

*E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS  
(CFR-CDF)  
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX*

**OPINION OF THE E.U. NETWORK OF INDEPENDENT EXPERTS IN  
FUNDAMENTAL RIGHTS REGARDING THE ROLE OF NATIONAL  
INSTITUTIONS FOR THE PROTECTION OF HUMAN RIGHTS IN THE MEMBER  
STATES OF THE EUROPEAN UNION**

**AVIS DU RESEAU U.E. D'EXPERTS INDEPENDANTS EN MATIERE DE DROITS  
FONDAMENTAUX RELATIF AU ROLE DES INSTITUTIONS NATIONALES DE  
PROTECTION DES DROITS DE L'HOMME DANS LES ETATS MEMBRES DE  
L'UNION EUROPEENNE**

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## QUESTIONNAIRE REGARDING THE ROLE OF NATIONAL INSTITUTIONS

### **Question 1**

1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?

1.2. Describe

- a) The composition of such national institution;
- b) Its powers;
- c) Its working methods;
- d) Its achievements.

1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?

### **Question 2**

Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?

### **Question 3**

3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?

3.2. What is the typical content of such a plan?

3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?

### **Question 4**

4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?

4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.

4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.

4.4. If civil society organisations are involved in monitoring such compliance, please specify this.

### **Question 5**

Please indicate any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms, which contribute to the elaboration of a fundamental rights policy in the State that you are monitoring.



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# **AUSTRIA**

## **Question 1. Existence of a national institution for the protection of human rights.**

**1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

There is presently no national human rights institution in Austria. The national Ombuds Office (Volksanwaltschaft) monitors shortcomings in the field of administration, but has no explicit human rights mandate. The Austrian draft law of the Equal Treatment Act (Gleichbehandlungsgesetz), which is supposed to transpose the two EU Anti-Discrimination Directives (2000/43/EC and 2000/78/EC), provides for the establishment of an Equal Treatment Commission (Gleichbehandlungskommission) and a so-called Office for Equal Treatment (Anwaltschaft für Gleichbehandlungsfragen). Due to the fact that the mandate of these institutions is limited to the scope of the two Directives they cannot be considered a national human rights institution in the sense of the Paris Principles. Similarly, there exist special Child and Youth Ombuds Offices in the 9 Federal Provinces (Länder) and a Human Rights Advisory Board at the Ministry of the Interior (see infra question 5).

**1.2. Describe**

**a) The composition of such national institution;**

N/A

**b) Its powers;**

N/A

**c) Its working methods;**

N/A

**d) Its achievements.**

N/A

**1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

The independence of members of the Commission and the Office for Equal Treatment is not guaranteed by a constitutional provision; for the degree of independence of the Human Rights Advisory Board see the concerns listed under Question 5.

## **Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

Again, the techniques of assessing the international human rights implications of draft legislation in Austria are fairly rudimentary and in no way comprehensive. On a customary basis every legislative

bill drafted by any of the Federal Ministries is submitted to an extensive consultative assessment procedure, which involves many stakeholders, including other Federal Ministries, the so-called social partners (Chamber of Commerce, trade unions etc.) and civil society organisations, among them human rights NGOs and the Ludwig Boltzmann Institute of Human Rights. At this stage, these institutions can, of course, raise human rights concerns, but very often (e.g. in respect to asylum and aliens' legislation) these concerns are not taken into account. The Department on Constitutional Issues (Verfassungsdienst) in the Federal Chancellery checks whether draft legislation is in conformity with the Federal Constitution, including the domestic bill of rights. With the exception of the European Convention on Human Rights, the Convention for the Elimination of Racial Discrimination (Articles 1-2) and the Convention on the Elimination of all forms of Discrimination Against Women (Articles 1-4), international and regional human rights treaties have, however, not been directly incorporated into the Austrian Federal Constitution. In relation to children's rights and the current preparations for an Austrian Children's Rights Action Plan (see question 3 below) a discussion has started on introducing regular child impact assessments (Kinderverträglichkeitsprüfung) on legislative and administrative measures. At the level of the Federal Parliament, a special Human Rights Committee has been established in reaction to NGO recommendations in the Human Rights Year 1998. In practice however, this Committee, which is chaired by the human rights speaker of the opposition Green Party, has very limited competences and influence on the legislative procedure.

### **Question 3. Existence of a national plan of action on fundamental rights.**

#### **3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

Again, the overall answer is no. Although the preparation of a comprehensive national human rights plan of action was one of the most urgent recommendations of NGOs in 1998, this has not been taken up by the political decision making bodies. But there do exist certain specialized action programmes, such as those required for the implementation of EU Action Plans (on social exclusion, employment, etc.) or UN Action Plans. Austria's commitment to develop a National Action Plan against Racism arose from the UN World Conference Against Racism, held in Durban, South Africa in September 2001. Due to the fact that several different Ministries are responsible for the implementation of the intended action plan an inter-ministerial consultation process has been initiated to develop such action plan. Most important in this respect is the Young *rights* Action Plan (YAP), which is currently under preparation in Austria. The YAP has been conceived both as an implementation strategy to the UN Convention on the Rights of the Child and as a rights-based follow-up to the 2002 UN General Assembly Special Session on Children in New York. Four Working Groups on various children's rights topics have been established in 2003, complemented by a major public survey among children and adolescents about their future expectations and concerns. Based on the results of these processes the YAP is expected to be adopted by the Council of Ministers in mid-2004.

#### **3.2. What is the typical content of such a plan?**

In relation to the YAP: the mandate of the Working Groups included the identification of focus areas, setting of priorities, developing goals and measures for CRC implementation, including indicators for monitoring.

#### **3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

The YAP should form the basis for a rights-based child and youth policy for the next ten years in Austria and there is principal agreement among all actors on the need for monitoring and regular evaluation, but discussions about the concrete structure of the monitoring process and also on the question of child and youth participation are still under way.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

The Human Rights Committee and other treaty monitoring bodies of the United Nations are not taken very seriously by the Austrian authorities. Even decisions of the Human Rights Committee on individual communications have not been implemented on the ground that they are “not legally binding”. Austria is usually in delay with the submission of State reports and does not pay much attention to legally non-binding concluding observations and similar recommendations of the treaty bodies.

Austria ratified the European Convention on Human Rights in 1958. An amendment to the Constitution in 1964 clarified its status as constitutional law. As a result, any infringements of the Convention can be reprovved within all judicial or administrative procedures as a violation of constitutionally guaranteed rights. Moreover, the legislator is under a constitutional obligation to respect the rights of the Convention and to give effect to them. All courts and authorities have to apply the Convention within their jurisdiction, which means that they have to interpret domestic law in conformity with the rights of the Convention. The Constitutional Court is competent to abolish decisions of administrative authorities and laws infringing rights of the Convention.

The constitutional status of the Convention does not mean that judgements of the ECHR are directly applicable within domestic law and that decisions or laws infringing the Convention can be abolished directly based on them. Compensations based on judgements in accordance with Art 50 of the Convention are paid punctually and completely, but in civil and administrative law no rectification is afforded of the committed wrong itself. Concerning criminal law some legal instruments provide for the revision of a final judgement (*Wiederaufnahme*) in cases where a violation of the Convention has later been found by the ECHR. An amendment to the Code of Criminal Procedure in 1996 offers the applicant for the first time a right to move for reopening. Another means for bringing criminal law in accordance with the Convention even after a final decision is the Procurator General's plea of nullity for the consistency of the law to the Supreme Court (*Nichtigkeitsbeschwerde zur Wahrung des Gesetzes*). But as the cases of *Lingens* and *Oberschlick I versus Austria* show this plea can not be seen as a sufficient effective instrument for implementing a judgement of the ECHR. Although the reopening of proceedings is generally known in Austrian civil and administrative law, contrary to criminal law, the assessment of a violation of the Convention or a change in case-law is no sufficient ground. This lack of legal provisions for reopening proceedings prevents or hinders in many cases the individual transformation of Strasbourg judgements into Austrian domestic law and brings about a violation of the principle of equality in proportion to the amended criminal law.

In general it has to be stated that in Austria there is only little readiness to implement the judgements of the Strasbourg Court concerning the concrete cases of the Strasbourg applicants by taking the appropriate legal measures. More readiness exists to ensure that a violation of the Convention is not repeated. Quite a number of laws (e.g. in the field of civil and criminal justice, the Public Broadcasting Monopoly Act) have been amended in reaction of Strasbourg judgments, and in 1988 Independent Administrative Tribunals (*Unabhängige Verwaltungssenate*) have been established in order to bring the review of administrative acts (including direct police measures) in line with the requirements of Art 6 of the European Convention. It must be mentioned, though, that law reform is usually a long process requiring repeated condemnations when a standing national practice or interpretation of law by judicial or administrative organs is to be abandoned .

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

In reaction to the NGO Plan of Action of 1998, human rights coordinators have been established in all Federal Ministries and in the Governments of the 9 Federal Provinces. In practice, these (mostly junior) civil servants have, however, very little power, competences and influence on the development of a human rights culture within the Austrian administrative branch.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

Of course, many civil society organisations are involved in monitoring Austrian compliance with international human rights standards, judgments, decisions and recommendations, for instance, through compiling “shadow reports” in relation to states reports under various human rights treaty monitoring procedures. The Boltzmann Institute of Human Rights, e.g., is directly involved in such monitoring activities as part of the national focal point of the EU Monitoring Centre on Racism and Xenophobia, as part of the Human Rights Advisory Board at the Ministry of the Interior, as member of the EU Network of Fundamental Rights Experts and in various other capacities. Similar monitoring activities are carried out by the Austrian section of Amnesty International, refugee organisations (e.g. Asylkoordination), gay and lesbian organisations (e.g. Lambda, Hosi), anti-racism organisations (e.g. ZARA), women’s organisations (Frauenhaus), children’s rights groups and institutions (e.g. National Coalition for the implementation of the CRC in Austria, including Austrian Committee for UNICEF, Kinderfreunde, Catholic Jungschar, Scout Movement, SOS Children’s Villages, Child and Youth Ombuds Offices, etc).

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

On the informal level and in the context of civil society, there are many initiatives and mechanisms for the development of human rights policies and a genuine human rights culture in Austria. National human rights NGOs, who often receive governmental funding, play an important role in monitoring the actual human rights situation in Austria and in cooperating with governmental agencies in the implementation of human rights related activities, e.g. in the fields of development cooperation and the treatment of asylum seekers. But a comprehensive, consistent and structural human rights policy of the Austrian Government is missing. Although the human rights year 1998 produced a first comprehensive human rights dialogue with a comprehensive set of recommendations and demands, only very few have in fact been implemented. There still does not exist a national human rights institution, a national human rights action plan, a consistent policy of implementing international human rights obligations in Austria, nor an effective human rights coordination between the various Ministries and governmental departments both at the Federal and Provincial Government level. Finally, reference should be made to the Austrian Human Rights Advisory Board (Menschenrechtsbeirat), which was established in 1999 in reaction to respective recommendations of the European Committee for the Prevention of Torture and the tragic death of a Nigerian citizens during his forced deportation to Sofia. The Advisory Board consists of an equal number of governmental and non-governmental members and has the function of monitoring the federal law enforcement agencies and advising the Minister of Interior in all human rights aspects. The Advisory Board established six regional Human Rights Commissions with the task of regularly visiting all places of detention under the authority of the Minister of Interior (police jails and other detention

places of the police, including the aliens police at the borders) and to monitor the use of force by law enforcement officials in the context of demonstrations, assemblies, anti-drug raids, soccer matches and similar actions. Although the independence has been guaranteed by a special constitutional provision, the members of both the Advisory Board and its Commissions can be released by the Minister of Interior and are not fully independent. Although the existence of this institution certainly has had an impact on the prevention of human rights violations and the development of a human rights culture within the Austrian police, many recommendations of the Advisory Board and its Commissions, e.g. in relation to the treatment and detention of aliens and asylum seekers, have not been implemented by the Minister. This example is taken to illustrate that there do exist many interesting, albeit often half-hearted, initiatives, but that a serious, consistent and structural human rights approach is still missing in Austria.





# **BELGIUM**

## **Question 1. Existence of a national institution for the protection of human rights.**

**1.1. Est ce qu'une institution nationale de protection des droits de l'Homme a été établie dans votre Etat conformément aux Principes de Paris adoptés par l'Assemblée générale des Nations Unies en 1993 ?**

Extrait de la Déclaration gouvernementale de juillet 2003, "Une Belgique créative et solidaire: du souffle pour le pays - Un monde plus juste", p. 59

« A l'instar de plusieurs de nos voisins, et comme le recommandent le Conseil de l'Europe et les Nations Unies, le Gouvernement mettra en place une Commission des Droits de l'Homme qu'il consultera régulièrement ».

Ce projet n'a cependant à ce jour connu aucun début de réalisation. Certaines rencontres préparatoires ont certes eu lieu, mais aucun texte n'a encore été déposé.

**1.2. Veuillez décrire:**

**a) La composition de cette institution nationale;**

Sans objet.

**b) Ses pouvoirs;**

Sans objet.

**c) Ses méthodes de travail;**

Sans objet.

**d) Ses réalisations / résultats.**

Sans objet.

**1.3. Comment évaluez-vous le degré d'indépendance de cette institution et sa contribution à la protection et à la promotion des droits fondamentaux au sein de votre Etat?**

Sans objet.

## **Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**2.1. Quelles techniques sont utilisées pour assurer que la législation et la réglementation adoptées dans votre Etat sont conformes aux engagements pris par votre Etat en matière de droits fondamentaux ? Cette conformité est-elle vérifiée avant la rédaction et l'adoption de la législation et de la réglementation et, le cas échéant, par quels moyens est-elle vérifiée?**

Seront brièvement décrits ci-dessous 4 instances susceptibles d'intervenir en amont de l'adoption de textes légaux et réglementaires. La section de législation du Conseil d'Etat (1), dont la consultation est obligatoire dans certains cas, examine la légalité de tout texte qui lui est soumis, quelle que soit la

matière visée par le dit texte. Sa compétence d'avis n'est donc pas exclusive de certains champs matériels. La Commission de la protection de la vie privée (2), le Comité consultatif de bioéthique (3) et le Conseil Supérieur de la Justice (4) peuvent pour leur part être consultés relativement à des projets de législations et de réglementations au regard de leurs compétences spécifiques respectives (protection des données à caractère personnel, questions éthiques, fonctionnement de l'ordre judiciaire). Leurs domaines d'intervention étant étroitement liés à divers droits fondamentaux (droit à la protection de la vie privée, protection des données personnelles, droit à l'intégrité de la personne, dignité humaine, droit au procès équitable etc.), ces organes sont régulièrement amenés à examiner la compatibilité de l'un ou l'autre projet au regard de ces droits.

### **1. La section de législation du Conseil d'Etat**

Le Conseil d'Etat (<http://www.raadvst-consetat.be>), juridiction indépendante créée par la Loi du 23 décembre 1946 est composé de deux sections: une section législation consultative et une section administration juridictionnelle. Seule la première retiendra notre attention (Lois coordonnées sur le Conseil d'Etat: version coordonnée).

**Composition** – La section de législation est composée de 12 membres du Conseil d'Etat lesquels sont nommés à vie par le Roi sur une liste double de candidats; l'une présentée par le Conseil d'Etat lui-même, l'autre alternativement par la Chambre et la Sénat. Les candidats doivent être âgés de 40 ans au minimum, être licencié ou docteur en droit et disposer d'une expérience juridique de 10 années.

**Missions** – La section de législation constitue une aide technique et juridique au travail législatif des parlements et des gouvernements fédéraux, régionaux et communautaires. Elle donne des avis juridiques motivés sur des avant-projets de loi, propositions de lois, de décrets (niveau régional et communautaire à l'exception de la Région de Bruxelles-Capitale) ou d'ordonnance (Région de Bruxelles-Capitale). Elle vérifie notamment si les textes soumis respectent les plus hautes normes juridiques (Constitution, loi), *en ce compris donc la conformité des textes qui lui sont soumis aux engagements internationaux de la Belgique en matière de droits fondamentaux*. La section de législation du Conseil d'Etat ne se prononce pas sur l'opportunité des textes qui lui sont soumis pour avis.

### **La saisine de la section de législation du Conseil d'Etat est tantôt obligatoire tantôt facultative:**

**La saisine obligatoire par le pouvoir exécutif** – Tout avant-projet de loi, de décret ou d'ordonnance (introduits par les différents gouvernements) doit être soumis à l'avis motivé de la section de législation du Conseil d'Etat<sup>1</sup>. Deux exceptions existent cependant à cette règle:

- un certain nombre d'avant-projets qui n'ont aucune portée générale (budgets, comptes, emprunts, ...) ne doivent pas être soumis au Conseil d'Etat (article 3 des Lois coordonnées sur le Conseil d'Etat);
- Lorsque le gouvernement concerné invoque l'urgence, en motivant celle-ci, la section ne donne qu'un avis limité à la compétence de l'autorité initiatrice du texte (article 3 des Lois coordonnées sur le Conseil d'Etat).

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<sup>1</sup> Article 3 § 1 des Lois coordonnées sur le Coseil d'Etat: « Hors les cas d'urgence spécialement motivés et les projets relatifs aux budgets, aux comptes, aux emprunts, aux opérations domaniales et au contingent de l'armée exceptés, les Ministres, les membres des gouvernements communautaires ou régionaux, les membres du Collège de la Commission communautaire française et les membres du Collège réuni visés respectivement aux alinéas 2 et 4 de l'article 60 de la loi spéciale du 12 janvier relatif aux institutions bruxelloises, chacun pour ce qui le concerne, soumettent à l'avis motivé de la section de législation du Conseil d'Etat le texte de tout avant-projets de loi, de décret, d'ordonnance ou de projets d'arrêtés réglementaires. L'avis et l'avant-projet sont annexés à l'exposé des motifs des projets de loi, de décret ou d'ordonnance.

De même, tout projet d'arrêté royal ou d'arrêté d'un gouvernement communautaire ou régional doit être soumis à la Section de législation du Conseil d'Etat<sup>2</sup>. A défaut, l'arrêté est illégal. Les cours et tribunaux ordinaires peuvent dans le cadre d'un litige refuser d'appliquer l'arrêté et la section d'administration du Conseil d'Etat peut annuler l'arrêté en question.

**La saisine facultative par le pouvoir législatif** - La section de législation du Conseil d'Etat de Belgique « donne un avis motivé sur le texte de tous projets ou propositions de loi, de décret et de d'ordonnance ou d'amendements à ces projets et propositions dont elle est saisie par le Président du Sénat, de la Chambre des Représentants, d'un Conseil de Communauté ou de Région, de la Commission communautaire française ou de l'assemblée réunie visées respectivement aux alinéas 2 et 4 de l'article 60 de la loi spéciale du 12 janvier 1989 relative aux institutions bruxelloises » (:article 2 § 1 des Lois coordonnées sur le Conseil d'Etat ).

Le président d'une des assemblées citées ci-dessus *est cependant tenu* de demander l'avis sur les propositions de loi, de décret ou d'ordonnance, et sur les amendements à des projets ou propositions, *lorsqu'un tiers au moins des membres de l'assemblée intéressée en font la demande* (Titre II, article 2 § 2). De même, le président du Sénat, de la Chambre des Représentants, du Conseil ou de l'assemblée réunie visés respectivement aux articles 1<sup>er</sup> et 60 de la loi spéciale du 12 janvier 1989 relative aux institutions bruxelloises, est tenu de demander l'avis sur les propositions de loi, de décret ou d'ordonnance, et sur les amendements à des projets ou propositions lorsque la *majorité des membres d'un groupe linguistique* de l'assemblée intéressée en fait la demande (article 2 §2 des Lois coordonnées sur le Conseil d'Etat).

**Portée de l'avis** – « La section de législation donnant des avis dépourvus de caractère contraignant, l'autorité qui les reçoit est en principe libre de les suivre ou non. Il faut cependant admettre que l'on ne peut normalement s'écarter de l'avis - tout au moins quant aux questions de fond qu'il soulève - que pour des motifs fondés en droit. Il est bien entendu préférable que l'autorité s'explique quant auxdits motifs. Elle en aura toujours l'occasion dans l'exposé des motifs joint aux projets de nature législative. Ces motifs peuvent également apparaître dans un rapport au Roi, au Gouvernement et au Collège, rapports qui ne sont cependant obligatoires que dans certains cas particuliers. La publication de ces derniers documents impliquant également celle de l'avis du Conseil d'Etat, les intéressés ont dès lors la possibilité de porter une juste appréciation sur l'ensemble des arguments de droit exposés. Par ailleurs, même dans les cas où les avis de la section de législation ne doivent pas être légalement publiés, ils sont cependant en mesure de recevoir une certaine publicité. C'est ainsi qu'en cas de recours contre des arrêtés réglementaires l'avis éventuel de la section de législation, qui fait partie du dossier administratif, devra être communiqué à ce titre. Ledit avis doit aussi, en vertu des règles constitutionnelles et législatives relatives à la publicité de l'administration, être en principe produit, à quiconque le demande, par le ministre à qui l'avis a été adressé » (Circulaire de légistique formelle, pp. 7-8).

## 2. La Commission de la protection de la vie privée

**Composition** – Instituée auprès de la Chambre des Représentants, la Commission de protection de la vie privée (<http://www.privacy.fgov.be>) comprend 8 membres effectifs dont au moins un magistrat, un juriste, un informaticien, une personne pouvant justifier d'une expérience professionnelle dans la gestion des données à caractère personnel relevant du secteur privé et une personne pouvant justifier

<sup>2</sup> Article 3bis des Lois coordonnées sur le Conseil d'Etat: § 1er. Les projets d'arrêtés royaux qui peuvent abroger, compléter, modifier ou remplacer les dispositions légales en vigueur, sont soumis à l'avis motivé de la section de législation.

Cet avis est publié en même temps que le rapport au Roi et l'arrêté royal auquel il se rapporte.

Les arrêtés, l'avis, le rapport au roi et le texte des projets d'arrêtés soumis à l'avis de la section de législation seront communiqués, avant leur publication au Moniteur belge, aux Présidents de la Chambre des représentants et du Sénat.

§ 2. Pour les projets d'arrêtés royaux visés au §1er du présent article, l'urgence prévue au §1er de l'article 3 [voy. note 1] ne pourra pas être invoquée.

d'une expérience professionnelle dans la gestion des données à caractère personnel relevant du secteur public. Ses membres doivent offrir toutes les garanties leur permettant d'exercer leur mission avec indépendance et compétence.

**Missions** - La Commission de la protection de la vie privée émet, soit d'initiative, soit à la demande du Gouvernement, des chambres législatives (Chambre des Représentants et Sénat), des Exécutifs communautaires ou régionaux, des Conseils de communauté ou régionaux, du collège réuni ou de l'assemblée réunie visés à l'article 60 de la loi spéciale du 12 janvier 1989 relative aux institutions bruxelloises, des avis sur toute question relative à l'application des principes fondamentaux de la protection de la vie privée dans le cadre de la Loi du 8 décembre 1992 relative à la protection des données à caractère personnel ainsi que des lois contenant des dispositions relatives à la protection de la vie privée à l'égard des traitements de données à caractère personnel.

La Commission peut également émettre des recommandation motivées, soit d'initiative, soit sur demande des mêmes instances que celles qui sont autorisées à lui soumettre une demande d'avis.

Dans des cas spécifiquement prévus par la Loi du 8 décembre 1992, l'avis de la Commission est requis. Ainsi, à titre d'exemple, il est prévu qu' « après avis de la Commission de la protection de la vie privée, le Roi peut exempter certaines catégories de la déclaration [préalable à la mise en œuvre d'un traitement automatisé] (...) » ou encore que « le Roi détermine, après avis de la Commission de la protection de la vie privée les catégories de traitement qui présentent des risques particuliers au regard des droits et libertés des personnes concernées (...) » (articles 17 § 8 et 17bis).

**Méthode de travail** - L'avis est, sauf exceptions, rendu dans les soixante jours de la formulation de la demande et de la communication de toutes les données nécessaires. Les avis de la Commission sont motivés mais non contraignants; ils sont communiqués à l'autorité concernée et une copie en est adressée au Ministère de la Justice.

Dans les cas où l'avis de la Commission est requis par une disposition de la Loi du 8 décembre 1992, ce délai de 60 jours est réduit à 15 jours au minimum dans des cas d'urgence spécialement motivés. Dans ce cas également, l'avis doit être publié au Moniteur belge en même temps que l'acte réglementaire auquel il se rapporte.

**Réalisation** - A titre d'exemple, on peut citer l'avis d'initiative de la Commission de la protection de la vie privée dans le cadre des discussions portant sur divers projets de loi relatifs à la criminalité informatique du 13 décembre 1999. Notons que dans cet avis, comme c'est le cas dans d'autres, la Commission s'étonne de ne pas avoir été consultée à un stade antérieur à la discussion au Parlement dès lors que ses précédents avis émis dans le cadre de cette problématique soulignaient en effet l'importance des enjeux en termes de protection de la vie privée de certaines dispositions en projet.

### 3. Le Comité consultatif de bioéthique

**Composition** - Créé par Accord de coopération du 15 janvier 1993 signé par l'Etat fédéral, les Communautés française, flamande et germanophone ainsi que par la Commission communautaire commune, le Comité consultatif de bioéthique de Belgique (<http://www.health.fgov.be/bioeth>) est une instance indépendante des autorités qui l'ont créé dont la composition est la suivante:

- 16 personnalités issues des milieux universitaires, proposés par les conseils inter-universitaires;
- 6 docteurs en médecine en activité proposés par le Conseil national de l'ordre des médecins;
- 2 avocats présentés par le Conseil national de l'ordre des avocats;
- 2 magistrats;
- 9 membres désignés par le Roi et les gouvernements des trois communautés (flamande, française et germanophone) et le collège de la commission communautaire commune;

Pour chaque membre effectif, un membre suppléant est désigné selon la même procédure.

8 membres participent avec voix délibérative aux travaux du Comité:

- 1 représentant du Ministre de la Justice;
- 1 représentant du Ministre fédéral ayant la Politique scientifique dans ses attributions;
- 1 représentant du Ministre fédéral ayant la Santé publique dans ses attributions;
- 1 représentant de la Communauté flamande;
- 1 représentant de la Communauté française;
- 1 représentant de la Communauté germanophone;
- 2 représentants de la Commission communautaire commune.

**Missions** - La mission du Comité consultatif de bioéthique de Belgique est double:

- *rendre des avis* sur les problèmes soulevés par la recherche et ses applications dans les domaines de la biologie, de la médecine et de la santé, ces problèmes étant examinés sous leurs aspects éthiques, sociaux et juridiques, en particulier sous ceux du respect des droits de l'homme;
- informer le public et les Autorités sur ces phénomènes.

S'il peut rendre un avis sur une question qu'il évoque de sa propre initiative (auto-saisine), le Comité consultatif de bioéthique *rend également des avis à la demande, notamment, des Présidents des diverses entités parlementaires ou d'un membre de leur gouvernement*. Ces avis ne sont pas contraignants.

**Méthode de travail** - Le plus souvent, le Comité charge une commission restreinte de préparer l'avis. Ces commissions, dont la composition reflète celle du Comité, peut faire appel à des experts externes pour des auditions ponctuelles et à des experts permanents. La Commission fait un rapport de ses travaux au Comité et lui propose un projet d'avis. Les discussions qui s'en suivent en Comité plénier conduisent, le cas échéant, à l'amendement du projet d'avis en une version définitive. L'avis est en principe rendu dans les 6 mois de la saine du Comité. Les avis sont publics et disponibles sur le site internet du Comité. Le Comité dresse un rapport annuel de ses activités ou sont notamment repris ses avis. Ce rapport est adressé aux différentes autorités du pays (Présidents du Sénat, de la Chambre des Représentants, au Premier Ministre, au Ministre de la Justice, aux Ministres ayant la Politique scientifique et la Santé publique dans leurs attributions, aux Présidents des parlements communautaires ainsi qu'aux Ministres Présidents de leurs gouvernements).

**Réalisation** – A titre d'exemple, au cours de l'année 2000, il avait été demandé au Comité consultatif de bioéthique d'émettre un avis relatif à deux propositions de loi traitant de la question des examens médicaux dans le cadre des relations de travail. L'une de ces propositions de loi a abouti à la Loi du 28 janvier 2003 relative aux examens médicaux dans le cadre des relations de travail (*M.B.*, 9 avril 2003). Les conclusions du Comité ont trouvé un écho certain auprès du législateur qui s'est inspiré de ses analyses et recommandations (Avis n°20 du 18 novembre 2002 relatif aux tests génétiques prédictifs et tests HIV dans le cadre des relations de travail).

#### **4. Le Conseil supérieur de la Justice**

**Composition** – Institué par l'article 151 de la Constitution, mis sur pied aux termes de la Loi du 22 décembre 1998, le Conseil Supérieur de la Justice ([www.csj.be](http://www.csj.be)) est composé de 44 membres répartis en deux groupes linguistiques de 22 membres (11 magistrats et 11 non magistrat) dont au minimum (article 259bis1 §§ 1-3 du Code judiciaire: Chapitre Vbis: Du Conseil Supérieur de la Justice):

- Pour le groupe « magistrat »
- Un membre d'une Cour ou du ministère public près une Cour;
- Un membre du siège;
- Un membre du ministère public;

- Un membre par ressort de Cour d'appel.
- Pour le groupe « non magistrat »
- 4 avocats possédant une expérience professionnelle d'au moins 10 années de barreau;
- 3 professeurs d'une université ou d'une école supérieure possédant au minimum une expérience utile de 10 années;
- 4 membres, porteurs d'au moins un diplôme d'une école supérieure et possédant une expérience utile de 10 années dans le domaine juridique, administratif, social ou scientifique.

**Missions** - Le Conseil supérieur de la Justice est notamment compétent pour émettre des *avis et des propositions concernant le fonctionnement général et l'organisation de l'ordre judiciaire* (article 151 § 3, 6° de la Constitution belge), soit d'initiative, soit à la demande de l'assemblée générale du Conseil, du Ministre de la Justice ou de la majorité des membres de la Chambre des Représentants ou du Sénat (article 259bis12 § 1 du Code judiciaire).

**Méthode de travail** – La Commission d'enquête et d'avis réunie (CAER) instituée au sein du Conseil formule des avis écrits qui n'ont aucun effet contraignant ni suspensif (article 259bis12 § 3 du Code judiciaire). Elle est libre de consulter des experts (article 259bis6 § 1 du Code judiciaire). Ces avis sont publics, disponibles sur le site internet du Conseil.

**Réalisation** – A titre d'exemple on peut citer l'avis rendu le 25 juin 2003 sur la question du désaisissement du Tribunal de la Jeunesse au bénéfice du Tribunal correctionnel en cas d'infractions commises par certains mineurs aux termes duquel le Conseil Supérieur de la Justice examine les différents projets et propositions de loi relative à cette question (demande formulée par le Ministre de la Justice sur la base de différents propositions de loi et un projet de loi rédigé par son propre cabinet). En 2004, le Conseil Supérieur de la Justice a par ailleurs rendu un « Avis relatif à la Médiation » ( 4 février 2004) et un « Avis portant sur les propositions de loi visant à accorder aux journalistes le droit au secret de leurs sources d'information » (4 février 2004). Ces 2 avis avaient été demandés par la Ministre de la Justice qui souhaitait recevoir l'éclairage du Conseil Supérieur de la Justice sur différentes propositions de loi déposées relativement à ces questions tant à la Chambre des Représentants qu'au Sénat.

### **Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Est ce que votre Etat prépare un plan d'action national annuel ou périodique sur les droits fondamentaux? Le cas échéant, comment ce plan est-il préparé? Quels acteurs sont impliqués ou consultés?**

**3.2. Quel est le contenu habituel d'un tel plan?**

Sans objet.

**3.3. Quelle évaluation est faite de la mise en œuvre de ce plan à la fin de la période pour laquelle il a été adopté?**

Aucun plan d'action national annuel n'est préparé en Belgique.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Quels mécanismes spécifiques, s'il en existe, ont été mis en place dans votre Etat pour assurer le respect des jugements de la Cour européenne des droits de l'Homme ou le suivi des observations finales des Comités établis par les traités des Nations Unies en matière de droits de l'homme?**

Aucune procédure spécifique n'est prévue.

**4.2. Veuillez préciser la façon dont ont été résolus les problèmes de coordination entre les différents départements ministériels ou les différents niveaux de pouvoir (national, régional,...).**

Aucune procédure spécifique n'est prévue aux fins d'assurer cette coordination.

**4.3. Si c'est l'institution nationale pour la protection des droits fondamentaux qui contrôle cette conformité ou/et ce suivi, veuillez indiquer les moyens utilisés.**

Sans objet.

**4.4. Si des organisations relevant de la société civile sont impliquées dans le contrôle de cette conformité, veuillez le préciser.**

Sans objet.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Veuillez indiquer ci-dessous tout autre commentaire que suscite, à la lumière de l'expérience acquise au sein de votre Etat, la lecture des questions identifiées ci-dessus. En particulier, veuillez décrire les dispositifs originaux qui contribuent à l'élaboration de la politique des droits fondamentaux dans cet Etat.**





# **CYPRUS**

## **Question 1. Existence of a national institution for the protection of human rights.**

**Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

In Cyprus in 1998 by the Decision of the Council of Ministers No.48.386, the memorandum providing for the establishment and functioning of the National Organization for the Protection of Human Rights (hereafter referred to as 'the Organisation') was approved, and consequently by this Decision the Organization has been established.

### **1.2. Describe**

#### **a) The composition of such national institution;**

According to Section 3 (1) of its Memorandum, the Organization consists of a President and two Committees, the Committee of Implementation of Conventions, and the Committee of Guidance and Investigation of Complaints. By virtue of Section 3 (2) of the Memorandum, the President of the Organisation is an independent government officer appointed by the Council of Ministers for a renewable period of five years.

According to Section 4 (1) of the Memorandum, the Committee of Implementation of Conventions consists of representatives of the Office of the Attorney General of the Republic, representatives of the Ministry of Foreign Affairs, representatives of the Ministry of Finance, representatives of the Ministry of Interior, representatives of the Ministry of Justice and Public Order, of the Ministry of Labor and Social Insurance, Ministry of Education and Culture as well as representatives of the Office of the Ombudsman of the Republic.

The Committee of Guidance, in accordance to Section 5 (1) of the Memorandum, consists of a President and members. The members of this Committee should be distinguished persons in the field and are recommended by private organizations that deal with human rights related issues in Cyprus, the University of Cyprus, the House of Representatives, and other professional organizations whose contribution is valued for the operation and realization of the aims of the Organisation.

#### **b) Its powers;**

By virtue of Section 8 of its Memorandum referring to the competences of the Organisation it is provided that the Organisation shall provide information to all interested parties in relation to human rights issues, shall assist by any means the formation and awareness of the public opinion on human rights, can examine, discuss and provide recommendations in regards to the applicability of human rights in Cyprus, may consult the Government on any question in relation to human rights that has been send to the Organization for consultation, can examine and follow any up-dates on relevant legislation, the relevant case-law and the administrative arrangements in relation to the defense and promotion of human rights, and must prepare, in relation, to these issues recommendations and reports to the relevant authorities.

Furthermore, the Organisation prepares and submits to the competent bodies and Committees reports, responses to questionnaires and other notes in relation to human rights in Cyprus. These competent bodies include committees responsible for the supervision of the implementation of international treaties such as:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The International Convention on the Elimination of all forms of Racial Discrimination
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- International Convention on the Rights of the Child
- The Convention on the Elimination of all forms of Discrimination against Women

The Organisation can proceed to examine on its own initiative or by virtue of an application to this effect of complaints for human rights violations and may submit a report or recommendations to the relevant bodies. It is important to note however, that the Organisation according to Section 8 (2) of its Memorandum, may not examine complaints that have been submitted, have been examined or are pending before another competent governmental authority, or complaints that fall within the exclusive competence of another body such as the Ombudsman.

It can submit recommendations and suggestions including the preparation of bills for the development and harmonization of Cypriot legislation with the international human rights treaties.

The organization can organize lectures and seminars, prepare texts, translations and other documents for the promotion of human rights. The organization may take measures for the securing of scholarships of limited duration for educational courses in relation to human rights.

In general, the Organisation can execute any other competence delegated to it by the Council of Ministers, in relation to the obligations of the Republic vis-à-vis International Human Rights Treaties that are binding on it.

### **c) Its working methods;**

By virtue of Section 15 of its Memorandum, the Organisation submits on an annual basis to the Council of Ministers its Report on its activities and cases of violations that have been examined.

The Organisation, according to Section 16 of its Memorandum, submits its recommendations, suggestions and reports to the Council of Ministers through the Ministry of Foreign Affairs that is responsible to ensure for the implementation and compliance of the said recommendations.

The Organisation constitutes the link of the Republic with analogous organizations of other States.

It is provided in its Memorandum, in section 14, that the Organisation is empowered to establish a fund for the attainment of its goals and purposes. One of the purposes of such fund will be the acquisition of property for the attainment of the purposes of the Organisation with a parallel right of mortgaging such property.

Between January 2001 until October 2002 152 complaints were registered for examination with the Organisation. A significant portion of these complaints were directed against the administrative authorities and were thus referred to the Ombudsman.

In relation to complaints that reach the Organisation that relate to the operation of the Judicial System and the operation of the Courts of the Republic, the Organisation does not intervene until such examination of a case by the Courts becomes finalized.

In relation to complaints that relate to criminal offences the complainants are advised by the Organisation to communicate their complaints to the Police.

In relation to complaints in which legal advice is deemed necessary, the complainants are advised to consult a lawyer. In some cases where the complainants are at financial strains, the Organisation

directs them to lawyers with whom the Organisation co-operates, and in such cases the complainants may not be liable for costs.

The Organisation, for cases that involve alien workers, cooperates closely with the Labor Office and the Office of the Migration Officer. Upon examination of a complaint relating to the employment terms of an alien, the Organisation undertakes to make known to the alien involved the existing procedures for resolution of a labor dispute or the applicable ways of finding of a new employer and accommodation.

Within the context of its general framework and purposes the Organisation undertakes to embark on visits in different areas subject to criticism for human rights violations. Within this context within 2001 there were 22 visits to the Central Prisons in Nicosia, while in 2003 there were about 17 such visits. During such visits, representatives of the Organisation have the opportunity to communicate directly with detainees as well as with the relevant authorities. The Organisation proceeded to make recommendations and suggestions to the Prisons authorities, which in general were welcomed and put into effect by the relevant authorities.

The President of the Organisation has been present in a significant number of the meetings of the Parliamentary Committee of Human Rights.

#### **d) Its achievements.**

One of the most important functions of the organization is the preparation of the National Reports that are submitted to the different monitoring bodies established by Human Rights Treaties. Representatives of the Organisation have been visiting places where human rights violations are most likely existing, such as the Police Station where asylum seekers applications are being submitted, the Central Prisons in Nicosia, and the Asylum Seekers Reception Centre at Kofinou. By attracting publicity around these issues, the Organisation has been successful in ensuring that problems of systematic violation of human rights become acknowledged by the public opinion.

The Organisation has established a Volunteer's Group for the Assistance of Refugees and Asylum-Seekers in co-operation with the UN. High Commission for Refugees.

As an example of its work, the Citizenship Law was amended to provide for the acquisition of the Cypriot citizenship of children of a Cypriot mother, following a recommendation to this effect by the Organisation.

Another important achievement of the Organisation is the introduction as a criminal offence of the employment of an illegal immigrant.

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

- The Organisation according to Section 1 of its Memorandum is independent.
- Although Representatives of different Ministries are included as members of the Committee of Implementation they participate in the Organisation in an advisory capacity. This however, is not ensured in the Memorandum of the Organisation.
- The biggest problem of the Organisation, is inadequate funding which despite bona fide efforts by its President creates a de facto dependency on the Government. In particular Article 5 of the Principles Relating to the Status of National Institutions attached as an Annex on the General Assembly Resolution of 20 December 1993, emphasizes the importance of adequate funding for the purpose of ensuring independence from the Government and eliminate the possibility of Governmental Financial Control, which might affect its independence. It is noted in this respect that the Organisation in Cyprus, does not have funds of its own. It employs only one person, whose salary is arranged directly from the Government through the amount provided for the

Law Commissioner Office. In fact, the offices of the Organisation in Cyprus are within the Office of the Law Commissioner.

- A stable mandate for the President of the Organisation is ensured by the Memorandum of the Organisation, and this is indeed done by an official act, namely a decision of the Council of Ministers. The mandate of the President is renewable.
- It is worth noting that the fact that the Organisation undertakes the preparation of the Reports submitted to International monitoring bodies established by human rights treaties, on behalf of the Government, poses a valid source of concern, since the Organisation in this context cannot be said to be acting independently of the Government and its interests.
- Finally, another reason for concern is the fact that the Organisation has been established by a Decision of the Council of Ministers and not by Law.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

All Bills are submitted to the Office of the Attorney General of the Republic for legal vetting before their submission to the Council of Ministers for approval. The Counsels of the Republic examine *inter alia* the compatibility of a Bill with the International Obligations of the Republic including Human Rights. Subsequently they are transmitted to the House of Representatives for enactment. The competent Committee examining a Bill may consult and seek the approval of the Committee of Human Rights of the House, before its submission before the full House for enactment.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

We are not aware of one.

**3.2. What is the typical content of such a plan?**

N/A

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

N/A

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

The European Convention has force superior to any domestic legislation by virtue of Article 169 (3) of the Constitution of the Republic. Thus judgements against Cyprus are binding on the Courts. The same applies for the Human Rights UN Treaties. There is no special mechanism set up, but the Office of the

Attorney-General of the Republic with the competent Ministry proceeds with the preparation of an Amendment if necessary of the offending legislation or practice in issue. If it involves compensation, the Ministry of Finance proceeds to the required payment. Finally, the House Committee on Human Rights may embark on an enquiry on the implementation of judgements of the European Court of Human Rights or concluding observations of UN Committees.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

In cases where different ministerial departments are concerned, consultation between them for the preparation of a Bill is undertaken.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

The Organisation monitors such compliance through the preparation of the Reports submitted to the monitoring bodies, and through the submission of its Report to the Council of Ministers.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

Unless an NGO has a specific interest in a particular case, there is no follow-up of such compliance. Representatives of NGOs concerned with a particular case, may be invited by the House Committee of Human Rights on the occasion of the discussion of an issue of their concern.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

The overall contribution of the Organisation in the elaboration of a fundamental rights policy is rather unsatisfactory, despite its President's and employee's efforts. There is an urgent need of funding and manning of the Organisation. In general, in Cyprus, there is no specific fundamental rights policy targeting particular problem areas. The focus of human rights rhetoric on the island is on human rights violations conducted by Turkey, and only limited attention is given to respect of human rights by the Republic to those within its jurisdiction.



# **CZECH REPUBLIC**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

In the Czech Republic, there was established the Ombudsman Office in 1999, it is an independent organ with a broad mandate concerning human rights, set by a law (Law No. 349/1999 Coll. of Laws), which is fully compatible with the Paris Principles. There also exists the Government Council for Human Rights (an advisory body of the Czech Government), but this organ does not fulfil all the requirements of the Paris Principles.

#### **1.2. Describe**

##### **a) The composition of such national institution;**

The Ombudsman office (it is an independent body) consists of one Ombudsman and one Deputy-Ombudsman and the staff.

The Government Council for Human Rights comprises the Chairman of the Council (the Government Representative for Human Rights), his deputy and other 20 members – the representatives of central State bodies and the civil, professional and academic public. Representatives of central State bodies are appointed at the Minister's proposal by the Chairman of the Council, whereas members of civil, professional and academic community are appointed directly by the Government.

##### **b) Its powers;**

Ombudsman protects citizens against maladministration by examining all alleged or presumed grievances arising in connection with the public administrative system.

The Government Council for Human Rights studies and evaluates human rights issues, and in particular evaluates the fulfilment of international obligations.

##### **c) Its working methods;**

The Ombudsman receives and examines individual complaints about maladministration, but also does proactive human rights work, has a mandate to act on his own initiative, investigates and adopts recommendations. His findings and recommendations are not legally binding, but are accompanied by a procedure for receiving official response by the authorities concerned. He adopts annual reports and other reports, which he submits to Parliament.

The Government Council for Human Rights consists of special committees (called "sections") dealing with specific issues of human rights. It submits reports to the Government and adopts proposals of action plans.

##### **d) Its achievements.**

Work of the Ombudsman is quite effective and the Government Council for Human Rights works well too.

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

The independence of the Ombudsman is guaranteed, both in theory as well as in practice. Its contribution to the protection and promotion of human rights is high.

The independence of the Government Council for Human Rights is not ensured because this advisory and co-ordination body of the Czech Government is composed by State officers and experts who are appointed by the Government. It contributes to the protection and promotion of human rights as well.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

The Legislative Council of the Government exams compliance of the legislation with the constitutional principles and international undertakings of the State before the legislation/regulation is drafted by the Government and adopted by the Government or submitted to Parliament and adopted by Parliament. The Government Council for Human Rights takes part in the procedure as well.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

Yes, the Government adopts at the proposal of the Government Council for Human Rights a national plan of action on fundamental rights. The Czech Government has many advisory bodies dealing with the human rights issues: Government Council for Human Rights, Government Council for National Minorities, Government Council for Roma Community Affairs, Government Council for Equal Opportunities for Men and Women, they are involved in preparing of a national plan of action and concluding reports.

**3.2. What is the typical content of such a plan?**

There is a consideration of reports on the implementation of international treaties held before their supervisory bodies, for example reports of the CTP, of the Committee on the Rights of the Child etc., there are chapters containing fundamental rights issues, political rights, judiciary, court protection and other forms of control, issues concerning people deprived of freedom or people whose freedom has been restricted, economic, social and cultural rights issues, issues concerning women's rights, discrimination, rights of children, minorities, foreigners, refugees and other persons who need international protection.

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

There are reports about the implementation of the plan at the end of the period for which it is adopted.



**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties?**

The Government and its organs, especially the Government Council for Human Rights and the Legislative Council of the Government, takes in account the judgements adopted by the European Court of Human Rights and the concluding observations of UN committees set up under the UN human rights treaties, and usually ensures compliance of the legislation and practice with them. However, no formal compliance mechanisms have been set up. The Constitutional Court also respects the judgements of the European Court of Human Rights. Moreover, the Constitutional Court has power to take measures, in a specific procedure, in order to ensure compliance with the judgements of the ECHR. This power does not extend to observations of other, non-judicial human rights bodies.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

The co-ordination between different ministerial departments is ensured by the Government Council for Human Rights, by a special Committee of the Government Representative for Human Rights' Office, and also by the Department of the Deputy Prime Minister for research and development, human rights and human resources.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

Many experts, officers of ministerial departments, academicians, members of NGO's are involved in the procedure.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

The civil society is involved in monitoring of the situation of human rights in the Czech republic, mainly the non-governmental organisations, such as the Czech Helsinki Committee or the League of Human Rights.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

Both, the Ombudsman and the Government Council for Human Rights, contribute to the elaboration of a fundamental rights policy in the Czech Republic, one being an independent body dealing with individual complaints, the other as a part of the Czech Government. Very important for the development of the human rights issue is also the Constitutional Court.



# **DENMARK**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

The Danish Institute for Human Rights was founded by the Act on establishment of a Danish Centre for International Studies and Human Rights on June 6 2002, and carries forth the mandate vested in the Danish Centre for Human Rights, established by act of parliament in 1987. The Institute is mandated according to the Paris Principles.

### **1.2. Describe**

#### **a) The composition of such national institution;**

The Danish Institute is part of the Danish Centre for International Studies and Human Rights which composes of two independent institutes; The Institute for International Studies and the Danish Institute for Human Rights. The Danish Centre for International Studies and Human Rights is governed by a Centre Board deciding on all essential matters relating to the administration and finance of the Centre. The Institute for International Studies and the Danish Institute for Human rights are each led by an Institute Board, which is responsible for all matters relating to substance and professional issues, including research strategy and tasks falling within the area specified for each Institute. Besides the board the Danish Institute composes of an executive Director and of four departments; a Research Department, an International Department, an Information and Education Department and a National Department. Furthermore a Council for Human Rights is established which discuss the overall principles guiding the activities of the Institute and ensures that the activities of the Institute are in accordance with its objective as laid down by establishment act.

#### **b) Its powers and;**

The Danish Institute for Human Rights shall in the execution of its activities take its outset in the human rights recognized at any given time by the international society, including in particular those laid down in the United Nations Universal Declaration, conventions adopted by the United Nations and the Council of Europe, and the fundamental rights contained in the Danish Constitution. The Institute shall work to strengthen research and information relating to human rights. The Institute shall in particular carry out an independent and autonomous Danish research, advise the parliament and the government on Denmark's obligations in the area of human rights, conduct and promote education at all levels, promote equal treatment of all persons, provide information and contribute to the implementation of human rights domestically as well as internationally.

Since May 2003 the Danish Institute for Human Rights has had an expanded mandate stipulated in the Act on equal treatment, including a Complaints Committee which has the mandate to hear complaints of discrimination on grounds of race or ethnic origin.

#### **c) Its working methods;**

The Danish Institute for Human Rights serves as a centre for research, information, education, and documentation on human rights in a Danish, European, as well as an international context. The Institute addresses human rights from an interdisciplinary approach, and thus employs a staff of varied background such as law, anthropology, sociology, economics, humanities, journalism, and pedagogy. The Institute co-operates with organisations and public authorities in Denmark, with human rights institutions, equal treatment bodies and humanitarian organisations in other countries, as well as with the Nordic Council, the Council of Europe, the OSCE, the EU, and the UN.

**d) Its achievements.**

The Danish Institute for Human Rights participated in the World Summit on Information Society in December 2003 as adviser in the Danish Delegation and as coordinator of civil society's Caucus on Human Rights. The summit resulted in the adoption of the Declaration and Action Plan on Development of the Information Society. The Declaration deals with the principles and values fundamental for the development of the Information Society including many important human rights principles and references. The Summit also resulted in a Plan of Action, adopted by government representatives, and a civil society Declaration entitled 'Shaping Information Societies for Human Needs'.

In January 2004 The Institute coordinated activities against genocide in memory of victims of genocide and holocaust all over the world in Copenhagen and four major towns in Denmark

The programme included speeches, films, music and testimonies from survivors from genocide during WWII, and more recently in Rwanda and Bosnia.

One of the major projects of the Institute concerning discrimination is the MIA project, which is intended to create dialogue and focus on diversity and equal treatment at workplaces in Denmark. The project is funded by the EU, as a follow-up to the two 2000 Directives intended to safeguard the equal treatment of everybody – irrespective of ethnic origin, religion, disability, age and sexual orientation. MIA recommends diversity at workplaces as the best way of accommodating the principle of equal treatment. In connection with the project the MIA Prize was instituted to point to best practices and reward companies that actively promote diversity. The first MIA Prize will be awarded on 30 March 2004.

The Institute also have a Human Rights Programme in China with the aim of addressing decisions makers and concerned authorities to improve laws and practices securing the rights of the individual to due process and fair trial in the process of criminal and social justice. Awareness raising in human rights is another main priority in the programme. The programme includes seven Chinese partners representing state and independent institutions as well as civil society and mass organisations.

A DIHR mission has spent approximately five weeks in Basra in order to identify key issues and challenges for the Iraqi civil society. They also identified potential partners in building and supporting civil society in the Southern part of the devastated country. DIHR is planning a number of follow-up activities with the civil society as well as with the University of Basra, College of Law on curriculum development and training in international human rights.

These examples are just a few of the recent achievement made by the Institute.

**1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

The degree of independence of the Danish Institute for Human Rights is rather high as it follows from The Act on Establishment of a Danish Centre for International Studies and Human Rights of 6th June 2002. According to this The Centre is an independent self-governing institution cf. Section 3 and the institutes are independent units cf. section 1 (2)

The Institute contribute in a rather large extend to the protection and promotion of human rights cf. the answer to question 1.2. b.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

The Danish Institute is heard on regulation within the field of human rights. The Institute considers the compliance of bills, decisions, opinions and government initiatives with the human rights conventions ratified by Denmark before the adoption of the regulation. The Institute is consulted by the Danish ministries and receives several consultation papers each year. The Institute replies to the consultation papers by describing the human rights concerns raised by the regulation.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

The Danish state does not prepare one national plan on fundamental rights. However, the State prepares several action plans within the human rights field. An action plan is usually prepared by an inter-ministerial working group, which provides the initial draft. Later on in the process NGO's are consulted and hereafter the plan is adopted. The preparation time for an action plan is typically 6-12 months.

**3.2. What is the typical content of such a plan?**

In the recent years the Government has made several action plans within the human rights area. The Government has for example submitted an Action Plan to Combat Trafficking in Women. The Action Plan suggests specific activities intended to support the victims of trafficking in women and to prevent trafficking in women.

The Government has also submitted an Action Plan to Combat Sexual Abuse of Children, August 2003. The Action Plan is intended to further strengthen the initiatives against sexual abuse of *children*. Some focus areas of this action plan are the authorities' handling of suspicions, preventive efforts, prosecution, support to children and their families, efforts to help offenders and international initiatives against sexual abuse of children.

At The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban (South Africa) in 2001 a Declaration and a Programme of Action were signed by several states, including Denmark. As a follow-up hereto The Danish Government has adopted The Action Plan to Promote Equal Treatment and Diversity and to Combat Racism in 2003. The action plan consists of a number of new initiatives to promote equal treatment and diversity for example by making an information campaign on diversity and equal treatment, a campaign on the diversity of the working place, activities promoting the integration in housing sectors etc.

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

Evaluation of an action plan is made by follow-up meetings in the working groups, by follow-up reports and by concrete initiatives. An example hereof is the initiative pursuant to The Action Plan to Combat Trafficking in Women. This plan has been followed up by the opening of a hotline offering counselling to female victims of trafficking in 11 languages.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

When the Danish State is found by the Court to have violated the ECHR the Danish Ministry of Justice inform the authority who made the decision brought before the Court about the Court's judgment. As the Danish state is legally bound by the judgements of the Court the relevant authority must change its decision in order to fulfil the Danish state's obligations according to the ECHR.

The Danish State follow-up on the concluding observations of UN Committees by making follow-up reports, including i.e. amendments in the Danish regulation or practice, submitting new initiatives etc. The Ministry of Foreign Affairs have information briefings with the Danish NGO community app. three times a year.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

The state reporting is usually conducted by the Ministry of Justice or the Ministry of Foreign Affairs with input from other relevant Ministries and NGOs. The Danish Institute for Human Rights cooperates with a variety of ministerial departments, public institutions, the local municipalities and the civil society community.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

The Danish Institute for Human Rights monitors the compliance of the Court's Judgments and the concluding observations of the UN committees by informing on these in its yearly Status Report, by implementing them in its general work for example when making statements to the government, when giving lectures in human rights etc. Furthermore the Institute makes alternative reports in cooperation with the Danish civil society community to the various UN committees.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

The civil society organisations work together in networks where they participate in making alternative reports to the UN committees, exchange experiences, recommend initiatives, deliver information, develop methods etc. within their focus area.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

Denmark does not have a constitutional court and there has not been one specific mechanism to form the fundamental rights policy.

# **ESTONIA**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

Yes, the Legal Chancellor of the Republic of Estonia.

### **1.2. Describe**

#### **a) The composition of such national institution;**

The Legal Chancellor of the Republic of Estonia is an independent official who is appointed to office by the parliament (Riigikogu) on the proposal of the President of the Republic for a term of seven years. He or she leads the Office of the Legal Chancellor that currently consists of approximately 40 qualified lawyers and other staff.

#### **b) Its powers;**

Firstly, the Legal Chancellor acts as the guarantor of fundamental rights in Estonia. If individual believes that state officials or organs have violated his or her fundamental rights, he or she can file a complaint with the Legal Chancellor. In this capacity, the Legal Chancellor acts as *ombudsman*.

Secondly, the Legal Chancellor exercises control over the conformity with the constitution of all new laws, foreign treaties, regulations and other legal acts of state and municipal organs. If he/she finds a new legal act to be not in conformity with the constitution, he/she proposes the giver act to change it. If the state or municipal body refuses to do so, he/she can bring the issue to the Supreme Court (to which access on the basis of fundamental rights is otherwise much more restricted than e.g. in Germany).

#### **c) Its working methods;**

The Legal Chancellor is both reactive and proactive. On the one hand, he/she reacts to complaints by individuals and has the duty to check the constitutionality of all new legal acts of general nature. On the other hand, he/she has increasingly identified in public debate troublesome aspects in the practice and shown initiative in investigation and putting emphasis on some aspects of human rights violations.

#### **d) its achievements.**

The Legal Chancellor is one of the most popular institutions in Estonia, one among the institutions whom citizens trust most. The current Legal Chancellor, Mr Allar Jõks, has won several prizes from the press and the public. In substance, this shows that the Office of the Legal Chancellor has proven to be independent, has been quite successful in “speaking truth to the power” and challenging government’s behaviour.

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

Under the present Legal Chancellor, it is one of the strongest and most reliable national institutions in Estonia. However, many politicians seem to be jealous about the popularity of the present Legal Chancellor and claim that he intervenes in the realm of politics in issues that bring him the popularity of the people. It is therefore possible that politicians will attempt to name a less independent and active

individual for the post after 2007. This may *de facto* change the independent and active practice of the institution.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

The work is done, at least in theory, before. The first filter is the government that when preparing for Estonia's accession to a new human rights treaty must safeguard that all other laws lower than the constitution must comply with the new human rights treaty. The final "seal" to this checking procedure is done in the Legal Chancellor's Office whose consent is asked in the process of ratification by the government.

A post-accession procedure of adopting a national law with requirements of a human rights treaty is also possible through the Office of the Legal Chancellor and/or the Supreme Court. So far, this has been rare in practice.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

There is not yet a general plan of action on fundamental rights. However, there have been adopted plans of action in particular problem areas such as e.g. minority rights and the integration of minorities.

**3.2. What is the typical content of such a plan?**

It contains goals of policy and lays out means to achieve the respective ends.

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

There seems to be not yet enough practice on "post-adoption procedures".

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

There seem to be no particular mechanisms – which is a problem. The respective ministries, especially the Ministry of Foreign Affairs take the lead in co-ordinating bringing Estonia's practice in conformity with international standards and recommendations. If a conflict between Estonia's laws and practices and her international obligations is claimed by the international monitoring body, the Legal Chancellor also has the right – and possibly, duty – to propose the change of Estonia's legislation.



**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

Estonia is a small and unitary state, therefore the issue of “national-regional” does not emerge so often.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

For example, when a UN monitoring body has pointed out that the definition of torture in Estonia’s penal code excludes inflicting mental pain only – which is a part of the internationally adopted definition – the Legal Chancellor contacted the Minister of Justice and once again drew his attention on this matter, suggesting that the Ministry bring Estonia’s law in accordance with the internationally accepted concept of torture. However, it must be admitted that such communication is poorly institutionalised and may remain non-systematic and sporadic since based on the initiative, good will and competence of officials and no direct legally determined obligations within institutions.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

The involvement of the civil society has not been institutionalised but if such organisations show initiative and interest in certain matters, they are usually consulted and their activism can draw state organs’ attention on certain issues and deficiencies.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

Estonia has made enormous progress in terms of awareness and protection of human (fundamental) rights since the early 1990s. All institutions, lawyers, citizens and the civil society have become much more competent on the issues of human rights. On the other hand, measured by the standards of European states with a longer history of democratic tradition, Estonia has still many ways to improve. The work of the Office of the Legal Chancellor seems to have had a positive impact on those developments.

*\* Qualification. The composer of this report works beside his duties as the Head of Lectureship of International and EC law at the Faculty of Law of the University of Tartu, part-time as international law adviser of the Estonian Legal Chancellor. He may therefore, in terms of objectivity, not be in the ideal position to be critical about the work of the Legal Chancellor’s Office. However, he has no reason to show things in a « better » light and has complied this report according to his best and most sincere estimation.*



# **FINLAND**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

No. There is an Advisory Board on International Human Rights Matters, nominated by the Cabinet and linked to the Ministry for Foreign Affairs. This body has taken up the issue of possibly establishing a National Institution pursuant to the Paris principles, but at least for the time being the discussion has not taken any specific direction. In 2002, the Åbo Akademi University Institute for Human Rights prepared a feasibility study mapping and discussing various options. The study gives support to a network model of a National Institution where the office of the Parliamentary Ombudsman, the existing Advisory Board and academic human rights institutes would work closely together in order to cover the functions required by the Paris Principles. The report is available in Finnish at <http://www.abo.fi/instut/imr/norfa/miko-pohjolainen-martin.pdf>

### **1.2. Describe**

#### **a) The composition of such national institution;**

As there is no National Institution in Finland, there is no need to answer all the sub-questions. Instead, a brief account of the main bodies performing certain functions of a National Institution is given.

The Parliamentary Ombudsman receives complaints under a broad mandate, including constitutional rights, international human rights and good administration. She can order prosecution in serious cases but usually issues a reprimand. The Ombudsman is elected by Parliament and is independent from Government.

The Advisory Board for International Human Rights Matters consists of representatives from central ministries, main political parties, human rights NGOs and academic human rights research institutes. It advises primarily the Ministry for Foreign Affairs. The Board is appointed by the Cabinet for a period of two or three years. The existence of the Board is not regulated by law.

Academic human rights institutes, including the Institute for Human Rights at Åbo Akademi University, have functions in the field of using human rights expertise nationally, through policy-oriented research papers contracted by Government agencies or through opinions on draft laws. The main body responsible for screening proposed legislation is the Constitutional Law Committee of Parliament which, in turn, hears academic experts.

Constitutional rights and international human rights treaties are directly applicable in courts. There is relatively much case law both from ordinary and administrative courts since 1990.

#### **b) Its powers;**

N/A

#### **c) Its working methods;**

N/A

**d) Its achievements.**

N/A

**1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?****Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

When a Government Bill is being prepared ministries may ask for instance academic human rights institutes for an opinion. This is not frequent and is done on *ad hoc* basis. The Ministry of Justice has the role of quality control in respect of Bills prepared in other ministries. The Chancellor of Justice screens all Bills before their approval by Cabinet. Compatibility with the Constitution and with international human rights treaties is a part of his mandate.

However, the main mechanism for screening new legislation is in the hands of Parliament. A specialized Committee on Constitutional Law examines all Bills that appear to raise questions of compatibility with the Constitution or with international human rights treaties. The Committee issues up to 70 opinions per year. These opinions are treated as *de facto* binding for other Committees that then modify the Bill so that it corresponds to the Constitution or to international human rights treaties. The Constitutional Law Committee always hears academic experts, typically three, before issuing an opinion. The experts are professors of constitutional or international law or other experts in constitutional and human rights.

**Question 3. Existence of a national plan of action on fundamental rights.****3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

There is no plan of action on fundamental rights. However, the Ministry for Foreign Affairs has in recent years prepared three documents on human rights policy which partly address also matters of national concern, but mainly human rights in foreign policy. These documents are considered by the Foreign Affairs Committee of Parliament which then gives its advice to Government. There is no fixed periodicity for this practice.

**3.2. What is the typical content of such a plan?**

N/A

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

N/A

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

The Legal Department of the Ministry for Foreign Affairs has overall responsibility for implementation, including payment of just satisfaction ordered by the European Court of Human Rights and transmitting views and concluding observations of UN treaty bodies to relevant authorities. There is case law by the Supreme Court that a judgment by the European Court of Human Rights can be the basis for annulling a court decision through extraordinary remedies (*Z. v. Finland*). Also, there is case law by the Supreme Administrative Court ordering the state to pay compensation in cases where the UN Human Rights Committee has found a violation of the Covenant on Civil and Political Rights and called for an effective remedy (the cases of *Torres v. Finland* and *Vuolanne v. Finland*). In the latter situation compensation is not paid automatically but the complainant may need to initiate new procedures in an administrative court, whereas payment of just satisfaction after a European Court judgment is automatic.

The Åbo Akademi University Institute for Human Rights recently made a comparative study on the implementation of findings by the UN treaty bodies in Finland and selected other countries. The study written by Heli Niemi will soon be available at [http://www.abo.fi/instut/imr/publications\\_online.htm](http://www.abo.fi/instut/imr/publications_online.htm)

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

Finland is a relatively small and centralized country, so coordination works quite informally and well.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

Human rights NGOs, primarily the Finnish League for Human Rights, submits shadow reports to UN human rights treaty bodies and also monitors follow-up.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

The protection of constitutional rights and international human rights are comparatively well integrated with each other. Main responsibility for a policy related to constitutional rights rests with the Ministry of Justice, whereas the Ministry for Foreign Affairs has responsibility in human rights policy. Both are represented in the Advisory Board for International Human Rights Matters. The Ministry of Justice evaluates the implementation of the constitutional rights reform of 1995 and the total reform of the Constitution in 1999, assessing also the need for further reform of ordinary laws.

Due to the relatively well-functioning mechanisms of direct applicability of human rights treaties in courts, the complaint procedure of the Parliamentary Ombudsman and the screening of new legislation by the Constitutional Law Committee of Parliament, relying on academic expertise, the establishment of a new National Human Rights Institution is widely held as difficult and perhaps even unnecessary.



# FRANCE

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Est ce qu'une institution nationale de protection des droits de l'Homme a été établie dans votre Etat conformément aux Principes de Paris adoptés par l'Assemblée générale des Nations Unies en 1993 ?**

C'est la Commission nationale consultative des droits de l'Homme (ci-après *la CNCDH*), créée en 1984 telle qu'on la connaît aujourd'hui, même si ses origines remontent à 1947, qui avait pris l'initiative d'organiser à Paris sous l'égide du Centre pour les droits de l'Homme des Nations unies, la première Rencontre internationale des Institutions nationales de promotion et de protection des droits de l'homme qui allait aboutir à l'élaboration des « principes de Paris » adoptés par la Résolution 48/134 du 20 décembre 1993 de l'Assemblée générale des Nations Unies.

D'une manière générale, il existe en France une multitude d'institutions nationales dont les statuts ont été établis ou du moins remaniés conformément aux principes de Paris. Diverses « autorités administratives indépendantes » se trouvent en dehors du système administratif hiérarchique et bénéficient par conséquent d'une certaine indépendance vis-à-vis d'autres autorités publiques. On peut penser, par exemple, à la Commission nationale de l'informatique et des libertés, au Conseil supérieur de l'Audiovisuelle, à l'Autorité des marchés financiers (anciennement Commission des opérations de bourse), au Médiateur de la République, au Défenseur des enfants, à la Commission d'accès aux documents administratifs, etc. Néanmoins la CNCDH semble être l'institution par excellence de promotion et de protection des droits de l'Homme au niveau national conformément aux principes de Paris.

### **1.2. Veuillez décrire**

#### **a) La composition de cette institution nationale;**

La CNCDH est composée d'une part par des représentants des pouvoirs publics et judiciaires nationaux, et, d'autre part, par les représentants de la société civile, tous nommés par arrêté du Premier Ministre.

S'agissant des pouvoirs publics et judiciaires on y retrouve:

- les représentants du Premier Ministre et des ministres intéressés. Les membres en question n'ont que de simples voix consultatives à la différence de tous les autres membres qui, eux, disposent chacun d'une voix délibérative.
- un député désigné par le Président de l'Assemblée nationale
- un sénateur désigné par le Président du Sénat
- les membres du Conseil d'État et des magistrats de l'ordre judiciaire
- le Médiateur de la République.

Quant à la société civile:

- les représentants de 33 associations nationales des droits de l'Homme
- les représentants de sept confédérations syndicales
- un groupe de 47 personnalités formé de représentants des grandes religions, des membres des universités, du corps diplomatique, du barreau etc.
- sept experts français siégeant dans des instances internationales de droits de l'Homme

**b) Ses pouvoirs;**

Les compétences de la CNCDH sont essentiellement consultatives et elles s'étendent à la totalité des domaines liés aux droits de l'Homme tant sur le plan national qu'international.

Au niveau national, elle a une double fonction de vigilance et de proposition. Elle peut intervenir soit sur saisine du Premier Ministre ou des membres du gouvernement, soit par auto-saisine. Elle émet des avis ou élabore des études tant en amont, lors de la préparation des projets de loi ou de règlements, des politiques et programmes, qu'en aval, pour vérifier l'effectivité du respect des droits de l'Homme dans les pratiques administratives ou dans les actions de prévention. Les avis et les études de la Commission sont rendus publics.

Au niveau international, elle contribue à la préparation des rapports que la France présente devant les organisations internationales, émet des avis sur les positions françaises dans les négociations multilatérales, coopère avec les institutions étrangères de promotion et de protection des droits de l'Homme.

**c) Ses méthodes de travail;**

La CNCDH fonctionne de manière démocratique, dans un souci d'efficacité et de recherche d'un consensus. D'une manière générale, les membres de la Commission ont l'obligation de participer à l'ensemble des travaux à titre bénévole, sans rémunération, et ils sont tenus à un devoir de confidentialité.

Les organes de la Commission sont l'Assemblée plénière qui est l'organe principal, le Président qui est le représentant de la Commission, le Bureau qui fixe l'ordre du jour de l'Assemblée, le Comité de coordination et de réflexion qui est chargé de l'animation, de la programmation et de la coordination des travaux de la Commission, le Secrétariat général qui, à côté de ses tâches administratives, assure la communication avec les services du Premier Ministre et les manifestations de la Commission.

La Commission fonctionne avec ses sous-commissions préparant des projets d'avis ou d'études dans des domaines précis. Elles veillent, par ailleurs, à la transposition en droit interne des engagements internationaux pris par la France. Les sous-commissions sont actuellement au nombre de six: Droits de l'homme et évolution de la société, Questions internationales, Questions nationales, Education et formation aux droits de l'Homme, droits de la femme, de l'enfant et de la famille, Droit international et action humanitaires, Lutte contre le racisme et la xénophobie.

**d) Ses réalisations / résultats.**

La Commission a publié un nombre important de travaux sur les sujets les plus divers, et notamment, en matière de société de l'information et de l'Internet, de formation aux droits de l'Homme, en droit international humanitaire (la torture, la Cour pénale internationale, la peine de mort, les prisonniers de guerre, l'aide extérieur européenne, le médiateur humanitaire, etc.), en matière de droit des enfants (indemnisation des administrateurs *ad hoc*, placement d'enfants, l'exploitation sexuelle, droits des enfants aux loisirs, etc.), des personnes malades ou handicapées (égalité des chances, modernisation du système de santé, etc.), en matière de droits économiques et sociaux, d'Ethique et de société, d'intégration du droit international dans le droit français, de justice et de sécurité, de nationalité, d'immigration et d'asile, de racisme et de discrimination. On peut également trouvé des avis sur la situation des droits de l'Homme dans des pays étrangers.

**1.3. Comment évaluez-vous le degré d'indépendance de cette institution et sa contribution à la protection et à la promotion des droits fondamentaux au sein de votre Etat?**

Si les membres de la Commissions sont nommés par le Premier Ministre, l'institution bénéficie d'une totale indépendance en raison précisément de sa composition et du système de votation. En ce qui



concerne la composition, la Commission réunit en son sein un nombre considérable d'hommes et de femmes d'expériences riches et diverses. Représentants d'ONG et de confédérations syndicales, personnalités choisies, experts siégeant dans les instances internationales, parlementaires, tous sont garants du pluralisme. Quant au système de vote, les représentants des pouvoirs politiques n'ont qu'une voix consultatives.

La contribution de la CNCDH à la promotion et la protection des droits de l'Homme en France est fondamentale.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Quelles techniques sont utilisées pour assurer que la législation et la réglementation adoptées dans votre Etat sont conformes aux engagements pris par votre Etat en matière de droits fondamentaux ? Cette conformité est-elle vérifiée avant la rédaction et l'adoption de la législation et de la réglementation et, le cas échéant, par quels moyens est-elle vérifiée?**

La CNCDH rend des avis consultatifs pour rappeler au gouvernement ses engagements en matière de droits de l'Homme. La possibilité pour elle de se saisir d'un dossier sans demande préalable du gouvernement renforce son efficacité. La Commission peut intervenir en amont, au moment de l'élaboration du projet mais aussi en aval une fois que le texte est adopté. Dans ce dernier cas, la Commission pourrait proposer au gouvernement la mise en conformité de la réglementation avec les instruments internationaux.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Est ce que votre Etat prépare un plan d'action national annuel ou périodique sur les droits fondamentaux? Le cas échéant, comment ce plan est-il préparé? Quels acteurs sont impliqués ou consultés?**

Conformément à la loi N° 90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe, le 21 mars de chaque année la CNCDH remet au Gouvernement un rapport sur la lutte contre le racisme qui est immédiatement rendu public. L'ordre du jour de la Commission est déterminé par Le Bureau institué par le Décret constitutif N° 84-72 du 30 janvier 1984.

**3.2. Quel est le contenu habituel d'un tel plan?**

Sans objet.

**3.3. Quelle évaluation est faite de la mise en œuvre de ce plan à la fin de la période pour laquelle il a été adopté?**

Sans objet.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Quels mécanismes spécifiques, s'il en existe, ont été mis en place dans votre Etat pour assurer le respect des jugements de la Cour européenne des droits de l'Homme ou le suivi des observations finales des Comités établis par les traités des Nations Unies en matière de droits de l'homme?**

Aux termes de l'article 55 de la Constitution française, les traités ou accords régulièrement ratifiés ou approuvés ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve pour chaque accord ou traité, de son application par l'autre partie. Il résulte à l'évidence de cet article que la Convention européenne des droits de l'Homme a une autorité supérieure à celle des lois françaises. Il n'existe pas de mécanisme spécifique de surveillance de la conformité de la réglementation nationale aux engagements internationaux de la France mais, l'une des attributions de la CNCDH est précisément de veiller à cette conformité en utilisant son pouvoir consultatif actif (l'auto-saisine).

**4.2. Veuillez préciser la façon dont ont été résolus les problèmes de coordination entre les différents départements ministériels ou les différents niveaux de pouvoir (national, régional,...).**

La CNCDH établit des liens de coopération et de coordination avec d'autres institutions françaises partageant les mêmes centres d'intérêt. Elle établit des liens avec le Parlement, par l'intermédiaire des représentants de l'Assemblée nationale et du Sénat, ainsi qu'avec le Médiateur de la République.

**4.3. Si c'est l'institution nationale pour la protection des droits fondamentaux qui contrôle cette conformité ou/et ce suivi, veuillez indiquer les moyens utilisés.**

Avis, études, rapports d'activités.

**4.4. Si des organisations relevant de la société civile sont impliquées dans le contrôle de cette conformité, veuillez le préciser.**

Oui, par l'intermédiaire de la CNCDH.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Veuillez indiquer ci-dessous tout autre commentaire que suscite, à la lumière de l'expérience acquise au sein de votre Etat, la lecture des questions identifiées ci-dessus. En particulier, veuillez décrire les dispositifs originaux qui contribuent à l'élaboration de la politique des droits fondamentaux dans cet Etat.**

La CNCDH, malgré l'étendue des domaines de son action et le nombre important de ses membres, est de loin l'institution la plus efficace pour la promotion et la protection des droits de l'Homme en France. Même si elle ne dispose pas d'un pouvoir contraignant face aux déviances ou omissions éventuelles du gouvernement, elle constitue un lieu de dialogue et de réflexion de qualité. Ses travaux reçoivent alors nécessairement un écho particulier dans notre société démocratique.

# GERMANY

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

Yes, the “German Institute for Human Rights” in Berlin. Its foundation was initiated by the German *Bundestag* (Federal Parliament). It started in the end of 2001.

### **1.2. Describe**

#### **a) The composition of such national institution;**

The Institute has the legal status of an incorporated society with three organs: executive board, advisory board and assembly of members. At present the Institute has 9 permanent employees. Its instructions are promotion of human rights.

#### **b) Its powers;**

The Institute does not have any competences like a state. It has only consulting functions.

#### **c) Its working methods;**

The Institute does not practice monitoring. However, within the scope of promotion of human rights it has the following functions: Information and documentation, applied research and political advisory service, human rights education in Germany, co-operation with other national and international human rights institutions, promotion of dialog and co-operation at home.

#### **d) Its achievements.**

Up to now: A number of publications on fundamental and actual human rights issues and on the mechanisms of international human rights institutions. Setting up a network of human rights educators in Germany. Political advisory service. Successful realization on training seminars, conferences and expert workshops on human rights topics.

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

The Institute was expressly founded as an independent institution; it receives basic financing from the state (Federal Ministry of Justice, Foreign Office, Federal Ministry for Economic Co-operation and Development) , but determines its work projects independently of any state influence. Its advisory board is composed of personalities from non-government organisations, academia and politics; Federal Ministries and the *Bundesrat* (Federal Council) are also represented without the right to vote.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

The Common Rules of Procedure of the Federal Ministries in detail regulate the co-operation between the ministries while preparing draft law. By this the Commissioner for Human Rights Issues in the Federal Ministry of Justice is involved as well. This altogether provides that the compliance with international responsibilities of the Federal Republic of Germany on the human rights field is verified.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

A general national plan of action is not prepared as yet. But the German *Bundestag*, following a recommendation of its Committee for Human rights and Humanitarian Aid, has requested the Federal Government (decision of 13 March 2003) to integrate a short national plan of action in the next governmental report on its human rights policy in foreign relations and other political fields, to be given in 2004. That plan should make a list of important spheres of problems and objectives as well as strategies for their implementation. – On individual fields the government already has national action plans; e.g. a plan for a world suitable for children is being prepared at present.

**3.2. What is the typical content of such a plan?**

No experiences so far.

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

No experiences so far.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

The Commissioner for Human Rights Issues in the Federal Ministry of Justice monitors the compliance with judgments of the ECHR. See the answer for question 2 as well. The judgments are translated in German language, sent to the affected authorities (poss. to not affected courts and authorities as well if a decision has general effects) and publicised in a juridical periodical. Further measures depend on the individual case.

Concluding observations of UN treaty bodies are made known. The competent Federal Ministry (Ministry of Justice primarily, further the Ministry for Family Affairs, Senior Citizens, Women and Youth and the Ministry for Economics and Labour) takes care of the follow-up.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

There are no special rules. The co-ordination orientates by general rules. Regarding the compliance with judgments of the ECHR problems to the disadvantage of the complainant did not arise up to now.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

The German Institute for Human Rights does not monitor the compliance of the Judgments of the ECHR. For the implementation of concluding observations of UN treaty bodies in the future the Institute will organise follow-up meetings with the authorities in question and organisations of the civil society. As for the rest the Institute is generally engaged in the implementation of human rights responsibilities by publications, seminars and conferences.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

A formal participation of civil society organisations does not happen (but see 4.3). However, by their own they contact the competent parliaments and authorities (of the Federal and the Laender), if in their view concluding observations of the UN treaty bodies are not complied.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

Apart from the activities of the German Institute for Human Rights a successful human rights policy takes place in Germany by a parallel and combined work of various institutions:

- On the parliamentary level the Committee on Human Rights and Humanitarian Aid has to be mentioned. It constantly receives information from the Federal Government on the human rights situation in different countries, on centres of crisis for humanitarian aid and on the Federal Government's policy in these fields. In a dialogue with the Federal Government, the Committee participates in the further development of national, European and international instruments for the protection of human rights and in the legal and political scrutiny of human rights infringements.
- The Federal Government every two years provides information on its human rights policy in foreign relations and other policy fields to German Bundestag. This report recently includes domestic policies to a greater extent than in the past and. From the next report on, it will include a chapter with a national plan of action on fundamental rights.
- The Government's Commissioner for Human Rights Policy and Humanitarian Aid in the Foreign Office has the task to observe the development in the field of human rights world-wide and to participate in the bilateral and multilateral human rights dialogue. He contributes to shaping human rights policy in international relations and maintains close contacts at home and abroad with institutions and groups active in this field.
- The Commissioner for Human Rights Issues in the Federal Ministry of Justice is the agent of the Federal Government to the European Court of Human Rights in Strasbourg. He is also in charge of making observations to the United Nations Commission on Human Rights in proceedings pursuant to Economic and Social Council Resolution 1503 and

pursuant to the Optional Protocol to the International Covenant on Civil and Political Rights. In addition, the Commissioner is responsible for the various state reports on human rights to be submitted to the United Nations.

- An especially important role in the protection of human rights is played by organisations which in addition to international bodies work towards world-wide protection of human rights. On the occasion of the UN World Conference on Human Rights held in Vienna in June 1993, 19 human rights organisations of the Federal Republic of Germany joined forces in a “Human Rights Forum” which by now has over 40 member organisations. This working group of non-government organisations in the field of human rights aims at an improved and comprehensive protection of human rights world-wide, in particular regions of the world and in individual states as well as in the Federal Republic of Germany.

# GREECE

## Question 1. Existence of a national institution for the protection of human rights.

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

The Greek National Commission for Human Rights (GNCHR) was founded by Law 2667/1998. GNCHR is a statutory National Human Rights Institution having a consultative status with the Greek State on issues pertaining to human rights protection. The creation of GNCHR emanated from the need to monitor developments regarding human rights protection on the domestic and international plane, to inform Greek public opinion about human rights-related issues and, above all, to provide guidelines to the Greek State aimed at the establishment of a modern, principled policy of human rights protection. A direct source of inspiration for the creation of GNCHR were the *Paris Principles*, adopted by the United Nations. Law 2667/1998 is in full conformity with the Paris principles. The GNCHR is currently a member of the European Coordinating Committee of National Human Rights Institutions.

### **1.2. Describe**

#### **a) The composition of such national institution;**

In accordance with Article 2 of Law 2667/1998, as amended in 2002 and 2003, the following are members of GNCHR:

1. The President of the Special Parliamentary Commission for Institutions and Transparency;
2. A representative of the General Confederation of Greek Workers, and his/her alternate;
3. A representative of the Supreme Administration of Civil Servants' Unions, and his/her alternate;
4. Six representatives (and their alternates) of Non-Governmental Organisations active in the field of human rights protection, that is, Amnesty International Greek Section, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, the Greek Council for Refugees, the Greek League for Women's Rights and the Panhellenic Federation of Greek Roma Associations;
5. Representatives of the political parties represented in the Greek Parliament. Each political party designates one representative and his/her alternate;
6. The Greek Ombudsman and his/her alternate;
7. One member of the Authority for the Protection of Personal Data and his/her alternate, proposed by the President of the above Authority;
8. One member of the National Radio and Television Council and his/her alternate, proposed by the President of the Council;
9. One member of the National Commission for Bioethics and his/her alternate, proposed by the President of that Commission;
10. Two personalities widely recognised for their expertise in the field of human rights protection, designated by the Prime Minister;
11. One representative (and one alternate) of the: Ministry of Interior, Public Administration and Decentralisation, Ministry of National Education and Religion, Ministry of Labour and Social Security and Ministry of the Press and Mass Media. Each of these persons (who do not have the right to vote) is designated by the competent Minister (according to the Paris Principles, governmental representatives do not have the right to vote);
12. Three Professors or Associate Professors (and their alternates) of Public Law or Public International Law, members of the University of Athens, Faculty of Political Science and Administration, of the University of Thessaloniki, Faculty of Law and of the University of Thrace, Faculty of Law;
13. One member of the Athens Bar Association and his/her alternate.

**b) Its powers;**

According to Law 2667/1998, by which GNCHR was established, GNCHR has the following substantive competences:

1. The study of human rights issues raised by the government, by the Convention of the Presidents of the Greek Parliament, by GNCHR members or by non-governmental organisations;
2. The submission of recommendations and proposals, elaboration of studies, submission of reports and opinions for legislative, administrative or other measures which may lead to the amelioration of human rights protection in Greece;
3. The development of initiatives for the sensitisation of the public opinion and the mass media on issues related to respect for human rights;
4. The cultivation of respect for human rights in the context of the national educational system;
5. The maintenance of permanent contacts and co-operation with international organizations, similar organs of other States, as well as with national or international non-governmental organisations;
6. The submission of consultative opinions regarding human rights-related reports which Greece is to submit to international organisations;
7. The publicising of GNCHR positions in any appropriate manner;
8. The drawing up of an annual report on human rights protection in Greece;
9. The organisation of a Human Rights Documentation Centre;
10. The examination of the ways in which Greek legislation may be harmonised with the international law standards on human rights protection, and the subsequent submission of relevant opinions to competent State organs.

**c) Its working methods;**

Since 10 January 2000 the President of GNCHR (Commissioner) has been Emer. Professor Alice Yotopoulos-Marangopoulos. First Vice-President is Mr Nikos Frangakis and Second Vice-President is Professor Anna Frangoudaki.

GNCHR has established five Sub-Commissions:

- The Sub-Commission for Civil and Political Rights;
- The Sub-Commission for Social, Economic and Cultural Rights;
- The Sub-Commission for the Application of Human Rights to Aliens;
- The Sub-Commission for the Promotion of Human Rights;
- The Sub-Commission for International Communication and Co-operation.

According to the Rules of Procedure of GNCHR the Plenary convenes every two months. In practice this happens every month. According to the above Rules each Sub-Commission holds at least one meeting per month. The Sub-Commissions' work consists of the preparation of reports on issues related to their specific field of action. All these reports are subsequently submitted to the GNCHR (Plenary) for discussion and decision.

Since 15 November 2000 GNCHR has employed two Legal Officers while since 1 April 2002 GNCHR has also employed an Executive Secretary.

In 2003 GNCHR acquired its own premises in Athens and opened its website ([www.nchr.gr](http://www.nchr.gr)).

**d) Its achievements.**

In the beginning of the first year of its life, 2000, GNCHR collected and studied all major international and European documentation regarding human rights protection issues in Greece which have been raised in international and European fora, with a view to examining the actual compliance of Greece with international and European human rights standards and law. Accordingly, the major issues of



concern have been the following: issues pertaining to the effectiveness of the Greek justice system; freedom of religion; conscientious objection to military service; conditions of detention; non-discrimination on the grounds of race, ethnic origin or sex; protection of minority populations.

In the course of the meetings of the GNCHR Plenary and the Sub-Commissions since 2000 the following issues have been discussed and relevant action was taken, including notification of the GNCHR resolutions and recommendations to all competent Greek authorities (also published in GNCHR Annual Reports):

GNCHR proposals on the draft Charter of Fundamental Rights of the European Union (11 July 2000)

- *The issue of inclusion of religious affiliation in Greek citizens' identity cards (13 July 2000).*
- *Ratification of humanitarian law treaties (28 September 2000).*
- *The 2000 Bill on aliens/immigration (9 November and 30 December 2000).*
- *Cremation of the deceased (7 December 2000).*
- *Ratification of the Rome Statute of the International Criminal Court (7 December 2000).*
- *Human Rights Education and Promotion (2000-).*
- *Amendment of the Greek Constitution in 2001 (1 February 2001).*
- *Freedom of religion (1 March 2001).*
- *Use of force and of firearms by police forces (4 April 2001).*
- *Bill on organised crime (3 May 2001).*
- *Protection of refugees (asylum) in Greece (8 June 2001).*
- *Establishment of a comprehensive legal aid system (25 June 2001).*
- *Conditions of detention in Greece (5 July 2001).*
- *Alternative civil-social service (5 July 2001).*
- *Implementation by Greece of ILO Convention No 111 on non-discrimination in employment and occupation (20 August 2001 - a formal request for an opinion was submitted to GNCHR by the Greek Ministry of Labour).*
- *Resolution on terrorism and human rights after the events of 11.09.2001 (20 September 2001).*
- *Protection of social rights of refugees and asylum seekers in Greece (20 September 2001).*
- *Draft Report of the Greek Foreign Ministry on Racism, Intolerance and Xenophobia to the Committee of Ministers of the Council of Europe (22 October 2001).*
- *Second Mediterranean Conference of National Human Rights Institutions (1-3 November 2001).*
- *Issues regarding protection of Roma in Greece (29 November 2001).*
- *2001 Reports of the Ministers of Justice and of Public Order to the UN CAT (13 December 2001).*
- *Main issues of racial discrimination in Greece – Proposals for the modernisation of Greek law and practice (20 December 2001).*
- *2001 Greco-Turkish Protocol for the implementation of article 8 of the Greco-Turkish Agreement on combating crime, especially terrorism, organized crime, illicit drug trafficking and illegal migration (31 January 2002).*
- *Appeal to the Greek Foreign Minister pertaining to the treatment by the US authorities of Afghan detainees (28 February 2002).*
- *Appeal to the Greek Foreign Minister for the ratification by Greece of the anti-discrimination 12<sup>th</sup> Protocol to the European Convention on Human Rights, already signed by Greece (28 February 2002).*
- *Resolution on the 2001 proposals for an EU Council Framework Decision on combating terrorism and for an EU Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (28 February 2002).*
- *Research project on TV news bulletins and human rights protection (28 February 2002).*
- *2002 Core Document of the Greek Foreign Ministry to the UN Human Rights Committee (28 February 2002).*
- *Bill on combating trafficking in persons and providing protection to victims (28 February 2002).*

- *Appeal to the Greek Foreign Minister for the signature and ratification by Greece of the 13<sup>th</sup> Protocol to ECHR (concerning the abolition of the death penalty in all circumstances, 24 April 2002).*
- *Restrictive quotas against women employed by the Greek Police and Fire Brigade (29 May 2002).*
- *Issues relating to reception and access of asylum seekers to the asylum procedure in Greece (6 June 2002).*
- *Report on Law 2956/2001 pertaining to temporary employment through “companies of temporary employment” (4 July 2002).*
- *Bill on the Greek administration’s compliance with judicial decisions (9 July 2002).*
- *Initial (2002) Report of Greece to the UN Committee on Economic, Social and Cultural Rights (4 September 2002).*
- *Athens Conference on the Greek Presidency of the EU Council and the challenge of asylum and immigration, 8-9 November 2002 (co-organised with the Greek Ombudsman, UNHCR BO for Greece and the Greek Council for Refugees).*
- *International Conventions on Migrant Workers and the position of Greece (12 December 2002).*
- *Issues relating to discrimination against alien workers with regard to their employment injury compensation (12 December 2002).*
- *Commentary on the Bill of the Ministry of Public Order regarding arms possession and use of firearms by police personnel and their relevant training (12 December 2002).*
- *Resolution on Greece’s combat against terrorism in its territory (12 December 2002).*
- *Greece’s compliance with the Conclusions of the European Committee of Social Rights (12 December 2002).*
- *The detention conditions in Greece in 2002 (12 December 2002).*
- *Proposals to the European Convention for the Constitutional Treaty of the European Union (07 May 2003).*
- *Resolution on Muslim weddings by proxy in Greece (29 May 2003).*
- *Draft Agreements (a) on extradition and (b) on mutual legal assistance between the European Union and the United States of America (29 May 2003).*
- *Supplementary reply of GNCHR to the Greek Foreign Ministry on the Initial Report by Greece to the Committee of the International Covenant on Economic, Social and Cultural Rights (29 May 2003).*
- *Bill on the reform of juvenile criminal law (29 May 2003).*
- *Bill on the acceleration of criminal procedure (29 May 2003).*
- *Proposals on the protection of the rights of mentally disabled persons subject to criminal security measures (19 June 2003).*
- *Reply of GNCHR to the appeal of the “Committee for the recognition of the ancient Greek religion of the Twelve Gods” regarding human rights violations (25 September 2003).*
- *The incorporation of the EU Charter of Fundamental Rights into the draft Constitutional Treaty of the Union (30 October 2003).*
- *The continuing use by Greece of anti-personnel mines in border areas (30 October 2003).*
- *The loss of Greek nationality by virtue of ex article 19 of the Greek Nationality Code (GNC) and the procedure for its reacquisition (30 October 2003).*
- *Defining the position of cultural rights in domestic legal order and the relevant action of GNCHR (17 December 2003).*
- *The protection of “de facto” refugees in Greece (17 December 2003).*
- *Bill entitled “Application of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation” (transposition of Directives 2000/43/EC and 2000/78/EC) (17 December 2003).*
- *The prevention of torture and other cruel, inhuman and degrading treatment or punishment and the accession and application by Greece of the Optional Protocol to the relevant United Nations Convention (2002) (17 December 2003).*
- *The provision of cruel, inhuman or degrading penalties by the penal law of certain States as a violation of fundamental human rights (17 December 2003).*

A number of recommendations by the GNCHR on the above subjects have already been followed by the competent authorities. The GNCHR is monitoring the implementation of its own recommendations in close coordination with the representatives of the seven ministries who are members of the Commission (without the right to vote, as already mentioned).

**1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

It is worthy to note the originality of the law provisions concerning GNCHR membership and the election of Members, of the President and the two Vice-Presidents. Each institution participating in GNCHR designates its representatives. All representatives -except for those of seven Ministries who take part in the sessions of the Plenary and the Sub-Commissions without the right to vote- elect the President and the two Vice-Presidents of GNCHR. This particular, liberal system ensures GNCHR's independence and impartiality.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

According to Law 2667/1998, the GNCHR has to be consulted prior to the submission of any draft law to the Parliament, if such draft law concerns, directly or indirectly, human rights. The GNCHR systematically verifies whether such draft law is in conformity with the Constitution and the international obligations of Greece in the field of human rights. Furthermore, when the draft law is submitted to the Parliament, it is immediately sent to the "Scientific Council" of the Parliament, which verifies, once more, its compatibility with the Constitution and the international commitments of Greece.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

N/A

**3.2. What is the typical content of such a plan?**

N/A

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

N/A

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

1. According to Law 3086/2002, the Legal Council of State has the competence to represent the Greek State under the European Court of Human Rights and to coordinate the execution of the judgments in the national level (general measures of execution of the judgments).

2. According to Law 2667/1998, the GNCHR has the competence to examine the ways in which Greek legislation may be harmonized with the international law standards on human rights protection, and the subsequent submission of relevant opinions to competent State organs.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

N/A

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

According to Law 2667/1998, the GNCHR has the competence to examine the ways in which Greek legislation may be harmonized with the international law standards on human rights protection, and the subsequent submission of relevant opinions to competent State organs. This has been done in several occasions by the adoption of the following reports which are communicated to the competent Greek authorities:

- *Ratification of humanitarian law treaties (28 September 2000).*
- *Ratification of the Rome Statute of the International Criminal Court (7 December 2000).*
- *Human Rights Education and Promotion (2000-).*
- *Freedom of religion (1 March 2001).*
- *Establishment of a comprehensive legal aid system (25 June 2001).*
- *Alternative civil-social service (5 July 2001).*
- *Implementation by Greece of ILO Convention No 111 on non-discrimination in employment and occupation (20 August 2001 - a formal request for an opinion was submitted to GNCHR by the Greek Ministry of Labour).*
- *Protection of social rights of refugees and asylum seekers in Greece (20 September 2001).*
- *Main issues of racial discrimination in Greece – Proposals for the modernisation of Greek law and practice (20 December 2001).*
- *Appeal to the Greek Foreign Minister for the ratification by Greece of the anti-discrimination 12<sup>th</sup> Protocol to the European Convention on Human Rights, already signed by Greece (28 February 2002).*
- *Appeal to the Greek Foreign Minister for the signature and ratification by Greece of the 13<sup>th</sup> Protocol to ECHR (concerning the abolition of the death penalty in all circumstances, 24 April 2002).*
- *Restrictive quotas against women employed by the Greek Police and Fire Brigade (29 May 2002).*
- *Issues relating to reception and access of asylum seekers to the asylum procedure in Greece (6 June 2002).*
- *Bill on the Greek administration's compliance with judicial decisions (9 July 2002).*
- *Initial (2002) Report of Greece to the UN Committee on Economic, Social and Cultural Rights (4 September 2002).*

- *International Conventions on Migrant Workers and the position of Greece (12 December 2002).*
- *Greece's compliance with the Conclusions of the European Committee of Social Rights (12 December 2002).*
- *Defining the position of cultural rights in domestic legal order and the relevant action of GNCHR (17 December 2003).*
- *The prevention of torture and other cruel, inhuman and degrading treatment or punishment and the accession and application by Greece of the Optional Protocol to the relevant United Nations Convention (2002) (17 December 2003).*

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

Six representatives (and their alternates) of Non-Governmental Organisations active in the field of human rights protection (Amnesty International Greek Section, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, the Greek Council for Refugees, the Greek League for Women's Rights and the Panhellenic Federation of Greek Roma Associations) are members of GNCHR which has the competence to examine the ways in which Greek legislation may be harmonized with the international law standards on human rights protection, and the subsequent submission of relevant opinions to competent State organs.

**Question 5. Original mechanisms for the protection of fundamental rights.**

Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.



# **HUNGARY**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

A) On June 30, 1995 four commissioners, the Parliamentary Commissioner for Human Rights, the Deputy Ombudsman, the Parliamentary Commissioner for Data Protection and Freedom of Information, and the Parliamentary Commissioner for Ethnic Minorities, were elected by the Parliament of the Hungarian Republic.

The establishing of these new institutions was ordained basically by the comprehensive amendment to the Constitution in 1989, and consequently by the 1993 Act on the Parliamentary Commissioners, however, in the case of the Commissioner for Data Protection and Freedom of Information (also known as the Data Protection Ombudsman), already the Act on Data Protection and Freedom of Information of 1992.

B) An Act on equal treatment and the promotion of equal opportunities was adopted by Parliament in December 2003. According to the Act a public authority, a national anti-discrimination commission shall be set up on the 1<sup>st</sup> of January 2005 with overall responsibility of ensuring compliance with the principle of equal treatment.

### **1.2. Describe**

#### **a) The composition of such national institution;**

A) The Parliamentary Commissioners are elected by a majority of two-thirds of the votes of the Members of Parliament, upon the nomination of the President of the Republic for a period of six years (regular parliamentary elections are held in every fourth year).

B) The composition of the equal opportunity authority hasn't been regulated, yet. The Act authorised the Council of Ministers to enact the regulation by the end of 2004.

#### **b) Its powers;**

A) Under Article 32/B of the Hungarian Constitution, the Parliamentary Commissioner for Civil Rights is responsible for investigating or having investigated irregularities concerning constitutional rights which have come to his attention and initiating general or specific measures for their remedy. The Parliamentary Commissioner for the Rights of National and Ethnic Minorities is responsible for investigating or having investigated irregularities concerning the rights of national or ethnic minorities, which come to his attention and initiating general or specific measures for their remedy. The Parliamentary Commissioner for Ethnic Minorities intercedes in issues that under his jurisdiction as stipulated in the Act no. LXXVII of 1993 on national and ethnic minority rights (Minority Rights Law). Under this interpretation, the Commissioner may be called upon by a citizen whose rights as guaranteed under the Minority Rights Law have been violated (such as, use of native language, free association, participation in native language education, self-identity, prohibition of racial discrimination), or by a community, whose minority rights have been violated (for example, self-governance, Parliamentary representation, establishment of institutions, cultural autonomy), or by a local or national minority self-government, whose minority self-government rights have been violated (such as, participation in public administration, working in conjunction with public administration organisations, cultural and educational self-governance, management of personal assets). The tasks and functions of the Data Protection Commissioner constitute a unique solution. Besides monitoring

both data protection and freedom of information in general with an ombudsman-like competence, the Commissioner's tasks are many-sided. They include the maintenance of the Data Protection Register; the giving of opinion on DP and FOI-related draft legislation as well as each category of official secrets; and, according to the Secrecy Law of 1995, the Commissioner is entitled to change the classification of state and official secrets as well.

B) The anti-discrimination commission is entitled to carry out investigation *ex officio* or on a basis of a complaint; initiate lawsuits; review and comment draft legislation; make recommendations, reports. In its procedure it applies the provision Act no. IV of 1957 on the general procedures of public administration, with the differences regulated in the act. If the Authority has established that the provisions ensuring the principle of equal treatment have been violated, it may order that the situation constituting a violation of law be eliminated; prohibit the further continuation of the conduct constituting a violation of law; publish its decision establishing the violation of law; impose a fine; apply a legal consequence determined in a special act. In the administrative procedures the reverse burden of proof applies: the injured party has to prove that he/she suffered an injury and he/she possesses those characteristic(s) that are defined in the act. The other party has to provide evidence that he observed, or that particular relationship he does not have an obligation to observe the principle of equal treatment.

### **c) Its working methods;**

A) Anybody, who feels that in consequence of a proceeding, decision or the omission of the measure listed below, caused the violation of any constitutional rights or the threat of this is immediate, may apply to the ombudsman, e.g.: organ fulfilling state administration (town clerk, construction authority, guardianship authority, tax authority, duties office), any other organ acting as state administrative authority (land registry office, Hungarian Energy Office), investigation authority (police, tax-police, investigation office of the general attorney), penitentiary facility, local governments, minority self-government, the office of the mayor, notary public, public utility services (water, gas, electricity, social and health care, educational institutions), etc.

The constitutional rights may be injured by for example, unreasonably long procedures, discrimination, inaccurate, or wrong information provided, inequitable personal treatment, unreasonable refusal of information dissemination, unlawful decision, etc.

Complaint can be filed if the complainant has already exhausted the available possibilities of administrative legal remedies, or no legal remedies ensured.

B) The anti-discrimination commission will start functioning on the 1st of January 2005, therefore we don't know much about its working method, yet.

### **d) Its achievements**

A) The first six years term of the Parliamentary commissioners was over in 2001. In this period of time the number of applications has constantly been increased, the institution became more and more popular. Although all of the annual reports submitted to the Parliament were approved, and the ombudspersons were respected by both the governing and the opposition parties, despite the possibility of a re-election only one of the commissioners (the ombudsman for the Rights of National and Ethnic Minorities) serving in the first term was even nominated and re-elected for a second term. (In 1998 also the Government has been changed.)

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

Independence is guaranteed through three means. First, the Parliamentary commissioners are elected by the two third majority of the Members of Parliament. Second, the funding is ensured by law, the Office of the Parliamentary Commissioners has their own chapter in the state budget. The offices of the four independent Commissioners, both for financial and practical reasons, have been integrated



into a common organizational structure, which ensures the conditions of independent decision-making and performing of tasks for the Commissioners. Third, the mandate of the parliamentary commissioners is established by the Constitution and in separate statute, which requires the two third majority of the MP's present.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

The Council of Europe periodically request information from the Hungarian government about the compatibility of the domestic law in the specific fields covered by international undertakings. The European Committee against Racism and Intolerance (ECRI) monitors the local implementation of the Convention through its country visits in every four year. The Human Rights Department of the Ministry of Justice examines whether the draft legislation is in accordance with the European Human Rights Convention, and the similar department of the Ministry of Foreign Affairs does the same work in relation to the UN Conventions. Thus, any incompatibility with international treaties ratified by Hungary shall be revealed during the drafting process.

The Hungarian Constitution declares that Hungary accepts the generally recognised rules of international law and ensures that domestic law be in conformity with its obligations assumed under international law.

It is within the jurisdiction of the Constitutional Court to review the conformity of domestic law with international undertakings. The Parliament, its standing committee, any member of the Parliament, the President of the Republic, the Government, or any of its members, the President of the State Audit Office, the Chief Justice or the Chief Prosecutor may initiate the procedure; and it could be an ex officio proceeding as well.

If the norm under review has the same or a lower rank than the legal norm under which the treaty has been promulgated, it will be annulled.

If the norm however has higher rank, the Constitutional Court can choose between two options: 1) it can require the body responsible for the execution of the treaty to change the treaty within the specific time period, or 2) it can require the responsible lawmaking agency to conform the internal legal norm to the treaty within a specific time period.

**Question 3. Existence of a national plan of action on fundamental rights.**

**Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

There is no such a national plan of action. According to the Ministry of Justice may be the new anti-discrimination law regulating the duty of the Government to enact an Equal Opportunity Programme will offer an opportunity to prepare such a plan, at least on this field.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanism, if any, have been set up in your State to ensure compliance with the judgments by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties?**

There is no specific mechanism established for the implementation of the decisions of the international organs. The Hungarian Government during the implementation of the Eur. H.R. Ct. judgments follows the guidelines of the Committee of Ministers. Furthermore, the Ministry of Justice follows the development of the case-law of the Court, and draws attention to those problems of the Hungarian legal system that might result in future violations. E.g. as a result, in the end of 2003 the Parliament modified the Code on Civil Procedures introducing a new remedy for the exceeding of reasonable time.

The implementation of the decisions of the International Court of Justice as well as the concluding observations of UN committees belongs to the Ministry of Foreign Affairs.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional) have been solved.**

There are no significant problems in the co-operation between the national and regional level. The affairs relating to the European Convention on Human Rights belong to the Human Rights department in the Ministry of Justice. The Government agent informs the Ministry of Foreign Affairs on a case-by-case basis, there is no institutional way of co-operation.

**4.3. If the national institution for the protection of human rights monitors such compliance/follow-up, please specify through which means.**

There has been no specific institution set up for the follow-up. (The parliamentary commissioners have no such jurisdiction.) The compliance of legislation with the international human rights instruments is monitored by the Constitutional Court. (see Question 2)

**4.4. If civil society organisations are involved in the monitoring such compliance, please specify this.**

Non-governmental organisations follow the implementation of decisions delivered in cases where the members of the organisation have been involved, as advisors or legal representatives. No civil society organisation has been established yet that would focus specifically on the monitoring of compliance.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

The Constitutional Court, established by the comprehensive amendment to the Constitution in 1989, is also a very important protector of fundamental rights. Besides the already mentioned examination of conformity of legislation with international treaties the Court's jurisdiction includes *inter alia* preliminary review of enacted but not yet promulgated statutes, constitutional review of enacted norms, review of unconstitutional omission of legislation, and interpretation of the constitution. Retrospective norm control can be initiated by anyone, even if they are not affected by the regulation in question. In such a motion the petitioner can suggest the full or partial nullification of the legal regulation or statute challenged. By such an *actio popularis*, any statute or even administrative

regulations (for example, ministerial degrees) can be challenged. Retrospective norm control can be initiated also by judges of the ordinary court. Such judges can suspend any case pending before them and initiate proceedings before the Constitutional Court, if they consider the legal provisions to be applied in the case unconstitutional. Although the Court also has the jurisdiction to decide on constitutional complaints, but only in cases of unconstitutional laws implemented by the ordinary courts. This means that the Constitutional Court also within this jurisdiction is to review the constitutionality of the laws, while in case of infringement of fundamental rights or in case of objections to state decisions one may present a claim at the ordinary courts. So, on the one hand Hungary has a Constitutional Court with an exceptionally wide jurisdiction in abstract review of laws, and on the other, there exists no «real» constitutional complaint in order to protect infringed fundamental rights.



# **IRELAND**

## **Question 1. Existence of a national institution for the protection of human rights.**

**Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

The Irish Human Rights Commission was established by statute (the Human Rights Commission Acts, 2000 & 2001) in July 2001.

### **1.2. Describe**

#### **a) The composition of such national institution;**

The Commission has 15 members, including a President.

#### **b) Its powers;**

Its powers are set out in Section 8 of the Human Rights Commission Act, 2000 and are as follows:

- to keep under review the adequacy and effectiveness of law and practice in the state relating to the protection of human rights;
- if requested by Government, to examine any legislative proposal and report its views on any implications of such proposal for human rights;
- to consult with such national or international bodies or agencies having a knowledge or expertise in the field of human rights as it sees fit;
- either of its own volition or on being requested to do so by the Government, to make such recommendations to the Government as it deems appropriate in relation to the measures which the Commission should be taken to strengthen, protect and uphold human rights in the state;
- to promote understanding and awareness of the importance of human rights in the state and, for those purposes, to undertake, sponsor or commission, or provide financial or other assistance for, research and educational activities;
- to conduct enquiries (in accordance with Section 9 of the Human Rights Commission Act, 2000);
- to prepare and publish, in any manner it sees fit, reports on any research and enquiries carried out by the Commission;
- to act as amicus curiae in proceedings involving human rights before the High and Supreme Courts;
- to establish and participate in a Joint Committee with the Northern Ireland Human Rights Commission;
- to provide, in certain circumstances, legal advice and/or representation to persons involved in legal action relating to the protection of human rights;
- to institute legal proceedings in its own name to vindicate the human rights of individuals or groups of persons based on the Irish Constitution or an international treaty or convention which has been given the force of law within the state.

#### **c) Its working methods;**

The Commission, in its start-up phase, established approximately 15 Committees and Advisory Groups. Some of these were established to deal with issues connected with the establishment of the Commission or human rights issues of specific concern at the time. There are now four thematic committees dealing with the administration of justice, economic, social and cultural rights, gender and women's rights and racism as well as other committees dealing with research, approach to work and

casework. The Commission has a full-time staff of 11 who work under the direct control of the Chief Executive. The Commission President also serves in a full-time capacity.

**d) Its achievements.**

To date, the Commission has produced a range of written submissions on legislative proposals, reports and has co-sponsored a number of public events on human rights issues. It also initiated a public consultation process on its Strategic Plan (covering the period 2003-2006) in 2003. In December 2003, it moved to a new premises which was officially opened by An Taoiseach (the Irish Prime Minister). On 29<sup>th</sup> January, 2004 it approved a Business Plan for the year 2004. The Commission has not yet been involved in litigation (in its own name or as an *amicus curiae*) but it has established a clear set of criteria upon which to make decisions on whether or not to engage in litigation.

**1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

While there was considerable concern about this matter at the time of appointment of the Commission (arising from the initial failure of the Government to appoint those recommended by an independent Selection Committee) the Commission has exercised its powers and functions with admirable independence. It has criticised Government actions and proposals in a number of sensitive areas and has made constructive proposals for reform, some of which have been adopted in legislative proposals. The Commission has also demonstrated a capacity to work in partnership with other statutory bodies and NGOs and is developing a healthy public profile as an authoritative and responsive institution with considerable credibility.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

‘Human rights-proofing’ of legislative proposals takes place, at the drafting stage, in the Office of the Attorney General. Sponsoring government departments may also comment on the compatibility of legislative proposals with international human rights obligations. The Irish Human Rights Commission has a full-time Senior Legislation & Policy Review Officer (with an Assistant). The Commission has a statutory function (discussed above) to comment, upon the request of a government Minister, on the compatibility of legislative proposals with domestic and international human rights obligations but it can also, of its own motion, make recommendations on measures to strengthen and promote human rights in the state. The Commission has exercised both of these powers since its establishment in the course of the legislative process and its representatives have also appeared before parliamentary committees to explain the Commission’s comments on legislative and other proposals.

In this connection, it should be noted that no formal system of parliamentary scrutiny of legislation for human rights compatibility exists and the opportunity to institute such a system was not availed of in the legislation to give further effect to the ECHR in Irish law (European Convention on Human Rights Act, 2003). A Human Rights Sub-Committee (under the aegis of the Oireachtas Foreign Affairs Committee) does exist but its focus is largely human right and foreign policy. Otherwise, issues of domestic human rights concern usually arise for consideration by the Oireachtas Committee on Justice, Equality, Defence and Women’s Rights.

**Question 3. Existence of a national plan of action on fundamental rights.****3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

The state does not prepare a national plan of action on fundamental rights in general but it does have a series of national action plans on specific issues of thematic concern such as women's rights, racism (awaited), poverty etc. The Irish Human Rights Commission has published a Strategic Plan for the period 2003-2006.

**3.2. What is the typical content of such a plan?**

N/A

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

N/A

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.****4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

The responsibility for ensuring compliance with the judgments of the European Court of Human Rights or follow-up in relation to UN Committees rests with the Legal Unit of the Department of Foreign Affairs. It is not clear what formal mechanisms, if any, exist for this purpose and much will depend on the issues involved in individual cases or periodic reports.

Because Ireland has a dualist system in its constitutional provision for international law, decisions of international courts (such as the European Court of Human Rights) cannot be enforced in the Irish courts if they conflict with provisions of Irish law. Similarly, if an adverse finding is made in respect of Ireland under the Optional Protocol to the International Covenant on Civil and Political Rights the Irish courts can refuse to give effect to such finding as the ICCPR does not have legal effect in the jurisdiction.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

These issues are usually dealt with by a variety of inter-departmental committees with a central co-ordinating role for the Legal Unit of the Department of Foreign Affairs. For certain thematic reporting mechanisms, other government Departments co-ordinate the preparation of state reports (e.g. for CERD the lead role is taken by the Department of Justice, Equality & Law Reform).

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

As a recently established institution there have been limited opportunities for the Irish Human Rights Commission to monitor compliance and engage in follow-up activities. The Commission is, however, making an independent submission to the relevant UN Committees in relation to Ireland's most recent periodic reports under CERD and CEDAW. It is also completing a follow-up submission to Government on the latest CPT Report (2003) in which it analyses the Government's response thereto.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

A number of civil society organisations actively engage with international mechanisms for the protection of human rights in the preparation of Shadow Reports and other issue-specific written and oral submissions. All of the major UN mechanisms (ICCPR, ICESCR, CRC, CEDAW and CERD) have benefited from the involvement of such NGOs.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

As well as the Irish Human Rights Commission there are a number of other statutory agencies charged with the protection and enforcement of fundamental rights (by direct or indirect means) through a variety of mechanisms. These include: the Equality Authority, the National Disability Authority, the Health & Safety Authority, the National Consultative Committee on Racism and Inter-culturalism, the office of the Ombudsman and Information Commissioner, the Data Protection Commissioner and other agencies with specific mandates.



# ITALY

## Question 1. Existence of a national institution for the protection of human rights.

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

In Italy an institution for the protection of human rights that fulfils the requirements of the U.N. Resolution 48/134 of December 20<sup>th</sup> 1993 has not yet been set up.

### **1.2. Describe**

#### **a) The composition of such national institution;**

N/A

#### **b) its powers;**

N/A

#### **c) its working methods;**

N/A

#### **d) its achievements.**

N/A

### **1.2. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

N/A

## Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

The compliance with the international obligations in the field of human rights is mainly ensured by the jurisdictional authorities in Italy: they give direct application to the international treaties, in particular to the ECHR, and when the Italian legislation conflicts with the ECHR they try to interpret the Italian law in such a way as to conform to the international principles.

The International treaties – ECHR included – don't rank at the constitutional level in Italy, because they are considered at the same level of the laws approved by the Parliament. That is the reason why the Constitutional court doesn't have the power to declare nul and void the Italian legislation that conflicts with the international treaties. Nevertheless, the Constitutional court takes in serious account the international instruments for the protection of Human rights and usually interprets national laws "in the light" of the European Convention of Human Right and of other international agreements on human rights.

In a word, we can say that in Italy the techniques for the respect of international provisions on Human rights are *ex post*, *jurisdictional* and *interpretative*.

No serious control *ex ante* is ensured by the Italian institutions.

In order to improve the compliance to the international agreements on Human rights the Committee of human rights has been set up in 1978 (Decree of the Minister of Foreign Affairs, 15.2.1978, n. 519 modified by the Decree of 13.6.1997, n. 2960). This Committee is part of the Government. Within its members are represented: the Prime minister, all the Ministers involved in the protection of human rights (such as foreign affairs, internal affairs, justice, education, health, ect.), the Carabinieri, the National Council for Economy and labour, the national institute of statistics, the Italian commission for UNESCO, the Italian society for international organisation (SIOI), and three important persons committed in the field of human rights, appointed by the Minister for foreign affairs.

The governmental Committee of human rights is not endowed of significant powers. Its main function is to prepare every year a report, the first part of which describes Italy's activities in the protection of human rights on the international stage, and the second one points out the areas where the most important violations of human rights occur in Italy. This report is presented to the Parliament.

### **Question 3. Existence of a national plan of action on fundamental rights.**

#### **3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

No plan of action on human rights is envisaged in the Italian system.

#### **3.2. What is the typical content of such a plan?**

N/A

#### **3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

N/A

### **Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

#### **4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

Law n. 89 of 2001 (legge Pinto) is a specific legislation enacted in order to comply with art. 6, par. 1 of the ECHR, concerning the reasonable time of the process. This law recognise the right to compensation for the damages deriving for violation of art. 6, par. 1 of ECHR, and this right is justiciable before the national judges. This is the only specific mechanism provided by the Italian legal system. It deserves great attention since the violations of art. 6, par. 1 are the main causes of condemnation of Italy by the Court of Human Rights of Strasbourg. No general instrument for ensuring the effective compliance of the judgements of the Court of Strasbourg has been set up.

#### **4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

N/A

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

N/A

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

N/A

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

As has been described above, the Italian system does not provide any specific institution for the elaboration of a policy on fundamental rights. The system is oriented to jurisdictional and *ex post* guarantees, ensured both by ordinary judges and by the Constitutional Court.



# LATVIA

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

Yes. Its name is the National Human Rights Office (*Valsts cilvēktiesību birojs*).

### **1.2. Describe**

#### **a) The composition of such national institution;**

The Office was established on 18 July 1995 on the basis of the Cabinet of Ministers Regulations on the National Human Rights Office (NHRO). Regulations were adopted in accordance with Article 81 of the *Satversme* (Constitution) which attributes the Cabinet of Ministers with limited legislative powers. Subsequently, the *Law on the National Human Rights Office* was adopted by the *Saeima* (Parliament) on 5 December 1996<sup>3</sup>.

The Law specifies that the NHRO is a public law legal person. The *Satversme* does not provide for the NHRO. It is therefore that in accordance with the institutional system of Latvia, as determined by the *Satversme*, the NHRO cannot be an independent State institution. The Law provides that it is an independent public law institution, but this should be understood as functional independence since the statutory laws cannot create new independent institutions that are not provided in the Constitution. That would simply be unconstitutional. Legally, therefore, the Office is, at least, indirectly subordinated to the government which in accordance with Article 58 of the *Satversme* has the competence to carry out State administration. In other words, even if the 1996 Law attempts to pronounce on the independence of the Office, this lies uncomfortably with the division of competencies between institutions in the *Satversme*. The need to amend the Constitution in this respect has been mentioned, but there is a strong resistance against touching the Constitution all too often.

The Director of the Office is appointed by the *Saeima* upon the proposal of the Cabinet of Ministers. The *Saeima* also takes a decision on firing the Director. The status of the Director is equal to that of a Minister. This clearly contributes to the functional independence of the Office. The deputy director and the staff members of the NHRO are appointed by the Director. Currently, the Office has X departments.

#### **b) Its powers;**

The NHRO monitors the observance of human rights in Latvia, as they are provided for in the *Satversme* and international human rights treaties binding on Latvia. In doing so, it has the competence

- to inquire into any complaint related to the abuse of human rights;
- to immediately react to facts of human rights violations and, on its own initiative, determine reasons which may have caused such violations;
- to monitor respect for human rights in the country, especially in the areas concerning the vulnerable groups of the society;
- provide information to the society on human rights;
- prepare national programmes with an aim to ensure and strengthen respect for human rights in the country;

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<sup>3</sup> Likums par Valsts cilvēktiesību biroju, Latvijas Vēstnesis [Official Gazette], No. 221, 17.12.1996.

- examine regularly the compliance of national legal acts with human rights; in case of conflict submit applications to the Constitutional Court;
- prepare quarterly reports on the situation with respect for human rights in Latvia.

**c) its working methods;**

The investigation of complaints:

The Office has the right to request necessary information from any state and municipal institution and physical or legal persons who may be aware of information relating to the complaint on the violation of human rights under investigation.

In order to determine the circumstances of each case and establish relevant facts, the Director of the Office shall hear explanations by the Parties and other persons, opinions of specialists, and he/she examines other information essential for the investigation of a complaint in essence.

The Office shall provide equal opportunity for both Parties to present their arguments. When investigating a complaint, the Office is entitled to resolve the conflict by conciliation. The conciliation is signed by the Parties and approved by the Director of the Office. The Director of the Office does not approve a conciliation of the Parties if it is not in accordance with the law, or if it violates the rights or legal interests of third persons. The Office is entitled not to disclose information on a person submitting a complaint or any other person, if necessary for the protection of the rights of the individuals. The Office cannot investigate a complaint, if a Court verdict has already come into legal effect in a civil, criminal or administrative case concerning the violation of human rights indicated therein and reached against the same person and for the same violation.

If conciliation cannot be reached, the Office advises the Parties in writing of its opinion and proposals in the form of recommendations.

The Office presents its suggestions and recommendations for the prevention of violations of human rights and forwards them to the relevant public institution or an official. The official to whom the proposal is forwarded shall reply to the Office in writing within one month.

Monitoring and research:

The Office studies the human rights situation in the country as a whole and especially in areas concerning the vulnerable groups in the society.

The NHRO also investigates the observance of human rights in the country, analyses Latvia's legislation and its compliance with international human rights documents. Opinions and comments usually generate great interest among the media. They are made public.

The NHRO is taking part in the drafting process of various legislative acts. It submits proposals as to their compliance with human rights norms and principles. There is a good co-operation between the Office and the Human Rights Commission of the Parliament in the discussions on the draft legislation. Otherwise, the Office can influence the observance by the State of human rights through the submission of applications to the Constitutional Court. The NHRO can only submit such applications when XXXX.

The Office regularly informs the *Saeima* and the Cabinet of Ministers of its activities, provides reports on human rights issues in Latvia and prepares recommendations to improve the situation.

Information and education:

In order to provide information to the public on human rights and to promote the understanding and recognition of these rights, the Office prepares and distributes information on human rights guaranteed by the laws and international commitments of Latvia. The Office publishes informational materials, organises seminars, round tables on the topical human rights issues and keeps the media informed.

The representatives of the NHRO visit state, municipal, educational and penitentiary institutions, other organizations. They visit the regions of Latvia with the aim to evaluate the human rights situation and to make the Office more accessible to all residents of the country.

The Information and Documentation Center of the NHRO offers a broad range of literature and documentation in the realm of human rights to students, civil servants and other visitors.

**d) Its achievements.**

The most important area of the NHRO activities is the review of complaints about the violations of human rights. The NHRO receives complaints in written form (by ordinary mail, e-mail, personally) and provides oral consultations. In the period from 1996 to 2002 the NHRO reviewed 27 116 applications; out of these there were 5 378 written applications, and 21 738 oral consultations were provided. The majority of the applications deal with violations of the right to housing and social security, which attests to the topicality of social issues in the country. A significant portion of the applications relate to the right to a fair justice.

In 2003, the NHRO received 1437 written complaints and gave 3332 oral consultations. NHRO managed to influence a number of draft normative acts and took part in the proceedings of the Constitutional Court.

**1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

As pointed out under 1.2 (a), the legal independence remains a problem since the Office's independence is not protected in the *Satversme*.

In view of the Office itself, the NHRO is an independent state institution. The Office maintains that the degree of political independence in the decision making process is high. The budget of the Office is adopted as the separate budget line in the state budget through an ordinary procedure (through Ministry of Finance). The Office acknowledges that a more direct involvement at the level of the Cabinet of Ministers or the *Saeima* would be more in line with the need to ensure its independence.

The NHRO has contributed its comments from a human rights perspective on topical issues to the mass media, it has publicized its conclusions and opinions, which have undoubtedly promoted further the understanding of human rights among the general public.

Contribution to the protection and promotion of human rights is made within the limitations of the budget resources (the budget for the year 2003 is 287 028 USD.)

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

Each draft legislation is accompanied by an annotation in which the authors to submit whether any international law standards are applicable and how is the proposed draft meeting their requirements. **There is no separate comment on human rights standards required.** Even the Ministry of Justice in its statute has not indicated that it has to assess draft bills from the point of view of their compliance with human rights<sup>4</sup>.

The representatives of the NHRO regularly participate in the meetings of the Human Rights Commission of the Parliament in the discussions on the draft legislation and present their opinions and proposals to the other Commissions of the Parliament.

Human rights experts are, in principle, invited to participate in working groups on draft legislation concerning human rights norms.

It is the opinion of the expert of the Network, which seems to be shared by the Office, that the area of legislative process is weak as concerns the assessment of draft legislative initiative and their compliance with human rights. There is an urgent need to establish more relevant procedures and obligations thereof.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

In 1995 the Government adopted a *National Programme for the Protection and Promotion of Human Rights in Latvia*. One of the chief objectives of the Programme was to establish an independent institution for these goals. The adoption of the Programme was largely sponsored by the UNDP, the Council of Europe and the OSCE. It was not well understood nor was the local 'ownership' extended to these developments by the Latvian politicians. The adoption of the Programme and the Office was seen as something to be carried out so as to obtain membership in relevant international organisations. The lack of true understanding of a need for such a programme and a relevant institutional framework has affected the work of the Office and explains those weaknesses that have partly been mentioned in answers to the questions above.

At the moment, the Cabinet of Ministers may prepare more specific and narrow programmes, if that is required by the European Commission. In 2001, the Government adopted *Conception on Gender Equality*. The *National Programme against Intolerance* is in the process of elaboration.

**3.2. What is the typical content of such a plan?**

N/A

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<sup>4</sup> Ministru kabineta Noteikumi: Tieslietu ministrijas nolikums, Nr. 243, 29.04.2003.



**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

There has never been an evaluation of the 1995 Programme.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

The Institution of *Representative of the Government of the Republic of Latvia before International Human Rights Organizations* has been established in 1998<sup>5</sup>. One of the tasks of this institution is to monitor the implementation of legally binding decisions and observations and recommendations adopted in respect of Latvia by international human rights bodies. Usually special working groups (inter-institutional + experts + NGO-s) on the implementation of judgments and/or concluding observations are created by the Government.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

As for draft legislative bills, it is the responsibility of the institution, an author, of the bill to co-ordinate among all the ministries, departments and other State institutions. As for the preparation of reports to international human rights institutions, the responsible institution is the Government Representative. As for the preparation of the State argumentation in the European Court of Human Rights, it is also the responsibility of the Government Representative. Often, the Ministry of Foreign Affairs or the Ministry of Justice is entrusted with relevant tasks and in that case they would be responsible for co-ordination. If however a particular civil servant has not consulted with relevant institution this may be detected either at the Cabinet of Ministers level or in the Parliamentary commission. This, of course, requires the understanding and political will of the politicians. This remains difficult in the areas touching upon human rights.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

The NHRO refers to judgments and concluding observations in its opinions and recommendations to the Government and the Parliament. This is typically used method in any other task carried out by the Office.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

Some NGO-s are very actively participating in the State mechanisms as well as monitoring and reporting on their own initiative.

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<sup>5</sup> Noteikumi par Ministru kabineta pārstāvēšanu starptautiskajās cilvēktiesību institūcijās, Latvijas Vēstnesis [Official Gazette], No. 73/74, 19.03.1998.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

For the moment, it seems that the Constitutional Court remains the most effective mechanism for the protection of human rights in Latvia. It is true that it only determines the scope and content of a specific human right as it may apply in relation to a normative act challenged in front of the Court. It does not per se develop a comprehensive human rights policy, but it is an important element since, at least, the politicians listen to the court.

Unfortunately, the NHRO has not undertaken the comprehensive development of, or at least an assessment, of the existing system of human rights protection in Latvia. It is therefore that there is no general picture or an overview of the available mechanisms and procedures as to their relevance for a better protection of human rights. It is clear from above that there is a need for an assessment and the proposals for a better framework for the protection of human rights. One element of such a framework would be relevant obligations of the Government and the Parliament in assessing the human rights component in the legislative process.

The knowledge or the information about EU fundamental rights and their possible inter-action with the EC law and national law is practically non-existent. In view of these limitations, it is early to say that there is an interest by some politicians to make this an issue in the policies that they would pursue.

# **LITHUANIA**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

Following the practice of many European and world countries, the Seimas (Parliamentary) Ombudsmen's Office, or the institution protecting human rights, was established in Lithuania on 8 December 1994.

Article 73 of the Constitution of the Republic of Lithuania stipulates:

“The Seimas Ombudsmen shall examine complaints of citizens concerning the abuse of powers by, and bureaucracy of, State and local government officers (with the exception of judges). The Ombudsmen shall have the right to submit proposals to the court to dismiss guilty officers from their posts.

The powers of the Seimas Ombudsmen shall be established by law. As necessary, the Seimas shall also establish other institutions of control. The system and powers of said institutions shall be established by law.”

The Seimas Ombudsmen (according to the Law – 5) investigate complaints regarding abuse of office or bureaucracy of officers of state and local authorities. There are also 2 offices of special ombudsmen: Equal Opportunities Ombudsman's (established by the Law in 1998) and the Controller (ombudsman) for the Protection of the Rights of the Child (established by the Law in 2000).

### **1.2. Describe**

#### **a) the composition of such national institution;**

N/A

#### **b) its powers;**

N/A

#### **c) its working methods;**

N/A

#### **d) its achievements.**

The Seimas Ombudsmen are appointed for the term of 4 years by the Seimas. Lithuania has 5 Seimas Ombudsmen: 2 Ombudsmen for the investigation of activities of state institutions and 3 for the investigation of activities of local government officers. One of the ombudsmen is appointed as the head of the Seimas Ombudsmen's Office and in addition to his direct ombudsman's also performs administrative functions.

The Seimas Ombudsmen have equal rights and duties in investigation of complaints. Each of them may function independently in passing decisions.

The Law on the Seimas Ombudsmen establishes that the Seimas Ombudsmen investigate citizens' complaints concerning the abuse of office and bureaucracy of officers of state government and administration institutions, local government and military institutions, and institutions ranking as such.

The Seimas Ombudsmen do not investigate activities of the President of the Republic, members of the Seimas, the Prime Minister, the Government (as a collegial institution), judges of the Constitutional Court, Supreme Court and other courts, legality and validity of procedural decisions of prosecutors, investigators and officers conducting inquiry, municipal councils (as collegial institutions).

The Seimas Ombudsmen do not investigate complaints arising from the labour legal relations and other complaints that are subject to court investigation. They do not investigate complaints about the legality and validity of court decisions, judgments and rulings.

Article 5 of the Constitution of the Republic of Lithuania says that state government institutions shall serve people. However practice shows that this has not been consolidated in everyday activities of state government and local government officers. This is proved by citizens' complaints about abuse of office and bureaucracy of officers.

In more than eight years of the Seimas Ombudsmen's Office functioning, the problems set forth in citizens' complaints have not changed essentially. Complaints about restoration of ownership rights to land and buildings (they account for 20 percent of all complaints filed against officers of state institutions, and more than half are valid), complaints about correction institutions, prisons (about 30 percent) and activities of police officers and prosecutors (around 15 percent) are the most usual. Complaints about household taxes and other household problems, social issues and infringement of official ethics are lodged against officers of municipal institutions. Officers of state and municipal institutions who misinterpret, misuse and infringe regulations of laws and other legal acts cause the greatest discontent among the residents.

Every citizen, even a stateless person, has a right to file a complaint with the Seimas Ombudsman. Legal assistance at the Seimas Ombudsmen's Office is free of charge. Thus, it is the cheapest and generally available way to protect one's rights.

Tens of visitors come to the reception-room of the Seimas Ombudsmen's Office per day. They receive legal assistance, can lodge a complaint or have a complaint written. Occasionally, a complaint may be solved at once when a person is advised to visit a specific institution or a problem is analyzed without any difficulties, while sometimes the problem should be investigated in more detail.

The Seimas Ombudsmen's Office analyzes about two thousand complaints per year, half of which are reasoned. The Seimas Ombudsmen, upon completing the complaint investigation and having proved it to be valid, decides upon a decision following the principles of lawfulness, impartiality and transparency. The Law on the Seimas Ombudsmen establishes decisions passed by the Ombudsman to be recommendatory.

The Seimas Ombudsman's recommendation to abolish or make a decision, to eliminate violations of law, their causes and circumstances must be considered by the institution or the officer to whom the recommendation is addressed. Usually the officers or the institution present information about execution of decisions made by the Seimas Ombudsman or present a reasoned proof why the decisions are not executed. Around 70 percent of recommendations of the Seimas Ombudsmen are taken into consideration.

The Law on the Seimas Ombudsmen entitles the Seimas Ombudsmen to submit proposals to the Seimas, the Government and other institutions on amending and supplementing laws or normative documents restricting human rights.

The Seimas Ombudsmen do not limit their activities only to the control of abuse of office and bureaucracy. They are also engaged in the educative-preventive work, i.e. receive people in regions and consult on legal issues.

Seeking for transparency, the Seimas Ombudsmen must be accountable not only to the Seimas, as it is established by the Law, but also prepare activity reports, inform the community about the ascertained facts of violation of human rights, deliver speeches during various events, on the radio and other mass media.

The competence of 2 special ombudsmen in their respective areas is much broader: they deal with the complaints against various subjects, not only state and municipal servants. Equal Opportunities Ombudsman exercise similar functions for complaints of gender discrimination and sexual harassment. A new Law on Equal Opportunities (adopted in November 2003) forbids any immediate and indirect discrimination based on various grounds, not just gender. The Equal Opportunities Ombudsman is expected to oversee the implementation of the law. The Children's Rights Ombudsman controls the implementation of relevant laws and conventions, oversees children's rights protection institutions, investigates complaints, and advises the government on improving the protection and legal interests of the child.

The Ombudsmen's offices is an important instrument in protection of human rights and freedoms, control of the work of state and local government institutions.

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

The degree of independence of the Ombudsmen institutions and their contribution to the protection of human rights is rather high. Certain problems still exist as regard the lack of traditions to respect recommendatory decisions, and certain difficulties for the institution providing for non-judicial remedy to find the right place within the system of other legal institutions.

## **Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

According to the Statute of the Seimas the drafts of legal acts presented to the Seimas have to be verified on their compliance with the European Convention on Human Rights. This is an obligation of the initiators of the legal act. A special opinion on the issue could be obtained from the European Law Department under the auspices of the Government. The Seimas Committee on Human Rights undertakes the parliamentary control on the compliance of the drafts of legal acts with the Lithuanian obligations in the field of human rights.

## **Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

In order to make further progress and to lead the way in following international human rights obligations, Lithuania opted for development of a National Action Plan for the Protection and Promotion of Human Rights (a National Human Rights Action Plan), as recommended in the Vienna

Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993, within the framework of the global Human Rights Strengthening (HURIST) programme.

A project of UNDP support to the development of the National Human Rights Action Plan was signed between the Chairman of the Parliament of the Republic of Lithuania and the UNDP Resident Representative on 2 April 2001.

The National Human Rights Action Plan was approved by a resolution of the Parliament of the Republic of Lithuania No. IX-1185 of 7 November 2002. This is the first national plan on human rights.

However, significant improvement of the human rights situation is only possible if the Human Rights Action Plan will be successfully and effectively implemented, a consistent system of monitoring human rights situation in Lithuania established, and a mechanism for continuous dialogue between the authorities and the civil society on the improvement of the human rights situation developed.

On 16 December 2002, the Chairman of the Seimas of the Republic of Lithuania, Mr. Artūras Paulauskas, and the Resident Representative of the United Nations Development Programme, Ms. Cihan Sultanoglu, signed the programme "Support to the implementation of the National human rights action plan" (LIT/02/005) (thereinafter Programme).

The implementation of the programme started on 1<sup>st</sup> January 2003. 5 institutions have been responsible for the implementation of the Programme: the Ministry of Justice, the Ministry of Social Security and Labour, the Ministry of Education and Science, the Ministry of Interior and the Chancellery of Parliament.

The most important Programme achievements in 2003 are mentioned below:

- The draft Law on Legal Status of Aliens was prepared **seeking to increase the effectiveness of safeguarding the rights of refugees**. The Law was also harmonized with the provisions of EU Acquis.
- While **improving the protection of the rights of disabled persons**, a series of measures has been prepared, namely, "Individualized model of general education programs for children with special needs", "Professional education program for school children with special needs", "Procedures for provision of services for children with special needs in educational institutions", "Procedures for provision of compensatory educational home equipment to persons with special needs". A representative sociological survey was conducted in June 2003 to analyze the attitude of Lithuanians towards disabled people and the effectiveness of their rights protection. Results of the survey and a report "Status evaluation of the disabled people in Lithuania" were presented at the workshop organized by Association of Lithuanian Disabled Forum and European Disabled Forum (23-24 June 2003) and at a national conference "Blindness in different cultures" (2-3 October 2003, Vilnius).
- According to one of the Programme objectives - **to improve rights protection of elderly people** - an analysis of current situation with regards to the elderly population (demographic tendencies, labour market policy measures, employment and training possibilities) was carried out. A survey "Training and occupation opportunities for the elderly" was conducted, based on which an "Action plan for training and employment generation for the elderly" was prepared and approved. Its main provisions were presented and discussed at a public roundtable organized by the Ministry of Social Security and Labour, November 26, 2003.
- **Seeking to increase public awareness with regards to consumer rights**, a methodology for consumer opinion research was prepared; a representative consumer opinion survey and its analysis were carried out. Results of the research were presented to relevant state institutions at a conference organized by Confederation of Industrialists, published by media, placed in the Web page of the Programme. While **seeking to improve the quality provision of services**

**and assure quality guarantees**, draft amendments to legal acts related to consumer rights were prepared and presented to the public through a series of TV and radio programs.

- In order to improve the **quality and timeliness of labour disputes examination**, a research on possibilities to establish Labour Courts in Lithuania was carried out in September 2003. Its results, as well as experience of other countries were discussed at a round-table meeting in November 2003.
- New edition of Patients Rights Law as well as related compensation mechanisms for the damage to their health were drafted in order to **increase the quality of health care and safeguarding the rights of patients**. Proposed amendments were discussed at a round-table meeting in November 2003.
- **Seeking to reinforce the legal instruments for protection of women's rights and stop the violence against women**, a book "Sexual harassment: innocent flirt or disturbance of human rights" was drafted and published. The main aim of this book is to provide readers with popular explanation what sexual harassment means in legal interpretations and explain sexual harassment cases investigation methodology. The book was widely distributed and presented to public at 10 regional seminars around the country. In addition, amendments to legal acts on victims of violence were drafted and discussed at a round-table discussion "Fighting violence against woman: amendments to legal acts" in October 2003.
- In the framework of Programme, draft amendments to legislation for **prevention of trafficking in human beings** were developed and presented for expert evaluation. General information packages about legal acts on victims of trafficking in human beings were prepared and distributed widely throughout all counties of Lithuania.
- **Seeking to increase possibilities for the public to obtain information from state authorities and municipal institutions**, draft amendments to the Law on Right to Receive Information from State and Municipal Institutions were prepared and presented for expert evaluation. With an aim to **strengthen capacities of the public to participate in local self-governance**, a round-table discussion was held in Druskininkai in November 2003, where comments and suggestions on how to enhance public participation were discussed.
- A national programme for fight against intolerance, racism, xenophobia and homophobia and an action plan was prepared in order to assure **protection of vulnerable groups against discrimination**. With the same purpose a representative sociological survey and a study "Manifestations of intolerance, xenophobia and homophobia in Lithuania's society" were conducted and are to be presented at the round-table discussion. A public information campaign against intolerance and discrimination was carried out through a series of TV and radio programs with a participation of experts and people from most vulnerable social groups.
- **Seeking to increase effectiveness of institutional human rights protection system**, monitoring of all institutions involved in the protection of human rights was conducted. Based on the monitoring results, a publication about the national and international institutions engaged into protection of human rights is prepared for publishing.
- **With an aim to establish a continuous system for monitoring of human rights situation in Lithuania**, victimological survey and a study "Evaluation of victimization of Lithuanian population, law enforcement institutions, and public safety" were carried out. Based on the study, a publication will be prepared and published.
- In the framework of Programme, **Lithuanian Human Rights Centre** organized a series of seminars related to **legal training and education of judges and other officials of law enforcement institutions** on the rights of the accused and the imprisoned, paying particular attention to the improvement of qualification of officers of the police, prosecution and the Special Investigation Service. 3 seminars were conducted on the "Rights of the Accused and the Imprisoned Persons" (in Trakai (2) and Mažeikiai) and a seminar "Rights of Imprisoned Persons" in Vilnius. Two seminars for education of judges were held in Birštonas (24 October 2003) and Vilnius (15 November 2003). In order to strengthen capacities of civil society organizations to engage into constructive dialogue with the government, 10 workshops "National Human Rights Action Plan and Civil Society" were organized in various cities of

Lithuania (Molėtai, Anykščiai, Pasvalys, Šiauliai, Naujoji Akmenė, Alytus, Vilkaviškis, Trakai, Prienai, Kėdainiai).

Seeking to continue the activities successfully launched the Chairman of the Seimas of the Republic of Lithuania, the Resident Representative of the United Nations Development Programme, and Chancellor of the Parliament, signed the [programme "Support to the implementation of the National human rights action plan" for 2004-2005](#).

### **3.2. What is the typical content of such a plan?**

Plan deals with the measures for the implementation of human rights in specific areas. The plan was designed in the light of the report on human rights in Lithuania (report has been made on the basis of the workshops in the regions and analytical work of the experts) and the findings of public opinion polls. Each chapter of the plan specifies a problem and provides for measures to resolve it along with deadlines and responsible institutions.

### **3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

For the evaluation and co-ordination of the implementation of the Plan the Commission for co-ordinating implementation of the National Action Plan for the Protection and Promotion of Human Rights has been set up. The commission is composed by the representatives of the institutions responsible for the implementation of the programme, non-governmental organisations and experts. One of the tasks of the plan was to create a monitoring of human rights system in Lithuania. For this reason a systematic evaluation of public attitudes towards the level of protection of various human rights has been planned.

## **Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

### **4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

As regards the implementation of the judgements of the European Court of Human Rights the law provides for the procedure of the compensations to the victims of the violation of the European Convention on Human Rights. The special provisions of the Code of Criminal Procedure and the Code of Civil Procedure entitles a number of subjects to initiate the renewal of the proceedings after the recognition of the Court of the violation of the Convention. As regards the follow-up of the concluding observations of other monitoring bodies the respective ministries and other agencies are responsible for their implementation. The Seimas Committee on Human Rights undertakes the general parliamentary control on the compliance of legal acts and practise with the Lithuanian obligations in the field of human rights. European Law Department under the auspices of the Government delivers its opinions on the compliance of the legal drafts with the European Convention on Human Rights.

### **4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

As was mentioned above, the Seimas Committee on Human Rights undertakes the general parliamentary control on the compliance with the Lithuanian obligations in the field of human rights. The Ministry of Foreign Affairs has certain function of co-ordination of the reporting obligations to various monitoring bodies.



**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

The ombudsmen's institutions when making proposals and recommendations to the authorities often invoke the practise of the monitoring bodies of the international treaties on human rights.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

The National Human Rights Action Plan provides for more systematic involvement of civil society organisations in such monitoring process. For example, the representatives of non-governmental organisations participate in the work of the Commission for co-ordinating implementation of the Plan.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

The implementation of the National Human Rights Action Plan and, as a consequence, more specific attitude towards human rights, gives expectations that it will contribute significantly to the elaboration of a fundamental human rights policy.



# **LUXEMBOURG**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Est ce qu'une institution nationale de protection des droits de l'Homme a été établie dans votre Etat conformément aux Principes de Paris adoptés par l'Assemblée générale des Nations Unies en 1993 ?**

La Commission consultative des Droits de l'Homme existe depuis trois ans. Elle a été instituée en vertu d'un règlement adopté par le Conseil de Gouvernement lors de sa séance du 28 avril 2000.

### **1.2. Veuillez décrire:**

#### **a) La composition de cette institution nationale;**

La Commission est composée de vingt-deux membres qui proviennent de divers horizons. Ils sont choisis, pour un terme renouvelable de trois ans, en raison de leurs compétences en matière de droits de l'homme ou de questions de société.

#### **b) Ses pouvoirs;**

La Commission est un organe consultatif du Gouvernement, chargé d'assister de ses avis et études le Gouvernement sur toutes les questions de portée générale qui concernent les droits de l'homme sur le territoire du Grand-Duché de Luxembourg. Elle émet ses avis et élabore ses études à la demande du Gouvernement, mais également de sa propre initiative (auto-saisine). En outre la Commission assume le rôle de correspondant de l'Observatoire européen des Phénomènes racistes et xénophobes qui a son siège à Vienne. La Commission avise également le rapport de la Commission nationale pour la protection des données (Loi du 2 août 2002).

Ni ONG ni organe de Gouvernement, la Commission est indépendante. Ses travaux sont publics.

#### **c) Ses méthodes de travail;**

La Commission fonctionne en sous-commissions, à savoir, les sous-commissions "Education", "Discrimination", "Problèmes institutionnels" et en groupes "ad hoc", notamment les groupes "Droits des enfants", "Expulsions" et "Perquisitions". Les groupes "ad hoc" sont institués pour examiner des problèmes ponctuels qui sont souvent urgents. Ainsi p. ex. , 3 membres de la Commission ont établi en 2003 un rapport d'une visite du 24 janvier 2003 du Centre de séjour provisoire pour étrangers en situation irrégulière.

#### **d) Ses réalisations / résultats.**

Depuis sa création, la Commission a émis les avis suivants:

- 1/2000 Avis sur le projet pour une Charte des droits fondamentaux de l'Union européenne
- 1/2001 Avis sur le projet de loi n° 4735 relatif à la protection des personnes à l'égard du traitement des données à caractère personnel
- 2/2001 Avis concernant l'éducation des Droits de l'Homme
- 1/2002 Avis sur le projet de loi n° 4137 relatif à la promotion des droits de l'enfant et la protection sociale de l'enfance
- 1/2003 Avis sur "L'expulsion et le refoulement du territoire des étrangers en situation irrégulière"
- 2/2003 Avis sur "les perquisitions du 31 mars 2003 et leurs conséquences"

Ces avis ont été remis au Premier Ministre et au Ministre de tutelle concerné par les avis respectifs. Ensuite, ils ont été présentés au public lors de conférences de presse.

En outre, la Commission se prononce par voie de communiqué de presse (21 mars 2001 concernant "Les demandeurs d'asile et le droit au travail"). Elle a régulièrement des entrevues et réunions de travail avec des membres du gouvernement et des institutions internationales (p.ex. ECRI (2002), Commissaire des droits de l'homme du Conseil de l'Europe (2004)).

La Commission édite chaque année son rapport annuel retraçant le travail effectué. Ce rapport est transmis au Gouvernement, à la Chambre des Députés, au Conseil d'Etat et à la presse.

La Commission organise également des colloques, comme p. ex. le colloque des 13 et 14 décembre 2002 sur "la discrimination".

Les avis et les communiqués de la Commission peuvent être consultés sur Internet: [www.gouvernement.lu](http://www.gouvernement.lu)

### **1.3. Comment évaluez-vous le degré d'indépendance de cette institution et sa contribution à la protection et à la promotion des droits fondamentaux au sein de votre Etat?**

La Commission est totalement indépendante. Son indépendance contribue à la protection et à la promotion des droits fondamentaux.

### **Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Quelles techniques sont utilisées pour assurer que la législation et la réglementation adoptées dans votre Etat sont conformes aux engagements pris par votre Etat en matière de droits fondamentaux? Cette conformité est-elle vérifiée avant la rédaction et l'adoption de la législation et de la réglementation et, le cas échéant, par quels moyens est-elle vérifiée?**

La Commission émet ses avis généralement avant l'adoption du texte.

### **Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Est ce que votre Etat prépare un plan d'action national annuel ou périodique sur les droits fondamentaux? Le cas échéant, comment ce plan est-il préparé? Quels acteurs sont impliqués ou consultés?**

Non

**3.2. Quel est le contenu habituel d'un tel plan?**

Sans objet.

**3.3. Quelle évaluation est faite de la mise en œuvre de ce plan à la fin de la période pour laquelle il a été adopté?**

Sans objet.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Quels mécanismes spécifiques, s'il en existe, ont été mis en place dans votre Etat pour assurer le respect des jugements de la Cour européenne des droits de l'Homme ou le suivi des observations finales des Comités établis par les traités des Nations Unies en matière de droits de l'homme ?**

Les décisions d'organes internationaux sont respectées. En matière pénale, un arrêt de la Cour européenne des droits de l'homme peut donner lieu à une procédure de révision.

**4.2. Veuillez préciser la façon dont ont été résolus les problèmes de coordination entre les différents départements ministériels ou les différents niveaux de pouvoir (national, régional,...).**

Pas de problèmes spécifiques de coordination.

**4.3. Si c'est l'institution nationale pour la protection des droits fondamentaux qui contrôle cette conformité ou/et ce suivi, veuillez indiquer les moyens utilisés.**

Pas d'institution nationale, à l'exception de la Cour constitutionnelle, si un problème de constitutionnalité d'une loi est en cause. Elle statue par voie d'exception sur question préjudicielle posée par une juridiction.

**4.4. Si des organisations relevant de la société civile sont impliquées dans le contrôle de cette conformité, veuillez le préciser.**

Pas d'implication officielle.

**Question 5. Original mechanisms for the protection of human rights.**

**Veuillez indiquer ci-dessous tout autre commentaire que suscite, à la lumière de l'expérience acquise au sein de votre Etat, la lecture des questions identifiées ci-dessus. En particulier, veuillez décrire les dispositifs originaux qui contribuent à l'élaboration de la politique des droits fondamentaux dans cet Etat.**

Pas de commentaire spécifique.



# MALTA

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

No particular national institution with the competences and responsibilities mentioned in the Paris Principles adopted by the United Nations General Assembly in 1993 has been set up. Within the Maltese national system, protection and promotion of fundamental rights is carried out on the one part through the traditional judicial system, and on the other by the Ombudsman's Office and civil society organisations.

None of the above mentioned have the competence to act on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter related to the promotion or protection of human rights. However, according to Section 242 of the Code of Organisation and Civil Procedure *"When a court, by a judgment which has become res judicata, declares any provision of any law to run counter to any provision of the Constitution of Malta or to any human right or fundamental freedom set out in the First Schedule to the European Convention Act, or to be ultra vires, the registrar shall send a copy of the said judgment to the Speaker of the House of Representatives, who shall during the first sitting of the House following the receipt of such judgment inform the House of such receipt and lay a copy of the judgment on the table of the House."*

On the other hand, encouragement to ratify international human rights instruments, to harmonise national legislation and practices with these instruments and to implement the obligations undertaken therein are matters done informally through the civil society organisations.

### **1.2. Describe**

#### **a) The composition of such national institution;**

N/A

#### **b) Its powers;**

N/A

#### **c) Its working methods;**

N/A

#### **d) Its achievements.**

N/A

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

N/A

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

The office of the Attorney General is that office responsible for the drafting and review of national legislation. At times this function is also given to specifically appointed commissions. However, we are not aware that a specific department or commission exists to review the compliance of national legislation with the State's international undertakings. Where such undertakings have been implemented into domestic law, this review takes place through the courts. In reality, this is not actually a review but the possibility may exist of obtaining a decision invalidating legislation that does not comply with the European Convention for the protection of human rights and fundamental freedoms.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

No such plan is prepared.

**3.2. What is the typical content of such a plan?**

N/A

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

N/A

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

An official mechanism is only found in relation to the implementation of the judgment delivered by the European Court of Human Rights. According to Section 6 of the European Convention Act<sup>6</sup> a decision delivered by the European Court may be executed by the national Constitutional Court in the same manner as those decisions given by this national court, and this upon an application presented to it by the individual concerned. That application must be served on the Attorney General and must ask the national Constitutional Court to give execution to the judgment delivered by the European Court. The national Constitutional Court will execute such a decision only if it finds it to be dealing with an issue that falls within the declaration made by the State under Article 46 of the European Convention.

Mechanisms to implement the concluding observations of UN committees set up under the UN human rights treaties do not exist.

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<sup>6</sup> Chapter 319 of the Laws of Malta



**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

N/A

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

N/A

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

N/A

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

In view of the replies given to the other questions we do not see that any meaningful reply can be given in relation to Malta. There is no national institution for the protection of human rights separate and distinct from the Courts of law and the other functions of the State. Human Rights policy is therefore developed through the action of the parliamentary and government institutions as well as through the decisions of the Courts and the Ombudsman. There is no original mechanism in Malta separate and distinct from the above to evolve a State human rights policy.



# **THE NETHERLANDS**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

In 1999 the NGO 'NJCM' (*Nederlands Juristen Comité voor de Mensenrechten*, the Dutch section of the International Commission of Jurists) called for the establishment of a national human rights commission. This initiative received support from the National Ombudsman and was carried forward by several members of Parliament. In 2001 the Ministers of Justice and Home Affairs indicated that, while they applauded the initiative and agreed that such a commission could have an added value, further study was required (*Kamerstukken II*, 2001-2002, 28000 VI, No. 38). The Government's starting point was that in the Netherlands human rights are already protected at a high level whereas a number of institutions involved in the promotion of human rights already exist. If, therefore, a new human rights commission were to be established, duplication of tasks would have to be avoided. The Ministers indicated that they intended to present in the spring of 2002 a preliminary draft for the establishment of a human rights commission.

To date, however, no such draft has been published. On the contrary, the current Government has indicated in a letter to NJCM, of 10 December 2003, that it is now looking for a solution that is in line with the Government's general policy to deregulate and to simplify the system of advisory bodies. It is therefore unlikely that a national human rights commission will be set up in the Netherlands in the near future.

### **1.2. Describe**

#### **a) The composition of such national institution;**

Not applicable

#### **b) Its powers;**

Not applicable

#### **c) Its working methods;**

Not applicable

#### **d) Its achievements.**

Not applicable

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

Not applicable

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**2. Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

In 1992 the Prime Minister issued the *Aanwijzingen voor de regelgeving* [Directives for Law-making] which apply to those who are involved in the drafting of acts and other regulations of the *rijkssoeverheid* [central authorities]. The Directives were most recently revised in 2000. The need to ensure compliance with international human rights standards is addressed in *Aanwijzing 18* [Directive 18] – that is to say, not in the text itself but in its annex:

When drafting regulations it shall be determined whether and if so how freedom to regulate the matter in question has been restricted by superior rules.

Explanation: These may include international or European Community legislation, constitutional regulations, legal principles and - in the case of regulations laid down by order in council or ministerial order - rules embodied in an Act of Parliament (in the formal sense). As far as international rules are concerned, mention should be made in particular of European standard-setting, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. [...]

Accordingly, the persons charged with the preparation of draft legislation and regulation are at the same time responsible to ensure that the new rules will be compatible with international human rights standards. In addition the Minister of Justice ought to review the constitutionality of draft acts. The *Raad van State* [Council of State, *Conseil d'Etat*], in giving advisory opinions to the Government on draft legislation, also pays attention to this issue.

It should be noted that, in practice, no systematic reference to relevant international human rights instruments is made in the explanatory memoranda that accompany the bills that are submitted to Parliament. It is therefore not always possible for the public to ascertain whether human rights were taken into account when the bill was prepared.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

No.

**3.2. What is the typical content of such a plan?**

Not applicable

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

Not applicable

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

Since 2002 the Minister of Foreign Affairs, in consultation with the Minister of Justice, submits to Parliament every year a short review of the case-law of the European Court of Human Rights. The review is limited to statistical information (number of cases against the Netherlands), short summaries of judgments in cases against the Netherlands as well as cases where the Netherlands intervened. In theory the review would also include judgments that, in the view of the Government, should lead to amendment of Dutch legislation. In practice this has not yet occurred.

The reviews do not attract a lot of attention inside or outside Parliament; they are not officially published in the *Kamerstukken* [Parliamentary records] but recorded as letters to Parliament.

No similar procedure exists in connection to views adopted by the committees set up under the UN human rights treaties. On some occasions, where the views adopted in individual cases (or the concluding observations concerning periodic reports) related to sensitive issues, Parliament has extensively discussed the matter with the Government – but this is not a standard practice. It should be added that the Government has sometimes reported, of its own motion, about the conclusions and recommendations of, for instance, the European Committee on Social Rights – but again these letters were not officially published in the *Kamerstukken* and received little or no attention.

When a Member of Parliament asked the Government, in 2001, to see the questions that the UN Committee on the Elimination of Discrimination against Women (CEDAW) had raised in connection with the Dutch periodic report, the Dutch Government was quick to submit both the questions and the answers (*Handelingen II*, 2000-2001, No. 1171) – but the case illustrates that the Government does not submit this information automatically.

For these reasons an editorial in *NJCM-Bulletin*, the Dutch human rights law review, called upon Parliament to pay attention to the activities of international human rights bodies in a much more structural way (*NJCM-Bulletin* 2002, pp. 3-5). No change has occurred yet.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

Whereas an ‘inter-departmental’ working body has been established to follow the developments of Community law (including the case-law of the ECJ), no similar body exists to analyse the Strasbourg case-law.

The Dutch ‘agent’ to the European Court of Human Rights, who is located within the Ministry of Foreign Affairs, is responsible for co-ordinating the Dutch position each case against the Netherlands brought before the Strasbourg Court.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

Not applicable.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

Some NGOs, such as NJCM, usually produce a *schaduwrapport* [alternative report] to accompany the official periodic reports that the Netherlands submit to the UN supervisory bodies. Both the Dutch

Government and the Dutch delegations appearing before these UN bodies have always encouraged and facilitated this practice.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

It is worth mentioning that the drafting of the Dutch periodic reports to the UN Committee on the Elimination of Discrimination against Women (CEDAW) is preceded by the publication of a comparable report for domestic purposes. This 'pre-report' is presented to Parliament with a view to a discussion that may feed into the final report as submitted to CEDAW. Thus, the 4<sup>th</sup> Dutch periodic report, which will be submitted in 2004, was preceded by a 'national periodic report' that was submitted to Parliament on 22 December 2003.

# **POLAND**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

In Poland, the institution whose task it is to safeguard the liberties and rights of citizens as set out in the Constitution and in other legal acts, is the Ombudsman. The Ombudsman shall investigate whether, due to any action or abstention on the part of organs, organisations or institutions responsible for the observance and implementation of those rights and liberties, the law and principles of societal life and social justice have been infringed. This institution has been established by the Constitution and its scope and mode of operation is specified in the Act of 15 July 1987 on the Ombudsman (unified text: the Official Journal, 2001, No. 14, item 147).

The institution that safeguards children's rights, as specified in the Constitution and in other legal acts, is the Ombudsman for Children. The legal basis for the activity of the Ombudsman for Children has been specified in the Constitution and its scope and mode of operation are set out in the Act of 6 January 2000 on the Ombudsman for Children (the Official Journal of 2000, No. 6, item 69).

### **1.2. Describe**

#### **a) The composition of such national institution;**

##### The Ombudsman

The Ombudsman is appointed by the Sejm (the lower chamber of the Polish Parliament) for a five-year term of office. The Ombudsman carries out his or her tasks with the assistance of the Office of the Ombudsman, which consists of teams dealing with special subjects.

##### The Ombudsman for Children

The Ombudsman for Children is appointed by the Sejm for a five-year term of office. The Ombudsman carries out his or her tasks with the assistance of the Office of the Ombudsman for Children.

#### **b) Its powers;**

##### The Ombudsman

The Ombudsman, having become acquainted with each application received and admitting a case, may carry out his/her own inquiries, demanding access to files or information on the status of issues under consideration.

After a case is examined, the Ombudsman may convey it to the appropriate agency, organisation or institution or to a superior body, present opinions and conclusions as to how the case could be settled, and may also demand that disciplinary proceedings be instigated. The Ombudsman may demand that judicial proceedings be initiated, may participate in cases pending and lodge a cassation appeal against each final judgment.

The Ombudsman may lodge proposals for a legislative initiative with the relevant governmental agencies, may approach the Constitutional Tribunal on matters of conformity of statutory laws, international treaties and other legal regulations with the Constitution and may participate in the

proceedings before the Tribunal. He/she may approach the Supreme Court asking for an interpretation of the law.

#### The Ombudsman for Children

The Ombudsman for Children undertakes actions to protect children's rights. He/she may approach public authorities, organisations or institutions and request explanations and necessary information as well as access to files and documents. The Ombudsman can request that certain actions be taken for the welfare of children.

The Ombudsman for Children may also address appropriate organs and ask for a legislative initiative or for issuing or changing certain legal acts.

#### **c) Its working methods;**

##### The Ombudsman

The Ombudsman deals with a case either on request of a person or on his/her own initiative. He/she may take up the case, instruct the applicant as to whatever action the person is entitled to take, convey the case accordingly to another competent institution, or refuse to deal with the case. In the framework of his/her competencies the Ombudsman co-operates with human rights non-governmental organisations.

##### The Ombudsman for Children

The Ombudsman for Children deals with a case on request of a person or takes actions for the welfare of children on his/her own initiative.

#### **d) Its achievements.**

##### The Ombudsman

From the date that the Ombudsman Institution started functioning ( 1 January 1988) until the end of 2003, 699,186 cases were submitted. In the fourth quarter of 2003, the proceedings in 3,363 cases were completed, out of which 16.9% ended with a positive result.

Various societal actions are undertaken on the initiative of the Ombudsman. The activities of the Ombudsman significantly influence the state of protection of human and citizens' rights in Poland.

##### The Ombudsman for Children

Every year, several thousand cases concerning the protection of children's rights find their way to the Office of the Ombudsman for Children.

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

##### The Ombudsman

The Ombudsman Institution is independent from other state institutions in its activities and reports solely to the Sejm. The Ombudsman cannot be called to criminal responsibility or be deprived of liberty without the previous consent of the Sejm. Every year the Ombudsman submits a report of his/her activities and on the situation of human and citizens' rights to the Sejm and the Senate. The activities of the Ombudsman are financed from the central budget.



The Ombudsman for Children

The Ombudsman for Children is independent from other state institutions in its activities and reports only to the Sejm, without whose consent he/she cannot be called to criminal responsibility or deprived of liberty.

The Ombudsman for Children cannot hold any other office or pursue other professional activities. Neither can he/she act publicly in a way incompatible with his/her duties and with the dignity of this position.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

The Constitution of the Republic of Poland guarantees respect for human and citizens' rights. All statutory laws and legal regulations of a lower rank have to be compatible with the Constitution and with the ratified international instruments. During the legislative process different institutions, such as the Sejm's Commission for Justice and Human Rights, have an influence on the final content of adopted acts. In 2003, 56 draft laws were sent to the Commission.

During the legislative process in the parliament, the following persons are invited to participate: the Ombudsman, the Government's Plenipotentiary for Equal Status of Men and Women, representatives of the Department of International Co-operation and European Law of the Ministry of Justice and other experts, including representatives of non-governmental organisations. In cases involving significant human rights issues they express their opinions on the draft and its conformity with the Constitution and international human rights standards. The representatives of these institutions may present their opinions and request that legislative action be taken.

During the legislative process the President may request the Constitutional Tribunal to examine the conformity of the law adopted by the Parliament with the Constitution. The President can refuse to sign an act declared by the Tribunal to be incompatible with the Constitution.

The existing legislation and the final judgments of courts in individual cases may be questioned before the Constitutional Tribunal which issues judgments inter alia in cases involving the conformity of acts and international treaties with the Constitution and the conformity of laws with ratified international treaties. The possibility also exists to lodge an individual constitutional complaint with the Constitutional Tribunal.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

Such a plan is not prepared.

**3.2. What is the typical content of such a plan?**

N/A

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

N/A

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

The Polish authorities have not introduced any special mechanisms to ensure compliance of the Polish law and practice with judgments of the European Court of Human Rights. The principles contained in the Constitution and in respective laws should be applied. According to Art. 91 of the Constitution an international treaty ratified upon the statutory consent takes priority over the ordinary law if the treaty is incompatible with that law. Judgments of the European Court of Human Rights influence the interpretation of the law by the Polish courts.

One of the methods to ensure compatibility of the Polish law with judgments of the European Court of Human Rights is the adoption of new regulations or the initiation of amendments to the existing regulations. Another possibility to ensure compliance of the Polish law with judgments of the European Court of Human Rights is the procedure before the Constitutional Court.

In the Code of Criminal Procedure a provision exists which indicates that the decision of international judicial organs is one of the reasons to re-open criminal proceedings. (Art. 540 para. 3 of the Act of 6 June 197, Code of Criminal Procedure, the Official Journal, 1997, No. 89, item 555 as amended).

Despite this, there is no special, fully effective mechanism to ensure compliance of the law and practice with decisions of the European Court of Human Rights.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

The work is carried out on the basis of consultations between departments.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

The Ombudsman can approach adequate institutions with the request to take a legislative initiative or to issue or amend laws on matters concerning human rights.

The Ombudsman can lodge cassation appeals to the Supreme Court or to the Supreme Administrative Court and to raise matters concerning the conformity of legal provisions with ratified international instruments in the Constitutional Tribunal.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

Non-governmental organisations in Poland are involved in monitoring and influencing the legislative process. Various governmental consultative bodies deal with human rights issues. They are composed, inter alia, by representatives of human rights non-governmental organisations, eg. the Consultative Law Committee of the Ministry of Foreign Affairs or Actions for Public Good Council.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

It is crucial to ensure that the different sectors of society and in particular lawyers are familiar with any important developments in the case law of the European Court for Human Rights and other international human rights bodies. In Poland this material is widely publicised in the national language, not only in the specialised periodicals but also in the daily press or on the Internet.



# **PORTUGAL**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

There exists, in Portugal, no Human Rights Commission, within the meaning of the Paris Principles. However, the Portuguese Constitution of 1976 received the Ombudsman, called *Provedor de Justiça* – literally “provider of justice”- whose statute was developed, first by Law No. 81/77, as of November 22, 1977, and latter by Law No. 9/91, as of April 9, 1991<sup>7</sup>.

### **1.2. Describe**

#### **a) the composition of such national institution;**

The Ombudsman disposes of a structure of support, first called *Serviço do Provedor de Justiça* and now *Provedoria de Justiça*, which is divided into the Staff of Assessors and the Technical and Administrative Services.

The 25 Assessors of the Ombudsman and respective 5 co-ordinators are freely appointed by the Ombudsman and are grouped in five areas of matters:

- I. Political and Constitutional matters, rights, freedoms and safeguards; Urban Planning and Environment; Culture and Media; Hunting and Fishing; Tourism and Games.
- II. Financial matters; Economics, Employment and Consumers' Rights.
- III. Social matters: Education, Social Security, Health, Minors and Sport.
- IV. Administrative organisation and civil servants' matters.
- V. Judicial and Penitentiary matters; National Defence; Internal Security; Traffic; Civil Status and Notary.

#### **b) Its powers;**

Under the terms of the Constitution, the Ombudsman is an organ of the State elected by the Parliament whose main functions shall be to defend and promote the rights, freedoms, safeguards and legitimate interests of the citizens, and secure through informal means that the exercise of public powers shall abide by justice and the law.

The Ombudsman shall exercise his functions notably with respect to the activities of the central, regional and local public administration, the Armed Forces, public institutes, public enterprises, enterprises the largest share of whose capital stock is publicly owned, enterprises that are concessionaires of public services or exploit property in the public domain.

According to article 2, number 2 of its Statute, the activity of the Ombudsman may also extend to the relations between private persons, which involve a special relationship of dominion, in the scope of the protection of rights, liberties and safeguards. This is probably the most innovative aspect of the scope of action of the portuguese Ombudsman, as it has enabled him to exercise a wider mandate than the typical, classical Scandinavian model would allow for.

Any citizen may submit to the Ombudsman claims concerning actions or omissions of the public powers. The Ombudsman shall examine the claims and address to the relevant bodies such recommendations as he seems fit to prevent or redeem injustice; the Ombudsman appreciates **the**

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<sup>7</sup> <http://www.provedor-jus.pt/welcome.htm>

claims without the power to take decisions on their matters, but only to address to the relevant bodies such recommendations as he deems fit to prevent or redeem injustice.

It lies within the Ombudsman's competence:

- To address to the competent organs recommendations aimed at correcting illegal or unfair acts of public authorities, or aimed at improving the services of the latter;
- To point out shortcomings in the law and accordingly to make recommendations concerning the interpretation, amendment or repeal of the relevant provisions, as well as to make suggestions for new legislation; such findings, recommendations and suggestions shall be forwarded to the Speaker of the Parliament, the Prime Minister and the Ministers directly involved, and, where applicable, to the Speakers of the Regional Legislative Parliaments and the Presidents of the Governments of the Autonomous Regions;
- To give an opinion on any matter pertaining to his activities, upon request from the Parliament;
- To promote the widespread knowledge of (1) the substance and the meaning of each of the fundamental rights and freedoms, (2) the objectives of his office, (3) the competencies and jurisdictional reach of his office and (4) how to obtain access to it;
- To intervene, under the terms of the applicable law, for the safeguard of collective and diffuse interests where a public entity is involved.

The Ombudsman is a member of the Council of State, the formal organ, advising directly the President, who is democratically elected.

Under the terms of Article 281, paragraphs 1 and 2 (d), of the Constitution, the Ombudsman is empowered to request the Constitutional Court to pass a ruling on the unconstitutionality or illegality of any rules made by public entities.

Under the terms of Article 283, paragraph 1, of the Constitution, the Ombudsman is empowered to request the Constitutional Court to take a stand and pass a ruling on unconstitutionality by omission. The recommendations addressed by the Ombudsman to the Parliament or to the Regional legislative Parliaments are published in their respective official journals.

In the performance of his duties, the Ombudsman has the following powers:

- To visit for the purpose of inspection, with or without notice, any place of activity of the central, regional and local administration, including civil and military public services and prisons, and any entities subject to his control; to give hearings to officials of these respective organs and request from them such information and documents as he deems fit;
- To undertake such investigations and inquiries as he deems necessary or convenient; he may for that purpose use any reasonable ways and means of collecting and producing evidence, provided that such means do not impinge upon legitimate rights and interests of the citizens;
- To search, in co-operation with the competent bodies and services, the solutions that more adequately serve the purposes of safeguarding the legitimate interests of the citizens and improving the activities of the administration.

The Ombudsman's powers to act and intervene shall not be affected by judicial and non judicial remedies provided by the Constitution or the law, pending or not pending<sup>8</sup>. The Ombudsman reports

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<sup>8</sup> The Ombudsman is not, however, empowered to quash, repeal or reform decisions of public authorities; his interventions shall not suspend the computation of time limits, in particular procedural time limits established for judicial or administrative appeals. The organs of supreme authority [i. e., the President of the Republic, the Parliament, the Government and the Courts of Law], the Regional Legislative Parliaments and the Regional Governments shall not be subject to the Ombudsman's control and supervising powers, save insofar as their administrative activity, as well as the acts that they perform in supervising the administration, are concerned. Any claims relating to judicial activities, where they do not fall outside the Ombudsman's scope of activities,

yearly to the Parliament on his activities, his initiatives, the complaints received, the actions undertaken and the results obtained; the report shall be published in the official journal of the Parliament. If he deems fit, and at their request, the Ombudsman may participate in the work of parliamentary committees for the purpose of dealing with matters within his competence

**c) Its working methods;**

The Ombudsman discharges his duties, either in response to claims submitted to him by one or several citizens, or, on his own initiative, in response to facts that come to his notice by any other means.

Most importantly, claims addressed to the Ombudsman are not subject to any requirements concerning a direct, personal and legitimate interest on the part of the claimant, nor to time limits.

Claims may be submitted orally or in writing and may take the form of a letter; claims must include the identity and the address of the claimant and if possible his signature.

The claims submitted orally shall be officially written down into a formal document that the claimant, where possible and provided he is able to do it, must sign. Claims may either be handed in directly to the Ombudsman or handed to any Public Prosecutor; in the latter case the claim shall be immediately forwarded to the Ombudsman. Where a claim is not submitted in proper terms, its replacement shall be ordered. There exists also, since some years, the possibility of filing a complaint through the internet, which has certainly contributed to a wider recurrence to the *Provedor de Justiça*.

A preliminary examination of claims shall be made with a view to deciding upon their admissibility. Manifestly unfounded or "mala fide" claims shall be dismissed immediately.

The investigation carried out by the *Provedor de Justiça* consists of requests for information, inspections, examinations, inquiries or any other procedures that are reasonable and do not impinge upon fundamental rights of the citizens; it shall be undertaken through informal and expeditious means and compliance with the procedural rules applicable to the producing of evidence shall not be required.

Measures within the investigation process shall either be carried out by the Ombudsman and his collaborators or, at his request and if necessary with priority and urgency, by the Public Prosecutors or any other public entity.

It shall be the duty of any organ or official of a public entity, both civil and military, to provide the Ombudsman with all the information and clarification that the latter might request from them. At his request, both civil and military public entities, shall fully co-operate with the Ombudsman; such co-operation shall include producing information notes, undertaking inspections through those services competent to do so, making documents and files available for examination or deposit with the Ombudsman.

The Ombudsman may stipulate, in writing, a time limit of not less than 10 days, which an urgent request present by him must be fulfilled.

The Ombudsman shall be entitled to order any civil servant, any official of any public entity and any incumbent of any organ subject to his control, to be present at his seat, or at any other place according to circumstances, with the object of co-operating with him as required; any such order addressed to any of these persons shall be conveyed through the proper authority.

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shall be dealt with through the Higher Council of the Bench, the Higher Council of the Public Prosecution or the Higher Council of the Administrative and Fiscal Courts, as applicable.

Non compliance by an official of the central, regional or local public administration, the armed forces, a public institute, a public enterprise, an enterprise the largest share of whose capital stock is publicly owned or an enterprise that is concessionaire of public services or exploits property in the public domain with the duty to co-operate provided for, if unjustified, amounts to a crime of disobedience and, where applicable, may be subject of disciplinary proceedings.

Where the Ombudsman deems that a judicial or administrative remedy especially provided by the law is available to the claimant, he may limit his intervention to directing the claimant to the competent entity. In any case, the Ombudsman shall always keep the claimant informed of the judicial remedies available to the latter.

In less serious and not repetitive cases, the Ombudsman may limit his intervention, either to cautioning the organ or the services involved, or to closing the matter upon receiving explanations. If sufficient evidence of criminal, disciplinary or regulatory offences come to the notice of the Ombudsman during the procedure, the latter shall accordingly inform, as the case may be, either the Public Prosecutor, or the authority that is competent on grounds of hierarchy to start disciplinary or regulatory proceedings.

Where circumstances so require, the Ombudsman may decide to issue "communiqués" or publish information concerning the conclusions reached in cases or any other matter pertaining to his activity, if necessary through the State owned mass media; in any event, he shall benefit in accordance with the law from the rules concerning the publication of official "communiqués".

The Ombudsman's recommendations shall be addressed to the organ, which has the powers to correct the irregular act or situation. The organ to which a recommendation is addressed must, within sixty days, inform the Ombudsman of the stand it has taken on the issue. Decisions not to follow a recommendation must be substantiated. If a recommendation is not followed or the Ombudsman does not meet with the co-operation due to him, he may address himself to the superior authority. If the executive organ of the local authority does not comply with the recommendations of the Ombudsman, he may address himself directly to the respective deliberating assembly. If the Administration should not act in accordance with his recommendations or if it should refuse to co-operate as requested, the Ombudsman may address himself to the Parliament stating the reasons for his initiative. The Ombudsman shall always inform the organs and officials involved, as well as the claimants if applicable, of his conclusions.

Besides this, the portuguese Ombudsman has created two phone line special services: *Recados da Criança* (Messages from Children) and *Linha do Cidadão Idoso* (Phone Line of the Elderly). They are aimed at aiding to solve problems presented by children, the elderly or their legal representatives, of any kind: be it a child custody or a right to alimony that has been attributed, but is not complied with, or even a right to a particular social benefit, that has unduly not been granted, situations of poverty, deprivation, isolation, in relation to which the State has a duty of protection. After hearing the message, the *Ombudsman* liaises with the involved public actors and private persons and is generally particularly effective in relation to the inertia of public bodies.

#### **d) Its achievements.**

In general, one may fearlessly state that the *Provedor de Justiça* is an organ that has always had, since its institution in Portugal, a high degree of success. Presently, around 86% of its decisions are accepted and complied with by the public bodies concerned, in due time. At times, he takes decisions concerning private actors, such as insurances' companies and banks and these also receive a prompt reply. This is partially due to the dignity and weight of the persons, who have been, so far, appointed, but also to his working methods, in which a first phase of investigation is carried out, without any public exposure or pre-judgement of the behaviour of the entity concerned.



The referral of legislation to the Constitutional Court has also enabled the Ombudsman to cover some gaps, in particular, in relation to legislation already in force, namely by drawing the Court's attention to situations of inequality, generated by a narrow drawing of the circle of beneficiaries of some social benefits, that left out similar cases of need.

The area of activity, in relation to which the Ombudsman has been, unfortunately, less successful, relates to his capability to compel public powers to start structural changes in some fields of society. *E.g.* the successive portuguese *Ombudsmen* have inspected regularly portuguese jails; recently, in 2003, the *Provedor de Justiça* in office presented an exhaustive and utterly well documented report on the situation of each of the 55 portuguese jails, establishing various violations of the rights of detainees: of access to health, of complaint against solitary confinement and above all, an already known situation of extreme overcrowding, excessive and unjustified recourse to preventive detention and frightening rates of AIDS incidence. The reports of the previous years met with the inertia of public authorities; the latter, because it advised that wings with free access to drugs should be studied as a method of combating the spread of AIDS and inter-prisoner violence, met with the unfortunate rejection of the Ministry of Justice who, immediately afterwards, saluted another report produced by the study group on the reform of the prison system, much softer in tone, and half of which consists in a worthless historical account of the evolution of the legislative framework on the field.

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

#### Degree of Independence:

The Statute of the Ombudsman provides for a set of guarantees of independence of the holder in office. Article 1, number 1 provides that: under the terms of the Constitution, the Ombudsman is an organ of the State elected by the Parliament whose main functions shall be to defend and promote the rights, freedoms, safeguards and legitimate interests of the citizens, and secure through informal means that the exercise of public powers shall abide by justice and the law. Article 1, number 2 states that: In exercising his functions, the Ombudsman shall enjoy total independence. The Ombudsman shall be appointed by the Parliament, by a two thirds' majority of the Members present where that majority is larger than the absolute majority of the Members entitled to vote. The appointment may only fall upon a citizen who fulfils the conditions required to be elected a Member of the Parliament and who enjoys a well-established reputation for integrity and independence. The Ombudsman shall take up functions before the Speaker of the Parliament. The Ombudsman shall be appointed for a period of four years and may be re-appointed only once, for the same period of time. His term of office having reached an end, the Ombudsman shall nevertheless remain in office until his successor takes up functions. The appointment shall take place within the last thirty days of the term of office of the incumbent Ombudsman. Once appointed, the Ombudsman is independent and irremovable; his functions shall not be discontinued before the end of his term of office. The Ombudsman shall not be answerable, either on civil or on criminal law grounds, for the recommendations or remarks that he makes, the opinions that he gives, or the acts that he performs in the exercise of his functions.

The Ombudsman shall not be arrested or imprisoned without the authorisation of the Parliament, except for commission of a crime that carries a prison sentence of over three years, for which he is caught in "flagrante delicto".

Where criminal proceedings are moved against the Ombudsman and the latter is definitively accused, the Parliament shall decide whether or not to suspend him from office so that the proceedings can be continued, save in the case of a crime punishable with a prison sentence of over three years. In such a case, the imprisonment of the Ombudsman carries with it the suspension of the latter from office during the time of imprisonment. The Ombudsman shall be subject to the same rules on incompatibilities that apply to the acting magistrates of the courts of law. The Ombudsman may not exercise any function within the organs of political parties or associations, nor may he engage in partisan activities of a public nature.

The Office of the Ombudsman has an annual budget prepared according to its organic law. The budgetary appropriations of the Office of the Ombudsman figure in the budget of the Parliament. For the purpose of authorising expenses, the Ombudsman shall have ministerial powers.

The contribution of the Ombudsman to human rights' protection, in Portugal, has been very good, as we have stated, in relation to individual cases, bearing in mind, in particular, the extreme lengthiness of justice and courts, in general. In what concerns some needed structural changes, the *Ombudsman* has certainly very well fulfilled a watch-dog and investigative mission, greatly contributing to public awareness; however, public authorities have not always acted with the urgency the problem would require.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

There is no special mechanism to ensure legislation complies with international undertakings in the field of human rights. Under Article 8º, nº 2 of the Portuguese Constitution, rules contained in duly ratified and approved international conventions apply in national law as soon as they are officially published and hence must be applied by Portuguese courts as long as they remain in force, in other words, as long as Portugal is bound by them at the international level. The Constitution does not regulate expressly the hierarchical position of international conventions in relation to national laws. However, since they may be subject to the control of constitutionality, it is generally assumed they have an infra-constitutional character. In principle, they should not be derogated from unilaterally by an internal merely legislative act; however, in the absence of a general rule, conflicts would have to be decided on a case-by-case basis, considering their content and the nature of the convention and that of the legislative act: the normative strength of the latter may be diverse, as there are, e.g., acts of Parliament which require a qualified majority for their approval.

It must be emphasized that, in this context, Article 16.2 of the Constitution provides that constitutional provisions and laws relating to fundamental rights must be construed and interpreted in accordance with the Universal Declaration of Human Rights. This open clause is often read as an indicator that international instruments directly relevant for the protection of human rights have a particular strong normative status, one of a *para-constitutional nature*. Therefore, it is possible to consider international conventions pertaining to human rights are part of the parameter of control of constitutionality of legislative acts, even though, in practice, the very complete bill of rights contained in the portuguese fundamental law, will render referral to the Constitutional Court, on these matters, strictly in terms of compliance with the Constitution and respect for the rights provided in it.

Thus, one can affirm that the main mechanism of ensuring legislation complies with human rights is through the control of its constitutionality. According to article 277º 1 of the Constitution, the President may require the Constitutional Court to rule preventively on the constitutionality of any norm, that has been subject to him for promulgation. In such circumstances, if the Court decides positively on the non-conformity of the act to the Constitution, the President shall veto it and devolve it to the organ that approved it (article 279º 1), which must expurgate the norm judged unconstitutional, before forwarding again the document for promulgation. Alternatively, despite the unconstitutionality, the law may be confirmed by a majority of two thirds of the deputies present, as long as that makes a number superior to the absolute majority of the deputies effectively exercising a mandate during the legislature (279º2). The constitutionality of the norms of the Statute, once in force,

may also be challenged<sup>9</sup>, through judicial review, before any court, *ex officio* by the judge or at the request of any of the parties in a case in which the agreements' precepts are at stake (article 280° 1). When following this concrete control of constitutionality the judge refuses the application of one of the provisions on grounds of unconstitutionality, appeal of this decision to the Constitutional Court, which may, in any event, occur is compulsory for the public prosecutor (article 280° 3 of the Constitution). Another alternative is to seek a declaration of unconstitutionality directly before the Constitutional Court, by the President, the President of Parliament, the Prime Minister, the Provedor de Justiça (*Ombudsman*), the Procurador-Geral (*General Attorney*), or one tenth of the members of Parliament (article 281 2 of the Constitution).

### **Question 3. Existence of a national plan of action on fundamental rights.**

#### **3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

No. This is a major gap in Portugal, where the existence of a parliamentary commission devoted to Constitutional Issues, Fundamental Rights and Freedoms does not, at all, substitute for the drawing of a plan of action on human rights. The First Constitutional Commission, in fact, mostly confines its action to the prior appreciation of the compatibility of proposed parliamentary statutes to the Constitution, which is clearly insufficient to ensure a transversal human rights policy is pursued.

#### **3.2. What is the typical content of such a plan?**

N/A

#### **3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

N/A

### **Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

#### **4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

##### Judgements of the ECHR:

The portuguese internal law is silent, on the matter of the compliance with the judgements of the European Court on Human Rights. In practice, it is always the Agent of the portuguese State, that represented Portugal in Strasbourg that notifies the Ministry of Justice, who executes the decision and activates a special fund, when the payment of just satisfaction is owed. So far, the omission of the portuguese laws have not presented a special problem, as the state has always promptly complied with the sentence.

However, the fact no mechanism of reaction against lack of compliance with the judgements has been set may present a problem, as Portugal does not dispose of a petition or appeal mechanism of the kind of the *Bundesverfassungsbeschwerde* or the *Recurso de Amparo*. This loophole in portuguese

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<sup>9</sup> Even despite the fact that under the preventive control mechanism, the Act was judged not to offend constitutional provisions. Such a decision does not, in fact, have a preclusive effect.

legislation should be covered as soon as possible, to avoid any problem, *e.g.*, in executing a sentence, *per force* of which the victim, being detained, has the right to be freed.

Concluding observations of the UN Committees:

Similarly, no special mechanism has been set to receive the concluding observations of the UN Committees or the reports of organs such as the *European Commission Against Racism and Intolerance* and the *Office of the Commissioner for Human Rights*, Mr. Gil Robles. Therefore, the Concluding Observations of the Committees have had very little impact in Portugal and are widely unknown of upper State organs, from the Parliament and the Executive, to the judicial authorities and the Constitutional Court. One might cite as an example, the fact that in 2003, after a ten-year silence, Portugal resumed its obligation of reporting under the ICCPR; one would therefore expect a large discussion of the conclusions of the Committee: however, the latter remained largely unknown.

It looks particularly imperative that, in the future, the first Parliamentary Commission, proportionately representing all Parties with seats at Parliament, compulsorily inscribes in its Agenda, a discussion of such reports, takes them seriously and draws the attention to them, by the concerned public entities. Another idea would be to entrust the Ombudsman with the task of referring the concluding observations to the relevant public bodies and of disseminating them, within the civil society at large.

In relation to the “follow-up” to Concluding Observations, the method adopted has been similar to that of reporting: it is the Office of Documentation and Comparative Law of the General Attorney’s (*GDDC - Gabinete de Documentação e Direito Comparado da Procuradoria-Geral da República*) that provides expertise to the Foreign Office, in drafting the reports and replying to the questions posed by the Committees. The *GDDC* is integrated in the hierarchical structure of the prosecutors’ carrier, but it has functional independence from the Ministry of Justice and a long tradition of dedication to international matters.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

N/A

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

N/A

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

Civil society is not at all involved in monitoring the compliance with Concluding Observations or its content. Moreover, upon reporting, though specialized national institutions, as referred below, are consulted by the *GDDC*, there is no direct link with, or any kind of hearing of, NGO’s; this partially explains the fact that the reports presented by Portugal are of a formalistic character and they tend to shield from criticism behind the usually perfect legislative framework set to deal with the problems, that sometimes covers fundamental flaws in application.

In this context, *e.g.*, the report by Commissioner Gil Robles of the Council of Europe furnishes a much more accurate and “live” picture of the state of the art in human rights in Portugal, than the Concluding Observations of the UN Committee, as the first carried a visit to Portugal, spent three days talking to governmental and non-governmental officials, whereas the second is obliged to rely heavily upon the State report.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

There are, in Portugal, three main specialized national institutions, within the meaning of the Paris Principles:

1. The Commission for Equality in Labour and Employment (CITE - Comissão para a Igualdade no Trabalho e no Emprego):

The Commission for Equality in Labour and Employment (*CITE - Comissão para a Igualdade no Trabalho e no Emprego*) was created by decree law n° 392/79, of 20th September 1979, in order to fight discrimination and promote equal opportunities and equal treatment for women and men in labour, employment and vocational training, both in the public and the private sectors.

The Commission is guaranteed independence in fulfilling its tasks, however it reports to the Minister of Social Security and Labour and to the Minister of the Presidency, and is composed by governmental representatives and representatives of some of the social partners (The Portuguese Retail and Services Confederation - CCP, The General Confederation of Portuguese Workers - National Trades Union - CGTP-IN, The Confederation of Portuguese Industry - CIP, and the General Workers' Union - UGT). The Commission is a consultative and advisory body, with the mandate to promote gender equality at work and occupation. To the achievement of that aim, the commission issues recommendations to the Executive on the assumption of certain legislative and administrative measures. Upon request from the General Labour Inspectorate (*Inspecção Geral do Trabalho*), from a judge ruling on discrimination case, from trade unions, or any other interested person, the Commission issues opinions on concrete cases. These opinions, though not binding, must be compulsorily requested in specific cases, such as the dismissal of a pregnant worker.

Among other duties, the Commission also promotes studies and research, receives and handles individual complaints alleging the violation of the national law on gender equality at the workplace, publicizes cases of gender based discrimination at work, visits or requests the Labour Inspectorate to visit workplaces, in order to prove discriminatory practices, assists entities responsible for collective bargaining, stimulates and disseminates action, the objective of which is to promote gender equality at work, and follows up developments on this matter at the level of the European Union and other international organizations.

In general, one might say that endemic practices of discrimination towards women, in the field of employment, are far from being eradicated, in Portugal; however, there are also no doubts, statistics show portuguese society is increasingly egalitarian. In this context, it is possible to assert that *CITE* has been more successful, in its task of advisor in individual cases, than in bringing about a structural change, in the way the labour market relates to the feminine working force, as the latter has been mainly a consequence of societal evolution and increasing qualification of women.

2. The Commission on Equality and Women's Rights – CIDM (Comissão para a Igualdade e Direitos das Mulheres):

Created by the decree-law n° 166/91, of the 9<sup>th</sup> of May 1991, and following the former Commission on the Feminine Condition, the Commission on Equality and Women's Rights (*CIDM – Comissão para a Igualdade e para os Direitos das Mulheres*) is integrated in the Presidency of the Council of Ministers, and reports to the Minister of Presidency, though it functions with independence from it. The Commission's main organs are its President, a Technical Coordination Council, and a Consultative Council. This last organ is divided in two sections, a ministerial section and a NGO'S section, in order

to ensure the participation of both governmental and non-governmental institutions in the setting and carrying out of a general and transversal policy of gender equality

*CIDM* has an important role in what concerns investigation, publication, training and legal support on equality issues, as well as, improvement of community awareness. Among others, the Commission has the duty to: participate in the development of a global gender equality policy, contribute to legislative amendments, propose measures and issuing opinions, assume public positions on aspects that affect the gender equality, cooperate with international organizations with similar purposes, organize actions that contribute to the discussion and raise awareness of the wider community, namely through debates, seminars, trainings, publications. The Commission must be heard every time a project of law, concerning gender equality, is issued.

To the pursuit of its objective of promoting equality of rights, opportunities and dignity, the Commission counts with three technical departments: the publishing division, the studies and training division and the legal division. The described structure works permanently, and sometimes specialized working groups are created.

In general, one may say the Commission on Equality and Women's Rights is a low profile organ, with little public exposure. However, *e.g.*, it has greatly contributed, in the late 90's, to a series of projects, legislative and practical, aiming at combating the epidemic levels of domestic violence, in Portugal.

3. The High Commissioner for Immigration and Ethnic Minorities<sup>10</sup> (*ACIME – Alto Comissário para a Imigração e Minorias Étnicas*):

The post of High Commissioner for Immigration and Ethnic Minorities was established under qualified legislation enacted in 1996. The High Commissioner reports to the presidency of the Council of Ministers and derives special authority from his or her direct link with the Prime Minister. He or she heads an office similar to that of a parliamentary undersecretary and enjoys wide-ranging powers including consultation and dialogue with the bodies representing immigrants or ethnic minorities in Portugal. The High Commissioner carries out studies on various themes relating to the integration of immigrants or ethnic minorities in co-operation with employers' associations and trade unions, social welfare institutions and other public or private bodies involved in this area. His or her role is to help improve the living conditions of Portugal's immigrants, to help eliminate discrimination and combat racism, xenophobia and exclusion. The High Commissioner also works with the government authorities responsible for the entry, residence and departure of foreign nationals in Portugal and proposes legislative measures to help immigrants and ethnic minorities.

The High Commissioner for Immigration and Ethnic Minorities coordinates the "interministerial working group for the Gypsy community" and, since 2000, the "interministerial working group on the integration of immigrants into Portuguese society". In framing social integration and anti-exclusion policies, the High Commissioner is assisted by an Advisory Board on Immigration Issues (*Conselho Consultivo*), set up in 1998 and comprising representatives of social welfare institutions, employers' associations, trade unions, immigrants' groups and independent academic experts.

The High Commissioner for Immigration and Ethnic Minorities can also impose fines and administrative sanctions under Law No. 134/99, as completed by the New Labour Code from 2003, which prohibits discrimination in the exercise of rights on the grounds of race, colour, nationality or ethnic origin, particularly in the area of employment, access to goods and services, the performance of an economic activity, the sale or rental of property, access to public buildings, health and education. To this end, he or she consults the Commission on Equality and Racial Discrimination of which he or she is chair and which consists of two members of the Portuguese Parliament, two government representatives and two representatives respectively of immigrants' groups, anti-racist organisations, trade unions, employers' associations and human rights organisations, as well as three prominent

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<sup>10</sup> <http://www.acime.gov.pt/>

figures appointed by the other members. This Commission also gathers information about discriminatory acts, proposes laws and regulations to prevent discrimination and encourages studies and surveys in this area.

There also exists, since the beginning of 2002, within the High Commissioner, an informal unit, the Observatory on Immigration Issues<sup>11</sup>, which has started to bear fruit, by the end of 2003: in particular, the Observatory has commended highly valuable studies, which are now being the object of discussion, on the incidence of contagious diseases such as AIDS and tuberculosis, among migrant communities, the capability of learning portuguese by the several communities of migrants and the unemployment rate among aliens.

One may state, that, after one first period of launching, corresponding to the years between 1996-1998, the High Commissioner for Immigration and Ethnic Minorities, has become a highly successful institution, in relation to almost all its attributions: the High Commissioner was responsible for compelling authorities to provide legal status to almost 180 000, so far undocumented migrants, through the enactment of "permissions to stay" in 2001 and for the creation of the socio-cultural mediators, aimed at fostering the integration of the Roma/Gypsie community, at all levels of society, with particular emphasis on education. 2002, after the legislative election, was a period of dormancy of the High Commissioner, but by the beginning of 2003, it was fully operative again, starting with a strong presence in the internet.

The fact the Consultative Board of the High Commissioner comprises extremely active NGO's, liaises on a continuous basis with the European Commission Against Racism and Intolerance, and disposes of a wealth of studies provided by its academic experts has not been alien to its success. The Commissioner has also been behind international conventions relating to the status of the lusophone citizen, aimed at concretising the special regime foreseen to nationals of the CPLP (Community of Portuguese Speaking Countries), by article 15 of the portuguese Constitution.

The weakness of the High Commissioner lies with the fact that its advisory opinions, prior to the enactment of legislation in the field of non-discrimination and immigration, though compulsory, are not binding. Moreover, the High Commissioner may not himself seize the Constitutional Court on grounds of unconstitutionality of statutes in its field of action. Therefore, appeals of the High Commissioner for a speedy decision on some matters: e.g. the appeal for an urgent regulation of the Law on Immigration from February 2003 and namely of the terms according to which family reunion may be granted, have sometimes been turned a blind eye. Moreover, the Executive keeps the final power of decision: the recent establishment of a narrow quota of lawful immigrants for 2003, contrary to the expressed opinion of the High Commissioner and NGO's is, also one major example of the latter's lack of decisional power.

However, the High Commissioner has been successful in setting the agenda in relation to the rights of migrants and raising awareness of the community at large. The visibility of the critical report of one of its independent experts on the first months of application of the Convention Between Portugal and Brasil on the Reciprocal Hiring of their Nationals and on the final regulation of the new Immigration Law have consolidated its role and respectability.

Unlike CITE and CIDM, it has also been successful in not ghettoising discrimination and immigration issues, as it has succeeded in rendering these matters a transversal issue of concern and a highly ranked priority of the Ministry of Solidarity and Social Security, in a country, which was traditionally homogeneous and accustomed to emigration of its nationals only.

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<sup>11</sup> <http://www.oi.acime.gov.pt/>





# **SLOVAK REPUBLIC**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

The Slovak National Centre for Human Rights [*Slovenské národné stredisko pre ľudské práva*] (hereinafter referred to as the “Human Rights Centre”) was established by the Act of the National Council of the Slovak Republic no. 308/1993 Coll. of 15 December 1993 on Establishment of the Slovak National Centre for Human Rights as amended by the Act no. 136/2003 Coll. (hereinafter referred to as the “Act on Human Rights Centre”). Its seat is in Bratislava.

On 9 March 1994 there was concluded an Agreement between the United Nations and the Government of the Slovak Republic regarding the establishment of the Slovak National Centre For Human Rights, under which the Government of the Slovak Republic is bound:

- to provide adequate premises for the Human Rights Centre,
- to provide funds,
- to ensure the legal and operational independence of the Human Rights Centre.

### **1.2. Describe**

#### **a) the composition of such national institution;**

The Human Rights Centre is composed of the Administrative Board [*Správna rada*] and the Executive Director [*Výkonný riaditeľ*].

The Administrative Board has nine members, who are supposed to be selected from those persons who have been endowed with natural authority and credibility in the area of human rights.

The Administrative Board consists of:

- one member appointed by the President of the Slovak Republic,
- one member appointed by the President of the National Council of the Slovak Republic,
- one member appointed by the Public Defender of Rights (ombudsman),
- one member appointed by the Dean of Faculty of Law of Comenius University in Bratislava,
- one member appointed by the Dean of Faculty of Law of University of Pavol Jozef Šafárik in Košice,
- one member appointed by the Dean of Faculty of Law of University of Matej Bel in Banská Bystrica,
- one member appointed by the Dean of Faculty of Law of University of Trnava in Trnava,
- one member appointed by the Prime Minister on the motion of NGOs,
- one member appointed by the Minister of Labour, Social Affairs and a Family of the Slovak Republic.

The Administration Board elects the Executive Director for the term of three years on the basis of the motions filed by the persons who have appointed the members of the Administration Board. The candidate for the position of Executive Director must be at least 35 years old, have a university degree, be active in the area of human rights or the rights of children, and he must not have a criminal record. The same person can be elected as the Executive Director no more than for two consecutive terms. The Executive Director manages and supervises the activities of the Human Rights Centre.

**b) Its powers;**

The Human Rights Centre carries out the tasks in the area of human rights. For this purpose it monitors and evaluates the observance of human rights, including rights of children, accomplishes research and educational activities, gathers and disseminates information, provides library and other similar services.

**c) Its working methods;**

The Human Rights Centre, according to the Act on Human Rights Centre, should year by year, by 31 January prepare and publish via Internet or periodic press an annual report on the state of observance of human rights in the Slovak Republic, including the rights of children.

The working methods of the Human Rights Centre include research activities, educational activities, and publication activities, documentary, informational and monitoring activities, specialised advisory activities, and co-operation with other institutions and media.

**d) Its achievements.**

The Human Rights Centre, at least in the last few years, has not performed any significant activities that would be worth to mention. A new Executive Director of the Human Rights Centre has been recently elected and it is greatly expected that this institution will improve its performance under the new administration.

**1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

The Act on Human Rights Centre defines the Human Rights Centre as an „independent legal entity” financed through the grants from the state budget in accordance with the international treaty concluded between the Slovak Government and the United Nations in 1994. The other sources of income may, in accordance with the Act on Human Rights Centre, derive from donations from domestic and foreign natural persons and legal entities.

The personal independence, as regards the creation of the organs of Human Rights Centre, seems to be quite high (see point 1.2 letter a)).

As for the contribution, the Human Rights Centre concentrated its activities especially on organisation of seminars and trainings and on publishing. However, its practical working in the area of human rights protection can be considered as minimal.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

According to the Article 7 paragraph 5 of the Slovak Constitution, International treaties on human rights and fundamental freedoms and international treaties for which exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural or legal persons and which were ratified and promulgated in the way laid down by a law, shall have precedence over laws.

Pursuant to the Rules of Procedure of the National Council of the Slovak Republic (Act no. 350/1995 Coll. on Rules of Procedure of the National Council of the Slovak Republic as amended), each bill submitted to the parliamentary discussion must contain an explanatory report. Explanatory report, *inter alia*, must contain a declaration that the bill is in conformity with the Constitution, constitutional laws, international treaties and the EU law.

Also the Rules of Procedure of the Slovak Government stipulate, that the governmental decrees and other regulations must comply with the obligations of the Slovak Republic resulted from the international treaties and other international documents. Evaluation of conformity of the regulation with the international treaties and other international documents must constitute a part of an explanatory report of each proposal of regulation. The Rules of Procedure of the Slovak Government require enumeration of all relevant international treaties and international documents in the explanatory report.

Therefore, the compliance of any legislative proposal or regulation with the international undertakings of the Slovak Republic in the area of human rights must be evaluated from the beginning of the legislation process and before their adoption.

The Legislative Council of the Government, as an advisory body to the Slovak Government, evaluates the compliance of the governmental proposals of the legislation and regulations with the Constitution, constitutional laws, and international undertakings, including international treaties on human rights, before the proposals are submitted to the government for their adoption.

Pursuant to the Rules of Procedure of the National Council of the Slovak Republic, the Constitutional and Legal Affairs Committee deliberates each bill, especially from the point of its compliance with the Constitution, constitutional laws, binding international treaties, laws of the Slovak Republic and EU law.

At the final phase of the legislative process, the President of the Slovak Republic has the right to veto the law adopted by the National Council, and return it back to the parliament with his comments for repeated discussion and adoption. In practice, the President uses this right quite often, and it happens that the non-compliance of the adopted law with the international treaty on human rights is mentioned by the President as the reason for returning the law back to the parliament.

### **Question 3. Existence of a national plan of action on fundamental rights.**

#### **3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

General national plan of action for the area of fundamental rights is not being prepared.

There are only action plans for some areas of human rights, among which – (i) the Action plan of the prevention of all forms of discrimination, racism, xenophobia, antisemitism and other demonstrations of intolerance, (ii) National action plan for children and (iii) National action plan for women, could be regarded as the most important ones.

(i) The Action plan of the prevention of all forms of discrimination, racism, xenophobia, antisemitism and other demonstrations of intolerance was first time elaborated for the period of years 2000-2001. On 3 May 2000, the Slovak Government approved it by the resolution no. 283/2000. The action plan on this area for the period of years 2002-2003 was approved on 6 March 2002 by the governmental resolution no. 207/2002. Action plan used to be prepared by Human Rights and Minorities Section, which operates under the Slovak Republic Government Office, under the supervision of the Deputy Prime Minister for European Integration, Human Rights and Minorities. Several central bodies of state

administration and other institutions operating in this area participate on the preparation of action plan, at least by providing relevant materials.

(ii) National action plan for children was worked out by the Ministry of Labour, Social Affairs and a Family of the Slovak Republic. This action plan responds to the Conclusions of UN Committee on the Rights of the Child and to the report of Slovak Republic to the Convention on the Rights of the Child. Several representatives nominated by the Deputy Prime Minister for European Integration, Human Rights and Minorities, Slovak Government Plenipotentiary for Roma Communities, chairman of Statistical Office, representatives of various touched ministries and the General Prosecutor were participated on the preparation of the action plan. The proposal of National action plan for children was approved by governmental resolution no. 837/2002 of 7 August 2002. The evaluation of the filling the tasks of the plan and the elaboration of the report about the performance should be realised till 30 October 2004 together with its updating for the years 2005-2007.

(iii) National action plan for women was created as the keynote document with the aim to improve the position of women in the Slovak Republic within next 10 years. It was prepared by the coordinating committee for women issues, which is an advisory, coordinating and initiative body of the Slovak Government with wide representation of central bodies of state administration and of NGOs (the committee was established in 1996 under the Ministry of Labour, Social Affairs and a Family of the Slovak Republic). The action plan was approved by governmental resolution no. 650/1997 of 16 September 1997. The plan contains the principles, which determine the tasks for particular departments and social institutions with the aim to create non-discriminating conditions for both, women and men.

### **3.2. What is the typical content of such a plan?**

Characteristic content of individual action plans is determination of priorities, strategic aims and particular steps, which the Slovak Government should realise via subjects accredited by the government. For example, the action plan of the prevention of all forms of discrimination, racism, xenophobia, antisemitism and other demonstrations of intolerance for the years 2000-2001 contained, *inter alia*, an establishment of the Coordinating Committee for realisation of this action plan; the organising of the national conference oriented on the prevention of all forms of discrimination, racism, xenophobia, antisemitism and other demonstrations of intolerance; education to tolerance and mutual estimation; systematic education of professional groups, which during the exercising of their duties have some influence on the prevention of all forms of discrimination, racism, xenophobia, antisemitism and other demonstrations of intolerance and performing of informational and media campaign in this area.

### **3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

(i) The action plan of the prevention of all forms of discrimination, racism, xenophobia, antisemitism and other demonstrations of intolerance on the years 2000-2001 was evaluated in the form of evaluating material prepared under the supervision of the Deputy Prime Minister for human rights. For evaluation purposes, relevant ministries, governmental plenipotentiary for Roma communities and the General Prosecutor Office provided the records and documents. The evaluation of the action plan was discussed by the Slovak Government on 10 January 2002, the government took notice of this material.

The action plan of the prevention of all forms of discrimination, racism, xenophobia, antisemitism and other demonstrations of intolerance on the years 2002-2003 was up to now evaluated through two evaluating reports, the first one covers the period March – August 2002, the second one covers the period September 2002 – February 2003. The Slovak Government discussed and approved the reports by the resolutions.

(ii) National action plan for children from the year 2002 had not been evaluated, yet. It is assumed that it will be considered, evaluated and updated biannually.

(iii) National action plan for women is evaluated annually by the Ministry of Labour, Social Affairs and a Family of the Slovak Republic, which prepares evaluating report about its fulfilling.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

The general obligation of public bodies and institutions, including Constitutional court and other courts, to follow up and respect judgements of the European Court of Human Rights derives from the Article 7 paragraph 5 of the Slovak Constitution.

Pursuant to the Article 144 paragraph 1 of the Slovak Constitution, judges, in the performance of their function, are independent and, in decision-making are bound by the Constitution, by constitutional law, by international treaties pursuant to the Article 7 paragraphs 2 and 5, and by law.

According to the second paragraph of this article, if a court assumes that other generally binding legal regulation, its part, or its individual provisions, which concern a pending matter, contradicts the Constitution, constitutional law, international treaties pursuant to Art. 7 paragraph 5 or law, it should suspend the proceedings and should submit a proposal for the commencement of proceedings according to Art. 125 paragraph 1. Legal opinion of the Constitutional Court of the Slovak Republic contained in the decision shall be binding for the Court.

Pursuant to the paragraph 135 section 1 of Code of Civil Procedure, the court is bound, *inter alia*, by the decision of Constitutional Court or the European Court of Human Rights concerning the fundamental rights and freedoms.

However, in practice, unlike the Constitutional Court, which has been finding supporting arguments for its decisions from the judgements of the European Court of Human Rights quite often, the courts and their judges at all levels, including the Supreme Court, seem not to be familiar with the judgements of the European Court of Human Rights, and in general, they do not follow-up these judgements (*ratio decidendi*) in decision making process. The same applies to other public institutions, such as the public prosecution.

With regard to the judgements of the European court of Human Rights against the Slovak Republic, the Ministry of Justice is competent for enforcement of these judgements and it submits to the Slovak Government recommendations for further actions. Generally, it only recommends the government to pay out the claimant the pecuniary and/or non-pecuniary compensations acknowledged by the European Court of Human Rights.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

As mentioned above, the execution of judgements of the European Court of Human Rights is in competence of the Ministry of Justice, therefore the co-ordination between ministerial departments is not necessary in this regard.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

The Human Rights Centre is entitled to monitor the observance of human rights in the Slovak Republic, including the compliance with the judgements of European Court of Human Rights. However, the Human Rights Centre does not monitor separately this compliance. We are not aware of any other institution, which would monitor and evaluate the compliance of human rights standards in the Slovak Republic with standards established by the European Court of Human Rights in its judgements.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

We are not aware of any civil society organisation acting in the Slovak Republic, which would be involved in monitoring of the compliance of decisions made by the Slovak public institutions, including courts, with judgements made by the European Court of Human Rights.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment, which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

We would like to mention, that the evaluations of compliance of the draft legislation with the international undertakings of the Slovak Republic, including the formal declarations of compliance in the explanatory reports to the draft legislations, have not been done thoroughly, which is mainly caused by the substantial legislative dynamism and lack of competent and qualified people who would be able to make thorough evaluations. The declarations of compliance are often made automatically without any, or only with minimal consideration of compliance.

# **SLOVENIA**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

#### The Ombudsman<sup>12</sup>

Slovenia introduced the Ombudsman as an institution for the out of court and informal protection of human rights and basic freedoms. According to the Slovenian Constitution (Official Gazette RS, Nos. 33/91, 42/97, 66/00 and 24/03), its function is to protect human rights and basic freedoms in matters involving state bodies, local government bodies and statutory authorities (Article 159.1 of the Constitution). The form of a parliamentary type of ombudsman was adopted by the Slovenian legal system. It is most similar to the model of the so-called Scandinavian parliamentary ombudsman.

Cooperation with the Ombudsman in the execution of an inquiry is obligatory both for the involved body and for all other State bodies (Article 34 of the Ombudsman Act). All functionaries and officials of State bodies must respond to the Ombudsman's summons for cooperation in the inquiry and to give explanations (Article 36.1 of the Ombudsman Act). He may summon anyone as a witness or expert to discuss the issue he is treating and the person summoned is obliged to respond to the summons (Article 36.2 of the Ombudsman Act). If the Ombudsman ascertains that there was a violation (Article 39.1 of the Ombudsman Act), he may propose a way how to remove the ascertained irregularity (Article 39.2 of the Ombudsman Act). In addition, he may also propose the initiation of disciplinary measures against the employees of the bodies responsible for the ascertained irregularity (Article 39.3 of the Ombudsman Act). The Ombudsman reports on his activities to the National Assembly through regular or special reports (Article 43.1 of the Ombudsman Act). Under Article 50.2 of the Constitutional Court Act, the Ombudsman has authority to lodge constitutional complaints before the Constitutional Court.

The forms of the decision making process of the Ombudsman (Article 28 of the Ombudsman Act) are as follows: when the Ombudsman accepts an initiative to begin a procedure, he/she carries out the necessary inquiries and on this basis decides:

- on the request in a summary procedure;
- to reject the initiative;
- not to accept the initiative: if it is anonymous, too late (more than one year from the action or the last decision of the body), or injurious and enshrines the abuse of the right to appeal;
- to begin the investigation, to prepare a report on the basis of it and to propose a way how to remove the violation of human rights or how to remove other incorrectness.

The Special Ombudsman may be empowered by statute to make determinations on particular subjects (Article 159.2 of the Constitution).

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<sup>12</sup> See also Trpin, G., Varuh človekovih pravic in temeljnih svoboščin, Nova ustavna ureditev Slovenije, Zbornik razprav, Ljubljana, ČZP Uradni list, 1992, 114. See Grad, F., Kaučič, I., Ribičič, C., Kristan, I., Državna ureditev Slovenije, Ljubljana, ČZP Uradni list, 1996, 442. Butala, A., Varuh človekovih pravic - pristojnosti in pooblastila, Podjetje in delo, No. 5-6/95, 745.

## **1.2. Describe**

### **a) The composition of such national institution;**

The Ombudsman is elected on the proposal of the President of the Republic by the National Assembly (Article 2 of the Ombudsman Act, Official Gazette RS, Nos. 71/93, 15/94 and 56/02) with a two-thirds majority of all Deputies (Article 12 of the Ombudsman Act), and his Deputies (two to four) are nominated by the National Assembly on the proposal of the Ombudsman (Article 15.1 of the Ombudsman Act). Their term of office is six years; the Ombudsman may be reelected once (Article 12 of the Ombudsman Act), while his Deputies may be nominated and serve several times (Article 16 of the Ombudsman Act). The Ombudsman may only be dismissed for reasons provided by statute (Article 21 of the Ombudsman Act). His function is incompatible with any other political or administrative function or professional activity (Article 19 of the Ombudsman Act). In his activities he enjoys professional immunities (Article 20 of the Ombudsman Act).

### **b) Its powers;**

The Ombudsman is empowered to submit proposals, opinions, critiques or recommendations to state bodies, local government bodies and statutory authorities, which these are obliged to discuss and answer to within the term determined by the Ombudsman (Article 7 of the Ombudsman Act). They are also obliged to submit, on the request of the Ombudsman, all data and information within their power (regardless of the degree of confidentiality) and enable the execution of inquiries (Article 6 of the Ombudsman Act). The Ombudsman may submit initiatives for amendments of statutes and other legal acts to the National Assembly and the Government (Article 45.1 of the Constitutional Court Act, Official Gazette RS, No. 15/94), and gives his opinion from the viewpoint of the protection of human rights and basic freedoms on the issue dealt with to all other bodies (Article 25 of the Ombudsman Act). The Ombudsman may enter any official premise and perform a so-called inspection also in jails and other premises with limited freedom of movement (Article 42 of the Ombudsman Act). He is also authorised to discuss broader questions important for the protection of human rights and basic freedoms as well as for the legal protection of the citizens in the Republic of Slovenia (Article 9.2 of the Ombudsman Act). However, the Ombudsman must not treat issues dealt with in judicial or other legal proceedings except in the case of an unjust delay of the proceedings or obvious abuse of authority (Article 24 of the Ombudsman Act).

### **c) Its working methods;**

Proceedings before the Ombudsman are confidential and free of charge for the parties (Article 9.3 of the Ombudsman Act). One of the basic characteristics of the Ombudsman's activities is his full right of discretion to decide as to which issues he will attend to and which not (Article 31 of the Ombudsman Act). Anyone who thinks that their human rights or basic freedoms have been violated by an act or action of a government body, local government body or statutory authority, may propose the initiation of such proceedings. The Ombudsman may also start proceedings on his own initiative (Article 9.1 of the Ombudsman Act). The Ombudsman may reject an initiative or not attend to it (Article 30 of the Ombudsman Act), or decide on it in shortened proceedings (Article 29 of the Ombudsman Act), or start an inquiry (Article 28.1.2 of the Ombudsman Act).

### **d) Its achievements.**

It is no doubt tedious if every year, at least in part, there is a repetition of the findings about the state of human rights in Slovenia, but sadly for 2002 too the Ombudsman has observed that a whole range of things are the same as the previous year or even several years ago. Some things are improving, but too slowly. Often problems are resolved in such a way where the Ombudsman gets the feeling that more energy is invested in seeking obstacles to prevent a resolution of the problem, than means of removing these obstacles. The Ombudsman can repeat last year's finding that state institutions (and not just these) are excessively bureaucratised and insufficiently active in recognising or eliminating



people's problems. It is still true, therefore, that the common denominator in the assessment of the functioning of institutions is insufficient sensitivity to the problems of those people who need help. Or a certain kind of indifference to other people. Sadly the Ombudsman must repeat the record of previous years. For the sixth year running now, the National Assembly has not found the time or inclination to set in law the area of mental health; it would appear that political prestige is more important than help for marginalised people. The non-adoption of implementing regulations and realisation of possibilities for educating special needs children are other such examples repeated from the 2001 report. But there is a whole range of similar examples. To this the Ombudsman can add the decade spent resolving the problem of those "deleted". The Ombudsman may repeat: excessive zeal for "grand historic subjects and tasks" and a callous attitude to the needs and difficulties of the "little" people still mark the attitude of the state to human rights.

It has been possible, however, to identify certain positive changes, chiefly in certain institutions accommodating the ombudsman's intervention. A number of bodies are responding more seriously and rapidly to our cautions, their behaviour is changing and the Ombudsman may conclude that it is also changing in relation to their clients. Unfortunately there are still too many institutions that take complaints from individuals or the work of the ombudsman as unnecessary whining and a disruption of their established operation. They show this either directly through non-response or indirectly by evasion. At this point the Ombudsman must point out in particular the lack of seriousness shown by the National Assembly towards the special report produced by the Human Rights Ombudsman on the problem of tenants of denationalised housing. The National Assembly bodies processed the report at such a snail's pace that it was no longer possible to accommodate the recommendations in the housing act, although those debating it agreed with their substance. The Ombudsman may therefore wonder what is the point in continuing to produce special reports, given such an attitude to them? The Ombudsman might think the same thing regarding National Assembly decisions, since a series of decisions from previous years have still not been fulfilled. (from the Annual Report of the Ombudsman for 2002, <http://www.varuh-rs.si>).

### **1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

The Ombudsman is independent and autonomous in relation to the Government and the Ministers and, while solving concrete matters, also in relation to the National Assembly (Article 4 of the Ombudsman Act). In his activities he observes the provisions of the Constitution and international legal acts on human rights and basic freedoms, and in his interventions he may call upon the Principle of Justice and Good Management (Article 3 of the Ombudsman Act).

I would rate the degree of the Ombudsman's independence as very high.

### **Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

In the process of ratifying a treaty, the Constitutional Court, on the proposal of the President of the Republic, the Government or a third of the deputies of the National Assembly, issues an opinion on the conformity of such treaty with the Constitution. The National Assembly is bound by the opinion of the Constitutional Court (Article 160.2 of the Constitution, Official Gazette RS, Nos. 33/91, 42/97, 66/00 and 24/03).

The Constitutional Court shall give an opinion on ratification of international treaties and their conformity with the Constitution in the manner provided by this Law (Article 21.2 of the Constitutional Court Act, Official Gazette RS, No. 15/94). The Constitutional Court shall give an opinion on the conformity of international treaties with the Constitution during the process of ratification, at the proposal of the President of the Republic, the prime minister or one-third of the deputies of the National Assembly. Constitutional Court shall reach this opinion at a session closed to the public (Article 70 of the Constitutional Court Act).

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

No.

**3.2. What is the typical content of such a plan?**

No comment.

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

No comment.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties ?**

The decisions of the European Court of Human Rights are to be directly implemented by the empowered court of the Republic of Slovenia only in cases covered by ratified international agreements (Article 113 of the Courts Act), Official Gazette of RS, Nos. 19/94, 45/95, 38/99 and 28/00).

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

The legal regulation of Slovenia does not provide for the decentralisation of State administration, but only its deconcentration. The State administration has the task of implementing statutes, other regulations and acts of the National Assembly, as well as regulations and acts adopted by the Government. The mentioned tasks of the administration are exercised on the basis and within the frame work of the Constitution and statutes as well as other regulations and acts. In addition, the State administration exercises its duties independently (Article 120.2 of the Constitution). As regards its activities, the State administration issues administrative regulations, administrative and other acts, as well as performs particular action. Administrative regulations must conform with the Constitution and with statutes (Article 153.3 of the Constitution). Furthermore, administrative and other acts (individual and concrete legal acts) must be directly based on statute or on regulations made pursuant to statute (Article 153.4 of the Constitution). Regulations implementing statutes (regulations of ministries, decrees, directives) may be issued only by ministries. Concerning their field of activity, ministries supervise the lawful performance by local government bodies of their duties and functions (Article 144 of the Constitution and Article 10.1 of the Administration Act, Official Gazette RS, Nos. 52/02,

110/02, 56/03 and 83/03). Concerning State powers vested by the State in urban municipalities, the empowered ministries also exercises control of the suitability and expert knowledge of activities of local government bodies (Article 140 of the Constitution and Article 10.2 of the Administration Act). A minister manages and represents a particular ministry and in this way is individually accountable. Heads of bodies and organisations as structural parts of a particular administrative body do not have the position of a member of the Government. Therefore they are not empowered to act independently at the meetings of the Government and of the National Assembly; in such a case, a component body is represented by a competent minister. As regards its activities, ministries follow the political instructions of the Government. In addition, they are obliged to submit reports to the Government on their activities.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

No comment.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

No comment.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

The most original mechanism which was introduced for the human rights protection is the Constitutional Complaint<sup>13</sup>.

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<sup>13</sup> Subpara. 6 of Para. 1 of Article 160 of the Constitution; Article 50 through 60 of the Constitutional Court Act. See Mavcic, A., Slovenian Constitutional Review, Its Position in the World and Its Role in the Transition to a New Democratic System, Ljubljana, Založba Nova revija, 1995. Mavcic, A., The Citizen as an Applicant Before the Constitutional Court, Report on the Seminar organised by the European Commission for Democracy through Law in conjunction with the Constitutional Court of Georgia on Contemporary Problems of Constitutional Justice, Tbilissi, Georgia, 1-3 December 1996, Offprint. Mavcic, A., The Role of the Slovenian Constitutional Court in Legal Transition, Report on the Conference on Constitutional Transition, CCT'97, Hong Kong, 29 May - 1 June, 1997, Offprint. Mavcic, A., Nature and Effects of Decisions of the Slovenian Constitutional Court, Temporary Order as an Element of the Constitutional Review Procedure, Report on the Colloquium ueber Grundfragen der Verfassungsgerichtsbarkeit in Mittel- und Osteuropa, das Max-Planck-Institut fuer auslaendisches oeffentliches Recht und Voelkerrecht, Heidelberg, 17-18 April, 1997, Offprint. Mavcic, A., The Protection of Basic Rights by the Constitutional Court and the Practice of the Constitutional Court of the Republic of Slovenia, Report on the Seminar "The Protection of Basic Rights by the Constitutional Court", European Commission for Democracy through Law, Brioni, Croatia, 23-25 September 1995, Proceedings, p. 204. Mavcic, A., The Protection of Basic Rights by the Constitutional Court, Report on the Seminar Constitutional Dimension of Judicial Reform and Judicial Organization, Kyrghyz Republic, Bishkek, 17-18 June 1997, Offprint. Mavcic, A., Constitutional Complaint, Report on the Seminar organised by the European Commission for Democracy Through Law in conjunction with the Constitutional Court of Latvia, Riga, Latvia, 3-4 July 1997, Offprint. Mavcic, A., Report on Constitutional Review in the Field of Human Rights Protection, Seminar organised by the European Commission for Democracy through Law in conjunction with the Constitutional Court of Azerbaijan, Baku, Azerbaijan, 8-9 November 2002, Offprint. Mavcic, A., Report on the Slovenian Experience Concerning Constitutional Review in the Field of Human Rights Protection, Seminar organised by the European Commission for Democracy through Law in conjunction with the Constitutional Court of Azerbaijan, Baku, Azerbaijan, 26-27 February 2004, Offprint.

The provisions of the Slovenian *Constitution* of 1991 that regulate the constitutional complaint in detail are relatively modest<sup>14</sup>. However, the *Constitution* itself<sup>15</sup> envisages a special regulation<sup>16</sup>. The Constitutional Court decides cases of constitutional complaints alleging violations of human rights and fundamental freedoms<sup>17</sup>. Thus the protection embraces all constitutionally guaranteed human rights and fundamental freedoms<sup>18</sup> including those adopted through the treaties that have become part of the national law through ratification.

Any legal entity or individual may file a constitutional complaint<sup>19</sup>, as may the Ombudsman if directly connected with particular case he is concerned with<sup>20</sup>, although subject to the agreement of those whose human rights and fundamental freedoms he is protecting in an individual case<sup>21</sup>. The subject matter of constitutional complaint is an individual act of a government body, a body of local self-government, or public authority allegedly violating human rights or fundamental freedoms<sup>22</sup>.

The precondition for lodging a constitutional complaint is the prior exhaustion of all possible legal remedies<sup>23</sup>. As an exception to this condition the Constitutional Court may hear a constitutional complaint even before all legal remedies have been exhausted in cases if the alleged violation is obvious and if the carrying out of the individual act would have irreparable consequences for the petitioner<sup>24</sup>.

A constitutional complaint may be lodged within sixty days of the adoption of the individual act<sup>25</sup>, though in individual cases with good grounds, the Constitutional Court may decide on a constitutional complaint after the expiry of this time limit<sup>26</sup>. The complaint must cite the disputed individual act, the facts on which the complaint is based, and the suspected violation of human rights and fundamental freedoms<sup>27</sup>. It shall be made in writing and a copy of the respective act and appropriate documentation shall be attached to the complaint<sup>28</sup>.

In a group of three judges<sup>29</sup> the Constitutional Court decides whether it will accept or reject the constitutional complaint for review (or its allowability) at a non-public session. The Constitutional Court may establish a number of senates as required. The ruling of the Constitutional Court on the allowability of a constitutional complaint is final<sup>30</sup>. The constitutional complaint may be communicated to the opposing party for response, either prior to or after acceptance<sup>31</sup>. The Constitutional Court normally deals with a constitutional complaint in a closed session but it may also call a public hearing<sup>32</sup>. The Constitutional Court may suspend the implementation of an individual act, or even suspend the implementation of a statute and other regulation or general act on the grounds of which the disputed individual act was adopted<sup>33</sup>.

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<sup>14</sup> Articles 160 and 161 of the Constitution.

<sup>15</sup> Para. 3 of Article 160 of the Constitution.

<sup>16</sup> Provisions of Articles 50 through 60 of the Constitutional Court Act.

<sup>17</sup> Item 6 of Para. 1 of Article 160 of the *Constitution*.

<sup>18</sup> Such a formulation in the Slovenian system is rare, since other arrangements as a rule explicitly define the circle of rights protected by the constitutional complaint.

<sup>19</sup> Para. 1 of Article 50 of the Constitutional Court Act.

<sup>20</sup> Para. 2 of Article 50 of the Constitutional Court Act.

<sup>21</sup> Para. 2 of Article 52 of the Constitutional Court Act.

<sup>22</sup> Para. 1 of Article 50 of the Constitutional Court Act.

<sup>23</sup> Para. 3 of Article 160 of the Constitution; Para. 1 of Article 51 of the Constitutional Court Act.

<sup>24</sup> Para. 2 of Article 51 of the Constitutional Court Act.

<sup>25</sup> Para. 1 of Article 52 of the Constitutional Court Act.

<sup>26</sup> Para. 3 of Article 52 of the Constitutional Court Act.

<sup>27</sup> Para. 1 of Article 53 of the Constitutional Court Act.

<sup>28</sup> Para. 2 of Article 53 and Para. 3 of Article 53 of the Constitutional Court Act.

<sup>29</sup> Para. 3 of Article 162 of the Constitution; Para. 1 of Article 54 of the Constitutional Court Act.

<sup>30</sup> Para. 3 of Article 55 of the Constitutional Court Act.

<sup>31</sup> Article 56 of the Constitutional Court Act.

<sup>32</sup> Article 57 of the Constitutional Court Act.

<sup>33</sup> Article 58 of the Constitutional Court Act.

The decision *in merito* of the Constitutional Court may:

- Deny the complaint as being unfounded<sup>34</sup>;
- Partially or in entirety annul or invalidate the disputed (individual) act or return the case to the body having jurisdiction for retrial<sup>35</sup>;
- Annul or invalidate (*ex officio*) unconstitutional regulations or general acts issued for the exercise of public authority if the Constitutional Court finds that the annulled individual act is based on such a regulation or general act<sup>36</sup>;
- In case it annuls or invalidates a disputed individual act it may also decide on the disputed rights or freedoms if this is necessary to remove the consequences that have already been caused by the annulled or invalidated individual act, or if so required by the nature of the constitutional right or freedom, and if it is possible to so decide on the basis of data in the documentation<sup>37</sup>. Such an order is executed by the body having jurisdiction for the implementation of the respective act that was retroactively abrogated by the Constitutional Court and replaced by the Court's decision on the same. If there is no such body having jurisdiction according to currently valid regulations, the Constitutional Court shall appoint one<sup>38</sup>.

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<sup>34</sup> Para. 1 of Article 59 of the Constitutional Court Act.

<sup>35</sup> Para. 1 of Article 59 of the Constitutional Court Act.

<sup>36</sup> Para. 2 of Article 161 of the Constitution; Para. 2 of Article 59 of the Constitutional Court Act.

<sup>37</sup> Para. 1 of Article 60 of the Constitutional Court Act.

<sup>38</sup> Para. 2 of Article 60 of the Constitutional Court Act.



# SPAIN

## Question 1. Existence of a national institution for the protection of human rights.

**1.1. Est ce qu'une institution nationale de protection des droits de l'Homme a été établie dans votre Etat conformément aux Principes de Paris adoptés par l'Assemblée générale des Nations Unies en 1993 ?**

En Espagne n'existe pas d'institution nationale de protection des droits de l'Homme au sens de la résolution 48/134 de l'Assemblée générale des Nations Unies.

**1.2. Veuillez décrire;**

**a) La composition de cette institution nationale;**

Sans objet.

**b) Ses pouvoirs;**

Sans objet.

**c) Ses méthodes de travail;**

Sans objet.

**d) Ses réalisations / résultats.**

Sans objet.

**1.3. Comment évaluez-vous le degré d'indépendance de cette institution et sa contribution à la protection et à la promotion des droits fondamentaux au sein de votre Etat?**

Sans objet.

## Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.

**Quelles techniques sont utilisées pour assurer que la législation et la réglementation adoptées dans votre Etat sont conformes aux engagements pris par votre Etat en matière de droits fondamentaux ? Cette conformité est-elle vérifiée avant la rédaction et l'adoption de la législation et de la réglementation et, le cas échéant, par quels moyens est-elle vérifiée?**

En Espagne existent des instruments généraux et des instruments spécifiques de garantie des droits fondamentaux.

Les instruments généraux (pour la protection de n'importe quel droit):

- Le droit au procès équitable de l'art. 24 de la Constitution, les garanties de procédure y comprises (A posteriori)
- L'accès au Defensor del Pueblo [Médiateur] (A posteriori).
- Le recours d'inconstitutionnalité et la question d'inconstitutionnalité devant le Tribunal Constitutionnel (a posteriori). Avec les arrêts de ceci on peut obtenir la déclaration

d'inconstitutionnalité et la nullité des lois et autres normes avec valeur de loi comportant violation des droits fondamentaux.

Les instruments spécifiques dirigés à la protection d'un ensemble de droits fondamentaux (arts. 14 à 29 et 30.2 CE: égalité et non discrimination, vie et intégrité physique et morale, liberté idéologique, religieuse et de culte, liberté et sûreté, honneur, intimité et protection de l'image de soi même, protection du domicile et les communications, liberté de résidence et circulation, liberté d'expression et information, liberté académique, droit de réunion et manifestation, droit d'association, droit de participation politique, droit au procès équitable, droits des emprisonnés, interdiction des tribunaux d'honneur, droit à l'éducation et liberté de l'enseignement, droit d'association syndicale et de grève, droit de pétition et, le cas échéant, objection de conscience au service militaire:

- Le recours de protection des droits fondamentaux préférant et sommaire (raccourcit les délais et simplifie la procédure). C'est le juge ordinaire qui a la compétence "a posteriori".
- Le recours d'amparo devant le Tribunal constitutionnel (a posteriori)
- La réserve de loi organique (sauf pour l'objection de conscience et l'égalité et non discrimination) (au préalable).

Les instruments spécifiques pour garantir un droit fondamental concret:

- Habeas corpus, à fin de protéger la liberté personnelle (a posteriori).
- Actions devant l'Agencia de Protección de Datos [Autorité indépendante de protection des données] (a posteriori ou au préalable, le cas échéant).
- Besoin de résolution judiciaire pour entrer dans un domicile (préalable)
- Besoin de résolution judiciaire pour contrôler les communications (préalable).
- Evaluation de l'impact de genre des futures lois et décrets à fin de garantir l'égalité entre les hommes et les femmes (préalable)

### **Question 3. Existence of a national plan of action on fundamental rights.**

#### **3.1. Est ce que votre Etat prépare un plan d'action national annuel ou périodique sur les droits fondamentaux? Le cas échéant, comment ce plan est-il préparé? Quels acteurs sont impliqués ou consultés?**

En Espagne n'existe point aucun plan d'action concernant les droits fondamentaux dans son ensemble. Certes, il existe des plans sectoriels, comme celui contre la violence de genre ou l'égalité, mais jamais on a préparé un plan concernant l'ensemble des droits fondamentaux..

#### **3.2. Quel est le contenu habituel d'un tel plan?**

Sans objet.

#### **3.3. Quelle évaluation est faite de la mise en œuvre de ce plan à la fin de la période pour laquelle il a été adopté?**

Sans objet.



**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Quels mécanismes spécifiques, s'il en existe, ont été mis en place dans votre Etat pour assurer le respect des jugements de la Cour européenne des droits de l'Homme ou le suivi des observations finales des Comités établis par les traités des Nations Unies en matière de droits de l'homme?**

Il n'existe pas un instrument spécifique concernant la mise en place des jugements de la Cour européenne des droits de l'Homme ni des Comités des Nations Unies. Cependant, moyennant l'arrêt du Tribunal Constitutionnel dans l'*Affaire Barberá, Messegué et Jabardo*, nous sommes face un mécanisme interprétatif qui permet donner une certaine efficacité aux arrêts de la Cour de Strasbourg car la violation de droits déclarée par cette cour, s'il s'agit d'un droit qui soit à la Convention européenne des droits de l'homme et aussi à la Constitution espagnole, la violation de la Convention constitue une violation de la Constitution que les autorités judiciaires internes doivent affronter. De cette façon, on obtient l'annulation des résolutions judiciaires internes contraires à la Convention et, en même temps, à la Constitution. Mais concernant le législateur ou la pratique administrative, aucun instrument est prévu et l'Espagne a été condamnée par la Cour de Strasbourg dans des affaires où la violation du droit fondamentaux découlait de la loi sans que le législateur n'aie rien fait à fin de donner compliment aux arrêts de cette Cour (*Affaire Ruiz Mateos* et *Affaire Valenzuela Contreras* [réaffirmé dans l'*Affaire Prado Bugallo*]).

En ce qui concerne les observations des Comités des Nations Unies, nous n'avons pas non plus des instruments spécifiques pour garantir la mise en pied des observations, mais des institutions chargées de la surveillance de quelques droits concrets, surveillent aussi, bien que d'une façon large, le respect des observations de quelques Comités. C'est le cas, par exemple, de l'Instituto de la Mujer [Institut de la Femme] en ce qui concerne les observation du Comité CEDAW. Quelques bureaux ministériels, ils aussi, peuvent faire le suivi de ces observations.

Quelques ONG's, de leur côté, ont établi la pratique de fournir des rapports concernant la surveillance de droits fondamentaux, mais elles ne sont pas insérées dans des institutions ou des services publics avec des fonctions spécifiques.

**4.2. Veuillez préciser la façon dont ont été résolus les problèmes de coordination entre les différents départements ministériels ou les différents niveaux de pouvoir (national, régional,...).**

**4.3. Si c'est l'institution nationale pour la protection des droits fondamentaux qui contrôle cette conformité ou/et ce suivi, veuillez indiquer les moyens utilisés.**

**4.4. Si des organisations relevant de la société civile sont impliquées dans le contrôle de cette conformité, veuillez le préciser.**

**Question 5. Original mechanisms for the protection f fundamental rights**

**Veuillez indiquer ci-dessous tout autre commentaire que suscite, à la lumière de l'expérience acquise au sein de votre Etat, la lecture des questions identifiées ci-dessus. En particulier, veuillez décrire les dispositifs originaux qui contribuent à l'élaboration de la politique des droits fondamentaux dans cet Etat.**

En Espagne on peut dire que l'instrument le plus important pour établir une "politique" des droits fondamentaux est la jurisprudence du Tribunal Constitutionnel. Les recours d'amparo, instrument judiciaire spécifique pour protéger certains droits, dont le contenu des arrêts contraigne les juges ordinaires, ils jouent un important rôle dans la définition de chaque droit fondamental ayant accès à ce recours.



# **SWEDEN**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

In Sweden there are six official ombudsmen: Office of the Parliamentary ombudsman (JO), Consumer Ombudsman (KO), Office of the Equal Opportunities Ombudsman (JämO), Ombudsman against Ethnic Discrimination (DO), Children's Ombudsman (BO), Office of the disability Ombudsman and Ombudsman against Discrimination because of Sexual orientation (HomO).

### **1.2. Describe**

#### **a) The composition of such national institution;**

The Ombudsmen, who are well recognized lawyers are assisted by legally trained staff.

#### **b) Its powers;**

The JO's supervision covers all State and municipal agencies and bodies and their personnel. The supervision does not, however, extend to the performance of ministerial duties. The JO may initiate investigations on his/her own accord but also deals with complaints made by individuals.

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The KO is the Director of the General Consumer Agency. It is a state agency whose task is to help the Swedish general public with consumer affairs. Its fields of work primarily relate to advertising and contract terms, consumer information and education, domestic finances, product safety, quality and environmental impact.

The JämO's task is to ensure that the provisions of the Equal Opportunities Act are observed. The Act is intended to promote equal rights of men and women with respect to work and working conditions.

The DO's field of activity encompasses the whole scope of society except for private life. The DO pays special attention to ethnic discrimination on the labour market.

The BO's main task is to safeguard the rights and interests of children and young people as laid down in the UN Convention on the Rights of the Child. In particular, the BO shall verify that laws and statutory instruments, as well as their implementation, are compatible with Sweden's commitments under the Convention.

One of the central tasks of the Office of the Disability Ombudsman is to evaluate and disseminate information about the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities from 1993.

The HomO can act after receiving complaints or undertake initiatives on his/her own without the submission of an underlying complaint. The HomO is also commissioned to present proposals to the Government for changes in legislation or other measures that are needed to counteract discrimination because of sexual orientation.

Each year the Ombudsmen submit an annual report to the Parliament. Very often the reports contain proposals for the amendments of existing statutes at points where they have found existing provisions to be defective.

There is, in addition, the Office of Chancellor of Justice (JK), who undertakes approximately the same supervision of the courts and administrative organst as the Parliamentary Ombudsmen. He /she is, however, appointed by the Government.

Mention should be made of the Press Ombudsman for the General Public, which is not a public institution but is sponsored by media organizations.

**c) Its working methods;**

The Ombudsmen mentioned above deal with the individual complaints within their respective fields of responsibility.

The JO concentrates on those complaints which are of importance in terms of striking a just balance between the freedom of the individual and the claims of the community. The investigations carried out by the JO may result in disciplinary sanctions being imposed on a civil servant or a judge.

The KO represents consumer interests in relation to businesses and pursues legal action in the consumer interest.

In pursuance of JämOs responsibilities, the Office, in a case of discrimination, initially tries to negotiate a settlement. If such a settlement is not reached, the case may be brought before the Labour Court. The JämO can, however, only institute proceedings in the Court in cases where the trade union decides not to represent the employee or job applicant in question.

The DO gives advice in individual cases and, on a more general level. His/her activities include discussion at places of work and information at public meetings. The DO has the power to make employers, under the threat of a fine, negotiate with and give information to him/her.

The BO gives legal advice and information and acts as a consultative body in the process of drawing up legislation covering children and young people.

JK supervises the limits of the freedom of expression in accordance with the Freedom of Expression Act.

**d) its achievements**

The Ombudsman system in Sweden is of great significance as a guarantee against oppressive measures within the judicial system and the civil administration.

**1.2. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

There is a public confidence in the activities of the Ombudsmen, who are prominent lawyers and who are appointed by the Parliament for a term of four years. While there are a number of similarities between the various Ombudsmen offices, there are also some differences. The BO is for example an independent non-political body. The HomO is on the other hand a government authority.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

International treaties do not automatically become part of Swedish law. In order to become part of Swedish law, treaties must be transformed or formally incorporated into the Swedish statutes. They are usually transformed into Swedish law by the enactment of equivalent provisions in an existing or a new Swedish statute. Nevertheless, in the case of the ECHR, the Convention was incorporated, by means of a general law, stating that it shall apply in Sweden as Swedish law.

As part of the process acceding to a treaty, relevant Swedish legislation is subjected to review to ascertain that it is in conformity with the treaty in question. If amendments are needed to existing legislation, they are normally proposed in the bill to the Parliament in which the Government puts forward the treaty for approval. The amendments are usually approved and enacted before the Government, with the consent of the Parliament, takes a decision to ratify the treaty in question. There are, in addition, procedures to ensure that no new legislation contravenes the human rights treaties to which Sweden is a party. Firstly, the ministry responsible for drafting the legislation has to make that kind of evaluation. All draft bills are thereafter sent to the Ministry of Foreign Affairs. A second control is done by the Law Council (Lagrådet), which consists of members of the Supreme Court and the Supreme Administrative Court.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

The Swedish Human Rights National Action Plan covers a three-year period and applies to 2002-2004.

The work on the National Action Plan began in 2000 and it was prepared by a working group at the Government Offices in cooperation with some 240 national actors such as the Ombudsmen, various parliamentary parties, researchers, NGOs and trade union organisations, including representatives of the national authorities.

**3.2. What is the typical content of such a plan?**

A number of the issues included in the Action Plan relate to subject matters to which there has been given attention in connection with the monitoring of Sweden's obligations under international treaties. Among the priority issues are: international protection from persecution and torture; protection from discrimination on grounds such as sexual orientation, gender, disability, ethnic and cultural background; the rights of the child and the rights of the elderly as well as housing and segregation issues. The Action Plan focuses also on national minorities and the Sami peoples. Moreover, the Plan specifies current and proposed legislation in the area of relevance.

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

At the time of writing there is on-going evaluation work on the implementation of the Plan done at the Ministry of Justice.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.**

**4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties?**

Primary responsibility for ensuring compliance with the ECHR lies with the legislator. There are however, no special procedures in Swedish law or mechanisms for ensuring compliance with the judgments of the EurCtHR. Nevertheless, several Swedish cases have led, directly and indirectly, to legislative reforms.

One may say that Swedish authorities attach great importance to the concluding observations of human rights monitoring bodies. Such recommendations are respected and generally followed.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

The alternative, so called “shadow reports”, which are elaborated by the civil society and transmitted to the various international committees for the supervision of human rights play an important role in the evaluation of Sweden’s compliance with the concluding observations of the committees in question. The Swedish NGO Foundation for Human Rights has e.g. produced alternative reports to the CEDAW, the ESC Committee, the HRC and the CAT.

# **UNITED KINGDOM**

## **Question 1. Existence of a national institution for the protection of human rights.**

### **1.1. Has a national institution for the protection of human rights been set up in your State according to the Paris Principles adopted by the United Nations General Assembly in 1993?**

There is no national institution but there is one for a part of the country (Northern Ireland Human Rights Commission) and there are also three national institutions which focus only on discrimination (Commission for Racial Equality, Disability Rights Commission and the Equal Opportunities Commission), as well as a fourth which focuses on discrimination in the context of Northern Ireland (the Equality Commission for Northern Ireland). However, the government has accepted the proposal of Parliament's Joint Committee on Human Rights that a Commission for Equalities and Human Rights should be established. This will take over the work of the three equality bodies, introduce a focus on three other equality 'strands' – age, religion and belief and sexual orientation – also have responsibility for taking forward the promotional agenda that underpins the Human Rights Act. In addition it should be noted that Children's Rights Commissioners have been or are being established for all four countries that comprise the United Kingdom and that there is an Information Commissioner with responsibility for issues relating to access to information and data protection

### **1.2. Describe**

#### **a) The composition of such national institution;**

The Northern Ireland Human Rights Commission is comprised of a full-time Chief Commissioner and eight part-time commissioners and a similar structure exists for the equality commissions, although their membership is generally larger and (other than in Northern Ireland) they have 'chairs' rather than a 'chief'. All bodies are supported by full-time staff.

#### **b) Its powers;**

The Northern Ireland Human Rights Commission has responsibility for promoting human rights, reviewing existing law and practice and conducting investigations. It can also assist individuals to bring court proceedings and can bring such proceedings itself. Similar powers are enjoyed by the various bodies concerned with discrimination.

#### **c) Its working methods;**

Activities inevitably follow the powers conferred but priority areas for action tend to be identified. There is also a willingness to work with public bodies and other organisations subject to their powers so that progress is sometimes achieved through agreement rather than the use of coercive power.

#### **d) Its achievements.**

The Northern Irish bodies are relatively new and so it is too early to expect significant achievements but the equality bodies have made substantial advances in their areas of concern through a combination of increasing public awareness, negotiating with employers, targeting casework and undertaking investigations.

**1.3. How would you rate the degree of independence of this institution and its contribution to the protection and promotion of human rights within your State?**

All the members of the bodies mentioned are appointed by ministers, who also exercise control over their budget. However, removal is restricted to considerations such as non-attendance, bankruptcy or incapacity and, although relations with ministries are more co-operative than confrontational, the statutory basis for their powers means that compliance with their requirements can be insisted upon despite the opposition of a particular government department. Nevertheless any change in legislation that they propose – whether in terms of their powers or the scope of particular rights – will require the agreement of both the executive and the legislature.

As has already been indicated the contribution of the Northern Irish bodies is still limited but the equality bodies – particularly those concerned with race and sex – have been of considerable importance in ensuring that the legislative standards have become a reality.

**Question 2. Techniques for ensuring the compliance of the laws and regulations with the international obligations of the State.**

**2. Which techniques are used to ensure that the legislation and regulations adopted within your State comply with the international undertakings of the State in the field of human rights? Is such compliance verified before the legislation / regulation is drafted and adopted, and by which means?**

The principal responsibility for vetting the compatibility of proposed legislation with international undertakings in the field of human rights rests with the department bringing it forward. However, in the case of the European Convention on Human Rights a request may also be made for the matter to be checked by the Government Agent before the European Court of Human Rights (a legal adviser in the Foreign and Commonwealth Office) and in all cases it is possible that the Cabinet Committee responsible for legislation may raise particular issues about compliance. Furthermore there is an obligation under the Human Rights Act 1998, s 19 for the Minister in charge of a Bill to make a statement to the effect that either the provisions of the Bill are in his view compatible with the Convention rights ('a statement of compatibility') or the government wishes consideration of the Bill to proceed although he or she is unable to make a statement of compatibility. In the latter case there is no legal impediment to the adoption of the proposed measure but this may only be politically acceptable where a derogation is made under Article 15 of the Convention and section 14 of the 1998 Act. A statement of compatibility must be in writing but there is no requirement that the advice on which the statement of compatibility is made be disclosed and it is not disclosed in practice. Following the introduction of a Bill its provisions may be considered by the Joint Committee on Human Rights which can examine them from the perspective of any of the United Kingdom's international obligations in the field of human rights (and not just the Convention). The Joint Committee will report on the proposed legislation that it examines before its adoption and comments made by it may lead to modification or withdrawal of particular proposals.

**Question 3. Existence of a national plan of action on fundamental rights.**

**3.1. Does your State prepare a national plan of action, annual or with another periodicity, on fundamental rights? How is such a plan prepared? Which actors are implicated or consulted?**

There is no national plan of action but the activities being undertaken by the Department of Constitutional Affairs with regard to implementation of international human rights obligations and the Human Rights Act 1998 point to the adoption in the future of a perspective that is both more general and more co-ordinated. The Northern Ireland Human Rights Commission has also begun to adopt 'Strategic Plans' covering several years.



**3.2. What is the typical content of such a plan?**

The Northern Irish plans endeavour to identify the areas where action needs to be taken and how to target its resources so as to deal with them, with particular attention being given to issues such as whether something is urgent, is being addressed by another body and has widespread implications. In so doing it has consulted with the public.

**3.3. Which evaluation is made, if any, of the implementation of the plan at the end of the period for which it is adopted?**

It is too early for any evaluation.

**Question 4. Mechanisms for ensuring compliance with the judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN Committees.****4.1. Which mechanisms, if any, have been set up in your State to ensure compliance with judgements by the European Court of Human Rights or the follow-up of the concluding observations of UN committees set up under the UN human rights treaties?**

The implementation of judgments made by the European Court of Human Rights will principally be the responsibility of the relevant government department (ie the one seen as particularly engaged by the complaints leading to the proceedings before the Court), working in co-operation with the Government Agent before the Court (who has to report on the action taken and who will be the conduit for concerns expressed by the Committee of Ministers about delay or the suitability of the action being proposed), as well as any other departments that might be involved (some cases could have implications for the responsibilities of more than one). However, the implementation of judgments is also now beginning to be reviewed by a Forum that the Department for Constitutional Affairs has established with NGOs. The lead responsibility for dealing with the follow-up issues that arise from the concluding observations of the committees set up under the UN human rights treaties rests with the government department whose sphere of activity is seen as most corresponding to that of the treaty concerned (CEDAW – Women's and Equality Unit, CERD – Home Office, CRC – Children and Young Person's Unit, ICCPR and CAT – Department for Constitutional Affairs and ICESCR – Foreign and Commonwealth Office) but it will work in co-operation with other departments where their activities may also be engaged. There has been an acknowledgement that the present arrangements have not always led to meaningful action being taken and the Department for Constitutional Affairs accepts that there is a clear need for a domestic monitoring process to ensure that effective action is taken to address concerns expressed by the monitoring bodies and to ensure that ongoing action is planned, tracked, measured and evaluated. It is intended that this be undertaken by a sub-committee of a Forum that the Department has established with NGOs but no concrete action appears to have been taken so far. Parliament's Joint Committee on Human Rights has also begun to examine the issue of follow-up in the course of its work and in 2003 pressed for further action to be taken with regard to those issued by the Committee on the Rights of the Child.

**4.2. Please specify how the problems of co-ordination between different ministerial departments or different levels of power (national, regional, etc.) have been solved.**

In view of the foregoing, it is doubtful if the problems have been solved but there is undoubted value in having both lead responsibility for implementation but also co-ordinating oversight of the action being taken.

**4.3. If the national institution for the protection of human rights monitors such compliance / follow-up, please specify through which means.**

The Northern Ireland Human Rights Commission monitors compliance and follow-up in respect of cases/observations of particular concern to Northern Ireland and will raise this both with government departments and in its Annual Reports.

**4.4. If civil society organisations are involved in monitoring such compliance, please specify this.**

Civil society organisations are involved in the bringing of many cases before the European Court and in making submissions to UN treaty bodies, as well as preparing on occasion parallel reports, so that they take a particular interest in compliance and follow-up. This has traditionally been manifested through traditional lobbying action but the Forum mentioned above indicates that in the future they are likely to be accorded a more direct opportunity to press for action to be taken.

**Question 5. Original mechanisms for the protection of fundamental rights.**

**Please indicate hereunder any comment which may be elicited by the above questions, in the light of the experience of your State. In particular, please describe the original mechanisms which contribute to the elaboration of a fundamental rights policy in the State which you are monitoring.**

The United Kingdom has had several relatively narrowly focused institutions whose powers have generally been adequate – although some refinement has been necessary – and the major concern about a general institution is that some issues may be lost sight of, particularly in debates as to how best to target limited resources. Efforts to minimise such a risk must be taken on board in designing the composition and organisation of such an institution but co-ordination and co-operation between bodies is probably more important than having one all-purpose institution. Public awareness of the requirements of international obligations has only become reasonably widespread in recent years and there is a need to ensure that reporting to international bodies is not out of sight or scrutiny of the legislature and civil society. A vibrant civil society has been particularly important in ensuring that human rights are always on the agenda for action and the institution of Parliament's Joint Committee has been a valuable device for ensuring that human rights concerns are seriously examined in the legislative process, providing a useful prompt to action by both ministries and independent agencies. The contribution of the Government Agent in ensuring compliance with European Court judgments should not be underestimated but the move to have a ministry with general responsibility for human rights (ie the Department for Constitutional Affairs) looks to be a potentially significant innovation.

# ANNEX - Summary Table of Responses to the Questionnaire

## PART I

	<b><u>Question 1:</u></b> <b><i>Is there a national institution for the protection of human rights set up according to the UN Paris Principles of 1993?</i></b>	<b><u>Question 2:</u></b> <b><i>Which techniques are used to ensure that the legislation and regulations comply with the international undertakings of your State in the field of human rights?</i></b>	<b><u>Question 3:</u></b> <b><i>Is there a national plan of action on fundamental rights?</i></b>
Austria	<ul style="list-style-type: none"> <li>▪ There is no general national institution for the protection of human rights within the meaning of the Paris Principles.</li> <li>▪ However there exist specialised bodies in certain human rights matters (e.g. Human Rights Advisory Board, Child and Youth Ombuds Offices).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The techniques of assessing the international human rights implications of draft legislation are fairly rudimentary and in no way comprehensive.</li> <li>▪ On a customary basis every legislative bill drafted by any of the Federal Ministries is submitted to an extensive consultative assessment procedure, which involves many stakeholders.</li> <li>▪ Moreover a discussion has started on introducing regular child impact assessments on legislative and administrative measures.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no comprehensive national human rights plan of action.</li> <li>▪ But there are certain specialised action programmes in human rights field (e.g. Young Rights Action Plan).</li> </ul>
Belgium	<ul style="list-style-type: none"> <li>▪ Although there is a plan to establish a Human Rights Commission, there is by now no general national institution for the protection of human rights within the meaning of the Paris Principles.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Four different bodies may intervene during the legislative process, before the adoption of the final text.</li> <li>▪ The Legislative Department of the Council of State, the consultation of which is sometimes mandatory, can render an opinion on any matter (no restrictions <i>ratione materiae</i>). The Commission for the Protection of Private Life, the Consultative Committee on Bioethics and the Higher Council of Justice can be consulted within their respective fields of competences (personal data protection, ethical issues linked with the rights to integrity and dignity of the person, functioning of the judicial system and right to a fair trial).</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no national human rights plan of action.</li> </ul>

Cyprus	<ul style="list-style-type: none"> <li>▪ There is the “National Organisation for the Protection of Human Rights (established in 1998). However it has shortcomings with regard to Article 5 of the Paris Principles (i.e. its funding).</li> </ul>	<ul style="list-style-type: none"> <li>▪ All bills are submitted to the Office of the Attorney General of the Republic for legal vetting before their submission to the Council of Ministers for approval.</li> <li>▪ The Counsels of the Republic examine <i>inter alia</i> the compatibility of the bill with the State’s international obligations, including human rights.</li> <li>▪ The competent Committee examining a bill may consult and seek the approval of the Committee of Human Rights of the House, before its submission before the full House for enactment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> </ul>
Czech Republic	<ul style="list-style-type: none"> <li>▪ The “Ombudsman Office” (independent body established in 1999) is fully compatible with the Paris Principles.</li> <li>▪ There is also the Government Council for Human Rights, but this organ does not fulfil all the requirements of the Paris Principles (it is a part of the government).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Legislative Council of the Government exams compliance of the legislation with the constitutional principles and international undertakings of the State before the legislation / regulation is drafted by the Government and adopted by the Government or submitted to Parliament and adopted by Parliament.</li> <li>▪ The Government Council for Human Rights takes part in the procedure as well.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Government adopts at the proposal of the Government Council for Human Rights a national plan of action on fundamental rights.</li> <li>▪ The Government Council for Human Rights, the Government Council for National Minorities, the Government Council for Roma Community Affairs, the Government Council for Equal Opportunities for Men and Women are involved in preparing this national plan of action and concluding reports.</li> </ul>
Denmark	<ul style="list-style-type: none"> <li>▪ The “Danish Institute for the Protection of Human Rights” (established in 2002) is mandated according to the Paris Principles.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Danish Institute for the Protection of Human Rights considers the compliance of bills, decisions, opinions and government initiatives with the human rights conventions ratified by Denmark before the adoption of the regulation.</li> <li>▪ The Institute is consulted by the Danish ministries and receives several consultation papers each year regarding regulations.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national action plan on fundamental rights.</li> <li>▪ However, there are several specialised action plans within the human rights field (e.g. racism, children).</li> </ul>

Estonia	<ul style="list-style-type: none"> <li>▪ There is the “Legal Chancellor of the Republic of Estonia”.</li> </ul>	<ul style="list-style-type: none"> <li>▪ This compliance is usually verified before the adoption of the legislation.</li> <li>▪ When the Government is preparing for Estonia’s accession to a new human rights treaty, it must safeguard that all other laws lower than the constitution comply with the new human rights treaty. The final assessment is made by the Legal Chancellor Office.</li> <li>▪ A post-accession procedure of adopting a national law with requirements of a human rights treaty is also possible through the Office of the Legal Chancellor and/or the Supreme Court.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no comprehensive national human rights plan of action.</li> <li>▪ However there are certain specialised plans of action in human rights fields (e.g. minority rights).</li> </ul>
Finland	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> <li>▪ However there are specialised bodies in certain human rights matters (e.g. the Parliamentary Ombudsman and the Advisory Board for International Human Rights Matters).</li> </ul>	<ul style="list-style-type: none"> <li>▪ When a Government Bill is being prepared, ministries may ask academic human rights institutes for an opinion. This is not frequent and is done on ad hoc basis.</li> <li>▪ The Ministry of Justice has the role of quality control in respect of bills prepared in other ministries. The Chancellor of Justice screens all bills before their approval by Cabinet. Compatibility with the Constitution and with international human rights treaties is a part of his mandate.</li> <li>▪ The main mechanism for screening new legislation is in the hands of Parliament. A specialised Committee on Constitutional Law examines all bills that appear to raise questions of compatibility with the Constitution or with international human rights treaties.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no plan of action on fundamental rights.</li> <li>▪ However, the Ministry for Foreign Affairs has in recent years prepared three documents on human rights policy, which partly address also matters of national concern, but mainly human rights in foreign policy.</li> </ul>
France	<ul style="list-style-type: none"> <li>▪ There is the “Commission nationale consultative des droits de l’Homme – CNCDH”, which respects the Paris Principles.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The CNCDH may intervene during the drafting of a legislation or after its adoption. The CNCDH can also be required to hand in “consultative opinions”. It can decide to study a particular issue even if the government has not required it (this specific power strengthens the efficiency of the CNCDH).</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is an annual report by the CNCDH regarding the fight against racism, which is immediately made available to the public.</li> </ul>
Germany	<ul style="list-style-type: none"> <li>▪ There is the “German Institute for Human Rights” (established in 2001).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Common Rules of Procedure of the Federal Ministries regulate the co-operation between the ministries while preparing draft law. By this the Commissioner for Human Rights Issues in the Federal Ministry of Justice is involved as well. This altogether provides that the compliance with international responsibilities of the Federal Republic of Germany on the human rights field is verified.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action (although probably a short plan of action is to be published next year).</li> <li>▪ However there are certain specialised action plans in human rights fields (e.g. children rights)</li> </ul>

Greece	<ul style="list-style-type: none"> <li>▪ The “Greek National Commission for Human Rights” (established in 1998) is conform to the Paris Principles.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Greek National Commission for Human Rights has to be consulted prior to the submission of any draft law to the Parliament, if such draft law concerns, directly or indirectly, human rights. It systematically verifies whether such draft law is in conformity with the Constitution and the international obligations of Greece in the field of human rights.</li> <li>▪ Furthermore, when the draft law is submitted to the Parliament, it is immediately sent to the “Scientific Council” of the Parliament, which verifies, once more, its compatibility with the Constitution and the international commitments of Greece.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> <li>▪ However there are specialised bodies in certain human rights matters (i.e. four Commissioners and soon there will be a National Anti-Discrimination Commission).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Human Rights Department of the Ministry of Justice examines whether the draft legislation is in accordance with the ECHR and the similar department of the Ministry of Foreign Affairs does the same work in relation to the UN Conventions. Any incompatibility with international treaties ratified shall be revealed during the drafting process before the adoption of the rule.</li> <li>▪ Nevertheless it is within the jurisdiction of the Constitutional Court to review the conformity of domestic law with international undertakings. The Court’s jurisdiction includes <i>inter alia</i> preliminary review of enacted but not yet promulgated statutes, constitutional review of enacted norms, review of unconstitutional omission of legislation, and interpretation of the constitution. Retrospective norm control can be initiated by anyone, even if they are not affected by the regulation in question.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> </ul>
Ireland	<ul style="list-style-type: none"> <li>▪ The Irish Human Rights Commission was established by statute (the Human Rights Commission Acts, 2000 &amp; 2001) in July 2001.</li> </ul>	<ul style="list-style-type: none"> <li>▪ ‘Human rights-proofing’ of legislative proposals takes place, at the drafting stage, in the Office of the Attorney General.</li> <li>▪ Sponsoring government departments may also comment on the compatibility of legislative proposals with international human rights obligations.</li> <li>▪ The Irish Human Rights Commission has a statutory function to comment, upon the request of a government Minister, on the compatibility of legislative proposals with domestic and international human rights obligations but it can also, of its own motion, make recommendations on measures to strengthen and promote human rights in the State.</li> <li>▪ However there is no formal system of parliamentary scrutiny of legislation for human rights compatibility.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national plan of action on fundamental rights but there is a series of national action plans on specific issues of thematic concern such as women’s rights, racism (awaited), poverty etc.</li> </ul>

Italy	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The compliance with the international obligations in the field of human rights is mainly ensured by the judicial authorities. The mechanisms for ensuring the respect of international human rights provisions are <i>ex-post</i>, judicial and interpretative. No serious <i>ex-ante</i> control is ensured.</li> <li>▪ The governmental Committee on Human Rights plays a limited role in this field.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>▪ There is the “National Human Rights Office” (established in 1995).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The area of legislative process is weak as concerns the assessment of draft legislative initiative and their compliance with human rights.</li> <li>▪ Each draft legislation is accompanied by an annotation in which the authors submit whether any international law standards are applicable and how is the proposed draft meeting their requirements. However there is no separate comment on human rights standards required.</li> <li>▪ The representatives of the National Human Rights Office regularly participate in the meetings of the Human Rights Commission of the Parliament in the discussions on the draft legislation.</li> <li>▪ Human Rights experts are, in principle, invited to participate in working groups on draft legislation concerning human rights norms.</li> </ul>	<ul style="list-style-type: none"> <li>▪ In 1995 the Government adopted a National Programme for the Protection and Promotion of Human Rights in Latvia.</li> <li>▪ Moreover there are also specific and narrow programmes in human rights fields (e.g. gender equality).</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> <li>▪ However there is the Parliamentary Ombudsmen’s Office in charge of protecting human rights as well as two other offices of special ombudsmen (Equal Opportunities Ombudsman and the Controller for the Protection of the Rights of the Child).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The drafts laws presented to the Seimas (Parliament) have to be verified with regard to their compliance with the ECHR. This is an obligation for the authors of the draft.</li> <li>▪ The Seimas Committee on Human Rights undertakes the parliamentary control of the compliance of the drafts with Lithuania’s obligations in the field of human rights.</li> <li>▪ The European Law Department under the auspices of the Government can deliver its opinion on the compliance of the drafts with the ECHR.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Lithuania has adopted in 2002 its first National Action Plan for the Protection and Promotion of Human Rights, as recommended by the Vienna Declaration and Programme of Action of 1993.</li> <li>▪ Accordingly and together with the UNDP, the Parliament has adopted the "Support to the implementation of the national human rights action plan programme".</li> </ul>
Luxembourg	<ul style="list-style-type: none"> <li>▪ There is the “Consultative Commission on Human Rights” (established in 2000).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Consultative Commission on Human Rights usually gives its opinion before the adoption of the legislation / regulation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> </ul>

Malta	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The office of the Attorney General (and sometimes specifically appointed commissions) is responsible for the drafting and review of national legislation.</li> <li>▪ There is the possibility of obtaining a judicial decision invalidating the legislation that does not comply with the ECHR.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> </ul>
Poland	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> <li>▪ However there are the Ombudsman and the Ombudsman for Children who are in charge of safeguarding the rights and freedoms of the citizens.</li> </ul>	<ul style="list-style-type: none"> <li>▪ During the legislative process, the Ombudsman, the Government's Plenipotentiary for Equal Status of Men and Women, representatives of the Department of International Co-operation and European Law of the Ministry of Justice, the Sjem's Commission for Justice and Human Rights and other experts might express their opinions on the draft and its conformity with the Constitution and international human rights standards. The President may request the Constitutional Court to examine the conformity of the law adopted by the Parliament with the Constitution.</li> <li>▪ Moreover the existing legislation may be questioned before the Constitutional Court.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> </ul>
Portugal	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> <li>▪ However the Ombudsman is competent in certain human rights matters.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no special mechanism to ensure that the legislation complies with international undertakings in the field of human rights. The main mechanism of ensuring legislation complies with human rights is through the control of its constitutionality.</li> <li>▪ The President may require the Constitutional Court to rule preventively on the constitutionality of any norm that has been subject to him for promulgation.</li> <li>▪ The constitutionality of the norms of the Statute, once in force, may also be challenged, through judicial review.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> </ul>



Slovak Republic	<ul style="list-style-type: none"> <li>▪ There is the “Slovak National Centre for Human Rights” (established in 1993) although it is not specified whether it is set up according to the Paris Principles.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Each bill submitted to the parliamentary discussion must contain an explanatory report, which <i>inter alia</i> must contain a declaration that the bill is in conformity with the Constitution, constitutional laws, international treaties and the EU law. Evaluation of this conformity must constitute a part of the explanatory report.</li> <li>▪ The Legislative Council of the Government evaluates the compliance of the governmental proposals of legislation and regulations with constitutional and international undertakings, including international treaties on human rights, before the proposals are submitted to the government for their adoption.</li> <li>▪ The Constitutional and Legal Affairs Committee deliberates each bill with regard to this compliance.</li> <li>▪ At the final phase of the legislative process, the President has the right to veto the law adopted by the National Council, and return it back to the parliament with his comments for repeated discussion and adoption.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> <li>▪ However there are certain specialised action plans in human rights fields (e.g. discrimination, racism, women, children).</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> <li>▪ However there is the Ombudsman that is competent in human rights matters.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Constitutional Court shall give an opinion on ratification of international treaties and their conformity with the Constitution in the manner provided by this Law.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> </ul>
Spain	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is a range of procedures available in order to ensure compliance with human rights obligations such as the control of constitutionality, the access to the <i>Defensor del Pueblo</i> and the <i>Amparo</i> complaint procedure.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> <li>▪ However there are certain specialised action plans in human rights fields (e.g. gender equality).</li> </ul>

Sweden	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> <li>▪ However there are six Ombudsmen specialised in human rights matters.</li> </ul>	<ul style="list-style-type: none"> <li>▪ As part of the process acceding to a treaty, relevant Swedish legislation is subjected to review to ascertain that it is in conformity with the treaty in question.</li> <li>▪ With regard to new laws, the ministry responsible for drafting the legislation has to make an evaluation of such compliance.</li> <li>▪ All draft bills are thereafter sent to the Ministry of Foreign Affairs. A second control is done by the Law Council, which consists of members of the Supreme Court and the Supreme Administrative Court.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Swedish Human Rights National Action Plan covers a three-year period and applies to 2002-2004.</li> <li>▪ It was prepared by a working group at the Government Offices in co-operation with some 240 national actors such as the Ombudsmen, various parliamentary parties, researchers, NGOs and trade union organisations, including representatives of the national authorities.</li> </ul>
The Netherlands	<ul style="list-style-type: none"> <li>▪ There is no general institution for the protection of human rights within the meaning of the Paris Principles.</li> <li>▪ However many different institutions are involved in the promotion of human rights.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The persons charged with the preparation of draft legislation and regulations are at the same time responsible to ensure that the new rules will be compatible with international human rights standards.</li> <li>▪ In addition the Minister of Justice ought to review the constitutionality of draft acts. The Council of State, in giving advisory opinions to the Government on draft legislation, also pays attention to this issue.</li> <li>▪ In practice, no systematic reference to relevant international human rights instruments is made in the explanatory memoranda that accompany the bills that are submitted to Parliament.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no general national human rights plan of action.</li> </ul>

<p>United Kingdom</p>	<ul style="list-style-type: none"> <li>▪ There is no general national institution for the protection of human rights within the meaning of the Paris Principles but there is one for Northern Ireland: the “Northern Ireland Human Rights Commission”.</li> <li>▪ At the national level there are several specialised bodies in certain human rights, especially in non-discrimination matters.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The principal responsibility for vetting the compatibility of proposed legislation with international undertakings in the field of human rights rests with the department bringing it forward.</li> <li>▪ However, in the case of the ECtHR a request may also be made for the matter to be checked by the Government Agent before the ECtHR and in all cases it is possible that the Cabinet Committee responsible for legislation may raise particular issues about compliance.</li> <li>▪ Furthermore there is an obligation for the Minister in charge of a bill to make a statement to the effect that either the provisions of the bill are in his view compatible with the Convention rights (‘a statement of compatibility’) or the government wishes consideration of the bill to proceed although he or she is unable to make a statement of compatibility. In the latter case there is no legal impediment to the adoption of the proposed measure but this may only be politically acceptable where a derogation is made under Article 15 of the Convention and section 14 of the 1998 Act.</li> <li>▪ Following the introduction of a bill its provisions may be considered by the Joint Committee on Human Rights. The Joint Committee will report on the proposed legislation that it examines before its adoption and comments made by it may lead to modification or withdrawal of particular proposals.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no national plan of action but the activities being undertaken by the Department of Constitutional Affairs with regard to implementation of international human rights obligations and the Human Rights Act 1998 point to the adoption in the future of a perspective that is both more general and more co-ordinated.</li> <li>▪ The Northern Ireland Human Rights Commission has begun to adopt ‘Strategic Plans’ covering several years.</li> </ul>
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## PART II

	<b>Question 4:</b> <b>Which mechanisms ensure compliance with judgements by the European Court of Human Rights (ECrTHR) or follow-up of the concluding observations of UN Committees set up under the UN human rights treaties.</b>	<b>Question 5</b> <b>Original domestic mechanisms that contribute to the elaboration of a fundamental rights policy.</b>  <b><u>Other comments</u></b>
Austria	<ul style="list-style-type: none"> <li>▪ <b><u>ECrTHR:</u></b></li> </ul> <ol style="list-style-type: none"> <li>2. The constitutional status of the ECHR does not mean that judgements of the ECrTHR are directly applicable within domestic law and that decisions or laws infringing the ECHR can be abolished directly based on them.</li> <li>3. Although the reopening of proceedings is generally known in civil and administrative law, contrary to criminal law, the assessment of a violation of the ECHR or a change in case-law is no sufficient ground.</li> <li>4. In general there is only little readiness to implement the judgements of the ECrTHR concerning the concrete cases of the applicants by taking the appropriate legal measures. More readiness exists to ensure that a violation of the ECHR is not repeated.</li> </ol> <ul style="list-style-type: none"> <li>▪ <b><u>UN Committees:</u></b></li> </ul> <p>There is no specific mechanism.</p>	<ul style="list-style-type: none"> <li>▪ National human rights NGOs play an important role in monitoring the actual human rights situation and in cooperating with governmental agencies in the implementation of human rights related activities.</li> <li>▪ Reference should be made to the Austrian Human Rights Advisory Board, which consists of an equal number of governmental and non-governmental members and has the function of monitoring the federal law enforcement agencies and advising the Minister of Interior in all human rights aspects. The Advisory Board established six regional Human Rights Commissions with the task of regularly visiting all places of detention under the authority of the Minister of Interior and to monitor the use of force by law enforcement officials in the context of demonstrations, assemblies, anti-drug raids, soccer matches and similar actions.</li> </ul>
Belgium	<ul style="list-style-type: none"> <li>▪ There is no specific mechanism.</li> </ul>	
Cyprus	<ul style="list-style-type: none"> <li>▪ Judgements of the ECrTHR against Cyprus are binding on the Courts. The same applies for the Human Rights UN Treaties.</li> <li>▪ There is no special mechanism set up, but the Office of the Attorney-General of the Republic with the competent Ministry proceeds with the preparation of an amendment if necessary of the offending legislation or practice in issue.</li> <li>5. Finally, the House Committee on Human Rights may embark on an enquiry on the implementation of judgements of the ECrTHR or concluding observations of UN Committees.</li> </ul>	

Czech Republic	<ul style="list-style-type: none"> <li>▪ No formal compliance mechanisms have been set up.</li> <li>▪ The Government and its organs, especially the Government Council for Human Rights and the Legislative Council of the Government, take into account the judgements adopted by the ECtHR and the concluding observations of UN committees and usually ensures compliance of the legislation and practice with them.</li> <li>▪ The Constitutional Court also respects the judgements of the ECtHR and has the power to take measures, in a specific procedure, in order to ensure compliance with them. This power does not extend to observations of other, non-judicial human rights bodies.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Constitutional Court plays an important role in the development of the protection of human rights.</li> </ul>
Denmark	<ul style="list-style-type: none"> <li>▪ <b>ECtHR:</b> When the State is found by the Court to have violated the ECHR, the Ministry of Justice inform the authority who made the decision brought before the Court about the Court's judgement. The relevant authority must change its decision in order to fulfil the State's obligations according to the ECHR.</li> <li>▪ <b>UN Committees:</b> The State follows up on the concluding observations of UN Committees by making follow-up reports, including i.e. amendments in the Danish regulation or practice, submitting new initiatives etc. The Ministry of Foreign Affairs have information briefings with the Danish NGO community app. three times a year.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Denmark does not have a constitutional court and there has not been one specific mechanism to form the fundamental rights policy.</li> </ul>
Estonia	<ul style="list-style-type: none"> <li>▪ There are no particular mechanisms for ensuring such compliance.</li> <li>▪ The respective ministries, especially the Ministry of Foreign Affairs, have the lead in co-ordinating Estonia compliance with international standards and recommendations.</li> <li>▪ If there is a lack of compliance, the Legal Chancellor has the right – and possibly the duty – to propose a change of legislation.</li> </ul>	<ul style="list-style-type: none"> <li>▪</li> </ul>
Finland	<ul style="list-style-type: none"> <li>▪ The Legal Department of the Ministry for Foreign Affairs has overall responsibility for implementation, including payment of just satisfaction ordered by the ECtHR and transmitting views and concluding observations of UN treaty bodies to relevant authorities.</li> <li>▪ A judgement by ECtHR can be the basis for annulling a court decision through extraordinary remedies.</li> <li>▪ The State may be asked to pay compensation in cases where the UN Human Rights Committee has found a violation of the Covenant on Civil and Political Rights and called for an effective remedy.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Due to the relatively well-functioning mechanisms of direct applicability of human rights treaties in courts, the complaint procedure of the Parliamentary Ombudsman and the screening of new legislation by the Constitutional Law Committee of Parliament, relying on academic expertise, the establishment of a new National Human Rights Institution is widely held as difficult and perhaps even unnecessary.</li> </ul>
France	<ul style="list-style-type: none"> <li>▪ There is no specific mechanism in this sense.</li> <li>▪ The CNCDH is in charge of watching over this conformity. The CNCDH can decide to use its active consultative power in this field.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The CNCDH is not the only institution for the protection of fundamental rights. There are many other “administrative independent authorities” in charge of specific issues, which have been set up - or modified - according to the Paris Principles.</li> </ul>

Germany	<ul style="list-style-type: none"> <li>▪ <b><u>ECrthR:</u></b> The Commissioner for Human Rights Issues in the Federal Ministry of Justice monitors the compliance with judgements of the ECrtHR. The judgements are sent to the affected authorities (poss. to not affected courts and authorities as well if a decision has general effects) and publicised in a juridical periodical. Further measures depend on the individual case.</li> <li>▪ <b><u>UN Committees:</u></b> The Concluding observations of UN treaty bodies are made known and the competent Federal ministries take care of their follow-up.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Apart from the activities of the German Institute for Human Rights, the human rights policy takes place by a parallel and combined work of various institutions:</li> <li>▪ On the parliamentary level, the Committee on Human Rights and Humanitarian Aid.</li> <li>▪ The Federal Government, which provides every two years a report on its human rights policy.</li> <li>▪ The Government's Commissioner for Human Rights Policy and Humanitarian Aid in the Foreign Office.</li> <li>▪ The Commissioner for Human Rights Issues in the Federal Ministry of Justice.</li> <li>▪ The Human Rights Forum which by now has over 40 member organisations.</li> </ul>
Greece	<ul style="list-style-type: none"> <li>▪ <b><u>ECrthR:</u></b> The Legal Council of State has the competence to co-ordinate the execution of the judgements of the ECrtHR at the national level.</li> <li>▪ <b><u>UN Committees:</u></b> The Greek National Commission for Human Rights has the competence to examine the ways in which the legislation may be harmonised with international law standards on human rights and the subsequent submission of relevant opinions to competent State organs.</li> </ul>	<ul style="list-style-type: none"> <li>▪</li> </ul>
Hungary	<ul style="list-style-type: none"> <li>▪ <b><u>ECrthR:</u></b> The Hungarian Government during the implementation of the ECrtHR judgements follows the guidelines of the Committee of Ministers. The Ministry of Justice follows the development of the case law of the Court, and draws attention to the problems of the Hungarian legal system that might result in future violations.</li> <li>▪ <b><u>UN Committees:</u></b> The implementation of the decisions of the International Court of Justice as well as the concluding observations of UN committees belongs to the Ministry of Foreign Affairs.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Constitutional Court plays an important role in the development of the protection of human rights although there is no «real» constitutional complaint in order to protect infringed fundamental rights.</li> </ul>

Ireland	<ul style="list-style-type: none"> <li>▪ The responsibility for ensuring compliance with the judgments of the ECtHR or follow-up in relation to UN Committees rests with the Legal Unit of the Department of Foreign Affairs. It is not clear what formal mechanisms, if any, exist for this purpose and much will depend on the issues involved in individual cases or periodic reports.</li> <li>▪ Because Ireland has a dualist system in its constitutional provision for international law, decisions of international courts (such as the ECtHR) cannot be enforced in the Irish courts if they conflict with provisions of Irish law.</li> <li>▪ Similarly, if an adverse finding is made in respect of Ireland under the Optional Protocol to the International Covenant on Civil and Political Rights the Irish courts can refuse to give effect to such finding as the ICCPR does not have legal effect in the jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>▪ As well as the Irish Human Rights Commission there are a number of other statutory agencies charged with the protection and enforcement of fundamental rights (by direct or indirect means) through a variety of mechanisms.</li> <li>▪ These include: the Equality Authority, the National Disability Authority, the Health &amp; Safety Authority, the National Consultative Committee on Racism and Inter-culturalism, the office of the Ombudsman and Information Commissioner, the Data Protection Commissioner and other agencies with specific mandates.</li> </ul>
Italy	<ul style="list-style-type: none"> <li>▪ There is no general instrument for ensuring the effective compliance with the judgements of the ECtHR.</li> <li>▪ The only specific mechanism provided in this field concerns the reasonable time of the trial (Article 6§1 of the ECHR).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Constitutional Court plays an important role in the development of the protection of human rights.</li> </ul>
Latvia	<ul style="list-style-type: none"> <li>▪ The Representative of the Government of the Republic of Latvia before International Human Rights Organizations is in charge of monitoring the implementation of legally binding decisions and observations and recommendations adopted in respect of Latvia by international human rights bodies.</li> <li>▪ Usually special working groups on the implementation of judgements and/or concluding observations are created by the Government.</li> </ul>	<ul style="list-style-type: none"> <li>▪ For the moment, it seems that the Constitutional Court remains the most effective mechanism for the protection of human rights although it does not <i>per se</i> develop a comprehensive human rights policy.</li> <li>▪ Moreover, unfortunately, the National Human Rights Office has not undertaken the comprehensive development of, or at least an assessment, of the existing system of human rights protection in Latvia.</li> </ul>
Lithuania	<ul style="list-style-type: none"> <li>▪ <b>ECtHR</b> The law provides the procedure of compensation for the victims of a violation of the ECHR. Moreover special provisions of the Code of Criminal Procedure and the Code of Civil Procedure entitles a number of subjects to initiate the renewal of the proceedings following the recognition by the Court of violations of the ECHR.</li> <li>▪ <b>UN Committees</b> The respective ministries and other agencies are responsible for the implementation of the Concluding Observations.</li> </ul>	
Luxembourg	<ul style="list-style-type: none"> <li>▪ In criminal matters, the judgements of the ECtHR can lead to a procedure of revision.</li> </ul>	

Malta	<ul style="list-style-type: none"> <li>▪ <b>ECrTHR:</b> A decision delivered by the ECtHR may be executed by the Constitutional Court in the same manner than the decisions given by this national court, and this upon an application presented before it by the individual concerned.</li> <li>▪ <b>UN Committees:</b> There is no specific mechanism to implement the concluding observations of UN Committees.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Human rights' policy is developed through the action of the parliamentary and government institutions as well as through the decisions of the Courts and the Ombudsman.</li> </ul>
Poland	<ul style="list-style-type: none"> <li>▪ There is no special fully effective mechanism to ensure compliance of the laws and practices with the decisions of the ECtHR. However there is a procedure of control of constitutionality.</li> <li>▪ The Code of Criminal Procedure provides that the decision of an international judicial organ is one of the reasons to re-open criminal proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>▪</li> </ul>
Portugal	<ul style="list-style-type: none"> <li>▪ <b>ECrTHR</b> There is no specific mechanism of reaction against a lack of compliance with the ECtHR. It is the Agent of the Portuguese State that notifies the Ministry of Justice, who executes the decision and activates a special fund, when the payment of just satisfaction is owed.</li> <li>▪ <b>UN Committees</b> There is no specific mechanism to receive the Concluding Observations of the UN Committees. Therefore they have very little impact and are widely unknown of upper State organs. In relation to the "follow-up" of Concluding Observations, the Office of Documentation and Comparative Law of the General Attorney provides expertise to the Foreign Office, in drafting the reports and replying to the questions posed by the Committees.</li> </ul>	<ul style="list-style-type: none"> <li>▪ There are three main specialised national institutions, within the meaning of the Paris Principles:</li> <li>▪ The Commission for Equality in Labour and Employment.</li> <li>▪ The Commission on Equality and Women's Rights.</li> <li>▪ The High Commissioner for Immigration and Ethnic Minorities.</li> </ul>
Slovak Republic	<ul style="list-style-type: none"> <li>▪ There is a general obligation for public bodies and institutions to follow up and respect the judgements of the ECtHR. However, unlike the Constitutional Court, this obligation is not always applied, in practice, by the national courts in their decision making process.</li> <li>▪ With regard to the judgements of the ECtHR against the Slovak Republic, the Ministry of Justice is competent for enforcement of these judgements and it submits to the Government recommendations for further actions. Generally it only recommends the government to pay out the claimant the pecuniary and/or non-pecuniary compensations.</li> </ul>	<ul style="list-style-type: none"> <li>▪</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>▪ The decisions of the ECtHR are to be directly implemented by the empowered national court only in cases covered by ratified international agreements.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The most original mechanism for the human rights protection is the « Constitutional Complaint ». This protection embraces all constitutionally guaranteed human rights and fundamental freedoms including those adopted through the treaties that have become part of the national law through ratification.</li> </ul>



Spain	<ul style="list-style-type: none"> <li>▪ There is no specific mechanism for ensuring compliance with the judgements by the ECtHR or the follow up of the Concluding Observations of the UN Committees.</li> <li>▪ There is a mechanism of interpretation that gives some efficiency to the judgements by the ECtHR.</li> <li>▪ Moreover certain institutions are in charge of monitoring specific human rights (e.g. women rights).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The most important instrument for the protection of fundamental rights is the case law of the Constitutional Court.</li> </ul>
Sweden	<ul style="list-style-type: none"> <li>▪ There are no special mechanisms for ensuring compliance with the judgements of the ECtHR. Primary responsibility for ensuring compliance with the ECHR lies with the legislator.</li> <li>▪ Swedish authorities attach great importance to the concluding observations of human rights monitoring bodies. Such recommendations are respected and generally followed.</li> </ul>	<ul style="list-style-type: none"> <li>▪</li> </ul>
The Netherlands	<ul style="list-style-type: none"> <li>▪ <b><u>ECtHR</u></b> The Minister of Foreign Affairs, in consultation with the Minister of Justice, submits to Parliament every year a short review of the case-law of the ECtHR although this reviews do not attract a lot of attention inside or outside Parliament.</li> <li>▪ <b><u>UN Committees</u></b> No similar procedure exists in connection to views adopted by the UN Committees. On some occasions, these views have been extensively discussed by the Parliament and the Government (i.e. when they tackled sensitive issues).</li> </ul>	<ul style="list-style-type: none"> <li>▪ The drafting of the Dutch periodic reports to the UN Committee on the Elimination of Discrimination against Women (CEDAW) is preceded by the publication of a comparable report for domestic purposes. This 'pre-report' is presented to Parliament with a view to a discussion that may feed into the final report as submitted to CEDAW.</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>▪ <b><u>ECtHR</u></b> The implementation of judgements made by the ECtHR will principally be the responsibility of the relevant government department, working in co-operation with the Government Agent before the Court as well as any other departments that might be involved. However, the implementation of judgements is also now beginning to be reviewed by a Forum that the Department for Constitutional Affairs has established with NGOs.</li> <li>▪ <b><u>UN Committees</u></b> The lead responsibility in this field rests with the government department whose sphere of activity is seen as most corresponding to that of the treaty concerned. However there is a clear need for a new domestic monitoring process since the present arrangements have not always led to meaningful action being taken. The Northern Ireland Human Rights Commission monitors compliance and follow-up in respect of cases/observations of particular concern to Northern Ireland and will raise this both with government departments and in its Annual Reports.</li> </ul>	<ul style="list-style-type: none"> <li>▪</li> </ul>