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Strengthening access to justice through non-judicial redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries

Baseline study for assessing the national non-discrimination mechanisms in Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus

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Executive summary

The regional baseline study for assessing the national non-discrimination mechanisms in Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus (the study / baseline study hereinafter) was carried out within the project “Strengthening access to justice through non-judicial redress mechanisms for victims of discrimination, hate crime and hate speech in the Eastern Partnership countries” (hereinafter, the regional project). The project is part of the Partnership for Good Governance for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus, co-funded by the European Union and the Council of Europe and implemented by the Council of Europe.

This study was drafted on the basis of six national studies developed in early 2019. This study aims to assess the effectiveness of access to justice for victims of discrimination, hate crime and hate speech through non-judicial redress mechanisms in the six countries and provide areas in which interventions could be prioritised in the regional project. This study also assesses the capacity and the level of cooperation of Equality bodies/ Ombudsperson institutions with NGOs partners and the judiciary in the six countries. The regional baseline study is not a report on the situation of equality and discrimination in the six countries. The study is primarily indented to help the regional project team tailor the activities towards achieving the project goals and to have a baseline information which would allow to assess the impact of the project.

The equality principle is enshrined in the Constitutions of all six countries. The legislation of all countries includes provisions on equality and non-discrimination in various laws and public policy documents. In all countries, there are laws that provide the citizens’ right to complain to the public authorities for their rights’ violations, including on discrimination and hate speech. Theoretically, this mechanism should be applicable to complaints on discrimination. However, this is rather an illusory mechanism for victims of discrimination in the countries where no special anti-discrimination laws or at least special provisions exist in the procedural codes and other legislative acts that provide for at least the shared burden of proof for examining discrimination complaints and basic discrimination concepts.

Anti-discrimination laws exist in Georgia, Republic of Moldova and Ukraine. However, in Ukraine the provisions on burden of proof are insufficient and both in the Republic of Moldova and Georgia need improvements regarding their anti-discrimination laws. An anti-discrimination draft law has been on public agenda in Armenia for some time, pending adoption.

Similarly, at least some provisions in the criminal codes exist criminalizing hate speech and hate crimes in each country. However, the Criminal Codes in none of the six countries is fully in line with the European Commission against Racism and Intolerance’s (hereinafter, ECRI) General Policy Recommendation (hereinafter, GPR) no. 7, all in need of amendments. Draft legislative initiatives on improving the equality and non-discrimination framework, including the criminal codes, exist in Armenia, Georgia, Republic of Moldova and Ukraine.

Legislative provisions on hate speech vary in the project countries. None of the countries reported effective civil and administrative remedies for hate speech and none of the countries

reported mechanisms for rapid responses to hate speech. Hate speech in the media is regulated in all countries, except Belarus, and complaint mechanisms exist, either to broadcasting bodies (public institutions) or to self-regulatory bodies created by unions of journalists. None of the countries reported effective mechanisms for combating hate speech by political parties, including in electoral campaigns. In the Republic of Moldova, this is a particular challenge, since legislation and competencies of the electoral bodies are missing. Counter speech by public officials seems to be missing in all countries.

Equality Bodies exercising at least some functions as recommended in ECRI's GPR No. 2, with a diverse institutional set up, exist in Georgia, Republic of Moldova, Ukraine and to some extent in Armenia, where the Human Rights Defender does not have an express mandate, but carries out some activities to prevent and combat discrimination. In the Republic of Moldova, two bodies – the Equality Council and the Ombudsperson institution – are entrusted with the equality mandate, together covering all three functions as recommended by ECRI's GPR No. 2. The Ombudsperson in Azerbaijan does not have an express equality mandate, nor does it carry out any activities in the field of discrimination. There is no equality body or Ombudsperson institution in Belarus.

The effectiveness of the Equality Bodies/ Ombudsperson institutions in Armenia, Georgia, Republic of Moldova and Ukraine varies, each having different strengths and weaknesses. All carry out the promotion and prevention functions, with varying degrees of effectiveness. The Public Defender of Georgia lacks the victim support and litigation function, while in the Republic of Moldova this function theoretically can be exercised by the Ombudsperson institution, but in practice is insufficiently carried out. In Ukraine, the Parliamentary Commissioner does not have investigation and conciliation powers. Addressing structural discrimination varies among the four countries. Ukraine seems to prioritize more these aspects, employing a variety of strategies. Still, the Equality Bodies in the three countries (Georgia, Republic of Moldova and Ukraine) primarily use legislative analysis and promotion of legislative amendments for addressing structural discrimination. Other tools, such as strategic litigation, practically is missing.

Effectiveness in addressing individual complaints on discrimination, hate speech and hate crimes varies among the four countries. The competencies of the four bodies vary. The Equality Bodies / Ombudsperson institution in Ukraine, Georgia and the Republic of Moldova have express equality mandates and decision-making competencies to take decisions on discrimination and hate speech complaints (decision-making competencies). In Armenia, even though it does not have an express equality mandate, the Human Rights Defender examines individual complaints from the equality and non-discrimination perspective. Only the Equality Council in the Republic of Moldova has the competence to issue legally binding decisions. However, these competences are quite limited in the final effect due to legal procedural flaws. The authors of the baseline studies for Armenia (in the context of the draft anti-discrimination law), Republic of Moldova and Ukraine propose assigning the Equality Bodies powers to apply sanctions for discrimination, which would enhance the effectiveness of the respective national mechanisms. A common theme raised in Georgia, Republic of Moldova and Ukraine refers to the enforcement of recommendations issued by Equality Bodies on findings of discrimination. Ukraine reported the

highest rates of enforcement, but the data are insufficient to draw comprehensive conclusions regarding the effectiveness of the mechanism. All four countries still need important legislative amendments to ensure a comprehensive equality and non-discrimination framework, including improvements regarding the functioning of the Equality Bodies and the enforcement of their recommendations / decisions.

Equality Bodies' cooperation with NGOs is important for various aspects, in particular for enhancing the reach of Equality Bodies / Ombudsperson institution to groups and areas that they cannot cover directly. There are effective legal tools and provisions that could naturally enhance cooperation between Equality Bodies and NGOs. These include provisions on the composition of the Equality Bodies (eg in the Republic of Moldova, at least three out of five members of the Equality Council need to come from civil society), the possibility of NGOs to address the Equality Bodies/ Ombudsperson institutions to bring constitutional challenges (e.g. Armenia, Georgia, Republic of Moldova), the possibility of NGOs to participate in the Equality Bodies proceedings, including via submitting amicus curiae and individual complaints (e.g. Georgia, Republic of Moldova). These legal tools are applied to a different degree in the four countries.

There is a great benefit from continuous engagement and cooperation between Equality Bodies/ Ombudsperson institutions with NGOs via advisory councils, memorandums of cooperation with specific NGOs or coalitions of NGOs. The Parliamentary Commissioner in Ukraine seems very successful in maintaining an effective cooperation with NGOs at different levels, as well as local activists, via a Consultative Council on general matters of Commissioner's work, two advisory councils focused on equality and non-discrimination and a regional network of public activists acting as the Commissioner's Regional Coordinators for the interaction with civil society.

Cooperation between the Equality Bodies and the judiciary, as well as other relevant national stakeholders is very important for an effective promotion of equality and non-discrimination, especially since courts are the last national remedies for the victims of discrimination. Providing expressly in the law the procedural tools for the Equality Bodies to intervene in cases examined by courts is an effective means for ensuring both a continuous input from the Equality Bodies, as well as a practical possibility for monitoring the court practice. The Equality Bodies/ Ombudsperson institutions in the Republic of Moldova and Ukraine can intervene in court proceedings, in the Republic of Moldova depending on the judge's approval and in Ukraine with significantly larger possibilities. These practices should be strengthened in both countries. A good practice not yet present in any of the countries, but in a draft law in the Republic of Moldova, is assigning the courts the obligation to request ex-officio the Equality Body's opinion in every discrimination case.

Irrespective of the existing tools, the interest and capacity of the Equality Bodies/Ombudsperson institutions staff in actively engaging with the judiciary is crucial and capacity building in this respect is needed in all countries. Cooperation with judicial training institutions and other state bodies via provision of training to future judges and public employees is a very important instrument that the Equality Bodies should use. Active cooperation in this regard has been

reported only in the Republic of Moldova and Ukraine, although perhaps such activities are carried out in the other project countries as well.

Intervening before the Constitutional Court is a particularly important tool that the Equality Bodies/Ombudsperson institutions can use for challenging discriminatory legislative provisions. This competence is assigned to the Ombudsperson institutions in Armenia, Georgia, the Republic of Moldova and Ukraine. All countries reportedly use well this function. In the Republic of Moldova, the Equality Council and several NGOs are advocating for assigning a similar competence to the Equality Council.

Lack of national data collection mechanisms and publicly accessible data on discrimination, hate crimes and hate speech is a common problem for all project countries, with some varying differences. National available data on discrimination practically do not exist. The court databases do not disaggregate court decisions on discrimination in any of the countries. Public perception surveys on discrimination are conducted in some countries, such as Georgia, the Republic of Moldova and Ukraine. However, only the Republic Moldova reported so far periodic reports conducted by the Equality Council. In none of the countries, the surveys are conducted periodically on funds from the state budget, which affects their sustainability in the longer term.

None of the countries collects and reports aggregated data on hate speech. Such data is usually either included in the general data on discrimination or in the hate crime data, or in sporadic / thematic reports by equality bodies or non-governmental organisations.

Lack of data on hate crime is another common problem for all project countries. Although Armenia, Georgia, Republic of Moldova and Ukraine regularly report on hate crime data to the OSCE/ODIHR hate crime reporting mechanism, all countries still have important lacunas. Out of the 6 countries, Georgia seems to have the most advanced system of data collection and reporting on hate crime, reported to OSCE/ODIHR. However, reliable public data and statistics on hate crime are not yet made public. In Ukraine, only the data on hate crimes recorded by police is publicly available, data from prosecution and courts missing. Also, Ukraine has not reported on cases of hate crimes separately from cases of hate speech and/or discrimination in the reports to OSCE/ODIHR hate crime reporting. Only Georgia and Ukraine reported to OSCE/ODIHR hate crimes recorded by police disaggregated by bias motivation. Armenia and the Republic of Moldova do not record and hence do not report on bias motivation of recorded hate crimes. A common problem is lack of systems to either highlight / automatically identify the crimes with hate elements and/or lack of systems to allow disaggregating crimes by bias motivation, which would allow for automatic identification on reporting of hate crimes.

Another important impediment for reliable data on hate crimes seems to be the low number of reports and/ or the resistance of law enforcement agencies to record hate crimes as such, due to personal bias, as well as lack of training and local expertise on these issues.

Possible priorities for intervention for the regional project include the following:

- Providing assistance for improving and promoting the adoption of the anti-discrimination laws / related legislative initiatives currently on the agenda in Armenia, Georgia, Republic of Moldova and Ukraine, as well as promotion of amendments to the Criminal Code in line with ECRI's GPR no. 7 in all six countries. In Belarus, the project could support public discussions on setting up a national human rights institution;
- Providing technical assistance, including legislative expertise, for improving the primary and secondary legislation regarding the functioning of the Equality Bodies in Armenia, Georgia, Republic of Moldova and Ukraine in line with ECRI's GPR No. 2. Similar assistance would be provided to Azerbaijan and Belarus if the countries express interest in advancing regarding the setting up of Equality Bodies/ Ombudsperson institutions with an equality mandate;
- Providing opportunities for the Equality Bodies / Ombudsperson institutions in the project countries to share experiences on best practices, as well as challenges faced in their operations;
- Providing targeted capacity building for the Equality Bodies / Ombudsperson institutions in the project countries addressing the specific needs of each body;
- Enhancing trainers' capacities of the Equality Bodies / Ombudsperson institutions staff for carrying out training on European equality and non-discrimination standards for legal specialists (judges and law enforcement in particular), public employees and NGOs;
- Providing targeted capacity building assistance to the criminal justice agencies in all countries open for developing systems for recording and publishing data on hate crimes;
- Providing training of trainers for law enforcement agencies on hate crimes issues, focusing on creating pools of local trainers that could further provide training to their peers in a sustainable manner;
- Providing training / other types of capacity building activities to the Equality Bodies / Ombudsperson institutions and active NGOs on effective ways of combating hate speech, based on ECRI's GPR No. 15, and facilitating discussions on the topic among the key actors in the project countries.
- For the current, as well as future similar projects, it is recommendable to include countries with advanced equality and non-discrimination legal framework and institutional mechanisms with more substantive accumulated practice. Many of the identified lacunas are missing in all six project countries, in particular data collection and practices on combating hate speech and hate crimes. Exchanges of experiences only among the project countries could be of little practical help and impact. Learning from countries with functional systems could be significantly more useful.

Methodology

The regional baseline study was compiled based on the information included in the six country baseline studies written by the following experts: Ara Ghazaryan (Armenia), Alasgar Mammadli (Azerbaijan), Grigory Vasilevich (Belarus), Levan Meskhoradze (Georgia), Nadejda Hriptievschi (Republic of Moldova) and Alevtyna Sanchenko (Ukraine).

The regional baseline study aimed to:

1. assess the effectiveness of access to justice for victims of discrimination, hate crime and hate speech through non-judiciary redress mechanisms in the six countries and provide proposals for improvements;
2. assess the capacity and the level of cooperation of Equality bodies/ Ombudsperson institutions with NGO partners and judiciary in the six countries for the protection and assistance of victims of racism and discrimination, hate crime and hate speech and provide proposals for improvements.

The regional baseline study is not a report on the situation of equality and discrimination in the six countries. The study is primarily intended to help the project team tailor the activities towards achieving the project goals and to have a baseline information which would allow to assess the impact of the project once finalized. The experts that wrote the country baselines studies were requested to assess the existing regulatory framework in the given country and the way in which legal provisions are implemented, with a focus on the efficiency of the non-judiciary mechanisms for access to redress for victims of discrimination, hate crime and hate speech. They assessed the formal and informal cooperation mechanisms of the Equality bodies/ Ombudsperson institutions with NGO partners and judiciary in the six countries for the protection and assistance of victims of racism and discrimination, hate crime and hate speech. The country authors were also asked to assess the compliancy to European standards and the efficiency of desegregated data collection systems on discrimination, hate crime and hate speech. The country baseline studies' authors were requested to provide an assessment per country based on available public information and interviews with at least 10 key stakeholders. The country authors were also requested to identify the main gaps in the country reports' areas of interest and propose improvements. The proposals in the regional baseline study are based to a large extent on country baseline studies.

In spite of a unified methodology, the country baseline studies varied considerably from descriptive to analytical and in terms of presented data. As a result, the regional baseline is not very balanced regarding the different countries, as it relied on available information. On the other hand, given the very large focus of the country baseline studies, naturally they, as well as the regional study, might lack many in-depth details that require further analysis. For example, the specific lacunas in the anti-discrimination laws or the criminal codes related to hate crimes, or the training needs of the Equality Bodies / Ombudsperson institutions, or the details on hate speech remedies, or the availability and challenges regarding hate crime data collecting and challenges.

The regional baseline study and the country baseline studies relied on the following European standards that formed the basis for assessment of compliance of the national norms and mechanisms:

- the [European Convention of Human Rights and Fundamental freedoms](#) (ECHR);
- ECRI revised General Policy Recommendation [No.2 on Equality Bodies to combat racism and intolerance at national level](#) (ECRI GPR No. 2);
- ECRI General Policy Recommendation [No.4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims](#) (ECRI GPR No. 4);
- ECRI General Policy Recommendation [No.7 on national legislation to combat racism and racial discrimination](#) (ECRI GPR no. 7);
- ECRI General Policy Recommendation [No.15 on Combating Hate Speech](#) (ECRI GPR No. 15);
- European Union Commission's Recommendation of 22 June 2018 on [Standards for Equality Bodies](#) - C(2018) 3850 (EU Standards for Equality Bodies).

The findings of the relevant ECRI monitoring country reports were also a privileged reference for the study's assessment. Where available, the authors used the relevant Human Rights Commissioner's statements/reports.

1. National non-discrimination framework and available non-judiciary mechanisms for victims of discrimination, hate crime and hate speech

1.1. National legislative and institutional non-discrimination framework with focus on national non-judicial mechanisms

In **Armenia**, the non-discrimination principle is enshrined in the Constitution, which provides a non-exhaustive list of prohibited grounds of discrimination.¹ Several laws, such as the Labour Code, the Law on Education, the Criminal Code, the Code on Administrative Violations, the Election Code, the Civil and Criminal Procedural Codes include standard non-discrimination provisions. However, no legislative act provides the definition / concept of discrimination, discrimination forms, and the burden of proof applied to discrimination cases. Only the Law to Ensure Equal Rights of Women and Men regulates gender discrimination issues. Two basic statutory laws, the Civil Code and the Law on Fundamentals of Administrative Action and Administrative Proceedings, do not have non-discrimination clauses at all. The absence of a law on anti-discrimination hinders the development of effective judicial and non-judicial remedies for victims of discrimination.²

Hate speech remedies:

For hate speech statements issued by public officials or public bodies, complaints can be submitted to the higher administrative body or the Human Rights Defender Office. The decisions of the administrative/public bodies are further subject to judicial appeal. However, due to lack of specific provisions regarding the burden of proof for discrimination cases, the chances in court proceedings for finding discrimination or hate speech if such not found by the administrative body are very small. For this reason, victims of hate speech and/or NGOs working in this field tend to first request the public body/ media source to publish an apology and only if such attempts fail, lawsuits are brought. Similarly, lawyers and NGOs tend to initially obtain a conclusion of the Human Rights Defender on the disputed statement, and then apply to court bring the respective conclusions as arguments in support of the claim.³

The *Commission on TV and Radio of Armenia*, a regulatory body of broadcasting media, is authorized by law to institute administrative proceedings against broadcasting media entity for spreading discriminatory content on the basis of religion, ethnicity, nationality and to subject it to administrative liability.

The *Code of Conduct of Media Representatives for editors and journalists concerning impartial and responsible coverage of events and news* includes non-discriminatory and anti-hate speech clauses. The Code is signed by 46 media entities, including written, online and audio-visual media, and 8 journalistic unions that support its mission. The Code urges not to promote in any manner ethnic or religious hatred and intolerance, or any discrimination on political, social, sexual and

¹ Art. 26 of the Constitution of Armenia.

² Baseline study for Armenia by Ara Ghazaryan (baseline study, Armenia), pp. 4-6.

³ Baseline study, Armenia, pp. 5-7.

language grounds. The Observatory is a dispute resolution body in charge of overseeing the implementation of the Code. Any individual or legal entity can bring a complaint against the signatory media entity on violation of journalistic ethics under the Code. The decisions of the Observatory are not binding over the parties. They usually include a conclusion on whether there was a violation and recommends measures to remedy the situation, including the removal of the published material. The Observatory cannot issue disciplinary action or monetary compensation decisions. However, the parties as a rule respect the decisions and follow them.⁴

Hate crime remedies:

Complaints related to hate crimes should be addressed to law enforcement. However, the Criminal Code does not sufficiently address the concept of hate crimes. The Criminal Code provides for an aggravated circumstance, applicable to all offences, if offences are committed with “racial, national and religious hatred”. The list of protected grounds does not include sexual orientation and gender identity. The Criminal Code does not criminalize public incitement to violence or discrimination and does not include any specific provisions prohibiting public insults and defamation on the prohibited grounds. The Criminal Code is being amended and the updated version is expected to provide for a better protection against hate crimes.⁵

Enabling cross-cutting issues: NGOs

The 2017 Law on NGOs allows the latter to bring cases the protection of rights of their members or for their beneficiaries, provided that the human rights protection is enlisted as an objective in their Charter and the members are legally registered. This means that the NGO bears the obligation to supply the necessary documentation regarding the official membership of the person on behalf of whom they bring the claim to the domestic court. NGOs cannot bring cases without a specific victim.⁶

The main gaps regarding the implementation of ECRI’s 2016 report on Armenia refer to the adoption of a comprehensive law on anti-discrimination and adjustment of the Criminal Code to include sexual orientation and gender identity as grounds for hate crimes, as well as setting up independent data collection mechanism on hate crimes.⁷

In **Azerbaijan**, the equality principle is enshrined in the Constitution, which provides that the state guarantees the equality of rights and liberties of everyone irrespective of “race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organizations.”⁸ Human and civil rights and freedoms listed in the Constitution are applied in accordance with international treaties to which Azerbaijan is a party. The Constitution also provides that international agreements are applied when there is a conflict between the normative legal acts included in the legislative system of

⁴ Information about the Observatory and the list of signatories of the Code is available at: http://ypc.am/oldypc/self_regul/ln/en, Baseline study, Armenia.

⁵ Baseline study, Armenia, pp. 10-11.

⁶ 2017 Law on NGOs, Baseline study, Armenia, p. 6.

⁷ Baseline study, Armenia, pp. 8-9.

⁸ Art. 25 of the Azerbaijan Constitution.

Azerbaijan (except for the acts adopted by the Constitution of the Republic of Azerbaijan and the referendum) and intergovernmental agreements signed by Azerbaijan.⁹

Azerbaijan has ratified a series of international conventions that promote equality and non-discrimination but has not yet ratified the Additional Protocol no. 12 to the European Convention on Human Rights (hereinafter, ECHR).

The equality principle is provided in a series of laws, such as the Law on Ensuring Gender (men and women) Equality, the Code of Administrative Offenses, the Law on Police, the Law on Public Television and Radio Broadcasting, the Law on Mass Media, the Law on Protection of Health, the Law on Education and the Labour Code. However, Azerbaijan still has not enacted comprehensive legislation on discrimination on the grounds of race, colour, language, religion, citizenship, national or ethnic origin, sexual orientation or gender identity.¹⁰

Hate speech remedies:

Hate speech is insufficiently regulated in the national legislation and victims do not have effective remedies against hate speech. The Criminal Code does not include the grounds of race, colour, language, religion, citizenship, national or ethnic origin, sexual orientation or gender identity. The Ombudsperson¹¹ does not tackle instances of hate speech, including against the most targeted groups such as LGBTI, against political opposition and internally displaced persons.¹²

A new chapter on "Protection of the principle of gender equality and non-discrimination" was added in the *Code of Professional Ethics for Journalists* in November 2018. It requires journalists to respect the principle of gender equality and non-discrimination, avoid sexist language or inciting sexist hatred, and refrain from promoting gender stereotyping in the media. The *Press Council* oversees the implementation of the Code.¹³ It is a self-regulatory body and operates on a public basis. Television and radio broadcasters are not members of the Press Council and its decisions are not applied to the broadcasting sector. The Press Council examines complaints connected to the media organs (newspapers, magazines and news agencies) registered with the Justice Ministry. The Press Council issues decisions of a recommendatory nature. When the Press Council issues a decision, the responsible Edition should publish it in the nearest issue (the daily editions - within 3 days) as it is. Should the responsible edition not publish the decision during this period, then, the Press Council publicizes it in the order it establishes.¹⁴

Hate crime remedies:

The baseline study for Azerbaijan does not indicate any specific remedies for hate crimes victims, than the inferred law enforcement remedies based on the Criminal and Criminal Procedure Codes. The Criminal Code does not include the grounds of colour, language, citizenship, ethnic

⁹ Baseline study for Azerbaijan by Alasgar Mammadli (Baseline study, Azerbaijan), p. 13.

¹⁰ ECRI 2016 Report on Azerbaijan, para. 11; Baseline study, Azerbaijan, pp. 13-15.

¹¹ Information on Ombudsperson institution available at <http://www.ombudsman.gov.az/en/>.

¹² Baseline study, Azerbaijan, pp. 20-25.

¹³ Information regarding the Press Council available at <http://www.presscouncil.az/>.

¹⁴ Baseline study, Azerbaijan, p. 23.

origin, sexual orientation and gender identity, and it does not criminalize incitement to violence and incitement to discrimination of foreigners.¹⁵ In its 2016 report on Azerbaijan, ECRI recommended addressing these issues with priority, as well as other provisions that are not in compliance with ECRI's GPR No. 7. None of these recommendations has been implemented.

In **Belarus**, the equality principle is enshrined in the Constitution¹⁶ and non-discrimination provisions are included in legal fields, e.g. constitutional, civil, administrative, criminal and other sectoral legislation, such as Criminal and Criminal Procedure Codes, the Procedural and Executive Code, the Code of Administrative Offences. The Labour Code prohibits discrimination based on gender, race, ethnic or social origin, language, religious or political beliefs, participation or non-participation in trade unions or other public associations, property status, official status, age, place of residence, physical or mental disabilities that do not constitute an impediment to performing relevant job requirements, other circumstances unrelated to business qualities and not determined by the specifics of an employee's working functions. The Law on the Freedom of Conscience and Religious Organizations and the Law on Alternative Service prohibit discrimination on the basis of religion. The Law on Legal Status of Foreign Citizens and Stateless Persons, the Law on the Rights of the Child, the Law on Social Protection of Persons with Disabilities, the Law on the Office of the Prosecutor also stipulate the equality principle. However, there is no comprehensive anti-discrimination law and no specialized body working on equality and non-discrimination issues.¹⁷

Victims of discrimination can use the court for challenging the violation of their rights based on some substantive provisions in the available legislation and/or use the non-judicial available remedies that include the public authorities and the prosecution office. The alleged victims can submit complaints to the public authorities based on provisions of the Law on Appeals of Citizens and Legal Persons and to the prosecution office based on the Law on the Office of the Prosecutor. However, the country report author reported that there are no data on whether complaints on discrimination issues are being submitted and examined within these procedures. The report includes data on the role of the prosecution office in ensuring the implementation of the Law on the Social Protection of Persons with Disabilities.

Ensuring gender equality seems to be a priority of the Belarus government. A national mechanism for implementing gender policies has been put in place by setting up expert working groups in all regions of Belarus. The National Council on Gender Policy at the Council of Ministers ensures coordination and monitoring of the state policy on ensuring gender equality and develops coordinated activities intended to ensure the implementation of the provisions of the UN Convention on the Elimination of All Forms of Discrimination Against Women. The body does not examine individual complaints.¹⁸

¹⁵ ECRI 2016 Report on Azerbaijan, para. 9.

¹⁶ Art. 22 of the Belarus Constitution.

¹⁷ Baseline study for Belarus by Grigory Vasilevich (Baseline study, Belarus), pp. 5-14.

¹⁸ Baseline study, Belarus, pp. 14-18.

The Commissioner for Religious and Ethnic Affairs and the Commissioner's office participate in the development and implementation of state policy in the ethnic and religious sphere, ensuring the rights of citizens to freedom of conscience and religion and protecting their rights and interests regardless of their attitude to religion or religious affiliation, as well as the right to the freedom of association in religious organizations. Any citizen can address a complaint to the Commissioner. The Commissioner shall examine the complaint and suggest a solution by forwarding the complaint to the relevant state authority or to an official whose competence includes the consideration of such appeals. However, there are no public statistics regarding the complaints received by the Commissioner.¹⁹

In spite of numerous legislative provisions that prohibit discrimination or proclaim the equality principle, the absence of specific procedural provisions on protection against discrimination and basic concepts related to discrimination limits the applicability of the wide range of general provisions on equality and non-discrimination.

Hate speech and hate crimes remedies:

The Criminal Code prohibits "direct or indirect premeditated infringement upon or restriction of rights and freedoms or for establishing direct or indirect advantages for persons based on their gender, race, ethnicity, language, origin, property status, official status, attitude to religion, beliefs, membership in public associations that significantly infringed upon rights, freedoms, and legitimate interests of a person".²⁰ However, this article does not seem to be applied in practice, as no data were identified in the baseline study regarding the number or types of cases received or considered by courts based on its provisions.

In **Georgia**, the equality principle is enshrined in the Constitution.²¹ The Law on the Elimination of All Forms of Discrimination (the anti-discrimination law), in force since 7 May 2014, is the main law in the field, providing key definitions and the authorities responsible for its implementation. The law provides for a non-exhaustive list of protected grounds that includes "race, colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics". The law is applicable in the public and private sectors. A series of other laws prohibit expressly discrimination on various grounds, such as the General Administrative Code, the Law on Assembly and Manifestations, the Law on Fighting against Trafficking, the Law on Political Union of Citizens, the Law on General Education, the Law on Higher Education, the Labour Law etc.²²

Hate speech remedies:

¹⁹ Baseline study, Belarus, pp. 24-26.

²⁰ Art. 190 of the Criminal Code, Belarus.

²¹ Art. 11, Georgia Constitution.

²² Baseline study for Georgia by Levan Meskhoradze (Baseline study, Georgia), pp. 7-12.

Georgian legislation does not criminalize hate speech except those cases, when it creates a threat of immediate, irreversible and apparent violence. Article 239¹ of the Criminal Code (added in 2015) establishes criminal liability for incitement of violence against others with the aim of increasing tensions on religious, ethnic or other grounds. Criminal investigations are launched only when the statements included a specific threat of violence.²³

Hate speech in the media is prohibited by several primary and secondary laws. The Law on Broadcasting prohibits broadcasting programmes “intended to abuse or discriminate against any person or group on the basis of disability, ethnic origin, religion, opinion, gender, sexual orientation or on the basis of any other feature or status, or which are intended to highlight this feature or status, except when this is necessary due to the content of a programme and when it is targeted to illustrate existing hatred”. The Code of Conduct for Broadcasters and the Charter of Journalistic Ethics also include provisions prohibiting hate speech. Under the Code of Conduct for Broadcasters, self-regulatory mechanisms (commission and an appeal body) have been created in the broadcasters, including Public Broadcaster. Any “affected party” can submit complaints to the self-regulatory mechanisms. However, each broadcaster defines the term of “affected party” differently, some excluding NGOs and representative of the certain groups, which negatively affects the effectiveness of the respective procedures. The Georgian Charter of Journalistic Ethics is an independent union of journalists aimed at raising the social responsibility of media through protection of professional and ethical journalistic standards. The Charter’s Council examines complaints against journalists, including related to hate speech.²⁴

The Law on Advertising prohibits placement and distribution of improper advertising, which is defined as advertising “that uses offensive language and comparisons with regards to physical persons’ nationality, race, occupation, social standing, age, sex, language, religious, political and philosophical affiliation, violates universally recognized human and ethical norms, [...]”. Victims of hate speech can also submit complaints to court based on the Law on Freedom of Speech and Expression.²⁵

The Elections Code prohibits instigation of national, ethnic or religious hatred or conflict in the course of pre-election campaign. However, the Code does not provide for suppressing public financing of, banning or dissolving, racist parties or organisations, as recommended in ECRI’s GPR No. 7, §§ 16 and 17.²⁶

Hate crime remedies:

Hate crimes are defined in the Criminal Code²⁷ both as separate crimes and as when such committed due to the intolerance motive that constitutes an aggravating circumstance applicable to sentencing for any crime. The Code includes the intolerance motive regarding “race, skin colour, language, sex, sexual orientation, gender identity, age, religion, political and other

²³ Baseline study, Georgia, pp. 4-5.

²⁴ Baseline study, Georgia, pp. 7-9.

²⁵ Baseline study, Georgia, p. 10.

²⁶ Baseline study, Georgia, p. 10.

²⁷ Art. 53¹ of the Criminal Code.

opinions, disability, citizenship, national, ethnic or social affiliation, origin, property or social status, residence or other discriminatory ground". Separate crimes include the following: violation of equality, racial discrimination, obstructing the observation of religious rites, incitement of violence against others with the aim of increasing tensions on religious, ethnic or other grounds. Genocide and crimes against humanity are also provided by the Code.²⁸ Hate crime complaints can be submitted to the police or the prosecution service. The Public Defender of Georgia monitors the complaints referred to the authorities, systematically analysing the challenges related to hate crimes.

Enabling cross-cutting mechanisms: NGOs, burden of proof; legal aid system

NGOs can submit amicus curiae in a court case, but cannot be involved as third parties.²⁹ Both the Anti-Discrimination Law and the Code of Civil Procedure provide for a shared burden of proof in discrimination cases. Namely, the Code of Civil Procedure shifts the burden of proof in civil cases concerning alleged discrimination facts to the defendant, the plaintiff only having to provide the court with the facts that may give rise to reasonable suspicion that discrimination has occurred. Provision of free legal aid or an interpreter to an applicant wishing to bring a discrimination case to a court is not provided.³⁰

In its 2016 report on Georgia, ECRI recommended introducing specific provisions prohibiting offences such as racist insults, the public dissemination or distribution with a racist aim of material containing racist statements, and the creation or the leadership of a group which promotes racism, as well as introducing language and religion as protected grounds for hate crimes. These amendments have not yet been passed.³¹

The **Republic of Moldova** has a relatively good legal framework to ensure equality and non-discrimination in all spheres of public and private life. The equality principle is enshrined in the *Constitution*, which provides an exhaustive list of protected grounds against discrimination. National provisions shall be interpreted in line with international human rights treaties signed by Moldova. ECHR is directly applicable by courts and the ECtHR case law is part of the internal legal system. Moldova has ratified a series of international conventions that promote equality and non-discrimination but has not yet ratified the Additional Protocol no. 12 to the ECHR.³²

Besides the constitutional provisions, the main law in the field is the 2012 *Law on ensuring equality* (the law on equality, hereinafter). The Law includes an open list of protected grounds against discrimination, with sexual orientation expressly mentioned only in the employment field. The law needs improvements, such as providing expressly the following grounds: national

²⁸ Baseline study, Georgia, pp. 12-13.

²⁹ Information provided by the Public Defender of Georgia.

³⁰ Baseline study, Georgia, p. 16.

³¹ Baseline study, Georgia, p. 14.

³² Baseline study for the Republic of Moldova by Nadejda Hriptievschi (Baseline study, Republic of Moldova), pp. 4-5.

origin, citizenship, sexual orientation and gender identity, providing definitions like intersectional discrimination or structural discrimination and the duty of public officials to promote equality.³³

In addition to the law on equality, equality and non-discrimination is ensured through a series of other laws, such as the *Labour Code*, the *Law on equal opportunities between women and men*, the *Law on the Social Inclusion of Persons with Disabilities*. Equal treatment and non-discrimination are included among the principles that regulate the *public procurement* related relations. At the same time, the Law on public procurement does not provide for any obligation of public authorities to ensure that third parties, with which the government has concluded agreements and/or provided loans, grants and other benefits – observe the principle of non-discrimination.³⁴

The victim of discrimination and/or her legal representative can submit complaints on discrimination to the Equality Council, the Ombudsperson institution and to *police or prosecution office* if the alleged violations have criminal or misdemeanour elements. The complainant shall not pay any fee. As a last remedy, a discrimination complaint can be brought before the *courts*. The courts can examine cases related to discrimination in the civil, administrative, misdemeanour, and criminal proceedings.³⁵

There is also an *Agency for Interethnic Relations*, which is a central public administration body, subordinated to the Government, in charge with implementing state policies in the field of interethnic relations and the functioning of languages spoken on the territory of the country. The Agency monitors the process of integration of national minorities, promotes intercultural dialogue and linguistic diversity. The Agency does not have the competence to examine individual complaints.³⁶

Hate speech remedies:

Several laws prohibit hate speech in the Republic of Moldova, including the *Law on Freedom of Expression* and is covered by the *Law on Ensuring Equality*, the *Code of Audio-visual Media Services*, *Journalist's Code of Ethics*. Hate speech can also be punished under the *Criminal Code*, but not all grounds are covered and the code needs improvement to cover incitement to violence, include the grounds of colour, national or ethnic origin, language, citizenship, sexual orientation and gender identity. The *Contravention Code* does not include any provisions regarding hate speech and contraventions committed based on prejudice or hate.³⁷

The enforcement mechanisms are not sufficiently effective. For example, the Audio-visual Coordinating Council, which is an autonomous public authority in charge of supervising the implementation of the Code of Audio-visual Services by the audio-visual service providers, the providers of platforms of video materials sharing and of the distributors of media services, examined only four complaints between 2014 and 2017 regarding hate speech. In 2017 – 2018,

³³ Baseline study, Republic of Moldova, pp. 4-6.

³⁴ Baseline study, Republic of Moldova, p. 8.

³⁵ Baseline study, Republic of Moldova, p. 8.

³⁶ Baseline study, Republic of Moldova, p. 8.

³⁷ Baseline study, Republic of Moldova, p. 14.

it examined 8 complaints (four per each year).³⁸ The *Press Council*, an independent self-regulatory body for mass-media institutions/journalists that monitors compliance with the Journalist's Code of Ethics in written, online/internet and even audio-visual media, examines complaints only regarding the media that signed the Code and is a voluntary body. Based on the experience accumulated so far, it seems that the main problem of mass-media is not promoting discriminatory or hate speech statements by journalists, but the way such statements are being reported on and the way online media manage their comments sections.³⁹

The biggest weakness is the electoral legislation, which includes no provision allowing for the dissolution of political parties or organisations that promote racism and no mechanisms for rapid sanctioning of hate speech during electoral campaigns. Counter-speech on behalf of public authorities is missing. Criminal Code and Contravention Codes need improvement for an effective sanctioning of hate speech. There is no coordinated strategy among the relevant public authorities, such as law enforcement bodies, the Audio-Visual Coordinating Council, the Central Electoral Commission, the Equality Council, the Ombudsperson institution and the Press Council, mobilizing them to prevent and combat hate speech in the Republic of Moldova.

Hate crime remedies:

Victims of any alleged hate crime shall submit complaints to police and/or prosecution office (law enforcement bodies). The Equality Council, the Ombudsperson institution and any other public authority can also refer the victim or the complaint to law enforcement bodies.

There are two main problems with regard to effective combating of hate crimes in the Republic of Moldova: inadequate legislation and resistance/lack of knowledge or skills of the law enforcement to qualify hate crimes as such. The latter determines lack of data and underreporting, since victims do not trust that law enforcement will adequately qualify their complaints. The Criminal Code needs improvement and the lacuna are identified both in 2018 ECRI's report on Moldova and in the draft law no. 301 that is pending on the Parliament's agenda since 2016.

Enabling cross-cutting mechanisms: legal aid system, NGOs, burden of proof:

The Republic of Moldova has a relatively robust *legal aid system*, which includes primary and secondary / qualified legal aid. Any person can get free primary legal aid. Victims of discrimination can get secondary legal aid if they meet the means and merits tests. *NGOs can bring cases of discrimination* before the Equality Council, both representing a specific victim and in their own name when the discrimination act has as a target a group or community. In courts, trade unions and associations may submit complaints only on behalf of specific persons. The Civil Procedure Code does not provide the possibility of associations to submit a court complaint on their behalf without a power of attorney from the individual victims / *actio popularis*. The public associations may participate as accessory interveners. As regards complaints to law enforcement bodies,

³⁸ Baseline study, Republic of Moldova, pp. 11-12.

³⁹ Baseline study, Republic of Moldova, p. 11, Interview with the President of the Press Council.

there is no specific provision prohibiting, nor allowing expressly submission of complaints on behalf of an organization.

The law on equality provides for the principle of *sharing the burden of proof in discrimination* cases both with respect to the proceedings before the Equality Council and the proceedings before the courts. Moreover, the failure to submit the information requested by the Council can be interpreted by the Council to the detriment of the person who does not submit the required data. The courts must also observe the principle of sharing the burden of proof in misdemeanour and civil proceedings, based on the law on equality, as *lex specialis* for discrimination complaints.⁴⁰

In **Ukraine**, the equality and non-discrimination principle is enshrined in the Constitution. The 2012 Law on the Principles of Prevention and Combating Discrimination (the Anti-discrimination Law) is the main law that includes the basic concepts and framework for prevention and combating of discrimination. The law provides for an open list of protected grounds of discrimination, including race, skin colour, political, religious or other beliefs, sex, age, disability, ethnic or social origin, nationality, marital status, place of residence, linguistic or other features.

A series of other laws provide for the equality and non-discrimination principle in the covered areas. These include, among other, the following: the Law on the National Minorities, the Law on Ensuring Equal Rights and Opportunities for Women and Men, the Law on Freedom of Conscience and Religious Organisations, the Law on Fundamentals of Social Protection of Disabled Persons in Ukraine, the Law on the Citizens' Appeal", the Law on Free Legal Aid, Civil and Civil Procedure Codes, the Labour Code, the Criminal and Criminal Procedure Codes, the Code on Administrative Offences. Further provisions are included in several bylaws public policy documents.⁴¹ Victims of discrimination can invoke the relevant provisions when submitting complaints to the Parliament's Commissioner on Human Rights, public authorities, law enforcement (criminal and administrative offences codes) and courts.

The Law on Ensuring Equal Rights and Opportunities for Women and Men (the Gender Equality Law) includes a mechanism for enforcement. A victim of sex-based discrimination or sexual harassment can submit complaints to the Parliamentary Commissioner for Human Rights, the Ministry of Social Policy, an authorized person/coordinator of a State power body, the law enforcement bodies and the courts. In 2017, the position of the Government's Commissioner for Gender Policy was created to facilitate coordination of the executive authorities' work for the practical implementation of the principle of gender equality in all spheres of society. No competencies for examining individual complaints were assigned.⁴²

Any citizen can submit complaints to public authorities on discrimination and hate speech issues, based on the provisions of the Law on the Citizens' Appeal. The public authorities are obliged to

⁴⁰ Baseline study, Republic of Moldova, pp. 14-15.

⁴¹ Baseline study on Ukraine by Alevtyna Sanchenko (Baseline study, Ukraine), pp. 12-17.

⁴² Baseline study, Ukraine, pp. 22-25.

respond.⁴³ However, there is no unified approach or specific guidelines regarding the examination of discrimination complaints by public authorities or disaggregated data to allow drawing any conclusions on the use of this remedy for discrimination complaints.

The Labour Code provides for the protection of the rights of workers and employers both in court and via special, non-judicial, bodies created for the resolution of labour disputes: labour disputes commissions, conciliation commissions, and labour arbitration. These bodies can examine discrimination related complaints as well.⁴⁴ However, no data is available on the effectiveness of this remedy.

There is no law on mediation in Ukraine, which could be used for settling disputes regarding discrimination. The Parliamentary Commissioner is not assigned conciliation competencies either.⁴⁵

Hate speech remedies:

The Law on the freedom of expression prohibits hate speech, promotion of violence and cruelty, incitement to racial, national, religious hatred. In *media*, the *Law on Television and Radio Broadcasting* prohibits in the informational and other television and radio programmes the systematic, targeted and unwarranted intensification of attention on the war, violence and cruelty, incitement to racial, national and religious hostility or their positive representation (interpretation) and requires ideological and political pluralism in the field of audio-visual media. The *National Council on TV and Radio Broadcasting* oversees the implementation of the law, can examine complaints and can impose sanctions in the form of a warning and a fine in the amount of 25 percent of the license fee, including for hate speech. Anyone can submit a complaint online, using the Council's website, or by post. The broadcaster can also be imposed to refute the broadcasted information. For damages, the courts are competent.

The *Law on the Printed Mass Media (Press)* and the *Law on the News Agencies* also prohibit the "promotion of violence and cruelty, incitement to racial, national, religious hatred, dissemination of information that undermines public morals or incite to offences, degrades the honour and dignity of a person, as well as information that violates the legitimate rights and interests of citizens".⁴⁶ The *Journalist Ethics Commission* is a self-regulating body for journalists and editorial staff created by the Ukrainian Association of Journalists. Article 15 of the Code of Ethics of a Ukrainian Journalist prohibits discrimination on the ground one's gender, language, race, religion, national, regional or social origin or political affiliation. The Judicial Ethics Commission can examine complaints and apply one of the following sanctions if the Ethics Code was violated: notification, warning, statements in the form of public conviction. Between 2015 and 2018, the Judicial Ethics Commission issued 12 decisions that found violations of art. 15 of the Ethics Code.

Hate crime remedies:

⁴³ Baseline study, Ukraine, p. 25.

⁴⁴ Baseline study, Ukraine, pp. 32-34.

⁴⁵ Baseline study, Ukraine, p. 38.

⁴⁶ Baseline study, Ukraine, pp. 28-29.

Hate crimes are defined in the Criminal Code both as separate crimes and as when such committed due to the intolerance motive that constitutes an aggravating circumstance applicable to sentencing for any crime. In its 2017 report, ECRI recommended the authorities to amend the Criminal Code to include the following elements: the offences of incitement to discrimination and to violence; defamation; the public expression, with a racist aim, of an ideology which claims the superiority of, or which denigrates, a group of persons; the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes; the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; and legal persons' liability. The grounds of race, colour, language, religion, citizenship, and national or ethnic origin should also be included in all the relevant provisions.⁴⁷ Since then, no amendments were introduced in the Criminal Code.⁴⁸

Law enforcement bodies – police and prosecution – handle crime-related complaints.

Enabling cross-cutting mechanisms: burden of proof:

The Anti-Discrimination Law does not include any provisions on burden of proof and the provisions in the Civil Procedure Code do not correspond to ECRI's definition provided in ECRI's GPR No. 7 § 11. ECRI's recommendation to clearly set out provisions on the sharing (or shifting) of the burden of proof in discrimination cases in the specific anti-discrimination legislation have not yet been implemented.⁴⁹

1.2. Main legislative gaps in the national legislation compliance with European standards

In this section the main reference to European standards is the last ECRI monitoring report regarding the countries' compliance with ECRI GPR no. 7.

In **Armenia**, the main gaps in respect of failure to comply with ECRI's GPRs no. 2 and no. 7 are highlighted in ECRI's 2016 report on Armenia. ECRI recommended Armenia to bring its criminal law in line with ECRI's GPR no. 7, in particular to "(i) explicitly include the grounds of colour, language, nationality (understood as citizenship), national or ethnic origin, sexual orientation, and gender identity in the list of "prohibited grounds"; (ii) criminalise incitement to violence and incitement to racial discrimination, and (iii) criminalise the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity and war crimes."⁵⁰ ECRI recommended that the Armenian authorities adopt comprehensive civil and administrative legislation against discrimination - which should also cover the grounds of interest to ECRI - in all key fields of life.⁵¹ ECRI also recommended that the law provides for shared burden of proof in discrimination cases. Regarding the Equality Bodies, ECRI recommended that the authorities either amend the Law on the Human Rights Defender to give him/her the power to examine

⁴⁷ 2017 ECRI Report on Ukraine, paras. 9.

⁴⁸ Baseline study, Ukraine, p. 15.

⁴⁹ 2017 ECRI Report on Ukraine, paras. 13 and 15.

⁵⁰ 2016 ECRI Report on Armenia, para. 10.

⁵¹ 2016 ECRI Report on Armenia, para. 17.

complaints concerning discrimination, also on grounds of interest to ECRI, in the private sector, or that the authorities establish an independent equality authority.⁵² These recommendations have not been yet implemented, as it follows from the analysis provided in the country report on Armenia.

In **Azerbaijan**, the main recommendations from ECRI's 2016 report refer to ratification of the Protocol No. 12 to the ECHR, bringing the Criminal Code in line with ECRI's GPR No. 7 and adoption of comprehensive legislation to combat racism and discrimination in all key fields of life. ECRI strongly recommended that the authorities establish, in line with its GPR No. 2, a separate specialized body to combat racism and discrimination in both the private and public sector. This body should notably have the power to provide general advice and legal assistance to victims of discrimination, including representation in proceedings before courts. ECRI also recommended that the Azerbaijani authorities ensure that public officials at all levels refrain from hate speech towards Armenians and build up regular dialogue with vulnerable groups in order to ensure that any instance of hate speech is reported and that they ensure that their statistics contain all instances of racist, homo- and transphobic criminal offences. ECRI recommended that the police and prosecution services thoroughly investigate all cases of alleged hate crime, that they establish dialogue and co-operation with groups at risk of hate crime and that they use the Law on the Prevention of Domestic Violence to protect LGBT persons. The authorities were also recommended to create conditions under which a diverse and independent civil society can develop by implementing the detailed recommendations of the Council of Europe's Parliamentary Assembly's (§§ 11.1, 11.2 and 11.6 to 11.8 of Resolution 2062(2015)) and of the Venice Commission (§ 94 of Opinion No. 787/2014).⁵³ These recommendations still seem valid and in need of implementation.

In **Georgia**, the Criminal Code needs to be adjusted to be fully in line with ECRI's GPR no. 7. In particular, the Criminal Code still lacks provisions "prohibiting offences such as racist insults, the public dissemination or distribution with a racist aim of material containing racist statements, and the creation or the leadership of a group which promotes racism". Language and religion are still not listed as protected grounds. These and other lacunas are addressed in a draft law on amending the Criminal Code promoted by the Ministry of Interior.⁵⁴

The Anti-Discrimination Law does not include provisions on denial of reasonable accommodation, as well as the concepts of segregation, discrimination by association, and announced intention to discriminate (the last three recommended by ECRI's GPR No. 7, §6). The Anti-Discrimination Law does not have specific provisions allowing the Public Defender to interpret the submitted complaint in the detriment of the party that failed to present the requested documents (such provisions exist, for example, in the Republic of Moldova, and are very helpful for disciplining the parties). Individuals are entitled to initiate court proceedings in

⁵² 2016 ECRI Report on Armenia, para. 23.

⁵³ 2016 ECRI Report on Azerbaijan, paras. 2, 9, 16, 20, 29, 33, 37, 44.

⁵⁴ Baseline study, Georgia, pp. 16-17.

case they consider that their rights under the law are violated, but there is no “fast-track procedure”.

The intolerance motive is not provided in the Code of Administrative Violations, nor as a separate crime, neither as an aggravating circumstance. Hence, the acts that amount to administrative violations, with a gravity insufficient for qualification as crimes, are not punished. Provision of free legal aid or an interpreter to an applicant wishing to bring a discrimination case to a court is not provided.

In the Republic of Moldova, the main gaps in respect of failure to comply with ECRI’s GPRs no. 2 and no. 7 are highlighted in ECRI’s 2018 report on Moldova. None of those recommendations have yet been implemented. ECRI recommended amendments to the criminal law, administrative and civil, as well as the legislation regarding the functioning of the equality bodies (Equality Council and Ombudsperson institution). Regarding *hate speech*, ECRI recommended that the authorities develop, jointly with the relevant civil society groups and international organizations, a comprehensive strategy to prevent and combat hate speech. This strategy should make effective use of ECRI’s General Policy Recommendation No.15 on combating hate speech. Regarding *racist and homo/transphobic violence*, ECRI strongly recommended that racial profiling by the police is defined and prohibited by law, in accordance with its GPR No. 11 on combating racism and racial discrimination in policing.

In **Ukraine**, ECRI’s 2017 recommendations to amend the Criminal Code in line with its GPR No. 7 are still relevant. The Code of Ukraine on Administrative Offenses does not include any provisions on discrimination related offences. There is no law on mediation that could be used for discrimination related complaints. There are no legislative norms to prevent discriminatory advertising. Ukraine still has not ratified and signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.⁵⁵

1.3. Ongoing legislative initiatives and/or advocacy opportunities for legislative amendments

In **Armenia**, there are two main pending draft laws in the equality and non-discrimination field. The first is the draft law on anti-discrimination, which was published for public consultations in February 2018 and discussed again with NGOs in April 2019. The draft law provides the main definitions on discrimination, including the types of discrimination, the principle of shared of burden of proof in cases of discrimination and setting up of an Equality Council within the structure of the Ombudsman’s office.⁵⁶ The main objection from several NGOs seems to be the setting of the Equality Body, NGOs advocating for a separate independent body, accountable to the Parliament, entrusted with competencies to examine discrimination complaints in both public and private sectors and issue legally binding decisions.

⁵⁵ Baseline study, Ukraine, pp. 4-5.

⁵⁶ Baseline study, Armenia, pp. 11-12.

The other draft is the draft law on amending the Criminal Code of Armenia, which was subject to the Council of Europe expertise in 2017⁵⁷. The draft law widens the list of protected grounds, criminalizes discrimination as a distinct crime and provides detailed and extensive definition of the criminal discrimination, including the grounds aggravating the crime such as if the offense is committed by public or government official.⁵⁸

Other ongoing legislative initiatives include the draft Law Ethnic Minorities, the draft Law amending the Law on Freedom of Conscience and on Religious Organizations and a draft law amending the Code on Administrative Violations.⁵⁹

In **Azerbaijan**, no on-going legislative initiatives and advocacy opportunities have been identified in the country report.

In **Belarus**, the expert Grigory Vasilevich has drafted the Concept of the National Human Rights Institution (Commissioner for Human Rights) to be established in Belarus and expressed his interest to further promote the concept. In the author's view, "the establishment of the institution of the Commissioner for Human Rights would make it possible to solve emerging problems in this area in a comprehensive manner. The establishment of the National Institution will intensify the processes of protecting human rights and freedoms, strengthen the awareness-raising function of the state in the areas of rights and freedoms, and contribute to the formation of a higher culture in this area."⁶⁰

In **Georgia**, the Ministry of Interior prepared a draft law on amending the Criminal Code, which addresses most if not all recommendations that ECRI made in its 2016 report on Georgia.⁶¹

In the Republic of Moldova, there are two draft laws that are the most relevant and could implement most of the missing provisions and ECRI recommendations from the last report. One draft law refers to hate crimes (law no. 301) and includes amendments to the Criminal and Convention Codes. The draft law is on the Parliament's agenda since 2016. It was approved in the first reading, has been assessed by local and international experts (Council of Europe and OSCE/ODIHR). The draft law needs adoption in the second reading by the Parliament.

The second draft law refers to a draft law on amending the legal framework on equality and on-discrimination, with focus on the Law on equality and the Law on the functioning of the Equality Council. It was registered with the Parliament in the fall of 2018 but was not voted and hence became null. The respective draft law needs important improvements, which could be included in a relatively reasonable period of time. The Ministry of Justice and the Equality Council should collaborate on improving the draft law, consult with the interested stakeholders and promote its

⁵⁷ Council of Europe opinion on the draft Criminal Code of Armenia at <https://rm.coe.int/coe-opinion-on-draft-criminal-code/168075f918>.

⁵⁸ Baseline study, Armenia, p. 12.

⁵⁹ Baseline study, Armenia, pp. 12-13.

⁶⁰ Baseline study, Belarus, p. 28.

⁶¹ Baseline study, Georgia, pp. 16-17.

adoption by the Parliament. The Council of Europe provided an expert opinion on the draft law in the fall of 2019. The draft law should also include amendments to the other main laws that include the equality and non-discrimination principle to align them at least at the level of protected grounds and main used definitions, including on strengthening the Ombudsperson institutions independence could be inserted in the draft law on the equality framework or a separate draft law.

In **Ukraine**, several draft laws relevant to promoting equality and non-discrimination are under consideration. The baseline study for Ukraine indicates a series of draft laws, among which two could be highlighted as most relevant to the regional project objectives. The first is the draft law on amendments to certain legislative acts of Ukraine (concerning harmonization of legislation on prevention and combating discrimination with the European Union law), registration No. 3501 of 20.11.2015, submitted by MPs, adopted by the Parliament in the first reading on 16.02.2016, under consideration the second reading. The draft law includes amendments regarding the Anti-Discrimination Law, the Code on Administrative Offenses and the Criminal Code with the aim to eliminate the conceptual and procedural gaps in the current legislation on discrimination, introducing administrative liability for discrimination related violations and enforcement of implementation mechanisms. According to the baseline study author, this draft law is in line with the EU norms and ECRI recommendations and is strongly promoted by the Commissioner and the MPs-authors. The second is the draft law on amendments to the Criminal Code aiming to improve the qualification of crimes with signs of national, racial or religious hatred or hostility, registration No. 2314a of 08.07.2015, submitted by an MP, currently under consideration. This draft law has not yet been adopted in the first reading. This draft law could be relevant in terms of adjustments of the Criminal Code to ECRI's 2017 recommendations.

2. Effectiveness of the Equality body/Ombudsperson institution as redress mechanism for victims of discrimination, hate crime and hate speech

2.1. Mandate and institutional set up

Equality bodies exercising at least some functions as recommended in ECRI GPR No. 2, with a diverse institutional set up, exist in Georgia, Republic of Moldova, Ukraine and to some extent in Armenia, where the Human Rights Defender does not have an express mandate but carries out some activities to prevent and combat discrimination. In the Republic of Moldova, two bodies – the Equality Council and the Ombudsperson institution – are entrusted with the equality mandate, covering all three functions as recommended by ECRI GPR No. 2. The Ombudsperson in Azerbaijan does not have an express equality mandate, nor does it carry out any activities in the field. There is no equality body or Ombudsperson institution in Belarus.

In **Azerbaijan**, there is no institution specifically responsible for combating racism and discrimination. The Ombudsperson is responsible for preventing and combating violations of human rights and freedoms in the public sector. The Ombudsperson has wide powers, such as the right to receive complaints from individuals, to carry out investigations *propriu motu*, to request information from the authorities, to hear any person who may provide relevant information, to have access to public facilities, to require public authorities to remedy violations, to refer cases to the prosecution services, to submit a proposal to take disciplinary measures and to apply to a court, including the Constitutional Court. The Ombudsperson shall also submit motions to Parliament with regard to the passing or review of laws and, in his or her annual report, express general views and recommendations concerning the protection of human rights.⁶²

ECRI recommended that Azerbaijan authorities establish a separate specialised body to combat racism and discrimination in both the private and public sector. This body should notably have the power to provide general advice and legal assistance to victims of discrimination, including representation in proceedings before courts.⁶³ No such body has been established yet and there is no draft law or an initiative on the public agenda in this respect.

In **Armenia**, the Human Rights Defender is responsible for protecting individuals from breaches of their human rights and fundamental freedoms by public authorities and local self-government bodies and officials, in certain cases by organizations. It also facilitates the restoration of violated rights and freedoms and improvement of normative legal acts related to rights and freedoms. However, it cannot examine complaints on discrimination in the private sector.⁶⁴

⁶² ECRI 2016 Report on Azerbaijan, para. 18.

⁶³ ECRI 2016 Report on Azerbaijan, para. 20.

⁶⁴ 2016 ECRI Report on Armenia, para. 18; Baseline study, Armenia, pp. 15-17.

The Human Rights Defender is provided by the Constitution. The Law on the Human Rights Defender envisages full functional immunity for the Defender (Ombudsperson), partial immunity for the staff of the Human Rights Defender and ensures sustainable funding and other social guarantees for the institution's activities. The law requires the state and local self-government bodies and organizations to assist in the activities of the Defender and prohibits obstructing the activities of the Defender.⁶⁵ The Human Rights Defender is in full compliance with the Paris Principles, having received A status from the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).⁶⁶

As regards the functions of the Human Rights Defender, although not expressly provided in its mandate, it carries out promotion and awareness raising activities on equality and non-discrimination. The Human Rights Defender cannot bring a case on behalf of an alleged victim of discrimination, but it can provide consultations including on discrimination issues.⁶⁷ It can also lodge a constitutional complaint for abstract review before the Constitutional Court that challenges the potential infringement on human rights by legal acts. When the Constitutional Court considers a case involving human rights issues (under Chapter II of the Constitution), it requests on regular basis an opinion from the Human Rights Defender on the subject matter of the claim if it involves human rights issues, including issues concerning non-discrimination.⁶⁸ Hence, the Human Rights Defender carries out several competencies under support and litigation functions recommended by ECRI GPR No. 2, except the important competence of litigation support to the alleged victims.

The Human Rights Defender can receive complaints from individuals and legal entities and issue non-binding recommendations. Although not expressly provided in its mandate, it can and receives complaints on discrimination as well. However, since the legal framework does not include the basic definitions and procedural rules for examining discrimination complaints, for example regarding the burden of proof, the examination of discrimination complaints falls under the same rules as any other complaints. This might explain the very low level of discrimination complaints, although the overall number of complaints has increased over the years. Moreover, due to the absence of non-discrimination legal provisions and a specific mandate in this field, the Human Rights Defender cannot go well beyond simply documenting the fact of discrimination.⁶⁹ Hence, the Human Rights Defender does not have the decision-making function as recommended in ECRI GPR no. 2.

In 2018, the Government posted for public consultations the draft Law on Ensuring Legal Equality. The draft provides the basic minimum standards of the concept of non-discrimination such as the definition of discrimination, the types of discrimination, the concept of evidence and the sharing of burden of proof in cases of discrimination and other key principles, as well as the creation of

⁶⁵ Baseline study, Armenia, p. 15.

⁶⁶ 2016 ECRI Report on Armenia, para. 19.

⁶⁷ Baseline study, Armenia, p. 16.

⁶⁸ Baseline study, Armenia, pp. 16-17, interview with the head of Research and Education Center at the Human Rights Defenders' Office.

⁶⁹ Baseline study, Armenia, p. 18.

the Equality Council within the Human Rights Defender. The main arguments of the Ministry of Justice for a multi-mandate Ombudsperson institution are the high level of independence guarantees and the capacity of the institution. Many representatives of the civil society advocate for the creation of a separate Equality Body, entrusted with the function to examine individual complaints and issue binding decisions, arguing that the mandate of the Human Rights Defender, including the institutional capacity, will not enable the Equality Body to become an effective regulatory and dispute resolution body in the sphere of non-discrimination.⁷⁰ As of October 2019, the draft law was not yet adopted, nor the approach towards the mandate of the Equality Department within the Ombudsperson institution vs. a separate Equality Body was clarified.

In **Georgia**, the Public Defender is an independent institution elected by the Parliament and has all the powers recommended in ECRI's GPR No. 7, § 24.⁷¹ The Public Defender mandate covers the public and private spheres. It can examine complaints from natural and legal persons, as well as investigate cases on his/her own initiative. It cannot, however, initiate court cases without referring to a specific victim, as required by ECRI's GPR No. 7, § 24.⁷² The Public Defender has the right to receive all necessary evidence from both the public bodies and private entities and persons.⁷³

The Department of Equality was established within the Public Defender's Office in 2014, based on an order of the Public Defender, based on the 2014 Law of Georgia on the Elimination of All Forms of Discrimination. The Law prohibits discrimination on the grounds of race, colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics. The Public Defender Office applies a variety of these grounds in their work while examining individual complaints.

The mandate of the Department of Equality within the Public Defender Office is to eliminate discrimination and ensure equality. It monitors the equality situation in the country, carries out educational and awareness raising activities on equality, submits opinions on draft laws to the Parliament and opinions or proposals on issues or policies related to equality and non-discrimination to any public authority, collects and analyses statistical data on discrimination, examines incidents of alleged discrimination and issues recommendations and general proposals. Moreover, the Public Defender Office can apply to a court and request action or inaction from the administrative agency or a legal entity of private law in case the latter did not respond to or fulfil Public Defender's recommendations on alleged fact of discrimination.⁷⁴ Hence, the Public Defender Office carries out the promotion and awareness raising function and takes decisions on

⁷⁰ Baseline study, Armenia, p. 16.

⁷¹ 2016 ECRI Report on Georgia, para. 19.

⁷² 2016 ECRI Report on Georgia, para. 20.

⁷³ Private persons and entities were added by amendments to the Law on the elimination of all forms of discrimination of 3 May 2019.

⁷⁴ Baseline study, Georgia, pp. 3, 16.

complaints, but does not fully carry out the support and litigation function as recommended by ECRI GPR No. 2.

In the **Republic of Moldova**, there are two independent bodies with an express mandate to promote equality and non-discrimination – the Equality Council⁷⁵ and the Ombudsperson. The Equality Council issues legally binding decisions, acting as a quasi-judicial body, while the Ombudsperson institution issues non-binding recommendations specific to Ombudsperson institution. The main law in the equality and non-discrimination field is the Law on ensuring equality of 2012. It prohibits discrimination on the following grounds: race, colour, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation or any other similar ground, in the political, economic, social, cultural fields and other fields of life. In addition, Art. 7 of the law expressly stipulates that „prohibition of discrimination on grounds of sexual orientation shall be enforced in the field of employment and recruitment”. It does not include expressly for all areas such grounds as national origin, citizenship, sexual orientation and gender identity.

The Ombudsperson institution is an independent multi-mandate human rights institution, whose activity is regulated by the Constitution and the law on the 2014 law on People's Advocate (Ombudsperson). The Ombudsperson and his/her deputies have legal safeguards for ensuring their functional independence and immunity. The law also provides sufficient guarantees against arbitrary dismissal, namely the Ombudsperson can be dismissed only by 3/5 of the MPs, based on a report of a special parliamentary commission composed of members of the legal and human rights parliamentary commissions. The revocation initiative must be presented by minimum 20 MPs. The Ombudsperson institution does not have sufficient financial independence.⁷⁶ The Ombudsperson institution covers the public and private sectors. It can receive complaints, initiate investigations ex-officio and issue non-binding recommendations. In 2018, ECRI recommended providing expressly that legal entities can submit complaints. The Ombudsperson does not have an expressly provided right to initiate court cases when a specific victim is not referred to, which was recommended by ECRI in its 2018 report on Moldova.⁷⁷ Despite numerous shortcomings, the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions recommended in May 2018 that the Ombudsperson institution be granted A status, with a large set of recommendations aiming at greater compliance with the principles

⁷⁵ Full name: The Council for Prevention and Combating of Discrimination and Ensuring Equality.

⁷⁶ Several guarantees included in the law on People's Advocate (art. 37), such as approval of the budget for two years in advance, the express provision that the budget is approved by the Parliament at the Ombudsperson's proposal and can be reduced only by Parliament decision, were removed from the law in July 2018. These amendments were adopted in spite of an earlier Venice Commission opinion that was negative regarding similar proposals, as they were “weakening financial independence of this institution” and recommended the authorities to reconsider the amendments (Venice Commission, Opinion no. 106 of 11 December 2017 on the proposed new art. 37 of the Law on the People's Advocate, CDL-AD(2017)032, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)032-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)032-e)).

⁷⁷ 2018 ECRI report on Moldova, para. 26.

relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).⁷⁸

Regarding equality, the Ombudsperson institution covers all discrimination grounds provided by law. If assessed from the perspective of the three main functions of an equality body as recommended in ECRI's GPR no. 2, the Ombudsperson institution has all three functions, the decision-making function including non-binding recommendations. In practice, its activities on equality and non-discrimination are limited. This is due to the fact that the Equality Council is the main institution carrying out promotion activities and has the competence to issue legally binding decisions, but also due to lack of human resources/internal capacity to adequately tackle this area and the multitude of other human rights issues tackled by the Ombudsperson institution. On the other hand, the Equality Council does not have the function of victim support and litigation, including due to a potential conflict between this function and the decision-making function (binding decision). In this context, the Ombudsperson institution should take on more actively the function of victim support and litigation on equality and non-discrimination issues.

The Equality Council is an independent body set up with the purpose of preventing discrimination and promoting equality for victims of discrimination, set up in 2013, after the entry into force of the law on equality. It is composed of five members appointed by the Parliament following a public contest organized by two parliamentary commissions. It enjoys important independence guarantees, but insufficient for ensuring full operational and financial independence. In particular, members of the Equality Council do not have functional immunity and safeguards against arbitrary dismissal. The Equality Council lacks financial independence and autonomy. Since 2018, the Equality Council is member of EQUINET.⁷⁹

The Equality Council covers all grounds included in the law on equality. Moreover, since its creation, the Equality Council has consistently applied directly the ECHR and has also extended the list of protected grounds beyond the grounds expressly provided in the law on equality under the notion of "another similar criteria" via its own case-law. The Equality Council applies the sexual orientation criteria in any field, not only in the work field. The Council covers both private and public sectors. In terms of the covered territory, the Equality Council, similar to other public authorities in the Republic of Moldova, de jure covers the full territory, de facto does not cover the eastern region of Moldova that is not under the effective control of the Moldova authorities.

The Equality Council has a series of competencies, which can largely be divided in three types: 1) promoting equality and non-discrimination in public and private sectors, 2) analysing the legislation and public policies through the principle of equality and non-discrimination, and 3) examining individual complaints on discrimination. The Equality Council lacks the function of victim support through legal assistance and litigation, as recommended by ECRI's GPR no. 2, paras. 10, 14-16. Vague provisions regarding the decision-making and appeal procedure of the Equality Council's decisions, as well as lack of sanctioning powers, significantly hampers the

⁷⁸ Report of the Special Rapporteur on the situation of human rights defenders, Human Rights Council, A/HRC/40/60/Add.3, 15 January 2019, para. 76; Annual report of the Ombudsperson for 2018, available at www.ombudsman.md.

⁷⁹ Equinet is the European Network of Equality Bodies in Europe, more information available at <https://equineteurope.org/>.

effectiveness of the Equality Council. It can provide opinions in court proceedings if requested by court or a party and approved by the court. It cannot submit constitutional reviews of laws to the Constitutional Court.

In **Ukraine**, the Parliament's Commissioner on Human Rights (the Commissioner) is a multi-mandate human rights institution, established by the Constitution and the specific Law on the Parliament's Commissioner on Human Rights. The 2012 Law on the Principles of Prevention and Combating Discrimination in Ukraine (the Anti-discrimination Law) attributed the Commissioner the competencies to elaborate policy, to coordinate and ensure prevention and combating of discrimination and intolerance. The Commissioner's powers in the non-discrimination field are delegated to the Commissioner's Representative on observance of the equality of rights and freedoms (the Representative on equality). The Representative on equality is appointed by the Commissioner.⁸⁰

The mandate of the Commissioner covers the whole territory of Ukraine and the competence concerns protection against all types of discrimination. The Commissioner is appointed by the Parliament with a simple majority and can be dismissed also by a simple majority of votes. The Commissioner enjoys financial autonomy, working within a budget approved by the Parliament at the Commissioner's proposal. The Commissioner's Representative on equality enjoys functional immunity. The Commissioner approves the budget of the Representative on equality and its secretariat.⁸¹

The Commissioner carries out promotion and awareness raising functions on equality and non-discrimination, can bring to courts cases of discrimination in order to protect the public interest and, personally or through a representative, participate in litigation in the individual cases. It can also examine individual complaints on discrimination, issuing non-binding recommendations.⁸² In its 2017 report on Ukraine, ECRI concluded that the competences of the Commissioner appeared to be almost fully in line with ECRI's GPRs No. 2 and No. 7 § 24, the only missing element is investigation powers that ECRI recommended to be assigned to the Commissioner.⁸³

2.2. Effectiveness in addressing structural issues related to discrimination, hate crime and hate speech

Given the lack of an express mandate on equality, the Human Rights Defender in **Armenia** does not address structural issues related to discrimination, nor on hate crime and hate speech.⁸⁴

In **Georgia**, the Public Defender can propose legislative amendments to ensure laws comply with the anti-discrimination law. The Equality Department of the Public Defender of Georgia identifies

⁸⁰ Baseline study, Ukraine, p. 50.

⁸¹ Baseline study, Ukraine, pp. 48-51.

⁸² Baseline study, Ukraine, p. 50.

⁸³ 2017 ECRI report on Ukraine, para. 17.

⁸⁴ No information on these issues the baseline study for Armenia.

general problems in terms of equality situation and issues a recommendation/general proposal for the notice of a respondent.⁸⁵

In the Republic of Moldova, there is no express definition of structural discrimination. The Equality Council and the Ombudsperson institution do not have sufficient competencies to effectively address structural discrimination separately, but by cooperating more closely, they could reach results that are more significant. For example, the Equality Council can address structural discrimination by providing opinions on draft laws or draft public policies. This opinion is not binding for the respective public authority. As for the legislation in force, the Council cannot directly challenge the legislation in breach of equality and non-discrimination principle to the Constitutional Court, while the Ombudsperson can. The Equality Council has no express competencies regarding local regulations and administrative provisions. Theoretically, the Council can exercise this review by examining ex-officio the respective provisions and submitting recommendations to the local authorities. The Council can also address structural discrimination via examination of individual complaints and issuing legally binding decisions with recommendations for redressing the situation, including amending laws. Even if the public authorities are often contesting the Council's decisions and are reluctant to amending legislation based on Council's decisions, a series of Council's recommendations were implemented, such as amending legislation to exclude discriminatory provisions for a category of retired persons in 2018.⁸⁶ There is room for more cooperation between the two bodies in order to address structural discrimination more effectively.⁸⁷

In **Ukraine**, the Commissioner addresses structural discrimination via continuous monitoring of the human rights situation in the country. The institution carries out regular (weekly) analysis of the draft laws registered by the Parliament from the human rights perspective, including discrimination. The Commissioner regularly provides written opinions, proposals and comments on improving the acting legislation and draft laws for preventing and combating discrimination. The Commissioner and Secretariat members participate at parliamentary hearings and parliamentary commissions' sittings. The Commissioner regularly cooperates with the Parliamentary Committee on Human Rights, Inter-ethnic Relations and National Minorities and the Subcommittee on Gender Equality and Non-Discrimination.

The Commissioner monitors the activity of the state and local government authorities, as well as other public and private entities via media monitoring of their statements, advertising and other public information. If there are the messages, notifications, evidence or individual appeals on discrimination, hate crimes or hate speech, the Commissioner can open proceedings and address the relevant public or private body with recommendations on actions on elimination of discrimination, protection of victims and restoration their rights. The Commissioner and her/his Representatives can pay monitoring visits to any private and public entity, including urgent visits, to verify the observance of human rights, including with regard to the Commissioner's proceedings on cases of discrimination. They can invite officials for meetings in order to get their

⁸⁵ Baseline study, Georgia, pp. 19-20.

⁸⁶ Moldova, Equality Council report for 2018, p. 54.

⁸⁷ Baseline study, Republic of Moldova, p. 24.

verbal or written explanations on the circumstances that are being audited in the case. They can also serve in the capacity of mediators when holding meetings of the parties of a conflict.⁸⁸

2.3. Effectiveness in addressing individual complaints related to discrimination, hate crime and hate speech

Although the Human Rights Defender in **Armenia** does not have an express equality mandate, it examines individual complaints from the equality and non-discrimination perspective, limiting to documenting the act of discrimination. The victims further use the Human Rights Defender conclusions in domestic judicial proceedings, the proceedings before the European Court of Human Rights or other proceedings. The most common forms of discrimination addressed in the individual complaints examined by the Human Rights Defender in the recent years concern employment related discrimination, women discrimination as victims of domestic violence, discrimination of persons with disabilities.⁸⁹

In **Georgia**, the Public Defender is entitled to examine individual complaints⁹⁰ regarding discrimination and issue recommendations on the measures to be taken to redress the found violation. The legislation provides important guarantees to ensure the effectiveness of the Public Defender redress mechanism. In particular, the law provides for a shared burden of proof, with the complainant requested to submit facts and relevant evidence that raise suspicion on discrimination, while the defendant bearing the burden to prove that discrimination did not occur. The law requires any administrative, governmental or local self-government agency (including prosecutorial, investigative and judicial bodies) as well as private entities, including individuals, to transfer materials, documents and other information to the Public Defender within 10 calendar days following the request as provided by the law.⁹¹ It is not clear whether the Public Defender can interpret the failure to provide the requested materials in the detriment of the party that fails to provide them, which would be an important provision to ensure effectiveness of proceedings. The Public Defender can hold a public hearing when the communication with parties is not sufficient for comprehensive examination of all factual and legal circumstances.

The law provides important guarantees for implementation of issued recommendations, such as the obligation of the public agencies and private entities to communicate to the Public Defender of Georgia the steps taken to implement the recommendation/general proposal received. In May 2019, important amendments to the anti-discrimination law were adopted in particular strengthening the enforcement of the Public Defender decisions. For example, in case a fact of alleged discrimination is committed by legal persons of private law, the Public Defender is entitled to apply to a court and request action or inaction from the respective entity in case the latter did not respond to or fulfil Public Defender's recommendations or proposals on alleged fact of discrimination. Previously this competence could be applied only to public authorities.

⁸⁸ Baseline study, Ukraine, pp. 52-54.

⁸⁹ Baseline study, Armenia, p. 18.

⁹⁰ The application form for submitting a complaint is available at <http://www.ombudsman.ge/geo/sakhalkho-damtsvelistvis-gantskhadebit-sachivrit-mimartva>.

⁹¹ Baseline study, Georgia, pp. 20-21.

This competence still does not apply to individuals. This competence was used for the first time in 2018, to enforce a recommendation of the Public Defender to the Kobuleti Municipality Gamgeoba and Kobuleti Water Ltd regarding the connection to the water system of a boarding school opened by a Muslim community in a context of opposition by the local population.⁹²

In the **Republic of Moldova**, an alleged victim of discrimination can address to any of the two equality bodies. The Equality Council issues legally binding decisions, acting as a quasi-judicial body,⁹³ while the Ombudsperson institution issues non-binding recommendations specific to Ombudsperson institutions. The Equality Council is an alternative, but not a mandatory avenue for victims of discrimination that wish to go directly to court. The victim can choose one of these remedies – the Equality Council or the court - and can even submit complaints in parallel. For damages, the victim must address the courts. An individual complaint regarding discrimination, including hate speech, can be submitted to the Equality Council or the court within one year from the moment the alleged discrimination took place, or the person had the possibility to know about that. Individual complaints regarding hate crimes must be submitted to law enforcement. Both the Equality Council and the Ombudsperson institution can refer complaints to law enforcement.

The law on equality provides for the principle of sharing the burden of proof in discrimination cases and the Equality Council applies it effectively. Moreover, the law provides the legal persons' and the natural persons' obligation to submit information requested by the Equality Council and that "the failure to submit the information requested by the Council is sanctioned by the legislation in force and interpreted by the Council to the detriment of the person who does not submit the required data."⁹⁴ This is an important guarantee for the victims to prevent the alleged perpetrators ignoring the Equality Council's proceedings. The number of complaints addressed to the Equality Council⁹⁵ is an important indicator showing the importance of the Council's mechanism for victims of discrimination. The number of complaints submitted to the Council has increased from 44 in 2013 to 903 between 2013-2018 (247 in 2018) and the issued decisions (a decision may include several recommendations) from 12 in 2013 to 708 between 2013-2018 (213 in 2018).⁹⁶

After examining an individual complaint, the Council shall issue a reasoned decision. If the Council finds discrimination, the Council can issue recommendations, which can include recommendations to restore the victim's rights and prevent similar acts of discrimination in the future, and/or draw a misdemeanour protocol that is subject to court review. The Council can also contribute to finding amicable solutions through mediation. The perpetrator or the person/authority that received the Council's recommendations shall inform the Council within

⁹² Baseline study, Georgia, p. 21.

⁹³ It examines the discrimination complaints, finding discrimination and issuing recommendations for redress, and can ask the court to apply fines for non-enforcement of the its decisions based on art. 71/2 of the Misdemeanor (contravention) Code.

⁹⁴ Art. 15 para (2) – (3) of the law on equality.

⁹⁵ The electronic form of the complaint and explanations on what discrimination means are available at <http://egalitate.md/depune-o-plingere/>.

⁹⁶ Baseline study, Republic of Moldova, p. 26.

10 days about the actions taken to implement the recommendations. If the Council's decisions are not implemented, the Council can draw a misdemeanour protocol and submit it to court for validation, which can apply a fine of 75 EUR – 150 EUR to individuals and of 112 EUR - 225 EUR for legal entities. The fines are not significant, and the procedure is cumbersome, since the Council needs to closely monitor the enforcement of its decisions and then go to court to have a relatively symbolic fine applied to the perpetrator for failure to implement the Council's recommendations. Moreover, even if enforcement of its decisions is on the Council's priority for the past two years, the monitoring process requires significant human resources that the Council lacks. Such a system is far from a satisfactory one for the victim. Based on the Council's monitoring of implementation of its recommendations formulated in its 2017 issued decisions, only 35% were implemented by the end of 2017.⁹⁷

The Council can issue misdemeanour protocols when the discrimination act is of a higher gravity. However, due to collisions between the relevant procedural laws (law on equality and Contravention Code) and their divergent interpretation by courts and the Equality Council, the vast majority of the Council's misdemeanour protocols were annulled by courts, which discouraged the Council to further use this remedy.⁹⁸ Instead of improving the procedures, the Council practically stopped applying this remedy⁹⁹ and focused on issuing recommendations, in parallel continuing advocating for attributing direct sanctioning powers to the Council.¹⁰⁰ Hence, although the legislation provides for an administrative remedy for sanctioning discrimination, this is not used by the Equality Council due to procedural inconsistencies between the law on equality and the Contravention Code, leaving practically acts of discrimination unsanctioned administratively.

The main limitations regarding the Equality Council's set up to address individual complaints is that it lacks competencies for applying effective, proportionate and dissuasive sanctions, as required by the EU and the Council of Europe when states assign decision-making competencies to equality bodies.¹⁰¹ Several reports recommended assigning direct sanctioning powers as a means to significantly increase the effectiveness and impact of the Council's casework.¹⁰²

In **Ukraine**, the Parliamentary Commissioner examines individual complaints of victims of discrimination, hate crime and hate speech. Victims can submit the complaints by ordinary mail,

⁹⁷ Equality Council report for 2018, p. 53.

⁹⁸ For instance, from 2013-2015, the Equality Council issued 32 misdemeanour protocols. Out of 32, only two were maintained by courts, but even in those two cases fines were not applied since the time limit for applying the sanctions had expired.

⁹⁹ In 2017, the Council issued two misdemeanour protocols, both maintained by the courts. In 2018, the Council did not draw any misdemeanour protocol.

¹⁰⁰ Equality Council annual report for 2016.

¹⁰¹ Art. 15, 2000/43EC, art. 27 2000/78EC and the European Commission Against Racism and Intolerance (ECRI), General Policy Recommendation no. 2.

¹⁰² See, for example: the 2015 Compatibility analysis; the Legal analysis of the decisions of the Equality Council and the decisions of the domestic courts on discrimination cases of the Republic of Moldova, John WADHAM and Dumitru RUSSU, 2016; the two 2016 Council of Europe assessments of the law on equality and on the Equality Council; recommendations by civil society during ECRI's monitoring visit, ECRI 2018 report on Moldova, para. 99.

e-mail or in person.¹⁰³ The Commissioner issues recommendations on each examined complaint. The recommendations can be addressed to the relevant public authorities, private entities or individuals residing in Ukraine with the request to apply, within a month period, appropriate measures necessary to remedy the victim's situation. Failure to comply with the recommendations allows the Commissioner to draw up protocols on administrative offenses and submit them to court, which can impose fines between 100 to 200 non-taxable minimum incomes of citizens. There is no data in the Commissioner's annual report on the number of applied protocols on discrimination-based administrative offences.¹⁰⁴

The Commissioner has an important competence as recommended also by ECRI's GPR No. 2, namely to submit complaints in court on cases of discrimination in order to protect the public interest and, personally or through a representative, participate in litigation in the individual cases. Among the analysed countries, only the Ombudsperson institution in the Republic of Moldova has the litigation competence but is not using it. The Ukraine's Commissioner's experience in this regard could be one of the good practices to be shared with the other countries.

In 2018, the Commissioner considered 616 notifications of cases of discrimination and violation of the principle of equality, and opened 106 proceedings on her initiatives in concern to the incidents that had signs of discrimination based on mass-media and social networks monitoring.¹⁰⁵ Given the population of Ukraine, this may seem like a relatively modest number of complaints, if, for example, compared to Moldova, but a more in-depth analysis would be necessary for reliable conclusions. The Commissioner's office reports very high rates of enforcement of its recommendations - about 90% of implementation of the recommended remedies within the term prescribed by the law and about 10% implemented in a longer timeframe, usually in cases when more complex decisions or budget allocations are involved.¹⁰⁶ In any event, such high implementation rates of recommendations are a good indicator of effectiveness of the mechanism.

Similarly to Armenia and the Republic of Moldova, the author of the baseline study for Ukraine highlights the need for a mechanism or body in Ukraine that would have the competencies to directly apply sanctions for acts of discrimination as a means to offer a rapid and effective remedy to victims of discrimination, including hate speech.

2.4. Information and awareness raising activities about the Equality Body/Ombudsperson institution

Information about the equality bodies/Ombudsperson institutions in all four examined countries is available on their respective websites, with a varying degree of accessibility and

¹⁰³ Electronic format of the complaint available at <http://www.ombudsman.gov.ua/ua/page/applicant/how-to-file-a-petition-to-the-commissioner/>.

¹⁰⁴ Baseline study, Ukraine, p. 56.

¹⁰⁵ Baseline study, Ukraine, p. 58.

¹⁰⁶ Baseline study, Ukraine, p. 58.

comprehensives of the information. In Armenia, the information about the Human Rights Defender is available on its website <https://www.ombuds.am>. However, the website does not include specific information on non-discrimination related complaints, nor on public awareness activities tackling discrimination.

In Georgia, information on the Public Defender of Georgia is provided on its website <http://www.ombudsman.ge>. It includes a sub-page dedicated to the anti-discrimination mechanism, which includes information for applicants, a template application, the Public Defender general proposals and issued recommendations in the field, information on amicus curiae submitted by the Public Defender, as well as information regarding the interested parties to participate as third parties in the proceedings conducted by the Public Defender. Information on the status as well as news and current activities, including awareness-raising activities carried out by the Public Defender is also available, as well as the Public Defender annual activity reports. The Public Defender's Equality Department's capacity to carry out awareness raising activities on equality and non-discrimination has been consolidated recently within the context of an EU-funded project of Combating All Forms of Discrimination in Georgia implemented at the Public Defender's Office.¹⁰⁷

In the Republic of Moldova, the websites of the Equality Council (www.egalitate.md) and of the Ombudsperson institution (www.ombudsman.md) are the main sources of information regarding the role of the bodies. Both websites contain information about the respective body, the means of submitting a complaint, as well as the activity reports and other publications. The website of the Equality Council is accessible for persons with access needs and national minorities. It also includes an option for online submission of a complaint. The website has the google translate integrated tool, which can be used by the visitors for translating the most relevant information. The Council is also active on social media: Facebook, Twitter and Odnoklassniki.

The awareness raising activities undertaken by the Equality Council and the Ombudsperson institution are also briefly described in their respective annual reports. As reported by representatives of the two bodies, the awareness raising activities carried out by the Equality Council are still mostly supported by development partners. The level and budget categories of the Ombudsperson institution have recently improved allowing the institution to carry out awareness raising activities using the state budget.

In Ukraine, information on the Commissioners' work on non-discrimination is available on its official website <http://www.ombudsman.gov.ua>. It includes information for applicants on how and where to apply with individual complaints, as well as information on the legal framework regarding the Commissioner's activities and information for interested parties in equality and non-discrimination, such as national and international case law and practical guidelines. The website includes also the results of monitoring of observance of human rights and freedoms exercised by the Commissioner, ongoing News line and the annual reports on Commissioner's

¹⁰⁷ Baseline study, Georgia, pp. 21-22.

activity. Information on activities carried out by the Commissioner is also included in annual reports that are presented to the Parliament and published on the website. The decisions and recommendations per each individual complaint examined by the Commissioners are not published, but may be published once a new version of the website is launched.¹⁰⁸ Publishing of Commissioner's decisions on examined individual complaints would be important both for increasing the transparency and accountability of the Commissioner, and for the benefit of the interested parties that could examine the interpretations and recommendations provided by the Commissioner. The published decisions may also play an important preventive role.

¹⁰⁸ Baseline study, Ukraine, pp. 60-62.

3. Data collection mechanisms on discrimination, hate crime and hate speech

3.1. National data on discrimination, hate crime and hate speech

In **Armenia**, no nation-wide mechanism for collecting data on discrimination is in place. No official data on hate crime and hate speech is publicly available either. This seems to be mainly due to the fact that the police, prosecution and judiciary do not disaggregate the collected data by aggravated circumstances, which would allow extrapolating the data on hate crime and hate speech reported to / examined by these bodies.

For example, the Information Centre run by the police keeps the database of crimes where data on hate crime and hate speech is not processed as a distinct and separate category. The Prosecutor's General Office collects data and publishes narrative report of crimes annually, summarized by number, gravity, category and types of crimes. The report does not specify hate crime or hate speech as a distinct category, since it is referring to the type of crime without further specifying the aggravated circumstances. The Judicial Department, which runs the administration of the Judiciary, provides semi-annual and annual reports of judicial practice in which it summarizes the court practice and trends of developments. The Judiciary has adopted statistical indexes to identify types of crimes for processing of statistical data. However, none of the indexes indicate hate crime as a distinct category. The National Statistical Committee processes statistical data on crime received from the police, broken down by gender, public security and order, property, economic activity, crimes committed against state power, state service and procedure of governance and other crimes. Hate crime is not specified as a separate category of crime.¹⁰⁹

Several non-governmental organisations collect, and process hate crime and hate speech data depending on their area of specialization. For example, PINK Armenia publishes narrative reports on hate crimes against members of LGBT community, the Helsinki Committee reports on hate speech by media outlets.¹¹⁰

In 2017, Armenia reported hate crime information for the first time to OSCE/ODIHR. The report includes 14 hate crimes recorded by police and 15 incidents reported by other sources.¹¹¹

In **Azerbaijan**, the Ministry of Internal Affairs does not classify and register hate crimes, hence no official information can be obtained.¹¹² Azerbaijan last reported hate crime data to ODIHR for the 2011 Hate Crime Report.¹¹³

¹⁰⁹ Baseline study, Armenia, pp. 19-20.

¹¹⁰ Baseline study, Armenia, p. 21.

¹¹¹ OSCE/ODIHR, Hate crime reporting: <http://hatecrime.osce.org/armenia>.

¹¹² Baseline study, Azerbaijan, p. 16.

¹¹³ OSCE/ODIHR, Hate crime reporting: <http://hatecrime.osce.org/azerbaijan>.

In **Belarus**, there is no mechanism for collecting data on discrimination, hate crimes and hate speech.¹¹⁴ Belarus has not periodically reported reliable information and statistics on hate crimes to ODIHR.¹¹⁵

In **Georgia**, no national wide data collection mechanisms on discrimination was reported in the country report. On the other hand, Georgia seems to have an advanced system for collecting data on hate crime, which is well reported to ODIHR, although, no public reliable data and statistics on hate crimes are made public. For 2017, Georgia reported 86 hate crimes recorded by police, disaggregated by bias motivation. Other sources reported 39 incidents.¹¹⁶

According to ODIHR, Georgia regularly reports hate crime data to ODIHR. The data do not report cases of discrimination and persecution separately. The Information-Analytical Department of the Ministry of Internal Affairs, the Central Administration of Prosecutors of the Ministry of Justice, the Statistical Office and the Supreme Court all collect hate crime statistics. The following system of hate crime collection is in place. Employees of the Ministry of Internal Affairs are instructed to immediately initiate investigations when they suspect that an offence might have been committed on the basis of hatred and intolerance. The Information-Analytical Department of the Ministry generates statistical data about criminal offences with an element of discrimination. In January 2018, the Human Rights Protection and Monitoring Department was established in the Ministry of Internal Affairs of Georgia, which monitors hate crimes, collects statistics and oversees the initial stage of investigation on other, ordinary crimes committed with bias motive. The Ministry also indicates the motive for the presumed intolerance and the specific reason for discrimination, such as race, skin colour, sex, sexual orientation or other grounds envisioned by Paragraph 3(1) of Article 53 of the Criminal Code of Georgia. These procedures are in accordance with an instruction issued by the Ministry of Internal Affairs. Based on the recommendation regarding the application of Article 53 §3(1) of the Criminal Code, the Human Rights Unit of the Prosecutor's Office of Georgia must be notified electronically of potential bias motivated crimes less than three days after the creation of the relevant procedural document. The information includes case details, details about the judicial process, and details of the investigation. The Georgian judiciary collects its own statistical data on hate crimes through the Supreme Court of Georgia's Analytical Unit, which collects all judgements in which Article 53 § 3 (1) is used as an aggravating circumstance from city and district courts.¹¹⁷

In the **Republic of Moldova**, the Equality Council is the only public authority that publishes data on discrimination. The Council publishes two types of data: data from public perception surveys about discrimination, in line with ECRI's GPR no. 4, and disaggregated data on discrimination complaints received by the Equality Council and their outcomes, as recommended by ECRI's GPR no. 2. The National Bureau of Statistics publishes population related data, which is usually disaggregated by gender, age, areas (rural/urban). No specific discrimination related cases are published by the National Bureau of Statistics, unless such data are provided by the specialized

¹¹⁴ Baseline study, Belarus, p. 27.

¹¹⁵ OSCE/ODIHR, Hate crime reporting: <http://hatecrime.osce.org/belarus>.

¹¹⁶ OSCE/ODIHR, Hate crime reporting: <http://hatecrime.osce.org/georgia>.

¹¹⁷ OSCE/ODIHR, Hate crime reporting: <http://hatecrime.osce.org/georgia>.

bodies or a separate study/data collection exercise is carried out by the National Bureau of Statistics. The court system does not have a menu/compartment for tracking discrimination cases and therefore the automated court case system, which is quite advanced in the Republic of Moldova, does not generate data on discrimination cases. The Equality Council cannot track the court discrimination cases, unless it is a party or one of the parties or the court requests its conclusions (expert conclusion).

There is no centralized system for producing and publishing hate speech related data. The Equality Council publishes information on received complaints or initiated ex-officio cases in this annual report and might have more information from 2019, given the daily mass-media monitoring activity it instituted since 2018. Data on hate speech can be found in the Ombudsperson institution's reports. Relevant data can be also individually collected from the information on cases / complaints examined by the Press Council and the Audio-Visual Coordinating Council.

The Republic of Moldova does not routinely publish data on hate crimes. The only reliable source for data on hate crimes is the data provided to the OSCE/ODIHR, provided by the National Liaison Officer for OSCE Hate Crime, who is currently based in the Prosecutor General Office. Moldova for the first time reported significantly more hate crimes recorded by police than before in 2017 (e.g. 17 hate crimes recorded by police in 2017 compared to 5 in 2016, 0 in 2015, 1 in 2014 and 4 in 2013. In 2017, other sources reported 17 incidents).¹¹⁸

However, the reported crimes still miss the bias motivation, since the law enforcement agencies do not record it separately. All crimes are registered in the automated integrated information system for crimes, managed by the Information Centre of the Ministry of Interior. The crimes are registered according to the articles of the Criminal Code. Hate crimes can be extrapolated from the total number of cases by individually extrapolating specific articles and aggravating circumstances. However, the system does not allow for tracking of bias motivation as it is not recorded separately. A similar system exists in the Prosecution office. Since 1 July 2017, the prosecution office has an electronic system for all criminal cases, called "E-file". The system includes all criminal cases from the registration moment to the final decision. The system is not connected yet to the Ministry of Interior system, nor with the court system. Prosecutors register crimes according to the Criminal Code article and aggravated circumstances can also be registered, but the system does not have further opportunities for registering the bias motivation. The prosecution service is interested in further developing the e-file system to add the bias motivation in the system. The court system is similar to the police and prosecutor office: statistics are collected based on the articles of the Criminal Code. Hate crimes need to be extrapolated from the general system by specific articles of the Criminal Code, but no bias motivation is further recorded.¹¹⁹

¹¹⁸ OSCE/ODIHR, Hate crime reporting: <http://hatecrime.osce.org/moldova>.

¹¹⁹ Baseline study, Republic of Moldova, p. 30.

Besides the cumbersome data collection system, data on hate crime are missing because of law enforcement and courts' resistance to qualify them as such. This is explained both by personal bias and by lack of adequate skills and knowledge on hate crimes. As a result of law enforcement resistance to record hate crimes as such and qualify them as such, victims have a very low trust to report such crimes to law enforcement. The current training on hate crimes provided by the National Institute of Justice to prosecutors and judges is insufficient and superficial (modules of 1-2 hours). There is a need for more training for all three main actors involved: police, prosecutors and judges, as well as for training of trainers, to have a local pool of legal practitioners to be able to provide training to law enforcement and judges in a sustainable way.

In **Ukraine**, the State Service of Statistics is responsible for national statistics, collected from the different authorities, including statistics on justice and crime. However, its annual reports do not include data on discrimination and hate speech.¹²⁰ The State Court Administration of Ukraine maintains the Unified State Register of Judicial Decisions, which is accessible via Internet and includes judicial decisions that can be searched by fields of law, the date, the court that considered the case and other parameters etc. However, the State Court Administration does not keep records of cases under the category "cases on discrimination" or "hate crimes" in the documents' flow systems.¹²¹ Since 2018, following the Commissioner's request, the State Court Administration quarterly sends the Commissioner information on the total number of cases on discrimination considered in the civil, administrative and criminal proceedings. The Commissioner requested the State Court Administration to include the category of cases on discrimination in the list of categories based on which judicial statistics are generalized.¹²²

Ukraine reports data on hate crime, discrimination and hate speech to OSCE/ODIHR, but not separately per each category. Hate crime data recorded by police are disaggregated by bias motivation. In 2017, Ukraine reported 163 hate crimes recorded by police, disaggregated by bias motivation and other sources reported 212 incidents.¹²³ Hate crime data are collected by the Main Investigation Department of the National Police of Ukraine based on information from the protocols on committed crimes or crimes in preparation, as well as from the Unified Register of Pre-Trial Investigations. The departments on investigations of the Main Directorates of the National Police in the regions, the city of Kyiv, the Autonomous Republic of Crimea and the city of Sevastopol include the staff responsible for monitoring and identifying information about crimes that may indicate the signs of prejudice. This information is also sent to the Main Investigation Department of the National Police for compilation. The National Police of Ukraine, when collecting information on hate crimes, requests for the information that it needs from other organizations and institutions, for example, the State Court Administration of Ukraine, or the Office of the Parliament's Commissioner on Human Rights. Statistical information on hate crimes is published annually on the official website of the National Police. The General Prosecutor's Office does not generate data on hate crimes because there is no precise legal definition of hate

¹²⁰ Baseline study, Ukraine, p. 63.

¹²¹ Baseline study, Ukraine, p. 65.

¹²² Baseline study, Ukraine, p. 68.

¹²³ OSCE/ODIHR, Hate crime reporting: <http://hatecrime.osce.org/ukraine>.

crime in the acting Ukrainian legislation. Information can only be filtered according to articles of the Criminal Code of Ukraine.¹²⁴

Several non-governmental organizations collect data on discrimination, hate speech and hate crime depending on their area of work. For example, the Ukrainian Helsinki Human Rights Union keeps records of applications on discrimination in nine oblasts of Ukraine. The NGO "Human Rights Roma Centre", which covers the territory of 10 regions of Ukraine, collect and report on cases on Roma discrimination. The NGO "The League for the Defence of Women "Harmony of Equal" monitor the advertising and online magazines. In 2018, the League received, considered and submitted 398 citizens' applications and complaints to the Commissioner of the Parliament on Human Rights, to the Industrial Gender Committee on Advertising and to the State Committee for Consumer Protection.

3.2. Equality body/Ombudsperson institution data collection mechanisms for data collection

In **Armenia**, due to absence of a specific equality mandate assigned to the Human Rights Defender, the body does not have a specific data collection mechanism for data on discrimination, hate crimes and hate speech. However, in the annual narrative reports on its activity, the Human Rights Defender includes information on cases or practices of hate crime and hate speech (e.g. the 2018 report). The institution has also issued thematic reports on hate speech incidents, for example, the 2016 report concerning the events of July 2016 that gave rise to widespread and systematic violations of prohibition of hate speech.¹²⁵

In **Georgia**, the Public Defender of Georgia collects annual data regarding the cases under its consideration. The statistics are disaggregated by ground of discrimination and sphere where discrimination has occurred, as well as whether the parties are represented and if the representative is a member of the Equality Coalition.¹²⁶ The respective data are published in the annual Special Report on Equality Situation in the country.¹²⁷

In the **Republic of Moldova**, the Equality Council carries out periodic perception studies of the population regarding equality. It conducted one in 2015 and one in 2018, both with the financial support of the development partners. The surveys provide important information on perceptions and attitudes in the society and their sustainability should be ensured through budgetary means. The Equality Council publishes data on examined complaints and their outcomes. The data on complaints are disaggregated by the following criteria: gender, place of residence (urban/rural), language, means of submission (post, in person, email, online), way of submission (in victim's interest, for another person, for a group, via a representative, referred) and the outcomes of the complaints. This information is presented in the Council's annual reports and can be obtained upon request or tracked individually from the Council's website. Since 2018, the Equality Council

¹²⁴ Baseline study, Ukraine, p. 64.

¹²⁵ Baseline study, Armenia, p. 22.

¹²⁶ Information provided by the Public Defender of Georgia.

¹²⁷ Baseline study, Georgia, p. 23.

has developed a tracking system for monitoring the implementation of its recommendations. The results are published in the Council's annual report. However, the Council does not yet have a system that easily shows the implementation of its recommendations per each decision. Such information can be obtained only upon request and the Council staff needs to manually extrapolate the information. The Equality Council publishes all its decisions on its website, anonymizing the names of the parties and excluding protected personal data (e.g. domicile).

The Ombudsperson institution does not have specific data collection mechanisms for data on discrimination.

In **Ukraine**, the Parliamentary Commissioner keeps a detailed electronic record of all its activities, including regarding discrimination field. Annually the Secretariat summarizes the general and disaggregated number of appeals/ complaints, requests for information and measures of the Commissioner's response, including monitoring visits, inspections, etc. This data is published in the Commissioner's annual reports. Data on discrimination is disaggregated by grounds, for example the submitted complaints to the Commissioner by grounds of discrimination, the initiated proceedings as a result of mass-media monitoring, disaggregated by grounds of discrimination. Since 2018, following the Commissioner's request, the State Court Administration quarterly sends the Commissioner information on the total number of cases on discrimination considered in the civil, administrative and criminal proceedings.¹²⁸

The Commissioner does not conduct any public surveys on peoples' perception of discrimination in Ukraine. In 2018, the Ilko Kucheriv Democratic Initiatives Foundation in cooperation with the NGO "Human Rights Information Center" conducted the nationwide poll "What Ukrainians know and think about human rights: assessment of change" (2016-2018)¹²⁹. The United Nations Development Program in Ukraine supported this activity.¹³⁰

¹²⁸ Baseline study, Ukraine, p. 68.

¹²⁹ http://www.ua.undp.org/content/ukraine/uk/home/library/democratic_governance/humanrightsresearch-2018.html

¹³⁰ Baseline study, Ukraine, p. 68.

4. Cooperation of Equality body/Ombudsperson institution with NGOs, the judiciary and other national stakeholders for the protection and assistance of victims of racism and discrimination

4.1. Equality body/Ombudsperson institution cooperation mechanisms with NGOs

In **Armenia**, the Human Rights Defender Office cooperates with non-governmental organisations on various human rights issues including on the matters of non-discrimination. Within the entrusted three mandates – National Prevention Mechanism, protection of the rights of persons with disabilities and of the rights of children, the Human Rights Defender Office works on discriminatory issues with NGOs within these three areas of work. Currently it has 18 partner non-governmental human rights organisations, according to the information posted on its website. The NGOs cooperate with the Human Rights Defender on taking cases to the Constitutional Court for abstract review of the constitutionality of statutory norms. The Human Rights Defender Office cooperates with NGOs on drafting the annual reports, being required by law to forward the annual reports after the publication to NGOs.¹³¹

The Human Rights Defender Office has a good practice of outsourcing the services of NGOs for legal analysis of laws and practice and drafting special reports, such as reports focused on specific events¹³² or practices. The right to receive expert support is expressly provided by the Law on the Human Rights Defender within its national prevention mechanism and is used in all three mandates.¹³³ The Human Rights Defender is also authorized by law to establish councils within its structure and invite members of NGOs as members of the council. Currently, the Human Rights Defender has expert councils on the issues of the rights of military servicemen and on the issues of prevention of torture.¹³⁴ These are good practices of interest to other countries.

In **Azerbaijan**, cooperation with NGOs is negatively affected by the legal framework and the environment that is not conducive for a vibrant civil society and a good cooperation between NGOs and state authorities, including the Ombudsperson institution. In its 2016 report on Azerbaijan, ECRI recommended that the authorities create conditions under which a diverse and independent civil society can develop by implementing the detailed recommendations of the Council of Europe's Parliamentary Assembly's (§§ 11.1, 11.2 and 11.6 to 11.8 of Resolution 2062(2015)) and of the Venice Commission (§ 94 of Opinion No. 787/2014). This recommendation was made in the context of the state crackdown on NGOs, particularly through legal restrictions on registration and receiving foreign funding of 2014.¹³⁵ These restrictions had

¹³¹ Baseline study, Armenia, pp. 23-24.

¹³² For example, the Human Rights Defender Office involved experts on hate crime and hate speech from a human rights NGO and the Chamber of Advocates in order to draft the report on the events of July 2016, during which a group of armed people attacked a police regiment and took hostages while their supporters spread tremendous amount of hate speech via social networks and media outlets against police officers (Country report, Armenia).

¹³³ Baseline study, Armenia, p. 24.

¹³⁴ Baseline study, Armenia, p. 24.

¹³⁵ A number of amendments to the administrative code and the laws on NGOs, grants, and registration of legal entities adopted in 2014.

in particular negatively affected the members of vulnerable groups who turn to such NGOs in order to receive aid and assistance in cases of hate speech and other instances of racism and discrimination. In its June 2019 conclusions on the implementation of the recommendations subject to interim follow up, ECRI concluded that this recommendation has not yet been implemented. ECRI welcomed the 2016 presidential decree that included measures to simplify procedures concerning the registration of grants by foreign donors and ensure their transparency and the setting up in 2016 of a platform for dialogue between the Government and civil society under the National Action Plan for Open Government (2016–2018) to enhance the involvement of civil society organisations. However, ECRI concluded that these measures were insufficient since the presidential decree did not address the legal requirement for NGOs to register grants and has not changed the unlimited discretion of the authorities to decide on grant registration. Moreover, ECRI received reports from various stakeholders regarding the continuing use of restrictive regulations by the authorities. This practice impedes proper and independent functioning of NGOs and leads, in some cases, to these organizations being unable to resume their work.¹³⁶

In **Georgia**, a Coalition of Equality, which includes ten NGOs,¹³⁷ was created with the support of the Open Society Georgia Foundation in 2014, while the draft law on anti-discrimination was being developed. The Coalition aims at advancing the implementation of the anti-discrimination law and monitoring its practical application. In this regard, the Coalition aims to promote awareness raising about anti-discrimination mechanism and implementation of the anti-discrimination law through strategic litigation, providing legal consultations to alleged discrimination victims, bringing strategic discrimination cases to the Public Defender's Office and intervening as a third party in the proceedings. The members of the Coalition focus on different groups and grounds of discrimination, covering a wide range of discrimination related issues. The Coalition and the Public Defender Office signed a memorandum of cooperation in 2015 outlining the areas and focus of cooperation. The Coalition and the Public Defender Office agreed to meet on a case by case basis for issues of common interest. The last meeting within this format was held in October 2019, according to the Public Defender Office. The Public Defender Office was supposed to create a council that would include other NGOs besides the Coalition members and representatives of the Public Defender Office. However, to date no such council was created.¹³⁸ NGOs can participate as third parties in the proceedings initiated by the Public Defender Office, which is a good opportunity for NGOs to contribute to improving the Public Defender's practice. This is a good practice that could be of interest to other countries.

In the **Republic of Moldova**, the Regulation on Equality Council provides expressly that the Equality Council cooperates with NGOs via common projects. The Equality Council cooperates

¹³⁶ ECRI conclusions on the implementation of the recommendations in respect of Azerbaijan subject to interim follow-up, adopted on 3 April 2019 and published on 6 June 2019, available at <https://rm.coe.int/interim-follow-up-conclusions-on-azerbaijan-5th-monitoring-cycle-/168094ce04>.

¹³⁷ Georgian Young Lawyer's Association, Human Rights Education and Monitoring Center, Safari, Article 42 of the Constitution, Identity, Partnership for Human Rights, Women's Initiatives Supportive Group, Equality Movement, Democratic Initiative of Georgia, Tolerance and Diversity Institute.

¹³⁸ Baseline study, Georgia, p. 25.

with NGOs via different mechanisms, usually based on specific project implemented or initiated by the NGOs or by the Council. Cooperation can be formalised via memorandums of cooperation or carried out without formalities. The way the Council is created, with at least three members as representatives of civil society, contributes to a continuous collaboration between the Council and the NGOs. The Council has an important mechanism via which NGOs can influence the Council's case law via submitting amicus opinions on ongoing cases. NGOs can also submit complaints to the Council.¹³⁹ These are good practices that could be of interest for other countries.

The Council's representatives expressed a wish for more involvement on behalf of the NGOs. The Council reported trying to set up twice a Consultative Council composed of NGOs representatives, but failed due to insufficient expressions of interest. In 2019, the Council organized for the first time a contest for awarding symbolic prizes for the most active NGO, journalist, public authority and applicant, meant to inspire more cooperation among the candidate institutions / groups, as well as inspire more people/institutions to work on equality and non-discrimination topics. Every annual report of the Equality Council includes references to the common projects or partnerships concluded with NGOs.¹⁴⁰

The Ombudsperson institution also cooperates with NGOs in the implementation of its mandate. Cooperation can be formalized or carried out for specific activities. The representatives of the Ombudsperson institution mentioned an increased cooperation lately with NGOs on constitutional reviews submitted by the Ombudsperson. They also expressed a wish for more active involvement on behalf of NGOs in the issues promoted by the Ombudsperson institution. In 2018, the Ombudsperson institution focused on human rights defenders' situation, which was an important step for improving the cooperation between Ombudsperson institution and civil society.¹⁴¹

In **Ukraine**, the Parliamentary Commissioner actively cooperates with NGOs via both formal and informal mechanisms. Cooperation with civil society is expressly provided in the Law on the Commissioner, bylaws regulating the Commissioner's work - the Regulation on the Secretariat of the Commissioner, the Regulation on the Commissioner's Representatives, orders on the work of the Secretariat's structural divisions, on procedures of monitoring visits, on the work of advisory bodies etc. Within the National Prevention Mechanism mandate, the Commissioner has several means of cooperating with NGOs, including by contracting civil society representatives for conducting inspection and monitoring visits. The Law on the Commissioner expressly provides that she cooperates with NGOs by setting up a Consultative Council as an advisory body and considers the NGOs' proposals on improvement of protection of human rights and freedoms. The Commissioner's Secretariat ensured the secretarial work for the Council as well as maintains regular communication of the Commissioner and the Commissioner's Representatives with NGOs.¹⁴² These are good practices that could be of interest to other countries.

¹³⁹ Baseline study, Republic of Moldova, p. 32.

¹⁴⁰ Baseline study, Republic of Moldova, p. 32.

¹⁴¹ Baseline study, Republic of Moldova, p. 33.

¹⁴² Baseline study, Ukraine, pp. 70-71.

In 2018, the Commissioner created the Coordinating Council on Non-discrimination and Gender Equality and the Coordinating Council for the observance of the rights of internally displaced persons and persons residing on the temporarily occupied territory, each composed of half representatives of the relevant public authorities and half of representatives of NGOs working on non-discrimination and gender equality. The councils are collegial advisory bodies to provide the Commissioner and his/her Representative with advice, proposals and recommendations. Their regular sittings are held four times a year, communication between the Secretariat and the Coordinating Councils' members is supported to promote and realize the initiatives discussed during the sittings. The key topics for consideration at the sittings are proposed by the councils' members. These usually include addressing systemic problems or responding to urgent issues. Working groups within the council can be established to deal with specific matters. The Commissioner's Representative on Equal Rights and Freedoms leads the advisory councils' work. The information about the councils' activities is made public in the form of press-releases on the web-site of the Commissioner.¹⁴³ The Commissioner's practice on setting up and maintaining the activities of the specialized advisory councils could be of interest to other countries, in particular Moldova and Georgia that seem interested but have not yet managed to set up such councils.

In addition, a network of public activists, acting as Regional Coordinators for the interaction with civil society, has been established in order to ensure the Commissioner's communication with citizens and representatives of civil society institutions (Regulation on the Regional Representations of the Commissioner). They are local activists who are expected to promptly respond to violations of human and civil rights and freedoms. They also cooperate with the Association of Ukrainian monitors on the observance of human rights in the activities of law enforcement agencies. Regional Coordinators operate abroad also. On the basis of a written mandate of the Commissioner that determines their rights, they provide monitoring of observance of the human rights of citizens of Ukraine who stay on the territory of foreign countries, communicate with citizens of Ukraine and their NGOs.¹⁴⁴ Such a network could be of interest to the other countries, as an effective tool to reach out to local communities. No other countries mentioned such networks.

Another good practice of the Commissioner is maintenance of an updated list of the most reliable NGOs working on various human rights issues, with updated contacts details. The Commissioner and her office can contact the NGOs for issues of common interest and provide the list to the applicants, alleged victims of discrimination, in cases when they need urgent assistance that cannot be provided by the Commissioner.¹⁴⁵

A coalition on combating discrimination in Ukraine, including more than 50 public and charitable organisations working on combating discrimination and advancing equality, is actively cooperating with the Commissioner. The Coalition leads the Information campaign

¹⁴³ Baseline study, Ukraine, p. 71.

¹⁴⁴ Baseline study, Ukraine, p. 71.

¹⁴⁵ Baseline study, Ukraine, p. 72.

“Discrimination restricts – ACT!”, which has a webpage that is also available from the Commissioner’s website. It provides, inter alia, the possibility to online address a question to a lawyer related to discrimination on different grounds and lawyers working in the project “Without Borders” respond to the applicants. The Coalition, in cooperation with the Commissioner, conducts several awareness raising activities on equality and non-discrimination. The Commissioner also actively cooperates with Roma NGOs to promote implementation of the Roma Protection and Integration Strategy, to protect Roma from violence, stigmatisation, segregation, marginalisation, hostility and hate crimes. The Commissioner has signed several other memoranda of cooperation with specific NGOs and is continuously working on widening and maintaining effective cooperation with NGOs.¹⁴⁶

4.2. Equality body/Ombudsperson institution cooperation mechanisms with judiciary and other relevant national stakeholders

In **Armenia**, the Human Rights Defender Office is entrusted with the competence to apply to the Constitutional Court seeking abstract review of the constitutionality of statutory norms and government regulations. The Public Defender Office uses this competence often, including in cooperation with NGOs. The Constitutional Court also seeks expert opinion of the Human Rights Defender on pending claims before it filed by individuals, courts or other relevant parties (*amicus curiae*). The Public Defender Office publishes periodically compilations of *amicus curiae* submitted to the Constitutional Court. These are important avenues of cooperation between Human Rights Defender Office and the Constitutional Court.

The Human Rights Defender Office seeks to give its annual and special reports the structure and content of soft law, using a narrative and explanatory approach to presented issues. This approach enables those who file claims with judicial bodies and before government entities to cite reports of the Human Rights Defender as soft sources of law.¹⁴⁷

In the **Republic of Moldova**, the Ombudsperson can submit opinions or *amicus curiae* to the Constitutional Court, either upon court’s request or the Ombudsperson institution’s own initiative. The court will decide on whether to examine or not the submitted opinion. The Equality Council can submit conclusions in ongoing discrimination court cases, if requested by the court or one of the parties, or on its own initiative, according to the Civil Procedure Code provisions. The final decision on whether to accept such conclusions belongs to the judge.¹⁴⁸ This is an important avenue through which the Council can influence the judicial practice on equality and non-discrimination. In 2018, within a Council of Europe supported project, guidelines were developed for the Equality Council on how to intervene with *amicus curiae* before ordinary courts, the Constitutional Court and European institutions, which could be used more by the

¹⁴⁶ Baseline study, Ukraine, pp. 72-73.

¹⁴⁷ Baseline study, Armenia, p. 25. Specific example given the report on events of July 2016, which provides explanatory review of international norms of freedom of speech and the grounds of prohibition of hate speech and intolerance in general and is already cited by different groups, including lawyers, in their legal submissions to courts and other public bodies.

¹⁴⁸ In 2018, the Council submitted 5 such conclusions.

Equality Council in strengthening its capacity in this respect.¹⁴⁹ These guidelines could be of interest for other project countries.

A draft law on amending the equality legal framework, including the Equality Council, initiated in 2018, provides for ex-officio involvement of the Equality Council in court discrimination cases for submission of conclusions. This mechanism is used in Romania and proves to be an efficient one. This could be a practice of interest for other project countries as well.

The Equality Council cooperates with the public authorities mainly through trainings delivered for the staff of the public authorities and submission of opinions on draft laws / policies, as well as on specific issues depending on the nature of the issue. In 2018, the Equality Council, the Ombudsperson institution and the Agency for Interethnic Relations signed a memorandum of cooperation under the auspices of the OSCE Mission to Moldova, to promote the rights of national minorities.¹⁵⁰

In **Ukraine**, the Parliamentary Commissioner has extensive means of cooperating with judiciary, including via active participation in judicial proceedings. The Law on Commissioner provides such tools as Commissioner's right to attend the sitting of the Constitutional Court, Supreme Court of Ukraine and the highest specialized courts of Ukraine. The Commissioner is entitled to submit constitutional challenges to the Constitutional Court on a broad range of grounds, such as compliance of the Constitution of Ukraine with the laws of Ukraine and other legal acts of the Parliament, acts of the President and the Government, legal acts of the Parliament of the Autonomous Republic of Crimea concerning human and civil rights and freedoms, as well as on the official interpretation of the Constitution of Ukraine. The Commissioner can also personally or through his/her representative lodge appeals to courts on the protection of the rights and freedoms of persons who, due to physical condition, age, elderly age, incapacity or limited capacity, cannot independently protect their rights and freedoms. The Commissioner can also participate in the trial of cases, the proceedings of which are open based on his/her claims and can intervene in cases where proceedings are initiated based on complaints submitted other persons. The Commissioner can also initiate review of court decisions regardless of his/her participation in court proceedings.¹⁵¹

The anti-discrimination law entitles the Commissioner to issue opinions in cases of discrimination upon a court request, based on court's ex-officio request or the request of one of the parties in the case. In practice, this competence is insufficiently used, mostly due to courts' reluctance to examine discrimination related claims. For example, in 2018, the Commissioner received only three requests of this type.¹⁵²

¹⁴⁹ Equality Bodies as amicus curiae, Guidelines to the Moldovan Council for Preventing and Eliminating Discrimination and Ensure Equality to Write and Amicus Curiae Brief, prepared by Frederique AST, Council of Europe Expert, available on <https://rm.coe.int/equality-bodies-as-amicus-curiae/1680932030>.

¹⁵⁰ Baseline study, Republic of Moldova, p. 33.

¹⁵¹ Baseline study, Ukraine, p. 73.

¹⁵² Baseline study, Ukraine, p. 74.

The Commissioner has also the competence to monitor court proceedings. The Commissioner can also refer to the Supreme Court of Ukraine when there are systemic problems that create difficulties in the implementation of a certain law. The Commissioner can recommend the Supreme Court to pay attention to the problem, consider making an analysis of the relevant court practice and provide explanations on the result of the Courts' considerations. For example, in 2018 the Commissioner referred to the President of the Supreme Court on lack of uniform judicial practice on administrative offences. The Commissioner has also the right to submit complaints to the High Council of Justice on judges' disciplinary responsibility. Moreover, the Commissioner together with the Head of the State Judicial Administration of Ukraine are involved in appointment (in the procedure of the public competition) of a member of the High Qualification Commission of Judges of Ukraine; a candidate is from among the retired judges or other persons who are not judges.¹⁵³

The Commissioner cooperates with the State Court Administration on judicial statistics. Since 2018, the State Court Administration quarterly sends to the Commissioner information on the total number of cases on discrimination that are examined by courts. The Commissioner also cooperates with the National School of Judges, providing training on antidiscrimination legislation, European standards and jurisprudence on discrimination.¹⁵⁴

¹⁵³ Baseline study, Ukraine, p. 76.

¹⁵⁴ Baseline study, Ukraine, p. 76.

Conclusions and proposals for interventions

Key country specific conclusions and proposed activities

In **Armenia**, the absence of a law on anti-discrimination hinders the development of effective judicial and non-judicial remedies for victims of discrimination. NGOs cannot bring cases without a specific victim. The Human Rights Defender is a national human rights institution covering the public sector only. It does not have the equality mandate expressly assigned by law. However, it carries out promotion and awareness raising activities on equality and non-discrimination and can also examine individual complaints on discrimination. It can lodge a constitutional complaint for abstract review before the Constitutional Court that challenges the potential infringement on human rights by legal acts, including on equality and non-discrimination. The Human Rights Defender cannot bring a case on behalf of an alleged victim of discrimination.

For hate speech statements issued by public officials or public bodies, complaints can be submitted to the higher administrative body or the Human Rights Defender Office. Due to lack of specific provisions regarding the burden of proof for discrimination cases, the chances in court proceedings for finding discrimination or hate speech if such not found by the administrative body are very small.

Complaints related to hate crimes should be addressed to law enforcement. However, the Criminal Code does not sufficiently address the concept of hate crimes. The list of protected grounds does not include colour, language, ethnic origin, sexual orientation and gender identity. The Criminal Code does not criminalize public incitement to violence or discrimination and does not include any specific provisions prohibiting public insults and defamation on the prohibited grounds.

The gaps identified in respect of failure to comply with ECRI's GPRs no. 2 and no. 7 as highlighted in ECRI's 2016 report on Armenia are still valid. Two main draft laws for improving the equality and non-discrimination legal framework are pending: the draft law on anti-discrimination and the draft law on amending the Criminal Code.

No nation-wide mechanism for collecting data on discrimination is in place. No official data on hate crime and hate speech is publicly available either. This seems to be mainly due to the fact that the police, prosecution and judiciary do not disaggregate the collected data by aggravated circumstances, which would allow extrapolating the data on hate crime and hate speech reported to / examined by these bodies. The Human Rights Defender includes information on cases or practices of hate crime and hate speech in its annual reports and has also issued thematic reports on hate speech incidents.

The Human Rights Defender Office cooperates with non-governmental organizations on various human rights issues including on the matters of non-discrimination. Currently it has 18 partner NGOs. Cooperation is particularly focused on taking cases to the Constitutional Court for abstract

review of the constitutionality of statutory norms, on drafting the annual reports and outsourcing the services of NGOs for expert services (e.g. legal analysis of laws and practice, drafting special reports etc.). The Human Rights Defender has expert councils on the issues of the rights of military servicemen and on the issues of prevention of torture. Given the Human Rights Defender competence to seek abstract review of laws by Constitutional Court, these institutions have established a good cooperation practice. The Constitutional Court also seeks expert opinion of the Human Rights Defender on pending claims (*amicus curiae*). The Public Defender Office publishes periodically compilations of *amicus curiae* submitted to the Constitutional Court. The practice/ decisions of the Human Rights Defender are used as soft law in the claims before judicial bodies and governmental bodies.

National level co-operation projects could focus on:

- Assistance for the adoption of a national comprehensive anti-discrimination law to cover both private and public sectors, including provisions on shared burden of proof in civil procedure code for court procedure and include non-discrimination clauses in the Law on Fundamentals of Administrative Action and Administrative Proceedings;
- Assistance in the establishment of a national equality body with a mandate for the private sector, in line with ECRI's GPR no. 2;
- Legislative support for amending the Criminal Code to bring fully in line with ECRI's GPR no. 7;
- Support for setting up a system for data collection and publication of data on hate crimes;
- Provision of training to law enforcement and legal specialists on discrimination, hate speech and hate crimes, including on data recording and reporting;
- Supporting the development of a national strategy for effectively preventing and combating hate speech.

In **Azerbaijan**, the equality principle is provided in the Constitution and a series of laws. However, Azerbaijan still has not enacted comprehensive legislation on discrimination on the grounds of race, colour, language, religion, citizenship, national or ethnic origin, sexual orientation or gender identity. There is no institution specifically responsible for prevention and combating discrimination in Azerbaijan. The Ombudsperson is responsible for preventing and combating violations of human rights and freedoms in the public sector but does not have an equality mandate. ECRI's recommendation to establish a separate specialized body to combat racism and discrimination in both the private and public sector is still not implemented and there is no draft law or an initiative on the public agenda in this respect.

Hate speech is insufficiently regulated in the national legislation and victims do not have effective remedies against hate speech. The Criminal Code does not include the grounds of race, colour, language, religion, citizenship, national or ethnic origin, sexual orientation or gender identity. The Ombudsperson does tackle instances of hate speech, including against the most targeted groups such as LGBTI, against political opposition and internally displaced persons.

The country report does not indicate any specific remedies for hate crimes victims, other than the inferred law enforcement remedies based on the Criminal and Criminal Procedure Codes.

The Criminal Code does not include the grounds of colour, language, citizenship, ethnic origin, sexual orientation and gender identity, and it does not criminalize incitement to violence and incitement to discrimination of foreigners. ECRI recommended addressing these issues with priority, as well as other provisions that are not in compliance with ECRI's GPR No. 7. None of these recommendations is reported as implemented. No data on hate crimes could be obtained since the Ministry of Internal Affairs does not classify and register hate crimes. Azerbaijan last reported hate crime data to ODIHR for the 2011 Hate Crime Report.

In its 2016 report on Azerbaijan, ECRI recommended that the authorities create conditions under which a diverse and independent civil society can develop by implementing the detailed recommendations of the Council of Europe's Parliamentary Assembly's (§§ 11.1, 11.2 and 11.6 to 11.8 of Resolution 2062(2015)) and of the Venice Commission (§ 94 of Opinion No. 787/2014). This recommendation was made in the context of the state crackdown on NGOs, particularly through legal restrictions on registration and receiving foreign funding of 2014. In its June 2019 conclusions on the implementation of the recommendations subject to interim follow up, ECRI concluded that this recommendation has not yet been implemented.

National level co-operation projects could focus on:

- Support the development of a national comprehensive anti-discrimination law to cover both private and public sectors;
- Assistance for establishing a separate specialized body to combat racism and discrimination in both the private and public sector per ECRI's recommendation;
- Support amending the Criminal Code to bring it in full compliance with ECRI's GPR no. 7;
- Supporting the setup of a system for data collection and publication of data on hate crimes and provision of training to law enforcement and legal specialists on discrimination, hate speech and hate crimes;
- Assistance to the involvement of a diverse and independent civil society in the fight against discrimination;
- Assistance to local NGOs to monitor and provide support to victims of discrimination, hate speech and hate crime, as well as advocate for national legislation and effective state remedies against discrimination.

In **Belarus**, the equality principle is enshrined in the Constitution and non-discrimination provisions are included in legal fields, e.g. constitutional, civil, administrative, criminal and other sectoral legislation. However, there is no comprehensive anti-discrimination law and no specialized body working on equality and non-discrimination issues. The absence of specific procedural provisions on protection against discrimination and basic concepts related to discrimination limits the applicability of the wide range of general provisions on equality and non-discrimination.

Victims of discrimination can use the court for challenging the violation of his/her rights based on some substantive provisions in the available legislation and/or use the non-judicial available remedies that include the public authorities and the prosecution office. The alleged victims can submit complaints to the public authorities based on provisions of the Law on Appeals of Citizens

and Legal Persons and to the prosecution office based on the Law On the Office of the Prosecutor. However, there is no data on whether complaints on discrimination issues are being submitted and examined within these procedures.

Among relevant bodies, the National Council on Gender Policy at the Council of Ministers ensures coordination and monitoring of the state policy on ensuring gender equality but does not examine individual complaints. The Commissioner for Religious and Ethnic Affairs can examine individual complaints regarding the exercise of religious freedom, however, there are no public statistics regarding the complaints received by the Commissioner.

The Criminal Code (art. 190) prohibits “direct or indirect premeditated infringement upon or restriction of rights and freedoms or for establishing direct or indirect advantages for persons based on their gender, race, ethnicity, language, origin, property status, official status, attitude to religion, beliefs, membership in public associations that significantly infringed upon rights, freedoms, and legitimate interests of a person”. However, this article does not seem to be applied in practice, as no courts have received or considered cases based on its provisions. There is no mechanism for collecting data on discrimination, hate crimes and hate speech. Belarus has not periodically reported reliable information and statistics on hate crimes to OSCE/ODIHR.

National level co-operation projects could focus on:

- Assistance for the development of a national comprehensive anti-discrimination law to cover both private and public sectors;
- Support to the establishment of a national human rights institution, with an equality mandate in line with ECRI’s GPR no. 2;
- Support to the setup of a system for data collection and publication of data on hate crimes and provision of training to law enforcement and legal specialists on discrimination, hate speech and hate crimes;
- Assistance to local NGOs to monitor and provide support to victims of discrimination, hate speech and hate crime, as well as advocate for national legislation and effective state remedies against discrimination.

In **Georgia**, the equality principle is enshrined in the Constitution. The 2014 Law on the Elimination of All Forms of Discrimination (the anti-discrimination law) is the main law in the field, providing key definitions and the authorities responsible for its implementation. The law provides for a non-exhaustive list of protected grounds that includes “race, colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics”. The law is applicable in the public and private sectors. Both the Anti-Discrimination Law and the Code of Civil Procedure provide for a shared burden of proof in discrimination cases.

The courts of general jurisdiction and the Public Defender of Georgia (Ombudsperson institution) are the competent legal instruments for examining discrimination complaints. In August 2014,

the Department of Equality was established within the Public Defender's Office, charged to examine discrimination complaints and to carry out awareness raising activities on equality. The Public Defender is an independent institution elected by Parliament and has all the powers recommended in ECRI's GPR No. 7, § 24. The Public Defender Office carries out the promotion and awareness raising function and takes decisions on complaints but does not fully carry out the support and litigation function as recommended by ECRI GPR No. 2.

The Anti-Discrimination Law does not include provisions on denial of reasonable accommodation, as well as the concepts of segregation, discrimination by association, and announced intention to discriminate (the last three recommended by ECRI's GPR No. 7, §6). The Anti-Discrimination Law does not have specific provisions allowing the Public Defender to interpret the submitted complaint in the detriment of the party that failed to present the requested documents (such provisions exist, for example, in the Republic of Moldova, and are very helpful for disciplining the parties). Individuals are entitled to initiate court proceedings in case they consider that their rights under the law are violated, but there is no "fast-track procedure". These lacunas are not addressed yet.

The intolerance motive is not provided in the Code of Administrative Violations, nor as a separate crime, neither as an aggravating circumstance. Hence, the acts that amount to administrative violations, with a gravity insufficient for qualification as crimes, are not punished.

Georgian legislation does not criminalize hate speech except those cases, when it creates a threat of immediate, irreversible and apparent violence. Hate speech in the media is prohibited by several primary and secondary laws. Broadcasters' self-regulatory mechanisms examine complaints, including on hate speech. However, interpretations vary regarding the parties that can submit such complaints, which negatively affects the effectiveness of these mechanisms. The Council of the Georgian Charter of Journalistic Ethics examines complaints against journalists, including related to hate speech. The Elections Code prohibits instigation of national, ethnic or religious hatred or conflict in the course of pre-election campaign. However, the Code does not provide for suppressing public financing of, banning or dissolving, racist parties or organisations, as recommended in ECRI's GPR No. 7, §§ 16 and 17.

Hate crimes are defined in the Criminal Code both as separate crimes and when such committed due to the intolerance motive that constitutes an aggravating circumstance applicable to sentencing for any crime. The Criminal Code needs to be adjusted to be fully in line with ECRI's GPR no. 7. In particular, the Criminal Code still lacks provisions "prohibiting offences such as racist insults, the public dissemination or distribution with a racist aim of material containing racist statements, and the creation or the leadership of a group which promotes racism". Language and religion are still not listed as protected grounds. These and other lacunas are addressed in a draft law on amending the Criminal Code promoted by the Ministry of Interior.

Georgia seems to have an advanced system for collecting data on hate crime, compared to the other project countries, which is well reported to OSCE/ODIHR, although, no public reliable data and statistics on hate crimes are made public. Georgia reports to OSCE/ODIHT hate crimes

recorded by police, disaggregated by bias motivation. The Public Defender of Georgia collects annual data regarding the cases under its consideration. The statistics are disaggregated by ground of discrimination and sphere where discrimination has occurred. The respective data are published in the annual Special Report on Equality Situation in the country. No periodic public perception surveys were reported as conducted.

The Public Defender Office has had a good cooperation with the Coalition of Equality.. The Public Defender Office was supposed to create a consultative council that would involve various NGOs but no such council was yet created. NGOs can participate as third parties in the proceedings initiated by the Public Defender Office, which is good opportunity for NGOs to contribute to improving the Public Defender's practice.

National level co-operation projects could focus on:

- Assistance to amend the anti-discrimination law to address the missing concepts recommended in ECRI's GPR No. 7, §6 and include a fast-track option for bringing discrimination cases to the courts, as recommended in ECRI's GPR No. 7, § 10;
- Assistance to amend the Law on Free Legal Aid to include the right to free legal aid and an interpreter, if necessary, for applicant wishing to bring their case to a court in cases alleging a fact of discrimination;
- Support the strengthening of the Public Defender Office's mandate by adding the victim and litigation support function and assistance for that the Public Defender has the right to initiate civil proceedings against individuals if they do not implement his/her recommendations;
- Support the establishment of a permanent advisory at the Public Defender Office including staff representatives and civil society representatives;
- Assistance to amend the draft law on amending the Criminal Code in line with ECRI's GPR no. 7;
- Continue to work on data collection, ensuring that the crime related data collection systems allow for disaggregate up to the bias motivation of crimes at all levels: Ministry of Internal Affairs, General Prosecutor's Office and the Supreme Court of Georgia and ensure that hate crime statistics are publicly available. Consider developing detailed guidance on recording, reviewing and compiling information on hate crimes, including clearly designating responsibilities at each level, to ensure a better data recording and publishing.

In the *Republic of Moldova*, the 2012 Law on ensuring equality includes the following open list of protected grounds against discrimination: race, colour, nationality, ethnic origin, religion or belief, sex, age, disability, opinion, political affiliation or any other similar ground, in the political, economic, social, cultural fields and other fields of life. National origin, citizenship, sexual orientation and gender identity are not provided as general protected grounds. The law does not include definitions like intersectional discrimination or structural discrimination and other important definitions.

The Equality Council, the public authorities and the courts are subjects entrusted with the competencies to prevent and combat discrimination. In addition, the Ombudsperson institution also has an equality mandate. Victims of discrimination can address any of these subjects. However, the public authorities do not provide an effective remedy, since often they are the ones committing discrimination, there is no express legal duty of public officials to promote equality and no unified approach to how public authorities must deal with discrimination complaints. The Equality Council and the Ombudsperson are independent bodies, each with an express mandate to promote equality and non-discrimination. The Equality Council issues legally binding decisions, acting as a quasi-judicial body, while the Ombudsperson institution issues non-binding recommendations specific to Ombudsperson institution. These two bodies are the main non-judicial mechanisms that victims of discrimination can use, including in disputes with public authorities.

The Equality Council and the Ombudsperson institution enjoy important guarantees for their independence, but insufficient for ensuring their operational and financial independence. The Equality Council needs legislative improvements regarding its *modus operandi* and competencies to directly address the Constitutional Court and directly apply sanctions for discrimination in order to provide effective national remedies for victims of discrimination. The Equality Council and the Ombudsperson institution do not cooperate sufficiently on tackling structural discrimination and do not have a written referral mechanism for victims of discrimination. None of the two bodies carry out the function of victim support and litigation, as recommended in ECRI's GPR No. 2. Given the current setting, the Ombudsperson institution should carry out this function, which is already provided by law but not implemented.

The law on equality provides for the principle of *sharing the burden of proof in discrimination* cases both with respect to the proceedings before the Equality Council and the proceedings before the courts. Moreover, the failure to submit the information requested by the Equality Council is sanctioned by the legislation in force and interpreted by the Council to the detriment of the person who does not submit the required data.

NGOs can bring cases of discrimination before the Equality Council, both representing a specific victim and in their own name when the discrimination act has as a target a group or community. In courts, NGOs may submit complaints only on behalf of specific persons. NGOs can participate as accessory interveners in courts and can submit *amicus curiae* to the Equality Council. The legal aid system covers civil cases, including cases of discrimination, should the victim meet the financial and merits test.

Several laws expressly regulate hate speech. However, the enforcement mechanisms for hate speech complaints is weak and the legislation insufficiently covers it. The biggest weakness is the electoral legislation, which includes no provision allowing for the dissolution of political parties or organisations that promote racism and no mechanisms for rapid sanctioning of hate speech during electoral campaigns. Counter-speech on behalf of public authorities is missing. Criminal Code and Contravention Codes need improvement for an effective sanctioning of hate speech. There is no coordinated strategy among the relevant public authorities, such as law enforcement

bodies, the Audio-Visual Coordinating Council, the Central Electoral Commission, the Equality Council, the Ombudsperson institution and the Press Council, mobilizing them to prevent and combat hate speech in the Republic of Moldova.

Victims of any alleged hate crime shall submit complaints to police and/or prosecution office (law enforcement bodies). The Equality Council, the Ombudsperson institution and any other public authority can also refer the victim or the complaint to law enforcement bodies. There are two main problems with regard to effective combating of hate crimes in the Republic of Moldova: inadequate legislation and resistance/lack of knowledge or skills of the law enforcement to qualify hate crimes as such. The latter determines lack of data and underreporting, since victims do not trust that law enforcement will adequately qualify their complaints. The Criminal Code needs improvement and the lacuna are identified both in 2018 ECRI's report on Moldova, and in the draft law no. 301 that is currently on the Parliament's agenda.

The Equality Council is the only public authority that publishes data on discrimination. The Council publishes two types of data: data from public perception surveys about discrimination, in line with ECRI's GPR no. 4, and disaggregated data on discrimination complaints received by the Equality Council and their outcomes, as recommended by ECRI's GPR no. 2. The National Bureau of Statistics publishes population related data, which is usually disaggregated by gender, age, areas (rural/urban). Data on hate speech can be found in the Equality Council and Ombudsperson institution's annual reports. Relevant data can be also individually collected from the information on cases / complaints examined by the Press Council and the Audio-Visual Coordinating Council. Moldova does not routinely publish data on hate crimes. Moldova reports to the OSCE/ODIHR hate crime reporting, but the reported crimes still miss the bias motivation, since the law enforcement agencies do not record it separately.

The Equality Council and the Ombudsperson institution cooperate routinely with NGOs via different mechanisms. However, both bodies expressed interest for an improved cooperation. The Equality Council twice failed setting up a Consultative Council composed of NGOs representatives due to lack of interest on the latter. Cooperation of both bodies with the judiciary is mainly limited to the legal instruments each has in providing amicus / conclusions to the Constitutional Court / ordinary courts. Informal on-going discussions among these bodies and the judiciary are missing.

National level co-operation projects could focus on:

- Assistance to the draft law on amending the Criminal and Contravention Code regarding hate crimes and hate speech (draft law no. 301, adopted in the first reading) as well as to the improvement of the draft law on amending the legal framework on equality and on-discrimination, with focus on the law on equality and the Law on the functioning of the Equality Council, including assigning the powers to apply dissuasive sanctions for discrimination;
- Provision of capacity building to the Ombudsperson institution on how it can provide legal support and litigation to victims of discrimination and hate speech;

- Assistance to the development of a multi-stakeholder strategy to combat hate speech, led by the Equality Council and the Ombudsperson institution;
- Provision of capacity building to the Audio-Visual Coordinating Council and Press Council in a better monitoring and sanctioning of hate speech. Establish a protocol of cooperation between the two bodies and the Equality Council to refer instances of hate speech identified through their daily media monitoring;
- Provision of for journalists as well as media institutions / sites owners regarding the responsibilities for moderating the comments;
- Assistance for improving the prosecution e-file system to allow registering the bias motivation for hate crimes and design a system for publishing routinely information on hate crimes;
- Provision of a training of trainers program to prepare a group of local practitioners able to provide trainings on effective combating of hate crimes to law enforcement, lawyers and judges, including modules on overcoming personal stereotypes and prejudices;
- Promotion of the inclusion of training sessions on hate crimes and hate speech in the initial and continuous training programs of police, prosecutors, judges and lawyers;
- Assistance for the Equality Council and the Ombudsperson institution to develop a joint practice of issuing rapid statements regarding hate or discriminatory speech, which could inspire and empower other public authorities and public officials to engage in in the future;
- Assistance for the Equality Council and the Ombudsperson institution, in cooperation with NGOs and support from international community, to carry out an analysis and develop legislative proposals to provide for the possibility of dissolution of organizations or political parties which promote racism and the suppression of their public financing;
- Assistance for the Equality Council and the Ombudsperson institution to consider establishing a Consultative Council, separate for each institution, composed of representatives of NGOs, as well as public authorities in order to facilitate cooperation among the involved stakeholders.

In **Ukraine**, the equality and non-discrimination principle is enshrined in the Constitution. The 2012 Law on the Principles of Prevention and Combating Discrimination (the Anti-discrimination Law) is the main law that includes the basic concepts and framework for prevention and combating of discrimination. The Anti-Discrimination Law does not include any provisions on burden of proof and the provisions in the Civil Procedure Code regarding the burden of proof do not correspond to ECRI's definition provided in ECRI's GPR No. 7 § 11.

The Parliament's Commissioner on Human Rights (the Commissioner) is a multi-mandate human rights institution, which since 2012 also has the equality mandate. The Commissioner's powers in the non-discrimination field are delegated to the Commissioner's Representative on equality. The mandate of the Commissioner covers the private and the public sectors. The Commissioner carries out promotion and awareness raising functions on equality and non-discrimination, brings to courts cases of discrimination in order to protect the public interest and participates in litigation in the individual cases. It examines individual complaints on discrimination, issuing non-

binding recommendations. The Commissioner lacks investigation and conciliation powers. The Commissioner is the main non-judicial remedy for discrimination complaints.

The Commissioner's office reports very high rates of enforcement of its recommendations - about 90% of implementation of the recommended remedies within the term prescribed by the law and about 10% implemented in a longer timeframe, usually in cases when more complex decisions or budget allocations are involved.

Discrimination complaints can be submitted to public authorities based on the provisions of the Law on the Citizens' Appeal. However, there is no unified approach or specific guidelines regarding the examination of discrimination complaints by public authorities or disaggregated data to allow drawing any conclusions on the use of this remedy for discrimination complaints. Discrimination can also be submitted to law enforcement (criminal and administrative offences codes) and courts.

There is no law on mediation in Ukraine, which could be used for settling disputes regarding discrimination.

The Law on the freedom of expression prohibits hate speech, promotion of violence and cruelty, incitement to racial, national, religious hatred. Complaints regarding audio-visual services can be submitted to the *National Council on TV and Radio Broadcasting* that can impose sanctions, including for hate speech. Complaints can also be submitted to the *Journalist Ethics Commission*, a self-regulating body for journalists and editorial staff created by the Ukrainian Association of Journalists. Between 2015 and 2018, the Judicial Ethics Commission issued 12 decisions that found violations of the Ethics Code prohibiting discrimination.

Hate crimes are defined in the Criminal Code both as separate crimes and as when such committed due to the intolerance motive that constitutes an aggravating circumstance applicable to sentencing for any crime. In its 2017 report, ECRI recommended the authorities to amend the Criminal Code to include the following elements: the offences of incitement to discrimination and to violence; defamation; the public expression, with a racist aim, of an ideology which claims the superiority of, or which denigrates, a group of persons; the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes; the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; and legal persons' liability. The grounds of race, colour, language, religion, citizenship, and national or ethnic origin should also be included in all the relevant provisions.¹⁵⁵ Since then, no amendments were introduced in the Criminal Code.¹⁵⁶

Ukraine reports data on hate crime, discrimination and hate speech to OSCE/ODIHR, but not separately per each category. Hate crime data recorded by police are disaggregated by bias motivation. Hate crime data are collected by the Main Investigation Department of the National

¹⁵⁵ 2017 ECRI Report on Ukraine, paras. 9.

¹⁵⁶ Country report, Ukraine.

Police of Ukraine based on information from the protocols on committed crimes or crimes in preparation, as well as from the Unified Register of Pre-Trial Investigations. The prosecution office and the courts do not collect hate crime data. No data on hate crimes are published regularly.

Commissioner keeps a detailed electronic record of all its activities, including regarding discrimination field, published in the annual reports. Since 2018, following the Commissioner's request, the State Court Administration quarterly sends the Commissioner information on the total number of cases on discrimination considered in the civil, administrative and criminal proceedings. The Commissioner does not conduct any public surveys on peoples' perception of discrimination in Ukraine.

The Commissioner actively cooperates with NGOs via both formal and informal mechanisms. The law expressly provides the Commissioner's duty to set up of a Consultative Council as an advisory body and consider NGOs' proposals on improvement of protection of human rights and freedoms in his/her work. In 2018, the Commissioner created the Coordinating Council on Non-discrimination and Gender Equality and the Coordinating Council for the observance of the rights of internally displaced persons and persons residing on the temporarily occupied territory, each composed of half representatives of the relevant public authorities and half of representatives of NGOs working on non-discrimination and gender equality. However, the Council's work is not yet sufficiently visible. In addition, a network of public activists, acting as Regional Coordinators for the interaction with civil society, has been established in order to ensure the Commissioner's communication with citizens and representatives of civil society institutions. A coalition on combating discrimination in Ukraine, including more than 50 public and charitable organizations working on combating discrimination and advancing equality, is actively cooperating with the Commissioner.

The Commissioner has extensive means of cooperating with judiciary, including via active participation in judicial proceedings. The Commissioner has the right to attend the sittings of the Constitutional Court, Supreme Court of Ukraine and the highest specialised courts of Ukraine. The Commissioner can also participate in certain judicial proceedings, monitor trials and issue opinions in cases of discrimination upon a court request, based on court's ex-officio request or the request of one of the parties in the case. In practice, this competence is insufficiently used, mostly due to courts' reluctance to examine discrimination related claims.

National level co-operation projects could focus on:

- Assistance for the draft law on amendments to certain legislative acts (concerning harmonization of legislation on prevention and combating discrimination with the European Union law), registration No. 3501 of 20.11.2015;
- Assistance for the draft law on amendments to the Criminal Code aiming to improve the qualification of crimes with signs of national, racial or religious hatred or hostility, registration No. 2314a of 08.07.2015;
- Assistance, if relevant, to the revising and adopting of the law on mediation;

- Assistance to the Parliamentary Commissioner concerning its investigation and conciliation powers regarding discrimination;
- Provision of specialized trainings to public authorities, decision-makers and legal professionals on equality and non-discrimination standards and the application of the anti-discrimination law;
- Assistance on the collection of accessible public data on hate crimes and ensuring interconnectivity between reported data on hate crimes between police, prosecution and judiciary;
- Assistance to the Commissioner so that its data on discrimination, including the judgments on discrimination that the Commissioner receives from the State Court Administration, is more accessible.

Regional synergies

On the level of synergies between the equality bodies, the regional project could focus on the Equality Bodies in Armenia, Georgia, Republic of Moldova and Ukraine, with Azerbaijan and Belarus authorities participating to the extent there is willingness for setting up or assigning the equality mandate to existing bodies. A common theme for Georgia and the Republic of Moldova, and potentially Armenia, concerns the victim support and litigation function that the Equality Bodies should carry out and are missing. It seems that Ukraine has this function, but there is insufficient information on its practical implementation. An exchange of experiences in this respect could be very useful. Ukraine might benefit from the experience of the other three countries in exercising the investigative powers by the Equality Bodies. Given the discussions on the draft law on equality in Armenia, it could be beneficial to have an exchange of views between the Armenian stakeholders and the Equality Bodies from Georgia, Republic of Moldova and Ukraine on pros and cons for one multi-mandate institution, including the equality mandate, versus an Ombudsperson institution and a separate Equality Body. Another common theme of discussion and exchange of experiences among all four countries could be the independence of the equality bodies. It seems that Armenia, Georgia and Ukraine are more advanced in terms of ensuring financial independence and functional immunity for the Equality / Ombudsperson institution bodies, which could be useful for Moldova and potentially for Belarus.

Another common theme between the Equality Bodies / Ombudsperson institutions in the four countries - Armenia, Georgia, Republic of Moldova and Ukraine – would be effective strategies and tools for addressing structural discrimination. A common theme for Armenia, Republic of Moldova and Ukraine relates to the decision-making competencies of the equality body. Only the Moldovan Equality Council has the competence to issue legally binding decisions, which are also quite limited in the final effect due to legal procedural flaws. Assigning powers to directly apply sanctions for discrimination is recommended by country authors in all three countries and could be an important issue of discussion. Another theme raised in Georgia, Republic of Moldova and Ukraine refers to the enforcement of issued recommendations on findings of discrimination. Ukraine seems to have the highest rates of enforcement, but the data are insufficient to draw more comprehensive conclusions on the mechanism. An exchange of experiences among the three countries may be helpful.

Cooperation with NGOs is important for various aspects, in particular for enhancing the reach of Equality Bodies / Ombudsperson institutions to groups and areas that they cannot cover directly. At the same time, cooperation does not happen if there is insufficient interest or openness on behalf of the Equality Bodies / Ombudsperson institutions, as well as responsiveness and proactive approaches on behalf of NGOs. The Equality Bodies / Ombudsperson institutions in Armenia, Georgia, Republic of Moldova and Ukraine employ different tools of cooperation with NGOs. Georgia and the Republic of Moldova seem to struggle with setting up consultative councils, while Ukraine has set up several. An exchange of experience among the Equality Bodies/Ombudsperson institutions could be of interest to learn new tools from each other.

Similarly, cooperation between the Equality Bodies and the judiciary, as well as other relevant national stakeholders, is very important for an effective promotion of equality and non-discrimination. The Equality Bodies / Ombudsperson institutions in Armenia, Georgia, Republic of Moldova and Ukraine employ different tools of cooperation with judiciary and have different competencies in this regard. The Equality Bodies/ Ombudsperson institutions in the Republic of Moldova and Ukraine can intervene in court proceedings, in the Republic of Moldova depending on the judge's approval and in Ukraine with significantly larger possibilities. These practices should be strengthened in both countries and the practice could be of interest to other countries. A good practice not yet present in any of the countries, but in a draft law in the Republic of Moldova, is assigning the courts the obligation to request ex-officio the Equality Body's opinion in every discrimination case. The regional project could help strengthen this capacity by training and development / sharing of guidelines for Equality Bodies / Ombudsperson institutions to intervene in courts, similar to the guidelines on how to intervene with amicus curiae before ordinary courts, the Constitutional Court and European institutions developed for the Equality Council in the Republic of Moldova.

The Ombudsperson institutions in Armenia, Georgia, Republic of Moldova and Ukraine can intervene before the Constitutional Court. All countries reportedly use well this function. A regional meeting could focus in more depth on the practices and approaches used, in particular for raising issues of constitutionality regarding effective rights protection of vulnerable groups.

Cooperation with judicial training institutions and other state bodies via provision of training to future judges and public employees is a very important instrument that the Equality Bodies should use. Active cooperation in this regard has been reported only in the Republic of Moldova and Ukraine, although perhaps such activities are carried out in the other project countries as well. Enhancing the training of trainers' capacities of the Equality Bodies / Ombudsperson institutions staff for carrying out this function could be an area of focus for the regional project.

The legislative provisions on hate speech vary among the countries, as well as the approaches by Equality Bodies / Ombudsperson institutions on addressing hate speech. None of the countries collects and reports disaggregated data on hate speech. Such data are usually either included in the general data on discrimination or in the hate crime data, or in sporadic / thematic reports by equality bodies or non-governmental organisations. Only Moldova reported an initiative started

in 2019 by the Equality Council to monitor hate speech in mass-media. None of the countries reported rapid mechanisms to respond to hate speech. The overall impression is that addressing hate speech is not among the priorities of the Equality Bodies / Ombudsperson institutions in the regional project countries and even the awareness on ECRI's GPR No. 15 on combating hate speech is not sufficient. A dedicated meeting organized in a half training, half workshop format for the staff of the Equality Bodies / Ombudsperson institutions on strategies for combating hate speech would be very useful. A common theme to explore is also the possibility for providing training or developing written guidelines for journalists and owners of public forums for moderating comments. Lastly, facilitating discussions among key actors in each country on effective ways for combatting hate speech could be an important activity for the regional project.

Lack of national data collection mechanisms and publicly accessible data on discrimination, hate crimes and hate speech is a common problem for all project countries, with some varying differences. National available data on discrimination practically do not exist. The court databases do not disaggregate court decisions on discrimination in any of the countries. Public perception surveys on discrimination are conducted in some countries, such as Georgia, Republic of Moldova and Ukraine. However, only Moldova reported so far periodic reports conducted by the Equality Council. In none of the countries, the surveys are conducted periodically on funds from the state budget, which affects their sustainability in the longer term.

Lack of data on hate crime is another common problem for all project countries. Although Armenia, Georgia, Republic of Moldova and Ukraine regularly report on hate crime data to the OSCE/ODIHR hate crime reporting, all countries still have important lacunas. Out of the 6 countries, Georgia seems to have the most advanced system of data collection and reporting on hate crime, reported to OSCE/ODIHR. However, reliable public data and statistics on hate crime are not yet made public. In Ukraine, only the data on hate crimes recorded by police is publicly available, data from prosecution and courts missing. Also, Ukraine has not reported on cases of hate crimes separately from cases of hate speech and/or discrimination in the reports to OSCE/ODIHR hate crime reporting. Only Georgia and Ukraine reported to OSCE/ODIHR hate crimes recorded by police disaggregated by bias motivation. Armenia and the Republic of Moldova do not record and hence do not report on bias motivation of recorded hate crimes. A common meeting focused on successful practices of hate crime data collection and publishing, perhaps with examples from countries outside the project countries, would be particularly relevant for the project countries. The regional project could focus on building capacity of the criminal justice agencies in the countries open for developing systems for recording and publishing data on hate crimes.

Another important impediment for reliable data on hate crimes seems to be the low number of reports and/ or the resistance of law enforcement agencies to record hate crimes as such, due to personal bias, lack of training and other impediments. Training of law enforcement agencies is an area of potential focus for the regional project. In particular, the project could focus on training of trainers for pools of local specialists, which would be capacitated to further provide training to their peers in a sustainable manner.

Annexes:

1. List of abbreviations used

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRI	European Commission against Racism and Intolerance
GPR	General Policy Recommendation
NGO	Non-governmental organisation
Ombudsperson institution	Ombudsperson institution / Peoples' Advocate / Human Rights Defender / Public Defender
The regional project	The Project on strengthening the access to justice for victims of discrimination, hate crime and hate speech in Eastern Partnership countries, part of the Partnership for Good Governance for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus, co-funded by the European Union and implemented by the Council of Europe

2. List of persons interviewed (per country)

Armenia:

1. *Nvard Piliposyan - "Non-Discrimination and Equality" Coalition, Legal Coordinator*
2. *Maria Vardanyan - "Non-Discrimination and Equality" Coalition, Lawyer*
3. *Stepan Danielyan - "Collaboration for Democracy" Centre, Chairman; "Religions.am", Editor*
4. *Anahit Mkrtchyan – "New Generation" Humanitarian NGO, Human Rights Protection and Advocacy Department Coordinator*
5. *Maro Khachaturyan –Advocate*
6. *Lusine Sargsyan – Human Rights Defender of the Republic of Armenia, Head of Research and Education Center*
7. *Armen Lusyan – "Center for Religion and Law" NGO, President; "Word of Life Church" Armenia, Pastor*
8. *Karine Qocharyan - Former Teacher, Victim of Discrimination*
9. *Izabella Sargsyan - Eurasia Partnership Foundation, Program Director*
10. *Nikolay Hovhannisyan - Eurasia Partnership Foundation, Project Manager*
11. *Hasmik Petrosyan - PINK Armenia, Lawyer*
12. *Sipan Asatryan– "Disability and Inclusive Development" NGO, Representative; Member of the Council of Elders of Yerevan*
13. *Sashik Sultanyan – Ezidi Centre of Human Rights, Coordinator*
14. *Davit Asatryan – Advocate*
15. *Ani Galstyan- Legal Assistance department, Ministry of Justice, RA*
16. *Hasmik Hakobyan- Country Director of ABA ROLI Armenia*

Azerbaijan:

1. *Samad Rahimli - lawyer providing legal protection to LGBT individuals*
2. *Elman Fattah - Member of the Board of Musavat Party*
3. *AKif Gurbanov - head of the Institute for Democratic Initiatives (IDI)*
4. *Shamshad Agayev - Editor Argument.az online news resource and representative of the Talish ethnic group*
5. *Aydan Fuad and Nargiz Mukhtarova- Monitors and authors of hate speech in the speech of politicians*
6. *Nasimi Mammadli- Nasimi Mammadli - Political analyst*

Belarus:

1. *Abramovich V. Lecturer, Department of Constitutional Law, Faculty of Law, Belarusian State University*
2. *Artemyev S. Lecturer, Department of Constitutional Law, Faculty of Law, Belarusian State University*
3. *Konnova E. Associate Professor, Department of International Law, Faculty of International Law, Belarusian State University*

4. Kiseleva T. Associate Professor, Department of Constitutional Law, Faculty of Law, Belarusian State University
5. Shavtsova A. Associate Professor, Department of Constitutional Law, Faculty of Law, Belarusian State University
6. Maslovskaya T. Associate Professor, Department of Constitutional Law, Faculty of Law, Belarusian State University
7. Reshetnikov S. Head of the Department of Political Science, Faculty of Law, Belarusian State University
8. Savchuk E. Leading Specialist of the Secretariat of the Constitutional Court of the Republic of Belarus
9. Sokolovskaya T. Senior Lecturer, Department of Constitutional Law, Faculty of Law, Belarusian State University
10. Shumanskaya O. Employee of the National Bank of the Republic of Belarus
11. Shumansky V. First-Year student at the International Humanitarian and Economic Institute (Minsk)
12. Shidlovsky A. Deputy Dean of the Faculty of Law, Belarusian State University

Moldova:

1. Interview with the Executive Director of the Center “Partnership for Development”.
2. Interview with the Ministry of Justice General State Secretary.
3. Interview with the President of the Press Council.
4. Interview with the President of the Central Electoral Commission.
5. Interview with the President and Head of Staff, Equality Council.
6. Interview with two staff members of the Ombudsperson institution.
7. Interview with two staff members of the OSCE Mission to Moldova.
8. Interview with three representatives of the General Prosecution Office.
9. Interview with OHCHR Human Rights Office and a local civil society representative.
10. Interview with a staff member of the Ministry of Interior

Ukraine:

11. Ms Lidiia Kozub, Representative of the Parliament’s Commissioner on observance of equality of rights and freedoms
12. Ms Olena Stepanenko, Representative of the Parliament’s Commissioner on observance of social and economic rights
13. Ms Svitlana Velychanska, Head of Department on monitoring of equal rights and freedoms, Parliament’s Commissioner Secretariat
14. Ms Viktoriia Parubok, Deputy head of division on equal rights and freedoms, Department on monitoring of equal rights and freedoms, , Parliament’s Commissioner Secretariat
15. Ms Oksana Sulyma, Department on reforms’ implementation, Ministry of Social Policy of Ukraine
16. Ms Nataliia Gerasymchuk, Government expert, Directorate of human rights, access to justice and legal awareness, Ministry of Justice of Ukraine
17. Mr. Kostyantyn Tarasenko, Department on Human Rights Ensuring, National Police of Ukraine
18. Mr. Leonid Ilchuk, Acting director of the Scientific Research Institute of the Ministry of Social Policy of Ukraine and the national Academy of Sciences of Ukraine, Ph.D. in political sciences
19. Mr. Oleksandr Nosikov, Leading researcher, Scientific Research Institute of the Ministry of Social Policy of Ukraine and the national Academy of Sciences of Ukraine, Ph.D. in sociology
20. Ms Iryna Sakharuk, Centre for European Social Law, Taras Shevchenko Kyiv National University, Ph.D. in Law
21. Ms Natalia Kozarenko, Head of the Public Reception Network, the Ukrainian Helsinki Human Rights Union
22. Ms Zemfira Kondur, Vice-President of the International Charitable Organization “Roma Women's Fund “Chiricli””
23. Mr. Volodymyr Kondur, Head of the NGO "Human Rights Roma Centre"
24. Ms Eleonora Kulchar, member of the Interdepartmental working group under the cabinet of Ministers of Ukraine on implementation of the Roma Protection and Integration Strategy
25. Mr. Rostyslav Dzunda, Bureau of Social and Political Developments, NGO
26. Ms Oleksandra Golub, Head of the Women’s Rights Protection League “Harmony of Equal”

3. Country baseline studies (available from the Council of Europe upon request)