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Parliamentary scrutiny over corruption: parliamentary co-operation with the investigative media

Reply to Recommendation[1]: Recommendation 2106 (2017)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2106 (2017) on "Parliamentary scrutiny over corruption: parliamentary co-operation with the investigative media". It has transmitted the recommendation to the Group of States against Corruption (GRECO), to the European Committee on Legal Co-operation (CDCJ), to the Steering Committee on Media and Information Society (CDMSI) and to the Steering Committee for Human Rights (CDDH), for information and possible comments.

2. The Committee of Ministers recalls that the fight against corruption is a high priority for the Organisation. In this context, it underlines the important link between anti-corruption measures and human rights protection and shares the views of the Parliamentary Assembly regarding the need to enable an environment in which anti-corruption initiatives can succeed. It considers that the Council of Europe could explore further avenues in this respect while noting that transparency and accountability are crucial and that adequate tools need to be in place for society to be made aware of, and engaged in, the prevention of and the fight against corruption. In this respect, civil society empowerment, including the media, is also an essential element for the legitimacy and effectiveness of anti-corruption activities.

3. Regarding firstly transparency and access to information, the Committee of Ministers recalls that freedom of expression and the right to receive and impart information as its inherent element are fundamental rights that underpin an informed public opinion, public debate and transparency in public affairs. It acknowledges that access to public documents is a powerful tool for enhancing transparency and accountability of governments, strengthening anti-corruption safeguards and raising public awareness about governments' performance.

4. Taking note of paragraph 2.1 of the Assembly recommendation, the Committee of Ministers recalls the relevance of the Council of Europe Convention on Access to Official Documents (CETS No. 205) and considers that priority should be given to promoting ratification of this instrument.

5. With regard to the second issue relating to the protection of whistle-blowers raised in paragraph 2.2 of the recommendation, the Committee of Ministers recalls that it is rooted in the jurisprudence of the European Court of Human Rights on Article 10 of the European Convention on Human Rights. The Court has consistently held that, in a democratic system, the acts and omissions of government must be subject to close scrutiny not only of the legislative and judicial authorities but also of the media and public opinion. The public's interest to have access to information can sometimes be so strong as to override even a legally imposed duty of confidence.

6. In addition to Recommendation CM/Rec(2014)7 on the protection of whistleblowers mentioned by the Assembly, the Committee of Ministers recalls CM/Rec(2015)5 on the processing of personal data in the context of employment, which provides that where employers implement internal reporting mechanisms the confidentiality of whistleblowers should be ensured as well as the protection of personal data of all parties

1. Adopted at the 1306th meeting of the Ministers' Deputies (7 February 2018).

involved, as well as CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, which requires that whistleblowers alongside with other media actors have access to protective measures when they are threatened. It further recalls its Declaration on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers (2011), which draws attention to the need to protect a variety of contributors in the public debate within a digital context and of the public value of alternative voices in the digital environment.

7. Taking this into account, the Committee of Ministers notes that there is a rich body of standards covering various aspects of the protection of whistleblowers and, like the Assembly, underlines the need for implementation at national level. In this respect, it encourages member States to conduct a self-assessment of their legal provisions to identify the effectiveness of domestic implementation and possible implementation gaps. Regarding the Parliamentary Assembly's specific suggestion in paragraph 2.2, the Committee of Ministers considers that, given the relatively short period of time (approximately 3 years) which has elapsed since the adoption of the Recommendation CM/Rec(2014)7, it is premature to review the follow-up given to it by member States. It would point out in this respect that activities for promoting and supporting the implementation of this recommendation are undertaken by the CDCJ.

8. Finally, with regard to paragraph 2.3, the Committee of Ministers recalls that the CDCJ is, in particular, responsible for (i) facilitation of co-operation and understanding between member States within its areas of competence; and (ii) provision of legislative advice, training and awareness-raising to national authorities and other relevant bodies relating to public interest disclosures and the protection of whistleblowers. In this perspective, the Committee is ready to respond to any request for technical assistance from member States, subject to available resources.