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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT PRINCIPLES

**ON THE PROTECTION AND PROMOTION
OF THE OMBUDSMAN INSTITUTION
(THE VENICE PRINCIPLES)**

**DOCUMENT
as of 21 June 2018**

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**PRINCIPLES
ON THE PROTECTION AND PROMOTION
OF THE OMBUDSMAN INSTITUTION
(The Venice Principles)**

***The European Commission for Democracy through Law
("The Venice Commission")***

Noting that there presently are Ombudsman Institutions in more than 140 states, at the national, regional or local level, and of a general or specialised nature;

Recognising that these Institutions have adapted into the legal and political system of the respective states; however organised according to different models, being true to the core principles of the Ombudsman, such as independence, objectivity, transparency, fairness, impartiality;

Emphasising that the Ombudsman is an important element in a state based on democracy, the rule of law, the respect for human rights and fundamental freedoms and good governance;

Emphasising that the Ombudsman may play an important role in protecting Human Rights Defenders;

Emphasising the importance of national and international co-operation of Ombudsman Institutions and similar institutions;

Recalling that the Ombudsman is an institution which should take action independently against injustices towards and maladministration affecting an individual and a legal person;

Stressing that the right to complain to the Ombudsman comes in addition to the right to access to justice;

Stating that governments and parliaments must accept criticism in a transparent system which is accountable to the people;

Focusing on the commitment of the Ombudsman to call upon parliaments and governments to respect and promote human rights and fundamental freedoms; such a role being of the utmost importance especially during periods of hardship and conflicts in society;

Recalling that the Venice Commission, on different occasions, has worked extensively on the role of the Ombudsman;

Expressing serious concern with the fact that the Ombudsman institution is at times under different forms of attacks and threats, such as physical or mental coercion, legal actions threatening immunity, reprisal, budgetary cuts and a limitation of its mandate;

Referring to the Recommendations of the Committee of Ministers of the Council of Europe R (85) 13, R (97) 14 , R (2000)10 on codes of conduct for public officials and CM/Rec(2007) 7 on good administration; to the Recommendations of the Parliamentary Assembly of the Council of Europe 757 (1975) and 1615 (2003) and in particular its Resolution 1959 (2013), as well as to Recommendations 61(1999), 159(2004), 309(2011) and (2016)3 and Resolution 327 (2011) of the Congress of Local and Regional Authorities of the Council of

Europe; to the ECRI General Policy Recommendation No. 2: Equality bodies to combat racism and intolerance at national level, adopted on 7 December 2017;

Referring to Resolution 48/134 on the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) of 20 December 1993 and Resolution 69/168 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, adopted by the General Assembly of the United Nations on 18 December 2014; to Resolution 72/181 adopted by the General Assembly on 19 December 2017 on National institutions for the promotion and protection of human rights and to Resolution 72/186 adopted by the General Assembly on 19 December 2017 on the role of ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights;

After having consulted the United Nations Human Rights Office of the High Commissioner, the UN Special Rapporteur on the situation of human rights defenders, the Commissioner for Human Rights and the Steering Committee for Human Rights of the Council of Europe, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the European Union Agency for Fundamental Rights, the Association of Mediterranean Ombudsmen (AOM), the Association of Ombudsman and Mediators of the Francophonie (AOMF), the European Network of National Human Rights Institutions (ENNHRI), the Federation of Ibero-American Ombudsman (FIO), the International Ombudsman Institute (IOI);

has, at its th Plenary Session, date adopted these Principles on the Protection and Promotion of the Ombudsman Institution (the “Venice Principles”)

1. Ombudsman institutions have an important role to play in consolidating democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms. While there is no standardised model across Council of Europe Member States, the State should support and protect the Ombudsman institution and refrain from any action undermining its independence.
2. The Ombudsman institution should be based on a firm legislative foundation, preferably at the constitutional level, while the characteristics and functions of the Institution may further be elaborated at the statutory level. Parliament should adopt a law on the Ombudsman.
3. The choice of a single or plural Ombudsman model depends on the State organisation, its particularities and needs. States should provide models that do not weaken the institution nor diminish the level of protection and promotion of human rights and fundamental freedoms in the country.
4. The Ombudsman Institution should be given an appropriately high rank, which is also reflected in the remuneration of the Ombudsman and in the retirement compensation.
5. The Ombudsman should be elected by Parliament, by a qualified majority also including representatives from parties outside Government, so as to strengthen the impartiality, independence and legitimacy of the Ombudsman and the public trust in the Institution. The procedure for the election should involve civil society and therefore preferably include a public call. It should be public, transparent and provided for by law.
6. The criteria for being appointed Ombudsman should not be restrictive. The essential criteria are high moral character and recognised relevant experience, notably in human rights, in order to enjoy a broad support in society.

7. The Ombudsman should not, during his or her term of office, engage in a political or administrative or professional activity incompatible with his or her independence or impartiality. The Ombudsman and his or her staff should be bound by a code of ethics.

8. The term of office should preferably be limited to a single term, with no option for re-election, so as to safeguard against accusations that the Ombudsman acts under pressure of re-election. The single term should not be stipulated below seven years. If the term is renewable, it should be longer than the mandate of Parliament. At any rate, the Ombudsman's mandate should be renewable only once.

9. The Ombudsman should be removed from office exclusively by the same body which elected or appointed him or her, and only according to an exhaustive list of clear criteria established by law. These criteria should relate solely to the inability of the Ombudsman to act in practice or in a manner necessary to preserve his or her independence and public trust. If elected by Parliament, the majority required for removal should be at least equal to, and preferably higher than, the one required for election. The procedure for removal should be public, transparent and provided for by law.

10. The mandate of the Ombudsman should cover prevention and correction of injustices and maladministration, and the protection and promotion of human rights and fundamental freedoms.

11. The Ombudsman should not be given or follow any instruction from any authorities.

12. Any individual or legal person, including NGOs, should have the right to free and unhindered access to the Ombudsman, and to file a complaint.

13. The institutional competence of the Ombudsman should cover the executive branch of government.

The competence of the Ombudsman should not threaten the independence of the judicial branch; the Ombudsman may contribute to ensuring procedural efficiency and administrative order.

Private bodies should be included in the competence of the Ombudsman at least to the extent that these bodies are entrusted with a public service mission.

14. The Ombudsman should have the power, on his or her own initiative or as a result of a complaint, to investigate cases; implied in this power is the right to have access to and to scrutinise any official document and database, interview or demand written explanations from officials and authorities; and the right to unhindered access to buildings, institutions and persons, also those deprived of their liberty. In the course of investigations, the Ombudsman may seek the co-operation of any individual who or organisation which may be able to assist.

15. The Ombudsman should have the power to address individual recommendations to bodies within the competence of the Institution. The Ombudsman should have the right to demand that officials and authorities respond within a reasonable time set by the Ombudsman.

16. The Ombudsman should have the power to present, in public, recommendations to Parliament or Government, including to amend legislation or to adopt new legislation or to ratify international conventions which he or she deems better in line with the basic values and norms he or she is appointed to protect, including the international human treaties ratified by the State.

17. Following an investigation, the Ombudsman should preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts.

18. The Ombudsman should be mandated to report, in public, to Parliament on the activities of the Institution at least once a year. In this Report, the Ombudsman may inform Parliament on a lack of compliance by the executive branch. The Ombudsman should also be mandated to report on specific issues, as the Ombudsman sees appropriate. Ombudsman reports should be duly taken into account by the authorities.

19. Sufficient budgetary resources of the Ombudsman should be secured; the law regulating the Institution should state that budgetary allocation of funds must be adequate to the need to ensure full, independent and effective discharge of the responsibilities and functions of the Ombudsman. The Ombudsman should be consulted and should be asked to present a draft budget for the coming financial year. The adopted budget for the institution should not be reduced during the financial year, unless the reduction generally applies to all State institutions.

20. The Ombudsman institution should have sufficient staff and appropriate structural flexibility. The Institution may include one or more deputies, who is/are appointed by the Ombudsman. The Ombudsman should be able to recruit his or her own staff.

21. The Ombudsman, the deputies and the staff should be immune from legal process in respect of activities and words, spoken or written, carried out in their official capacity for the institution (functional immunity). Such immunity should be granted also after the Ombudsman, the deputies or the staff-member leave the Institution.

22. States should commit themselves to refrain from taking any action and to effectively protect Ombudsman institutions from any action threatening their functioning.

23. Nothing in these Principles should be read, interpreted or used to restrict the powers or to refuse to grant additional powers to the Ombudsman institution.