



CDDH-INST(2019)02
12/02/2019

STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

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

(CDDH-INST)

**[Draft] Reflection document in view of the work of CDDH-INST
on the update of the Committee of Ministers' Recommendation
No. R (97) 14 on the establishment of independent national institutions
for the promotion and protection of human rights**

1. This document aims at providing input for the consideration of the CDDH-INST in view of the discussion, to be launched at its 5th meeting, on the update of the [Recommendation No. R\(97\)14](#) on the establishment of independent national institutions for the promotion and protection of human rights.

A. Terms of reference

2. According to its terms of reference for the biennium 2018-2019 (see CDDH-INST(2018)01), the CDDH was invited to proceed, among others, “to the revision of 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 (deadline: 31 December 2019)”.

3. At its 3rd meeting held in March 2018, the CDDH-INST decided to extend its work, in addition to the work - foreseen in its mandate - on the revision of Recommendation No. R(97)14, to the updating of [Recommendation No. R\(85\)13](#) of the Committee of Ministers on the institution of the Ombudsman. This decision was endorsed by the CDDH at its 89th meeting in June 2018 and the CDDH-INST was invited to give priority to the work on Recommendation No. R(85)13, as the Venice Commission was working in parallel on the “Venice Principles” on the protection and promotion of the ombudsman institution (see CDDH(2018)R89, § 37).

4. At the 90th meeting of the CDDH in November 2018, it was proposed that, given the budgetary and personal constraints of the CDDH, the Group’s work on the revision of Recommendation No. R(97)14 be postponed until 2020 (see CDDH(2018)R90, § 43).

5. It is nevertheless suggested that at its 5th meeting taking place on 27 February – 1 March 2019, the CDDH-INST holds a discussion on the possible ways and means to update Recommendation No. R(97)14.

B. Background

6. The 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 (“Recommendation No. R(97)14”) was adopted by the Committee of Ministers on 30 September 1997 at the 602nd meeting of the Ministers' Deputies.

7. It is recalled that on 20 December 1993, the UN General Assembly adopted [Resolution 48/134](#) on “National Institutions for the Promotion and Protection of Human Rights”, with an annex containing *the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights*, better known as *Paris Principles*, in which it encouraged all states in the world to set up independent national human rights institutions (NHRIs). NHRIs are non-judicial, independent institutions created by states through their constitution or law, with the mandate to promote and protect human rights. States are free to decide the best type of NHRI for their domestic purposes. In Europe, the most common models are ombudsman institutions, human rights commissions, hybrid institutions (which combine several mandates, including that of equality body), and human rights institutes and centres.

8. On the occasion of the 25th anniversary of the Paris Principles, the Council of Europe Commissioner for Human Rights has recently published a [comment](#) in which she noted that independent and effective national human rights institutions are every bit as important and relevant today and they are a “jewel of the human rights system”. She also observed with

concern that several NHRIs in Europe have experienced blows to their independence and effective operations over the past few years, and considered that the independent NHRIs that come under threat because of their human rights work can be considered as human rights defenders and should have access to effective protection mechanisms.

9. It is also to be noted that since the adoption of the Paris Principles in 1993, the UN adopted further resolutions on national institutions for the promotion and protection of human rights, in particular General Assembly resolutions 66/169 of 19 December 2011, 68/171 of 18 December 2013 and 70/163 of 17 December 2015, as well as Human Rights Council resolutions 23/17 of 13 June 2013, 27/18 of 25 September 2014 and 33/15 of 29 September 2016; all of them recognising the importance of the independent voice of national human rights institutions in promoting and protecting all human rights.

10. In the recently adopted 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, prepared by the CDDH-INST, Council of Europe member States are invited, among others, to establish *effective, independent, pluralistic and adequately funded* NHRIs in compliance with the Paris Principles. Based on the CDDH-INST 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 (document CDDH(2017)R87 Addendum IV), the Recommendation recognizes, for example, that NHRIs are human rights defenders and that they play an important role in promoting and protecting civil society space, which should be supported by state governments through relevant legislation, policies and concrete measures.

C. Input for discussion by the CDDH-INST at its 5th meeting (February-March 2019)

11. The main aim of updating Recommendation No. R(97)14 should be to encourage member States to establish NHRIs in compliance with the Paris Principles and to help the existing NHRIs to be more present and active in the member States, to enjoy sufficient political support and to have their positive role recognised by the domestic authorities. It should also help to raise awareness about the work done by the NHRIs and about the difficulties they are currently facing. Indeed, NHRIs play an important role in the human rights architecture at the national level.

12. Subject to the final decision to be taken by the CDDH, the CDDH-INST work on updating Recommendation No. R(97)14 could reflect the position of the current Commissioner for Human Rights, who, in her human rights comment of 18 December 2018 (see § 8 above), recommended to all Council of Europe member States:

- (a) to establish NHRIs when they do not exist, and strengthen those that exist in full compliance with the Paris Principles, including through asking for technical assistance, as relevant, from UN OHCHR and ENNHRI;
- (b) to ensure that the selection and nomination process of NHRIs' leadership is merit based, transparent and participatory, and scrupulously respect the independence of NHRIs;
- (c) to provide the NHRIs with sufficient resources and staffing to ensure that they can effectively carry out their mandate;
- (d) to ensure that NHRIs enjoy adequate access to policy makers, including timely consultations on draft legislation and policy strategies with human rights implications;
- (e) to implement NHRIs' recommendations in a timely fashion and provide regular reports on this implementation.

13. With regard to sub-paragraph (a) above, it is to be mentioned that in 2018, 25 of 47 Council of Europe member States have A-status NHRIs¹, compliant with the Paris Principles; those States should be encouraged to strengthen the NHRIs' capacity. Remaining member States should consider establishing such institutions and giving them competence to effectively protect civil society space through their monitoring, investigation, reporting and complaints handling functions.

14. In this context, advantage could be taken from the fact that, in the course of 2019, the EU Fundamental Rights Agency is to update their 2010 [report](#) on the situation and, in particular, on the impact of NHRIs in the EU member States, which will be done in cooperation with ENNHRI and EQUINET and in consultation with the European Commission, Council of Europe, OHCHR and OSCE/ODIHR. The study should also feed into upcoming national parliamentary debates and trigger wider interest and debate on the situation of NHRIs, raising awareness of the special role that NHRIs play for the protection and promotion of human rights. The release of the new report is planned towards the end of 2019/beginning of 2020. It should cover the EU member States, Republic of North Macedonia, Serbia and most probably also Albania. It is being discussed whether the Council of Europe would be interested in expanding the FRA study to cover its non-EU member States, while using FRA's methodology. It goes without saying that such study would be very helpful for updating Recommendation No. R(97)14 and could notably enable to illustrate the principles of the revised Recommendation with examples of good practices.

15. It also seems important that the updated Recommendation underlines the following points:

- importance of financial and administrative independence as well as pluralism of NHRIs (the key requirements of which are also provided by the Paris Principles and developed by the [General Observations](#) of the Sub-Committee on Accreditation²);
- impact, stability and effectiveness/efficiency of NHRIs;
- variety of the existing models and mandates of NHRIs, their compliance with the Paris Principles and the possible strengthening of the accreditation process;
- the need for cooperation of NHRIs with a wide variety of stakeholders at national, regional and international level (other national human rights structures, Council of Europe – the existing cooperation should also be recognized, e.g. with the Court, department for execution of judgments, CDDH, etc.);
- the fact that NHRIs and their respective members and staff should not face any form of reprisal or intimidation, including political pressure, physical intimidation, harassment or unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates, including when taking up individual cases or when reporting on serious or systematic violations in their countries³;
- the question of NHRIs under the mechanism strengthening the protection of human rights defenders focusing on reprisals against human rights defenders that are related to

¹ Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Russian Federation, Serbia, Spain, Ukraine, United Kingdom.

² It could be useful to make reference to those documents in the preamble to the revised Recommendation.

³ In this regard, [Guidelines on ENNHRI Support to NHRIs under Threat](#) could be taken into account.

their interaction with the Council of Europe, established under the authority of the Secretary General of the Council of Europe.