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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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SECRETARIAT MEMORANDUM

COMMENTS ON PACE RECOMMENDATION 2163(2019) ON OMBUDSMAN INSTITUTIONS IN EUROPE - THE NEED FOR A SET OF COMMON STANDARDS

In view of the preparation of the Committee of Ministers' reply
to this recommendation

Adopted by the Venice Commission
at its 121st Plenary Session
(Venice, 6-7 December 2019)

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1. On 15-16 March 2019, the Venice Commission adopted the Principles on the protection and promotion of the Ombudsman institution (“the Venice Principles”), drafted in co-operation with major international institutions active in this field, including the Council of Europe Commissioner for Human Rights and Steering Committee for Human Rights (CDDH), the United Nations Office of the High Commissioner for Human Rights and the International Ombudsman Institute.
2. On 2 May 2019, the Committee of Ministers endorsed the Venice Principles.
3. At its Part-time session of October 2019, the Parliamentary Assembly adopted Resolution 2301 (2019) on “Ombudsman institutions in Europe – The need for a set of common standards”,¹ whereby it endorsed the Venice Principles as “the first international set of standards for ombudsman institutions, equivalent to the Paris Principles for NHRIs”. The Parliamentary Assembly further called on Council of Europe member States “to ensure that the Venice Principles and other relevant recommendations of the Council of Europe are fully implemented in practice”; take all necessary measures to ensure the independence of ombudsman institutions; invite their national parliaments and relevant governmental bodies to systematically refer to the Venice Principles when assessing the need for and the content of legislative reform concerning ombudsman institutions; refrain from any action aiming at or resulting in the suppression or undermining of ombudsman institutions and from any attacks or threats against such institutions and their staff, and protect them against such acts; promote an “ombudsman-friendly climate” in particular by guaranteeing easy and unhindered access to ombudsman institutions, providing sufficient financial and human resources to those institutions and allowing them to co-operate freely with their peers in other countries and with international associations of ombudspersons.”
4. The Parliamentary Assembly also adopted Recommendation 2163(2019) whereby it recommended that the Committee of Ministers “consider establishing a mechanism of appropriate composition and mandate to which the Council of Europe member states could regularly report on the situation and activities of their ombudsman institutions, including the state of implementation of the Venice Principles”.²
5. On 16 October 2019, the Committee of Ministers adopted Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution.³ The Committee of Ministers stated that “Member States should provide a firm legal basis for Ombudsman institutions, preferably at the constitutional level, and/or in a law which defines the main tasks of such an institution, guarantees its independence and provides it with the means necessary to accomplish its functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on Ombudsman institutions, in particular the Principles on the protection and promotion of the Ombudsman institution, adopted by the European Commission for Democracy through Law of the Council of Europe (Venice Commission) on 15 March 2019 and endorsed by the Committee of Ministers on 2 May 2019.”
6. All the aforementioned instruments adopted by the Venice Commission, the Parliamentary Assembly and the Committee of Ministers have been developed against the background of the concern expressed over the existence of threats, pressures and attacks on Ombudsman institutions and their staff.

¹ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28161&lang=en>

² <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28162&lang=en>

³ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680982bcb

7. The Venice Commission is convinced of the need to protect Ombudsman institutions from any form of undue pressure and to enable them to function smoothly.

8. The Commission has already assessed numerous constitutional provisions and pieces of legislation on the Ombudsman. It intends to encourage the Ombudsman institutions of its member States, also through the assistance of the different world and regional associations of Ombudsman Institutions with which the Commission maintains active co-operation, to seek the Commission's opinion on any law or constitutional and/or legislative amendments affecting them. The Commission will assess these constitutional and legislative texts against the background of the Venice Principles and of the relevant Recommendations of the Committee of Ministers, notably CM/Rec(2019)6.

9. The Commission considers that, pending the possible establishment of a specific reporting mechanism as recommended by the Parliamentary Assembly (see above, para. 4), it could be useful for the Committee of Ministers to hold thematic debates, at regular intervals and/or whenever necessary, on the situation and activities of Ombudsman institutions, including on the state of implementation of the Venice Principles, in particular in the light of such Commission's opinions.