37th Session – Strasbourg, France, 29-31 October 2019

Speaking notes for the rapporteur Harald BERGMANN (Netherlands, ILDG)

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Report on "Principles on the Protection and Promotion of the Ombudsman Institution" ("The Venice Principles") (37th session of the Congress-31 October 2019)

Strasbourg, France, 30 October 2019

Dear members,

I am delighted to present to you today a draft resolution on the Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles"). The Venice Principles were adopted by the Venice Commission last March.

I will make a short presentation because we have the pleasure to welcome here today Mr Gianni Buquicchio, President of the Venice Commission, who will present the Venice Commission work more substantially than I could do. The Venice Principles have been prepared in consultation with the major international institutions active in the field, such as the International Ombudsman Institute, a global association of ombudsmen from more than 100 countries, and the UN Office of the High Commissioner for Human Rights.

More than 140 States worldwide currently have ombudsman institutions at national, regional or local level with different competences. This institution is an important element in a State based on democracy, the rule of law, respect for human rights and fundamental freedoms and good governance. The objective of preparing the Venice Principles was to help to consolidate and empower Ombudsmen institutions.

The Congress has been working for many years with the institution of Ombudsmen at all levels of governance. It adopted several recommendations and resolutions on the role of Ombudsmen at grassroots' level to strengthen the role of local and regional mediators/ombudsmen in defending citizens' rights and as regards local and regional authorities.

Ombudsmen in the Council of Europe member States together with national, regional and local authorities, are important interlocutors of the Congress when it monitors the implementation of the Charter and promotes human rights at local and regional level.

Now, I would like to say just a few words about the Principles.

In total, the document contains 25 principles that have been drawn partly from a diversity of existing models of Ombudsmen in the world. They cover the whole range of conditions which should be met to

ensure the proper functioning and independence of ombudsman institutions, from election or dismissal of ombudsmen, to financial and material guarantees of their work.

I will outline only those principles which I consider of specific relevance for the Congress activities.

The Venice Principles state that the Ombudsman Institution may be organised at different levels and with different competences.

This is a very important principle and indeed, the Congress promotes the establishment of local Ombudsmen, the practice which has proven to be very successful in many states.

The Venice Principles require that the mandate of the Ombudsman shall cover prevention and correction of maladministration at all levels and regarding 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.

This provision is invaluable as it opens new venues for citizens to seek redress in case their rights are violated by local authorities.

In parallel, the Venice Principles also give new possibilities to local authorities, which are usually legal persons, to seek assistance of Ombudsman in case of conflicts with higher level authorities since - I quote - 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.

The Venice Principles not only define the scope of preferable mandate but also outline major instruments allowing Ombudsmen to fulfil their mandate effectively.

For instance, he or she shall have the power to address individual recommendations to any bodies or institutions and shall have the legally enforceable right to demand that officials and authorities respond within a reasonable time set by the Ombudsman.

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

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

Finally, as regards the harmonization of national legislation with international instruments on human rights and fundamental freedoms, 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.

To sum up, the Venice Commission thus underlined that Ombudsmen are important for democracy as they act independently against maladministration and alleged violations of human rights and hence play a crucial role regarding the governments and parliaments which must accept criticism. They also serve as interface between the administration and the citizens, being sometimes the first or the last resort to address a human rights violation.

Ombudsmen Institution is an essential element of good governance and an important instrument for supervising public authorities and fostering public confidence in local and regional administrations.

On the other hand, this institution is also an important link between local authorities and the higher-level governments and can also serve as an additional tool available to subnational authorities to protect local autonomy, together with judicial means of protection through the court, in light of Article 11 of the Charter.

Given the importance of the Ombudsman Institution, the Venice Principles were endorsed by the Committee of Ministers of the Council of Europe in May 2019 and by the Parliamentary Assembly at the beginning of this month.

Therefore, I would like to invite you to follow the Committee of Ministers and the PACE and to adopt a draft resolution which endorses the Venice Principles as an important international reference text for the establishment and proper functioning of Ombudsman institutions in a democratic society at all levels.

The draft resolution was approved at the last meeting of the Monitoring Committee in Oslo, in July 2019.

The draft resolution urges national authorities of the Council of Europe member States to ensure that the Venice Principles are applied to already functioning Ombudsman Institutions at all levels or in the situations where such institutions are being set up.

By endorsing the Venice Principles, we will contribute to building up on the successful cooperation between the Congress and the Venice Commission.

Let me remind you that, similarly, in 2016 the Congress endorsed the rule of law checklist drawn up by the Venice Commission as the first reference document on the rule of law and a tool to assess the degree of respect of this principle in a country.

By endorsing the rule of law checklist, the Congress also extended its support and promoted this document as guidelines to all levels of governance, notably to local and regional authorities, to help them to ensure the respect for the Rule of Law.

The checklist has been also useful for the Monitoring Committee to assess the legal and political background of functioning of local and regional democracy in the Council of Europe member states when monitoring implementation of the Charter.

In the same vein and following the main line of support that the Congress has always extended to Ombudsmen activities as well as to the co-operation with the Venice Commission, I invite you to adopt the draft resolution on the Venice Principles.

Thank you for your attention.

I am glad to answer your questions.