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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**ANDORRA**

**DRAFT OPINION**

**ON THE LAW ON THE CREATION AND FUNCTIONING OF  
THE OMBUDSMAN**

**On the basis of comments by**

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## I. Introduction

1. By letter of 15 July 2022, Mr Joan Forner Rovira, the Permanent Representative of Andorra to the Council of Europe, requested an opinion from the Venice Commission on the Law on the Creation and Functioning of the Ombudsman ([CDL-REF\(2022\)032](#)) (hereinafter “the Law”).
2. Ms Sanja Barić, Ms Elisabet Fura and Mr Panayotis Voyatzis acted as rapporteurs for this opinion.
3. On 22 and 23 September 2022, a delegation of the Venice Commission composed of Ms Sanja Barić and Mr Panayotis Voyatzis, accompanied by Mr Schnutz Dürr and Mr Domenico Vallario from the Secretariat, visited Andorra. The delegation met with the Ombudsman of Andorra (*Raonador del Ciutadà*, hereinafter “the Ombudsman”); the President and Vice-President of the Parliament; the Presidents of the Legislative Commissions on: (i) Justice, National and Institutional Affairs and (ii) Foreign Policy; the Minister of Social Affairs, Youth and Equality; the Minister of Justice and Interior; UNICEF Andorra and representatives of the civil society. The Venice Commission is grateful to the Andorran authorities for the preparation of the visit.
4. This opinion is based on an English translation of the Law. The translation may not always accurately reflect the original version on all points, therefore certain issues raised may be due to problems of translation.
5. This opinion was drafted on the basis of comments by the rapporteurs and the information provided by the interlocutors during the country visit. *It was adopted by the Venice Commission at its ... Plenary Session (Venice, ... 2022).*

## II. Background and applicable legal standards

6. The Andorran authorities have requested an opinion on the Law, i.e. an already existing piece of legislation. The Venice Commission praises the initiative of the Andorran Government of seeking advice prior to the commencement of a legislative reform, when assessing the need for and the content of such reform.<sup>1</sup>
7. The Venice Commission is also aware of the willingness of the Andorran authorities to further develop the Ombudsman institution, to strengthen its role and to broaden its competences in order to provide meaningful protection of human rights and so that its work more closely resembles that of a national human rights institution (hereinafter “NHRI”),<sup>2</sup> also in order to implement previous UN recommendations.<sup>3</sup>
8. The Venice Commission would like to stress at the outset that it is not its task to identify the exact reforms that need to be undertaken in order for the Ombudsman to fulfil the criteria to become a NHRI. The Venice Commission will rather assess the compatibility of the Andorran

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<sup>1</sup> See, in this sense, Council of Europe, Parliamentary Assembly, [Resolution 2301\(2019\)](#), *Ombudsman institutions in Europe – The need for a set of common standards*, 2 October 2019, § 9.3.

<sup>2</sup> United Nations, General Assembly, [A/HRC/46/11/Add. 1](#), *Report of the Working Group on the Universal Periodic Review – Andorra - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 21 December 2020, with regard to recommendations 84.18 – 84.22; see also [A/HRC/46/11](#), §§ 84.18 – 84.22; [Annex to the Letter by the High Commissioner to the Foreign Minister](#), 17 May 2021, chapter “National human rights framework”.

<sup>3</sup> See United Nations, Committee on the Elimination of Racial Discrimination, [CERD/C/AND/CO/1-6](#), *Concluding observations on the combined initial and second to sixth periodic reports of Andorra*, 22 May 2019, §§ 15-16; Committee on the Elimination of Discrimination against Women, [CEDAW/C/AND/CO/4](#), *Concluding observations on the fourth periodic report of Andorra*, 13 November 2020, §§ 19–20; Committee against Torture, [CAT/C/AND/QPR/2](#), *List of issues prior to submission of the second periodic report of Andorra*, 21 June 2018, § 11.

current legislation on the Ombudsman with relevant international standards on Ombudsman institutions, as expressed in the Principles on the Protection and Promotion of the Ombudsman Institution (hereinafter the “Venice Principles”).<sup>4</sup> Nonetheless, the Venice Commission will also have regard, where appropriate, to: (i) the United Nations Principles relating to the Status of National Institutions (hereinafter: the “Paris Principles”);<sup>5</sup> but also (ii) the United Nation General Assembly Resolution A/RES/75/186, on “[t]he role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law”, which acknowledged the Venice Principles and recognised them as new global standard for the Ombudsman institutions;<sup>6</sup> (iii) the Council of Europe Parliamentary Assembly Resolution 2301(2019) on “Ombudsman institutions in Europe – The need for a set of common standards” and its Explanatory Memorandum;<sup>7</sup> and (iv) Recommendations CM/REC(2019)6 and CM/REC(2021)1 of the Committee of Ministers of the Council of Europe, devoted to Ombudsman institutions and NHRIs, respectively.<sup>8</sup>

### III. Analysis

#### A. Legal basis of the Ombudsman institution - the need for a constitutional revision

9. The Andorran Constitution entered into force in May 1993, giving to the Principality the characteristics of a state governed by the rule of law and expressly recognising the principle according to which any person under Andorran jurisdiction is entitled to exercise human rights and fundamental freedoms.<sup>9</sup> However, the 1993 Constitution does not provide for the existence of the Ombudsman institution. Indeed, the Ombudsman was created in 1998 by means of the Law in order to, pursuant to its Article 1 (“Mission”), “*defen[d] and protec[t] [...] the fundamental rights and freedoms recognised in the Constitution, supervis[e] [...] compliance with and defen[d] [...] the rights recognised in the international conventions signed and ratified by the Principality of Andorra under the terms established in this Law, in particular with regard to the rights of children and disabled persons, and [...] fight against discrimination of all kinds and against racist, xenophobic, anti-Semitic and intolerant attitudes*”.

10. According to Principle 2 of the Venice Principles, “[t]he Ombudsman Institution, including its mandate, shall be based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level”.

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<sup>4</sup> Venice Commission, CDL-AD(2019)005, *Principles on the Protection and Promotion of the Ombudsman Institution* (“The Venice Principles”). The Venice Principles were endorsed by the Committee of Ministers of the Council of Europe at the 1345th Meeting of the Ministers' Deputies, on 2 May 2019; by the Parliamentary Assembly of the Council of Europe, Resolution 2301(2019), on 2 October 2019; by the Congress of Local and Regional Authorities of the Council of Europe, Resolution 451(2019) on 29-31 October 2019.

<sup>5</sup> United Nations, General Assembly, [Principles relating to the Status of National Institutions \(The Paris Principles\)](#), Adopted by General Assembly resolution 48/134 of 20 December 1993.

<sup>6</sup> United Nations, General Assembly, [A/RES/75/186](#), *The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law* (hereinafter “UN GA Resolution 75/186”), 16 December 2020.

<sup>7</sup> See footnote 1 above; [Explanatory Memorandum of 20 August 2019](#) (hereinafter “2019 PACE Memorandum”).

<sup>8</sup> Council of Europe, Committee of Ministers, [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) (hereinafter “CM 2019”); Committee of Ministers, [Recommendation CM/Rec\(2021\)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions](#) (Adopted by the Committee of Ministers on 31 March 2021 at the 1400th meeting of the Ministers' Deputies) (hereinafter “CM 2021”).

<sup>9</sup> [Constitution of the Principality of Andorra](#), entered into force on 4 May 1993.

11. The main reasons underpinning this principle are, *inter alia*: (i) to protect the Ombudsman institution from political influence;<sup>10</sup> and (ii) to promote and preserve the independence and neutrality of the Ombudsman as well as the respect in the nation and the place of importance among other institutions.<sup>11</sup> The Venice Commission is mindful that it can be that at the time of the entry into force of the Constitution the significance of the role of Ombudsman institutions was generally not as clearly recognised as it is today.<sup>12</sup> Moreover, the delegation from the Venice Commission learned that the Andorran Constitution has never been amended in its first 29 years of existence and that constitutional amendments might be difficult to implement in Andorra.

12. The Venice Commission would like to point out that there is no indication of any kind of undue governmental pressure on the independence and/or functioning of the Ombudsman. On the contrary, the Venice Commission has witnessed that there is a strong commitment to the further development of the Ombudsman institution in order to provide a meaningful protection of human rights and particularly of vulnerable groups in the Andorran society. However, it is not the goodwill of a particular government that the constitutional order stands for, but rather the opposite: the very essence of the rule of law and constitutional guarantees have their roots in the *a priori* mistrust toward those who might be in power.<sup>13</sup>

13 Accordingly, to strengthen the protection against any misuse of power, the Venice Commission recommends revising the Andorran Constitution in order to guarantee the basic regulation of the creation, independence and functioning of the Ombudsman on the constitutional level.

14. In addition, the constitutional amendment might provide that the future law regulating more specific characteristics and functions of the Ombudsman be treated as a “qualified law” (similar to “organic” or institutional laws), as such following the approval procedures listed in Article 57 § 3 of the Constitution.<sup>14</sup>

## **B. Functions of the Ombudsman**

15. The Venice Commission welcomes the provision contained in Article 2 of the Law detailing the functions of the Ombudsman insofar as it, in general terms, correctly reflects the role that s/he should have in upholding human rights and fundamental freedoms of individuals, especially the most vulnerable, and legal persons. Nevertheless, some minor adjustments to this Article might be useful to ensure consistency with international standards.

### **1. Definition of public administrations**

16. At the outset, Article 2 § 1 of the Law provides that the Ombudsman has, *inter alia*, the following functions:

“[...]”

*b) To ensure that the actions of the public administrations, in general and in a broad sense, comply with the fundamental principles of defence and protection of the rights and freedoms established in the Constitution;*

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<sup>10</sup> See Venice Commission, CDL-AD(2004)041, *Joint Opinion on the Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe*, § 9.

<sup>11</sup> See Venice Commission, CDL-AD(2007)020, *Opinion on the possible reform of the Ombudsman Institution in Kazakhstan*, § 7.

<sup>12</sup> 2019 PACE Memorandum, § 26.

<sup>13</sup> See, *similarly* Venice Commission, CDL-AD(2016)007, *Rule of Law Checklist*, § 49.

<sup>14</sup> Article 57 § 3 of the Constitution reads: “*The approval of the qualified laws prescribed by the Constitution requires the final favourable vote of the absolute majority of the members of the General Council [...]*”.

*c) To ensure that the actions of the public administrations, in general and in a broad sense, objectively serve the general interest and are subject to the principles of hierarchy, efficiency, transparency and full submission to the Constitution and to the rest of the legal system;  
[...]*

17. In this regard Principle 13 §§ 1 and 2 of the Venice Principles reads “1. *The institutional competence of the Ombudsman shall cover public administration at all levels.* 2. *The mandate of the Ombudsman shall cover all general interest and public services provided to the public, whether delivered by the State, by the municipalities, by State bodies or by private entities*”. Therefore, in order to avoid possible misunderstandings, the Venice Commission finds that Article 2 § 1 of the Law could better reflect this principle by specifying that “public administrations” is meant to include public administration at all levels and public services provided to the public regardless of the provider.

## **2. Definition of maladministration**

18. Despite the fact that Principle 12 of the Venice Principles only defines maladministration in general terms, the Venice Commission recalls that maladministration covers both breaches of law, as well as types of conduct such as undue delays, failure to give information, rudeness or insensitivity.<sup>15</sup> Therefore, insofar as the Law only refers to the “actions” of the public administration, the Venice Commission recommends that Article 2 § 1 of the Law be amended in order to explicitly refer to violations by omission.<sup>16</sup>

## **3. Definition of discrimination**

19. Article 2 § 1 (e) of the Law contains, *inter alia*, definitions of direct and indirect discrimination.<sup>17</sup> The Venice Commission is aware that Article 2 § 1 (e) of the Law has been added pursuant to recommendations from European Commission against Racism and Intolerance (ECRI) of the Council of Europe.<sup>18</sup> However, the Venice Commission finds that it is quite unusual to define such material provisions that are usually part of antidiscrimination legal sources within an inherently institutional law, such as a law on the creation and functioning of an Ombudsman. Insofar as in 2019 the Parliament adopted a specific anti-discrimination law,<sup>19</sup> which at its Article 6 defines direct and indirect discrimination, the Venice Commission finds the provision contained in subparagraphs 2 and 3 of Article 2 § 1 (e) of the Law now obsolete. In order to improve the legislative quality of the Law and to avoid wordy and cumbersome provisions, the Venice Commission therefore recommends deleting the definitions contained in the last two paragraphs of Article 2 § 1 (e) of the Law.

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<sup>15</sup> 2019 PACE Memorandum, § 8, with further references.

<sup>16</sup> See, similarly, CDL-AD(2006)038, *Opinion on Amendments to the Law on the Human Rights Defender of Armenia*, §§ 20, 89.

<sup>17</sup> See Article 2 § 1 (e), subparagraphs 2 and 3, which read: “*Direct discrimination is understood as any difference of treatment based on one of the conditions mentioned in the above paragraph and that lacks objective and reasonable justification or, in other words, does not pursue a legitimate aim or lacks proportionality in the means employed and the aim pursued.*

*Indirect discrimination is understood to mean that an apparently neutral factor, such as a rule, a criterion or a practice, cannot be respected equally as easily by persons belonging to a particular group because of any of the conditions mentioned in the first paragraph of this point e), unless this factor has objective and reasonable justification, as defined in the preceding paragraph”.*

<sup>18</sup> Council of Europe, ECRI, [ECRI Report on Andorra \(fifth monitoring cycle\)](#), 28 February 2017, §§ 18-22, and recommendation no. 2, p. 25.

<sup>19</sup> [Law no. 13/2019](#) (only in Catalan) “*per a la igualtat de tracte i la no-discriminació*” (for equal treatment and non-discrimination), 15 February 2019.



#### 4. Policy recommendations

20. Article 22 § 3 of the Law provides that “[t]he Ombudsman may recommend the promotion and adoption of legal or regulatory reforms in matters relating to the functions entrusted to him/her”. The Venice Commission welcomes this provision, which is in line with Principle 20 of the Venice Principles, and with the possibility, for an Ombudsman, to report on any issue s/he deems appropriate.<sup>20</sup> However, the placing of this paragraph within Article 22 of the Law (titled “Reports”), and the fact that all the other paragraphs of Article 22 relate to the Ombudsman’s annual and extraordinary reports to the Parliament, raises doubts as to whether there is the possibility, for the Ombudsman, to issue a formal policy recommendation also outside the ambit of the yearly or extraordinary report. To avoid any ambiguity, it might be therefore useful to amend the Law and to include, within the functions of the Ombudsman, possibly in current Article 2 of the Law, the possibility of issuing policy recommendations whenever s/he deems it appropriate. The same provision could foresee that the Ombudsman have the possibility to propose to the relevant state bodies, such as the Government or the Parliament, the signature, ratification, or accession to relevant international human rights treaties.<sup>21</sup>

#### C. Relations with adjudicatory bodies and courts

##### 1. Power of intervention before domestic courts

21. Principle 19 of the Venice Principles suggests that “[t]he Ombudsman shall preferably be entitled to intervene before relevant adjudicatory bodies and courts”. In this regard, the Venice Commission is convinced that the role of the Ombudsman in strategic litigation, especially, but not only, in the field of discrimination, can contribute to the shaping and the consistent application of domestic case law, have a deterring effect and encouraging victims to seek judicial protection.<sup>22</sup> It goes without saying that the role of the Ombudsman in this sense shall be that of helping and assisting the courts in providing expertise on human rights issues from an external point of view; in no way whatsoever the Ombudsman shall impinge upon the courts’ ability to deliver fair and impartial judgments nor hinder the independence of the judiciary. Therefore, even though the Ombudsman should be given the right to represent citizens and/or to act as *amicus curiae* when s/he deems it necessary, s/he must exercise the greatest possible care in availing him/herself of this prerogative. With the aforementioned in mind, the Venice Commission recommends amending the Law to provide for such possibility.

22. In this regard, and in order to strengthen the role of the Ombudsman as a potential expert witness or strategic litigator, the authorities might also consider amending Article 4 of the Law to provide for the interruption of the time limits to appeal to civil and administrative courts when a complaint or claim has been officially filed with the Ombudsman. The Venice Commission takes note of the domestic authorities’ concern, expressed during the country visit, that this could have an impact on the length of proceedings. However it considers that, on the contrary, the intervention of the Ombudsman as an expert in court proceedings following his/her investigation would speed up court proceedings, as s/he will be able to assist the courts with relevant and helpful information. The Venice Commission notes that this would also be in line with Principle

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<sup>20</sup> Principle 20 of the Venice Principles reads: “The Ombudsman shall report to Parliament on the activities of the Institution at least once a year. [...] The Ombudsman shall also report on specific issues, as the Ombudsman sees appropriate.”

<sup>21</sup> With regard to NHRIs, see CM 2021, Appendix, § 3: “Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and [...] that it allows them, inter alia, to: [...] encourage the signature, ratification of and accession to international human rights treaties and contribute to the effective implementation of such treaties, as well as related judgments, decisions and recommendations as well as to monitor States’ compliance with them”.

<sup>22</sup> See also Council of Europe, Human Rights National Implementation Division, DGI, [Exchange of Best Practices in Addressing Human Rights Violations with a Special Focus on Combating Discrimination](#), Sarajevo, 15-16 February 2018.

19 of the Venice Principles, which reads: “[t]he official filing of a request to the Ombudsman may have suspensive effect on time-limits to apply the court, according to the law”.

## **2. Power to challenge the constitutionality of laws and regulations**

23. In the context of the recommended amendment of the Constitution, and in accordance with Principle 19 § 1 of the Venice Principles,<sup>23</sup> the Venice Commission recommends that Article 99 § 1 of the Constitution be modified in order to allow the Ombudsman to lodge appeals of unconstitutionality against laws and other regulations which govern issues related to rights and freedoms of persons. The Ombudsman should be able to do this of his/her own motion or triggered by a particular complaint made to the institution.<sup>24</sup> Such an amendment shall thereafter be reflected in the Law.

### **D. Independence and immunity**

#### **1. General provision on independence**

24. Neither the Ombudsman himself nor the Andorran authorities raised concerns as regards the institution’s independence from the executive. In this regard, the Venice Commission has no reason to doubt that the Ombudsman performs his functions independently and impartially. However, the Venice Commission considers that Article 6 § 1 of the Law is drafted in rather unusual legal fashion, especially when it mentions that the Ombudsman “is independent from any other”.<sup>25</sup> The Venice Commission recommends that, in line with Principle 14 of the Venice Principles, the article be redrafted to reflect that the Ombudsman “shall not be given nor follow any instruction from any authorities”.

25. The Venice Commission further notes that Article 6 § 1 of the Law on the principle of independence lacks reference to principles that should normally govern the Ombudsman’s performance. In particular, the Venice Commission recommends redrafting this article to include, among the guiding principles of the action of the Ombudsman, objectivity, impartiality, transparency and fairness.<sup>26</sup>

#### **2. Functional immunity**

26. Turning to the functional immunity of the Ombudsman and his/her staff, the Law, as it currently stands, provides that the sole Ombudsman may not be prosecuted for the opinions s/he expresses or the acts s/he performs, and only for the time s/he is in charge. The Venice Commission recommends that the Law be amended in order to bring it in line with Principle 23 of the Venice Principles, which reads: “[t]he Ombudsman, the deputies and the decision-making staff shall 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 functional immunity shall apply also after the Ombudsman, the deputies or the decision-making staff-member leave the Institution”. Accordingly, the Venice Commission recommends extending the functional immunity of the Ombudsman also after s/he leaves the Institution, for any act committed in his/her official capacity during his/her term of office, and the functional immunity to all decision-making staff-member, if any.

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<sup>23</sup> Principle 19 of the Venice Principles reads: “Following an investigation, the Ombudsman shall preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts”.

<sup>24</sup> CDL-AD(2007)020, op. cit., § 14.

<sup>25</sup> Article 6 § 1 of the Law reads: “The institution of Ombudsman is independent from any other and performs its functions objectively and with total independence”.

<sup>26</sup> See also 2019 PACE Memorandum, § 21.



27. Lastly, the Venice Commission recommends that the Law clearly regulate the situations and specific modalities in which such functional immunity may be lifted (see also section F (5) below).<sup>27</sup> In particular, the Law might provide that immunity might be lifted only by a qualified majority of the Parliament, in accordance with the requirements of Principle 11 of the Venice Principles.<sup>28</sup>

## **E. Status and budgetary issues**

### **1. Status of the Ombudsman**

28. Article 7 of the Law reads: “[t]he General Council shall determine, and charge to its budget, within the general framework of effective remuneration for public office, the remuneration to be paid to the Ombudsman for the performance of his/her duties”. While it is welcomed that the exact remuneration to be paid to the Ombudsman be linked to the “general framework of effective remuneration for public office”, the Venice Commission finds that there is no mentioning of the Ombudsman’s high rank, as prescribed by Principle 3 of the Venice Principles.<sup>29</sup> This is possibly connected to the fact that the Ombudsman is not a constitutionally established state body. As a consequence, the Venice Commission considers that neither the remuneration nor the retirement compensation of the Ombudsman is efficiently guaranteed on a necessary legislative level.

29. The Venice Commission accordingly recommends specifying in the Law that the Ombudsman benefit from an appropriate high rank,<sup>30</sup> a distinct special status regulated by the law,<sup>31</sup> which shall be reflected in his/her salary and remuneration. While this principle refers to the head of the Ombudsman institution, it shall be understood as extending to all staff.<sup>32</sup>

### **2. The Ombudsman’s budget**

30. Article 18 §§ 1 and 2 of the Law provides for the legal framework relating to the Ombudsman’s budget. It reads: “1. *The material and personal resources necessary for the Ombudsman to exercise its functions shall be provided by the General Council, as part of its budget allocation;* 2. *The Ombudsman appoints the collaborative staff and the staff in the service of the institution that he/she heads, in accordance with the budget approved by the General Council*”.

31. Principle 21 of the Venice Principles reads: “*Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not be reduced during the financial year, unless the reduction generally applies to other State institutions. The independent financial audit of the Ombudsman’s budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate*”.

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<sup>27</sup> See Venice Commission, CDL-AD(2015)034, *Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina*, § 69.

<sup>28</sup> Venice Commission, CDL-AD(2021)049, *Kazakhstan - Opinion on the draft law “On the Commissioner for Human Rights”*, § 54, *in fine*.

<sup>29</sup> Principle 3 of the Venice Principles reads: “*The Ombudsman Institution shall be given an appropriately high rank, also reflected in the remuneration of the Ombudsman and in the retirement compensation*”.

<sup>30</sup> It might be advisable to establish the status, rank, and remuneration of the Ombudsman with reference, for example, to the judiciary.

<sup>31</sup> CDL-AD(2021)049, *op. cit.*, § 114.

<sup>32</sup> Venice Commission, CDL-AD(2021)035, *Opinion on the Legislation Related to the Ombudsman’s Staff of Armenia*, § 27.

32. The Paris Principles also attach particular importance to the budgetary independence. In paragraph 2 of the chapter “Composition and guarantees of independence and pluralism” it is provided that “[t]he national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence”.

33. Lastly, the UN GA Resolution 75/186 encourages Member States to, *inter alia*, “endow Ombudsman [...] with [...] adequate financial allocation for staffing and other budgetary needs”<sup>33</sup>, whereas the Committee of Ministers of the Council of Europe finds that 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”.<sup>34</sup>

34. In sum, the standards relating to the independence of the Ombudsman have given importance to the notion of the need for “sufficient resources” for the institution, which is an essential condition for the institution to be able to fulfil its mandate. Such a term covers three main elements: the institution’s budget, its staff and its infrastructure.<sup>35</sup>

35. Against this backdrop, the Venice Commission finds that the current provisions contained in the Law do not guarantee the Ombudsman institution the sufficient level of material and financial independence. In particular, the Venice Commission finds that there is no guarantee that the Ombudsman gets a budget adequate and sufficient enough to secure his/her mission. The Venice Commission therefore recommends that it ought to be specified in the Law that the Ombudsman receive enough resources to carry out his/her functions and missions fully, independently and effectively.

### **3. Participation of the Ombudsman to budget drafting**

36. Even if there may be exchanges in practice, there is no guarantee for real and meaningful influence of the Ombudsman on the preparation of the budget. In particular, the wording of the Law does not provide for any kind of participation of the Ombudsman in the budgetary allocation, not even in the phase of proposal, let alone in the negotiation procedure. The Venice Commission recommends that the Law be amended and make explicit that the Ombudsman should propose the budget of the institution for the coming year.<sup>36</sup> The role of the Parliament in supporting the budget of the Ombudsman institution, and thus in supporting its independence, is crucial.

### **4. Guarantees against disproportionate cuts**

37. Furthermore, the Venice Commission notes that at the moment there are no guarantees against potential disproportionate cuts in budgetary allocation. In this regard it is essential to ensure that any necessary budgetary restraints not be applied to the Ombudsman Institution in a disproportionate manner.<sup>37</sup> Therefore, in view of the particular significance of its financial resources for the independence of the Ombudsman institution, the Venice Commission further recommends that the Law provide that the Ombudsman’s budget ought not to be reduced unless the reduction generally applies to other State institutions. The Law could also foresee that potential and proportionate raise/cuts in budgetary allocation depend on, for example, the country’s GDP, the number of actual complaints or new competences that the Ombudsman might be bestowed with in the future.

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<sup>33</sup> UN GA Resolution 75/186, § 2 (b).

<sup>34</sup> CM 2019, Appendix, § 6.

<sup>35</sup> CDL-AD(2021)035, op. cit., §§ 18-19.

<sup>36</sup> See also CDL-AD(2021)049, op. cit., § 105.

<sup>37</sup> CDL-AD(2015)034, op. cit., § 88.

## 5. Staffing issues

38. The number of staff is an important issue that directly affects the budget of the institution.<sup>38</sup> During the country visit, the delegation of the Venice Commission learned that the Ombudsman is carrying out the legal functions of the Institution on his own, and he often relies on external consultants to carry out legal tasks. This does not help the efficiency of the institution and the expeditious treatment of the complaints. Moreover, the Venice Commission learned that there is some delay in the publication of the yearly reports, which might be due to the lack of support staff.<sup>39</sup> The Venice Commission therefore recommends amending the Law to ensure that the Ombudsman has sufficient staff and appropriate structural flexibility. In this regard, the establishment of deputies might be advisable, especially in light of a foreseen increase of the Ombudsman's workload, and particularly if future Ombudsmen happen not to have a professional background in law.

### F. Eligibility and incompatibility, appointment and reasons for cessation of office

39. At the outset, the Venice Commission finds that Articles 8-11 of the Law should follow a logical and chronological order, detailing first eligibility and incompatibility criteria, then regulating the appointment procedure, and lastly the cessation of office. The Venice Commission will follow this chronological order to assess the Law against international standards.

#### 1. Eligibility requirements

40. The Venice Commission has on previous occasions stressed the importance of not having too restrictive criteria for the Ombudsman's eligibility.<sup>40</sup> In this regard, the Law only lists Andorran nationality, being of age and having full use of civil and political rights.<sup>41</sup>

41. While this has not affected the quality of the Ombudsmen elected hitherto, the Venice Commission recommends that the eligibility criteria be reconsidered to include the essential requirements listed in Principle 8 of the Venice Principles. In particular, while it is positive that no specific education is required, therefore leaving the door open for a wide variety of suitable candidates, the Venice Commission notes that the Venice Principles list as essential criteria for being eligible "*high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms*".<sup>42</sup> This does not mean that the Ombudsman needs to be of a legal profession, however s/he should have, at a minimum, expertise and competence in the subject matter of the institution and should be credible and respected by both the government and the public, thus enhancing the effectiveness and authority of the Ombudsman institution.

42. Furthermore, as the Law currently stands, the Ombudsman is in practice appointed by the Parliament without a public call, on an almost exclusively fiduciary basis. The Venice Commission therefore recommends that, in order to align the Law with international standards, the procedure for selection of candidates include a public call and be public, transparent, based on merit, objective, and provided for by the law, as set out in Principle 7 of the Venice Principles.<sup>43</sup>

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<sup>38</sup> CDL-AD(2021)035, op. cit., § 70.

<sup>39</sup> For example, to date (October 2022), the 2021 yearly report has not yet been published, see: <https://www.raonadordelciutada.ad/arxiu/>.

<sup>40</sup> See, among others, CDL-AD(2015)034, op. cit., § 58.

<sup>41</sup> Article 11 of the Law reads: "*Any citizen of Andorran nationality, of age and with full use of their civil and political rights, may be Ombudsman*".

<sup>42</sup> Principle 8 of the Venice Principles; see also 2019 PACE Memorandum, § 31 and CM 2019, Appendix, § 3.

<sup>43</sup> Principle 7 of the Venice Principles reads: "*The procedure for the selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law*".

## 2. Code of ethics

43. The Venice Commission recommends that the Law mention the obligation, for the Ombudsman, to establish a self-regulatory code of ethics, as provided for in Principle 9 of the Venice Principles.<sup>44</sup>

## 3. Term of office

44. The Venice Commission finds that the six-year term provided for in Article 9 § 1 of the Law complies with the Venice Principles insofar as it is longer than the mandate of the appointing body, i.e. the Parliament.<sup>45</sup> The Venice Commission further welcomes the fact that the mandate is not renewable.<sup>46</sup> However, to bring the law fully in line with the international standards, it is recommended to provide for a slightly longer term of office, not below 7 years.<sup>47</sup>

## 4. Appointment procedure

45. As to the appointment procedure, the Venice Commission finds that the 2/3 majority provided for by Article 8 § 1 of the Law to elect the Ombudsman at the first ballot is in line with the Principle 6 § 2 of the Venice Principles, which provides that “[t]he Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority”.<sup>48</sup> This is to provide the institution with a politically and socially broad base<sup>49</sup> and to strengthen to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution.<sup>50</sup> It is therefore questionable whether the possibility to elect the Ombudsman at the second ballot with an absolute majority of the votes (not even of all members) is still in line with the aforementioned principle, although the key criterion is not the qualified majority in itself, but the requirement of support for the Ombudsman among parties, including those outside the Government. Simple majority does not require a broad consensus of all tendencies in the Parliament and the appointment of Ombudsman without such a consensus may compromise the institution’s credibility.<sup>51</sup> The Venice Commission recommends therefore amending Article 8 § 1 of the Law and providing that a qualified majority of at least 3/5 majority of the members be needed to elect the Ombudsman as from the second (even better the third) ballot.

## 5. Removal from and cessation of office

46. Article 9 § 3 of the Law lists a series of reasons for cessation of office.<sup>52</sup> Insofar as Article 9 § 3 (b) is concerned, the Venice Commission was informed by the authorities that the wording

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<sup>44</sup> Principle 9 of the Venice Principles reads: “[...] *The Ombudsman and his or her staff shall be bound by self-regulatory codes of ethics*”.

<sup>45</sup> According to Article 51 § 1 of the Constitution deputies (*Consellers*) are elected for a four-year term.

<sup>46</sup> Principle 10 of the Venice Principles reads: “*The term of office of the Ombudsman shall be longer than the mandate of the appointing body. The term of office shall preferably be limited to a single term, with no option for re-election [...]. The single term shall preferably not be stipulated below seven years*”.

<sup>47</sup> Principle 10 of the Venice Principles.

<sup>48</sup> Article 8 § 1 of the Law provides: “*The person who holds the office of Ombudsman shall be appointed by the General Council with a vote in favour of two thirds of its members in the first ballot. If this majority is not obtained in a first ballot, the candidate who obtains an absolute majority of the votes in a second ballot shall be elected*”.

<sup>49</sup> See Venice Commission, CDL-AD(2008)009, *Opinion on the Constitution of Bulgaria*, § 81.

<sup>50</sup> CDL-AD(2021)049, op. cit., § 58, with further reference to the Venice Principles.

<sup>51</sup> See Venice Commission, CDL-INF(2001)007, *Memorandum on the Organic Law on the Institution of the Ombudsman of the Federation of Bosnia and Herzegovina*, § 2.

<sup>52</sup> Article 9 § 3 of the Law reads: “*The Ombudsman must cease to hold office only in the following events: a) By express resignation, in writing, before the Syndic General; b) Death, political disqualification or judicially declared invalidity. If it is at the request of the General Council, the same majority as that established for appointment is required to initiate the disqualification procedures;*

“political disqualification”, in spite of appearances, does not refer to a political decision but rather to the accessory penalty of disqualification from public office, understood as an accessory penalty to some specific crimes (e.g. crimes against the public administration or crimes committed in the official capacity). This criterion, read in conjunction with Article 9 § 3 (d), guarantees that the disqualifying conviction excludes minor convictions or petty infractions.<sup>53</sup>

47. Turning to the “disqualification” provided for in the second part of Article 9 § 3 (b), the Venice Commission understands that the word refers to the incapacity (*incapacitació* in Catalan in the original text of the Law) procedure which can be triggered by the Parliament, as distinct from the court-declared incapacity referred to in the first part of the provision. Insofar as the Law provides that the same majority as that established for appointment is required to initiate the incapacitation procedure, the Law is compliant with Principle 11 of the Venice Principles (although it would be always preferable to have a higher majority for removal),<sup>54</sup> provided that the considerations made above with regard to the necessary heightening of the majority to elect the Ombudsman are taken into account.

48. The Venice Commission finds that the current procedure of declaration of incompatibility, as a cause for cessation of office, is rather unclear. The only reference is the one provided in Article 9 § 4 of the Law which provides that the Syndic General shall declare the office vacant, once it has established, by means of the corresponding document, the cause that has given rise to it. In this regard, it is not clear how the incompatibility is established, for example, in case of “exercising any liberal, commercial or labour profession” or “positions or functions in organisations, associations or companies”.<sup>55</sup> The Venice Commission recommends harmonizing the Law and providing for clear, smooth and consistent procedures for removal from and cessation of office.

49. The Venice Commission is also concerned by the majority requested for removing the Ombudsman in case of negligence or carelessness in the exercise of the office. In this case, Article 9 § 5 of the Law provides for the simple absolute majority, which is even less than the majority requested to elect the Ombudsman.<sup>56</sup> This provision therefore stands in stark contrast to the Venice Principles.<sup>57</sup> The Venice Commission therefore recommends amending the majority required to remove the Ombudsman for negligence or carelessness and bring it in line with the majority requested for electing the Ombudsman. This is fundamental for protecting the legal status of the Ombudsman, particularly his or her independence, and for preventing the politicisation of his or her possible dismissal.<sup>58</sup>

50. Lastly, in order to be in line with the Venice Principles, the Law should provide for a public and transparent procedure for removal. The removal procedure should take place in Parliament, with a public hearing of the Ombudsman. This seems to be the case for Article 9 § 5 but not for the incapacitation procedure triggered by the Parliament provided for in Article

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c) His/her term of office ends; d) Conviction by final judgement for a wilful offence; e) Incurrence of incompatibility, in accordance with the provisions of this Law; f) Manifest negligence or carelessness in the exercise of his/her office”.

<sup>53</sup> CDL-AD(2016)033, *Armenia - Opinion on the draft Constitutional Law on the Human Rights Defender*, § 39; CDL-AD(2021)049, op. cit., § 73.

<sup>54</sup> Principle 11 of the Venice Principles, in this regard provides that: “[...]The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament- shall be equal to, and preferably higher than, the one required for election[...]” (emphasis added).

<sup>55</sup> See Article 11 § 2 of the Law.

<sup>56</sup> Article 9 § 5 of the Law reads: “Negligence or carelessness in the exercise of the office may only be declared by the Plenary Session of the General Council, in public session, by an absolute majority of its members and after having heard the person concerned.”

<sup>57</sup> Principle 11 of the Venice Principles, cited above.

<sup>58</sup> CDL-AD(2021)049, op. cit., § 77.

9 § 3 (b).<sup>59</sup> It is therefore recommended that the Law be amended, a harmonized procedure for dismissal put in place, ensuring a public hearing so that the case, as well as the views of the Ombudsman, are made public.<sup>60</sup>

## G. Powers of Investigation

### 1. Power to continue investigation

51. The Venice Commission recommends that the Law explicitly provide that the Ombudsman has the discretion to continue the investigation of a case even if the complainant shows lack of interest, if he or she deems that it is in the general interest to do so.<sup>61</sup>

### 2. Ex officio enquiries

52. Article 5 of the Law reads:

*“1. Even if no specific complaint or claim has been lodged, the Ombudsman may, ex officio, draft reports or make recommendations on matters of interest to citizens or society in general, or on matters related to any of the functions entrusted to him/her.*

*2. Even if no specific complaint or claim has been lodged, if the Ombudsman becomes aware of any case of discrimination, racism, xenophobia, anti-Semitism or intolerance, he/she may undertake an ex officio enquiry in accordance with the procedure regulated in Title II of this Law.”*

53. The Venice Commission welcomes this provision, which gives precedence to the role of the Ombudsman as promoter and protector of human rights and fundamental freedoms rather than to the interest of the complainant. However, it might be considered that the possibility to undertake an *ex officio* enquiry (Article 5 § 2) be extended to all cases pertaining to the competence of the Ombudsman rather than being confined to cases involving discrimination, racism, xenophobia, anti-Semitism or intolerance.<sup>62</sup>

### 3. Whistle-blowers

54. It is further advisable to introduce a special provision on the protection of whistle-blowers within the public sector, as suggested by the Venice Principles.<sup>63</sup> The Venice Commission recalls that whistle-blowers are usually a very important source of information for own initiative investigations<sup>64</sup> and the information provided enables the Ombudsman to carry out his or her tasks effectively.<sup>65</sup>

## H. Access to information

55. Access to information is regulated in Article 19 § 3 of the Law, which reads: “[t]he Ombudsman may have access to any information relating to the matter subject to the investigation he/she has

<sup>59</sup> The procedure for declaring negligence or carelessness of the Ombudsman could indeed be merged with the one for declaring the incapacity of the Ombudsman.

<sup>60</sup> CDL-AD(2021)049, op. cit., § 76.

<sup>61</sup> See also CDL-AD(2007)024, *Opinion on the Draft Law on the People's Advocate of Kosovo*, § 58.

<sup>62</sup> Principle 16 § 1 of the Venice Principle reads: “*The Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases [...]*” (emphasis added); see also CDL-AD(2004)041, § 27 *in fine*.

<sup>63</sup> Principle 16 § 2 of the Venice Principles reads: “*The Ombudsman shall have the power to interview or demand written explanations of officials and authorities and shall, furthermore, give particular attention and protection to whistle-blowers within the public sector*” (emphasis added).

<sup>64</sup> Venice Commission, CDL-AD(2021)041, *Opinion on the Possible Exclusion of the Parliamentary Commissioner for Administration and Health Service Commissioner from the “Safe Space” Provided for by the Health and Care Bill*, § 85.

<sup>65</sup> CDL-AD(2016)033, op. cit., § 47.



*initiated, except for information with confidentiality protected by applicable laws". In this regard, the Venice Principles expressly state that "[...] [t]he Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential. This includes the right to unhindered access to buildings, institutions and persons, including those deprived of their liberty [...]."*<sup>66</sup>

## **1. Privileged and confidential material**

56. The Venice Commission finds that Article 19 § 3 is not fully in line with international standards: it is indeed a very fundamental principle that the Ombudsman shall have access to all relevant documents and databases, including material which might be considered as privileged or confidential.<sup>67</sup>

## **2. Physical access**

57. Moreover, the Venice Commission finds that the possibility of physical access to spaces of the Ombudsman's interest, although a reality in practice,<sup>68</sup> shall be regulated in the Law. This is particularly true for places where persons are deprived of their liberty by a public authority (prisons, police detention centres, military prisons, psychiatric institutions and other similar sites). Indeed, the right to visit and inspect such places in connection with concrete complaints or on his or her own initiative is one of the most important safeguards for the effective operation of the Ombudsman institutions and it must be clearly stated in the Law.<sup>69</sup> Moreover, the Venice Commission recalls that a detained person should have the opportunity to freely communicate, without any supervision, with the Ombudsman. The law should clearly state that this is not limited to conversations, but that it also covers all other means of communication, e.g. telephone or electronic communications, where applicable.<sup>70</sup>

58. In sum, the Venice Commission recommends that the Law be amended in order to: (i) include a sufficiently broad definition to the documents that have to be accessible upon the Ombudsman's request; (ii) provide access to relevant documents, including those that might be privileged or confidential; (iii) provide for the possibility of physical access to spaces of the Ombudsman's interest, including to places of detention and to have unconstrained contact with detainees; and (iv) provide for the detainees to seek visits with the Ombudsman without constraints.

### **I. Time limits and procedure for complaints**

59. The legislation on the time limits for processing a complaint is impressive and ambitious. In detail, the Ombudsman, upon receiving the complaint or claim, acknowledges receipt thereof, in all cases and within a maximum period of thirteen working days, and must inform the person concerned of the action s/he has taken (Article 13). Thereafter, the enquiry into the reality of the alleged facts must not take longer than three months (Article 17 §§ 1, 3). The public or private entity involved have one month of time to submit a written report on the matter raised by the Ombudsman (Article 17 §§ 4-5). If such deadlines expire without the concerned entities or individuals having replied, the Ombudsman shall recall them to do so (Article 17 § 6). Lastly, if, despite having been notified for a second time, the requested persons or entities have not issued the written report, or if this report is incomplete or insufficient, the Ombudsman must record this

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<sup>66</sup> Principle 16 of the Venice Principles.

<sup>67</sup> CDL-AD(2021)041, cited above, § 70.

<sup>68</sup> The Ombudsman informed the delegation of the Venice Commission that he regularly visits the only penitentiary establishment of the country.

<sup>69</sup> See Venice Commission, CDL-AD(2009)043, *Opinion on the draft amendments to the law on the Protector of Human Rights and Freedoms of Montenegro*, § 17.

<sup>70</sup> *Ibid.*, § 19.

fact in the annual or extraordinary reports that s/he drafts, and may publicize the identity and position, or the name of the persons or entities concerned public (Article 17 § 7). The Venice Commission has been informed by the Ombudsman and by the authorities which have received several requests from the former that time-limits are being consistently respected. The Venice Commission praises the Ombudsman and the Andorran authorities for such efficiency in dealing with the complaints and in responding to the requests for information, which demonstrates the paramount role of the Ombudsman in promoting good governance in public administrations and improving their relations with citizens.<sup>71</sup>

## J. Visibility

### 1. Fostering visibility

60. A major concern expressed by the authorities, the civil society and the Ombudsman himself during the country visit is the lack of visibility of the institution, which has a clear impact on the kind of cases the Ombudsman receives.<sup>72</sup> The Committee of Ministers of the Council of Europe has recommended that Member States place particular attention to persons who may not be aware of the existence of Ombudsman Institutions or NHRIs and that they should foster awareness of the mandate, independence and role of NHRIs.<sup>73</sup> Knowledge of the Ombudsman institutions as a means to resolve grievances, as well as public trust, are important features for the latter to maintain their legitimacy.

61. In the context of the very Andorran Ombudsman, the UN Committee on the Elimination of Racial Discrimination already recommended that necessary measures be taken to make the institution, its mandate and work more visible to the public, in particular to vulnerable groups.<sup>74</sup> The Venice Commission endorses such a recommendation and invites the Andorran authorities to foster awareness of the mandate, independence and role of the Ombudsman. Among other things, authorities could institutionalize the cooperation between the Ombudsman and relevant public entities to enhance the institution's visibility.<sup>75</sup>

### 2. Cooperation with civil society

62. The Venice Commission observes that close cooperation with non-governmental organizations ("NGOs") and civil society is paramount for the Ombudsman institution to have visibility and substantive impact, and when it comes to being kept informed about arising human rights issues.<sup>76</sup> Civil society can assist the Ombudsman to identify systemic problems of public administration, direct citizens toward him/her and propose innovative solutions.<sup>77</sup>

63. In this regard, the Venice Commission welcomes the provision contained in Article 2 § 1 (f) (ii) of the Law which provides that the Ombudsman has the mandate to "*promote the participation of civil society [...]*". However, the Venice Commission notes that this paragraph only applies to

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<sup>71</sup> In this regard the delegation of the Venice Commission learned, *for example*, that the National Institute for Housing (in Catalan *Institut Nacional de l'Habitatge*), was established in 2021 following, *inter alia*, a request of the Ombudsman and partly as a reaction to his activity in the field of housing.

<sup>72</sup> According to the 2020 Annual report (*Raonador del Ciutadà, Informe anual al Consell General 2020*, only in Catalan), almost 1/3 of the complaints received by the Ombudsman concerned housing issues. On the contrary, no files/complaints concerned, for example, discrimination of any kind.

<sup>73</sup> In relation to Ombudsman see CM 2019, Appendix, § 1; in relation to NHRIs see CM 2021, Appendix, §§ 1 and 12.

<sup>74</sup> CERD/C/AND/CO/1-6, op. cit., §§ 15-16.

<sup>75</sup> See also CM 2019, Appendix, § 11(a).

<sup>76</sup> See, *for example*, European Ombudsman, [Ombudsman: NGOs can help EU institutions do their job better](#), 24 January 2008.

<sup>77</sup> See also Council of Europe, [A comparative review on Ombuds - Recommendations of Action for the Turkish Ombudsman and Guidelines for the Ombudsman and Public Authorities](#), October 2021.

the Ombudsman's competence related to the rights of people with disabilities. In this regard, the Venice Commission notes that both the United Nations and the Committee of Ministers of the Council of Europe have encouraged States to take effective measures to promote cooperation between Ombudsman Institutions and NHRIs and civil society.<sup>78</sup> With specific regard to NHRIs, the Paris Principles provide that NHRIs shall develop "*relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas*".<sup>79</sup> The Venice Commission recalls that such cooperation is essential for the work of Ombudsman institution in all fields.

64. The Venice Commission therefore recommends amending the Law to regulate cooperation with civil society in a wider legal provision that relates to the overall activity of the Ombudsman institution rather than to a specific field of action. Moreover, as mentioned above, the delegation of the Venice Commission learned that civil society is not always aware of the Ombudsman's competences and the possibilities of cooperation with him. In this regard, the Law might provide for regular meetings between the Ombudsman and NGOs active in the Ombudsman's fields of competence. As explained above, the Venice Commission is convinced that such an amendment and its implementation would also promote the visibility of the Ombudsman institution *vis-à-vis* the general public. This is all the more relevant since the Andorran authorities have expressed their willingness to further develop the Ombudsman institution, to strengthen its role and to broaden its competences in order to provide meaningful protection of human rights and so that its work more closely resembles that of a NHRI.

#### **IV. Conclusions**

65. The Venice Commission warmly welcomes the request of the Andorran authorities and their efforts and willingness to strengthen the Ombudsman institution. In particular, the Venice Commission appreciates that this opinion was requested prior to the commencement of a legislative reform, and therefore that its findings will be the basis for the reflection over the need and modalities of such a reform. However, the Venice Commission reiterates that it is not its task to identify the exact reforms that need to be undertaken in order for the Ombudsman to fulfil the criteria to become a NHRI. The Venice Commission has assessed the compatibility of the Law with relevant international standards on Ombudsman institutions, *in primis* the Venice Principles.

66. In order to guarantee the Ombudsman institution's independence at the highest level, the Venice Commission recommends at the outset that the establishment of the Ombudsman institution, its mandate, and the procedure for the election and resignation of the Ombudsman, be provided in the Constitution.

67. In the context of such constitutional amendment, the Venice Commission further recommends that the Ombudsman be entrusted with the possibility to challenge the constitutionality of laws and other regulations before the Constitutional Court.

68. The Venice Commission is aware that constitutional amendments are difficult to implement in Andorra but nonetheless such amendments should be considered seriously.

69. Moreover, in order to align the Law with international standards, the Venice Commission recommends:

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<sup>78</sup> UN GA Resolution 75/186, § 8(d)-(e) ; CM 2019, Appendix, § 11(b) ; CM 2021, Appendix, § 15(b).

<sup>79</sup> Paris Principles, chapter "Methods of Operation", letter (g).

- that the Law provide that the Ombudsman benefit from an appropriate high rank, be endowed with sufficient financial resources and that s/he propose the budget of the institution for the coming year;
- that the appointment and the removal of the Ombudsman be better regulated in the Law, in particular by providing higher qualified majorities for his/her appointment and removal and clearer and consistent procedures for removal;
- that the functional immunity be extended to the Ombudsman's decision-making staff and beyond his/her term of office, for any act committed in his/her official capacity during his/her term of office;
- that the Ombudsman be granted access to all relevant documents, including those that might be privileged or confidential; that the Law provide for the possibility of physical access to spaces of the Ombudsman's interest, including to places of detention and to have unconstrained contact with detainees; and
- that cooperation with civil society be better regulated in the Law and that the awareness of the mandate and role of the Ombudsman institution be fostered.

70. The Venice Commission remains at the disposal of the Andorran authorities for further assistance in this matter.