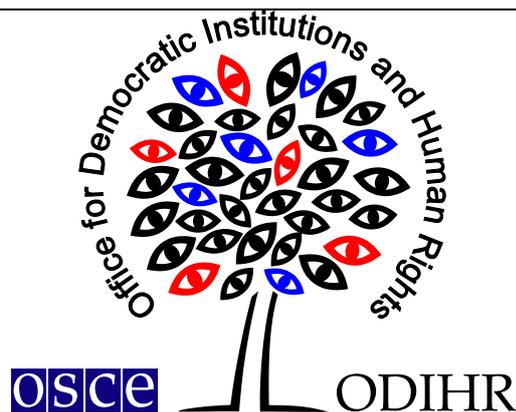


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**INTERIM OPINION ON  
THE DRAFT LAW OF THE REPUBLIC OF  
ARMENIA ON ENSURING EQUALITY BEFORE THE  
LAW (AS OF NOVEMBER 2018)**

**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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## ***OSCE/ODIHR Interim Opinion on the Draft Law of the Republic of Armenia on Ensuring Equality before the Law (as of November 2018)***

### **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 Director responded to this request, confirming the Office's readiness to prepare a legal opinion on this Draft Law, which will assess its compliance with OSCE human dimension commitments and international human rights obligations.*
3. *Considering that the Draft Law has been further amended since the receipt of the above request, ODIHR decided to publish the present Interim Opinion on the Draft Law as received in November 2018. This will be followed by the publication of a second Opinion on the revised Draft Law as of August 2019.*
4. *This Interim 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 Interim Opinion focuses on the Draft Law on Ensuring Equality Before the Law of the Republic of Armenia, submitted for review. Thus limited, the Interim 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 Interim 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 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 Women<sup>1</sup> (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 Interim Opinion analyses the potentially different impact of the Draft Amendments on women and men.<sup>2</sup>
8. This Interim 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 Interim 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 Interim Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of Armenia that ODIHR may wish to make in the future.

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<sup>1</sup> *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.

<sup>2</sup> 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).

### 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 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 body to combat discrimination within the Human Rights Defender Institution.
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 as well as to guarantee effectiveness 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 Amendments:
  - A. to revisit the title of the law to make it clear that it guarantees equal treatment and equal opportunities in relation to the recognition, enjoyment and exercise of the rights and freedoms of every individual and citizen with no discrimination; [par 25]
  - B. to exclude the references to 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 38]
  - C. to include additional protected characteristics, specifically referring to sexual orientation, gender identity, religion and belief, as well as national origin and nationality; [par 50]
  - D. to ensure that the 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, to assign these competences to the Human Rights Defender or specially created independent equality body; [par 71]
  - E. 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; [par 82]; and to define the mandate of the Equality Body ensuring effective execution of its functions both in law and in practice in order to remedy occurred discrimination should authorities choose to establish such a body within the existing institution. [par 86]

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

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### **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 Rights<sup>3</sup> (“UDHR”, Article 7), International Covenant on Civil and Political Rights<sup>4</sup> (hereinafter “ICCPR”, Article 26) and the International Covenant on Economic, Social and Cultural Rights<sup>5</sup> (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 Discrimination<sup>6</sup> (hereinafter “CERD), the UN Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter “CEDAW”)<sup>7</sup>, and the UN Convention on the Rights of Persons with Disabilities<sup>8</sup> (hereinafter “CRPD), the Convention on the Rights of the Child<sup>9</sup> (hereinafter “CRC”, Article 2).
15. At the Council of Europe level, the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>10</sup> (ECHR), in its Article 14, and its Protocol 12 provides for a general prohibition of discrimination.<sup>11</sup> The Revised European Social Charter<sup>12</sup> (RESC) and the Framework Convention for the Protection of National Minorities<sup>13</sup> (hereinafter “Framework Convention”, Article 4), as well as the Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter “Istanbul Convention”) also prohibit discrimination.<sup>14</sup>
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.<sup>15</sup> The UN Human Rights Committee has defined discrimination as implying “any distinction, exclusion, restriction or preference” based on the grounds enumerated in Article 26,

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

<sup>4</sup> *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.

<sup>5</sup> *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.

<sup>6</sup> *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.

<sup>7</sup> *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.

<sup>8</sup> *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.

<sup>9</sup> *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 CRC on 23 June 1993.

<sup>10</sup> *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.

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

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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 of 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 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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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.<sup>16</sup>

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 situation that is not based on “objective and reasonable” grounds.<sup>17</sup>

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”,<sup>18</sup> “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”,<sup>19</sup> while committing to ensure “equal protection of the law” and “equal and effective protection against discrimination on any ground”.<sup>20</sup>
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.<sup>21</sup>
19. Under European Union law, 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)<sup>22</sup>, as well as directives specifically protecting equal treatment of men and women<sup>23</sup> and equal treatment irrespective of ethnic or racial origin<sup>24</sup> (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

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<sup>16</sup> 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. See also European Court for Human Rights (ECtHR), *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; *Khamtokhu and Aksenchik v. Russia* [GC] (Application nos. 60367/08 and 961/11, judgment of 24 January 2017), par 64.

<sup>17</sup> 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 ECtHR judgment in the case of *Carson and Others v. the United Kingdom* (Application no. 42184/05, judgment of 16 March 2010), par 61.

<sup>18</sup> 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.

<sup>19</sup> *OSCE Concluding Document of Vienna – Third Follow-up Meeting*, Questions Relating to Security in Europe: Principles, Vienna, 1989, pars 13.7 and 13.8.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> 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”.

<sup>23</sup> *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.

<sup>24</sup> See *Council Directive 2000/43/EC of 29 June 2000* implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.

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provisions and requirements for anti-discrimination/equality bodies. These bodies focus on the promotion of equal treatment and on the protection from discrimination.

20. Given that the Draft Law aims to establish an equality body mandated to deal with all forms of discrimination and to ensure its independence, the ensuing recommendations will 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),<sup>25</sup> which set minimum standards for ensuring their independence and efficiency.<sup>26</sup> 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.”<sup>27</sup>

### ***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,<sup>28</sup> anybody who appears in front of public officials/bodies have to be treated equally. Article 3 par 1, specifies further that discrimination is prohibited in “political, economic, social, cultural and other areas of public life”. At the same time, however, the scope of the Draft Law is extended to the private sphere as well. Thus, in order to avoid misinterpretations and confusion, it is advisable to revisit the title and ensure that it fits an overall aim and the scope of anti-discrimination legislative initiative.
22. UN conventions and treaties dealing specifically with discrimination, like CERD and CEDAW, do not use in their title the phrase “equality before the law”, but rather the terms “elimination of discrimination”. Article 26 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.<sup>29</sup> As for EU directives, they refer to the notion of “equal treatment” or “equal opportunities”.<sup>30</sup> All these elements support the view that the terms “equality before the law” are too restrictive to describe the object and purpose of the present Draft Law.
23. Although the Draft Law is given a wide scope of application (according to Article 3: all areas of public life), the phrase “public life” could lend itself to restrictive interpretations. 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

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<sup>25</sup> 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.

<sup>26</sup> 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.

<sup>27</sup> See par 27 of the *OSCE Copenhagen Document* (1990).

<sup>28</sup> 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.).

<sup>29</sup> “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.”

<sup>30</sup> [\*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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longer used.<sup>31</sup> 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 a different 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).<sup>32</sup> 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. There seems to be no reasonable justification to limit the prohibition of discrimination to “public life” only. Preferably, a general clause of prohibition of discrimination should be introduced. The wording of Article 26 of the ICCPR could be of help – “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination [...]”.
25. **In order to reflect adequately on 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 law to make it clear that it guarantees equal treatment and equal opportunities in relation to the recognition, enjoyment and exercise of the rights and freedoms of every individual and citizen with no 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.** Relevant Provisions of CEDAW and CRPD or in ECRI General Policy Recommendations may serve as useful examples in this respect.
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 are drafted incoherently, providing different degrees of precision and with varying scopes.
27. Article 9 appears to follow ILO 1958 Convention (No. 111) concerning Discrimination in respect of Employment and Occupation. It should also be stressed that par 2 of said Article lists specific aspects of “working relations” where discrimination is prohibited (such as job announcements, competition, probation and training, working conditions, salary, 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” (for instance, in public services, public medical care, social security, banking services, transport services, education and science, media) and economic activities (including, registration, taxation, suspension, termination and liquidation of a business). Article 10 par 2 also seems to suggest that prohibition of discrimination applies only “to legal relationships”, while no such wording can be found in Articles 9 and 11.
28. Moreover, 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 state may also offer public services.

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<sup>31</sup> 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.

<sup>32</sup> 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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29. From the text of the Draft Law, the relationship or difference between Articles 10 and 11 are also not sufficiently clear. According to the 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 services, grants, loans, credit, financial services. The same is true with respect to sub-paragraphs 1 and 3 of par 1 of Article 11 and 1, par 2 of Article 10. It is not clear what the difference between the registration of a legal person or individual, which constitute “public service” as defined under sub-paragraph 1, par 2 of Article 10 is.
30. Some of the provisions and terms in the Draft Law are vague. For instance, Articles 10 and 11 refer to “legal relationships” in “promoting goods and services”, and “publicly available products and services”.<sup>33</sup> Such vague 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 the violations of the requirements of this Draft Law.
31. It is not clear what the reason is for providing a selective and exhaustive list of areas in which discrimination is prohibited pursuant to Articles 10 and 11 of the Draft Law. **Existence of such a list may exclude other areas not listed in these Articles from the scope of this law and it is recommended to revise it 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 meaning of terms, such as “legal relationships” in “promoting goods and services,” as well as “publicly available products and services.”**

### ***3. Permissible Differentiation***

32. Articles 3 and 4 are the central provisions of the Draft Law, creating standards for permissible differentiation, introducing various definitions of discrimination and criteria for evaluation of the differentiated treatment. Article 3 par 3 establishes a general justification clause for differentiated treatments, 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.<sup>34</sup>
33. Article 4 defines discrimination and its types and introduces the legitimacy, necessity and proportionality test an integral part of the definition of discrimination itself.<sup>35</sup> However, the Draft Law is inconsistent in its use of terminology, defining differently treatments constituting *prima facie* discrimination. While the definitions of indirect discrimination and segregation make reference to legitimacy, necessity and proportionality (Articles 5 par 1, sub-paragraphs 3 and 7), definition of the direct discrimination (sub-paragraph 3) contains no such reference and is also different from

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<sup>33</sup> 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.”

<sup>34</sup> 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.

<sup>35</sup> Article 4 par 1: “Discrimination is an action, inactivity or a regulation that has been manifested by differentiation, exclusion, limitation of or preference towards person’s rights and freedoms, *without an objective basis and reasonable proportionality and necessity between the legitimate aim pursued 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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the relevant provisions of Articles 3 and 4. Moreover, the definition of criteria justifying restrictions provided in Article 4, par 1 are not identical to those listed in Article 3, par 3. Article 3 refers to the restrictions, which are legitimate, “proportionate and appropriate”, while Article 4 speaks about “an objective basis”, “reasonable proportionality and necessity between the legitimate aim pursued and the means employed”. All this may create confusion in understanding the meaning of these provisions and applying the definitions in practice.

34. 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 is legitimate under the Covenant.”<sup>36</sup> According to the case law of the European Court of Human Rights (hereinafter “ECtHR”), the Contracting State enjoys a margin of appreciation<sup>37</sup> in assessing whether and to what extent differences in otherwise similar situations justify a different treatment.<sup>38</sup> 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. Under EU Law, the level of scrutiny and tests applied differ for evaluating cases of direct or indirect discrimination. Certain discrimination grounds have been also recognized as necessitating an especially high level of protection. This is particular true with respect to the case of gender, race, ethnic and origin.
35. Under EU Law, 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.<sup>39</sup> For direct differences of treatment, by contrast, justifications accepted vary depending on the ground and the field concerned.<sup>40</sup> According to the Draft Law it is not clear whether there is a legislative intention to differentiate between direct or indirect discrimination, and then to establish a different legal test (legal grounds) for finding an objective and reasonable justification for each type of differentiation in treatment. While 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.
36. According to the ECtHR “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.”<sup>41</sup> “Racial discrimination is a particularly invidious kind of discrimination

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<sup>36</sup> UN HRC, *General Comment No. 18 on Non-Discrimination*, par 13.

<sup>37</sup> *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. The ECtHR established that 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 (see e.g., *Belgian Linguistic Case* (No 2) (Application nos. 1474/62 et al., judgment of 23 July 1968), par 10.

<sup>38</sup> 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.

<sup>39</sup> It worth noting that according to the EU regulations, indirect distinctions 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, while in case of direct differences of treatment justifications accepted vary depending on the ground and the field concerned. 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.

<sup>40</sup> 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.

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

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and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction.”<sup>42</sup> In the same vein, it 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 reason” would have to be put forward before a difference of treatment based on sex “could be regarded as compatible with the Convention.”<sup>43</sup>

37. It has also been established that “very weighty reasons” would have to be put forward to justify a difference of treatment based exclusively on nationality,<sup>44</sup> sexual orientation<sup>45</sup> and disability.<sup>46</sup>
38. **On the basis of the above, it is recommended to exclude the reference to legitimacy, necessity and proportionality tests from the definition of what constitutes *prima facie* discrimination; to provide separately a coherent and comprehensive definition of the test, preferably also indicating 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.**<sup>47</sup>

### **4. Defining Discrimination and Prohibited Grounds**

39. Article 4 contains very important provisions, which may determine the overall effect of this Draft Law, defines types and grounds of prohibited discrimination. Importantly, the Draft Law explicitly prohibits discrimination based on a perceived characteristic (last word of Article 4 par 1) and discrimination by association (Article 4 par 2), and is also sensitive to discrimination on the basis of genetic features, disability, etc. Moreover, it includes reference to “other personal or social circumstances”, which according to the 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 law, which has recognized these particular forms of discrimination. All the above constitute positive elements of the Draft Law.
40. Article 4 par 1, defines discrimination as action, inactivity or a regulation 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.
41. 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.<sup>48</sup> The EU Equality Directives refer to situations “where one person is

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

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

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

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

<sup>46</sup> 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.

<sup>47</sup> The “*Declaration of Principles of Equality*” of the Equal Rights Trust aim into the same direction in demanding strictly defined criteria in the case of a direct discrimination, see Principle 5 par 5, 2<sup>nd</sup> 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”.

<sup>48</sup> UN HRC, *General Comment No. 18 on Non-Discrimination*, par 7.

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- treated less favorably than another is, has been or would be in a comparable situation”.<sup>49</sup>
42. International treaties, such as CERD, CEDAW and CRPD define discrimination as “any distinction, exclusion, restriction or preference based on [the relevant prohibited grounds] which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms.” Thus, the terms “nullifying or impairing the recognition, enjoyment or exercise of rights and freedoms” usefully specify the meaning of discrimination.
  43. 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 amount to discrimination if it has the effect of generating discrimination, regardless of the intention of the person who adopted this measure.
  44. 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.**<sup>50</sup>
  45. 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.
  46. 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.<sup>51</sup> Moreover, sexual orientation is recognized as a prohibited discrimination ground in EU laws.
  47. 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.<sup>52</sup> The grounds of nationality and sexual orientation have been recognized by the ECtHR, moreover, as calling for a high level of protection.<sup>53</sup> Finally, the UN High Commissioner for Human Rights,<sup>54</sup> the Parliamentary Assembly of the Council of Europe,<sup>55</sup> and the Council of Europe Commissioner for Human Rights<sup>56</sup> have all called upon states to ensure that anti-discrimination legislation includes gender identity among

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<sup>49</sup> Article 2 in both EU Equality Directives.

<sup>50</sup> See the case of the ECtHR, *Sejdić and Finci v. Bosnia and Herzegovina* [GC] (Application nos. 27996/06, 34836/06, judgment of 22 December 2009) where for the first time a violation of § 1 of the Protocol No. 12 was established as regards national regulation concerning the possibility to stand for parliamentary elections (some national minorities were excluded).

<sup>51</sup> *ECRI Report on Armenia (fifth monitoring cycle)*, adopted on 28 June 2016, CRI(2016)37, par 10.

<sup>52</sup> 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.

<sup>53</sup> 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).

<sup>54</sup> 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).

<sup>55</sup> Parliamentary Assembly of the Council of Europe, *‘Promoting the human rights of and eliminating discrimination against intersex people’*, Resolution 2191 (2017).

<sup>56</sup> Commissioner for Human Rights of the Council of Europe, *Human Rights and Gender Identity* (29 July 2009) CommDH/IssuePaper (2009), p. 18.

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prohibited grounds.<sup>57</sup> 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”.<sup>58</sup>

48. 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 the broad approach adopted by the ECRI which defines “racial discrimination” by including the ground of nationality.
49. Although the list of grounds in the Draft Law is not meant to be exhaustive (due to the wording “or other personal or social circumstances, actual or perceived”), by explicitly mentioning some of the features, the legislator sends out the message that discrimination on the basis of the listed characteristics is unacceptable and that these types of discrimination will be punished. For example, when it comes to discrimination on the basis of s sexual orientation, drawing from the experience of EU member states, it is generally acknowledged that explicitly sanctioning this form of discrimination had positive effects.<sup>59</sup>
50. **Taking into account international standards, best practices, and relevant case law,<sup>60</sup> it is recommended to amend the Draft Law to list other grounds for prohibited treatment covering the most vulnerable groups, specifically referring to sexual orientation,<sup>61</sup> gender identity,<sup>62</sup> religion and belief, as well as mention explicitly national origin and nationality to the list of prohibited grounds.**
51. **Additionally, Article 5 par 1 sub-paragraph 3 of the Draft Law states “[d]irect discrimination is present also in case of less favourable treatment towards a woman, based on pregnancy or motherhood.” While it is welcome that direct**

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<sup>57</sup> 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.

<sup>58</sup> Council of Europe, *3rd Quarterly Activity Report 2018*, Dunja Mijatović, Commissioner for Human Rights (1 July to 30 September 2018).

<sup>59</sup> 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).

<sup>60</sup> 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.

<sup>61</sup> 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 ex. *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).

<sup>62</sup> 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).

discrimination of women is mentioned explicitly in the law, gender-based discrimination does in many cases take forms that have nothing to do with pregnancy or parenthood. Framing Article 3 par 1 sub-paragraph 3 in this context perpetuates traditional patriarchal gender roles of women that limit them to the role of mothers. It is also not clear if the current formulation would extent to cases in which women are discriminated against based on potential future motherhood (in employment etc.). It is therefore recommended to revise the wording of Article 5 par 1 sub-paragraph 3 and delete the reference to pregnancy and motherhood. At a minimum, it should be clarified that pregnancy and motherhood are only examples or contexts in which women face unequal treatment on account of being women. It is also recommended that the text explicitly states that violence against women is a form of discrimination against women as clarified in Article 3 (a) of the Istanbul Convention.

### **5. Criminal, Civil and Administrative Liability**

52. Article 3 par 2 of the Draft Law stipulates that persons committing discrimination are “subject to disciplinary, civil and/or criminal liability.” Presuming that disciplinary sanctions would fall under the 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 would be recommended to refer to “administrative liability” in Article 3, par 2.**
53. 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 criminal liability. Application of punitive measures of a disciplinary nature would require existence of clearly defined legal provisions defining unauthorized, prohibited behavior. It is also not clear what type of liability would be triggered for various discriminatory actions as defined by 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. Therefore, it is not clear in what case discriminatory actions, as defined by this Draft Law, would satisfy the requirements of criminal law and trigger criminal liability.<sup>63</sup>
54. **Therefore, it is recommended that specific Articles of the Draft Law refer specifically to other legal norms containing clear description of prohibited actions as well as provide guidance with respect to type of liability to be applied.**

### **6. Definition of Indirect Discrimination**

55. According to the Draft Law, indirect discrimination occurs when “[a]pparently neutral politics, treatment, conditions, standards, or practices, which, if applied, puts a person, on grounds of one or more protected characteristics or in association with them, in considerably less favourable situation compared to other persons in similar

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<sup>63</sup> See ECtHR, *Kopriynikar 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.

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circumstances, or disproportionately adversely affects a group of people; or an equal treatment with respect to persons being in different conditions, with the exception of cases when application of such policies, treatment, conditions, standards and practices pursues a legitimate aim, is necessary in a democratic society and means employed are proportionate.” a.

56. The definition proposed in ECRI General Recommendation No. 7 refers to “a provision, criterion or practice [that] cannot be as easily complied with by, or disadvantages persons belonging to a group designated by [one of the prohibited ground] (...)” (par 1, c), our emphasis). EU directives define indirect discrimination as occurring “where an apparently neutral provision, criterion or practice would put persons [having a particular characteristic] at a particular disadvantage compared with other persons (...)”.<sup>64</sup>
57. It should also be noted that Article 5 par 1, also refers to situations where the contested measure “disproportionately adversely affects a group of people”, which seems to be an appropriate wording. The fact that a person is put, or would be put, in a less favourable situation (or, to use the language of EU directives, would be put at a particular disadvantage) as a result of the contested measure should be sufficient to establish *prima facie* indirect discrimination. The requirement that the situation of the victim be “considerably less favourable” appears to be unduly restrictive and also differs from the general definition of discrimination included in Article 4 par 1 of the Draft Law.
58. **Thus, it is recommended to exclude word “considerably” from the definition of indirect discrimination and ensure coherent terminology of the definition of indirect discrimination throughout the Draft Law.**

### **7. Definition of Victimization**

59. 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 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 only protects persons who filed an appeal or complained to competent authorities. 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.
  - Reprisal measures can also target other persons than the one lodging a complaint, for instance persons who helped the alleged victim with their claim by providing support or evidence (e.g. testimony) that there has been discrimination.
60. ECRI General Policy Recommendation No. 7 states that “The law should provide protection against any retaliatory measures for persons claiming to be victims of racial

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<sup>64</sup> See e.g. Article 2(b) of [Directive 2000/43](#).

offences or racial discrimination, persons reporting such acts or persons providing evidence.”<sup>65</sup> In the same vein, EU directives on equality and non-discrimination require member states to introduce into their national legal systems “such measures as are necessary 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.”<sup>66</sup> Furthermore, according to Article 9 of the Racial Equality Directive and Article 11 of the Employment Equality Directive, “Member States shall introduce into their national legal systems such measures as are necessary 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”. The directives extend the protection against victimization potentially to anyone who could receive adverse treatment “as a reaction to a complaint or to proceedings.

61. **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.**

#### **8. Definition of Reasonable Accommodation**

62. 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.<sup>67</sup> 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.” However, among the grounds and types of prohibited discrimination listed in Article 4 of the Draft Law “denial of reasonable accommodation to a person with disabilities” is not listed.
63. Although “reasonable accommodation” is mentioned in Article 4 par 3 of the Draft, this provision does not impose an obligation but rather 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. The Draft Law seems to apply a different definition compared to the one defined in international instruments. The measures have to aim at preventing or compensating for disadvantages linked to a prohibited ground and have to be temporary. (EU Directive Article 5, ECHR Protocol No. 12 Preamble, ICERD Article 1(4)).
64. In addition, Article 4 par 3 does not comply with the CRPD which, as seen above (par 52), requires prohibiting denial of reasonable accommodation as a form of discrimination and taking steps to ensure that reasonable accommodation is provided where needed. The “reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms

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<sup>65</sup> See par 27, [ECRI General Policy Recommendation No. 7](#), adopted 2002 (as amended in 2017) (hereinafter “ECRI Recommendation No. 7”).

<sup>66</sup> See e.g. Article 9 of [Directive 2000/43](#), our emphasis.

<sup>67</sup> 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.<sup>68</sup>

65. **Thus, in order to fulfil state’s obligations under the CRPD, the legislator should include “denial of reasonable accommodation to a person with a disability” among the types of discrimination listed in Article 4 par 3.**

***9. Legal and Judicial Protection against Discrimination - Article 7***

66. The legal and judicial protection against discrimination provided for in Article 7 need to be strengthened in several respects. Four points are discussed below: the persons or entities entitled to bring cases (a); the availability of conciliation procedures (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*

67. Article 7 par 1, entitles the person who believes to have been the victim of discrimination to bring a case before courts or other competent entities. Experience in many countries shows that in practice, a majority of victims of discrimination do not bring any complaint. Lack of knowledge about remedies, cost of proceedings, the weaker position victims often find themselves in compared to the perpetrator are among the main reasons explaining this phenomenon. Accordingly, it is important to empower institution, especially Equality Bodies, as well as non-governmental organization to support individual victim in initiating proceedings or bring a complaint in case of discrimination.
68. 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 procedure provided for the enforcement of antidiscrimination norms.<sup>69</sup> Similarly, ECRI General Policy Recommendation No. 7 states that “organisations such as associations, trade unions and other legal entities which have, according to the criteria laid down by the national law, 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.”
69. ECRI General Policy Recommendation No. 2, moreover, lays down that the 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 Body to bring cases in courts.<sup>70</sup>

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<sup>68</sup> [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).

<sup>69</sup> 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](#).

<sup>70</sup> 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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70. According to the ECRI General Policy Recommendation No. 7, easily accessible conciliation procedures should be available to victims of discrimination.<sup>71</sup> 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.<sup>72</sup> Such procedures can be useful in discrimination cases, they are quicker, less burdensome and less polarizing than judicial proceedings.
71. **It is recommended that the Equality Body, as well as non-governmental organisations that have a legitimate interest in it, 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 they have been the victims of discrimination. In addition, it is also recommended to assign these competences to the Human Rights Defender or specially created independent equality body.**

*b. Protection against Victimization*

72. Article 7(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 59-61) are also relevant here. In addition, Article 7(2) of the Draft Law does not clearly indicate what remedies are available for persons who are the victims of such retaliatory measures. It is recommended to address this shortcoming.

*c. Sanctions*

73. 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 case of infringement of the law. Article 7 par 1 only states that alleged victims should be entitled “to demand compensation for material and moral damages.”
74. 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.”<sup>73</sup> 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.”<sup>74</sup>
75. **It is recommended to specify further in the Draft Law (or to refer to relevant provisions in the legislation defining) the nature and level of sanctions applicable in case of finding of discrimination and to ensure that these sanctions are “effective, proportionate and dissuasive”.**

**10. The Equality Body: the Human Rights Defender and the Equality Council**

76. As it appears from the Draft Law, the Human Rights Defender shall bear the function of an Equality Body, being supported by the Equality Council “in ensuring equality and protection from any type of discrimination.” The Equality Council shall also assist the

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<sup>71</sup> [ECRI General Policy Recommendation No. 7](#), par 10.

<sup>72</sup> See, for instance, Article 7(1) of [Directive 2000/43](#).

<sup>73</sup> [ECRI General Policy Recommendation No. 7](#), par 12.

<sup>74</sup> See Article 15 of [Directive 2000/43](#).

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Human Rights Defender in considering complaints. However, no further details are provided by the Draft with respect to the mandate of or mechanism available to the Human Rights Defender to ensure application of the Draft Law.

77. While it is within the margin of appreciation of the State to decide what supervision mechanisms are established, a number of issues raise concern and do not accord with international obligations and good practice.<sup>75</sup>
78. In the 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”.<sup>76</sup> In addition, the Paris Principles define the role of human rights institutions and sets out minimum standards on the establishment and functioning of national human rights institutions, in terms of pluralism, transparency, guarantees of functional and institutional independence and effectiveness.<sup>77</sup>
79. 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 “equality body.” The ECRI General Policy Recommendation No 2 requests member states of the Council of Europe to establish one or more independent equality bodies to combat racism and intolerance.<sup>78</sup> 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).
80. 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.<sup>79</sup>
81. 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

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<sup>75</sup> 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.

<sup>76</sup> See paragraph 27 of the 1990 OSCE Copenhagen Document.

<sup>77</sup> 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).

<sup>78</sup> [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

<sup>79</sup> Article 13 of [EU Directives 2000/43](#); Article 20 of EU Directive [2006/54](#).

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Human Rights Defender and thus cannot be separated from it. Therefore, it is paramount that the Equality Body's mandate is clearly defined by the Draft Law, should ensure independence and effectiveness of the Equality Body both in law and in practice.

82. **It is recommended to define the Human Rights Defender's mandate, powers and competences in the field of non-discrimination, clearly define the mandate and functions within this institution. The Draft Law should contain detailed provisions or 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.**
83. 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."<sup>80</sup> **The Human Rights Defender should be allotted a number of permanent employees tasked with dealing specifically with discrimination and equality issues.**
84. 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...". 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 plan to expend the functions of Council.
85. Acknowledging the complexity of amending constitutional law<sup>81</sup> the desire to regulate certain functions and procedures by ordinary law for equality body seems understandable. However, if without amendments to the constitutional law neither the Human Rights Defender, nor Equality Council within the Human Rights Defender institution would be able to act as 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.
86. **Alternatively, if authorities choose to establish an Equality Body within the existing institution, 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 possibility of establishing by this Draft Law an Equality Body completely separate from existing institutions, assuming that it can be established by an ordinary law, and without amending Constitution or constitutional law.**
87. 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 overall welcomed that these principles are expressly stated, the Draft Law fails to define what is meant by "impartiality" and does not detail the safeguards in the draft that will be in place to protect and guarantee such independence, as neither the

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<sup>80</sup> [ECRI General Policy Recommendation No. 2 on Equality Bodies to combat racism and intolerance at national level](#) (revised).

<sup>81</sup> 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.

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mandate, nor the procedure of selection/appointment of the Council members guarantees its independence.

88. Article 13 provides requirements for the selection of Council members. Candidates can be either nominated by non-governmental organizations or self-nominate. 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. However, there is no further indication in the Draft Law as to the selection criteria or possible incompatibilities other than membership in the political party. In addition, provided that the Council has a role in adjudicating complaints, in such circumstances, the Council should adhere to basic criteria for independence and impartiality and should provide, in its proceedings, guarantees of fair trial. For ensuring the independence of the Council, other restrictions, such as persons serving in local or national governments, should also be included. Similarly, Article 14 provides for grounds for termination of powers of members of the Council, but no further details are provided for dismissal grounds, such as failure to fulfil their duties, as well on re-election procedures and deadlines. **For legal and procedural clarity it is recommended that the Draft Law be supplemented with such details.**
89. In addition, the Draft Law does not envisage 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 “Diversity 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.”<sup>82</sup> 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 alia, by helping to strengthen [...] Ombudsman institutions”,<sup>83</sup> which should be impartial and independent.<sup>84</sup> 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.<sup>85</sup> **The Draft Law should include requirements of balanced representation in the membership of the Council as well as further guarantees for ensuring pluralism.**
90. It is welcoming that the Draft Law envisages a transparent way of recruitment of the Council members through publication of the vacancy on the website of the Human Rights defender (Article 13 par 1).<sup>86</sup> As advertising vacancies maximizes the potential number of candidates, thereby promoting pluralism, it is recommended to extend the publication of the vacancy in other sources to allow broader publication.
91. According to Article 13 par 3, sub-paragraph 3, a candidate must not be a member of a political party. Although this may seem as to contravene the right to freedom of

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<sup>82</sup> See the *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, 16-20 November 2015.

<sup>83</sup> 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.

<sup>84</sup> See the *Joint Statement from expert meeting on strengthening independence of national human rights institutions in OSCE region in Warsaw* (19 December 2016).

<sup>85</sup> 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.

<sup>86</sup> See par 1.8 of the *General Observations* of the GANHRI recommends to “publicize vacancies broadly”.

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association as provided by Article 11 of the ECHR and Article 22 of the ICCPR, this practice is justified for the national human Rights institutions. As already stated in previous ODIHR opinions, “any function connected to these institution are not compatible with the performance of another function or profession, public of 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.”<sup>87</sup>

92. Article 15 provides for a broad mandate for the Council for assisting 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 on antidiscrimination. It is also mandated to consult the Human Rights Defender on national and local self-governing bodies, on raising public awareness to prevent all forms of discrimination and contribute to the Human Rights Defender’s annual report with regard to issues of equality and elimination of discrimination. Considering that the work of the Council is voluntary and it is envisaged that they meet once a month, the duties and responsibilities foreseen in Article 15 seem excessive and question their timely and effective implementation. As already stated earlier, these duties should be fulfilled by a group of paid employees working full time with sufficient resources.

***11. Final Comments***

93. 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).<sup>88</sup> 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 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.

[END OF TEXT]

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<sup>87</sup> 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.

<sup>88</sup> Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

**ANNEX:**

**The Law of the Republic of  
Armenia  
On “Ensuring Equality Before the Law”  
Chapter 1  
General Provisions**

**Article 1: The aim of the law and subject of regulation**

1. The purpose of this law is to ensure equal opportunities for implementation of the rights and freedoms of every individual and citizen with no discrimination.

2. This law defines the concept of discrimination and its types, subjects and mechanisms for ensuring equality before the law, as well as the status, objectives and activities of the Equality Council.

**Article 2: Legislation of the Republic of Armenia on ensuring equality before the law**

1. The legislation of the Republic of Armenia on ensuring equality before the law consists of Constitution of the Republic of Armenia, international treaties ratified by the Republic of Armenia, the present law, RA Law on “Ensuring equal rights and opportunities for men and women”, other laws, as well as other legislative acts in cases prescribed by law.

**Article 3: Prohibition of Discrimination**

1. Discrimination in political, economic, social, cultural and other areas of public life is prohibited.

2. Persons discriminating against others are subject to disciplinary, civil and/or criminal liability as per the legislation of the Republic of Armenia.

3. Differentiated treatment, different conditions and/or situations can be created if it pursues a legitimate aim and is necessary in a democratic society, and the means employed are proportionate and appropriate.

**Article 4: Discrimination and its types**

1. Discrimination is an action, inactivity or a regulation that has been manifested by differentiation, exclusion, limitation of or preference towards person’s rights and freedoms, without an objective basis and reasonable

proportionality and necessity between the legitimate aim pursued 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.

2. Types of discrimination are: direct discrimination, indirect discrimination, incitement to discrimination, harassment, segregation, victimisation and associative discrimination.

3. Temporary special measures and reasonable accommodation are means to ensure equal treatment, equal rights and opportunities. The procedure, timing and other specificities related to reasonable accommodation are regulated by the legislation of the Republic of Armenia.

### **Article 5: Basic concepts used in law**

1. The following concepts are used in the present law:

1) **Person:** Physical person, as well as a legal person, to a degree the rights and freedoms defined in present law are applicable to the legal person, groups of people, who have common protected characteristics.

2) **Protected Characteristics:** one or more mentioned in part 1 of Article 4 of the present law, as well as other personal or social characteristics.

3) **Direct Discrimination:** a manifested behaviour towards an individual as a result of which the person appears in a less favourable situation than the other person in similar circumstances because of one or more protected characteristics or other characteristics associated with those. Direct discrimination is present also in case of less favourable treatment towards a woman, based on pregnancy or motherhood

4) **Indirect discrimination:** Apparently neutral politics, treatment, conditions, standards, or practices, which, if applied, puts a person, on grounds of one or more protected characteristics or in association with them, in considerably less favourable situation compared to other persons in similar circumstances, or disproportionately adversely affects a group of people; or an equal treatment with respect to persons being in different conditions, with the exception of cases when application of such policies, treatment, conditions, standards and practices pursues a legitimate aim, is necessary in a democratic society and means employed are proportionate.

5) **Incitement to discrimination:** an order, instruction or a call directed to a person to discriminate against another person.

6) **Harassment:** unwanted treatment against a person on grounds of one or more protected characteristics or in association with them, with the effect or purpose of creating unfriendly, hostile, offensive, humiliating or rejecting atmosphere for that person.

7) **Segregation** is expressed by a decision, action or inaction, which directly or indirectly results in differentiation, separation, distinction of a person or group of persons from other persons on grounds of certain characteristics, with no legitimate purpose, objective grounds or reasonable proportionality.

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8) **Victimisation:** Intentional action or inaction, which has resulted in negative consequences for the person who filed an appeal or complaint to competent authorities for the protection of his or her rights in the frame of the present law.

9) **Associative discrimination:** Discrimination against a person, who despite not bearing any of the protected characteristics, is connected by means of kinship, marriage or has any other links with a person or groups of people who bear any of those characteristics.

10) **Temporary special measures:** Application of means by public bodies in regard to a person or a group of people, aimed at eliminating the actually existing inequality between a person or a group of people and the society, and restoration and observance of equal opportunities with other members of the society.

**Article 6: Ensuring Equality Before the Law**

1. The subjects of ensuring equality before the law are the following:

1) state and local self-governing bodies and their officials in exercising their powers as defined by the Constitution, laws and other legal acts of the Republic of Armenia;

2) Legal entities and individual entrepreneurs in exercising their functions and rights.

3) The Human Rights Defender

2. In order to ensure equality before the law, national, local self-governed bodies and legal entities should:

1) Ensure, that their activities, legal acts and internal regulations are in accordance with the legislation of the Republic of Armenia on equality before the law.

2) Exclude any promotion of discrimination and intolerance in their activities, educational, informational and entertainment materials and in other publications.

3) React to any alleged discrimination as provisioned by the present law and other legislative acts.

4) In case the fact of discrimination is confirmed, according to law and their internal provisions impose liability on persons manifested discrimination, and ensure elimination of consequences of discrimination in within the scope of their powers and functions.

**Article 7: Legal and judicial protection against discrimination**

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1. Any individual who has foundations to think that he/she has been subject to discrimination, has the right to apply to the court, the Human Rights Defender or a respective administrative body to restore his/her rights, to demand compensation for material and moral damages.

2. Any negative attitude or oppression against a person who has applied to relevant bodies to be protected from discrimination is prohibited.

3. The authority considering the complaint on discrimination must ensure the immunity of applicant's private and family life as per the provisions of the law of the Republic of Armenia on "Personal Data Protection".

**Article 8: Distribution of burden of proof**

1. When reviewing a complaint about the discrimination by the court, the Human Rights Defender or other State body, the applicant or the plaintiff presents the data and arguments that *prima facie* justify existence of discrimination, and the obligation to prove the absence of discrimination is brought to the defendant or to the person against whom the complaint is filed.

**Chapter 2**

**Ensuring Equality Before the Law in separate fields**

**Article 9: Prohibition of discrimination in working relations:**

1. In working relations it is prohibited to demonstrate any distinction, exclusion, restriction or preference against a person without objective reason, as a result of which the equality before the law in working relationship is violated and the person is deprived of equal rights and opportunities compared to others.

2. National and local self-governing bodies and legal entities should exclude discrimination in working relations, amongst which are the following sectors:

- 1) Job announcement and competition
- 2) Accepting employment, transfer to another job and promotion
- 3) Probation and training
- 4) Working conditions of the employee
- 5) Salary, additional remuneration, guarantees and rewards
- 6) Disciplinary liability
- 7) Termination of employment relations
- 8) Providing information on working relations
- 9) Membership in trade unions

3. The actions mentioned in the first part of this article are not discrimination, as long as they stem from inherent occupational requirements. Inherent occupational requirements shall mean, distinction, exclusion, restriction or privilege deriving from the nature and peculiarities of a particular occupation, constitutes substantial and determining occupational requirement, if such a requirement pursues a legitimate aim and is proportionate.

4. In the field of ensuring equality before the law the employer must:

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1) In working relationships apply, protect and promote equality before the law, ensure equal opportunities and prohibit any type of discrimination.

2) Take actions aimed at preventing discrimination in work relationships and imposing liability against people who have manifested discrimination.

**Article 10: Prohibition of discrimination while supplying publicly available products and services**

1. Discrimination is prohibited while supplying publicly available products and services.

2. The prohibition of discrimination, as defined in this chapter, applies to those legal relationships that are formed in promotion of goods and services in the following areas:

- 1) Public Services.
- 2) Public Medical care and services.
- 3) Social Security and assistance.
- 4) Banking Services, insurance, grants, loans, credit and financial services.
- 5) Transport services.
- 6) Culture, entertainment services and sport.
- 7) Real estate purchase and renting.
- 8) Commercial and professional activities.
- 9) Education and Science.
- 10) Media.

**Article 11: Prohibition of discrimination in economic activities**

1. Discrimination is prohibited in economic activities, including in the following cases:

- 1) Registration of a legal person or individual entrepreneur
- 2) Tax and credit policy.
- 3) Inspections and supervision.
- 4) Suspension, termination and liquidation of a business.

**Chapter 3**

**Equality Council**

**Article 12: Status and members of Equality Council**

1. The Equality Council is a consultative body adjunct to the Human Rights Defender, with a purpose to assist the Human Rights Defender in ensuring equality and protection from any type of discrimination. The Equality Council is based on principles of equality, impartiality, publicity, transparency, accessibility and representation.

2. 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

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present Law, and shall operate on the basis of these laws, the Rules of Procedure of the Equality Council and other legal acts.

3. The Equality Council consists of at least 7 members, who are selected for a period of 3 years by the Human Rights Defender and can be re-appointed for one time only, they work on voluntary basis. The Human Rights Defender selects the members of the Council among human rights activists and scientists.

4. The Rules of Procedure of the Equality Council are approved by the Human Rights Defender

5. The Equality Council shall carry out its activities through sessions, called up on at least once a month.

6. The organizational and technical aspects of the work of the Equality Council shall be ensured by the Secretariat of the Office of the Human Rights Defender.

**Article 13: Selection of members of Equality Council**

1. The procedure for applying to become a member of the Equality Council shall be published on the Human Rights Defender's website at least 30 days before the deadline for submitting an application.

2. Applications for inclusion in the Equality Council are submitted both by non-governmental organizations and by self-nomination.

3. An application for the appointment of a member of the Equality Council may be submitted by person, who:

- 1) Isa citizen of the Republic of Armenia.
- 2) Has at least three years of experience in the field of human rights defence or scientific works related to protection of human rights.
- 3) Is not a member of a political party.

4. Biography of the applicants shall be published on the Human Right's Defender's website.

5. In case of early termination of the powers of a member of the Equality Council, an application for a vacant position shall be submitted in the manner prescribed by this Article, if the number of members of the Council is less than the minimum number specified in part 3 of Article 14 of the present Law.

**Article 14: Termination of powers of members of Equality Council**

1. Human Rights Defender can terminate the powers of members of Equality Council earlier if:

- 1) The member of the council applies for it.
- 2) The citizenship of Republic of Armenia is terminated or
- 3) Death of a member of the council, being declared absent or deceased by Court verdict entered into force,
- 4) Conviction for an intentionally committed crime by a court verdict or
- 5) Violating the requirements of the law, as well as The Rules of Procedure of the Equality Council

**Article 15: Equality Council's objectives and functions:**

1. The objectives of the Equality Council are to assist The Human Rights Defender in his activities towards ensuring equality before the law and equal opportunities, prevention and elimination of discrimination in the Republic of Armenia

2. The Equality Council:

1) Shall assist the Human Rights Defender in considering the complaints relating to the areas prescribed by part 1 of the present article and shall present its advisory opinion to the Human Rights Defender relating to violations identified therein.

2) If necessary, shall submit to the Human Rights Defender the recommendations to carry out the specific powers reserved by the Constitutional Law of the Republic of Armenia "On the Human Rights Defender". The Council may also recommend the Human Rights Defender to submit a supportive position (*amicus curiae*) to the Constitutional and Cassation Courts of the Republic of Armenia about the discrimination cases.

3) Shall assist the Human Rights Defender also in:

a. providing consultation to organisations as well as national and local self-governing bodies.

b. raising public awareness to prevent all forms of discrimination.

c. conducting research and studies about discrimination as well as developing the Human Rights Defender's annual report in regard to issues of equality and elimination of discrimination.

**Chapter 4**

**FINAL AND TRANSITIONAL PROVISIONS**

**Article 16: Final and transitional provisions**

1. The present law enters into force on the 10<sup>th</sup> day after its official publication.

2. The Human Rights Defender, within two months after entering into force of the present law, shall form the Equality Council and initiate its first session.

**The law of Republic of Armenia on**

**«Making amendments in the Civil Procedure Code of the Republic of Armenia»**

**Article 1: Part 1 of the** Article 48 of the Civil Procedure Code of the Republic of Armenia of June 17, 1998 shall be amended with the new sentences with following content: "When reviewing a complaint about the discrimination, the plaintiff presents the data and arguments that clearly justify existence of discrimination. The obligation to prove the absence of discrimination is brought to the defendant."

**Article 2:** The present law enters into force on the 10<sup>th</sup> day after its official publication.

**The law of Republic of Armenia**

**«Making amendments in the Administrative Procedural Law of the Republic of Armenia»**

**Article 1:** Part 2 of the Article 29 of the Administrative Procedure Code of the Republic of Armenia of December 5, 2013 shall be amended with a new Part 5 with the following content:

«5) The defendant in any complaint on discrimination and complaint containing data and evidence clearly justifying the existence of discrimination –in the part of proving the absence of discrimination»:

**Article 2:** The present law enters into force on the 10<sup>th</sup> day after its official publication.

**The law of Republic of Armenia on**

**«Making amendments in the Civil Code of Legislation of the Republic of Armenia»**

**Article 1:** Add new Article 162.1(2) of the Civil Code of the Republic of Armenia of 5 May 1998 (hereinafter referred to as the Code) with the following new paragraph 10: "The right to not be subject to discrimination".

**Article 2:** Replace "9" with "10" in Point 2 of Part 7, Article 1087.2 of the Code.

**Article 3:** This law will be enforced 10 days after its official publication