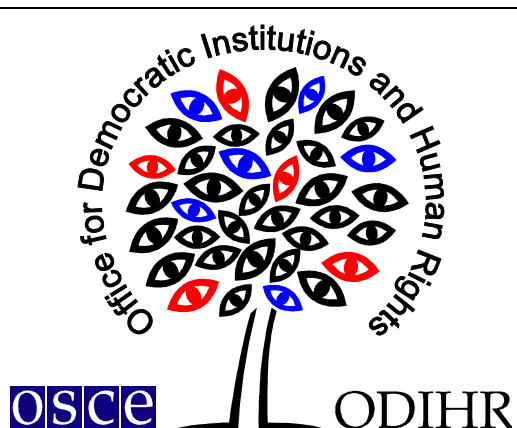


Warsaw, 10 May 2016

Opinion-Nr.: NHRI-UKR/289/2016 [AIC]

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## OPINION

# ON THE DRAFT AMENDMENTS TO THE LAW ON CIVIL SERVICE OF UKRAINE

**based on an unofficial English translation of the Draft Amendments provided by the  
Ukrainian Parliament Commissioner for Human Rights**

OSCE Office for Democratic Institutions and Human Rights

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**Annex: Draft Amendments to the Law on Civil Service of Ukraine**

## **I. INTRODUCTION**

1. *On 29 April 2016, the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) received a request from the Ukrainian Parliament Commissioner for Human Rights (hereinafter “the Commissioner”) to review the Draft Amendments to the Law on Civil Service of Ukraine (hereinafter “Draft Amendments”).*
2. *On 4 May 2016, the OSCE/ODIHR Director responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Draft Amendments with international human rights standards and OSCE commitments.*
3. *This Opinion was prepared in response to the above-mentioned request.*

## **II. SCOPE OF REVIEW**

4. The scope of this Opinion covers only the Draft Amendments submitted for review, which are also reviewed within the framework of certain provisions of the Law of Ukraine “On the State Service” (hereinafter “the Civil Service Law”)<sup>1</sup> and the Law on the Ukrainian Parliament Commissioner for Human Rights<sup>2</sup> (hereinafter “Law on the Commissioner”), as appropriate and relevant. Thus limited, the Opinion does not, however, constitute a full and comprehensive review of the entire legal and institutional framework regulating the protection and promotion of human rights and fundamental freedoms in Ukraine.
5. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements rather than on the positive aspects of the Draft Amendments. The ensuing recommendations are based on international and regional standards and practices governing national human rights institutions, as well as relevant OSCE commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion analyses the potentially different impact of the Draft Amendments on women and men.<sup>3</sup>
6. This Opinion is based on an unofficial English translation of the Draft Amendments provided by the Ukrainian Parliament Commissioner for Human Rights, which is attached to this document as an Annex. Errors from translation may result.
7. In view of the above, the OSCE/ODIHR would like to make mention that the Opinion is without prejudice to any written or oral recommendations and comments related to the legal and institutional framework on the protection and promotion of human rights in Ukraine, that the OSCE/ODIHR may make in the future.

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<sup>1</sup> The Law of Ukraine “On Civil Service” was adopted by the Parliament on 10 December 2015, and published in the Verkhovna Rada of Ukraine Journal of 22 January 2016; it entered into force on 1 May 2016.

<sup>2</sup> Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights” №776/97 of 23 December 1997, as amended by the Law № 274-VI (274-17) of 15 April 2008, is available at [http://www.legislationline.org/download/action/download/id/4127/file/Ukraine\\_NHRI\\_law\\_1997\\_en.pdf](http://www.legislationline.org/download/action/download/id/4127/file/Ukraine_NHRI_law_1997_en.pdf).

<sup>3</sup> See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at <http://www.osce.org/mc/23295?download=true>.

### **III. EXECUTIVE SUMMARY**

8. At the outset, it should be noted that the Draft Amendments are very welcome, as they seek to introduce a legal framework applicable to the Commissioner's staff that exempts them, to a certain extent, from the general rules on civil service. This is positive, as it aims to enhance the Commissioner's autonomy to recruit and manage his/her own staff - which constitutes an essential guarantee of this institution's independence – and avoids the risk that the institution may be perceived as being under the executive's control.
9. At the same time, the Draft Amendments would benefit from some changes, to better protect the Commissioner's institutional independence from any external interference during recruitment processes and regarding general human resources management issues, and to ensure a pluralist and gender-balanced staff composition at all levels.
10. In order to ensure full compliance of the Draft Amendments with international standards on NHRIs and good practices, the OSCE/ODIHR makes the following key recommendations:
  - A. to supplement the Draft Amendments to specify that:
    - the Commissioner or a special competition committee is competent to define qualification requirements and selection criteria for the Head and Deputy Heads of the Commissioner's secretariat; [par 31]
    - the recruitment of other senior-level category A position within the Commissioner's Office should also be undertaken by the Office; [par 32]
    - the Commissioner's staff recruitment processes are open to all, clear, transparent, merit-based and lie within the sole discretion of the institution; [par 32] and
    - the Commissioner will exercise the competences listed under Article 15 of the Civil Service Law, including dismissal, disciplinary powers, career management and professional development of all category A civil servants working for the institution. [par 34]
  - B. to outline in the Draft Amendments:
    - the possibility for the Commissioner to derogate from the national policy on civil service mentioned in Article 13 of the Civil Service Law when deciding on its staffing needs and organizational priorities; [par 22]
    - an exemption from the qualification requirements listed in Articles 19 of the Civil Service Law regarding category A positions to ensure that no prior experience within the public service is required when applying for such positions within the Commissioner's Office; [par 24]
    - an explicit exception to the general civil service salary scales and benefits that could be applied by the Commissioner in order to retain competent professional expert staff, while taking into account similar levels of responsibilities and experience; [par 25]
    - that nothing in the Civil Service Law should be interpreted as limiting the functional immunity of the Commissioner's staff for words spoken and written, or actions and decisions undertaken in good faith in their official capacities. [par 39]

- C. to specify in the Draft Amendments that while the general provisions of Articles 19 to 35 of the Civil Service Law apply to the selection of the Commissioner’s staff, the Commissioner may derogate from certain qualification requirements and selection criteria/modalities to ensure gender balance and diversity in the composition of the NHRI staff at all levels; [pars 37-38, and 43]
- D. to introduce explicit exceptions to the requirement to provide identification documents regarding Ukrainian citizenship as a prerequisite for participating in a public service competition and allow NHRI staff to use other languages, including minority languages, when performing their duties; [pars 45-46] and
- E. to consider introducing temporary or special measures to pursue greater gender balance and diversity in the staffing of the Commissioner’s Office at all levels, and address special requirements of employees with disabilities pursuant to the principle of reasonable accommodation. [pars 43-44]

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

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. International Standards on National Human Rights Institutions**

- 11. National Human Rights Institutions (hereinafter “NHRIs”) are independent bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are considered to constitute a “key component of effective national human rights protection systems and indispensable actors for the sustainable promotion and protection of human rights at the country level”.<sup>4</sup> Thus, NHRIs link the responsibilities of the State stemming from international human rights obligations to the rights of individuals in the country. Although part of the state apparatus, NHRIs’ independence from the executive, legislative and judicial branches ensures that they are able to fulfil their mandate to protect individuals from human rights violations, particularly when such violations are committed by public authorities or bodies.
- 12. The main instrument relevant to NHRIs at the international level are the United Nations Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (hereinafter “the Paris Principles”).<sup>5</sup> While they do not prescribe any particular model for NHRIs, they outline minimum standards in this respect, including a broad human rights mandate, autonomy from government, guarantees of functional and institutional independence, pluralism, adequate resources and adequate powers of investigation. Regarding specifically the composition and guarantees of independence and pluralism of NHRIs, Paris Principle B.2 provides that “[t]he national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding [...] to enable it *to have its own staff* and premises, in order

<sup>4</sup> See UN High Commissioner for Human Rights, *Report to the UN General Assembly* (2007), A/62/36, par 15, available at <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>.

<sup>5</sup> The UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (hereinafter “the Paris Principles”) were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris (7-9 October 1991), and adopted by UN General Assembly Resolution 48/134 of 20 December 1993, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

- to be independent of the Government and not be subject to financial control which might affect its independence”.
13. The ensuing recommendations are also based on the General Observations issued by the Sub-Committee on Accreditation (hereinafter “the SCA”) and adopted by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (hereinafter “the ICC”),<sup>6</sup> which serve as interpretive tools of the Paris Principles.<sup>7</sup> According to the SCA, which is also in charge of reviewing and accrediting national human rights institutions in compliance with the Paris Principles, the Ukrainian Parliament Commissioner for Human Rights (hereinafter “the Commissioner”), the NHRI in Ukraine, is currently accredited with status A, which means that this institution is considered to be fully compliant with the Paris Principles.<sup>8</sup>
  14. While the Paris Principles do not further detail the issue of staffing of NHRIs, this is dealt with explicitly in ICC General Observations 2.4 and 2.5 on “Recruitment and Retention of NHRI Staff” and “Staffing of the NHRI by Secondment” respectively. ICC General Observation 1.7 refers to diverse models for ensuring pluralism of NHRIs, which include staff that are representative of diverse segments of society; this is particularly important in an institution headed by one person. The UN Secretary General has also reiterated the importance of ensuring that NHRIs enjoy the necessary autonomy to recruit their own staff members, while ensuring open, participatory and pluralistic processes when selecting and appointing staff.<sup>9</sup>
  15. At the Council of Europe (hereinafter “CoE”) level, the key role of NHRIs and key principles regulating their establishment and functioning, including compliance with the Paris Principles, are highlighted in various documents.<sup>10</sup> In particular, CoE Parliamentary Assembly Recommendation 1615 (2003) underlines a number of characteristics considered essential for any Ombuds institution, including the “complete autonomy over issues relating to budget and staff”.<sup>11</sup>
  16. Finally, in the 1990 Copenhagen Document, OSCE participating States have committed to “facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law”.<sup>12</sup> The OSCE/ODIHR has been specifically tasked to “continue and increase efforts to promote and assist in building

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<sup>6</sup> The International Coordinating Committee for National Human Rights Institutions (ICC) was established in 1993 and is the international association of national human rights institutions (NHRIs) from all parts of the globe. On 23 March 2016, the ICC became the Global Alliance of National Human Rights Institutions (GANHRI). The ICC promotes and strengthens NHRIs in accordance with the Paris Principles, and provides leadership in the promotion and protection of human rights. Through its Sub-Committee on Accreditation (SCA), it also reviews and accredits national human rights institutions in compliance with Paris Principles. The ICC may also assist those NHRIs under threat and encourage the reform of NHRI statutory legislation and the provision of technical assistance, such as education and training opportunities, to strengthen the status and capacities of NHRIs. See <http://nhri.ohchr.org/EN/Pages/default.aspx>.

<sup>7</sup> Latest revised General Observations of the SCA, as adopted by the ICC Bureau (hereinafter “ICC General Observations”) at its meeting in Geneva on 6-7 May 2013, are available at

<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf>.

<sup>8</sup> See <http://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart.pdf>; and ICC Sub-Committee on Accreditation (SCA), *Report and Recommendations of the Session* (October 2014), page 35 (Section 3.11), available at <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf>.

<sup>9</sup> See UN Secretary General, *Report on National Institutions for the Promotion and Protection of Human Rights*, A/HRC/27/39, 30 June 2014, pars 104-105, available at

[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A\\_HRC\\_27\\_39\\_ENG.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A_HRC_27_39_ENG.doc).

<sup>10</sup> See e.g., CoE Committee of Minister, *Recommendation Rec(97)14E on the Establishment of Independent National Institutions for the Promotion and Protection of Human Rights*, 30 September 1997, available at <https://wcd.coe.int/ViewDoc.jsp?id=589191>; Parliamentary Assembly of the Council of Europe (PACE), *Recommendation 1615 (2003) on the Institution of Ombudsman* (hereinafter “PACE Recommendation 1615 (2003)”), 8 September 2003, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17133&lang=en>; PACE, *Recommendation 1959 (2013) on the Strengthening the Institution of Ombudsman in Europe*, adopted on 4 October 2013, available at <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20232&lang=en>.

<sup>11</sup> *ibid.* par 7.7. (PACE Recommendation 1615 (2003)).

<sup>12</sup> See par 27 of the OSCE Copenhagen Document (1990), available at <http://www.osce.org/odihr/elections/14304?download=true>.

democratic institutions at the request of States, inter alia by helping to strengthen [...] Ombud[s] institutions”,<sup>13</sup> which should be impartial and independent.<sup>14</sup>

## **2. General Comments**

17. The basis and main principles regarding the Commissioner’s institutional status and role are provided in the Constitution of Ukraine.<sup>15</sup> The Law on the Commissioner further details the modalities of the Commissioner’s appointment and dismissal, as well as the roles, responsibilities and powers of the institution. Article 10 par 3 of the Law on the Commissioner provides that the Law of Ukraine “On the State Service” (hereinafter “the Civil Service Law”)<sup>16</sup> shall apply to the Commissioner’s secretariat staff members and that “[t]he appointment and dismissal of the Secretariat staff members shall be exercised by the Commissioner”. Article 3 par 3 (8) of the newly adopted Civil Service Law expressly excludes from its scope the Commissioner and his/her representatives, but not the Commissioner’s Heads and Deputy Heads of Secretariat and staff.
18. In that respect, it is worth noting that the Office of the UN High Commissioner for Human Rights (OHCHR) has expressed concerns regarding this new Civil Service Law. More specifically, it considered that “authorizing a special commission to nominate the Chief of Staff of the [Commissioner’s] Office and entitling that person to appoint other staff members of the institution [...] is inconsistent with the provisions of Paris Principles relating to the autonomy and independence of national human rights institutions”.<sup>17</sup>
19. As noted in ICC General Observation 2.5, an NHRI “must have the authority to determine its staffing profile and to recruit its own staff”. At the same time, most countries have human resources policies pertaining to their public services that apply to all public agencies and entities, including NHRIs.<sup>18</sup> It is generally considered that in such cases, NHRIs should nevertheless benefit from a certain flexibility in applying public service rules on recruitment and career advancement.<sup>19</sup> More generally, an NHRI does not only need to be independent, but it must also be “seen” to be independent.<sup>20</sup> NHRI members and staff should not be too closely connected to the public service or considered or perceived as government employees.<sup>21</sup> Having the Civil Service Law

<sup>13</sup> See par 10 of the Bucharest Plan of Action for Combating Terrorism (2001), Annex to OSCE Ministerial Council Decision on Combating Terrorism, MC(9).DEC/1, 4 December 2001, available at <http://www.osce.org/atu/42524?download=true>.

<sup>14</sup> See e.g., *op. cit.* footnote 2, par 42 (second indent) (2004 OSCE Action Plan for the Promotion of Gender Equality).

<sup>15</sup> As amended in 2014, available at

[http://www.legislationline.org/download/action/download/id/5492/file/Ukraine\\_Constitution\\_am2014\\_en.pdf](http://www.legislationline.org/download/action/download/id/5492/file/Ukraine_Constitution_am2014_en.pdf). Article 55 par 3 states that “[e]veryone has the right to appeal for the protection of his or her rights to the Ukrainian Parliament Commissioner for Human Rights”; Article 85 (17) specifies that the Parliament appoints to office and dismisses from office the Commissioner, as well as hears his or her annual reports on the situation with regard to the observance and protection of human rights and freedoms in Ukraine; and Article 101 provides that the Commissioner “exercises parliamentary control over the observance of constitutional human and citizens’ rights and freedoms”.

<sup>16</sup> The Law of Ukraine “On Civil Service” was adopted by the Parliament on 10 December 2015, and published in the Verkhovna Rada of Ukraine Journal of 22 January 2016; it entered into force on 1 May 2016.

<sup>17</sup> See UN OHCHR, *Report on the Human Rights Situation in Ukraine* (16 November 2015 to 15 February 2016), par 180, available at [http://www.ohchr.org/Documents/Countries/UA/Ukraine\\_13th\\_HRMMU\\_Report\\_3March2016.pdf](http://www.ohchr.org/Documents/Countries/UA/Ukraine_13th_HRMMU_Report_3March2016.pdf).

<sup>18</sup> OHCHR, *Handbook on National Human Rights Institutions - History, Principles, Roles and Responsibilities* (2010), page 156, available at [http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf).

<sup>19</sup> *ibid.* page 156 (2010 OHCHR Handbook on National Human Rights Institutions). See also UNDP-OHCHR, *Toolkit for Collaboration with National Human Rights Institutions* (December 2010), pages 173-174, available at <http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>.

<sup>20</sup> *ibid.* page 39 (2010 OHCHR Handbook on NHRIs). See also, OSCE/ODIHR-European Commission for Democracy through Law of the Council of Europe (Venice Commission), *Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro*, adopted by the Venice Commission at its 88th Plenary Session (Venice, 14-15 October 2011), pars 12, 27 and 29, available at <http://www.legislationline.org/documents/id/16665>.

<sup>21</sup> International Council on Human Rights Policy and OHCHR, *Report on Assessing the Effectiveness of National Human Rights Institutions* (2005), page 8, available at [http://www.ichrp.org/files/reports/18/125\\_report.pdf](http://www.ichrp.org/files/reports/18/125_report.pdf).

regulating recruitments and terms and conditions of employment within the Commissioner's Office may also have an impact on its *perceived independence* to operate independently from the government, which is as important as its real independence.<sup>22</sup>

20. The Draft Amendments aim to supplement the Civil Service Law with a new provision that would regulate staffing, including the hiring of the Head and Deputy Heads, within the Commissioner's secretariat. This is a welcome step, since the Draft Amendments seek to introduce a legal framework applicable to NHRI staff that derogates from the general rules on civil service. Otherwise, subjecting NHRI staff to such general rules may not only limit the autonomy of the Commissioner to recruit and manage his/her own staff - which constitutes an essential guarantee of this institution's independence - but could also potentially lead the public to perceive the institution as a part of the general public service and wholly dependent or subject to the direction/supervision of the executive.

### **3. NHRIs' Autonomy in Human Resources Management**

#### **3.1. Overall Autonomy in terms of NHRIs' Staffing Policy and Organizational Priorities**

21. Article 3 of the Civil Service Law outlines the scope of the law, and in its par 4 refers to a "Central Executive Body in Charge of the Development and Implementation of a National Policy on Civil Service", whose roles and responsibilities are further detailed in Article 13 of the Civil Service Law. Such functions include, among others, the development and implementation of the national policy for the civil service, drafting regulations on the civil service and defining the needs for professional training of civil servants; this body is also in charge of developing, in consultation with the Commission on Senior Civil Service,<sup>23</sup> the professional requirements applicable to category A civil servants (Article 13 par 3 (18)).
22. As acknowledged by the SCA, an NHRI should in principle have the power to determine its own staffing requirements based on its organizational priorities and should then be able to hire its own staff accordingly.<sup>24</sup> The new Article 91<sup>1</sup> par 1 of the Draft Amendments specifies that the hiring, career and termination of civil service in the Commissioner's secretariat are regulated by the Civil Service Law, the Law on the Commissioner and international standards on NHRIs; however, it does not expressly provide a possibility to derogate from the above-mentioned national policy. If this policy is broad or general enough, then this may not necessarily impact on the Commissioner's overall autonomy in terms of staff management and organizational priorities. At the same time, in recognition of the Commissioner's autonomy to manage its own staff according to its needs and priorities, **it may still be advisable to introduce in the Civil Service Law the possibility to derogate from the national policy on civil service for the staffing of the Commissioner's office, and other independent bodies.**

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<sup>22</sup> *Op. cit.* footnote 6, page 39, General Observation 2.5 (ICC General Observations).

<sup>23</sup> i.e., a body composed of eleven representatives, including a representative from the Parliament, three representatives of the executive, one representative of the National Agency for the Prevention of Corruption, one representative of the State Judicial Administration, one representative of trade unions and employers' unions and four representatives from NGOs or academia (Article 14 par 2 of the Civil Service Law); the Cabinet of Ministers shall approve its membership (Article 14 par 3 of the Civil Service Law).

<sup>24</sup> See e.g., ICC Sub-Committee on Accreditation, *Report and Recommendations of the Session* (March 2012), pages 13-14, available at <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20MARCH%202012%20FINAL%20REPORT%20ENG%20WI TH%20ANNEXURES.pdf>.



23. The Commission on Senior Civil Service also approves the list of positions for any public entity upon the proposal of the Head of the Civil Service of said entity (Article 15 par 6 of the Civil Service Law). Given that the composition of this body is approved by the Cabinet of Ministers, having the Commission approve positions within the Commissioner's Office could limit the Commissioner's autonomy in relation to the organization and staffing of his/her Office. In this context, it should be noted that the SCA has considered as problematic the requirement for an NHRI to obtain the consent of an executive body in relation to the numbers, terms and conditions of staff appointments,<sup>25</sup> or where the employment of new staff was subject to approval of government-led bodies.<sup>26</sup> More generally, the SCA has also raised some concerns where legislation did not empower an NHRI's governing body to recruit its entire staff, including its Director, Deputy Director and thematic co-ordinators.<sup>27</sup> It is thus welcome that the new proposed Article 91<sup>1</sup> par 6 of the Draft Amendments specifies that such list of positions shall be approved by the Commissioner (understood as a derogation to the general rule stated in Article 15 par 6 of the Civil Service Law).
24. Article 20 par 2 (1) of the Civil Service Law specifies that persons applying for category A civil servant positions need to have served a certain number of years in public administration (Article 20 par 2 (1)). For positions of B and C categories, the requirements appear to be more flexible, as prior experience in non-public entities also appears to be acceptable (Article 20 par 2 (2) and (3)). When applying this to staff for NHRIs, then it should be noted that such institutions should not be obliged to recruit staff from the public service. Rather, NHRIs should have the possibility of hiring staff also from outside the civil service, and relevant legislation should permit the NHRI leadership to set its own by-laws in this regard<sup>28</sup> that would include selection criteria and modalities for recruitment to ensure that the most qualified candidates apply, and are hired for NHRI positions.<sup>29</sup> Indeed, the SCA has expressed concerns where only civil servants could apply for certain posts within NHRIs, noting that this circumstance could limit the pool for recruitment of qualified candidates,<sup>30</sup> and potentially jeopardize the professionalism of the NHRI. Given NHRIs' oversight, investigating and reporting roles, it is particularly important that their staff profile is merit-based, gender balanced and representative of the populations they serve; this may require setting derogatory qualification requirements and recruiting a variety of persons beyond those already employed in public administration.<sup>31</sup> The Draft Amendments should **specify that requirements different than those listed under Article 20 of the Civil Service Law**

<sup>25</sup> ICC Sub-Committee on Accreditation, *Report and Recommendations of the Session* (November 2008), page 5 on the staffing of the Great Britain's Equality and Human Rights Commission, available at [http://nhri.ohchr.org/EN/AboutUs/ICC/Accreditation/Documents/2008\\_November%20SCA%20Report.pdf](http://nhri.ohchr.org/EN/AboutUs/ICC/Accreditation/Documents/2008_November%20SCA%20Report.pdf).

<sup>26</sup> ICC Sub-Committee on Accreditation, *Report and Recommendations of the Session* (March 2015), pages 21-22 on the Staffing of the Protector of Citizens (PCRS) of Serbia, available at <http://nhri.ohchr.org/EN/AboutUs/ICC/Accreditation/Documents/SCA%20MARCH%202015%20FINAL%20REPORT%20-%20ENGLISH.pdf>.

<sup>27</sup> ICC Sub-Committee on Accreditation, *Report and Recommendations of the Session* (March-April 2010), page 10, available at [http://nhri.ohchr.org/EN/AboutUs/ICC/Accreditation/Documents/SCA%20REPORT%20MARCH%202010%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICC/Accreditation/Documents/SCA%20REPORT%20MARCH%202010%20-%20FINAL%20(with%20annexes).pdf). See also ICC Sub-Committee on Accreditation, *Report and Recommendations of the Session* (November 2015), page 9 on the Staffing of the Commissioner for Administration and Human Rights (CAHR) of Cyprus, available at <http://nhri.ohchr.org/EN/AboutUs/ICC/Accreditation/Documents/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf>; and *ibid.* pages 13-14 on the Staffing of the National Human Rights Commission of Bangladesh (ICC SCA Report and Recommendations of March 2015).

<sup>28</sup> *Op. cit.* footnote 18, page 148 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

<sup>29</sup> *Op. cit.* footnote 17, page 156 (2010 OHCHR Handbook on National Human Rights Institutions). See also *ibid.* page 173 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

<sup>30</sup> See e.g., *op. cit.* footnote 25, page 28 on the Human Rights and Ombudsman Institution of Uruguay (ICC SCA Report and Recommendations of March 2015).

<sup>31</sup> *Op. cit.* footnote 6, page 26, General Observation 1.7 (ICC General Observations). See also *op. cit.* footnote 18, page 173 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

**may apply to recruitments to the Commissioner's Office** (see also Section 4 *infra* on pluralism and diversity).

25. Regarding salaries and working conditions, ICC General Observation 1.10 provides that salaries and benefits awarded to NHRI staff should be “comparable” to those of civil servants performing similar tasks in other state independent institutions. However, in many countries, public sector salaries may not always be adequate or appropriate and it is recognized that so-called “comparable” salaries should be a minimum criterion.<sup>32</sup> It is generally recognized as a good practice to have salaries rather at the upper end of the public sector's salary scale, particularly for professional expert staff, while taking into account similar levels of responsibilities and experience; this is useful not only to attract and retain competent staff,<sup>33</sup> but also to ensure their independence from the executive when carrying out their work. It is generally recommended to provide an NHRI, in the underlying legislation, with some flexibility to set the levels of wages and benefit packages for its members and staff, especially professional expert staff, which may differ from those of the public service in general;<sup>34</sup> similar comments apply regarding rules on career advancement and human resources management.<sup>35</sup> **The Draft Amendments should be supplemented to ensure some flexibility in that respect.**

### ***3.2. Commissioner's Representatives and Senior Level Positions in the Commissioner's Office***

26. According to Article 11 of the Law on the Commissioner, he or she has the right to appoint his or her representatives using the allocated funds approved by the Parliament of Ukraine. It is understood that so far, the Commissioner has appointed six such representatives.<sup>36</sup>
27. Currently, Article 3 par 3 (8) of the Civil Service Law excludes from its scope the Commissioner and his/her representatives. The Draft Amendments propose to delete this exclusion, meaning that such representatives would be subject to the general rules applicable to all staff (subject to the proposed new rules of Article 91<sup>1</sup> of the Draft Amendments). This would not be problematic if the representatives' functional immunity is not affected and the Commissioner retains full autonomy to appoint his/her representatives in accordance with an open, transparent and merit-based selection process and also to dismiss them under certain defined circumstances.
28. Article 17 par 1 of the Civil Service Law defines who occupies the position of Head of the Civil Service in the respective public bodies, but does not specify who would hold such a position in the Commissioner's Office. This is set out in Article 91 par 2 of the Civil Service Law, which states that the Chief of Staff (Secretariat) of the Commissioner's Office would hold the position of Head of Civil Service for the Commissioner's Office; under this latter provision, he/she shall be appointed on the proposal of the Commission on Senior Civil Service as the result of a competitive selection. Moreover, Articles 14 to 16 of the Civil Service Law regulate the

<sup>32</sup> *Op. cit.* footnote 17, page 156 (2010 OHCHR Handbook on National Human Rights Institutions); and *ibid.* page 174 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

<sup>33</sup> *ibid.* pages 123 and 152 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

<sup>34</sup> *ibid.* page 152 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

<sup>35</sup> *ibid.* page 174 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

<sup>36</sup> i.e., Representative of the Commissioner on Social, Economic and Humanitarian Rights; Representative of the Commissioner for Personal Data Protection; Representative of the Commissioner on the Rights of the Child, Non-discrimination and Gender Equality; Representative of the Commissioner for Public Relations and Information Technology; Representative of the Commissioner for Drafting Constitutional Appeals and on the Right to Access Public Information; and Representative of the Commissioner on the Rights of Internally Displaced Persons (see <http://www.ombudsman.gov.ua/en/page/secretariat/representatives-of-the-commissioner/>).

Commission on Senior Civil Service, which defines the professional requirements for category A civil servants and conducts the public competition for such positions (Article 15 par 1 (1) and (2)); it also participates in the procedure for early dismissal (Article 15 par 1 (3)) and makes proposals to transfer category A civil servants to other positions of the same, or lower level.

29. Under the above provisions, the Commission on Senior Civil Service has a direct influence on selecting one of the most high-level staff in the Commissioner's Office, by defining the application requirements and organizing the competition for the post. This means that the recruitment of the Heads (and Deputy Heads) of the Commissioner's Secretariat (and consequently of the staff) will no longer be in the hands of the Commissioner. These general provisions of the Civil Service Law thereby jeopardize and potentially infringe upon the Commissioner's autonomy in terms of internal organization and staffing. This would appear to be inconsistent with relevant international standards, as also noted by the OHCHR (see par 18 *supra*).
30. It is thus welcome that the Draft Amendments designate the Commissioner as the Head of the Civil Service<sup>37</sup> for the Commissioner's Office, and provide special modalities for the recruitment of the Head and Deputy Heads of the Commissioner's Office, who are classified as category A civil servants (new Article 91<sup>1</sup> par 3). Their selection would be subject to "competition in compliance with procedures and conditions defined by [the Civil Service] Law" (new Article 91<sup>1</sup> par 4), following a competition conducted by a specialized committee established by the Commissioner (new Article 91<sup>1</sup> par 5).
31. At the same time, it is noted that the new Article 91<sup>1</sup> par 4 merely refers to the organization of the competition; it is thus not clear whether the definition of qualification requirements and selection criteria would still fall under the competence of the Commission on Senior Civil Service (as per Article 15 of the Civil Service Law). Should this still be the case, then this would continue to raise concerns relating to the Commissioner's independence. In that respect, the SCA has also raised some concerns when a government body, and not an NHRI's governing body, was vested with the authority to determine NHRI staff's required skills and human rights expertise.<sup>38</sup> As mentioned in pars 21 and 23 *supra*, this would mean that a body whose composition is approved by the Cabinet of Ministers could influence the Commissioner's work due to its staffing choices. Moreover, the hiring of such staff members would then depend on external processes, which may also lead to potential delays in staff recruitment thus impeding the functioning of the institution as a whole.<sup>39</sup> It is thus recommended **to clarify in new Article 91<sup>1</sup> par 4 that the Commissioner, or the above-mentioned committee, shall also be competent to define qualification requirements and selection criteria for the Head and Deputy Heads, and to include in Article 15 of the Civil Service Law a reference to this exception.** This aspect is all the more

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<sup>37</sup> Article 2 par 1 (3) of the Civil Service Law defines the Head of the Civil Service as the highest position in a given state authority which exercises all powers pertaining to the public service in such entity; these powers are defined in Article 17 of the Civil Service Law. Such a position is important since the Head of Civil Service carries out a number of key human resources functions, including the organizing of competitions of category B and C civil servants, career planning and training of said civil servants, controlling the observance of discipline in the said public authority, taking decisions on promotion and disciplining category B and C civil servants (Article 17 par 2).

<sup>38</sup> *Op. cit.* footnote 26, page 10 on the staffing of the Centre for Equal Opportunities and Opposition to Racism of Belgium (ICC SCA Report and Recommendations of March-April 2010).

<sup>39</sup> See e.g., ICC Sub-Committee on Accreditation, *Report and Recommendations of the Session* (November 2013), page 9 on the Staffing of the Office for the Protection of Citizens of Haiti, available at <http://nhri.ohchr.org/EN/AboutUs/ICC/Accreditation/Documents/SCA%20NOVEMBER%202013%20FINAL%20REPORT%20ENGLISH.pdf>; and ICC Sub-Committee on Accreditation, *Report and Recommendations of the Session* (November 2009), page 7 on the staffing of the National Commission on Human Rights of Chad, available at [http://nhri.ohchr.org/EN/AboutUs/ICC/Accreditation/Documents/2009\\_November%20SCA%20REPORT.pdf](http://nhri.ohchr.org/EN/AboutUs/ICC/Accreditation/Documents/2009_November%20SCA%20REPORT.pdf), where the SCA noted with concern that the recruitment of staff depended on the will of the Office of the Prime Minister.

important in light of the need to ensure pluralism within an NHRI (see Section 4 *infra* on pluralism and diversity).

32. At the same time, aside from the Heads or Deputy Heads of the Commissioner's Office, other senior-level positions (category A) within that Office would still fall under the general rules provided by the Civil Service Law (as described in par 28 *supra*). It is reiterated at this point that an NHRI should have the legislative authority to recruit all of its staff members, including at the senior level.<sup>40</sup> For this reason, **the Draft Amendments should specify that also the recruitment of other senior-level category A positions within the Commissioner's Office should be undertaken by the Office itself.** In any case, such recruitment processes should always be **open to all, clear, transparent, merit-based and lie within the sole discretion of the NHRI.**<sup>41</sup> It may be advisable to also specify these principles under Article 91<sup>1</sup> par 5.
33. It is noted that the Commission on Senior Civil Service, which is in charge of all competition for category A civil servants, includes representatives from NGOs and academia (Article 14 par 2 (8) of the Civil Service Law), which is welcome. As recommended under ICC General Observation 1.7, it is considered a good practice **to consult with all relevant stakeholders, including civil society, when defining selection criteria to ensure the quality and integrity of candidates for NHRI posts.**<sup>42</sup> The new proposed Article 91<sup>1</sup> par 5 refers to a competition committee, but does not elaborate on the rules regarding its composition. It is **recommended to specify such rules while ensuring the representation of civil society, as well as diversity and gender balance in the composition of such a committee.**
34. Finally, it is not clear from the Draft Amendments whether the Commissioner as the Head of the Civil Service would exercise other powers with regard to these senior level positions within the Commissioner's Office, similar to the functions that currently fall under the competence of the Commission on Senior Civil Service (Article 15 of the Civil Service Law). These include **disciplinary powers, career management and decisions on training for category A civil servants.** On similar issues, the SCA has in the past expressed some concern where relevant legislation left the appointment, promotion and dismissal of NHRI staff mainly in the hands of an executive entity.<sup>43</sup> In principle, **NHRI leadership should have competence over these aspects as well. It is thus recommended to clarify in the Draft Amendments that, regarding category A civil servants, the Commissioner will exercise the competences listed under Article 15 of the Civil Service Law, including dismissal, disciplinary powers, career management and professional development.**

### 3.3. Other Staff

35. As far as other staff within the Commissioner's Office are concerned, the new proposed Article 91<sup>1</sup> par 4 refers to their appointment by the Commissioner following a competition carried out in compliance with the procedures and conditions defined by the Civil Service Law. As stated earlier, the new proposed Article 91<sup>1</sup> par 2 specifies that

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<sup>40</sup> *Op. cit.* footnote 6, page 38, Justification to General Observation 2.4 (ICC General Observations). See also e.g., *op. cit.* footnote 26, page 10 on the staffing of the Centre for Equal Opportunities and Opposition to Racism of Belgium (ICC SCA Report and Recommendations of March-April 2010), where the SCA has raised some concerns where an NHRI's governing body was not vested with the authority to appoint all staff members, including its Director, Deputy Director and thematic co-ordinators.

<sup>41</sup> *ibid.* page 39, Justification to General Observation 2.5 (ICC General Observations).

<sup>42</sup> *Op. cit.* footnote 6, page 21, Justification to General Observation 1.7 (ICC General Observations).

<sup>43</sup> *Op. cit.* footnote 26, page 9 on the staffing of the Equal Treatment Commission of Netherlands (ICC SCA Report and Recommendations of March-April 2010). See also *op. cit.* footnote 17, page 40 (2010 OHCHR Handbook on NHRIs).

- the Commissioner will exercise the powers of Head of the Civil Service for the Commissioner's secretariat; such powers are listed in Article 17 par 2 of the Civil Service Law.
36. At the same time, it is not clear whether the definition of qualification requirements and selection criteria for category B and C staff will also fall under the competence of the Head of Civil Service/Commissioner, since Article 17 par 2 of the Civil Service Law refers to other provisions of the Civil Service Law for that purpose. While these provisions (Articles 19 to 35 of the Civil Service Law) are generally positive, as they aim at ensuring open, clear and transparent selection procedures, certain requirements and criteria listed therein may be unduly restrictive for NHRI staff, particularly as regards the need to ensure the pluralism (see Section 4 *infra*, particularly pars 45-46 *infra* on the requirement to provide identification documents to participate in civil service recruitment and the use of the State language when performing duties), as well as staff competences in the human rights field.
37. In this context, ICC General Observation 2.4 recommends that NHRIs be “legislatively empowered to determine the staffing structure, the skills required to fulfil the Institution’s mandate, set other appropriate criteria (such as diversity), and select their staff in accordance with national law”. Additionally, it further states that “[s]taff should be recruited according to an open, transparent and merit based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfil the Institution’s mandate”. As mentioned in par 20 *supra*, this constitutes an essential guarantee of NHRIs’ independence, effectiveness but also promotes public confidence in the institution.<sup>44</sup> This does not mean that the Civil Service Law will not apply to the Commissioner’s staff at all, but that the principles and rules stated therein should only apply insofar as they do not jeopardize the Commissioner’s institutional independence.
38. In light of the above, it may thus be advisable **to specify in the Draft Amendments that while the general provisions of Articles 19 to 35 of the Civil Service Law apply to the selection of the Commissioner’s staff, the Commissioner may derogate from certain qualification requirements and selection criteria/modalities to ensure the pluralism of his or her staff as well as the skills required to fulfil the Commissioner’s mandate.** In all cases, staff recruitment should be based on merit and conducted through a transparent selection process using clear pre-determined criteria (see par 32 *supra*).<sup>45</sup>
39. Other aspects regarding the human resources management of the Commissioner’s staff, including career advancement, training and professional development, discipline and dismissal, are regulated by the Civil Service Law. Some of these general provisions may raise some concerns. For instance, disciplinary sanctions may be imposed on any civil servant who violates the civil servants’ oath or the rules of ethical conduct for civil servants, as well as in cases of disrespect demonstrated to the state, the state symbols of Ukraine and the Ukrainian people or other acts that harm the credibility of public service (Article 65 par 2 of the Civil Service Law). This provision may be problematic if interpreted in such a way as to restrict the functional immunity of the staff<sup>46</sup> and their

<sup>44</sup> *Op. cit.* footnote 6, General Observation 2.4 (ICC General Observations).

<sup>45</sup> *ibid.* page 38, Justification to General Observation 2.4 (ICC General Observations).

<sup>46</sup> i.e., their protection from liability for the words spoken and written, the actions and decisions that are undertaken in good faith in their official capacity; see *op. cit.* footnote 6, page 12, General Observation 1.1 (ICC General Observations) and page 36, justification to General Observation 2.3 (ICC General Observations) where functional immunity is described as an “essential hallmark of institutional independence”. See also e.g., OSCE/ODIHR, *Final Opinion on the Draft Act Amending the Act on the Commissioner for Human Rights of Poland*, 16 February 2016, pars 26-27, available at <http://www.legislationline.org/documents/id/19896>; *op. cit.* footnote 19, par 23 (2011 OSCE/ODIHR-Venice Commission Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro);

ability to engage in critical analysis and commentary on human rights issues, particularly when they are criticizing the functioning of public bodies or entities.<sup>47</sup> Indeed, the functional immunity of an NHRI and its staff is essential to ensure that both are able to engage in the proper exercise of their mandates without their independence being compromised through fear of disciplinary or criminal proceedings or civil action by an allegedly aggrieved individual or entity, including public authorities.<sup>48</sup> It may be advisable **to specify in the Draft Amendments that nothing in the Civil Service Law should be interpreted as limiting the functional immunity of the Commissioner and his/her staff for words spoken and written, or actions and decisions undertaken in good faith in these persons' official capacity.**

40. Finally, it is noted that Article 8 of the Civil Service Law lists the main duties of a public servant, which include the duty to implement the decisions of public authorities or other orders of certain public leaders (par 1 (8) and Article 9). If also applicable to staff of the Commissioner's Office, this would run counter to the general independence of the institution of the Commissioner. NHRI staff should not receive instructions from government ministers or other public officials, directly or indirectly; public officials should likewise not attempt to issue such instructions.<sup>49</sup> **The Draft Amendments should thus be changed to specify that the Commissioner and his or her staff are not subject to any instructions or orders that emanate from outside the Commissioner's Office.**

#### 4. Pluralism of NHRI Staff

41. As stated in ICC General Observation 1.7, “[a] diverse decision-making and staff body facilitates the NHRI's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the NHRIs for all citizens”. It further recommends that pluralism be ensured in terms of gender, ethnicity or minority status.<sup>50</sup> This should contribute to ensuring a balanced representation of women and men, as well as diversity to represent all segments of society, within its staff at all levels of responsibility, including senior level positions.<sup>51</sup>

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Venice Commission, *Opinion on Amendments to the Law on the Human Rights Defender of Armenia*, CDL-AD(2006)038, adopted by the Venice Commission at its 69th Plenary Session (Venice, 15-16 December 2006), pars 74 and 76, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2006\)038-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2006)038-e); Venice Commission, *Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina*, CDL-AD(2015)034-e, adopted by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015), par 69, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)034-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)034-e); and Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe, *Joint Opinion on the Draft Law on the Ombudsman of Serbia*, CDL-AD(2004)041, adopted by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004), par 18, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)041-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)041-e).

<sup>47</sup> *Op. cit.* footnote 6, page 36, Justification to General Observation 2.3 (ICC General Observations). Venice Commission, *Compilation of Venice Commission Opinions concerning the Ombuds Institutions*, CDL-PI(2016)001, 5 February 2016, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)001-e). See also *op. cit.* footnote 19, par 23 (2011 OSCE/ODIHR-Venice Commission Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro); as well as *op. cit.* footnote 45, pars 74-76 (2006 Venice Commission Opinion on Amendments to the Law on the Human Rights Defender of Armenia); par 69 (2015 Venice Commission Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina); and par 18 (2004 Joint Opinion on the Draft Law on the Ombudsman of Serbia).

<sup>48</sup> *ibid.* General Observation 2.3 (ICC General Observations) and *op. cit.* footnote 25, pages 10 and 20 (ICC SCA Report and Recommendations of March 2015). See also *op. cit.* footnote 45, pars 74 and 76 (2006 Venice Commission Opinion on Amendments to the Law on the Human Rights Defender of Armenia).

<sup>49</sup> *Op. cit.* footnote 20, page 12 (2005 ICHRP-OHCHR Report on Assessing the Effectiveness of NHRIs).

<sup>50</sup> *ibid.* page 20, General Observation 1.7 (ICC General Observations). See also e.g., *op. cit.* footnote 26, page 9 on the Staffing of the Commissioner for Administration and Human Rights (CAHR) of Cyprus (ICC SCA Report and Recommendations of November 2015).

<sup>51</sup> OSCE/ODIHR, *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*, 4 December 2012, pages 9 and 78, available at <http://www.osce.org/odihr/97756>. See also *op. cit.* footnote 17, page 157 (2010 OHCHR Handbook on NHRIs).

- Diversity of staff is particularly important in the case of an NHRI headed by one person,<sup>52</sup> as is the case for the Ukrainian Commissioner for Human Rights.
42. Generally, pluralism at all staff levels can help strengthen the visibility of an NHRI's commitment to inclusiveness and diversity, and positively influence the institution's overall credibility and effectiveness.<sup>53</sup> Moreover, it could serve as a model to other public institutions and bodies for progressive employment policies to overcome barriers faced by certain persons or groups to access public service in Ukraine.<sup>54</sup> Pluralism also ensures the representation of all sections of society, including women, ethnic minorities, and persons with disabilities, who may be under-represented in other official bodies and who would also have particularly relevant experience and insights related to the needs of those sectors of society.<sup>55</sup>
43. On several occasions, the SCA has raised some concerns where relevant legislation did not empower an NHRI to recruit its own staff, or to define certain recruitment criteria, such as diversity and gender requirements.<sup>56</sup> The SCA generally encourages NHRIs to promote the inclusion in relevant legislation of gender balance and diversity provisions pertaining to membership and staff<sup>57</sup> at all levels. Thus, it is recommended to supplement the Draft Amendments **by adding provisions clearly stating that qualification requirements and selection criteria and modalities, and employment conditions, for NHRI staff, may differ from the general rules mentioned in the Civil Service Law in order to ensure gender balance and diversity at all staff levels** (see also pars 37-38 *supra* and 44 *infra*). **The drafters should further consider introducing temporary or special measures to pursue greater gender balance and diversity in the staffing of the Commissioner's Office.**<sup>58</sup> This is all the more important given the under-representation of certain minority groups in public bodies in Ukraine, as reported in relevant OSCE/ODIHR reports (see par 45 *infra*).
44. The ICC SCA has also noted positively cases where NHRIs have adopted policies to promote greater gender equity, diversity and opportunities for advancement within the institutions.<sup>59</sup> These include, for instance, measures to ensure equal opportunities for promotion, temporary special measures to support professional development of under-represented persons<sup>60</sup> and human resource policies that take into consideration the needs

<sup>52</sup> *ibid.* General Observation 1.7 (ICC General Observations).

<sup>53</sup> *Op. cit.* footnote 17, page 39 (2010 OHCHR Handbook on NHRIs).

<sup>54</sup> *Op. cit.* footnote 18, page 173 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

<sup>55</sup> See e.g., Amnesty International, National Human Rights Institutions: Amnesty International' Recommendations for Effective Protection and Promotion of Human Rights (2001), page 10, Recommendation 2.4, available at <https://www.amnesty.org/en/documents/ior40/007/2001/en/>.

<sup>56</sup> *Op. cit.* footnote 50, pages 9, 78 and 80 (2012 OSCE/ODIHR Handbook for NHRIs on Women's Rights and Gender Equality).

<sup>57</sup> See e.g., *op. cit.* footnote 25, page 23 on the Staffing of the Protector of Citizens (PCRS) of Serbia (ICC SCA Report and Recommendations of March 2015); and *op. cit.* footnote 23, pages 8 and 10 on the Staffing of the Commissioner for Human Rights of Kazakhstan and of the Ombudsperson (Akyikatchy) of the Kyrgyz Republic (OKR) (ICC SCA Report and Recommendations of March 2012).

<sup>58</sup> See, for instance, examples of such measures and mechanisms in OSCE/ODIHR, *Opinion on Draft Amendments to Ensure Equal Rights and Opportunities for Women and Men in Political Appointments in Ukraine*, GEND-UKR/242/2013, 19 December 2013, pars 38-40, available at [http://www.legislationline.org/download/action/download/id/5011/file/242\\_GEND\\_UKR\\_19Dec2013\\_en.pdf](http://www.legislationline.org/download/action/download/id/5011/file/242_GEND_UKR_19Dec2013_en.pdf); **this could include the introduction of time-bound targets with** a gradual increase of the target quota could be set for increasing the representation of women and minority communities (see CoE Committee of Ministers, *Explanatory Memorandum to the Recommendation Rec (2003)3 on the Balanced Participation of Women and Men in Political and Public Decision-Making*, 30 April 2002, Paragraph VI, available at <https://wcd.coe.int/ViewDoc.jsp?id=2229>), and/or special recruitment measures might be considered in order to quickly redress an imbalance (see e.g., Committee on the Elimination of All Forms of Discrimination against Women, *General recommendation No. 25 on Article 4 par 1 of the Convention on the Elimination of All Forms of Discrimination against Women on Temporary Special Measures*, pars 21-22, available at [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf)).

<sup>59</sup> See e.g., *op. cit.* footnote 7, page 17 on the Staffing of the Afghanistan Independent Human Rights Commission (ICC SCA Report and Recommendations of October 2014).

<sup>60</sup> See e.g., the good practice of special programmes for professional development addressed to women, which use different selection criteria for recruitment and then provide training and development prior to accessing permanent employment, see *op. cit.* footnote 18, page 174 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

of pregnant women and persons with parental and/or caretaking responsibilities.<sup>61</sup> Additionally, NHRIs should pay particular attention to the special requirements for employees with disabilities, in line with Article 27 of the UN Convention on the Rights of Persons with Disabilities,<sup>62</sup> and should have a policy in this regard<sup>63</sup> to accommodate such persons as far as reasonably possible. It is recommended **to supplement the Draft Amendments accordingly.**

45. Article 25 par 1 of Civil Service Law requires among others the submission of passport copies evidencing Ukrainian citizenship to be able to apply to civil service positions. In that respect, the 2014 OSCE/ODIHR Situation Assessment Report on Roma in Ukraine highlights the challenges, such as lack of proper identification documents and/or discrimination, which generally prevent many Roma from accessing employment and taking part in public and political life.<sup>64</sup> Hence, the requirements of the Civil Service Law concerning the submission of identification documents to take part in the competition to become a civil servant could pose an obstacle for representatives from certain minority groups, such as Roma, from applying for a position in the Commissioner's Office. **The legal drafters should consider introducing an explicit exception to the requirement of providing identification documents as a prerequisite for participating in a public service competition for a position in the Commissioner's Office.**
46. Finally, the fact that Article 8 par 1 (5) of the Civil Service Law requires civil servants to use the State language while performing their duties may also run counter to the objective of ensuring pluralism within the institution and its overall accessibility to the public;<sup>65</sup> being able to communicate in all languages of a country is a precondition of genuine public access to an NHRI.<sup>66</sup> Consequently, the Draft Amendments should **provide an explicit derogation from Article 8 par 1 (5) of the Civil Service and authorize the use of other languages, including minority languages for the Commissioner's staff when performing their duties.** This would also be in line with the OSCE High Commissioner on National Minorities' 1998 Oslo Recommendations regarding the Linguistic Rights of National Minorities.<sup>67</sup>

[END OF TEXT]

<sup>61</sup> *Op. cit.* footnote 50, pages 9, 78 and 80 (2012 OSCE/ODIHR Handbook for NHRIs on Women's Rights and Gender Equality). See also *ibid.* pages 174-175 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

<sup>62</sup> UN Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 during the sixty-first session of the UN General Assembly by resolution A/RES/61/106; the Convention was ratified by Ukraine on 4 February 2010.

<sup>63</sup> *Op. cit.* footnote 18, page 175 (UNDP-OHCHR Toolkit for on National Human Rights Institutions (2010)).

<sup>64</sup> See OSCE/ODIHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis* (August 2014), pages 19-25, available at <http://www.osce.org/odihr/124494?download=true>.

<sup>65</sup> *Op. cit.* footnote 6, page 27, Justification to General Observation 1.10 (ICC General Observations), which refers for instance to the receipt of complaints in minority languages; see also Justification to General Observation 1.7 which notes that "in multilingual societies, the Institution's capacity to communicate in all languages is key to its accessibility".

<sup>66</sup> *Op. cit.* footnote 20, page 17 (2005 ICHRP-OHCHR Report on Assessing the Effectiveness of NHRIs).

<sup>67</sup> Available at <http://www.osce.org/hcnm/67531>. Principle 14 specifically provides that: "Persons belonging to national minorities shall have adequate possibilities to use their language in communications with administrative authorities especially in regions and localities where they have expressed a desire for it and where they are present in significant numbers. Similarly, administrative authorities shall, wherever possible, ensure that public services are provided also in the language of the national minority. To this end, they shall adopt appropriate recruitment and/or training policies and programmes."



***LAW OF UKRAINE***

«On Amendments to the Law of Ukraine "On Civil Service"»

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The Parliament of Ukraine **decrees:**

**I.** To amend the Law of Ukraine "On Civil Service" (Verkhovna Rada of Ukraine Journal of 22.01.2016 №4, page 60, Article 43) with the following provisions:

**1.** In Paragraph 8 Part 3 *Article 3* the words «and his/her representatives» shall be **excluded**.

**2.** To add Section X «Special Aspects of Civil Service in Specific State Bodies, Executive Support Service» with Article 91<sup>1</sup> of the following content:

«Article 91<sup>1</sup>. Special Aspects of Civil Service in the Secretariat of the Ukrainian Parliament Commissioner for Human Rights.

1. Relations arising in connection with the beginning, passage and termination of civil service in the Secretariat of the Ukrainian Parliament Commissioner for Human Rights are regulated by this Law taking into account the specialities defined by the Law of Ukraine "On Ukrainian Parliament Commissioner for Human Rights" and international standards on guarantees of independence and self-sufficiency of national human rights institutions.

2. The powers of Head of Civil Service in the Secretariat of the Ukrainian Parliament Commissioner for Human Rights are exercised by the Ukrainian Parliament Commissioner for Human Rights.

3. The positions of Head of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights and Deputy Heads are classified as category "A" positions of civil service.

4. Head and other civil servants of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights shall be appointed by the Commissioner according to the results of the competition in compliance with procedures and conditions defined by this Law.

5. The competition for vacant positions of the Head of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights and Deputy Heads shall be conducted by the competition committee established by the Ukrainian Parliament Commissioner for Human Rights.

6. The list of positions in the Secretariat of the Ukrainian Parliament Commissioner for Human Rights vested with serving functions shall be approved by the Ukrainian Parliament Commissioner for Human Rights. »

**II.** This Law enters into force on the day of entering into force of the Law of Ukraine “On Civil Service” (Verkhovna Rada of Ukraine Journal of 22.01.2016 №4, page 60, Article 43).

**Head of the Parliament  
of Ukraine**