Strasbourg, 24 June 2024 **CDL(2024)019**

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DIRECTORATE GENERAL OF DEMOCRACY AND HUMAN DIGNITY

(DGII)

ARMENIA

JOINT OPINION

ON

THE DRAFT LAW ON NATIONAL MINORITIES

Adopted by the Venice Commission
at its 139th Plenary Session
(Venice, 21-22 June 2024)

On the basis of comments by

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Opinion co-funded by the European Union

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I. Introduction

1. By letter of 25 January 2024, Mr Grigor Minasyan, Minister of Justice of Armenia, requested an opinion on the Draft Law on National Minorities through a letter addressed to the Directorate General on Democracy and Human Dignity (DG II). On 1 March 2024, the Armenian authorities requested the involvement of Venice Commission for the examination of the Draft Law on National Minorities (i.e. the March version, hereinafter – "the original text"). The Venice Commission, in line with its practice, decided to prepare this opinion jointly with DGII. A new version of the Draft Law on National Minorities (hereinafter "the Draft Law", CDL-REF(2024)010; see also the explanatory note CDL-REF(2024)027) was sent by the authorities on 22 April 2024.

2. Ms Veronika Bílková, Mr Jan Velaers, Ms Janneke Gerards, Mr Francesco Palermo and Ms Federica Prina acted as rapporteurs for this opinion.

3. On 6 and 7 May 2024, a joint Venice Commission and DGII delegation composed of Ms Veronika Bílková, Ms Janneke Gerards, Ms Federica Prina, accompanied by Ms Delphine Freymann, Deputy Secretary of the Venice Commission and Mr Roland Gjoni, from the Commission's Secretariat, travelled to Yerevan and had meetings with the Deputy Minister of Justice, the Deputy Minister of Education, Science, Culture and Sports, Members of Parliament from National Minorities, representatives of the Parliament's Standing Committee on Protection of Human Rights and Public Affairs, the Council for National and Cultural Organisations of National Minorities, as well as representatives of the Ministry of Foreign Affairs, the Human Rights Defender's Office, civil society organisations including national minorities' organisations, and the international community. On 4 June 2024, the Ministry of Territorial Administration and Infrastructure provided information in writing. Written comments were also provided by civil society and minority representatives following the visit. The Venice Commission and DGII are grateful for this information and to all interlocutors for their input. The Venice Commission and DGII are grateful to the Armenian authorities and the Council of Europe Office in Yerevan for the excellent organisation of this visit.

4. This opinion was prepared in reliance on the English translation of the Draft Law. The translation may not accurately reflect the original version on all points.

5. This joint opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 6 and 7 May 2024. The authorities provided written comments on the draft Opinion on 13 June 2024. It was adopted by the Venice Commission at its 139th Plenary Session (Venice, 21-22 June 2024).

II. Background and context

6. In the Republic of Armenia, Armenians make up 98 %of the population. According to the 2022 census, the remaining two percent consist of Yezidis, Russians, Assyrians, Ukrainians, Kurds, Indians, Persians, Greeks, Georgians, and a relatively high number of non-specified "others".[1] The previous censuses of 2001 and 2011 showed the presence of other minorities such as Jews, Belarusians, Azerbaijanis, Poles, and Germans.[2] In its fifth opinion on Armenia,[3] the Advisory Committee (hereinafter ACFC) on the Framework Convention for the Protection of National Minorities (hereinafter FCNM) noted that the Udins were reportedly in the process of being recognised as a national minority by the authorities. While Armenia's minorities are scattered across the country, and do not form local majorities in most administrative units, their presence is significant and long-lasting in the country's history.

[1] Statistical Committee Republic of Armenia, The Main Results of RA Census 2022, online at https://www.armstat.am/en/?nid=82&id=2623.
[2] ECRI (2016) §71.
[3] Fifth Opinion on Armenia, ACFC/OP/V(2022)01, Advisory Committee on the Framework Convention for the Protection of National Minorities on Armenia, 5 October 2022, para 36.

7. In its abovementioned fifth opinion on Armenia,[4] the ACFC welcomed the prevailing climate of tolerance in Armenian society. It remains concerned about the limited awareness of the content of the rights of national minorities enshrined in the FCNM, among the authorities, the majority and persons belonging to national minorities. It regretted the limited progress in the realm of national minority rights legislation and its effective implementation over the last monitoring cycle.

8. The Committee of Ministers' Resolution CM/ResCMN(2023)6[5] on the implementation of the FCNM by Armenia, recommended "revis[ing] the Draft Law on National Minorities in full compliance with international standards, including the FCNM, having ensured that all those concerned have been effectively consulted on its substance", as already recommended by the ACFC in its fifth opinion on Armenia.[6] Armenia was also recommended to adopt a law on national minorities under the UN Universal Periodic Review Mechanism.

9. The successive Action Plans to the respective National Strategies for Human Rights 2017-2019 and 2023-2025 foresee the development and adoption of a law on national minorities.

10. The Draft Law has been in the drafting process for many years. In 2018, an earlier draft of this Law was assessed by Council of Europe experts.

11. The Draft Law on national minorities has been developed in parallel with the draft Law on Ensuring Equality. Since the Venice Commission has not been requested to provide an opinion on latter, the current opinion will not assess it but only refer to its provisions where needed.

12. The aim of the present opinion is not to look into all provisions of the Draft Law in an exhaustive manner but to address the main issues, which in the view of the Venice Commission and DGII warrant further consideration and improvement. The absence of remarks on other aspects of the draft law should not be interpreted as their tacit approval.

III. Domestic legal framework

13. The 1995 Constitution of the Republic of Armenia,[7] as amended in 2005 and 2015, contains several provisions relevant for the protection of national minorities. Article 29 prohibits "discrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances". Article 56 of the Constitution recognises the general right of everyone "to preserve his or her national and ethnic identity" (paragraph 1) and stipulates that "persons belonging to national minorities shall have the right to preserve and develop their traditions, religion, language and culture" (paragraph 2).

14. At present, Armenia does not have a specific Law on National Minorities. Until now, various aspects of national minority related questions have been regulated through legal provisions in other sectoral laws.[8]

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[4] Fifth Opinion on Armenia, ACFC/OP/V(2022)01, Advisory Committee on the Framework Convention for the Protection of National Minorities on Armenia, 5 October 2022, para 1.
[5] Resolution CM/ResCMN(2023)6 on the implementation of the Framework Convention for the Protection of National Minorities by Armenia, Adopted by the Committee of Ministers on 28 June 2023 at the 1470th meeting of the Ministers' Deputies.
[6] Fifth Opinion on Armenia, ACFC/OP/V(2022)01, Advisory Committee on the Framework Convention for the Protection of National Minorities on Armenia, 5 October 2022, para 20.
[7] Constitution of the Republic of Armenia.
[8] This topic is regulated *inter alia* by the Law on the Fundamentals of Cultural Legislation, the Law on Language, Electoral Code, the Law on Fundamentals of Administrative Action and Administrative Proceedings, the Criminal Code, the Criminal Procedure Code, the Law on Mass Media, the Law on Audiovisual Media, the Labour Code, the Law on Education, the Law on the Police, the Law on Audiovisual Media, the Code of Administrative Offences,

15. Article 89(2) of the Constitution indicates that seats in the National Assembly shall be allocated to representatives of national minorities under the procedure prescribed by the Electoral Code. Articles 83(5), 95(9) and 100(2) of the Electoral Code of the Republic of Armenia reserve four seats to representatives of "the first four national minorities with the largest number of resident populations according to the data of the latest census preceding the elections". These four minorities are currently the Yezidis, the Russians, the Assyrians, and the Kurds.

16. On 3 May 2019, the Prime Minister of the Republic of Armenia issued a decision which established the Council on National Minorities (hereinafter Council).[9] The Council replaced the Co-ordinating Council for National and Cultural Organisations of National Minorities. A new decision on 29 December 2023[10] amended the previous decision. It is composed of representatives of state institutions and members of non-governmental organisations involved in activities related to the realisation of the rights of the national minority of the Republic of Armenia, the preservation of national identity, and the development of culture. The Council is a consultative body which discusses the issues of national minorities in Armenia, expresses its position on them, as well as elaborates relevant proposals, including regarding the distribution of state support provided to national minorities. The Council includes the representatives of eleven national minorities (namely the Assyrian, Belarusian, Georgian, German, Greek, Jewish, Kurdish, Polish, Russian, Ukrainian and Yezidi minorities). While the Council used to operate adjunct to the Chief Adviser to the Prime Minister, it operates adjunct to the Head of Prime Minister's Office since the above-mentioned decision of December 2023. The Council has adopted its own rules of procedure and the method of distribution of the financial resources allocated to organisations of national minorities from the state budget.

IV. International standards

17. Armenia has ratified several international treaties on the protection of human rights, some of which contain specific provisions on minority rights, notably Article 27 of the International Covenant on Civil and Political Rights (hereinafter ICCPR), [11] the FCNM and the European Charter for Regional or Minority Languages (hereinafter ECRML).[12] Armenia is State party to the European Convention on Human Rights (hereinafter ECHR). It is also State Party to other United Nations (hereinafter UN) human rights instruments.[13]

18. Based on Article 5(3) of the Constitution of the Republic of Armenia, "in case of conflict between the norms of international treaties ratified by the Republic of Armenia and those of laws, the norms of international treaties shall apply". Article 81(1) of the Constitution moreover provides that "the practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions concerning basic rights and freedoms enshrined in the Constitution".

19. The fulfilment of these international obligations is monitored by the specific supervisory bodies of the Council of Europe: the ACFC,[14] the Committee of Experts (hereinafter COMEX) of the ECRML, the European Commission against Racism and Intolerance (hereinafter ECRI) and

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the Judicial Code, Medical Care and Services of the Population Act, the Criminal Code, the Civil and Criminal Procedure Codes.

[9] Decision of the Prime Minister of the Republic of Armenia N 486-L, 3 May 2019.

[10] Decision of the Prime Minister of the Republic of Armenia N 1297-L, 29 December 2023.

[11] Article 27 of the ICCPR provides that "persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".

[12] Upon the ratification of the ECRML, Armenia declared that "within the meaning of the European Charter […], minority languages in the Republic of Armenia are Assyrian, Yezidi, Greek, Russian and Kurdish languages".

[13] Except for the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

[14] Armenia has gone through five monitoring cycles by the ACFC.

the Council of Europe Commissioner for Human Rights. Their activities have led to the adoption of recommendations by the Committee of Ministers of the Council of Europe. The fulfilment of international obligations relating to minority rights is also monitored in the framework of the UN.[15]

V. Analysis

A. Legislative process and consultation

20. The Venice Commission and DGII note that the Draft Law has been in the drafting for many years. The Explanatory Report states that the Draft Law, from 2018 to 2020, "was subject to numerous public discussions with government agencies, journalists, representatives of civil society organisations, including organisations of persons belonging to national minorities, representatives of the communities of national minorities (including the members of the Council on the Issues of National Minorities), human rights activists etc". In their written comments, the authorities state that the draft law was first developed in 2018, and then discussed between 2018 and 2020 in public consultations, based on which the current Draft Law was finalised. The legislative thus process seems to have then been discontinued and has recently been resumed; in April 2024, a revised version of the text of the Draft Law was presented to the Venice Commission and DGII. Since the text of the Draft Law has not undergone any major changes between 2018 and 2024, it is not clear to what extent the results of public consultations were taken into account in drafting this new version.[16] Many interlocutors confirmed that no public discussions or other forms of public consultations have been held since the 2018-2020 consultations. Most of the interlocutors were not even aware that the work on the Draft Law had resumed and that new changes had been recently made; there was confusion amongst stakeholders about the different versions of the Draft Law and the nature of the provisions retained in the Draft Law, which had not been made public. Representatives of national minorities and of civil society organisations met by the delegation deplored the lack of recent consultations and felt that their concerns as expressed in the previous consultation process had not been taken into account.

21. The Venice Commission's Rule of Law Checklist provides for the need for "the process for enacting law [to be] transparent, accountable, inclusive and democratic".[17] This includes the adequate justification of the legislative proposal, the availability of a public debate – which should provide the public with a meaningful opportunity to provide input –, and carrying out a preliminary impact assessment where appropriate.

22. In this context, the Venice Commission and DGII further recall that Article 15 of the FCNM stipulates that States "shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them". The Explanatory Report to the FCNM specifies that the provision can be implemented inter alia through "consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly".[18] The need to effectively consult representatives of national minorities on draft laws affecting their legal status and rights also has been repeatedly highlighted by the Venice Commission.[19]

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[15] https://www.ohchr.org/en/hr-bodies/upr/am-index.
[16] See also Fifth Opinion on Armenia, ACFC/OP/V(2022)01, Advisory Committee on the Framework Convention for the Protection of National Minorities on Armenia, 5 October 2022, para 38.
[17] Venice Commission, CDL-AD(2016)007, Rule of Law Checklist, para. 50.
[18] Explanatory Report to the Framework Convention for the Protection of National Minorities, 1 February 1995, para 80. See also ACFC, Thematic Commentary on "The Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs", ACFC/31DOC(2008)001.
[19] See CDL-AD(2007)001, Report on non-citizen and minority rights, paras 41, 119-120; and CDL-AD(2019)032, Opinion on the Law ensuring the Functioning of the Ukrainian language as State Language, para 61.

23. In the light of the above, the Venice Commission and DGII consider that the consultation process followed so far is not in line with these standards. They invite the Armenian authorities to consult all parties concerned in the further stages of the legislative process and provide representatives of national minorities with a meaningful opportunity to give their input in the finalisation of the Draft Law.

B. Content of the Law

1. General observations

24. The Venice Commission and DGII acknowledge the efforts of the Armenian authorities to prepare a law on national minorities, as recommended by the Committee of Ministers and the ACFC.

25. The Venice Commission's Rule of Law Checklist[20] provides that foreseeability means not only that the law must, where possible, be proclaimed in advance of implementation and be foreseeable as to its effects; it must also be formulated with sufficient precision and clarity to enable legal subjects to regulate their conduct in conformity with it. Foreseeability further requires that new legislation should clearly state whether, and which, previous legislation is repealed or amended, and amendments should be incorporated in a consolidated, publicly accessible version of the law.

26. The Draft Law does not regulate the legal status of national minorities in a holistic and comprehensive manner. As indicated in Article 2, the Draft Law is part of the Armenian legal framework applicable to persons belonging to national minorities. This legal framework is complex and encompasses legal acts that are mentioned in the Draft Law and in the Explanatory Note, as well as various sectoral laws. In several instances, the Draft Law refers to other legislation applicable without explicitly mentioning the relevant laws or provisions. The understanding of the legal status of persons belonging to national minorities and of their rights thus requires a very solid knowledge of the Armenian legal system. Moreover, the draft Law refers to draft legislation under preparation such as the Draft Law "On Ensuring Equality", which raises questions of legal certainty as long as this Draft Law is not adopted. The various laws the Draft Law on National Minorities needs to be read in conjunction with are not always referred to explicitly. Moreover, they have not been submitted to the Venice Commission and DGII and therefore are not assessed in detail in this opinion. While it may be impossible or impractical to include all relevant provisions related to persons belonging to national minorities into one single piece of legislation, the Venice Commission and DGII invite the Armenian authorities to refer more explicitly to the other relevant acts (in Article 2 or in other provisions). This would bear out more clearly that the Draft Law is intended to be a *lex specialis* on the topic of national minorities. The Venice Commission and DGII furthermore consider that the harmonisation and alignment between the draft law and other (draft or existing) legislation needs to be ensured.

27. The Venice Commission and DGII note that the Draft Law contains a considerable number of provisions that are drafted in general, vague or ambiguous terms. Some provisions do not go beyond what already appears to be enshrined in the other laws, in the Constitution or in international instruments (e.g., Article 11 on the right to freedom of thought, conscience and religion). Moreover, the formulation of several provisions in broad and unspecific terms makes it difficult to understand to whom they are addressed and/or what rights and duties they establish (e.g., Article 10 on the right to education of persons belonging to national minorities). Furthermore, many provisions relate to negative responsibilities on the part of the state – i.e. responsibilities for the state to refrain from interfering with the enjoyment of particular rights –, but do not ensure that the conditions for the exercise of these rights be created. In relation to certain

[20] CDL-AD(2016)007, Rule of Law Checklist.

rights, the Draft Law does not contain thorough procedural provisions,[21] and at other places it includes rather open references to other laws that regulate the relevant issues in more detail. This is the case in particular for the prohibition of discrimination, processing personal data and right to the freedom of thought, conscience and religion, but also for representation in parliament and for the use of languages in criminal proceedings. Considering that the general and vague formulations used in the Draft Law do not bring added value and negatively impact the Draft Law's foreseeability and understandability, as well as its effective implementation, the Venice Commission and DGII recommend that the Draft Law be reviewed in order to improve its quality in this regard.

28. The draft law does not contain any information as to the legal effect of the various provisions and their enforceability. The Venice Commission and the DGII find that some provisions seem to contain rather open-ended norms that are not "justiciable" because they are merely programmatic, whereas other provisions contain rights that would require additional legal protection and elaboration (such as the right to non-discrimination).The Venice Commission and DGII are of the opinion that additional provisions should be added about legal effects and remedies as well as on subsequent implementing acts/regulations.

2. Personal scope of application

a. Terminology

29. Although the Draft Law mainly uses the expression "national minorities", it refers throughout the text to the terms "national and ethnic identity", which are also used in Article 56 of the Constitution of Armenia in the section "the Right to Preserve National and Ethnic Identity". The Draft Law does only define a "national" minority, but not an "ethnic minority". The Venice Commission and DGII note that the two concepts are sometimes mentioned together in certain provisions and sometimes separately, without these different approaches being explained and without clarifying if they are meant to refer to different types of minorities or, essentially, to the same set of minorities. Several interlocutors have explained to the Venice Commission and DG II that the two terms are meant to refer to the same groups. Further elaboration on the use of the two notions and consistent use of terminology would be warranted to ensure clarity of the Draft Law.

b. Definition of "national minority"

30. The Venice Commission and DGII recall that neither the text of FCNM nor its Explanatory report contain a definition of the concept of "national minority".[22] The States Parties to the FCNM therefore have a certain degree of discretion in this respect "in order to take into due account the specific circumstances prevailing in their countries". At the same time, this discretion must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3 (principle of free self-identification) of the FCNM. The discretion is thus not unlimited, and the implementation of the FCNM shall take place in good faith (Article 2 FCNM) and may not be a source of arbitrary or unjustified distinctions.[23]

31. Article 3 of the Draft Law sets the criteria for the definition of national minorities. Based on Article 3(1) of the Draft Law, "persons belonging to the national minority are members of the national minority, i.e. a group with their inherent national or ethnic identity, historically formed in

[21] For example, the Draft Law does not include provisions prescribing (1) the procedure for the recognition/registration of other national minorities (Article 3); (2) the procedure of determining the Council's activities (Article 18); (3) the procedures available for national minorities if they would like to be able to have children taught in their own language but no facilities for this are available in the local schools (Article 10(1)).

[22] See further ACFC, Thematic Commentary No. 4 "The Scope of Application of the Framework Convention for the Protection of National Minorities", ACFC/56DOC(2016)001.

[23] CDL-AD(2012)011,Opinion on the Act on the Rights of Nationalities of Hungary, §31.

the Republic of Armenia." The Venice Commission and DGII note that the wording of the first part of the sentence contains a circular definition which lacks clarity.

32. In the previous version of the Draft Law, citizenship of the country was considered a prerequisite for being considered a person belonging to a national minority. This requirement has been removed from the Draft Law in the version of April 2024. This can be considered a positive step. The Venice Commission has previously expressed itself on the issue of the citizenship requirement with regard to legislation protecting national minorities, underlining that a new, more dynamic tendency to extend minority protection to non-citizens has developed over the years.[24]

33 Concerning the requirement of the "historical formation", the Draft Law fails to define what it means. In its Thematic Commentary No. 4, the ACFC has indicated that whereas certain guarantees established by the FCNM may be limited to areas traditionally inhabited by persons belonging to national minorities, "the length of residency in the country is not to be considered a determining factor for the applicability of the FCNM as a whole, […] any temporal restrictions should be regarded flexibly and […] distinctions in the treatment of otherwise similar groups based solely on the length of their residency in the territory can be unjust".[25] Similarly, the Human Right Council has held, referring to the term "exist" in Article 27 of the ICCPR,[26] that "given the nature and scope of the rights envisaged under that article it is not relevant to determine the degree of permanence that the term "exist" connotes".[27] Although some interlocutors supported the importance of a historical connection between a minority group and the Armenian territory, other representatives of the national minorities and civil society met by the Rapporteurs stressed the need to keep a certain flexibility in this regard and insisted on the importance of allowing for more recent developments to be taken into account.

34. The Venice Commission and DGII note that the presence of a general definition of national minorities in Article 3(1) contrasts with the list of such groups provided in Article 3(2), which provides that "national minorities in the Republic of Armenia are Assyrians, Belarusians, Germans, Yezidis, Poles, Jews, Greeks, Russians, Georgians, Ukrainians, Kurds". This list enumerates the same minorities that were already represented in the Council of National Minorities. According to the Explanatory Report, these groups "were chosen" on the basis of the results of the 2011 census as the groups with the largest population size. The Venice Commission and DGII are unsure why the drafters found it necessary to include a specific list of such minorities into the text. Moreover, there is a discrepancy between the main criterion for the definition of a national minority of Article 3(1) (having a historical connection with Armenia) and the main criterion for the definition of the minorities in Article 3(2) ("largest population size"). Moreover, if population size is indeed the defining criterion, the Venice Commission and DG II note that, as Armenia declared in its response to the ACFC Fifth Report, "the 11 national minorities, recognised in the Republic of Armenia, have been declared as such during the session of the Congress on national minorities held in 2000".[28] A comparison of the past (1989, 2001, 2011 and 2022) censuses reveals that the composition of the population of the Republic of Armenia and the relative size of various national groups have been undergoing relatively rapid

[24] CDL-AD(2005)026 Romania-Opinion on the Draft Law on the Statute of National Minorities living in Romania. Para. 24; CDL-AD(2004)013 Opinion on "Two Draft Laws amending the Law on National Minorities in Ukraine", para. 18; CDL-AD(2004)026 Opinion on "The revised Draft Law on Exercise of the Rights and Freedoms of National and Ethnic Minorities in Montenegro", paras 33-34.

[25] ACFC, The Framework Convention: a key tool to managing diversity through minority rights, Thematic commentary No. 4 The scope of application of the Framework Convention for the Protection of National Minorities, 27 May 2016, para 31.

[26] Article 27 of the ICCPR provides that "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".

[27] UN Doc. CCPR/C/21/Rev.1/Add.5, General comment No. 23(50) (art. 27), 26 April 1994, para 5.2.

[28] GVT/COM/V(2023)002, Comments of the Government of Armenia on the Fifth Opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by Armenia, received on 8 February 2023, p. 9.

changes. The Venice Commission and the DGII are surprised that the most recent 2022 census results have not been taken into account in the Draft Law in this regard. Indeed, the dynamics in population size dictate a cautious and flexible approach and speak against any fixed list of groups qualifying as national minorities.

35. The Venice Commission has repeatedly advised against closed lists of national minorities. In its opinion on national minorities in Croatia, it noted that having such lists "tends to create legal problems related to the protection of rights of minorities (in particular, those that may exist in fact but do not appear on the list) that far outweigh the political benefits gained from the recognition of specific minority groups, which may be better accomplished at the moment when minorities seek to claim the exercise of a specific right".[29] It also noted that "should such a list be retained, it should be explicitly construed as non-exhaustive or indicative, not least of all because over time other communities may meet the elements of the definition".[30] The same recommendations are also applicable to the Draft Law under scrutiny. Would the option of making the list non-exhaustive be selected, the law would need to specify a procedure for revision of the list, which should be rather flexible and should set clear standards for being considered a national minority.

36. The Venice Commission and DGII regret that the system put in place by Article 3 does not allow for acknowledging the existence or the formation of other groups in the course of history, as identities evolve over time. They find that the Draft Law is in need of clearer criteria and should allow for the recognition of other minorities over time. In order to safeguard this, there is a need for a mechanism for changing or updating the list.

37. Another point of confusion related to the definition of minorities can be seen if the definition and the list of groups as presented in Article 2 are read in conjunction with the principle of self-identification laid down in Article 4. Based on Article 4(2) of the Draft Law, persons may decide to declare or not declare their belonging to a national minority and cannot be forced to renounce their ethnic identity. Nevertheless, Article 3(2) obliges them to choose from a closed list and multiple affiliation is prevented.

38. It follows from the above that the rules provided in the Draft Law as to the system of declaration combined with a closed list of minorities are not in line with international standards. Based on that finding, the Venice Commission and DGII recommend reconsidering the drafting of Article 3 based on the above considerations.

3. Equality, tolerance and non-discrimination

39. Articles 5, 7 and 8 of the Draft Law lay down the basic principles with regard to equality and non-discrimination. Some principles are indeed covered by these provisions, such as the general prohibition of discrimination, the duty for the authorities to raise awareness about minorities and their role in society (Article 5), the prohibition of assimilation and the promotion of intercultural dialogue (Article 7) and the right of persons belonging to minorities to preserve their culture and tradition to the extent this is compatible with [the constitution and] the legislation of Armenia (*ordre public* clause, Article 8). Other principles, however, are missing, namely in relation to tolerance and the understanding of the role of minorities in society as well as the need for substantive equality.

40. Article 2 refers to the [draft] law "on ensuring equality" as general law on the matter, which the Draft Law on national minorities integrates and complements as *lex specialis*. The Draft Law on Ensuring Equality has not yet been adopted. In their written comments, the authorities note that the Law on Ensuring Equality that is currently under preparation is intended to define the concept and forms of discrimination, as well as provide relevant legal remedies. The Venice

[29] CDL(2000)79rev, Opinion on the draft constitutional law on the rights of minorities in Croatia, para 3.
[30] CDL(2000)79rev, Opinion on the draft constitutional law on the rights of minorities in Croatia, para 3.

Commission has not been requested to provide an opinion on that draft law, so the present opinion exclusively focuses on the Draft Law on National Minorities. Yet, questions may arise as to the interrelationship between the provisions included in the two draft laws. In addition, changes to the respective draft laws may be necessary to provide for proper alignment. For example, from a perspective of effectiveness, clarity and legal certainty, it could be advisable to specifically prohibit various distinct forms of discrimination (e.g. harassment, intimidation, discriminatorily motivated violence, discriminatory speech) against persons belonging to national minorities in the Draft Law on National Minorities in the same vein as is done in the Draft Law on Ensuring Equality. Alternatively, the grounds of belonging to a national minority and national origin could be included expressly in the list contained in Article 4(1) of the Draft Law on Ensuring Equality and a reference to this could be added in the Draft Law on National Minorities. The Venice Commission and DGII further note that the Draft Law on National Minorities is not listed under the legislation of the Republic of Armenia on ensuring equality before the law indicated in Article 2 of the Draft Law on Ensuring Equality.

41. The Venice Commission and DGII recall that "non-discrimination within the meaning of the proposal does not denote formal equality between individuals belonging to the minority and the rest of the population, but rather substantive equality".[31] To ensure substantive equality, in line with Article 4 (2) of the FCNM, adequate measures might need to be adopted both to ensure that persons belonging to national minorities are not disadvantaged when compared to other individuals, and where necessary to address specific conditions that such persons face more commonly than other individuals. The ACFC and UN treaty bodies have identified several areas in which persons belonging to national minorities in Armenia encounter increased difficulties (such as access to justice[32] or effective access to education[33]) or where special problems arise (such as hate crime[34] or gender-based violence[35]). The Venice Commission and DGII are of the opinion that the Draft Law should provide that the state shall take specific measures to achieve full and effective equality between persons belonging to national minorities and the majority.

42. Based on Article 6(1) of the FCNM, states parties "shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media". The Venice Commission and DGII recommend adding a reference to the establishment of such a climate in the Draft Law, so as to promote the understanding of minorities as an integral part of society.

4. Specific minority rights

a. Freedom of persons belonging to national minorities to use their own language

43. Article 9 of the Draft Law provides that "persons belonging to national minorities have the right to use their language without restriction in their private life and in public places, as well as to exchange and disseminate information in their language" (paragraph 1). At the same time, the Republic of Armenia shall promote mastery of the Armenian language by persons belonging to

[31] CDL(1991)008, Explanatory report on the Proposal for a European Convention for the Protection of Minorities, Article 4, para 24; reproduced in "The protection of minorities", Collection Science and Technique of Democracy, no. 9, p. 24, 1994.
[32] UN Doc. CERD/C/ARM/12-14, Combined twelfth to fourteenth periodic reports submitted by Armenia under article 9 of the Convention, due in 2020, 18 February 2022; and UN Doc. CERD/C/ARM/CO/7-11, para 13.
[33] ACFC, Fifth Opinion on Armenia, ACFC/OP/V(2022)01, 5 October 2022, para 139; UN Doc. CEDAW/C/ ARM/CO/7, Concluding observations on the seventh periodic report of Armenia, 1 November 2022, para 21.
[34] ACFC, Fifth Opinion on Armenia, ACFC/OP/V(2022)01, 5 October 2022, paras 88-97.
[35] UN Doc. CEDAW/C/ ARM/CO/7, Concluding observations on the seventh periodic report of Armenia, 1 November 2022, para 25.

national minorities (paragraph 2). The Venice Commission and DGII recall that it is generally recognised that "States may adopt laws aimed at strengthening and protecting the state language".[36] In the opinion on the language legislation in Slovakia, the Venice Commission noted that "protecting and promoting the official language can respond to public order needs as the use of the State Language allows the State authorities to have access to official communications and documents which are essential to fulfil their public responsibilities".[37] It is however also generally recognised that the protection and promotion of the State language must be balanced against the protection and promotion of languages of national minorities.[38] In light of the Thematic Commentaries of the ACFC Nos. 3 and 4[39] as well as the Ljubljana Guidelines of the OSCE High Commissioner on National Minorities,[40] the Venice Commission and DGII note that it would be a good policy to promote minority languages amongst persons belonging to the majority in areas where minorities live traditionally or in substantial numbers.

44. The Venice Commission and DGII note that the Draft Law contains no provision about increasing the ability of civil servants to understand and speak minority languages, the need to ensure language training of the public officers concerned, or the possibility to resort to authorised translators, with a view to promoting the use of their minority language by persons belonging to minorities. This makes it hardly possible in practice for national minorities to use minority languages in the public sphere. For that reason, it is recommended to add such provisions.

45. Article 9(3) in the original text of the Draft Law provided that "in communities where people belonging to national minorities are at least 30% of total population, the language of the national minority can be used as the language for oral communication with local self-government authorities". The Draft Law now decreases the required portion of the population to 20% and expands the scope of the provision to apply to "oral and written communication". Article 9(3) provides that the proportion of persons belonging to national minorities in the given community shall be determined based on the data of the regular census. On several occasions the Venice Commission has accepted the requirement of a numerical minimum threshold as a condition to exercise the right to use the minority language in relation to public authorities, as this right implies significant financial and other efforts of the state (qualified staff members and/or translators, language training for civil servants etc.). The level of protection may therefore depend on the number of persons belonging to a national minority in a given area of the state.[41] The Venice Commission stated in its Report on non-citizens and minority rights of 2007 "that no general answer can be given [to the question of what is a reasonable minimum threshold] but rather that each country-specific situation, including from a socio-historical perspective, plays a crucial role".[42] States enjoy a certain discretion in this regard. In its Fifth Report on Armenia,[43] the COMEX stated that a 20% threshold would be too high for the use of minority languages with the local administration. On two occasions the Venice Commission accepted a threshold of 20%,[44] while on another occasion it noted that a threshold of 20% might be incompatible with Article 10

[36] ACFC, Fifth Opinion on Armenia, ACFC/OP/V(2022)01, 5 October 2022, para 71.
[37] CDL-AD(2010)035, Opinion on the Act on the State Language of the Slovak Republic, para 41.
[38] CDL-AD(2010)035, Opinion on the Act on the State Language of the Slovak Republic, para 47; CDL–AD(2011)008, Opinion on the Draft Law on Languages in Ukraine, para 97.
[39] ACFC, Thematic Commentaries: No. 4 "The Scope of Application of the Framework Convention for the Protection of National Minorities", ACFC/56DOC(2016)001; and No. 3 on the language rights of persons belonging to national minorities under the Framework Convention, ACFC/44DOC(2012)001.
[40] Ljubljana Guidelines on Integration of Diverse Societies, OSCE High Commissioner on National Minorities, 7/11/2012
[41] Report on non-citizens and minority rights. Adopted by the Venice Commission at its 69th plenary session (Venice, 15-16 December 2006) CDL-AD(2007)001, 125.
[42] Report on non-citizens and minority rights. Adopted by the Venice Commission at its 69th plenary session (Venice, 15-16 December 2006) CDL-AD(2007)001, 120.
[43] Fifth Report on Armenia, COMEX, para.11.
[44] Opinion on the draft Law on the status of national minorities living in Romania, CDL-AD(2005)026, §§31-36; Opinion on the law on the use of languages (North Macedonia), Adopted by the Venice Commission at its 121st Plenary Session (Venice, 6-7 December 2019), CDL(2019)33, § 54.

of the ECRML.[45] The threshold of 5%, introduced in another country, was "to be commended".[46] The issue of thresholds has also consistently been dealt with by the ACFC.[47]

46. The ACFC noted in its Fifth Opinion on Armenia that territorial administrative reform would affect thresholds.[48] Representatives of national minorities met by the Rapporteurs stressed that minority populations in Armenia are in most cases scattered across the country, and do not form local majorities in most administrative units. They pointed out in this regard that a process of consolidation or amalgamation of "communities" as an administrative unit did have significant consequences for reaching the threshold. In several locations, this process of consolidation has brought together several individual villages in one administrative unit. In some such cases, whereas there is a strong representation of a minority group in one or more particular villages, the consolidation or amalgamation has decreased the concentration of the minority population on the administrative level of the community. Indeed, statistical data show that Armenia's communities as administrative units were reduced nearly tenfold from 2016 to 2022.[49] This reportedly reduced the percentage of presence of national minorities in certain communities, thus impacting upon their influence on local affairs, and on their meeting the thresholds as defined in the Draft Law.[50]

47. Based on the above, the Venice Commission and DGII consider that an in-depth impact analysis should have been carried out by the authorities prior to the definition of the threshold. The representatives of the authorities explained to the Rapporteurs that the threshold of 20% was chosen based on examples from other countries. However, in view of the territorial dispersion of national minority communities, thresholds that have been considered acceptable in other countries where the minority population is more compact may not be appropriate in Armenia. There is thus a need for the authorities to conduct, in consultation with minority representatives, a detailed study in order to measure the impact of the threshold envisaged also taking into account the impact of the process of consolidation of communities.

48. Article 9(3) limits the right to use the minority language to the communication with local self-government authorities. The Venice Commission and DGII reckon that Article 9(2) of the Draft Law complements Article 27 of the Law of the Republic of Armenia on Fundamentals of Administrative Action and Administrative Proceedings, which provides that "persons mastering languages of national minorities […] may, as prescribed by law or in accordance with the international treaties of the Republic of Armenia, submit the application and documents attached to it in the language of such national minority for conducting the administrative proceedings". While this provision entitles persons belonging to national minorities to submit their documents in minority languages, an Armenian translation needs to be attached for all the documents related to the conduct of the proceedings and the records relating to them. By contrast, the right to communicate orally or in writing with local self-government authorities does not require any translation and the wording of the Draft Law suggests that it implies both the right to address local self-government authorities in the minority language and the right to be replied to in this language. While this regulation is welcome, the Venice Commission and DGII note that it constitutes a rather minimalist implementation of Article 1(2) of the FCNM and Article 10(2) of the ECRML.

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[45] CDL-AD(2010)035, Opinion on the Act on the State Language of the Slovak Republic, para 53.
[46] CDL-AD(2004)026, Opinion on the Revised Draft Law on Exercise of the Rights and Freedoms of National and Ethnic Minorities in Montenegro, para 41.
[47] See *inter alia*: Second Opinion on Bosnia and Herzegovina, Third Opinion on the Slovak Republic, Third Opinion on Estonia. See also Thematic commentary no. 3, esp. para 57.
[48] ACFC, Fifth Opinion on Armenia, ACFC/OP/V(2022)01, 5 October 2022, para 192 - Referring, in relevant Opinion, to a 30% threshold, the ACFC noted that in some villages where Assyrians reside in substantial numbers, the right to use a minority language in communication with local authorities would be removed as a result of "community consolidation". It is unclear whether this would still be the case with a 20% threshold, and it should be discussed with interlocutors.
[49] ACFC, Fifth Opinion on Armenia, ACFC/OP/V(2022)01, 5 October 2022, para 189.
[50] The COMEX noted that the 20% threshold would, for example, pre-empt the use of Greek in communication with the local authorities in areas where it has been traditionally used (§11).

b. The Right to education of persons belonging to national minorities

49. Article 10 of the Draft Law guarantees the right to education for children belonging to national minorities. This provision has undergone several changes compared to the original text. Article 10(1) now provides that pre-school education and training in public educational institutions for children belonging to national minorities can be organised in the language of such minority, with compulsory teaching of Armenian, or additional educational groups can be arranged to teach the minority language as well as culture and history, "considering the coverage of the permanent residence of national minorities". The Venice Commission and DGII note that the provisions are non-committal, and recommend reconsidering this approach. In addition, they note that the current formulation does not provide any indication as to how "the coverage of the permanent residence" will be established, what geographical area should be considered in calculating this coverage and how sizeable the "coverage" should be. In this regard, further specification is needed.

50. By means of Article 10(2), non-state educational institutions can be organised for children belonging to national minorities in the language of a national minority, again with compulsory teaching of Armenian. No specific obligations are placed upon the state authorities to deliver this teaching or to provide resources to this effect. The Venice Commission and DGII note that the wording of Article 10 does not clarify whether a threshold clause applies to the exercise of such right and, if so, which threshold should be met to grant minority language education in a school. In their comments, the authorities explain that the right enshrined in the Article 10(2) is applicable regardless of the size of the minority population in the community or other administrative unit. The Venice Commission and DGII recommend clarifying this in the text of the Draft Law. In addition, they recommend that Article 10(1) and (2) of the Draft Law should guarantee this right to national minorities and impose a specific obligation on the authorities in the field of education.

51. The fact that minority-language education is reserved to "children belonging to a national minority" is problematic from the point of view of the ECRML's application. Linking language tuition to belonging to a national minority could effectively exclude from opportunities for minority-language education those pupils who belong to the Armenian majority population, or to other national minorities who do not share the same "mother or national tongue". In its Fifth Report,[51] the COMEX therefore recommended to modify the Draft Law to ensure that minority-language education be available to all pupils, regardless of whether they belong to the relevant national minority. Article 10(3) is similarly quite vague, providing that the state "shall *contribute* [italics added] to the development of educational programmes", relevant literature and teachers' training of pedagogical personnel. The Venice Commission and DGII recommend that the extent of this contribution be explained. On the other hand, more robust provisions are found in Article 10(4), by which the state "shall guarantee the admission of persons belonging to national minorities to higher or vocational institutions by the general competition, in case of passing the exams with at least passing points for the paid system.

52. The main state responsibility included in the Draft Law is the allocation of funds for the development of school curricula, publication of textbooks and other materials to teach languages and cultures of national minorities. Yet, Article 10(5) specifies that resources are to be made available only to communities that "do not have a nation state". The Venice Commission and DGII note that while it is not uncommon that kinstates provide some form of support for education in or about the national language and culture,[52] there is no obligation for kinstates to do so. Moreover, according to international standards, the state of residence has the primary responsibility for upholding the rights of national minorities.[53]

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[51] Fifth Report on Armenia, COMEX, para.10.
[52] CDL-INF(2001)19, *Report on the Preferential Treatment of National Minorities by Their Kin-State,* p. 6-7.
[53] HCNM Bolzano/Bozen Recommendations on National Minorities in Interstate Relations.

c. Other minority rights

53. Based on Article 11 "persons belonging to national minorities have the right to publicly or privately profess their own religion or belief, alone or jointly with others, or to express it a different way, to change or not to profess any religion" (paragraph 1). It adds that "relations related to the exercise of the right to freedom of religion of persons belonging to national minorities are regulated by law" (paragraph 2). As the provision is very generally worded and does not go much beyond what is stated in Article 41 of the Constitution, its added value is uncertain. The reference to other legislation in paragraph 2 is equally unclear. Whereas the title of Article 11 is about "freedom of thought, conscience and religion", its paragraph 1 refers to "religion or belief", while paragraph 2 refers solely to "religion". The Venice Commission and DGII are of the opinion that the article should be reworded to avoid discrepancies and ensure harmonisation between different laws.

54. Article 13(1) states that it is possible to establish media in the languages of national minorities, without referring to any special measures aimed at facilitating access to the media for persons belonging to national minorities. The only state responsibility specifically mentioned relates to the provision that "[p]ublic television and radio shall broadcast programmes representing the culture of the national minorities of the Republic of Armenia"; in producing these programmes the Council of National Minorities' recommendations "might be considered" (Article 13(2)). Details are not included, but the Draft Law cross-references other legislation on broadcasting in the languages of national minorities. Thus, the Draft Law does not seem to add to the existing provisions. The Venice Commission and DGII are of the opinion that the Draft Law should spell out state obligations in the sphere of media, including the requirement that programmes for the public broadcaster be developed in close consultation with (or by) persons belonging to national minorities. Besides enhancing awareness of pluralism in Armenian society, minority participation would serve the function of challenging existing reported stereotypes. The law should further refer to special measures aimed at facilitating access to the media for persons belonging to national minorities.

55. Article 14 of the Draft Law provides that "in the communities where people belonging to national minorities make up at least 20% of the total population [the original Draft Law indicated a 30% threshold], the names of communities and streets, as well as the notices of state and community institutions, including the community hall, school, kindergarten, shall be written in the language of the national minority along with Armenian". As for Article 9(3), the 30% threshold indicated in the original Draft Law has been decreased to 20% in the current Draft Law. While this decrease is welcome, the comments related to the threshold and the recommendation to carry out an impact assessment on the consequences of the Draft Law on minority populations are reiterated in relation to this provision.

56. The Draft Law does not contain any provisions on the right to use of minority languages in criminal proceedings. In their written comments, the authorities state that only the Judicial Code and the Criminal Procedure Code can regulate matters related to criminal procedure. Referring to the findings of the ACFC in this regard,[54] the Venice Commission and DGII consider that relevant provisions or references to relevant legal acts on the right to use of minority languages in criminal proceedings should be added to the Draft Law.

57. Article 15, entitled "right to establish organisations", defines the aim of minority organisations ("protecting and implementing the rights of persons belonging to the national minority" – Article 15(1)) and states that these organisations "may issue their documents and forms […] in Armenian", with translation into their national languages (Article 15(2)). If the latter provision is to

[54] See Fifth Opinion on Armenia, ACFC/OP/V(2022)01, Advisory Committee on the Framework Convention for the Protection of National Minorities on Armenia, 5 October 2022 para. 125-129.

be interpreted in the sense that *all* documents produced by minority organisations have to be (first and foremost) in Armenian, and cannot be only in the minority language, it seems a cumbersome requirement and may well detract from the organisations' ability to produce documents in their own languages. The Venice Commission and DGII encourage the Armenian authorities to leave the choice of the first language for their documents, forms, and seals to the organisations themselves and only require the availability of Armenian texts of documents, forms and seals for the most important documents, forms, and seals (such as the statute of the organisation).

58. The original text expressly noted that "any organisation of national minorities shall not be deemed to express the will of the entire national minority" (Article 15(3)). This provision, reflecting the internal diversity of all communities, plurality of views and opinions, has now been deleted in the Draft Law. The Venice Commission and DGII recommend its reintroduction.

5. Representation and participation of national minorities

59. The Draft Law foresees two ways through which persons belonging to national minorities may as such participate in public governance, namely their representation through reserved seats in the National Assembly, and their participation in the Council of National Minorities.

60. As regards representation of national minorities in the National Assembly, Article 17 of the Draft Law refers to the existing provisions in the Constitution and the Electoral Code. The Electoral Code reserves four seats for representatives of "the first four national minorities with the largest number of resident populations according to the data of the latest census preceding the elections" (Article 95(9)), these four minorities being the Yezidis, Russians, Assyrians, and Kurds. The Venice Commission had the opportunity to assess the draft of this regulation in the 2016 Joint Opinion on the Draft Electoral Code.[55] It remains at the disposal of the authorities for any further assistance in this matter.

61. The second form of participation of national minorities in public governance pertains to their activities in and through the Council of National Minorities. The original text of the Draft Law used the term "Chamber", which has been replaced by the term "Council" in the version of April 2024, thus aligning with the title of the already existing Council on National Minorities. The relationship between this Council and the new Council is not clearly explained in the Draft Law. By means of Articles 18(1) and 20(2) of the Draft Law, the Council should be "established" after the entry into force of the Draft Law. In their meetings with the rapporteurs, the authorities clarified that the purpose of the Draft Law was to enshrine in law the existence of the Council as previously created by Decision of the Prime Minister. The Venice Commission and DGII consider that the Draft Law should explicitly mention the link between the existing Council and the one created by the Draft Law, as well as clarify the transitional measures for the application of the new provisions in this regard.

62. Article 18(1) of the Draft Law provides that the Council shall "be established with a view to contributing to the realisation of the rights of national minorities, monitoring the situation and problems related to the realisation of rights, preparing recommendations for solving the problems and expressing their position". It shall encompass persons belonging to all national minorities, each represented by two members nominated by organisations of national minorities. Members of the Council shall have a term of four years. It is not specified whether they can serve only one mandate.

63. The original text contained rules on the selection of the members of the Council as well as on the running of its meetings. The changed text is less detailed in this respect[56] and only notes

[55] CDL-AD(2016)019, Armenia - Joint Opinion on the Draft Electoral Code as of 18 April 2016, para 43.
[56] The former paragraphs 3 and 5 have been removed from the 2024 version of the Draft Law.

that "the procedure of the Council's activities, the requirements for members, and the individual composition of the Council are approved by the decision of the Prime Minister" (Article 18(6)). The Draft Law does not allow to understand if the rules for nomination and appointment having been used so far based on the Prime Minister's decision N 1297-L of 29 December 2023 will continue to apply to the new Council. The current Draft Law further states that Council shall be a consultative body adjunct to the Prime Minister (Article 18(2)). The Prime Minister further is given several fundamental functions such as the establishment of the working procedure, the determination of the requirements for membership and the appointment of the members, as provided by Article 18(6). All this links the Council very clearly to the Prime Minister. However, in the view of the Venice Commission and DG II the involvement of the Prime Minister in the operation of the Council suggests that the protection of national minorities is considered an important political issue in Armenia. Nevertheless, leaving some of the most crucial issues related to the Council to be decided solely by the Prime Minister, rather than to the legislator, risks seriously compromising the autonomy, or the perception thereof, of the Council. Several interlocutors also expressed concerns about such a risk. This does not correspond to Article 15 of the FCNM, which refers to the right to effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs. The Venice Commission and DGII recommend reintroducing the rules on the selection of the members of the Council as they were contained in the previous draft into the current version of the Draft Law – albeit in a revised form, as discussed below –, as well as the general rules for decision-making.

64. The Venice Commission and DGII note that the previous version of the text provided that candidates for membership shall be nominated by "organisations of national minorities that have been active […] for at least 5 years", with no explanation about this requirement. The text did not stipulate why a term of 5 years was chosen and what it meant to have been "active" for that term. In addition, it did not contain any procedure for nominations of candidates of a national minority coming from several different organisations and it did not provide for a solution for the situation in which no organisation meeting the criteria indicated in the text would exist for certain national minorities. The Venice Commission and DGII note that the regulation foreseen by the original text was problematic in this regard and recommend it should not be reintroduced.

65. Although not stated explicitly in either version of the Draft Law, it is likely that only the 11 national minorities listed in Article 3(2) of the Draft Law will be represented on the Council. Yet, the Venice Commission and DGII note that the composition of the Council has given rise to long-standing discussions as it has never been changed despite the developments in the presence of national minorities (as noted above) and despite the efforts of certain minority groups to be admitted to the Council. For instance, the Udins have requested membership several years ago, but their request has not been granted yet.[57] The Venice Commission and DGII also recall the importance of ensuring that the composition reflects the diversity which exist within minorities and ensures gender equality and the presence of youth, as previously stated by the ACFC.[58] All this shows that the composition of the Council – in terms of both which minorities are represented and who represents them – is a delicate issue that requires generally known, transparent and flexible rules. The Venice Commission and DGII consider that the Draft Law in its current version fails to provide such rules.

66. Article 19 enlists the functions and the rights and duties of the Council. The functions, drafted in a rather general language, include promoting the exercise of the rights of national minorities, monitoring this exercise, submitting claims for program-based funding and provide recommendations on institutional and program-based funding. The rights and duties, also drafted in a general language, are those of cooperating with state and local self-government bodies as well as certain other bodies; providing the public with information on the state of implementation of rights of national minorities; preparing recommendations on issues related to the rights of

[57] See also ACFC, Fifth Opinion on Armenia, ACFC/OP/V(2022)01, 5 October 2022, para 36.
[58] See for example ACFC 5th opinion (2023) on Austria, paras 197-205.

persons belonging to national minorities, discussing, analysing drafts of laws and other legal acts in that field, and expressing a position on them and preparing recommendations. Article 19(3) establishes the corresponding duty of state and local self-government authorities to cooperate with the Council and provide information upon its request. Article 19(3) also provides that the Council "prepares an annual report" on the state of the rights of national minorities, which is then presented to the Prime Minister and the Human Rights Defender, as well as published on the government official website.

67. The Draft Law does not specify whether and how the recommendations and outcomes of discussions are to be considered by the relevant authorities. The only obligation that state bodies have, besides the requirement to "cooperate with the Council", is to "provide information" on the exercise of the rights of national minorities, if a request is submitted. Some representatives of national minorities expressed concerns that their voices were not effectively heard and their recommendations were not taken into consideration, including their recommendations regarding the Draft Law. The Venice Commission and DGII recommend that the mandate of the Council be clarified in this regard so as to ensure the effective participation of all minorities in decision-making where relevant through their involvement in the Council.

68. Furthermore, the Venice Commission and DGII recommend further consultations with the Human Rights Defender's Office so as to clarify the respective roles and links between the above Council and the Public Council for the Protection and Promotion of the Rights of People Belonging to National Minorities under the Human Rights Defender Office of the Republic of Armenia.[59]

69. Regarding the state's financial support to national minorities, Article 16 indicates that programmes of organisations of persons belonging to national minorities shall receive annual funding from the state budget according to the rules established by the Council of National Minorities. The ACFC in its report on Armenia notes that the Council for National Minorities disburses funds among its members and that individual minorities can also receive grants to support their projects.[60] Although Article 16 seems to only refer to one source of funding from the state budget, several interlocutors confirmed during their meetings with the Rapporteurs that two types of funding were available, one institutional – available to minorities represented in the Council only –, and the other programme-based – available to all national minorities. The Venice Commission and DGII consider that the provision in the Draft Law would need to be clarified regarding the two sources of funding. In addition, they share the concern expressed by the ACFC that the system risks giving minorities represented in the Council "increased visibility and access to regular funds compared to other minorities",[61] which is hardly compatible with the principle of non-discrimination.

VI. Conclusions

70. At the request of the Minister of Justice of Armenia, the Venice Commission and DGII have assessed the Draft Law on National Minorities.

71. The Draft Law on National Minorities is a welcome legislative initiative, which is likely to contribute to bringing the legislation pertaining to the protection of national minorities in Armenia in line with the applicable international standards. The Venice Commission and DGII

[59] The Public Council for the Protection and Promotion of the Rights of People Belonging to National Minorities under the Human Rights Defender Office of the Republic of Armenia consists of representatives of public organizations and independent experts with the necessary experience in the field of protecting the rights of people belonging to national minorities The purpose of the Council is to facilitate the activities of the Defender in the field of protection and promotion of the rights of people belonging to national minorities, as an advisory body.
[60] ACFC, Fifth Opinion on Armenia, ACFC/OP/V(2022)01, 5 October 2022, para 62.
[61] ACFC, Fifth Opinion on Armenia, ACFC/OP/V(2022)01, 5 October 2022, para 36.

welcome the efforts by the Republic of Armenia to resume the preparation of the new legal acts on the protection of national minorities and on non-discrimination, which have been in the process of drafting for many years. They nevertheless recommend that the Armenian authorities submit the Draft Law on National Minorities to public consultations and ensure that persons belonging to national minorities, not limited to the members of the Council for National Minorities, have an opportunity to participate actively in such consultations.

72. While recognising that the Armenian authorities have made steps in the right direction, the Venice Commission and DGII note that the Draft Law on National Minorities is not a comprehensive legal act regulating all aspects of the legal status of persons belonging to national minorities. It needs to be read in conjunction with certain other legal acts, which have not however been submitted to the Venice Commission and which therefore are not assessed in any detail in this opinion. Further harmonisation between the different laws would be required to ensure foreseeability, harmony and clarity, such as adding clear cross-references between the draft law and other sectoral legislation. In this context, it is particularly recommended to specify the references to the relevant provisions of other laws and to better reflect the principle *lex specialis derogat generali*.

73. The Venice Commission and DGII furthermore note that the Draft Law contains certain important limitations and there is uncertainty as to its scope (see paragraphs 26, 27, 28, 29, 33, 34, 37, 40, 41, 44, 54, 56, 57, 58, 61, 67, 69), which is likely to hamper its practical implementation. It is recommended to address these shortcomings with the necessary revisions, with a view to making the draft more easily operational and improving its quality. This would also ensure that the draft is fully in line with international and European standards.

74. The Venice Commission and DGII are of the opinion that the Draft Law should promote measures to achieve full and effective equality between persons belonging to national minorities, among people belonging to different minorities and those belonging to the majority. In addition, the Draft Law should encourage a spirit of tolerance and intercultural dialogue as per Article 6 (1) of the FCNM[62] and it should contain effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory of Armenia.

75. Throughout the opinion, the Venice Commission and DGII identified several aspects of the law which are in need of further clarification and revision. The most important recommendations are the following ones:

a) The Armenian authorities should reconsider the requirement of “historical formation in the Republic of Armenia” as part of the definition of national minorities. They should also make the list of national minorities contained in Article 3(3) non-exhaustive and establish a mechanism allowing for future recognition of other groups which want to apply for the status of a national minority.

b) The threshold foreseen in Articles 9(3) and 14 should be based on an analysis of the situation at the domestic level (impact assessment) taking the minorities’ population repartition into account so as to avoid an excessively high threshold which would deprive the provisions of their effectiveness in practice.

[62] Article 6 (1) of the FCNM: “The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. According to the Explanatory Report, Article 6 (1) “ stresses a spirit of tolerance and intercultural dialogue and points out the importance of the Parties’ promoting mutual respect, understanding and co-operation among all who live on their territory. The fields of education, culture and the media are specifically mentioned because they are considered particularly relevant to the achievement of these aims.”

c) The provisions regarding the right to education for children belonging to national minorities should be more committal for the authorities by imposing specific obligations on the state. In addition, further specification is needed regarding the notion of "coverage of the permanent residence" in Article 10(1). The question of the applicability and scope of the threshold in the case of non-state general educational institutions (Article 10(2)) should be clarified, and Article 10(3) should explicit the state's contribution to the development of programmes, literature and training.

d) The Draft Law should contain rules on the nomination and selection of members of the Council for National Minorities. Strong powers of the Prime Minister in this area should be avoided.

e) The mandate of the Council should be clarified so as to ensure the effective participation of minorities in decision-making where relevant through their involvement in the Council.

76. The Venice Commission and DGII remain at the disposal of the Armenian authorities for any further assistance in this matter.