

<p>EU-UKRAINE CIVIL SOCIETY PLATFORM</p>		<p>ПЛАТФОРМА ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА УКРАЇНА-ЄС</p>
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*3rd meeting, Kyiv, 8-9 November 2016*

**ANTI-DISCRIMINATION LEGISLATION AND PRACTISE: RIGHTS OF  
VULNERABLE GROUPS IN THE CONTEXT OF THE ASSOCIATION  
AGREEMENT**

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## **Introduction**

In the **Annex XL to Chapter 21** in the Association Agreement, under the headlines of **Cooperation on Employment, Social policy and Equal Opportunities and Health and Safety at Work**, it is specified which EU legislation Ukraine undertakes to gradually approximate Ukraine's own legislation to. **In the field of anti-discrimination and gender equality, the main EU legislation referred to are:**

- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of **equal treatment between persons irrespective of racial or ethnic origin;**
- Council Directive 2000/78/EC of 27 November 2000 establishing a general **framework for equal treatment in employment and occupation;**
- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of **equal treatment between men and women in the access to and supply of goods and services**
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of **equal opportunities and equal treatment of men and women in matters of employment and occupation** (recast)

In this report the **current legislation and practise in the field of anti-discrimination and the rights of vulnerable groups in both the EU and Ukraine** will be described and discussed, taking these directives as the starting point. The recent developments in Ukraine, for example in relation to the visa liberalisation process, and the development of the National Human Rights Strategy and Action Plan will be described. The report will also give **recommendations to legislators in both the EU and Ukraine**. The main challenges of the anti-discrimination policy development will be addressed; and there will be a focus on the situation for a number of vulnerable groups; such as **ethnic minorities, people with**

**disabilities, indigenous people and other vulnerable groups in Crimea; Roma people and LGBT people.**

### **The EU and anti-discrimination legislation**

**European Union legislation is legally binding in all EU Member States**, who have the obligation not only to respect and apply the EU laws themselves, but to implement them to ensure that their citizens have to respect and apply them as well. In the field of equality and non-discrimination law, the **Directives regard different grounds of discrimination and also different areas of law**. This is an ongoing challenge for EU legislators, the population and civil society organisations working with representing the rights of vulnerable groups and others who face discrimination in the various countries of the EU.

Also relevant to the field of equality and non-discrimination law is the [Charter of Fundamental Rights of the EU](#), which assembles in a single document the fundamental rights and freedoms protected in the EU, regrouped in six chapters: **dignity; freedoms; equality; solidarity; citizens' rights and justice**. Adopted in 2000, the Charter is legally binding since the entry into force of the Lisbon Treaty in 2009. It is addressed to the institutions and bodies of the EU and the national authorities of EU Member States when they are implementing EU legislation. Title III on equality contains general provisions of **equality before the law and prohibition of any form of discrimination** as well as more specific provisions concerning the rights of the child and of the elderly, integration of persons with disabilities, equality between women and men and linguistic diversity.

The main areas covered in the directives mentioned above are as follows:

#### **[Directive 2000/43/EC](#) against discrimination on grounds of race and ethnic origin (Race and ethnic origin Directive):**

- Protection against discrimination on grounds of racial or ethnic origin in **employment and training, education, social protection, membership of organisations and access to goods and services**;
- Definitions of direct and indirect discrimination and of harassment;
- **Positive action** to ensure full equality in practice;
- The right to complain through a judicial or administrative procedure, with **appropriate penalties** for those who discriminate;
- **Shared burden of proof** in civil and administrative cases: victims must provide evidence of alleged discrimination; defendants must provide prove that there has been no breach of the equal treatment principle;
- Limited exceptions to the principle of equal treatment (where a difference in treatment on the grounds of race or ethnic origin is a genuine occupational requirement);
- Creation, in each EU country, of an organisation to promote equal treatment and assist victims of racial discrimination (**National Equality Bodies**).

**Directive 2000/78/EC against discrimination at work on grounds of religion or belief, disability, age or sexual orientation (Framework employment Directive):**

- Principle of equal treatment in **employment and training irrespective of religion or belief, disability, age or sexual orientation**;
- Employers must make **reasonable efforts to accommodate disabled people** who are qualified to participate in training or paid employment;
- Same rules as the Race and ethnic origin Directive regarding definitions of discrimination and harassment, positive action, rights of redress and sharing the burden of proof;
- Limited exceptions to the principle of equal treatment where the ethos of a religious organisation needs to be preserved, or where an employer legitimately needs an employee to be from a certain age group.

**Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Gender Goods and services Directive):**

- Equal treatment of men and women in the **access to and supply of goods and services**: applicable to all persons and organisations that make goods and services accessible to the public; only outside the area of private and family life; not applicable to the content of media and advertisement or to education;
- Prohibition of any discrimination – direct or indirect – on the grounds of sex in the fields covered by the directive, including: less favourable treatment of women for reasons of pregnancy or maternity; harassment, whether of a sexual nature or not; instructions to discriminate;
- Exceptions: in general permitted if justified by a legitimate aim, proportionate and necessary; no prohibition of more favourable provisions concerning the protection of women as regards pregnancy and maternity; specific exception for insurance and related financial services, declared invalid by the CJEU in 2011 in the Test-Achats case (C-236/09);
- Same rules as the Framework employment directive regarding positive action, rights of redress and sharing the burden of proof;
- Creation, in each EU country, of an organisation to promote equal treatment and assist victims of gender discrimination in the fields covered by the directive (**National Equality Bodies**).

**Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Gender recast Directive):**

- Equal treatment of men and women in access to: **work (including selection criteria); self-employment; occupations; vocational training; career advancement; working conditions (including dismissals)**;

- Prohibition of any discrimination - direct or indirect - on grounds of gender, including:reference to marital or family status;less favourable treatment of women related to pregnancy or maternity leave;harassment, whether of a sexual nature or not;instructions to discriminate;
- Same rules as the Framework employment directive regarding positive action, rights of redress and sharing the burden of proof;
- Protection from dismissal or any other form of retaliation by the employer of employees who complain or take legal action to enforce their right to equal treatment;
- Creation, in each EU country, of an organisation to promote equal treatment and assist victims of gender discrimination in the fields covered by the directive (**National Equality Bodies**).

A [Proposal for a Directive](#) against discrimination based on age, disability, sexual orientation and religion or belief beyond the workplace("The horizontal directive") was also adopted by the European Commission in 2008 and is being negotiated by the EU legislature, consisting of the following:

- Equal treatment in the areas of social protection, including **social security and health care, education and access to and the supply of goods and services which are commercially available to the public, including housing**;
- Prohibition of direct and indirect discrimination as well as harassment and victimisation;
- An obligation to provide people with disabilities with general accessibility as well as "reasonable accommodation" in all the areas covered. Both are subject to the condition that they do not impose a disproportionate burden on service providers.

In a resolution (mostly regarding the application of Council Directive 2000/78/EC ([2015/2116\(INI\)](#)) adopted on the 15<sup>th</sup> of September this year, the **European Parliament** stated, that it "regrets the fact that the notion of human rights as being universal, indivisible and interrelated remains, as a principle of law, a matter more of theory than of practice, given that different aspects of the human being are treated separately in existing EU legal instruments;" and also "stresses how important it is to reach an agreement as soon as possible, and calls on the Council to break the deadlock, in order to **move towards a pragmatic solution and speed up without further delay the adoption of the EU horizontal anti-discrimination directive proposed by the Commission in 2008** and voted for by Parliament; considers it a pre-condition to secure a consolidated and coherent EU legal framework, protecting against discrimination on the grounds of religion and belief, disability, age and sexual orientation outside of employment; notes that no undue restriction of the Directive's scope should be accepted; **considers that the consolidation of the EU legislative framework on tackling hate crime is also a crucial element**, taking into consideration that similar crimes are also prevalent in the work environment."

## **The anti-discrimination work in the EU in practise**

The, so far, inability of the legislators of the EU to come to an agreement regarding the "Horizontal Directive" has been **strongly criticised**, not only from the parliament, as in the resolution quoted above, but also from civil society, where many organizations have put lots of advocacy efforts into trying to get this piece of legislation in place. The resistance from legislators have been coming mostly from some member state representatives in the Council of ministers, and the reasons put forward have been, among other things, the principle of subsidiarity, which the Horizontal Directive, it has been argued from these representatives, is violating – although they claim to endorse additional legislation. Civil society representatives have often pointed out that the **Race and Ethnic origin Directive is covering education** and that the argument of subsidiarity in relation to the Horizontal Directive is not valid.

In a Presidency Progress report (Interinstitutional File 2008/0140 (CNS)), written in June 2016 by the Dutch Presidency, it is stated, that a "**large majority of delegations has welcomed the proposal in principle, many endorsing the fact that it aims to complete the existing legal framework by addressing all four grounds of discrimination through a horizontal approach**", but also that although the fight against discrimination is important "certain delegations have, in the past, questioned the need for the Commission's proposal, which they have seen as infringing on national competence for certain issues and as conflicting with the principles of subsidiarity and proportionality."

Topics discussed during the presidency in this field were, for example the **interplay between the proposed Directive and the proposed European Accessibility Act (EAA)**, where both proposals address the issue of accessibility, but in different ways: the Equal Treatment Directive would establish a general principle of non-discrimination that would be applicable to the very broad range of goods and services included within its scope, whereas the EAA would lay down detailed accessibility requirements for a closed list of specific goods and services.

Conclusions from the Dutch presidency were that **further discussion is needed** on for example the "interplay between the Equal Treatment Directive and the EAA, as well as on a number of other outstanding issues, including the following: **the overall scope, certain delegations being opposed to the inclusion of social protection and education within the scope; remaining aspects of the division of competences and subsidiarity; and legal certainty regarding the obligations that would be established by the Directive.**"

According to representatives from **EQUINET, the European Network of Equality Bodies**, the most common complaint of discrimination in the EU is **discrimination in working life**. The second most common complaint is **access to goods and services, for example being discriminated when trying to get access to a particular education**. For most people, the latter is not covered by EU legislation, for example because the "Horizontal Directive" has so

far not been made into EU law, but there is coverage on national level in many individual member states. DG Employment representatives mention women wearing headscarves being the most common example of reported discrimination in working life. This is reflected also in the resolution from the European Parliament mentioned above ([2015/2116\(INI\)](#)), where it is stated that "studies show that the **most discriminated religious groups in the area of employment include Jews, Sikhs and Muslims (and especially women)**" and therefore "recommends the adoption of European frameworks for national strategies to combat anti-Semitism and Islamophobia".

EQUINET, as well as representatives at DG Employment, national equality bodies and civil society organisations have raised the issue of **lacking resources to help people seeking redress after being discriminated** as a general problem. There are also differences between countries in the EU regarding the willingness to report discrimination. In some countries the trust in authorities is limited, and people might therefore not report incidents of discrimination. In other countries, reports are more frequent. There should be **increased efforts to raise awareness about rights, and how to go about to report discrimination**. This has been noted also by the parliament. In the resolution mentioned above ([2015/2116\(INI\)](#)) it is stated "whereas, although the perception of discrimination has increased, **numerous victims of discrimination are still not aware of their rights or do not dare to take legal action against discriminatory practices**, because of various factors such as a lack of trust in Member State authorities or complex and lengthy legal procedures".

**Vulnerable groups** in the EU especially mentioned by representatives from DG Employment are the **Roma populations** of Bulgaria, Hungary, Romania and Czech Republic. There are a high number of reports of discrimination in for example access to education, There are also other vulnerable groups in the EU, where there is no competence from the EU to try to combat the problems and the responsibility lies with the member states, which have different legislation, abilities and political will to address the problems. These groups can be for example homeless people, children living in poverty, and migrants.

In the resolution from September this year ([2015/2116\(INI\)](#)) the European Parliament stated regarding discrimination in the EU that "evidence collected by the European Union Agency for Fundamental Rights (FRA) shows that **racism, xenophobia, homophobia and transphobia and related forms of intolerance are widespread**, despite measures taken by governments and civil society across the EU; whereas the social and political climate is growing ever more tolerant of extremist, racist and xenophobic agendas that exploit fears about unemployment, the refugee crisis, alienation partly as a result of migration flows, and security in the face of terrorism and other geopolitical challenges, which undermines core EU values" and that "**women are most affected by unemployment and suffer negative discrimination in terms of employment**, particularly pregnant women and mothers, including mothers who are breastfeeding" and that "the rate of employment of people with disabilities in the Member States is far below 50 %, as compared to over 70 % for the general population, and **the rate of unemployment of people with disabilities (18,3 %) is almost**

**twice that of the general population (9,9 %)**; whereas the EU averages conceal strong differences at country level” and that “the employment rate among women with disabilities is less than 50 %, a figure which highlights the twofold discrimination that they face, making it difficult for them to play a full part in society”.

The resolution also focused on the situation for **LGBT people in the EU and highlighted the differences in protection within the union**: “the number of Member States that have extended the prohibition of discrimination based on sexual orientation to all areas covered by the Racial Equality Directive grew from 10 in 2010 to 13 in 2014” but “**protection from sexual orientation and gender identity discrimination is still limited**”, and that “**the scope of protection from discrimination available to trans people, especially in the areas of employment, education and healthcare, remains uncertain in many Member States**”. The parliament therefore “**calls for measures to implement effectively national legislation transposing the Gender Equality Directive**” and “points out that such measures could improve legal definitions to ensure that protection includes all transgender people and not only trans people who are undergoing or have undergone gender reassignment”.

## **Ukraine’s anti-discrimination legislation and policies**

### **On Principles of Prevention and Combating Discrimination of Ukraine**

Introduced in 2014, the main features of the Ukrainian anti-discrimination law are:

- Discrimination is defined as: a situation in which the individual and / or group of persons because of their **race, skin color, political, religious or other beliefs, sex, age, disability, ethnic or social origin, nationality, and marital status, place of residence, linguistic or other features** that existed, exist and can be real or imagined suffered, incurred or may incur limitations in any form, established by this Law except the cases when such limitation has legal, objectively reasonable goal, ways to achieve what are appropriate and objective.
- The scope of the law is public and political activity; **civil service and service in the bodies of local self-government; judiciary; labour relations, including the application of the principle of reasonable accommodation by the employer; healthcare; education; social security; housing relations; access to goods and services; other spheres of public life.**
- The different forms of discrimination are: **direct discrimination; indirect discrimination; incitement to discrimination; aiding discrimination; harassment.**

Noteworthy is for example that this legislation covers the field of education for all groups included – where as in the EU only the Race and Ethnic Origin Directive covers education. **People lacking protection completely in the Ukrainian legislation is people who could be discriminated because of their sexual orientation or gender identity.**

### **The National Strategy for Human Rights and the Action Plan**

On the 25th of August 2015 the National Human Rights Strategy was approved by the

president of Ukraine. The strategy sets out a number of **strategic goals in the field of human rights and anti-discrimination**. Especially worth mentioning here are:

- **Preventing and combating discrimination**

Challenges include: lack of consistent activities of state authorities and local self-government bodies in this area, inefficient legal mechanisms of bringing to liability for committing discrimination, lack of awareness raising for overcoming stereotypes, biases and intolerance prevalent in society. Expected outcomes include: a **comprehensive and consistent legislation in the area of preventing and combatting discrimination**; awareness raising programmes for citizens; everyone is provided with unrestricted access to efficient legal protection from discrimination; non-discrimination and respect for diversity are observed and implemented, measures are taken to overcome social stereotypes leading to discrimination; responsibility is increased for the refusal to reasonably adjust infrastructure to the needs of disabled persons; **crimes committed for reasons of racial, national, religious and other intolerance are efficiently investigated**, while perpetrators are brought to liability; statistical data on violations of the law on preventing and combatting discrimination and on bringing perpetrators to liability are gathered and processed.

- **Ensuring equal rights for women and men**

Expected outcomes include: international standards of gender equality are implemented, including at the legislative level; **the mechanisms for ensuring equal rights and opportunities for women and men are improved**; conditions are provided for balanced participation of women and men in the political processes and public decision-making; comprehensive measures are implemented to combat gender discrimination, including gender stereotypes; equal access to justice is provided.

- **Ensuring the rights of national minorities and indigenous peoples**

Expected outcomes include: an **effective mechanism to ensure and protect the rights of national minorities and indigenous peoples is established**; comprehensive measures to meet the demands of citizens of Ukraine belonging to national minorities and indigenous peoples for social and other services are taken; an efficient mechanism is established for participation of representatives of national minorities and indigenous peoples in decision-making of state authorities and local self-government bodies on issues that concern the rights of national minorities and indigenous peoples; a policy of inter-ethnic tolerance is implemented.

- **Ensuring the right to education**

Expected outcomes include: educational curricula encompass the issues of human rights education, including children rights and gender equality; **inclusive education is implemented to enable the disabled persons to fulfil their right to education**; **equal rights to education are provided without privileges or discrimination on any grounds, including on the grounds of ethnic and social**



**origin, economic status, place of residence and other grounds.**

- **Protection of the rights of internally displaced persons**

Expected outcomes include: the basic livelihood needs of internally displaced persons are provided; comprehensive measures are taken to support and maintain social adaptation of citizens of Ukraine who moved from the temporarily occupied territory of Ukraine and the area of anti-terrorist operation to other regions of Ukraine; social rights of internally displaced persons are observed and protected, their educational and other needs are met; efficient mechanisms for promoting the observance and restoration of rights and freedoms of internally displaced persons are introduced; **international legal mechanisms for the protection of rights and freedoms of internally displaced persons are used.**

The **Action Plan** to implement the strategy was adopted on November 23rd of 2015. The Action Plan is a very extensive document, covering both expected results, measures aimed at achieving the expected results, indicators of this, execution term and a responsible actor for each result. Some expected results worth mentioning in this context are:

- Expected result 39: **”To prevent unnecessary and disproportionate restriction on the right to peaceful assembly”**, where “the specific nature of controversial meetings, in particular, the events of the LGBT community” is one of the measures.
- Expected result 62: **“To ensure access to health care for the persons diagnosed ‘intersexed’”**, where “establishment of a multidisciplinary working group on development and implementation of medical standards” is one of the measures.
- Expected result 64: **“To create equal access to high quality health care and social assistance for drug-addicted persons, people living with HIV, tuberculosis patients and people having other socially dangerous diseases”**, with the measure: “Development and approval of the **Procedure for providing medical care to persons, who need sex change (correction), where medical and legal aspects are clearly defined**, and the procedure of gender change complies with recommendations by Council of Europe and United Nations Human Rights Committee”.
- Expected result 105: **“To ensure fullness and coherence of legislation in preventing and combating discrimination**, to implement relevant and well-timed positive actions at the national and local levels in regard to prevention and combating discrimination, to ensure an effective and well-timed country’s response to new challenges”, including the measures: **“Harmonization of the list of grounds which prohibit discrimination against with the EU legislation, including non-discrimination on the grounds of sexual orientation and gender identity**, expanding the list of the forms of discrimination (victimization), to deal with the issue of prohibition of multiple discrimination and discrimination by association, to clarify the scope of law” and **“To punish for the hate crimes on the grounds of such grounds as race, skin colour, religious beliefs, sexual orientation, transsexuality, disability, language”** and “Drafting of a bill on **legalization of registered civil**

**partnership in Ukraine for opposite-sex and same-sex couplestaking** into consideration property and non-property rights, in particular to own and inherit property, to support a partner in case of incapacity for work, a constitutional right not to testify against the partner and its submission to the Cabinet of Ministers of Ukraine” and “To establish a working group involving international experts to develop a Procedureto change legal identity documents for the persons with a confirmed clinical diagnosis ‘transsexed’ and to prepare proposals to amend appropriately other regulatory documents” and “**To develop a Procedure to change legal identity documents for the persons with a confirmed clinical diagnosis ‘transsexed’** and to prepare proposals to amend appropriately other regulatory documents”.

- Expected result 109: “**To ensure effective investigation of the crimes on grounds of race, ethnic origin, religion and other intolerance**, and to bring the perpetrators to justice”.

## **The anti-discrimination work in Ukraine in practice**

### **VLAP and developments of the National Human Rights Strategy and the Action Plan**

According to representatives from Ukrainian civil society organisation **Insight**, the agreements between Ukraine and the EU have been the only reasons for the rapid development of the anti-discrimination framework in Ukraine. Before the agreements, a prohibition of unequal treatment was only mentioned in the constitution and there were few other explicit references to this in other laws. Insight mainly lists the **Action Plan on Visa Liberalisation, VLAP**, launched in 2010, as a key process in this development.

Insight describes the process in the following way: The first anti-discrimination law was voted on in October 2012. Because the law contained a number of shortcomings, such as a lack of a comprehensive list of protected grounds, lack of a mechanism to shift the burden of proof, weak role of the national equality body, no administrative punishment for discrimination or any other sanctions apart from the Criminal Code, there were attempts to amend it in May 2014. The second version ensured changes in definitions, added new grounds of discrimination and intensified the role of the national equality body, as well as established the possibility to shift the burden of proof. **Unresolved were the issues of inclusion of sexual orientation and gender identity in the list of protected grounds, and the establishment of administrative procedures for reporting discrimination, and definition of penalties for discrimination. The law was introduced in 2014.**

In the **Sixth Progress Report from the Commission to the Council and the European Parliament on the Implementation by Ukraine of the Action Plan on Visa Liberalisation (COM (2015) 905 final)** written in December 2015, it is reported on how effective and sustainable the Ukrainian authorities have implemented the benchmarks of the second phase of the VLAP. In **Block 4: External relations and fundamental rights, the report state, under the headline Citizens’ rights, including protection of minorities**, the following: “The President adopted the National Human Rights Strategy on 25 August 2015, which includes sections on anti-discrimination. Ukraine continued to implement at a reasonable level

the legal framework on the protection of persons belonging to national minorities.” The report also commends the progress on delivering training on anti-discrimination to law enforcement officials, prosecutors and judges, and describes the commitments made by Ukraine in the Annex XL to the Association Agreement regarding approximating its legislation with EU antidiscrimination directives. In the Fifth progress report it was stated that **“the improvements of the antidiscrimination law would be deemed fulfilled provided the Action Plan on the implementation of the National Human Rights Strategy includes identified gaps and indicates a limited time for their redress. Parliament also adopted on 12 November amendments to the Labour Code which explicitly prohibit discrimination on the basis of sexual orientation. /.../ Subsequent legislation in this area, such as the new Labour Code which is pending adoption in the Parliament, will need to guarantee the same prohibition.”** The benchmark was deemed to have been achieved. This was the last Progress Report and the second phase of the VLAP has been finalised. The report states that the Commission will continue to actively monitor Ukraine’s implementation of all the benchmarks under the four blocks of the VLAP under the existing association structures and dialogues.

**Unfortunately, the new draft Labour Code has not been discussed lately and there is no information when it would be on the agenda of the Parliament again. The draft of the new Labour Code, which passed the first reading in November 2015, did not include prohibition of discrimination on basis of sexual orientation.**

A positive development noted by the progress report was the exclusion, on June 11<sup>th</sup> 2015, of hiv/aids infection from the list of diseases that serves as a basis for refusing immigration permits.

In the Commission Staff Working Document, accompanying the Progress Report from December 2015, it is noted that **discrimination on the basis of sexual orientation and protection of the Roma population are not addressed in the National Human Rights Strategy.** The working document then states that a draft version for the Action Plan to implement the strategy includes actions related to the Roma community, LGBT people and commitments set by the Association Agreement concerning anti-discrimination in Annex XL to Chapter 21. **This was also included in the adopted Action Plan, in November 2015.**

In the Commission Staff Working Document there is also more detailed information on the practise and the application of the laws. After the amended Anti-discrimination law entered into force 2014, there is data on complaints and legal proceedings available. **But there is still need for improvement regarding “effective, proportionate and dissuasive sanctions and derogations”.** This is very similar to the critique from Insight referred to above and it is also noted in detail in a document assessing the state of fulfilment of the 2<sup>nd</sup> phase benchmarks of the VLAP, written in September of 2015. The reporters conclude that international standards are not fulfilled when it comes to sanctions - the special law generically provides sanctions for discrimination deeds, the **administrative Code does not stipulate expressly either the**

**amount of the sanction, or the agencies mandated to enforce the sanction. Also, in practise, there was no case law to be able to estimate if the requirement of compensation granting for victims was met. This is still the case.**

The equality institution, the **Parliamentary Commissioner on Human Rights**, worked closely with civil society organisations and international organisations to implement the Strategy on Preventing and Combating Discrimination in Ukraine 2014-2017 and the related Action Plan, states the Working Document, and considered 314 complaints on discrimination on the basis of ethnic origin, religion, disability, sexual orientation. The body also initiated 39 proceedings with respect to hate crime, hate speech and discrimination. In the Assessment Document it is noted that too many cases have been concluded by for example an ascertainment, which results in too few relevant cases to be able to assess the interpretation of the anti-discrimination legislation. The combined problems are **preventing citizens from reacting in discrimination cases and do not dissuade those who perpetrate discrimination deeds.**

The Equality institution has also worked with awareness raising, for example with the campaign “Discrimination restricts, Counteract”. **The Assessment Document stresses the need for more strategic, permanent effective campaigns.**

The Working Document also notes that the **new Labour Code so far has not included a prohibition of discrimination on the basis of sexual orientation** and notes that there are a number of documented incidents and crimes motivated by homophobia in Ukraine. Civil society organisation Nash Mir has documented 34 cases between January and August 2015. (In 2016, the documented number of cases between January and July were 109, according to a report by ILGA Europe from August 2016.)

On October 5<sup>th</sup> 2016 The **All-Ukrainian Council of LGBT-organizations of Ukraine** wrote a statement regarding the implementation of the National Strategy on Human Rights and sent it to among others the EU Delegation to Ukraine. In the statement they express their “**deep common concern about the implementation of the Action Plan, namely its components to protect the rights and interests of the Ukrainian LGBT community citizens.**” In regards to the five expected results, with a number of different measures, (quoted above), that have impact to LGBT people, the report states: “Of these fifteen tasks, nine were to be implemented (partially or completely) in the first three quarters of 2016. In fact, except for commencing to develop a course for law enforcement officials on preventing discrimination and to prevent law enforcement officers from discrimination towards vulnerable groups (item 105, task 5), **government agencies still ignore all LGBT components of the Action Plan.**”

The report states further: “**Particularly alarming to us is that officials of some government bodies openly express their disagreement with certain provisions of the Plan relating to LGBT people, and have expressed their wish to change or cancel them entirely.** Thus, the Ministry of Justice in its official reply actually refused to introduce explicit prohibition of

discrimination on grounds of sexual orientation and gender identity (SOGI) in the Law of Ukraine 'On Principles of Prevention and Combating Discrimination in Ukraine' (item 105, task 1). We also reliably know that the Ministry of Interior does not want to make the necessary changes to criminalize 'hate crimes' on grounds of SOGI to most articles of the Criminal Code as provided for in item 3, task 105." The report concludes: **"Accordingly we are forced to admit the failure to carry out the LGBT components of the Action Plan by the Ukrainian government."**

The same concerns are raised in the report by ILGA Europe, the umbrella organization of European LGBTI organizations, mentioned above. On the more positive side ILGA Europe also notes that there has been an **improvement from state and local authorities in Ukraine in their approach to LGBTI people and issues**: "This was especially evident in Kyiv, where the Kyiv City State Administration (KCSA) contributed to securing the Equality March within the Kyiv Pride 2016 LGBT festival. This was the first time in Ukraine when representatives of a local government – the head of KSCA Vitalii Klychko and other high-ranking officials - **clearly and unconditionally defended the constitutional right of LGBTI people to peaceful assembly, including publicly calling for tolerance and non-violence, and guaranteeing safety of participants.**" ILGA Europe also notes some negative examples of open statements from authorities, but also states that **"Very active in the protection of LGBT rights in Ukraine in 2016 was the office of the Ukrainian Parliamentary Commissioner on Human Rights** – particularly in support of the Equality March in Kyiv and other LGBT events across the country, and the introduction of the necessary legislative changes."

The Parliamentary Commissioner of Human Rights is also noted positively in the Assessment Document, which states that there has been significant progress concerning allocating sufficient budgetary and human resources to ensure sustainable implementation to support the policies on anti-discrimination. To further improve the situation, the document suggests that **The Parliamentary Commissioner for Human Rights be accepted as a full member of EQUINET. This would require funding from the Commission of the EU.**

The Assessment Document also notes the **recommendation in the VLAP to maintain a permanent and effective dialogue between people belonging to national minorities and that national minorities representatives have reported a lack of an inter-ministerial structure at government level to be responsible for this.** Representatives have also reported a disadvantage for ethnic minority pupils in taking Baccalaurate exam to get into university, because they have Ukrainian as a second language. Because of this some years over 40 per cent of the students did not pass. The Assessment Document recommends additional language classes to be introduced for ethnic minorities and also that the dialogue with the representatives should be maintained.

The Assessment Document also notes the initiative addressing the problems faced by the Roma minority in Ukraine – the Strategy for the Protection and Integration of the Roma national minority, from 2013. According to the Assessment Document the **Roma people is**

**the community mostly targeted by discrimination in Ukraine.** Many live in encampments, and there is ethnic segregation observed in the field of education for children. The Strategy has shown a **lack of reasonable and effective results and there has been criticism regarding for example the lack of indicators, lack of monitoring mechanism, implementation, evaluation and effectiveness, and of an annual progress report.** There is a lack of coordination on governmental land on local level, and there is a lack of an allocated budget to implement public policies for the improvement of the situation for the Roma. The report hopes that this can be addressed in the Action Plan – but this was not the case.

There have also, the Assessment Document notes, been **reports from the Tatar minority about serious human rights breaches against them.** The representatives in Crimea reported breaches of the rights to express and preserve ethnic and religious identity, aggressions, violence, kidnapping, illegal detentions, seizure of goods and censoring of the freedom of expression and religion.

The **situation of internally displaced persons, IDPs,** is also noted in the assessment document. There have been reports of discrimination against IDPs in the contexts of buying properties and employment, and there are **reports about harassment and hate speech, segregation in housing and schools, multiple discrimination of Roma and Jewish IDP:s,** discrimination on political opinions, actions to prohibit IDPs from voting in local election in October 2015.

**In a report from the Office of the United Nations High Commissioner for Human Rights, OHCHR, regarding the situation of human rights in Ukraine from the 16<sup>th</sup> of May to the 15<sup>th</sup> of August 2016, the situation of the IDPs is also addressed. It is "critical for Ukrainian authorities to ensure equal protection of law towards people living in armed group-controlled areas and IDPs. The creation of obstacles toward obtaining social entitlements, including through amendments to Resolution No. 637, places undue burdens on personson the basis of their origin, limits their freedom of movement, and subjects them to intrusivescrutiny. By depriving IDPs of their social entitlements, the Government is further deepening the socio-economic hardships of IDPs, making them dependent on humanitarian aid." The UN Refugee Agency, UNHCR, also, in a message from September 2016 stresses the importance of the situation of IDPs being addressed: "UNHCR calls on the Government of Ukraine for a settlement of the issue of the payment of pensions and social benefits that is not discriminatory towards Internally Displaced People (IDPs).**

#### **Recommendations from The EU-Ukraine Association Agenda, The EU-Ukraine Human Rights Dialogue, EU-Ukraine Civil Society Platform and the EU-Ukraine Parliamentary Association Committee**

**In the EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, a document endorsed by the EU-Ukraine Association Council on 16 March 2015,** there are a number of recommendations to Ukraine, and the

document also stresses the importance of the active role of civil society in the work with the Association Agreement. The EU-Ukraine civil society platform is especially mentioned.

The aim of the Association Agenda is described in the following way: "to prepare and facilitate the implementation of the Association Agreement, by creating a practical framework through which the overall objectives of political association and economic integration can be realised and by providing a list of priorities for joint work on sector by sector basis." The Agenda give a number of good examples on how the Association Agreement can guide cooperation in the field of antidiscrimination and the rights of vulnerable groups.

Under the headlines **Political Dialogue** and **Democracy, rule of law, human rights and fundamental freedoms**, the adoption and implementation of the National Human Rights Strategy and the Action Plan is mentioned and recommendations include "ensure the full application of the legislative framework on anti-discrimination on all grounds, including implementation of the Anti-Discrimination Law and strengthen the capacity of the Ombudsman in line with the progress reports on the Visa Liberalisation Action Plan", as well as "exchanging best practices on measures to protect minorities from discrimination and exclusion in accordance with European and international standards, with the objective of developing a modern legal framework. Developing close cooperation between the authorities and representatives of minority groups" and "cooperate on measures to combat the growth in intolerance and the incidence of hate crimes (whether due to racism, homophobia, xenophobia or anti-Semitism)" and "exchange best practices to ensure the equality of men and women in social and economic life and promote the greater participation of women in public life and decision-making".

In a Joint communiqué to the 4<sup>th</sup> meeting of the EU-Ukraine **Parliamentary Association Committee in September 2016** the Co-Chairs of the **EU-Ukraine Civil Society Platform** expressed a wish that in order to increase the role of NGOs, volunteers' organisations and activists in the promotion of democratic changes and respect to human rights, the **EU, should enhance its support for civil society and Ukrainian government.**

In a press release following the latest **EU-Ukraine Human Rights dialogue**, on July 20<sup>th</sup> 2016, these were some of the statements made: "The EU commended Ukraine for adopting the national human rights strategy 2016-2020 and the related action plan and **underlined the importance of its implementation. Both sides agreed on the important role of the Human Rights Commissioner of the Ukrainian Parliament and of civil society in strengthening human rights protection in Ukraine**" and "Non-discrimination policy was discussed, too, including the rights of LGBTI persons and those belonging to ethnic, linguistic, religious and national minorities, the rights of the child, gender equality and women's rights as well as the reform of the electoral framework."

## **Recommendations to the EU**

- Adopt the “Horizontal Directive”, to level the legal protection against discrimination for citizens in the EU.
- Ensure that the current legal protection granted by EU law to those who intend to undergo, are undergoing or have undergone gender reassignment is extended to all trans persons in the the EU member states.
- Work with awareness raising to increase the knowledge among all citizens about their rights, in cooperation with civil society organisations.
- Allocate more resources to ensure that people who have experienced discrimination have reasonable chances to seek redress.
- Allocate resources to make it possible for The Parliamentary Commissioner for Human Rights (of Ukraine) to be accepted as a full member of EQUINET. This would require funding from the Commission of the EU.

### **Recommendations to Ukraine**

- Ensure the full application of the legislative framework on anti-discrimination on all grounds, including implementation of the Anti-Discrimination Law.
- Develop close cooperation between the authorities and representatives of minority groups.
- Ensure that prohibition of discrimination based on sexual orientation and gender identity is included in the new draft Labour Code.
- Provide civil society organisations with the right to represent victims in courts and/or make claims in public interests.
- Adopt and implement the Action Plan to prevent and combat discrimination in all spheres.
- Launch a national informational awareness-raising campaign on the Anti-discrimination law and the prohibition of discrimination, in cooperation with civil society organisations.
- Invest in civil society, show that the work is appreciated and prioritized and not depending on funding from external parties.

### **Recommendations to Ukraine and the EU**

- Introduce hate crime legislation to counter the widespread racism, xenophobia, homophobia and transphobia and related forms of intolerance.
- Exchange best practices on measures to protect minorities from discrimination and exclusion in accordance with European and international standards, with the objective of developing a modern legal framework