
Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution

(Adopted by the Committee of Ministers on 16 October 2019 at the 1357th meeting of the Ministers' Deputies)

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 the aim of the Council of Europe is to achieve a greater unity between its members, for the purpose of safeguarding and realising the ideals and principles which are their common heritage, *inter alia* by carrying out activities in the field of human rights and fundamental freedoms;

Welcoming the remarkable development that has taken place since the adoption of Recommendation Rec(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 Ombudsman institutions¹ at national, regional and local level, including those dealing with specific, thematic issues;

Welcoming the steady development of the functions of Ombudsman institutions which have expanded beyond the original mandate concerning maladministration and the rule of law;

Noting with satisfaction that Ombudsman institutions now constitute an important feature of democratic governance and play a key role in the protection and promotion of human rights and the rule of law in the vast majority of Council of Europe member States;

Underlining the great potential of 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 (ETS No. 5);

Acknowledging the importance of continuing support by the Council of Europe and other international stakeholders to Ombudsman institutions and welcoming the well-established co-operation between the Commissioner for Human Rights of the Council of Europe and Ombudsman institutions, as well as their networks, as foreseen in the Commissioner's mandate under Resolution Res(99)50 on the Council of Europe Commissioner for Human Rights;

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

¹ The term "Ombudsman institutions" is used in this recommendation regardless of gender and to designate institutions such as those of an Ombudsman, Mediator, Parliamentary Commissioner, People's Defender, People's Advocate, Human Rights Commissioner, Inspector General of Government, Public Protector, etc.

Bearing in mind the relevant international texts in support of the development and protection of Ombudsman institutions;²

Acknowledging the diversity of Ombudsman institutions, which reflects the diversity of the countries and regions they serve;

Emphasising nonetheless that it is vitally 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;

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;

Wishing to develop its Recommendation Rec(85)13 on the institution of the Ombudsman, henceforth replaced by the present instrument,

Recommends that the governments of member States:

1. ensure that the principles set out in the appendix to this recommendation are implemented in relevant domestic law and practice;
2. strengthen Ombudsman institutions and avoid any measures which might weaken them, and evaluate on a regular basis the effectiveness of the measures taken;
3. ensure, by appropriate means and action – including, where appropriate, translation – a wide dissemination of this recommendation among competent authorities and stakeholders;
4. examine, within the Committee of Ministers, the implementation of this recommendation no later than five years after its adoption.

Appendix to Recommendation CM/Rec(2019)6

Principles for the development of the Ombudsman institution

I. Establishment and fundamental characteristics of Ombudsman institutions

1. Ombudsman institutions should be in place in all member States. 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 in respect of all public services, however provided. Particular attention should be paid to persons who may not be aware of the existence of Ombudsman institutions, who may have difficulties in accessing Ombudsman institutions or who may be in

² See, in particular:

- Recommendation Rec(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) 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”;
- 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 118th Plenary Session (Venice, 15-16 March 2019);
- ECRI 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”);
- 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;
- the by-laws of the International Ombudsman Institute, adopted on 13 November 2012.

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 Ombudsman institutions, preferably at the constitutional level, and/or in a law which defines the main tasks of such an institution, guarantees its independence and provides it with the means necessary to accomplish its functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on Ombudsman institutions, 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 and endorsed by the Committee of Ministers on 2 May 2019.

3. The process of selection and appointment of the head of an Ombudsman institution should promote its independence. 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 any Ombudsman institution does not stay vacant for any significant period of time.

4. Member States should ensure that Ombudsman institutions operate in a conducive environment which allows them to carry out their mandate independently of any provider of public services over which they hold jurisdiction, in an effective manner and in a climate of impartiality, integrity, transparency and fairness.

5. Member States should take effective measures to enable Ombudsman institutions to require all administrative authorities and other relevant entities to co-operate with their activities, 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 their mandate. Ombudsman institutions should also 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 Ombudsman institutions with adequate, sufficient and sustainable resources to allow them to carry out their mandate in a fully independent manner. Ombudsman institutions should be able to appoint their own staff and to ensure that they receive adequate training.

7. Member States should take all measures necessary to protect Ombudsman institutions against threats and harassment. Any cases of alleged reprisal or intimidation against Ombudsman 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.

II. Main tasks of Ombudsman institutions

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

a. take action upon complaints received or on their own initiative, 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, public or private, notably by providing right-holder-friendly, non-judicial means to facilitate the resolution of disputes between individuals and providers of public services, which may include mediation, as appropriate;

b. protect and promote human rights and fundamental freedoms, the rule of law and democratic governance, including, as appropriate, through proposals to change legislation, litigation or other means;

c. make recommendations to prevent or remedy any of the conduct described in paragraph 8.a and, where appropriate, to propose administrative or legislative reforms aimed at improving the operation of public-service providers; in the event that the latter fail to accept or implement such recommendations, member States should ensure that Ombudsman institutions have the right, *inter alia*, to submit a report on such failure to the competent elected body, usually parliament;

d. co-operate, within their mandate, with local, regional, national and international stakeholders and networks which operate in related or similar fields.

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

10. Member States should consider granting Ombudsman institutions competences enabling them to perform the functions foreseen by relevant international conventions in the field of human rights, such as the 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, or to strengthen such competences, where appropriate. Where an Ombudsman institution holds these mandates, it must have access to sufficient resources to develop the capacity enabling it to effectively discharge its functions; this should include having appropriately qualified, skilled and trained staff.

III. Co-operation and dialogue

11. Member States should take effective measures to enable Ombudsman institutions, whether at national, regional or local level, to communicate and co-operate with, in particular:

- a.* counterpart institutions, where appropriate through electronic networking and exchange of information and practices, as well as through regular meetings;
- b.* civil society stakeholders, in particular non-governmental organisations, who should enjoy easy access to Ombudsman institutions;
- c.* other human rights structures, notably 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 Council of Europe bodies.

12. Member States which have established several Ombudsman 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 Ombudsman 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 Ombudsman institutions, in order to strengthen their contribution to the effective implementation of the European Convention on Human Rights and other relevant instruments.