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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")**

on the basis of comments by

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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 are presently Ombudsman Institutions in more than 140 states, at the national, regional or local level, with different competences;

Recognising that these Institutions have adapted into the legal and political system of the respective states;

Noting that the core principles of the Ombudsman Institution, including independence, objectivity, transparency, fairness and impartiality, may be achieved through a variety of different models;

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 long standing constitutional traditions and a mature constitutional and democratic political culture constitute an essential enabling element to the democratic and legal functioning of the Ombudsman Institution;

Emphasising that the Ombudsman plays 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 taking action independently against maladministration and alleged violations of human rights and fundamental freedoms affecting individuals or legal persons;

Stressing that the right to complain to the Ombudsman is an addition to the right of access to justice through the courts;

Stating that governments and parliaments must accept criticism in a transparent system 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;

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, suppression reprisal, budgetary cuts and a limitation of its mandate;

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

Referring to the Recommendations of the Committee of Ministers of the Council of Europe R (85) 13 on the institution of the Ombudsman, R (97) 14 on the establishment of independent national institutions for the promotion and protection of human rights, R (2000)10 on codes of conduct for public officials and CM/Rec(2007) 7 on good administration, CM/Rec(2014)7 on the protection of whistle-blowers and CM/Rec(2016)3 on human rights and business; 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 Resolution 327 (2011) of the Congress of Local and Regional Authorities of the Council of Europe; to ECRI General Policy Recommendation No. 2: Equality bodies to combat racism and intolerance at national level, adopted on 7 December 2017;

Referring to United Nations General Assembly 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, Resolution 69/168 of 18 December 2014 and Resolution 72/186 of 19 December 2017 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, Resolution 72/181 of 19 December 2017 on National institutions for the promotion and protection of human rights, the Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 18 December 2002, the Convention on the Rights of Persons with Disabilities adopted by the General Assembly on 13 December 2006;

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 Council of Europe Commissioner for Human Rights and the Steering Committee for Human Rights of the Council of Europe (CDDH), the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the European Union Agency for Fundamental Rights, the European Ombudsman of the European Union, the International Ombudsman Institute (IOI), the Association of Mediterranean Ombudsmen (AOM), the Association of Ombudsman and Mediators of the Francophonie (AOMF), the Federation of Ibero-American Ombudsman (FIO), the European Network of National Human Rights Institutions (ENNHRI);

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 strengthening 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 shall support and protect the Ombudsman Institution and refrain from any action undermining its independence.
2. The 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.
3. The Ombudsman Institution shall be given an appropriately high rank, also reflected in the remuneration of the Ombudsman and in the retirement compensation.

4. The choice of a single or plural Ombudsman model depends on the State organisation, its particularities and needs. The Ombudsman Institution may be organised at different levels and with different competences.

5. States shall adopt models that fully comply with these Principles, strengthen the institution and enhance the level of protection and promotion of human rights and fundamental freedoms in the country.

6. The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution.

The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.

7. The procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law.

8. The criteria for being appointed Ombudsman shall be sufficiently broad as to encourage a wide range of suitable candidates. The essential criteria are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms.

9. The Ombudsman shall not, during his or her term of office, engage in political, administrative or professional activities incompatible with his or her independence or impartiality. The Ombudsman and his or her staff shall be bound by self-regulatory codes of ethics.

10. 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; at any rate, the Ombudsman's mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years.

11. The Ombudsman shall be removed from office exclusively by the same body having elected or appointed him or her, and only according to an exhaustive list of clear and reasonable conditions established by law. **These shall relate solely to the essential criteria of "incapacity" or "inability to perform the functions of office", "misbehaviour" or "misconduct", which shall be narrowly interpreted.** The parliamentary majority required for removal shall be at least equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law.

12. The mandate of the Ombudsman shall cover prevention and correction of maladministration, and the protection and promotion of human rights and fundamental freedoms.

13. The institutional competence of the Ombudsman shall cover public administration at all levels.

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.

The competence of the Ombudsman relating to the judiciary shall be confined to ensuring procedural efficiency and administrative functioning of that system.

14. The Ombudsman shall not be given nor follow any instruction from any authorities.

15. Any individual or legal person, including NGOs, shall have the right to free, unhindered and free of charge access to the Ombudsman, and to file a complaint.

16. The Ombudsman shall have **discretionary** power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies. The Ombudsman shall be entitled to request the co-operation of any individuals or organisations who may be able to assist in his or her investigations. The 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.

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.

17. The Ombudsman shall have the power to address individual recommendations to any bodies or institutions within the competence of the Institution. The Ombudsman shall have the legally enforceable right to demand that officials and authorities respond within a reasonable time set by the Ombudsman.

18. In the framework of the monitoring of the implementation at the national level of ratified international instruments relating to human rights and fundamental freedoms and of the harmonization of national legislation with these instruments, the Ombudsman shall have the power to present, in public, recommendations to Parliament or the Executive, including to amend legislation or to adopt new legislation.

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

The Ombudsman shall preferably be entitled to intervene before relevant adjudicatory bodies and courts.

The official filing of a request to the Ombudsman may have suspensive effect on time-limits to apply to the court, according to the law.

20. The Ombudsman shall report 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 public administration. The Ombudsman shall also report on specific issues, as the Ombudsman sees appropriate. The Ombudsman's reports shall be made public. They shall be duly taken into account by the authorities.

This applies also to reports to be given by the Ombudsman appointed by the Executive.

21. 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.

22. The Ombudsman Institution shall have sufficient staff and appropriate structural flexibility. The Institution may include one or more deputies, appointed by the Ombudsman. The Ombudsman shall be able to recruit his or her staff.

23. The 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.

24. States shall refrain from taking any action aiming at or resulting in the suppression of the Ombudsman Institution or in any hurdles to its effective functioning, and shall effectively protect it from any such threats.

25. These principles shall be read, interpreted and used in order to consolidate and strengthen the Institution of the Ombudsman. Taking into consideration the various types, systems and legal status of Ombudsman Institutions and their staff members, states are encouraged to undertake all necessary actions including constitutional and legislative adjustments so as to provide proper conditions that strengthen and develop the Ombudsman Institutions and their capacity, independence and impartiality in the spirit and in line with the Venice Principles and thus ensure their proper, timely and effective implementation.

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