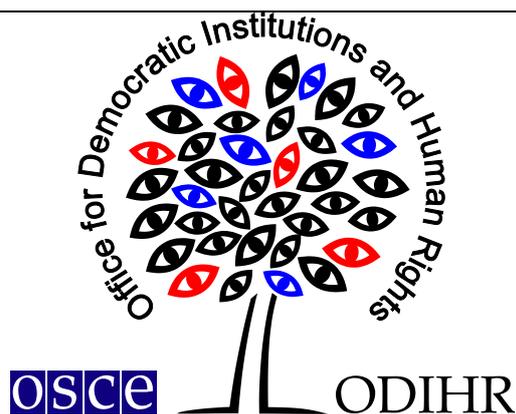


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**FINAL OPINION ON
THE DRAFT LAW OF
THE REPUBLIC OF ARMENIA ON
ENSURING EQUALITY BEFORE THE LAW**

**based on an unofficial English translation of the Draft Law provided by the Ministry of
Justice of the Republic of Armenia**

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*This Opinion is also available in Armenian.
However, the English version remains the only official version of the document.*

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I. INTRODUCTION

1. *On 21 November 2018, the Ministry of Justice of the Republic of Armenia sent a request to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to prepare an opinion on the Draft Law on Ensuring Equality Before the Law of the Republic of Armenia (hereinafter the Draft Law).*
2. *On 30 November 2018, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on this Draft Law, which assesses its compliance with OSCE human dimension commitments and international human rights obligations.*
3. *On 6 September 2019, ODIHR published the OSCE/ODIHR Interim Opinion on the Draft Law of the Republic of Armenia on Ensuring Equality before the Law (as of November 2018). On 2 September 2019, the Ministry of Justice requested a second Opinion on an updated version of the Draft Law.*
4. *This Final Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist OSCE participating States in the implementation of key OSCE commitments in the human dimension.*

II. SCOPE OF THE INTERIM OPINION

5. The scope of this Opinion focuses on the updated Draft Law on Ensuring Equality Before the Law of the Republic of Armenia, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing equality and non-discrimination in Armenia.
6. The Opinion raises key issues and indicates areas of possible refinement. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the draft law. The ensuing recommendations are based on relevant OSCE commitments, and international standards, as well as international good practices.
7. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women¹ (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion analyses the potentially different impact of the Draft Amendments on women and men.²
8. This Opinion is based on an unofficial English translation of the amendments to the Draft Law provided by the Ministry of Justice of the Republic of Armenia. Thus, inaccuracies may occur in this Opinion as a result of incorrect translations. This Opinion is also available in Armenian. However, the English version remains the only official version of the document.
9. In view of the above, ODIHR would like to make mention that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or

¹ *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Armenia acceded to this Convention in 1993.

² See par 32 of the [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004).

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comments on the respective legal acts or related legislation of Armenia that ODIHR may wish to make in the future.

III. EXECUTIVE SUMMARY

10. ODIHR welcomes the efforts to address various forms of discrimination in a comprehensive manner through the Draft Law, which attempts to cover both the private and the public sphere. The Draft Law, in particular in its recently revised version, contains many positive elements which aim to guarantee equality through the legal norms and regulations. Introduction of special measures, as well as by establishing a special advisory body to combat discrimination within the Human Rights Defender's Office should also be welcomed.
11. At the same time, the Draft Law could benefit from certain revisions and clarifications, to enhance its effectiveness, avoid ambiguity and ensure respect for principles of equality, but also to guarantee effectiveness, independence and credibility of the institution authorized to oversee and apply this Draft Law.
12. More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following recommendations to further enhance the Draft Law:
 - A. to revisit the title of the law to make it clear that it guarantees equal treatment of and equal opportunities for every individual with no discrimination; [par 25]
 - B. to exclude the references to the legitimacy, necessity and proportionality tests from the definition of what constitutes *prima facie* discrimination and to separately provide a coherent and comprehensive definition of the test, preferably also indicating that a higher degree of scrutiny is required in cases of direct discrimination based on certain protected characteristics; [par 44]
 - C. to include additional protected characteristics, specifically referring to sexual orientation and gender identity, as well as national origin and nationality; [par 55]
 - D. to ensure that the Human Rights Defender as the main equality body, as well as non-governmental organisations that have a legitimate interest in it, are entitled to bring cases on behalf or in support of an alleged victim of discrimination and to include a provision aimed at ensuring that conciliation procedures are available to persons who believe they have been the victims of discrimination; [par 74]
 - E. to clarify Article 7 by establishing a hierarchy of complaints, specifying which institution complainants should approach first, and where they should then take their appeal. Alternatively, such cases may be taken to the Human Rights Defender, within the parameters set by Articles 20 par 2 and 24 par 4 of the Constitutional Law on the Human Rights Defender; [par 77]
 - F. to define the Human Rights Defender's mandate, powers and competences in the field of non-discrimination and to include references to the relevant provisions of the Constitutional Law on the Human Rights Defender, which define and describe its mandate, competences and powers in combating discrimination and promoting equality, as well as to ensure adequate resources for the implementation of the mandate; [pars 95, 96 and 99].

Additional Recommendations, highlighted in bold, are also included in the text of the opinion.

IV. ANALYSIS AND RECOMMENDATIONS

1. *International Standards Relevant to Anti-Discrimination Legislation*

13. This Opinion analyses the current Draft Law from the viewpoint of its compatibility with relevant international human rights obligations, standards and OSCE commitments. International anti-discrimination obligations are extensive; the Universal Declaration of Human Rights³ (“UDHR”, Article 7), International Covenant on Civil and Political Rights⁴ (hereinafter “ICCPR”, Article 26) and the International Covenant on Economic, Social and Cultural Rights⁵ (hereinafter “ICESCR”, Article 2 par 2), among others, include reference to the principle of non-discrimination.
14. Other more specific anti-discrimination treaties and conventions ratified by Armenia also include United Nation (UN) Convention on the Elimination of All Forms of Racial Discrimination⁶ (hereinafter “CERD), the UN Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter “CEDAW”)⁷, and the UN Convention on the Rights of Persons with Disabilities⁸ (hereinafter “CRPD), the Convention on the Rights of the Child⁹ (hereinafter “CRC”, Article 2).
15. At the Council of Europe level, the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁰ (ECHR), in its Article 14, and its Protocol 12 provides for a general prohibition of discrimination.¹¹ The Revised European Social Charter¹² (RESC) and the Framework Convention for the Protection of National Minorities¹³ (hereinafter “Framework Convention”, Article 4), as well as the Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter “Istanbul Convention”)¹⁴ also prohibit discrimination.
16. Both Article 26 of the ICCPR and Article 14 of the ECHR protect individuals from discrimination based on an extensive and non-exhaustive range of grounds.¹⁵ The UN

³ *Universal Declaration of Human Rights*, adopted by UN General Assembly Resolution 217 A (III) on 10 December 1948.

⁴ *UN International Covenant on Civil and Political Rights*, adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966. The Republic of Armenia acceded to the ICCPR on 23 June 1993.

⁵ *UN International Covenant on Economic, Social and Cultural Rights*, adopted by UN General Assembly Resolution 2200A (XXI) on 16 December 1966. The Republic of Armenia acceded to the ICESCR on 13 September 1993.

⁶ *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted by the General Assembly of the United Nations in resolution 2106 (XX) of 21 December 1965 and signed on 7 March 1966. The Republic of Armenia acceded to CERD on 23 June 1993.

⁷ *Convention on the Elimination of All Forms of Discrimination against Women*, adopted by resolution 34/180 of the General Assembly at its thirty-fourth session, 18 December 1979. The Republic of Armenia acceded to this Convention on 13 September 1993.

⁸ *Convention on the Rights of Persons with Disabilities*, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. The Republic of Armenia ratified the CRPD on 22 September 2010.

⁹ *UN Convention on the Rights of the Child*, adopted by UN General Assembly Resolution 44/25 of 20 November 1989. The Republic of Armenia acceded to the CRC on 23 June 1993.

¹⁰ *The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms*, signed on 4 November 1950, entered into force on 3 September 1953. The Republic of Armenia ratified the ECHR on 26 April 2002.

¹¹ Protocol No. 12 was ratified by the Republic of Armenia on 17 December 2004.

¹² Council of Europe, *European Social Charter*, Part V, Article E, adopted on 3 May 1996. The Republic of Armenia ratified the European Social Charter on 21 January 2004.

¹³ Council of Europe, *Framework Convention for the Protection of National Minorities*, adopted on 1 February 1995. The Republic of Armenia ratified the Framework Convention on 20 July 1998.

¹⁴ CETS No. 210 entered into force on 1 August 2014. The Republic of Armenia has not yet ratified the Istanbul Convention but has signed it on 18 January 2018.

¹⁵ Article 26 states that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status”. See also ICCPR, Article 2 par 1 as a general non-discrimination clause, Art. 3 on equal enjoyment of rights to men and women; Article 23 par 4 regarding non-discrimination of spouses in marriage and its dissolution and Article 24 regarding the rights of the child. Similarly, Article 14 of the ECHR foresees that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

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Human Rights Committee has defined discrimination as implying “any distinction, exclusion, restriction or preference” based on the grounds enumerated in Article 26, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of all persons, on an equal footing, of all rights and freedoms.¹⁶ The overall concept behind the anti-discrimination provisions in both the ICCPR and the ECHR is to prevent any difference in treatment of persons in a relevantly similar or analogous (comparable) situation that is not based on “objective and reasonable” grounds;¹⁷ in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

17. At the OSCE level, key commitments, including from the very origins of the OSCE in the Helsinki Final Act, relate to non-discrimination, prevention and protection against discrimination. Specifically, OSCE participating States committed to “respect human rights and fundamental freedoms (...) for all without distinction as to race, sex, language or religion”,¹⁸ “color [...], political or other opinion, national or social origin, property, birth or other status”, and agreed “that no individual exercising, expressing the intention to exercise or seeking to exercise these rights and freedoms or any member of his family, will as a consequence be discriminated against in any manner”,¹⁹ while committing to ensure “equal protection of the law” and “equal and effective protection against discrimination on any ground”.²⁰
18. The Vienna Document also stresses that all OSCE participating States commit to ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²¹
19. Under European Union law, which even though not binding on Armenian decision-makers, may nonetheless serve as useful guidance, the Charter of Fundamental Rights of the European Union prohibits discrimination. In addition, numerous directives have reflected EU countries’ commitment to protecting equal treatment of all persons, in particular the “Employment Equality Directive” (Council Directive 2000/78/EC)²², as

¹⁶ See the UN Human Rights Committee’s [General Comment No. 18 on Non-Discrimination](#), adopted at its thirty-seventh session on 10 November 1989, par 7. See similar definitions of specific forms of discrimination in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

¹⁷ See the UN Human Rights Committee’s [General Comment No. 18 on Non-Discrimination](#), par 13, and its admissibility decision in the case of [Balani v. Spain, Communication No. 1021/2001](#), of 28 March 2003, par 4.3. See also, instead of others, the recent European Court for Human Rights (ECtHR) judgment in the case of [Carson and Others v. the United Kingdom](#) (Application no. 42184/05, judgment of 16 March 2010), par 61, [Konstantin Markin v. Russia](#) [GC] (Application no. 30078/06, judgment of 22 March 2012), par 125; [X and Others v. Austria](#) [GC] (Application no. 19010/07, judgment of 19 February 2013), par 98; and [Khamtokhu and Aksenchik v. Russia](#) [GC] (Application nos. 60367/08 and 961/11, judgment of 24 January 2017), par 64.

¹⁸ Conference on Security and Co-operation in Europe, Final Act, Questions Relating to Security in Europe: 1(a) [“Declaration on Principles Guiding Relations between Participating States – Principle VII”](#), Helsinki, 1975.

¹⁹ [OSCE Concluding Document of Vienna – Third Follow-up Meeting](#), Questions Relating to Security in Europe: Principles, Vienna, 1989, pars 13.7 and 13.8.

²⁰ 1990 Copenhagen Document, par 5.9; see also 1990 Copenhagen Document, pars 25.3 and 25.4: “measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation” and “will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority”; and [OSCE Decision no. 10/05 Tolerance and Non-discrimination: Promoting Mutual Respect and Understanding](#), MC.DEC/10/05, adopted at the Ministerial Council in Ljubljana, 6 December 2005, pars 4, 5 and 5.1.

²¹ See *op. cit.* footnote 19 par 13.8 (Vienna 1989). The [Ministerial Council Decision 4/03 on Tolerance and Non-Discrimination](#) of 2 December 2003 reaffirmed the Ministerial Council’s concern about discrimination in all participating States and the [Permanent Council Decision no. 621 of 29 July 2004 on Tolerance and the Fights against Racism, Xenophobia and Discrimination](#) committed participating States to consider enacting, or strengthening, as appropriate, legislation prohibiting discrimination.

²² See the [Council Directive 2000/78/EC of 27 November 2000](#) establishing a general framework for equal treatment in employment and occupation, hereinafter “the Employment Equality Directive” or “Council Directive 2000/78/EC”.

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well as directives specifically protecting equal treatment of men and women²³ and equal treatment irrespective of ethnic or racial origin²⁴ (Council Directive 2000/43/EC, hereinafter also referred to as “the Racial Equality Directive”). The EU directives include clear and specific definitions of direct and indirect discrimination, as well as remedy and enforcement provisions and requirements for anti-discrimination/equality bodies. These bodies focus on the promotion of equal treatment and on the protection from discrimination.

20. The Draft Law does not intend to establish a separate equality body, but rather aims to create an advisory Equality Council within the Human Rights Defender’s Office, which is a national human rights institution. The ensuing recommendations will thus also make reference, as appropriate, to the [*United Nations Principles relating to the status of national institutions for the promotion and protection of human rights*](#) (or Paris Principles),²⁵ which set minimum standards for national human rights institutions.²⁶ In addition, 1990 Copenhagen Document, OSCE participating States have committed to “facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law.”²⁷

2. Aim of the Draft Law and the Scope of its Application

21. The title and other provisions of the Draft Law (such as Article 1, par 1) suggest that its overall aim is to ensure “equality before the law”. Traditionally, this concept is understood as the duty of public authorities to ensure equal application of the law,²⁸ meaning that anybody who appears in front of public officials/bodies has to be treated equally.
22. It should be noted in this context that UN conventions and treaties dealing specifically with discrimination, like CERD and CEDAW, do not use in their titles the phrase “equality before the law”, but rather the term “elimination of discrimination”. Article 26 of the ICCPR mentions both the concepts of equality before the law and the obligation of states to prohibit discrimination, thus suggesting that these are two distinct concepts.²⁹ As for the EU directives, they refer to the notion of “equal treatment” or “equal opportunities”.³⁰ All these elements support the view that the term “equality before the law” is too restrictive to describe the object and purpose of the present Draft Law, which

²³ [*Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006*](#) on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; and Council Directive 2004/113/EC of 13 December 2004 on the principle of equal treatment between men and women in the access to and supply of goods and services.

²⁴ See [*Council Directive 2000/43/EC of 29 June 2000*](#) implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.

²⁵ The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

²⁶ The recommendations are also based on the [*General Observations issued by the Sub-Committee on Accreditation*](#) and adopted by the Bureau of the Global Alliance of National Human Rights Institutions (GANHRI), as last amended in February 2018, which serve as interpretive tools of the Paris Principles.

²⁷ See par 27 of the *OSCE Copenhagen Document* (1990).

²⁸ See D. Alland and S. Rials (eds), *Dictionnaire de la culture juridique*, Paris, P.U.F., 2003, pp. 585-586. See e.g. Article 29 of the Lithuanian Constitution provides: “All persons shall be equal before the law, the court, and other State Institutions and officials”. The Constitutional Court of Lithuania has stressed that this provision means that the principle of the equality of all persons must be observed while passing and applying laws, as well as administering justice (Rulings of 30 January 2004, 3 December 2003, etc.).

²⁹ “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

³⁰ [*Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*](#) (hereinafter Directive 2000/43); [*Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*](#) (hereinafter Directive 2000/78); [*Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services*](#) (hereinafter Directive 2004/113).

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deals with preventing and combating discrimination at all levels of society and in all spheres of life. For this reason, and in order to avoid any misinterpretations, it may be advisable to revisit and reformulate the title of the Draft Law, so that it matches the Draft Law's overall aim.

23. The scope of the Draft Law is set out in Article 3, which specifies that discrimination shall be prohibited in “political, economic, social, cultural and other areas of public life”. Here, the phrase “public life” could imply that the scope of the Draft Law covers only public life, not private life. Although it is true that Article 1 par 1 of CERD also refers to “public life”, in more recent UN conventions relating to discrimination, this expression is no longer used.³¹ Both CEDAW and CRPD use the terms “the political, economic, social, cultural, civil or any other field” (Article 1 CEDAW and Article 2 CRPD) instead of “other areas of public life”. The European Commission against Racism and Intolerance (ECRI), in its General Policy Recommendation No. 7, uses yet another formulation. It states that the law should provide that the prohibition of discrimination applies “both in the public and in the private sectors, in all areas” (par 7).³² The phrasing used in ICCPR, CEDAW, CRPD or in ECRI General Policy Recommendation appears to be comprehensive and more adequate for the purposes of describing the scope of application of the prohibited discriminatory treatment.
24. Moreover, there seems to be no reasonable justification to limit the prohibition of discrimination to “public life” only. This also does not appear to be the intention of the competent lawmaking authorities, as Article 6 (outlining, among others, legal entities and individual entrepreneurs as “subjects ensuring equality”) and other provisions indicate that the scope of the law is wider and covers both public and private spheres. Preferably, a general clause of prohibition of discrimination should therefore be introduced. The wording of Article 26 of the ICCPR could be of help here, stating that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination [...]”.
25. **In order to reflect adequately the purpose and the scope of the Draft Law, which in practice extends its application to the private sector, it is suggested to revisit the title of the Draft Law to make it clear that the latter guarantees equal treatment and equal opportunities to every individual without discrimination. It is further recommended that Article 3 par 1 should refer to both “public and private sectors” when defining the scope of application of the prohibition of discrimination.**
26. Chapter 2 of the Draft Law indicates three separate fields where discrimination is prohibited: in working relations (Article 9), while supplying publicly available products and services (Article 10) and in economic activities (Article 11). These Articles provide different degrees of precision and have varying scopes.
27. Article 9 appears to follow ILO 1958 Convention (No. 111) concerning Discrimination in respect of Employment and Occupation. Paragraph 2 of said Article lists specific aspects of “working relations” where discrimination is prohibited (such as job announcements, competition, probation and training, working conditions, salaries, etc.). However, Articles 10 and 11 are drafted in more general terms, prohibiting discrimination in “legal relationships that are formed in promotion of goods and services” (in areas such as public services, public medical care, social security, banking and

³¹ It should be noted that the term has been interpreted broadly by the Committee on the Elimination of Racial Discrimination. See P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination. A commentary*, Oxford, Oxford University Press, 2016, pp. 130-131.

³² European Commission against Racism and Intolerance (ECRI), [General Policy Recommendation No.7 on National legislation to combat racism and racial discrimination](#), par 7, adopted in 2002 (as amended in 2017).

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financial services, transport services, education and science, and media) and in economic activities (including registration, taxation, suspension, termination and liquidation of a business). Article 10 par 2 also seems to suggest that the prohibition of discrimination applies only “to legal relationships”, while no such wording can be found in Articles 9 and 11.

28. Article 9 par 1 also indicates that any difference in treatment is prohibited if it happens “without objective reason”. This element does not coincide with other justification standards in the Draft Law, such as Article 3 par 3, and should thus be deleted (see par 44).
29. In addition, Article 9 par 3 states that differential treatment of certain persons is not discrimination if it stems from “inherent occupational requirements”. The latest version of the Draft Law mentions, in this same paragraph, that the respective requirement shall follow a legitimate aim and be necessary to carry out the occupation. While this addition is welcome, it is noted that the reference to the proportionality of the requirement to the intended aim has been removed from the current wording of Article 9 par 3. **It is recommended to re-introduce the proportionality aspect here, so that citing occupational requirements to justify differential treatment will only be permissible if this follows a legitimate aim and is necessary and proportionate under the given circumstances.**³³
30. Sub-paragraph 1, par 2 of Article 10 prohibits discrimination in “public services” in general, thus suggesting that sub-paragraphs 2-10 may be relevant to private providers of services. However, this does not seem to be the case as these paragraphs include public medical care, social security, and other areas where the state may also offer public services.
31. From the text of the Draft Law, the relationship or difference between Articles 10 and 11 is also not sufficiently clear. According to sub-paragraph 2, par 1 of Article 11, discrimination is prohibited in tax and credit policy, while sub-paragraph 4, par 2 of Article 10 prohibits discrimination in banking and financial services, insurance and grants. Similar overlaps can be seen in sub-paragraphs 1 and 3 of par 1 of Article 11 (registration, licensing, inspections and supervisions) and 1, par 2 of Article 10. Here, particularly the difference between the registration of a legal person or individual, which constitutes “public service”, and the public services as defined under sub-paragraph 1, par 2 of Article 10 is not clear.
32. Some of the provisions and terms in the Draft Law are also quite vague. For instance, Article 10 refers to “publicly available products and services” and to “legal relationships” in “promoting goods and services”.³⁴ Such general terms may be quite problematic in relation to the principle of legality, which also requires foreseeability of the law, especially in the context of Article 3 par 2, which opens the possibility of different types of liability for violating the requirements of this Draft Law.
33. Furthermore, the reason for providing such selective and exhaustive lists of areas in which discrimination is prohibited pursuant to Articles 10 and 11 of the Draft Law is also not clear. **Such practice may exclude other areas not listed in these Articles from the**

³³ See also ECtHR and the EU Fundamental Rights Agency : Handbook on European non-discrimination law, 2018 edition, pp. 97-100, with examples of case law of the European Court of Justice.

³⁴ EU directives 2000/43/EC talks in this regard about “access to and supply of goods and services which are available to the public, including housing”. In addition, EU directive 2004/113/EC gives the following precisions about this concept: “(...) this Directive shall apply to all persons who provide goods and services, which are available to the public irrespective of the person concerned as regards both the public and private sectors, including public bodies, and which are offered outside the area of private and family life and the transactions carried out in this context.”

scope of the Draft Law; it is thus recommended to revise these provisions by clarifying that the provided lists are merely non-exhaustive examples of areas in which discrimination is prohibited. It is also recommended to clarify the scope of the Articles 10 and 11, as well as the meanings of certain terms, such as “legal relationships” in “promoting goods and services,” as well as “publicly available products and services.”

3. Permissible Differentiation

34. Articles 3 and 4 are the central provisions of the Draft Law and create standards for permissible differentiation, while introducing various definitions of discrimination and criteria for evaluation of the differential treatment. Article 3 par 3 establishes a general justification clause for differential treatments and provides that if certain conditions are met – existence of a legitimate aim, necessity in a democratic society and proportionality and appropriateness of means – a difference of treatment will not be considered as discrimination.³⁵
35. Article 4 defines discrimination and its types and introduces the legitimacy, necessity and proportionality test as an integral part of the definition of discrimination itself.³⁶ Recent changes to this provision of the Draft Act have rendered this test somewhat unclear – whereas the formulation in Article 3 par 3 has remained unchanged, Article 4 par 1 now describes the legitimacy, necessity and proportionality test as “reasonable proportionality between the legitimate aim pursued, its necessity and purpose in a democratic society”. This could create confusion as to the different elements of the above-mentioned test, by implying that the legitimate aim (rather than a particular measure) needs to be necessary and have a particular purpose.
36. Moreover, the criteria justifying differences in treatment provided in Article 4, par 1 are not identical to the criteria listed in Article 3, par 3. To simplify Article 4 and reduce inconsistencies (especially as Article 3 par 3 already contains a justification standard), the authors of the Draft Law may consider removing the legitimacy, necessity and proportionality test from this provision, as was done in certain definitions listed under Article 5 (see next paragraph). A separate provision should be created that would then serve as the justification standard for the entire Draft Law.
37. Additionally, in numerous provisions, the Draft Law is inconsistent in its use of terminology, defining differently treatments constituting *prima facie* discrimination. It is welcome that the definitions of indirect discrimination and segregation (Article 5 par 1, sub-paragraphs 3 and 7) have now been simplified, and no longer make reference to legitimacy, necessity and proportionality as exceptions to discrimination. However, the definition of direct discrimination (Article 5 par 1, sub-paragraph 3) is still quite different from the definition of discrimination under Article 4 par 1.
38. The UN Human Rights Committee states that differentiation of treatment will not constitute discrimination under Article 26 of the ICCPR “if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which

³⁵ It is not quite clear whether there is a substantial difference between proportionality and appropriateness and if both classifications are focussed on the interrelation of the legitimate aim on the one hand and that of the differentiation on the other hand.

³⁶ Article 4 par 1: “Discrimination is an action, inactivity, regulation or policy that has been manifested by differentiation, exclusion, limitation of or preference towards person’s rights and freedoms, *without a reasonable proportionality between the legitimate aim pursued, its necessity and purpose in a democratic society and the means employed* based on one’s sex, race, colour of skin, ethnic and social origin, genetic features, language, religion, worldview, political or other views, belonging to national minority, property status, birth, disability, age or other personal or social circumstances, actual or perceived.”

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is legitimate under the Covenant.”³⁷ According to the case law of the European Court of Human Rights (hereinafter “ECtHR”), a distinction of treatment in the enjoyment of a right does not violate Article 14 ECHR if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised.³⁸ Moreover, the Contracting State enjoys a margin of appreciation³⁹ in assessing whether and to what extent differences in otherwise similar situations justify a different treatment.⁴⁰ However, where certain discrimination grounds are at stake, in particular race or ethnicity, gender, sexual orientation and disability, the state’s margin of appreciation is restricted.

39. More specifically, the ECtHR has found that “where a difference in treatment is based on race or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible.”⁴¹ It has further noted that “[r]acial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction.”⁴² In the same vein, the Court has stated that “the advancement of gender equality is today a major goal in the Member States of the Council of Europe” and that “very weighty reasons” would have to be put forward before a difference of treatment based on sex “could be regarded as compatible with the Convention.”⁴³
40. Similarly, the ECtHR has established that “very weighty reasons” would have to be put forward to justify a difference of treatment based exclusively on nationality,⁴⁴ sexual orientation⁴⁵ and disability.⁴⁶
41. Under EU Law, the level of scrutiny and tests applied differ for evaluating cases of direct or indirect discrimination. Certain discrimination grounds have also been recognized as necessitating an especially high level of protection. This is particular true with respect to the case of gender, race, ethnic and national origin.
42. EU Law states that indirect difference of treatment shall not be considered as discrimination if the concerned provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.⁴⁷ For direct differences of treatment, by contrast, justifications accepted vary depending on the ground and the field concerned.⁴⁸
43. With respect to the Draft Law, it is not clear whether there is a legislative intention to differentiate between direct or indirect discrimination, and to then establish different

³⁷ UN HRC, *General Comment No. 18 on Non-Discrimination*, par 13.

³⁸ See e.g., ECtHR, *Vallianatos v Greece [GC]* (Application nos. 29381/09 and 32684/09, judgment of 7 November 2013), par 76 and *Burden v. the United Kingdom [GC]* (Application no. 13378/05, judgment of 29 April 2008), par 60.

³⁹ *Margin of appreciation* doctrine as developed by the ECtHR, see cases of the ECtHR, *Paksas v. Lithuania [GC]* (Application no. 34932/04, judgment of 6 January 2011), concerning the right to vote and stand for elections, par 96; *Vallianatos v. Greece [GC]* (Application nos. 29381/09 and 32684/09, judgment of 7 November 2013), concerning discriminatory regulation of the partnership agreements for the same-sex and different-sex couples, par 76, etc.

⁴⁰ See cases of ECtHR, *Burden v. the United Kingdom [GC]* (Application no. 13378/05, judgment of 29 April 2008), par 60; *Schalk and Kopf v. Austria* (Application no. 30141/04, judgment of 24 June 2010), par 96; and *X and Others v. Austria [GC]* (Application no. 19010/07, judgment of 19 February 2013), par 98, etc.

⁴¹ See e.g. ECtHR, *Sejdic and Finci v Bosnia and Herzegovina* (Application nos. 27996/06 and 34836/06, judgment of 22 December 2009).

⁴² ECtHR, *Timishev v. Russia* (Application nos. 55762/00 and 55974/00, judgment of 13 December 2005), par 56.

⁴³ ECtHR, *Emel Boyraz v. Turkey* (Application no. 61960/08, judgment of 2 December 2014), par 51.

⁴⁴ See e.g. ECtHR, *Gaygusuz v. Austria* (Application nos. 17371/90, judgment of 16 September 1996), par 42.

⁴⁵ See e.g. ECtHR, *E.B. v. France [GC]* (Application no. 43546/02, judgment of 22 January 2008), par 91.

⁴⁶ See e.g. ECtHR, *Glor v. Switzerland* (Application no. 13444/04, judgment of 30 April 2009), par 84 (physical disability) and ECtHR, *Alajos Kiss v. Hungary* (Application no. 38832/06, judgment of 20 May 2010), par 42 (mental disability). See also, for example, cases of ECtHR, *Karner v. Austria* (Application no. 40016/98, judgment of 24 July 2003), pars 37 and 42; and *X and Others v. Austria [GC]* (Application no. 19010/07, judgment of 19 February 2013), par 99.

⁴⁷ See e.g. Art. 2(b)(i) Directive 2000/78. See also Art. 2(b)(ii) of Directive 2000/78 which adds an additional clause of justification related to the obligation to adopt reasonable accommodation measure for persons with disabilities in the field of employment and occupation.

⁴⁸ Direct discrimination, as laid down in the Directives, occurs when one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of protected characteristics.

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legal tests (legal grounds) to determine whether a difference in treatment is justified in each of these two situations. When applying the provisions of this law, administrative and judicial bodies should be able to recognize the necessity of a higher level of protection, and therefore a stricter standard of justification for direct discrimination, and then also for certain cases, particularly those involving gender, race, ethnicity, nationality, disability and sexual orientation/sexual identity, among others.

44. **It is recommended to exclude the reference to a legitimacy, necessity and proportionality test from the definition of what constitutes *prima facie* discrimination under Article 4 par 1, and to provide a separate, coherent and comprehensive definition of this test in a stand-alone provision. This provision could preferably also indicate that a higher degree of scrutiny is required when direct discrimination based on certain grounds – like gender, race or ethnic origin, sexual orientation, and disability - is at stake,⁴⁹ as required by relevant European standards.**

4. Defining Discrimination and Prohibited Grounds

45. Article 4 contains essential provisions, which may determine the overall effect of this Draft Law, as it defines types and grounds of prohibited discrimination. Importantly, the Draft Law explicitly also prohibits discrimination based on a perceived characteristic (last word of Article 4 par 1) and discrimination by association (Article 4 par 2), and is similarly sensitive to discrimination on the basis of genetic features, disability, etc. Moreover, it includes reference to “other personal or social circumstances”, which, echoing the principle behind Protocol 12 to the ECHR, greatly expands the scope of the prohibition of discrimination. This is all in line with the international evolution of antidiscrimination legislation, which has recognized these particular forms of discrimination. All of the above constitute positive elements of the Draft Law.
46. Article 4 par 1 defines discrimination as any action, inactivity, regulation, treatment or policy that has been manifested by differentiation, exclusion, limitation of or preference “towards person’s rights and freedoms.” This definition would benefit from some clarification and revision.
47. The UN Human Rights Committee’s General Comment No. 18 defines discrimination as “any distinction, exclusion, restriction or preference” based on the list of protected grounds cited in Article 26, which has the purpose or effect of nullifying, or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.⁵⁰ International treaties, such as CERD, CEDAW and CRPD, contain similar definitions. The EU Equality Directives, on the other hand refer to situations “where one person is treated less favorably than another is, has been or would be in a comparable situation”.⁵¹
48. Furthermore, it is important to make clear that a decision, policy or practice does not need to be intentionally discriminatory to constitute discrimination: a measure may

⁴⁹ The “[Declaration of Principles of Equality](#)” of the Equal Rights Trust aim to go into the same direction in demanding strictly defined criteria in the case of a direct discrimination, see Principle 5 par 5, 2nd sent. See also the case of the ECtHR of [D.H. and Others v. the Czech Republic](#) [GC] (Application no. 57325/00, judgment of 13 November 2007), par 208, where the Court stated: “In these circumstances and while recognising the efforts made by the Czech authorities to ensure that Roma children receive schooling, the Court is not satisfied that the difference in treatment between Roma children and non-Roma children was objectively and reasonably justified and that there existed a reasonable relationship of proportionality between the means used and the aim pursued”.

⁵⁰ UN HRC, [General Comment No. 18 on Non-Discrimination](#), par 7.

⁵¹ Article 2 in both EU Equality Directives.

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amount to discrimination if it has the effect of generating discrimination, regardless of the intention of the person who adopted this measure.

49. While States do not need to adopt exactly the same definition as the one provided by international treaties, it should be broad enough to encompass all the components as envisaged by various instruments. **It is therefore recommended to review Article 4 par 1, with this consideration, clarifying the above definitions to avoid in law and practice possible contradictions with violations international norms.**
50. It should also be acknowledged that neither this Draft Law, nor the provisions of international treaties and conventions provide for an exhaustive list of protected grounds based on which discrimination is prohibited. However, certain grounds, which have been recognized internationally as particularly likely to give rise to discrimination, are absent from this list.
51. In the context, it is noted that a person's health status has been recognized as a protected ground.⁵² in the case of Armenia, ECRI specifically recommends including sexual orientation, gender identity, national origin and nationality (understood as citizenship) among the prohibited grounds of discrimination.⁵³ Moreover, sexual orientation is recognized as a prohibited discrimination ground in EU law.⁵⁴
52. The ECtHR has acknowledged in its case law that the protection against discrimination afforded by Article 14 ECHR extends to the grounds of nationality, sexual orientation and gender identity, although they are not expressly mentioned in this provision.⁵⁵ The grounds of nationality and sexual orientation have been recognized by the ECtHR, moreover, as calling for a high level of protection.⁵⁶ Finally, the UN High Commissioner for Human Rights,⁵⁷ the Parliamentary Assembly of the Council of Europe,⁵⁸ and the Council of Europe Commissioner for Human Rights⁵⁹ have all called upon states to ensure that anti-discrimination legislation includes gender identity among the prohibited grounds.⁶⁰ With regard to the situation of LGBTI persons in Armenia, the Council of Europe Commissioner for Human Rights in her 3rd quarterly activity report of 2018 explicitly urged the government of Armenia "to take a firm stance in combating incidents of hate speech and hate crime against LGBT persons".⁶¹
53. National origin features among the prohibited criteria as provided in Article 14 of the ECHR, Article 2(1) of the ICCPR and ICESCR, as well as Article 1(1) of the CERD. As per Article 2 (a) of the Council of Europe's Convention on Nationality (adopted in 1997), "nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin". Also, the inclusion of this protected ground seems to reflect

⁵² UN Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20, 2009, par. 33.

⁵³ [ECRI Report on Armenia \(fifth monitoring cycle\)](#), adopted on 28 June 2016, CRI(2016)37, par 10.

⁵⁴ See Article 1 of Directive 2000/78.

⁵⁵ On nationality, see ECtHR, [Gaygusuz v. Austria](#) (Application no. 17371/90, judgment of 16 September 1996), par 41 ; on sexual orientation, ECtHR, [Gaygusuz v. Austria](#) [GC] (Application no. 43546/02, judgment of 22 January 2008), par 91; on gender identity, see ECtHR, [Identoba and others v. Georgia](#) (Application no. 73235/12, judgment of 12 May 2015), par 96.

⁵⁶ On nationality, see *ibid.* par 41 (ECtHR, [Gaygusuz v. Austria](#), 16 September 1996); on sexual orientation, see *ibid.* par 91 (ECtHR GC, [Gaygusuz v. Austria](#), 22 January 2008).

⁵⁷ United Nations High Commissioner for Human Rights, [Discrimination and violence against individuals based on their sexual orientation and gender identity](#) (4 May 2015) UN Doc No. A/HRC/29/23, par 79(c).

⁵⁸ Parliamentary Assembly of the Council of Europe, [Promoting the human rights of and eliminating discrimination against intersex people](#), Resolution 2191 (2017).

⁵⁹ Commissioner for Human Rights of the Council of Europe, [Human Rights and Gender Identity](#) (29 July 2009) CommDH/IssuePaper (2009), p. 18.

⁶⁰ On this issue, see more generally, M. Van den Brink and P. Dunne, [Trans and intersex equality rights in Europe. A Comparative Analysis](#), European network of legal experts in gender equality and non-discrimination, European Commission, DG Justice and Consumers, Nov. 2018.

⁶¹ Council of Europe, [3rd Quarterly Activity Report 2018](#), Dunja Mijatović, Commissioner for Human Rights (1 July to 30 September 2018).

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the broad approach adopted by ECRI, which defines “racial discrimination” by including the ground of nationality.

54. Despite the non-exhaustive nature of the grounds set out in the Draft Law, explicitly mentioning the above features sends out the message that discrimination on the basis of such characteristics is unacceptable and that these types of discrimination will be punished. For example, when it comes to discrimination on the basis of sexual orientation, drawing from the experience of EU member states, it is generally acknowledged that explicitly sanctioning this form of discrimination has had positive effects.⁶²
55. **Taking into account international standards, best practices, and relevant case law,⁶³ it is recommended to amend the Draft Law to list other grounds for prohibited treatment covering the most vulnerable groups, by specifically referring to sexual orientation,⁶⁴ gender identity,⁶⁵ as well as mentioning explicitly national origin and nationality and health status in the list of prohibited grounds.**
56. Finally, it is reiterated that Article 4 par 2 also mentions “associative discrimination” as a type of discrimination, which is welcome. Article 5 par 9 states that this is discrimination against a person who does not bear any protected characteristics, but is connected by kinship, marriage “or has any other links” with persons or groups bearing said characteristics. The term “any other links” may, however, be somewhat broad, and should be clarified.

5. Criminal, Civil and Administrative Liability

57. Article 3 par 2 of the Draft Law stipulates that persons committing discrimination are “subject to disciplinary, civil and/or criminal liability.” Even assuming that disciplinary sanctions would fall under administrative law, it is nevertheless surprising that “administrative liability”, which covers but is not limited to disciplinary regulations, has been omitted from the Draft Law. **It is recommended to also refer to “administrative liability” in Article 3, par 2.**
58. Furthermore, to fulfil the requirement of legality and foreseeability, the legislator has a duty to indicate precisely and explicitly the actions which would lead to liability,

⁶² See the [Report on Harassment](#) related to Sex and Sexual Harassment Law, in 33 European Countries prepared by the Members of the European Network of Legal Experts in the Field of Gender Equality (2012).

⁶³ See the cases of the ECtHR, [Schalk and Kopf v. Austria](#), [Vallianatos v. Greece](#) [GC]; [Taddeucci v. Italy](#), [Pajic v. Croatia](#), [Orlandi v. Italy](#) and many others.

⁶⁴ UN Committee on Economic, Social and Cultural Rights, [General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights \(Art. 2, par 2\)](#), UN Doc E/C.12/GC/20, 2009, par 32. The same goes for Article 26 of the ICCPR, see UN HRC, [Young v. Australia](#) (Communication No. 941/2000), UN Doc CCPR/C/78/D/941/2000 (2003). - The ECtHR has decided likewise, see for eg. [Smith and Grady v. the United Kingdom](#) (Application nos. 33985/96 and 33986/96, judgment of 27 September 1999); [Karner v. Austria](#) (Application no. 40016/98, judgment of 24 July 2003); [Bączkowski and Others v. Poland](#) (Application no. 1543/06, judgment of 3 May 2007); and [E.B. v. France](#) [GC] (Application no. 43546/02, judgment of 22 January 2008). See furthermore the [Explanatory Report of the Council of Europe](#) to the Protocol No. 12 to the ECHR, Rome, No. 20, explicitly referring to equality and sexual orientation and to the ECtHR’s case [Salgueiro da Silva Mouta v. Portugal](#) (Application no. 33290/96, judgment of 21 December 1999).

⁶⁵ Although Article 14 of the ECHR does not explicitly list ‘sexual orientation’ as a protected ground, the ECtHR has expressly stated that it is included among the ‘other’ grounds protected by Article 14 in a series of cases – see Footnote No. 2, p. 77. Committee on Economic, Social and Cultural Rights, [General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights \(Art. 2, par 2\)](#), UN Doc E/C.12/GC/20, 2009, par. 32; see furthermore ECtHR, [Goodwin v. the United Kingdom](#) [GC] (Application no. 28957/95, judgment of 11 July 2002); European Court of Justice, [P. v. S. and Cornwall County Council](#), Case C-13/94, (1996). See also the ECtHR case of [Vallianatos v. Greece](#) [GC] (Application nos. 29381/09 and 32684/09, judgment of 7 November 2013), par 77. Sexual orientation is a concept covered by Article 14. The Court has repeatedly held that, just like differences based on sex, differences based on sexual orientation require “particularly convincing and weighty reasons” by way of justification (see, for example, [Karner v. Austria](#), pars 37 and 42; [X and Others v. Austria](#) [GC], pars 99, etc.). Where a difference in treatment is based on sex or sexual orientation, the State’s *margin of appreciation is narrow* (see [Karner v. Austria](#), par 41, and [Kozak v. Poland](#) (Application no. 13102/02, judgment of 2 March 2010, par 92). Differences based solely on considerations of sexual orientation are unacceptable under the Convention (see [Salgueiro da Silva Mouta v. Portugal](#), par 36; [E.B. v. France](#) [GC], pars 93 and 96; and [X and Others v. Austria](#) [GC], par 99).

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particularly criminal liability. The application of punitive measures of a disciplinary nature would likewise require clearly defined legal provisions outlining unauthorized, prohibited behavior. Also, while Article 3 par 2 refers to different kinds of liability “as per the legislation of Armenia”, it does not specify which laws it is referring to.

59. It is also not clear what type of liability would be triggered for various discriminatory actions as defined by the provisions of the Draft Law and how they differ from or relate to crimes that are already punishable under the Armenian Criminal Code such as bias-motivated crimes, incitement to hatred or ethnic/racial violence. Moreover, it is not apparent in which cases discriminatory actions, as defined by this Draft Law, would satisfy the requirements of criminal law and trigger criminal liability.⁶⁶
60. **Therefore, it is recommended that specific Articles of the Draft Law include clear descriptions of prohibited actions and indicate which behaviour will lead to which types of liability and to which sanctions, or refer explicitly to other legal norms where such information is set out.**
61. Lastly, Article 5 par 1’s reference to Article 4 par 2 (speaking of types of discrimination) is most likely not correct, and should be replaced with a reference to Article 4 par 3, which speaks of temporary measures and reasonable accommodation as means to ensure equal rights, equal treatment and opportunities (i.e. cases where difference in treatment is permissible). Similar corrections should be made in Article 5 par 1 sub-paragraph 7 defining segregation, which also contains a reference to Article 4 par 2.

6. . Definition of Victimization

62. The definition of victimization as provided in Article 5 par 1, sub-paragraph 8 of the Draft Law appears to be over-restrictive. It refers to “[i]ntentional action or inaction, which has resulted in negative consequences for the person who filed an appeal or complaint to competent authorities or published a case of alleged discrimination for the protection of his or her rights in the frame of the present law”. The concept of victimization implies protection from any retaliatory measure that could be taken by an (private or public) person or entity accused of discrimination in reaction to a complaint. The definition included in the Draft Law, however, only protects persons who filed an appeal, complained to competent authorities or published a case of alleged discrimination. There are two problems with this definition:
 - A person may face retaliatory measures after reporting alleged discrimination before a private entity, like an NGO or an internal complaint mechanism within an enterprise. The words “competent authorities”, used in the current definition, are too restrictive: they suggest that only persons who have lodged a complaint before a public institution are protected (unless the case is published).
 - Reprisal measures can also target other persons than those lodging a complaint or publishing a case, for instance persons who helped the alleged victim with their

⁶⁶ See ECtHR, *Koprivnikar v. Slovenia* (Application no. 67503/13, judgment of 24 January 2017), par 46, where the Court stated that “Article 7 of the Convention [...] also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty. While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that criminal law must not be extensively construed to an accused’s detriment, for instance by analogy”. It has also stated that “[...] offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual can know from the wording of the relevant provision, if need be with the assistance of the courts’ interpretation of it and after taking appropriate legal advice, what acts and omissions will make him or her criminally liable and what penalty he or she faces on that account” (par 47). See also ECtHR, *Kafkaris v. Cyprus* [GC] (Application no. 21906/04, 23 February 2008), par 140.

claim by providing support or evidence (e.g. testimony) that there has been discrimination.

63. ECRI General Policy Recommendation No. 7 states that “[t]he law should provide protection against any retaliatory measures for persons claiming to be victims of racial offences or racial discrimination, persons reporting such acts or persons providing evidence.”⁶⁷ In the same vein, EU directives on equality and non-discrimination require member states to introduce into their national legal systems measures to protect individuals from “any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.”⁶⁸ The directives thus extend the protection against victimization to anyone treated in an unfavourable manner following such complaint or proceedings.
64. **It is thus recommended to amend the definition of victimization to extend protection to all persons susceptible of being the victim of adverse treatment or adverse consequence as a reaction to a complaint (before any relevant organization) or to proceedings relating to discrimination, regardless of whether their case is published or not.**

7. Definition of Reasonable Accommodation and Temporary Special Measures

65. Article 2 of the CRPD, to which Armenia is party, explicitly describes “denial of reasonable accommodation” as a form of disability-based discrimination that ought to be prohibited.⁶⁹ Article 5 par 3 of the CRPD, moreover, provides that “in order to promote equality and eliminate discrimination, State Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.” Article 4 par 2 of the Draft Law lists the “failure to provide reasonable accommodation to persons with disabilities” as a type of discrimination.
66. “[R]easonable accommodation” is also mentioned in Article 4 par 3 of the Draft and seems to authorize “reasonable accommodation” in the context of “temporary special measures” “to ensure equal treatment, equal rights and opportunities” in accordance with the national legislation. In this context, while the definition of “temporary special measures” in Article 5 is welcome, **this provision should clearly state that such measures shall end as soon as the “actually existing” inequality mentioned in Article 5 par 10 no longer exists.**
67. Further, Article 5, which generally defines all relevant terms set out in the Draft Law, does not contain a definition of ‘reasonable accommodation’. Also, Article 4 par 3 does not clarify which “national legislation” it is referring to. The CRPD, as seen above (par 68), sees the denial of reasonable accommodation as a form of discrimination and requires states to take steps to ensure that reasonable accommodation is provided where needed. The term “reasonable accommodation” implies necessary and appropriate modifications and adjustments in a particular case that do not impose a disproportionate or undue burden on the state, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms

⁶⁷ See par 27, *ECRI General Policy Recommendation No. 7*, adopted 2002 (as amended in 2017) (hereinafter “ECRI Recommendation No. 7”).

⁶⁸ See e.g. Article 9 of *Directive 2000/43* and Article 11 of *Directive 2000/78*.

⁶⁹ According to Article 2, “[d]iscrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”

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(Article 2 of CRPD). Article 5 of EU Directive 2000/78 – which only concerns the field of employment – could also be of relevance here.⁷⁰

68. **In order to fulfil the State’s obligations under the CRPD, the legislator should include a definition of “reasonable accommodation to a person with a disability” under Article 5 that is in line with the definition set out in the CRPD, or else refer to relevant other legislation where such definition may be found.**

8. *Legal and Judicial Protection against Discrimination*

69. The legal and judicial protection against discrimination provided for in Article 7 needs to be strengthened in several respects. Four points are discussed below: the persons or entities entitled to bring cases and the availability of conciliation procedures (a); the respective bodies responsible for dealing with such complaints (b) the protection against victimization (i.e. retaliatory measures) (c); and the sanctions applicable in case of infringement of the law (d).

a. Legal support, Conciliation procedures

70. Article 7 par 1 entitles a person who believes to have been the victim of discrimination to bring a case before courts or other competent entities. The experience in many countries shows that in practice, a majority of victims of discrimination do not bring any complaints. The main reasons for this are a lack of knowledge about remedies, the cost of proceedings, and the weaker position that victims often find themselves in compared to the perpetrator. Accordingly, it is important to empower institutions, especially equality bodies, as well as non-governmental organizations to support individual victims in initiating proceedings or lodging a complaint in case of discrimination.
71. EU directives on equality and non-discrimination contain a provision requiring states to ensure that associations, organisations or other legal entities, which have a legitimate interest in combating discrimination, may engage, on behalf or in support of the complainant, in judicial and/or administrative procedures provided for the enforcement of antidiscrimination norms.⁷¹ Similarly, ECRI General Policy Recommendation No. 7 states that “organisations such as associations, trade unions and other legal entities which have [...] a legitimate interest in combating racism and racial discrimination” should be “entitled to bring civil cases, intervene in administrative cases or make criminal complaints even if a specific victim is not referred to.” It adds that “if a specific victim is referred to, it should be necessary for that victim’s consent to be obtained.”
72. ECRI General Policy Recommendation No. 2, moreover, lays down that the competent equality body should have, among its competences, that of representing, with their consent, people exposed to discrimination before institutions, adjudicatory bodies and the courts as well as that of bringing cases of individual and structural discrimination in its own name (par 14, c) and d)). A large number of EU countries have empowered their equality bodies to bring cases to courts.⁷²

⁷⁰ [EU Directive 2000/78](#) lays down an obligation for (public or private) employers to “take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training unless such measures would impose a disproportionate burden on the employer (...)” (Article 5).

⁷¹ See e.g. Article 7(2) of [Directive 2000/43](#). See also the precisions brought by the European Court of Justice in this regard in C-54/07, 10 July 2008, [Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn](#).

⁷² See EU Network of Legal Experts in Gender Equality and Discrimination, [A comparative analysis of non-discrimination law in Europe](#), European Commission, DG Justice and Consumers, 2017.

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73. According to ECRI General Policy Recommendation No. 7, easily accessible conciliation procedures should also be available to victims of discrimination.⁷³ ECRI General Policy Recommendation No. 2, in particular, recommends empowering the equality body to promote conciliation procedures where appropriate (par 14). Apart from that, EU directives also encourage member states to set up conciliation procedures for discrimination cases.⁷⁴ Such procedures can be useful in discrimination cases, and are quicker, less burdensome and less polarizing than judicial proceedings.
74. **It is recommended that the equality body, as well as non-governmental organisations that have a legitimate interest in a case, be entitled to bring cases on behalf or in support of a victim of discrimination. The Draft Law should also include a provision aimed at ensuring that conciliation procedures are available to persons who believe that they have been victims of discrimination. In addition, it is also recommended to assign these conciliation competences to the Human Rights Defender as the competent equality body.**

a. Complaints-handling Bodies

75. Article 7 par 1 states that anyone alleging to have been a victim of discrimination may take his/her case to court, to the Human Rights Defender or to a respective administrative body. This list of complaints-handling bodies does not reflect any sort of hierarchy of appeals bodies and may thus lead to confusion in that respect.
76. Moreover, this provision does not distinguish between the different proceedings that are taken before administrative bodies and courts, on the one hand, and the Human Rights Defender on the other. In this context, it should be noted that the Human Rights Defender may not accept any complaint that is already being reviewed by an administrative office (see Article 20 par 2 of the Constitutional Law on the Human Rights Defender). Similarly, Article 24 par 4 of the Constitutional Law on the Human Rights Defender specifies that the Human Rights Defender may not intervene in pending court proceedings.
77. **For this reason, it would be advisable to clarify Article 7 by establishing some sort of hierarchy of complaints, specifying which institution complainants should approach first, and where they should then take their appeal. Article 7 may go on to state that alternatively, such cases may be taken to the Human Rights Defender, within the parameters set by Articles 20 par 2 and 24 par 4 of the Constitutional Law on the Human Rights Defender.**
78. **Moreover, Article 7 should include some sort of reference indicating which courts would be competent to deal with such cases, following which procedure.**

b. Protection against Victimization

79. Article 7 par 2 of the Draft Law aims at protecting persons who have brought cases of discrimination before relevant bodies against retaliatory measures. Observations already made on the definition of victimization and the necessity to extend it along the lines indicated above (see pars 62-64) are also relevant here. In addition, Article 7 par 2 of the

⁷³ [ECRI General Policy Recommendation No. 7](#), par 10.

⁷⁴ See, for instance, Article 7(1) of [Directive 2000/43](#).

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Draft Law does not clearly indicate which remedies are available for persons who are the victims of such retaliatory measures. It is recommended to address this shortcoming.

c. Sanctions

80. Although Article 7 of the Draft Law recognizes the right to legal and judicial protection against discrimination, it remains vague on the sanctions applicable in cases of infringements of the law. Article 7 par 1 only states that alleged victims should be entitled “to demand compensation for material and moral damages.”
81. ECRI General Policy Recommendation No. 7 indicates that the law “should provide for effective, proportionate and dissuasive sanctions for discrimination cases” and that such sanctions “should include the payment of compensation for both material and moral damages to the victim.”⁷⁵ Similarly, EU directives require member states to ensure that the sanctions applicable in case of infringements of the provisions on combating discrimination are “effective, proportionate and dissuasive.”⁷⁶
82. **It is recommended to specify further in the Draft Law (or to refer to relevant provisions of other legislation defining) the nature and level of sanctions applicable in case of findings of discrimination and to ensure that these sanctions are “effective, proportionate and dissuasive”. Such provisions should be clear and specific and should explicitly state which type of behaviour leads to which types and levels of sanctions**

9. The Equality Body: the Human Rights Defender and the Equality Council

83. According to Article 6, the ‘subjects of ensuring equality before the law’ are state and local self-governing bodies, and their officials, as well as legal entities and individual entrepreneurs and the Human Rights Defender.
84. Article 6 par 2 specifies the obligations of national, local self-governing bodies and legal entities. These include ensuring that their activities, legal acts and regulations are in accordance with domestic equality legislation, not promoting discrimination and intolerance, reacting to alleged discrimination and imposing liability and eliminating consequences in confirmed cases of discrimination. Here, it is recommended to ensure that Article 6 par 2 is consistent with Article 6 par 1: Article 6 par 2 should thus also include individual entrepreneurs. Unless an error in translation, it is also recommended to reconsider the term “individual entrepreneurs” and use a broader term such as “private sphere” instead.
85. Moreover, it is noted that Article 6 par 1 mentions the Human Rights Defender as a subject of ensuring equality before the law, thereby seeming to equate his/her role with that of the other bodies/individuals mentioned therein. While the latter, as also indicated in Article 6 par 2, have the obligation to treat individuals in similar positions equally and to not discriminate when exercising their powers and implementing their tasks, the role of the Human Rights Defender appears to be somewhat different, given also his/her mandate as an independent and impartial human rights protection mechanism. This also extends to complaints that may be made to the Human Rights Defender; while discrimination complaints can also be made to the other ‘subjects of ensuring equality

⁷⁵ [ECRI General Policy Recommendation No. 7](#), par 12.

⁷⁶ See Article 15 of [Directive 2000/43](#).

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before the law’, their powers of investigation and of responding to cases of discrimination can hardly be compared to those of the Human Rights Defender.

86. For this reason, **it is important that the Draft Law differentiate between public bodies, legal entities and individual entrepreneurs, on the one hand, and the Human Rights Defender on the other.** While the latter are obliged to act according to the law, and ensure that its provisions are implemented, the Human Rights Defender is a special human rights complaints mechanism, supported by an Expert Council, as set out in Chapter 3 of the Draft Law. It is thus recommended to delete the reference to the Human Rights Defender in Article 6 par 1. Moreover, as stated before, the mere reference to “ensuring equality before the law” is somewhat restrictive (see pars 21-22) and should be replaced with a general obligation to ensure equality and prevent and combat discrimination.
87. It is noted that in Article 5, par 1, sub-paragraph 10 refers to “equality bodies” when talking about the imposition of temporary special measures. It is assumed that this term refers to the “subjects of ensuring equality before the law” specified under Article 6 par 1, but this should be clarified.
88. As stated above, and as also indicated in Chapter 3 of the Draft Law, the Human Rights Defender shall bear the function of an equality body (i.e. an equality complaints body) and shall be supported in that by the Equality Council “in ensuring equality and protection from any type of discrimination.” **It would be advisable, however, if that is indeed the intention of the drafters, to specify more clearly that the Human Rights Defender is the main equality body, i.e. equality complaints body, in Armenia,** pursuant to the Draft Law, and the Defender’s general mandate and competences as specified in the Constitutional Law on the Human Rights Defender.
89. The Equality Council shall, among other things, assist the Human Rights Defender in considering complaints. However, no further details are provided in the Draft Law with respect to the mandate of or mechanism available to the Human Rights Defender to ensure the application of the Draft Law, nor does the Draft Law contain any relevant references to the Law on the Human Rights Defender.
90. In this context, while it is within the margin of appreciation of the State to decide which supervision mechanisms to establish, a number of issues raise concerns and do not appear to be in accordance with international obligations and good practice.⁷⁷
91. In the 1990 Copenhagen Document, OSCE participating States committed to “facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law”.⁷⁸ In addition, the Paris Principles define the role of human rights institutions and sets out minimum standards on the establishment and functioning of such institutions, in terms of pluralism, transparency, guarantees of functional and institutional independence and effectiveness.⁷⁹
92. The experience of many participating States demonstrates the importance of setting up a public independent agency tasked with combating discrimination and promoting equal treatment, commonly called an “equality body.” The ECRI General Policy

⁷⁷ See the margin of appreciation doctrine as developed by the ECtHR. For example, see cases of *Paksas v. Lithuania* [GC] (Application no. 34932/04, judgment of 6 January 2011), concerning the right to vote and stand for elections, par 96; *Vallianatos v. Greece* [GC] (Application nos. 29381/09 and 32684/09, judgment of 7 November 2013), concerning discriminatory regulation of the partnership agreements for the same-sex and different-sex couples, par 76.

⁷⁸ See paragraph 27 of the 1990 OSCE Copenhagen Document.

⁷⁹ The Paris Principles outline minimum standards in this respect, including a broad human rights mandate, autonomy from government, guarantees of functional and institutional independence, pluralism, adequate resources and adequate powers of investigation, where applicable. See also UNDP-OHCHR, *Toolkit for Collaboration with National Human Rights* (2012).

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Recommendation No 2 requests member states of the Council of Europe to establish one or more independent equality bodies to combat racism and intolerance.⁸⁰ It further observes that in case an equality body forms part of a multi-mandate institution exercising a human rights or ombudsperson mandate, the following conditions should be respected:

- “a. Legislation should explicitly set out the equality mandate of the institution.
- b. Appropriate human and financial resources should be allocated to each mandate to ensure an appropriate focus on the equality mandate.
- c. Governing, advisory, and management structures should be organised in a manner that provides for clear leadership, promotion and visibility of the equality mandate.
- d. Reporting arrangements should give adequate prominence to the concerns arising and work carried out under the equality mandate” (par 7).

93. EU Directives 2000/43 and 2006/54 require EU member states to designate a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds, respectively, of racial or ethnic origin and of sex.⁸¹
94. It is obvious from the Draft Law that the Equality Council is not envisaged as an independent equality body or even autonomous entity within the institution of the Human Rights Defender. It is rather established as an advisory body supporting the Human Rights Defender and thus cannot be separated from it. Therefore, it is paramount that the mandate of the Human Rights Defender as the equality body be clearly defined in the Draft Law, which in extension should also ensure the independence and effectiveness of the equality body both in law and in practice.
95. **It is recommended to define the Human Rights Defender’s mandate, powers and competences in the field of non-discrimination, and to clearly outline the pertinent mandate and functions within this institution. The Draft Law should contain detailed provisions and/or references to the relevant provisions of the Constitutional Law on the Human Rights Defender in this regard.**
96. Additionally, nothing in the Draft Law guarantees that the Human Rights Defender will have appropriate human and financial resources to carry out effectively its mandate in relation to non-discrimination and equality. ECRI General Policy Recommendation No. 2 provides that “appropriate human and financial resources should be allocated to each mandate to ensure an appropriate focus on the equality mandate”.⁸² **The Human Rights Defender should be allotted a number of permanent employees tasked with dealing specifically with discrimination and equality issues, as already done in other areas, notably the prevention of torture and ill-treatment (see Articles 27 and 36 of the Constitutional Law on the Human Rights Defender). This should also be set out explicitly in the Draft Law and in future budgets of the Office of the Human Rights Defender.** Moreover, as done for the work that the Human Rights Defender is doing as a national preventive mechanism in the area of torture and ill-treatment (see Article 8 of

⁸⁰ [ECRI General Policy Recommendation No. 2 on Equality Bodies to combat racism and intolerance at national level](#) (adopted in 1997, as amended in 2017). In addition, [EU Directives 2000/43](#) and [2006/54](#) require EU member states to designate a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds, respectively, of racial or ethnic origin and of sex. The [European Commission Recommendation of 22 June 2018 on standards for equality bodies](#) provides further guidance

⁸¹ Article 13 of [EU Directive 2000/43](#); Article 20 of [EU Directive 2006/54](#).

⁸² [ECRI General Policy Recommendation No. 2 on Equality Bodies to combat racism and intolerance at national level](#) (revised).

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the Constitutional Law on the Human Rights Defender), a separate budget line could eventually be envisaged for the Human Rights Defender's work as an equality body as well.

97. Article 12 par 2 stipulates that the Equality Council "shall be established by the constitutional law of the Republic of Armenia on "The Human Rights Defender" and as per provisions of the present Law, and shall operate on the basis of these laws, the Rules of Procedure of the Equality Council, and other acts". It is not obvious from the Draft Law if amendments to the constitutional law are required in order to provide legal foundations for the establishment of the Council, or if they would merely echo provisions of this Draft Law or even expand the functions of Council.
98. Acknowledging the complexity of amending constitutional law,⁸³ the desire to regulate certain functions and procedures by ordinary law for the equality body seems understandable. However, if without amendments to the constitutional law neither the Human Rights Defender, nor the Equality Council within the Human Rights Defender institution would be able to act as a proper equality body, a proper assessment of its mandate only seems to be possible together with and in light of (the amendments to) the constitutional law. **Thus, the Constitutional Law on the Human Rights Defender may also need to be supplemented to reflect the role of the Defender as an equality body, particularly Article 2 (which already contains specific references to the Human Rights Defender as the national preventive mechanism in the area of torture and ill-treatment, and as the body responsible for monitoring the implementation of the UN Conventions on disabled persons and the rights of the child), and Chapter 5 (on activities of the Defender in separate areas). The same is true for some other issues discussed above, including funding and staffing issues.**
99. **Alternatively, if authorities choose to establish a more autonomous equality body within the existing institution of the Human Rights Defender's office, it is recommended to define the mandate of this body accordingly, ensuring its independence and effective execution of its functions both in law and in practice in order to remedy occurred discrimination. Authorities may also consider the possibility of establishing by this Draft Law an equality body that is completely separate from existing institutions, available funds permitting, and assuming that it can be established by an ordinary law, and without amending Constitution or constitutional law.**
100. Article 12 par 1, provides that the Equality Council be based on the "principles of equality, impartiality, publicity, transparency, accessibility and representation." While it is generally welcome that these principles are expressly stated, the Draft Law fails to define what is meant by "impartiality" and does not detail any safeguards that will be in place to protect and guarantee such impartiality.
101. Article 13 provides requirements for the selection of Council members. Candidates can be either nominated by non-governmental organizations or self-nominate. It is positive that the Draft Law envisages a transparent way of recruiting the Council members through a publication of the vacancy on the website of the Human Rights defender (Article 13 par 1).⁸⁴ As advertising vacancies maximizes the potential number of candidates, thereby promoting pluralism, it is recommended to extend the publication of the vacancy to other public sources to allow broader publication.

⁸³ Which requires at least three fifths of votes of the total number of Deputies, see Article 103 of the [Constitution](#) of the Republic of Armenia.

⁸⁴ See par 1.8 of the [General Observations](#) of the GANHRI recommends to "publicize vacancies broadly".

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102. According to Article 13 par 3, sub-paragraph 3, a candidate may not be a member of a political party. Although this may seem to contravene the right to freedom of association as provided by Article 11 of the ECHR and Article 22 of the ICCPR, this practice is justified here, as the Council is part of an NHRI. As already stated in previous ODIHR opinions, NHRI functions “are not compatible with the performance of another function or profession, public or private, or with membership in political parties or unions – although certain educational, scientific or artistic activities may be undertaken, provided that they are not incompatible with the proper performance of the NHRI duties, its impartiality and public confidence therein.”⁸⁵
103. To be eligible, a candidate must be a citizen of the Republic of Armenia and have at least three years of experience in the field of human rights or “at least five scientific works related to the protection of human rights”. It is assumed that this refers to five years of scientific work related to the protection of human rights.
104. However, there is no further indication in the Draft Law as to the selection criteria or possible incompatibilities other than membership in a political party or a conviction for an intentionally committed crime (also here, the text should probably be amended to read that an applicant should have *no* such conviction). In addition, should the Council, when assisting the Human Rights Defender in considering complaints (Article 15 par 2, sub-paragraph 1, also have a role in adjudicating complaints, then the Council and its members should adhere to basic criteria for independence and impartiality and should provide, in its proceedings, guarantees of fair trial. To ensure the independence of the Council in such cases, other restrictions, such as not allowing persons serving in local or national governments to become members of the Council, should also be included.
105. Similarly, Article 14 provides for grounds for termination of powers of members of the Council, but no further details are provided as to the circumstances in which Council members may be dismissed, such as the failure to fulfil their duties, or with regard to re-election procedures and deadlines. **In the interests of legal and procedural clarity, it is recommended that the Draft Law be supplemented with such details, as needed. Moreover, it is recommended to remove the violation of the Council’s Rules of Procedure as a ground for termination (as not all such violations may warrant termination), or else to specify particularly grave cases where this shall be the case.**
106. In addition, the Draft Law does not envisage any special modalities to ensure pluralism in the composition of the Council in terms of gender, ethnicity or minority status. For example, the Global Alliance of National Human Rights Institutions (GANHRI) provides that “[d]iversity in the membership and staff of a NHRI facilitates its appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates.”⁸⁶ In addition, the Paris Principles specify that composition and the appointment of members of the human rights institutions shall likewise afford all necessary guarantees to ensure “the pluralistic representation of social forces (of the civilian society) involved in the promotion and protection of human rights”. This helps promote public confidence in the institution and ensures that it has relevant experience and insights as to the needs of those sectors of society. OSCE participating States have also committed to assist in building democratic institutions at the request of States, inter

⁸⁵ See ODIHR, [Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland](#) (6 February 2017). See also Venice Commission and DGHR of the Council of Europe, [Joint Opinion on the Draft Law on the Ombudsman of Serbia](#), CDL-AD(2004)041.

⁸⁶ See the [Report and Recommendations of the Session of the Sub-Committee on Accreditation](#), 16-20 November 2015.

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alia, by helping to strengthen [...] Ombudsman institutions”,⁸⁷ which should be impartial and independent.⁸⁸ The need for effective, independent, and pluralistic human rights institutions has also been reiterated by numerous resolutions adopted by the UN General Assembly and the UN Human Rights Council.⁸⁹ While the Equality Council is admittedly not an NHRI itself, but rather only part of an existing NHRI, namely the Office of the Human Rights Defender, it may be useful to ensure pluralism in the composition of the Council to enhance its work as an anti-discrimination advisory body, and increase public trust in its work. **The Draft Law should thus include requirements of balanced representation in the membership of the Council, as well as further guarantees for ensuring pluralism.**

107. According to Article 15 par 2, sub-paragraph 1, the Equality Council shall assist the Human Rights Defender in assessing complaints relating to the areas set out in par 1 of this article, “by permission of the complainant”. Given that the Human Rights Defender is also permitted to review cases *ex officio* (see Article 15 of the Constitutional Law on the Human Rights Defender), and that the role of the Equality Council is only advisory in nature, it would appear to be at odds with the general mandate of the Human Rights Defender to allow complainants to decide how their cases will be assessed. It is recommended to reconsider this provision.
108. Overall, as indicated above, Article 15 provides the Council with a broad mandate to assist the Human Rights Defender, including in considering complaints and rendering opinions, giving recommendations on powers of the Human Rights Defender, as well as for court cases relating to discrimination. It is also mandated to send consultative explanations and recommendations related to studies and analyses of information on human rights and freedoms to national and local self-governing bodies, organizations and officials, to raise public awareness to ensure equality before the law and protect from and prevent all forms of discrimination and to contribute to the Human Rights Defender’s annual report with regard to issues of equality and elimination of all forms of discrimination. Considering that the work of the Council is voluntary and that the Draft Law envisages that its members meet only once a month, the duties and responsibilities foreseen in Article 15 seem excessive. It is highly doubtful whether it will be possible for the Council to implement all of its tasks in a timely and effective manner. As already stated earlier (see par 96), these duties should be fulfilled by a group of paid employees working full-time with sufficient resources.

10. Final Comments

109. It is worth recalling that OSCE commitments require legislation to be adopted “as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (Moscow Document of 1991, par 18.1).⁹⁰ Particularly legislation that may have an impact on human rights and fundamental freedoms, as is the case here, should undergo extensive consultation processes throughout the drafting and adoption process, to ensure that human rights organizations and the general public, including marginalized groups, are fully informed and able to submit their views prior to the

⁸⁷ See par 10 of the [Bucharest Plan of Action for Combating Terrorism](#) (2001), Annex to OSCE Ministerial Council Decision on Combating Terrorism, MC(9).DEC/1, 4 December 2001.

⁸⁸ See the [Joint Statement from expert meeting on strengthening independence of national human rights institutions in OSCE region in Warsaw](#) (19 December 2016).

⁸⁹ See UN General Assembly, [Resolution no. 70/163 on National Institutions for the Promotion and Protection of Human Rights](#), A/RES/70/163, adopted on 17 December 2015. See also the [Resolution no. 27/18 on National Institutions for the Promotion and Protection of Human Rights](#) of the UN human Rights Council, A/HRC/RES/27/18, adopted on 7 October 2014.

⁹⁰ Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

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adoption of the Act. Public discussions and an open and inclusive debate will increase all stakeholders' understanding of the various factors involved and enhance confidence and trust in the adopted legislation, and in the institutions in general. The Armenian legislator is encouraged to ensure that the Draft Law is consulted extensively up until its adoption.

110. Additionally, and finally, it is noted that following recent revisions to the transitional provisions under Article 16 of the Draft Law, par 3 of this provision states that “provisions concerning reasonable accommodations shall enter into force within the timeframe prescribed by the legislation of Armenia”. It is not clear which timeframes and which legislation are meant here. It is thus recommended that this be clarified accordingly.

[END OF TEXT]