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STEERING COMMITTEE FOR HUMAN RIGHTS

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

**(CDDH-INST)**

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Preliminary draft text of the revised Recommendation No. R(97)14  
on the establishment of independent national institutions  
for the promotion and protection of human rights

*Working document*

*Prepared by the Chair of the CDDH-INST in cooperation with the Secretariat*

## Foreword

1. This document contains the preliminary draft text of the revised Recommendation No. R(97)14 on the establishment of independent national institutions for the promotion and protection of human rights<sup>1</sup>. The revised text builds on the work already carried out by the CDDH on civil society and the Ombudsman institution which, inter alia, led to the adoption of Recommendation CM/Rec(2018)11 on the need to strengthen the protection and the promotion of the civil society space in Europe<sup>2</sup> as well as Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution<sup>3</sup>.

2. The below structure of the new draft recommendation was agreed upon by the Drafting Group on Civil Society and National Human Rights institutions (CDDH-INST) at its last meeting (27 February - 1 March 2019)<sup>4</sup> and approved by the CDDH at its June 2019 meeting<sup>5</sup>:

- a **preamble** presenting the complementarity between the recently adopted recommendation on the specific institution of the ombudsman and the new draft recommendation revising the previous recommendation on national human rights institutions (NHRI), in particular highlighting their specific role in promoting an enabling environment for human rights and drawing attention to the thread they face which requires specific protection measures.

- an **operative part** which recommends member States to follow the principles set out in the appendix and to conduct a review of the implementation.

- an **appendix** with 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.

3. The present preliminary draft text has been prepared by the Chair of the CDDH-INST in cooperation with the Secretariat. On 13 January 2020 it was transmitted to the participants in the CDDH for possible comments by 14 February 2020.

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<sup>1</sup> Adopted by the Committee of Ministers on 30 September 1997 at the 602<sup>nd</sup> meeting of the Ministers' Deputies.

<sup>2</sup> Adopted by the Committee of Ministers on 28 November 2018 at the 1330<sup>th</sup> meeting of the Ministers' Deputies.

<sup>3</sup> Adopted by the Committee of Ministers on 16 October 2019 at the 1357<sup>th</sup> meeting of the Ministers' Deputies.

<sup>4</sup> See document CDDH-INST (2019)R5, paragraph 13.

<sup>5</sup> See document CDDH (2019)R91, paragraph 38.

4. On 6 February 2020 a consultation meeting will be organised in Brussels by the European Network of National Human Rights Institutions (ENNHRI) in which the Chair of the CDDH-INST and the Secretariat will participate in order to gather useful elements for the revision of the Recommendation.
5. In the light of the comments received by the CDDH participants and the results of the above-mentioned meeting, the CDDH-INST will at its next meeting on 4-6 March 2020 finalise the draft revised Recommendation.

## **Draft Recommendation on the development of effective, pluralist and independent national institutions for the promotion and protection of human rights**

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

Considering that effective, pluralist and independent national human rights institutions are a pillar of democracy, the rule of law and respect for human rights;

Recognising that effective national human rights institutions are an important link between government and civil society, in so far as they help bridge the protection gap between the rights of individuals and the responsibilities of the State;

Welcoming the significant increase in the number of accredited<sup>6</sup> independent national human rights institutions<sup>7</sup> since the adoption of Recommendation No. R(97)14 on the establishment of independent national institutions for the promotion and protection of human rights;

Underlining the great potential and impact of independent national human rights institutions for the promotion and protection of human rights in Europe, in particular for the effective implementation of the European Convention on Human Rights (ETS No. 5);

Acknowledging the importance of continuing support by the Council of Europe and other international stakeholders to national human rights institutions and welcoming the well-established co-operation between the Commissioner for Human Rights of the Council of Europe and national human rights 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;

Acknowledging further the importance of the co-operation between national human rights institutions and their various networks, and of their co-operation with the Council of Europe and other international stakeholders;

Bearing in mind the relevant international texts in support of the development and protection of national human rights institutions<sup>8</sup>;

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<sup>6</sup> <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>

<sup>7</sup> For the ease of reading the term "national institutions for the promotion and protection of human rights" is referred to by the shorter term "national human rights institutions" which may cover ombudsman institutions, human rights commissions, hybrid institutions (which combine several mandates, including that of equality body), and human rights institutes and centres, etc.

<sup>8</sup> In addition to 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, in particular:

- Resolution (97) 11 on co-operation between national human rights institutions of member states and between them and the Council of Europe;
- 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) on strengthening the institution of ombudsman in Europe;
- Congress of Local and Regional Authorities of the Council of Europe Resolution 327 (2011) on the office of Ombudsperson and local and regional authorities;

Acknowledging the diversity of national human rights institutions, which reflects the diversity of the countries and regions they serve;

Emphasising at the same time that it is vitally important that any such institution be established and function in full compliance with the UN Principles on National Institutions for the Promotion and Protection of Human Rights (Paris Principles), in particular with regard to its:

- mandate, based on universal human rights norms and standards, and competence;
- autonomy from Government;
- independence guaranteed by statute or Constitution;
- pluralism;
- adequate resources; and
- adequate powers of investigation.

Expressing grave concern about the challenging working conditions, threats, pressures and attacks which national human rights institutions and their staff are at times exposed to in member States;

Wishing to develop its Recommendation No. R(97)14 on the establishment of independent national institutions for the promotion and protection human rights, henceforth replaced by the present instrument;

Recommends that the governments of member States:

1. consider the establishment of an independent national human rights institution in accordance with the Paris Principles and, when established, ensure an enabling legal framework and a conducive [political and] public environment for national human rights institutions to freely carry out their activities for the protection and promotion of all human rights and fundamental freedoms;
2. ensure that the principles set out in the appendix to this Recommendation are implemented in relevant domestic law and practice;

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- Principles on the protection and promotion of the Ombudsman institution ("The Venice Principles"), adopted by the European Commission for Democracy through Law (Venice Commission) at its 118<sup>th</sup> Plenary Session (Venice, 15-16 March 2019);

- European Commission against Racism and Intolerance General Policy Recommendation No. 2 (revised) on Equality Bodies to combat racism and intolerance at national level, adopted on 7 December 2017;

- United Nations General Assembly Resolution 48/134 of 20 December 1993 on national institutions for the promotion and protection of human rights ("The Paris Principles") and the developing interpretation of the Paris Principles by the Global Alliance of the National Human Rights Institutions' (GANHRI) Sub-Committee on Accreditation;

- United Nations 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;

- European Network of National Human Rights Institutions - *Guidelines on ENNHRI Support to NHRIs under Threat*, March 2016.

3. strengthen the independence of national human rights institutions, and evaluate on a regular basis the effectiveness of the measures taken;
4. ensure, by appropriate means and action – including, where appropriate, translation – a wide dissemination of this Recommendation among competent authorities and stakeholders;
5. examine, within the Committee of Ministers, the implementation of this Recommendation no later than five years after its adoption.

## **Appendix to the Recommendation**

### **I. Establishment of national human rights institutions**

1. National human rights institutions should be in place in all member States and they should be established, accredited and function in full compliance with the Paris Principles. The choice of one or more of these 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. Particular attention should be paid to persons who may not be aware of the existence of national human rights institutions, who may have difficulties in accessing national human rights institutions or who may be in a situation of vulnerability, such as migrants, persons deprived of liberty, persons with disabilities or older persons and children.

2. Member States should provide a firm legal basis for national human rights institutions, preferably at the constitutional level, and/or in a law which defines the main tasks of such institutions, guarantees their independence and provides them with the means necessary to accomplish their functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on national human rights institutions, in particular the Paris Principles and their developing interpretation by the Global Alliance of the National Human Rights Institutions' (GANHRI) Sub-Committee on Accreditation.

### **II. Strengthening of national human rights institutions**

3. Member States should ensure that the mandate given to national human rights institutions is in full compliance with the Paris Principles and allows them, *inter alia*, to:

- protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and
- promote human rights, through education, outreach, the media, publications, training and capacity building, as well as advising and assisting the Government.

4. The process of selection and appointment of the leadership of a national human rights institution should be merit-based, transparent and participatory to guarantee the independence and pluralist representation of these institutions.

5. Member States should provide national human rights institutions with adequate, sufficient and sustainable resources to allow them to carry out their mandate in a fully independent manner. These institutions should be able to appoint their own staff and to ensure that they receive adequate training.

6. Member States should ensure that national human rights institutions enjoy adequate access to policy makers, including timely consultations on draft legislation and policy strategies with human rights implications.

7. Member States should implement the recommendations of national human rights institutions in a timely fashion and provide regular reports on this implementation.

8. Member States should consider granting national human rights institutions competences which enable them to perform the functions foreseen by relevant international conventions in the field of human rights, such as the European Convention on Human Rights<sup>9</sup> [and .....]<sup>10</sup>, or to strengthen such competences, where appropriate. Where a national human rights institution holds these mandates, it should have access to sufficient resources to develop the capacity enabling it to effectively discharge its functions; this should include having appropriately qualified, qualified and trained staff.

### **III. Securing and expanding a safe and enabling environment for national human rights institutions**

9. Member States should ensure that national human rights institutions can operate independently, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of impartiality, integrity, transparency and fairness.

10. Member States should take all measures necessary to protect national human rights institutions against threats and harassment. Any cases of alleged reprisal or intimidation against national human rights institutions and their staff, or against individuals who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.

### **IV. Cooperation and support**

11. Member States should take effective measures to enable national human rights institutions, whether at national, regional or local level, to communicate and co-operate with, in addition to the various levels of administration in the member States, in particular:

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<sup>9</sup> [The importance of the participation of civil society and National Human Rights Institutions (NHRI) in effective national implementation of the European Convention on Human Rights has been continuously highlighted by various actors in the process of the reform of the Convention system. See the Interlaken Declaration, part B.4.a); the [Brighton Declaration](#), § 4; the [Brussels Declaration](#), preamble, point 7, and part B.2.a), f) and j); and the [Copenhagen Declaration](#), §§ 14, 18. See also the [CDDH Reports](#) "Contribution of the CDDH to the evaluation provided for by the Interlaken Declaration" adopted on 26–29 November 2019, §§60-63, and on "[The longer-term future of the system of the European Convention on Human Rights](#)" adopted on 11 December 2015, §§ 58 and 195 i); and the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations, document [CM\(2012\)167](#) (= [CDDH\(2012\)R76 Addendum I](#)), § 153. The contribution of national human rights structures to the implementation of the Convention was already highlighted in the Report of the Group of Wise Persons to the Committee of Ministers in 2006, see document.]

<sup>10</sup> [With regard to Ombudsman institutions, Recommendation CM/Rec(2019)6 mentions as examples: National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and/or the independent mechanism under the United Nations Convention on the Rights of Persons with Disabilities.]



- a.* counterpart institutions, where appropriate through networking and exchange of information and practices, as well as through regular meetings such as those taking place within the framework of the European Network of National Human Rights Institutions (ENNHRI) and the Global Alliance of the National Human Rights Institutions (GANHRI);
- b.* civil society stakeholders, in particular non-governmental organisations and human rights defenders, who should enjoy easy access to national human rights institutions;
- c.* other human rights structures, notably Ombudsman institutions and their networks, where appropriate through jointly organised activities;
- d.* international and regional organisations which work in related or similar fields, particularly Council of Europe bodies.

12. Member States which have established several national human rights institutions, such as regional, local and/or specialised bodies, should enable appropriate, effective co-ordination and co-operation among these institutions, in order to promote synergy and avoid duplication, by ensuring that legislation on national human rights institutions enables and encourages such co-operation.

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