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Strengthening Ombudspersons in Central and Eastern Europe

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Summary

A common new institutional development in the process of accession by Central and Eastern European (CEE) countries to the European Union has been the establishment of ombudspersons to protect the rule of law and human rights. Today, in a climate of rule-of-law backsliding, the ombudspersons—as genuine democratic actors—should be supported. Situated among the three branches of governance, they are uniquely placed to monitor compliance with the rule of law and human rights. They can also provide institutional opposition to an authoritarian regime and regressive tendencies.

Governments should use ombudspersons' findings to improve their work and that of the public administration when there is evidence of poor coordination or implementation. Ombudspersons and governments should be natural partners, not competitors or adversaries. However, when being openly critical of governments, ombudspersons are exposed to different formal and informal pressures, openly or covertly. In such circumstances, parliaments should protect ombudspersons since the legislative branch of government is institutionally positioned as their key supporter and partner. Yet, given the usual dominance of the executive over the legislature, it is not rare that the parliaments join campaigns against ombudspersons, labeling them as outlaws and adversaries.

The office needs strategic and unwavering support from external and domestic partners to be able to continue rigorous and persistent monitoring. In the case of ombudspersons in the CEE region, support from three types of actors can have a considerable impact on the government: the political opposition, civil society, and the EU institutions.

The political opposition should use ombudspersons' findings to reveal existing problems and insist on the implementation of their recommendations. Civil society organizations (CSOs) should use public space and the media to warn of problematic situations. They are also the best amplifiers of ombudspersons' findings, with the ability to translate them into wider civic

actions. Additionally, CSOs are usually well connected with international partners, which allows them to raise with international human rights bodies and key political actors, including the EU institutions, concerns about the problems ombudspersons face.

The EU institutions should use their presence on the ground and pressure from Brussels to assist ombudspersons in the short term. Regular progress reports for candidate countries and the new annual rule-of-law reports should be used to provide strategic long-term support to ombudspersons. The rule of law is receiving more emphasis in the EU's accession process as well as in its internal policies. Closer ties between ombudspersons and EU delegations in candidate and potential candidate countries should be established to allow information exchanges. Similarly, more structured cooperation between the European Commission and the ombudspersons of member states is needed. Firmer cooperation between them should also serve as a deterrent to government pressure on ombudspersons, as information would travel quicker and would be received in the right part of the EU system.

These actors are also best placed to pressure ombudspersons when they are not performing as they should. The same channels may be used to raise concerns about ombudspersons' performance. Parliamentary oppositions should insist on debating ombudspersons' reports, comparing them to findings from other human rights actors. CSOs may use those opportunities to challenge ombudspersons' findings. They can do the same by preparing their own reports, aimed either at the domestic public or at international human rights bodies, such as the UN treaty bodies or the Council of Europe's monitoring bodies. There is also great potential to induce a positive change in ombudspersons' performance through CSOs' participation in their accreditation as a national human rights institution. For such an opportunity to be used more frequently by CSOs from the CEE region, it should be better advertised and promoted.

Introduction

The democratic transformation of the countries of Central and Eastern Europe (CEE) has often been pictured as a success story, among the most important ones in Europe since the end of the Cold War. The countries of Central Europe all joined the European Union. The Western Balkan countries are still keen to do the same, despite major internal and external challenges, while close cooperation between the EU and the Eastern Partnership countries has grown. Integral parts of these efforts were strengthening the rule of law, building strong institutions, and promoting good governance. A common new institutional development in this process has been the establishment of the institution of ombudspersons as a mechanism to protect the rule of law and human rights.

As observed by the former European ombudsman Nikiforos Diamandouros, ombudspersons maintain and improve the quality of democracy directly through the promotion of accountability and active citizenship, and indirectly by reinforcing the rule of law and thus the balance between equality and liberty that is a salient feature of a pluralist democracy.¹ There is an interplay between ombudspersons and the democratic state governed by the rule of law within which this institution operates. On the one hand, the existence of ombudspersons as an institution presupposes, to a certain extent at least, the rule of law within a democracy, and on the other hand, their work helps to maintain and fortify the rule of law and democracy. For those reasons, they are of great importance for the consolidation of the rule of law. Being independent state actors, they have to speak and act freely in order to protect those whose rights have been violated by wrongdoings committed by the state. Furthermore, ombudspersons should be vocal about systemic problems in the functioning of the public administration. To that end, they can be exposed to different attacks from state and non-state forces wishing to maintain

the status quo and from those public officials whose work the ombudsperson has criticized.

This paper explores the strategies that can be used to strategically support the ombudspersons in the CEE region to serve as independent watchdogs over the executive branches. At the same time, close attention to their work should also positively influence their actions and attitude toward the public administration. Such close attention should lower the risk of hijacking the institution—that is, the possibility to have an ombudsperson who is an agent of the executive or legislative branch. With that aim, this paper analyzes the position and work of the institution of the ombudsperson in the CEE region, the challenges they face as well as their relations with EU institutions and civil society. The research was conducted primarily through desk research along with interviews with key stakeholders, who offered an insight into the practical results of ombudspersons' efforts.

The main findings indicate that with critical scrutiny of ombudspersons' work performed through joint efforts of the EU, the media, and civil society, two simultaneous goals can be reached: strategic support to well developed, credible, and independent ombudspersons; and strategic efforts to transform "agentized" and marginalized ombudspersons into full-fledged and purposeful institutions.

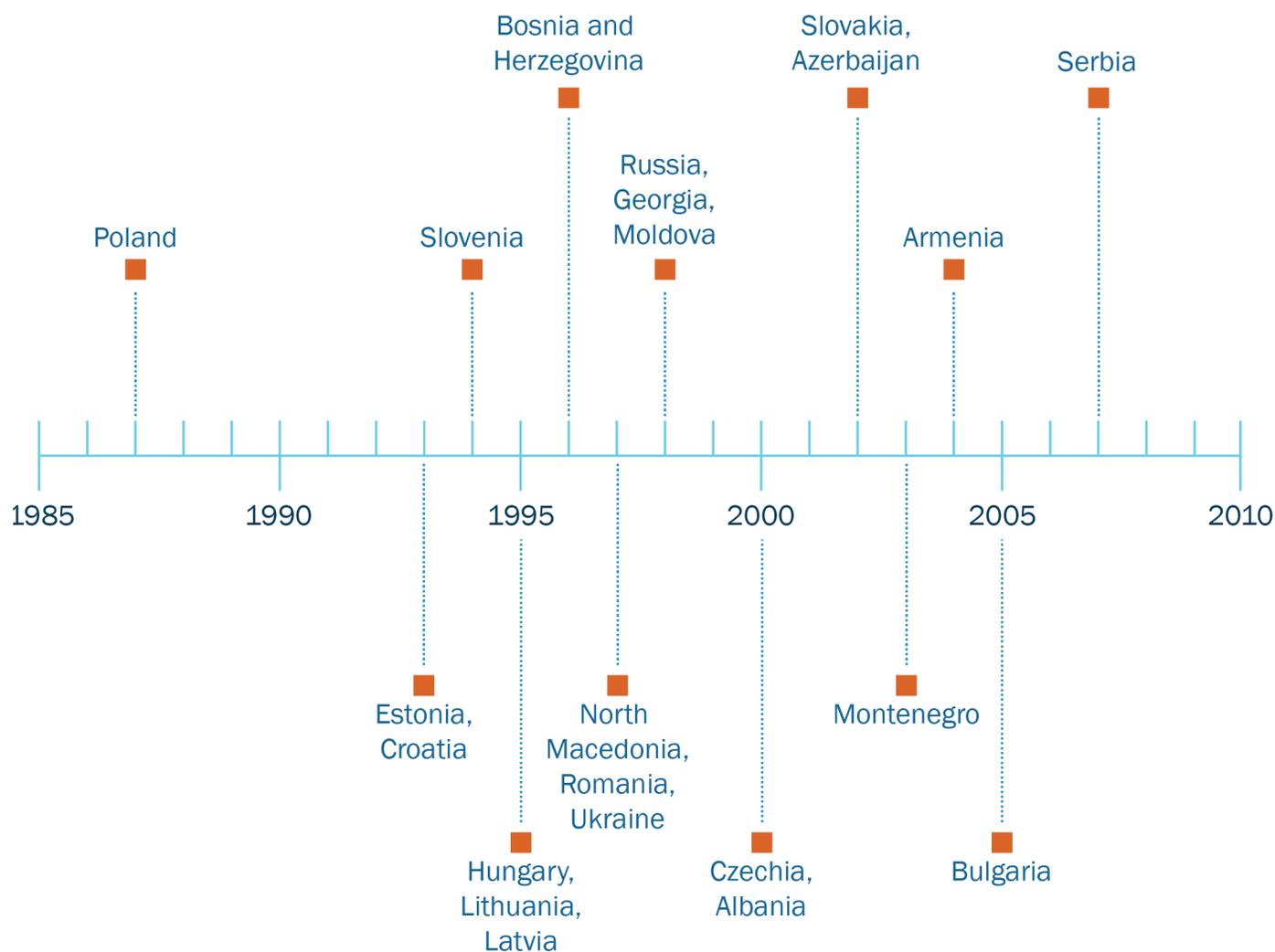
Ombudspersons in the CEE Countries

The evolution of the institution of ombudspersons in Central and Eastern Europe mirrored the pace of transition in the region; it started in Poland with the creation of the commissioner for human rights in 1987, and ended with Serbia, which elected its first protector of citizens in 2007. In the meantime, all CEE countries did the same, except Belarus, which promised to establish one but has not fulfilled that promise yet. (See Figure 1.)

The CEE countries have established this institution under different formal names, such as: the People's Advocate in Albania, the Parliamentary Advocate in Moldova, the Public Defender of Rights in Czechia, and the Mediator, the Chancellor of Justice, the

¹ Nikiforos Diamandouros, [The Ombudsman Institution and the Quality of Democracy](#), October 17, 2006.

Figure 1. The Establishment of Ombudspersons in the Central and Eastern Europe.



Parliamentary Commissioner, the Commissioner for Human Rights, and the Human Rights Defender elsewhere. However, there is no substantial differentiation in terms of mandate and functions; these different names result rather from the particular legal terminology of each state. The vast majority of CEE countries established the “hybrid” type of ombudspersons, meaning that these oversee the work of administrative authorities and fight maladministration, and they have an explicit mandate to protect and promote human rights. The main method of work of ombudspersons is investigations, which can be initiated by a complaint lodged by citizens or organizations, or

at their own initiative. Handling complaints is thus perceived as their key function.

Ombudspersons are established to oversee the work of the public administration in order to contribute to its legal, efficient, and effective operations. A good public administration is one that ensures that it is at citizens’ service, guaranteeing and providing them with clear, fair, efficient, and simple procedures to enjoy their rights. It is the task of the government to make sure that such procedures are established and operational, given that it is government’s task to coordinate, direct, and supervise the work of the entire public administration. Ombudspersons serve as

corrective and oversight mechanisms to indicate when the public administration is not serving its purpose effectively. To that end, ombudspersons and governments should be natural partners, and not competitors or adversaries.

The majority of CEE ombudspersons also have the right to propose laws and submit amendments, give opinions on draft legislation, and challenge legislation before the constitutional court. This legislative function indicates the strong institutional ties that ombudspersons have with legislatures. They are, as a rule, appointed by the parliament and report to it. That is why parliaments are sometimes called the institutional parents of ombudspersons. In addition, it is the parliament's role to secure the implementation of their decisions and recommendations. In fact, as noted above, in several CEE countries (such as Hungary, Lithuania, and Ukraine), the word "parliamentary" is included in the official title of the ombudsperson to make this institutional connection as clear as possible. Nevertheless, as ombudspersons are independent oversight authorities, the parliament must not interfere with their work or issue specific instructions and orders to them, as that would violate its functional independence. This prohibition on interfering with or influencing their decisions in any way applies not only to parliament, but also to any other entities, including private entities, civil society organizations, and citizens, including complainants.² To that end, independence is their essential characteristic: without it, an ombudsperson stops being an ombudsperson.

With a wide mandate and independence as key features, the great majority of CEE ombudspersons fulfilled the necessary requirements to be accredited by the United Nations as independent national human rights institutions (NHRIs). The accreditation through the Global Alliance of NHRIs (GANHRI) is based on normative and practical compliance with the Paris Principles,³ and set forth the conditions that an institution

has to fulfill in order to be recognized and accredited as an NHRI. These conditions include: a broad mandate to protect and promote human rights provided in a constitutional or legislative text; independence and autonomy from the government; an inclusive and transparent selection and appointment process; free access to documents, people and premises; and direct communication with universal and regional human rights mechanisms. The GANHRI assesses whether an institution fulfils all the requirements stipulated in the Paris Principles. Accreditation is valid for five years for those institutions holding the highest "A" status.

Independence is their essential characteristic: without it, an ombudsperson stops being an ombudsperson.

The strategic advantage for ombudspersons of being formally recognized as an NHRI is the possibility to communicate through various avenues with global and regional human rights bodies well beyond the control of national governments. NHRIs are able to communicate directly with the UN human rights mechanisms and participate in their work independently of their respective governments. They are also granted active participatory rights in regional human rights entities such as the Council of Europe, the Inter-American Commission on Human Rights, and the African Commission on Human and Peoples' Rights.

Through their ability to interact with international organizations independently of the state, NHRIs stands as a double intermediary: primarily between citizens and the state, and then between the state and international human rights mechanisms. Thus, ombudspersons as NHRIs are important actors in ensuring the rule of law, not only at the national level, but also in the regional and universal human rights system.

The State of Play

Ombudspersons in CEE countries have been established not just because national political elites, civil

2 Saša Janković and Luka Glušac, *Zaštitnik građana Republike Srbije - pojašnjenja nekih čestih nepoznanica*, Iustitia, 2015, p. 54.

3 United Nations, [General Assembly Resolution 48/134](#), 1993.

society, and academia have understood their potential value for the rule of law and human rights protection, but also as a result of strong international pressure. In fact, creating or strengthening the institution was a precondition for membership in international organizations. In the cases of, for instance, Czechia and Slovakia, strengthening their institutions was a requirement for EU membership, while Serbia (and Russia) created theirs, among other reasons, in order to be able to join the Council of Europe. EU membership played a very important role in establishing NHRIs in the Baltic countries.⁴

Only after a successful combination of external and internal pressures have parliaments adopted the necessary legislation.

This new kind of institution was not easily accepted as a feature in the post-socialist institutional architecture of the CEE countries. In fact, it encountered resistance and opposition from all three branches of government. In some countries there was a gap between the formal establishment of the institution and the election of the first ombudsperson. In Romania it took six years and in Slovenia and Croatia four, while Serbia and Ukraine elected their first ombudspersons two years after the adoption of the founding legislation.

Only after a successful combination of external and internal pressures have parliaments adopted the necessary legislation. Governments have struggled to accept that an additional mechanism to oversee its work has been introduced, while judiciaries have perceived ombudspersons as competitors, despite their very different mandates. In countries where the ombudsperson was given a mandate to oversee the judiciary in terms of respecting the right of access to justice (as in Poland), resistance by the courts was even stronger. CEE ombudspersons have nevertheless

managed to grow into important and purposeful institutions. While they have operated in different contexts and gone through different development phases at different speeds, they all have justified their *raison d'être*. The late 1990s and the first decade of the 2000s was a particularly favorable time for ombudspersons, given the interest of international donors and regional organizations in supporting their strengthening.

This decade, though, has brought new challenges for CEE democracies. The rise of creeping authoritarians, the shrinking of democratic space, the overwhelming power of the executive over the legislative branch, attacks on the independence of the judiciary, and the return of old narratives on the “other” all contributed to an increasingly difficult environment for ombudspersons’ operations.

The trend of democratic backsliding is marked by increased legal uncertainty—that is, legal provisions and their application are unpredictable and inconsistent—and the adoption of new legislation and policies that disrupt the rule of law and question human rights standards. Probably the most worrisome trend in such circumstances is the trade-off between the internal rule of law and responding to perceived external security threats. Those external threats vary across the CEE region, from Russian influence to the influx of migrants, territorial disputes, terrorism, and returning foreign fighters. Nevertheless, the common denominator is increased legal uncertainty and a lowering of the rule of law and human rights standards. This has happened within a broader focus on external threats and a revived discourse about internal enemies of the state, which was a Cold War euphemism for political opposition. These trends, most visible in Hungary and Poland but also in the Western Balkans, show that democracy is reversible and has to be constantly monitored.

Pressures from the Government and Parliament

In such circumstances, ombudspersons can serve as rule-of-law beacons and the voice of citizens and organizations whose rights have been oppressed. Uniquely positioned in-between three branches of government,

⁴ Sonia Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights*, University of Pennsylvania Press, 2014.

with their fact-based and objective scrutiny of public administration, they constantly remind the executive of its legal obligations. When doing so, ombudspersons are also open to become targets of governments wishing to silence critical voices. In cases where legislative branches join such campaigns, ombudspersons are labeled as outlaws and enemies.

Poland is a clear example of such a development. In 2015, the government started judiciary reforms and took steps to de facto downgrade existing standards for the protection of some vulnerable groups such as lesbian, gay, bisexual, transgender, and intersex people. The government also introduced new anti-terrorism legislation. These steps encountered wide criticism, nationally and internationally, especially from the EU and the Council of Europe.

Parliament should be a key interlocutor and partner of ombudspersons.

In 2016, Poland's ombudsperson, Adam Bodnar, referred the new anti-terror law to the Constitutional Tribunal, claiming multiple infringements of the constitution. In his 100-page complaint, he argued that the law violated the right to privacy and freedom of communication as guaranteed by the constitution, the EU's Charter of Fundamental Rights, and the European Convention on Human Rights. The ombudsperson was subsequently exposed to major pressure from the government, which did not appreciate his siding with the Constitutional Tribunal, which was itself under heavy fire from the government and the parliament, aimed at influencing its work. Instead of supporting the ombudsperson's persistence and public statements, the parliament reduced his budget by 20 percent and changed the regulations to allow the Minister of Justice instead of the legislature to remove the ombudsperson's immunity. Right-wing parties in the parliament even called for Bodnar's removal from office.

These pressures have continued, particularly in 2019 after the ombudsperson publicly defended the universal right to a fair trial and the prohibition of

inhumane and degrading treatment, following an investigation conducted by his office related to disproportionate force used by the police during the arrest of a murder suspect.⁵ The ombudsperson has been subjected to serious threats and hate speech from some politicians and segments of the media.⁶ This drove international and regional actors to release a joint statement in support of the ombudsperson, reiterating their support of the institution's work to promote and protect human rights in Poland in an independent and effective manner.⁷ The ombudsperson has managed to remain in office to this day, despite such a challenging environment, due to strong support from the public, the independent media, and international organizations. The attacks coming from the executive are, to some degree, unsurprising given that majority of ombudsperson's work is directed toward identifying problems in the work of government. What the Polish case demonstrates is that when the legislative branch joins such a campaign, the fragility and weakness of democracy is revealed. In such a context, the system of checks and balances is more a façade than a cornerstone of democracy.

Parliament should be a key interlocutor and partner of ombudspersons. The impact of the latter's recommendations is not derived from binding, coercive, or determinative powers, but from the rigor, objectivity, and independence with which they conduct their activities. This ought to provide the ideal opportunity for parliaments to push the authorities to abide by ombudspersons' decisions, exercising their own essential function of the oversight of the executive.

⁵ Poland In, [Ombudsman deflects claims of 'siding with murderer'](#), June 21, 2019.

⁶ ENNHRI, [International and regional actors issue joint statement in support of Polish Commissioner for Human Rights](#), June 28, 2019.

⁷ The statement was issued by the key ombudsmen peer network and international human rights bodies: the European Network of National Human Rights Institutions (ENNHRI); the European Network of Equality Bodies (Equinet); the International Ombudsman Institute (IOI), the Global Alliance of NHRIs (GANHRI) and the European office of the UN Human Rights Office (OHCHR) with the support of other actors. ENNHRI, [Joint Statement in Support of the Polish Commissioner for Human Rights](#), June 2019.

However, Poland's parliament became instead an arena for attacking the ombudsperson.

A similar situation happened recently in Georgia when the ombudsperson's office presented its special report to the parliament's Committee on Human Rights and Civil Integration to raise its concerns that some prison administrations were allowing systems of "informal governance" by inmates, resulting in a risk of violence and mistreatment. Before and during the session, the minister of justice tried to discredit the report and published two video recordings of meetings between the ombudsperson and prisoners on the social-media channels of the Ministry of Justice, without any regard to privacy or confidentiality safeguards. Instead of protecting the ombudsperson, the committee's chairperson questioned the report,⁸ and implicitly supported the minister a fellow member of the Georgian Dream party. A similar scenario was also observed a few years ago in Serbia. The country's parliament did not build consistent, predictable, and efficient relations with the ombudsperson. Instead of being the supreme protector of its independence and its strongest ally in the protection of the rule of law and human rights, the parliament developed a practice of hampering the ombudsperson's work.⁹

Besides using the floor of parliaments for verbal attacks on ombudspersons, ruling majorities have also abused their formal procedural authority to hamper their work.

The Polish, Georgian, and Serbian cases share two additional characteristics. All three ombudspersons were targeted by members of the government and parliament after they became involved in security-re-

lated issues, and they were all supported by the international community.¹⁰

Besides using the floor of parliaments for verbal attacks on ombudspersons, ruling majorities have also abused their formal procedural authority to hamper their work. This was particularly done when appointing ombudspersons, considering their annual reports, and approving their annual budgets.

For instance, when the term of office of Ukraine's ombudsperson, Valeria Lutkovska, expired in 2017, it took the parliament almost a year to elect her successor. During the process the international community¹¹ and local human rights organizations criticized the lack of transparency, conflicting legislation, and the politicization of the vetting and election process, including party trade-offs and ignoring the voice of civil society.¹² Two out of three candidates for this position were members of parliament. Those candidates took advantage of imprecise provisions in the law. While the law prohibits the ombudsperson from being a parliamentarian or holding executive office at the same time, it does not specifically prevent a member from being elected, as long as they then resign their seat.¹³ Ultimately, Ludmila Denisova, an member of parliament from the People's Front party and a former minister for labor and social policy, was elected. She resigned her seat before taking the new office. With the delayed

8 Parliament of Georgia, [Human Rights and Civil Integration Committee Hearing Public Defender and Minister of Justice](#), January 21, 2020.

9 Luka Glušac, Assessing the relationship between parliament and ombudsman: evidence from Serbia (2007–2016), *The International Journal of Human Rights*, 2019, pp. 531-554.

10 In Georgian case, the statement was issued by ENNHRI, with support of GANHRI, IOI, Equinet, and the UN Special Rapporteur on the Situation of Human Rights Defenders. ENNHRI, [Statement of Support to Georgian NHRI](#). In the Serbian case, the OHCHR issued a public statement. OHCHR, [Press briefing notes on Yemen, Serbia, Honduras and Albinism website launch](#), May 5, 2015. The Council of Europe commissioner for human rights wrote a letter to Serbia's prime minister raising concerns because of the government's attitude toward the ombudsmen. Commissioner for Human Rights, [A Letter to Prime Minister of Serbia](#), May 18, 2015.

11 ENNHRI, [ENNHRI calls for the respect of the Paris Principles in the process of selection and appointment of the next Ukrainian Parliament Commissioner for Human Rights](#), May 12, 2017.

12 Democracy Reporting, [Ukraine's political maneuvering: Parliament does not appoint an Ombudsman](#), November 15, 2017.

13 Kharkiv Human Rights Protection Group, [Political Shenanigans to the End: Ukraine's Parliament elects their own MP as 'Human Rights Ombudsman'](#), March 15, 2018.

procedure, controversial candidates, and the lack of participation by civil society, the parliament severely damaged not just its own credibility, but also that of the ombudsperson.

Through ombudspersons' reports, parliaments are informed about the legality and regularity of the work of public authorities. At the same time, these reports serve as an indicator of ombudspersons' work.¹⁴ However, several ombudspersons in the CEE region have faced challenges in presenting their reports to parliament. Ruling majorities are often unwilling to put these reports on the parliamentary agenda, despite an explicit legal obligation to do so. For instance, Serbia's parliament did not discuss the ombudsperson's annual reports in the plenary for four consecutive years (2014–2017), while the 2015 annual report of Croatia's ombudsperson was not approved by the parliament, which voted against it, constituting a precedent.¹⁵

Finally, budget cuts have also been used to suppress ombudspersons not only in Poland. Serbia's ombudsperson has faced either budget cuts or threats that its budget would be cut on different occasions. Even ombudspersons in the West have not managed to avoid the cuts, such as the Parliamentary and Health Service Ombudsman in the United Kingdom.¹⁶

Civil Society Engagement

The crucial role of civil society as a supporter and a watchdog of ombudspersons' independence and effectiveness becomes even more evident when these institutions face various pressures. Public support for ombudspersons in those circumstances can reinforce the relationship between these two actors, which is of great importance for both. A good example is a strong public statement issued by a group of prominent CSOs in Georgia in January 2020 in support of the

ombudsperson,¹⁷ requesting the justice minister to be held accountable after she published the above-mentioned footage of prison monitoring carried out by the ombudsperson.¹⁸

In return, ombudspersons should be vocal when governments take steps that threaten civil society. For instance, in 2016, Croatia's government adopted a decree that significantly reduced the allocation of funds from the national lottery to CSOs working on human rights and democratization. The ombudsperson's office engaged in public consultations and presented recommendations to the government, while also raising the issue in its annual report to parliament. In 2017, the government adopted a new decree increasing budget for the CSOs.¹⁹

When under attack from government, ombudspersons may opt to fight back and remain critical and objective watchdogs, or they can align with the government. In the latter case, they risk their credibility and reputation, and effectively become agents of governments. Those passive ombudspersons who serve as the executive's human-rights voice instead of performing critical independent scrutiny of its work are themselves a threat to democracy. However, it is rare that ombudspersons allow themselves to be completely hijacked in this way. More often they opt to ignore key problems and human-rights violations by the government, and at the same time they pay considerable attention to some less important issues, trying to preserve the public image of a seemingly independent, critical, and vocal institution. CSOs in the region have raised concerns that this is exactly what has been happening in some countries that are experiencing democratic backsliding. The means through which civil society is undermined or restricted have become more sophisti-

14 Glušac, *Assessing the Relationship between Parliament and Ombudsman*, p. 540.

15 HRT, [Sabor odbio izvješće pučke pravobraniteljice](#), May 20, 2016.

16 DAC Beachcroft, [How the Parliamentary and Health Service Ombudsman is revamping the complaints process](#), June 4, 2018.

17 Open Society Georgia, [Political Responsibility of the Minister of Justice for Disclosure of the Footage of the Public Defender's Monitoring in the Penitentiary System](#), January 21, 2020.

18 OC Media, [Justice Minister accused of 'spying' on prison monitors](#), January 28, 2020.

19 ENNHRI, [National Human Rights Institutions and Human Rights Defenders](#), p. 11.

cated and widespread,²⁰ and go well beyond only legal measures. Where there are both passive ombudspersons and repressed civil society, countries can hardly be called pluralistic and democratic.

Civil society organizations have been particularly vocal about this in countries that at the same time introduced new legislation effectively shrinking civic space. A notable example is Hungary, where the Hungarian Helsinki Committee (HHC) criticized the commissioner of fundamental rights (the ombudsperson) for remaining completely silent over government attacks against human rights CSOs resulting in the violation of their freedom of association and freedom of expression.²¹ The ombudsperson opted not to use any of its powers to tackle the violation of the rights of civil society organizations,²² ignoring the issue despite the fact that these developments had been widely condemned by high-level international human rights stakeholders.

Leading CSOs in Hungary have criticized the ombudsperson not only for being reluctant to react to the shrinking space for CSO activities, but also and more importantly for ignoring severe human rights violations, particularly when the government pushed for the criminalization of irregular border crossings. The HHC had asked the ombudsperson, without success, to turn to Constitutional Court on this question. According to the HCC, the ombudsperson ignored the situation on the borders completely. For instance, in September 2015, one day after the adoption of the new legislation, serious incidents took place at a Hungarian-Serbian border crossing point in the context of monitoring operations conducted by the national Anti-terrorism Center (TEK). This led to egregious human-rights violations. The HHC filed a complaint with the ombudsperson,

condemning the disproportionate use of force as well as serious breaches of the rights of refugees and observers who were present. Nonetheless, no investigation was conducted by the ombudsperson.²³ The International Federation for Human Rights raised concerns regarding the ombudsperson's ability to exercise its mandate effectively and independently from undue influences, especially in politically sensitive cases.²⁴ In the statement issued following his mission to Hungary, the UN special rapporteur on the situation of human rights defenders, Michel Forst, also recommended that Hungary adopt measures to strengthen the ombudsperson's role and independence and ensure adequate follow-up and implementation of its recommendations.²⁵

The Role of the European Union

The EU is founded on the values of respect for democracy and the rule of law and respect for human rights (Article 2 of the Treaty on European Union), and it has introduced the right to good administration in its Charter of Fundamental Rights (Article 41). The EU has formally recognized the crucial role of ombudspersons and NHRIs as independent oversight institutions and affirmed its commitment to supporting and engaging with them in member states and candidate countries.

The first objective of the EU Action Plan on Human Rights and Democracy (2014–2019) was to support the capacity of NHRIs.²⁶ This listed three actions to achieve this objective.

The first is recognizing and supporting the crucial role of NHRIs as independent institutions, affirming the EU's commitment to supporting and engaging in particular with those institutions that are in line with the Paris Principles, and working to strengthen the involvement of NHRIs in consultation processes at

20 Rosa Balfour and Nicolas Bouchet, [Supporting Civil Society in Eastern Europe and the Western Balkans: Old and New Challenges](#), German Marshall Fund of the United States, 2018.

21 FIDH, [Hungary: Democracy under Threat](#), 2016, pp. 37–44.

22 Hungarian Helsinki Committee, [Assessment of the Activities and Independence of the Commissioner for Fundamental Rights of Hungary in Light of the Requirements Set for National Human Rights Institutions](#), 2019, p. 28.

23 FIDH, [Hungary: Democracy under Threat](#), p. 54.

24 Ibid, p. 37.

25 OHCHR, [End of mission statement by Special Rapporteur on the situation of human rights defenders](#), Visit to Hungary February 8–16, 2016.

26 Council of the European Union, [EU Action Plan on Human Rights and Democracy](#), 2015, p. 16.

country level, in particular regarding human-rights dialogues and third-country reforms. According to the action plan, the European Commission, the European External Action Service, and member states are in charge of accomplishing this task.

The EU institutions have cooperated with NHRIs of member states and partner countries. The EU's support does not only help them become stronger and more efficient, but also actually strengthens its own network of reliable interlocutors. When drafting decisions regarding human rights in member states, EU institutions rely on information received from NHRIs. For instance, in its proposal to evoke Article 7(1) of the Treaty on European Union against Poland regarding the rule of law situation in the country,²⁷ the European Commission relied heavily on the findings of Poland's ombudsperson. Similarly, the European Commission and European Parliament regularly seek information from NHRIs of candidate countries when assessing human-rights protection and the rule of law. NHRIs provide information to the commission during the process of preparing annual progress reports for candidate countries. EU officials and experts regularly meet with NHRIs when conducting country visits.

The second group of actions under this objective of the action plan was to strengthen the capacities of those with an "A" status accreditation with the GANHRI, support the upgrade of those with a "B" status to "A" status, and cooperate with their regional and international networks. Different EU bodies have invested considerable efforts and funds to support the work of individual NHRIs and their regional network, the European Network of NHRIs (ENNHRI). Almost 90 percent of the ENNHRI's budget for 2018 came from EU sources, including through grants approved by the Directorate-General for Justice and Consumers and the Directorate-General for International Cooperation and Development.²⁸ The EU has invested a lot

of efforts in building individual NHRIs' capacities, particularly in EU candidate countries such as Serbia.²⁹

Finally, the European Commission and member states are responsible for a third task—facilitating cooperation between NHRIs in EU member states and partner countries. Besides bilateral contacts established between individual institutions, twinning project facilitated by the EU have been widely used. These bring together public-sector expertise from EU member states and third countries with the aim of raising the capacities of ombudspersons offices through peer-to-peer activities. Thus, the ombudspersons of France and Spain implemented a twinning project with Armenia's ombudsperson, while the ombudspersons of Austria, Greece, and the Netherlands, helped build up the capacities of Serbia's ombudsperson. Most recently, Portugal's ombudsperson assisted Turkey's under the twinning agreement to "develop the capacity of the ombudsperson's institution to defend fundamental rights, handle complaints against human rights, and guarantee its independence from the political power."³⁰ The ENNHRI has facilitated its own program of peer-exchange visits, under a project on the role of NHRIs in post-conflict situations.

How Can Different Stakeholders Support Ombudspersons

Ombudspersons are at the intersection of state and society. Thus, other state authorities and civil society organizations are their natural partners. Those partners have, however, very different roles in relation to ombudspersons.

As noted, the relationships between ombudspersons and other state authorities vary depending on the type of the latter. However, in all cases they are based on the principle of cooperation, which is legally binding. All state authorities, irrespective of whether ombud-

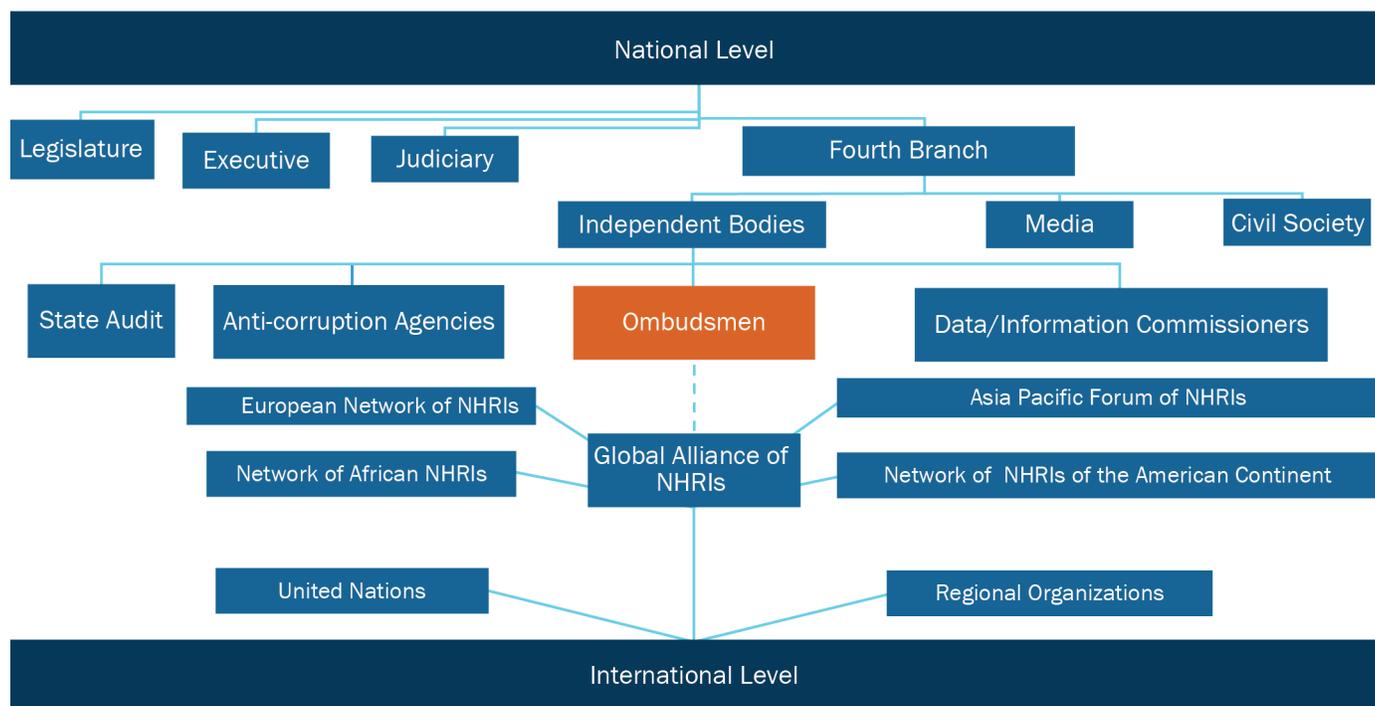
27 European Commission, [Reasoned Proposal in Accordance with Article 7\(1\) of the Treaty on European Union regarding the Rule of Law in Poland](#), 2017.

28 ENNHRI, [Funding](#).

29 Luka Glušac, *Mesto i uloga Zaštitnika građana (Ombudsmana) u procesu pristupanja Republike Srbije Evropskoj uniji*, *Godišnjak Fakulteta političkih nauka*, 2017, pp. 53–72.

30 IOI, [Ombudsman of Portugal and Turkey launch partnership under EU program](#), November 19, 2018.

Figure 2. Ombudspersons in the National and International Institutional Context



persons oversee their work, are obliged to cooperate with it. Public administration bodies are obliged to allow unhindered access to their premises, employees, and documents and to respond to any request of the ombudsperson during the investigation. State authorities whose work ombudspersons are not mandated to oversee, such as heads of state, governments (as a body), parliaments, and judiciaries (in some countries) should work together with ombudspersons to create efficient, transparent, open, accountable, and citizen-oriented public administrations.

In order to overcome the key issues hampering the work and effectiveness of the ombudsperson across the CEE region, a set of actions by different actors is needed. These include steps by ombudspersons, as well as by external actors that can greatly contribute to support the transformation of ombudspersons who do not fulfil their statutory goals.

The Role of National Authorities

The government and the parliament are of critical importance for ombudspersons. Given the ways in

which these two institutions can negatively affect ombudspersons' status, position, and work, as described above, there are also concrete activities they can conduct to support the institution.

Parliaments are sometimes regarded as the institutional parent of ombudspersons. That is a useful parallel, given that they are responsible for providing ombudspersons with essential preconditions for their development. These include: a strong and clear founding law (laying down a broad and inclusive mandate), financial independence (guaranteeing it is under the authority of parliaments and not governments to approve ombudspersons' budget), a transparent and open appointment and selection process, and obligation of ombudspersons to report to parliaments and not governments. Besides being there to enable ombudspersons' unhindered operations, parliaments should actively benefit from their work by seeking expert advice in relation to human rights during proceedings of various parliamentary committees and in plenary sessions. It is often said that parliaments work in committees and vote in plenary. Thus,

cooperation with committees provides real evidence of how parliaments treat ombudspersons.³¹ Although international standards, such as the Belgrade Principles on the relationship between parliaments and NHRIs, stipulate that parliaments should identify or establish an appropriate parliamentary committee as the NHRI's main point of contact, that is not always done in practice. Two committees are of particular importance: the one that participates in the selection and appointment procedure for ombudspersons, and the committee that deals with human rights (if they are not subsumed in a single committee). That does not mean that these two committees should be the only ones that cooperate with ombudspersons. The number of relevant parliamentary committees depends on their organization and competences.³²

A perfect mechanism for establishing and developing cooperation between parliamentary committees and ombudspersons is the public hearing.

A perfect mechanism for establishing and developing cooperation between parliamentary committees and ombudspersons is the public hearing. Through these, committees obtain information, expert opinions, and alternative perspectives on a proposed legislation or policy issue so as to produce more effective and sounder laws. Whenever a new draft legislation or policy that may affect citizens' rights is discussed at a public hearing, the ombudsperson should be invited to present its views.

Beyond public hearings, ombudspersons should be consulted through regular legislative processes on the content and applicability of a proposed law with respect to ensuring human rights norms and principles are reflected therein. Ombudspersons should be invited to give a formal written opinion on the

human-rights compatibility of draft laws and policies. Since most ombudspersons have the right of legislative initiative, parliaments should make sure that those initiatives are duly considered.³³

The main tasks of governments are to formulate public policies, to ensure they are implemented in an efficient manner, and to supervise and coordinate the work of the entire public-administration system. To that end, when an ombudsperson identifies systemic problems in the work of the public administration, either rooted in bad procedures or legislation, the government should ensure that such problems are resolved. The government should also consult with the ombudsperson whenever introducing new policies or regulations that may impact on citizens' rights. Making sure that the ombudsperson's recommendations are implemented also falls within the government's responsibility. The government should gather such information from public administration bodies regularly and establish follow-up procedures in order to have a clear picture of the key problems in the work of the public administration. The parliament should require the government to report periodically on whether and how the ombudsperson's recommendations are complied with, and if not, why not. However, many ombudspersons struggle with the implementation of their recommendations where the proper government follow-up procedure is not established.

For example, Albania's ombudsperson faces poor implementation of its recommendations, as reported by the European Commission,³⁴ while North Macedonia's authorities still need to ensure the systematic follow-up to the ombudsperson's recommendations, according to the same source.³⁵ Ombudspersons and governments should maintain a constant dialogue. However, the former are intended to be a critical voice within governments' structure, and not the amplifier of their standpoints. In order to be critical, ombud-

31 Luka Glušac, *Assessing the relationship between parliament and ombudsman*, p. 545.

32 *Ibid.*, pp. 546–547.

33 [Belgrade principles on the relationship between national human rights institutions and parliaments](#), 2012.

34 European Commission, [Albania 2019 Report](#), p. 8.

35 European Commission, [North Macedonia 2019 Report](#), p. 13.

persons have to be active, to act on their own initiative when needed, and to react promptly when there are indications of human-rights violations.

It is a legitimate expectation that passive ombudspersons would be aligned with government policies and serve as government agents instead of critical, objective oversight bodies. In this context, parliaments, and primarily the parliamentary opposition, should pressure ombudspersons to fulfill its mandate fully and without hesitation or political calculations.

The most obvious opportunity to do so is during the discussions on ombudspersons' annual and special reports. As these are sometimes not even tabled before the plenary, the parliamentary opposition should persist in requesting that they are presented and discussed. In situations where there is an evident increase of human-rights violations and other signs of democratic backsliding, ombudspersons should be held accountable if they are not dealing with them. Opposition parties can also use information about ombudspersons' performance that is brought up by CSOs by raising it in parliament.

The Role of Civil Society

CSOs are not just natural partners of ombudspersons, but also their primary "reality-checks" and critics when necessary. Both should seek mutual reinforcement, particularly in a climate of democratic backsliding.

There is a plethora of possible avenues of cooperation. First, CSOs may possess information about human rights violations that ombudspersons are not aware of. They should feed ombudspersons with such information, either formally or informally. CSOs themselves may lodge a complaint with or decide to submit such information to the ombudsperson, which then decides whether it will open an investigation.

Second, ombudspersons may support projects implemented by CSOs. Many serve as partners on project proposals submitted by CSOs to different donors. The opposite process is also possible. The two sides may productively cooperate when systemic normative issues are at stake. A good example is a

project implemented by Serbia's ombudsperson aimed at supporting its own capacities to propose legislative initiatives. The ombudsperson launched a public call for expert CSOs. Selected ones were commissioned to prepare comparative analyses, targeted thematic pieces, or opinions on draft legislation that helped the ombudsperson to decide what type of action it should pursue in each case. At the same time, this opportunity enabled civil society experts to advocate for policy proposals developed on the basis of their experience on the ground and their expertise, contributing to quality and evidence-based decision making. While in this example, CSOs assisted the ombudsperson, in others it was vice versa. For instance, ombudspersons have a stronger formal position before the constitutional court than CSOs. Ombudspersons are usually among "authorized proposers," meaning they can submit a proposal that is not just legally stronger than an initiative that CSOs can submit, but also informally may have more weight in the eyes of courts. If there is good cooperation between ombudspersons and CSOs, the latter may provide the former with necessary information needed to submit a proposal to the constitutional court. Further, CSOs and ombudspersons may support each other when they under threat. For example, ombudspersons should react when there are legislative initiatives to shrink civic space, while CSOs should be vocal when there is draft legislation aiming to weaken ombudspersons.

However, CSOs should not only be vocal when they want to support ombudspersons, but also when the latter should be criticized. As noted, ombudspersons' independence essentially means that nobody should interfere with their decision making. Nonetheless, that does not mean that nobody may criticize their work. In fact, with greater independence, there should be a higher level of accountability as well.

When ombudspersons are not performing well, CSOs and individual human rights defenders lose a key partner within the state, which is especially worrisome given the shrinking civic space in many CEE countries. In such circumstances, CSOs have a responsibility to raise their concerns. There is a variety of

ways through which they can express dissatisfaction with the work of ombudspersons and pressure them to perform better. Whatever avenue they choose, CSOs' interventions against ombudspersons have to be fact-based and well explained in order to protect their integrity and reputation. CSOs are the best equipped to act urgently to flag important human-rights problems as soon as they develop and to urge ombudspersons to investigate.

The most obvious way to raise concerns about the performance of ombudspersons is through reports. Depending on the scale of the problem in the functioning of ombudspersons, those reports may be public or kept unpublished (shadow reports), and they can be aimed at a national or an international audience.

Many CSOs prepare reports on human rights, and these can also reflect on the work of ombudspersons. For instance, in September 2019 the Hungarian Helsinki Committee (HHC) published a lengthy report assessing the activities and independence of Hungary's ombudsperson between 2014 and 2019. The analysis showed that even though the ombudsperson was active in a number of areas, it repeatedly failed to address adequately pressing human-rights issues that were politically sensitive and high-profile.³⁶ The HHC underlined that this was especially problematic when taking into account the democratic backsliding in Hungary since 2010. The HHC stated that at a time when checks and balances had been undermined and human rights violated repeatedly in the country, it would have been especially important that the ombudsperson stood up for fundamental rights.³⁷

Challenging NHRI accreditation

Besides preparing reports to inform national audiences about the performance of the ombudsperson, CSOs may also actively participate in their international NHRI accreditation. Submitting the shadow reports to the GANHRI may be a very effective way

of pressing ombudspersons to perform better. The majority of CEE ombudspersons are members of the body and enjoy the highest "A" status.³⁸ CSOs may submit shadow reports on the performance of ombudspersons under review, which have an opportunity to respond to such reports during the accreditation process and questions to ombudspersons can also be based on information received from CSOs.

In Hungary, the HHC report mentioned above attracted considerable attention abroad. During its re-accreditation as an NHRI in October 2019, the GANHRI asked Hungary's ombudsperson to respond to its critical contents.³⁹ Based on all the information received, including from the ombudsperson and different UN bodies, it was decided to defer the review of the ombudsperson for a year. The ombudsperson was encouraged to take the actions necessary to address problematic issues raised by CSOs and the UN and to provide further information and documentation.⁴⁰ The decision on the accreditation of the Russian ombudsperson was deferred for one year on similar grounds.⁴¹

In another example, the Serbian Lawyers' Committee for Human Rights (YUCOM) published in 2019 a comprehensive report analyzing the work of the country's ombudsperson. The YUCOM formally submitted this report to the GANHRI, given that the ombudsperson was scheduled to be reviewed in the spring of 2020. The YUCOM heavily criticized the ombudsperson and stated it did not comply with the Paris Principles in the two most important areas, independence and competence.⁴² While it remains to

36 Hungarian Helsinki Committee, [Assessment of the Activities of Ombudsperson of Hungary](#), September 17, 2019.

37 Ibid.

38 "A" status NHRIs are: Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Latvia, Lithuania, Moldova, Poland, Russia, Serbia, and Ukraine. "B" status NHRIs are: Azerbaijan, Macedonia, Montenegro, Slovakia, and Slovenia. Estonia, Czechia, Belarus, and Romania have no accredited NHRIs.

39 See GANHRI SCA, [Report and Recommendations of the Session of the Sub-Committee on Accreditation \(SCA\) Geneva](#), October 14-18, 2019, p. 24.

40 Ibid.

41 Ibid., pp. 26–29.

42 YUCOM, [5 godina: Analiza rada Zaštitnika građana Republike Srbije u periodu 2015-2019](#), 2019.

be seen what effect this criticism will ultimately have on Serbia's re-accreditation, using this mechanism to inform the international human rights community of the ombudsperson's alleged underperformance certainly presents a valuable tool.

A more organized approach to how CSOs can contribute to the NHRI accreditation process can be witnessed in Asia. The Asian NGO Network on National Human Rights Institutions consists of CSOs and human rights defenders from 21 countries or territories. Its members regularly provide input into the accreditation process. However, outside Asia, CSOs participating in NHRI accreditation is still largely sporadic. Although information on deadlines to submit information about NHRIs under review is always available on the GANHRI's website, the possibility of taking part is still not well known in the wider CSO community. Official data on the participation of CSOs in NHRI accreditation does not exist. To that end, the GANHRI should work with the Office of the High Commissioner for Human Rights to advertise this opportunity. Regional networks of NHRIs should be key partners in this endeavor, as they are more familiar with local differences.

Besides engaging with NHRI accreditation, CSOs have another useful avenue to raise concerns about the way ombudspersons discharge its functions: sending shadow reports to international human rights mechanisms, such as United Nations or Council of Europe human-rights bodies. In these reports they can reflect on how ombudspersons contribute to the realization of the rights guaranteed in international treaties.

The Role of the EU

While the EU may be rather slow to react, when it does become involved it may indeed make an important difference, especially in EU candidate countries, which are very much prone to accept Brussels' criticism. The European Commission and the European Parliament regularly report on the state of the rule of law and human rights in candidate countries. The commission's annual progress reports have served as a baseline for the development of national action

plans toward EU accession, including on good governance and human rights. Those reports have regularly reflected on the work of ombudspersons. They have usually concentrated on emphasizing the importance of preserving the independence of ombudspersons and providing the institution with sufficient human and material resources. They have also called upon the parliaments to consider ombudspersons' annual and special reports and to follow up on their recommendations. At the same time, they have usually urged governments to make sure that the recommendations are implemented. These EU reports have sometimes also raised concerns about ombudspersons' performance. For instance, in 2019, the European Commission noted with concern that Serbia's ombudsperson had made fewer visits to places of detention and that CSOs had reported a decrease in cooperation with the ombudsperson in relation to torture prevention.⁴³

Candidate countries used to eagerly await the European Commission's annual progress reports to see how their progress on reforms had been evaluated and whether they were ready for the next step in the accession process. But the politics of conditionality was successful only until the credibility and strength of the EU started to decline because of numerous internal and external developments. In recent years, the existing accession framework manifested deficiencies, including the growing mistrust caused by broken promises between the EU and candidate countries.

In February 2020 the European Commission presented a revised framework aiming to make "the enlargement process more credible, predictable, dynamic, and subject to stronger political steering" and to make the accession process and make it more effective, enhancing credibility and trust on both sides.⁴⁴ The existing 35 chapters are reorganized in six new clusters, where the first one is called "fundamentals" and it covers chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security),

⁴³ European Commission, [Serbia 2019 Report](#), p. 23.

⁴⁴ European Commission, [Revised enlargement methodology: Questions and Answers](#), February 5, 2020.

as well as the key political criteria, such as functioning of democratic institutions and public-administration re-form. As per new methodology, negotiations in the area of fundamentals will be opened first and closed last, meaning that progress on the fundamental reforms will determine the overall pace of negotiations. To that end, the rule of law becomes even more central in the accession negotiations, and consequently the role of ombudspersons as information-provider to the EU became even more important. Closer ties between national ombudspersons and EU delegations in candidate countries should therefore be much more frequent than currently, as ombudspersons are bodies with best seats, meaning they have unprecedented insight in the state of rule of law. The same applies to national ombudspersons in EU member states.

The EU institutions have traditionally been more active and influential in increasing the level of realization of human rights in EU candidate countries. Recent negative developments in the EU, however, has caused Brussels to devote more time, resources, and energy to finding ways to counter an evident deterioration in the rule of law in several member states. In fact, there were no procedures in place for such circumstances, as it was not foreseen that human rights might be under serious threat in any member state. When the situation in Poland had deteriorated to the degree that alarms were activated in all EU institutions, it was clear that institutional mechanisms had to be introduced.

Since 2018, the European Commission has been working on introducing new mechanisms to protect the rule of law in member states. In April 2019, it presented an overview of the existing rule-of-law toolbox and launched a consultation on the necessary reforms. In July 2019 it then presented concrete initiatives grouped around three main pillars: promoting a rule-of-law culture, preventing rule-of-law problems, and responding effectively to breaches of the rule of law.

To promote a common rule-of-law culture, the European Commission will follow up on the idea of a dedicated annual event for a dialogue with civil society. It will make full use of funding possibilities

to empower stakeholders, including civil society, to promote the rule of law, and set up a dedicated communication strategy on the rule of law. The commission has decided to set up a Rule of Law Review Cycle, including an annual report covering all member states. For an effective common response to breaches, it will continue to make full use of its enforcement powers, if early detection and prevention measures are not effective. The European Commission will adopt a strategic approach to infringement proceedings, bringing cases to the European Court of Justice as necessary. In addition, it calls on the European Parliament and the Council of the EU to reflect on a collective approach to managing cases related to Article 7 of the Treaty on European Union with clear procedural rules.

It is commendable that efforts to establish closer cooperation between ombudspersons and EU specialized bodies, such as the European Ombudsman and the Fundamental Rights Agency, have begun.

Ombudspersons from member states should be natural partners for the European Commission in implementing these new procedures, either on their own initiative or upon invitation. Creating close ties should be beneficial to both sides. The commission would receive well-founded information from reliable sources while ombudspersons would be more protected from pressures from national bodies. This connection should also enable quicker reactions from both sides in case of fast developments on the ground.

It is commendable that efforts to establish closer cooperation between ombudspersons and EU specialized bodies, such as the European Ombudsman and the Fundamental Rights Agency (FRA), have begun. While the European Ombudsman is exclusively, and the FRA primarily, oriented toward EU institutions, they have developed meaningful and evolving relations with national bodies. The fact that the current and previous top officers of both institutions have

background in being ombudspersons in their respective countries has certainly helped mainstreaming national human rights bodies at the EU level. Both institutions collect information from national ombudspersons to enrich their own findings and to keep updated with recent events in member states. The European Ombudsman has increasingly been including information from national ombudspersons in its correspondence with EU institutions in certain cases, such as the one on effective complaint mechanisms for matters concerning European Structural and Investment Funds.⁴⁵ The FRA has been also collecting experiences and opinions from ombudspersons on different occasions. It is scheduled to publish a comprehensive report on NHRIs in the EU in the coming months. The launch of this report would be a great opportunity to further explore the possibilities of developing strategic cooperation between EU institutions and ombudspersons. The European Ombudsman and the FRA have also expanded their reach to include cooperation with ombudspersons of EU candidate countries. Representatives of Serbia and North Macedonia sit on the FRA's management board with observer status.

Conclusion and Recommendations

Uniquely positioned among the three branches of government, with their fact-based and objective scrutiny of public administration, ombudspersons serve as a corrective and oversight mechanism to indicate when the public administration is not serving its purpose effectively.

Governments should use ombudspersons' findings to improve its work and that of the public administration when there is evidence of poor coordination or implementation. To do so most efficiently, they should regularly collect information from public-administration bodies on compliance with ombudspersons' recommendations. Ombudspersons and governments should be natural partners, not competitors or adversaries.

When raising concerns and indicating worrisome developments, ombudspersons are susceptible to becoming targets of governments wishing to silence critical voices. In such circumstances, parliaments should protect ombudspersons since it is institutionally positioned as their key supporter and partner.

Beyond adopting a legal framework and allocating sufficient funds for ombudspersons' work, parliaments should invest in establishing strategic cooperation with them through different avenues, such as:

- creating a procedure to follow up on ombudspersons' reports, recommendations, and legislative initiatives;
- designating focal committee(s) for cooperation; and
- inviting ombudspersons to participate actively in parliamentary work, through participation in committee sessions, public hearings, and so on.

However, given the usual dominance of the executive over the legislature, it is not rare that the parliaments have joined campaigns against ombudspersons, labeling them as outlaws and adversaries. When that happens, ombudspersons are put in an almost untenable position. In the case of ombudspersons in the CEE region, support from three types of actors can have a considerable impact on the government: the political opposition, civil society, and the EU institutions. To be effective in making governments step back and allow ombudspersons to do what the office was established to do, that support must be simultaneous and persistent.

The political opposition, especially in parliaments, should pressure ruling majorities to support ombudspersons instead of hindering their work. They should use ombudspersons' findings to reveal existing problems and insist on the implementation of the ombudsperson's recommendations.

CSOs and prominent human rights defenders should use public space and the media to warn of problematic situations. They are also the best amplifiers of ombudspersons' findings, with the ability to translate

⁴⁵ European Ombudsman, [Decision on strategic initiative SI/3/2018/JN](#), 18 July 2019.

them into wider civic actions. Additionally, they are usually well connected with international partners which allows them to raise with international human rights bodies and key political actors, including the EU institutions, concerns about the problems ombudspersons face.

CSOs and prominent human rights defenders should use public space and the media to warn of problematic situations. They are also the best amplifiers of ombudspersons' findings, with the ability to translate them into wider civic actions.

The EU institutions should use its presence on the ground and pressure from Brussels to assist ombudspersons in the short term. Regular progress reports for candidate countries and the new annual rule-of-law reports should be used to provide strategic long-term support to ombudspersons. The rule of law is receiving more emphasis in the EU's accession process as well as in its internal policies. It is expected that ombudspersons would serve as key information-providers to relevant EU institutions.

To that end, closer ties between national ombudspersons and EU delegations in candidate and potential candidate countries should be established to allow information exchanges.

Similarly, more structured cooperation between the European Commission and the ombudspersons of member states is needed to improve the flow of information. Firmer cooperation between them should

also serve as a deterrent to government pressure on ombudspersons, as the information would travel quicker and would be received in the right part of the EU system.

Multi-year projects funded by the EU may serve as an additional tool, helping capacity building and developing better advocacy capabilities and a stronger international presence of ombudspersons.

The same three groups of actors are also best placed to pressure ombudspersons when they are not performing as it should be. The same channels may be used to raise concerns about ombudspersons' performance.

Parliamentary oppositions should insist on debating ombudspersons' reports, comparing them to findings from other human rights actors. They can initiate debates in parliamentary committees or public hearings to discuss human rights issues; and they can make sure that CSOs and ombudspersons are invited to present their views.

CSOs may use those opportunities to challenge ombudspersons' findings. They can do the same by preparing their own reports, aimed either at the domestic public or at international human rights bodies, such as the UN treaty bodies or the Council of Europe's monitoring bodies. There is also great potential to induce a positive change in ombudspersons' performance through CSOs' participation in their accreditation as an NHRI. For such an opportunity to be used more frequently by CSOs from the CEE region, the GANHRI, as a global network, and the ENNHRI, as its European counterpart, should do more, with the help of the Office of the High Commissioner for Human Rights, to advertise this opportunity in a more systematic fashion.

The views expressed in GMF publications and commentary are the views of the author(s) alone.

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