
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)

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 3rd 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 20th 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.

Appendix to Recommendation CM/Rec(2018)11**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.