



Strasbourg, 22 May 2018

CDL(2018)017

Study No. 897 / 2018

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT

PRINCIPLES

ON THE PROTECTION AND PROMOTION

OF THE OMBUDSMAN INSTITUTION

(THE VENICE PRINCIPLES)

**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 national, regional or local level

Recognising that these Institutions have adapted into the legal and political system of the respective states; however organized 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, rule of law, respect for human rights and fundamental freedoms and good governance

Reminding that the Ombudsman is an institution which should independently take action against injustices and maladministration made to an individual and a legal person

Stressing that the right to complain to the Ombudsman adds to the right to have 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 utmost importance especially during periods of hardship and conflicts in society

Recalling that the Venice Commission, on different occasions, has worked extensively with 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 the immunity, reprisals

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

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

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 Office for Democratic Institutions and Human Rights, 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 in consolidating democracy, the rule of law and the protection and promotion of human rights and fundamental freedoms. While there is no standardised model across Council of Europe Member’s States, the State should support and protect the Ombudsman institution.

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 Ombudsman.

3) The choice of a single or plural Ombudsman model depends on the State organization, its particularities and needs. States should provide models not weakening the institution nor diminishing 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 during and after his or her mandate ends.

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 of the election should be public, transparent and provided for by law.

6) The criteria for being appointed Ombudsman should not be restrictive. The essential criterion is that the person is of high moral character in order to enjoy broad support in society.

7) The Ombudsman should not during his or her term of office engage in political or administrative or professional activity incompatible with his or her independence or impartiality.

8) The term of office should preferably be a single term, without any option for reelection, thus safeguarding against accusations that the Ombudsman acts influenced by a wish to be reelected. A single term should not be stipulated below seven years.

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 can relate solely to 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 injustice and maladministration, and 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 a NGO, 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 cover the judicial branch, thereby threatening its independence; at most, the Ombudsman may contribute to ensuring procedural efficiency and administrative order.

Private bodies should be included in the competence of the Ombudsman only to the extent that these bodies are entrusted with a public service mission and are co-financed by the state.

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 scrutinize any official document and database, interview or demand written explanations of officials and authorities; and the right to unhindered access to buildings, institutions and persons, also those deprived of their liberty.

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 will better be in line with the basic values and norms he or she is appointed to protect. This power implies also that Parliament or Government should consult the Ombudsman concerning draft legislation on relevant issues. This applies in particular to national and international protection of human rights and fundamental freedoms.

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

18) The Ombudsman should 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 lack of compliance by the executive branch.

The Ombudsman should also report, as the Ombudsman sees appropriate, on specific issues.

19) Necessary 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 a sufficient staff and appropriate structural flexibility. If appropriate, the Institution may include deputy/deputies Ombudsman. The Ombudsman employs the staff of the institution, including deputy/deputies.

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

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

23) The Ombudsman should be seen as a human rights institution.