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| <p>EU-UKRAINE<br/>CIVIL SOCIETY PLATFORM</p> |  | <p>ПЛАТФОРМА<br/>ГРОМАДЯНСЬКОГО<br/>СУСПІЛЬСТВА УКРАЇНА-ЄС</p> |
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**Anti-discrimination legislation and practice: The rights of vulnerable groups in the context of the Association Agreement**

*Drafted by: Julia Tyshchenko, Marfa Skoryk, Natalia Belitser, Sviatoslav Sheremet, Bogdan Mojsa, Sergij Ponomarev, Lilia Oleksiuk*

The report shows the progress, key issues and challenges in the context of anti-discrimination legislation in Ukraine under THE ASSOCIATION AGREEMENT BETWEEN UKRAINE, ON THE ONE HAND, AND THE EUROPEAN UNION, THE EUROPEAN ATOMIC ENERGY COMMUNITY AND THEIR MEMBER STATES (hereinafter, the Agreement), and practice regarding the implementation of various minority groups (ethnic minorities, people with disabilities, LGBT, women and other vulnerable groups).

The basic issues of anti-discrimination legislation, the basic legislative and regulatory acts, adopted in the context of anti-discrimination policy, were analysed, and problems of various groups concerning discrimination against them, institutional capacity on the implementation of anti-discrimination policy, combating discrimination and so on were identified. Recommendations for authorities concerning combating discrimination and improvement of the relevant regulatory and legal framework and practice were formulated.

**General description of the situation, the powers of the authorities in the context of anti-discrimination policy**

Political dialogue that is reflected in the Agreement is based on the principles of strengthening respect for democratic principles, rule of law and good governance, human rights and fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of persons belonging to minorities, respect for diversity and gender equality, and contribute to the consolidation of domestic political reform. According to this, Ukraine has committed itself to the inclusion of EU directives to prohibit discrimination in the workplace and implementation of equality policy<sup>1</sup>, in national legislation. Attachment No 40 to the Contract of Association lists some of the Council of Europe directives designed to prohibit discrimination on various grounds and to achieve equality in the workplace through the implementation of a number of instruments.

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<sup>1</sup> Directive 2006/54/EC of the European Parliament and of the Council of July 5<sup>th</sup>, 2006; Council Directive 2004/113/EC of December 13<sup>th</sup>, 2004, 96/443/JHA: Joint Action of July 15<sup>th</sup>, 1996, adopted by the European Union Council; Council Directive 2000/43/EC of June 29<sup>th</sup>, 2000.

The issue of human rights protection, combating discrimination in the political dialogue is reflected in paragraph 4<sup>2</sup> of the Ordinance of the Cabinet of Ministers of Ukraine No 847-s "On the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their countries - members on the other hand". Particularly, the issue is about *provision of activities related to the protection of ethnic minority rights, including in the framework of the Action Plan on visa liberalisation*, which provides measures in the system of anti-discrimination policy constitution, policy regarding refugees and asylum seekers, and measures to protect the rights of vulnerable groups.

Realisation of relevant priorities in the structure of executive bodies is the responsibility of the Ministry of Culture, Ministry of Social Policy, Ministry of Education and Science, Ministry of Health, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Economic Development, MIA, State Committee for Television and Radio Broadcasting, State Migration Service, and other central and local executive authorities. Particularly, according to new challenges, the issue is about discrimination with respect to internally displaced persons (IDPs), which appeared as a result of the annexation of Crimea by the Russian Federation (RF) and the conflict in Donbass, and policy of which the newly established Ministry of temporarily occupied territories and IDPs takes care of.

Today, there is a Parliament Commissioner for Human Rights in defence against discrimination of citizens that is in fact the only structure of the state. Since 2012, in the structure of the Office of the Commissioner, a special Representative of the Commissioner was appointed for children's rights, non-discrimination and gender equality, and a special Administration was established with a department of non-discrimination. In 2014, by order of the Commissioner, the Administration's structure was reformed and two specialised departments were created - for monitoring and responding to incidents of discrimination and analysts and for outreach and awareness-raising work on non-discrimination. The Administration's functions are fairly broad and include the range from responses to cases of discrimination against individuals to monitoring and parliamentary oversight of the exercised equality policy. From 2013, together with this Representative of the Commissioner, there is an Expert Board to provide consulting support regarding non-discrimination and gender equality.

In the area of gender policy, in 2015 a public advisory body under the Ministry of Social Policy was renewed - this is an Expert Board regarding consideration of the facts of gender-based discrimination, the decisions of which are recommendatory. The disadvantage is the advisory and consultative status of these authorities, which do not replace the implementation of equality policy by state authorities.

In Verkhovna Rada of Ukraine, the Committee on Human Rights, National Minorities and Inter-ethnic Relations is responsible for matters of legislation on combating discrimination. It includes an established subcommittee of the Verkhovna Rada regarding gender equality and non-discrimination.

During the implementation of the Agreement, a number of legal problems have arisen regarding the adoption of relevant laws and regulations, including laws of Ukraine aimed at priority implementation, existing problems in the implementation of priorities, coordinating authorities, and the expert

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<sup>2</sup> See <http://zakon2.rada.gov.ua/laws/show/847-2014-%D1%80/print1389774622835798#n12> online.

community regarding the development and formation of policy implementation. Significantly, policies are implemented by the authorities in a formal way (formal anti-discrimination, gender analysis, etc.).

### **Anti-discrimination legislation, conditions, problems, changes**

The Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" was adopted in 2012<sup>3</sup>. Considering the criticism of international and national human rights organisations regarding its non-compliance with international standards and inefficiency, it was revised and the last amendments entered into force on 30 May, 2014.

Also, in January 2013, the Cabinet of Ministers of Ukraine adopted a resolution that approved the procedure of anti-discrimination examination<sup>4</sup>. However, this document received a lot of criticism from both national human rights and international organisations because it is too general and does not contain clear criteria for executing such examination, thus turning it into only a formal requirement, devoid of real content.

In 2015, by Order of the President of Ukraine, the "National Strategy for Human Rights"<sup>5</sup> was approved, which as one of its strategic objectives included the "implementation of an effective system of preventing and combating discrimination. Implementing the document, the action plan for implementation of the National Strategy on human rights for the period until 2020<sup>6</sup> provides working out draft law on amendments being made to the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" to comply with the provisions of acts of EU law of a list of grounds, prohibited discrimination, and extension of provisions governing the establishment of special legal matters that cannot be considered discriminatory (exceptions). Amendments to the Code of Ukraine on Administrative Offenses have the aim to resolve the question of administrative liability for discrimination, determination of penalties and subjects of their imposition, and changes to the Criminal Code of Ukraine on criminal liability for discrimination (direct or indirect restriction of rights or direct or indirect benefits for signs) and others.

In the first reading in Verkhovna Rada, the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine (regarding the harmonisation of legislation on preventing and combating discrimination with EU law)" was approved (reg. No 3501 of 20 November, 2015 (02.16.2016))<sup>7</sup>. The draft Law provides a complement to the Code of Ukraine on Administrative Offenses with the new Article 188, which sets liability in the form of a fine for violation of legislation on preventing and combating discrimination - i.e. direct or indirect discrimination, oppression, rejection of reasonable accommodation, incitement to discrimination, complicity in discrimination or victimisation, and multiple discrimination.

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<sup>3</sup> See <http://zakon3.rada.gov.ua/laws/show/5207-17> online.

<sup>4</sup> See <http://zakon5.rada.gov.ua/laws/show/61-2013-n> online.

<sup>5</sup> To approve the National strategy on human rights.

<sup>6</sup> See <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679> online.

<sup>7</sup> See [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=57162](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57162) online.

In 2015, despite the opposition of some political forces and clerical resistance, amendments to the Labour Code of Ukraine were approved, which entered into force on 26 November, 2015 under Article 2 "Equal Labour rights of citizens of Ukraine". The amendments expand the list of grounds on which any discrimination in the workplace is prohibited, including violation of the principle of equal rights and opportunities, direct or indirect restriction of the rights of workers, depending in particular on the basis of race, colour, political, religious and other beliefs, gender, gender identity, sexual orientation, ethnic, social and foreign origin, age, health, disability, suspected presence or presence of HIV/AIDS, family and material status, family responsibilities, location, membership in trade union or other association of citizens, participating in a strike, addressing or intending to apply to the courts or other authorities to protect their rights or supporting other workers in defence of their rights, language, or other characteristics not related to the nature of work or conditions of its implementation<sup>8</sup>.

### **The main challenges of formation and implementation of anti-discrimination policy, the problems of vulnerable groups**

In broad public consciousness, discrimination is mostly thought of as any oppression and restrictions, and manifestations of social inequality (stratification) are also thought of as discrimination that do not fully reflect a real understanding of discrimination. However, citizens feel discrimination by age (employment issues), health, sexual and gender orientation; discriminated against are such minority groups as Roma. Whereas there is a lack of knowledge and resources regarding the commencement of lawsuits by persons who suffer discrimination, often there are cases of multiple discrimination against citizens on various grounds simultaneously.

The occupation and annexation of the territory of sovereign Ukraine, Crimea, by the RF, and support by the RF conflict in Donbass started to introduce challenges in the field of human rights, reforming government relations with vulnerable groups, and actualised the issues of implementation of a complex policy in this field, which would be consistent and meet the priority directions of the Agreement. On temporarily uncontrollable and temporarily occupied territories, discrimination against various minorities and manifestations of multiple discrimination, in particular the Crimean Tatars, Roma and representatives of various religious groups, increased. Today, in the European and world community there is a lack of mechanisms to monitor and influence the situation that is coming. In the annexed Crimea, human rights and freedoms are violated, including freedom of discussion, assemblies and associations, freedom of movement, the right for fair trial and effective means of legal defence. The most vulnerable groups for rights violations and discrimination are those who opposed the annexation.

There is discrimination against IDPs who, due to the annexation of Crimea and the Donbas conflict, were forced to leave their place of residence. According to numerous studies<sup>9</sup>, in some communities the arrival of IDPs actualised local social problems and increased levels of social competition, followed by tension in relations between immigrants and locals. There are manifestations of multiple

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<sup>8</sup> See <http://zakon3.rada.gov.ua/laws/show/322-08/paran26#n26> online.

<sup>9</sup> In preparing the text data were used from the United Nations Office of the High Commissioner for Refugees studies, report "Ukraine. Evaluation of peace recovery and building ANALYSIS OF THE INFLUENCE OF CRISIS AND NEEDS IN EASTERN UKRAINE" of the EU, the World Bank, the UN Office in Ukraine, 2015, GFK, Internews, reports on stereotypes DWW, and research materials of social organisations regarding stereotypes, needs, problems of social cohesion and media monitoring.

discrimination based on age, gender, status of immigrants during placement and the process of integration in the host community.

The following are among a number of problems that should be solved in the policy of preventing and combating discrimination:

- inconsistency and lack of complexity of anti-discrimination legislation;
- need for the implementation of affirmative action at the national and local levels in preventing and combating discrimination;
- ensuring proper investigation of crimes committed on the grounds of race, nationality, religious and other intolerance, and to bring those responsible to justice;
- improvement of the procedure of anti-discrimination examination of normative legal acts by executive authorities, and formality of gender analysis of the impact of policies;
- creating a system of statistics on violations of legislation in the sphere of combating discrimination and bringing the perpetrators to justice, in the preparation of statistical reports the courts do not emphasise cases of discrimination if they are independent of the crime, and there is lack of statistics on gender issues and vulnerable groups.

Among the challenges in the area of preventing and combating discrimination, the following can be singled out: **the lack of a simple and transparent mechanism for punishment for cases of discrimination** and compensation to victims of discrimination; there is a narrow list of *grounds for referring the crimes to category as committed on the ground of hate* (i.e. only religious, ethnic and racial characteristics), which results in poor qualifications of crimes committed on the grounds of hate for other characteristics.

There is systematic ataxic of power structures' activities regarding responding to crimes, committed on the grounds of hate that are qualified usually as, among others, hooliganism and hate speech. Preventing and combating discrimination are prevented by insufficient coordination of activities of state and local government authorities in this area, ineffective legal mechanisms of liability for discrimination, lack of information and educational activities to combat stereotypes, prejudice and intolerance in society regarding different vulnerable groups, and lack of circumspect policy of upgraded qualifications for personnel of the law enforcement system of Ukraine (both newly created police and prosecutors, the judiciary, etc.).

### **The issue of national minorities**

There were no significant changes in the promotion of Ukrainian legislation on minority rights, institutional support of inclusive dialogue in this area, and the development of mechanisms for involving national minorities in decision-making processes. There is lack of institutional capacity of the state on the implementation of ethnic policy. The Ministry of Culture of Ukraine remains the leading special authorised central executive authority; in June 2014, in addition to the existing network of central authorities, the post of Government Commissioner for Ethnic Policy was established. It operates along with the Department of the Ministry of Culture and is the coordinating authority for interoperability of the Cabinet of Ministers of Ukraine with the executive authorities and civil society institutions. However, on 15 April, 2015 the corresponding position was eliminated<sup>10</sup> and the

corresponding functions actually remained with the Ministry of Culture, which provides mostly just cultural events concerning ethnopolitics.

Despite important political declarations in parliament<sup>11</sup> and government, including the adoption of the Order of the VR "On the Declaration of the Verkhovna Rada of Ukraine to guarantee the rights of the Crimean Tatar people as a part of the Ukrainian State" No 1140-VII, in the legislation of Ukraine there were no changes in the formulation of the principles of the state's ethno-national policy, the adoption of laws about indigenous peoples, and proposals for new versions of the law regarding national minorities. The Verkhovna Rada of Ukraine did not receive any specific proposal. However, public experts are developing drafts of appropriate amendments. Also, there was no completed work on the national concept of ethno-national policy that, in view of the situation in the country, is extremely important. Draft laws of Ukraine "On indigenous people in Ukraine" are being developed, but the issue of modernisation of the law "On national minorities in Ukraine" remains actual.

### **Anti-Romanism (Romaphobia)**

The only change in the field of the rights of national minorities that can be considered is the Strategy of protection and integration of the Roma minority in Ukrainian society up to 2020 and the action plan for its realisation<sup>12</sup>. However, the document was adopted without consultation with Roma communities and organisations, and therefore ignores their actual needs - in particular, taking into account regional specifics. Also, in the document there are no clear indicators for assessing progress in its implementation and no budget funding is provided. So, it is only the formal implementation of their provisions by the relevant authorities, as indicated by Roma organisations and human rights and international organisations.

The Action Plan to implement the National Strategy on human rights for the period until 2020<sup>13</sup> provides a review of the Integration Strategy of Roma in the 1<sup>st</sup> quarter of 2016 (p. 116.2), but this work has not been done by the government. The Ministry of Culture of Ukraine does not have the sufficient authority, resources or expertise to ensure the implementation of the Strategy and Action Plan at the appropriate level. The Inter-Ministerial Working Group on implementation of the Action Plan on Roma integration, established in November 2015 by the Cabinet of Ministers of Ukraine No 993<sup>14</sup>, has not yet started its activities, reasons for which include bureaucratic run-around.

To date, state authorities have no relevant information on the number of Roma living in Ukraine at present, and attempts to conduct such an assessment. The Action Plan to implement the National Strategy on human rights provided for the State Statistics Service of Ukraine the task of developing during 2016 a mechanism of statistical accounting and to display the number of Roma in general in Ukraine, and in specific regions and settlements (p. 116.3). However, work on developing such a mechanism has not yet commenced.

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<sup>10</sup> See <http://zakon4.rada.gov.ua/laws/show/213-2015-%D0%BF/paran44#n44> online.

<sup>11</sup> See <http://zakon4.rada.gov.ua/laws/show/1140-vii> online.

<sup>12</sup> See <http://zakon4.rada.gov.ua/laws/show/201/2013>; <http://zakon2.rada.gov.ua/laws/show/701-2013-p> online.

<sup>13</sup> See <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679> online.

<sup>14</sup> See <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248677547> online.

The level of intolerance and negative stereotyping towards Roma and Roma communities is rather high in Ukrainian society and considerable social distance, indicated by the annual survey of "Ukrainian Society" of the Sociology Institute, largely enables the expression of direct and indirect discrimination. Meanwhile, at the state level there are no effective education and awareness programmes on preventing and combating stereotypes concerning Roma.

The overall situation in Roma communities is characterised by the following problems:

- Limited access to civil state registration and identification documents. Whereas, according to the study by WHO (2016), generally in the country the percentage of Roma who have ID documents is rather high (approximately 90%; 95% of children have birth certificates), the situation varies by regions. The biggest problems are observed in the Zakarpattia region where the cause of low provision to Roma with passports is, among other, unfounded administrative obstructions caused by migration authorities. Meanwhile, the situation is more problematic with the presence of other documents, such as tax identification number, proof of residence registration, documents of ownership of real estate and more.
- Limited access to education and discrimination in education. School attendance is lower compared to the main population, especially among Roma girls and women. Also, in the Zakarpattia region and the Odesa region there is a segregation of Roma children in education, which appears as a presence of separate schools for Roma and, although to a lesser extent, the presence of separate classes for Roma in general education schools.
- High unemployment (only 10% of Roma are formally employed) and the prevalence of informal ways of earning, and unstable sources of income in Roma households. The main source of income of 65% of Roma households is welfare payments, including payments for children, low-income allowance, pensions and so on.
- Discrimination in access to administrative services and healthcare. The last one, as a result, leads to poor health and prevalence of socially dangerous diseases such as tuberculosis and hepatitis in Roma communities.
- Poor living conditions and mostly unsettled legal status of dwellings inhabited by Roma. Also, in the Zakarpattia region the situation is complicated by serious problems regarding access of Roma to drinking water and sewer systems.
- Hate crimes against Roma, and anti-Roma political and media discourse. A striking example is the anti-Roma pogroms and eviction of Roma from the Loschynivka village of the Izmail district of the Odesa region, which took place in August 2016. Similar events took place in June 2016 in the Avylyvtsi village in the Kharkiv region, in January last year in Izmail city of the Odesa region, and three years ago in the Ivanovka village in the Cherkasy region. In addition, although pogroms as in Loschynivka happen rarely, requirements to "evict" or expel Roma from certain places are heard often enough. Thus, the community of Lysohirskyi mikrorayon of Kyiv city raised this question before the Holiivskyi district state administration in April 2016.

### **Discrimination on the grounds of disability**

Discrimination on the grounds of disability is prohibited by anti-discrimination legislation and the Law of Ukraine "On the basis of social protection of invalids in Ukraine"<sup>15</sup>. However, there is a formal



finding of non-discrimination encountering no effective mechanism of protection, due to lack of access to justice<sup>16</sup>. A small number of court decisions have recognised discrimination on grounds of disability, showing that: firstly, legally binding provisions on eliminating discriminatory barriers can be not respected<sup>17</sup>; secondly, the amount of compensation for damages in the case of appointment is insignificant<sup>18</sup>.

Since 2011, the term of "reasonable accommodation"<sup>19</sup> was introduced into Ukrainian legislation, but the responsibility for refusing to provide it was not established. In the Anti-discrimination Law, the principle of reasonable accommodation is limited by the scope of employment<sup>20</sup>. It is to be hoped that Verkhovna Rada of Ukraine will adopt the draft law No 3501, which provides for such form of discrimination as "denial of reasonable accommodation"<sup>21</sup>.

Barriers in the community lead to discrimination of people with disabilities. The issue is about the lack of monitoring of compliance with state building codes, ensuring compliance with legal requirements on transport and using available formats of information. The vulnerability of people with disabilities was particularly noticeable during the military conflict in the east of the country<sup>22</sup>. Local government authorities and state authorities, responsible for policy in the field of construction, demonstrate the lack of attention to preventing the creation of artificial barriers for people.

The current government policy results in unequal treatment of people with different disabilities and degrees of loss of health. Four percent standard for employment is mainly performed by people in the III group of disability and those who do not require additional conditions. Much worse is the rate of employment of people in the I group and intellectual and psychosocial disabilities. However, regarding inclusive education, children with minor disabilities are primarily involved, and children who need the creation of additional conditions mostly continue education in boarding schools or with individual forms of learning. The most segregated category comprises persons with psychosocial and intellectual disabilities, due to a particular lack of social services in the community. Sometimes it is

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<sup>15</sup> Article 1 of the Law of Ukraine "On Preventing and Combating Discrimination in Ukraine". Paragraphs 2 and 3 of Article 2 of the Law of Ukraine "On the basis of social protection of invalids in Ukraine". See <http://zakon5.rada.gov.ua/laws/show/875-12> online.

<sup>16</sup> This is a case of architectural inaccessibility of court houses, and access to information of persons with impaired vision, hearing, and intellectual and psychosocial disabilities.

<sup>17</sup> In December 2012, the Order of the Supreme Administrative Court of Ukraine upheld the Decision of the District and Administrative Court to declare unlawful inaction of the Cabinet of Ministers of Ukraine on the part of lack of titration or translation in sign language television programmes that falls under the Law (<http://www.reyestr.court.gov.ua/Review/13318818>). Only in December 2015 did the State Committee for Television and Radio Broadcasting publish a relevant draft law. Just after protests by people with disabilities of vision that took place in May 2016, "Ukrzaliznytsia" JCS began adapting services to purchase tickets via the Internet; the company was forced to do this by the Court of Appeal of the Lviv region in October 2013 (<http://www.reyestr.court.gov.ua/Review/34204864>).

<sup>18</sup> A Decision of the Kalininsky district court of Donetsk recognised as discrimination on the grounds of disability a case regarding a plaintiff with disabilities who was refused access to a nightclub and compensation for moral damages in the amount of USD 2 000 was set. 29 May, 2013 No. 256/1473/13-ц. See <http://www.reyestr.court.gov.ua/Review/32002298> online.

<sup>19</sup> Meets the definition in the UN Convention on the Rights of Persons with Disabilities.

<sup>20</sup> Article 4 of the Law of Ukraine "On Preventing and Combating Discrimination in Ukraine".

<sup>21</sup> Draft law on amendments to certain legislative acts of Ukraine (regarding the harmonisation of legislation on preventing and combating discrimination with EU law). See [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=57162](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57162) online.

<sup>22</sup> Emergency alerting system does not use accessible formats. Infrastructure of shelter facilities ignores the needs of people with disabilities. The evacuation system, including stationary healthcare facilities and social security, appeared to be not adapted.



impossible for employers to meet the requirements for creating additional conditions — the rules are outdated and control by the state authorities has a penal character, fines for failure are super-high.

The Law of Ukraine "On the Rehabilitation of the Disabled in Ukraine" and "On the basis of social protection of invalids in Ukraine" divides persons with disabilities only into two groups: disabled and disabled children, disregarding the gender dimension. The lack of requirements for the needs of girls and women with disabilities in programmes to protect women leads to discrimination of the abovementioned category, for example in the area of healthcare, reproductive health and protection from domestic violence<sup>23</sup>.

### **Discrimination against indigenous people and other vulnerable groups in the occupied Crimea**

The situation of indigenous peoples and national minorities in annexed Crimea is steadily deteriorating. Monitoring and human rights organisations of Ukraine report the increasing number of illegal arrests, tortures, searches, psychological pressure, intimidation and other flagrant human rights abuses, the victims of which are mostly the representatives of indigenous Crimean Tatar and Ukrainian "minority in minority". Among the glaring examples of disregard of international law and even the RF's own legislation is the so-called "case on February 26th", according to which was judged Akhtem Chiyhoza, Deputy Chairman of the Mejlis of Crimean Tatars, and three other Crimean Tatars. The Crimean Tatars also constitute the overwhelming majority - 12 people - of the 17 who are officially recognised as "missing", despite the fact none of them were found, and the investigation is not actually carried out.

In addition to discrimination based on ethnic origin, subjected to cruel persecution are Muslims of the Crimea. The formal reason for this is the accusation of belonging to Hizb ut-Tahrir - World Muslim political organisation, which is banned in Kazakhstan, Russia and some other countries with an authoritarian regime, but that operates legally in Ukraine and other countries. Out of the 14 Crimean Muslims persecuted and arrested in such a manner, 4 people were transported to the RF and on 7 September, 2016 were baseless sentenced to 7 and 5 years in prison.

Since other denominations and religious organisations are subjected to considerable pressure and persecution - in fact, all that did not belong to the Ukrainian Orthodox Church of Moscow Patriarchate - it can be stated that in addition to persecution and discrimination based on political beliefs, aimed at all who disagree with the fact of illegal occupation and subsequent annexation of the Crimea, in annexed Crimea there are numerous acts of direct discrimination on religious and ethnic grounds.

Another ominous manifestation of increased repression against the Crimean Tatars is the case of Ilmi Umerov - Deputy Chairman of Mejlis of Crimean Tatars, against whom in May 2016 there was a criminal case under Article 280.1 ("Violation of the territorial integrity of the RF"). On 18 August, Ilmi Umerov, against his will, was moved from the clinical hospital, where he came after a heart attack during the trial, to a psychiatric hospital No 1 of Simferopol for 28 days of hospitalisation and forced psychiatric examination. Such developments actually mean a return to the Soviet practice of using "punitive psychiatry" to crack down on dissidents. Only through rough and tough reactions and

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In the report on the implementation of the Action Plan to implement the National Strategy for Human Rights, the Ministry of Social Policy of Ukraine considers that it is inappropriate to amend the Model Regulations on the Center for Social and Psychological Assistance regarding providing services by Center for people who need nursing care.

numerous protests in Ukraine and by the international community, on 7 September 2016 they released Ilmi Umerov from a psychiatric institution to home, finding him a mentally healthy person. However, the lawsuit against him FSB did not close.

Assessment of the true situation of vulnerable groups is even more complicated by a lack of access to the occupied territories by regular monitoring, especially advocacy missions and permanent representations of international organisations and structural divisions responsible for combating discrimination and supporting indigenous people and vulnerable minorities. An additional negative factor that makes it impossible to obtain accurate information on the real situation of the rights of minorities is the unreliability of the results of sociological surveys conducted on the occupied territories.

Comprehensive, detailed examination of the situation of vulnerable minorities in the occupied Crimea, which was ordered by the Human Rights Committee of the European Parliament, was published in April 2016 (The situation of national minorities in Crimea following its annexation by Russia; Document EP/EXPO/B/DROI/FWC/2013-08/LOT1/05 EN April 2016 -PE 578.003)<sup>24</sup>.

The conclusions and recommendations of this study must be fully taken into account and used by government authorities and civil society actors in Ukraine, as well as relevant institutions of the European Union and the countries – EU members.

### **Discriminatory practices regarding LGBT**

In 2015, the Law of Ukraine "On Amendments to the Labour Code of Ukraine (regarding the harmonisation of legislation on preventing and combating discrimination with EU law)" was approved with reg. No 3442. The draft law was designed with the aim to improve the legislation of Ukraine in the area of combating discrimination and **bring it in compliance with the regulations of EU law acts**. In fact, it was the first time Ukrainian legislation was provided with legal provisions that prohibit **any discrimination in the workplace**, including violation of the principle of equal rights and opportunities, direct or indirect restriction of the rights of workers **based on** race, colour, political, religious and other beliefs, sex, **gender identity**, and **sexual orientation**. However, after the signing of the Association Agreement in Ukraine, there are in place a number of specific trends that have signs of discriminatory attitudes towards LGBT people, including:

- **Improper (without result) investigation of cases of physical attacks on people from the LGBT community.** Thus, on 22 April, 2016, in Kiev, there was committed an attack on the activist, participant of LGBT public actions Stanislav Bevzenko. The victim did not hide his public position in defence of LGBT in the period exactly three months before the attack. There is no information about the arrest and punishment of perpetrators of the attack on Stanislav Bevzenko.
- **Neglecting by the courts homophobic motive as an aggravating circumstance in the crime.** On 29 October 2014 two young men committed arson of the oldest cinema "Zhovten" in Kiev during the broadcast of the film there of LGBT topic within the XLIV International Film Festival "Molodist". During the interrogation, they admitted that they committed arson with homophobic intentions. In October 2015, the court sentenced arsonists of the theatre for two and three years'

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<sup>24</sup> See [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO\\_STU\(2016\)578003\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf) online.

imprisonment under Article 296 "Hooliganism" and 263 "Illegal possession of weapons and ammunition" of the Criminal Code of Ukraine instead of considering them a crime under Article 161 "Violation of equality of the citizens on the their race, national origin, religion, disability and other grounds".

- **Remitting the sentences given by the courts considering "LGBT context" of the crime.** In January 2015, a brutal murder took place in Kharkiv: 26-year-old gay Igor Rabotyagov was killed at home; the media described the murder as "exemplary execution". The killer was arrested and during the investigation he reported that he acted in a state of homophobic affect that, in his opinion, is a extenuating circumstance.
- **Restrictions on the right for peaceful meetings for LGBT.** On 19–20 March 2016 in Lviv city (western Ukraine), the public LGBT organisation "Insight" planned to perform the socio-cultural Festival of Equality in order to put on the agenda a number of problems of discriminated groups in Ukraine. Prior to that, such a festival had already taken place in Kiev. Despite the fact that the programme of the Festival did not schedule any "provocative" actions, a number of religious and right-wing organisations of Lviv began to oppose the Festival, declaring it "gay pride parade". As a result, Lviv City Council (City Hall) has filed a lawsuit to ban any public events in the city as a part of the Festival of Equality, and the court granted the request of City Hall: by court order for the organisation "Insight" was *"limited exercise of the right to peaceful assembly by banning public events on 19 and 20 March 2016 in Lviv"*.

To avoid the negative trends regarding LGBT, public authorities and local government authorities need to develop implementation of LGBT components in an integral action plan to implement the National Strategy on human rights for the period until 2020, and in close cooperation with LGBT organisations in Ukraine.

### **The issue of gender policy in the context of discrimination and inequality**

**Today**, the system policy **is not implemented** to ensure real equality in the context of gender politics. Among the problems of the internal social situation in Ukraine, which has a distinct dimension of gender inequality, there is:

- lack or lack of access to health services due to reduced hospital infrastructure and commercialisation of services;
- of employment - actually reducing the number of women in the paid labour market in rural areas (about 70% of rural women, and this in turn a third of all women in Ukraine - informally employed and their percentage is growing annually - Ukrstat), reducing of educational infrastructure and teachers (preferably women); illegal labour in the service sector; illegal labour of women and girls abroad, and human trafficking;
- spreading of various types of gender-based violence as caused by hostilities in the east (in the area of ATO) and long-standing problems related to domestic and other forms of structural violence based on sex. Also, IDP women and women living in the area of ATO are suffering from these problems.

In the executive branch, there is no full governing authority capable of regulating issues related to gender inequality. The responsible Department of gender policy of the Ministry of Social Policy has

little ability to influence the situation in the field and especially to coordinate the activities of other central executive authorities (that must do so under the Equality Act 2005). In Ukraine, as of 2016, gender statistics is not defined properly, which would permit to visualise areas of gender inequality and to develop appropriate public policy (managers, indicators of rural employment in the labour market that are separate and do not allow a comparison to distinguish the data in terms of "rural women in the labour market") and other.

The positive issues include:

- changes in political representation issues (including the adoption of the Law of Ukraine with provisions on gender quotas);
- changes related to the arrival of women in power structures (especially in the system of the Ministry of Internal Affairs, which is one of the recommended institutional means of combating gender-based violence); and yet wide access of most women to the paid labour market (more than 60% of women of working age are economically active - Ukrstat).

The road map to achieve equality would be a state programme to ensure equal rights and opportunities for women and men for the period until 2016, approved with a delay of 3 years. (Right now, the next one is in the process of development)<sup>25</sup>. The programme proclaimed the integrated approach in ensuring equal rights and opportunities for the women and men of Ukraine, but the necessary measures with quantifiable indicators did not include.

The actual denial of state (2010–2013) to implement policy designed to promote equality between men and women negatively affected the social climate, and the appearance of both pro- and anti-gender initiatives, especially from religious communities and organisations.

## **Conclusions**

In Ukraine, there is a gradual modernisation of legislation on preventing and combating discrimination. We can welcome the adoption of amendments to the Labour Code of Ukraine, which came into force on 26 November 2015, expanding the list of grounds on which any discrimination in the workplace is prohibited. A positive moment is a decision of Strategy on Human Rights (2015) and its implementation plan, outlining policies on combating discrimination, tasks and activities that facilitate the appropriate implementation of policy, ensuring equality, and combating discrimination against various minority groups. At the same time, there are problems with the settlement of issues of criminal liability for discrimination, administrative liability for discrimination, determination of penal sanctions and subjects of their imposition, bringing to justice those responsible for crimes on grounds of discrimination, other legal acts that would implement EU standards, taking into account the responsibility for compliance with them (for example, standards in transport, construction for people with disabilities, etc.).

Unsatisfactory remains the situation on the definition of crimes, committed on the grounds of hate of different minority groups; there is a lack of relevant statistics, and the corresponding motives are often not captured in court at sentencing.

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<sup>25</sup> See <http://zakon5.rada.gov.ua/laws/show/717-2013-%D0%BF/print1454001737819677> online.

There is a lack of proper practice of anti-discrimination policy implementation; in various areas of policy it remains ataxic, institutionally weak both at central and local levels. There are signs of restricting freedom of assembly by the local authorities, in particular regarding the LGBT community.

Measures on anti-criminal examination of regulations, gender policy and the impact on people with disabilities are conducted formally and ignore some of the problems and challenges that arise in different groups of people.

There is a lack of positive actions by the state on various policies regarding vulnerable groups, which would facilitate convergence to true equality, introduce a policy on the promotion of the respect for rights of vulnerable groups (Roma, people with disabilities, IDPs, various social categories), often government programmes concerning vulnerable groups are formally implemented (Roma), are not provided with an adequate resource base, adequate institutional coordination, and process of proper monitoring and evaluation.

In a society, there is a lack of knowledge and understanding of anti-discrimination legislation to defend their rights in court. There is a lack of communication with the state regarding the reduction of the impact of various negative stereotypes about different minority groups that contribute to manifestations of discrimination, multiple discrimination (LGBT, Roma, IDPs, people with disabilities, women and other vulnerable groups).

Unsatisfactory is a system of various statistical data that would provide an opportunity to understand the potential problems of manifestations of inequality and discrimination against different vulnerable groups.

As a result of the annexation of Crimea by the RF, the conflict in Donbas, ethnic minorities, indigenous peoples and religious groups are subject to manifestations of systemic discrimination, violation of human rights by the RF, there is no system of effective monitoring of the situation by international organisations, and lack of adequate response to discrimination by the world community.

## **Recommendation**

For executive authorities:

- To develop and adopt amendments to the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" in order to bring it into compliance with the provisions of acts of EU law list, in particular as regards the grounds on which the discrimination is prohibited, including the prohibition of discrimination on grounds of sexual orientation and gender identity, expanding the list of forms of discrimination (victimisation), settlement of the prohibition of multiple discrimination and discrimination by association, clarifying the scope of the law.
- To implement EU standards in the sphere of construction, infrastructure, transport and use of accessible formats of information, protection of the population during emergencies, and strengthening the responsibility for their compliance.

- To develop, taking into account the European experience, positive actions for the employment of people with disabilities in the open labour market and in the public sector, given the degree of disability and loss of health.
- To develop a programme of deinstitutionalisation and implementing social services in the community, taking into account the experience of eastern European countries, including for people with psychosocial and intellectual disabilities.
- To amend the laws of Ukraine, the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine on criminal liability for discrimination, and settlement of the issue on administrative liability for discrimination. Providing penalties for crimes committed on the grounds of intolerance on such grounds as race, colour, religious beliefs, sexual orientation, gender identity/transsexuality, disability and language.
- To consider the needs of women and girls with disabilities in policy formulation and implementation in the sphere of equal rights of men and women, reproductive health, and combating domestic and gender violence.
- To strengthen institutionally the executive authorities responsible for gender policy, to optimise existing institutional mechanisms for gender equality, reviewing the number of advisory authorities.
- To review and approve departmental regulations on the protection of peaceful assembly in accordance with modern international standards on the right to peaceful assembly.
- To develop and adopt a draft law regarding legalisation in Ukraine of registered civil partnerships for opposite-sex and same-sex couples considering economic and moral rights, including ownership and inheritance of property, support by one another in the event of disability, constitutional right of incrimination against own partner, etc.
- To amend the order of the Ministry of Health of Ukraine from 20 August 2008 No 479<sup>26</sup> in order to eliminate discriminatory bans on adoption of children, including cases of adoption by HIV-positive people, people with disabilities and transgender people.
- To develop a procedure for the replacement of official documents to persons with clinical diagnosis of "transsexuality" or who are under treatment for gender dysphoria, in order to change the documentation of the identification of sex and to prepare proposals for appropriate amendments to other regulatory legal acts.
- To post a state order to study the actual gender issues in the Institute of NASU, branch research institutes and universities in Ukraine, relevant to certain issues of equality.

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<sup>26</sup> See <http://zakon1.rada.gov.ua/laws/show/z1022-08> online.

- To streamline processing and publication of gender-separated data, to amend the forms of statistical monitoring of statistics for tracking gender components; to provide these and other measures to prepare gender-segregated statistics in developed State Program-2016.
- To strengthen the institutional capacity of executive authorities in the context of development and implementation of national ethnic policy, to develop, given the European models, an updated version of the law "On national minorities, status of the Crimean Tatars in Ukraine" taking into account the questions of representation, preservation and development of identity, and the exercise of rights of national minorities.

To relevant structures of the European Union:

- To providing advice on the implementation of priority, to support promotion of dialogue between government and minority organisations, exchange of experience on various models of integration of minority groups, to increase attention in the context of monitoring the implementation of the relevant EU directives on combating discrimination, intensive support to different groups of minorities.
- To implement monitoring and advocacy recommendations of the report "The situation of national minorities in Crimea following its annexation by Russia", prepared by order of the Human Rights Committee of the European Parliament, which includes cooperation of the EU Council, Member States and the European External Action Service (EEAS) with international organisations - UN, OSCE and Council of Europe - to ensure continuous international presence in the Crimea, the creation of an international mission that will monitor the situation of all minority groups, monitoring and tougher sanctions in response to the events of discrimination and violation of human rights.