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STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

**DRAFTING GROUP ON CIVIL SOCIETY
AND NATIONAL HUMAN RIGHTS INSTITUTIONS**

(CDDH-INST)

**Preliminary revised Recommendation No. R(85)13
of the Committee of Ministers to member states
on the institution of the Ombudsman¹**

¹ This document may be subject to changes in the light of comments coming from other bodies.

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*(adopted by the Committee of Ministers on ... 2019,
at its ... Session)*

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. 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;
2. Welcoming the remarkable development of the institution of the ombudsman/ombudsperson in recent years at national, regional and local level in Council of Europe member states;
3. Bearing in mind important developments in the functions of the institution of the ombudsman/ombudsperson which, in addition to representing an out-of-court mechanism for the settlement of disputes between individuals and public administration, now plays a key role in the protection and promotion of human rights and fundamental freedoms;
4. Considering that it is, therefore, necessary to update Recommendation No. R(85)13 of the Committee of Ministers to member States on the institution of the Ombudsman;
5. Recalling, in this context, [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 ... March 2019], the By-laws of the International Ombudsman Institute, adopted on 13 November 2012, the UN General Assembly Resolution 48/134 of 20 December 1993 on national institutions for the promotion and protection of human rights (Paris Principles), as well as the UN 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;
6. Recognising and valuing the work of the institutions of the ombudsman/ombudsperson, whether or not they are national human rights institutions, which make important contributions to an environment of respect for and promotion of human rights, good governance and the rule of law in Europe;
7. Convinced that, through their functions, the institutions of the ombudsman/ombudsperson play a fundamental role in improving the functioning of the administration and good governance in member States;

8. Expressing grave concern about the sometimes difficult working conditions and about the threats, pressures and attacks which the institutions of the ombudsman/ombudspersons and their staff may face in member States;
9. Taking into account the diversity of the institutions of the ombudsman/ombudsperson which reflects the diversity of the countries and regions that they serve, while underlining that if it is of major importance for all the institutions of the ombudsman/ombudsperson to remain true to the core principles governing their work;
10. Noting the importance of the cooperation at the international level between the institutions of the ombudsman/ombudsperson and the various networks and regional and international associations representing them;
11. Expressing the need to promote the institution of the ombudsman/ombudsperson and to ensure its independence;
12. Recommends that the governments of member states:
 - i. 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;
 - ii. ensure, by appropriate means and action – including, where appropriate, translation - a wide dissemination of this Recommendation among competent authorities and stakeholders;
 - iii. examine, within the Committee of Ministers, the implementation of this Recommendation five years after its adoption.

Appendix I to Recommendation

I. Main tasks of the institution of the ombudsman/ombudsperson

1. Member States should recognise the institution of the ombudsman/ombudsperson in their Constitution or in a law which defines the main tasks of such institutions, guarantees its independence and provides it with means necessary to accomplish its functions effectively, both at national and international levels. When formulating or amending the relevant legislation, member States should, as much as possible, take account of 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 ... March 2019.
2. Member States should ensure that the mandate given to the institution of the ombudsman/ombudsperson empowers the latter, in particular:
 - a) to provide an out-of-court mechanism for the settlement of disputes between individuals and public administration and to carry out, in this context, investigations on the complaints received or on its own motion;
 - b) to protect and promote human rights and fundamental freedoms guaranteed by national constitutions and international conventions;
 - c) to protect any person or group of persons against maladministration, violation of rights, unfairness, abuse, corruption, or any injustice caused by public authorities of a State, a region or a local territory, including bodies, partially or fully privatized, which provide public services;

- d) to make recommendations in order to prevent or remedy any of the conduct described in paragraph 2 (c) and, where appropriate, to propose administrative or legislative reforms aimed at better functioning of public administration;
- e) to cooperate with other international organisations which work in related or similar fields and, where appropriate, ensure monitoring foreseen by international conventions within its field of competence.

3. Member States should consider giving, or where appropriate strengthening, the competence and capacity of the institution of ombudsman/ombudsperson to allow it to perform the functions foreseen by the relevant international conventions in the field of human rights, such as the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and/or the independent monitoring under the UN Convention on the Rights of Persons with Disabilities.

II. Diversity of ombudsman/ombudsperson institutions

4. Notwithstanding the diversity of the institutions of the ombudsman/ombudsperson, organised according to different models, and the diversity of their mandates, reflecting legal orders and particular cultures of member States, the latter should ensure that their institutions of the ombudsman/ombudsperson have a general competence of supervision in the fields of promotion and protection of human rights, good governance and rule of law.

III. Fundamental characteristics of the institution of the ombudsman/ombudsperson

5. Member States should ensure that the institution of the ombudsman/ombudsperson can perform its functions independently of any public authority over which jurisdiction is held, in an effective manner and in a climate of impartiality, transparency and fairness.

6. Member States should ensure that the institution of the ombudsman/ombudsperson is directly and easily accessible to everyone within their jurisdiction. Particular attention should be paid to persons who may ignore the existence of the institution of the ombudsman/ombudsperson or who are in a situation of vulnerability, such as migrants and older persons, who may sometimes not be able to lodge a complaint.

7. Member States should also take effective measures to enable the institution of the ombudsman/ombudsperson to carry out a credible examination of the complaints received or other issues covered by its mandate, to access all pieces and 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 while observing the requirements of transparency incumbent upon public authorities.

8. Member States should ensure that the human resources and financial means allocated to the institution of the ombudsman/ombudsperson are adequate, sufficient and sustainable to allow it to perform its functions in a fully independent manner.

IV. Cooperation and dialogue

9. Member States should take effective measures to enable the institution of the ombudsman/ombudsperson to communicate and cooperate with, in particular :

- a) counterpart institutions, where appropriate through electronic networking and exchange of information and practices, as well as through periodical meetings ;
- b) actors of the civil society, who should enjoy an easy access to the institution of the ombudsman/ombudsperson ;
- c) other human rights institutions, notably the 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, this aspect deserving a particular attention of the Council of Europe bodies.