

Complaints Procedure for Central Committee on Research Involving Human Subjects

Upon consideration of the desire to have a procedure ensuring proper handling of complaints and in light of Chapter 9 of the General Administrative Law Act (Awb), the Central Committee on Research Involving Human Subjects (hereinafter to be referred to by its Dutch acronym: the 'CCMO') has decided to adopt the following Complaints Procedure:

I. General provisions

Article 1. Right of complaint

1. Any person shall have the right to file a complaint with the CCMO concerning the manner in which the CCMO has acted towards him/her or another person in exercising its powers.
2. Conduct by a person working under the CCMO's responsibility shall be regarded as conduct by the CCMO.

Article 2 Proper handling

The CCMO shall ensure that verbal and written complaints regarding its conduct are handled properly.

Article 3 Scope

This Procedure shall apply to handling written complaints which relate to conduct towards the complainant and which satisfy the requirements referred to in Article 6.1, paragraphs a through d.

Article 4 Verbal/Other complaints

1. In handling verbal complaints or complaints filed by e-mail, or complaints relating to conduct towards someone else besides the complainant, the CCMO shall in any event exercise due care.
2. The CCMO shall inform a complainant who has filed a verbal complaint or complaint by e-mail that it is possible to file a written complaint.

Article 5 Appeal

A decision by the CCMO concerning the handling of a complaint regarding conduct as referred to in Article 1 may not be appealed.

II. Handling of written complaints

Article 6 Filing a complaint

1. A written complaint which is sent must be signed and must at least include:
 - a. the name and address of the person filing the complaint;
 - b. the date of the complaint;
 - c. a description of the conduct against which the complaint is directed.
 - d. The complaint must be addressed to:
General Secretary of the CCMO, P.O. Box 16302, 2500 BH The Hague the Netherlands.
2. If the complaint is written in a foreign language and a translation is necessary to handle the complaint properly, the person filing the complaint must have it translated.

Article 7 Stopping handling of a complaint

1. At any stage in the handling of a complaint, the CCMO may check whether informal settlement of the complaint will satisfy the complainant.

2. Once the CCMO has resolved the complaint to the complainant's satisfaction, this Procedure need not be applied further.

Article 8 Confirmation of receipt

The CCMO shall provide written notice confirming receipt of the written complaint within one week.

Article 9 Handling of complaints

1. The CCMO's General Secretary shall be responsible for handling complaints.
2. If the complaint relates to conduct by the General Secretary, the complaint shall be handled by the CCMO's Chairman.

Article 10 No obligation to handle complaint

1. The CCMO shall not be obliged to handle a complaint if this complaint relates to conduct:
 - a. regarding which a complaint was already filed previously and which was handled in accordance with this Complaints Procedure;
 - b. occurred more than one year before the complaint was filed;
 - c. to which the complainant could have objected;
 - d. which the complainant can or could appeal;
 - e. which, because proceedings have been filed, is or was subject to the judgement of another judicial body besides an administrative court;
 - f. as long as an investigation by order of the Public Prosecutor or a criminal prosecution regarding the conduct is pending, or if the conduct is part of the criminal investigation or prosecution of an offence and an investigation by order of the Public Prosecutor or a criminal prosecution regarding that offence is pending.
2. The CCMO shall not be obliged to handle a complaint if the complainant's interest or the importance of the conduct is obviously insufficient.
3. As soon as possible, but in any event no later than four weeks after the complaint is received, the CCMO shall inform the complainant in writing that the complaint will not be handled, stating reasons.

Article 11 Copy to the party accused of misconduct

A copy of the written complaint, as well as the documents sent with it, shall be sent to the party whose conduct the complaint relates to.

Article 12 Testimony

1. The CCMO shall give the complainant and the party whose conduct the complaint relates to the opportunity to be heard.
2. The complainant need not be heard if the complaint is obviously unfounded or if the complainant has stated that he or she does wish to exercise the right to be heard.
3. The testimony shall be recorded.

Article 13 Time periods

1. The complaint shall be resolved within six weeks after receipt.
2. Resolution may be postponed by at most four weeks. Written notice of the postponement shall be given to the complainant and the party whose conduct the complaint relates to.

Article 14 Resolution of the complaint

1. The CCMO shall inform the complainant in writing, stating reasons, of the findings of the investigation in response to the complaint, as well as any conclusions which it attaches to this.
2. This notice shall indicate that a complaint may be filed with the National Ombudsman.

3. The provisions in the first paragraph shall also apply to the party whose conduct the complaint is directed against.

Article 15 Recording and publication of complaints

1. The CCMO shall record written complaints filed with it.
2. The complaints recorded shall be published in the CCMO's Annual Report.

Article 16 Official title, notification and effective date

1. This Procedure may be cited as the 'CCMO Complaints Procedure'.
2. This Procedure shall be placed in the *Government Gazette* with explanatory notes. The Procedure with explanatory notes shall be placed on the CCMO's website as well.
3. This Procedure shall take effect on the day after the date of publication of the *Government Gazette* in which the Procedure is placed.
4. The Procedure shall apply to complaints filed after the effective date of this Procedure, even if the conduct complained about occurred before that date.

Adopted by the CCMO in its meeting on 11 September 2003.

[*mention of Chairman's name*], Vice-Chairman.

Explanatory notes

General

On 1 July 1999, the uniform complaints procedure of Chapter 9 of the General Administrative Law Act (Awb) took effect, providing a procedure for the handling of complaints by administrative bodies.

Chapter 9 must be viewed in close connection with the effectiveness and applicability of the National Ombudsman Institute, and has two major consequences for the National Ombudsman's responsibilities. First, this statutory procedure further formalises the exhaustion of remedies requirement. Second, the procedure has a screening effect on the National Ombudsman's tasks. The exhaustion requirement means that the National Ombudsman will not grant a request to handle a complaint until the complainant has first filed the complaint with the administrative body and the administrative body has had the opportunity to respond to it.

The Awb complaints procedure does not change the fact that the internal-organisational details of the procedure must be laid down by the administrative body. The present Procedure

pertains to the manner in which complaints are resolved and handled, as well as to the recording and publication of complaints.

The Awb complaints procedure was followed closely in formulating this Procedure. The Procedure contains sufficient provisions for handling complaints properly, so that supplemental rules are unnecessary. The CCMO retains the freedom, however, to include additional provisions in its own Procedure, in particular, if they furnish additional safeguards for the complainant.

Article-by-Article

Article 1

The Complaints Procedure provides a complainant with the means to take action against acts, conduct or negligence by the CCMO (or its members) or CCMO employees (including employees of the Secretariat) working under its responsibility. Complaints can be made about the manner in which the CCMO or one or more of its members/employees acted on a certain occasion towards the person filing the complaint. This might relate to, for example, rude behaviour, delays, privacy violations for which there is no judicial recourse, or deficient information or communication. The performance of the CCMO's organisation may be included under this as well, even if the conduct cannot automatically be traced to specific conduct by a certain person.

Article 2

This Article includes the general obligation for an administrative body to ensure that complaints are handled properly. In Articles 6 to 15, the Procedure specifies the details of the principle of proper handling of complaints with respect to written complaints. To avoid the risk of formalisation and bureaucratisation, the general duty of care to handle complaints properly is sufficient for verbal complaints.

Article 3

The Complaints Procedure pertains to the handling of complaints filed **in writing**. The Awb requires administrative bodies to handle these complaints in a certain way. The Awb does not, however, require complainants to file their complaint in writing.

If a complaint is filed in writing and satisfies the formal requirements, the administrative body must then resolve this complaint in accordance with its complaints procedure.

Article 4

Complaints may also be filed verbally or by e-mail. In addition, a complaint can be made about conduct towards another person besides the complainant. These complaints must likewise be resolved properly. With regard to the latter type of complaints, the Awb gives the administrative body the freedom to work out the details of proper resolution, and this Complaints Procedure need not be followed. In any event, the principles of sound administration will be observed in handling these types of complaints. If the complainant wants the CCMO to resolve a verbal complaint pursuant to this Complaints Procedure, the complainant must put the complaint in writing. In the case of verbal or e-mail complaints, the complainant must be informed that it is possible to file his or her complaint in writing.

Article 5

Decisions regarding handling of complaints may not be appealed and therefore may not be objected to, either. As a rule, decisions in connection with the handling of a complaint are not

intended to have legal consequences; they are therefore not 'decisions' within the meaning of the Awb and, for that reason alone, cannot be appealed.

Article 6

This Article describes the requirements which a written complaint must satisfy. If the complaint does not satisfy the stated requirements, the CCMO is not obliged to follow the further provisions of the Complaints Procedure. The obligation to resolve the complaint properly continues to exist, however. This may result in the complainant being given the opportunity to supplement his or her written complaint, after which Articles 6 to 15 of this Procedure must be applied.

Article 7

The Complaints Procedure may be stopped at any stage if a solution is found which satisfies the complaint. This enables quick and informal complaint resolution.

Resolution by telephone. A complaint may be resolved verbally in an informal manner. This will only be the case, however, if immediate, verbal contact with the complainant has resulted in a settlement of the complaint which is satisfactory in the complainant's view.

The CCMO and the complainant are in agreement with each other if the complaint has been addressed to the complainant's satisfaction. Handling of the complaint may also be stopped if the complainant confirms in writing that the complaint has been resolved satisfactorily. The person handling the complaint must record his/her verbal response to the complaint and any agreements made in that respect.

Article 8

In the confirmation of receipt, the CCMO must at the same time furnish information about the further procedure, including testimony.

Article 9

Handling the complaint with due care means that the person handling the complaint cannot have been involved in the conduct that was subject to complaint. This does not apply, however, if the complaint relates to the CCMO itself or its Chairman or one of its deputy or other members.

The General Secretary, who has been given authority to handle complaints, has been designated as the person to handle the complaint. The Awb interprets the concept 'handling the complaint' broadly. Handling the complaint means investigating the complaint, including hearing the complainant and the party accused of misconduct, and drawing conclusions from the investigation. The CCMO, however, continues to be responsible for the final resolution of the complaint.

Article 10

This Article includes a comprehensive list of the grounds on which the CCMO can decide not to handle a complaint. There is no longer an obligation to handle the complaint, but the power to do so remains. Written notice that the complaint will not be handled is a decision within the meaning of the Awb and must therefore be supported by reasons. A decision not to handle the complaint may not be objected to or appealed, though.

Article 11

It is important that the party whose conduct is in question knows that a complaint has been filed concerning him or her and that he or she is able to examine the content of the complaint. If the complaint results in a hearing, this party must be able to prepare. All documents relating to the complaint are therefore sent to the party.

Article 12

This Article reflects the principle of hearing both sides of the argument. The duty to take testimony is an essential element of the Complaints Procedure. The testimony is intended to obtain information to resolve the complaint properly. Both the complainant and the party whose conduct the complaint is directed against must be given the opportunity to bring up information during the hearing. In the Complaints Procedure, the CCMO is completely free to decide whether the complainant and the party accused of misconduct will be examined in each other's presence.

Testimony by telephone is not automatically precluded in the Complaints Procedure, provided the complainant has been consulted.

A separate report need not be drawn up to record the testimony. The letter resolving the complaint may also state what was discussed during the hearing. A separate report is preferable, though.

Article 13

Article 13.2 provides for the possibility of postponing resolution of the complaint for four weeks. This situation may arise, for example, if insufficient information is available to handle the complaint properly. The absence of the party whose conduct the complaint is directed against may also be a reason for postponing resolution.

Article 14

The first paragraph requires the CCMO to share its findings and any conclusions with the complainant in writing after the investigation is concluded. To that end, the decision must set forth the facts which were established during the complaint investigation. The first paragraph refers to 'any' conclusions, because the findings do not always have to lead to certain conclusions. Conclusions will not be stated especially if a complaint is deemed unfounded.

In general, handling of a complaint must result in a judgement of 'well-founded' or 'unfounded'.

The findings and conclusions are not intended to have legal consequences. Thus, the notice is not a decision within the meaning of the Awb. Even if the legitimacy of a decision is an issue in the Complaints Procedure, the outcome of this issue will not result in a legally binding decision. Any conclusions may, however, result in the CCMO amending or revoking a decision or taking a new decision.

The intention of the second paragraph is that the complainant must be informed of an external complaint resolution authority, such as the National Ombudsman in this case. The reference therefore does not relate to any internal complaint mechanisms which still can be pursued.

Article 15

Only complaints which are received in writing have to be recorded.

The first paragraph does not require that the findings of the complaint investigation and the conclusions attached to them by the CCMO be recorded.

Publication is likewise only required for complaints received in writing. There is also no obligation to publish the findings of the complaint investigation and the conclusions attached to them by the CCMO.

In publishing information, the CCMO must in any event indicate:

- how many complaints have been filed that year;
- how many of the complaints filed were resolved;
- the time periods within which the complaints were resolved;
- the nature of the complaints;
- how many complaints were declared to be well-founded and unfounded.

This information will be stated in a manner in which it is not possible to identify specific persons.