in North Macedonia were assessed with the lowest score (0), which means that they do not have enough financial resources to fulfil their legal mandate. The case of the SAMP-FAI explained in the country report on Serbia is illustrative: according to the Commissioner, the funds in the Budget for 2018 were not sufficient even for the salaries of the existing number of employees, despite the fact that all the programming documents of the Government and the National Assembly, as well as the Action Plan for Chapter 23 stipulate that one of the goals is to strengthen the institution’s staff resources. Funds were secured last-minute from budgetary reserves, before payments were due.<sup>92</sup>

In the table below, the budgets of all NHRIs in the three countries are presented for 2018, as a sum (in EUR) and as a percentage of the national budget

in EUR	MNE		MKD		SRB	
	Budget of the NHRI	% of National Budget	Budget of the NHRI	% of National Budget	Budget of the NHRI	% of National Budget
Ombudsperson	672,175.68	0.0369	1,178,292.00	0.0342	1,651,233.26	0.016
EB			90,081.00	0.0026	771,647.63	0.0076
SADP	617,323.69	0.0339	278,211.00	0.0080	1,682,897.67	0.017
Institution for FAI			267,967.00	0.0078		
Total	1,289,499.37	0.07	1,814,551.00	0.05	4,105,778.56	0.04

The total percentage of each national budget spent for the NHRIs in the country ranges from 0.04% in Serbia to 0.07% in Montenegro, and it is in the middle for North Macedonia – 0.05%. The differences seem logical, taking into account the size of the country and the amount of its national budget. However, no proportionality can be observed in the individual allocations to the NHRIs in each country, except in the case of Montenegro, where both NHRIs (which have double mandates) have been allocated almost equal budgets.

In some cases there is little correlation between the amount allocated to the NHRI and the effectiveness as assessed by this research. Such is the case, e.g. with the EB in Serbia, which scored highest as an individual body, as well as the SAMP in North Macedonia, which scored second highest, although these institutions have received relatively lower funds from the national budgets than other NHRIs. In North Macedonia the discrepancy in this correlation is high between the SAMP and the institution for FAI – they both received almost equal funds, but the institution for FAI has scored much lower in this research. The EB in North Macedonia received the least amount of funds and is the least effective.

While it is very difficult to set a quantitative standard for sufficiency of the allocated funds to the NHRIs, the presented data and the evident discrepancies demonstrate the need for introducing more objective and measurable indicators for funding the functioning of the NHRIs.

On the indicator **transparent and meritocratic recruitment procedures**, all NHRIs are ranked medium (1), except for the EB in North Macedonia (0), which simply did not have any staff, only commissioners were appointed. The medium value of the indicator means that the NHRI recruits its own staff, but there are modes for transfer of staff by the Government or other forms of influence on staff recruitment exerted by the Government.

None of the institutions had the highest score on the sub-indicator **sufficient human resources**, which signifies that none has sufficient number of staff to fully carry out its mandate. The most frequent is the medium score (1), meaning that NHRIs have sufficient number of staff for some parts of their mandate, but not for all. Such is the case with ombudspersons in all three countries, with EBs in Montenegro and Serbia, as well as with SAMP-FAI in Montenegro and North Macedonia. The EB in North Macedonia and the SAMP-FAI in Serbia do not have sufficient staff to fully carry out their mandate and are consequently assigned 0. As stated previously, the EB in North Macedonia did not have any staff.

The Ombudsperson in Montenegro and the EB got the maximum value (2) for the sub-indicator **adequate human resources**, as it was assessed that *they have recruited sufficiently qualified staff members, from a variety of fields, providing expertise in all aspects of their work*. The ombudspersons in Serbia and North Macedonia, as well as the SAMP-FAI in Montenegro and Serbia were graded medium (1), meaning that *current staff has the expertise for carrying out the basic mandate, but the institution lacks specialised staff*. The EB and the institution for FAI in North Macedonia are graded with minimum (0), meaning that *the current staff does not have the expertise for all aspects of the institution’s mandate*. The growing requirements for expertise in data protection in the relevant NHRI pose an additional challenge,

<sup>92</sup> Serbia, Commissioner, Annual Report 2018, 1.

especially considering that the needs of the private sector have also increased.

The issue of **pluralism**, which is a specific indicator for the ombudspersons and the EBs, based on defined international standards, is the most unified for the countries, as they were all assessed with the medium score of 1, meaning that *the composition of (members and) staff reflects the diversity in society to some extent* and not fully. As an illustration, we will present here the Macedonian case of the Ombudsperson.<sup>93</sup> There is diversity in relation to gender, although women are somewhat overrepresented; as for ethnicity, Albanians are overrepresented, whereas some of the other ethnicities (such as the Turks) are underrepresented.<sup>94</sup> It is indicative that all the countries lack information as to other diversity – such as disability, sexual orientation or age.

As for **training**, neither of the NHRIs in Montenegro has a structured specialist training programme either for their employees or for their target groups, resulting in a medium grade (1). As indicated in the Montenegro country report, the funds allocated for training in the budget are scarce. The situation in Serbia seems to be different, as all institutions have received the maximum score (2), meaning that *the NHRI has a training programme including the NHRI members and staff and key target groups*. The Ombudsperson and the institution for FAI in North Macedonia were graded medium (1), while the EB got the minimum score (0). The specific indicator **internal structure enables focus on each part of mandate** for Ombudsperson and EB, is satisfied highly by all ombudspersons and EBs (2), except for the EB in North Macedonia, which scored the minimum 0.

On another specific criterion for ombudspersons and EBs **regional offices/outreach**, only the Ombudsperson in North Macedonia scored the maximum 2, as the institution has six regional offices spread throughout the territory of the country. In Serbia both the ombudsperson and EB have some regional offices, but they do not cover the whole territory of the Republic of Serbia. In Montenegro the situation is specific due its small size. Although the institution does not have offices outside of the capital city, it has “postal boxes” and has organised the “Days of the Ombudsperson” in several Montenegrin municipalities.<sup>95</sup>

An indicator was included on **learning and change**. The EB in Serbia and the SAMP and the institution for FAI in North Macedonia scored highest (2), meaning that *these NHRIs have an established system of regular strategic planning, with output and impact indicators and an evaluation system*. Medium score was assigned to both NHRIs in Montenegro and the Ombudsperson and EB in North Macedonia. The Ombudsperson in Serbia scored lowest (0).

There are few pieces of information on **financial control**, mainly from the state audit office reports. However, in none of the countries obligatory regular external control is established. The State audit offices perform audit once in several years, depending on their plans. All other NHRIs were rated medium (1), meaning that they have established internal control, but that the external control is irregular, except for the EB in North Macedonia, scoring 0, since it lacks both external and internal control. Although internal control is established in most NHRIs in the region, it seems to be weak, the only exception being the SAMP-FAI in Serbia, which has adopted several documents related to internal financial control.<sup>96</sup>

In sum, Domain 2 ‘Availability of Resources and Capacities’ presents some of the key challenges for the effectiveness of the NHRI. The insufficiency of financial and human resources is a serious issue, which can also indicate the lack of political will to increase the effectiveness of the NHRI. However, the scores in this domain also point to the insufficient capacity of most NHRIs in the three countries to further increase their own effectiveness, which is illustrated by the lack of strategic vision, scarce capacity for appropriate spending of the available funds, insufficient capacity building and professionalism, etc.

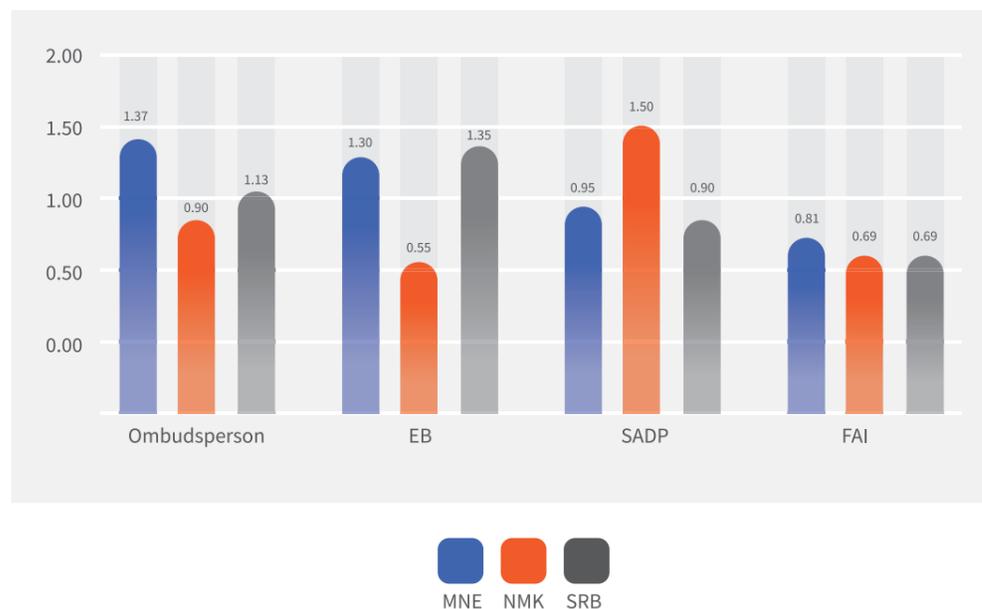
<sup>93</sup> The principle of equitable representation in relation to ethnicity is a constitutional principle in North Macedonia.

<sup>94</sup> ‘Годишен извештај за 2018 година - Народен правобранител [2018 Annual Report – Ombudsperson]’ (n. 85) 161–162.

<sup>95</sup> Zaštitnik ljudskih prava i sloboda Crne Gore, Godišnji izvještaj (2018), p. 23. Available at: [http://www.ombudsman.co.me/docs/1554124685\\_final-godisnji-izvjestaj-2018.pdf](http://www.ombudsman.co.me/docs/1554124685_final-godisnji-izvjestaj-2018.pdf).

<sup>96</sup> Strategic plan of internal control (2018-2020), Annual plan of work for 2018, and the Charter on internal control (2017).

### Domain 3. Information, accessibility and cooperation with other relevant actors



While the average score of indicators in this domain (1.01) is very close to that of Domain 2, the single scores vary much more significantly both in terms of NHRI mandate, as well as in terms of countries.

The Ombudsperson of Montenegro has scored best among ombudspersons (1.37), followed by the Serbian Ombudsperson (1.13). The Ombudsperson of North Macedonia scores significantly lower than its peers – only 0.90, which is by far the lowest grade per domain of this institution. The equality bodies/mandates in Serbia and Montenegro are almost at the same level of effectiveness for this domain: 1.35 and 1.30. The Macedonian EB also scored the lowest in this domain – 0.55. On the contrary, the Macedonian SADP has a leading score – 1.50, well in advance before the SADPs mandates of Montenegro and Serbia. FAI scores are quite even and low on average: 0.81 for Montenegro and 0.69 for North Macedonia and Serbia.

The indicator on **parliamentary scrutiny** was based on deliberation of the NHRI reports in the parliaments – in parliamentary bodies or in plenary session. Even this rather formal criterion was not satisfied by some NHRIs. The Parliament did not debate the Serbian SADP-FAI report neither in plenary session nor in the parliamentary bodies, thus scoring the minimum 0. The EB Report in North Macedonia was only debated in parliamentary bodies (thus receiving the score 1), which had not been the case in previous years. The reports of the Serbian Ombudsperson were only debated in the parliamentary bodies and not in plenary session not only in 2018, but three years before as well, and thus scored 1 on this indicator. All other NHRI reports were subject to parliamentary plenary debate (thus, the value 2 was assigned). However, as the Montenegrin report points out, “even if the reports of the NHRI are commonly on the agenda of the plenary sessions of the national Parliament, in most cases such plenary debates tantamount to presentation of the institution’s activities, rather than true scrutiny of its activities”. Hence the high score (2.0) “may reflect the adequate legislative framework rather than a substantial mechanism of checks and balances”.<sup>97</sup>

On **cooperation with Government**, we looked at the issue of consultation of NHRI on government policy proposals related to human rights. In Montenegro and in North Macedonia there is no obligation by the Government to consult the NHRIs, although the specific laws may provide the opportunity for NHRIs to contribute to laws and policy proposals, as is the case in Montenegro. Consequently, the ombudspersons and EB in Montenegro and North Macedonia received a minimum score (0). In Serbia, the Government has the obligation to receive an opinion from bodies on the draft laws and strategies within their jurisdiction, according to special laws,<sup>98</sup> but there is no obligation to provide feed-back on the provided proposals due to which all NHRIs got the middle score. This indicator was set slightly lower for SADP, due to the less explicit requirements in international standards. The SADP and institutions for FAI all received the middle score, except for the institution for FAI in North Macedonia, which scored 0.

The specific indicator set for ombudspersons and EBs **providing information to NHRI** refers to the obligation to provide data to the NHRI – in general, or related to specific cases. All ombudspersons, as well as EB in Montenegro and Serbia scored highest (2) as the executive and other branches/bodies have the obligation to provide relevant data to the NHRI, as well as data for evidence on specific cases. The score assigned to the EB in North Macedonia was 1, as there is only general obligation to provide relevant data, but not data for evidence on specific cases.

**Cooperation with other NHRIs** is existing, but usually not in a structured manner. The indicator itself was not set as a formal requirement for memoranda of understanding or other signed documents, but looked into actual proof of such cooperation. On this indicator only the Montenegrin Ombudsperson scored 2. The Serbian NHRIs scored medium (1), as the cooperation usually means participation in conferences, round tables, meetings and expert meetings in the organisation of NHRIs or other organisations,<sup>99</sup> referral to reports of other NHRIs,<sup>100</sup> rejection of complaints if citizens did not use the opportunity to address specialized NHRIs first,<sup>101</sup> joint initiatives, etc. In North Macedonia the Ombudsperson and the EB scored 1, while the SADP and the institution for FAI scored 0. This is assessed as “one of the weakest elements for all NHRIs in this domain is their mutual cooperation”, as the only sign of cooperation is the memorandum of understanding signed by the Ombudsperson and the CPAD, as well as forwarding cases which do not fall within Ombudsperson’s competence to the CPAD.<sup>102</sup>

The scores on **cooperation with NGOs** vary across countries and NHRIs, depending on whether the cooperation actually existed at all, and whether it was well structured or not. While the Montenegrin Ombudsperson scored highest (2), the Macedonian scored lowest (0), and the Serbian – middle (1). The high score of the Montenegrin Ombudsperson is due to having “actively and frequently teamed up with NGOs and the media, thus promoting its activities, especially as regards the rights of the child<sup>103</sup>, while in the Macedonian case – this was due to the Ombudsperson having maintained a very superficial and sporadic cooperation with NGOs.<sup>104</sup> The institution for FAI in North Macedonia scored low (0) in 2018, even though it had cooperated more with NGOs in the previous years, while the institution for FAI in Montenegro received a medium score (1). The Serbian NHRIs all scored 1, as cooperation existed, but it was not pursued in a structured manner.<sup>105</sup>

The indicator **providing information on rights** was based on the standard on publishing information on rights in an easy-to-read language, as well as provision of translation into “all languages commonly used in the country” for the ombudspersons and EBs, as the latter is an explicit standard for them. The Serbian and Montenegrin ombudspersons and EBs scored middle, since information is published in easy -to-read language, but not in all languages commonly used in the country. The Macedonian Ombudsperson and EB scored 0, as the information is not in an easy-to-read language, but rather formal. The SADP and the institutions for FAI all scored 1, as they published information on rights, but they are not in an easy-to-read language. Upon the specific **sub-indicator for SAPD providing information for data subjects** the Macedonian SADP scored highest (2) compared to the Montenegrin and Serbian SADPs, which scored middle (1), which means that Macedonian SA has publicised the rights of data subjects contained in the Modernised Convention 108, as well as the manner of providing assistance to non-residents.

The indicator on **accessibility** was broken down to sub-indicators for different NHRIs, to reflect the more precise requirements in international standards for specific categories. The general accessibility of the institution was measured through easily accessible premises, online, email and telephone services. According to this indicator, all ombudspersons, as well as other Serbian NHRIs scored high (2). The Montenegrin score of the EB and SADP-FAI, as well as the score for SADP in North Macedonia were medium. The EB and the institution for FAI in North Macedonia scored lowest (0). **Accessibility for persons with disabilities** remains an issue. Most NHRIs are accessible to persons with physical disabilities, but not other types of disabilities, such as sensory disabilities, resulting in middle score (1) for all ombudspersons, EB in Serbia and all SADP FAI. The EB in North Macedonia scored lowest, since its premises are inaccessible for physical disability, as well. It is worth mentioning that some NHRIs make serious efforts to increase accessibility for persons with disabilities, such as the EB and the SADP-FAI in Serbia, “as their websites are accessible for persons with disabilities, the latter also having a listening option”.<sup>106</sup> On **accessibility for children**, as a specific sub-indicator for ombudspersons, all ombudspersons scored differently – Serbia the highest (2), Montenegro in the middle (1) and North Macedonia – lowest (0).

Most NHRIs are active in **international networks and activities**. All NHRIs received a high score on **membership** in relevant international organisations/networks (2), except for the Montenegrin SADP-FAI, which scored low (0). Concerning **participation in international activities**, all ombudspersons and EBs in Serbia and Montenegro scored high (2), while EB in North Macedonia scored medium (1). The SADPs in North Macedonia and Serbia scored high (2), while the SADP in Montenegro scored low (0). All countries scored low in international activities concerning the mandate of FAI, which, apart from their low activity in this field, could also reflect the fact that official international activities are much less frequent than in other areas. As the indicators on international activities were set as quantitative, generally based on the number of relevant organisations in which the NHRI is a member/observer or the number of relevant international events in which it has participated, it does not provide an insight in the quality and actual contribution to and achievements from the membership/participation. Such assessment can neither be derived from the reports and public information of the NHRIs in the region, as they mainly list the activities but do not assess the substance of their own contribution to or achievements from the international activities. Consequently, additional research is needed in order to evaluate the level of socialization of the NHRIs from the region in the international human rights sphere. Under the specific indicator for **transnational cooperation on specific cases for the SADPs**, which was quantitatively set on the basis of number of cases, the Macedonian SADP ranked as highest (2), while the Serbian and Montenegrin SADPs scored middle.

<sup>97</sup> Jelena Džankić, Montenegro Country Report, Effectiveness of NHRIs in the Western Balkans - Montenegro, North Macedonia, Serbia (Civil Rights Defenders, EPI, 2019).  
<sup>98</sup> Serbia, Government’s Rules of Procedure, Art. 39 a) para. 4.

<sup>99</sup> Serbia, Commissioner, Annual Report 2018, 79.  
<sup>100</sup> Serbia, CPE, Annual Report 2018, 211.  
<sup>101</sup> Serbia, PC, Annual Report 2018, 104.  
<sup>102</sup> Biljana Kotevska, North Macedonia Country Report.  
<sup>103</sup> Jelena Džankić, Montenegro Country Report.  
<sup>104</sup> Biljana Kotevska, North Macedonia Country Report.  
<sup>105</sup> The Country report notes common activities such as speaking at NGO events, situation testing, meetings, campaigns, participation in fairs and other promotional activities, moot courts and prize competitions etc.  
<sup>106</sup> Ivana Krstić, Serbia Country Report.

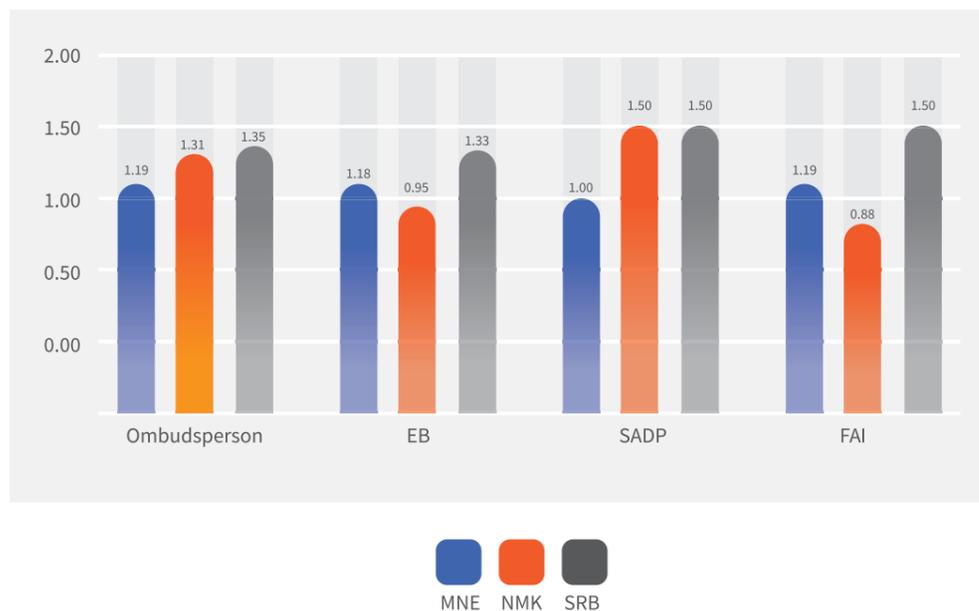
None of the ombudspersons and none of the EBs except for the EB in Serbia (scoring highest – 2) has a **communication strategy**. None of the SADPs and FAIs, except for the Macedonian ones, has a communication strategy (SADP was assigned 2 and the institution for FAI 1, since the communication strategy did not have a reference period). It also has to be noted that the indicator was set in such a way so as not to insist on a separate document, but rather essentially on a strategy, regardless of what form/which document it has presented. This situation is worrying, as one of the key mandates of NHRIs is promotion of human rights and therefore the NHRIs need to approach their target groups and the wider public in a well-planned manner.

**On confidentiality/protection** with the Ombudspersons and EBs it was checked whether and to what extent confidentiality is provided to witnesses and whistle-blowers. All ombudspersons and EBs scored middle, as they ensure confidentiality to a limited extent, mainly referring to the general legal framework. Only the Serbian ombudsperson scored highest (2), as it has its own bylaw regulating this issue and prescribing the obligation to protect whistle-blowers. The SADPs have the obligation for safeguarding professional secrecy within and after the term of office, which is sufficiently guaranteed only in North Macedonia, which scored high (2), and to a limited extent in Montenegro and Serbia, which scored middle – 1.

While the status and challenges in this domain rather vary per country and per body, some common issues can be extrapolated.

Challenges in the region are still pertaining even to a basic standard as debating the reports of NHRIs in Parliament, while substantial parliamentary scrutiny is missing. Cooperation with government through contribution to policy and law proposals is ongoing, but in many cases there are no formal requirements for the governments to request opinion from NHRI, and no obligation for feed-back. Structured cooperation with other NHRIs and with NGOs is generally lacking. While international cooperation is rather vivid, NHRIs do not provide information on the substance of their contributions and achievements of the international socialisation. Although NHRIs provide information on the rights, they are mostly in a formal, rather than easy-to-read language. Accessibility for persons with disabilities, especially sensory disabilities is an issue for all NHRIs. Only three NHRIs (and no ombudsperson) in the region have established a communication strategy, which points to a low level of capacity of NHRIs to approach their target groups and citizens. The protection of witnesses and whistle-blowers, as well as professional secrecy rules for SADPs in most cases need to be strengthened.

#### Domain 4: Mandate and powers



The average score of indicators in this domain is 1.24. The maximum score is 1.50, while the minimum 0.88, thus a difference of 0.62 points can be observed.

The Ombudspersons score within the range 1.19-1.35, the Serbian scoring highest (1.35), Macedonian in the middle (1.31) and Montenegrin – lowest 1.19. Variances are broader with the EBs – the EB in Serbia scoring highest – 1.33, the Montenegrin Ombudsperson in its mandate as EB scoring 1.18 and the EB of North Macedonia scoring the lowest 0.95. The SADP mandate and powers are stronger in North Macedonia and Serbia – 1.50 versus 1.00 in Montenegro. The institution for FAI mandate is Serbia is scoring the same (1.50), followed by 1.19 of Montenegro and the lowest 0.88 of the Macedonian FAI. The indicators in this domain are more diversified, as the mandates and powers are specific for each body. Consequently, we present the findings for each body/mandate, comparatively for the three countries.

#### Ombudspersons

All ombudspersons have a broad mandate on **human rights promotion** in line with the Paris principles: competence to freely address public opinion, raise public awareness on human rights issues, carry out education and training programmes and make use of press; thus they have scored the maximum 2.

All ombudspersons have an explicit mandate to promote and ensure **ratification and harmonization** of national legislation, regulations and practices **with the international human rights instruments** as well as their effective implementation, but they do not have an explicit obligation to contribute to the reports which States are required to submit to international bodies and institutions and express an opinion on the subject, with due respect for their independence. Thus they all scored medium (1).

Ombudspersons in the three countries also scored medium on the indicator **coverage of sectors**, as they cover the public authorities, but not the private sector performing public functions.

Regarding **powers for human rights protection** in all the countries, the ombudsperson has both the power to obtain statements in order to assess situations raising human rights issues and the authority to compel witnesses, thus scoring 2 on the sub-indicator **investigation**. All ombudspersons have the power of unannounced and free **access** to inspect and examine any public premises, documents, equipment and assets, resulting in the score 2 to each of them. Even though they have other relevant powers for complaints, none of the Ombudspersons in the region has the power to settle complaints through a binding determination, thus scoring medium (1) on the **powers on complaints**. Only the Ombudsperson in North Macedonia has the unlimited authority to **join or initiate action in court**, achieving 2 on this sub-indicator, as opposed to Serbia and Montenegro, which do not have this authority and scored the minimum.

An important indicator for ombudspersons is the **follow-up of their recommendations**. The report of the Ombudsperson in North Macedonia does not reveal the data in question, and was therefore assigned the minimum 0. The Serbian Ombudsperson scored 2, as 93.15% of his recommendations were accepted by public bodies in 2018.<sup>107</sup> The Montenegrin Ombudsperson scored 1 (meaning that less than 90% of his recommendations were followed), highlighting that one of the key challenges the institution faces is the 'attitude towards the recommendation of the Ombudsperson that were not followed'.<sup>108</sup>

Ombudspersons in Montenegro and North Macedonia scored the medium 1 in submitting **initiatives to national authorities**, while the Ombudsperson in Serbia scored high, being very active in submitting initiatives and proposals. They all scored high (2) in submitting **special reports**, in addition to the annual report.

The mandate and powers of the ombudspersons as a **national prevention mechanism** in the three countries are fully in line with the OPCAT, resulting in the maximum grade of 2 for the three institutions.

Concerning the mandate on the **rights of the child**, the Macedonian Ombudsperson has scored highest (2), as it also has the authority to bring cases to court, which is not the case in Montenegro and Serbia, which have scored medium (1), since their ombudspersons have the mandate for prevention, promotion and protection of children's rights, but not to bring cases to court.

The **assessment of progress in the EC Annual Report** in 2018 was graded as maximum 2 in North Macedonia and 1 in Montenegro and Serbia.

According to the RCC Balkan Barometer survey, only the Montenegrin Ombudsperson passed the threshold of more than 50% having **trust in the institution** – 58%, while in North Macedonia and Serbia this percentage is 38% and 36%, respectively.<sup>109</sup> There are no public opinion calls for the other NHRIs.

#### Equality bodies

All EBs have scored high – 2 on the indicators **coverage of grounds** and **areas/fields of discrimination**, as they cover a wide range of grounds, still leaving the list open, as well as all areas noted in the ECRI GPR. The same applies as regards the status on the specific standards on **equal treatment of all persons without discrimination on grounds of sex**.

The legislative framework ensures a full mandate on **promotion and prevention** to all EBs as it includes promotion and achievement of equality, prevention and elimination of discrimination and intolerance, including structural discrimination and hate speech, and promotion of diversity and of good relations between persons belonging to all groups in a society. In addition, the EBs have the obligation to promote equality through training, raising awareness and developing standards. Consequently, all three institutions/mandates scored high (2).

However, there are differences in the way EBs perform in practice. Only the Serbian EB was proactive and thus scored high on **initiatives to national authorities**, as it submitted 9 initiatives, while both Montenegro and North Macedonia scored low, with no initiatives submitted.

When it comes to **responsibilities for independent assistance** of the EB, in Montenegro they include all relevant responsibilities: receiving and handling individual or collective complaints; providing legal advice to victims, including pursuing their complaints; being engaged in the activities of mediation and conciliation; representing complainants in court and acting as *amicus curiae* or expert where required and scored the maximum (2). In Serbia the EB only has a limited mandate to act as *amicus curiae* or expert and scored 1, as does the EB in North Macedonia. The Serbian EB has actually been engaged in cases of **strategic litigation**, thus scoring 2. One case was initiated in 2018 and several others

<sup>107</sup> Serbia, Protector of Citizens, Annual Report (2018), 16.

<sup>108</sup> Zaštitnik ljudskih prava i sloboda Crne Gore, Godišnji izvještaj (2018), p. 203. Available at: [http://www.ombudsman.co.me/docs/1554124685\\_final-godisnji-izvjestaj-2018.pdf](http://www.ombudsman.co.me/docs/1554124685_final-godisnji-izvjestaj-2018.pdf).

<sup>109</sup> Regional Cooperation Council, Balkan Barometer 2019, Public Opinion, Analytical Report, Sarajevo, 2019, [https://www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_PublicOpinion\\_2019.pdf](https://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2019.pdf).

have been ongoing.<sup>110</sup> Montenegro and North Macedonia achieved medium score (1) as strategic litigation is provided in the legal framework, but their bodies did not engage in such cases. The Macedonian EB did not have the right to **issue recommendations**, nor **legally binding decisions** on specific cases, thus scoring the lowest (0), while the EBs in Montenegro and Serbia do have the right to issue recommendations, but not legally binding decisions on specific cases (achieved middle mark – 1). On the actual follow-up of recommendations, the Serbian EB scored highest (2) as more than 90% of recommendations were followed, while the Montenegrin and Macedonian EBs' score is medium (1), due to less than 90% of recommendations being followed.

All EBs allow all **manners of submission of complaints**: orally, in written form or online and have achieved the highest grade. However, in Montenegro and Serbia, complaints can be submitted “in a **language** of the complainant’s choosing which is common in the country where the equality body is located” (maximum 2 points assigned), while in the Macedonian case this is not ensured for all such languages (thus, 1 was assigned). All EBs scored maximum on the sub-indicator **free of charge**, since the procedure of submission does not impose any costs.

The mandate of the EB in North Macedonia does not specifically include regular **independent surveys**, so it got the lowest grade (0). In Montenegro and Serbia, they are included in the EB mandate, but were not performed last year, resulting in a medium score (1). In Serbia, they are conducted each third year, the last being conducted in 2016.<sup>111</sup>

No EB submitted a **contribution to an international body** in 2018, so they all scored 0.

No public polls are available on **public trust** for EBs, except for the Ombudsperson in Montenegro, which also has the mandate of an EB.

All EBs got the medium score (1) on the **assessment in the EC Annual Report**, as little or some progress was observed.

#### **Supervisory authorities on data protection**

Supervisory authorities on data protection in Montenegro and Serbia have full mandate and powers for **monitoring and enforcement** of the Data Protection Law as well as for all relevant developments as regards data protection, so they scored 2. The SADP of North Macedonia was marked medium (1), as it can act only once it receives report, which has effect on the competences.

The Macedonian and Serbian SADPs carried out **promotional** activities intended both to the general public and to data controllers and processors, getting the highest mark 2, while Montenegro scored 1, as it organised only trainings, and failed to organise other activities of promotion.

The Serbian SDPA-FAI performs a strong **advisory role**, as it submitted 59 opinions on draft laws and 4 initiatives to challenge constitutionality (for the two mandates)<sup>112</sup>. The SADP of North Macedonia also scored high, having submitted more than 5 initiatives, while Montenegro’s SADP had fewer initiatives and scored medium (1).

All SADPs have full mandate and powers for **investigations**, in line with the GDPR. However, the SADPs in North Macedonia and Serbia have the full mandate and powers to **handle complaints by data subjects, issue binding decisions, as well as the obligation to inform the data subject on the progress and outcome of the complaint**. However, Montenegro’s SADP has no power to issue binding decisions, resulting in a middle score (1).

On the **regulatory functions/authorisations**, the SADPs differ to a large extent. The SADP in Serbia scores high (2), as it has full mandate and powers for authorisations of codes of conduct, certifications, standard, authorisation of contractual clauses and administrative arrangements and approval of binding corporate rules. The SADP in North Macedonia scores middle (1) as its regulatory mandate is not complete, while in Montenegro, it has no such powers (score 0).

Good progress in the EC Report was observed for SADP in North Macedonia, which scored high (2), while Montenegro and Serbia scored medium (1)

#### **Institution for free access to information**

Institutions for FAI in Montenegro and Serbia (marked 2) have a full mandate for **monitoring and oversight**, meaning that they “can process requests for information, assist applicants, ensure the proactive dissemination of information by public bodies, monitor compliance with the law and present recommendations to ensure adherence to the right to access information”. The Institution for FAI of North Macedonia seems to be missing the mandate for assistance to applicants and proactive dissemination, thus it received the middle mark (1).

The Serbian and Macedonian Institutions for FAI have carried out **promotional** activities intended both to the general public and to public information holders and scored 2, while in Montenegro only trainings were organised (scored medium – 1).

Only the Institution for FAI in Serbia was proactive in submitting initiatives to national authorities and thus scored 2 on the indicator **advisory role**, while the score for North Macedonia and Montenegro is 0.

The scores are quite high concerning the procedures for **handling complaints**. In all countries they are **free of charge**. The institutions for FAI in Serbia and North Macedonia have the right to issue binding decisions and have scored high on this indicator (2), while Montenegro scored medium as it cannot issue binding decisions. However, the institutions for FAI of Montenegro also scored medium on the **manner of submission**, unlike the institutions for FAI in other two countries, which scored high.

The **assessments in the EC Annual Report** were rather modest, resulting in the medium score for Montenegro and score 0 for North Macedonia and Serbia.

To sum up, the main legislative framework for the mandates and powers of NHRIs in the three countries is established, but there are variances in their performance. Handling complaints seems to be an already established practice, but the key issues are related to the follow-up of recommendations (specifically in Montenegro and North Macedonia). There is room for more pro-activeness of NHRIs on promotion, submission of initiatives to the Government, special reports and strategic litigation.

## **CONCLUSIONS AND RECOMMENDATIONS**

The conclusions and recommendations in this report do not repeat the recommendations from the country reports, addressed to the national authorities, national NHRIs and NGOs. They exclusively focus on issues within the regional, European or global scope and on further research.

1. The general scores and the scores across domains tend towards the average. However, the analysis demonstrates that some basic issues related to the effectiveness of NHRIs still remain challenging in all domains, but those in the domain of independence are of critical importance. As these issues have been identified in the sphere of informality rather than formality (non-transparent appointment procedures; actual pressure, actual blocking of the work of the institution, etc.), it is recommended to perform in-depth case studies and further qualitative research in order to identify and address these complex challenges.
2. The research indicates that in addition to the approach by the state authorities to the NHRIs, the issues of strategic approach and vision of development, capacity and accountability of the NHRIs themselves persist. The limiting factors for raising their effectiveness are the lack of strategic planning and communication strategy, inadequate financial control, lack of focus on information sharing and accessibility, mutual cooperation among NHRIs and with NGOs, etc. Thus, they require further specific attention. Exploring these factors would assist in identifying the directions and options for further strategic development of the NHRIs in the region.
3. While the level of socialisation in the international human rights community at least formally is rather high, it is important to further focus on the qualitative aspect of this process. The slow speed of integration in the EU might impede the substantial socialisation. Therefore it is necessary to encourage structured cooperation and participation in the European organisations and networks.
4. The rather diverse achievements and shortcomings of different institutions in different domains/indicators stand as an opportunity for learning from each other within the countries in the region. This research can be a basis for identifying best practices and lessons learned.
5. The research has confirmed the need for structured and comparable measuring of the effectiveness of NHRIs in the Western Balkans. It would be desirable to continue the measuring in the next years, also widening its scope to the other countries in the Western Balkans.

#### **Consequently, the following recommendations should be considered:**

- The EU institutions should consider and further support the maximum possible level of participation of NHRIs in European networks. In order to support socialisation in the international framework, the EC should also support concrete projects on the exchange of best practices from MS, stimulating dialogue with the NHRIs in the WB and networking, as well as the regional exchange of best practices.
- The RCC should consider inclusion of the other NHRIs, in addition to the ombudspersons, in the Balkan Barometer survey, thus ensuring consistent measuring of the legitimacy of the NHRIs in the WB and raising awareness on human rights issues in the region.
- The RCC could also consider initiating programmes/activities on structured cooperation of all NHRIs in the WB, focusing on the strategic approach to raising the effectiveness of NHRIs in the WB.
- The national authorities should promote a strategic approach towards further increase of effectiveness of NHRIs, taking into account the best regional, European and global practices, with the emphasis on substantial rather than formal compliance with the international standards, avoiding swift and frequent changes to the legal framework.
- The NHRIs in the region should develop structured networking and cooperation among each other, including the design of joint projects (for example, exchange of best practices), identifying and addressing the main structural and performance issues and developing strategic approaches; as well as the structured cooperation with NGOs at regional level as well in order to increase their own effectiveness.
- The NHRIs should also significantly improve their approach to communication with the citizens and their accessibility by developing and implementing consistent communication strategies, including periodic measuring of their legitimacy.
- The NGOs should at global, European and regional level increase the networking and cooperation, including through the design and implementation of joint projects for monitoring, research and advocacy related to the effectiveness of NHRIs.

<sup>110</sup> Ivana Krstić, Serbia Country Report.

<sup>111</sup> CPE, Odnos građana i građanki prema diskriminaciji u Srbiji (The Attitude of Citizens Towards Discrimination in Serbia), 2016, <http://ravnopravnost.gov.rs/izvestaj-o-istrazivanju-javnog-mnjenja/>

<sup>112</sup> Serbia, Commissioner, Annual Report, 68-74.

## Annex: List of indicators

### Domain 1: Independence and ability to work without pressures

Ombudsperson	EB	SADP	FAI
Independent statutory basis	Independent statutory basis	Independent statutory basis	Independent statutory basis
Appointment process	Appointment process	Appointment process	Appointment process
Clear criteria for membership			
Term of office	Term of office	Term of office	Term of office
Avoidance of conflict of interest			
Immunities	Immunities		
No instruction from government			
Removal	Removal	Removal	Removal
Submission/agreement to pressure	Submission/agreement to pressure	Submission/agreement to pressure	Submission/agreement to pressure
Public opinion on independence of NHRI			

### Domain 2: Availability of resources and capacities

Ombudsperson	EB	SADP	FAI
Separate and independent budget	Separate and independent budget	Separate and independent budget	Separate and independent budget
Adequate financial resources	Adequate financial resources	Adequate financial resources	Adequate financial resources
Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures
Sufficient human resources	Sufficient human resources	Sufficient human resources	Sufficient human resources
Adequate human resources	Adequate human resources	Adequate human resources	Adequate human resources
Financial control	Financial control	Financial control	Financial control
Pluralism	Pluralism		
Training	Training		Training
Internal structure enables focus on each part of mandate	Internal structure enables focus on each part of mandate		
Regional offices / outreach	Regional outreach / offices		
Learning and change	Learning and change	Learning and change	Learning and change

### Domain 3: Information, accessibility and cooperation with other relevant actors

Ombudsperson	EB	SADP	FAI
Parliamentary scrutiny	Parliamentary scrutiny	Parliamentary scrutiny	Parliamentary scrutiny
Providing information to NHRIs	Providing information to NHRIs		
Cooperation with government	Cooperation with government	Cooperation with government	Cooperation with government
Cooperation with other NHRIs	Cooperation with other NHRIs	Cooperation with other NHRIs	Cooperation with other NHRIs
Cooperation with NGOs	Cooperation with relevant bodies and NGOs	Trans-national cooperation with other SAs	Cooperation with NGOs
Providing information on rights	Providing information on rights	Providing information on rights Information on rights and assistance to data subjects	Providing information on rights
Accessibility	Accessibility	Accessibility	Accessibility
Accessibility to children			
Accessibility to persons with disabilities	Accessibility to persons with disabilities	Accessibility to persons with disabilities	Accessibility to persons with disabilities
Membership in international networks	Membership in international networks	Membership in international networks	
Participation in international activities	Participation in international activities	Participation in international activities	Participation in international activities
Communication strategy	Communication strategy	Communication strategy	Communication strategy
Confidentiality and protection	Confidentiality and protection	Professional secrecy	

**Domain 4: Mandate and powers**

Ombudsperson	EB	SADP	FAI
		Monitoring and enforcement	Monitoring and oversight
Human rights promotion	Promotion and prevention	Promotion	Promotion
Promotion of harmonisation with international HR instruments and implementation			Promotion of proactive dissemination
Mandate – coverage of sectors	Coverage of grounds of discrimination		
	Coverage – area		
	Equal treatment of all persons without discrimination on grounds of sex		
Human rights protection – powers – investigation	Independent assistance – mandate	Investigations	
Human rights protection – powers – access	Independent assistance – strategic litigation		
Human rights protection – powers – complaints	Independent assistance – issuing recommendations and legally binding decisions		
Human rights protection – powers – courts			
Follow-up of recommendations	Follow up on recommendations		
Initiatives to national authorities	Initiatives to national authorities	Advisory role	Advisory role
	Complaints submission	Handling complaints	Handling complaints
	Complaints submission – language		Complaints submission
	Complaints submission – free of charge		Complaints submission – free of charge
	Independent surveys	Regulatory functions/ authorisations	
Reports	Independent reports		
Submission of contributions to international bodies	Submission of contributions to international bodies		
National prevention mechanism			
Rights of the child			
Public opinion on public trust in an NHRI	Public opinion on public trust in an NHRI	Public opinion on public trust in SA institution	Public opinion on public trust in SA institution
Assessment of the EC in the last report	Assessment of the EC in the last report	Assessment of the EC in the last report	Assessment of the EC in the last report

**Effectiveness of National Human Rights  
Institutions in the Western Balkans**

Montenegro, North Macedonia, Serbia



**COUNTRY REPORT  
MONTENEGRO**

November 2019

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## List of Acronyms and Abbreviations

APDP-FAI	Agency for Personal Data Protection and Free Access to Information
CoE	Council of Europe
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CJEU	Court of Justice of the European Union
CRD	Convention on the Rights of the Child
CRD	Civil Rights Defenders
CRPD	Convention on the Rights of Persons with Disabilities
ECRI	European Commission against Racism and Intolerance
FRA	European Union Agency for Fundamental Rights
GANHRI	Global Alliance of National Human Rights Institutions
GDPR	General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC)
EC	European Commission
EPI	European Policy Institute – Skopje
EU	European Union
HRA	Human Rights Action
ICCPR	International Covenant on Civil and Political Rights
MANS	<i>Mreža za afirmaciju nevladinog sektora</i> (Network for Affirmation of the NGO Sector)
MNE	Montenegro
MS	Member States
NHRI	National Human Rights Institutions
NE	National Expert
NGO	Non-governmental organisation
NPM	National Preventive Mechanism
OHCHR	UN Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
RCC	Regional Cooperation Council
SA	Supervisory Authority
UN	United Nations
UNHRC	UN Human Rights Committee
WB	Western Balkans

# INTRODUCTION

The process of transition to democracy has brought about a change in the state-citizen relations across the former socialist countries. The political aspects of this process included the establishment of democratic political institutions, the rule of law, and above all, guarantees that fundamental human rights and freedoms shall be exercised.<sup>1</sup> The latter bore particular significance in the post-communist countries, faced with scarce experience in providing adequate institutional guarantees that the state would safeguard human rights in line with international standards. States have thus established national human rights institutions (NHRIs) precisely with the mandate of upholding and promoting human rights.<sup>2</sup> In this research, the national human rights institution (NHRI) is defined as “a body established by the state with the mandate to protect and promote human rights”.

The Western Balkan (WB) states lagged behind in this process when compared to their East European counterparts. The latter have created mechanisms for the protection of human rights in the framework of their aspiration to comply with the conditions for the European Union (EU) membership. In the decade immediately following the breakup of Yugoslavia, the ethno-religious conflict and general state weakness made the establishment of the NHRIs virtually impossible. While the early 2000s brought the WB countries towards a moment of democratic change,<sup>3</sup> political institutions remained weak and susceptible to clientelism, patronage and corruption.<sup>4</sup> In the absence of a functioning rule of law, the existence of the NHRI has become increasingly significant not only for safeguarding human rights and freedoms within the states, but also for measuring and monitoring their implementation by external actors, above all the EU in the context of accession.

Montenegro is specific in this context. While the first guarantees of human rights and freedoms were introduced as a part of the ‘creeping independence’ process,<sup>5</sup> the establishment of the NHRIs was put on the back burner while dealing with the issue of statehood. Only after that have the two NHRIs been constitutionalised and established. These are (1) Ombudsperson and the (2) Agency for Personal Data Protection and Free Access to Information (APDP-FAI), respectively. Monitoring of the work of these two institutions in Montenegro remains unsystematic and there have been scarcely any local NGO reports or academic analyses in this regard.<sup>6</sup> Even so, several problems have been highlighted in these reports, especially as regards political interference, the lack of institutional independence, human resources and budget. While each of these issues represents a serious obstacle for the NHRIs to perform their function, their intersection points to a dire need for assessing their effectiveness. For the purposes of this research, on the basis of the pre-set indicators, the Report evaluates the performance of the NHRIs in the WB defining their effectiveness as ‘the capability of the NHRI to independently perform its mandate and powers, with the aim to make a significant impact on the achievement of human rights’.<sup>7</sup>

This Report focuses on assessing the two NHRIs in Montenegro in line with the methodology sketched out in the subsequent section. The following overview of these institutions is then used as the backdrop for presenting research results in the four domains used for evaluating how effective the NHRIs are: independence and ability to work without pressures, availability of resources and capacities, information, accessibility and cooperation with other relevant actors and mandate and powers. After highlighting the challenges, the Report concludes with a set of recommendations for various stakeholders.

## APPROACH AND METHODOLOGY

Since there is no systematic research for empirically assessing the effectiveness of the NHRIs in the WB, this research deploys an approach that combines the structural and the mandate-based indicators. The structural approach focuses on the compliance of NHRIs with the main legal norms, or the institutional measures for safeguarding human rights. The mandate-based approach is used as complementary to the structural one, as it allows the assessment of the extent to which the NHRIs are successful in performing their institutional assignments.

Combining these two approaches enabled us to develop a matrix of indicators structured in four domains:

- (1) Independence and ability to work without pressures,
- (2) Availability of resources and capacities,
- (3) Information, accessibility and cooperation with other relevant actors, and
- (4) Mandate and powers.

The overview of indicators is presented in the Annex, whereas a detailed outline of methodology is available in the Comparative Analysis.<sup>8</sup>

1 Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds. *The power of human rights: International norms and domestic change* (Cambridge University Press, 1999).  
2 Richard Carver, “One NHRI or Many? How Many Institutions Does It Take to Protect Human Rights? – Lessons from the European Experience.” *Journal of Human Rights Practice* 3, No 1 (2011): 1-24.  
3 Geoffrey Pridham and Tom Gallagher. *Experimenting with Democracy: Regime Change in the Balkans* (Routledge, 2000).  
4 Soeren Keil, “The business of state capture and the rise of authoritarianism in Kosovo, Macedonia, Montenegro and Serbia.” *Southeastern Europe* 42, No 1 (2018): 59-82; Gergana Noutcheva and Senem Aydin-Düzgüt. “Lost in Europeanisation: The Western Balkans and Turkey.” *West European Politics* 35, No 1 (2012): 59-78.  
5 Jelena Džankić, “Montenegro’s Minorities in the Tangles of Citizenship, Participation and Access to Rights.” *JEMIE* 11 (2012): 40.  
6 Marijana Laković Drašković, Daliborka Uljarević, Boris Marić, Wanda Tiefenbacher and Maja Stojanović, *Kratki vodič kroz zakonodavni i institucionalni okvir zaštite ljudskih prava u Crnoj Gori* (Centar za građansko obrazovanje, 2015); Snežana Bajčeta and Vuk Janković, *Analiza kapaciteta Agencije za zaštitu ličnih podataka i slobodan pristup informacijama* (MANS, 2019).  
7 Malinka Risteska, *Effectiveness of NHRIs: Methodology* (EPI, 2019).  
8 Malinka Risteska, *Effectiveness of NHRIs: Comparative Analysis* (EPI, 2019).

The relevant international standards and the interpretations thereof have been the starting point for developing the indicators in the matrix.

The Paris Principles<sup>9</sup>, or more precisely the GANHRI General Observations<sup>10</sup>, are taken as the grounds for the indicators assessing the effectiveness of human rights institutions with a general mandate. The bases for specific indicators were the UN relevant standards related to the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>11</sup>, the Convention on the Rights of the Child (CRC)<sup>12</sup>, the Convention on the Rights of Persons with Disabilities (CRPD)<sup>13</sup> and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>14</sup> and especially their interpretations.

The EU Commission Recommendation of 22 June 2018<sup>15</sup>, the Opinion on equality bodies of 2011 of the Human Rights Commissioner of the CoE as well as the Revised General Policy Recommendation No 2 of 2017 on equality bodies to combat racism and intolerance of ECRI of the CoE<sup>16</sup> were the European standards taken as the basis for indicators that assess the effectiveness of equality bodies.

The EU General Data Protection Regulation (GDPR)<sup>17</sup> and the CoE Convention 108+<sup>18</sup> are used as main standards for setting the indicators related to the performance of data protection supervisory authorities. Since there are no specific international standards for an independent body on free access to information, the general standards for NHRIs were applied accordingly, while specific international standards on content of the right to information<sup>19</sup>, as well as documents developed by special rapporteurs for freedom of expression in the UN, CoE and OSCE were used for the indicators on powers and mandate.

The values of indicators have been weighed depending on the number of indicators per domain (which ranged from 6-12). In addition, some indicators have been broken down to sub-indicators, to capture the specifics of a particular issue, which depended on the level of detail of the relevant international standard. The indicator per domain is estimated as a sum of the weighed values of indicators in the domain. The overall score of effectiveness for each NHRI in each country is estimated as a sum of the indicators per domain. Each domain equally participates in the final score with 25%. Consequently, the scale of the score per country per body is 0-8. If an NHRI body is a multi-mandate body, which is the case with both the Ombudsperson and APDP-FAI in Montenegro, each mandate is scored separately. The overall institutional score is then estimated as a simple average of the sum of its scores for each mandate.

## Overview of NHRIs in Montenegro

This section of the Report provides an overview of the roots of the NHRIs in Montenegro, their mandate, composition and the developments that may have an impact on their functioning. Both the Ombudsperson and the APDP-FAI in Montenegro have multiple mandates, which in the context of resources raises the questions of their effectiveness and competence. Further issues that may affect the implementation of these institutions’ mandates in practice include the lack of political independence, insufficient specialisation and general lack of human resources, poorly targeted capacity-building, and the approach to human rights protection and promotion which is formal rather than substantive.

**Ombudsperson** [*Zaštitnik/ca ljudskih prava i sloboda Crne Gore*]<sup>20</sup> is the state’s institutional pillar for the protection and promotion of human rights and freedoms in Montenegro. It was first established by the Law on Ombudsperson on 10 July 2003.<sup>21</sup> In practice, the Ombudsperson was inaugurated on 10 December the same year. While operating in accordance with the Law in the first years of its existence, the institution of the Ombudsperson as an independent body with the mandate of protecting human rights and freedoms was established by Article 81 of the 2007 Constitution of Montenegro.<sup>22</sup> The constitutional provisions at the same time warranted for legislative change, as the 2003 Law on Ombudsperson was not fully compatible with the highest legal act of the state. As highlighted in the report of the Human Rights Action (HRA) NGO, legislative amendments were delayed for several years, thus postponing the establishment of the national preventive mechanism (NPM) for the prevention of torture and the protection from discrimination.<sup>23</sup> The incompatibility of legislation was resolved with the adoption of the second Law on Ombudsperson in Montenegro on 15 August 2011, which provided for adequate legal guarantees for the institution to perform its NPM functions, but

9 UN General Assembly, Resolution A/RES/48/134 (1993)  
10 Global Alliance of National Human Rights Institutions, *General observations of the Sub-Committee on Accreditation*, adopted by GANHRI Bureau, 21 February 2018 (2018), Available at: [https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN\\_GeneralObservations\\_Revisions\\_adopted\\_21.02.2018\\_vf.pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf); accessed on 7 August 2019  
11 UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 (1996)  
12 UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 (1989)  
13 UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Annex I (2006)  
14 UN General Assembly, *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 18 December 2002, A/RES/57/199 (2002)  
15 Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, C/2018/3850, OJ L 167 Ch I, (2) (2018)  
16 Council of Europe, ECRI, *General policy recommendation No 2: Equality bodies to combat racism and intolerance at national level*, adopted on 7 December 2017, CRI (2018) 06 (2017).  
17 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), (2016) OJ L 119  
18 CoE, *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No 223), 10 October 2018 (2018)  
19 *International Covenant on Civil and Political Rights* (adopted on 16 December 1966, entered into force on 23 March 1976) 999 UNTS 171 (ICCPR) (1966); CoE, *Convention on Access to Official Documents*, CETS 205, 11 June 2008 (2008);  
20 The Law in the local language(s) uses gender sensitive language, while in English the name of the institution is translated as “Ombudsman”. This report reverts back to gender sensitive language and refers to the institution as Ombudsperson.  
21 *Zakon o zaštiti/ci ljudskih prava i sloboda Crne Gore* [Law on Ombudsperson] (Official Gazette of the Republic of Montenegro, No 41/03)  
22 *Ustav Crne Gore* [Constitution of Montenegro] (Official Gazette of the Republic of Montenegro 01/07), Article 81  
23 *Tea Gorjanc Prelević, Ljudska prava u Crnoj Gori 2010-2011* (Akcija za ljudska prava, 2012). Available at: [http://www.hracion.org/wp-content/uploads/Ljudska\\_prava\\_u\\_Crnoj\\_Gori\\_2010-2011.pdf](http://www.hracion.org/wp-content/uploads/Ljudska_prava_u_Crnoj_Gori_2010-2011.pdf)

the ‘capacity of the Ombudsperson’s Office to effectively address cases of anti-discrimination’ remained limited.<sup>24</sup> The 2014 Amendments to the Law on Ombudsperson in Montenegro have consolidated the role of this institution as both the institution for NPM and the equality body. The latter has been further engrained in the 2014 Law on Protection from Discrimination, giving a broad mandate to this institution to safeguard citizens from the potentially discriminatory actions of state organs and private entities.<sup>25</sup> In May 2016, the Ombudsperson has obtained a B-status accreditation by the Global Alliance of National Human Rights Institutions (GANHRI), meaning that it is only partly in compliance with the Paris Principles.<sup>26</sup>

Hence in Montenegro, the Ombudsperson’s mandate entails four pillars, including: 1) national mechanism for guaranteeing human rights and fundamental freedoms vis-a-vis public administration; 2) rights of the child, rights of youth and social protection; 3) national prevention mechanism – prevention from torture and due process; and 4) anti-discrimination, gender equality, and protection of minority rights.<sup>27</sup> With two general mandates on the protection of human rights and freedoms and anti-discrimination, and the specific mandates on the protection of the rights of the child and the NPM, questions of resources and training have frequently been raised in the European Commission’s (EC) Progress Reports and shadow reports of local NGOs.<sup>28</sup> This research covers the two general mandates of the Ombudsperson.

Two further issues that have been identified include the fact that the recommendations the Ombudsperson issues are not implemented in practice, as they are not binding; and that the Ombudsperson is frequently appointed as a result of political bargaining and not of a transparent and participatory process.<sup>29</sup> Both issues influence the Ombudsperson’s effectiveness. Namely, the first one implies its institutional weakness in comparison to public and private bodies against whose abuse it is mandated to protect citizens. The second one may indicate potential political influence, even though international and local assessments of impartiality in the course of his or her work have been positive.<sup>30</sup> The Ombudsperson’s term of office is six year, pursuant to Article 81 of the Constitution of Montenegro. Between 2003 and 2019, there have been two appointed Ombudspersons – Šefko Crnovršanin 2003 – 2009, who was re-elected for the period 2009-2015 and Šučko Baković 2015-2019. The appointment procedure is performed by the Parliament of Montenegro on the proposal of the President. As of 16 November 2019, a public call for the next Ombudsperson is ongoing, and the list containing four male and four female candidates has been published on the President’s website on 1 October. A lengthy appointment procedure, as in 2013 and 2014,<sup>31</sup> may hamper the institution’s effectiveness in developing a multi-annual strategy.

**The Agency for Personal Data Protection and Free Access to Information (APDP-FAI)** [*Agencija za zaštitu ličnih podataka i slobodan pristup informacijama*] was first established in 2008 as the Agency for Personal Data Protection, mandated as a supervisory body in view of the requirements for visa liberalisation in Montenegro.<sup>32</sup> The double-mandate of this institution was introduced by the 2012 Amendments to the Law on Free Access to Information, when the Agency was charged with implementing the constitutional guarantee of free access to information held by the public bodies.<sup>33</sup> The Agency is headed by a Director and led by a Council. The Council of the APDP-FAI is appointed by the Parliament of Montenegro. The Council appoints the Director of the Agency, whose term of office is four years, with the possibility of re-election. Internal activities of the Agency are regulated through a series of 26 subsidiary legal acts, which has indicated its institutional complexity and reflected on its capacity to perform its supervisory role.<sup>34</sup> The capacity of the Agency to take a double-mandate, especially as regards data protection, is insufficiently clearly regulated, which calls into question its efficiency as an NHRI.

Both the shadow report of the Montenegrin NGO MANS and the EC Annual Report have highlighted the weakness of the legal framework in terms of the protection of personal data, as well as the institutional capacity of the Agency to perform its tasks. The latter has especially been mirrored in the most recent criticism of the EC that while ‘the number of complaints lodged with the Agency has increased ... the number of data protection cases brought to court remains limited’.<sup>35</sup> In the domain of the protection of whistle-blowers, the capacities of the Agency remain scarce. Equally, as regards the Agency’s mandate in terms of free access to information, the institution’s recommendations are not followed by public administration, raising questions of accountability and transparency ‘especially in the areas prone to corruption and in the sectors dealing with the allocation of large portions of state budget or property’.<sup>36</sup> Further

24 Tea Gorjanc Prelević, *Ljudska prava u Crnoj Gori 2010-2011* (Akcija za ljudska prava, 2012); Marijana Laković Drašković, Daliborka Uljarević, Boris Marić, Wanda Tiefenbacher, and Maja Stojanović, *Kratki vodič kroz zakonodavni i institucionalni okvir zaštite ljudskih prava u Crnoj Gori* (Centar za građansko obrazovanje, 2015);  
 25 *Zakon o zabrani diskriminacije* [Law on Prohibition of Discrimination] (Official Gazette No 46/2010, 40/2011 – other law, 18/2014, 42/2017), Article 21  
 26 Global Alliance of National Human Rights Institutions (GANHRI), *Chart of the Status of National Institutions*. Available at: [https://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_Nis.pdf](https://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_Nis.pdf)  
 27 European Commission, 2011 Progress Report on Montenegro, p. 19. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/mn\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mn_rapport_2011_en.pdf)  
 28 European Commission, 2012 Progress Report on Montenegro. Available at: [https://eeas.europa.eu/sites/eeas/files/mn\\_rapport\\_2012\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/mn_rapport_2012_en.pdf); Vanja Čalović, Vuk Maraš, Aleksandar Mašković, Veselin Radulović, *Procjena nacionalnog integriteta Crne Gore* (MANS 2016). Available at: <http://www.mans.co.me/wp-content/uploads/2016/08/NISizvestajCG.pdf>  
 29 Vanja Čalović, Vuk Maraš, Aleksandar Mašković, Veselin Radulović, *Procjena nacionalnog integriteta Crne Gore* (MANS 2016). Available at: <http://www.mans.co.me/wp-content/uploads/2016/08/NISizvestajCG.pdf>  
 30 European Commission, 2012 Progress Report on Montenegro. Available at: [https://eeas.europa.eu/sites/eeas/files/mn\\_rapport\\_2012\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/mn_rapport_2012_en.pdf); Vanja Čalović, Vuk Maraš, Aleksandar Mašković, Veselin Radulović, *Procjena nacionalnog integriteta Crne Gore* (MANS 2016). Available at: <http://www.mans.co.me/wp-content/uploads/2016/08/NISizvestajCG.pdf>  
 31 Marijana Laković Drašković, Daliborka Uljarević, Boris Marić, Wanda Tiefenbacher, and Maja Stojanović, *Kratki vodič kroz zakonodavni i institucionalni okvir zaštite ljudskih prava u Crnoj Gori* (Centar za građansko obrazovanje, 2015)  
 32 *Zakon o zaštiti podataka o ličnosti* [Law on Personal Data Protection] (Official Gazette of the Republic of Montenegro 79/08, 70/09, 44/12)  
 33 *Ustav Crne Gore* [Constitution of Montenegro] (Official Gazette of the Republic of Montenegro 01/07), Article 51  
 34 Vanja Čalović, Vuk Maraš, Aleksandar Mašković, Veselin Radulović, *Procjena nacionalnog integriteta Crne Gore* (MANS 2016). Available at: <http://www.mans.co.me/wp-content/uploads/2016/08/NISizvestajCG.pdf>  
 35 European Commission, 2019 Report on Montenegro, p.26. Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>  
 36 European Commission, 2019 Report on Montenegro. Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>

problems, similar to the ones related to the Ombudsperson include inadequate resources, the insufficiently defined professional qualifications and potential political influence especially in the appointment procedures. The Agency lacks a communication strategy and a clear, simple and transparent citizen-oriented approach.<sup>37</sup>

## RESEARCH FINDINGS

The following section discusses the research findings per domain, so as to render the comparative findings in a better way, as well as to highlight the challenges that are common across the NHRIs in Montenegro. Such an approach also enables us to foster applicable recommendations and encourage inter-institutional exchange of good-practices. Subsections first present domain-specific ranking of each NHRI, and follow up in a descending order, per mandate.

### General score

NHRI (mandate)	General score ↓
	<i>min: 0; max: 8</i>
Ombudsperson (Equality)	5.23
Ombudsperson (NHRI)	5.20
Ombudsperson (total)	5.22
APDP-FAI (PDP)	4.17
APDP-FAI (FAI)	4.10
APDP-FAI (total)	4.13

The general ranking reveals that the Ombudsperson (5.22) is somewhat more effective NHRI than the APDP-FAI (4.13). The former institution also scored higher than the APDP-FAI in all domains. Domain 1 ‘Independence and Ability to Work without Pressures, where the Ombudsperson (1.50) received a somewhat higher score than the APDP-FAI (1.22). The close scores are related to the fact that legislative provisions related to the establishment and functioning of the two institutions are stipulated in a similar way. In practice, there have been concerns over the appointment procedure and possible political interference, especially as regards APDP-FAI.

In Domain 2 ‘Availability of Resources and Capacities’, the Ombudsperson (1.15) has a slightly higher score than the APDP-FAI (1.0). Both institutions reportedly lack financial resources, adequate training and strategic planning. While legislative provisions require general specialism from staff in both institutions, the structure and expertise of employees in the institution of Ombudsperson better reflects the four pillars of this institution. This will be explained in more detail in the section below.

In Domain 3 ‘Information, Accessibility and Cooperation with Other Relevant Actors’, the Ombudsperson (1.37, 1.30) scored higher than the APDP-FAI (0.94, 0.81). While both institutions would benefit from a streamlined communication strategy and better accessibility, the Ombudsperson’s higher score reflects the international outreach of this organisation in the relevant networks, greater degree of local initiatives and collaboration with local NGOs.

Finally, in Domain 4 ‘Mandate and powers’, the Ombudsperson (1.19, 1.28) has demonstrated to be a more effective institution than the APDP-FAI (1.00, 1.06). The Ombudsperson’s score is highest in relation to its mandate as an equality body (1.28), where the 2014 Law on Protection from Discrimination has given the prerogative to this institution to take to court private entities with a public function, along with public bodies. The low level of institutional responsiveness due to the non-binding character of recommendations and opinions remains the greatest concern for both NHRIs.

### Domain 1: Independence and Ability to Work without Pressures

NHRI	Domain 1 score ↓
	<i>min: 0; max: 2</i>
Ombudsperson (Equality)	1.50
Ombudsperson (NHRI)	1.50
APDP-FAI (PDP)	1.22
APDP-FAI (FAI)	1.22

The first domain in the matrix assesses the independence of the NHRI and its ability to work without pressure. While the scores only slightly differ, the Ombudsperson (1.50 on both mandates) is ostensibly more effective than the APDP-FAI (1.22 on both mandates).

37 Assessment made on the basis of the APDP-FAI website, which does not provide clear information in a language accessible to citizens, but rather refers to lengthy legislative provisions in an unsystematic manner.

Both institutions scored high (2.0) as regards their independent statutory basis. While originally the Ombudsperson was established by law, since 2007 this NHRI also has a constitutional basis.<sup>38</sup> APDP-FAI has been instituted through a separate law. The APDP-FAI met the highest appointment standard of a transparent procedure by legislature or specific independent body.<sup>39</sup> Since 2014 the legislation foresees participation of civil society, requires parliamentary approval and a public nomination by the President.<sup>40</sup> The 2015 selection of the Ombudsperson (in office until 2019) entailed participation of three academic institutions and a public call to NGOs, and a meeting with those that objected the appointment.<sup>41</sup> Including different societal actors in the appointment procedure is a step forward in ensuring legitimacy of Ombudsperson as the central NHRI. Consultations regarding all candidates rather than the one put forward by the President, and the publication of dissenting views, would further enhance the transparency of the process. The appointment procedure for the next Ombudsperson is currently ongoing. While the names of the candidates are published on the President's website, hence a part of the procedure is transparent, the selection takes place without mandatory public debate. There is no information on the consultations the President has undertaken in this regard.

On the membership criteria, the Ombudsperson satisfied the highest standard (human rights expertise). Article 8 of the Law on Ombudsman requires the appointees to have 'at least 15 years of work experience, of which at least 7 in the domain of human rights and freedoms', as well as a post-graduate degree, and other integrity-related qualifications.<sup>42</sup> The legally required educational qualification and experience correspond to the institutional structure and mandates of the Ombudsperson. By contrast, membership requirements for the APDP-FAI Council and Director include higher education and "5 years of work experience in the domain of human rights and freedoms", but there are no further conditions as regards specialisation or integrity.<sup>43</sup> As a result, APDP-FAI has received the score of 1.00. The present composition of the Agency's Council as well as the appointed Director only have a broad specialism in human rights, which may hamper the effectiveness of this institution in performing its mandates.

As regards the term of office, the term of the office of the Ombudsperson is six years, which is one year below the recommended maximum for the NHRI and the equality body, resulting in the score of 2.<sup>44</sup> Equally, the Director of APDP-FAI meets the highest standards in this domain with a term of office of four years, but the Council is elected for a five-year term.<sup>45</sup>

The Ombudsperson and the APDP-FAI scored 1.00 on the avoidance of conflict of interest as the law contains a general clause.<sup>46</sup> The Ombudsperson does not have adequate protection mechanisms against threat and coercion and there are no constitutional guarantees of immunity from prosecution.<sup>47</sup> A general functional immunity is laid down in the Law on Ombudsman. The lack of constitutionally guaranteed immunity makes this institution susceptible to political pressure and less effective in performing its function as an NHRI. APDP-FAI Council members, Director and staff are bound by professional secrecy during and after the office term.<sup>48</sup> As a result, this institution fully meets international standards in this domain, which require the extension of secrecy beyond office term.

The conditions on the absence of instruction from government are only partly safeguarded for both institutions in the two mandates through general provisions on independence in performing their function. The Ombudsperson and APDP-FAI both scored 1.00. Regarding removal from office, the Ombudsperson scored 2.00 as there are specific safeguards from arbitrary dismissal, while the APDP-FAI only scored 1.00 because it only provides for general safeguards.

There have been no recorded cases of Ombudsperson's submission to pressure in 2018, and hence this institution received the highest score in that regard. Local NGOs have reported at least one case of submission to political pressure of the APDP-FAI, raising concerns of international community, above all Transparency International.<sup>49</sup> Shortly after the presidential elections in April 2018, APDP-FAI rejected 90 requests for free access to information on finances of political parties submitted by the NGO MANS. The refusal of requests occurred two days after the Special Prosecutor for anti-corruption initiated an investigation on donations to the ruling Democratic Party of Socialists (DPS). The NGO maintained that free access to information has been politicised, in view of the upcoming local elections (May 2018).<sup>50</sup>

Finally, the Ombudsperson received the score of 1.00 on public trust and 0.00 on independence. According to the Balkan Barometer of the Regional Cooperation Council survey the public trust in this institution of 58 per cent is among the highest in the region; public opinion of its independence is at 49 per cent.<sup>51</sup> There have been no public polls measuring public trust in or independence of APDP-FAI.

Therefore, the analysis points out that while the statutory framework is solid, there are several challenges in the domain of independence. First, there need to be specific safeguards for institutional independence, especially as regards

38 Ustav Crne Gore [Constitution of Montenegro] (Official Gazette of the Republic of Montenegro 01/07), Article 81  
 39 Zakon o zaštiti podataka o ličnosti [Law on Personal Data Protection] (Official Gazette of the Republic of Montenegro No 79/08, 70/09, 44/12), Article 52  
 40 Zakon o zaštitniku/ci ljudskih prava i sloboda Crne Gore [Law on Ombudsperson] (Official Gazette of the Republic of Montenegro No 42/2011, 32/2014), Article 7  
 41 Baković ombudsman još 6 godina, RTCG (29 December 2015). Available at: <http://www.rtcg.me/vijesti/drustvo/114542/bakovic-ombudsman-jos-6-godina.html>  
 42 Zakon o zaštitniku/ci ljudskih prava i sloboda Crne Gore [Law on Ombudsperson] (Official Gazette of the Republic of Montenegro No 42/2011, 32/2014)  
 43 Zakon o zaštiti podataka o ličnosti [Law on Personal Data Protection] (Official Gazette of the Republic of Montenegro No 79/08, 70/09, 44/12), Article 52  
 44 Zakon o zaštitniku/ci ljudskih prava i sloboda Crne Gore [Law on Ombudsperson] (Official Gazette of the Republic of Montenegro No 42/2011, 32/2014), Article 8  
 45 Ustav Crne Gore [Constitution of Montenegro] (Official Gazette of the Republic of Montenegro No 01/07), Article 81  
 46 Zakon o zaštiti podataka o ličnosti [Law on Personal Data Protection] (Official Gazette of the Republic of Montenegro No 79/08, 70/09, 44/12), Article 54  
 47 Ustav Crne Gore [Constitution of Montenegro] (Official Gazette of the Republic of Montenegro No 01/07), Articles 86, 122, 137, 144; Amendment XII, Amendment XV  
 48 Zakon o zaštiti podataka o ličnosti [Law on Personal Data Protection] (Official Gazette of the Republic of Montenegro No 79/08, 70/09, 44/12), Article 64  
 49 MANS, Transparency International: Odbijanje zahtjeva za pristup informacijama izaziva zabrinutost (2018). Available at: <https://www.mans.co.me/odbijanje-zajtjeva-za-pristup-informacijama-izaziva-zabrinutost/>  
 50 MANS, Transparency International: Odbijanje zahtjeva za pristup informacijama izaziva zabrinutost (2018). Available at: <https://www.mans.co.me/odbijanje-zajtjeva-za-pristup-informacijama-izaziva-zabrinutost/>  
 51 Regional Cooperation Council, 'Balkan Barometer' (2018), p. 118 [https://www.rcc.int/seeds/files/RCC\\_BalkanBarometer\\_PublicOpinion\\_2018.pdf](https://www.rcc.int/seeds/files/RCC_BalkanBarometer_PublicOpinion_2018.pdf)

protection mechanisms for the Ombudsperson. Second, institutional independence and capacity building would be further advanced by more specific conditions for appointment (e.g., specialism related to the mandate of the NHRI).

## Domain 2: Availability of Resources and Capacities

NHRI	Domain 2 score ↓
	<i>min: 0; max: 2</i>
Ombudsperson (Equality)	1.15
Ombudsperson (NHRI)	1.15
APDP-FAI (PDP)	1.00
APDP-FAI (FAI)	1.00

Regarding the availability of resources and capacities, the Ombudsperson received a score of 1.15 both as the NHRI and the equality body. As such, it scored higher than the APDP-FAI, which has a score of 1.00 under both mandates.

The institutions are financed through the state's budget, but are not directly involved in budgetary preparations. Hence they receive the score of 1.00. In their annual reports, both the Ombudsperson and the APDP-FAI have highlighted that they have insufficient resources to carry out their tasks. The annual budget for the Ombudsperson amounted to EUR 672,175.68 (0.0369 per cent of the Budget of Montenegro for 2018), of which EUR 619,075.21 have been executed. A total of EUR 503,042.83 has been allocated for the employees' salaries.<sup>52</sup> The reported budget contains no information on allocations for professional training, activities or specific budget items that the institution would require in performing its tasks. A report of a local NGO, Center for Civic Education, covering the period between 2010 and 2014 indicated an underspending by the Ombudsperson, which stands in stark contrast for the calls for additional financial resources.<sup>53</sup> The annual allocation for the APDP-FAI for 2018 was EUR 617,323.69 euros (0.03387 per cent of the Budget of Montenegro for 2018), of which 511,222.69 had been spent on salaries, 15,200 on administrative material, 5,000 on fuel, 26,000 on communication services, 19,500 on travel and representation costs and merely 2,000 on professional training.<sup>54</sup>

Internal financial control is established. Only scarce information is available on external financial control, which depends on the State Audit Office (SAO). In 2018, the SAO performed an audit of the APDP-FAI but not of the Ombudsperson (last audited in 2016). In its report, the SAO gave a "positive opinion, but highlighted the financial audit and a conditional opinion subject to revision of irregularities".<sup>55</sup> The lack of regular external control highlights the need for stronger internal financial audit mechanisms.

Recruitment procedures are not fully independent, and there have been indirect modes for transfer of staff by the Government or other forms of influence exerted by the Government.<sup>56</sup> The employees at the institution of Ombudsperson have sufficient qualification under the four pillars of the institution, and both in the NHRI and the equality body mandates the allocated score is 2.00. The composition of the staff at this institution has a good gender balance internally, even though no woman has been elected Ombudsperson to date. Pluralism is good (1.00), but not all communities are represented in the institution. Conversely, the current staff at the APDP-FAI (1.00) only have general specialism in human rights, which questions their expertise in the growing requirements in the field of data protection. While there is representation of different national communities at the APDP-FAI, there is no gender balance and no female representation at the high institutional level (Council, Director). Hence the allocated score is 1.00.

The issues of finances, recruitment and pluralism are also related to the overall human resources in these institutions. Neither of them has a structured specialist training programme either for their employees or for their target groups. As indicated above, very scarce amounts of the budget allocations for both the Ombudsperson and APDP-FAI are spent on training and professional advancement. This issue is probably related to the lack of strategic planning and regular assessment on the basis of output and impact indicators. Both institutions do publish annual reports, which represent a broad overview of the mandate and activities, with scarce evaluation of the institution's impact or an indication of its future direction.

Regarding the regional offices criterion, it is worth noting that the score for the Ombudsperson (1.00) does not fully reflect the reality on the ground, possibly due to the fact that Montenegro is a small country. Even though the institution does not have offices outside of the capital city, it has "postal boxes" and has organised the "Days of the Ombudsperson" in several Montenegrin municipalities.<sup>57</sup>

52 Zaštitnik ljudskih prava i sloboda Crne Gore, Godišnji izvještaj (2018), p. 214. Available at: [http://www.ombudsman.co.me/docs/1554124685\\_final-godisnji-izvjestaj-2018.pdf](http://www.ombudsman.co.me/docs/1554124685_final-godisnji-izvjestaj-2018.pdf)  
 53 Marijana Laković Drašković, Daliborka Uljarević, Boris Marić, Wanda Tiefenbacher, and Maja Stojanović, Kratki vodič kroz zakonodavni i institucionalni okvir zaštite ljudskih prava u Crnoj Gori (Centar za građansko obrazovanje, 2015)  
 54 Izvještaj o stanju zaštite ličnih podataka i stanju u oblasti pristupa informacijama za 2018. godinu. Available at: [http://www.azlp.me/docs/zajednicka/izvjestaj\\_o\\_stanju/IZVJESTAJ%202018.doc](http://www.azlp.me/docs/zajednicka/izvjestaj_o_stanju/IZVJESTAJ%202018.doc)  
 55 Godišnji izvještaj o izvršenim revizijama i aktivnostima Državne revizorske institucije Crne Gore za period oktobar 2018 – oktobar 2019. godine. Available at: <http://www.dri.co.me/1/doc/Godi%C5%A1nji%20izvje%C5%A1taj%20o%20izvr%C5%A1enim%20revizijama%20i%20aktivnostima%20DRi%20za%20period%20oktobar%202018%20-%20oktobar%202019.%20godine.pdf>  
 56 Marijana Laković Drašković, Daliborka Uljarević, Boris Marić, Wanda Tiefenbacher, and Maja Stojanović, Kratki vodič kroz zakonodavni i institucionalni okvir zaštite ljudskih prava u Crnoj Gori (Centar za građansko obrazovanje, 2015)  
 57 Zaštitnik ljudskih prava i sloboda Crne Gore, Godišnji izvještaj (2018), p. 23. Available at: [http://www.ombudsman.co.me/docs/1554124685\\_final-godisnji-izvjestaj-2018.pdf](http://www.ombudsman.co.me/docs/1554124685_final-godisnji-izvjestaj-2018.pdf)

In sum, Domain 2 ‘Availability of Resources and Capacities’ presents some of the key challenges for the effectiveness of the NHRI. The core difficulty is not only the lack of financial resources, reported both by these institutions and the EC in its Progress Report, but also structural underspending and internal allocation of funds. A further issue is the professionalism and capacity building of staff, which is crucial for building human resources that would foster the work of the NHRI in Montenegro.

### Domain 3: Information, Accessibility and Cooperation with Other Relevant Actors

NHRI	Domain 3 score ↓
	<i>min: 0; max: 2</i>
Ombudsperson (Equality)	1.37
Ombudsperson (NHRI)	1.30
APDP-FAI (PDP)	0.94
APDP-FAI (FAI)	0.81

The Ombudsperson scored significantly higher than the APDP-FAI in Domain 3 ‘Information, Accessibility and Cooperation with Other Relevant Actors’. Overall, the institutions scored higher as regards the formal conditions within this domain (parliamentary scrutiny), but have not been as effective in those aspects of their mandate where an active approach or initiative is required.

Reports of the NHRIs are commonly on the agenda of the plenary sessions of the national Parliament.<sup>58</sup> In most cases such plenary debates are tantamount to presentation of the institution’s activities, rather than true scrutiny of its activities. Hence while both institutions have high score (2.0), it may reflect the adequate legislative framework rather than a substantial mechanism of checks and balances. Moreover, cooperation with the government and other NHRIs is also an important indicator of the institution’s effectiveness. While the statutes of these institutions provide them with the possibility to initiate or contribute to laws and policy proposals falling within their domains, there is no mechanism in Montenegro that obliges the government to consult NHRIs on the respective issues. However, the score for the Ombudsperson in this domain is 0.00 because “there is no obligation to consult the NHRI on policy proposals” and 1.00 for the APDP-FAI because the government “may, but is not obliged to consult the SA on legislative proposals related to data protection” (0.00 in the matrix implies the absence of the provision). The value of the indicator differs because the relevant standards for the NHRI and equality body are different from those for data protection and free access to information.

No formal cooperation channels exist between the Ombudsperson and APDP-FAI, although the two institutions have engaged in collaboration through activities, e.g. the workshop “Protocol on the behaviour of entities, bodies and organisations with homeless children and children who work on the street” co-organised by Save the Children, and the international Human Rights Day conference organised by the Parliament of Montenegro.<sup>59</sup> The Ombudsperson has actively and frequently teamed up with NGOs and the media, thus promoting its activities, especially as regards the rights of the child.<sup>60</sup> The Annual Report of the APDP-FAI lists 3 collaborative initiatives, including the signing of a memorandum with the NGO Blind Alliance, the above-mentioned Human Rights Day conference and a meeting with a presidential candidate. Hence this institution’s collaboration and outreach have been limited.

As regards the international activities, the Ombudsperson received the highest score for being a member of nine relevant international networks.<sup>61</sup> This NHRI’s report also lists a number of international events, mostly in the Western Balkan region, in which the Ombudsperson participated actively.<sup>62</sup> In 2018, the APDP-FAI became an observer in the European Data Protection Board (EDPB), and its members attended several international conferences. The Annual Report does not indicate whether APDP-FAI members actively participated in these events.<sup>63</sup> NHRIs in Montenegro have the obligation to provide information on rights and remedies. Moreover, in line with the international standards, such information needs to be provided in an accessible language. While such information is published on the Ombudsperson and APDP-FAI websites, it is not always in an easily accessible language. Information on the Ombudsperson’s website is principally simplified. However, it is not available in all the languages of the country, hence the score is 1.00. By contrast, information available on the APDP-FAI website is based on verbatim extracts from laws which most citizens find difficult to understand. Even so, this institution scored 1.00 because the standard for NHRI with mandate in free access to information and data protection is different from the one applied for the Ombudsperson.

58 Skupština Crne Gore, Dnevni Red: Izvještaj o radu Zaštitnika ljudskih prava i sloboda Crne Gore za 2018. godinu. Available at: <http://www.skupstina.me/index.php/me/kalendar/deseta-sjednica-prvog-redovnog-zasjedanja-u-2019-godini>; Skupština Crne Gore, Dnevni Red: Izvještaj o stanju zaštite ličnih podataka i stanju u oblasti pristupa informacijama za 2018. godinu. Available at: <http://www.skupstina.me/index.php/me/saradnja-sa-iseljenicima-aktuelnosti/item/3312-nastavak-seste-sjednice-prvog-redovnog-zasjedanja-u-2019-godini>  
59 Izvještaj o stanju zaštite ličnih podataka i stanju u oblasti pristupa informacijama za 2018. godinu. Available at: [http://www.azlp.me/docs/zajednicka/izvjestaj\\_o\\_stanju/IZVJESTAJ%202018.doc](http://www.azlp.me/docs/zajednicka/izvjestaj_o_stanju/IZVJESTAJ%202018.doc)  
60 Zaštitnik ljudskih prava i sloboda Crne Gore, Godišnji izvještaj (2018), p. 23. Available at: [http://www.ombudsman.co.me/docs/1554124685\\_final-godisnji-izvjestaj-2018.pdf](http://www.ombudsman.co.me/docs/1554124685_final-godisnji-izvjestaj-2018.pdf)  
61 The Ombudsperson: AOM, EOI, CRONSEE, ENOC, EQUINET, ECRI, NPM former Yugoslavia, GAHHNRI (B status).  
62 Zaštitnik ljudskih prava i sloboda Crne Gore, Godišnji izvještaj (2018), p. 32. Available at: [http://www.ombudsman.co.me/docs/1554124685\\_final-godisnji-izvjestaj-2018.pdf](http://www.ombudsman.co.me/docs/1554124685_final-godisnji-izvjestaj-2018.pdf). The annual report also lists the topics of the Ombudsperson’s contributions/speeches.  
63 Izvještaj o stanju zaštite ličnih podataka i stanju u oblasti pristupa informacijama za 2018. godinu. Available at: [http://www.azlp.me/docs/zajednicka/izvjestaj\\_o\\_stanju/IZVJESTAJ%202018.doc](http://www.azlp.me/docs/zajednicka/izvjestaj_o_stanju/IZVJESTAJ%202018.doc) The Annual Report mostly lists the topic of the conference/event.

Websites are not easy to navigate, especially for persons with disabilities. Equally, while the institutions’ premises are accessible for most individuals with physical disabilities, no special hosting arrangements have been made in either of the institutions. The Ombudsperson can be reached online, via email, telephone/fax, through designated postal boxes in prisons and orphanages. Office hours for meeting citizens are between 11 am and 2 pm Monday to Friday. The APDP-FAI can be reached online, by email, telephone/fax. Neither of the two NHRIs has a publicly available communication strategy.

As regards professionalism, it has been highlighted in Domain 1 that the key shortcoming of the Ombudsperson’s mandates as NHRI and equality body is the absence of mechanisms for the protection against threat. As a result, adequate standards for offering confidentiality to witnesses or protection to whistle-blowers in either of the two institutions still do not exist, except from the general obligation in line with Law on Prevention of Corruption.<sup>64</sup>

Finally, in Domain 3 ‘Information, Accessibility and Cooperation with Other Relevant Actors’, the key challenges include active collaboration with national NGOs and international networks; accessibility of premises and communication tools for individuals with disability; and most importantly substantial protection to whistle-blowers.

### Domain 4: Mandate and Powers

NHRI	Domain 4 score ↓
	<i>min: 0; max: 2</i>
Ombudsperson (NHRI)	1.19
Ombudsperson (Equality)	1.28
APDP-FAI (FAI)	1.00
APDP-FAI (PDP)	1.06

In Domain 4 ‘Mandate and Powers’ the research analyses specific conditions related to the assessment of each institution’s mandate. The focus is on cross-sectoral mandates and on the follow-up on the areas which need improvement as regards the applicable international standards.

In the NHRI domain, the Ombudsperson has a mandate limited to the public sector (apart from courts, which fall under the institution’s mandate only in cases of failure to ensure due process), and its decisions and opinions are not legally binding. Hence the institution received the score of 1.00 in this regard. The Law on Prevention of Discrimination extends the mandate of the Ombudsperson to the private sector (private companies performing a public function), in the domain of discrimination, and therefore as the equality body the Ombudsperson receives the score of 2.00.<sup>65</sup> The Ombudsperson’s decisions remain of a non-binding character, and Article 22 of the Law on Ombudsperson explicitly prohibits this institution from ‘changing, terminating, or annulling’ any legal act in force.<sup>66</sup>

APDP-FAI also has a dual mandate, being the supervisory mechanism for data protection and a safeguard for free access to information. Formally, it has full mandate and powers for monitoring and enforcement of the Law on Personal Data Protection and the Law on Free Access to Information, as well as all relevant developments in these two areas. It therefore scored 2.00 on monitoring and enforcement. APDP-FAI also has a full mandate for investigations, where it also reaches the highest standard. However, this institution does not have the full mandate required under the GDPR for ‘authorisations of codes of conduct, certifications, standard, authorisation of contractual clauses and administrative arrangements, approval of binding corporate rules’.<sup>67</sup> In this regard, it scored 0.00. Its decisions and opinions are not legally binding.

The fact that a number of NHRI recommendations have not been implemented poses a persistent problem, as well as the fact that there has been no follow-up on them. While there are no public data on the exact percentages, the 2018 Annual Report of the Ombudsperson highlights that one of the key challenges the institution faces is the ‘attitude towards the recommendations of the Ombudsperson that have not been implemented’.<sup>68</sup> The Ombudsperson has received the score of 1.00 in this domain. APDP-FAI adopted 35 decisions, 24 opinions, and 2 stances related to data protection, as well as 2,989 decisions on requests to free access to information.<sup>69</sup> There is no information as to how many such decisions have been implemented in the domain of data protection, but the APDP-FAI annual report notes that the institutions followed 91.38% of the decisions on requests for free access to information.<sup>70</sup>

At the national level, the Ombudsperson submitted three initiatives<sup>71</sup> related to its general NHRI mandate (hence the score of 1.00 for NHRI), but none in the domain of equality (hence the score of 0.00 for equality body): 1) Law on

64 Zakon o sprječavanju korupcije [Law on Prevention of Corruption] (Official Gazette No 53/2014, 42/2017)  
65 Zakon o zabrani diskriminacije [Law on Prohibition of Discrimination] (Official Gazette No 46/2010, 40/2011 – other law, 18/2014 and 42/2017)  
66 Zakon o zaštitniku/ci ljudskih prava i sloboda Crne Gore [Law on Ombudsperson] (Official Gazette of Montenegro No 42/2011, 32/2014), Article 22  
67 GDPR, Article 46  
68 Zaštitnik ljudskih prava i sloboda Crne Gore, Godišnji izvještaj (2018), p. 203. Available at: [http://www.ombudsman.co.me/docs/1554124685\\_final-godisnji-izvjestaj-2018.pdf](http://www.ombudsman.co.me/docs/1554124685_final-godisnji-izvjestaj-2018.pdf)  
69 Izvještaj o stanju zaštite ličnih podataka i stanju u oblasti pristupa informacijama za 2018. godinu, p. 16. Available at: [http://www.azlp.me/docs/zajednicka/izvjestaj\\_o\\_stanju/IZVJESTAJ%202018.doc](http://www.azlp.me/docs/zajednicka/izvjestaj_o_stanju/IZVJESTAJ%202018.doc)  
70 Izvještaj o stanju zaštite ličnih podataka i stanju u oblasti pristupa informacijama za 2018. godinu, p. 101. Available at: [http://www.azlp.me/docs/zajednicka/izvjestaj\\_o\\_stanju/IZVJESTAJ%202018.doc](http://www.azlp.me/docs/zajednicka/izvjestaj_o_stanju/IZVJESTAJ%202018.doc)  
71 Only those proposals that have been reported in the annual reports and submitted on the NHRI’s own initiative were accounted for.

Protection from Family Violence (to increase the payable charge); 2) Initiative for a training for police forces so that they avoid “arbitrariness” in executing their functions; 3) Opinion on the Guidelines for Noise Levels.<sup>72</sup> There were no international initiatives by the Ombudsperson. APDP-FAI was inactive in this regard at both national and international levels, receiving the score of 0.00.

The public trust in the Ombudsperson is 58 per cent, according to the Balkan Barometer of the Regional Cooperation Council survey,<sup>73</sup> resulting in the score of 1.00. However, there are no local or international public opinion polls that measure the public trust in APDP-FAI, and therefore this institution scored 0.00.

Finally, the indicator for assessing the NHRI was the evaluation of the European Commission in its last Report. Since both institutions have made progress, but shortcomings and limitations still exist, their score is 1.00.<sup>74</sup> The EC’s assessment of the Ombudsperson is indeed better than that of the APDP-FAI, but both institutions have been facing significant challenges in terms of financial and human resources and in terms of their position to guarantee that citizens’ human rights are protected.

## RECOMMENDATIONS

The ensuing recommendations to the national authorities (the Parliament and the Government and the NHRIs), international actors (the European Union and others) and the NGOs are based on the ranking of the Montenegrin NHRIs across the four domains. Rather than opting for general recommendations, in line with the findings and the main challenges outlined in the Report, the following are tailored per different stakeholders.

### National authorities

#### To the Parliament

**Ensure that appointments are genuinely transparent and participatory.** While formal transparency is indeed guaranteed, there is scarcely any public debate on the appointments to NHRIs. A proactive approach is required to involve different stakeholders in the public debate, especially as regards appointments to APDP-FAI.

**Stipulate clear conditions for appointment in view of the mandate of the NHRI.** Such an approach would require members to have specific expertise related to the mandate of the institution (e.g. rights of the child, data protection, etc.) rather than a broad specialism in human rights. In turn, expertise within the institution would enhance its performance.

**Ensure that members of the NHRI reflect the composition of Montenegrin society.** This implies not only formal anti-discrimination safeguards, but also special attention that the composition of the institution truly reflects the demographic map of the country. In turn, this would contribute to the NHRIs becoming institutions that can address the needs and protect the rights and freedoms of all citizens, without prejudice to gender, ethnic and religious belonging as well as persons with disabilities.

**Institute the obligation to consult NHRIs on issues clearly within their mandate.** As such a consultation is not obligatory, it is scarce at present. This would result in legislation and policies that take into account the expertise of NHRIs, and that tackle issues important for all citizens and, in particular, vulnerable groups.

**Introduce constitutional guarantees for immunity and protection against threat for NHRIs.** This would ensure independence in the performance of NHRI mandates.

**Discuss the needs of NHRIs regarding the mandate and their work plan as to ensure sufficient budgetary allocation.** Sufficient and adequately distributed resources would guarantee institutional independence and effectiveness of the NHRIs.

**Establish mechanisms for regular external financial control of NHRIs.** This would ensure compliance, but also help to identify the real financial needs of institutions.

#### To the National Human Rights Institutions

**Adopt strategic (multi-annual) work plans specifying activities within their mandate.** Mid-term strategic planning would ensure that the NHRI activities reflect the needs of citizens in guaranteeing their rights. It would also enable NHRIs to tailor their activities in a way that would enhance their performance in the context of EU accession.

**Enhance pluralism of staff, at all levels of seniority.** It is essential that NHRIs reflect societal diversity. Women, people of different ethnic backgrounds, and persons with disabilities must have equal opportunities within the institutions, particularly as regards senior positions.

<sup>72</sup> Zaštitnik ljudskih prava i sloboda Crne Gore, Godišnji izvještaj (2018), pp. 71-75 203. Available at: [http://www.ombudsman.co.me/docs/1554124685\\_final-godisnji-izvjestaj-2018.pdf](http://www.ombudsman.co.me/docs/1554124685_final-godisnji-izvjestaj-2018.pdf).

<sup>73</sup> Regional Cooperation Council, ‘Balkan Barometer’ (2019) 96 <[https://www.rcc.int/download/docs/Balkan-Barometer\\_Public-Opinion-2019-07-03.pdf](https://www.rcc.int/download/docs/Balkan-Barometer_Public-Opinion-2019-07-03.pdf)>.

<sup>74</sup> European Commission, 2019 Progress Report on Montenegro. Available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>

**Enhance human resources by regular training programmes.** These would result in capacity-building of NHRIs and would also enable collaboration and knowledge transfer with other stakeholders (NGOs, other NHRIs, IGOs).

**Enhance accessibility of NHRIs.** Individuals with physical, sensory and intellectual disabilities should be able to approach NHRIs and premises need to be equipped to accommodate such individuals. Individuals from the entire territory of Montenegro should have access to NHRIs, and arrangements should be made to ensure open office hours for those who reside outside the capital. This would guarantee that all citizens have equal opportunity to have their human rights protected.

**Enhance communication efforts and accessibility of information.** NHRIs would benefit from annual or bi-annual communication strategies, including outreach to the general public through most commonly used media (including social media). All information regarding the rights within the NHRIs’ mandate should be made available in all the languages commonly used in the country. Such information needs to be in an easy-to-read format, written in a manner understandable to citizens. The outcome of this would be equal access to rights for all citizens.

**Establish structured collaboration with NGOs, IGOs, and with other NHRIs.** Inter-institutional cooperation at different levels needs a structured approach so that joint initiatives can best meet the needs of NHRIs. Such collaboration would entail periodic meetings for discussing key challenges; a multi-actor approach to legislative initiatives; co-financing outreach activities with citizens. It would result in a participatory approach to key challenges that the Montenegrin society faces in view of human rights and freedoms.

**Enhance international activity.** This would entail not only formal membership in international networks, but also submission of initiatives therein and *active* participation in their work (e.g. by initiating projects, commenting on draft documents, presenting the NHRIs’ activities). This would result in an effective implementation of international standards through cross-fertilization of knowledge, learning and emulation.

**Enhance national activity.** NHRIs must take a more proactive approach in submitting independent initiatives to national authorities. According to international standards, within each mandate, multi-mandate NHRIs are advised to submit three such initiatives. Mechanisms for monitoring of compliance with NHRIs’ recommendations need to be established. This would reinforce the institutional position of the NHRI, thus offering a better protection of citizens’ rights.

### International actors

#### To the European Union

**In the Annual Report, clearly highlight both the elements of progress of NHRIs and the areas where improvement is needed.** Such an approach will ensure smoother harmonization with the conditions for EU membership, and at the same time allow a quality comparison of an institution’s progress or backsliding.

#### To other international actors

**The international organizations in Montenegro should establish structured collaboration with NHRIs in the relevant domain, particularly as regards training activities, technical and financial support.** Such an approach would help the domestic NHRIs build up human resources necessary for performing their tasks.

### NGOs

**Actively collaborate with NHRIs, seeking both project-based and structured co-operation.** Initiatives for long term collaboration should be established. Active and substantive collaboration that goes beyond signing memoranda of understanding between the NHRI and the NGOs is crucial for guaranteeing the institution’s effectiveness.

**Enhance monitoring of the NHRI along their mandates.** NGO reports on the performance of institutions help to assess their credibility and effectiveness. Such reports would need to include recommendations, which in turn would help highlight the key issues these institutions are facing and propose feasible solutions to them.

**Conduct public opinion polls on independence and public trust in NHRIs.** NGOs that conduct regular surveys of public opinion should include questions regarding specific NHRIs. This would enable future assessment of the perceptions of the institution’s effectiveness.

## Annex: List of indicators

### Domain 1: Independence and ability to work without pressures

Ombudsperson	EB	SADP	FAI
Independent statutory basis	Independent statutory basis	Independent statutory basis	Independent statutory basis
Appointment process	Appointment process	Appointment process	Appointment process
Clear criteria for membership			
Term of office	Term of office	Term of office	Term of office
Avoidance of conflict of interest			
Immunities	Immunities		
No instruction from government			
Removal	Removal	Removal	Removal
Submission/agreement to pressure	Submission/agreement to pressure	Submission/agreement to pressure	Submission/agreement to pressure
Public opinion on independence of NHRIs			

### Domain 2: Availability of resources and capacities

Ombudsperson	EB	SADP	FAI
Separate and independent budget	Separate and independent budget	Separate and independent budget	Separate and independent budget
Adequate financial resources	Adequate financial resources	Adequate financial resources	Adequate financial resources
Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures
Sufficient human resources	Sufficient human resources	Sufficient human resources	Sufficient human resources
Adequate human resources	Adequate human resources	Adequate human resources	Adequate human resources
Financial control	Financial control	Financial control	Financial control
Pluralism	Pluralism		
Training	Training		Training
Internal structure enables focus on each part of mandate	Internal structure enables focus on each part of mandate		
Regional offices/outreach	Regional outreach/offices		
Learning and change	Learning and change	Learning and change	Learning and change

### Domain 3. Information, accessibility and cooperation with other relevant actors

Ombudsperson	EB	SADP	FAI
Parliamentary scrutiny	Parliamentary scrutiny	Parliamentary scrutiny	Parliamentary scrutiny
Providing information to NHRIs	Providing information to NHRIs		
Cooperation with government	Cooperation with government	Cooperation with government	Cooperation with government
Cooperation with other NHRIs	Cooperation with other NHRIs	Cooperation with other NHRIs	Cooperation with other NHRIs
Cooperation with NGOs	Cooperation with relevant bodies and NGOs	Trans-national cooperation with other SAs	Cooperation with NGOs
Providing information on rights	Providing information on rights	Providing information on rights	Providing information on rights
		Information on rights and assistance to data subjects	
Accessibility	Accessibility	Accessibility	Accessibility
Accessibility to children			
Accessibility to persons with disabilities	Accessibility to persons with disabilities	Accessibility to persons with disabilities	Accessibility to persons with disabilities
Membership in international networks	Membership in international networks	Membership in international networks	
Participation in international activities	Participation in international activities	Participation in international activities	Participation in international activities
Communication strategy	Communication strategy	Communication strategy	Communication strategy
Confidentiality and protection	Confidentiality and protection	Professional secrecy	

**Domain 4: Mandate and powers**

Ombudsperson	EB	SADP	FAI
		Monitoring and enforcement	Monitoring and oversight
Human rights promotion	Promotion and prevention	Promotion	Promotion
Promotion of harmonisation with international HR instruments and implementation			Promotion of pro-active dissemination
Mandate – coverage of sectors	Coverage of grounds of discrimination		
	Coverage – area		
	Equal treatment of all persons without discrimination on grounds of sex		
Human rights protection – powers – investigation	Independent assistance – mandate	Investigations	
Human rights protection – powers – access			
Human rights protection – powers – complaints			
Human rights protection – powers – courts			
Follow-up on recommendations	Follow up on recommendations		
Initiatives to national authorities	Initiatives to national authorities	Advisory role	Advisory role
	Complaints submission	Handling complaints	Handling complaints
	Complaints submission – language		Complaints submission
	Complaints submission – free of charge		Complaints submission – free of charge
	Independent surveys	Regulatory functions / authorisations	
Reports	Independent reports		
Submission of contributions to international bodies	Submission of contributions to international bodies		
National prevention mechanism			
Rights of the child			
Public opinion on public trust in NHRIs	Public opinion on public trust in NHRIs	Public opinion on public trust in SA institution	Public opinion on public trust in SA institution
Assessment of the EC in the last report	Assessment of the EC in the last report	Assessment of the EC in the last report	Assessment of the EC in the last report

**Effectiveness of National Human Rights  
Institutions in the Western Balkans**

Montenegro, North Macedonia, Serbia



**COUNTRY REPORT  
NORTH MACEDONIA**

November 2019

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## List of Acronyms and Abbreviations

ADL	Law on Prevention and Protection against Discrimination (2010)
CoE	Council of Europe
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CPAD, the Equality body	Commission for Protection against Discrimination
CRD	Convention on the Rights of the Child
CRD	Civil Rights Defenders
CRPD	Convention on the Rights of Persons with Disabilities
DPD, the Directorate	Data Protection Directorate
ECRI	European Commission against Racism and Intolerance
FRA	European Union Agency for Fundamental Rights
GANHRI	Global Alliance of National Human Rights Institutions
GDPR	General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC)
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
KOMSPI, the Commission	Commission for the Protection of the Right to Access to Public Information
LFAPI	Law on Free Access to Public Information (2006)
LO	Law on the Ombudsperson (2003)
LPPD	Law on Protection of Private Data (2005)
MKD	North Macedonia
MLSP	Ministry of Labour and Social Policy
MNE	Montenegro
NGO	Non-governmental organisation
NHRI	National Human Rights Institutions
Ombudsperson	Ombudsperson of the Republic of Macedonia <sup>1</sup>
OHCHR	UN Office of the High Commissioner for Human Rights
OP-CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
Priebe Report	Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015
SA	Supervisory Authority
SRB	Serbia
UN	United Nations
UNHRC	UN Human Rights Committee

<sup>1</sup> As of February 2019, the Ombudsperson of the Republic of North Macedonia.

## INTRODUCTION

Following 1991 and the start of the transition, the ‘ombudsmania’ took over the former state socialist countries, including North Macedonia.<sup>2</sup> These processes overlapped with the enhanced efforts at the international level to promote the concept of national human rights institutions. A national human rights institution (NHRI) is a body established by the state with the mandate to protect and promote human rights.<sup>3</sup> These international efforts aimed to close the gap between international law and national practices.<sup>4</sup>

The 1990s were a period when NHRIs were on the rise in Europe in general, and in the former Yugoslav republics they were, and still are, particularly important. The main reason for this is that, while in lieu of NHRIs the other western European countries can rely on another protection option (their strong judiciaries), this is not the case in our part of the world. The dissolution of Yugoslavia brought turbulent changes and an overhaul of the judiciary, disturbing it completely. In a context of ‘weak, politicized, slow or otherwise incapacitated’<sup>5</sup> judiciary and a tendency for ‘power concentration’<sup>6</sup> among political elites, NHRIs become even more important. The prominence of NHRIs has grown since, and they have become an integral benchmark of international monitoring of human rights practices at the national level, including for the purposes of EU accession.

Under the pressure of international actors – first the UN and later the EU – the NHRIs in North Macedonia have been developing and diversifying. Four institutions satisfied the NHRI definition criteria selected for this research: the Ombudsperson, the Commission for Protection against Discrimination, the Data Protection Directorate, and the Commission for Protection of the Right to Free Access to Public Information. However, the monitoring of the NHRIs in North Macedonia consistently points out to several issues which these institutions face – ranging from lack of human and financial resources, to severe political pressure and undermining of their independence. This raises the issue of the ability of NHRIs to perform their work effectively, which leads us to the aim of this research – ‘to assess the effectiveness (performance) of the human rights institutions in North Macedonia, Montenegro and Serbia, based on a pre-defined set of indicators.’<sup>7</sup> In this research, the effectiveness of an NHRI is defined as ‘the capability of the NHRI to independently perform its mandate and powers, with the aim to make a significant impact on the achievement of human rights.’<sup>8</sup>

The starting ground was the current state of research on NHRIs. Several important sources have been published in North Macedonia for 2018 as an outcome of regular monitoring of NHRIs. The European Policy Institute in Skopje publishes regular annual monitoring reports of the Network 23 on Chapter 23 Judiciary and Fundamental Rights, including the NHRIs’ role in fundamental rights protection.<sup>9</sup> A specific monitoring report on the Ombudsperson by the NGO Info Centre from 2018 covered several aspects relevant for the institution’s effectiveness – legal framework, regional offices, as well as communication and cooperation with NGOs and media.<sup>10</sup> The Non-discrimination Network has been monitoring the implementation of the Anti-discrimination Law since 2011, including the operation of the Commission for Prevention and Protection of Discrimination,<sup>11</sup> while the Helsinki Committee for Human Rights published an annual information bulletin on discrimination.<sup>12</sup> The think tank Analytica has set out a framework for monitoring the Commission on Free Access to Public Information and the Data Protection Directorate.<sup>13</sup> The European Network of Legal Experts in the Non-Discrimination Field annual reports on non-discrimination deal with the compliance of equality bodies with EU directives standards.<sup>14</sup>

This report focuses on the findings from the research on the effectiveness of the four NHRIs in North Macedonia. The research specifically focused on the effectiveness of the four selected institutions, using the methodology outlined in the next section. After a brief overview of these institutions, we will present the research findings on the systemic challenges and shortcomings that hinder the work of the NHRIs for each of the effectiveness domains: independence and ability to work without pressure; availability of resources and capacities; information, accessibility and cooperation with other relevant actors; and mandate and powers. Finally, a set of recommendations, targeted at various stakeholders, are proposed.

<sup>2</sup> Svetomir Škarić and Gordana Siljanovska, Уставно право [Constitutional Law] (Kultura 2009) 759.

<sup>3</sup> See the research methodology in the comparative analysis.

<sup>4</sup> A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights’ (United Nations 1995).

<sup>5</sup> Linda Reif, ‘Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection’ 13 Harvard Human Rights Journal 1, 2.

<sup>6</sup> Jan Jarab, ‘Perspective on the Need for NHRIs in Europe and the World’ in Jan Wouters and Katrien Meuwissen (eds), *National Human Rights Institutions in Europe: Comparative, European and International Perspectives* (Intersentia and COST 2013) 291–292.

<sup>7</sup> See the research methodology in the comparative analysis.

<sup>8</sup> See the research methodology in the comparative analysis.

<sup>9</sup> Iva Conevska and others, ‘Shadow Report on Chapter 23 for the Period from June 2018 to March 2019’ (EPI 2019) <<https://epi.org.mk/wp-content/uploads/2019/05/Shadow-Report-Eng-1.pdf>>.

<sup>10</sup> Biljana Bejkova and Uranija Pirovska, ‘Граѓански мониторинг на Народниот правобранител [Civic Monitoring of the Ombudsperson]’ (NVO IC 2018).

<sup>11</sup> Igor Jadrovski, Jovana Jovanovska Kanurkova and Marija Gelevska, ‘Извештај за имплементација на Законот за спречување и заштита од дискриминација [Report on the Implementation of the Law on Prevention and Protection against Discrimination]’ (Мрежа за заштита од дискриминација 2019).

<sup>12</sup> Helsinki Committee of the Republic of Macedonia, Annual Information Bulletin on Discrimination - 2018 (Helsinki Committee of the Republic of Macedonia 2019) (<https://mhc.org.mk/reports/godishen-informator-za-diskriminacija-za-2018/>)

<sup>13</sup> Magdalena Lembovska, ‘Основни документи за следење на работата на Комисијата за заштита на правото на слободен пристап до информации од јавен карактер и Дирекцијата за заштита на личните податоци [Basic Documents for Monitoring of the Work of the Commission for the Protection of the Right to Free Access to Public Information and the Data Protection Directorate]’ (Analytica – think-tank 2017).

<sup>14</sup> Biljana Kotevska, Country Report – Non-Discrimination: Republic of North Macedonia 2018 (European Commission 2019).

## APPROACH AND METHODOLOGY

In the given context and the current state of development of research on NHRIs in the Western Balkans, an approach to measuring effectiveness that combines structural and mandate-based approaches was applied. The structural approach focuses on the compliance of an NHRI with main legal norms, i.e. institutional safeguards. The mandate-based approaches are performance based and focus on success in performing the mandate of an NHRI.

A matrix of indicators has been developed,<sup>15</sup> structured per four domains:

- (1) Independence and ability to work without pressure,
- (2) Availability of resources and capacities,
- (3) Information, access and cooperation with other relevant actors, and
- (4) Mandate and powers.

Values of the indicators have been weighed, depending on the number of indicators per domain (which ranged from 6 to 12). In addition, some indicators have been broken down to sub-indicators, to capture the specifics of a particular issue, which depended on the level of detail of a relevant international standard. The indicator per domain has been estimated as a sum of the weighed values of indicators in the domain. The overall score of effectiveness for each NHRI in each country is estimated as a sum of indicators per domain. Each domain participates equally in the final score – 25%. Consequently, the scale of the score per country per body is 0–8.

An overview of the indicators is presented in the Annex.

Relevant international standards and their interpretations have been used as the basis for developing the indicators. The Paris Principles<sup>16</sup>, or more precisely the GANHRI General Observations<sup>17</sup>, have been taken as a basis for the indicators for general mandate human rights institutions. UN relevant standards related to the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>18</sup>, the Convention on the Rights of the Child (CRC)<sup>19</sup>, the Convention on the Rights of Persons with Disabilities (CRPD)<sup>20</sup>, and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT)<sup>21</sup> and especially their interpretations have been used as the basis for specific indicators.

The EU Commission Recommendation of 22 June 2018<sup>22</sup>, the Opinion on equality bodies of 2011 of the Human Rights Commissioner of the CoE, as well as Revised General Policy Recommendation No 2 of 2017 on equality bodies to combat racism and intolerance of ECRI of the CoE<sup>23</sup> are the European standards taken as a basis for indicators for equality bodies.

The EU General Data Protection Regulation (GDPR)<sup>24</sup> and the CoE Convention 108+<sup>25</sup> have been taken as main standards for setting the indicators for data protection supervisory authorities. Lacking specific international standards for independent bodies on free access to information, general standards for NHRIs have been accordingly applied, while specific international standards on content of right of information<sup>26</sup>, as well as documents developed by special rapporteurs for freedom of expression in the UN, CoE and OSCE have been used as the basis for the indicators on powers and mandate.

### Overview of NHRIs in North Macedonia

In this section, we briefly present a short history of the NHRIs, their basic mandate and composition, and any major developments of relevance for effectiveness. This overview shows that all of the institutions were established and started operating only following pressure from the outside, from an international actor. They are usually set up with wide enough mandates, not enough resources, and are traditionally led by persons who, at the time of their appointment, have links to or strong support from ruling party or parties. However, some specificities do arise.

The oldest NHRI in the country is the Ombudsperson.<sup>27</sup> The legal ground for the establishment of the institution was set in 1991, with the adoption of the Constitution.<sup>28</sup> However, due to lack of political will, there were no developments regarding the adoption of the Law on the Ombudsperson and no setting-up preparations for several years after the adoption of the Constitution. The situation changed only following the visit of Elisabeth Rehn – UN Special Rapporteur on the Situation of Human Rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of

<sup>15</sup> A detailed explanation of the Methodology is available in the Comparative Analysis, published alongside the reports.

<sup>16</sup> UN General Assembly, Resolution A/RES/48/134 (1993).

<sup>17</sup> Global Alliance of National Human Rights Institutions, *General observations of the Sub-Committee on Accreditation*, adopted by GANHRI Bureau, 21 February 2018 (2018).

<sup>18</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 (1996).

<sup>19</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 (1989).

<sup>20</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Annex I (2006).

<sup>21</sup> UN General Assembly, *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 18 December 2002, A/RES/57/199 (2002).

<sup>22</sup> Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, C/2018/3850, OJ L 167 Ch. I, (2) (2018).

<sup>23</sup> Council of Europe, ECRI, *General policy recommendation no. 2: Equality bodies to combat racism and intolerance at national level*, adopted on 7 December 2017, CRI(2018)06 (2017).

<sup>24</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), (2016) OJ L 119.

<sup>25</sup> CoE, Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223), 10.10.2018 (2018).

<sup>26</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) (1966); CoE, *Convention on Access to Official Documents*, CETS 205, 11 June 2008 (2008);

<sup>27</sup> Official website of the institution: [www.ombudsman.mk](http://www.ombudsman.mk)

<sup>28</sup> Устав на Република Македонија [Constitution of the Republic of Macedonia] (Official Gazette of the Republic of Macedonia 1991) Чл. 77.

Yugoslavia at the time.<sup>29</sup> In her report, Elisabeth Rehn urged ‘the Government and all political forces in the country [...] to pay particular attention to the development of adequate national institutions for the protection of human rights’<sup>30</sup> while also citing the belated adoption of the law. The Law on the Ombudsperson had finally been adopted in 1997<sup>31</sup> and the institution with a mandate to deal with violations of the constitutional rights of the citizens in the public field and with maladministration started operating soon thereafter. One person heads the institution – the Ombudsperson of the Republic of North Macedonia,<sup>32</sup> appointed by the Parliament, with an eight-year mandate. It has six regional offices spread throughout the territory of the country, headed by a Deputy Ombudsperson. In addition to this, there are four other Deputy Ombudspersons tasked with specific thematic mandates. A new law under the same title – the Law on the Ombudsperson (LO) – was adopted in 2003 and has been amended and supplemented several times since, including to enlarge the mandate of the institution.<sup>33</sup> So, in time, the Ombudsperson assumed the role of the National Preventive Mechanism<sup>34</sup> and of an independent mechanism as per the Convention on the Rights of Persons with Disabilities.<sup>35</sup> It should be added, however, that the enlarged mandate was not followed by appropriate enlargement of resources. While the material scope of the Ombudsperson’s work has increased thematically, its sole focus on the public sector has been preserved. In 2011, the institution was awarded B-status by the Global Alliance of National Human Rights Institutions<sup>36</sup> (GANHRI). Since then, the Law on the Ombudsperson has been changed several times in order to address the points where the institution is not in line with the Paris Principles, namely legal grounds for conducting promotional work, lack of pluralism in the composition of the institution beyond the ethnic one, lack of transparency in staff recruitment, lack of financial independence and sufficient budget, and lack of interaction with the international human rights system and the existing networks.<sup>37</sup>

The second NHRI that we focus on is the Commission for Protection against Discrimination (CPAD, the equality body).<sup>38</sup> This equality body was established under the 2010 Law on Prevention and Protection against Discrimination (ADL).<sup>39</sup> The adoption of the law was preceded by years of effort by the domestic NGOs, who pushed for such a law to be adopted, drafted full proposals, organised and coordinated a large, participatory and diverse working group,<sup>40</sup> and maintained a momentum for its adoption. However, a major political push for the adoption of this law came from the outside, by the European Union, within the frame of the visa liberalisation process, which established the adoption of a comprehensive non-discrimination law as one of the benchmarks.<sup>41</sup> With an initially high potential for positive change in the area of anti-discrimination in the country, this process turned into a ‘missed opportunity’<sup>42</sup> when it comes to anti-discrimination since the EU decided to award the country visa free travel before the adoption of the ADL could be completed. In the meantime, the ruling coalition pushed through the Parliament a version of the law that was not the one that the working group had been working on, and which proposed that the equality body be seated in the Ministry of Labour and Social Policy. Eventually, this was amended in the brief parliamentary procedure and the end result was the CPAD. The CPAD is a composite body of seven commissioners, appointed following a public call by the Parliament, with a five-year mandate. Thus far, there have been two compositions of the CPAD appointed, both were highly contested because of their lack of experience and an abundance of suspicions about political ties with the then ruling parties of the appointed members. Both the CPAD and the Ombudsperson hold competences in relation to equality and non-discrimination in the public sector, whereas CPAD has sole competence in the private sector. This overlap in their mandates has not been properly dealt with; it was only a subject of one Memorandum for Understanding signed between the two institutions. Because of this and many other points on which the ADL was not in line with the EU *acquis* and was not, to put it simply, working in practice,<sup>43</sup> a new law under the same title was adopted in May 2019.<sup>44</sup> This law brought forth many improvements to the legal framework.<sup>45</sup> The membership criteria of the equality body are one of these improvements. However, since this research is a snapshot of the situation in 2018, we will take into consideration the 2019 developments when formulating the recommendations,<sup>46</sup> but we will not analyse them.<sup>47</sup>

The third NHRI that we focus on is the Data Protection Directorate (DPD, the Directorate).<sup>48</sup> The Directorate was established in 2005, by the Law on Protection of Private Data (LPPD).<sup>49</sup> Before this, there was an older law with the same title, however it did not foresee the establishment of a competent authority tasked with the implementation of

29 Мирјана Најчевска, ‘НИЧП во Република Македонија: Актуелна состојба, предизвици и можен развој’ (2012) 16 Списание за европски прашања ‘Евродијалог’ 25.

30 Elisabeth Rehn, Situation of Human Rights in the Territory of the Former Yugoslavia E/CN.4/1996/63 (Report submitted by Ms Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1995/89, UN Economic and Social Council 1996) <<http://hrlibrary.umn.edu/commission/country52/63-yugos.htm>>.

31 Закон за народниот правобранител [вон сила] [Службен весник на Република Македонија, бр. 7/97].

32 Until February 2019, this was Ombudsperson of the Republic of Macedonia.

33 LO 2003.

34 As per the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 17.

35 UN, Convention on the Rights of Persons with Disabilities (CRPD) (2006), Art. 33 (2).

36 Until March 2016, it was called ‘International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights’.

37 International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)* (2011) <[https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20\(with%20annexes\).pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20REPORT%20OCTOBER%202011%20-%20FINAL%20(with%20annexes).pdf)>.

38 Official website of the institution: [www.kzd.mk](http://www.kzd.mk)

39 Закон за спречување и заштита од дискриминација [Law on Prevention and Protection against Discrimination] 2010 [Службен весник на Република Македонија, бр: 50/10, 44/2014, 150/2015, 31/2016, 21/2018, Одлука на Уставен суд (У бр): 82/2010].

40 NGO PolioPlus led the Progress project, within the frame of which this working group was established and operated.

41 European Commission, ‘Visa Liberalisation with the Former Yugoslav Republic of Macedonia Roadmap’ (2008).

42 Simonida Kacarska, ‘Losing the Rights along the Way: The EU–Western Balkans Visa Liberalisation’ (2015) 16 European Politics and Society 363, 368.

43 For references to many relevant studies on various aspects of the ADL until 2019, see: Vaska Leshoska and others, ‘Gender-Based Discrimination and Labour in North Macedonia’ (Reactor – Research in Action 2019) 18 (footnote 17).

44 Закон за спречување и заштита од дискриминација [Law on Prevention and Protection against Discrimination] 2019 [Службен весник на РСМ бр. 101/2019].

45 For an analysis of the novelties in one of the latest draft versions before the law was adopted, see: Kotevska (n 15).

46 This means we will not propose any recommendations if an issue present in 2018 has been addressed in the 2019 law.

47 This is especially true since the mandate of the old CPAD ended, under Article 48(1) of the 2019 law, but a new one has not been appointed yet, regardless of the fact that the vacancy announcement ended five months ago.

48 Official website of the institution: [dzlp.mk](http://dzlp.mk)

49 Закон за заштита на личните податоци [Law on Personal Data Protection] 2005 [Службен весник на Република Македонија бр. 7/2005, 103/2008, 124/2008, 124/2010, 135/2011, 43/2014, 153/2015, 99/2016, 64/2018].

the law.<sup>50</sup> As of 2008, the body received the mandate to act as an inspectorate for the protection of personal data.<sup>51</sup> The DPD is headed by a Director appointed by the Parliament following a public call, with a five-year mandate. The Director has a Deputy Director, appointed following the same procedure and for the same number of years.

The fourth and final one is the Commission for Protection of the Right to Free Access to Public Information (KOMSPI, the Commission).<sup>52</sup> The KOMSPI, established under the 2006 Law on Free Access to Public Information,<sup>53</sup> is tasked with the protection and promotion of the right to access to information. It has five members – president, deputy-president and three members, each with a five-year mandate. They are appointed by the Parliament, following a public call. A 2013 study on the implementation of the LFAPI identified a trend of closing up of the KOMSPI with its restrictive approach to the interpretation of the concept of ‘public information’, as well as serious delays in acting upon individual cases.<sup>54</sup> This and later studies pointed out to many issues with the work and the positioning of the body, including lack of competences to issue fines and, like in other NHRIs, lack of financial and human resources.<sup>55</sup> The situation with the KOMSPI became alarming in May 2018 when, following the resignation of one of its members, it was left with two members only. Thus, it was not able to adopt any decisions, and therefore not able to decide upon cases.<sup>56</sup> All of this led to the adoption of a new law, with the same title, which is to enter into force on December 01, 2019.<sup>57</sup> According to this law, the KOMSPI is to be transformed into the Agency on the Right to Free Access to Public Information. In this research, we will take the same approach to this law as to the new ADL, which means that, since this research is a snapshot of the situation in 2018, we will take into consideration the 2019 developments when formulating the recommendations, but the analysis will not focus on these.

A common trait for all NHRIs throughout their history is refraining from entering into hot political issues. This was best exemplified during the wiretapping scandal, which revealed the extent of state capture which was later fully encapsulated in the 2015 Priebe Report.<sup>58</sup> This report included sections focusing on the Ombudsperson and on the DPD.

For the Ombudsperson, the Priebe Report found that it is ‘considered by many as being generally an independent institution in a difficult environment that carries out his functions delicately’,<sup>59</sup> and that its ‘genuine efforts to perform its oversight function are hampered by other institutions’<sup>60</sup>. It also found that:

*‘[The Ombudsperson] appears reluctant to use his mandate fully, probably as he is balancing between not upsetting the establishment too much in relation to concrete cases and his ability to carry out investigations into less politicised cases. Furthermore, the tense political environment seems to contribute to a lack of respect for his work and powers leading to obstruction. Yet it is precisely during such times of crisis that a strong oversight by the Ombudsman is essential to the rule of law, good governance, the protection of human rights and the restoring of public trust in the state institutions. Consequently, the Ombudsman is not systematically addressing the revealed potential violations of human rights although apart from obvious political pressure (direct or indirect) nothing, in theory, seems to prevent him from acting strongly on the revelations, like a real watchdog.’<sup>61</sup>*

As for the DPD, the Priebe Report found that it ‘appears generally to function well and with a high level of professionalism. It has received substantial international support.’ However, it expressed worry over the low activity of the DPD in the investigation of possible violations resulting from the wiretapping scandal, which fall within its mandate.<sup>62</sup> Furthermore, ‘[b]odies in charge of oversight and control in particular should not shy away from, and should by no means be prevented from, freely carrying out their mandate without inappropriate “political self-restraint”. Bodies which in a properly functioning democracy would be among the more important oversight and control bodies, such as [...] the Directorate for Personal Data Protection [...] appear unwilling to carry out their mandate.’<sup>63</sup>

As this overview shows, all institutions lack human and financial resources and are subjected to severe political pressure and undermining of their independence. We have evaluated these institutions using an effectiveness evaluation matrix. This enabled us to both identify the fine nuances in the level of compliance with international standards (explained in Approach and Methodology sections), and examine all institutions in order to identify systemic challenges for the effectiveness of NHRIs in North Macedonia. We present the results from this measuring exercise in the next section, Research Findings.

50 Закон за заштита на личните податоци [Law on Personal Data Protection] – not in force 1994 [Службен весник на Република Македонија бр. 12/1994, 4/2002].

51 Lembovska (n 14) 20.

52 Official website of the institution: [komspi.mk](http://komspi.mk)

53 Закон за слободен пристап до информации од јавен карактер [Law on Free Access to Public Information] 2006 [Службен весник на Република Македонија бр 13/2006, 86/2008, 6/2010, 42/2014, 148/2015, 55/2016 и 64/2018, Службен весник на Република Северна Македонија“ бр. 98/2019].

54 Danche Danilovska-Bajdevska, Marija Petrovska and Nada Naumovska, ‘Шест години подоцна: распука ли сидот од тишина? Анализа на имплементацијата на Законот за слободен пристап до информациите Од Јавен Карактер [Six Years Later: Has the Wall of Silence Cracked? Analysis of the Implementation of the Law on Free Access to Public Information]’ (FOOM 2013) 51–52.

55 Lembovska (n 14) 17–18; Danilovska-Bajdevska, Petrovska and Naumovska (n 58).

56 European Commission, ‘North Macedonia 2019 Report’ (2019) <<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>>.

57 Закон за слободен пристап до информации од јавен карактер („Службен весник на РСМ“ бр. 101/2019).

58 Senior Experts’ Group, ‘The Former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts’ Group on Systemic Rule of Law Issues Relating to the Communications Interception Revealed in Spring 2015’ (2015) <[https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news\\_corner/news/news-files/20150619\\_recommendations\\_of\\_the\\_senior\\_experts\\_group.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf)>.

59 *ibid* 13.

60 *ibid* 4.

61 *ibid* 14.

62 *ibid* 16.

63 *ibid* 4.

## RESEARCH FINDINGS

Next, we will discuss the research findings. We have presented them per domain, in order to facilitate the reaching of comparative remarks which can encourage mutual learning of the NHRIs. In addition, this enables us to point out to systemic challenges faced by all institutions. Each section starts with a figure presenting the ranking of NHRIs per domain, starting from the institution with the highest and ending with the one with the lowest score.

### General score

NHRI	General score ↓
	<i>min: 0; max: 8</i>
DPD	5.25
Ombudsperson	4.81
KOMSPI	3.71
CPAD	2.80

According to the general ranking, the DPD (5.25) is the most effective NHRI. The CPAD holds the lowest score (2.80). The CPAD also had the lowest score in all other domains, except Domain 4 'Mandate and Powers', where the KOMSPI had the lowest score. The Ombudsperson scored very close to the DPD (4.81). The KOMSPI is third in the ranking (3.71). The general score of the DPD is the highest because it scored better than the other three NHRIs in Domain 3 'Information, Accessibility and Cooperation with Other Relevant Actors'. This is also the domain that brought the score of the Ombudsperson significantly down. The general score of the KOMSPI and the CPAD is affected by the fact that one of them was not functioning for much of the researched period (KOMSPI), whereas the other had serious independence and passivity issues (CPAD). We explain all these points in more detail in the next four sections. The lowest overall score per domain is in Domain 2 'Availability of Resources and Capacities'. It is also worth noting that the institution with the best general score – the DPD, has its lowest score in this domain. This reflects well the fact that all NHRIs in the country have been working for years with very low human and financial resources. Overall, together with political interference, these two are the biggest systemic challenges for the effectiveness of the NHRIs in the country.

### Domain 1: Independence and Ability to Work without Pressure

NHRI	Domain 1 score ↓
	<i>min: 0; max: 2</i>
DPD	1.33
Ombudsperson	1.30
DPD	1.33
KOMSPI	1.22
CPAD	1.00

In the first domain, we examined the issues of independence and ability to work without pressure. The DPD has the highest score in this domain (1.33), but only slightly higher than the Ombudsperson (1.30). They are followed by KOMSPI (1.22). The CPAD has received the lowest score (1.00).

All institutions have scored high regarding their independent statutory basis, since they were all founded through either a law or the constitution.<sup>64</sup> The highest appointment standard applicable to the DPD and the KOMSPI (transparent procedure by legislature or specific independent body) has been satisfied,<sup>65</sup> whereas the highest appointment standard applicable to the Ombudsperson and the CPAD (legislature after public nomination, through participatory and transparent procedure) has not been satisfied due to the lack of a participatory and transparent procedure. This is mainly due to the fact that once the applications reach a competent parliamentary body – the Committee on Elections and Appointment Issues – the procedure becomes very much closed. There is no mandatory public debate, nor criteria for participation in the election by actors other than the Members of Parliament and, with that, beyond political parties.<sup>66</sup>

Concerning membership criteria, the Ombudsperson and the KOMSPI have satisfied the highest standards, whereas the CPAD and the DPD have not. The CPAD membership criteria do not demand a 'human rights expertise which may or may not be in conjunction with legal qualification'. While the ADL has 'human rights' among its criteria, this is diluted by the 'or social sciences' part,<sup>67</sup> which makes the provision porous to unqualified persons. This was very much the case in the past.<sup>68</sup> The DPD does not have a specified 'data protection expertise' among its membership criteria.<sup>69</sup>

64 LO 2003; ADL 2010; LPPD 2005; LFAP 2006.  
65 LPPD 2005 Art. 37; LFAP 2006 Art. 31.  
66 ADL 2010 Art. 19; LO 2003 Art. 5.  
67 ADL 2010 Art. 18.  
68 Kotevska (n 15) 70.  
69 LPPD 2005 38.

With regards to term of office, the Ombudsperson has a mandate that is longer than the one recommended by GANHRI (seven). On the other hand, the equality body has a four-year mandate, thus satisfying the standard.<sup>70</sup> The DPD and the KOMSPI comply with the highest standards.<sup>71</sup>

All institutions have received a medium score on the avoidance of conflict of interest. This is caused by the fact that neither foresees any specific criteria, only a general clause applicable for the duration of the term. For the DPD and the KOMSPI, according to the international standards for these bodies, the criteria should be extended for the period after the term as well, which is not currently the case with these two institutions.<sup>72</sup> The Ombudsperson and the CPAD should have an additional layer of protection - immunity and protection against threat and coercion. While immunity is well regulated for the Ombudsperson, protection against threat and coercion does not exist for the Ombudsperson and the deputies.<sup>73</sup> The ADL contains no clause that would provide both functional immunity and protection against threat and coercion.

Regarding the criterion 'no instruction from government', only the Ombudsperson has the highest score attainable because it has an explicit provision on prohibition of interference.<sup>74</sup> All other institutions have received a medium score, because the laws contain only general provisions on their independence.<sup>75</sup>

All institutions have also received a medium score regarding removal from office. This is mainly due to the room left for arbitrariness in the general provisions of the laws.

Regarding the criterion of submission or agreement to pressure, the Ombudsperson and the DPD have received the highest score since no cases of submission to pressure were registered in 2018. We have defined submission as both to remain free from external influence, whether direct or indirect, and to not seek nor take instructions from anybody.<sup>76</sup> The KOMSPI and the CPAD have received the minimum score for this criterion, marking them as institutions under high submission or agreement to pressure. For the KOMSPI, the score is such more because of the external pressure that rendered the body unable to function. With the CPAD, the body itself exhibited high submission. The largest case that tilted the score for the CPAD was the Opinion the CPAD adopted in the case of the runaway former Prime Minister, Nikola Gruevski. The Opinion dated 5 November 2018, was one of the key evidence used by Gruevski in his asylum claim in Hungary.<sup>77</sup> In it, the CPAD found that Gruevski was subjected to direct discrimination on grounds of personal and social status in the area of justice and administration.<sup>78</sup>

Finally, public opinion on the independence of institutions has been added. We used available public opinion polls for this. Only the Ombudsperson was scored, and it received a minimal score, since the public view on its independence was below 50%.<sup>79</sup>

There are several key challenges in relation to this domain. While the very foundation for addressing independence under the law has already been established, these provisions are quite general. A stable structure that can guarantee independence has not been erected yet, making the current position of the NHRIs quite vulnerable and susceptible to pressure. This means that there is no specific mechanism that can guard the independence of these institutions and that can minimise and ultimately stop the political influence and pressure. The political influence and pressure valve open with the very appointment procedures. The main reason for this is the fact that, beyond the public vacancy announcement, the rest of the procedures remain non-transparent and non-participatory, and thus very susceptible to political influence and pressure.

### Domain 2: Availability of Resources and Capacities

NHRI	Domain 2 score ↓
	<i>min: 0; max: 2</i>
Ombudsperson	1.20
KOMSPI	0.93
DPD	0.92
CPAD	0.30

In the availability of resources and capacities domain, the Ombudsperson has the highest score (1.20). The KOMSPI (0.93) and the DPD (0.92) have very close scores, whereas the CPAD has the lowest score (0.30).

70 Устав на Република Македонија [Constitution of the Republic of Macedonia] (n 28) Art. 77; LO 2003 Art. 5(1).

71 LPPD 2005 Art. 37; LFAP 2006 Art. 31.

72 LPPD 2005 Art. 40.

73 LO 2003 Art. 38.

74 *ibid* Art. 3.

75 ADL 2010 Art.16; LPPD 2005 Art.37; LFAP 2006 Art. 30.

76 Adjusted from the GDPR, Art. 52.

77 Комисија за заштита од дискриминација, 'Мислење Бр. 0801-295/1 на Комисијата за заштита од дискриминација донесено на 05.11.2018'.

78 On the problematic aspects of the Commission's Opinion, see: Kotevska (n 15) 70.

79 Regional Cooperation Council, 'Balkan Barometer' (2019) 96 <[https://www.rcc.int/download/docs/Balkan-Barometer\\_Public-Opinion-2019-07-03.pdf](https://www.rcc.int/download/docs/Balkan-Barometer_Public-Opinion-2019-07-03.pdf)> adad30ca8a8c00a259a1803673c86928.pdf>.

The Ombudsperson is the only institution that has a separate budget line.<sup>80</sup> None of the institutions has appropriate financial resources nor suitable human resources to carry out its mandate fully. In 2018, the budget of the Ombudsperson was EUR 1,178,292.00 (or MKD 71,940,000.00 and MKD 525,000.00 for the NPM). This amounted to 0.0342% of the annual budget for 2018.<sup>81</sup> In the same year, the budget of the CPAD was EUR 90,081.00 (or MKD 5,540,000.00). This amounted to 0.0026% of the annual budget for 2018. The budget of the DPD was EUR 278,211.00 (or MKD 17,110,000.00). This amounted to 0.008% of the annual budget for 2018. The budget of the KOMSPI was EUR 267,967.00 (or MKD 16,480,000.00). This amounted to 0.0078% of the annual budget. In their annual reports, all of the institutions have been consistently asking the authorities to allocate sufficient resources for the institutions to be able to carry out their full mandates.<sup>82</sup> Due to lack of publicly available data, a more in-depth analysis of the spending per institution was not possible.<sup>83</sup>

With persons retiring or leaving the institutions, and not enough new staff being recruited, the situation is getting even more alarming, human resources wise. In 2018, the Ombudsperson employed 71 persons (79, including the appointed persons, out of 141, according to the job classification).<sup>84</sup> The CPAD employed 0 persons (7 with the appointed commissioners),<sup>85</sup> the DPD employed 24 persons (out of 50, according to the job classification),<sup>86</sup> and the KOMSPI employed 19 persons (out of 28, according to the job classification).<sup>87</sup> None of the NHRIs recruits staff independently, in a transparent and meritocratic manner. The recruitment is very much tied to the executive and a final approval from the Ministry of Finance, and is thus hindered by it. Therefore, the Ombudsperson, DPD and KOMSPI have received a medium score for this indicator. The CPAD has received the lowest score because it has no administrative support. In fact, under the law, the commissioners perform the administrative and technical tasks, in addition to the expert ones. Thus, it cannot recruit persons at all.<sup>88</sup> Since 2011, the CPAD has been operating with the assistance of volunteers and staff that has been taken over from the Ministry of Labour and Social Policy.<sup>89</sup> Not only does this manner of operation undermine the capacity of the body, but it also enhances its links to the executive and thus severely undermines its independence. This is also why the CPAD, as opposed to the Ombudsperson, does not satisfy the set standard according to which the internal structure and distribution of responsibilities of the NHRI units should cover all parts of the mandate and enable appropriate focus to each part of the mandate.

The issue of human resources is also related to the lack of structured and ongoing training programmes for their staff, aside from the mandatory training programme for civil servants.<sup>90</sup> In addition, according to the international standards, all NHRIs are expected to provide training programmes for their target groups. At the moment, the DPD and the KOMSPI engage in such activities regularly. Under the standards established in the GDPR, the DPD is also to publish information on rights and remedies in an easy-to-read language. While such information is shared on its website, it is not in an easy-to-read language.

Two more criteria set out in the international standards pertain to the Ombudsperson and the CPAD specifically. It is recommended that both the Ombudsperson and the CPAD have regional offices. However, only the Ombudsperson has these.<sup>91</sup> It is also recommended that the composition reflect fully the diversity represented in society. This applies to both the leadership of the institutions and the staff. With the CPAD, we could evaluate only the leadership and not the staff, since there is no staff. With the Ombudsperson, there is diversity in relation to gender, although women are somewhat overrepresented. As for ethnicity, the principle of equitable and proportionate representation has not been fully respected; the Albanians are overrepresented, whereas some of the other ethnicities (such as the Turks) are underrepresented.<sup>92</sup> There is no information as to other diversity.<sup>93</sup>

In relation financial control, the biggest issue is building solid internal financial control. The regularity of external financial control is also questionable since it depends on the annual plans of the State Audit Office. In addition, very few information is readily available as to the financial control of these institutions.

80 LO 2003 Arts. 43-a, 48.  
81 As per the State Budget for 2018, reported in: [https://finance.gov.mk/files/u6/BUDZET%202018%20-%20DOPOLNET%20PREDLOG%20\(12.12.2017\).pdf](https://finance.gov.mk/files/u6/BUDZET%202018%20-%20DOPOLNET%20PREDLOG%20(12.12.2017).pdf)  
82 'Годишен извештај за 2018 година – Народен правобранител [2018 Annual Report – Ombudsperson]' (Народен правобранител [Ombudsperson] 2019) <<http://ombudsman.mk/upload/Godisni%20izvestai/GI-2017/GI-2018.pdf>>; 'Годишен извештај за 2018 година – Комисија за заштита од дискриминација [Commission for Protection against Discrimination – 2018 Annual Report]' (Комисија за заштита од дискриминација [Commission for Protection against Discrimination] 2019) <<https://www.sobranie.mk/materialdetails.nsp?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353>>; 'Годишен извештај за 2018 година Дирекција за заштита на лични податоци [Data Protection Directorate – 2018 Annual Report]' (Дирекција за заштита на лични податоци [Data Protection Directorate] 2019) <<https://www.sobranie.mk/materialdetails.nsp?materialId=089ba446-8cf3-43d6-932e-e1b76a885f22>>; 'Годишен извештај за 2018 година – Комисија за заштита на правото на слободен пристап до информации од јавен карактер [Commission for the Protection of the Right to Free Access to Public Information – 2018 Annual Report]' (Комисија за заштита на правото на слободен пристап до информации од јавен карактер [Commission for the Protection of the Right to Free Access to Public Information] 2019) <<https://www.sobranie.mk/materialdetails.nsp?materialId=7e97a548-7d2e-426f-b14a-b17476be7ad2>>.  
83 For the same reasons, the recommendations section does not include recommendations in this regard.  
84 'Годишен извештај за 2018 година – Народен правобранител [2018 Annual Report – Ombudsperson]' (Народен правобранител [Ombudsperson] 2019) 161/162 <<http://ombudsman.mk/upload/Godisni%20izvestai/GI-2017/GI-2018.pdf>>.  
85 'Годишен извештај за 2018 година – Комисија за заштита од дискриминација [Commission for Protection against Discrimination – 2018 Annual Report]' (Комисија за заштита од дискриминација [Commission for Protection against Discrimination] 2019) 6, 36–37 <<https://www.sobranie.mk/materialdetails.nsp?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353>>.  
86 'Годишен извештај за 2018 година – Дирекција за заштита на лични податоци [Data Protection Directorate – 2018 Annual Report]' (Дирекција за заштита на лични податоци [Data Protection Directorate] 2019) 7, 35 <<https://www.sobranie.mk/materialdetails.nsp?materialId=089ba446-8cf3-43d6-932e-e1b76a885f22>>.  
87 'Годишен извештај за 2018 година – Дирекција за заштита на лични податоци [Data Protection Directorate – 2018 Annual Report]' (Дирекција за заштита на лични податоци [Data Protection Directorate] 2019) 7, 35 <<https://www.sobranie.mk/materialdetails.nsp?materialId=089ba446-8cf3-43d6-932e-e1b76a885f22>>.  
88 ADL 2010 Art. 30.  
89 Jatrovski, Jovanovska Kanurkova and Gelevska (n 12) 78.  
90 This was also a finding in the functional analysis of the KOMSPI. Source: 'Извештај од спроведена функционална анализа во Комисијата за заштита на правото на слободен пристап до информации од јавен карактер [Report on the Functional Analysis of the Commission for the Protection of the Right to Free Access to Public Information]' (Комисија за заштита на правото на слободен пристап до информации од јавен карактер [Commission for the Protection of the Right to Free Access to Public Information] 2017) 74 <<http://komspi.mk/wp-content/uploads/2014/01/Функционална-анализа.pdf>>.  
91 LO 2003 Art. 44.  
92 'Годишен извештај за 2018 година – Народен правобранител [2018 Annual Report – Ombudsperson]' (n 85) 161–162.  
93 For example, there is no information on disability. In addition, there is a new division on disability, but the initial unofficial information that we have been provided with are that there are no persons with disability working there. There are no openly LGBT\*IQ persons either. From the available documents, it is not possible to know the age composition of the employees.

With regards to learning and change criterion, the DPD has established a system of regular strategic planning, with output and impact indicators and an evaluation system.<sup>94</sup> The KOMSPI had such a strategic plan for the researched year. While this on its own could not attest to the 'regularity' element, since it foresaw 'annual evaluation and revision,' we gave it a maximum score as well.<sup>95</sup> CPAD's strategy has expired and has not been renewed since, whereas for the Ombudsperson the data was not available.<sup>96</sup>

In sum, this is the most challenging domain and it impacts the effectiveness of the institutions in all other domains. There are systemic obstacles and lack of political will to provide the NHRIs with sufficient resources, both financial and human, for them to execute their mandate.

### Domain 3: Information, Accessibility and Cooperation with Other Relevant Actors

NHRI	Domain 3 score <sup>7</sup>
	<i>min: 0; max:2</i>
DPD	1.50
Ombudsperson	0.90
KOMSPI	0.69
CPAD	0.55

In the domain of information, accessibility and cooperation with other relevant actors, the DPD has scored higher than the other institutions (1.50). This is due to its intensive and pro-active cooperation with many stakeholders, accessibility and shared information. The Ombudsperson scored 0.90, the KOMSPI 0.69, and the CPAD 0.55.

For the parliament's scrutiny, the highest score is given to an NHRI if its annual report was debated at a plenary session. Save for the CPAD's, all other NHRIs' reports have been debated at a plenary session.<sup>97</sup> An important element is also cooperation with the government. A persisting issue with all NHRIs is that there is no explicit obligation under the law for the government to consult the NHRIs on legislative and/or policy proposals related to the issues that fall within their competences.<sup>98</sup> While most laws do contain the possibility of NHRIs to contribute to such discussions or to even initiate them, there is no explicit obligation for consultation from the government.

One of the weakest elements of all NHRIs in this domain is their mutual cooperation. At the moment, according to available information, the only sign of cooperation is the memorandum of understanding signed by the Ombudsperson and the CPAD. It is also clear from the Ombudsperson's report that they forward cases which do not fall within their competence to the CPAD. The annual reports of all four institutions do not report any other cooperation among the NHRIs. Cooperation of the Ombudsperson, the CPAD and KOMSPI with NGOs was also assessed. Based on the information provided in their annual reports, KOMSPI are within the medium score,<sup>99</sup> whereas the Ombudsperson and CPAD scored low. The CPAD was in a better position in the previous years, especially during the first composition. Aside from speaking at NGO events, during that composition, the CPAD cooperated with NGOs on joint projects and organised joint campaigns. However, the CPAD's annual report for 2018 shows a significant drop in these activities.<sup>100</sup> In 2018, the Ombudsperson also maintained a very superficial and sporadic cooperation with NGOs.<sup>101</sup>

According to international standards, in addition to the general obligation for the executive and other branches or bodies to provide relevant data to an NHRI, the executive and other branches/bodies should also be obliged to provide relevant data for evidence on specific cases. The Ombudsperson has satisfied this criterion, but not the CPAD.

All NHRIs have an obligation to provide information on rights and remedies. While such information is shared on the websites of all of these institutions except the CPAD,<sup>102</sup> language accessibility remains an issue. These publications are almost never in an easy-to-read language, and none of the institutions has used easy-read formats. The accessibility of their websites for persons with disabilities remains an issue. Accessibility overall is an issue in these institutions, particularly for sensory disabilities. But the CPAD has an even more basic issue than that, since its premises remain inaccessible for physically disabled as well. While both the Ombudsperson and the CPAD can be reached online,<sup>103</sup> via

94 'Стратегија за спроведување на правото за заштита на личните податоци во Република Македонија 2017 - 2022' (Дирекција за заштита на лични податоци [Data Protection Directorate] 2017) <[https://dzlp.mk/sites/default/files/dzlp\\_strategija\\_mk.pdf](https://dzlp.mk/sites/default/files/dzlp_strategija_mk.pdf)>.  
95 'Стратешки план на Комисијата за заштита на правото на слободен пристап до информации од јавен карактер 2018–2020 [Strategy of the Commission for the Protection of the Right to Free Access to Public Information 2018–2020]' (Комисија за заштита на правото на слободен пристап до информации од јавен карактер [Commission for the Protection of the Right to Free Access to Public Information] 2017) <<http://komspi.mk/wp-content/uploads/2014/01/Стратешки-план-на-Комисијата-2018-2020.pdf>>.  
96 Request for access to public information was sent to the Ombudsperson on 28.10.2019.  
97 <https://www.sobranie.mk/materialdetails.nsp?materialId=43ccfa39-c959-4203-9955-297becb4cabf> and <https://www.sobranie.mk/sessiondetails.nsp?sessionId=32de1194-c36b-4305-88c9-685db13a0272&date=27.5.2019>  
98 Furthermore, the DPD has raised this issue in its annual report. 'Годишен извештај за 2018 година – Дирекција за заштита на лични податоци [Data Protection Directorate – 2018 Annual Report]' (n 85).  
99 'Годишен извештај за 2018 година – Комисија за заштита на правото на слободен пристап до информации од јавен карактер [Commission for the Protection of the Right to Free Access to Public Information – 2018 Annual Report]' (n 85).  
100 'Годишен извештај за 2018 година – Комисија за заштита од дискриминација [Commission for Protection against Discrimination – 2018 Annual Report]' (n 85).  
101 'Годишен извештај за 2018 година – Народен правобранител [2018 Annual Report – Ombudsperson]' (n 85).  
102 The CPAD's website was offline for most of 2018. Source: 'Годишен извештај за 2018 година – Комисија за заштита од дискриминација [Commission for Protection against Discrimination – 2018 Annual Report]' (n 85).  
103 The CPAD's website was not in operation for the large part of 2018, however it maintained a Facebook page, so we have marked that criteria as satisfied.

email or telephone services, only the Ombudsperson has met the criteria for flexibility in meeting the time constraints of those seeking access to services. The Ombudsperson should also be accessible to children and has an obligation for outreach to children. However, according to its annual report and the information available in the public domain, this is not the case.

In relation to international activity, the bodies showed good overall results. Regarding the NHRIs' international activity, evaluated as participation at relevant events, the Ombudsperson and the DPD have had high international activity. The CPAD has had medium activity, whereas the KOMSPI has had low activity. Membership in relevant international networks was a criterion for the Ombudsperson, the CPAD and the DPD, and they have all received the highest scores.<sup>104</sup> In addition, the DPD cooperated with more than three other counterparts from other countries by providing mutual assistance, exchange of information, or joint investigations, interventions or actions.<sup>105</sup>

In addition, there are standards set for the DPD regarding professional secrecy. These are obligatory for members and staff during and after the term of office. The DPD has satisfied this criterion.<sup>106</sup> The Ombudsperson and the CPAD are to attain a standard for confidentiality and protection, within the frame of which they are supposed to be obliged to offer confidentiality to witnesses and whistle-blowers. However, at the moment, there is no such strong guarantee.<sup>107</sup>

Finally, the bodies are expected to have a communication strategy covering a period of at least three years. The DPD has a communication strategy for the period 2018–2023.<sup>108</sup> The KOMSPI has a communication strategy, however it was not possible to establish its period of duration.<sup>109</sup> The CPAD's communication strategy has expired and has not been renewed. No data is available on the Ombudsperson.<sup>110</sup>

## Domain 4: Mandate and Powers

NHRI	Domain 4 score ↓
	<i>min: 0; max: 2</i>
DPD	1.50
Ombudsperson	1.31
CPAD	0.95
KOMSPI	0.88

Regarding mandate, we evaluated the institutions against very specific mandate criteria applicable for their type of institution. The DPD scored the highest (1.50), followed by the Ombudsperson (1.31). The CPAD scored 0.95 and the KOMSPI 0.88.

We single out here only those who have not attained the highest standard expected according to international standards. The CPAD has no limitations with regards to mandate, thus it is not mentioned separately here.

The Ombudsperson's decisions are not binding. It cannot be said to have the competence to operate 'amicable and confidential settlement of the complaints through an alternative dispute resolution process.' Even though at present there are institutions with competences regarding gender equality as per the Goods and Services Directive and the Recast Directive (primarily the CPAD, but also the Ombudsperson to an extent, both mainly in relation to their protection mandate), the gender equality mandate is not visible and is not given appropriate treatment at all. Thus, even though gender equality competences have been formally awarded, there is no independent institution dealing with gender equality in practice. The DPD can act only once it receives a report. Also, it does not have full mandate and power to authorise codes of conduct, certifications, standards, contractual clauses and administrative arrangements, or to approve binding corporate rules, as required under the GDPR. The KOMSPI does not have mandate to assist applicants and to ensure proactive dissemination of information by public bodies.<sup>111</sup>

Regarding initiatives<sup>112</sup> submitted to national authorities, the DPD has been the most active one and has had more than five initiatives submitted.<sup>113</sup> The Ombudsperson falls within the medium score, whereas the CPAD and KOMSPI have received the lowest score due to their inactivity in this regard. Submissions or contributions to international bodies was a criterion for the Ombudsperson and the CPAD. The Ombudsperson has received a medium score because of having two relevant submissions to international bodies,<sup>114</sup> and the CPAD has received the lowest score.

<sup>104</sup> The Ombudsperson: GANHRI, AOMF, ENNHRI, FRA observer.; the CPAD: EQINET; the DPD: full member with voting rights in the Consultative Committee (T-PD), European Conference for Personal Data Protection (Spring Conference), Conference of Central and Eastern European Authorities for Personal Data Protection, International Conference of Data Protection and Privacy Commissioners, International Working Group on Data Protection in Telecommunications, observer status in the European Data Protection Board (former Working Group 29) of the European Union.

<sup>105</sup> 'Годишен извештај за 2018 година – Дирекција за заштита на лични податоци [Data Protection Directorate – 2018 Annual Report]' (n 85) 16–17.

<sup>106</sup> LPPD 2005 Art. 43.

<sup>107</sup> Закон за заштита на укажувачи [Law on Whistleblowers Protection] (Службен весник на Република Македонија, бр. 196/2015, 35/18) Art. 5.

<sup>108</sup> 'Communication Strategy of the Directorate for Personal Data Protection (2018–2023)' (Directorate for Personal Data Protection 2018).

<sup>109</sup> We were informed by the KOMSPI in a phone inquiry (29.10.2019) that the strategy had been prepared as part of a project, where the KOMSPI had received support from the Konrad Adenauer Stiftung. However, we were told that the strategy had not been made with the intent to last for a specific period.

<sup>110</sup> Request for access to public information was sent to the Ombudsperson on 28.10.2019.

<sup>111</sup> LFAP 2006 Art. 32.

<sup>112</sup> Only the proposals that have been reported in the annual reports and submitted on the NHRI own initiative were counted in.

<sup>113</sup> 'Годишен извештај за 2018 година – Дирекција за заштита на лични податоци [Data Protection Directorate – 2018 Annual Report]' (n 85).

<sup>114</sup> These were the submissions to the CRPD and to ECRI. Source: 'Годишен извештај за 2018 година – Народен правобранител [2018 Annual Report – Ombudsperson]' (n 85) 142–143.

It is important also whether and to what extent there is a follow up on the NHRIs' recommendations. In 2018, there was no reliable public data regarding follow up.<sup>115</sup> For the CPAD, such an evaluation was conducted by CSOs, and the result was less than 90%, so the CPAD has received a medium score.<sup>116</sup>

We have also assessed the public trust in the institutions. In order to do this, we have used available public opinion polls. We have scored the Ombudsperson and the CPAD. Both have received the lowest score, since the public trust level for both is below 50%.<sup>117</sup>

The final criterion that we have evaluated is assessment of progress provided by the European Commission in its last annual report. On this point, the Ombudsperson and the DPD have received the highest score, the CPAD a medium score, whereas the KOMSPI have received the lowest score.<sup>118</sup>

## RECOMMENDATIONS

On the basis of ranking, main findings and established main challenges, we have developed a set of recommendations. These refer to national authorities (the Parliament and the Government, and the NHRIs), international actors (European Union and others), and NGOs.

### National authorities

#### To the Parliament

**To hold consultations with representatives of the executive and of all NHRIs, and with relevant experts and relevant NGOs in order to establish a proposal for a portion of the annual state budget that would be allocated to the institutions. This proposal would also contain a strict list of criteria for evaluation of sufficiency of the budget in newly arisen circumstances (such as, for example, change in the mandate of the institutions).** This would strengthen not only the financial independence of the institutions, so that they could finally operate under their full mandates, but it would also enhance their ability to conduct multi-annual planning. This would also enable them to take more part in projects with their counterparts from the region and beyond, and with other stakeholders, as they would have a credible pool of resources on which they could.

**To free the recruitment of staff by the NHRIs from the administrative blockade of the Ministry of Finance by establishing a proposal for shifting the real decision-making power for recruitment to the NHRIs, but without impacting the status of the staff as 'public servants', in consultations with representatives from the government and from all NHRIs, and with relevant experts.** This would enable an institution to manage its own human resources independently and to not be understaffed for long periods of time, for external reasons. It would also ease its dealing with natural processes such as filling in vacancies created because of persons retiring or leaving the institution. This would also help the NHRI to plan its internal training and capacity building, but also any efforts towards enhancing its own pluralism. It would also shift the responsibility for capacities to the NHRI.

**To reform appointment procedures for all NHRIs in order to make them more transparent and participatory, in discussion with the NHRIs, NGOs and other relevant stakeholders.** This needs to be done alongside an in-depth analysis of the experience of the Parliament with previous appointments and its Rules of Procedure, as well as by drawing on comparative experiences from other countries, which are contextually fitting and have been assessed as fully compliant with this criterion of international NHRI standards. The procedure stipulated in the Law on Prevention of Corruption and Conflict of Interest<sup>119</sup> can be used a starting ground for this reform. The pluralism criteria should be taken into consideration.

**To propose, discuss (with the NHRIs, NGOs and other relevant stakeholders), and adopt specific membership provisions, which would foresee specific expertise related to the mandate of a body and would enable the appointment procedures to result in memberships that would reflect the composition of the society.** This would put an end to the porous entry points for persons that are not highly competent in the relevant area. It would also stop the consistent practices of appointment of persons who reflect only or predominantly one gender, one or two ethnic groups, and which do not reflect at all diversity regarding disabilities, age, and sexual orientation.

**To propose, discuss (with the NHRIs, NGOs and other relevant stakeholders) and adopt legislative changes which would supplement the current, very general independence provisions with strong and clear legal grounds for independence of the institutions, including by immunity and prohibition of interference clauses, specific removal criteria which would be as much free as possible from arbitrary acts, and conflict of interest provisions both during and after the term.** This would provide the institutions with a strong legal backbone on which they could more confidently implement their full mandates independently. This should be done in dialogue with the NHRIs.

<sup>115</sup> Bejkova and Pirovska (n 11).

<sup>116</sup> Jetrovski, Jovanovska Kanurkova and Gelevska (n 12).

<sup>117</sup> Regional Cooperation Council (n 79) 96; Gjorgji Kimov and Fani Kimova, 'Barometer of Equal Opportunities (Unpublished)' (OSCE 2019).

<sup>118</sup> Regarding the lowest score awarded to KOMSPI, the EC wrote in the Progress Report: 'The delays in appointing of the Commission for Protection of Free Access to Public Information from May 2018 until the end of March 2019 made it non-responsive to appeals in that period. Its capacities have remained insufficient to monitor compliance with the proactive disclosure of information requirements.' Source: European Commission (n 60) 13.

<sup>119</sup> Закон за спречување на корупцијата и судирот на интереси [Law on Prevention of Corruption and Conflict of Interest] 2019 (Службен весник на Република Македонија бр. 12/2019) Art. 12.

**To undertake a public consultation process on possible expansion of mandates of the NHRIs.** This would be the first step towards enlarging their mandates in order to address the weak points identified in this report. This expansion of mandates must not happen without appropriate increase in resources – both human and financial. In addition, a solution for the obfuscation of the gender equality mandate has to be sought out, and an independent institution, existing or new, has to undertake fully, seriously and visibly the competences regarding gender equality, as per the EU Directives.

**To regularly consult the NHRIs on issues which fall within their competences,** such as, for example, the Ombudsperson on legislation impacting child rights, the CPAD about equality and non-discrimination aspects in a strategy on the elderly. Such an obligation should be added to the legislative framework as well, in order to decrease the chances of this aspect depending on the willingness of the changing governments.

**To propose, discuss (with the NHRIs, NGOs and other relevant stakeholders), and adopt legislative changes which would enhance the obligation of NHRIs to offer confidentiality to witnesses and whistle-blowers, in dialogue with the NHRIs.** The present provisions on confidentiality of witnesses and whistle-blowers do not contain the element of obligation required under international standards. The legislative framework should be amended in order to provide for this.

**To regularly hold public hearings when debating the annual reports of the NHRIs** in order to promote inclusiveness and transparency. The Members of Parliament would benefit from supplementing the findings in the reports with the findings and positions of NGOs and other relevant stakeholders.

**To hold structured debates on issues related to the effectiveness of the NHRIs,** and to oversee hearings on the implementation of recommendations of the NHRIs **and hearings on specific issues brought up by the NHRIs within the frame of the Parliament's Standing Inquiry Committee on Human Rights.** This would contribute towards upgrading the level of debate in the Parliament on issues related to NHRIs and their mission, increasing the awareness of the public, and effectively contributing towards the increase in accountability and strengthened control over the executive.

#### **To the Government**

**To develop a practice of information sharing and debate when international standards are drafted and deliberated at the European level (e.g. CoE), including through joint consultations with the NHRIs and relevant NGOs.** This would contribute towards better sharing of information, cross-pollination of expertise among these stakeholders, and the building of trust and partner relationships.

**To participate and actively contribute to all Parliament-organised discussions on NHRIs, as proposed herein.** This would enable the executive government to have a significant say in these reforms, while giving the lead to the Parliament in this process, in order to enable it to perform its function as the home of public deliberation.

**To regularly consult the NHRIs on issues that fall within their competence.** Such an obligation should be added to the legislative framework as well, in order to decrease the chances of this aspect depending on the willingness of the changing governments.

**To delimit very strictly the situations in which reallocations can be made from the budget allocated to the NHRIs.** This would address the worrying situation mentioned in the NHRIs' annual reports, according to which the NHRIs' budgets are cut quite often in budget reallocation procedures.

**To support the NHRIs in making them all fully accessible to all persons with any type of disability, by allocating sufficient funds and performing any other required actions.** This would create an equal starting ground for equal access to justice for all.

**To not additionally hinder the work of NHRIs, including by providing requested access and data to the NHRIs as per their relevant mandates, and to work together with them in order to remove administrative bottlenecks which may be causing the hindrance.** This would make sure that the work of the NHRIs does not suffer because of the executive and would increase the level of services provided by the executive in the medium to long run.

**To ramp up the system on follow-up on recommendations from the NHRIs and to increase the transparency of the implementation.** This would contribute towards a better response and increase in the responsibility of all state bodies, including by enabling a systematic analysis of the underlying issues for non-implementation.

#### **To the National Human Rights Institutions**

**To enhance the readily available information on the financial control and overall financial transparency of these institutions.** This can be done by fully and regularly updating annual financial reports and records of financial control activities, which are currently lacking. These sections of the NHRIs' websites should also link to the reports which the State Audit Office publishes about their respective institutions.

**To seek a solution with the Parliament and the State Audit Office in order to establish regularity in external financial control.** This would enhance their credibility in general and when seeking additional funds through projects or grants.

**To enhance the cooperation between the NHRIs.** The research shows little to no cooperation among the NHRIs. This cooperation should be conducted in a more structured way, which would enable continuity and mutual learning and support.

**To hold a regular, structured annual dialogue on issues that affect their work as NHRIs.** This would resolve the currently very low cooperation among the institutions. It would also encourage mutual learning. It would enhance the advocacy capacity of the NHRIs, since they could act as a joint front, in order to seek improvement for the conditions in which they all work in. This joint front could work well for advocacy efforts both at home and abroad, in forums working on NHRIs. In addition, they can discuss and reach joint solutions to commonly faced issues in a manner that can save resources and time to address these issues.

**To resolve the outreach of the equality body in lieu of its lack of regional offices.** One option is to discuss the possibility of outreach with the help of the regional offices of the Ombudsperson. Another option is to organise visits at regular intervals of commissioners and/or their staff to selected places throughout the whole territory. This would establish the currently non-existing regional outreach of the equality body.

**To enhance efforts in achieving pluralism within its own human resources.** This will enable the institution to better reflect on its work and to also 'practice what it preaches'.

**To develop regular and comprehensive training programmes.** These training programmes should include both training of the internal staff and training of target groups. In order to facilitate the planning and execution of these training programmes, the NHRIs can reach out to actors that have training expertise, for example, training experts from NGOs, universities, state institutions, the courts, or professional associations.

**To enhance the accessibility of the NHRIs.** The accessibility should be enhanced for all types of disabilities, including for sensory and intellectual disabilities. Persons with disabilities must be able to autonomously approach the NHRIs and receive their support.

**To enhance the language accessibility of information about rights within their mandate, and the overall accessibility of information.** This can be done by enhancing their availability in all of the languages used in the countries. All NHRIs need to work on easy-to-read language presentations of information, but they should also start publishing easy-read publications. The Fundamental Rights Agency has such publications, which can be used as examples.<sup>120</sup>

**To establish regular cooperation with NGOs in a structured manner.** Cooperation with NGOs is very low, sporadic and related to projects and/or NHRI representatives speaking at NGOs events. This keeps a great potential for cooperation and mutual support locked. A structured approach for cooperation with CSOs is needed for all NHRIs.

**To enhance the strategic planning process, including by setting of indicators and regular revision and updating.** This would enable the NHRIs to strengthen their internal capacities for strategic planning, financial management, communication, research and/or analysis. The NHRIs should annually plan funds for such activities. In addition, it would enable the NHRIs to have a clear and targeted communication mode which would have a positive impact on transparency overall. In addition, communication can help with the visibility of the NHRIs and their work, which, in turn, could have a positive impact on public trust.

**To establish regular practice of monitoring follow-ups on its recommendations and publishing the findings in an easy-to-read format.** The present practice of no or sporadic monitoring results in the inability to identify weak points in implementation of recommendations, whatever they may be. A regular practice could also help to detect early positive or negative trends arising in relation to the follow-up on the recommendations.

**To enhance their international activity, including by making relevant submissions to international bodies.** This means that the NHRIs should work on more actively partaking in international events and cooperation. Submissions to relevant international bodies should regularly be made. While participating at events is always encouraged and stimulates learning and networking above all, the NHRIs are strongly encouraged to also make their active contribution to the lively dialogue taking place at the international level regarding protection, promotion and advancement of human rights. In addition, the public would benefit from reflection in the reports on the substance of the results from international activities.

**To enhance their national activity, with regards to initiatives submitted to national authorities.** This would show a proactive approach of the NHRIs, and would disable the making of regressive or damaging changes to the legal or institutional human rights framework. On this issue, the NHRIs could cooperate with NGOs on joint initiatives.

<sup>120</sup> See: <https://fra.europa.eu/en/publication-type/easy-read-publication>

## To the International actors

### To the European Union

**To apply strict conditionality in relation to the NHRIs.** This would enable the national authorities to take perpetual issues, such as lack of resources, seriously into consideration.

**To support financially the national processes for enhancing the independence and effectiveness of the NHRIs.** To continue programming funds in a way that would enable access for NHRIs, focusing on increasing their own capacities and accountability, and in a way that would also facilitate cooperation of NHRIs with other relevant stakeholders, such as NGOs.

**To integrate performance and impact of NHRIs in the planning of financial support.** This would enable both more funding for the NHRIs and larger impact.

### Other international actors

**IGOs present in the country – to continue to support technically and financially the national processes for enhancing the independence and effectiveness of the NHRIs.** This support has been crucial for undertaking processes that can be very costly, such as technically equipping an institution or providing support for strategic planning.

**IGOs present in the country – to support NGOs’ activities on monitoring the work and effectiveness of NHRIs.** This would provide NGOs, who are at present the most relevant, critical and regular scrutinizers of the work of NHRIs, with funds to continue doing this work. This should include support for networking activities at the European level on issues related to NHRIs.

## NGOs

**To continue with their very important work on monitoring the NHRIs.** This enables reliable data and maintains pressure on the NHRIs and other relevant institutions to refrain from regressing the situation in which the NHRIs are, and to work towards progressing by continuously issuing recommendations.

**To seek for a more structured way to cooperate with the NHRIs, in dialogue with the NHRIs.** This would add new quality to the current, mainly project- and activity-based cooperation.

**To include questions on the independence of and trust in the NHRIs, whenever possible and appropriate when working on public opinion polls.** If this is to be done in regular intervals, it would enable not only monitoring of current opinions and attitudes, but also identifying trends.

**To work on joint initiatives with the NHRIs, which would be addressed to national authorities.** This could help to form a joint front on issues of joint interest, which could make both the NHRIs’ and NGOs’ advocacy activities stronger.  
**To participate and actively contribute to all Parliament-organised discussions on NHRIs, as proposed herein.** This would enable the experience and knowledge accumulated in the NGOs to be reflected in these reforms. It would also indirectly support the shifting back of the balance of the powers in a way that would enable the Parliament to perform its function as the home of public deliberation.

**To use the existing networks for joint advocacy at the national level.** This would improve the advocacy position of NGOs and would increase the visibility of their advocacy efforts.

**To further develop networking at regional, European and global levels.** This would work towards increasing capacities, finding ideas for new solutions on pending issues at the national level, and gaining an international standing which they could use to both voice their opinions and share their national experience in regional, European and global dialogues on NHRIs, as well as to put extra pressure for pressing issues at home.

## Annex: List of indicators

### Domain 1: Independence and ability to work without pressure

Ombudsperson	EB	SADP	FAI
Independent statutory basis	Independent statutory basis	Independent statutory basis	Independent statutory basis
Appointment process	Appointment process	Appointment process	Appointment process
Clear criteria for membership			
Term of office	Term of office	Term of office	Term of office
Avoidance of conflict of interest			
Immunities	Immunities		
No instruction from government			
Removal	Removal	Removal	Removal
Submission / agreement to pressure			
Public opinion on independence of NHRI			

### Domain 2: Availability of resources and capacities

Ombudsperson	EB	SADP	FAI
Separate and independent budget	Separate and independent budget	Separate and independent budget	Separate and independent budget
Adequate financial resources	Adequate financial resources	Adequate financial resources	Adequate financial resources
Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures
Sufficient human resources	Sufficient human resources	Sufficient human resources	Sufficient human resources
Adequate human resources	Adequate human resources	Adequate human resources	Adequate human resources
Financial control	Financial control	Financial control	Financial control
Pluralism	Pluralism		
Training	Training		Training
Internal structure enables focus on each part of mandate	Internal structure enables focus on each part of mandate		
Regional offices / outreach	Regional outreach / offices		
Learning and change	Learning and change	Learning and change	Learning and change

**Domain 3: Information, accessibility and cooperation with other relevant actors**

Ombudsperson	EB	SADP	FAI
Parliamentary scrutiny	Parliamentary scrutiny	Parliamentary scrutiny	Parliamentary scrutiny
Providing information to the NHRI	Providing information to the NHRI		
Cooperation with government	Cooperation with government	Cooperation with government	Cooperation with government
Cooperation with other NHRIs	Cooperation with other NHRIs	Cooperation with other NHRI	Cooperation with other NHRI
Cooperation with NGOs	Cooperation with relevant bodies and NGOs	Trans-national cooperation with other SAs	Cooperation with NGOs
Providing information on rights	Providing information on rights	Providing information on rights Information on rights and assistance to data subjects	Providing information on rights
Accessibility	Accessibility	Accessibility	Accessibility
Accessibility to children			
Accessibility to persons with disabilities	Accessibility to persons with disabilities	Accessibility to persons with disabilities	Accessibility to persons with disabilities
Membership in international networks	Membership in international networks	Membership in international networks	
Participation in international activities	Participation in international activities	Participation in international activities	Participation in international activities
Communication strategy	Communication strategy	Communication strategy	Communication strategy
Confidentiality and protection	Confidentiality and protection	Professional secrecy	

**Domain 4: Mandate and powers**

Ombudsperson	EB	SADP	FAI
		Monitoring and enforcement	Monitoring and oversight
Human rights promotion	Promotion and prevention	Promotion	Promotion
Promotion of harmonisation with international HR instruments and implementation			Promotion of pro-active dissemination
Mandate – coverage of sectors	Coverage of grounds of discrimination Coverage - area Equal treatment of all persons without discrimination on grounds of sex		
Human rights protection – powers – investigation	Independent assistance – mandate	Investigations	
Human rights protection – powers – access	Independent assistance – strategic litigation		
Human rights protection – powers – complaints	Independent assistance – issuing recommendations and legally binding decisions		
Human rights protection – powers – courts			
Follow-up on recommendations	Follow up on recommendations		
Initiatives to national authorities	Initiatives to national authorities	Advisory role	Advisory role
	Complaints submission Complaints submission – language Complaints submission – free of charge	Handling complaints	Handling complaints Complaints submission Complaints submission – free of charge
	Independent surveys	Regulatory functions / authorisations	
Reports	Independent reports		
Submission of contributions to international bodies	Submission of contributions to international bodies		
National prevention mechanism			
Rights of the child			
Public opinion on public trust in NHRIs	Public opinion on public trust in NHRIs	Public opinion on public trust in SA institution	Public opinion on public trust in SA institution
Assessment of the EC in the last report	Assessment of the EC in the last report	Assessment of the EC in the last report	Assessment of the EC in the last report

**Effectiveness of National Human Rights  
Institutions in the Western Balkans**

Montenegro, North Macedonia, Serbia

**COUNTRY REPORT  
SERBIA**

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## List of Acronyms and Abbreviations

CoE	Council of Europe
Commissioner	Commissioner for Information of Public Importance and Personal Data Protection
CPE	Commissioner for Protection of Equality
CRD	Civil Rights Defenders
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
ECRI	European Commission against Racism and Intolerance
GANHRI	Global Alliance of National Human Rights Institutions
GDPR	General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC)
EQUINET	European Network of Equality Bodies
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
LFAIPI	Law on Free Access of Information of Public Importance
LPC	Law on the Protector of Citizens
LPD	Law on the Protection from Discrimination
MKD	North Macedonia
MNE	Montenegro
MS	Member States
NHRI	National Human Rights Institutions
NGO	Non-Governmental Organisation
NE	National Expert
OHCHR	UN Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PC	Protector of Citizens (Ombudsperson)
SA	Supervisory Authority
SRB	Serbia
UN	United Nations
UNGA	United Nations General Assembly
WB	Western Balkans

# INTRODUCTION

After democratic changes in 2000, Serbia has embarked upon a large scale of the social, political and economic reform process. In many areas of law, new laws or major amendments to existing legislation have been adopted, in order to bring national legislation and practice into line with international and European standards. Serbia adopted a new Constitution in 2006,<sup>1</sup> which contains a broad catalogue of guaranteed human rights. It has ratified almost all relevant international human rights treaties and begun to take more notice of the practice of international bodies that oversee the fulfilment of international obligations, undertaken by the ratification of those treaties. It has also established several independent institutions due to the need for additional forms of control of administration and better human rights protection, bearing in mind that traditional forms have proven to be insufficient, and inadequate.<sup>2</sup> However, it must be underlined that NHRIs were spontaneously introduced into the Serbian legal system, which raised the issue of their position, role and function.

For the purpose of this research, the NHRI is defined as “a National Human Rights Institution that is a body established by the state with the mandate to protect and promote human rights”.

Three institutions which satisfied the NHRI definition<sup>3</sup> were selected for this research: Commissioner for Information of Public Importance and Personal Data Protection, Protector of Citizens (Ombudsperson) and Commissioner for Protection of Equality.

The monitoring of the NHRIs in Serbia is not comprehensive and periodical. However, few sources indicate that these institutions are faced with limited human and financial resources, non-compliance with their decisions, and are exposed to political pressures which undermine their independence. It raises the issue of the ability of NHRIs to perform their work effectively. Therefore, the aim of this research - is ‘to assess the effectiveness (performance) of the human rights institutions in North Macedonia, Montenegro and Serbia, based on a pre-defined set of indicators.’<sup>4</sup> The effectiveness of the NHRI is defined, for the purpose of this research, as ‘the capability of the NHRI to independently perform its mandate and powers, with the aim to make a significant impact on the achievement of human rights’.<sup>5</sup>

The starting point was the current state of research on NHRIs. In Serbia, for the year of 2018, a few relevant sources have been published as the outcome of monitoring of NHRIs. Belgrade Centre for Human Rights in their annual report on human rights include the assessment of work of independent bodies in Serbia.<sup>6</sup> Also, CRTA prepared a report on the role and position of two NHRIs.<sup>7</sup> Equal Rights Trust conducted comprehensive research on the application of anti-discrimination law in Serbia, including the assessment on the work of the Commissioner for Protection of Equality.<sup>8</sup> In addition, there is one comprehensive monograph on independent bodies in Serbia which assess their competence, procedure and practice.<sup>9</sup>

This report focuses on the findings from the research on the effectiveness of the three NHRIs in Serbia. The research looked specifically at the effectiveness of the three selected institutions, using the methodology briefly described in the next section of this report. Following a brief overview of these institutions, the research findings on the systemic challenges and shortcomings that hinder the work of NHRIs will be presented for each of the effectiveness domains: 1) independence and ability to work without pressures; 2) availability of resources and capacities; 3) information, accessibility and cooperation with other relevant actors; and 4) mandate and powers. In the end, a set of recommendations were given, targeted at various stakeholders.

## APPROACH AND METHODOLOGY

In the given context and current state of development of research on NHRIs in the Western Balkans, an approach to measuring effectiveness that combines the structural and the mandate-based approach was applied. The structural approach focuses on the compliance of NHRI with the main legal norms, or the institutional safeguards. The mandate-based approaches are performance-based and focus on the success in performing the mandate of the NHRI.

A matrix of indicators was developed,<sup>10</sup> structured per four domains:

- (1) Independence and ability to work without pressure,
- (2) Availability of resources and capacities,
- (3) Information, accessibility and cooperation with other relevant actors, and
- (4) Mandate and powers.

1 Ustav Republike Srbije (Constitution of the Republic of Serbia), “The Official Gazette of the Republic of Serbia”, No 98/2006.

2 Marko Davinić, “Nezavisna kontrolna tela u Republici Srbiji” (Independent Controlling Bodies in Serbia), Dosije, Belgrade, 2018, 17.

3 According to the UNCHR (Office of the High Commissioner for Human Rights), national human rights institutions are defined as “state bodies with a constitutional and/or legislative mandate to protect and promote human rights, that are part of the State apparatus and are funded by the State” Office of the United Nations High Commissioner for Human Rights, National Human Rights Institutions, History, Principles, Roles and Responsibilities, UN, 2010, p. 13.

4 See the research methodology in the comparative analysis.

5 See the research methodology in the comparative analysis.

6 Belgrade Centre for Human Rights, Human Rights in Serbia for 2018, Belgrade, 2019, 98.

7 CRTA, Uloga i položaj Zaštitnika građana i Poverenika za zaštitu ravnopravnosti (The role and the position of the Protector of Citizens and the Commissioner for Protection of Equality), Belgrade, January 2019.

8 Equal Rights Trust, Ravnopravnost u praksi, primena antidiskriminacionih zakona u Srbiji (Equality in practice - application of anti-discrimination legislation in Serbia), London, January 2019.

9 Marko Davinić (fn 2).

10 A detailed explanation of the Methodology is available in the Comparative Analysis, published alongside the policy report.

The values of indicators were weighed, depending on the number of indicators per domain (which ranged from 6-12). In addition, some indicators have been broken down to sub-indicators, to capture the specifics of a particular issue, which depended on the level of detail of the relevant international standard. The indicator per domain is estimated as a sum of the weighted values of indicators in the domain. The overall score of effectiveness for each NHRI in each country is estimated as a sum of the indicators per domain. Each domain participates equally in the final score – 25%. Consequently, the scale of the score per country per body is 0-8.

An overview of indicators is presented in the Annex.

The basis for developing the indicators were the relevant international standards and their interpretations. The Paris Principles<sup>11</sup>, or more precisely, the GANHRI General Observations<sup>12</sup>, are taken as a basis for the indicators for human right institutions with the general mandate. The basis for specific indicators were the UN relevant standards related to the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>13</sup>, the Convention on the Rights of the Child (CRC)<sup>14</sup>, the Convention on the Rights of Persons with Disabilities (CRPD)<sup>15</sup>, and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>16</sup> and especially their interpretations.

The EU Commission Recommendation of 22 June 2018<sup>17</sup>, the Opinion on equality bodies of 2011 of the Human Rights Commissioner of the CoE, as well as the Revised General Policy Recommendation No 2 of 2017 on equality bodies to combat racism and intolerance of ECRI of the CoE<sup>18</sup> were the European standards taken as a basis for indicators for equality bodies.

The EU General Data Protection Regulation (GDPR)<sup>19</sup> and the CoE Convention 108+<sup>20</sup> are taken as primary standards for setting the indicators for data protection supervisory authorities. Since there are no specific international standards for an independent body on free access to information, the general standards for NHRI have been applied accordingly, while the basis for the indicators on powers and mandate have been the specific international standards on content of right of information<sup>21</sup>, as well as documents developed by special rapporteurs for freedom of expression in UN, CoE and OSCE.

## Overview of NHRIs in Serbia

In this section, a short history of the NHRIs in Serbia will be presented, as well as their basic mandate and composition, and all relevant major developments which concern their effectiveness. The differences that exist between NHRIs derives from their competences and power given by the laws under which they were established. They issue different legal acts, and there is a difference in the extent of their control of subjects. Also, it is important to note that the state’s attitude towards NHRIs was characterized by mistrust and insufficient support, meaning that they were faced with limited technical and financial resources, inadequate premises and obstacles in the recruitment of their staff. However, some specificities do arise.

The oldest NHRI in the country is the Commissioner for Information of Public Importance and Personal Data Protection (Commissioner) - *Poverenik za informacije od javnog značaja*. The institution of Commissioner was introduced with the adoption of the Law on Free Access of Information of Public Importance (LFAIPI).<sup>22</sup> The first Commissioner was appointed on 22 December 2004, but the institution started to operate in July 2005. The establishment of the CIPIPD does not have a constitutional basis, it was introduced before the new Constitution was adopted in 2006. The Commissioner has a mandate under the LFAIPI. Since 1 January 2009, the Commissioner also gained authority in the field of personal data protection according to the Law on Personal Data Protection (LPDP).<sup>23</sup> The National Assembly appoints the Commissioner to a seven-year term of office, which can be renewed. Under the LFAIPI, the Commissioner has a very broad mandate, yet the most important task is to consider complaints against the decision of public authorities that violate the right to access information of public importance. The procedure before the Commissioner is administrative and a complaint against his decision may be lodged to the Administrative Court. Therefore, his decisions are binding and subject to judicial review. Under the Law on Personal Data Protection, the Commissioner is allowed to decide on appeals in cases set out in the law. In the last several years, the Commissioner repeatedly come into conflict with the Government, performing his public duties. In 2018 the situation deteriorated, and the Commissioner frequently

11 UNGA, Resolution A/RES/48/134 (1993).

12 Global Alliance of National Human Rights Institutions, *General observations of the Sub-Committee on Accreditation*, adopted by GANHRI Bureau, 21 February 2018 (2018).

13 UNGA, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 (1996)

14 UNGA, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 (1989)

15 UNGA, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106, Annex I (2006).

16 UNGA, *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 18 December 2002, A/RES/57/199 (2002).

17 Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, C/2018/3850, OJ L 167 Ch I, (2) (2018).

18 Council of Europe, ECRI, *General policy recommendation No 2: Equality bodies to combat racism and intolerance at national level*, adopted on 7 December 2017, CRI (2018)06 (2017).

19 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), (2016) OJ L 119

20 CoE, Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No 223), 10.10.2018 (2018).

21 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) (1966); CoE, Convention on Access to Official Documents, CETS 205, 11 June 2008 (2008).

22 *Zakon o pristupu informacija od javnog značaja* (Law on Free Access to Information of Public Importance), The Official Gazette of the Republic of Serbia, No 120/04 and 54/07.

23 *Zakon o zaštiti podataka o ličnosti* (Law on Personal Data Protection), The Official Gazette of the Republic of Serbia, 97/2008. In a meantime, a new law was adopted, *Zakon o zaštiti podataka o ličnosti* (Law on Personal Data Protection), The Official Gazette of the Republic of Serbia, No 87/2018.

faced difficulties in his work, primarily as a consequence of lack of political will to enforce his rulings regarding access to information.<sup>24</sup> The mandate of the Commissioner expired in December 2018, while the new Commissioner was appointed in July 2019. The CIPIPD has seven divisions: 1) Harmonisation Division, 2) Enforcement Complaints Division on Access to Information, 3) Complaints Division on Data Protection, 4) Information Technology Division, 5) Supervision Division, 6) Joint Affairs Division and 7) Co-operation and Reporting Division.

The second NHRI that the report focuses on is the Protector of Citizens (Ombudsperson) - *Zaštitnik građana*. The legal ground for the establishment of the institution was set in 2006, with the adoption of the Constitution.<sup>25</sup> The highest legal act guarantees its independence, while the basis for the establishment of the institution was introduced with the Law on the Protector of Citizens.<sup>26</sup> However, back in 2001 the first draft was prepared by the Ministry of Justice and in 2002 submitted to the National Assembly, but the assassination of the Prime Minister in 2003 and new elections interrupted the process of its adoption. The new draft was prepared in 2004 and adopted it in 2005. The first PC was appointed by the National Assembly in 2007 (two years after the adoption of the law) on five-year term of office, which can be renewed. It has four deputies: 1) Deputy for child rights and gender equality, 2) Deputy for the rights of persons with disabilities, 3) Deputy for national minority rights, and 4) Deputy for the protection of persons deprived of liberty and coordination of the National Prevention Mechanism (NPM).<sup>27</sup> The PC is responsible for two complex and interconnected tasks: to protect and promote human rights, as well as to control public administration bodies. The main duty of the PC is to act upon complaints of citizens or at its own initiative in order to check if there are or have been omissions in the work of public administration bodies. If it finds any inadequacies in the work of public administration bodies, the PC issues recommendations and requires these bodies to rectify them. Although it issues recommendations, the administrative body must act upon them, but if it fails to do so, it must provide explanations for not fulfilling the recommendation. However, the responsibility of the PC is limited to control of public officials and only if other legal remedies have been exhausted. In addition, the PC is allowed to mediate, provide advice and opinions and urge administrative bodies to improve their work and protect human rights. It has the following sectors: 1) Sector for human rights protection and the rights of persons deprived of liberty, 2) Sector for child rights protection, gender equality and rights of persons with disabilities, 3) Sector for national minority rights and rights of other minorities, 4) Media and Project Sector, 5) General Affairs Sector, 6) Sector for the Reception of Citizens, 7) Sector for Material and financial affairs, and 8) Normative Affairs Sector. The PC has an A status accreditation of the GANHRI as one of 79 NHRIs being in full compliance with the Paris Principles.

In 2017, the PC was exposed to political pressure, concerning the manner and results of his work as well as the level of his income by representatives of the most important state institutions. The negative atmosphere was noted in the Annual Report for 2016.<sup>28</sup> The culmination of this situation was his announcement of the presidential bid in the elections and his resignation on 7 February 2017. The new PC was appointed in July 2017, although some found that the process was non-transparent and that he is ineligible to perform this duty.<sup>29</sup>

The third NHRI presented in this report is the Commissioner for the Protection of Equality (CPE) - *Poverenik za zaštitu ravnopravnosti*.<sup>30</sup> This equality body had been established under the Law on Prohibition of Discrimination (LPD),<sup>31</sup> and has the mandate to prevent and combat all forms and types of discrimination. The LPD very broadly defines discrimination and explicitly covers 19 grounds for discrimination. However, some grounds not explicitly mentioned such as residence could also be considered as prohibited grounds and within the mandate of the CPE, as it is an open-ended clause.<sup>32</sup> The civil society has been making an initiative for enacting this law since 2004. The draft was finalized in 2008 in a joint effort by several NGOs, and it was also a precondition for Serbia's inclusion in the "White Schengen List". Its adoption was heavily debated in the National Assembly, and the text was even withdrawn from the procedure, due to resistance of certain religious communities, followed by intense media and public debate.<sup>33</sup> The LPD is broadly in line with European standards, but some further alignment with EU *acquis* is needed.<sup>34</sup> The National Assembly appointed the first CPE in 2010 for five-year term of office, which can be renewed. The CPE is authorized to receive and review complaints, provide opinions and recommendations and publicly announce the existence of violation in a case her recommendation was not respected. It is also authorized to initiate strategic litigation of public interest, as well as to submit misdemeanour and criminal charges and proposals for assessing constitutionality and legality. The CPE provides legal aid to the person submitting a complaint and is also authorized to recommend mediation if assessed that the case is such. It has three sectors: 1) Sector for Acting upon Complaints, 2) Sector for Improvement of Protection of Equality, International Collaboration and Projects and 3) Sector for General Affairs. The CPE's work is regulated by the Rules of Procedure, adopted in 2011.<sup>35</sup>

The above-mentioned institutions have been analysed through the lens of an effectiveness evaluation matrix. The matrix made it possible both to identify the fine nuances in the level of compliance with the international standards (explained in the Approach and Methodology section) and to look across all institutions, in order to identify systemic challenges for the effectiveness of the NHRI in Serbia. The results from this measuring exercise will be presented in the next section, Research Findings.

## RESEARCH FINDINGS

Research findings are presented per domain, in order to facilitate the reaching of comparative remarks which can encourage learning between the NHRIs. In addition, this enables pointing out to systemic challenges faced by all three institutions. Each section starts with a figure presenting the ranking of NHRIs per domain, from the institution with the highest, to the one with the lowest score

### General score

NHRI	General score ↓
	<i>min: 0; max: 8</i>
CPE	5.33
PC	4.99
Comm. (FAI)	4.34
Comm. (PDP)	4.37
Comm. (total)	4.35

According to the general ranking, the CPE (5.33) is the most effective NHRI, with very consistent scores in all four domains. The CP holds the second position (4.99), while the Commissioner scored the lowest (4.35). The CPE has the highest score in the second and the third domain, while in Domain 1 – Independence and ability to work without pressures, the PC has the highest score (1.40). In Domain 4 – Mandate and Powers the Commissioner has the best score (1.50), while in all other domains it has the lowest score, especially in Domain 3 – Information, Accessibility and Cooperation with Other Relevant Actors (0.79).

The lowest overall score per domain is in Domain 3 – Information, accessibility and cooperation with other relevant actors and in Domain 2 – Availability of Resources and Capacities, with the CPE has demonstrated much higher score (1.35) compared to the CPE (1.10) and the Commissioner (0.84). This reflects the fact that all NHRIs in Serbia have been working for years with very low human and financial resources,<sup>36</sup> while the CPE moved to other premises in 2017, and this change just recently has reflected in the higher score. Overall, together with political interference, these two are the biggest systemic challenges for the effectiveness of the NHRIs in Serbia.

### Domain 1: Independence and Ability to Work without Pressures

NHRI	Domain 1 score ↓
	<i>min: 0; max: 2</i>
PC	1.40
CPE	1.30
Comm. (FAI)	1.22
Comm. (PDP)	1.22
Comm. (total)	1.22

In the first domain, we looked at issues of independence and ability to work without pressures. The PC has the highest score (1.40), followed by the CPE (1.30). The Commissioner has the lowest score in this domain (1.22). All institutions scored high when it comes to the independent statutory basis since they are all established either by law or by the constitution. The PC is the only institution which has constitutional basis,<sup>37</sup> while other two NHRIs are referred to by the law.<sup>38</sup> When it comes to the appointment procedure, all NHRIs follow the same process. The National Assembly appoints NHRIs with majority votes, under the proposal of the competent Committee. Each parliamentary group can propose a candidate.<sup>39</sup> The LPC is the only law prescribing that before formal proposal submitted to the National Assembly, the Committee can decide to hold a session and to allow all candidates to present their views on the role and the manner of exercising the powers of the NHRI.<sup>40</sup> This is just a possibility and not the rule, although it should be a compulsory phase before the formal proposal. Despite the fact that the appointment process seems to be by the legislature after public nomination, in the participatory procedure, it has not been transparent, as the last

24 Belgrade Centre for Human Rights (fn 5), 98.

25 Constitution Art. 138, para. 1.

26 *Zakon o zaštiti građana* (Law on Protector of Citizens), The Official Gazette of the Republic of Serbia, No 79/2005, 54/2007.

27 The mandate of all deputies expired in December 2018 and the new deputies have not been appointed yet.

28 The PC notes that the trend of endangering independence and diminishing the importance of the institution continued during the entire 2016. European Commission, Serbia 2016 Report, 2016 Communication on EU Enlargement Policy, Brussels, 9 November 2016, 4.

29 Danas, *Rasprava u skupštini o nezavisnim institucijama* (2017) [www.danas.rs/politika/rasprava-u-skupstini-o-nezavisnim-institucijama/](http://www.danas.rs/politika/rasprava-u-skupstini-o-nezavisnim-institucijama/)

30 Official website of the institution: <https://www.poverenik.rs>.

31 *Zakon o zabrani diskriminacije* (Law on prohibition of Discrimination), The Official Gazette of the Republic of Serbia, No 22/2009.

32 LPD Art. 2, para. 1.

33 Equal Trust, Serbia, National Anti-Discrimination Law, 2, [https://www.equalrightstrust.org/ertdocumentbank/395178321\\_5\\_PIL%20Project%20-%20Serbia%20Summary%20Template%20for%20National%20Law.pdf](https://www.equalrightstrust.org/ertdocumentbank/395178321_5_PIL%20Project%20-%20Serbia%20Summary%20Template%20for%20National%20Law.pdf)

34 European Commission, Serbia 2018 Report, 24. The law need to be further aligned with the *acquis*, especially in relation to the following: the definition of direct discrimination to cover also detriment; the definition of indirect discrimination to contain the conditional wording ('would') and not to be limited to the actual occurrence of disadvantage; to include the instruction to discriminate; to mention also access to goods, and not only to services; and to include provision on reasonable accommodation for people with disabilities. *Non-paper on the state of play regarding chapters 23 and 24 for Serbia*, May 2017.

35 Rules of Procedure, the Official Gazette of the Republic of Serbia, No 34/2011. Text available at <http://www.ravnopravnost.gov.rs/rs-o-nama/akti-poverenika>.

36 More on this issue see CRTA (fn 6), 4-8.

37 Constitution Art. 138, para. 1; LPC Art 2, para. 1.

38 LPD Art. 1, para. 2; LFAIPI Art. 1, para. 2, Art. 32, paras. 1 and 2.

39 LPC Art. 4 of the LPC; LPD Art. 28 of the LPD; LFAIPI Art. 30.

40 LPC Art. 4; LPD Art. 28; LFAIPI Art. 30.

two elections candidates were not announced on time, the NGOs were not consulted and there was no wider public debate. Also, once the applications get to the competent Committee, the procedure is closed and goes very quickly, and there is no mandatory debate. It is also important to highlight that there is always a delay in electing the new NHRI. NGOs submitted an initiative to the competent Committee to introduce a competitive election process, especially in relation to the election of the new Commissioner. The proposal was supported by five Committee members, while the remaining eight did not vote on it.<sup>41</sup>

On the criteria for membership, the LPD clearly requires at least 10 years of human rights expertise for the CPE,<sup>42</sup> (it got the highest score) as well as for the Commissioner,<sup>43</sup> but the latter does not expressly require specific knowledge on freedom of expression or information or data protection expertise (it got the medium score). The PC also got the medium score as the LPC contains a very broad provision requiring at least 10 years of experience on legal affairs within the competence of the PC,<sup>44</sup> which implicitly means human rights requirement. The positive trend is that in all three cases, legal qualifications are necessary. Concerning the terms of office, all NHRIs satisfy the highest criteria, as the PC is appointed on five-year term,<sup>45</sup> as well as the CPE,<sup>46</sup> while the Commissioner is appointed on seven-year term.<sup>47</sup> All mandates can be once renewed.

Two institutions had the middle score on the question of immunities, as none foresees more specific criteria than a general clause on functional immunity applicable for the term. It does not cover the period after the term, as well as immunity and protection against threat and coercion. However, the LFAIPI is the only law which explicitly prescribes that the Commissioner cannot be held liable for the opinion given or the proposal made in the exercise of his/her jurisdiction.<sup>48</sup>

Concerning the criteria – avoidance of conflict of interest, the PC got the highest score as the LPC is the only law which refers to the provisions of a special law regulating the conflict of interest.<sup>49</sup>

Regarding the criterion ‘no instruction from government’, the LFAIPI has an explicit provision which says that the Commissioner will neither seek nor receive orders or instructions from state authorities or other persons.<sup>50</sup> However, the independence of the PC is protected by the provision that he/she is independent and autonomous in carrying out the tasks set out by the law, and no one has the right to influence his/her work and conduct, but it does not explicitly say the Government or state authorities.<sup>51</sup> The CPE got a medium score because the law only contains a general provision on independence.<sup>52</sup>

All NHRIs got the medium score regarding the removal from office. Although the position of the PC is guaranteed by the Constitution, in case of all NHRIs, the laws prescribe as one of the reasons for removal the ‘unprofessional performing’ of duties can be very broadly defined in practice.<sup>53</sup> Nevertheless, it is worth mentioning that the procedure for the removal from office was not initiated in practice, although in 2017 the situation with the previous PC culminated, due to which he resigned from the office.

Regarding submission or agreement to pressure, the PC and the CPE received the highest score since no cases of submission to pressure were registered. In 2018, the CPE issued several opinions against ministers, politicians and influential persons.<sup>54</sup> However, the new PC was appointed in 2017 and his work might be suffering indirect pressure, since the previous PC resigned in February 2017 due to negative atmosphere and constant pressure. It seems that pressure was a result of the need to discredit his personality as a potential political opponent at the elections.<sup>55</sup> The Commissioner, on the other hand, received the minimum score for this criterion, due to external pressure which left the body unable to function. The Commissioner stated that 2017 was the most difficult year for the institution’s work. Nevertheless, as for the situation and events in 2018, this year was the most challenging for the work of the Commissioner since its foundation. By refusing to cooperate, the competent or controlled authorities often made it difficult or even impossible for the Commissioner to take legal action, or the measures taken had no effect.<sup>56</sup> Despite numerous challenges, the NHRI preserved its attribute of independence.<sup>57</sup>

Finally, except for the RCC survey, including the ombudspersons, there is no available survey of public opinion on public trust in the other NHRI institutions in 2018.<sup>58</sup>

41 Belgrade Centre for Human Rights (fn 5) 224.

42 LPD Art. 28, para. 4 (2).

43 LFAIPI Art. 30, para 2.

44 LPC Art. 5, para. 2.

45 Ibid Art. 4, para. 6.

46 LPD Art. 29, para. 1.

47 LFAIPI Art. 30, para. 5.

48 Ibid Art. 32, para. 4.

49 LPC Art. 9, para. 3.

50 Ibid Art. 32, para. 2.

51 Ibid Art. 2, para. 1.

52 LPD Art. 1, para. 2. Despite the fact that some reasons for removal are ambiguous and are subject to arbitrary treatment, no NHRI was removed from its office yet.

53 LPC Art. 12, para. 3 (1); LPD Art. 30, para. 3 (1); LFAIPI Art. 31, para. 3. Despite the fact that some reasons for removal are ambiguous and are subject to arbitrary treatment, no NHRI was removed from its office yet.

54 For example, see CPE, Opinion No 07-00-368/2018-02, 2 August 2018, issued against the minister Nenad Popović; CPE, Opinion No 07-00-9/2018-2, 5 April 2018, issued against the Red Star Football Club Director.

55 Marko Davinić (fn 2), 117.

56 Commissioner, Annual report 2018, 4.

57 Belgrade Centre for Human Rights (fn 5), 222.

58 There is only RCC Balkan Barometer Public Opinion 2018 finding that 31% of respondents trust the institution of the Protector of Citizens, which is also the highest score with the trust in courts and the supreme audit institution. RCC, Public Opinion Survey, Balkan Barometer 2018, <https://www.rcc.int/pubs/66/balkan-barometer-2018-public-opinion-survey>. Also, the report Attitude of Citizens towards Discrimination reveals that in 2016, 50,8% of citizens knew that special institution dealing with discrimination existed (41,4% know the exact name of the institution). Also, 18% of responded said that they will address the CPE in a case of discrimination (in 2013 only 2% had the same answer).

There are several key challenges in relation to this domain: non-transparent procedure of appointing NHRIs, quite general provisions addressing independence, removal of office subject to arbitrariness, no specific criteria other than a general clause on functional immunity applicable for the duration of the term, non-existence of mechanism against pressure and influence, and no regular public opinion survey to measure the independence of institutions.

## Domain 2: Availability of Resources and Capacities

NHRI	Domain 2 score ↓
	<i>min: 0; max: 2</i>
CPE	1.35
PC	1.10
Comm. (FAI)	0.93
Comm. (PDP)	0.75
Comm. (total)	0.84

In the domain availability of resources and capacities, the CPE has the highest score (1.35). The PC has much lower score (1.10), whereas the Commissioner has the lowest score (0.84).

All institutions have a separate budget. However, the process of adopting the budget is problematic. The institution proposes the budget plan, which is sent to the Ministry of Finances to their approval and is submitted to the National Assembly. Funds are provided by the 2018 Law on the Budget, which was in total RSD 1,206,848,355,000.00.<sup>59</sup> In 2018, the PC received RSD 195,294,000.00 (0,016% of the total Budget), the CPE was allocated RSD 91,264,000.00 (0.0076% of the total Budget) and the Commissioner received 199,039,000.00 RSD (0.017% of the total Budget).

Each year all NHRIs receive a significantly smaller amount of money and some of their activities are additionally funded from donations. Therefore, none of the institutions has adequate financial resources nor adequate human resources to carry out its mandate fully. All NHRIs face the problem of the insufficient number of staff to fulfil its legal mandate. The worst situation and the lowest score received the Commissioner, who claimed that the funds in the Budget for 2018 were not sufficient even for the salaries of the existing number of employees, despite the fact that in all the programming documents of the Government and the National Assembly, as well as in the Action Plan for the Chapter 23, it has been stipulated that one of the goals is to strengthen the institution’s staff resources. Funds were secured from last-minute budgetary reserves before payments were due.<sup>60</sup>

None of the NHRIs recruits staff independently, in a transparent and meritocratic manner as this process relies on the final approval from the Ministry of Finance.<sup>61</sup> Therefore, all NHRIs got a middle score on this indicator. However, it is worth mentioning that the Commissioner’s Office didn’t receive approval of its draft staffing plan, which was approved to other NHRIs. In addition, the PC’s draft staffing plan was approved even for the envisaged staff, despite warnings that allocated funds for the Commissioner’s Office are not sufficient to cover the salaries of the staff already working.<sup>62</sup> Despite limited human resources, all NHRIs provide an ongoing training program for their staff, as well as training programs for their target groups, which is well documented in their annual reports.<sup>63</sup>

Another indicator is the establishment of regional offices or regional outreach. Both the PC and the CPE have a few regional offices, but they do not cover the whole territory of the Republic of Serbia. Thus, the PC has opened Offices in Bujanovac, Preševo and Medveđa. It has also established practice of receiving complaints in Roma settlements in Bujanovac, Kragujevac, Kraljevo and Kruševac. Additionally, in 15 libraries throughout Serbia citizens can communicate with the staff through video link and there they can submit complaints.<sup>64</sup> The CPE has opened only one regional office in Novi Pazar.<sup>65</sup> The Commissioner does not have any regional office or activity in that respect, however this is not required by any international standard for SADPs or FAIs.

There is no enough information to evaluate the diversity of the composition of the management of the institution and its staff. In both institutions, the PC and the CPE, there is diversity concerning gender and ethnicity, but other information is not available.

There is very few information available to the financial control of the NHRIs. They are all exposed to external control of the State Audit Office, which is not regular, so all got the medium score. However, it is worth mentioning that the Commissioner also develops internal control. Several documents adopted recently confirm this statement: Strategic plan of internal control (2018 - 2020), Annual plan of work for 2018, and the Charter on internal control (2017).

59 *Zakon o budžetu Republike Srbije* (Law on the Budget of the Republic of Serbia), The Official Gazette of the Republic of Serbia, No 113/2017.

60 Commissioner, Annual report 2018, 1.

61 CRTA (fn 6), 6.

62 Belgrade Centre for Human Rights (fn 5), 222.

63 PC, Annual report 2018,

64 LPC, Art. 3, paras. 1-2.

65 CPE, Annual report 2018, 25.

With regards to the learning and change criteria, the CPE has established a system of regular strategic planning, with output and impact indicators, and an evaluation system.<sup>66</sup> The Commissioner introduced strategic planning, with output and impact indicators and an evaluation system, but the strategy expired in 2017.<sup>67</sup>

It can be concluded that this is the most challenging domain which impacts the effectiveness of the institutions in all other domains. Therefore, it is necessary to ensure financial independence in terms of sufficient resources and suitable staff in order to allow them to execute their mandate properly. Also, it is important to establish local and regional offices for conducting the work of the NHRIs in order to reach every person that might need to communicate with them.

### Domain 3: Information, Accessibility and Cooperation with Other Relevant Actors

NHRI	Domain 3 score ↓
	<i>min: 0; max: 2</i>
CPE	1.35
PC	1.13
Comm. (FAI)	0.69
Comm. (PDP)	0.90
Comm. (total)	0.79

In the domain of information, accessibility and cooperation with other relevant actors, the CPE scored higher than the other institutions (1.35). The PC scored 1.13, whereas the Commissioner scored 0.79

When it comes to the parliamentary scrutiny, it is important to mention that four years in a row annual reports of NHRIs were not debated at a plenary session.<sup>68</sup> Still, the CPE and PC got a higher score than the Commissioner as their annual reports were debated in competent Committees, although there are no available conclusions and recommendations after discussion.

The Government has an obligation to receive an opinion from bodies on the draft laws and strategies within their jurisdiction, according to special laws,<sup>69</sup> but there is no obligation to provide feedback on the provided proposals due to which all NHRIs got the middle score. For example, the PC has competence to submit opinions on the draft laws and bylaws related to human rights. If he exercises this competence, the Government and the National Assembly are obliged to consider his initiatives. Moreover, the Constitution allows the PC to submit draft laws in his area of jurisdiction.<sup>70</sup> The CPE is also allowed to monitor the implementation of laws and other regulations, initiate the adoption or amendment of regulations in order to implement and improve the protection against discrimination and give opinions on the draft laws and other regulations concerning the prohibition of discrimination.<sup>71</sup> Finally, the Commissioner is allowed to initiate adoption or amending of regulations in order to implement and improve the right of access to information of public importance, as well as to propose measures in order to improve the work of public bodies.<sup>72</sup>

Regarding the NHRIs cooperation, there is no memorandum for understanding signed between them. Notwithstanding, the annual reports of all three institutions do report cooperation among them. That cooperation usually means participation in conferences, round tables, meetings and expert meetings in the organization of NHRIs or other organisations,<sup>73</sup> referral to reports of other NHRIs,<sup>74</sup> rejection of complaints if citizens did not use the opportunity to address specialized NHRIs first,<sup>75</sup> joint initiatives, etc. Therefore, all NHRIs got the medium score.

Cooperation with NGOs does exist, but it is not structured. Aside from speaking at NGO events, that cooperation means also situation testing, meetings, campaigns, participation in fairs and other promotional activities,<sup>76</sup> Moot courts and prize competitions,<sup>77</sup> etc. Although all three institutions got the middle score, annual reports suggest that the CPE has most extensively developed this cooperation. The PC cooperates with NGOs within the National Prevention Mechanism (NPM) and organizes the “Ombudsperson Day” when he talks with citizens and representatives of the civil sector and holds meetings with representatives of public authorities, pointing to the need to improve respect for citizens’ rights.<sup>78</sup> However, it seems that in 2018 the cooperation between the PC and NGOs deteriorates and in one occasion, he was criticized for giving recommendations which are contrary to relevant international standards concerning persons with disabilities.<sup>79</sup>

66 *Strategija Poverenika za zaštitu ravnopravnosti (2016-2020)*, (Strategy of the Commissioner for Protection of Equality), <http://ravnopravnost.gov.rs/propisi/akti-poverenika/>

67 *Strategija upravljanja rizicima u službi Poverenika za informacije od javnog značaja i zaštitu podataka o ličnosti (Risk Management Strategy in the office of the Commissioner for Public Information and Protection of Personal Data)*, <https://www.poverenik.rs/sr/актуелни-акти.html?start=20>

68 In 2019, the reports were finally considered at a plenary session.

69 Government’s Rules of Procedure, Art. 39 a) para 4.

70 Constitution, Art. 107, para. 2.

71 LPD, Art. 33, para. 7.

72 LFAIPI, Art. 35, para. 1-2.

73 Commissioner, Annual report 2018, 79.

74 CPE, Annual report 2018, 211.

75 PC, Annual report 2018, 104.

76 Commissioner, Annual report 2018, 80.

77 CPE, Annual report 2018, 2011-2014.

78 PC, Annual report 2018, 72.

79 *Saopštenje platforme povodom Godišnjeg izveštaja Zaštitnika građana*, <https://platforma.org.rs/saopstenje-platforme-povodom-godisnjeg-izvestaja-zastitnika-gradana/>

In addition to the general obligation of executive and other branches or bodies to provide relevant data to the NHRI, the executive and other branches/bodies should also have an obligation to provide relevant data for evidence on specific cases. That criteria have been satisfied for both the PC and the CPE.

All NHRIs have an obligation to provide information on rights and remedies. Information is placed on the website or in publications. However, not all information is written in easy-to-read-language. In that respect, the PC got the minimal score, while the CPE got the medium score, as the majority of publications, handbooks and leaflets are written in easy-to-read-language. Institutions are physically accessible for persons with disabilities, and all institutions can be reached online, by email and via telephone services, and there is flexibility in meeting the time constraints of those seeking access to services. Therefore, they all got the highest mark in terms of general accessibility. When it comes to the question of accessibility to persons with a disability, it should be underlined that not all information, communication and other services are accessible to persons with disabilities, regardless of the type of disability. Thus, all NHRIs got the medium score. Nevertheless, it should be underlined the CPE and the Commissioner tend to seriously work on it, as their websites are accessible for persons with disabilities, the latter also having a listening option.

In relation to the international activity, the bodies demonstrated very good results, participating in more than seven relevant international events, and all got the highest mark, except the Commissioner for activities in relation to freedom of expression (it received the medium score). They are also members of relevant international organizations/bodies.<sup>80</sup> When it comes to professional secrecy, all NHRIs need to attain a standard for confidentiality and protection, within the frame of which they are supposed to be obliged to offer confidentiality to witnesses and whistle-blowers. However, only the PC has its bylaw regulating this issue and prescribing obligation to protect whistle-blower.<sup>81</sup> Other NHRIs act within the general framework for the protection prescribed by the Law on the Protection of Whistle-Blowers.<sup>82</sup> Finally, only the CPE has a communication strategy covering a period for at least three years (2016-2020). The Commissioner’s communication strategy has expired and has not been renewed. No data is available on the Ombudsperson.

In the domain of information, accessibility and cooperation, the weakest point is the debate of annual reports in the National Assembly and the need for more structured cooperation between NHRIs and NGOs. In addition, some NHRIs need to create and adopt communication strategy and its internal rules concerning the protection of witnesses and whistle-blowers.

### Domain 4: Mandate and Powers

NHRI	Domain 4 score ↑
	<i>min: 0; max: 2</i>
Comm. (FAI)	1.50
Comm. (PDP)	1.50
Comm. (total)	1.50
PC	1.35
CPE	1.33

In the domain of mandate, the institutions were evaluated through specific criteria applicable for their type of institution and bearing in mind the highest international standards that need to be attained. This domain has the best score. Thus, the Commissioner received the highest score (1.50), followed by the PC (1.35), while the lowest score was given to the CPE (1.33).

The PC got the highest scores concerning its competences. He has a competence to address public opinion freely, raise public awareness on human rights issues, and carry out education and training programs and making use of the press. It also has both the power to obtain statements in order to assess situations raising human rights issues and the authority to compel witnesses. He has also a competence to operate amicable and confidential settlement of the complaints through an alternative dispute resolution process.<sup>83</sup> The PC also has unannounced and free access to inspect and examine any public premises, documents, equipment and assets, without prior written notice,<sup>84</sup> and has a broad competence as a national prevention mechanism. However, its mandate is limited to the public sector (excluding the National Assembly, the President, the Government, the Constitutional Court, courts and prosecutor’s offices). Also, its decisions are recommendations and are not binding. As the LPC explicitly prescribes that the PC acts in accordance with international law.<sup>85</sup> It has the mandate to promote and ensure the harmonisation of national legislation with international standards, but it does not have an explicit mandate to submit an opinion on the subject to international

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80 The PC is a member of GANHRI, AOM, ENNHRI, IOI, EOI, ENO, ENOC, CRONSEE, and the CPE is a member of EQUINET.

81 Rulebook on the procedure of internal alerting in the professional service of the Protector of Citizens, [https://www.ombudsman.rs/attachments/4464\\_pravilnik%20o%20postupku%20unustrasnjeg%20uzbunjivanja.pdf](https://www.ombudsman.rs/attachments/4464_pravilnik%20o%20postupku%20unustrasnjeg%20uzbunjivanja.pdf)

82 *Zakon o zaštiti uzbunjivača (The Law on the Protection of Whistle-Blowers)*, The Official Gazette of the Republic of Serbia, No 128/2014.

83 LPC, Art. 24, para. 2.

84 Ibid Art. 21(1).

85 Ibid Art. 2(2).

bodies. However, the PC is doing that in practice. In 2018, the PC submitted two submissions to international bodies.<sup>86</sup> It is also active in publishing reports.<sup>87</sup> The PC does not have the authority to be a party of the court action. In addition, it has an explicit mandate to protect children's rights, but not the power to take cases to court and intervene in court cases. Regarding the initiatives submitted to the national authorities, the PC was very active and submitted 37 opinions in order to improve the work of the administrative bodies and to improve the protection of human rights and also submitted 5 initiatives.<sup>88</sup> Finally, 93.15 % of his recommendations have been accepted by public bodies in 2018.<sup>89</sup>

The CPE has a broad mandate and explicitly covers 19 grounds for discrimination, including the residence (provision is an open-clause). It also covers all areas, noted in the ECRI GPR. In addition, it also has a broad mandate concerning the promotion and achievement of equality, prevention and elimination of discrimination and intolerance, including structural discrimination and hate speech as well as the promotion of diversity and good relations between persons belonging to all the different groups in society. In addition, the CPE has the obligation to promote equality through training, raising awareness and developing standards. In 2018, the CPE was also very active in submitting initiatives – 37 opinions on draft laws and 9 initiatives.<sup>90</sup> The CPE has also engaged in strategic litigation on its own behalf (one strategic litigation was initiated in 2018, and several were ongoing). When it comes to responsibilities within its mandate, the CPE only has a limited mandate to act as *amicus curiae* or expert. Similar to the PC, the CPE has the right to issue recommendations, but not legally binding decisions. The mandate of the CPE includes independent surveys, and they are conducted each third year, the last being conducted in 2016.<sup>91</sup> Moreover, the CPE relies on independent research as the basis for its reports, and can submit contributions to international bodies, but according to available data, none was submitted in 2018.

Finally, the Commissioner received the highest score concerning its mandate. First of all, it has a full mandate and powers for monitoring and oversight on free access to public information and data protection. It has full mandate and powers to handle complaints and issue binding decisions. According to its report, the Commissioner has carried out number of promotional activities for both the general public and data providers in the form of educational activities but also engages the proactive dissemination of information.<sup>92</sup> The Commissioner was the most active concerning initiatives – it gave 59 opinions on draft laws and 4 initiatives to challenge the constitutionality.<sup>93</sup>

All NHRIs allow complaints to be submitted orally, in written form or on-line. The CPE accepts complaints submitted in a language of the complainant's choosing, in accordance with the Law on the Official Use of Languages and Script.<sup>94</sup> Also, the procedure of submitting complaints is free of charge in all NHRIs.

Except for the RCC survey, including the ombudspersons, there is no available survey on public opinion on public trust in the other NHRI institutions in 2018.<sup>95</sup>

The final criteria evaluated was the assessment provided by the European Commission in the last Progress Report. On this point, the PC<sup>96</sup> and the CPE<sup>97</sup> got the middle score, while the Commissioner got the lowest mark, as the EC pointed out that the majority of public authorities do not comply with the obligation to provide data to the Commissioner regarding citizens' requests for information, and that it remains understaffed and underfunded.<sup>98</sup>

## RECOMMENDATIONS

On the basis of the ranking, the main findings and established principal challenges, we developed a set of recommendations. These refer to the national authorities (the Parliament and the Government, and the NHRIs), international actors (European Union and others), and the NGOs.

### National authorities

#### To the National Assembly

In order to fully utilize the contribution of independent institutions to parliamentary oversight of the executive, some obstacles in existing assembly procedures should be eliminated. In order to benefit from full cooperation with NHRIs it is important to carry out the following:

**To raise the awareness of all relevant actors** (MPs, parliamentary groups, committees) **about the role and work of NHRIs**, in order to maximize the cooperation with NHRIs and to create an atmosphere of tolerance, acceptance and appreciation;

<sup>86</sup> In 2018, he submitted opinion to CEDAW and GREVIO. PC, Annual report 2018, 92.

<sup>87</sup> In 2018 the PC has published Annual 2018 Report, National Preventive Mechanism 2018 Report, special report on problems in the implementation of two specific laws and reports on the visit to particular institutions within the NPM - in total 14 in 2018.

<sup>88</sup> PC, Annual report 2018, 17-20.

<sup>89</sup> *ibid*, 16.

<sup>90</sup> CPE Annual report 2018, 244.

<sup>91</sup> CPE, *Odnos građana i građanki prema diskriminaciji u Srbiji* (The Attitude of Citizens Towards Discrimination in Serbia), 2016, <http://ravnopravnost.gov.rs/izvestaj-o-istrazivanju-javnog-mnjenja/>

<sup>92</sup> Commissioner, Annual Report 2018, 75-78.

<sup>93</sup> *ibid*, 68-74.

<sup>94</sup> *Zakon o službenoj upotrebi jezika i pisma* (Law on the Official Use of Languages and Script), The Official Gazette of the Republic of Serbia, No 45/91, 53/93, 67/93, 48/94, 101/05, 30/10, 47/18, 48/18.

<sup>95</sup> RCC, Public Opinion Survey, Balkan Barometer 2018.

<sup>96</sup> The EC criticized that for the fourth consecutive year, the parliament did not discuss in the plenary the Ombudsman's annual report and hence, no conclusions were made for the Government's review. At the same time, the number of citizens' complaints submitted to the Ombudsman decreased by 19%, while the number of recommendations from the Ombudsman addressed to the authorities remained stable. Also, the percentage of his recommendations followed up by the authorities remains high, although certain recommendations related to "public interest" still have not been addressed. There has been a serious delay in amending the Law on the Ombudsman. EC Serbia 2018 Report, 23.

<sup>97</sup> The CPE continued to participate in the work of the ENEBs. Her office introduced an annual award for a municipality with the best practice in promoting tolerance and creating equal opportunities. However, the authorities still need to follow up on the recommendations of the CPE on developing an anti-discrimination policy for employers in Serbia. EC Serbia 2018 Report, 27, 79.

<sup>98</sup> *ibid*, 20, 24.

**To review reports of NHRIs on a regular basis and to draw clear conclusions** in order to exercise its oversight competence and to evaluate the fulfilment of NHRI's recommendations;

**To regularly consult the NHRIs on issues which fall within their competence**, in order to receive information that is valuable for the exercise of its legislative and oversight functions;

**To introduce provisions in the Rules of Procedure on the competent committees for each NHRI and to specify the deadline for reviewing reports in plenary sessions** in order to give NHRIs information on the date when their reports will be discussed and to allow them to properly prepare for presentation, as well as to oblige the National Assembly to adhere to the deadline;

**To make the process of appointment of a representative of the NHRI to be more transparent and participatory, in discussion with the NHRIs, NGOs and other relevant stakeholders.** The election needs to be based on the evaluation of qualifications and previous working experience related to the work of each NHRI. This is the only way to appoint the best candidate;

**To initiate the process of appointment in due time**, bearing in mind when exactly the term of representative expires. This is relevant not only for the representative but also for his/her deputies in order to allow proper functioning of the NHRI;

**To adopt legislative amendments, in cooperation with NHRIs, in order to specify independence provision, including immunity and prohibition of interference clause, to specify removal criteria and to include conflict of interest provision for both, during and after the term expires** in order to comply with relevant international standards and to guarantee the independence of NHRIs;

**To review the mandate of each NHRI under relevant international standards and to prepare a study on its possible strengthening of the mandate**, bearing in mind the weak points identified in this report and other sources;

**To adopt the staffing plan and to abandon the practice of requiring approval for every new staff member by the Committee responsible for administrative-budgetary issues**, as this seriously endangers NHRIs independence and functioning. In addition, **it is important to ensure that the plan reflects the need to secure diversity in Serbian society**, especially regarding gender, ethnic origin, disability, age and religion;

**To change the Law on State Audit Institution** in order to introduce a provision on regular external financial control of the NHRI;

**To ensure sufficient budgetary allocation** in order to allow proper functioning of NHRIs and to perform their full mandate.

### The Government

The executive need to further secure independence of NHRIs, to support their work and to understand that they need to cooperate as they are associates and not the enemies. However, since the NHRIs establishment, their relationship was characterized by mistrust and insufficient support. Therefore, the Government must:

**Provide adequate funding and resources to NHRIs, so they will be able to carry out fully, and without restrictions and limitations, their functions set out within the mandate.** Therefore, the Government needs to accept the financial plan of NHRIs in order to secure their financial independence;

**Exempt NHRIs from the obligation to get an approval of the Ministry of Finance for the staffing plan.** The current practice limits their independence, according to the Law on Civil Servants and need to be changed;

**Refrain from obstruction and any influence and pressure that endangers the independence of NHRIs** and to secure the atmosphere of tolerance and cooperation, which also means to fulfil recommendations and other measures issued by NHRIs.

### The national human rights institutions

The NHRIs should also be very active not only in advocating legislative changes that will increase their independence but also in exercising their full mandate. In that respect, the NHRIs need to do the following:

**To base the recruitment process on the clear evaluation of the need of the institution**, in order to increase its effectiveness and exercise of its full mandate;

**To recruit the staff which reflects diversity in Serbian society**; especially bearing in mind gender balance, recruitment of representatives of ethnic and religious minorities and persons with disabilities;

**To establish better internal financial control**, in order to enhance the credibility of the institution, and **to advocate the exercise of regular external control by the State Audit Institution**;

**To establish more structured ways of cooperation and mutual support between NHRIs.** It can also include annual conferences on the role and importance of NHRIs, where they will discuss the challenges and obstacles in their work and advocate for legislative and other changes in order to secure better conditions to perform their mandate;

**To establish a more structured way of cooperation with NGOs**, which does not rely only on project activities. This cooperation should assume to maintain regular contacts with NGO representatives to be able to assess the situation in the field, to collect relevant data and information and to discuss possible joint actions;

**To adopt a communication strategy and strategic planning process of development of the NHRI**, setting clear indicators, measures and evaluation. This is important from the perspective of further development of each NHRI and opportunity to assess risks that can undermine their performance and overall results;

**To adopt internal acts on the protection of witnesses and whistle-blowers** in accordance with the Law on Whistle-blowers, in order to increase the level of their protection and to remove doubts if they are protected by and from the NHRI;

**To establish regional offices** that cover the whole territory of Serbia. This is vitally important to the effective functioning of NHRIs in order to allow everyone to communicate with NHRIs. When regional offices are established, it is important to secure their effective coordination and communication;

**To enhance the accessibility of the NHRIs** for all types of disabilities, especially for sensory disability in order to allow everyone to benefit from their protection;

**To enhance the language accessibility of the information** regarding NHRIs competences and to have more information in an easy-to-read language which is clear to everyone. This is an important goal, as ordinary citizens need to understand the mandate and procedure before the NHRI;

**To conduct regular surveys on public opinion on NHRIs** in order to collect relevant data on the perception of citizens on their independence, visibility and effectiveness. The results should be used to reflect the current state and to improve their work.

## International actors

Different international actors are important partners in increasing NHRIs capacities and their effectiveness in human rights promotion and protection.

### To the European Union

**To be more explicit when assessing the work of NHRIs in progress reports** in order to send the message to the authorities that some issues, such as a lack of resources and pressure, will not be tolerated, and are a prerequisite for joining the EU.

### Other international actors

**To continue supporting programs that enable NHRIs to perform all of their functions**, especially in relation to their capacities, **as well as to support their cooperation with other relevant stakeholders**. Without their support, NHRIs with very limited financial resources will not be able to perform some activities, such as trainings, organization of Moot courts, publications, etc.

**To support NGOs to monitor the effectiveness and independence of NHRIs on a regular basis**. This will provide necessary data on their performance and will be an incentive for the improvement of their work.

## NGOs

Cooperation between NHRIs and civil society is essential in promoting and protecting human rights. Therefore, this is essential that NHRIs maintain a close relationship with civil society and to consider civil society as an important partner in not only providing human rights protection but also in performing its full mandate. Thus, NGOs should particularly do the following:

**To focus on monitoring the effectiveness and independence of NHRIs on a regular basis**, in order to provide reliable information to NHRIs that should be used to improve their functioning;

**To require a more strategic partnership with NHRIs, and to focus on joint initiatives with the NHRIs in order to become real partners in securing the human rights protection** as they both have expertise and experience that can be shared to their mutual advantage. This will allow NHRIs to increase awareness generally of human rights and to provide a greater degree of human rights protection, especially of most vulnerable groups in Serbia;

**To actively take part in proposing and supporting candidates for NHRIs and to seek that the appointment process is transparent and participatory** in order to minimize the politicization of the whole process and to contribute to the selection of the best candidate;

**To review the annual reports of NHRIs, to follow the fulfilment of recommendations and to make public pressure** in those cases when the authorities ignore the situation;

**To condemn every attempt to jeopardize the independence of NHRIs and inappropriate attacks on their representatives** and to enable them to achieve greater public legitimacy.

# Annex: List of indicators

## Domain 1: Independence and ability to work without pressures

Ombudsperson	EB	SADP	FAI
Independent statutory basis	Independent statutory basis	Independent statutory basis	Independent statutory basis
Appointment process	Appointment process	Appointment process	Appointment process
Clear criteria for membership			
Term of office	Term of office	Term of office	Term of office
Avoidance of conflict of interest			
Immunities	Immunities		
No instruction from government			
Removal	Removal	Removal	Removal
Submission/agreement to pressure	Submission/agreement to pressure	Submission/agreement to pressure	Submission/agreement to pressure
Public opinion on independence of NHRIs			

## Domain 2: Availability of resources and capacities

Ombudsperson	EB	SADP	FAI
Separate and independent budget	Separate and independent budget	Separate and independent budget	Separate and independent budget
Adequate financial resources	Adequate financial resources	Adequate financial resources	Adequate financial resources
Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures	Transparent and meritocratic recruitment procedures
Sufficient human resources	Sufficient human resources	Sufficient human resources	Sufficient human resources
Adequate human resources	Adequate human resources	Adequate human resources	Adequate human resources
Financial control	Financial control	Financial control	Financial control
Pluralism	Pluralism		
Training	Training		Training
Internal structure enables focus on each part of mandate	Internal structure enables focus on each part of mandate		
Regional offices / outreach	Regional offices / outreach		
Learning and change	Learning and change	Learning and change	Learning and change

**Domain 3: Information, accessibility and cooperation with other relevant actors**

Ombudsperson	EB	SADP	FAI
Parliamentary scrutiny	Parliamentary scrutiny	Parliamentary scrutiny	Parliamentary scrutiny
Providing information to NHRIs	Providing information to NHRIs		
Cooperation with government	Cooperation with government	Cooperation with government	Cooperation with government
Cooperation with other NHRIs	Cooperation with other NHRIs	Cooperation with other NHRIs	Cooperation with other NHRIs
Cooperation with NGOs	Cooperation with relevant bodies and NGOs	Trans-national cooperation with other SAs	Cooperation with NGOs
Providing information on rights	Providing information on rights	Providing information on rights Information on rights and assistance to data subjects	Providing information on rights
Accessibility Accessibility to children Accessibility to persons with disabilities	Accessibility Accessibility to persons with disabilities	Accessibility Accessibility to persons with disabilities	Accessibility Accessibility to persons with disabilities
Membership in international networks Participation in international activities	Membership in international networks Participation in international activities	Membership in international networks Participation in international activities	Participation in international activities
Communication strategy	Communication strategy	Communication strategy	Communication strategy
Confidentiality and protection	Confidentiality and protection	Professional secrecy	

**Domain 4: Mandate and powers**

Ombudsperson	EB	SADP	FAI
		Monitoring and enforcement	Monitoring and oversight
Human rights promotion	Promotion and prevention	Promotion	Promotion
Promotion of harmonisation with international HR instruments and implementation			Promotion of pro-active dissemination
Mandate – coverage of sectors	Coverage of grounds of discrimination Coverage – area Equal treatment of all persons without discrimination on grounds of sex		
Human rights protection – powers – investigation	Independent assistance – mandate	Investigations	
Human rights protection – powers – access	Independent assistance – strategic litigation		
Human rights protection – powers – complaints	Independent assistance – issuing recommendations and legally binding decisions		
Human rights protection – powers – courts			
Follow-up on recommendations	Follow up on recommendations		
Initiatives to national authorities	Initiatives to national authorities	Advisory role	Advisory role
	Complaints submission Complaints submission – language Complaints submission – free of charge	Handling complaints	Handling complaints Complaints submission Complaints submission – free of charge
	Independent surveys	Regulatory functions/ authorisations	
Reports	Independent reports		
Submission of contributions to international bodies	Submission of contributions to international bodies		
National prevention mechanism			
Rights of the child			
Public opinion on public trust in NHRIs	Public opinion on public trust in NHRIs	Public opinion on public trust in SA institution	Public opinion on public trust in SA institution
Assessment of the EC in the last report	Assessment of the EC in the last report	Assessment of the EC in the last report	Assessment of the EC in the last report





## Effectiveness of National Human Rights Institutions in the Western Balkans

Montenegro, North Macedonia, Serbia

(What is behind and) **Beyond the average?**

