

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CDDH-INST(2018)R4
21/09/2018

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**DRAFTING GROUP ON CIVIL SOCIETY
AND NATIONAL HUMAN RIGHTS INSTITUTIONS
(CDDH-INST)**

REPORT

4th meeting
19–21 September 2018

Item 1: Opening of the meeting and adoption of the draft agenda

1. The CDDH Drafting Group on Civil Society and National Human Rights Institutions (CDDH-INST) held its fourth meeting in Strasbourg from 19 to 21 September 2018 with Ms. Krista OINONEN (Finland) in the Chair. The list of participants appears in Appendix I. The agenda as adopted appears in Appendix II.

2. The Group was welcomed by Mr Mikhail LOBOV, Head of the Human Rights Policy and Cooperation Department. He emphasised the importance of the work carried out by the CDDH-INST, which represents one of the highlights of the CDDH mandate in this biennium and enjoys support of the whole DGI. Mr Lobov also stressed the significance of the new text to be adopted by the CDDH-INST on the need to strengthen the protection and promotion of the civil society space in Europe, that makes a transition to the CDDH-INST work on reviewing the Committee of Ministers' Recommendation No. R(97)14 on the establishment of independent national institutions for the promotion and protection of human rights.

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3. The Group was also welcomed by Mr Alfonso DE SALAS, Head of the Human Rights Intergovernmental Co-operation Division and Secretary of the CDDH, who explained the procedural aspects of the adoption by the CDDH of the texts approved by the CDDH-INST.

Item 2: Second reading and discussion of the draft Declaration on the need to strengthen the protection and promotion of the civil society space in Europe

4. During the second reading of the draft Declaration on the need to strengthen the protection and promotion of the civil society space in Europe, the Group discussed the amendments to the text made at the 89th meeting of the CDDH by the delegations of the Netherlands, Sweden and the United Kingdom. After the Group proposed a number of changes, a revised text was prepared by the Chair and the Secretariat on this basis and in the light of the comments provided during the meeting. Furthermore, noting that it was tasked to draft a non-binding legal instrument and that the Secretariat of the Committee of Ministers was of the view that the draft text was more suitable for a recommendation, the Group decided to present a draft Recommendation to the Committee of Ministers, taking into account that it was not necessary to accompany it by an explanatory memorandum. Consequently, editorial changes were proposed by the Chair and the Secretariat and approved by the Group.

5. The final draft of the Recommendation was adopted by the Group and will be submitted to the CDDH for electronic adoption by 28 September 2018 (see Appendix III below).

Item 3: Second reading and discussion of the revised compilation of measures and practices in place in the member States, accompanied by the overview document

6. The Group was informed about the changes to the revised Compilation of measures and practices in place in the member States (CDDH-INST(2018)05Rev), prepared by the Chair with the assistance of the CDDH Secretariat. It then read through the accompanying overview document (CDDH-INST(2018)06Rev) and adopted both texts (see CDDH-INST(2018)R4add), which will be submitted to the CDDH for electronic adoption together with the draft Recommendation.

Item 4: Exchange of views

7. The Chair invited Ms Géraldine MATTIOLI-ZELTNER, Adviser in the Office of the Commissioner for Human Rights, to present the work of the Commissioner on and with Ombudsmen institutions in the Council of Europe Member States. In her presentation Ms Mattioli-Zeltner stressed that the cooperation with national human rights structures, and namely ombudsmen, is specifically foreseen in the Commissioner's mandate and that with human rights protection mandate are considered by the Commissioner as his/her counterparts. The role of the Commissioner in strengthening the NHRS and defending their independence was underlined.

8. Ms Mattioli-Zeltner also commented on the draft Venice Principles which are currently being elaborated by the Venice Commission, and reiterated some of the remarks made on these draft principles by the Commissioner during the consultation process.

Item 5: Exchange of views

9. The Chair invited Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Enlarged Agreement on Democracy through law (Venice Commission), to inform the Group about the Venice Commission current state of work on the principles relating to the institution of ombudsman.

10. Ms Granata-Menghini explained that the incentive came from the ombudsman community, and described the wide consultation process which is being carried out by the respective working group. She emphasized that the aim was to obtain a text of universal validity, and that the principles will not have any binding force but were expected to be endorsed by different Council of Europe bodies and other international organisations. She also mentioned a number of specific principles which responded to concerns raised by the ombudsmen (election, term of office, mandate for protection of human rights, relation to judiciary). Her very comprehensive intervention was followed by a discussion with the Group.

Item 6: Discussion of the draft CDDH opinion on "the

11. The Group read through and discussed the draft document prepared by the Secretariat on the basis of the comments made on the draft Venice Principles by the CDDH members at their meeting in June. It also took into account the comments made by the Commissioner for Human Rights, the Ombudsman of the Republic of Bulgaria and the CDDH focal point in the Venice Commission, Ms Brigitte OHMS (Austria), who also submitted comments and drafting proposals made by the Secretariat of the International Ombudsman Institute in Vienna.

12. In the light of the discussion and the suggestions made by the Group, a draft Opinion of the CDDH on the draft Venice Principles was prepared by the Chair with the assistance of the CDDH Secretariat. The Group then adopted the text (CDDH-INST(2018)09Rev), which will be submitted to the CDDH for electronic adoption.

Item 7: Discussion of the work on the update of the Recommendation no. R(85)13 on the institution of the ombudsman

13. The Chair observed at the outset that while its main objective remained valid, the Recommendation R(85/13) contained the very minimum and needed to be brought up to date. This was also the view expressed by several members of the Group. The Group then read through the draft reference document (CDDH-INST(2018)08) and discussed the elements to be reflected in the revised Recommendation. The Group agreed that it will draw upon its previous work, including the Analysis (CDDH(2017)R87 Addendum IV) and the draft Recommendation on the need to strengthen the protection and promotion of the civil society space in Europe.

14. The Group agreed that a possible structure of the revised Recommendation could be the following: updated preamble; operative part recommending to follow the principles set in the Appendix and to conduct a review of the implementation; appendix consisting of four sections: I. General principles, main tasks of the ombudsman; II. Diversity of ombudsman institutions; III. Fundamental characteristics of the ombudsman institution (such as independence and effectiveness, impartiality, fairness, possibility for the ombudsman to conduct a credible review process, confidentiality, accessibility); IV. Cooperation and dialogue (between ombudsman institutions, civil society organisations, national human rights structures and their networks, State authorities, international and regional organisations).

15. In parallel a survey concerning namely current challenges and good practices could be conducted, the outcome of which could be appended to the revised Recommendation as an explanatory memorandum. However, since it is not possible for the CDDH Secretariat to carry out such survey (because of the staff and budgetary constraints), the idea was raised of outsourcing the survey to an external consultant, provided that voluntary funding is made for this purpose. Account should also be taken of existing studies, reports and reference material.

Item 8: Exchange of views

16. The Chair invited Mr Daniel SCHMIDT, Head of South-East Europe & Turkey Unit, Human Rights National Implementation, to give the Group information on the cooperation projects relevant to the Recommendation No. R(85)13. Mr Schmidt mentioned several upcoming regional conferences which will involve ombudsman institutions, mainly those acting as NPMs or dealing with discrimination and mental health issues. He suggested that members of the Group could participate at these conferences and that direct meeting with ombudsmen could be arranged in order for the Group to collect relevant information from the field. The South-East Europe & Turkey Unit could also assist the Group in carrying out or disseminating a possible survey, identifying the most challenging topics (e.g. insufficient resources, reluctance to follow ombudsmen's ~~selecting good practices~~ recommendations) or

Item 9: Preparation of the CDDH workshop on the protection and promotion of the civil society space in Europe

17. The Chair presented the note (CDDH-INST(2018)07, see [Appendix IV](#) below), prepared together with the CDDH Secretariat, on the preparation of the CDDH Workshop which is to take place on 29 November 2018 during the 90th meeting of the CDDH, under the aegis of the Finnish Presidency of the Committee of Ministers. Members of the Group were invited to encourage their national delegates to the CDDH and other colleagues to attend the Workshop, and to submit suggestions for other possible participants, namely among national NGOs and

NHRIs. A publication containing the texts adopted by the Group, other working documents and the proceedings of the Workshop is foreseen for early 2019.

18. ENNHRI observed that their annual conference (25 October 2018, Athens) will this year be dedicated to the role of NHRIs in enabling democratic space and that the relevant publication, which will be ready soon, can be included into the working documents of the Workshop. The Conference will take into account the work carried out by the CDDH-INST and will be attended by its Chair as well as the Director General, Mr Christos GIAKOMOPOULOS. The outcome of the Conference will be shared with the CDDH-INST.

Item 10: Adoption of the meeting report

19. The Group adopted the present meeting report in English and French.

Item 11: Other business

20. The CDDH-INST took note of the following events relevant to its work:

21. The FRA Forum on Fundamental Rights, which will be attended by the Chair, will take place on 25-27 September 2018 in Vienna.

22. A delegation of the Council of Europe, including the Chair and Ms Irena MARKOVÁ, Secretary of the CDDH-INST, will attend the Conference organised by the International Ombudsman Institute at the occasion of its 40th anniversary, which will take place on 1-3 October 2018 in Brussels.

23. The Annual Colloquium on Fundamental Rights organised by the European Commission on the theme “Democracy in E U” will take place on 27 November 2018 in Brussels. Members of the Drafting group will be invited to this event.

APPENDIX I

List of Participants

MEMBER STATES / ETATS MEMBRES

ARMENIA / ARMENIE

Ms Kristinne GRIGORYAN, Ministry of Justice, Head of the Department on International Legal Assistance and Foreign relations

AZERBAIJAN / AZERBAIDZAN

Mr Hasan BAGHIROV, Chief Adviser, Administration of the President of the Republic

FINLAND / FINLANDE

Ms Krista OINONEN (*Chair/Présidente*), Director, Unit for Human Rights Courts and Conventions, Agent of the Government before the European Court of Human Rights
Legal Service | Ministry for Foreign Affairs

IRELAND / IRLANDE (*Apologised*)

MONTENEGRO

Ms Vanja RADEVIC, Advisor of the Representative of Montenegro before the European Court of Human Rights

POLAND / POLOGNE

Ms Agata ROGALSKA – PIECHOTA, chief specialist Criminal Proceedings , Department for Proceedings before International Human Rights Protection Bodies Ministry of Foreign Affairs

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Sergei KONDRATIEV, Counsellor, Deputy to the Permanent Representative, Permanent Representation of the Russian Federation to the Council of Europe

SLOVENIA / SLOVENIE (*Apologised*)

SPAIN / ESPAGNE

Mr José Antonio JURADO RIPOLL, Ministry of Justice

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" / " LA REEUBLIQUE YOUGOSLAVE DE MACEDOINE"

Mr Filip TOSEVSKI, Directorate for Multilateral Affairs Sector for United Nations and Human Rights Unit for United Nations and other international Organisations, Ministry of Foreign Affairs

TURKEY / TURQUIE

Ms Günseli GÜVEN, Adjointe au Représentant Permanent, Représentation permanente de la Turquie auprès du Conseil de l'Europe

UNITED KINGDOM / ROYAUME-UNI

Stephen LOWE, Team Leader Democracy & Equality, Human Rights & Democracy Department, Foreign & Commonwealth Office

OBSERVERS / OBSERVATEURS**PARLIAMENTARY ASSEMBLY / ASSEMBLEE PARLEMENTAIRE**

SZKLANNA Agnieszka, Committee on Legal Affairs and Human Rights / Commission des questions juridiques et des droits de l'homme

Bilge SAHIN, trainee / Stagiaire

AMNESTY INTERNATIONAL

Ms Rita PATRICIO, Senior Executive Officer for the Council of Europe

EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS / RESEAU EUROPEEN DES INSTITUTIONS NATIONALES DES DROITS DE L'HOMME (ENNHRI)

Ms Katrien MEUWISSEN Développeur officer, Permanent Secretariat

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

Ms Linda Maria RAVO, Legal and policy officer, Directorate-General for Justice and Consumers
Directorate C – Fundamental rights and rule of law, Unit C2 - Fundamental rights policy

CONFERENCE OF INGOS OF THE COUNCIL OF EUROPE / CONFERENCE DES ONG DU CONSEIL DE L'EUROPE

Mr Dragan GOLUBOVIC, member of the Expert Council on NGO Law

PARTICIPANTS

Ms Géraldine MATTIOLI-ZELTNER, Adviser, Office of the Commissioner for Human Rights / Conseiller, Bureau du Commissaire aux droits de l'homme

Ms Simona GRANATA-MENGHINI, Deputy Secretary, Secretariat of the Enlarged Agreement on Democracy through law (Venice Commission) / Secrétaire adjointe, Secrétariat de l'accord partiel élargi pour la démocratie par la droit (Commission de Venise), DGI

Mr Daniel SCHMIDT, Head of South East Europe and Turkey Unit / Chef de l'Unité Europe du Sud et Turquie, DGI

SECRETARIAT**DGI – HUMAN RIGHTS AND RULE OF LAW / DIRECTION DES DROITS DE L'HOMME ET**

Mr Mikhail LOBOV, Head of Human Rights Policy and Development Department / Chef du Service des politiques et du développement des droits de l'Homme

Mr Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Secretary of the CDDH

Mrs Irena MARKOVA, Administrator, Secretary of the CDDH-INST, Human Rights Intergovernmental Cooperation Division

Ms Corinne GAVRILOVIC, Assistant, Human Rights Intergovernmental Cooperation Division

APPENDIX II**Agenda**

	ITEM 1: OPENING OF THE MEETING, ADOPTION OF THE AGENDA
CDDH-INST(2018)OJ2	Draft agenda
CDDH-INST(2018)01	Extract of the terms of reference given by the Committee of Ministers to the CDDH regarding the work of the CDDH-INST during the 2018-2019 biennium and relevant extracts of the CDDH meeting reports
	ITEM 2: SECOND READING AND DISCUSSION OF THE DRAFT DECLARATION ON THE NEED TO STRENGTHEN THE PROTECTION AND PROMOTION OF THE CIVIL SOCIETY SPACE IN EUROPE
CDDH-INST(2018)04Rev	Draft Declaration of the Committee of Ministers on the need to strengthen the protection and promotion of the civil society space in Europe
	Additional drafting proposals by CDDH-INST members
	ITEM 3: SECOND READING AND DISCUSSION OF THE REVISED COMPILATION OF MEASURES AND PRACTICES IN PLACE IN THE MEMBER STATES, ACCOMPANIED BY THE OVERVIEW DOCUMENT
CDDH-INST(2018)05Rev	Protection and promotion of the civil-society space: Compilation of measures and practices in place in the Council of Europe member States
CDDH-INST(2018)06	Draft Overview document on the protection and promotion of the civil-society space, based on the compilation of measures and practices in place in the Council of Europe member States
	ITEM 4: EXCHANGE OF VIEWS
	Exchange of views with Ms Géraldine MATTIOLI-ZELTNER, Adviser, Office of the Commissioner for Human Rights, on the work of the Commissioner on and with Ombudsmen institutions in the Council of Europe Member States
	ITEM 5: EXCHANGE OF VIEWS

	Exchange of views with Ms Simona GRANATA-MENGHINI, Deputy Secretary of the Enlarged Agreement on Democracy through law (Venice Commission), DGI
	ITEM 6: DISCUSSION OF THE DRAFT CDDH OPINION ON “ THE VENICE PRINCIPLES ON THE PROTECTION AND PROMOTION OF THE OMBUDSMAN INSTITUTION ”
CDL(2018)025 <i>restricted</i>	Draft Principles on the Protection and Promotion of the Ombudsman Institution (by the European Commission for Democracy through Law - “ t h e V e n i c e C o m m i s s i o n ”)
CDDH-INST(2018)09 <i>restricted</i>	Draft CDDH Opinion on the Draft Principles on the Protection and Promotion of the Ombudsman Institution
	ITEM 7: DISCUSSION OF THE WORK ON THE UPDATE OF THE RECOMMENDATION NO. R (85) 13 ON THE INSTITUTION OF THE OMBUDSMAN
Recommendation No. R(85)13	Recommendation No. R(85)13 of the Committee of Ministers to member States on the Institution of the Ombudsman
CDDH-INST(2018)08 <i>(only in English)</i>	Reference document in view of the work of the CDDH-INST on the update of t h e C o m m i t t e e Recommendation No. R (85) 13 on the Institution of the Ombudsman
	ITEM 8: EXCHANGE OF VIEWS
	Exchange of views with Mr Daniel SCHMIDT, Head of South-East Europe & Turkey Unit, Human Rights National Implementation, DGI, on the cooperation projects relevant to the Recommendation No. R(85)13
	ITEM 9: PREPARATION OF THE CDDH WORKSHOP ON THE PROTECTION AND PROMOTION OF THE CIVIL SOCIETY SPACE IN EUROPE
CDDH-INST(2018)07 <i>(only in English)</i>	Note on the preparation of the CDDH Workshop: Protection and promotion of the civil society space in Europe
	ITEM 10: ADOPTION OF THE MEETING REPORT
	ITEM 11: OTHER BUSINESS

Organisation of the work for the next meeting in Strasbourg, 27 February–1st March 2019.

APPENDIX III

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

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

1. Reaffirming the commitment to the Statute of the Council of Europe and the latter's aim 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;
2. Recalling the member States' obligation to secure to everyone within their jurisdiction the rights and freedoms enshrined in the 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 and international human rights instruments;
3. Recalling the interdependence between the European Convention on Human Rights and the other activities of the Council of Europe in the field of human rights, democracy and the rule of law, the objective being to develop the common democratic and legal space founded on respect for human rights and fundamental freedoms;
4. Reaffirming that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be enjoyed by everyone without discrimination;
5. 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 Human Rights Institutions and the subsequent UN General Assembly Resolutions on National Human Rights Institutions and on Human Rights Defenders;
6. Recalling Recommendation No. R (85) 13 of the Committee of Ministers on the institution of the ombudsman of 23 September 1985, Recommendation No. R (97) 14 of the Committee of Ministers to member States on the establishment of independent national institutions for the promotion and protection of human rights (NHRIs) of 30 September 1997, Resolution (97)11 of the Committee of Ministers on cooperation between NHRIs of Member States and between them and the Council of Europe of 30 September 1997, and Recommendation CM/Rec (2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe of 10 October 2007;
7. 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 the said Declaration of the Committee of Ministers acknowledged that "whereas the prime responsibility and duty to promote and protect human rights defenders lies 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 that the Committee of Ministers further agreed to "keep under review the question of further Council of Europe action in this field";

8. Reaffirming the commitment made by Heads of State and Government meeting at their Third Summit in Warsaw 2005 that –through its various mechanisms Europe “ and institutions – play a dynamic role in protecting the right of individuals and promoting the invaluable engagement of non-governmental organisations, to actively de
9. 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 mandate, as defined in the May Commit t 1999, and recalling the States’ duty byfacilitating his/her ate wit visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so required;
10. Taking note of the Secretary General of the Council of Eur report on the state of human rights, democracy and the rule of law to establish, under his authority, a mechanism strengthening the protection of human rights defenders focusing on reprisals against human rights defenders related to their interaction with the Council of Europe;
11. Taking into account the Guidelines on Freedom of Association, jointly developed by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation 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 Res
12. Noting the European Union 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;
13. Recognising that human rights defenders include anyone who, individually or with others, acts to protect or promote human rights, regardless of their profession or other status, and that NHRIs and civil society organisations working on the protection and promotion of human rights are human rights defenders;
14. 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 the national, regional 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, 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 killings, to take a clear stance in rejection of such practices and offences;
15. Underscoring the positive, important and legitimate roles of all human rights defenders, including NHRIs and civil society organisations, in independently promoting and advocating for the realisation of all human rights including by engaging with Governments, across the local, national, regional and international levels, organising awareness raising and education activities, and contributing to the efforts in the implementation of the obligations and commitments of States in this regard;

16. 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 active respect for and promotion of human rights, democracy and the rule of law in Europe;
17. 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 countries' adherence to principles of democratic pluralism and commitment to human rights and the rule of law
18. Recalling Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom;
19. 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;
20. Expressing its deep concern at the shrinking space for civil society following *inter alia* from restrictive laws, policies and austerity measures taken recently by member States;
21. 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;
22. 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 they can operate safely without stigmatisation and fear of reprisals;
23. Expressing the need to strengthen the protection and promotion of the civil society space in Europe and, to this end,

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)...

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

24. 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 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 as well as other bodies of the Council of Europe;
- c. remove any unnecessary, unlawful or arbitrary restrictions to the civil society space, in particular with regards to freedom of association, peaceful assembly and expression;
- d. ensure that various forms of hate crime, including acts of violence and hate speech, public incitement to hatred and violence, are prohibited under their 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 at ending impunity;
- e. ensure that everyone, including human rights defenders, can effectively participate in decision-making, notably by giving them full access to information, in line with 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 existing in the implementation on the 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 of the Steering Committee for Human Rights (CDDH) on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and NHRIs;
- 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 their role to protect and promote vibrant civil society space, cooperate 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 entering into dialogue with him/her about the situation of human rights defenders when so requested;
- k. consider signing and ratifying the 1995 Additional Protocol to the European Social Charter 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 the civil society space

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

- a. prevent violations of the rights of human rights defenders including smear campaigns, threats and attacks against them, as well as other attempts to hinder their work;
- b. ensure independent and effective investigation of such acts and hold those responsible accountable through appropriate administrative measures and/or criminal proceedings, and ensure that criminal, civil and administrative laws and proceedings are not applied in a way that hinder and criminalise the work of human rights defenders;
- c. strengthen 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 roles 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 to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas.

III. National measures to promote civil society space

26. Member States should take effective measures to promote the 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, so that they are enabled and equipped to conduct their human rights work.

IV. Support from Council of Europe bodies and institutions

27. Council of Europe bodies and institutions are called 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 shall 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 human rights defenders' work and give visibility to Human Rights and 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 at the Committee of Ministers to 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 freezing of civil society work in the Council of Europe member States;
- e. keeping under review the question of further Council of Europe action in this field.

APPENDIX IV

**Note on the preparation of the CDDH Workshop on the
Protection and promotion of the civil society space in Europe**

CONTEXT

1. In the course of the biennium 2018-2019, the Steering Committee for Human Rights (CDDH) is tasked by the Committee of Ministers to prepare, on the basis of work conducted in 2016-2017, a draft non-binding instrument of the Committee of Ministers and a guide of good practices with the aim that member States, through their legislation, policies and practices, effectively protect and promote the civil society space (activities of organisations of the civil society, human rights defenders and national institutions for the promotion and protection of human rights) (deadline: 31 December 2018).
2. Thus, following the Analysis on the impact of the legislation, policies and current national practices on the activities of civil-society organisations, human rights defenders and national institutions for the promotion and protection of human rights (CDDH(2017)R87 Addendum IV), elaborated by the Drafting Group on Civil Society and National Human Rights Institutions, (drafted by the Steering Committee for Human Rights at its 87th meeting (6-9 June 2017) and examined by the Committee of Ministers at the 1293rd meeting of the Ministers' Deputies (13th September 2017) and the 138th meeting in December 2017 of the possibility to have the Analysis be accompanied by a compilation of good practices. It also endorsed the questionnaire proposed by the CDDH-INST, aimed at receiving examples of national practices which have an overall positive character and are innovative in nature; the emphasis was placed on the collection of *good practices of implementation* of existing national legislation regarding the protection and promotion of the civil-society space".
3. Majority of the practices and measures submitted by 22 member States¹, numerous members of the European Network of National Human Rights Institutions (ENNHRI) and the European Roma and Travellers Forum (ERTF), except for practices which were considered as not going beyond common standards or concerned national human rights institutions which do not meet applicable international standards (including the Paris Principles), were integrated into the document entitled: "The protection and promotion of the civil-society space - Compilation of measures and practices in place in the Council of Europe member States" (CDDH(2018)05 Rev.). Together with this compilation the CDDH-INST prepared the Draft Recommendation on the need to strengthen the protection and promotion of the civil society space (" Recommendation ") adopted by the CDDH at its 89th meeting in June 2018 (CDDH(2018)R89add2) and transmitted to the Committee of Ministers for adoption².

¹ Contributions have been submitted by Armenia, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Finland, France, Georgia, Greece, Monaco, Montenegro, Netherlands, Poland, Portugal, Russian Federation, Serbia, Spain, Sweden, Switzerland, "The former

² The examination by the Committee of Ministers is expected in September 2018.

4. At its 89th meeting in June 2018, the CDDH also noted with satisfaction the interest of the Finnish authorities for a CDDH workshop on the civil society space, which would take place under the Finnish Presidency of the Committee of Ministers during the 90th meeting of the CDDH (namely on 29 November 2018 afternoon).

AIM

5. In the very diverse and complex world of today, the shrinking space phenomenon has become a global trend which requires a multi-faceted response. The aim of the Workshop is to draw attention to the shrinking democratic space in Europe, to raise awareness of the major challenges faced by various civil society actors engaged in human rights protection and to explore ways for reversing this phenomenon. By discussing how to better coordinate their efforts and provide critical support for civil society actors, the relevant stakeholders should also provide tools for an effective implementation by member States of the principles embedded in the new Declaration elaborated by the CDDH. Furthermore, guidance could be given for the upcoming work of the CDDH-INST on updating CM Recommendations No. R(85)13 on the institution of the ombudsman and No. R(97)14 on the establishment of independent national institutions for the promotion and protection of human rights.
6. Besides, 2018 marks the 20th anniversary of the United Nations Declaration on Human Rights Defenders and the 10th anniversary of 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 by the Committee of Ministers on 6 February 2008), in which t h e C o m m i t t e e o f M i n i s t e r s w h e r e a s t h e a c k n o w l e d g e s t h a t prime responsibility and duty to promote and protect human rights defenders lies 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". The Committee of Ministers further agreed to "keep under review the question of further Council of Europe action in this field"; the Workshop is intended to fall within this framework.
7. Discussion with suggested participants (see Appendix II hereafter) should allow the g o v e r n m e n t s ' r e p r e s e n t a t i v e s t o g e t a c l e a r e r different categories of civil society actors and of possible ways to tackle them. Therefore key-note speeches should be concise and discussion among participants should be favoured.

WORKING DOCUMENTS AND PROCEEDINGS

8. Working and information documents to be prepared in view of the Workshop and to be published on the CDDH website should include:

Working documents

- (Draft) Declaration on the need to strengthen the protection and promotion of the civil society space (CDDH(2018)R89add2), a d o p t e d o n ... S e p t e m b e r 2 0 1 8
- 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

- Recommendation No. R(97)14 of the Committee of Ministers to member states on the establishment of independent national institutions for the promotion and protection of human rights, adopted on 30 September 1997
- Recommendation No. R(85)13 of the Committee of Ministers to member States on the institution of the Ombudsman, adopted on 23 September 1985

Information documents

- 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 (CDDH(2017)R87 Addendum IV)
 - The protection and promotion of the civil society space - Compilation of measures and practices in place in Council of Europe member States (CDDH-INST(2018)05Rev)
 - Overview document on the protection and promotion of the civil society space (CDDH-INST(2018)06)
 - PACE Resolution 2226 (2018) on new restrictions on NGO activities in Council of Europe member States, adopted on 27 June 2018, and PACE Recommendation 2134 (2018) "New restrictions on NGO activities" adopted on 27 June 2018
 - Human Rights Comment of the CoE Commissioner "Space for Human Rights Organisations", published
 - Statement of the CoE Commissioner for Human Rights on the 10th anniversary of the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, published on 6 February 2018
 - Bibliography of standards pertaining to civil society organisations, human rights defenders and national institutions for the promotion and protection of human rights (CDDH-INST(2018)03Rev)
 - FRA (EU) report "Challenges facing civil society in the EU" (2018)
 - Selection of relevant case-law of the European Court of Human Rights (CDDH-INST(2018)02)
 - ECtHR case-law research report on NGOs and human rights (available only in French)
 - Other material submitted by civil society.
9. Proceedings containing keynote speeches and working documents will be published.

PRELIMINARY DRAFT TIMETABLE

10. At this stage, and once the Chair of the CDDH has given his agreement, the Secretariat foresees the following actions:
- Examination of the present note and of the draft programme by the CDDH-INST at its 4th meeting held on 19-21 September 2018.
 - Sending out of the draft programme to the Finnish Presidency and the Bureau of the CDDH by 25 September 2018 for comments by 2 October 2018.
 - Sending out of the official invitations to the Workshop: by 8 October 2018.
 - Publishing working and information documents on the CDDH website: together with the draft agenda of the 90th CDDH meeting.
 - Publication of the proceedings: early 2019.

* * *

**Draft programme of the Workshop:
Protection and promotion of the civil society space in Europe**

organised by the CDDH at its 90th meeting
under the aegis of the Finnish Presidency
of the Committee of Ministers

Place and date: Strasbourg, Agora, room G03, Thursday 29 November 2018 (14:00-17:15)

Participants: representatives of member States, Council of Europe, international organisations, civil society

14:00 – Opening session

- (3 ') Welcome to t ~~Hans-Jörg BEHRENS, Chair of the CDDH~~ Mr
 (3 ') Speech by the Finnish Chair of the Committee
 (7 ') Speech by ~~GIAKOMO PULOS, Director General DGI (tbc)~~
 (7 ') Speech by Ms Krista ~~-DISTONEN, Chair of the CD~~

14:20 – Working session I – Commitment of the Council of Europe and other international partners to protect and promote the civil society space in Europe

Short presentations by representatives of the Venice Commission, PACE, Platform to promote the protection of journalism and safety of journalists, CoE focal point for reprisals against human rights defenders related to their interaction with the Council of Europe, Steering Committee on Media and Information Society, CoE Commissioner (to be determined)

Discussion – *What should be the further steps to strengthen the role of the civil society in Europe?*

15:20 – Coffee break

15:45 – Working session II – Current challenges facing civil society actors in Europe

Short presentations by representatives of the Working Group on Human Rights Defenders set up within the Human Rights Committee of the Conference of the INGOs of the Council of Europe, Council of Bars and Law Societies of Europe, ENNHRI, Amnesty International, Front Line Defenders, International Service for Human Rights

Discussion – *How to reverse shrinking democratic space in Europe?*

17:00 – Conclusion

(7 ') Concluding remarks by Hans-Jörg BEHRENS, Chair of the CDDH

(3 ') Closing by the Finnish authorities

17:15 – *Vindicta* offered by the Finnish Presidency of the Committee of Ministers

* * *

Possible participants at the Workshop (list to be completed)

(1) Representatives of member States

(2) Representatives of civil society

Conference of the INGOs of the Council of Europe (Working Group on Human Rights Defenders)

Council of Bars and Law Societies of Europe (voice of the European legal profession)

ENNHRI (European Network of National Human Rights Institutions)

Amnesty International

Front Line Defenders (NGO aimed at protecting human rights defenders at risk)

International Service for Human Rights (independent NGO, author of a Model Law for the Recognition and Protection of Human Rights Defenders)

....

(3) Representatives of relevant sectors within the Council of Europe: PACE (Agnieszka Szklanna), HR Commissioner (Furkat Tishaev), Venice Commission (Caroline Martin), Platform to promote the protection of journalism and safety of journalists (Ramona Toma), CoE focal point for reprisals against human rights defenders related to their interaction with the Council of Europe (Irene Kitsou-Milonas), Steering Committee on Media and Information Society ...

(4) Representatives of international organisations

European Union

- Directorate-General for Justice and Consumers, Unit C2 – Fundamental Rights Policy
- FRA (*Fundamental Rights Agency*) – author of the report “Challenges for civil society organisation working on human rights”
- *OHCHR* - The mandate of the Special Rapporteur on the rights of freedom of association and peaceful assembly (Mr Clément Voule) observed limitations on civic space through the adoption of restrictive legislation regulating civic space and the right to peaceful assembly and association as well as the use of national security, anti-terrorism and public order laws to suppress freedom of peaceful assembly and association (see report A/HRC/38/34 presented to the Human Rights Council 38th session on 18 June 2018)