

# CIVIL SOCIETY AND HUMAN RIGHTS



- ▶ **Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe**  
*(adopted by the Committee of Ministers on 28 November 2018, at the 1330th meeting of the Ministers' Deputies)*
- ▶ **Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution**  
*(adopted by the Committee of Ministers on 16 October 2019, at the 1357th meeting of the Ministers' Deputies)*
- ▶ **Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions**  
*(adopted by the Committee of Ministers on 31 March 2021, at the 1400th meeting of the Ministers' Deputies)*

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

# **CIVIL SOCIETY AND HUMAN RIGHTS**

**Council of Europe**

**French edition:**

***SOCIÉTÉ CIVILE ET DROITS DE L'HOMME***

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## Preface




The Council of Europe values the important role played by civil society in actively promoting human rights, democracy and the rule of law. Actors range from the national human rights institutions (NHRIs) that engage public authorities at every level and initiate human rights awareness and education activities, through to human rights defenders. These are people who work in defense of fundamental rights and freedoms, sometimes risking their own interests. Their work is not just valuable: it is unique and irreplaceable.

Nonetheless, the space for civil society in Europe has been shrinking: a trend that must be reversed. In light of this, both our Committee of Ministers and our Parliamentary Assembly have acted to make clear States' obligations to foster civil society action for the promotion and protection of human rights.

This publication contains three Recommendations adopted in recent years by the Committee of Ministers. The texts, elaborated within the Steering Committee for Human Rights (CDDH) in close cooperation with representatives of civil society, call on member states' governments to ensure that their national laws and practices comply with the clear principles, and to evaluate regularly the effectiveness of national measures designed to strengthen the space for civil society.

We cannot let our guard down. The Council of Europe will continue to work for a strong civil society in Europe. To that end, this publication provides a valuable tool for the relevant authorities and stakeholders.

  
Marija Pejčinović Burić  
Secretary General of the Council of Europe



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of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions  
*(adopted on 31 March 2021 at the 1400<sup>th</sup> meeting of the Ministers' Deputies)*

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**Recommendation  
CM/Rec(2018)11**

**of the Committee of  
Ministers to member States on the  
need to strengthen the protection  
and promotion of civil society space  
in Europe**

*(adopted on 28 November 2018 at the  
1330<sup>th</sup> meeting of the Ministers' Deputies)*





The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, *inter alia*, by promoting common standards and carrying out activities in the field of human rights and fundamental freedoms;

Recalling the member States' obligation to secure to everyone within their jurisdiction the rights and freedoms enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights; ETS No. 5) and the Protocols thereto, and where relevant their obligations arising from the European Social Charter (ETS No. 35, and from its revised version ETS No. 163), as well as other European or international human rights instruments;

Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be enjoyed by everyone without discrimination;

Recalling the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms of 9 December 1998 (UN Declaration on Human Rights Defenders), the UN General Assembly Resolution 48/134 of 20 December 1993 on national institutions for the promotion and protection of human rights and the subsequent UN General Assembly Resolutions on national human rights institutions and on human rights defenders;

Recalling Recommendation No. R(85)13 on the institution of the ombudsman, Recommendation No. R(97)14 on the establishment of independent national institutions for the promotion and protection of human rights, Resolution (97) 11 on co-operation between national human rights institutions of member States and between them and the Council of Europe, and Recommendation [CM/Rec\(2007\)14](#) on the legal status of non-governmental organisations in Europe;

Recalling the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted on 6 February 2008, and its Guidelines for civil participation in political decision making, adopted on 27 September 2017, and noting in particular that in the said Declaration the Committee of Ministers acknowledged that "whereas the prime responsibility and duty to promote and protect human rights defenders lie with the State, the Council of Europe shall also contribute to creating an

enabling environment for human rights defenders and protect them and their work in defending human rights", and also agreed to "keep under review the question of further Council of Europe action in this field";

Reaffirming the commitment made by heads of State and government, in the action plan adopted at their 3<sup>rd</sup> Summit in Warsaw 2005, that the Council of Europe "shall – through its various mechanisms and institutions – play a dynamic role in protecting the right of individuals and promoting the invaluable engagement of non-governmental organisations, to actively defend human rights";

Welcoming the activities that the Council of Europe Commissioner for Human Rights has undertaken in support of human rights defenders, mindful that protection of human rights defenders as well as the development of an enabling environment for their activities fall within the scope of his/her mandate, as defined in Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, and recalling the States' duty to co-operate with the Commissioner by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so required;

Taking note of the Secretary General of the Council of Europe's proposal in his third annual report, *State of human rights, democracy and the rule of law in Europe – A security imperative for Europe* (2016), to establish, under his authority, a mechanism strengthening the protection of human rights defenders focusing on reprisals against human rights defenders that are related to their interaction with the Council of Europe;

Taking into account the *Guidelines on Freedom of Association*, jointly published by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) and the European Commission for Democracy through Law of the Council of Europe (Venice Commission), the ODIHR/OSCE *Guidelines on the Protection of Human Rights Defenders* and its 2017 report "The Responsibility of States: Protection of Human Rights Defenders in the OSCE Region (2014-2016)";

Noting the European Union (EU) Guidelines on Human Rights Defenders, which contain suggestions for practical measures by EU member States and other States willing to implement them, to support and protect human rights defenders;

Recognising that a human rights defender is anyone who, individually or with others, acts to protect or promote human rights, regardless of his/her profession or other status, and that national human rights institutions (NHRIs) and civil society organisations working for the protection and promotion of human rights are human rights defenders;

Strongly reaffirming that everyone has the right, individually and in association with others, to promote and strive for the protection and realisation of human rights and fundamental freedoms at regional, national and international levels, as laid out in the UN Declaration on Human Rights Defenders, and, as recalled by the UN General Assembly Resolution 72/247 of 24 December 2017 on the 20<sup>th</sup> anniversary and promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, encouraging leaders in all sectors of society and in their respective communities, including political, military, social and religious leaders and leaders in business and the media, to express public support for human rights defenders in society, including women human rights defenders, and in cases of threat, harassment, violence, discrimination, racism and other violations and abuses committed against them, including murder, to take a clear stance in rejection of such practices and offences;

Underscoring the positive, important and legitimate roles of all human rights defenders, including NHRIs and civil society organisations, in independently promoting the realisation of all human rights including by engaging with Governments, across local, regional, national and international levels, organising awareness-raising and education activities, and contributing to the efforts to implement the obligations and commitments of States in this regard;

Recognising and valuing the work of all human rights defenders, including NHRIs and civil society organisations, which each make important contributions to an environment of respect for and the active promotion of human rights, democracy and the rule of law in Europe;

Bearing in mind that the existence of civil society organisations expressing a diverse range of views and interests is a manifestation of the right to freedom of association under Article 11 of the European Convention on Human Rights and of their host country's adherence to principles of democratic pluralism and commitment to human rights and the rule of law;

Recalling Recommendation CM/Rec(2016)5 on Internet freedom;

Deploring the fact that human rights defenders, including journalists, are still all too often victims of violations and abuses of their rights, threats and attacks, despite efforts at both national and international levels, and considering that human rights defenders merit special attention, as such violations may indicate the general situation of human rights in the State concerned or a deterioration thereof;

Expressing its deep concern at the shrinking space for civil society resulting, *inter alia* from restrictive laws, policies and austerity measures taken recently by member States;

Expressing grave concern about the considerable and increasing number of allegations and reports of threats of a serious nature, risks and dangers faced by human rights defenders, including women human rights defenders, online and offline, and the prevalence of impunity for violations and abuses against them in many countries, where they face threats, harassment and attacks and suffer insecurity, including through restrictions on, *inter alia*, the rights to freedom of expression, association or peaceful assembly, and the right to privacy, or through abuse of criminal or civil proceedings;

Convinced that States must not only refrain from unnecessary, unlawful or arbitrary interferences with the rights of human rights defenders, but are also under a positive obligation to actively protect and promote a safe and enabling environment in which human rights defenders can operate safely without stigmatisation and fear of reprisals;

Expressing the need to strengthen the protection and promotion of civil society space in Europe,

Recommends that the governments of member States:

1. ensure that the principles set out in the appendix to this Recommendation are complied with in relevant national legislation and practice, and evaluate the effectiveness of the measures taken;
2. ensure, by appropriate means and action – including, where appropriate, translation – a wide dissemination of this Recommendation among competent authorities and stakeholders;
3. examine, within the Committee of Ministers, the implementation of this Recommendation five years after its adoption.

**I. National legal framework and political and public environment to protect and promote civil society space**

Member States should:

- a. ensure an enabling legal framework and a conducive political and public environment for human rights defenders, enabling individuals, groups, civil society organisations and national institutions for the protection and promotion of human rights (NHRIs) to freely carry out activities, on a legal basis, consistent with international law and standards, to strive for the protection and promotion of all human rights and fundamental freedoms;
- b. ensure that legislation, in particular on freedom of association, peaceful assembly and expression, is drafted and applied in conformity with international human rights law and standards and, where appropriate, seek advice from the Commissioner for Human Rights, the Venice Commission and the Expert Council on NGO Law of the Conference of International Non-Governmental Organisations and other bodies of the Council of Europe;
- c. remove any unnecessary, unlawful or arbitrary restrictions to civil society space, in particular with regards to freedom of association, peaceful assembly and expression;
- d. ensure that the various forms of hate crime, including acts of violence, hate speech and public incitement to hatred and violence, are prohibited under national law, and take measures to prevent and combat cases of hate crime and hate speech, in particular by carrying out effective investigations with the aim of ending impunity;
- e. ensure that everyone, including human rights defenders, can effectively participate in decision-making, notably by giving them full access to information, taking into account the Council of Europe Convention on Access to Official Documents (ETS No. 205);
- f. ensure timely and transparent public consultations in policy development and draft legislation, especially where it may affect civil society;

g. address the gaps in the implementation, at national level, of international law and standards relevant to the protection of civil society and the promotion of its work, as identified in the “Analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and national institutions for the promotion and protection of human rights”, adopted by the Steering Committee for Human Rights (CDDH);

h. establish effective, independent, pluralistic and adequately funded NHRIs in compliance with the Paris Principles, or where they already exist, strengthen them for the protection and promotion of all human rights and fundamental freedoms, including in their role to protect and promote an effective environment for civil society, co-operate and seek assistance, when needed, from the European Network of National Human Rights Institutions (ENNHRI), as well as from regional and international bodies such as the Office of the United Nations High Commissioner for Human Rights (OHCHR), the ODIHR/OSCE, the Council of Europe Commissioner for Human Rights, and the Venice Commission;

i. respect the freedom of human rights defenders, including civil society organisations, to seek, receive and utilise resources from domestic, foreign and international sources;

j. co-operate with the Council of Europe human rights mechanisms and in particular with the European Court of Human Rights in accordance with the European Convention on Human Rights, as well as with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and discussing the situation of human rights defenders with him/her when so requested;

k. consider signing and ratifying the 1995 Additional Protocol to the European Social Charter providing for a System of Collective Complaints (ETS No. 158) and to consider recognising the right of national NGOs fulfilling the criteria mentioned therein to lodge collective complaints before the European Committee of Social Rights.

## **II. National measures to protect civil society space**

Member States should take effective measures to protect civil society space, in particular to:

- a. prevent violations of the rights of human rights defenders including smear campaigns, threats and attacks against them, and other attempts to hinder their work;
- b. ensure the independent and effective investigation of such acts and hold those responsible accountable through appropriate administrative measures or criminal procedures, and ensure that criminal, civil and administrative laws and procedures are not applied in a way that hinders and criminalises the work of human rights defenders;
- c. ensure, while respecting their legal traditions, the independence of their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated;
- d. consider giving, or where appropriate strengthening, the competence and capacity of independent NHRIs to effectively carry out their role to protect civil society space through their monitoring, investigation, reporting and complaints handling functions;
- e. facilitate the effective access of human rights defenders, NHRIs and civil society organisations, to international and regional human rights mechanisms, including the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures;
- f. provide measures for swift assistance and protection for human rights defenders in danger in other countries, such as, where appropriate, attendance and observation of trials and/or, if feasible, the issuing of emergency visas.

### **III. National measures to promote civil society space**

Member States should take effective measures to promote civil society space, in particular to:

- a. ensure access to resources to support the stable funding of human rights defenders, including NHRIs and civil society organisations, and increase efforts to promote their activities;



- b. ensure women human rights defenders are able to access specific support, funding, and protection, including against gender-based violence, and guarantee an environment in which they can work free from violence and discrimination;
- c. explicitly recognise the legitimacy of human rights defenders, including NHRIs and civil society organisations, and publicly support their work, acknowledging their contribution to the advancement of human rights and the development of a pluralistic society;
- d. facilitate and support programmes to guarantee that human rights defenders have access to the necessary skills, tools and training they require without discrimination, in order to enable and equip them to conduct their human rights work.

#### **IV. Support from Council of Europe bodies and institutions**

Member States should call on Council of Europe bodies and institutions to pay special attention to issues concerning the enabling environment in which all human rights defenders, including NHRIs and civil society organisations, can safely and freely operate in Europe. This should include:

- a. providing information and documentation, including on relevant case law and other European standards, as well as encouraging co-operation and awareness-raising activities with civil society organisations and encouraging human rights defenders' participation in Council of Europe activities;
- b. ensuring that Council of Europe local offices promote civil society's, NHRIs' and human rights defenders' work and give visibility to key judgments of the European Court of Human Rights, recommendations of the Commissioner for Human Rights, the Venice Commission, and Parliamentary Assembly resolutions concerning the safe and enabling environment for human rights defenders.
- c. paying special attention within the Committee of Ministers to the execution of judgments of the European Court of Human Rights concerning human rights defenders and the enabling environment for human rights work, which have yet to be implemented;

- d. ensuring continuous dialogue and debates on threats to civil society, NHRIs and human rights defenders, in particular to address threats and attacks on human rights defenders and to express concern for the unjustified detention and criminal charges which effectively lead to halting civil society work in Council of Europe member States;
- e. keeping under review the question of further Council of Europe action in this field.





**Recommendation  
CM/Rec(2019)6**

**of the Committee of the Committee of  
Ministers to member States on the  
development of the Ombudsman  
institution**

*(adopted on 16 October 2019 at the 1357<sup>th</sup>  
meeting of the Ministers' Deputies)*



The Committee of Ministers of the Council of Europe, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, for the purpose of safeguarding and realising the ideals and principles which are their common heritage, *inter alia* by carrying out activities in the field of human rights and fundamental freedoms;

Welcoming the remarkable development that has taken place since the adoption of Recommendation Rec(85)13 on the institution of the Ombudsman in the great majority of the Council of Europe member States with respect to the establishment of Ombudsman institutions<sup>1</sup> at national, regional and local level, including those dealing with specific, thematic issues;

Welcoming the steady development of the functions of Ombudsman institutions which have expanded beyond the original mandate concerning maladministration and the rule of law;

Noting with satisfaction that Ombudsman institutions now constitute an important feature of democratic governance and play a key role in the protection and promotion of human rights and the rule of law in the vast majority of Council of Europe member States;

Underlining the great potential of Ombudsman institutions for the promotion and protection of human rights in Europe, not least for the effective implementation of the European Convention on Human Rights (ETS No. 5);

Acknowledging the importance of continuing support by the Council of Europe and other international stakeholders to Ombudsman institutions and welcoming the well-established co-operation between the Commissioner for Human Rights of the Council of Europe and Ombudsman institutions, as well as their networks, as foreseen in the Commissioner's mandate under Resolution Res(99)50 on the Council of Europe Commissioner for Human Rights;

Acknowledging further the importance of the co-operation between Ombudsman institutions and their various networks, and of their co-operation with the Council of Europe and other international stakeholders;

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<sup>1</sup> The term "Ombudsman institutions" is used in this recommendation regardless of gender and to designate institutions such as those of an Ombudsman, Mediator, Parliamentary Commissioner, People's Defender, People's Advocate, Human Rights Commissioner, Inspector General of Government, Public Protector, etc.

Bearing in mind the relevant international texts in support of the development and protection of Ombudsman institutions;<sup>2</sup>

Acknowledging the diversity of Ombudsman institutions, which reflects the diversity of the countries and regions they serve;

Emphasising nonetheless that it is vitally important for any such institution to be governed by a number of core principles, including the following:

- independence;
- impartiality, objectivity and fairness;
- integrity and high moral authority;
- a comprehensive mandate;
- accessibility; and
- effectiveness;

Expressing grave concern about the challenging working conditions, threats, pressures and attacks which Ombudsman institutions and their staff are at times exposed to in member States;

Wishing to develop its Recommendation Rec(85)13 on the institution of the Ombudsman, henceforth replaced by the present instrument,

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<sup>2</sup> See, in particular:

- Recommendation Rec(97)14 of the Committee of Ministers to member States on the establishment of independent national institutions for the promotion and protection of human rights;
- Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe;
- Parliamentary Assembly Resolution 1959 (2013) on “Strengthening the institution of ombudsman in Europe”;
- Congress of Local and Regional Authorities of the Council of Europe Resolution 327 (2011) on “The office of Ombudsperson and local and regional authorities”;
- Principles on the protection and promotion of the Ombudsman institution (“The Venice Principles”), adopted by the European Commission for Democracy through Law (Venice Commission) at its 118<sup>th</sup> Plenary Session (Venice, 15-16 March 2019);
- ECRI General Policy Recommendation No. 2 (revised) on Equality Bodies to combat racism and intolerance at national level, adopted on 7 December 2017;
- United Nations General Assembly Resolution 48/134 of 20 December 1993 on national institutions for the promotion and protection of human rights (“The Paris Principles”);
- United Nations General Assembly Resolutions 65/207 of 21 December 2010, 67/163 of 20 December 2012, 69/168 of 18 December 2014, 71/200 of 19 December 2016 and 72/186 of 19 December 2017 on the role of the ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights;
- the by-laws of the International Ombudsman Institute, adopted on 13 November 2012.

Recommends that the governments of member States:

1. ensure that the principles set out in the appendix to this recommendation are implemented in relevant domestic law and practice;
2. strengthen Ombudsman institutions and avoid any measures which might weaken them, and evaluate on a regular basis the effectiveness of the measures taken;
3. ensure, by appropriate means and action – including, where appropriate, translation – a wide dissemination of this recommendation among competent authorities and stakeholders;
4. examine, within the Committee of Ministers, the implementation of this recommendation no later than five years after its adoption.



## Principles for the development of the Ombudsman institution

### I. Establishment and fundamental characteristics of Ombudsman institutions

1. Ombudsman institutions should be in place in all member States. The choice of one or more of these institutions should be made by each State in the light of its organisation, particularities and needs. These institutions should be directly and easily accessible to everyone in respect of all public services, however provided. Particular attention should be paid to persons who may not be aware of the existence of Ombudsman institutions, who may have difficulties in accessing Ombudsman institutions or who may be in a situation of vulnerability, such as migrants, persons deprived of liberty, persons with disabilities or older persons and children.

2. Member States should provide a firm legal basis for Ombudsman institutions, preferably at the constitutional level, and/or in a law which defines the main tasks of such an institution, guarantees its independence and provides it with the means necessary to accomplish its functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on Ombudsman institutions, in particular the Principles on the protection and promotion of the Ombudsman institution, adopted by the European Commission for Democracy through Law of the Council of Europe (Venice Commission) on 15 March 2019 and endorsed by the Committee of Ministers on 2 May 2019.

3. The process of selection and appointment of the head of an Ombudsman institution should promote its independence. Candidates should be of high moral authority and possess recognised competence in the field of the rule of law, democratic governance and human rights. Arrangements should be in place so that the post of the head of any Ombudsman institution does not stay vacant for any significant period of time.

4. Member States should ensure that Ombudsman institutions operate in a conducive environment which allows them to carry out their mandate independently of any provider of public services over which they hold jurisdiction, in an effective manner and in a climate of impartiality, integrity, transparency and fairness.

5. Member States should take effective measures to enable Ombudsman institutions to require all administrative authorities and other relevant entities to co-operate with their activities, to have unfettered access to all relevant premises, including places of detention, and to all relevant individuals, in order to be able to carry out a credible examination of complaints received or other issues covered by their mandate. Ombudsman institutions should also have access to all pieces of information needed for such examination, subject to possible restrictions stemming from the protection of other rights and legitimate interests, and to guarantee the confidentiality of the data in its possession.

6. Member States should provide Ombudsman institutions with adequate, sufficient and sustainable resources to allow them to carry out their mandate in a fully independent manner. Ombudsman institutions should be able to appoint their own staff and to ensure that they receive adequate training.

7. Member States should take all measures necessary to protect Ombudsman institutions against threats and harassment. Any cases of alleged reprisal or intimidation against Ombudsman institutions and their staff, or against individuals who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.

## **II. Main tasks of Ombudsman institutions**

8. Member States should ensure that the mandate given to Ombudsman institutions empowers them, in particular, to:

- a. take action upon complaints received or on their own initiative, in order to protect any person or group of persons against maladministration, violation of rights, unfairness, abuse, corruption or any injustice caused by providers of public services, public or private, notably by providing right-holder-friendly, non-judicial means to facilitate the resolution of disputes between individuals and providers of public services, which may include mediation, as appropriate;
- b. protect and promote human rights and fundamental freedoms, the rule of law and democratic governance, including, as appropriate, through proposals to change legislation, litigation or other means;

- c. make recommendations to prevent or remedy any of the conduct described in paragraph 8.a and, where appropriate, to propose administrative or legislative reforms aimed at improving the operation of public-service providers; in the event that the latter fail to accept or implement such recommendations, member States should ensure that Ombudsman institutions have the right, *inter alia*, to submit a report on such failure to the competent elected body, usually parliament;
- d. co-operate, within their mandate, with local, regional, national and international stakeholders and networks which operate in related or similar fields.

9. Member States should make it a legal obligation for all addressees of recommendations by Ombudsman institutions to provide a reasoned reply within an appropriate time.

10. Member States should consider granting Ombudsman institutions competences enabling them to perform the functions foreseen by relevant international conventions in the field of human rights, such as the National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and/or the independent mechanism under the United Nations Convention on the Rights of Persons with Disabilities, or to strengthen such competences, where appropriate. Where an Ombudsman institution holds these mandates, it must have access to sufficient resources to develop the capacity enabling it to effectively discharge its functions; this should include having appropriately qualified, skilled and trained staff.

### **III. Co-operation and dialogue**

11. Member States should take effective measures to enable Ombudsman institutions, whether at national, regional or local level, to communicate and co-operate with, in particular:

- a. counterpart institutions, where appropriate through electronic networking and exchange of information and practices, as well as through regular meetings;
- b. civil society stakeholders, in particular non-governmental organisations, who should enjoy easy access to Ombudsman institutions;

- c. other human rights structures, notably national human rights institutions and their networks, where appropriate through jointly organised activities;
- d. international and regional organisations which work in related or similar fields, particularly Council of Europe bodies.

12. Member States which have established several Ombudsman institutions, such as regional, local and/or specialised bodies, should enable appropriate, effective co-ordination and co-operation among these institutions, in order to promote synergy and avoid duplication, by ensuring that legislation on Ombudsman institutions enables and encourages such co-operation.

13. Member States should encourage and sponsor the development of co-operation programmes with the Council of Europe to ensure permanent knowledge-sharing among Ombudsman institutions, in order to strengthen their contribution to the effective implementation of the European Convention on Human Rights and other relevant instruments.





**Recommendation  
CM/Rec(2021)1**

**of the Committee of the Committee of  
Ministers to member States on the  
development and strengthening of  
effective, pluralist and independent  
national human rights institutions**

*(adopted on 31 March 2021 at the 1400<sup>th</sup> meeting  
of the Ministers' Deputies)*



The Committee of Ministers of the Council of Europe, under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1),

Considering that effective, pluralist and independent national human rights institutions (NHRIs) are among the pillars of respect for human rights, the rule of law and democracy;

Recognising that a NHRI is a State-mandated body, independent from the government, with a broad constitutional or legislative mandate to promote and protect human rights and accredited on a regular basis according to its compliance with the Paris Principles;<sup>3</sup>

Recalling that NHRIs are human rights defenders and that they contribute to the promotion and protection of other human rights defenders and to a safe and enabling space for civil society;

Recalling also the Committee of Ministers' Decision "A shared responsibility for democratic security in Europe – The need to strengthen the protection and promotion of civil society space in Europe" (Helsinki, 17 May 2019) to further strengthen the Council of Europe's mechanisms for the protection of human rights defenders, including the Secretary General's Revised Private Office procedure on human rights defenders interacting with the Council of Europe;

Recognising that effective NHRIs are an important link between government and civil society, insofar as they help bridge the potential protection gap between the rights of individuals and the responsibilities of the State;

Welcoming the significant increase in the number of accredited<sup>4</sup> independent NHRIs<sup>5</sup> in Council of Europe member States since the adoption of Committee of Ministers' Recommendation Rec(97)14 on the establishment of independent national institutions for the promotion and protection of human rights;

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<sup>3</sup> Principles relating to the status of national institutions (the Paris Principles), adopted by the United Nations General Assembly on 20 December 1993 in its Resolution 48/134 on national human rights institutions for the promotion and protection of human right and interpreted by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI) in its General Observations, <https://ganhri.org/accreditation/>.

<sup>4</sup> <http://ennhri.org/our-members/>.

<sup>5</sup> NHRIs may cover Ombudsman institutions, human rights commissions, hybrid institutions (which combine several mandates, including that of equality body), and human rights institutes and centres, etc.



Underlining the great potential and impact of independent NHRIs for the promotion and protection of human rights in Europe, in particular for the effective implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, the Convention) including third party intervention before the European Court of Human Rights (on the basis of the Article 36, paragraph 2, of the Convention) and communication with regard to the supervision of the execution of judgments under Article 46, paragraph 2, of the Convention;

Acknowledging the importance of continued support by the Council of Europe and other international stakeholders to NHRIs and welcoming the well-established co-operation between the Commissioner for Human Rights of the Council of Europe and NHRIs, as well as the European Network of National Human Rights Institutions (ENNHRI), as foreseen in the Commissioner's mandate under Resolution Res(99)50 on the Council of Europe Commissioner for Human Rights;

Acknowledging further the importance of the co-operation between NHRIs and ENNHRI, and of their co-operation with the Council of Europe<sup>6</sup> and other national and international stakeholders;

Bearing in mind the broad international support for the development, strengthening, protection and recognition of and co-operation with NHRIs,<sup>7</sup> not only by the Council of Europe, but also by the United Nations,

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<sup>6</sup> ENNHRI has observer status in several Council of Europe intergovernmental committees.

<sup>7</sup> In addition to Recommendation Rec(97)14, in particular:

- Committee of Ministers' Resolution Res(97)11 on co-operation between national human rights institutions of member States and between them and the Council of Europe;
- Committee of Ministers' Recommendation CM/Rec(2018)11 to member States on the need to strengthen the protection and promotion of civil society space in Europe;
- Committee of Ministers' Recommendation CM/Rec(2019)6 to member States on the development of the Ombudsman institution;
- Parliamentary Assembly Resolution 1959 (2013) on "Strengthening the institution of ombudsman in Europe";
- Congress of Local and Regional Authorities Resolution 327 (2011) on "The office of Ombudsperson and local and regional authorities";
- European Commission for Democracy through Law (Venice Commission), Principles on the protection and promotion of the Ombudsman institution ("The Venice Principles");
- European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 2 (revised) on Equality Bodies to combat racism and intolerance at national level;
- United Nations General Assembly Resolution 48/134 and the interpretation of the Paris Principles developed by GANHRI;
- UN General Assembly Resolutions 65/207, 67/163, 69/168, 71/200 and 72/186 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights;
- ENNHRI, Guidelines on ENNHRI Support to NHRIs under Threat, February 2020. For further ENNHRI documents, see <http://ennhri.org>.

the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) and the European Union;

Recognising the diversity of NHRIs, which reflects the diversity of the countries and regions they serve;

Emphasising at the same time that it is vitally important that any such institution be established and function in full compliance with the minimum standards contained in the Paris Principles, in particular with regard to its:

- mandate and competence to promote and protect all human rights for everyone;
- autonomy from government;
- independence guaranteed by primary legislation or, preferably, the constitution;
- pluralism, including through the appointment and composition of the decision-making body, staff composition and procedures enabling effective co-operation with diverse societal groups;
- adequate level of resources;
- adequate access to individuals, premises and information; and
- international accountability and legitimacy through periodic international accreditation;

Expressing grave concern about the challenging working conditions, threats, pressures and attacks which NHRIs and their members and staff are at times exposed to in member States;

Wishing to build on Recommendation Rec(97)14, which is henceforth replaced by the present instrument,

Recommends that the governments of member States:

1. take all necessary measures to establish and, when established, maintain and strengthen an independent NHRI in accordance with the Paris Principles. In this context, States could draw on technical assistance such as that from ENNHRI and regional and international bodies to build on existing best practice;
2. ensure an enabling legal framework and a conducive institutional and public environment for NHRIs to carry out their activities effectively for the protection and promotion of all human rights and fundamental freedoms, and co-operate with them;

3. ensure that the principles set out in the appendix to this recommendation are implemented in relevant domestic law and practice;
4. ensure that these principles are interpreted in line with the specific recommendations and General Observations of the GANHRI Sub-Committee on Accreditation;
5. evaluate on a regular basis the effectiveness of the measures taken in the implementation of the appendix to this recommendation, including through consultation and dialogue with NHRIs;
6. explore the ways of developing a stronger role for and meaningful participation of NHRIs and ENNHRI in the Council of Europe for the enhanced promotion and protection of human rights, the rule of law and democracy;
7. ensure, by appropriate means and action – including, where appropriate, translation – a wide dissemination of this recommendation among competent authorities and stakeholders;
8. examine, within the Committee of Ministers, the implementation of this recommendation no later than five years after its adoption.

## I. Establishment of NHRIs

1. Member States should ensure that NHRIs are in place and that they are established, accredited and function in full compliance with the Paris Principles. The choice of the model of these institutions should be made by each State in the light of its organisation, particularities and needs. These institutions should be directly and easily accessible to everyone. Particular attention should be paid to persons who may not be aware of the existence of NHRIs, who may have difficulties in accessing NHRIs or who may be in a vulnerable situation.

2. Member States should provide a firm legal basis for NHRIs, preferably at the constitutional level, and/or in a law which defines the mandates and functions of such institutions, guarantees their independence and provides them with the means necessary to accomplish their functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on NHRIs, in particular the Paris Principles and their interpretation developed by GANHRI's Sub-Committee on Accreditation.

## II. Strengthening of NHRIs

3. Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, *inter alia*, to:

- monitor and analyse the human rights situation in the country, publish reports on these findings and address recommendations to public authorities at national, regional and local levels and, when applicable, to private entities, and present an annual report to the relevant authorities, including before parliament, for its consideration;
- freely address public opinion, raise public awareness on human rights and carry out education and training programmes;
- fully address all alleged human rights violations by all administrative authorities, other relevant State entities and, when applicable, private entities;

- have unfettered access to all relevant premises, including places of deprivation of liberty, and to all relevant individuals, in order to be able to carry out a credible examination of all issues covered by their mandate and to all relevant information, subject to possible restrictions stemming from the protection of other rights and legitimate interests and with due respect for the confidentiality of information obtained;
- monitor existing and draft policies and legislation with human rights implications before, during and after their adoption in order to advise the State about the impact of such policies and legislation on human rights and on the activities of human rights defenders, including by making relevant and concrete recommendations;
- contribute to an effective justice system for all, through awareness-raising measures and facilitating access to rights and remedies and, as applicable, by providing legal assistance, being a party before the courts or, when applicable, receiving individual complaints;
- encourage the signature, ratification of and accession to international human rights treaties and contribute to the effective implementation of such treaties, as well as related judgments, decisions and recommendations as well as to monitor States' compliance with them.

4. The process of selection and appointment of the leadership of a NHRI should be competence-based, transparent and participatory, in order to guarantee the independence and pluralist representation of these institutions.<sup>8</sup> It should also be based on clear, predetermined, objective and publicly accessible criteria. The duration of the appointment should be clearly set out in the founding legislation, so that the leadership posts of the NHRI do not stay vacant for any significant period of time.

5. To ensure independence, the enabling legislation of a NHRI should contain an objective dismissal process for the NHRI leadership, with clearly defined terms in a constitutional or legislative text. The dismissal process should be fair and ensure objectivity and impartiality and should be confined to only those actions which impact adversely on the capacity of the leaders of NHRIs to fulfil their mandate.

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<sup>8</sup> Paris Principles, section "Composition and guarantees of independence and pluralism", paragraph 1, and General Observation 1.8. of GANHRI's interpretation of the Paris Principles.

6. Member States should provide NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities.

7. NHRIs should have the authority to determine their staffing profile and recruit their own staff, as well as sufficient resources available, in order to fulfil their mandate, so as to permit the employment and retention of staff and to ensure that they receive adequate training.

8. Member States should ensure that NHRIs enjoy adequate access to information and to policy makers and legislators, including timely consultations on the human rights implications of draft legislation and policy strategies. NHRIs should also be consulted, in a timely manner, on draft legislation and policies that affect their mandate, independence and operation.

9. Member States should implement the recommendations of NHRIs and are encouraged to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame, to develop processes to facilitate effective follow-up of NHRI recommendations, in a timely fashion and include information thereon in their relevant documents and reports.

10. When member States grant NHRIs additional competences to perform functions foreseen by international conventions in the field of human rights, such as the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Convention on the Rights of Persons with Disabilities, the NHRI should have access to sufficient resources to develop the capacity to effectively discharge its functions, including having appropriately qualified and trained staff.

### **III. Securing and expanding a safe and enabling environment for NHRIs**

11. Member States should ensure that NHRIs can operate independently, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of impartiality, integrity, transparency and fairness.

12. Member States should foster awareness and the co-operation of all relevant public authorities in relation to the mandate, independence and role of NHRIs, including through training and awareness-raising activities.

13. Member States should take all measures necessary to protect and support NHRIs against threats and harassment and any other forms of intimidation, including through ensuring functional immunity. Any cases of alleged reprisals or intimidation against NHRIs, their membership and staff, or against those who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.

14. Member States should ensure that confidential information collected by NHRIs in the context of their mandate is privileged and is not unduly made public.

#### **IV. Co-operation and support**

15. Member States should take effective measures to enable NHRIs to communicate and co-operate with, in addition to the various levels of administration in the member States, in particular:

- a. counterpart institutions, where appropriate through networking and exchange of information and practices, as well as through regular meetings such as those taking place within the framework of ENNHRI and GANHRI;
- b. civil society stakeholders, in particular non-governmental organisations and human rights defenders, who should enjoy easy and safe access to NHRIs as part of an enabling environment;
- c. other human rights structures, including regional, local and/or specialised institutions, notably Ombudsman institutions and equality bodies and their respective networks, where appropriate through jointly organised activities;
- d. international and regional organisations working in related or similar fields.

16. Member States should encourage and consider sponsoring the development of co-operation programmes with the Council of Europe to ensure permanent knowledge-sharing among NHRIs, in order to strengthen their contribution to the effective implementation of the European Convention on Human Rights and other relevant instruments.

17. Member States should seek new ways and means of strengthening the role and meaningful participation of NHRIs and ENNHRI within the Council of Europe with a view to increasing its openness and transparency, including access to information, activities and events.

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**T**he 47 member states of the Council of Europe, all of which are parties to the European Convention on Human Rights, have the obligation to ensure to everyone within their jurisdiction the rights and freedoms enshrined in that instrument, bearing in mind that these fundamental rights are universal, indivisible, interdependent and interrelated, and should be enjoyed by everyone without discrimination.

This obligation is shared: individuals, groups and organisations of civil society also have the right and responsibility to promote and protect universally recognised human rights and fundamental freedoms. In this context, the role of human rights defenders, the institution of the Ombudsman and national human rights institutions is crucial.

To reaffirm and strengthen this role, the Committee of Ministers of the Council of Europe has recently addressed three specific recommendations to the member states. They are included in this publication.

[www.coe.int](http://www.coe.int)

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

