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STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

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

(CDDH-INST)

**Preliminary draft Recommendation No. R ...
of the Committee of Ministers to member States
on the development of the Ombudsman institution**

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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 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 Ombudsman 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 and welcoming the well-established cooperation between the Commissioner for Human Rights of the Council of Europe and the Ombudsman institutions, as well as their networks, as foreseen in the Commissioner's mandate under Resolution (99)50 on the Council of Europe Commissioner for Human Rights;

¹ The terms "Ombudsman institution" is used in the present Recommendation regardless of gender and to designate institutions such as Ombudsman, Mediator, Parliamentary Commissioner, People's Defender, People's Advocate, 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.

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;
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,

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 institution of ombudsman in Europe”;
- Resolution 327 (2011) of the Congress of Local and Regional Authorities of the Council of Europe: “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.

- 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.

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.