



CDDH-INST(2019)R5
01/03/2019

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

REPORT

5th meeting
27 February–1st March 2019

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 fifth meeting in Strasbourg from 27 February to 1st March 2019 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 Christophe POIREL, Director of Human Rights, who underlined the importance of the work carried out by the Group and the necessity to revise Recommendation no. R(85)13.

Item 2: Exchange of views

3. The Chair invited Mr Álvaro GIL-ROBLES, former Commissioner for Human Rights of the Council of Europe, to present the current situation of the ombudsmen in Europe as well as his comments on the preliminary draft of the revised Recommendation.

4. Mr Gil-Robles mentioned, first, the current crisis of democratic values across Europe, which puts the institution of the ombudsman in danger. Second, he underlined the three main principles of the initial Recommendation no. R (85) 13, as well as the need to strengthen the independence and the immunity of the Ombudsman. He also invited the Group to bear in mind the necessity of coordination and cooperation between the Ombudsman and the relevant institutions, including the Council of Europe, and the possibility for the Ombudsman to solve a case by mediation and to take certain cases concerning fundamental rights before the courts. He finally underlined the necessity to coordinate the work of the Group with the work done by the Venice Commission. The presentation was followed by an exchange of views with the members of the Group.

Item 3: Exchange of views

5. The Chair invited Mr Peter TYNDALL, President of the International Ombudsman Institute (IOI), to present the situation and the challenges faced by the Ombudsman institutions in Europe.

6. Mr Tyndall underlined the fundamental characteristics common to all types of these institutions: independence, objectivity, fairness and freedom of access. He also mentioned political pressure and threats faced by the Ombudsman institutions and the supporting role of the IOI. In his view, recognised international standards, such as the Venice Principles, should exist to protect the integrity of the Ombudsman institution, and the people of Europe should have access to the latter. The presentation was followed by an exchange of views with the members of the Group.

Item 4: Examination of the preliminary draft of the revised Recommendation No. R(85)13 on the Institution of the Ombudsman

7. The Group welcomed the preliminary draft of the revised Recommendation No. R(85)13 on the Institution of the Ombudsman prepared by the Rapporteur, Ms. Krista Oinonen, with the assistance of the CDDH Secretariat and proceeded with a general discussion thereof.

8. The Group then examined, paragraph by paragraph, the preliminary draft of the revised Recommendation.

9. On the basis of the amendments proposed by the Group and in the light of the comments provided during the meeting, a revised draft was then prepared by the Rapporteur and the Secretariat.

10. The final draft of the new Recommendation (see Appendix III) was adopted by the Group and will be submitted to the CDDH for adoption at its 91st meeting in June 2019. According to the Group, it would be very useful if the CDDH could have a brief exchange of views with Mr Tyndall and Mr Gil-Robles before the adoption of this draft Recommendation.

11. In the view of the Group, it would also be useful to append a compilation of good practices to the Recommendation. This document could be prepared by an external consultant in cooperation with the IOI. Assistance of Mr Daniel Schmidt, Head of South-East Europe & Turkey Unit, Human Rights National Implementation, could also be sought.

Item 5: Discussion of the work 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

12. The Group noted that the work on the update of the Recommendation No. R(97)14 should take into account the work carried out on the new draft recommendation on the development of the Ombudsman institution and that the complementarity of both instruments as well as the specificity of NHRIs should be presented clearly.

13. The Group agreed that a possible structure of the revised Recommendation could be the following: updated preamble (reflecting the ideas stated in the previous paragraph), 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. Establishment of NHRIs in compliance with the Paris Principles; II. Strengthening of NHRIs in line with the key characteristics of the Paris Principles; III. Securing and expanding a safe and enabling environment for NHRIs; IV. Cooperation with and support for NHRIs by local, regional, national and international actors, in particular the Council of Europe.

14. Finally, the Group was of the view that it would again be very useful to involve in its work specialists such as representatives of the Global Alliance for National Human Rights Institutions (GANHRI), of the European Network of National Human Rights Institutions (ENNHRI) and of one or more NHRIs.

Item 6: Adoption of the meeting report

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

Item 7: Other business

16. The Group was reminded that the annual Ministers' Warsaw Conference, which will take place this year on 22 March 2019, will be devoted to the role and position of NGOs at the Council of Europe. Progress made towards opening this event to the civil society was praised by the Group.

Item 8: Date of the next meeting

17. In view of fulfilling the current mandate of the Group, namely the work on the update of Recommendation No. (97)14, and in order not to lose the momentum of its work, the Secretariat suggested that it would be important to hold the meeting initially foreseen from 18 to 20 September 2019 which, for the time being, appears in square brackets in the calendar of the CDDH. The Group noted that this issue, related to the budgetary situation, should be discussed by the Bureau in May, then by the plenary in June.

Item 9: Acknowledgements

18. The Group expressed its appreciation for the active participation and valuable assistance of Mr Gil-Robles and Mr Tyndall, and thanked the Chair of the meeting for the way in which the work had been conducted. The Group also paid tribute to the work of its Secretariat. In particular it expressed its deep gratitude to its Secretary, Ms Irena Markova, and wished her every success in her new functions within the Registry of the Court.

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

NORTH MACEDONIA / MACEDOINE DU NORD

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

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 Grigory LUKIYANTSEV, Deputy Director, Department for Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs

SLOVENIA / SLOVENIE (*Apologised*)**SPAIN / ESPAGNE**

Mr José Antonio JURADO RIPOLL, Ministry of Justice

TURKEY / TURQUIE

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

Ms Ayşen EMÜLER, Experte juridique Ministère des Affaires étrangères de la Turquie auprès du Conseil de l'Europe

Mr Yakup YILDIRIM, Conseiller juridique, Ministère de la Justice

INVITEES / INVITÉS

Mr Álvaro GIL-ROBLES, Former Commissioner for Human Rights of the Council of Europe / Ancien Commissaire aux Droits de l'homme du Conseil de l'Europe

Mr Peter TYNDALL, President of the International Ombudsman International de l'Ombudsman

OBSERVERS / OBSERVATEURS**VENICE COMMISSION / COMMISSION DE VENISE**

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 loi (Commission de Venise), DGI

Ms Caroline MARTIN, Secretariat of the Enlarged Agreement on Democracy through law (Venice Commission) / Secrétariat de l'accord partiel élargi pour la démocratie par la loi (Commission de Venise), DGI

PARLIAMENTARY ASSEMBLY / ASSEMBLEE PARLEMENTAIRE

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

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS / AGENCE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE

Ms Eva SOBOTKA, Head of sector, Cooperation and consultation, Fundamental rights promotion Department

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

Ms Katrien MEUWISSEN, Senior Human Rights Officer (Accreditation), Permanent Secretariat

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

Mr Cyril RITCHIE, Honorary President of the Expert Council on NGO Law and representative of Civicus to the Council of Europe

M. Jean-Bernard MARIE, Représentant de la Conférence des ONG auprès du CDDH

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

Mr Christophe POIREL, Director / Directeur, Human Rights

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

Mr Markus JAEGER, Head of the Division "Independent Human Rights Bodies" / Chef de la division "Institutions indépendantes des droits de l'homme"

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

Ms Corinne GAVRILOVIC, Assistant, Human Rights Intergovernmental Cooperation Division

INTERPRETERS / INTERPRÈTES

Mme Lucie DE BURLET

M. Didier JUNGLING

M. Jean-Jacques PEDUSSAUD

Appendix II

Agenda

	ITEM 1: OPENING OF THE MEETING, ADOPTION OF THE AGENDA
CDDH-INST(2019)OJ1	Draft agenda
CDDH-INST(2018)R4	Report of the 4 th CDDH-INST meeting (19–21 September 2018)
CDDH-INST(2019)03	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 89 th and 90 th CDDH meeting reports (19–22 June and 27–30 November 2018)
	ITEM 2: EXCHANGE OF VIEWS
	Exchange of views with Mr Álvaro GIL-ROBLES, former Commissioner for Human Rights of the Council of Europe
	ITEM 3: EXCHANGE OF VIEWS
	Exchange of views with Mr Peter TYNDALL, President of the International Ombudsman Institute (IOI)
	ITEM 4: EXAMINATION OF THE PRELIMINARY DRAFT OF THE REVISED 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(2019)01	Preliminary draft of the revised Recommendation No. R(85)13 on the Institution of the Ombudsman
CDDH-INST(2018)08	Reference document in view of the work of the CDDH-INST on the update of the Committee Recommendation No. R(85)13 on the Institution of the Ombudsman
	ITEM 5: DISCUSSION OF THE WORK 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
Recommendation No. R(97)14	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
CDDH-INST(2019)02	Reflection document in view of the work of the CDDH-INST on the update of the Committee of Ministers

	R (97) 14 on the establishment of independent national institutions for the promotion and protection of human rights
	ITEM 6: ADOPTION OF THE MEETING REPORT
	ITEM 7: OTHER BUSINESS

Appendix III

Preliminary draft Recommendation No. R ... on the development of the Institution of the Ombudsman

*(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 that has taken place since the adoption of Recommendation No. R (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 the Ombudsman¹ institutions at national, regional and local level, including those dealing with specific thematic issues;
3. Welcoming the steady development of the functions of the Ombudsman institution which have expanded beyond the original mandate concerning maladministration and the rule of law;
4. Noting with satisfaction that the Ombudsman institution now constitutes an important feature of democratic governance and plays a key role in the protection and promotion of human rights and the rule of law in the vast majority of the Council of Europe member States;
5. Underlining the great potential of the 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;
6. Acknowledging the importance of continuing support by the Council of Europe and other international actors to the Ombudsman institutions;
7. Acknowledging further the importance of the cooperation between the Ombudsman institutions and of their various networks, and of their cooperation with the Council of Europe and other international actors;

¹ The terms “ Ombudsman institution” used in the present Recommendation regardless of gender and to designate institutions such as Ombudsman, Mediator, Parliamentary Commissioner, P e o p l e ’ s D e f e n d e r , P e o p l e ’ s Human Rights Commissioner, Inspector General of Government, Public Protector, etc. One salient feature of these institutions is that they are to a large extent reliant on the personalities that head them.

8. Bearing in mind the relevant international texts in support of the development and protection of the Ombudsman institution²;
9. Acknowledging the diversity of the Ombudsman institutions which reflects the diversity of the countries and regions they serve;
10. Emphasizing nonetheless that it is quintessentially 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;
11. 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;
12. Reiterating its Recommendation No. R (85) 13 on the institution of the Ombudsman;
13. Recommends that the governments of member States:
 - ensure that the principles set out in the appendix to this Recommendation are implemented in relevant national legislation and practice,
 - strengthen the Ombudsman institution and avoid any measures which might weaken it, and evaluate, on a regular basis, the effectiveness of the measures taken;
 - ensure, by appropriate means and action – including, where appropriate, translation – a wide dissemination of this Recommendation among competent authorities and stakeholders;
 - examine, within the Committee of Ministers, the implementation of this Recommendation five years after its adoption.

² See, in particular:

- 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 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) “Strengthening the Office of Ombudsperson and local and regional authorities”;
- Resolution 327 (2011) of the Congress of Local and Regional Authorities of the Council of Europe on the Office of Ombudsperson and local and regional authorities;
- [the ongoing work of the Venice Commission on the Principles on the Protection and Promotion of the Ombudsman Institution];
- ECRI General Policy Recommendation N°2 on Equality Bodies to combat racism and intolerance at national level, adopted on 13 June 1997 and revised on 7 December 2017;
- UN General Assembly Resolution 48/134 of 20 December 1993 on national institutions for the promotion and protection of human rights (Paris Principles),
- 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;
- By-laws of the International Ombudsman Institute, adopted on 13 November 2012.

Appendix I to Recommendation

I. Establishment and fundamental characteristics of the Ombudsman institution

1. Ombudsman institutions should be in place in all member States. The choice of one or more such 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 the Ombudsman institution, who may have difficulties in accessing the Ombudsman institution or who may be in a situation of vulnerability, such as migrants, persons deprived of liberty, persons with disabilities and older persons.
2. Member States should provide a firm legal basis for the Ombudsman institution, preferably at the constitutional level, and/or in a law which defines the main tasks of such institution, guarantees its independence and provides it with means necessary to accomplish its functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on the Ombudsman institution [, 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].
3. The process of selection and appointment of the head of the Ombudsman institution should be such as to promote the independence of the institution. 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 the Ombudsman institution does not stay vacant for any significant period of time.
4. Member States should ensure that the Ombudsman institution operates in a conducive environment which allows it to perform its functions independently of any provider of public services over which jurisdiction is held, in an effective manner and in a climate of impartiality, integrity, transparency and fairness.
5. Member States should take effective measures to enable the Ombudsman institution to require cooperation of all administrative authorities and other relevant entities, 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 its mandate. The Ombudsman institution should also be able to 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 the Ombudsman institution with adequate, sufficient and sustainable resources to allow it to perform its functions in a fully independent manner. The Ombudsman institution should be able to appoint its own staff and to ensure that they receive adequate training.

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

II. Main tasks of the Ombudsman institution

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

- a) to provide a rights-holder-friendly non-judicial mechanism for the resolution of disputes between individuals and providers of public services, which may include mediation, and to take action upon complaints received or on its own motion, 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, whether these are public or private;
- b) to protect and promote human rights and fundamental freedoms, rule of law and democratic governance, including through proposals to change legislation, litigation or other means;
- c) to make recommendations in order to prevent or remedy any of the conduct described in paragraph 2 (a) and, where appropriate, to propose administrative or legislative reforms aimed at better functioning of providers of public services; in the event that the latter fail to accept or implement those recommendations, member States should ensure that the Ombudsman institution has the right, *inter alia*, to bring a report on the failure to the attention of the competent elected body, usually the Parliament;
- d) to cooperate, within its mandate, with local, regional, national and international actors and networks which operate in related or similar fields.

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

10. Member States should consider giving, or where appropriate strengthening, the competence of the Ombudsman institution to enable 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 mechanism under the UN Convention on the Rights of Persons with Disabilities. Where the Ombudsman institution holds these mandates, it must have access to sufficient resources to develop the capacity to enable it to effectively discharge its functions; this should include having appropriately qualified, skilled and trained staff.

III. Cooperation and dialogue

11. Member States should take effective measures to enable the Ombudsman institution, whether at the national, regional or local level, 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, in particular non-governmental organisations, who should enjoy an easy access to the Ombudsman institution;
- c) other human rights structures, 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, particularly the Council of Europe bodies.

12. Member States which have established several Ombudsman institutions, such as regional, local and/or specialised ones, should enable appropriate effective co-ordination and cooperation among these institutions, in order to promote synergy and avoid duplication, through ensuring that the legislation on the Ombudsman institutions enables and encourages them to cooperate with each other.

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