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ARMENIA

**EXPLANATORY REPORT ON
THE DRAFT LAW
ON NATIONAL MINORITIES**

EXPLANATORY REPORT

ON THE DRAFT LAW ON NATIONAL MINORITIES

1. Background to the development of the Draft Law on National Minorities:

The Draft Law on National Minorities (hereinafter referred to as “the Draft”) was developed by the Ministry of Justice. From 2018 to 2020, it was subject to numerous public discussions with government agencies, journalists, representatives of CSOs, including organizations 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.

Furthermore, in 2018, expert opinions of Council of Europe experts regarding the Draft were requested and received, reviewing the compliance of the Draft with the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The Draft was revised based on the suggestions and concerns raised during the public discussions and the recommendations provided in the expert opinions.

The necessity for the development of the Draft derives from the RA Constitution, as well as Armenia’s international obligations related to the rights of persons belonging to national minorities.

Thus, in accordance with Article 29 of the RA Constitution, 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 shall be prohibited.

Article 56(1) of the Constitution enshrines the right of each person to preserve his or her national and ethnic identity. Accordingly, Article 56(2) provides that persons belonging to national minorities shall have the right to preserve and develop their traditions, religion, language and culture. The same Article states that exercise of the mentioned rights shall be regulated by law. The Draft aims at ensuring the legislative regulation of these constitutional guarantees.

Furthermore, Armenia has ratified and acceded to a number of international treaties, which oblige it to ensure the exercise and protection of the rights of persons belonging to national minorities. In particular, in 1998, Armenia ratified the Council of Europe Framework Convention for the Protection of National Minorities, and in 2002 – the European Charter for Regional or Minority Languages. Moreover, Armenia is also a member to the International Covenant on Civil and Political Rights, Article 27 of which states 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 practice their own religion, or to use their own language.

Importantly, a number of international monitoring bodies have explicitly recommended Armenia to adopt a stand-alone law regulating the protection of rights of persons belonging to national minorities.

Thus, in its First report on Armenia, the European Commission against Racism and Intolerance (ECRI) stressed that a more global and coordinated vision of how the situation of minority groups might be dealt with could lay down the basis for a more targeted approach and policies in various areas, and would help to strengthen and maintain the climate of tolerance between different groups in society. In this respect, ECRI reiterated the desirability of adopting a law on national minorities, which would demonstrate the political will to address this area and lay down the framework for action to be taken.¹

¹ Paragraphs 65-66, available at: <https://rm.coe.int/first-report-on-armenia/16808b5531?fbclid=IwAR0LZyMW8ruJHXsBPqmGmWDgQCqk11Tl3wff7i374y5qOyxRJJtWhMlt6KA>.

ECRI provided similar recommendation to Armenian authorities in its Second report on Armenia.²

Similarly, the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), has repeatedly emphasized the importance of establishing a legal framework related to the protection of the rights of persons belonging to national minorities. Thus, in its Fifth Opinion on Armenia, the ACFC urged the authorities to revise the Draft Law on National Minorities in full compliance with international standards, including the Framework Convention, having ensured that all those concerned have been effectively consulted on its substance, as well as to continue with the process of adoption of the law.³ Similar recommendations were provided by the ACFC in its Fourth, Second and First Opinions on Armenia.⁴

Armenia was also numerously recommended to adopt a law on national minorities within the framework of the UN Universal Periodic Review mechanism.⁵

It is also important to note that the elaboration and adoption of a law on national minorities was envisaged by the RA Government's 2019-2023 Action Plan, in accordance to which the Draft's immediate outcomes are the following:

- the clarification of the scope of persons belonging to national minorities,
- the establishment of fundamental rights and freedoms of national minorities, as well as the corresponding obligations of state and local self-government bodies,
- the establishment of a consultative body authorized to discuss the issues of persons belonging to national minorities, including the issues relating to the realization of their rights.

Furthermore, the development of the Draft was also envisaged by the 2017-2019 Action Plan to the National Strategy for Human Rights, in accordance to which the Draft should regulate the exercise of the rights of persons belonging to national minorities, in particular, the rights to preserve and develop their national and ethnic identity, traditions, religion, language and culture.

Similarly, the new 2023-2025 Action Plan to the National Strategy for Human Rights contains a separate action devoted to the revision and finalization of the Draft in accordance with relevant international standards and best practice.

2. The objectives of the Draft, main provisions, and its relationship with other legal acts:

While there is no stand-alone law regulating the exercise of the rights of persons belonging to national minorities, various legislative acts contain such separate provisions, which has led to a fractured and sectoral nature of the legal regulation of this field. The Draft thus aims at comprehensive regulation of the issues related to the exercise of the rights of persons belonging to national minorities, corresponding responsibilities and functions of state bodies, as well as to the establishment and functioning of a Minority Council.

Article 3 of the Draft provides for the definition of persons belonging to national minorities. In particular, persons are considered "belonging to national minorities" if they belong to a group with its own unique national and ethnic identity, which was historically formed in the Republic of Armenia. The same article lists the ethnic groups, which, in accordance with the Draft, are

² Paragraph 15, available at: <https://rm.coe.int/second-report-on-armenia/16808b5533>.

³ Paragraph 20, available at: <https://rm.coe.int/5th-op-armenia-en/1680aa2a81>.

⁴ Fourth Opinion on Armenia, page 2, available at: <https://rm.coe.int/16806f7f70>.

Second Opinion on Armenia, paragraphs 32-34, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c153>.

First Opinion on Armenia, paragraphs 22-24, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008bd37>.

⁵ <https://www.ohchr.org/en/hr-bodies/upr/am-index>.

considered national minorities in Armenia. These groups were chosen based on the results of the RA 2011 Population Census (the 11 nationalities with biggest population size were included) and are as follows: Assyrians, Belarusians, Germans, Yezidis, Poles, Jews, Greeks, Russians, Georgians, Ukrainians and Kurds.

The Draft provides for some of the core rights and freedoms of persons belonging to national minorities. It includes many of the rights enshrined in the Framework Convention for the Protection of National Minorities, such as:

- the right to freely choose to be treated or not be treated as a person belonging to a national minority,
- prohibition of discrimination,
- the right to preserve their identity, and to maintain and develop their traditions, religion, language and culture,
- the right to freely use their language,
- the right to freedom of thought, conscience and religion,
- the right to freedom of association, etc.

Some of the provisions of the Draft already exist in other legal acts. For example, in accordance with Article 8 of the Law on the Fundamentals of Cultural Legislation, the Republic of Armenia shall support the preservation and development of the cultural identity of national minorities living on its territory, and through the implementation of state programs shall contribute to the creation of conditions for the preservation, dissemination and development of their religion, traditions, language, cultural heritage and culture. This provision is quite similar to Article 7(3) of the Draft; however, the latter expands the scope of the abovementioned provision by providing for the implementation of programs and activities aimed at the promotion of intercultural dialogue and including an explicit obligation of not only state bodies but local self-government bodies to conduct such activities.

Furthermore, the Law on Language of the RA contains provisions related to the rights of persons belonging to national minorities to freely use their language and to education. Thus, in accordance with its Article 1, the Republic of Armenia guarantees the free use of the languages of national minorities, and under the Article 2, public education in the communities of national minorities may be organized in their mother tongue – within the framework of a state program and sponsorship, with compulsory teaching of Armenian. Articles 9 and 10 of the Draft also contain similar provisions, at the same time, they provide for broader safeguards to the exercise of these rights.

In relation to certain rights, the Draft does not contain thorough procedural provisions, and rather includes references to other laws, which regulate the relevant issues in more detail. This is the case for the prohibition of discrimination, processing personal data, right to the freedom of thought, conscious and religion, representation in the parliament, etc.

In this regard, it should be noted that the exercise of the rights of persons belonging to national minorities to freedom of belief and freedom of association is regulated by the respective sectoral laws, which do not differentiate between national minorities and other groups, but rather include general procedural provisions equally applicable to everyone.

As to the electoral rights, the quotas for national minorities in the National Assembly (the parliament) are established under the Article 89(2) of Constitution, according to which representatives of national minorities shall be allocated with seats in the National Assembly under the procedure prescribed by the Electoral Code.

Accordingly, Article 83 of the Electoral Code provides for 4 mandates for the representatives of those national minorities, which have the largest number of resident populations.

It is also important to note that the Draft does not aim at providing for legal mechanisms for the protection of minority rights, including anti-discrimination proceedings, which are to be defined

and regulated by the Draft Law on Ensuring Equality before the Law (hereinafter referred to as “the Draft Equality Law”). In particular, Article 4(1) of the Draft Equality Law defines discrimination as action, inaction, regulation, treatment or policy that has been manifested by differentiation, exclusion, limitation of or preference towards person’s rights and freedoms, if such differentiation, exclusion, limitation or preference is not necessary in a democratic society or if the conditions for reasonable proportionality between the legitimate aim pursued and means employed were not met, 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.

Accordingly, the Draft Equality Law provides for the types of discrimination, legal mechanisms for the restoration of rights or compensation, as well as the composition and mandate of the Human Rights Defender (Ombudsperson) as an equality body.

One of the objectives of the Draft is the regulation of the functions of the Minority Council. In accordance with Article 18 of the Draft, the Minority Council is a consultative body adjunct to the Prime Minister, and consists of the representatives of national minorities – 2 members from each national minority.

One of the main objectives of the establishment of the Council is not only to bust the participation of national minorities in decision making processes but also to ensure the existence of a valuable source of information for the Government on the issues of national minorities; in this sense, the Council will serve as a unique platform for the discussion of these issues.

It should be noted that currently, a similar Council operates adjunct to the Prime Minister’s Office, and is chaired by the Head of the Office of the Prime Minister. The Council was established in accordance with the Prime Minister’s Decision N 486-L of 2019,⁶ which provides for the Council’s powers. In particular, according to the mentioned Decision, 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 Draft expands the scope of the Council’s mandate to also include:

- the monitoring of the exercise of the rights of persons belonging to national minorities,
- providing the public with information on the state of exercise of the rights of persons belonging to national minorities and their problems,
- analyzing draft laws and other draft legal acts related to national minorities, expressing a position on them and preparing recommendations,
- presenting an annual report to the Prime Minister and the Human Rights Defender on its activities and the state of human rights of national minorities, etc.

The rationale behind the inclusion of provisions regarding the establishment and functions of the Council in the Draft, rather than in a bylaw, is to ensure its long-term sustainability. Additionally, as previously noted, the Draft provides for a larger scope of Council’s powers, enabling it to function with greater efficiency.

Concluding, it should be reiterated that the Draft aims at comprehensive regulation of issues related to national minorities, including by clarifying the definition of persons belonging to national minorities, defining their basic rights and freedoms, enshrining the duties of state and local self-government bodies in regards to the mentioned rights, as well as by providing for legal grounds for the establishment and functioning of the Minority Council.

⁶ Available at <https://www.arlis.am/DocumentView.aspx?docid=188199> (in Armenian).