

IN THE CROSSCURRENTS

Addressing Discrimination
and Inequality in Ukraine

Equal Rights Trust
in partnership with Nash Mir



EQUAL RIGHTS TRUST
IN PARTNERSHIP WITH
LGBT HUMAN RIGHTS CENTRE NASH MIR

In the Crosscurrents

Addressing Discrimination and Inequality in Ukraine

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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

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This report has been prepared with the financial assistance of the European Union. The contents of this report are the sole responsibility of the Equal Rights Trust and Nash Mir and can in no way be taken to reflect the views of the European Union.

*Ради тебе перли в душу сію,
Ради тебе мислю і творю.
Хай мовчать Америки й Росії,
Коли я з тобою говорю*

Василь Симоненко
"Задивляюсь у твої зіниці...", 1964

*For you [Ukraine] I put pearls in my soul
For you I think and create
Let Americas and Russias be silent
When I speak to You*

Vasyl Simonenko
"I am looking into your eyes...", 1964

Vasyl Symonenko is a well-known Ukrainian poet, journalist, and dissident. He is considered one of the most important figures in Ukrainian literature of the early 1960s.

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On the basis of the research, the first draft of the report was prepared by Richard Wingfield (Equal Rights Trust) and Andrii Kravchuk (Nash Mir) who also undertook a review of existing literature. In February 2015, Dimitrina Petrova (Equal Rights Trust) and Richard Wingfield undertook a validation visit in Ukraine, meeting experts and stakeholders from civil society, academia, government and the judiciary to consult them on the draft report. Following this visit, Richard Wingfield prepared a second draft incorporating the findings. This draft was reviewed and revised by Jim Fitzgerald and Joanna Whiteman (Equal Rights Trust). Finally, the report was edited and authorised for publication by Dimitrina Petrova, who also oversaw the overall research and drafting process.

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Finally, we wish to thank all persons who shared their stories with us. This report is dedicated to them and all other persons in Ukraine who have suffered – and who continue to suffer – discrimination and disadvantage.

ACRONYMS AND ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
HIV	Human Immunodeficiency Virus
HRC	Human Rights Committee
ICCPED	International Convention for the Protection of All Persons from Enforced Disappearances
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR-OP	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
ICMRW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IDP	Internally Displaced Person
ILO	International Labour Organization
IOM	International Organization for Migration
KCSA	Kyiv City State Administration
LGBT	Lesbian, gay, bisexual and transgender
MSEC	Medico-Social Expert Committee

NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
UAOC	Ukrainian Autocephalous Orthodox Church
UDAR	Ukrainian Democratic Alliance for Reform
UDHR	Universal Declaration of Human Rights
UGCC	Ukrainian Greek Catholic Church
Ukrainian SSR	Ukrainian Soviet Socialist Republic
UN	United Nations
UOC KP	Ukrainian Orthodox Church – Kyiv Patriarchate
UOC MP	Ukrainian Orthodox Church – Moscow Patriarchate
UPR	Universal Periodic Review
USSR	Union of Soviet Socialist Republic
WHO	World Health Organization

NOTE ON LANGUAGE AND TRANSLATION

Although this report is in English, many of the sources used for the report originated in Ukrainian or Russian. Our approach towards translation sources has been as follows:

Constitution of Ukraine

All references to the Constitution of Ukraine and to provisions within it have been taken from the English language version of the Constitution of Ukraine provided by the Constitutional Court of Ukraine.¹

Legislation

The official titles of legislation appear in Ukrainian in the footnotes, referenced as they appear on the “Laws of Ukraine” webpage at the website of the Verkhovna Rada of Ukraine.² In the main text of the report, we have used unofficial English language versions of the titles, translated by the drafters of this report.

Where available, we have used translations of the provisions of legislation which have been made by international and regional organisations such as the United Nations and the Council of Europe. Where unavailable, the drafters of the report have translated the provisions.

Court Decisions

The official names and citations of decisions of Ukrainian courts appear in Ukrainian in the footnotes. In the main text of the report, we have used unofficial English-language versions of the titles, translated by the drafters of this report.

For judgments of the Constitutional Court of Ukraine, where possible, we have used the English language summaries of court decisions made available

1 Constitutional Court of Ukraine, *Constitution of Ukraine*, available at: www.ccu.gov.ua/doccatalog/document?id=12084.

2 Верховна Рада України, Головна сторінка сайту “Законодавство України”, available at: <http://zakon4.rada.gov.ua/laws>.

from the website of the Constitutional Court of Ukraine.³ Where summaries of the relevant parts of the judgments of the Constitutional Court of Ukraine were not available in English, and for all decisions of lower courts, the drafters of the report have translated the judgments themselves.

Reports

Where a report by a Ukrainian institution or organisation has been published in English, we have used the English language name of the institution or organisation in the footnote. Where a report by a Ukrainian institution or organisation has been published in Ukrainian or Russian, we have used the Ukrainian or Russian language name of the institution or organisation in the footnote.

Names

The official English/Latin spelling of names in Ukrainian identification documents is inconsistent. So, for example, there are people with the same Ukrainian name “Сергій” whose names are spelt Serhii, Sergiy, Sergii, Serhij and Ser-gij in their identification documents. In this report, we have used the version as reflected in such personal documents, resulting in inconsistent rendering of the same name in Latin script, but remaining true to the original spelling choice of individuals.

Testimonies

All testimonies were collected in Ukrainian or Russian and have been translated into English by the drafters of this report.

Any errors in translation lie with the authors of this report alone.

3 Constitutional Court of Ukraine, *Jurisprudence*, available at: <http://www.ccu.gov.ua/en/publish/category/12154>.

EXECUTIVE SUMMARY

This report is published at a time of profound change and uncertainty in Ukraine. The country is caught in the crosscurrents created by powerful forces fighting for Ukraine's political identity. Will Ukraine end up as an ally and future member of the European Union, or a junior partner of a Russia which increasingly distances itself from the rest of Europe? The main line dividing people is Ukraine today runs between these opposing political orientations, and has its tragic reality in the actual frontline cutting through the east of the country. While not fully eclipsing the many other identity struggles which are the subject of this report, the armed conflict in Donbas and the preceding annexation of Crimea have to a large degree permeated all aspects of our research.

In assessing the enjoyment of the rights to equality and non-discrimination in Ukraine, this report finds that the country's progress towards achieving equality for all has been deeply influenced by competing visions for the country's future. Thus, while a drive to comply with European Union standards led the country to adopt comprehensive anti-discrimination legislation, much of the political class refused to engage with the process, perceiving the new law as a European imposition, rather than a reflection of a political or social consensus. Indeed, as amendments to strengthen this law were being developed in 2013–2014, some parliamentarians were seeking support for Russian-inspired legislation to ban "homosexual propaganda".

Ukraine's position between two different political worlds is also reflected in the patterns of discrimination and inequality identified in the report. Most prominently, issues of language, and latterly ethnicity, have become key battlegrounds for those promoting different visions of Ukraine's future. Yet the report also finds that the rights of lesbian, gay, bisexual and transgender (LGBT) persons are another key issue in dispute in the process of Ukraine's nation building. Similarly, different approaches to addressing inequalities on the basis of gender and disability reflect the different social and legal traditions of Western Europe and the Commonwealth of Independent States, and thus the different visions of the two sides in the conflict.

Thus, the report finds that in many ways, Ukraine stands at a crossroads in terms of the protection of the rights to equality and non-discrimination. Since 2012, the country has made great progress in improving its legal framework,

largely as a result of the government's desire to pursue greater European integration. Yet these protections – and even older ones in respect of women and persons with disabilities – remain largely unenforced and unimplemented. Moreover, as the fight for the country's future continues, it will be important for the state to guard against unravelling of its accomplishments in the protection of equal rights.

Part 1: Introduction

Purpose and Structure

The purpose of this report is to highlight and analyse discrimination and inequality in Ukraine and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights problems, while also seeking to shed light upon less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequalities of many different forms with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out its purpose and structure, the conceptual framework which has guided the work, and the research methodology. It also provides basic information about Ukraine, its history and the current political and economic situation. **Part 2** discusses the principal patterns of discrimination and inequality affecting different groups in Ukraine. **Part 3** analyses the legal and policy framework as it relates to non-discrimination and equality. **Part 4** contains conclusions and recommendations, drawn from an analysis of both the patterns of discrimination and inequality examined in Part 2 and the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 3.

Conceptual Framework and Research Methodology

The conceptual framework of this report is the **unified human rights framework on equality**, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each type of

inequality and the overarching aspects of different inequalities. The unified framework brings together:

- a. types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
- b. types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, and provision of goods and services, among others; and
- c. status inequalities and socio-economic inequalities.

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128 and subsequently by thousands of experts and activists on equality and human rights from all over the world.

This report is the result of a two and a half year partnership between the Equal Rights Trust and the Ukrainian non-governmental organisation LGBT Human Rights Nash Mir Center (Nash Mir). Since 2012, the Equal Rights Trust and Nash Mir have worked in partnership on a project designed to combat discrimination and inequality in Ukraine. This report is one of the outcomes of the project.

During this period, the partners had extensive opportunities to consult and conduct research on patterns of discrimination and inequality in Ukraine. We commissioned research by non-governmental organisations and individuals on different groups experiencing discrimination, and engaged with representatives of these groups directly. We also independently reviewed existing literature on discrimination and inequality on different grounds, and analysed and assessed the country's legal and policy framework related to equality. Prior to publication, this report was the subject of an extensive consultation, in which its findings and conclusions were exposed to scrutiny by experts and stakeholders from civil society, government and academia. We believe that as a result, the report's findings and conclusions have been significantly strengthened.

Country Context, History, Government and Politics

In addition to the conceptual framework, the first part of the report provides an overview of the demographic, economic, social, political and historical context in which discrimination and inequality manifest themselves in Ukraine.

Ukraine is the largest country wholly in Europe and the 46th largest country in the world, with a total area of 603,500 km². The capital city is Kyiv with a population of approximately 3 million people. The Autonomous Republic of Crimea was, as of May 2015, the subject of a territorial dispute between Ukraine and Russia and under the *de facto* control of the latter. Parts of two oblasts, Donetsk and Luhansk, were under the *de facto* control of pro-Russian separatists.

Ukraine is home to approximately 44.3 million people. The 2001 census revealed that ethnic Ukrainians made up 77.8% of the population, with Russians a sizeable minority (17.3%). Much smaller minorities include Roma, Belarusians, Moldovans, Crimean Tatars, Bulgarians, Hungarians, Romanians, Poles and Jews. A 2014 study carried out by the Razumkov Centre showed that 76.0% of Ukrainians considered themselves religious, of whom 70.2% were Orthodox Christians. Of the remaining 28.8%, 16.1% were non-Orthodox Christians with very small numbers of Jews, Muslims and Buddhists.

The country's official language is Ukrainian, although the issue of language is both complex and contentious. According to the 2001 census, Ukrainian was the first language of 67.5% of the population with 29.6% of the population speaking Russian as a first language. In practice, most people in Ukraine are bilingual, with decisions about which is a "first" language appearing to be more a question of identity politics than linguistic necessity.

In 2013, Ukraine's Gross Domestic Product (GDP) was US \$177,431 million, ranking it in 55th place in the world on the GDP list produced by the World Bank. Ukraine's GDP per capita (purchasing power parity) in 2013 was US \$8,790 and its GNI per capita (purchasing power parity) in 2013 was \$8,970. The United Nations Development Programme ranked Ukraine in 83rd place in its Human Development Index (HDI) for 2014, with an HDI of 0.734. Ukraine's Gini Income coefficient for the period 2003–2012, measuring inequality in the distribution of wealth, was 25.6, the second lowest in the world. The ratio of the average earnings of the richest 20% to those of the poorest 20% in the same period was 3.6.

The territory occupied by modern-day Ukraine has been claimed by a number of powers over the centuries. It ultimately became the Ukrainian Soviet Socialist Republic (Ukrainian SSR), within its present borders, in 1954. The

Ukrainian SSR was one of fifteen constituent republics which formed the Soviet Union until its collapse in 1991. On 24 August of that year, Ukraine declared itself an independent state.

The presidential election which took place at the end of 2004 saw a fierce battle between pro-Russian Prime Minister, Viktor Yanukovich, and the pro-Western Viktor Yushchenko. Yanukovich was declared the winner by the Central Election Commission in November, but Yushchenko challenged the results and a series of protests took place, nicknamed the Orange Revolution. On 26 December, the Supreme Court of Ukraine annulled the results and ordered a revote. This time, Yushchenko was declared the winner and became President in January 2005.

Yushchenko's popularity diminished quickly. In the next presidential election in 2010, he garnered just 5.5% of the vote, and his rival, once again Viktor Yanukovich, succeeded him as President. Under President Yanukovich, the few democratic reforms of the Yushchenko period were largely undone. The new administration began to establish control over the courts and to prosecute its political rivals. In October 2010, the Constitutional Court annulled a series of 2004 constitutional amendments which had limited the powers of the President.

In November 2013, following a decision by President Yanukovich not to sign an Association Agreement with the European Union, a series of public protests began, initially in Kyiv at the Maidan Nezalezhnosti (Independence Square), but spreading across the more pro-European western and central regions of the country. The protests (known as EuroMaidan) quickly turned violent, with riots in January and February 2014 which resulted in dozens being killed and hundreds injured. The authorities initially tried to suppress the protests with force, before resorting to blockades.

The violence escalated. In Kyiv, unknown snipers shot dozens of protesters and militiamen. Support for the President and the government from deputies within the Verkhovna Rada and the Kyiv City Council plummeted. On 21 February 2014, President Yanukovich signed an agreement which envisaged the restoration of the 2004 Constitution, a process of constitutional reform and presidential elections by the end of the year. However, Yanukovich reneged on his position, leading the Verkhovna Rada to vote for his removal. Shortly

thereafter, Yanukovich fled the country. The Verkhovna Rada voted to replace Yanukovich with its Speaker, the governing Party of the Regions quickly collapsed and a new governing coalition was formed including representatives of the former opposition.

Discontent in the eastern parts of Ukraine, where people were more likely to prefer a pro-Russian orientation and where the strongest supporters of Yanukovich resided, followed these developments. In March 2014, a “referendum” was held in Crimea on whether the territory should remain part of Ukraine or become a federal subject within Russia. Official results showed almost 97% of voters preferring Crimea to become part of Russia, though this was widely questioned by international actors. Despite an international outcry, Crimea was annexed by Russia within days. Elsewhere, pro-Russian separatist movements rejecting the new administration in Kyiv seized control of local government buildings in a number of cities in the east. Local “referenda” established “People’s Republics” in the oblasts of Donetsk and Luhansk and a war began between local forces and the Ukrainian army.

In May 2014, a new presidential election was won by the pro-European Petro Poroshenko. On 27 June 2014, he signed the economic parts of the EU-Ukraine Association Agreement previously rejected by Yanukovich. The parliamentary elections held in October 2014 saw a five-party coalition of pro-European parties form a majority and the confirmation of Arsenii Yatsenyuk as Prime Minister.

The general human rights situation in Ukraine today is mixed. In 2015, Freedom House considered Ukraine to be “partly free”, receiving an overall freedom rating of 3.5 (with specific ratings of 3 for civil liberties and 3 for political rights).

Part 2: Patterns of Discrimination and Inequality

Part 2 of the report discusses what the Equal Rights Trust’s research identified as the principal patterns of discrimination and inequality in Ukraine. It is based on original direct testimony collected from a wide range of individuals, as well as interviews with experts. The report also includes research undertaken by authoritative sources in the last decade, and, where necessary, have referred to news reports. This part of the report does not seek to provide an

exhaustive picture, but rather an insight into what appear to be the most significant patterns of discrimination in the country.

This part of the report presents evidence of discrimination and inequality on grounds of (i) gender; (ii) sexual orientation and gender identity; (iii) disability; (iv) health status, particularly HIV status; (v) ethnicity, national origin and colour; (vi) nationality and citizenship; (vii) religion; (viii) language; (ix) status as an internally displaced person (IDP); and (x) age, with a focus on disadvantages faced by children. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the action of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education and access to goods and services.

With respect to discrimination on the basis of **gender**, section 2.1 of the report finds that women are the principal victims of gender discrimination in Ukraine, experiencing discrimination and disadvantage resulting largely from the persistence of patriarchal and paternalistic social norms. Thus, despite a strong legal framework prohibiting discrimination on the basis of gender, a number of laws directly discriminate against women, many ostensibly seeking to “protect” them, but in fact limiting their ability to make choices, particularly in employment. Despite specific criminal laws, rates of domestic violence and trafficking of women remain high. Women are unable to participate in employment on an equal basis with men: our research identified evidence of discrimination in recruitment, unequal pay, vertical and horizontal segregation and sexual harassment in the workplace. Patriarchal norms are also reflected in public life, where women are severely underrepresented: less than 12% of deputies in the Verkhovna Rada currently are women and there are just two women in the Cabinet of Ministers.

Section 2.2 of the report examines discrimination on the basis of **sexual orientation** and **gender identity**, finding that lesbian, gay, bisexual and transgender persons in Ukraine experience severe and systematic discrimination and inequality, as a result of high levels of stigma and a weak legal protection framework. While Ukraine was the first former Soviet state to decriminalise same-sex sexual activity, in 1991, social intolerance has gradually increased since that time, particularly since the beginning of the century. Re-

cent surveys indicate that up to three-quarters of Ukraine's population have a negative attitude towards LGB persons, while transgender persons also experience stigmatisation. The Ukrainian parliament has consistently resisted calls to enact legislation explicitly prohibiting discrimination on the basis of sexual orientation and gender identity, and a number of existing laws directly or indirectly discriminate against LGBT persons. There are significant problems with the law enforcement agencies, ranging from abuse, harassment, blackmail and extortion to a failure to protect from discriminatory violence. In this legal and social context, many LGBT persons choose not to disclose their sexual orientation or gender identity, because – as evidence presented in the report suggests – those who do this experience discrimination in employment, education and healthcare.

With respect to discrimination on the basis of **disability**, section 2.3 finds that although Ukraine is a party to the Convention on the Rights of Persons with Disabilities and has a relatively robust domestic legal framework in place to prohibit discrimination on the basis of disability, significant problems remain. While recent reforms have brought the law on disability into line with current best practice, the state displays a tendency to treat persons with disability as objects of social concern and welfare, rather than as autonomous rights-holders. Accessibility to public spaces and buildings remains a problem, despite the existence of clear legal obligations to ensure access and modify buildings and infrastructure. Persons with disabilities are unable to participate in employment on an equal basis with others, and rates of unemployment are very high, both because of direct discrimination and failure to make reasonable accommodation. Similarly, the government acknowledges that education remains inaccessible for many persons with disabilities. Finally, our research found that persons with disabilities experience discrimination and disadvantage in access to healthcare and to goods and services.

Section 2.4 of the report, examining discrimination on the basis of **HIV status**, finds that people living with HIV experience severe and widespread stigma and as a result are forced to either conceal their health status or experience exclusion in employment, education, healthcare and other areas of life. While Ukraine's specific anti-discrimination law does not explicitly prohibit discrimination on the basis of health status, legislation focused on preventing the spread of HIV does contain specific protections from discrimination on the basis of HIV status. However, some other laws directly discriminate on

the basis of HIV status, while those protections which do exist appear largely ineffective in practice. Research for this report found evidence of direct discrimination and harassment against people living with HIV in employment, healthcare and education.

Section 2.5 examines discrimination on the basis of **ethnicity, national origin** and **colour**, looking at the situation of five different minority groups: the Roma, Crimean Tatars, ethnic Russians, Jews and recent migrants. Of these, the **Roma** are rightly considered to be the most discriminated ethnic group in the country. They are at the receiving end of a number of discriminatory practices ranging from discrimination by state agents to high levels of unemployment, poverty and poor quality education and housing resulting from less favourable treatment. Roma are exposed to widespread social prejudice, with levels of intolerance higher towards them than towards any other ethnic group, and this corresponds to high levels of hate speech and hate crime. Prejudice also has an impact on interaction with state agents, and our research documented numerous cases of discrimination by law enforcement officials. For a range of historical and social reasons, many Roma lack identification documents, and many experience problems today in trying to secure such documents, as a result of discrimination by the relevant authorities. Lack of identification documents results in turn in difficulties in accessing social services and healthcare. The Roma also experience discrimination and inequality in education, employment and housing. In a recent development, we discovered that Roma IDPs are treated less favourably than other IDPs from the Donbas area.

Crimean Tatars are a Turkic ethnic group which was forcibly deported from Crimea in the early 1940s and returned there in the 1980s and 1990s. They face numerous, interwoven challenges: lack of access to land as a result of the seizure and redistribution of land during the period of their forced absence, high levels of hate speech and prejudice, including from the authorities, difficulties securing employment, barriers in using their language in education and lack of political representation. Since the annexation of Crimea, the *de facto* authorities have conducted large numbers of raids in search of weapons and “extremist” literature, routinely targeting Crimean Tatar properties.

Ethnic Russians are by far the largest ethnic minority in Ukraine, constituting almost one fifth of the population. In light of the conflict between pro-

Russian separatists and the Ukrainian state in the Donbass region of eastern Ukraine, the Equal Rights Trust sought evidence of discrimination against this group, in order to establish whether discrimination was a factor in creating or perpetuating the conflict. Interviews conducted for the report, together with research undertaken by other independent actors, found that relations between ethnic Russians and the majority were historically good, and remained good at the personal level even as the war raged in the east. While there were grievances among ethnic Russians in the east and south prior to the conflict of 2013–2014, these did not appear to have been based on ethnicity *per se*. Rather than ethnicity, the dividing factor seems to have been **political opinion**: divergent geopolitical orientations to Russia and to the West and the related language preference among otherwise bilingual populations have been both the cause and the consequence of the armed conflict. Unsurprisingly, our research revealed that the conflict had antagonised ethnic Russians to a certain degree, even though political choice, experienced as a choice between two rather different civilisations, remained the much stronger marker of identity as late as April 2015. Some ethnic Russian respondents talked about an “identity crisis” for ethnic Russian Ukrainians, as aspects of identity which were historically compatible with membership of a multi-ethnic Ukrainian state have begun to become associated with political preference for the present-day Russian state.

Ukrainian Jews have historically been subjected to severe repression, but are today relatively well-integrated into society. As illustrated in this section, Jewish community leaders consider Ukrainian Jews to be sufficiently integrated so that most consider themselves Ukrainian citizens first and foremost. Nevertheless, interviewees did identify anti-Semitic incidents, which are a cause for concern, irrespective of the efforts of some Jewish leaders to downplay such racist acts.

Section 2.5.5 presents evidence of hate speech and violent hate crime by skin-head youth groups against visible minorities in the country, primarily immigrants and students from non-European backgrounds defined by **skin colour** and non-Slavic features, though there are currently no official statistics on the prevalence of such acts. Ukraine has been criticised for its inadequate response to these crimes, with both the relevant laws and their implementation called into question. In addition to being victims of hate crime, recent immigrants are disproportionately likely to be stopped and detained by law enforcement agencies.

With respect to discrimination on the basis of **nationality** and **citizenship** discussed in section 2.6, we found a number of laws which exceed the permissible limits of state discretion in differentiating between citizens and non-citizens. International human rights law recognises a degree of state discretion in deciding whether and if so how to differentiate between citizens and non-citizens in certain areas of life, though states must act within the scope of permissible limitations. In the case of Ukraine, the state retains a number of laws which discriminate, without justification, against non-citizens. In particular, many legislative provisions restrict certain professions or professional activities to citizens. While it may be justified to limit access to certain professions and professional activities to citizens where there is a genuine occupational requirement, provisions limiting certain professions – such as auditor or founder of farm – to citizens are patently unjustified.

Section 2.7 examines **language**, a deeply contentious issue in Ukraine, with the question of how the two most widely-spoken languages – Ukrainian and Russian – should be treated in law and policy an issue of particular significance. Our research found that political tension surrounding the question of language identity and use is not strongly reflected in the experience of most Ukrainian citizens. The majority of Ukrainians can and do speak both languages and census and survey responses indicate that there is no clear correlation between a person’s ethnicity, their language identity and their language use. Most importantly, opinion polls indicate that even in the south eastern region which is home to the largest concentration of ethnic Russians, few people expressed concern about discrimination on the basis of language. However, it should be noted that language has become further politicised since the outbreak of armed conflict, and that there may be a growing tendency to associate language choice with political opinion and affiliation.

Discrimination on the basis of **religion** in Ukraine, as noted in section 2.8, is manifested in a range of patterns, each adversely affecting the adherents of one or more different religions, including both minority and larger faith groups. This section presents evidence of religious hate speech and hate crime affecting Jehovah’s Witnesses and of states officials mobilising men to fight the separatists in south east Ukraine, without due regard to their conscientious objection. We also found evidence of discrimination and corruption in the allocation of land for church use; and discrimination by state actors involved in registering religious bodies. Finally, our research reveals that minor-

ity churches in the occupied areas of Donetsk and Luhansk have experienced increased repression since the conflict there began, while in Crimea, Muslim Crimean Tatars have experienced an increase in religious harassment.

The existence of **internally displaced persons (IDPs)** is a new phenomenon in Ukraine, and it is still difficult to draw firm conclusions on the nature, scope and prevalence of discrimination against the group. Nevertheless, despite the existence of a strong domestic legal framework providing protection from discrimination and guaranteeing the enjoyment of rights, section 2.9 reviews emerging evidence that IDPs – particularly those from the Donbas region – are experiencing discrimination, largely as a result of prejudice against them.

Finally, section 2.10 focuses on two types of **disadvantage affecting children** in Ukraine. The first concerns groups of children whose disadvantage arises solely on the basis of their age. This group, which includes primarily orphans and children who have been removed from their parents, but also children in the criminal justice system, face particular disadvantages not shared by adults. The second concerns those children within other groups which are exposed to discrimination, such as children with disabilities and children living with HIV. Despite its clear obligations under the Convention on the Rights of the Child, there is significant evidence that Ukraine has failed to ensure equal rights to children, in particular those who are most vulnerable. The institutionalisation of children continues on a significant scale, despite clear commitments to reform. This is a serious human rights problem in and of itself; of even greater concern are the poor conditions within Ukraine's children's institutions, and the poor quality of education for those residing in them. Ukraine has failed to take effective measures to establish a system of juvenile justice which is appropriate for the needs of children who are in conflict with the law. Finally, there is compelling evidence that children with disabilities and children with HIV are subjected to multiple discrimination and disadvantage, as minors within groups which are already exposed to significant discrimination.

Part 3: Legal and Policy Framework Related to Equality

Part 3 of the report analyses the legal and policy framework related to equality in Ukraine in order to assess its adequacy to address the patterns of inequality and discrimination highlighted in the preceding part. It examines both Ukraine's international legal obligations and the domestic legal and policy

framework which protects the rights to equality and non-discrimination. In respect of domestic law, it examines the Constitution, specific anti-discrimination laws, and non-discrimination provisions in other areas of law. It also examines government policies which have an impact on inequality, before turning to an assessment of the enforcement and implementation of existing laws and policies aimed at ensuring equality, including an examination of the most significant specialised body whose functions are related to equality, the Ukrainian Parliament Commissioner for Human Rights. Finally, this part reviews judicial practice related to discrimination.

Section 3.1 of the report assesses Ukraine's **participation in international and European instruments**. It finds that Ukraine has a good record of participation in the major UN human rights treaties, having ratified seven of the nine core treaties, omitting only the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Ukraine also has a good record of allowing for individual complaints to be made to the relevant treaty bodies with the failure to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights being the most significant gap.

Ukraine also has a very good record in relation to other international treaties which have a bearing on the rights to equality and non-discrimination. It has ratified the key Conventions relating to refugees and statelessness. Ukraine has also ratified all eight of the fundamental International Labour Organization Conventions and the 1960 UNESCO Convention against Discrimination in Education.

Ukraine has taken on important legal obligations through **regional human rights instruments**. The state has ratified both the European Convention on Human Rights (ECHR) and Protocol 12 to the Convention, which provides a free-standing right to non-discrimination. It has also ratified the European Social Charter (revised), the European Charter for Regional or Minority Languages, the Convention on Preventing and Combating Violence against Women and Domestic Violence, the Framework Convention for the Protection of National Minorities and the European Convention on Nationality.

International treaties form part of national law in Ukraine, and take precedence in cases of conflict. The ECHR is in an even stronger position, with

legislation requiring the courts to apply the ECHR and the case-law of the European Court of Human Rights when deciding cases. However, there are concerns about the extent to which these provisions are respected in practice.

Section 3.2 analyses Ukraine's domestic legal system, starting with the **Constitution**, which was adopted in 1996. The Constitution guarantees, through Article 24, the rights to equality and non-discrimination. However, despite providing some degree of protection, Article 24 contains a number of weaknesses. Paragraph 1 guarantees only that *citizens* shall have "equal constitutional rights and freedoms and shall be equal before the law", thus excluding non-citizens from the guarantee of the right to equality. Paragraph 2 prohibits "privileges and restrictions" on an open list of enumerated grounds. So termed, paragraph 2 is unlikely to prohibit all forms of direct and indirect discrimination. Moreover, while the list of grounds is open-ended, it omits many which are recognised at international law, such as sexual orientation, gender identity, disability and health status. Paragraph 3 requires the state to take measures to ensure "equality of the rights of women and men", but in fact serves to reinforce stereotypical notions of gender. For example, by requiring the state to take measures to "make it possible for women to combine work and motherhood", paragraph 3 reinforces the notion that it is the mother's role to take care of children within a family. Further, to the extent that paragraph 3 requires the state to take positive action measures in respect of women, there is no requirement in respect of other groups who suffer disadvantage and inequality. Finally, the Constitution guarantees a significant number of human rights only in respect of citizens, many of which ought, under international law, to be guaranteed in respect of *all persons*.

The major pieces of **anti-discrimination legislation** in Ukraine are assessed in section 3.2.2. Most significantly, the Law of Ukraine "On Principles of Prevention and Combating Discrimination", adopted in 2012 and amended two years later, prohibits discrimination on a wide range of grounds in many areas of life. The Law, while imperfect, can be considered a **comprehensive anti-discrimination law**. The text of the law, as amended, is largely in line with international best practice: there are appropriate definitions of the different forms of discrimination; discrimination is prohibited on an extensive and open-ended list of protected characteristics, though sexual orientation and gender identity are notably omitted from the listed grounds; and the law has a broad material scope. There are, however, a number of problems. These

include a failure to require positive action measures where necessary to accelerate progress towards equality and a limited range of remedies. Moreover, there has been a failure to integrate the Law within the wider legislative framework posing challenges to victims on using the Law to enforce their right to non-discrimination.

In addition to the Law of Ukraine “On Principles of Prevention and Combating Discrimination”, Ukraine has two **specific anti-discrimination laws** – the Law of Ukraine “On Equal Rights and Opportunities for Women and Men” and the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine”. While these laws purport to provide protection from discrimination on the basis of gender and disability respectively, they each have shortcomings. The former contains overly broad exceptions and is unclear on what remedies are available for breaches, though its requirement that legislation be analysed for its potential to discriminate on the basis of gender has been effective, with “gender-related assessments” leading to the amendment of a number of pieces of legislation. The Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine” has been substantially amended since its adoption, such that it now provides some measure of protection from discrimination on the basis of disability. While the approach of the law when adopted was firmly rooted in the “medical model” of disability, amendments have encouraged a shift towards the “social model” with provisions requiring reasonable accommodation and universal design in the public and private sector. However, the Law has not been fully implemented with many barriers to equal participation remaining; this may, in part, be because the Law does not set out any specific mechanisms by which the obligations it imposes are to be enforced. In addition to these two laws, the Law of Ukraine “On Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV”, whilst not strictly anti-discrimination legislation, contains provisions which prohibit discrimination against an individual either because he or she has HIV or because he or she belongs to a group at risk of HIV infection. There is little evidence of these provisions being used in practice, however.

In addition to these pieces of legislation, there are a number of **non-discrimination provisions in other legal fields** which are reviewed in section 3.2.3. Given its broad scope, the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, has, in practice, superseded such

provisions which are found in legislation in areas including family law, employment, education, healthcare, social security, immigration and sport. Our research found that such provisions have rarely been utilised by victims of discrimination and are largely symbolic. The criminal law contains a number of provisions which create offences of inciting hatred against particular groups and considering offences motivated by hostility as aggravated as well as further offences of certain forms of discrimination. Whilst these provisions go some way to meeting international best practice, they remain problematic. For example, the aggravated forms only apply where the offence was motivated by hostility on the basis of race, national origin or religion, and not any other characteristics. Further, our evidence suggests that they are little used in practice, with prosecutions under the provisions seldom brought.

Section 3.3 examines **government policies** and finds that, whilst the state has introduced a number of plans and policies in respect of many groups which are vulnerable to discrimination – including women, Roma, and persons with disabilities – little assessment has been made of the effectiveness of these plans and policies, making it difficult to determine to what extent they have had a positive impact. More broadly, the continuation of discrimination against many of these groups which is evidenced in Part 2 of the report calls into question the efficacy of these policies.

Finally, section 3.4 analyses the **implementation and enforcement of laws and policies** related to equality. It finds that generally, the Ukrainian legal system enables individuals to bring complaints of discrimination to court, although the failure to integrate and harmonise anti-discrimination legislation within the wider legislative framework makes this more difficult than it need be. On a positive note, persons bringing cases of discrimination are exempt from paying court fees, the Civil Code provides for a reversal of the burden in proof in discrimination cases, and Ukraine has a strong and independent human rights and equality body – the Ukrainian Parliament Commissioner for Human Rights – with broad powers and a good record on highlighting discrimination as part of its work.

Our analysis of Ukrainian **jurisprudence** paints a mixed picture. There are only a small number of cases decided by the Constitutional Court and the lower courts involving discrimination. While some cases indicate a strong, progressive approach to ensuring equality, others, particularly decisions of

the Constitutional Court, fail to engage in any detailed analysis of what the rights to equality and non-discrimination require, and the approach of the Court on some issues has been inconsistent and unclear.

This report's overall conclusion is that the system of laws, policies and practices in place to prevent discrimination in Ukraine remains a work in progress. While Ukraine has implemented a number of important reforms in recent years, and brought its framework largely into line with international standards, gaps and inconsistencies remain. More importantly, enforcement and implementation remain poor.

Part 4: Conclusions and Recommendations

Part 4 of the report presents its conclusions and makes recommendations to the Ukrainian government. It asserts that Ukraine's strong legal protections on paper have not yet translated into a significant reduction in discrimination in practice. This conclusion is supported both by the extensive evidence of discrimination on various grounds which is presented in part 2, and the assessment of the framework's enforcement and implementation in part 3. Thus, while Ukraine is certainly heading in the right direction, **there is much more to be done by the government of Ukraine to ensure that it fulfils its obligations to respect, protect and fulfil the rights to equality and non-discrimination.**

Section 4.2 of the report presents the Equal Rights Trust's recommendations, whose purpose is to strengthen protection from discrimination and to enable Ukraine to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality. All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality.

The report makes recommendations in eight areas:

- Strengthening of international commitments related to equality;
- Constitutional and legislative reforms to amend or repeal discriminatory laws;

- Implementation and enforcement of the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”;
- Reform, implementation and enforcement of other laws aimed at prohibiting discrimination;
- Actions to address discrimination against specific groups;
- Data collection on equality;
- Education on equality; and
- Prohibition of regressive interpretation, derogations and reservations.

1. INTRODUCTION

1.1 Purpose and Structure of This Report

The purpose of this report is to highlight and analyse discrimination and inequality in Ukraine and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights problems, while also seeking to shed light upon less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequalities of many different forms with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out its purpose and structure, the conceptual framework which has guided the work, and the research methodology. It also provides basic information about Ukraine, its history and the current political and economic situation.

Part 2 presents patterns of discrimination and inequality, highlighting evidence of discrimination and inequality on the basis of a range of characteristics: gender; sexual orientation or gender identity; disability; HIV status; ethnicity, national origin and colour (including an examination of the status of the Roma, Crimean Tatars, Jews and ethnic Russians); nationality and citizenship; language; religion; place of residence and status as an internally displaced person; and age (with a focus on the disadvantages faced by children).

Part 3 begins by reviewing the main international legal obligations of Ukraine in the field of equality and non-discrimination, within the frameworks of the United Nations (UN) and Council of Europe human rights systems. It then discusses Ukrainian national law related to equality and non-discrimination, starting with the Constitution before examining both specific anti-discrimination legislation and non-discrimination provisions in other legislation. Part 3 also reviews state policies relevant to equality. The potential for the realisation of the rights to equality and non-discrimination is illustrated through a review of judicial practice and a review of the operation of government and independent bodies responsible for the implementation of human rights laws.

Part 4 contains the report's conclusions and recommendations, which are based on the analysis of patterns of inequality and discrimination examined in Part 2 and the assessment of Ukrainian legislation and state policies in Part 3.

1.2 Conceptual Framework and Research Methodology

The conceptual framework of this report is the unified human rights framework on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

- a. types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
- b. types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, and provision of goods and services, among others; and
- c. status inequalities and socio-economic inequalities.

The Unified Human Rights Framework on Equality

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128 and subsequently by thousands of experts and activists on equality and human rights from all over the world. The principles formulated and agreed by the experts are based on concepts and jurisprudence developed in international, regional and national legal contexts.

Since its adoption, the Declaration has guided efforts to develop equality legislation in a number of countries and has received increasing support at the international and regional levels. In 2008, the UN Committee on Economic, Social and Cultural Rights (CESCR) made use of a number of key concepts from the Declaration in its *General Comment 20: Non-discrimination in economic, social and cultural rights*. In 2011, the Parliamentary Assembly of the

Council of Europe adopted a Recommendation calling on the Council of Europe member states, including Ukraine, to take the Declaration into account when developing equality law and policy.

Principle 1 of the Declaration defines the **right to equality**:

The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.⁴

Thus defined, the right to equality has a broad scope, and its content is richer than that of the right to non-discrimination, as traditionally understood. The right to equality has among its elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law. Most importantly, it encompasses equal participation in all areas of life in which human rights apply. This holistic approach to equality recognises the intersections of disadvantages arising in different contexts, which makes it necessary to take a comprehensive approach to inequalities in all areas of life.

This report takes the right to equality, as expressed in the Declaration, as the baseline against which it assesses the presence or degrees of inequality. It goes beyond poorer notions of equality found in many legal systems, by understanding equality not only as a right to be free from all forms of discrimination, but also as a right to substantive equality in practice. As discussed below, this motivates our analysis of disadvantages affecting different groups beyond those which arise as a result of discernible acts of discrimination. From this perspective, many societal inequalities relevant to human rights are seen as a consequence of historic disadvantage, while insisting that the right to equality requires states to address unfair inequalities, however “innocuous” their cause. Thus, the unified framework makes *de facto* inequalities, whether or not they result from discrimination, a relevant subject for this report.

⁴ Declaration of Principles on Equality, The Equal Rights Trust, London, 2008, Principle 1, p. 5.

The Declaration construes the right to non-discrimination as subsumed in the right to equality.⁵ Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

The unified human rights framework on equality makes it desirable and possible to provide a general legal definition of discrimination covering all types of discrimination. Principle 5 of the Declaration offers such a definition:

Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.

Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.

Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.

Discrimination may be direct or indirect.

5 *Ibid.*, Principle 4, p. 6.

Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.

Indirect discrimination occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

*An act of discrimination may be committed intentionally or unintentionally.*⁶

This definition takes a broad view regarding the list of **protected characteristics**. It contains both a list of explicitly prohibited grounds of discrimination and criteria for the inclusion of further grounds, according to which

6 *Ibid.*, Principle 5, p. 6–7.

“candidate grounds” should meet at least one of three listed criteria.⁷ Thus, the definition provides a foundation for tackling the full complexity of a person’s lived experience of discrimination. It recognises that a single person may experience discrimination on a “combination” of subtly interacting grounds, or on grounds not previously recognised as “prohibited”, and that the cumulative impact of discrimination on different grounds can be bigger than the sum of its parts. The unified framework acknowledges that the phenomenon of discrimination must be addressed holistically, if it is to be effectively challenged.

The definition of discrimination, reflecting best practice in outlawing discrimination on grounds that have come to be regarded as unfair in modern society, provides the basis for our consideration of the range of identity-based groups included in the report. Thus, the report examines discrimination on grounds of gender; sexual orientation or gender identity; disability; health status; ethnicity, national origin and colour; nationality and citizenship; language; religion; and age. Furthermore, the report examines some patterns of discrimination – such as the discrimination suffered by Romani women – which do not fall within one specified ground, but which it is felt need to be covered because they are important forms of multiple discrimination.

The Declaration defines three forms of **prohibited conduct** which constitute discrimination: direct discrimination, indirect discrimination and harassment. All three concepts reflect current expert opinion on the definitions of the different forms of discrimination in international human rights and

7 Petrova, D., “The Declaration of Principles on Equality: A Contribution to International Human Rights”, in *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008, p. 34: “The definition of discrimination in Principle 5 includes an extended list of ‘prohibited grounds’ of discrimination, omitting the expression ‘or other status’ which follows the list of characteristics in Article 2 of the Universal Declaration of Human Rights. While intending to avoid abuse of anti-discrimination law by claiming discrimination on any number of irrelevant or spurious grounds, the definition nonetheless contains the possibility of extending the list of ‘prohibited grounds’ and includes three criteria, each of which would be sufficient to recognise a further characteristic as a ‘prohibited ground’. This approach is inspired by the solution to the open versus closed list of ‘prohibited grounds’ dilemma provided by the South African Promotion of Equality and Prevention of Unfair Discrimination Act (2000).”

equality law⁸ and European Union Law.⁹ They are used throughout Part 2 to assess the patterns of discrimination identified by the research against the state's obligation to respect, protect and fulfil the right to non-discrimination, and in Part 3 as a basis against which to assess the adequacy of legal provisions intended to protect people from discrimination and to fulfil the right to non-discrimination.

The report also relies on a number of other important concepts and definitions contained in the Declaration of Principles on Equality. Thus, the report employs the definition of **reasonable accommodation provided in Principle 13 of the Declaration:**

To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.

Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.¹⁰

8 See, for example, United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 10.

9 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 2; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Article 2; 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, Article 4; and 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), Article 2.

10 See above, note 1, Principle 13, p. 10–11.

In line with international law in this area, the approach taken in the report is that a denial of reasonable accommodation constitutes discrimination.¹¹ Reflecting an emerging international consensus on this issue, the concept of reasonable accommodation “is extrapolated to cover other forms of disadvantage beyond disability, as well as, more generally, differences which hamper the ability of individuals to participate in any area of economic, social, political, cultural or civil life”.¹² Thus, in the context of this report, it is accepted that the duty of reasonable accommodation can arise in respect of grounds other than disability.

Similarly, the report employs the understanding of **positive action** provided in Principle 3 of the Declaration. As with other principles in the Declaration, this principle draws upon emerging approaches in international and regional human rights law, in this case with regard to the concepts of special measures in the various instruments,¹³ whereby “it should be noted that the Declaration captures the growing tendency of interpreting “special measures” as part of, rather than an exception to, equal treatment”.¹⁴ Principle 3 states:

To be effective, the right to equality requires positive action.

*Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.*¹⁵

11 See, for example, Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006, Article 2; United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 15: “disability-based discrimination” includes the denial of “reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”.

12 See above, note 4, p. 39.

13 See, for example, International Convention on the Elimination of All Forms of Racial Discrimination, GA Res. 2106 (XX), 1965, Article 1(4); and the Convention on the Elimination of All Forms of Discrimination against Women, GA Res. 34/180, 1979, Article 4(1).

14 See above, note 4, p. 32.

15 See above, note 1, Principle 3, p. 5.

The notion of positive action plays an important role in the unified framework on equality, and, therefore, in the approach taken by this report. As previously discussed, the right to equality extends beyond a right to be free from discrimination and contains an element of participation on an equal basis with others in all areas of life regulated by law. Positive action is key to addressing those inequalities which are not attributable solely to discrimination. Having identified patterns of substantive inequality in Part 2, Part 3 of this report analyses the adequacy of positive action measures to address these.

The review of laws and policies in Part 3 of this report is based on an assessment against those parts of the Declaration which set out the **obligations of the state** with regard to the rights to equality and non-discrimination, including in particular Principle 11. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as explained, *inter alia*, in General Comment No. 3 of the CESCR and General Comment No. 31 of the Human Rights Committee. As stated in the commentary on the Declaration:

By analogy with the interpretation of States' obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are required to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.¹⁶

16 See above, note 4, p. 38.

Application of the Unified Human Rights Framework on Equality

Applying the unified human rights framework on equality has a number of implications for the content, structure and methodology of this report. The **first implication** is reflected in the subject and scope of the report – the presentation of discrimination and inequality on a number of grounds in the same study. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground, the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Ukrainian context. In respect of certain grounds, it has not been possible to include every group vulnerable to discrimination and inequality on that ground. For example, the section on national and ethnic minorities does not examine the situation affecting all national or ethnic minorities, but instead looks at the groups which have historically suffered the most severe forms of discrimination, such as Crimean Tatars, Roma and Jews, as well as the largest group (ethnic Russians) and the most visible minorities (recent immigrants).

Presenting patterns of discrimination and inequality alongside each other also requires a specific weighing of the sources of evidence. To some extent, Part 2 of the report relies on pre-existing research into inequalities affecting particular groups and disaggregated data on the position of different groups in particular areas of life, which was available for some areas, but limited for others. For example, there is a lack of statistical data on the levels of participation of lesbian, gay, bisexual and transgender persons in employment, making it difficult to establish the levels of substantive inequality in this area. In this and other areas where pre-existing research was unavailable, the Equal Rights Trust has relied more heavily on direct testimony from individual victims or interviews with professionals working on behalf of particular groups. The evidence obtained through field research has been assessed and contextualised, with a view to presenting patterns of discrimination and disadvantage in a way which is as representative of Ukrainian reality as possible. In doing so, the report also illuminates the links between inequalities on different grounds, through identifying overarching issues, instances of multiple discrimination and common experiences.

The **second implication** of applying the unified human rights framework relates to the material scope of application of the right to equality, which

encompasses all areas of life regulated by law. The report seeks to cover, in respect to the selected groups and categories of people, their experience of inequality across a range of areas of life, such as interactions with the state authorities, employment, education and healthcare. The report also looks at legislative provisions which are discriminatory, or which have a discriminatory impact upon particular groups of people. However, in some cases there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups, either because persons within these groups do not experience disadvantage in a particular area of life, or because evidence of such disadvantage was not forthcoming in the course of the research. For example, the report contains little evidence of discrimination against older persons on the basis of age.

The **third implication** of applying the unified framework is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration of Principles on Equality, as the standard against which it assesses the degree of inequality. Thus, the report investigates historically-generated patterns of substantive inequality by looking at the element of “participation on an equal basis with others in economic, social, political, cultural or civil life”, thereby extending beyond experiences of discrimination.

The **fourth implication** of this approach is the presentation of factual patterns of discrimination and inequality alongside an analysis of the legal and policy framework related to equality, which results in the report’s basic logical structure. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of these rights. As protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights, we seek to match an assessment of the lived experience of discrimination and inequality with a review of Ukraine’s legal and policy framework, in order to establish how well the state has met its obligation.

The analysis of patterns of discrimination in Part 2 of the report makes clear that the existing laws and policies designed to tackle discrimination and inequality in Ukraine are insufficient. Part 3 of this report assesses the legal and policy framework in the light of the Declaration’s principles relating to access to justice for discrimination victims, evidence and proof in discrimina-

tion proceedings, and other elements of enforcement of equality rights. While the necessity of effective enforcement of the rights to non-discrimination and equality is illustrated by the findings in Part 2 of this report, these issues are discussed in more detail in Part 3, and Part 4 formulates recommendations about legal and policy reform, implementation and enforcement. Thus, it is hoped that the information contained in Part 2 provides a strong evidence base for analysing the effectiveness of the laws and policies discussed in Part 3, and therefore ensuring that the conclusions and recommendations in Part 4 are relevant and robust.

Research Methodology

This report is the result of a long engagement between the Equal Rights Trust and LGBT Human Rights Nash Mir Center (Nash Mir). Since 2012, the Equal Rights Trust and Nash Mir have worked in partnership on a project designed to combat discrimination and inequality in Ukraine. This report, which is one of the outcomes of this project, was developed in several stages.

In Spring 2013, a short study was prepared by Nash Mir, providing a preliminary outline of the major patterns of discrimination and inequality in Ukraine, based upon existing research and reports. In Autumn 2013, the Equal Rights Trust and Nash Mir enlisted a number of researchers who were tasked with undertaking research in relation to the grounds identified as the most significant in terms of discrimination in Ukraine (gender, sexual orientation and gender identity, disability, health/HIV status, age, national or ethnic origin, religion and language). The members of the research team were: the International Women's Rights Centre La Strada-Ukraine, which covered discrimination on the basis of gender; the Kharkiv NGO "Institute of Applied Humanitarian Research" focusing on discrimination on the basis of age; Public Youth Organisation Klub Vzeyemodopomohy Zhyttia+, which researched discrimination on basis of health and HIV status; Kharkiv Regional Foundation Hromadska Alternativa, focusing on discrimination on the basis of disability; Lyudy Bukovyny (Chernivtsi oblast) and LGBT Union You Are Not Alone (Zhytomyr oblast), examining multiple discrimination on grounds sexual orientation, gender identity and disability; Poltava oblast Media Club, looking at discrimination on the basis of national or ethnic origin and focusing on the Roma in particular; and Public Organisation "Human Rights Centre Postup" (Luhansk oblast), which had to examine discrimination on the basis of na-

tional or ethnic origin. At a later stage, further research was commissioned on discrimination and inequality affecting children (undertaken by Mariya Yasenovska) and ethnic Russians and Jews (undertaken by Kyril Kaścian).

During the research process, Ukraine was experiencing sweeping political and social change and this had a significant impact on the report (see Scope and Limitations of this Report, below). For example, one of the research organisations, Human Rights Centre Postup, based in Luhansk oblast, was unable to complete its work in full. Other researchers continued to work in extremely difficult conditions.

The research was conducted through interviews, focus groups and roundtables with organisations working for those exposed to discrimination in Ukraine as well as with victims of discrimination themselves. Throughout the report, in presenting the first-hand testimony of victims of discrimination, certain names have been withheld out of respect for their wishes for anonymity. Information on the identities of all persons whose names have been withheld is kept on file by the authors.

Research for Part 2 of the report also included desk-based research of existing published sources, helping to identify and elaborate the major patterns of discrimination in Ukraine. This involved a review of relevant literature on discrimination and inequality in Ukraine, including reports by both the government and NGOs to UN treaty bodies and the Universal Periodic Review process; government and intergovernmental data and reports; and research published by international and national NGOs, academics and media institutions. Wherever possible, statistical data was relied on to improve understanding of inequalities.

Legal research on law and policy for Part 3 was undertaken by the Equal Rights Trust and Nash Mir. Research on Ukraine's international legal obligations benefited from the United Nations Treaty Collection database¹⁷ and the website of the Office of the High Commissioner for Human Rights.¹⁸ Research

17 United Nations, *United Nations Treaty Series Online Collection*, available at: <https://treaties.un.org/pages/ParticipationStatus.aspx>.

18 Office of the High Commissioner for Human Rights, available at: <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>.

on Ukrainian laws, including the Constitution and national legislation, consisted of reviewing the primary sources, accessed via the website of the Verkhovna Rada (parliament) of Ukraine. Research on government policies was undertaken through review of state reports to the UN treaty bodies and documents gathered from government websites. Research on the role, functions and operations of the Ukrainian Parliament Commissioner for Human Rights was undertaken by review of the relevant legislation, together with a review of the reports of the Parliament Commissioner and meetings with officials at the Parliament Commissioner.

In order to ensure the accuracy of the report's findings and conclusions, a draft of this report was exposed to a validation process. In early 2015, the Equal Rights Trust visited Ukraine to present and discuss a draft of the report with interested parties from civil society, government, academia and other fields. In these meetings, and in correspondence thereafter, the report was subjected to critical evaluation by a range of stakeholders, with the aim of validating its findings and conclusions. The comments, criticisms and other feedback from these stakeholders were incorporated into the draft.

As part of its validation process, in February 2014, drafts of this report were provided to the Ministry of Social Policy, the Ministry of Justice and the Ministry of Foreign Affairs with a list of questions and an invitation for comments and feedback. Only the Ministry of Social Policy provided comments on the draft, both in writing and through a representative at a roundtable on 26 February 2014. In addition, the Equal Rights Trust met with a representative of the Ministry of Foreign Affairs. No response was received from the Ministry of Justice. The Equal Rights Trust also wrote to the Constitutional Court of Ukraine with a list of questions to which answers were received. While the Equal Rights Trust was unable to meet with a representative of the Constitutional Court, the Trust did meet with Professor Mykola Kozyubra, a former judge of the Constitutional Court and Head of the Department of General and Public Law at the National University of "Kyiv-Mohyla Academy". Finally, the Equal Rights Trust also met with a representative of the Ukrainian Parliament Commissioner for Human Rights, the Head of the Non-Discrimination Unit at the Secretariat of the Ukrainian Parliament Commissioner for Human Rights. The Equal Rights Trust has sought to incorporate all feedback received and to present the position of the government and other state bodies on the issues discussed in the report both through specific feedback and based on policies

and public statements, including in Ukraine's state party reports to the UN treaty bodies.

Scope and Limitations of this Report

In respect to the report's time frame, Part 2 is limited to approximately the last ten years, and the emphasis is on more recent events and cases, as much as possible. Part 3 captures the status quo related to laws and policies as of May 2015 and it should be noted that as frameworks on equality are evolving fast globally as well as in Ukraine, the presentation of the Ukrainian framework, while not ephemeral, will become obsolete within less than a decade, in particular as a result of developing judicial practice.

It is not possible for any report to provide an exhaustive account of discrimination and inequality in a given country, and this report is no exception. The reality of discrimination and inequality is such that experiences are as many and varied as the population of Ukraine itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or organisations and as a result of any aspect of their identity, or any combination of these aspects. For these reasons, the aim of Part 2 of this report is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in the Ukrainian context.

The research for this report was constrained, to some extent, by the lack of disaggregated statistical data pertaining to the situation of certain groups and in certain areas of life. Consequently, certain issues which would usually fall within the scope of a report addressing inequality and discrimination do not feature in the report at all. Further, the absence of disaggregated data in relation to certain areas of life, such as housing, education, employment, criminal justice, etc., has limited the extent to which the authors have been able to discuss inequalities in all areas of life for every group we have covered in the report. For example, while the report discusses the experience of some groups in the education system, it has not been possible to examine all groups' experiences in this area of life.

These omissions should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect to the omitted groups.

Rather, the decision not to include an assessment of discrimination or inequality in a particular area or for a particular group was motivated simply by lack of evidence during the desk and field research stages of producing this report. Indeed, a lack of evidence in respect of a particular group could in itself indicate a gap in protection and/or missing articulation of experience of inequality.

The crisis which started in November 2013 following President Viktor Yanukovich's decision not to sign an Association Agreement between Ukraine and the European Union and the subsequent conflict in Ukraine has resulted in two significant changes in the political geography of Ukraine. The first is the annexation of Crimea by Russia in March 2014 following a "referendum" in Crimea which supported the autonomous region becoming a federal subject of the Russian Federation. The "referendum" was criticised for having violated Ukrainian constitutional law and the annexation itself was condemned by a United Nations General Assembly Resolution.¹⁹ As of May 2015, a small number of states recognise Crimea as a federal subject of Russia, but the vast majority of states do not. While Crimea is *de facto* under Russian control, this report treats Crimea as part of Ukraine in all respects.

The second change of the Ukrainian political map was caused by the war in Donbas which, as of May 2015, is ongoing. By this time, two oblasts – Donetsk and Luhansk – are partly under the *de facto* control of pro-Russian separatists. "Referenda on independence" were held in both oblasts in May 2014 with both results reportedly showing overwhelming support for independence. These referendums were widely criticised by outsiders and no state has recognised either Donetsk or Luhansk as independent states. As with Crimea, while parts of the two oblasts are not under the *de facto* control of the Ukrainian government, this report treats both oblasts as part of Ukraine in all respects.

1.3 Country Context

Ukraine is a large country located in Eastern Europe, bordered to the north by Belarus, to the east by Russia, to the southeast by the Black Sea, to the southwest by Romania and Moldova, and to the West by Poland, Slovakia and

19 United Nations General Assembly, Resolution No. 28/262. *Territorial integrity of Ukraine*, UN Doc. A/RES/68/262, 1 April 2014.

Hungary. It is the largest country wholly in Europe and the 46th largest country in the world, with a total area of 603,500 km². It is divided into 27 entities: 24 oblasts, two cities with special status (Kyiv and Sevastopol) and the Autonomous Republic of Crimea. The capital city is Kyiv with a population of approximately 3 million people.

As noted above in section 1.2, the Autonomous Republic of Crimea is, as of May 2015, the subject of a territorial dispute between Ukraine and Russia and is under the *de facto* control of the latter. Parts of two oblasts, Donetsk and Luhansk, are under the *de facto* control of pro-Russian separatists.

Ukraine is home to approximately 44.3 million people, although its population has decreased from a high of over 52 million people in the early 1990s, as a result of higher death rates than birth rates and emigration. The birth rate in 2013 was 11.1 births per 1,000 people;²⁰ the death rate for the same year was 14.6. Life expectancy at birth is 71.2 years, although there is a sizeable gap between life expectancy for men (66.3 years) and women (76.2 years).²²

The 2001 census revealed that ethnic Ukrainians made up 77.8% of the population, with Russians a sizeable minority (17.3%). Much smaller minorities in Ukraine include Belarusians (0.6%), Moldovans (0.5%), Crimean Tatars (0.5%), Bulgarians (0.4%), Hungarians (0.3%), Romanians (0.3%), Poles (0.3%) and Jews (0.2%).²³ The distribution of Ukrainians and Russians, who together comprise the vast majority of the population, is not geographically uniform throughout Ukraine. Ethnic Ukrainians dominate in large parts of the country, particularly the northern and western regions, while ethnic Russians are found in greater numbers in the eastern and southern regions. Crimea is the only region where ethnic Russians outnumber ethnic Ukrainians.

20 World Bank, *Data: Birth rate, crude* (per 1,000 people), available at: <http://data.worldbank.org/indicator/SP.DYN.CBRT.IN> (as of May 2015).

21 World Bank, *Data: Death rate, crude* (per 1,000 people), available at: <http://data.worldbank.org/indicator/SP.DYN.CDRT.IN/countries> (as of May 2015).

22 World Bank, *Data: Ukraine*, available at: <http://data.worldbank.org/country/ukraine>.

23 State Statistics Committee of Ukraine, "About number and composition population of UKRAINE by All-Ukrainian population census 2001 data", available at: <http://2001.ukrcensus.gov.ua/eng/results/general/nationality>.

A 2014 study carried out by the Razumkov Centre showed that 76.0% of Ukrainians considered themselves religious, up from 57.8% in 2000.²⁴ A further 7.9% were unsure whether they were believers or not, down from 22.5%.²⁵ Of those considering themselves religious, 70.2% were Orthodox Christians (17.4% of the population belonged to the Ukrainian Orthodox Church Moscow Patriarchate (UOC MP), 22.4% to the Ukrainian Orthodox Church – Kyiv Patriarchate (UOC KP), 0.7% to the Ukrainian Autocephalous Orthodox Church, 28.1% “just Orthodox” and 1.4% who did not know).²⁶ Of the remaining 28.8%, 16.1% were non-Orthodox Christians (7.8% belonged to the Ukrainian Greek Catholic Church (UGCC), 1.0% were Roman Catholic, 1.0% were Protestant and 6.3% were other Christians) with very small numbers of Jews (0.1%), Muslims (0.2%) and Buddhists (0.2%). One in eight people – 12.5% of the population – did not consider themselves as affiliated with any particular religion.²⁷ The religious population is not evenly spread across Ukraine. Orthodox Christians belonging to the UOC MP form the majority in most parts of the country save for the western regions and Kyiv; the UOC KP forms the majority of Orthodox Christians in the western regions and in Kyiv; the UGCC dominates only in the three western oblasts covering the historical region of Galicia. Roman Catholics are mostly Poles, living in the west. The Muslim population in Ukraine mostly comprises Crimean Tartars.

The country’s official language is Ukrainian, although as section 2.7 of this report shows, the issue of language is both complex and contentious. According to the 2001 census, Ukrainian was the first language of 67.5% of the population with 29.6% of the population speaking Russian as a first language.²⁸ In practice, most people in Ukraine speak both languages fluently, with decisions about which is a “first” language appearing to be more a question of identity politics than linguistic necessity. As with ethnicity, those whose mother tongue is Ukrainian dominate in the northern and western regions,

24 Razumkov Centre and Konrad Adenauer Stiftung, *Ukraine 2014: Socio-Political Conflict and the Church, Positions of Religious Figures, Experts and Citizens*, 2014, p. 29.

25 *Ibid.*

26 *Ibid.*, p. 31.

27 *Ibid.*, p. 30.

28 State Statistics Committee of Ukraine, “About number and composition population of UKRAINE by All-Ukrainian population census 2001 data”, available at: <http://2001.ukrcensus.gov.ua/eng/results/general/language>.

while those who speak Russian as a first language dominate in the eastern and southern regions.

After falling sharply in the 10 year period following the collapse of the Soviet Union, Ukraine's economy grew quickly from 2000 to 2008 with growth in 2007 of 7%.²⁹ However, Ukraine was greatly affected by the 2008 economic crisis, with the economy shrinking by 15% in 2009 before recovering in the subsequent years.³⁰ In 2013, Ukraine's Gross Domestic Product (GDP) was US \$177,431 million, ranking it in 55th place in the world on the GDP list produced by the World Bank.³¹ Ukraine's GDP per capita (purchasing power parity) in 2013 was US \$8,790 and its GNI per capita (purchasing power parity) in 2013 was \$8,970.³²

The United Nations Development Programme ranked Ukraine in 83rd place in its Human Development Index (HDI) for 2014, with an HDI of 0.734.33 Ukraine's Gini Income coefficient for the period 2003-2012, measuring inequality in the distribution of wealth, was 25.6, the second lowest in the world after Sweden.³⁴ The ratio of the average earnings of the richest 20% to those of the poorest 20% in the same period was 3.6.³⁵

1.4 History, Government and Politics

The territory occupied by modern-day Ukraine has been claimed by a number of powers over the centuries. Originally home to a variety of East Slavic tribes as part of the powerful Kievan Rus' federation in the 9th to the 13th centuries, the land was incorporated into the Kingdom of Galicia–Volhynia in the 13th and 14th centuries and then the Grand Duchy of Lithuania in the 14th century, before being incorporated into the Polish–Lithuanian Commonwealth in 1569.

29 World Bank, *World Databank, World Development Indicators*, available at: <http://databank.worldbank.org/data/views/reports/tableview.aspx>.

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

33 United Nations Development Programme, *Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, 2014, p. 161.

34 *Ibid.*, p. 169.

35 *Ibid.*

A Cossack revolt that began in the Ukrainian lands in 1648 under the leadership of Bohdan Khmelnytskyi eventually led to the formation of the first Ukrainian national state on the territory of modern day central Ukraine. In 1649, this state was recognised by the Polish king John II Casimir as an autonomous part of the Polish–Lithuanian Commonwealth and, in 1654, the Cossack government concluded a treaty with the Tsar Alexis I of Russia recognising his supreme authority over the Cossack state in exchange for preservation of its autonomous status and protection. However, following a thirty year war between Russia, Poland, Turks and Cossacks known as “The Ruin” (1657 to 1686), the territory of present day Ukraine was divided between Russia (taking the lands to the east of the Dnieper River as well as Kyiv) and Polish-Lithuanian Commonwealth (taking the lands to the west of the Dnieper River) as part of the Eternal Peace Treaty of 1686. Self-government in these territories was ultimately abolished, and the Ukrainian language and culture suppressed. Despite the quasi-state’s brief existence as an autonomous territory, it laid the fundamentals of the modern Ukrainian nation. When the Polish-Lithuanian Commonwealth fell in the 18th century, those territories held by Poland were divided between Russia and the Austro-Hungarian Empire.

Crimea, meanwhile, had been fought over by various powers over the centuries, eventually becoming a Turkic vassal state (the Crimean Khanate) and part of the Ottoman Empire from the mid-15th to the late 18th century. In 1783, the Crimean Khanate was conquered by Catherine the Great of Russia, and became part of the Russian Empire.

The February Revolution in 1917 inspired many ethnic groups within the Russian Empire to demand greater autonomy and independence. Following the October Revolution that year, and the fall of the Russian Provisional Government, the Kyiv Uprising of November 1917 sparked a struggle for power which would last until 1921: the Ukrainian War for Independence which was part of the larger Russian Civil War, the period during which the Bolsheviks led by Lenin and Trotsky fought and defeated all categories of opponents and confirmed Soviet rule throughout Russia. During this period, two short-lived entities emerged: the Ukrainian People’s Republic (1917–1920) and the Western Ukrainian People’s Republic (1918–1919). The two formally merged into a single state, which shortly thereafter found itself under Bolshevik control and became the Ukrainian Soviet Socialist Republic (Ukrainian SSR), while

small neighbouring territories were divided between Poland, Romania and Czechoslovakia. In 1946, Czechoslovakia ceded the historical region of Carpathian Ruthenia to the Ukrainian SSR, which became the Zakarpattia oblast. Crimea, however, remained part of the Russian Soviet Federative Socialist Republic the largest and dominant republic within the USSR, until 1954, when it was transferred to the Ukrainian SSR.

The Ukrainian SSR was one of fifteen constituent republics which formed the Union of Soviet Socialist Republics (USSR) until its collapse in 1991. While Ukraine was a constituent of the USSR, any development of a distinct Ukrainian national identity was suppressed and any attempt at the creation of a Ukrainian independence movement eliminated. There have been allegations that the Great Famine of 1932–33 which resulted from forced collectivisation and deprivation of peasants of their own produce and which killed up to seven million people was a deliberate strategy of Joseph Stalin to suppress independence movements in Ukraine. In 2005, then Ukrainian President Viktor Yushchenko appealed, unsuccessfully, to the international community to recognise the Great Famine as Soviet-imposed genocide.³⁶

Between 1941 and 1944, much of Ukraine was occupied by Nazi Germany. Initially, many Ukrainians cooperated with the Nazis, in part due to aspirations for independence and anger towards the Soviets over the famine. However, by 1944, when the Red Army arrived in Ukraine, the population largely welcomed the Soviets as liberators and 4.5 million Ukrainians joined the Red Army. World War II took a heavy toll on Ukraine: between 1941 and 1945, around 3,000,000 ethnic Ukrainian and other non-Jewish victims were killed by the Nazis, along with between 850,000 and 900,000 Jews.

In 1953, Joseph Stalin died, and a period of de-Stalinisation took place across the USSR. A year later, as noted above, Crimea was transferred from the Russian Soviet Federative Socialist Republic to the Ukrainian SSR. In a reverse of Soviet policy, a process of Ukrainianisation followed with development of the Ukrainian language and culture. This process was short-lived and from 1962 until the early 1980s, under the leadership of Leonid Brezhnev, the USSR sought to forge a single “Soviet people (narod)” made up of numerous nationalities (natsional’nosti). Mikhail Gorbachev took the leadership of the USSR in

36 BBC News, “Ukraine demands ‘genocide’ marked”, *news.bbc.co.uk*, 25 November 2005.

1985 and launched the era of “perestroika” and “glasnost”, but the new liberal policies never took roots within the Ukrainian SSR due to opposition from the leader of the Communist Party of Ukraine, Volodymyr Shcherbytskyi. In 1986, a nuclear accident at the Chernobyl Nuclear Power Plant in the Ukrainian SSR killed 31 persons and the clean-up operation affected the health of the 600,000 people (liquidators) who took part.

On 24 August 1991, Ukraine declared itself an independent state. The Declaration of Independence was supported by over 92% of voters in a referendum held in December of that year. Leonid Kravchuk was elected as Ukraine’s first President. He served a single term before suffering defeat in 1994 to Leonid Kuchma, who led the new state until 2005.

The presidential election which took place at the end of 2004 saw a fierce battle between Kuchma’s pro-Russian Prime Minister, Viktor Yanukovych, and the pro-Western Viktor Yushchenko. Yanukovych was declared the winner by the Central Election Commission in November, but Yushchenko challenged the results and a series of protests took place, nicknamed the Orange Revolution (orange being the prominent colour of Yushchenko’s campaign). On 26 December, the Supreme Court of Ukraine annulled the results and ordered a revote. This time, Yushchenko was declared the winner and became President in January 2005, appointing the popular and charismatic Yulia Tymoshenko as Prime Minister.

Yushchenko’s popularity diminished quickly and his relationship with Tymoshenko soured. In the next presidential election in 2010, he garnered just 5.5% of the vote, and his rival, once again Viktor Yanukovych, succeeded him as President.

Under President Yanukovich, the few democratic reforms of the Yushchenko period were largely undone. The new administration began to establish control over the courts and prosecute its political rivals. Former Prime Minister Yulia Tymoshenko and members of her government were sentenced to imprisonment under dubious criminal charges of corruption brought before newly-appointed judges. Courts at all levels consistently began to issue decisions based upon the wishes of the government. In October 2010, the Constitutional Court annulled a series of 2004 constitutional amendments which had limited the powers of the President.

Following the parliamentary elections in October 2012, the Higher Administrative Court deprived a number of deputies of their seats, despite the fact that they had already taken the oath as members of the Verkhovna Rada and had thus gained immunity from prosecution without the permission of the Verkhovna Rada. Such a situation had never occurred before and the legal basis and reasoning of the Court's decisions were highly contentious. In January 2013, another example of the increasing restrictions on political freedoms occurred the Higher Administrative Court, following proceedings brought by the Kyiv City State Administration, decided that organisers of a peaceful public assembly had to inform the city administration about such an assembly at least 10 days prior to the event, despite this being contrary to the Constitution. The authorities increasingly began to use the courts as a means of prohibiting peaceful assemblies.

In November 2013, President Yanukovich decided not to sign an Association Agreement with the European Union which would have resulted in closer cooperation. This sparked a series of protests, initially in Kyiv at the Maidan Nezalezhnosti (Independence Square), but quickly spreading across the more pro-European western and central regions of the country. The protests (known as EuroMaidan) quickly turned violent, with riots in January and February 2014 which resulted in dozens being killed and hundreds injured. The state authorities initially tried to suppress the protests with force, before resorting to blockades. In response to police brutality, the protesters increased their demands, calling for those authorities found guilty of violence to be held liable, for the persecution of peaceful protesters to cease, and for those officials in charge of the crackdown to be dismissed.

However, violence escalated quickly – in Kyiv, unknown snipers shot dozens of protesters and militiamen. Support for the President and the government from deputies within the Verkhovna Rada and the Kyiv City Council plummeted. On 21 February 2014, President Yanukovich signed an agreement with a number of international mediators to resolve the crisis. This agreement envisaged the 2004 Constitution restored, a process of constitutional reform initiated and presidential elections by the end of the year. However, Yanukovich refused to sign a Resolution of the Verkhovna Rada which would have restored the 2004 Constitution. The following day, the Verkhovna Rada voted to remove Yanukovich from the post of President. Shortly thereafter, Yanukovich fled the country, disappearing for a week before surfacing in Rus-

sia. The Verkhovna Rada voted to replace Yanukovich with its Speaker, Oleksandr Turchynov of the Batkivshchyna party as acting President until fresh presidential elections could be held.

The governing Party of Regions quickly collapsed and a new governing coalition was formed in the Verkhovna Rada, composed of pro-democracy and unaffiliated deputies. The new government included representatives of the former opposition and was headed by Arsenii Yatsenyuk, of the Batkivshchyna party, who was former Minister of Economy, Minister of Foreign Affairs and Chairman of the Verkhovna Rada. Meanwhile, Yulia Tymoshenko, was released from prison on 28 February 2014.

Discontent in the more pro-Russian eastern parts of Ukraine, which had been the strongest supporters of Yanukovich, followed these developments. In March 2014, a “referendum” was held in Crimea on whether the territory should remain part of Ukraine or become a federal subject within Russia. Although official results showed almost 97% of voters preferring Crimea to become part of Russia, the United Nations General Assembly adopted a Resolution on 27 March 2014 stating that the referendum had “no validity” and could not “form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol”.³⁷ Despite an international outcry, Crimea was annexed by Russia within days. Pro-Russian separatist movements rejecting the new administration in Kyiv seized control of local government buildings in a number of cities in the east. Local “referenda” established “People’s Republics” in the oblasts of Donetsk and Luhansk and a war began between local forces and the Ukrainian army.

In May 2014, a new presidential election was held and won by the pro-European Petro Poroshenko. On 27 June 2014, he signed the economic parts of the EU-Ukraine Association Agreement. The parliamentary elections held in October 2014 saw a five-party coalition of pro-European parties form a majority and the confirmation of Arsenii Yatsenyuk as Prime Minister.

At present, Ukraine is a unitary state with a semi-presidential system of government. Legislative power is vested in the unicameral Verkhovna Rada.

37 See above, note 19.

The President is the head of state³⁸ and Commander in Chief of the Armed Forces, elected by popular vote for five year terms for a maximum of two consecutive terms.³⁹ Article 106 of the Constitution sets out an extensive list of powers and duties of the President, including: representing Ukraine in international relations; declaring a state of emergency; and appointing parts of the membership of the Constitutional Court and other state bodies. As of May 2015, the President was Petro Poroshenko. He was previously Minister of Foreign Affairs from 2009 to 2010, Minister of Trade and Economic Development in 2012 and, from 2007 to 2012, he was head of the Council of Ukraine's National Bank.

The Cabinet of Ministers is “the highest body in the system of bodies of executive power”⁴⁰ and comprises the Prime Minister, the First Vice Prime Minister, three Vice Prime Ministers and Ministers. While the Prime Minister, the Minister of Foreign Affairs and the Minister of Defence are appointed by the Verkhovna Rada under on the President's nomination, all other members of the Cabinet of Ministers are nominated by the Prime Minister and approved by the Verkhovna Rada.

Local state administrations are responsible for executive power in oblasts, districts and in Kyiv and Sevastopol with legislation setting out the extent of that power.⁴¹

The Verkhovna Rada (literally the “Supreme Council”) comprises 450 deputies elected every five years,⁴² whereby 225 are elected in single-member constituencies using the first-past-the-post electoral system, and 225 are elected through proportional representation with national lists and an electoral threshold of 5%. In May 2015, only 423 out of the 450 seats in the Verkhovna Rada were filled, as in October 2014 no elections were held in Crimea, Sevastopol, and most parts of the Donetsk and Luhansk oblasts which were in control of Russia or pro-Russian forces.

38 Constitution of Ukraine, Article 102.

39 *Ibid.*, Article 103.

40 *Ibid.*, Article 113.

41 *Ibid.*, Article 118.

42 *Ibid.*, Articles 75 and 76.

The general human rights situation in Ukraine is mixed. In 2015, Freedom House considered Ukraine to be “partly free”, receiving an overall freedom rating of 3.5 (with specific ratings of 3 for civil liberties and 3 for political rights).⁴³ The scores have remained relatively stable in recent years despite some improvements in the human rights situation: while the situation improved under President Yushchenko between 2004 and 2010, these improvements were largely reversed under his successor, Viktor Yanukovich. In its 2015 report, Freedom House highlighted various concerns including: business magnates and the state having influence over the media, the censorship of pro-Russian television channels and the raiding of pro-Russian journalists’ offices; continued political influence over the judiciary; and “corrupt bureaucrats, tax collectors, and corporate raiders.”⁴⁴

While not under control of the Ukrainian authorities, the human rights situation in Crimea and Donbas has deteriorated significantly since the crisis and conflict. The UN Human Rights Mission in Ukraine has reported “political pressure and intimidation against Crimean residents opposing the de facto authorities in Crimea and in particular Crimean Tatars and human rights activists.”⁴⁵ This pressure and intimidation includes legal proceedings being brought against individuals involved in protests against the referendum in March 2014,⁴⁶ including journalists.⁴⁷ Peaceful assembly, free movement within Crimea and the ability of certain religious groups to register have all been limited.⁴⁸ In Donbas, the UN Human Rights Mission in Ukraine has reported various violations of human rights, including possible incidents of summary, extrajudicial or arbitrary executions, illegal and arbitrary detention, enforced disappearance, and torture and ill-treatment by both pro-Russian and Ukrainian armed forces; and attacks on journalists.⁴⁹

43 Freedom House, *Freedom in the World 2015: Ukraine*, 2015.

44 *Ibid.*

45 Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015*, p. 3.

46 *Ibid.*, p. 23.

47 *Ibid.* See also Coynash, H., “Wave of Repression against Independent Crimean Journalist”, *Kharkiv Human Rights Protection Group*, 13 March 2015.

48 See above, note 45, pp. 23–25.

49 *Ibid.*, pp. 7–17.

2. PATTERNS OF DISCRIMINATION AND INEQUALITY

This part of the report discusses the principal patterns of discrimination and inequality in Ukraine. It seeks to identify the typical manifestations of discrimination and inequality as they are experienced by people in Ukraine and translate them into concepts that can be dealt with in the frameworks of human rights and equality law. It is based on original direct testimony collected from a wide range of individuals, as well as interviews with experts. We have also analysed research undertaken by authoritative sources in the last decade, and, where necessary, have referred to news reports. We have sought to corroborate all facts and provide accurate attribution of all statements.

This part of the report does not seek to provide an exhaustive picture of all of the observed patterns of discrimination. Rather, it aims to provide an insight into what appear to be the most important issues pertaining to the most significant discrimination grounds in the country. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the action of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education and access to goods and services.

The research found substantial evidence of discrimination and inequality on grounds of (i) gender; (ii) sexual orientation and gender identity; (iii) disability; (iv) health status, particularly HIV status; (v) ethnicity, national origin and colour; (vi) nationality and citizenship, (vii) religion; (viii) language; and (ix) age, including disadvantages faced by children.

2.1 Discrimination on the Basis of Gender

Ukraine is required to eliminate and prohibit all forms of discrimination against women through its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which it ratified in 1981 as the Ukrainian Soviet Socialist Republic. Ukraine also has specific obligations under Article 3 of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to ensure the equal rights of both men and women to the enjoyment of all of the rights set forth in the Covenants.

Further, under Article 26 of the ICCPR, Ukraine is required to ensure that the law “shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as (...) sex”. Finally, the European Convention on Human Rights (ECHR) requires Ukraine to prohibit discrimination based on sex in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.

Out of a total population of around 45.4 million people resident in Ukraine, around 24.3 million, or 53.7%, are women.⁵⁰

The Legal and Policy Framework

Ukraine has a relatively strong legal and policy framework designed to combat discrimination on the basis of gender when compared to other groups exposed to discrimination. This framework is analysed and assessed in Part 3 of this report. Discrimination on the basis of gender is prohibited both by the Constitution and the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”.⁵¹ Ukraine also has specific legislation designed to promote gender equality: the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”.⁵² In 2005, a Presidential Decree was issued aimed at improving the work of central and local government in respecting of ensuring equal rights for women and men⁵³ and, in 2013, the Cabinet of Ministers adopted a State Programme on Ensuring Equal Rights and Opportunities of Women and Men until 2016.⁵⁴

50 State Statistic Service of Ukraine, Population, available at: <http://www.ukrstat.gov.ua>.

51 Закон України “Про засади запобігання та протидії дискримінації в Україні” (Відомості Верховної Ради, 2013, № 32, с. 412), as amended by the Закон України “Про внесення змін до деяких законодавчих актів України щодо запобігання та протидії дискримінації” (Відомості Верховної Ради, 2014, № 27, с. 915).

52 Закон України “Про забезпечення рівних прав та можливостей жінок і чоловіків” (Верховної Ради України, 2005, № 52, с. 561), as amended between 2012 and 2014.

53 Указ Президента України “Про вдосконалення роботи центральних і місцевих органів виконавчої влади щодо забезпечення рівних прав та можливостей жінок і чоловіків”, 26 July 2005, № 1135/2005.

54 Кабінет Міністрів України, Постанова від 26 September 2013 р. № 717, “Про затвердження Державної програми забезпечення рівних прав та можливостей жінок і чоловіків на період до 2016 року”.

Despite these constitutional and legislative provisions, and the policy measures taken, discrimination on the basis of gender remains a significant problem in Ukraine and takes a variety of forms. It is overwhelmingly women who suffer the disadvantage of gender-based discrimination; consequently, this chapter focuses almost exclusively on the situation of women in the country.

International measurements of the overall disadvantage experienced by women in Ukraine consistently show that women face discrimination in many important areas of life, albeit with a much greater impact in some areas than others. The United Nations Development Programme's Gender Inequality Index of 2014, which measures "the extent to which national achievements in reproductive health, empowerment and labour market participation are eroded by gender inequality",⁵⁵ gives Ukraine a score of 0.326 ranking it 83rd out of 187 countries measured.⁵⁶ The World Economic Forum's 2014 Global Gender Gap Report, which measures the gender gap in economic participation, political life, education and healthcare, ranks Ukraine 56th out of 142 countries with a score of 0.706.⁵⁷ These figures, while somewhat selective, show the notable gap between men and women in various areas of life, although, as noted above, each area needs to be looked at in turn in order to understand the precise nature and level of the disadvantage experienced. Notwithstanding the varied forms of discrimination against women in Ukraine, most, if not all, have a common root in traditional stereotypes. As has been noted by the Committee on the Elimination of Discrimination against Women (the CEDAW Committee):

*[T]he persistence of traditional stereotypes regarding the roles and responsibilities of women and men in the family and in the society at large, (...) are root causes of women's disadvantaged position in political life, labour market and other areas.*⁵⁸

55 United Nations Development Programme, *Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, p. 39. A score of 0 represents absolute equality between men and women; a score of 1, absolute inequality.

56 *Ibid.*, p. 173.

57 World Economic Forum, *The Global Gender Gap Report 2014*, p. 358. Opposite to the UNDP's scoring system, a score of 0 represents absolute inequality between men and women; a score of 1, absolute equality.

58 United Nations Committee on the Elimination of Discrimination against Women, *Concluding Observations: Ukraine*, UN Doc. CEDAW/C/UKR/CO/7, 5 February 2010, Para 24.

Discriminatory Legal Provisions

Article 2(f) of the CEDAW requires Ukraine “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. Despite this, a number of legislative provisions continue to discriminate against women. These largely take two forms: the first, provisions which prevent (or limit) the ability of women to undertake certain types of work; the second, provisions which purport to give advantages or preferences to women through different forms of state assistance but in fact reinforce negative gender stereotypes.

Article 4 of the Law of Ukraine “On Equal Rights and Opportunities for Women and Men”, adopted in 2005, required all existing legislation to be subjected to a “gender-related assessment” (defined as an “analysis of the current legislation and draft legal acts, resulting in an opinion on their compliance with the principle of equal rights and opportunities for women and men”) and, in April 2006, the Cabinet of Ministers issued a Decree requiring the Ministry of Justice to develop and approve the method by which legislation would undergo a gender-related assessment.⁵⁹ In May 2006, the Instructions on how to conduct gender-related assessments were published by the Ministry of Justice.⁶⁰ The Instructions provide that all draft legislation would be assessed from 1 June 2006 onwards, and existing legislation would be assessed from 1 January 2007 onwards.

The requirement to assess legislation and draft legislation for its compatibility with the principles of gender equality has been taken seriously by the Ministry of Justice. The Ministry has issued guidelines on how to conduct gender-related assessments on both existing legislation and draft legislation which require assessment both against the CEDAW and against other relevant inter-

59 Кабінет Міністрів України, Постанова від 12 Април 2006 р. № 504, “Про проведення гендерно-правової експертизи”.

60 Міністерство Юстиції України, Наказ, 12 Май 2006, № 42/5, “Деякі питання проведення гендерно-правової експертизи”.

national treaties.⁶¹ Each year, the Ministry of Justice publishes a list of laws to be reviewed during the year, and issues reports of each assessment making recommendations for amendments to the legislation if necessary.

As of May 2015, the Ministry of Justice had conducted gender assessments of 38 pieces of legislation.⁶² Of these, 10 were considered to contain provisions which discriminated on the basis of gender. Of these, four have since been amended to remove the gender-discriminatory provisions, while six have not yet been amended.

Table 1: Number and Conclusion of “Gender-Related Assessments Carried out by the Ministry of Justice

Year	Non-Discriminatory on the Basis of Gender	Discriminatory on the Basis of Gender and Amended	Discriminatory on the Basis of Gender and Not Amended	Total
2007	6	1	3	10
2008	2	2	0	4
2009	0	1	0	1
2010	0	0	1	1
2011	2	0	1	3
2012	5	0	1	6
2013	7	0	0	7
2014	6	0	0	6
Total	28	4	6	38

The reviews suffer from a significant weakness in that both the Constitution and the Law of Ukraine “On Equal Rights and Opportunities for Women and Men” contain broad exceptions to the prohibition of discrimination on the basis of gender (see Part 3 of this report). Thus, many provisions which

61 Міністерства Юстиції України, *Методичні рекомендації щодо проведення гендерно-правової експертизи чинного законодавства*, available at: <http://www.minjust.gov.ua/15654>; М Міністерства Юстиції України, *Методичні рекомендації щодо проведення гендерно-правової експертизи проектів нормативно-правових актів*, available at: <http://www.minjust.gov.ua/15653>.

62 The Ministry of Justice of Ukraine maintains a dedicated website on the gender assessments, available at: http://www.minjust.gov.ua/law_gendpravexp.

are, in fact, discriminatory on the basis of gender and which are thus in contravention of international human rights law were assessed as not being discriminatory. Furthermore, not all of the provisions found to discriminate on the basis of gender have been amended. Of the 10 laws found to contain discriminatory provisions, six remain unamended and are briefly discussed below.

*Law of Ukraine "On Leave"*⁶³

- Article 10, paragraph 7 of the Law sets out the circumstances in which an employee may request annual leave prior to having worked for the employer for six months continuously in the first year of employment. The first item of paragraph 7 grants this right to women who need such leave due to pregnancy, childbirth and after childbirth and to women with two or more children under 15 years of age or a child with a disability.
- Article 10, paragraph 12 sets out the circumstances in which an employee may request leave at any convenient time. The fourth item of paragraph 12 grants this right to women with two or more children under 15 years of age or with a child with a disability.
- Article 19, paragraph 1 grants an additional period of seven days paid annual leave to certain persons, namely women with two or more children under 15 years of age, women with a child with a disability, or women who have adopted a child; single mothers; fathers raising children without a mother (including where the mother is in hospital); and persons who have custody of children.
- Article 25, paragraph 1 grants an additional period of 14 days unpaid annual leave, at their request, to certain persons, namely (i) mothers and (ii) fathers who bring up children without a mother (including where the mother is in hospital for a long period), where they have two or more children under 15 years of age or a child with a disability.

All of these provisions discriminate unjustifiably on the basis of gender, a conclusion reached by the assessment which considered all parents (whether the

63 Закон України "Про відпустки" (Відомості Верховної Ради України, 1997, № 2, с. 4), as amended between 2000 and 2014.

mother or the father) who had two or more children under the age of 15 or a child with a disability should enjoy the same entitlements to leave.

Law of Ukraine “On State Support to Families with Children”⁶⁴

- Articles 18-1 to 18-3 provide for social assistance for single mothers but not for single fathers.

By treating single fathers differently from single mothers, this provision discriminates unjustifiably on the basis of gender. The assessment reached the same conclusion and recommended that all single parents (whether single mothers or single fathers) should enjoy the same entitlements to social assistance.

Law of Ukraine “On Service in Local Government”⁶⁵

- Article 17, paragraph 1 of the Law requires officials working in local government to be assessed once every four years unless they fall into one of the categories listed in paragraph 2. Paragraph 2 includes, *inter alia*, pregnant women and women who have worked for less than one year after returning from maternity leave, childbirth or childcare.

While pregnant women are in a unique situation, by treating women who have returned to work after having a child differently from fathers who have returned to work after their child has been born, the provision discriminated unjustifiably on the basis of gender. The assessment reached the same conclusion, considering that that the provision violated International Labour Organization (ILO) Convention No. 156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities. The assessment concluded that the Law should be amended to include both women and men returning to work following leave to care for a child.

64 Закон України “Про державну допомогу сім’ям з дітьми” (Відомості Верховної Ради України, 1993, № 5, с. 21), as amended between 1994 and 2015.

65 Закон України “Про службу в органах місцевого самоврядування” (Відомості Верховної Ради України, 2001, № 33, с. 175), as amended between 2003 and 2015.

*Code of Labour Laws of Ukraine*⁶⁶

- Article 33, paragraph 2 grants employers the right to reassign staff members temporarily without their consent for a period of up to one month. However, paragraph 3 prohibits this where the employee is a pregnant woman, a woman with a child with a disability or with a child under six years old;
- Article 51, paragraph 4 allows employers to reduce the number of working hours for employees who are women with children under the age of fourteen years old or who have a disability;
- Articles 55 and 175 prohibit employers from requiring women to work at night, except as a temporary measure in those sectors of the economy where there is a special need;
- Articles 55 and 176 prohibit employers from requiring pregnant women and women with children under the age of three years old to work at night at all;
- Article 56 permits a pregnant women, women with a child under the age of fourteen years old or women with a child who has a disability to request that she work part-time;
- Articles 63 and 176 prevent pregnant women and women with children under the age of three years old from working at night, at weekends, overtime or being sent on business trips;
- Articles 63 and 177 require employers to obtain the consent of women with children aged between three and fourteen years old or who have a disability before requiring them to work overtime or to go on business trips;
- Article 174 prohibits the employment of women to undertake heavy work, to work in hazardous or dangerous conditions, and underground work, save where the underground work is non-physical and involves sanitary or domestic service. Article 174 also prohibits the employment of women to undertake work involving lifting and moving objects where the weight exceeds their limits;
- Article 178 allows for pregnant women and women with children under three years old to be transferred to another job which is less demanding;

66 Кодекс законів про працю України (Затверджується Законом № 322-VIII від 10.12.71 ВВР, 1971, додаток до № 50, с. 375), as amended between 1973 and 2015.

- Article 179 grants maternity leave for women for 70 days prior to childbirth and 56 days after childbirth (or 70 days if the mother gives birth to more than one child or has a difficult birth);
- Article 182 provides 56 days leave for women who adopt a child from birth (70 days if the woman adopts two or more children);
- Article 182¹ provides that where a woman has two or more children under fifteen years old, or a disabled child, or an adopted child, or is a single mother, or where a father is bringing up a child without a mother, they shall receive an additional seven days annual leave;
- Article 184 prohibits the dismissal of pregnant women, women with children under three years old and single mothers of children who are under fourteen years old or have a disability;
- Article 185 allows pregnant women and women with children under the age of 14 to claim vouchers to sanatoriums and rest homes as well as material aid;
- Article 186 requires organisations with a significant proportion of women to establish nurseries, kindergartens, rooms for nursing infants and rooms for personal hygiene for women.⁶⁷

All of these provisions treat women more favourably than men. While unique and favourable treatment for women during pregnancy and immediately after childbirth may be justified, the blanket favouring of mothers of young children or children with disabilities over fathers in the same situation is unjustifiable, as is the prohibition of women (regardless of whether they are pregnant or have children) from undertaking certain forms of work cannot be justified.

The assessment initially considered that all of these provisions fell within the exceptions to the prohibition of discrimination set out in Article 24 of the Constitution and Article 6 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”, as they judged that all involved either special protection measures for women during pregnancy, childbirth and child raising or specific requirements for the protection of women and men related to the protection of their reproductive health.

67 By virtue of Article 186¹, some of these guarantees (namely those in Articles 56, 176, 177, 179, paragraphs three to eight, 181, 182, 182¹, 184, 185 and 186) also apply to fathers raising children without a mother (including where the mother is in hospital for a prolonged stay) and to guardian or foster parents. However, they do not apply to fathers where the mother is not absent.

However, the assessment went on to note that both the CEDAW and ILO Convention 156 Concerning Workers with Family Responsibilities require that “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women”⁶⁸ and referred to the requirements under Articles 5 and 11(2)(c) of the CEDAW.⁶⁹ On that basis, the assessment concluded that some, but not all, of the provisions (namely all but Articles 174, 175, 178, 179 and 186) should be amended so as to provide equivalent guarantees to fathers.

- Article 56, paragraph 1 also permits a woman who is caring for a sick family member to request that she works part-time.⁷⁰

The restriction of this provision to women carers only constitutes an unjustified restriction on the basis of gender, a conclusion also reached by the assessment which recommended its extension to all employees, regardless of gender.

*Criminal Executive Code of Ukraine*⁷¹

- Article 141, paragraph 5 of the Criminal Executive Code provides that the children of women prisoners can be transferred to her family with the mother’s consent; or transferred to other persons with the

68 Convention on the Elimination of All Forms of Discrimination against Women, Preamble; ILO Convention No. 156 Concerning Workers with Family Responsibilities, Preamble.

69 Article 5 requires that States Parties take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases. Article 11(2)(c) requires that: “In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (...) (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities”.

70 By virtue of Article 186¹, this guarantee also applies to fathers raising children without a mother (including where the mother is in hospital for a prolonged stay) and to guardians foster parents. However, it does not apply to fathers where the mother is not absent.

71 Кримінально-Виконавчий Кодекс України (Відомості Верховної Ради України, 2004, № 3–4, с. 21), as amended between 2005 and 2015.

mother's consent and the agreement of the child's guardian or trustee; and that otherwise, at the age of three, they be transferred to children's institutions.

The preferential treatment to mothers in prison as opposed to fathers in prison discriminated justifiably on the basis of gender, as was the conclusion the assessment which recommended that the provision be amended so that the father's consent was obtained before children were transferred to relatives.

*Law of Ukraine "On Education"*⁷²

- Article 56 of the Law sets out various responsibilities of teachers and teaching staff. Paragraph 5 provides that teachers must educate children and young people to respect their parents, women, the elderly, traditions and customs, the national, historical and cultural values of Ukraine, the Ukrainian state and social order and the historical and cultural environment of the country.

The assessment considered that other legislation on education emphasised the importance of equal opportunity for women and men and gender equality, before concluding that the inclusion of "women" but not men in paragraph 5 was inconsistent with these principles and should be deleted. It is unclear, however, what the purpose and effect of the provision is in so far as it relates to women. While if interpreted as providing education on the equal worth of women in society and on the importance of equal opportunities for men and women, such a provision would help to eliminate the stereotypes which limit opportunities for women (as well as men) in Ukrainian society. However, if interpreted as suggesting that respect for women requires their special treatment and protection, in effect perpetuating the stereotypes, such a provision would, indeed, be inconsistent with the principle of gender equality.

As stated above, many provisions of other pieces of legislation are, in fact, discriminatory on the basis of gender and are thus in contravention of international human rights law but were not considered as being discriminatory during the assessment. Arguably the most significant among these are Articles

72 Закон України "Про освіту" (Відомості Верховної Ради УРСР, 1991, № 34, с. 451), as amended between 1993 and 2014.

174 and 175 of the Code of Labour Laws⁷³ which, while purporting to provide special protection for women, in fact restrict women's opportunities to work on an equal basis with men. As noted above, Article 174 prohibits women from undertaking heavy work, work in hazardous or dangerous conditions, and underground work, save where the underground work is non-physical and involves sanitary or domestic service. Women are also prohibited from undertaking work involving lifting and moving objects where the weight exceeds their limits. Similarly, Article 175 prohibits women from working at night save in those sectors of the economy where there is a special need and where it is for a temporary period only.

While arguably well intentioned, such provisions have been criticised by the CEDAW Committee as they have "the sole effect of restricting women's economic opportunities, and [are] neither legitimate nor effective as a measure for promoting women's reproductive health";⁷⁴ and "create obstacles to women's participation in the labour market".⁷⁵

Outside of the assessment process described above, some other attempts have been made to challenge certain discriminatory legislative provisions. In 2014, the Ukraine Parliament Commissioner for Human Rights applied to the Constitutional Court for an official interpretation of Article 24 of the Constitution in respect of particular legislative provisions. The Commissioner argued that on the basis of Article 24 of the Constitution and Article 3 of the Law of Ukraine "On Equal Rights and Opportunities for Women and Men", two legislative provisions were discriminatory against men: Article 182¹ of the Code of Labour Laws and Article 19 of the Law of Ukraine "On Leave" – both of which provide an additional seven days of annual leave to mothers who have two or more children under 15 years old, or a disabled child, or an adopted child, but not to fathers in the same circumstances. The Constitutional Court, however, refused to hear the application on the basis that the Commissioner was, in fact, not asking the Court to provide an inter-

73 See above, note 66.

74 United Nations Committee on the Elimination of Discrimination against Women, *Fifteenth Session Report*, UN Doc. A/51/38, 9 May 1996, Para 286.

75 United Nations Committee on the Elimination of Discrimination against Women, *Twenty-Sixth and Twenty-Seventh Sessions Report, Concluding Observations: Ukraine* UN Doc. A/57/38, 2 May 2002, Para 293.

pretation of Article 24, but to expand the provisions cited to provide equality between women and men. Article 85, paragraph 3 of the Constitution grants the Verkhovna Rada the competence to make legislation and Article 92, paragraph 6 lists as within the legislative competence of the Verkhovna Rada “the fundamentals of social protection”, “the principles of the regulation of labour and employment”, “marriage” and “family, the protection of childhood, motherhood and fatherhood”. As such, the Court concluded that it was being asked to act outside its jurisdiction.⁷⁶

Gender-Based Violence

Gender-based violence has been recognised by the CEDAW Committee as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.⁷⁷ Two of the most pervasive and pernicious forms of gender-based violence which affect women in Ukraine are trafficking in women and domestic violence.

Trafficking in Women

The trafficking of persons in Ukraine is a significant human rights issue, with the country being source, transit and destination country for men, women and children.⁷⁸ The International Organization for Migration (IOM) has worked with victims of trafficking in Ukraine since 2000; in the absence of a centralised national data collection system used by the authorities, the IOM’s statistics are the most widely used, including by government.⁷⁹ Between 2000

76 Ухвала Конституційного Суду України про відмову у відкритті конституційного ровадження у справі за Конституційним поданням Уповноваженого Верховної Ради України з прав людини щодо офіційного тлумачення положень статті 24 Конституції України у взаємозв’язку з положеннями статті 21, частини першої статті 1821 Кодексу законів про працю України, частини першої статті 19 Закону України “Про відпустки”, статті 3 Закону України “Про забезпечення рівних прав та можливостей жінок і чоловіків”, Справа № 2-41/2014, 11 March 2014, № 30-у/2014.

77 United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against women*, UN Doc. A/47/38 at 1, 1993, Para 1.

78 United States Department of State, *Trafficking in Persons Report 2014*, 2014, p. 390.

79 Council of Europe, Group of Experts on Action against Trafficking in Human Beings, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine*, GRETA(2014)20, Adopted on 4 July 2014, Published on 19 September 2014, p. 11.

and March 2015, the IOM assisted 11,086 victims of trafficking in Ukraine,⁸⁰ although the total number of victims is likely to be significantly higher: the IOM estimates that, since independence in 1991, over 120,000 men, women and children have been victims of human trafficking.⁸¹ Since 2004, the gender of the victims has been recorded and monitored and over two thirds of the victims have been women.⁸² Where the purpose of trafficking is sexual, the overwhelming majority of victims are women: 99% of the victims assisted since 2007 were women (2,190 compared to 25 men).⁸³

While victims from various countries are trafficked into or through Ukraine, victims who are themselves Ukrainian are trafficked not only to other countries, mostly in Europe and Asia, but within Ukraine itself.⁸⁴ The women most vulnerable to being trafficked are young, single women with low or very low living standards.⁸⁵ They often have limited access to employment opportunities and are invariably targeted by recruiters who are themselves Ukrainian through fraud, coercion, and debt bondage.⁸⁶

Beginning in the late 1990s, the Ukrainian authorities have taken a number of steps to address human trafficking, including trafficking in women.

80 International Organization for Migration, *Statistics: Combating Trafficking in Human Beings* (last updated on 31 March 2015), available at: http://www.iom.org.ua/sites/default/files/iom_vot_statistics_eng_mar_2015.doc.

81 International Organization for Migration, Mission in Ukraine, *Combating Human Trafficking*, available at: <http://iom.org.ua/en/combating-human-trafficking>.

82 See above, note 80. The full table shows that the proportion of women victims assisted has decreased from over 80% in the first three years to less than 50% in more recent years, however, as noted below, amongst victims of trafficking for sexual purposes, women make up almost 100% of victims:

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Women	540	713	761	849	625	596	693	471	414	447	189	91
	86%	86%	81%	76%	76%	77%	64%	57%	44%	48%	44%	64%
Men	86	115	176	272	195	177	392	352	531	482	236	50
	14%	14%	19%	24%	24%	23%	36%	43%	56%	52%	56%	36%

83 See above, note 80.

84 See above, note 78, p. 391.

85 Consortium for Applied Research on International Migration, *Human Trafficking Trends in Ukraine: CARIM-East Explanatory Note 13/67*, 2013, p. 2.

86 See above, note 78, p. 391.

As well as general criminalisation of trafficking through Article 149 of the Criminal Code (which criminalises trafficking for sex and labour), the government adopted a series of Action Plans from 1999 onwards and, in 2011, the Verkhovna Rada adopted the Law of Ukraine “On Combating Trafficking in Human Beings”⁸⁷ with the aim of reducing the level of trafficking and providing support to victims. It would appear that the legislative and policy efforts made by the government have had a significant impact upon the scale of trafficking in women. The number of victims identified and assisted by IOM has fallen steadily in recent years, from 581 in 2007 to 52 in 2014.⁸⁸ Despite this, non-governmental organisations have stated that the efforts of government are still insufficient. In 2010, despite recognising “the efforts made by the State party to address the issue of trafficking in women and girls”, the CEDAW Committee noted with concern that “the root causes of trafficking are not sufficiently addressed, funding of shelters remains scarce and that, in general, resources allocated to combat trafficking are still inadequate”.⁸⁹ In 2012, a report by La Strada Ukraine considered that these problems were still relevant, two and a half years after the CEDAW Committee had issued its concluding observations.⁹⁰

Domestic Violence

Statistics on the incidence of domestic violence in Ukraine reveal a high degree of prevalence. In 2011, the Ministry of the Interior reported 162,768 complaints of domestic violence.⁹¹ International Women’s Rights Centre “La Strada-Ukraine” estimated in 2013 that 90% of victims of domestic violence were women.⁹² While the breakdown of complaints by the gender of the complainant is not available, in 2011, a total of 81,304 men and 5,876 women

87 Закон України “Про протидію торгівлі людьми” (Відомості Верховної Ради України, 2012, № 19-20, с. 173), as amended between 2013 and 2015.

88 See above, note 77.

89 See above, note 58, Para 30.

90 La Strada-Ukraine, *Implementation by Ukraine of paragraph 31 of CEDAW Committee Concluding Observations, based on consideration of the combined sixth and seventh periodic report of Ukraine in 2010, 2012*, p. 1.

91 United States Department of State, *Human Rights Report 2011: Ukraine*, 2012.

92 Панчишин, О., “60% українських дітей до 14 років страждають від насильства в сім’ї”, *Zaxid.net*, 25 April 2013.

were placed under police supervision.⁹³ Even accounting for a small proportion of these incidents occurring in same sex relationships, the fact that over 93% of the complaints were made against men indicates that that women are likely to be the victims in the overwhelming majority of cases. In 2013, a similar number of complaints were made: 160,730.⁹⁴ Figures on the gender of the complainant are available for all complaints made during the first six months of the year (65,797): 58,039 by women (88%), 7,346 by men (11%), and 412 by children (1%).⁹⁵

With a total adult female population of approximately 21 million, a recent average of 160,000 complaints of domestic violence per year and 90% of these being made by women, this would indicate 1 in 145 adult women making a complaint of domestic violence each year. However, civil society actors argue that this number of official complaints is only the tip of the iceberg. La Strada Ukraine estimated that the number of complaints reflects only 10–15% of the total number of incidents.⁹⁶ Many victims state that even when they report domestic violence to the state authorities, their complaints are not taken seriously.⁹⁷

There is evidence that the conflict in Donbas has led to an increase in the number of incidents of domestic violence. While La Strada received an average of 580 calls a month in 2014, the vast majority of which related to domestic violence, for the first three months of 2015, the figure was closer to 900.⁹⁸ La Strada considers this increase to be due to men fighting in Donbas and returning with post-traumatic stress disorder, noting:

93 This figure is calculated on the basis that the reported cases were from opposite-sex couples. Given the reluctance of same-sex couples to live openly and the harassment LGBT individuals face by the police, it is safe to assume that a very low proportion, if any, of the complaints were made by partners in openly cohabiting same-sex couples.

94 Ukrainian Helsinki Human Rights Union, *Human Rights Report: Human Rights in Ukraine 2013, 2014*, available at: <http://helsinki.org.ua/index.php?id=1398093906>.

95 United States Department of State, *Human Rights Report 2013: Ukraine*, 2014.

96 Drachuk, S., "Violence against women in Ukraine and war in Donbas", *EuroMaidanPress*, 25 November 2014.

97 See above, note 94.

98 Bigg, C., "'Men Return Completely Changed': Ukraine Conflict Fuelling Surge in Domestic Violence", *Radio Free Europe / Radio Liberty*, 26 April 2015.

Women call and tell us that they were married for 15 years, that they had a good family, and that their husbands were never violent, never hit or insulted them. Then they left for the war and returned completely changed. They are violent. They beat the children. They beat their wives and drink. These women don't know what to do because they don't recognize the husbands they had before the war in these men.⁹⁹

In 2001, in response to concerns over the level of domestic violence in the country, the Law of Ukraine “On Prevention of Violence in the Family”¹⁰⁰ was adopted. It was the first specific legislation seeking to combat domestic violence adopted anywhere in the former Soviet Union. The Law provides for various preventative measures, including official warnings for those who are believed to have committed domestic violence but where it has not been possible to charge the person with an offence.¹⁰¹ Their details are then stored by the police on a special register. If a person commits domestic violence after an official warning has been issued, they can be sent to a crisis centre to undertake rehabilitation or issued with a protective order which prevents them from carrying out certain activities such as contacting the victim or going to the victim’s home.

Article 8 of the Law requires there to be a shelter for those affected by domestic violence in all major cities. In practice, however, there is not even one in each of the oblasts: as of 1 January 2015, a total of 19 shelters had been established.¹⁰² Those that do exist are often ineffective, with limited psychological and legal assistance provided. It has been reported that assistance centres in Kyiv have refused to provide their services to victims who were not registered as residents of the city.¹⁰³ The CEDAW Committee has expressed its concern over

99 *Ibid.*

100 Закон України “Про попередження насильства в сім’ї” (Відомості Верховної Ради України, 2002, № 10, с. 70), as amended between 2007 and 2012.

101 *Ibid.*, Article 10.

102 Information obtained from the Ministry of Social Policy of Ukraine, March 2015. Letter held on file by Nash Mir.

103 See above, note 91.

[T]he obstacles encountered by women in their access to these services owing to the official registration requirement, age limits and the fact that these centres lack appropriate funding and are not available in all regions.¹⁰⁴

Employment

Ukraine is obligated to “take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights” by virtue of Article 11 of the CEDAW. Further, Ukraine is required by Article 3 together with Article 6(1) of the ICESCR to ensure the equal right of men and women to enjoy “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts”. Despite these obligations, women in Ukraine face significant discrimination and disadvantage in many aspects of employment, including: discriminatory recruitment practices, lower pay than men for comparable work, difficulties in returning to the workplace following maternity leave, and sexual harassment in the workplace.¹⁰⁵

Overall, the unemployment rate among women is lower than that among men. The figures from 2013 show that while the unemployment rate for men was 8.0%, for women it was 6.2%.¹⁰⁶ This figure, however, masks a significant inequality in the employment market: while the labour force participation rate for men for 2013 was 71.6%, for women it was just 58.9%,¹⁰⁷ indicating that a much greater proportion of women were outside the labour force than men. The figures for 2014 show similar results: the unemployment rate for men

104 See above, note 58, Para 28.

105 In 2010, the CEDAW Committee expressed its concern over “the real situation of women in the labour market, in particular about high rates of unemployment affecting women, important wage discrepancies between women and men, occupational segregation and the persistent gender-based discriminatory attitudes among public and private employers, including discriminatory recruitment practices and sexual harassment at the workplace”. (See above, note 58, Para 34).

106 International Labour Organization, *Country Profiles: Ukraine*, available at: http://www.ilo.org/ilostat/faces/help_home/data_by_country/country-details?_afLoop=65487978636569&country=UKR&_adf.ctrl-state=nwd815j4v_253.

107 *Ibid.*

rose to 10.8% and for women to 7.5 %, but the labour force participation rate for women was 51.9% whereas for men it was 61.8%, again indicating that a much greater proportion of women are out of the labour force than men.¹⁰⁸

Discrimination in Recruitment

Article 11(1)(b) of the CEDAW requires Ukraine to ensure, on a basis of equality of men and women, “the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment”.

Evidence gathered for this report indicates that the experiences of women in the recruitment process vary significantly and that the disadvantages women face are multi-faceted. Advertisements which call only for female or male applicants, despite being prohibited by law, are commonplace; and women, particularly young women, are asked personal questions about their marital status and plans regarding children during job interviews, with employers reluctant to hire women seen as a “risk”. While job advertisements which seek only female applicants might seem to discriminate only against men, in fact, such practices contribute to the overall disadvantaged position of women in the workplace. First, such advertisements reinforce stereotypes that there are jobs that only women should do and, in turn, jobs that men should do. Secondly, as such jobs tend to be lower paid and less prestigious, they can distort the labour market in favour of men by pushing women into those jobs and encouraging more men in higher paid, more prestigious jobs. Such a distortion of the labour market ultimately limits women’s freedom of choice in employment and such advertisements have been criticised by, *inter alia*, the Committee on Economic, Social and Cultural Rights.¹⁰⁹

Job advertisements which impose requirements as to the sex of the applicant are officially prohibited. Article 17 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”¹¹⁰ prohibits job advertise-

108 Державну Службу Зайнятості, *Ситуація на Ринку Праці та Діяльність Державної Служби Зайнятості: Основні тенденції на ринку праці (за останніми опублікованими даними)*, 17 April 2015, available at: http://www.dcz.gov.ua/control/uk/statdatacatalog/list/category?cat_id=30543.

109 United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations: Poland*, UN Doc. E/C.12/1/Add.26, 16 June 1998, Para 14.

110 See above, note 52.

ments which seek only women or men, save where the position can only be performed by persons of a particular sex. Article 17 also prohibits employers from making different demands from employees based on their sex or requiring from them information about their personal life or plans to have children. The 2013 Law of Ukraine “On Employment of the Population”¹¹¹ prohibits, in Article 11, advertisements seeking candidates of only one gender and amends the Law of Ukraine “On Advertising” accordingly.¹¹² The State Labour Inspectorate is empowered to investigate such advertisements and fine employers who break the law with fines of up to 10 times the minimum wage.¹¹³

Despite this, there is evidence that many job advertisements in official job magazines continue to include requirements regarding the sex of the candidates, particularly for jobs as receptionists or in the textiles sector, indicating that the law is not being properly enforced.¹¹⁴ Researchers for this report analysed the magazine “Offer a Job” for the period May 2012 to December 2013 and found:

- There were many job advertisements where the sex and age of the eligible candidates for the vacant position are indicated;
- The most common job advertisements where only women were eligible were those for accountants, assistant accountants, curtain designers, embroiderers, ironers, sewers, secretaries, office managers, secretary-referents, housekeepers, bookbinders, cloth binders, dishwashers, managers in printing or logistics, telephone dispatchers or operators, goods-wrappers and dancers;
- On occasion, only women were eligible for positions as: director’s assistant (often with limitation in age up to 35 years old), pharmacy manager, shoe or dress store manager and estate agent;

111 Закон України “Про зайнятість населення” (Відомості Верховної Ради, 2013, № 24, с. 243), as amended between 2013 and 2015.

112 See Article 24¹ of Закон України “Про рекламу” (Відомості Верховної Ради України, 1996, № 39, с. 181), as amended between 1998 and 2014.

113 The minimum wage in Ukraine in 2014 was 1,214 hryvnia per month (approximately 52 euro) unless the person has a disability in which case it is 949 hryvnia per month (approximately 42 euro), as per Закон України “Про Державний бюджет України на 2014 рік” (Відомості Верховної Ради, 2014, № 35, с. 1180), thus permitting a maximum fine of 12,140 hryvnia (approximately 520 euro).

114 See Українська Гельсінська спілка з прав людини, *Права Людини в Україні 2013: Узагальнена Доповідь Правозахисних Організацій: 20. Права жінок та гендерна рівність*, available at: <http://helsinki.org.ua/index.php?id=1398060713>.

- Rarely, but on occasion, only women were eligible for positions as PC operators, laboratory assistants, physician assistants, commercial director assistants;
- The most common job advertisements where only men were eligible were those for security guards, printers, chemical engineers, production managers, positions in delivery services, bartenders, watchmen, inspectors, couriers, drivers, re-fuellers, delivery men, loaders, chief engineers, directors, technicians, tools repair professionals;
- In some cases, marital status was specified alongside the sex and age sought, for example: “Married women with school-age children are preferred”.

The website of the magazine “Vogue Ukraine”, for example, included the following advert:

*Vogue Ukraine offers the opportunity to join our team! We are looking for an editor assistant – a purposeful and active girl with experience of the positions of secretary or office-manager and with proficient English. Responsibilities include maintaining the office functioning, organising negotiations and business trips, translating and preparing presentations.*¹¹⁵

Gender stereotypes appear even in standard information materials giving information on the educational, qualification and physical requirements for different positions developed by the State Employment Office of Ukraine.¹¹⁶ These materials are available in central and regional state employment offices. A review of these materials revealed that many reflect gender stereotypes, potentially restricting access for women to a large number of professions which are highly paid and popular in the job market.¹¹⁷ These information materials recommend that women focus on jobs such as childcare, cleaning or making artificial flowers.¹¹⁸ In order to justify the difference in access to

115 Ла Страда-Україна, Звіт за результатами моніторингу. Ґендерна дискримінація, 2014, prepared for this report.

116 *Ibid.*

117 *Ibid.*

118 *Ibid.*

undertaken by the Ukrainian Social Workers League revealed that almost one third of parents were not hired due to their having a child and the possibility of requiring leave, because of pregnancy, or because they were the parent of a small child.¹²⁰ As it is only mothers, and not fathers, who are entitled to maternity and other forms of parental leave (with some exceptions), in practice, it will very frequently be women who are not hired. The League also found that 15% of parents were fired for one or more of these reasons.¹²¹

Women interviewed by the Equal Rights Trust for this report spoke of their own experiences. For example, Halyna was a 25 year old woman in Kyiv. She had higher education in economic and public service, together with advanced English. She attended a job interview for a position of Logistics Manager in the head office of an IT company in Kyiv. Among the first questions asked by the Human Resources Director were ones relating to her marital status and children. At this time, Halyna had a three-year-old child. The questions in the interview then largely related to who would look after the child in case of illness, etc., as irregular working hours were required in the position. Halyna was told that annual leave was only 10 days per year and there was no provision for sick leave. Halyna was required to justify and provide written evidence that she was in good health and had relatives who could look after her child. She was forced to hide the fact that her child had poor health and required regular medical examinations and treatment. Internal communications within the team included sexist remarks and sexual jokes. Halyna was ultimately forced to quit her position.¹²²

Ksenia was 22 years old, single and without children. She had undertaken higher education. She attended a job interview for a position in a private company. One of the first questions related to her marital status. She was informed that she

120 Ліга соціальних працівників України, "Виступ С.В. Толстоухової на парламентських слуханнях", *ligasocial.org.ua*, available at: http://ligasocial.org.ua/index.php?option=com_content&view=article&id=121:2013-11-11-13-56-30&catid=13:2013-11-11-13-45-25&Itemid=30.

121 *Ibid.*

122 Equal Rights Trust interview with Halyna, 10 February 2014, Kyiv. Throughout the report, in presenting the first-hand testimony of victims of discrimination, certain names have been withheld out of respect for their wishes for anonymity. Information on the identities of all persons whose names have been withheld is kept on file by the authors.

was required to provide a written commitment not to take maternity leave for 2 years as the company did not pay for such leave. Were this to happen, she would be required to resign of her own volition or else she would be dismissed for absenteeism or misconduct (she was informed that a reason would be found).¹²³

Unequal Pay

Article 7(a)(i) of the ICESCR requires Ukraine to ensure

Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

Measurement of the gender pay gap is notoriously difficult, and estimates of the actual pay gap in Ukraine vary, though all show that women are paid less than men. Since 2012, the State Statistics Committee has published annually the average monthly wage for men and women. This data shows a significant and indeed increasing gender pay gap.

Table 2: Average Monthly Wage for Men and Women and Gender Pay Gap

	Men (hryvnia)	Women (hryvnia)	Pay Gap
2012	3,429	2,661	22.4%
2013	3,711	2,866	22.8%
2014	3,979	3,037	23.7%

This rise in recent years should be seen in the context of a history of much larger gaps: the gender pay gap in 1991 was around one third;¹²⁴ between 2000 and 2005 it ranged from 29.1% to 31.4% before beginning to fall.¹²⁵

123 Equal Rights Trust interview with Ksenia, 11 February 2014, Kyiv.

124 United Nations Committee on the Elimination of Discrimination against Women, *Third Periodic Report of States Parties: Ukrainian SSR*, UN Doc. CEDAW/C/UKR/3, 14 June 1991, Para 5.

125 Ukraine, National Review, *Implementation of the Beijing Declaration and Platform for Action (1995) and the outcomes of the twenty-third special session of the General Assembly (2000) in the context of the twentieth anniversary of the Fourth World Conference on Women and the adoption of the Beijing Declaration and Platform for Action (2015)*, April 2014, p. 34.

By comparison, the average gender pay gap in the European Union in 2013 was approximately 16.4%.¹²⁶

The government of Ukraine has sought to explain this difference as “not due to discrimination in setting wages” but resulting:

[F]rom the greater percentage of men in management posts, which offer higher pay, and from men’s more frequent assignment to jobs characterized by difficult or harmful or particularly difficult or harmful working conditions and to night work, on which the pay is also higher.¹²⁷

This explanation gives further cause for concern, as the state appears to be seeking to justify continued pay disparity by reference to discriminatory laws outlined above which limit women’s freedom of choice in employment. As noted above, the CEDAW Committee has stated that women should not be prevented from undertaking work – irrespective of the level of difficulty, or the level of harmful or hazardous working conditions – which is available to men. Similarly, while it may be true that there are more men in senior management posts than women, this does not justify the differential in remuneration between men and women, but instead indicates the state’s tolerance of continued hierarchies in employment on the basis of sex.

One woman, Valentyna, spoke to Equal Rights Trust of her experience. Valentyna was 27 years old, married and the mother of one child. She had completed higher economic and financial education and was given a job at Nadra Bank. When she was hired, there were two similar vacancies in the organisation and she and a man were hired to fill them. Despite a perfect work record, she later discovered that her male colleague had been paid a higher salary than her, despite their positions being similar. When she challenged the bank’s director, she was told that “men took no maternity leave” and so the higher salary was a “bonus for riskless behaviour”. A few months later she left her position.¹²⁸

126 European Commission, “Equal Pay Day: Gender Pay Gap stagnates at 16.4% across Europe”, *europa.eu*, 28 February 2014. The figure of 16.4% masks significant variations across the European Union: in Slovenia, for example, the gap is just 2.5%, whereas in Estonia it is 30.0%.

127 United Nations Human Rights Committee, *Seventh Periodic Report: Ukraine*, UN Doc. CCPR/C/UKR/7, 16 September 2011, Para 32.

128 Equal Rights Trust interview with Valentyna, 11 February 2014, Kyiv.

Maternity Leave

Article 11(2) of the CEDAW requires Ukraine to take various measures to prevent discrimination against women on the grounds of maternity and to ensure “their effective right to work”. These measures include (a) prohibiting, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave; (b) introducing maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; and (c) encouraging the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.

As noted above, the legislative provisions in Ukraine providing for maternity leave do not – with some limited exceptions – permit equivalent leave to be taken by fathers. As such, upon the birth of a child, it will invariably be the mother who will take time off work as it is only she who is entitled to paid maternity leave. Coupled with the legislative provisions, traditional attitudes towards women in Ukraine mean that women undertake the vast majority of housework and childrearing.¹²⁹ In this context, the CEDAW Committee has raised concerns that “the lack of childcare facilities constitutes an obstacle to the full exercise of women’s right to work”.¹³⁰ The combination of these factors means that it is far more difficult for a woman to sustain a career if she has children.

The government has made some attempts to try to improve the situation of women who are put at a disadvantage by taking maternity and childcare leave. In 2013, the Ministry of Social Policy announced that women taking maternity leave would be eligible for vouchers for training, re-training or professional development, up to a value of 11,600 hryvnia (approximately 490 euro).¹³¹ In addition, in 2013, the Law of Ukraine “On Introduction of Amendments to Some Laws of Ukraine Regarding Awarding and Indexation of

129 Women’s Consortium of Ukraine, *Alternative Report on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women in Ukraine, 2008*, pp. 40 and 46.

130 See above, note 58, Para 34.

131 Ukrinform, “Young mothers to be eligible to subsidized employment – Korolevska”, *ukrinform.ua*, 12 August 2013.

Pension”¹³² came into force. The new legislation amends the Law of Ukraine “On Obligatory State Pension Insurance”¹³³ and changes the means by which pregnancy and childbirth allowance for women on maternity leave is funded. While, prior to this, the allowance had been funded entirely by the state, the amendments made the recipients of the allowance insured for the purposes of the state pension insurance scheme. As a result, working women and their employers are now required to contribute to the system of mandatory state social insurance which includes pension insurance (the Unified Social Tax). Working women are required to pay 2% of the total amount of the allowance to the state budget while employers have to contribute 33.2%. While this benefits women by including the period of paid maternity leave taken (either 126 or 140 days) in the calculation of their length of service and seniority, some have raised concerns that this could lead to a reduction in the official salaries of pregnant women, an increase in the shadow economy, and women becoming less competitive in the labour market in general.¹³⁴ Others have suggested that the new legislation will result in companies not hiring women, or firing them to avoid paying what has been dubbed a “pregnancy tax”.¹³⁵

In addition, it should be noted that while the current legislative and policy regime on parental leave fosters gender discrimination and puts women at a disadvantage in the workplace, these provisions also disadvantage men, resulting in fathers being unable to take paid paternity leave upon the birth of a child.

Armed Forces

There is evidence of employment discrimination against women specifically in the armed forces. The number of positions which are open to women in the Ukrainian army is small. In addition, there is evidence of sexist comments being made by senior members of the armed forces, such as Deputy Military Commissioner of Sumy oblast, Ihor Zakrevskyi, who stated:

132 Закон України “Про внесення змін до деяких законів України щодо призначення та індексації пенсії” (Відомості Верховної Ради, 2014, № 11, с. 135).

133 Закон України “Про загальнообов’язкове державне пенсійне страхування” (Відомості Верховної Ради України, 2003, № 49–51, с. 376), as amended between 2004 and 2015.

134 Послезавтра, “«Налог на беременность» усилит теннизацию экономики на 10 процентов – эксперт”, *poslezavtra.com.ua*, 17 July 2013.

135 Малык, И., “Налог на ‘декретные’: Дискриминация женщин и теннизация зарплат”, *UBR*, 23 July 2013.

By law, we can offer women service in the army. But today there are only vacancies as commanders of tank, tank mechanics and drivers. I cannot imagine a woman in such work (...) If you were lucky to be born as a man, you have your entire life to prove to the other half of humanity who were fortunate to be born a woman that you are a real man. There is no better way to prove this than to test yourselves in difficult military conditions.¹³⁶

Olesya told the Equal Rights Trust her story. Olesya was a senior specialist at the Department of Military Policy in the Ministry of Defence. She had eight years of experience working at the Ministry and had gained distinction as “the best specialist”. Nonetheless, the newly-appointed Chief of the department dismissed Olesya alongside other women in the department from their positions without any reason. She was later offered another position, lower in prestige and salary. The Chief of the department explained that Olesya could not have the position of a senior specialist since she had no experience of military service. Following this, Olesya worked in a position within the Ministry but in another department. There, an inspection of her performance was initiated for no reason. Following the inspection, the Chief of the department threatened Olesya that if she did not resign, he would initiate another inspection and create unbearable conditions for her work.¹³⁷

Sexual Harassment

Evidence collected by NGOs indicates that sexual harassment of women in the workplace is widespread, despite having been prohibited by the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”¹³⁸ since 2006. There are no official statistics collected on the incidence of sexual harassment, but women’s organisations estimate that one in four women in Ukraine will experience sexual harassment at work.¹³⁹ One story is N’s. N was the head of a section within a department of the Ministry of Defence with the

136 Новини Закарпаття, “До української армії відмовляються брати закарпатських жінок”, *transkarpatia.net*, 21 February 2013.

137 Equal Rights Trust interview with Olesya, 18 February 2014, Kyiv.

138 See above, note 52.

139 Коваленко, Н. and Шерстюк, Н. “Від сексуальних домагань на роботі страждають чверть українських жінок (правозахисники)”, *Радіо Свобода*, 31 May 2010.

rank of colonel. After a period of sick leave she met with her boss. He invited her to his office, allegedly to discuss work-related issues. When they were alone, he started to remove items of clothing and sexually harass her. She refused his advances, but did not inform the police as she feared this would make the situation worse. Following this, he started to use his seniority in order to put pressure on her and force her to quit her job. He prohibited other employees from communicating with her, forced them to submit complaints against her, launched an inquiry against her with no basis, refused to provide leave, pressed her psychologically, and was aggressive in his tone towards her, making it difficult for her to do her job. Finally under the premise of restructuring the department, he removed her from the staff without offering her another position elsewhere.¹⁴⁰

It appears that, as of May 2015, there has only been one case of sexual harassment considered by a court. Svitlana Pomilyaiko of Kharkiv regularly informed the management of the factory where she worked that the head of the design bureau made sexual advances towards her. In response to her complaints, the administration fired her, officially for being four minutes late to work. Svitlana took her complaint to the court. She was reinstated in her position, but was unable to prove the real reason for her dismissal.¹⁴¹

Political Life

Women are grossly underrepresented in political life and decision-making in Ukraine and this has been a repeated concern of both the Human Rights Committee (HRC) and the CEDAW Committee for many years. In 2001, the HRC noted that “the level of representation of women in Parliament (...) remains low”,¹⁴² and, in 2013, raised concerns “about the continued underrepresentation of women in decision-making positions in the public and political sphere, in particular in Parliament and Government”,¹⁴³ Similarly, the CEDAW Committee raised concerns in 1996 over “the low representation of

140 Equal Rights Trust interview with N., 18 February 2014, Kyiv.

141 Наталія Субота і партнери, “Сексуальні домагання на роботі: як захиститися в суді”, *nsubota.com.ua*, 20 November 2009.

142 United Nations Human Rights Committee, *Concluding Observations: Ukraine*, UN Doc. CCPR/CO/73/UKR, 12 November 2001, Para 9.

143 *Ibid.*

women in high-level elected and appointed bodies, including as members of Parliament”¹⁴⁴ and again in 2010 over the same issue.¹⁴⁵

Following the parliamentary election in 2014, of the 420 deputies elected, just 49 were women.¹⁴⁶ At 11.7%, the proportion of women in the Verkhovna Rada elected in 2014 is barely higher than the figure for the 2012 elections (9.7%). While this represents some progress since the 2007 and 2002 elections (where the proportion of women was 8.4% and 5.4% respectively) women remain heavily underrepresented. Approximately 25% of the candidates on party lists were women (an increase of 6% compared to 2012), but only around 13% of candidates in the single-member constituencies were women.¹⁴⁷

In response to the low representation of women in the Verkhovna Rada, in 2013, the Verkhovna Rada adopted the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Legislation on Elections”¹⁴⁸ which came into force on 1 February 2014. Among other changes, the Law amends the Law of Ukraine “On Political Parties in Ukraine” to insert a requirement that party lists at elections include at least 30% women.¹⁴⁹ However, the Law does not contain any means by which compliance with the requirement can be monitored and enforced and, indeed, at the 2014 election, only around 25% of candidates on the party lists were women.¹⁵⁰

144 See above, note 74, Para 285.

145 See above, note 55, Para 32.

146 Inter-Parliamentary Union, *Women in national parliaments*, available at: <http://www.ipu.org/wmn-e/classif.htm>.

147 International Election Observation Mission, *Ukraine – Early Parliamentary Elections, 26 October 2014, Statement of Preliminary Findings*, p. 8.

148 Закон України “Про внесення змін до деяких законодавчих актів України щодо вдосконалення законодавства з питань проведення виборів” (Відомості Верховної Ради, 2014, № 22, с. 794).

149 Article 8, paragraph 10 of Закон України Про політичні партії в Україні (Відомості Верховної Ради України, 2001, № 23, с. 118), as amended between 2003 and 2015, reads: “[T]he size of the quota, which determines the minimum level of representation of women and men in the list of candidates of parties for deputies of Ukraine in the nationwide constituency shall be not less than 30 per cent of the candidates on the list.”

150 See above, note 147.

Women are similarly underrepresented in government. As of May 2015, there were just two women in the Cabinet of Prime Minister Arsenii Yatsenyuk: Minister of Finance, Natalie Jaresko, and Minister of the Cabinet of Ministers, Hanna Onyshchenko.

The figures for women's representation in local government are somewhat better, and it is interesting and symptomatic that the share of women increases in reverse proportion to proximity to the top central power structures. As of 2013, women made up 12% of all deputies in the oblast councils, 23% of deputies in district councils, 28% of deputies in city councils, 46% of deputies in town councils and 51% of deputies in village councils.¹⁵¹

One notable exception to the general absence of women from high positions in politics is Yulia Tymoshenko. First elected to the Verkhovna Rada in 1996 and originally a key ally of Viktor Yushchenko, she was a key figure during the Orange Revolution and was appointed as Prime Minister under President Yushchenko in January 2005. That year, Forbes Magazine named her as the third most powerful woman in the world.¹⁵² In September 2005, she and her government were dismissed and she returned to opposition. Following the parliamentary elections of 2007, the party of which she was the leader (Yulia Tymoshenko Bloc) became the second largest party in the Verkhovna Rada and she was once again appointed as Prime Minister. In January 2010, she stood as a candidate at the presidential election and received 45.5% of the vote in the second round, being narrowly beaten by Viktor Yanukovich. This was nevertheless the highest number of votes ever received by a female presidential candidate.

A few weeks after the 2010 presidential elections, Tymoshenko's government was dismissed. In May of the same year, criminal charges were brought against her for abuse of power and embezzlement relating to a contract she had made with GazProm – the Russian gas supplier – while Prime Minister; charges many considered to have been politically motivated. In October 2011, she was found guilty and sentenced to seven years' imprisonment. She was

151 United Nations Human Rights Committee, *List of issues to be taken up with the consideration of the seventh periodic report: Ukraine: Addendum*, UN Doc. CCPR/C/UKR/Q/7/Add.1, 27 May 2013, Para 42.

152 Forbes Magazine, *The 100 Most Powerful Women 2005*, forbes.com, 29 July 2005.

released in February 2014, after the Verkhovna Rada retrospectively amended the legislative provisions which formed the basis for her charges. She once again stood for President in the May 2014 election, again finishing second, but this time with just 12.8% of the vote.

While examples of women achieving high success in political life such as Yulia Tymoshenko are rare, examples of sexist and misogynistic comments by men at the highest levels are common. In 2010, presidential candidate (and, ultimately, President) Viktor Yanukoych rejected proposals for a debate with his opponent, Yulia Tymoshenko, saying, “if she is to be treated as a woman, let her demonstrate her whims in the kitchen”.¹⁵³ In early 2012, in the context of legislative proposals for quotas for women in the Verkhovna Rada, the then Chairman of the Rada, Volydymyr Lytvyn, stated that,

*Society will not abide by such laws unless we get rid of that which is our tradition and stems from our Christian mentality: Man is the higher being, as woman was made from Adam’s rib. Consequently, she is the lesser being.*¹⁵⁴

Former Prime Minister Mykola Azarov has been quoted as saying, “[w]ith all respect to women, conducting reforms is not women’s business.”¹⁵⁵

The relative absence of women from political life and decision-making has not always been a permanent feature of Ukrainian politics: in 1978, in its first state party report to the UN Human Rights Committee, the Ukrainian SSR was able to boast that over 35% of deputies in the Supreme Soviet of the Ukrainian SSR were women, as well as almost 48% of all deputies in the local So-

153 RIA Novosti, “Yanukovych rejects debate, says Tymoshenko can show off in kitchen”, *ria.ru*, 20 January 2010; УНИАН, “Янукович советует Тимошенко пойти на кухню и показывать там свои прихоти”, *unian.net*, 20 January 2010.

154 Chalupa, I., “Honoring Women, Ukrainian Government-Style”, *Radio Free Europe / Radio Liberty*, 8 March 2012; Українська Правда, “Литвин перед 8 березня вказав жінкам, де їхнє місце”, *pravda.com.ua*, 2 March 2012.

155 Harding, L., “Ukrainian women berate ‘Neanderthal’ PM for sexist remarks”, *The Guardian*, 24 March 2010; УНИАН, “Азаров: проводити реформи – не жіноча справа”, *unian.ua*, 19 March 2010.

viets.¹⁵⁶ From 1984 until 1990, the Chair of the Presidium of the Verkhovna Rada was a woman: Valentyna Shevchenko.

Sexism in Advertising and Media Imagery

Sexist and misogynistic images of women in product advertisements and media imagery are rife. Women in such advertisements are invariably eroticised or objectified, or portrayed in sexist or misogynistic contexts, reinforcing gender stereotypes.¹⁵⁷ In 2010, the CEDAW Committee raised concerns over the “sexist representation of women in media and advertisement campaigns”.¹⁵⁸

Image 2: Advertisement of a financial services company, ShvydkoHroshi, on Kyiv subways trains, August 2012



In 2011, the Ukrainian Marketing Association produced the Standards for Advertising Free from Gender Discrimination.¹⁵⁹ To ensure compliance with the Standards, the Industrial Gender Committee on Advertising was established to consider (either on its own initiative or following a complaint) sexist advertising. The statistics, however, suggest that the Committee is largely inf-

156 United Nations Human Rights Committee, *Initial State Party Report: Ukraine*, UN Doc. CCPR/C/1/Add.34, 6 September 1978, p. 4.

157 For examples, see Iryna, “How to stop sexism in advertising”, *World Pulse*, 10 July 2013, available at: [http://www.worldpulse.com/2013/07/10/how-to-stop-sexism-in-advertising/](#); and Beznosyuk, M., “Sexism in Advertising”, *Slideshare*, 10 December 2011.

158 See above, note 58, Para 24.

159 Ukrainian Marketing Association, *Standards of Advertising Free from Gender Discrimination*, 2011, available at: <http://www.uam.in.ua/upload/medialibrary/344/344e8e2c1f85fdce7297d7042e1a8a56.pdf>.

fective in tackling the scourge of sexist advertising. The Committee’s website states that, as of May 2015, the Committee had only received 70 complaints and considered 68 of them.¹⁶⁰ Of these, 54 were found to have been discriminatory and 12 were subsequently changed.

Image 3: An advert for ProfiGaz



Conclusions

Women are the principal victims of gender discrimination in Ukraine, experiencing discrimination and disadvantage resulting largely from the persistence of patriarchal and paternalistic social norms. Thus, despite a strong legal framework prohibiting discrimination on the basis of gender, a number of laws directly discriminate against women, many ostensibly seeking to “protect” them, but in fact limiting their ability to make choices, particularly in employment. Despite specific criminal laws, rates of domestic violence and trafficking of women remain high. Women are unable to participate in employment on an equal basis with men: our research identified evidence of dis-

160 Ukrainian Marketing Association, Industrial Gender Committee on Advertising, *Complaint Form*, available at: <http://www.uam.in.ua/gkr/eng/how>.

crimination in recruitment, unequal pay, vertical and horizontal segregation and sexual harassment in the workplace. Patriarchal norms are also reflected in public life, where women are severely underrepresented: less than 12% of deputies in the Verkhovna Rada are women and there are just two women in the Cabinet of Ministers.

2.2 Discrimination on the Basis of Sexual Orientation and Gender Identity

Under Article 2(1) of the ICCPR and Article 2(2) of the ICESCR, Ukraine is required to ensure the enjoyment of all rights under these Covenants without discrimination on grounds which include sexual orientation and gender identity.¹⁶¹ In addition, Ukraine is required, by virtue of Article 26 of the ICCPR, to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”, including the grounds of sexual orientation and gender identity.¹⁶² Further, the ECHR requires Ukraine to prohibit discrimination based on sexual orientation and gender identity in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12

161 In respect of the ICESCR, the United Nations Committee on Economic, Social and Cultural Rights has stated that the term “other status” used in Article 2(2) includes both sexual orientation and gender identity (United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 32). In respect of the ICCPR, the Human Rights Committee has interpreted the term “other status” used in Article 2(1) (and Article 26) to include sexual orientation (see, for example, *Young v Australia*, (Communication No. 941/2000), UN Doc. CCPR/C/78/D/941/2000, 2003). While the Human Rights Committee has never explicitly stated that gender identity is a characteristic protected under Articles 2(1) and 26 of the ICCPR, it has raised concern that discrimination on the basis of gender identity (and, indeed, sexual orientation) was not prohibited in Ukraine and urged Ukraine to prohibit such discrimination (United Nations Human Rights Committee, *Concluding Observations: Ukraine*, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, Para 8).

162 *Young v Australia*, (Communication No. 941/2000), UN Doc. CCPR/C/78/D/941/2000, 2003); United Nations Human Rights Committee, *Concluding Observations: Ukraine*, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013. As noted above, While the Human Rights Committee has never explicitly stated that gender identity is a characteristic protected under Articles 2(1) and 26 of the ICCPR, it has raised concern that discrimination on the basis of gender identity (and, indeed, sexual orientation) was not prohibited in Ukraine and urged Ukraine to prohibit such discrimination (United Nations Human Rights Committee, *Concluding Observations: Ukraine*, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, Para 8).

to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.¹⁶³

As in other countries, the number of lesbian, gay, bisexual and transgender (LGBT) persons in Ukraine is unknown. The high level of stigma faced by LGBT persons in Ukraine means that the majority keep their sexual orientation and gender identity hidden.¹⁶⁴ As a result, estimates of the number of LGBT persons in Ukraine are extremely difficult to make. Estimates from other countries of the number LGBT people, however, suggest that the total number falls somewhere between 1.6% and 6.0% of the population¹⁶⁵ which, in Ukraine, would represent between 734,400 and 2,754,000 people.

The high levels of stigma and prejudice and the failure of the legal framework to provide protection from discrimination has resulted in particularly high levels of discrimination against individuals on the basis of their sexual orientation or gender identity. In 2011, Nash Mir undertook a comprehensive survey of LGBT people and the various forms of discrimination which they faced. The survey revealed that 89% of respondents whose same sex sexual orientation or minority gender identity (e.g. as trans, or intersex) was known by others had faced discrimination or some other violation of human rights on at least one occasion, during the preceding three years.¹⁶⁶ Discrimination against LGBT persons takes place in almost every area of life; however, LGBT organisations in Ukraine consider it to be most fre-

163 See, for example, *Karner v Austria* (Application No. 40016/98), 24 July 2003, where the European Court of Human Rights stated that different treatment on the basis of sexual orientation required “particularly serious reasons by way of justification” (Para 37); in *P.V. v Spain*, (Application No. 35159/09), 30 November 2010, the European Court of Human Rights held that transsexuality was covered by Article 14 of the European Convention on Human Rights.

164 ТСН, “Украинских геев травят милиция и ‘почетные’ гомофобы, *ru.tsn.ua*, 28 February 2013.

165 See, for example, Office for National Statistics, *Integrated Household Survey, January to December 2013: Experimental Statistics*, 2014, p. 3, which reported that 1.6% of the adult population in the United Kingdom identified as lesbian, gay or bisexual (LGB) (the report did not include identification on the basis of gender identity). The government of the United Kingdom estimates that the total LGB population is actually 6.0%: Govan, F., “Six per cent of population are gay or lesbian, according to Whitehall figures”, *The Telegraph*, 12 December 2005. In the United States of America, 3.4% of the adult population identified as lesbian, gay, bisexual or trans: Gates, G. J. and Newport, F., “Special Report: 3.4% of U.S. Adults Identify as LGBT”, *Gallup*, 18 October 2012.

166 Nash Mir, *One Step Forward, Two Steps Back: Situation of LGBT in Ukraine in 2010–11, 2011*, p. 16.

quently encountered in employment, education, healthcare and treatment by law enforcement agencies.

Social Attitudes towards LGBT Persons

In 1991, at the time of independence, Ukraine became the first former Soviet country to decriminalise same-sex sexual activity. Almost 25 years later, however, prejudice and intolerance towards LGB persons remains prevalent. Indeed, studies reveal a notable increase in negative attitudes towards LGBT persons in Ukraine from 2002 onwards. A survey undertaken by Nash Mir in 2007, for example, showed increased levels of intolerance towards LGB people and low levels of support for full legal equality between LGB and heterosexual persons.¹⁶⁷ Whereas in 2002, 42.5% of respondents agreed that LGB people should have the same rights as all other persons in Ukraine, by 2007, this figure had fallen to 34.1%.¹⁶⁸ The proportion of respondents who agreed that same-sex couples should be able to have their relationships legally recognised fell from 18.8% to 15.8% and the proportion of respondents who agreed that LGB people should be able to raise children fell from 21.5% to 17.1%.¹⁶⁹ A decrease in tolerance between 2004 and 2010 has also been noted by the Netherlands Institute for Social Research.¹⁷⁰

A survey from 2010 produced by the Gorshenin Institute showed that 72% of Ukrainians had a negative attitude towards sexual minorities and just 13% had a positive attitude.¹⁷¹ A separate sociological study undertaken in 2010 found that even in Kyiv – supposedly more liberal than other parts of the country – 66.5% of respondents considered that homosexuality was a perversion or a mental disease.¹⁷²

167 Nash Mir, *Ukrainian Homosexuals & Society: A Reciprocation. Review of the situation: society, authorities and politicians, mass media, legal issues, gay-community*, 2007, p. 65.

168 *Ibid.*

169 *Ibid.*

170 Kuyper, L., Iedema, J. and Keuzenkamp S., "Towards Tolerance", *The Netherlands Institute for Social Research*, 2013, p. 29.

171 УНИАН, "Як українці ставляться до представників сексменшин (опитування)", *unian.ua*, 24 December 2010.

172 ВсеНовости, "Опрос: 66,5% киевлян назвали гомосексуализм извращением и психическим заболеванием", *vsnovosti.info*, 28 September 2010.

A further study by the Gorshenin Institute, in 2011, showed that 78.1% of the population considered that sexual relations between two persons of the same sex were unacceptable in all circumstances;¹⁷³ another study from the same year by Kyiv International Institute of Sociology showed that 39% of respondents believed that LGB people should be isolated from society.¹⁷⁴ In 2013, a GfK study showed that 80% of respondents opposed any recognition of relationships between same-sex couples.¹⁷⁵

This apparent increase in negative attitudes towards LGB persons has coincided with a rise in the levels of religious observance and the increased influence of the churches after the collapse of communism (see section 2.8 of this report). In recent years, all of the major churches in Ukraine have made homophobic statements, particularly in response to legislative proposals. The consistent homophobic messages from the major churches, coupled with their increasing influence in society, indicates that the churches have been one significant factor in fostering increased homophobia and transphobia in Ukraine.

In 2011, for example, Sviatoslav, the Supreme Archbishop of the Ukrainian Greek Catholic Church, compared homosexuality with murder.¹⁷⁶ In the same year, the Ukrainian Greek Catholic Church and the Roman Catholic Church published a joint appeal against “propaganda of homosexuality”.¹⁷⁷ In 2013, Sviatoslav welcomed, on behalf of the church, a draft law prohibiting “propaganda of homosexuality” and condemned a proposed anti-discrimination law.¹⁷⁸ In 2012, Filaret, the Patriarch of the Ukrainian Orthodox Church – Kyiv Patriarchate, also supported the proposed prohibition of “propaganda of homosexuality”.¹⁷⁹ In 2013, under his instructions, the Local Council of the

173 Gorshenin Institute, “Moral orientations of Ukrainians”, *gorshenin.eu*, 7 November 2011.

174 Kyiv International Institute of Sociology, *Human Rights in Ukraine, Xenophobia Level, Attitude towards Various Social Groups and Regional Tolerance*, 2011, p. 16.

175 GfK Ukraine, “Українці не підтримують узаконення одностатевих шлюбів”, 17 May 2013.

176 Tochka.net, “Блаженнейший Святослав о мире с МП”, *news.tochka.net*, 8 November 2011.

177 Української Греко-Католицької Церкви, “Звернення Католицького Єпископату України: Синоду Української Греко-Католицької Церкви та Конференції Римсько-Католицької Церкви в Україні”, 9 February 2012.

178 Інститут релігійної свободи, “Глави церков закликають ВР відхилити законопроект № 2342 щодо дискримінації”, *irs.in.ua*, 13 May 2013.

179 Української Православної Церкви – Київського Патріархату, Журнали засідання Священного Синоду 20 жовтня 2012 р., Журнали № 36.

Kyiv Patriarchate adopted a declaration “On negative attitudes towards the sin of sodomy (homosexuality), its propaganda in society, and so-called gay marriage” which stressed that:

[T]he Church is troubled by the attempts to pass legislation through the Ukrainian Parliament prohibiting so-called discrimination on the basis of ‘sexual orientation’ and appeals to the deputies to refrain from adopting such legislative initiatives.¹⁸⁰

The head of the Ukrainian Orthodox Church (Moscow Patriarchate), Metropolitan Volodymyr, officially supported a draft law banning “propaganda of homosexuality” and, in March 2013, the Synod of the Ukrainian Orthodox Church (Moscow Patriarchate) called for a draft anti-discrimination law not to be adopted.¹⁸¹

Almost all of the many public demonstrations and appeals opposing the adoption of anti-discrimination legislation or calling for the enactment of draft laws prohibiting “propaganda of homosexuality” have involved religious slogans or have been connected with the activities of religious organisations.

State authorities and politicians also have a history of discriminating against LGBT people, in particular with respect to their freedom of expression and assembly. In 2013, the organisers of the Equality March held alongside the LGBT Forum Festival “KyivPride 2013” agreed the time and location of the march with the Kyiv City State Administration (KCSA). However, five days before it was scheduled to take place, the Administration changed its decision and requested that the District Administrative Court of Kyiv issue an injunction preventing any march from taking place; the injunction was granted by the Court.¹⁸² Eventually, the Administration allowed the march to proceed in an alternative location. In 2014, the same march was cancelled, with the new mayor of Kyiv, renowned

180 Української Православної Церкви Київського Патріархату, Декларація Помісного Собору про негативне ставлення до гріха содомії (гомосексуалізму), 27 June 2013.

181 Української Православної Церкви, “Звернення Священного Синоду УПЦ з приводу проекту Закону «Про внесення змін до деяких законодавчих актів України щодо запобігання та протидії дискримінації в Україні»”, 18 December 2013.

182 Новин Києва, “Суд заборонив гей-парад у День Києва”, *topnes.kiev.ua*, 23 May 2013.

boxing champion Vitalii Klychko, stating that it was not the appropriate time for “entertainment” in the country.¹⁸³

Outside of Kyiv, local authorities’ discriminatory treatment of LGBT people is even more pronounced. In May 2012 the mayor of Donetsk, Oleksandr Lukianchenko, stated that the local authority would object to any application to hold an LGBT parade, saying, “[o]urs is a city of working people; other thoughts, other inclinations, another intellectual baggage, this comes from having nothing to do”.¹⁸⁴

In 2013, ahead of the expected signature of the EU-Ukraine Association Agreement, the level of homophobic discourse amongst politicians and activists diminished somewhat. Indeed, throughout 2013 and early 2014, not only was there a noticeable reduction in the number of homophobic and transphobic comments made by politicians, but a small number (primarily from the Ukrainian Democratic Alliance for Reform (UDAR), *Batkivshchyna*, but also some from the Party of Regions) expressed cautious support for the prohibition of discrimination on the ground of sexual orientation (although there was no mention of gender identity),¹⁸⁵ Apparently, the enthusiasm for aligning itself with the EU was the main driver of this trend.¹⁸⁶

In early 2013, the Ukrainian government, then dominated by the Party of Regions, produced a draft law which would amend the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” to include sexual orientation as a protected characteristic, albeit only in the context of employment, consistent with the European Union Directive on Equal Treatment in Employment and Occupation.¹⁸⁷ The draft law was proposed as part of the implementation of the Action Plan for Visa Liberalisation. The government submitted the draft law to the Verkhovna Rada for further debate, but refrained from any public discussion of it. Following the decision,

183 Ukrinform, “Klitschko against gay parade in Kyiv”, *ukrinform.ua*, 4 July 2014.

184 Української Правди, “Мер Донецька не дозволить гей-парад: ‘У нас місто трудове, інші нахили’”, *pravda.com.ua*, 15 May 2012.

185 See, for example, Globa, B., “The EU-Ukraine tango on gay rights”, *EU Observer*, 25 October 2013.

186 See, for example, *Ibid.*, where leader of the UDAR party, Vitalii Klychko, is quoted as expressing support for prohibition of discrimination on the basis of sexual orientation as “a step towards European values”.

187 Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation.

in November 2013, not to sign the EU-Ukraine Association Agreement, then Prime Minister Mykola Azarov publicly declared several times that Ukraine was “not ready” for such reforms.¹⁸⁸ Indeed, Azarov made a number of incorrect statements about the nature and scope of the legislative change required by the European Union, stating for example that same-sex marriage would have to be legalised,¹⁸⁹ in an apparent attempt to encourage homophobia and to discredit the Association Agreement and pro-Europeanism in Ukraine. None of the parliamentary parties instructed their deputies to vote in favour of the new draft anti-discrimination law; instead, the Party of Regions, UDAR and Batkivshchyna allowed their deputies a free vote. The Communist Party and Svoboda opposed the inclusion of sexual orientation as a protected ground.

There were many attempts to incite homophobia during the EuroMaidan protests in Kyiv in 2013 and 2014, and to associate the protestors with LGBT activists, in an apparent attempt to discredit the protestors. People were hired and paid to pose as activists, falsely pretending to be part of LGBT organisations with their flags side-by-side with the pro-European protesters.¹⁹⁰ In fact, Ukrainian LGBT organisations had deliberately refused to participate in the protests openly on the basis that right-wing political organisations involved in the protests would find this unacceptable and that this might provoke aggression.¹⁹¹

Not until 2014 did any prominent Ukrainian politician publicly support equality for LGBT persons or condemn the homophobia, transphobia, discrimination and violence faced by LGBT persons. The closest that politicians had come beforehand to making positive statements towards LGBT persons were through vague references to “European standards” and the need to live side-by-side with others.

188 See, for example, Української Правди, “Азаров розказав мітингарям від ПР про одностатеві шлюби”, *pravda.com.ua*, 14 December 2013.

189 *Ibid.*

190 Gay Alliance Ukraine, “The Theatre of the Absurd: EuroMaidan and the mummies disguised as gays”, *upogau.org*, 25 November 2013.

191 Gay Alliance Ukraine, “Statement in relation to yet another attempt to discredit EuroMaidan using LGBT issue”, *upogau.org*, 8 January 2014.

The Legal and Policy Framework

As discussed in more detail in Part 3 of this report, Ukraine has a weak legal and policy framework in place to combat discrimination on the basis of sexual orientation and gender identity, compared to other grounds of discrimination. These characteristics are not included as explicitly protected grounds of discrimination in the Constitution or the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”.¹⁹² However, both instruments use open-ended lists of grounds, with an explicit list of characteristics followed by the words “or other characteristics”, thus allowing for the possibility for these grounds to be protected through judicial interpretation. Such an interpretation would be consistent with the treaty bodies’ interpretation of the term “other status” under both the ICCPR and the ICESCR,¹⁹³ instruments to which Ukraine is party.

Moreover, in May 2014, the High Specialised Court of Ukraine for Civil and Criminal Cases issued a letter to the heads of the courts of appeal in which it referred to international instruments to which Ukraine was party, as well as the general anti-discrimination provisions in Ukrainian legislation, before expressing its opinion that discrimination based on sexual orientation in employment is prohibited.¹⁹⁴ It should be noted that this letter was issued in the context of the negotiation of the EU-Ukraine Action Plan for Visa Liberalisation, a condition of which was that Ukraine prohibit discrimination on the basis of sexual orientation in employment, and that the letter does not carry the same weight as legislation. However, the High Specialised Court is the highest court with jurisdiction in civil and criminal cases with decisions appealable only in limited circumstances to the Supreme Court, and Ukrainian legal experts have indicated that the existence of this letter would make it difficult for another court to conclude that sexual orientation is not prohibited ground, at least in the area of employment.¹⁹⁵

192 See above, note 51.

193 See above, note 161.

194 Вищий Спеціалізований Суд України з Розгляду Цивільних і Кримінальних Справ, 7 Маю 2014, № 10-644/0/4-14, Про належне забезпечення рівності трудових прав громадян при розгляді спорів, що виникають у сфері трудових відносин.

195 Nash Mir, “Paving the way to changes: slow yet significant developments in anti-discrimination legislation in Ukraine”, *gay.org.ua*, 19 May 2014.

Nonetheless, it should be noted that at present there are no precedents or binding interpretations of these or any other non-discrimination provisions which would indicate that the Ukrainian authorities consider these grounds to be included within the term “other characteristics” or its equivalents.

In May 2014, with the aim of fulfilling Ukraine’s requirements under the EU Association Agreement, the newly appointed government submitted a new draft anti-discrimination law to the Verkhovna Rada. This draft law, which was adopted soon thereafter, did not prohibit all forms of discrimination on the basis of sexual orientation, though the government did commit to prohibit discrimination based on sexual orientation in employment in future, explicitly referring to the need to comply with the Association Agreement.¹⁹⁶ In December 2014, the Ministry of Social Policy of Ukraine published a draft of a new Labour Code which included sexual orientation in the list of grounds upon which discrimination would be prohibited.¹⁹⁷ As of May 2015, the draft had not been submitted to the Verkhovna Rada.

Ahead of the Presidential election in May 2014, Amnesty International Ukraine and a number of other Ukrainian human rights organisations analysed the election programmes of the political parties and surveyed the candidates, in particular, on the issue of prohibiting discrimination on the grounds of sexual orientation and gender identity in Ukraine. Only one candidate, Petro Poroshenko, supported such prohibition, not only in employment but in all areas of life.¹⁹⁸

The state authorities have not taken any legislative or other action to combat homophobia or transphobia and initiatives undertaken by civil society organisations have been ignored. In recent years, some non-governmental organisations, together with the Council of LGBT Organisations of Ukraine, have appealed to the President, the Prime Minister, government ministers

196 European Commission, *Report from the Commission to the European Parliament and the Council, Fourth Report on the implementation by Ukraine of the Action Plan on Visa Liberalisation*, COM(2014) 336 final, 27 May 2014, p. 5.

197 Hadashot, S., “Draft Labor Code of Ukraine enacted prohibiting employees from discrimination based on sexual orientation”, *Gay Alliance Ukraine*, 9 January 2015.

198 Amnesty International Ukraine, “‘Переможець отримає велику відповідальність’ – Результати аналізу правозахисниками програм кандидатів у Президенти”, *amnesty.org.ua*, 19 May 2014. Poroshenko was ultimately successful, winning the election.

and deputies of the Verkhovna Rada with recommendations and proposals on how to combat homophobia and transphobia. Specifically, they have called for inclusion of the current scientific understanding of sexual orientation and gender identity in the curricula of secondary schools and universities, in training programmes and in continuing professional development courses for teachers, school psychologists and law enforcement staff.¹⁹⁹ The Ministry of Education has not responded to the proposals, while the Ministry of Internal Affairs sent an official reply to the Council of LGBT Organisations of Ukraine stating that it believed that the programmes already in place were sufficient and that there was no need to change them.²⁰⁰

The Ukrainian authorities have not condemned the repeated homophobic statements of religious leaders and other figures. Some public officials, particularly deputies of the Verkhovna Rada and local authorities, have frequently made openly homophobic remarks. In 2012, for example, a deputy from the Party of Regions, Serhii Kyi, stated that “all these gay parades must be scattered, burnt down with red-hot iron”.²⁰¹

The only state institution which has sought to defend the rights of LGBT persons in Ukraine – albeit not forcefully – is the Ukrainian Parliament Commissioner for Human Rights, currently Ms. Valeriya Lutkovska. Her 2013 Annual Report on the State of Observance and Protection of the Rights and Freedoms of Person and Citizen in Ukraine was the first such report to include information on discrimination against and persecution of LGBT persons,²⁰² while the 2014 report contained a separate section on LGBT discrimination.²⁰³ The Commissioner has also made several legislative proposals on combating discrimination and violence against LGBT persons. These proposals have

199 LGBT Human Rights Nash Mir Center, *Discrimination on grounds of sexual orientation or gender identity in employment, social security, health care and education in Ukraine: Alternative Report to the UN Economic and Social Council*, 2014, p. 12.

200 Ministry of Internal Affairs of Ukraine, Letter #10/5-4350 of 15 June 2012, on file with Nash Mir.

201 ІА Мост-Днепр, “Гей-паради нужно разгонять, выжигать каленым железом, – Сергей Кий”, *most-dnepr.info*, 3 April 2012.

202 Уповноважений Верховної Ради України з прав людини, *Щорічна Доповідь про стан дотримання та захисту прав і свобод людини в Україні: 2013*, 2013.

203 Уповноважений Верховної Ради України з прав людини, *Щорічна Доповідь про стан дотримання та захисту прав і свобод людини в Україні: 2014*, 2014. Since April 2012, the Commissioner has been Ms. Valeria Lutkovska.

received support neither from the Verkhovna Rada nor any of the political parties in Ukraine.

Discriminatory Legal Provisions

Many provisions in Ukrainian law discriminate on grounds of sexual orientation. Article 51 of the Constitution and Article 21 of the Family Code define marriage as a union between one man and one woman, thus excluding same-sex couples from marriage.²⁰⁴ Article 74 of the Family Code provides that where unmarried man and woman live together as a couple, the property they acquire during the period of cohabitation is held as joint common property, unless a written agreement between them provides otherwise. This provision excludes, and thus also discriminates against, same-sex couples who cohabit in the same way but do not acquire joint property rights. Article 211, paragraph 3 of the Family Code explicitly prohibits same-sex couples from adopting children, stating that “[a]doptive parents cannot be persons of the same sex”.

The exclusion of same-sex couples from the definition of marriage creates consequential difficulties for these couples in various fields. Article 9 of the Law of Ukraine “On Citizenship of Ukraine”, for example, provides that the mandatory five-year term of residence in Ukraine in order to obtain citizenship does not apply to spouses of Ukrainian citizens.²⁰⁵ However, as there is no recognition of same-sex couples in Ukrainian law, this provision indirectly discriminates against same-sex couples, one of whom is a Ukrainian citizen. Similarly, Article 4 of the Law “On Immigration” provides for the establishment of a quota for spouses of immigrants, but provides that spouses of Ukrainian citizens can receive permits for immigration regardless of this quota, again indirectly discriminating against same-sex couples, one of whom is a Ukrainian citizen.²⁰⁶

204 Сімейний Кодекс України (Відомості Верховної Ради України, 2002, № 21–22, с. 135), as amended between 2003 and 2015.

205 Закон України “Про громадянство України” (Відомості Верховної Ради України, 2001, № 13, с. 65), as amended between 2005 and 2012.

206 Закон України “Про імміграцію” (Відомості Верховної Ради України, 2001, № 41, с. 197), as amended between 2005 and 2012.

Article 212, paragraph 1, subparagraph 8 of the Family Code prohibits the adoption of children by persons suffering from diseases specified on a list produced by the Ministry of Health. An order of the Ministry of Health (No. 479 of 20 August 2008) includes transsexuality on the list of diseases, thus directly discriminating against persons on ground of gender identity.²⁰⁷ The consideration of transsexuality as a disease is highly problematic and out of step with current international best practice.²⁰⁸ Such classification is not only anachronistic but results in discriminatory treatment in various areas of life, such as adoption, where disease is considered relevant.

Nevertheless, despite its failure to repeal or amend laws which directly and indirectly discriminate on the basis of sexual orientation and gender identity, Ukraine has resisted pressures to pass the kind of legislation limiting the freedom of expression and association of LGBT persons which has been introduced in Russia. Although a number of draft laws prohibiting the “promotion of homosexuality” have been proposed in recent years, none have passed into law.²⁰⁹ Such proposals were not universally unpopular, however: even the State Committee for Television and Radio Broadcasting of Ukraine initially supported one of the proposals before later reversing its position.²¹⁰

Treatment by Law Enforcement Agencies

LGBT persons in Ukraine face significant problems when interacting with the law enforcement agencies. Problems include the agencies’ non-compliance with legal procedure; abuse, threats, blackmail and extortion; and the refusal to protect LGBT persons from homophobic or transphobic crimes.

207 Міністерство Охорони Здоров'я України, Наказ, 20 August 2009, № 479, “Про затвердження Переліку захворювань, за наявності яких особа не може бути усиновлювачем”.

208 World Professional Association for Transgender Health, *WPATH ICD-11 Consensus Meeting*, 2013.

209 See, for example, Проект Закону про внесення змін до деяких законодавчих актів (щодо захисту прав дітей на безпечний інформаційний простір), 0945 of 12 December 2012 and Проект Закону про заборону спрямованої на дітей пропаганди одностатевих сексуальних стосунків, 1155 of 24 December 2012.

210 Nash Mir, *On the Threshold: The situation of LGBT people in Ukraine in 2013*, 2013, p. 4.

A survey undertaken by Nash Mir in 2011 on the problems faced by the LGBT community in Ukraine in the preceding three years showed that the most significant problems faced when dealing with the police were insults and psychological pressure (39% of respondents whose sexual orientation was known to the police having experienced this); personal searches not in accordance with the correct legal procedure (38%); blackmail and threats to disclose their sexual orientation (24%) and the unlawful taking of photographs and fingerprints (20%).²¹¹ Failure to intervene to prevent violence and other crimes is also a problem. On 6 July 2012, for example, a group of aggressive young men wearing symbols of the far-right nationalist Svoboda party disrupted a picket of LGBT activists in front of the Ministry of Foreign Affairs, in full view of a police squad who were present. The police failed to intervene against the aggressors, even after a direct appeal for help from the picketers.²¹²

Case Study: Oleksandr²¹³

On 20 October 2013, at around 7 pm, Oleksandr was returning home along Komarov Street in Kyiv. He heard a whistle and swearing behind him. Turning around, he noticed two officers from a patrol service (traffic police) running towards him. He stopped and waited as they approached him. They did not introduce themselves and demanded that he turn his pockets out. They then took his phone and began to look through his contact list. After that, they took his passport, telephoned their “base” and enquired as to whether he was wanted by the police or was the suspect of a crime. Having received confirmation that he was “clean”, the officers took his passport data and accused him of being in an intoxicated state. Oleksandr explained that he had had a bottle of beer at a friend’s home, had no intention to disturb the public order and was simply going home. The officers laughed at him, told him that he had not been drinking beer but had been “jerking off on him like all the queers do”. Oleksandr protested and said that he was not gay but the officers told him that everyone knew about his sexual orientation. They then told him that he had probably been “jerking off and looking for other queers”. Oleksandr con-

211 See above, note 166.

212 Українські Новини, “Націоналісти зірвали акцію геїв у центрі Києва”, *ukranews.com*, 6 July 2012.

213 Equal Rights Trust interview with Oleksandr, Kyiv, 5 December 2013.

tradicted them and they threatened that they would take him to the police department, that he would confess everything, that he was looking for sexual partners nearby, was masturbating and corrupting children.

In his passport, the officers found a reference from a psychiatric facility stating that Oleksandr had been disabled from childhood. They mocked him. He begged to be released, but the abuse and mockery continued, with the officers threatening that they would “drive him to the office and he would learn there how queers should be treated”.

Two passers-by, a young man and a woman, tried to intervene on behalf of Oleksandr, arguing that he was not disturbing public order. The patrols service workers then began to threaten these two people as well, demanding that they mind their own business and go on their way. The man was threatened that he too would be taken to the police department. Ultimately, the officers demanded that Oleksandr sign a document on administrative infringements (for being drunk in public) with a written acknowledgment that he had no complaints against the officers. When he did so, through fear of their threats, the officers released him.

Sometimes even the police themselves use violence against people on the basis of their sexual orientation. Oleksandr, a 24 year old gay man, and his two gay friends were subjected to humiliation and intimidation by the police in Ivano-Frankivsk, a city in western Ukraine. In April 2014 the three men were at a local gay cruising ground, the Veterans of Foreign Wars Park, when they were approached by two police officers who told them to go to their car. There, the officers began to insult the men because of their sexual orientation saying that since the park was named after fallen soldiers, “queers are forbidden to be here at all”. One of the officers took out a rubber baton and hit Oleksandr in the chest saying that he would rape each of them with this baton if he saw them in the park again. The police officers told the men that they were not to gather in the park, or they would be taken to the police station and hurt.²¹⁴

In recent years, a new pattern has appeared in the Ukrainian police’s activities towards LGBT persons: the police have moved beyond the unlawful col-

214 Equal Rights Trust interview with Oleksandr, Chernivtsi, 12 March 2015.

lection and use of information on local LGBT communities that come to their attention and begun proactively searching for gay men through the internet.

Case Study: Serhii²¹⁵

In September 2013, at around 8 am, the doorbell at Serhii's flat in Chernivtsi rang. He opened the door and saw three persons in civilian clothes. One introduced himself as a lieutenant-colonel of the police. He asked Serhii about a report he had made to the police of his computer being stolen. Serhii confirmed that he had submitted such a report and was told by the man that he should attend their offices in person to provide details of the theft. Serhii agreed to do so.

While in the company of the men at the police department's offices, the lieutenant-colonel switched on Serhii's computer and opened his VKontakte page. (VKontakte is a Russian-language social networking website). Serhii recognised his VKontakte page, though he had posted neither any personal information nor his photograph on it. The lieutenant-colonel enquired as to whether it was Serhii's page, saying that they had tracked his account through his IP address. Serhii confirmed that he had created the account. Another police officer then asked him to enter his account using his password. Serhii said that he had not had the account for very long and could not remember the password. The lieutenant-colonel stated that Serhii's account contained pornographic videos and that he was going to be charged with the possession and dissemination of pornography.

Serhii told the men that he wanted to telephone his friends to tell them that he had been taken to the police department and had been accused of a crime. The second police officer snatched his telephone and told him that he could not call anyone. Serhii argued that he had not disseminated any videos and had not used his account for a long time. The officer shouted at him, threatening to put him in prison and make everyone there aware that he was "queer". Serhii told the men that he was not gay, but the lieutenant-colonel told him that they knew everything about him, including that he was gay, that he had been in a relationship with a man, and which other gay men he associated with. Serhii denied the accusation stating that although he did know some gay men, he was not gay himself. The second police officer

215 Equal Rights Trust interview with Serhii, Chernivtsi, 30 December 2013.

demanded that he provide the contact details of the gay men he knew. Serhii responded that he did not have their details as he had just been drinking with them on a few occasions. The men continued to threaten him with imprisonment if he did not confess to disseminating pornography.

The men took Serhii to the district police department. There, he was brought to the offices of an investigator who presented him with a copy of the Criminal Code, open to the provisions prohibiting the production and dissemination of pornography, saying: "Look at what you'll do time for!". Serhii argued that he had neither produced nor possessed any pornography and that he had definitely not disseminated anything. The investigator threatened that the prosecutor would come to provide the evidence. When the prosecutor arrived, he had a folder containing screenshots from Serhii's VKontakte page. Serhii explained that he had created the page a long time ago, but had not used it for a year or posted any materials there. The investigator ordered Serhii to leave the room and wait in the corridor. After an hour, the investigator told him to wait for the lieutenant-colonel, who then returned and took him back to the local police offices, while again demanding the details of gay men in Chernivtsi. Again, Serhii denied that he had any contacts or associations with gay men. At about 6 pm, 10 hours after first being detained, Serhii was released.

There is evidence that information gathered in this way is used by the police to blackmail gay men, extorting money in return for not initiating criminal or administrative proceedings, and forcing them to collaborate with the police to identify new victims among the local LGBT community. For example, in November 2011, Ihor, a resident of Zhytomyr, had proceedings initiated against him under Article 181¹ of the Code of Administrative Offences, which prohibits prostitution. In October 2011, the police had entered into correspondence with Ihor using a dating website for gay men. This method was unlawful, in that the police had proceeded without registering any investigation. They encouraged conversation about sexual intercourse in exchange for money, offering to meet him and pay for sex. At the meeting, Ihor was detained. The police unlawfully copied contact numbers from his telephone, photographed him and asked for information on places where gay men meet. They also said that unless he collaborated and agreed to act as an informer, they would continue with the proceedings for administrative responsibility. Ihor refused. Despite the fact that he had not received any money for "prostitution" (under the law, the exchange of money is required for the offence to take place), the Administrative Commis-

sion of Zhytomyr Municipal Executive Committee found him guilty. The original penalty of a fine was changed by the Commission to a warning and, as such, Ihor decided not to appeal the verdict.²¹⁶

There are also cases in which policemen enter websites as clients, correspond with gay men, expose them and attempt to extort money. There have been at least four reported cases in Makiyivka and Donetsk where gay men were blackmailed into paying between 3,000 and 12,000 hryvnia (approximately 130 to 552 euro) to prevent their sexual orientation from being made known to their colleagues and relatives.²¹⁷ In another case, a young man told the police that it was fine for them to disclose his identity, as his colleagues already knew about his sexual orientation. He was still forced to pay 450 hryvnia (approximately 18 euro) and was charged with the dissemination of pornography.

It is extremely difficult for people to prove their innocence when accused by the police; in the case of LGBT persons, the difficulties are compounded by widespread homophobia. Fearful of their sexual orientation being disclosed, LGBT persons rarely seek to defend themselves. In 2012, monitoring by Nash Mir documented 33 cases where LGBT persons had experienced rights violations by law enforcement agencies, finding that in only six of those cases did the victim make any complaint about the police actions, and in only two of those cases was there a partial success.²¹⁸

Employment

One third of respondents (34%) to a survey conducted by Nash Mir in 2011 indicated that they had faced harassment in employment due to their sexual orientation.²¹⁹ In addition to harassment, 36% stated that they had been either denied employment or fired and 26% stated that they had been either forced to leave their work or had worked in a hostile environment.²²⁰

216 Nash Mir Interview with Ihor, Zhytomyr, 7 November 2011.

217 Куц, Л., "Донецькі геї нарікають на політиків і міліцію", *BBC Ukraine*, 16 October 2012.

218 Nash Mir, *LGBT Vector of Ukraine: The Situation of LGBT in Ukraine (November 2011–2012)*. 2013, p. 21.

219 See above, note 210, p. 16.

220 *Ibid.*

Evidence collected for this report indicates that even those with an excellent professional reputation and who have been able to conceal their private lives risk persecution at the workplace if their sexual orientation becomes known by their colleagues.

Case Study: Roman²²¹

Roman worked in the Chernivtsi Taxation Inspectorate from the start of his working life, reaching the position of Head of the Operational Control Department. In October 2010, the Head of the Inspectorate called him and asked him questions about his private life. He asked Roman why he was not married yet. Roman told him that it was simply because he had not yet found the woman with whom he wished to spend his life. The Head of the Inspectorate interrupted him, telling him that he knew that he was a “fag” and that the Inspectorate knew this as well. He told Roman that he should quietly retire because “such people cannot be in the public service”. Roman said that rumours could not be grounds for dismissal and that he was professionally qualified and sufficiently experienced to do his job. He asked whether the administration had any concerns with his performance. The Head of the Inspectorate said, “Not yet, but they will appear, if needed”. He threatened Roman that if he did not resign, the Inspectorate would “fabricate the crime” and that, following his dismissal, he would find himself in prison.

Roman had been employed for 15 years by this point, so decided to remain in his position and not to challenge his superior. Following this incident, the attitude of his supervisors changed: he was treated unfavourably, received complaints regarding his work and was spoken to in an aggressive manner. In early December 2010, he received a call from a friend who worked in the internal security service and who told him that “the hunt for him” had begun and that he would be dismissed under a provision of the Criminal Code. Roman subsequently resigned.

There have been cases where lesbian, gay or bisexual workers suffer harassment from homophobic co-workers, while the employer supports those responsible for the harassment. In some cases, the best outcome was that the administration tried to settle the issue by transferring the victim to other

221 Equal Rights Trust interview with Roman, Chernivtsi, 28 February 2014.

fields of work in order to isolate them from former colleagues – a manifestly inadequate response to allegations of harassment, but one which at least offers some protection for the victim.

Case Study: Petro²²²

Petro is a bisexual man in Chernivtsi who worked as part of the crew of an international railway. He had good relations with all the co-workers. Although he tried to develop romantic relationships with women, he also had occasional relationships with a male colleague, Ivan. Although the relationship was strictly sexual, Ivan had a family and feared that others would discover what he was doing. In summer 2010, the train upon which they were working was at rest. Petro and Ivan separated from their colleagues, closed themselves in one of compartments and went to sleep. They woke up to hear the voices of their colleagues who had opened the compartment doors and found Petro and Ivan lying together. They mocked Petro and Ivan, calling them “queers”, “homosexuals” and “perverts”. The mockery continued during the evening: male colleagues made homophobic remarks and insulted them. The two were called in by their manager who informed them that the crew were aware of their relationship and that she was personally disgusted by gay men. She told them that they should transfer to another crew as she could not have such workers. If they refused, they would be fired. The two men filed applications to transfer to other crews.

Given the difficulties they face in defending their rights, LGBT persons rarely resort to legal proceedings if they are subjected to discrimination. For example, in November 2011, Tetyana, a resident of Pavlohrad in Dnipropetrovsk oblast, was forced to resign from her job after she refused sexual advances from her director and informed him that she was a lesbian. Her director made homophobic remarks to her, including in front of her co-workers. He refused to pay her salary for her final month of employment and refused to return her employment records back to her. She filed a claim with the prosecutor and managed to obtain final monthly pay and her records book. However, she was unable to prove discrimination as the only

²²² Equal Rights Trust interview with Petro, Chernivtsi, 20 February 2014.

witnesses, her co-workers, were too afraid to testify against their director while still working for him.²²³

Education

About one third of LGBT persons questioned by Nash Mir in a 2011 survey reported problems in education due to their sexual orientation (31% of those whose sexual orientation was known or suspected in their educational establishment).²²⁴ The most frequently reported problems were the biased attitude of teachers (34% of respondents) and a lack of protection from harassment by fellow students (25%).²²⁵ Evidence collected for this report indicates that where students are “outed” at school, the school administration does little or nothing to protect them from homophobic abuse from other students, and, on occasion, members of staff would join in the harassment and persecution. One gay man from Donetsk oblast who wished to remain anonymous, recounted his experience:

*They got to know about me in the headmaster’s office and immediately called my home. They told my mother about me and informed her that I would be expelled. Then they started failing me in the examinations and eventually expelled me. After having left the headmaster’s office my classmates ostracised me and demonstrated their prejudiced attitude towards me; they must have been told that I am gay, and these students just rejected me.*²²⁶

There is also evidence of educational establishment administrations trying to isolate students from any contact with LGBT students. In October 2013, the head of one of departments at Kherson State University forbade her students from undertaking an internship at a non-governmental organisation, as she found out that it worked on preventing transmission of HIV among men who

223 Nash Mir interview with Tetyana, 7 November 2011, Pavlohrad.

224 See above, note 206, pp. 16–17.

225 *Ibid.*

226 Anonymous respondent to a survey conducted by Nash Mir in Spring 2011: Наш Світ, Крок Вперед, Два Назад, Становище ЛГБТ в Україні в 2010–2011 рр., 2012, p. 8.

have sex with men. In addition, in conversation with the leader of the organisation, she made offensive comments about such organisations and people with whom they worked.²²⁷

Healthcare

The 2011 survey conducted by Nash Mir found that in 28% of cases where a member of medical staff knew or suspected their patient's sexual orientation, discrimination on the basis of sexual orientation had been thought to have occurred.²²⁸ The most significant problems were prejudiced attitudes and humiliation (reported by 24% of victims), the disclosure of private information on sexual orientation (or HIV status) (18%), the refusal of medical care (12%) and even attempts to compulsorily "treat" homosexuality (8%).²²⁹

Discovery of a patient's sexual orientation is particularly common when the person is HIV positive. Even amongst medical professionals working with this group, there is evidence of high levels of prejudice towards LGBT patients. One activist who wished to remain anonymous spoke of his impressions of doctors working with LGB persons living with HIV/AIDS.

I was invited as a representative of vulnerable groups with whom doctors [in HIV/AIDS centres] work. My impressions were highly negative. Personal and religious biases were clearly in evidence amongst the doctors. When the issues of female sex workers and injecting drug users were discussed, the debate was not heated. But when I started to talk about the gay community, there was active criticism and indignation. One said "What have you come here for?" I wanted to tell them that their work must be of high quality and that, in practice, their clients could be different. It seemed as though this was the first time that they had met a gay person who spoke publicly and did not conceal his sexual orientation, and this shocked half the seminar's participants. I would not

227 Equal Rights Trust interview with Vitalii Zakharchuk, Kherson, 26 November 2013.

228 See above, note 210, p. 90.

229 *Ibid.*, p. 91.

*like to receive services from these doctors or even take an HIV test. In my opinion, doctors over the age of 40 should have to re-train in order to get rid of stereotypes from the Soviet era. Then something will change in our healthcare system.*²³⁰

Unfortunately, to date, the Ministry of Health has ignored all requests from Ukrainian LGBT organisations to improve the qualifications of medical staff on issues related to sexual orientation and gender identity. This is particularly disappointing given the forecast increase in the HIV infection rate among men who have sex with men.²³¹ Research undertaken by Nash Mir revealed that in Ukrainian medical universities, there are still handbooks that define homosexuality as a mental disease or a sexual perversion, despite the fact that homosexuality was excluded from the national classification of diseases in 1999, in line with WHO standards.²³² As such, it is not surprising that instead of receiving qualified medical treatment, LGBT patients are sometimes subjected to experiments designed to “treat homosexuality”, despite the fact that this is formally impossible, such as a young gay man from Donetsk oblast who wished to remain anonymous and who told Nash Mir, “On February 2011, my doctor insisted that I should pass a course of treatment of homosexuality, and prescribed some injections and medicine that I did not take.”²³³

Specific Issues Affecting Transgender Persons

Homophobia and transphobia are closely linked in Ukraine, with the result that many of the problems affecting LGB persons which are described above also impact upon transgender persons. However, our research has found a number of problems which specifically affect transgender persons in Ukraine, many of which are even less visible to society than those affecting

230 Nash Mir interview with an anonymous LGBT activist from Lviv, 10 March 2011. The Equal Rights Trust regrets that this advocate for LGBT rights is making an ageist statement.

231 Український центр контролю за соціально небезпечними хворобами, *Національна оцінка ситуації з ВІЛ/СНІДу в Україні станом на початок 2013 року*, p. 16.

232 Наш Світ, ЛГБТ-Вектор України: *Становище ЛГБТ в Україні (листопад 2011–2012 р.)*, 2013, p. 22. See also Міністерство Охорони Здоров'я України, Наказ, 8 October 1998 р. № 297 “Про перехід органів і закладів охорони здоров'я України на Міжнародну статистичну класифікацію хвороб і споріднених проблем охорони здоров'я десятого перегляду”.

233 See above, note 231, p. 8.

LGB persons. There is no official information on the numbers or experiences of transgender persons in Ukraine, but the NGO Insight conducted a study in 2010 which found that without exception, all transgender Ukrainians face problems of discrimination on the basis of their gender identity.²³⁴

Most significantly, it is not possible to secure official recognition of a sex change (and the corresponding change of name in official documents) without complex and costly surgical procedures. Although the relevant legislation – the Law of Ukraine “Fundamentals of Legislation of Ukraine on Healthcare”²³⁵ – contains no requirement for there to be surgery before a medical certificate certifying a change of sex can be issued, such a requirement has been introduced through secondary legislation.²³⁶ As such, a transgender person who does not wish to undergo corrective surgery, or whose financial position or health condition makes such surgery impossible, is forced to live with official identity documents which do not match their gender. Such is the case for one young transgender person from Kyiv oblast who told:

*I have a beloved partner, a family, and I feel alright, and I am happy with my sexual life. I do not need surgery as much as others do (...) I only want to change my documents. I think this would be good for me.*²³⁷

Even a transgender person who has received permission for, and has the means to undergo, corrective surgery may be forced to live for years with official documents stating their previous gender and corresponding name, as there are lengthy waiting times for sex change procedures. For example, a young transgender man from Kyiv oblast who wished to remain anonymous told Nash Mir:

I cannot get a regular job as my appearance is entirely male and my documents indicate that I am female. I can-

234 Insight, Ситуация трансгендеров в Украине. Отчет по исследованию, 2010.

235 Article 51 of Закон України “Основи законодавства України про охорону здоров'я” (Відомості Верховної Ради України, 1993, № 4, с. 19), as amended between 1993 and 2015.

236 Міністерство Охорони Здоров'я України, Наказ, 3 February 2011, № 60, “Про удосконалення надання медичної допомоги особам, які потребують зміни (корекції) статевої належності”.

237 See above, note 234, p. 37.

*not go abroad because law enforcement officers doubt the validity of my documents. Consequently, it leads to difficulties with law enforcement agencies. I have had a couple of such cases.*²³⁸

In addition to these problems, the aforementioned order of the Ministry of Health contains a number of prerequisites before a person can undergo a sex change, some of which are both unreasonable and discriminatory. A change of sex, for example, is prohibited if:

- The person has children under the age of 18;
- The person is homosexual or a transvestite;
- The person has any “sexually perverse tendencies”;
- The person has morphological features which would make it difficult for them to adapt to their desired gender (such as being androgynous or have a sex disorder development);
- Hormonal or surgical intervention is not possible due to pre-existing conditions; or
- Corrective surgery would be incompatible with the scope of sex change procedures recommended by the Commission on Change (Correction) of Sex of the Ministry of Health.²³⁹

A further significant problem is the lack, and sometimes the complete absence, of qualified medical professionals, and the unsatisfactory level of their training outside Kyiv, together with the high cost of corrective surgery that transgender persons are required to pay themselves.²⁴⁰ In addition to the fact that medical specialists in the regions do not have the professional skills needed to deal with problems common to transgender persons, transgender patients can face discriminatory, offensive and aggressive atti-

²³⁸ *Ibid.*, p. 46.

²³⁹ On 19 January 2015, the District Administrative Court of Kyiv held that two of the indications which prevent an individual from undergoing a sex change (namely that they live with a child under the age of 18 and that there has been a “gross violation of social adaptation” such as unemployment, homelessness, alcoholism, drug addiction or anti-social behaviour) were incompatible with the right to a private life as guaranteed under Article 32 of the Constitution. However, the provisions remain in force pending an appeal by the Ministry of Health. Nash Mir, *From Despair to Hope: LGBT situation in Ukraine in 2014*, 2015, p. 5.

²⁴⁰ Іванченко, С., *Ситуація трансгендерів в Україні, 2010*, pp. 33–34.

tudes from these specialists. The testimony of a young transgender person from Luhansk oblast who wished to remain anonymous is typical:

First, I was sent to an ordinary endocrinologist and he directed me to the Head in order to be examined by the Board. There were about five or six people, and they undressed me and made me do physical exercises. I was questioned about morality. She tried to talk about God, asking “what about God?” She pushed me, saying that I was stupid and did not understand what I did, that God would punish me and I would never be a normal man. She tried to change my mind by any means. When she noticed on my documents that I was an orphan and that my mother had recently died, she told me, “That is why your poor mother could not endure it and died”. I had a deep trauma after my mother’s funeral. And then such a (...) doctor starts telling me something about this (...) that was horrible! How dare she judge me and say such things. What if I had lost my wits and hung myself as nobody needed me?²⁴¹

There is also evidence of transgender persons facing similar discrimination and harassment to LGB persons in sectors such as education. Between November 2014 and January 2015, a 20 year old transgender woman from Dnipropetrovsk oblast (N.) was studying at Dniprodzerzhynsk State Technical University. N. was subjected to repeated harassment and attacks by other students, due to her appearance. She told the Equal Rights Trust “First, they set fire to my hair. Right in the classroom. The teacher pretended not to notice. The classmates pushed me with their shoulders in the hallway, and often kicked me.” On one occasion, one of the aggressors “put out cigarettes on my hands and several times hit me in the stomach”. When N. complained to the rector, she was told, “You must change. They do not like people such as you. You’re just sick.” As a result, N. left the university.²⁴²

241 See above, note 234, p. 44.

242 Equal Rights Trust interview with N., Dnipropetrovsk oblast, 14 March 2015.

Developments since the Crisis and the Conflict

Equal Rights Trust research indicates that since November 2013, the situation of LGBT persons in Crimea (now under the *de facto* control of Russia) and parts of Donetsk and Luhansk oblasts (under the control of pro-Russian separatists) has grown even more dangerous, with the authorities expressing virulently homophobic views and increasing levels of violence against LGBT people.

For example, in Crimea in May 2014, legislation started operating which prohibits any public displays of LGBT activities under the pretext of prohibiting “propaganda of homosexuality amongst minors”.²⁴³ Public events organised by LGBT organisations have been banned in Simferopol and Sevastopol.²⁴⁴ In September 2014, the “Prime Minister of Crimea”, Sergei Aksyonov, referred to gay people in a speech, stating that “we in Crimea do not welcome such people”, adding that if any LGBT people tried to organise any kind of gathering, “our police and self-defence forces will react immediately and in three minutes will explain to them what kind of sexual orientation they should stick to”.²⁴⁵ Many LGBT people have now left Crimea.²⁴⁶

In June 2014, in Donetsk, militants of the separatist “Donetsk People’s Republic” attacked a gay club, robbing and beating people inside.²⁴⁷ In Luhansk, there have been reports that the self-proclaimed “Luhansk People’s Republic” has sought to criminalise same-sex sexual activity with imprisonment of between two and five years.²⁴⁸ Many LGBT people have fled the region.²⁴⁹

243 Reynolds, D., “Russia’s ‘Gay Propaganda’ Law Takes Effect in Crimea”, *Advocate*, 1 May 2014.

244 Росбалт, “Власти Крыма и Севастополя отказали ЛГБТ в проведении четырех акций”, *rosbalt.ru*, 16 April 2014.

245 Radio Free Europe/Radio Liberty, “Crimea Chief Says Gays Not Needed”, *rferl.org*, 2 September 2014.

246 Shuster, S., “Crimea’s Gay Community Moves Out as Russian Homophobia Sets In”, *Time*, 15 October 2014.

247 Kyiv Post, “Ukraine News One: Donetsk gay club attacked by separatists”, *kyivpost.com*, 1 June 2014.

248 Coynash, H., “Luhansk pro-Russian militant ‘republic’ criminalizes homosexuality”, *Kharkiv Human Rights Protection Group*, 7 October 2014.

249 Bateson, I., “Ukraine’s LGBT community: Trapped between warring sides”, *Al Jazeera*, 12 March 2015.

Conclusions

LGBT persons in Ukraine experience severe and systematic discrimination and inequality, as a result of high levels of stigma and a weak legal framework. While Ukraine was the first former Soviet state to decriminalise same-sex sexual activity, in 1991, social intolerance has gradually increased since that time, particularly since the beginning of the century. Recent surveys indicate that up to three-quarters of Ukraine's population have a negative attitude towards LGB persons, while transgender persons also experience stigmatisation. The Ukrainian legislature has consistently resisted calls to enact legislation explicitly prohibiting discrimination on the basis of sexual orientation and gender identity, and on the contrary adopted a number of laws directly or indirectly discriminate against LGBT persons. There are significant problems with the law enforcement agencies, ranging from abuse, harassment, blackmail and extortion to a failure to protect from discriminatory violence. In this legal and social context, many LGBT persons choose not to disclose their sexual orientation or gender identity, because evidence collected for this report suggests that those who do this experience discrimination in employment, education and healthcare.

2.3 Discrimination on the Basis of Disability

Ukraine is required to prohibit all forms of discrimination against persons on the basis of disability, by virtue of its obligations under the Convention on the Rights of Persons with Disabilities (CRPD) which it ratified in 2010. Further, the Committee on Economic, Social and Cultural Rights (CESCR) has stated that discrimination on the basis of disability in the enjoyment of the rights guaranteed by the ICESCR is prohibited by virtue of the term "other status" in the non-discrimination provision, Article 2(2).²⁵⁰ Further, the ECHR requires Ukraine to prohibit discrimination based on disability in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other rights set forth by law.²⁵¹

The Ministry of Social Policy in Ukraine estimates that there are 2,831,726 persons with disabilities in Ukraine, or 6.2% of the total population.²⁵² Of these,

250 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 28.

251 See, for example, *Glor v Switzerland* (Application No. 13444/04), 30 April 2009.

252 See above, note 102.

168,280 are children under the age of 18, around 2% of the total child population.²⁵³ However, an absence of monitoring, imperfections in data collection and the unwillingness of some persons with disabilities to register their disability all mean that the actual figure is likely to be higher.²⁵⁴ Indeed, the World Health Organization (WHO) estimates that around 15% of all people live with some form of disability, of whom 2–4% experience significant difficulties in functioning.²⁵⁵ This would suggest an actual population of around 6,700,000 persons with disabilities and between 900,000 and 1,800,000 persons with significant difficulties in functioning.

Legal and Political Framework

The approach towards disability, and persons with disabilities, in Ukraine today must be seen in the context of Ukraine's history as part of the USSR, where disability was largely of interest to the state in relation to its impact upon the capacity of individuals to work, such capacity being considered the most important determinant of one's value to society. Persons with disabilities who were unable to work or who were less able to work were grouped into hierarchical "categories of invalids".²⁵⁶ As Sarah Phillips has noted:

253 *Ibid.*

254 Expert Council of Public Organizations, *The "Lost" Rights: An alternative report by public organizations on compliance with the UN Convention on the Rights of Persons with Disabilities*, 2012, Para 13.

255 World Health Organization, *World Report on Disability: Summary*, 2011, pp. 7–8.

256 Phillips, S. "'There are no Invalids in the USSR!': A Missing Soviet Chapter in the New Disability History", *Disability Studies Quarterly*, Vol. 29, No. 3, 2009. Ukraine continues to use this terminology. The most commonly used term for a "person with a disability" is "інвалід" (equivalent to the term "инвалид" in Russian). The term was originally used as a designation for a person who was unable to work. Both the Ukrainian language version of the Convention on the Rights of Persons with Disabilities and Закон України "Про основи соціальної захищеності інвалідів в Україні" (Відомості Верховної Ради УРСР, 1991, № 21, с. 252), as amended between 1994 and 2014, use the term "інвалід". This has been criticised by various non-governmental organisations and, in February 2015, the Committee on the Rights of Persons with Disabilities wrote to the Ukrainian government requesting that the terms "інвалід" and "особи з обмеженими можливостями" (another translation of "persons with disabilities" used which could loosely be translated as "people with limited capabilities") no longer be used. In response, the Ministry of Social Policy asked the Cabinet of Ministers to amend the official Ukrainian language version of the Convention on the Rights of Persons with Disabilities. (Міністерство соціальної політики України, "Міністерство соціальної політики України ініціює внесення змін до українського перекладу Конвенції ООН про права інвалідів" *misp.gov.ua*, 18 March 2015.

The state defined what “social contributions” citizens with disabilities would be allowed to make, set the parameters of education and work possibilities for this population, and closely regulated the development of disability consciousness.²⁵⁷

The post-independence 1996 Constitution approaches disability from the position of welfare and social assistance, rather than one in which persons with disabilities are rights-holders. As such, Article 24 of the Constitution of Ukraine, which provides for the rights to equality and non-discrimination, does not list “disability” as a protected characteristic. Instead, the needs of persons with disabilities are addressed through a specific reference in Article 46, which deals with social protection rights:

Citizens have the right to social protection that includes the right to provision in cases of complete, partial or temporary disability, the loss of the principal wage-earner, unemployment due to circumstances beyond their control and also in old age, and in other cases established by law.

This right is guaranteed by general mandatory state social insurance on account of the insurance payments of citizens, enterprises, institutions and organisations, and also from budgetary and other sources of social security; by the establishment of a network of state, communal and private institutions to care for persons incapable of work.

Pensions and other types of social payments and assistance that are the principal sources of subsistence, shall ensure a standard of living not lower than the minimum living standard established by law.

The approach taken in the Constitution is indicative of how approaches to disability, and persons with disabilities, in Ukraine (at least, in the first years after independence) reflect that of the Soviet period. Instead of disadvantage

²⁵⁷ See Phillips, *ibid.*

faced by persons with disabilities being considered from a discrimination or equality, the Constitution identifies persons with disabilities as vulnerable, unable to care for themselves, and dependent on state care. The aim of providing a right to social protection is to assist persons with disabilities on a humanitarian basis, but not to ensure equal participation with others in all areas of life.

Despite the fact that Ukrainian legislation contains provisions prohibiting discrimination against persons with disabilities, requiring reasonable accommodation to be made, and providing for some, limited positive action measures to overcome disadvantage (in particular, via the Law of Ukraine “On Fundamentals of Social Protection of Disabled People in Ukraine”),²⁵⁸ mechanisms to ensure that the provisions are implemented are either lacking or ineffective. The National Assembly of Disabled People in Ukraine has reported that the legislative provisions are declaratory rather than enforceable, and that there has been a lack of the financial investment and administrative implementation necessary to make the legislation effective in practice.²⁵⁹ In particular, the Assembly found that obligations to identify and eliminate barriers which limit the ability of persons with disabilities to access all areas of life are weakened by the lack of any clear authority responsible for ensuring their implementation.²⁶⁰

All persons with disabilities are classified into one of three groups (I, II or III) by the Medico-Social Expert Committee (MSEC) based on the severity of the disability and the individual’s ability to work and care for himself or herself.²⁶¹ Detailed regulations set out the specific criteria by which the MSEC is

258 Закон України “Про основи соціальної захищеності інвалідів в Україні” (Відомості Верховної Ради УРСР, 1991, № 21, с. 252), as amended between 1994 and 2014.

259 Міністерство регіонального розвитку, будівництва та житлово-комунального господарства, України, Національна асамблея інвалідів України, *Безперешкодний доступ осіб з інвалідністю до об’єктів соціальної, транспортної інфраструктури та зв’язку: Національна доповідь*, 2013, pp. 131–132.

260 *Ibid.*

261 Article 26 of Кабінет Міністрів України, Постанова № 1317, 3 December 2009 р., “Питання медико-соціальної експертизи”, and Міністерство охорони здоров’я України, Наказ № 561, 5 September 2011, “Про затвердження Інструкції про встановлення груп інвалідності”.

to make a determination.²⁶² As of 1 January 2014, the breakdown of adults with disabilities was as follows:²⁶³

Table 3: Number of Adults with Disabilities in Groups I, II and III

	Number of Persons	Proportion of Total
Group I	291,295	10.9%
Group II	1,042,340	39.1%
Group III	1,329,811	49.9%
Total	2,663,446	100.0%

As noted above, where concrete steps have been taken to address the disadvantages faced by persons with disabilities, these have been through the welfare system, either in the form of financial payments, or through institutionalisation, rather than through measures aimed at empowerment, the removal of barriers to participation and obligations to make reasonable adjustments. As a result, persons with disabilities in Ukraine experience severe restrictions on their ability to participate on an equal basis with others, particularly in employment and other areas of economic and social life.

Accessibility

Accessibility is a key principle of the CRPD (Article 3(f));²⁶⁴ the Convention contains a specific provision on the requirements of states parties to ensure accessibility for persons with disabilities in Article 9, requiring states parties to ensure that persons with disabilities have access “an equal basis with others” to the physical environment, to transportation, to information and communications, to other facilities and services open or provided to the public, both in urban and in rural areas.

Despite these obligations, a significant and widespread manifestation of discrimination against persons with disabilities is the failure to ensure acces-

262 Кабінет Міністрів України, Постанова № 1317, 3 December 2009 р., “Питання медико-соціальної експертизи”, and Міністерство охорони здоров’я України, Наказ № 561, 5 September 2011, “Про затвердження Інструкції про встановлення груп інвалідності”.

263 See above, note 102.

264 Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006.

sibility, particularly in respect of the built environment, transportation and access to information. While the Law of Ukraine “On Fundamentals of Social Protection of Disabled People in Ukraine” contains provisions requiring reasonable accommodation to be provided in access to buildings, infrastructure and the physical environment, such accommodation is not always so provided and thus persons with disabilities are often forced to bring complaints before any adjustment is made. In one example noted by the Ukrainian Parliament Commissioner for Human Rights, Yevhen Bochkaryov, a resident of Kyiv and with a disability was categorised as group I and lived on the eleventh floor of a block of flats, but the building initially had no ramp allowing him to enter it without assistance. As such, he was often unable to leave the building to go to work or to visit his doctor. It was not until he complained to the Parliament Commissioner for Human Rights who contacted the Kyiv city authorities to ensure that a ramp was built.²⁶⁵

General Infrastructure

The Law of Ukraine “On Fundamentals of Social Protection of Disabled People in Ukraine” contains provisions on the need to adapt infrastructure to meet the needs of persons with disabilities. In June 2009, the Cabinet of Ministers approved an Action Plan entitled “Barrier Free Ukraine”.²⁶⁶ The Action Plan entails a gradual transition towards adapting public transport, reviewing and adopting relevant standards for buildings and streets, and making other modifications such as special signage, pedestrian crossings with lower kerbs, audible traffic signals and fencing. It also requires specialised training for architects and others involved in building to provide them with skills and knowledge on universal design, the creation of spaces free from barriers, and the needs of persons with disabilities. These requirements were further established through the Law of Ukraine “On Architectural Activity”,²⁶⁷ an Order

265 Перший український Омбудсман, “Інвалід-спинальник Євген Бочкарьов: ‘Тільки благодаря втручання Уполномоченого по правам человека возле моего дома построили пандус!’”, *first-ombudsman.org.ua*, 30 January 2012.

266 Кабінет Міністрів України, Постанова № 784, 29 July 2009, “Про затвердження плану заходів щодо створення безперешкодного життєвого середовища для осіб з обмеженими фізичними можливостями та інших маломобільних груп населення на 2009–2015 роки ‘Безбар’єрна Україна”.

267 Закон України “Про архітектурну діяльність (Відомості Верховної Ради України, 1999, № 31, с. 246), as amended between 2004 and 2013.

of the Ministry of Regional Development and Housing “On Approval of the Procedures of Developing Project Documentation for Building Objects”²⁶⁸ and a revised Part V of the Law of Ukraine “On Fundamentals of Social Protection of Disabled People in Ukraine”,²⁶⁹ amongst others.

In addition, the Code of Ukraine on Administrative Offences²⁷⁰ sets out responsibility for non-compliance with the provisions of relevant building codes, standards and rules during the construction, reconstruction, restoration or repair of buildings. The Law of Ukraine “On Liability for Violations in Urban Planning”²⁷¹ contains provisions on responsibility for failing to ensure a barrier-free space for persons with disabilities and others who have mobility difficulties.

However, the absence of effective enforcement mechanisms in the legislation on accessibility makes its implementation difficult. For example, the simplified and deregulated process of obtaining permission for buildings whose complexity is categorised as I to III (98% of all constructions in Ukraine) means that the designers and developers are not required to carry out any expert examination of designs and completed structures and there is no means of supervising buildings’ constructions and reconstructions.²⁷² There are no legislative provisions which provide for non-governmental organisations representing persons with disabilities to have any involvement in the creation of barrier-free spaces.²⁷³ As there is no clear responsibility for meeting the legislative requirements, and no clarity as to who can enforce the Law or inspect construction, ensuring compliance with the requirements is almost impossible.

268 Міністерство регіонального розвитку, будівництва та житлово-комунального господарства України, Наказ № 45, 16 Мау 2011, “Про затвердження Порядку розроблення проектної документації на будівництво об’єктів”.

269 See above, note 258.

270 Кодекс України про адміністративні правопорушення (Відомості Верховної Ради Української РСР, 1984, додаток до № 51, с. 1122), as amended between 1985 and 2015.

271 Закон України “Про відповідальність за правопорушення у сфері містобудівної діяльності” (Відомості Верховної Ради України, 1994, № 46, с. 411), as amended between 1997 and 2012.

272 See above, note 254, Para 67.

273 *Ibid.*

In 2013, the Justice without Barriers campaign undertook a study into accessibility of courts for persons with disabilities.²⁷⁴ An inspection of 72 courts in 16 oblasts found that only 29 had ramps, of which only 12 met the standards in the State Buildings Codes; 46 had metal detectors and turnstiles making it difficult for persons in wheelchairs to enter; 69 court buildings had more than one level but 65 of these had no lifts; and doors were often too small and corridors too narrow for people in wheelchairs.²⁷⁵ One woman, Valentyna Chaika, spoke of her experience. Valentyna, a person with a disability categorised as group I, uses a wheelchair, and brought a case to the Krasnoarmiisk City District Court in the Donetsk oblast on behalf of another person with a disability, H. He was unable to enter the courtroom even with the assistance of his friends and colleagues. The stairs were steep and there were no ramps or rails to assist persons with physical disabilities.²⁷⁶

In Krasnoarmiisk, the issue of accessibility of the City District Court has been under consideration since 2008. In that year, during a session of the committee responsible for ensuring accessibility of persons with disabilities and with limited mobility to the city's infrastructure, it was decided that the City District Court would be equipped with a ramp and rails by June 2009. However, as of May 2015, no such modifications had been made.

During the research for this report, a number of persons with disabilities told the authors of the problems they faced. For example, A., a person with cerebral palsy, told us:

There are ramps in the pharmacy on Uhorska Street [in Lviv]; but a pharmacy on Mazepy Street has no ramps; in grocery shops, the stairs are often damaged. Once I had huge problems trying to enter a shop with damaged stairs. The owner came in with me. I said, "Excuse me, I would like to know why the stairs

274 Правозахисний центр "Поступ", *Українські суди недоступні для маломобільних груп населення – оприлюднені результати кампанії "Правосуддя без бар'єрів"*, available at: <http://postup.lg.ua/news/ukrayinski-sudi-nedostupni-dlya-malomobilnih-grup-naselennya-oprilyudneni-rezultati-kampaniyi>.

275 *Ibid.*

276 Equal Rights Trust interview with Valentyna Chaika, Kharkiv, 15 March 2014.

are damaged?” The owner’s answer was, “Come back when you get well”.²⁷⁷

Another person, Mazhena, who has a visual impairment, told us:

When I am in a shop, I am asked where my aide is and why I walk along the aisles alone. I ask for somebody to help me with my shopping. I tell them that it is common everywhere like this, and they answer they have no staff able to do this. Nowhere do staff help me, even when there are many workers. I go shopping in the lunchtime, trying to choose a time when there are fewer people in the shop. But it is not everywhere that it is so. (...) We submitted an appeal, but there are many appeals there and no one reads them. There are other difficulties in the supermarkets: weighing fruits without asking for help, reading the ingredients of yogurt, buying new products for those who cannot see.²⁷⁸

In some instances, people try to bring complaints against inaccessible infrastructure, with little success. Oleksandr Voloshynskyi, a member of the Green Cross Society, an NGO which implements programmes to enhance the employment of persons with disabilities, told us:

Numerous appeals are submitted. Yaroslav Hrybalskyi and Lyuba Kukurudza submitted an appeal against restaurant Kumpel in Lviv, on Chornovola Avenue. The restaurant tried to ensure “accessibility”, with two metal rails installed at an awkward angle. They addressed the State Architectural and Construction Inspection in Autumn 2013 and the owner was threatened with a fine; he asked us to withdraw the appeal and signed a letter of commitment that he would remove the rails and build a ramp as soon as the weather allowed. As of April 2014, the ramp has not been built; in any case,

277 Equal Rights Trust interview with an anonymous woman, Lviv, 20 March 2014.

278 Equal Rights Trust interview with Mazhena, Lviv, 20 March 2014.

*the State Architectural and Construction Inspection has been dissolved.*²⁷⁹

One particularly acute problem arises when persons with disabilities are unable to access healthcare facilities. In 2013, for example, then Prime Minister Mykola Azarov iterated the need to amend legislation to ensure that persons with disabilities were able to access pharmacies and other healthcare facilities.²⁸⁰ However, despite this and other government declarations on access to medical facilities, and an Order of the Ministry of Health in 2014 on improving state accreditation of healthcare facilities to implement the declarations,²⁸¹ access to medical facilities remains restricted. The standards, that requires ramps and lifts in order to accommodate persons who use wheelchairs, are neither followed nor implemented.

*Near to our place in Simferopol, there is a three storey building (at 61 Kechkemetska Street) with a private medical establishment containing eye, dental and cosmetic clinics. The building was constructed and opened in 2010 in violation of Ukrainian law, without ensuring access for persons with disabilities and others with reduced mobility. My wife and I both have disabilities and use wheelchairs. I need to receive the services from these clinics but cannot access the building, as it is completely inaccessible for persons with wheelchairs. The facility is the closest one to where I live, and so easiest to get to. There are public dental clinics, but these are not accessible either as they were built many years ago before the relevant Building Codes. In addition, these clinics are far from where I live and it's difficult to access them using public transport.*²⁸²

279 Equal Rights Trust interview with Oleksandr Voloshynskyi, Lviv, 20 March 2014.

280 Урядовий портал, *Микола Азаров доручив змінити умови ліцензування аптек і медичних закладів під потреби інвалідів*, 12 January 2013.

281 Міністерство охорони здоров'я України, Наказ № 142, 14 March 2011, "Про вдосконалення акредитації закладів охорони здоров'я".

282 Equal Rights Trust interview with an anonymous man, Simferopol, 11 March 2014.

In 2012, a high profile case involving accessibility was that of Dmytro Zharyi, a lawyer who uses a wheelchair and who brought a claim against a network of pharmacies.²⁸³ The case involved the lack of ramps in pharmacies which prevented access. The claimant argued this was a form of discrimination on the ground of disability and was thus prohibited under legislation which makes accessibility obligatory in order to receive a licence as a pharmacy. When Mr Zharyi went to one of the pharmacies in order to buy medicine, the shop assistant had to come out of the pharmacy to serve him. The case went to the Court of Appeal which held that the network of pharmacies should have its licence revoked due to violations of the licence agreement and failure to ensure access for persons with disabilities. In response, then Prime Minister Mykola Azarov charged the Ministry of Health to develop, together with the Ministry of Regional Development, Construction and Housing, amendments to the existing licence conditions for pharmacies and medical facilities which would ensure accessibility for persons with disabilities.

In addition to difficulties in access to infrastructure, there are also problems concerning escorting persons with disabilities in hospitals. In the city of Luhansk, for example, persons with visual impairments are treated at Polyclinic 12 in Artemivskiyi district. A ramp was built to ensure access for persons with difficulties in mobility, but no reasonable accommodation had been made for persons with visual impairments such as signals for finding entrances, coloured staircases, highlighted numbers and signs. Treatments could not be provided outside of the hospital as the equipment could not be transported to the patient's home. Instead, the hospital provided an escort for persons with visual impairments. However, in some cases, these escorts had no training on the methods and techniques of how to provide such assistance. During the reconstruction of the building, the requirements of the State Building Code should have been considered, however they were not: funds were allocated to install a ramp, but no equivalent funding for ensuring accessibility for persons with visual impairments was made available, despite the fact that it was less expensive.²⁸⁴

283 Дніпропетровський апеляційний адміністративний суд, 11 December 2012 р., справа № 2а-12740/11/0470. See Коаліція з Протидії Дискримінації в Україні, "Навчальна програма КПД: успіх всеукраїнського значення", 2013, and ФАКТИ, "Громадянин проти аптеки. Вперше вітчизняний суд став на бік інваліда", *fakty.ictv.ua*, 17 January 2013.

284 Equal Rights Trust interview with Dmytro Mazurak, 1 February 2014. Following the annexation of Crimea by the Russian Federation in March 2014, the situation may have changed significantly.

Transportation

There are significant problems in public transport, which is often not accommodated for persons with disabilities. Trains, for example, often do not contain toilets which are accessible for persons with certain disabilities, making them unusable for anything more than short journeys.²⁸⁵ Indeed, as of 2012, there were only 19 train carriages in Ukraine adapted for persons with disabilities.²⁸⁶ Persons with disabilities can also face other obstacles when using transportation, such as difficulties in purchasing train tickets. Andrii Stehnytskyi, for example, has a visual impairment, categorised as disabled in group I, and is therefore entitled to a discount in the price of train tickets. On 11 January 2013, he initiated a case against the State Railways Administration of Ukraine, Ukrzaliznytsia, as there was no possibility to purchase tickets with the discount online, using Ukrzaliznytsia's website. In addition, the website itself had not been adjusted to accommodate the needs of persons with visual impairments. In particular, the website used colour coding for vacant seats which the software for persons with visual impairments was not able to process. The Lviv oblast Court of Appeal ordered Ukrzaliznytsia and its Information Centre to remove the defects on its website to ensure that persons with visual impairments are able to access the website fully and to ensure that persons with disabilities could purchase discounted tickets.²⁸⁷

Information

Persons with visual impairments also face difficulties in accessing information. There are around 70,000 persons with visual impairments in Ukraine.²⁸⁸ During research in Lutsk, persons with such impairments raised a number of concerns over the use of paper documents in local government institutions and the near impossibility of electronic documents and electronic signatures

285 See above, note 249, Para 13.

286 *Ibid.*, Para 72.

287 Facts taken from Рішення Апеляційного суду Львівської області, Справа № 461/431/13, 2 October 2013. See also Тимошук, О., "Боротьба з дискримінацією інвалідів: судові перемоги", *Дзеркало тижня*, No. 6, 21 February 2014,

288 Riabokon, L., "People of the White Cane", *Day Kiev*, 16 November 2004.

being made available for persons with visual impairments.²⁸⁹ Persons with visual impairments face problems accessing information in almost every area of life; the state either ignores obligations to provide reasonable accommodation or has no funds to make necessary adjustments.

In 2010, a case was initiated by a man with a hearing impairment concerning the failure of the government to introduce relevant secondary legislation on subtitling and translating into sign language television programmes and films. The Court held that the Cabinet of Ministers had not fulfilled its legal duty and that the failure to adopt an order amounted to discrimination and the violation of a number of articles of the CRPD.²⁹⁰ However, the government has still not implemented the judgment and only a small proportion of television programmes, films and videos are available with subtitles or sign language.²⁹¹

Employment

Article 27 of the CRPD requires Ukraine to “recognize the right of persons with disabilities to work, on an equal basis with others”, including “the opportunity to gain a living by work freely chosen or accepted in a labour market” and a “work environment that is open, inclusive and accessible to persons with disabilities”.²⁹²

In addition to the difficulties in accessing infrastructure and information detailed above, persons with disabilities face numerous disadvantages in employment, including prejudice, discrimination in the hiring process, or a refusal to provide reasonable accommodation.

289 Equal Rights Trust interview with Bohdan Moisa, NGO of disabled persons with visual impairments “Generation of Successful Action”, Lutsk, 19 January 2014.

290 Київський Апеляційний Адміністративний Суд, Справа № 2а-4637/10/2670, 12 August 2010.

291 See above, note 254, Para 20.

292 See above, note 264. Article 27(1), in full, requires states parties to “recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities”. States parties are also required to “promote the realization of the right to work, including for those who acquire a disability during the course of employment”, including through legislation.

The Ministry of Social Policy has stated that employment for persons with disabilities is a priority²⁹³ and, indeed, Article 18 of the Law of Ukraine “On the Fundamentals of the Social Protection of Disabled Persons in Ukraine” requires employers to provide jobs and to create conditions for persons with disabilities to participate in work.²⁹⁴ Article 26 of the same Law, as recently amended, requires employers to ensure that the work environment is accessible for persons with disabilities. These provisions are largely consistent with the requirements of the CRPD. However, the provisions are not well enforced: failure to comply with the requirements is punished only by small fines, and many businesses simply choose to ignore the requirements, paying a fine rather than hiring persons with disabilities.²⁹⁵

As of 1 January 2015, a total of 742,591 persons with disabilities were employed.²⁹⁶ Assuming that the number of persons with disabilities has remained largely constant since 1 January, the employment rate of persons with disabilities in each of the groups can be calculated.²⁹⁷

Table 4: Number of Persons with Disabilities in Groups I, II and III in Employment

	Number of Persons	Number of Persons Employed	Proportion of Persons Employed
Group I	291,295	20,874	7.2%
Group II	1,042,340	193,494	18.6%
Group III	1,329,811	528,223	39.7%
Total	2,663,446	742,591	27.9%

As can be seen, the proportion of persons with disabilities in employment is very low. For those persons with the most significant disabilities (group I), the proportion is just 7.2%. The total number of persons with disabilities in

293 See above, note 102.

294 See above, note 258.

295 Phillips, S. “Civil Society and Disability Rights in Post-Soviet Ukraine: NGOs and Prospects for Change”, *Indiana Journal of Global Legal Studies*, Volume 16, Issue 1, 2009, pp. 275–291, p. 281.

296 See above, note 102.

297 *Ibid.*

employment has increased, however, in recent years. In 2012, the total number of persons with disabilities in employment was 662,000.²⁹⁸

One means by which the government has sought to address the low proportion of persons with disabilities in employment is through a quota. Article 19, paragraph 1 of the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine” requires enterprises, institutions and organisations employing more than 25 persons to ensure that persons with disabilities make up 4% of the total average number of full-time employees. Where the total number of employees is between eight and 25, at least one employee must be a person with a disability. Failure to meet the quota results in a penalty of an administrative fine which goes to support the Social Fund for Persons with Disabilities. NGOs representing persons with disabilities have noted, however, that the quota is not always observed,²⁹⁹ and, in 2014, the CESCR stated that this had “a limited impact owing to the lack of compliance by employers”.³⁰⁰

In addition to these cases and patterns of employment discrimination, refusal to hire persons with disabilities is particularly common, with employers often giving false reasons for their decision (such as that the applicant does not have appropriate qualifications, or that there are no vacancies). Employers also often fail to provide reasonable accommodation when faced with an applicant with a disability.

Oleksandr Voloshynskyi is a member of the Green Cross Society which implements programmes to increase the number of persons with disabilities in employment. In an interview, he told the Equal Rights Trust of his experience with the director of a poultry farm in Pustomyty Lviv oblast:

I spoke to the director several times about hiring persons with disabilities to put the laid eggs into trays. He said, ‘In my farm, the disabled will never work whilst

298 Convention on the Rights of Persons with Disabilities, *Initial reports of States parties due in 2012: Ukraine*, UN Doc. CRPD/C/UKR/1, 12 November 2014, Para 279.

299 See above, note 254, Para 131.

300 United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations: Ukraine*, UN Doc. E/C.12/UKR/CO/6, 13 June 2014, Para 12.

*I'm director.' He pays the fines and doesn't hire persons with disabilities.*³⁰¹

It is also common for job vacancies submitted to Employment Centres to state that they are suitable for persons with disabilities, when in fact it would be extremely difficult for many persons with disabilities to perform the job.³⁰²

As the Ministry of Social Policy accepts, increasing the number of persons with disabilities in employment requires preparatory steps, such as guidance for persons with disabilities and employers and vocational and work rehabilitation.³⁰³ A number of vocational rehabilitation centres exist providing support to persons with disabilities in entering (or re-entering) employment.

Education

Article 24(1) of the CRPD guarantees “the right of persons with disabilities to education (...) without discrimination and on the basis of equal opportunity”. The Laws of Ukraine “On the Fundamentals of Social Protection of the Disabled” and “On the Rehabilitation of the Disabled in Ukraine” both require educational establishments to ensure that suitable conditions are available for those students whose disabilities require particular accommodation. However, these provisions have not been effectively implemented: there are insufficient numbers of educational institutions able to meet the needs of students with disabilities, few staff trained to deal with students with particular disabilities requiring specialised treatment and a lack of accessible educational materials. For example, materials printed in Braille are only available in the libraries of the Ukrainian Society for the Blind, a non-governmental organisation receiving no state funding; no public libraries contain books in Braille. The government has estimated that “only 11% of educational institutions are fully accessible for children with special educational needs, and 39% are partially accessible”.³⁰⁴

Some secondary schools are able to provide education for students with certain disabilities through appropriate adaptation. For those with hearing dif-

301 See above, note 279.

302 See above, note 289.

303 See above, note 102.

304 See above, note 298, Para 210.

facilities, studies are accompanied by sign language and appropriate technical equipment. For those with visual difficulties, specialised equipment, including Braille tactile writing equipment, and large print materials are available. However, this is not so in higher education, where universities and colleges are often unable or unwilling to provide appropriate educational adaptations.³⁰⁵ Yulia Sukhova, a student with visual difficulties, spoke to us about her experience:

I graduated from the Lviv Pedagogical College, specialising in social pedagogy. I wanted to take a Master's course, however [in the educational establishments] in Lviv, there are no social pedagogy courses, only social work. There is social pedagogy only at the Drohobych Pedagogical University. I went to Drohobych, I had done my studies well, the Ukrainian Society for the Blind supported me, I had attended seminars and had work experience outside the College. I passed the examinations and had the best results amongst all the entrants, but when I came to finalise the documents, I was told that I could not be admitted as I was blind. I asked why. They said, "you have already graduated [from the College] and that's all". I said that I needed higher education. They said, "For what? You are disabled. Have your pension. Stay at home. Don't make difficulties for the lecturers, for us and for your parents." This was in 2010. For a long time, they refused to accept my documents. I asked for a written refusal. They began to shout and became so rude that my dad and mum had tears in their eyes and were hysterical. (...) I ended up going to "International Ukraine" in Kyiv where they had an inclusive programme. Many people have problems in Drohobych.³⁰⁶

Lyubov Kukurudza, the Head of the Lviv oblast branch of the Ukrainian Society of the Blind told the Equal Rights Trust of the experience of another young student who faced a similar experience:

305 See above, note 254, Paras 108–109.

306 Equal Rights Trust interview with Yuliya Sukhova, Lviv, 20 March 2014.

There are problems with the Lviv State University of Physical Culture. Many people who are visually impaired cannot enter there. Last year, there was a young woman, the graduate of the Medical College who was visually impaired. She wanted to enter the University of Physical Culture to study physical rehabilitation and they simply did not admit her. As a result she went to Rivne, as in Lviv she was humiliated so much that she decided not to try to get in.³⁰⁷

Despite the declared commitment to inclusive education, the parents of children with disabilities face many difficulties in practice. One of the participants of a focus group in Kharkiv was the mother of a 5 year old girl with a visual impairment from Balakleya, Kharkiv oblast, who was unable to find a suitable kindergarten for her.³⁰⁸ The administration of the local kindergarten told her that it was not able to create the conditions needed for her child. The absence of inclusive education limits the options of parents: parents often have to send their children to special boarding schools instead. Indeed, there are around 50 specialised boarding schools, run by the Ministry of Social Policy, catering for around 7,000 children. In many of them (for those children with particular severe illnesses or disabilities), there is almost no education whatsoever due to an absence of special programmes, textbooks and teachers.³⁰⁹

Healthcare

Article 25 of the CRPD guarantees the right of persons with disabilities “to the enjoyment of the highest attainable standard of health without discrimination”. This requires states parties to “provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons”.

307 Equal Rights Trust interview with Lyubov Kukurudza, Lviv, 20 March 2014.

308 Focus group in Kharkiv on 23 March 2014 hosted by the Kharkiv Foundation “Citizen Alternative” together with the Kharkiv Organisation of Blind Lawyers.

309 Національна Асамблея інвалідів України, *Дотримання прав дітей з інвалідністю в будинках-інтернатах*, 2010, p. 36. See also Chapter 4.

In addition to the difficulties in accessing health infrastructure and information detailed above, persons with disabilities face other difficulties in accessing healthcare, particularly in accessing medicines and rehabilitation. The Law of Ukraine “On the Fundamentals of the Social Protection of Disabled Persons in Ukraine” governs the provision of medicines and rehabilitation to persons with disabilities.³¹⁰ The details on the provision of medicines and means of rehabilitation programmes for persons with disabilities are set out in individual programmes. However, there are often delays in these programmes being developed and implemented, and the delays have recently increased as a result of budget cuts.³¹¹ For example, Decree of the President of Ukraine No. 113/2009, which states that persons with visual impairments should receive free sound producing thermometers, blood glucose meters or blood pressure monitors, has not been implemented, due to funding cuts:³¹² sound-producing can be three to four times more expensive than regular equipment.

In addition, obligations to provide individual rehabilitation programmes for persons with disabilities have not yet been implemented following the suspension of relevant budget funding, despite funds being allocated for this specific purpose.³¹³

Access to Goods and Services

Article 9 of the CRPD requires states parties to ensure the identification and elimination of “obstacles and barriers to accessibility” which includes ensuring that “private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities”. Nevertheless, a particular problem facing persons with disabilities in Ukraine is discrimination in accessing certain goods and services, sometimes due to social stigmatisation.

310 See above, note 258.

311 INVAK.INFO, “У Чернігові обговорили проблеми щодо виконання індивідуальних програм реабілітації інвалідів”, *invak.info*, 27 March 2014.

312 Президента України, Указ “Про першочергові заходи щодо поліпшення становища осіб з вадами зору”, 2 March 2009, № 113/2009.

313 Подробности, “В Україні прекратили финансировать реабилитацию инвалидов”, *podrobnosti.ua*, 13 April 2013.

Case Study: Tetyana Hrechyshnikova³¹⁴

Tetyana Hrechyshnikova has had a disability since childhood; she uses a wheelchair and is classified as being in group I. On the evening of 27 January 2013, she and her friends went to celebrate her birthday. At around 2 am, she and her friends arrived at a nightclub “Litsa”. The security at the club refused to let them in and said that entry was prohibited for people using wheelchairs. When they saw Tetyana, they said that she did not pass their “face control”, that the club was private property and that it was not accommodated for people like her. She was spoken to aggressively and, after forty minutes or argument, she demanded a written refusal of admission. This was denied. She was extremely upset by the incident. In February 2013, she brought a claim of disability discrimination to the Kalininskyi District Court of Donetsk, seeking the sum of 50,000 hryvnia (approximately 2,100 euro) in damages. The night club’s lawyers argued that they were looking to protect her health and welfare and so did not allow her into the club as it was not accommodated for persons with wheelchairs. On 29 May 2013, the Kalininskyi District Court found in favour of Tetyana, but granted her only 2,000 hryvnia (approximately 90 euro) in damages. The District Court held that the night club had violated the Law of Ukraine “On Consumer Rights Protection”, the Law of Ukraine “On Fundamentals of Social Protection of the Disabled” and the UN Convention on the Rights of Persons with Disabilities.³¹⁵ However, due to the low sum awarded in damages, Tetyana has taken her case to the European Court of Human Rights.

Many persons with disabilities also find it difficult to obtain certain financial services, including bank loans and mortgages. Each bank in Ukraine has its own particular rules setting out to whom it will lend money, with the majority refusing to provide such financial services to some, or all, persons with disabilities.

314 Джерельна, Л. and Печончик, Т., “На дискотеку на інвалідному візку”, Українська правда, 26 November 2013.

315 Рішення Калінінського районного суду міста Донецька Донецької області, Справа № 256/1473/13-ц, 29 May 2013.

**Testimony: Oleh Lepetyuk, Head of the Kharkiv
Organisation of Blind Lawyers³¹⁶**

On 20 November 2012, in order to improve the living conditions of my family, I found a property which was affordable to me, an apartment on the secondary housing market available through PrivatBank. The interest rate on the loan to purchase the apartment was 15% and the monthly cost was 2,258 hryvnia (approximately 100 euro). On 21 November, I submitted an application for purchase of the apartment and applied for credit to the Head Office of PrivatBank. Afterwards, I received a telephone call from someone at the bank introducing herself as Iryna, from the credit department. As the application had been received, she asked me a number of questions. I answered questions about my marital status, place of residence and work and I told her that I was self-employed as a lawyer. I also told her that in addition to my earnings through work, I received social assistance as a category I person with a disability, as well as a “loss-of-breadwinner” pension, and a pension for special merits. I also told her that I was a PrivatBank client with a credit card with a limit of 12,000 hryvnia (approximately 500 euro). At this point, Iryna apologised, concluded the interview and said that I would not receive any credit as I was a pensioner and a category I person with a disability. After this conversation, I looked at the PrivatBank website for any notifications concerning restrictions on obtaining credit but found none. I telephoned PrivatBank the same day and asked to speak to Iryna. I was told that I would no longer be dealt with by her but that my request would be considered in a few minutes. After speaking to her colleagues, the operator confirmed that PrivatBank did not provide loans to persons with disabilities and pensioners and that there was nothing she could do.

Some banks offer loans only to certain groups of persons with disabilities. Platinum Bank, for example, provides loans to persons with disabilities within group III. Slavko Vasylyk, a person with a disability of group I, told the Equal Rights Trust:

I was not provided with a loan because it is obvious that I cannot see. My friend, also a person in group I, tried to

316 Equal Rights Trust interview with Oleh Lepetyuk, Kharkiv, 23 March 2014.

obtain a loan and was successful because his disability is not so visible. The documents required do not include a certificate of disability, only an identity code and a reference from work. But it is obvious from my appearance. This was five years ago in Alfa Bank or Delta Bank, I do not remember exactly. I came and told them that I wanted to apply for a loan. The request was made, I went to the supermarket for twenty minutes, and was refused when I came back. The reasons were not given. We went to another bank, however it was already clear that the loan would not be provided, so I asked my friend to obtain the credit agreement instead.³¹⁷

In addition to difficulty obtaining financial services, the Kharkiv Association of Blind Lawyers has stated that most of the buildings where banks are located are inaccessible for persons with disabilities who use wheelchairs;³¹⁸ ATMs are positioned without any consideration of the needs of persons with disabilities, often situated too high or upstairs. The ATM screens themselves are not adapted for persons with visual difficulties, nor are the websites of the banks which allow for online banking. Within banks, persons with hearing difficulties struggle to communicate with bank staff without an interpreter and so are not always clear on the contents of agreements that they sign. For persons with visual difficulties, there is often a problem when they are required to reproduce their signature several times, with bank staff refusing to service them.³¹⁹

Family Life

Article 23(1) of the CRPD requires states parties to “take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others”, while Article 23(2) states that:

317 Equal Rights Trust interview with Slavko Vasylyk, Lviv, 20 March 2014.

318 The figure is estimated by some to be as great as 80%. See above, note 254, Para 59.

319 Харківська громадська організація незрячих юристів, “Відбувся круглий стіл «Права осіб з інвалідністю при доступі до фінансових послуг»”, 19 February 2013.

States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

There are, however, examples of situations where insufficient consideration is given to the rights of persons with disabilities to raise their children when making a decision as to whether a child should be raised by its parents or be put into care or up for adoption. In the case of the Shugaevs, for example, it has been argued that the institution in which the couple lived was too quick to take their child away and failed to give sufficient weight to the parents' rights. The Shugaeva, a couple from Simferopol, both have disabilities (cerebral palsy) and live in a boarding institution. In 2013, Mrs. Shugaeva gave birth to a girl. Although Mrs. Shugaeva had been pregnant before, she had been forced by the staff at the institution to have an abortion. As such, the couple concealed the pregnancy the second time. However, the administration at the institution did not permit the family to keep their daughter, arguing that due to their disabilities, they would not be able to provide sufficient care for the child. The administration also said that the establishment was only for adults and that they would be unable to look after themselves and a child. Although they brought a claim against the institution, they were unsuccessful and so have planned to appeal the European Court of Human Rights.³²⁰ Cases such as these emphasises the need for a careful balancing of the parents' rights and the child's best interests.

Conclusions

Ukraine is a party to the Convention on the Rights of Persons with Disabilities, and has a relatively robust domestic legal framework in place to prohibit discrimination on the basis of disability. However, the legacy of the Soviet

320 Case study based on media and an interview with the family's lawyer, Richard Sidney, in December 2013 by Dmytro Zharyi. See also Керменчикли, А. and Ковалева, И., "Скандал в Крыму: молодой семье инвалидов не отдают здорового ребенка", *Segdonya*, 3 August 2013.

era, during which the treatment of persons with disabilities was based on a welfare rather than human rights framework, continues to influence the approach taken towards disability. While recent reforms have brought the law on disability into line with current best practice, the state displays a tendency to treat persons with disability as objects of social concern and welfare, rather than as autonomous rights-holders. Accessibility to public spaces and buildings remains a problem, despite the existence of clear legal obligations to ensure access and modify buildings and infrastructure. Persons with disabilities are unable to participate in employment on an equal basis with others, and rates of unemployment are very high, both because of failures to make reasonable accommodation and because of direct discrimination. Similarly, the government itself acknowledges that education remains inaccessible for many persons with disabilities. Finally, persons with disabilities were found to experience discrimination and disadvantage in access to healthcare and in access to goods and services.

2.4 Discrimination on the Basis of HIV Status

Health status is a well-recognised ground of discrimination in international law. The CESCR has recognised that Ukraine and other states party to the ICESCR are required to guarantee all of the economic, social and cultural rights in the Covenant without discrimination on the basis of health status, including HIV status.³²¹ In addition, the UN Commission on Human Rights has stated that “the term ‘or other status’ in non-discrimination provisions in international human rights texts can be interpreted to cover health status, including HIV/AIDS” and that therefore “discrimination on the basis of AIDS or HIV status, actual or presumed, is prohibited by existing international human rights standards”.³²² As such, Ukraine is required to guarantee all of the civil and political rights in the ICCPR without discrimination on the basis of HIV status, by virtue of Article 2(1) (which uses the term “other status”). Similarly, under Article 26 of the ICCPR, Ukraine is required to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”, including on HIV status. Further, the ECHR requires

321 See above, note 250, Para 33.

322 United Nations Commission on Human Rights, *Report on the Fifty-First Session (30 January – 10 March 1995)*, UN Doc. E/CN.4/1995/176, 1995, Para 1.

Ukraine to prohibit discrimination based on HIV status in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.³²³

The first case of HIV was reported in Ukraine in 1987, although it did not begin to spread rapidly until 1995 when the virus entered the injecting drug user community. By 2013, the Joint United Nations Programme on HIV/AIDS estimated that there were 210,000 people living with HIV in Ukraine (0.47% of the population).³²⁴ Other estimates put the figure slightly higher, at 238,000 (0.53% of the population).³²⁵ However, as of April 2015 only 137,944 people – approximately 60% of the total population of people living with HIV/AIDS – were registered as being under any kind of medical supervision for the virus.³²⁶ A large number of people who have HIV/AIDS simply do not know it; indeed, in 2013, it was estimated that as many as 50% of people living with HIV did not know about their status.³²⁷

Despite the rapid increase in the last twenty years, the annual number of new HIV transmissions is expected to decline or remain steady in the future.³²⁸ This projection is based on anticipated changes in the main ways that HIV is transmitted, namely a reduction in risky behaviour amongst groups such as injecting drug users and female commercial sex workers, and increased access to anti-retroviral therapy.³²⁹ However, the prevalence of HIV amongst men who have sex with men is expected to grow.³³⁰ It is projected that the number of AIDS-related deaths will gradually decline, though the actual num-

323 See, for example, *I.B. v Greece* (Application No. 552/10), 3 October 2013.

324 UNAIDS, *HIV and AIDS Estimates: Ukraine, 2013*, available at: <http://www.unaids.org/en/regionscountries/countries/ukraine>.

325 UNAIDS, "Ukraine Harmonized AIDS Response Progress Report: Reporting period: January 2012 – December 2013", p. 4.

326 Український центр контролю за соціально небезпечними хворобами, *Оперативна інформація про офіційно зареєстровані випадки ВІЛ-інфекції, СНІДу та кількість смертей, зумовлених СНІДом за квітень 2015 року, 2015*.

327 Український центр контролю за соціально небезпечними хворобами, *Національна оцінка ситуації з ВІЛ/СНІДу в Україні станом на початок 2013 року, 2013*, p. 16.

328 *Ibid.*

329 *Ibid.*

330 *Ibid.*

ber is likely to remain high, primarily due to the “ageing” of the epidemic and an anticipated large number of cases of HIV-related TB.³³¹

Research conducted in 2011 – the People Living with HIV Stigma Index – found that 51% of the respondents had faced prejudice for being HIV positive. The respondents stated that they had often had rumours spread about them (30% of respondents) or faced verbal insults (18%). 25% of respondents stated that their HIV status had restricted their access to social and health services, for example in the form of a refusal to provide medical treatment (20%).³³² One in eight respondents stated that they had not been informed that they had been tested for HIV, and one in ten stated that they had been forced to be tested. A third of respondents had not received any consultation before or after testing.³³³ With regard to employment, 10% of employed respondents reported having suffered discrimination at work. 3% of them had resigned due to discrimination by the employer or colleagues, and 8% stated that they were deprived the opportunity to work.³³⁴

Research for this report indicates that, as a result of discrimination and prejudice, people living with HIV are forced either to conceal their status or risk being socially excluded in various areas of life, including employment, education, access to goods and services and health care. In addition, the high level of stigma and discrimination against people living with HIV has a negative effect on HIV transmission.

Discriminatory Legal Provisions

Despite the protections offered under the Law of Ukraine “On Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV”,³³⁵ there remain provisions in other pieces of legislation which discriminate directly against per-

331 *Ibid.*

332 All-Ukrainian Network of PLWH, “The People Living with HIV Stigma Index”, 2012, p. 7.

333 *Ibid.*, p. 8.

334 *Ibid.*, p. 29.

335 Закон України “Про протидію поширенню хвороб, зумовлених вірусом імунодефіциту людини (ВІЛ), та правовий і соціальний захист людей, які живуть з ВІЛ” (Відомості Верховної Ради України, 1992, № 11, с. 152), as amended between 1998 and 2012).

sons living with HIV. Article 10-21 of the Law of Ukraine “On the Police”, for example, provides that, in addition to other functions, the police is required:

*[T]o identify and report to healthcare institutions information on people who are at risk of AIDS, and, at the request of a healthcare institution, to issue warrants for such persons, as well as those infected with HIV, persons suffering from sexually transmitted diseases, chronic alcoholism and injecting drug addicts, for the purposes of mandatory screening and treatment.*³³⁶

Similarly, the police are required to “execute court orders requiring people suffering from contagious forms of tuberculosis to attend anti-tuberculous institutions”.³³⁷ In practice, as the Executive Director of the International HIV/AIDS Alliance in Ukraine, Andrii Klepikov, has noted:

*[T]he Ministry of Internal Affairs collects information about substitution maintenance therapy patients and, in particular, police officers insist on disclosure of their HIV status, something which is confidential. This frightens patients who become wary of taking part in substitution maintenance therapy programmes, not to mention intimidating doctors. At the same time, there is an inspection from the Ministry of the Interior of the activities of the health institutions and of non-governmental organisations supporting patients.*³³⁸

Until 2011, a provision of the Law of Ukraine “On Prevention of Acquired Immunodeficiency Syndrome (AIDS) and Social Protection of the Population”³³⁹ (which was replaced by the Law of Ukraine “On Combatting the Spread of Diseases Caused by the Human Immunodeficiency Virus

336 Закон України “Про міліцію” (Відомості Верховної Ради УРСР, 1991, № 4, с. 20), as amended between 1992 and 2015.

337 *Ibid.*, Article 10, paragraph 21-1.

338 УНІАН, “Міліція збирає інформацію про хворих на ВІЛ/СНІД в Україні”, *unian.ua*, 21 January 2011.

339 See above, note 335.

(HIV) and Legal and Social Protection of People Living with HIV”) included a provision which prohibited foreigners and stateless persons from entering Ukraine for more than three months, unless they presented documentation showing that they did not have HIV. While this provision has been repealed, a near identical provision remains in the Law of Ukraine “On Protection of the Population from Infectious Diseases”³⁴⁰ (Article 24, paragraph 4), the only difference being that the provision still in force is broader, including also active TB and covering entry into Ukraine for any period of time rather than only for three months or more.

In 2013, a draft law was put forward by Tetyana Donets of the Batkivshchyna party which would have deleted Article 10-21 of the Law of Ukraine “On the Police” as well as Article 24, paragraph 4 of the Law of Ukraine “On Protection of the Population against Infectious Diseases”.³⁴¹ In December 2013, the then government of Ukraine put forward a draft law which would have repealed the latter provision, but not the former.³⁴² Both draft laws were revoked in February 2014.

Employment

Neither the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine” nor the Labour Code explicitly mention health status or HIV status as protected characteristics against discrimination. The Labour Code, provides, however, that requirements as to a worker’s health status can be established by legislation (Article 22, paragraph 3). The Ministry of Health has produced various lists of diseases (either alone or jointly with relevant agencies), which can exclude applicants from certain professions. These regulations also list the professions which require certain physical or psychological attributes. While the Labour Code ostensibly seeks to protect potential employees by prohibiting employment contracts being made where a person’s health status renders them unable to do the job, our research found that

340 Закон України “Про захист населення від інфекційних хвороб (Відомості Верховної Ради України, 2000, № 29, с. 228), as amended between 2003 and 2012.

341 Проект Закону про внесення змін до деяких законодавчих актів України (щодо протидії поширенню хвороб, зумовлених ВІЛ, 3737 of 6 December 2013.

342 Проект Закону про внесення змін до деяких законодавчих актів України (щодо протидії поширенню хвороб, зумовлених ВІЛ, 3737-1 of 19 December 2013.

in practice, these provisions have been used by employers to discriminate against people on the basis of their health status. For example, in April 2013, Iryna, a 39 year old woman from Odesa oblast, was denied a position of a dishwasher in an Odesa café because her medical reference contained a note about her positive HIV status. The café administrator stated that they would not hire anyone with HIV.³⁴³ Similarly, in September 2012, Maryna, a 32 year old woman from Odesa oblast and a worker at an Odesa textile factory had to leave the workplace to get tested for HIV during working hours. Several days later, the director of the factory asked her to resign referring to the company's financial difficulties, and said he would be unable to pay her the minimum wage, though other employees continued to receive higher salaries. Under pressure from the director, the employee resigned. Maryna believed that the situation arose because the director had found out about her HIV status from the medical reference provided by the sexual health centre where she had been tested.³⁴⁴

As noted above, people living with HIV are subject to severe stigma, including in the workplace, where they can experience harassment by their colleagues. The fear of HIV and AIDS and stigma is also shared by employers who, instead of protecting employees with HIV/AIDS, discriminate against them. Viktoriya, a 33 year old woman from Odesa oblast, told the Equal Rights Trust her story. In summer 2013, the supervisor of a private art workshop in Odesa became aware of Viktoriya's HIV positive status. He approached the director and offered to dismiss the employee immediately. He also informed other staff members about her HIV status and forbade her from using the shared kitchen. Ultimately, the workshop director did not dismiss her, but, at her request, moved her to another site.³⁴⁵

343 Equal Rights Trust interview with Iryna, Odesa, 10 February 2014. As noted in the Acknowledgments, the original field research for this report, including interviews with victims of discrimination, was undertaken by a number of researchers across Ukraine. The collection of testimony from victims of discrimination on the basis of HIV status was undertaken by Public Youth Organisation "Klub Vzeyemodopomohy Zhyttya+" based in Odesa. Due to the organisation's geographical focus, the interviews collected for this chapter are all from victims within Odesa oblast, however the experiences faced and situations encountered are illustrative of victims from across the entire country.

344 Equal Rights Trust interview with Maryna, Odesa, 17 February 2014.

345 Equal Rights Trust interview with Viktoriya, Odesa, 20 December 2013.

Several regulations issued by executive authorities contain provisions that are vague or ambiguous, contributing to maladministration and conflicting practice. For example, the List of General Medical Contraindications for Persons of All Professions for Work on Ships refers to AIDS and hepatitis C as infectious diseases during “the period of danger to others”, thus allowing doctors to prevent people with these diseases from working on ships.³⁴⁶ The discriminatory nature of this regulation is exacerbated by the fact that it does not set out how this “period” is to be determined in practice. In 2013, the director of the Odesa Medical Marine Centre “Zdorovyya”, Lyudmyla Kuchmii, stated that, “The quality of our examination is quite high. We cannot let the sailor out if he has hepatitis C, HIV or tuberculosis – last year we had 4 cases of these diseases”.³⁴⁷

Healthcare

Discrimination on the basis of health or HIV status is particularly common within the healthcare system, often as a result of medical staff becoming aware of a person’s HIV status during the course of their work. People living with HIV risk have been refused basic or specialised medical treatment in both public and private healthcare facilities – one survey indicated that between 2007 and 2011, 25% of people living with HIV experienced problems in access to treatment.³⁴⁸ However, a series of awareness-raising campaigns directed towards combating stigma among medical staff have had a significant positive impact and have improved the situation in recent years. According to a 2013 survey by State Service of Ukraine on AIDS and Other Socially Dangerous Diseases, only 11% of persons living with HIV experienced stigma or discrimination in access to healthcare, almost half the figure from previous years.³⁴⁹ The Head of the State Service has said that:

346 Міністерство охорони здоров'я України, Наказ № 347 of 19 November 1996 “Про затвердження Правил визначення придатності за станом здоров'я осіб для роботи на суднах”.

347 Ишук, И., “Людмила Кучмий: «Мы стоим на страже здоровья моряков»”, *Favorit*, No. 7 (82), September 2013.

348 See above, note 332, p. 32.

349 Державна служба України з питань протидії ВІЛ-інфекції/СНІДу та інших соціально небезпечних захворювань, “ВІЛ-позитивні українці відзначають зниження рівня стигми”, 29 November 2013.

The main goal for increasing the quality of medical services for people living with HIV is reducing discriminatory practices among the medical staff. This offers wider opportunities for people living with HIV and for people belonging to the “high risk” groups to receive the medical aid they need. We have not yet overcome the prejudices among healthcare professionals, but the decreasing level of stigma associated with HIV among the doctors is encouraging. In the upcoming years, nationwide measures will be implemented to integrate and decentralise HIV services. In addition, we are planning to strengthen education and raise awareness among the public, and to involve general practitioners, social workers and the media in particular.³⁵⁰

Despite this improvement, incidents where HIV positive patients are refused medical treatment remain frequent. While sometimes medical staff will offer other reasons for the refusal to provide treatment, in many instances, they make no attempt at hiding the fact that the reason is the patient’s HIV status. In January 2013, for example, Svitlana a 30 year old woman from Odesa oblast was hospitalised at a clinic in one of the departments in Odesa with a reference from the Odesa AIDS centre. Within two days, the doctors and the medical staff – who knew about her positive HIV status from her medical records – refused to even approach her. She had a high temperature and called for a nurse to give her some medicine, however she was told that they had no medicine for her and that she should receive treatment in a special “AIDS hospital”. Svitlana was forced to call her husband, who brought antipyretic medication for her. She was discharged before she had fully recovered from her illness. She was taken in by a local NGO providing services for people living with HIV, after being informed by the hospital of their plans to discharge her.³⁵¹

Arguments from medical staff that people living with HIV should be treated exclusively in specialised centres is a common pretext for refusal or restriction of medical treatment in general facilities. In July 2013, Olena, a 28 year old HIV positive resident of Odesa called an ambulance due to a sudden rise in

³⁵⁰ *Ibid.*

³⁵¹ Equal Rights Trust interview with Svitlana, Odesa, 18 February 2014.

her body temperature (up to 40°C) several times during the week. Each time the doctors found out about her HIV status, they refused to provide her with medical care. One even suggested she go to “her AIDS doctor”.³⁵²

In addition, it is common for medical staff to treat HIV positive patients aggressively or abusively. In the winter of 2014, for example, Iryna, a 45 year old woman from Odesa oblast, requested a consultation with an urologist at the Odesa Municipal Polyclinic. When she saw her doctor for the second time (to collect a prescription), she had with her a document from the local AIDS centre stating that she was in the fourth stage of AIDS. When her doctor saw this, he got up aggressively and pushed her out of the room with the words: “Go to your AIDS doctors and get treated there”. In tears, Iryna asked him just to prescribe a course of medical treatment, as he was going to do before he saw the document, but he refused.³⁵³

In state healthcare facilities (with the exception of specialist AIDS centres) patients with HIV often meet the same stigma and ostracism shared by wider society. As a result of a refusal to be treated, many are forced to pay for expensive private medical treatment. In March 2011, for example, Hanna, a 49 year old in Odesa oblast, was hospitalised with a trauma at a municipal clinic. She informed her doctor about her HIV status, in order to ensure that the prescribed medicine would be compatible with the antiretroviral drug that she was taking. Immediately afterwards, the medical staff of the hospital changed their attitude to her completely. Each day the junior medical staff (laboratory technicians and nurses) refused to give her injections and suggested she do the injection herself or hire a private nurse. Even the orderly refused to clean near her bed. The other patients were moved out of the ward despite the fact that the department was oversubscribed. When Hanna pointed to the unlawfulness of these actions, one of the laboratory technicians replied: “I don’t want each and every person sick with AIDS to tell me what I should do with her”. She was discharged prematurely, not having received the medical treatment she needed, and was forced to hire a nurse at her own expense.³⁵⁴

352 Equal Rights Trust interview with Olena, Odesa, 3 February 2014.

353 Equal Rights Trust interview with Iryna, Odesa, 20 January 2014.

354 Equal Rights Trust interview with Hanna, Odesa, 16 December 2013.

Even in private healthcare facilities, experiences are not always much better. One woman, Olena, a 29 year old woman from Odesa oblast, spoke to the Equal Rights Trust. In September 2013, Olena was refused treatment in the Odesa branch of the private Ukrainian Institute of Plastic Surgery and Cosmetology “Virtus” due to her HIV positive status. She tried another clinic where she was also refused treatment. Eventually, the second clinic agreed to perform the operation, but at an increased price.³⁵⁵

A particular area of healthcare where persons living with HIV face discrimination is in reproductive healthcare, where attempts to limit their reproductive rights are a particular problem. The People Living with HIV Stigma Index revealed that 28% of men and 11% of women surveyed were told not to have children; 5% of men and 2% of women faced coercion into being sterilised; and 5% of women faced coercion to undergo an abortion.³⁵⁶

Despite the fact that Ukrainian law explicitly prohibits medical staff from disclosing the HIV status of a patient, widespread stigma and lack of professionalism has resulted in cases where this prohibition has been ignored. In September 2010, for example, while undertaking his duties, the Chief Doctor of the Central District Hospital in Reni, Odesa oblast, sent his medical conclusion on a child with disabilities – containing information on the fact that the child was HIV positive – in an open and unencrypted format to the Social Security Department of the Reni District State Administration. The document was also sent to the chair of the local council of the village where the family of the child lived. The staff at the council learnt of the child’s HIV status and this led to the information being spread amongst the population of the village where the child lived.

The Law of Ukraine “On Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV” provides that persons living with HIV are entitled to compensation for harm caused as a result of disclosure of their HIV-positive status, or information relating to their HIV-positive status.³⁵⁷ Although such incidents are frequent, it was only in 2013 that the first conviction of a medical

355 Equal Rights Trust interview with Olena, Odesa, 20 February 2014.

356 See above, note 332, p. 77.

357 See above, note 329, Article 15, paragraph 1, sub-paragraph 1.

worker for revealing such information took place under the Criminal Code; no compensation was paid to the victim.³⁵⁸

Discrimination in Other Areas of Life

Discrimination against persons living with HIV stems primarily from the stigma and prejudice surrounding the virus. As such, those living with HIV generally try to conceal their HIV status unless absolutely necessary to disclose it. However, sometimes this status is disclosed by others, either through a legal requirement, or, as the case above indicates, the negligence of medical staff or others who have access to their private information. Disclosure can then result in discrimination in almost all areas of life.

The stigma surrounding the virus and the discrimination it engenders extends beyond individuals who themselves have HIV to their spouses, partners and family members. The People Living with HIV Stigma Index showed that in addition to the 51% of persons living with HIV who suffered stigmatisation and discrimination, 14% said that their relatives had faced similar attitudes. The most vulnerable group are children with HIV positive parents. In one instance, the staff at a kindergarten refused to admit a child whose parents were HIV positive. Even when the parents were able to persuade the staff to allow the child in, he was treated so badly that they withdrew him.³⁵⁹

After medical and social services and employment, education is the third most common field in which discrimination against persons living with HIV takes place. Of people identifying themselves as parents living with HIV in the 2011 Index, 4% reported that their children had been expelled or suspended from school or had been prevented from attending lessons; 2% of respondents had faced such discrimination personally.³⁶⁰ Even where children living with HIV are able to attend school, where their condition is known to others, they can face ostracism from other pupils and even teachers. Individuals interviewed for this report indicated that school administrations can often exacerbate the problem. For example, a student from one of the colleges in Odesa who wished

358 Вголос, "В Україні Вперше медика покарали за розголошення ІНФОРМАЦІЇ про ВІЛ-статус дитини", *vgholos.com.ua*, 26 January 2013.

359 See above, note 332, p. 27.

360 *Ibid.*, p. 32.

to remain anonymous, told us that between December 2011 and March 2012, he suffered constant abuse from one of his lecturers because of his HIV positive status. The lecturer announced publicly during the lecture that he knew about the student's HIV positive status and asked other students about their relations with him, including whether they had had sexual relations with him, and stated that there was no place in the college for him amongst healthy students. As a result, the student faced stigma from other students and maltreatment from the lecturer who forbade other students from coming within two metres of him. The suffering only ended after the student's relatives paid the lecturer to stop. The student appealed against the actions of the lecturer but the college administration did nothing.³⁶¹

Conclusions

People living with HIV experience severe and widespread stigma and as a result are forced to either conceal their health status or experience exclusion in employment, education, healthcare and other areas of life. While Ukraine's specific anti-discrimination law does not explicitly prohibit discrimination on the basis of health status, legislation focused on preventing the spread of HIV does contain specific protections from discrimination on the basis of HIV status. However, few other laws directly discriminate on the basis of HIV status, while those protections which do exist appear largely ineffective in practice. Research for this report found evidence of direct discrimination and harassment against people living with HIV in employment, healthcare and education.

2.5 Discrimination on the Basis of Ethnicity, National Origin and Colour

Ukraine is required to prohibit discrimination against persons on the basis of their race, colour and national origin in the enjoyment of all civil, political, economic, social and cultural rights guaranteed under the ICCPR and ICESCR by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. In addition, Ukraine is also required by Article 26 of the ICCPR to ensure that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground", including on the basis of race, colour and national origin. The CESCR has also stated

361 Equal Rights Trust interview with an anonymous student, Odesa, 25 December 2013.

that Article 2(2) of the ICESCR extends to a prohibition of discrimination on the basis of ethnic origin.³⁶² In addition, as a state party to the International Convention on the Elimination of All Forms of Racial Discrimination, Ukraine is required to prohibit all forms of discrimination on the basis of race, colour, descent, national and ethnic origin. Further, the ECHR requires Ukraine to prohibit discrimination based on race, colour and national origin in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.

It is well established that in international human rights law, regardless of the way in which different social sciences distinguish between the terms “race”, “colour”, “national origin”, “ethnicity”, “ethnic origin”, and “descent”, they are equivalent legal terms when designating prohibited grounds of discrimination. The terms most relevant to Ukraine within this family of protected characteristics are “ethnicity”, “national origin” and “colour”, and therefore they are used in this section.

The proportion of the Ukrainian population which belongs to a minority ethnic group is relatively low, with the exception of ethnic Russians who made up 17.3% of the population at the 2001 census.³⁶³ Together, ethnic Ukrainians and Russians made up 95.1% of the total population of Ukraine. Other minority ethnic groups include Belarusians (0.6%), Crimean Tatars (0.5%), Moldovans (0.5%), Bulgarians (0.4%), Hungarians (0.3%), Poles (0.3%), Romanians (0.3%), Jews (0.2%) and Roma (0.1%).³⁶⁴ The distribution of Ukrainian and Russians, who together comprise the vast majority of the population, is not uniform throughout Ukraine. Ethnic Ukrainians dominate in most regions, particularly in the north and west, while ethnic Russians are found in greater numbers in the eastern and southern regions. Crimea is the only region where ethnic Russians outnumber ethnic Ukrainians.

362 See above, note 250, Para 19.

363 State Statistics Committee of Ukraine, *About number and composition population of UKRAINE by data All-Ukrainian population census'2001 data*, available at: <http://2001.ukrcensus.gov.ua/eng/results/general/nationality>.

364 *Ibid.* Determining the number of Roma in all countries where they live is constrained by a range of specific problems, from hiding one's Roma identity to biased census and polling methodologies. See Petrova, D., “The Roma: Between a Myth and the Future”, *Social Research*, Vol. 70, No. 1, 2003, section “The Abracadabra of Roma Statistics”.

The situation of Ukraine's different minority ethnic groups varies significantly, ranging from those (such as the Crimean Tatars and the Roma) who suffer significant discrimination and disadvantage to those (such as the Belarusians and Moldovans) who are essentially integrated within the population and reportedly suffer little, if any, discrimination or disadvantage. This section starts by focusing on those minority ethnic groups which suffer the greatest levels of discrimination and disadvantage: the Roma (also known as the Romani, Gypsies and Tsyhany) who live in various parts of Ukraine, but with a particularly high proportion in Transcarpatia; and the Crimean Tatars (also known as the Qırımlar) a Turkic indigenous community who overwhelmingly live in Crimea, with smaller populations in other parts of Ukraine. This section also examines the experiences of the ethnic Russian population, a difficult task in the strongly politicised and rapidly evolving situation since the autumn of 2013. As a group vulnerable to discrimination and disadvantage in many societies – and one which historically suffered severe discrimination in Ukraine itself – the Jews are also covered in this section.

The section then looks at a more recent phenomenon, namely xenophobia and discrimination against recent migrants and foreign nationals, including students, largely those with darker skin colour, who face discrimination based on a combination of their national origin and skin colour.

During the Soviet period, questions of ethnicity raised complex issues. The existence of an ethnic group (“національність”³⁶⁵) was a construction exercise by academics serving political expediency. As explained by Anatoly Khazanov:

In the Soviet Union not only the status of ethnic minority but also sometimes even the official recognition of the very existence of one were matters of arbitrary decision by the state. The all-union and republic powers

365 As this term has the same Latin root as “nationality” in English and similar terms in other Western languages, it has been very confusing to foreigners. In Marxist political science, “nationality” was a stage of the development of large groups following the stages of ethnic group (“етнос”), which in turn developed from tribe (“плем'я”), but in practice “національність” had the same meaning as the English “ethnicity”, or “ethnic belonging”. It was believed that all “національності” (plural) were evolving to form the historically new entity of the “Soviet people” (“радянський народ”).

*abolished and created nationalities. The number of nationalities figuring in the Soviet population census and therefore receiving official recognition was constantly decreasing. There were 194 nationalities in 1929, 109 in 1939, 106 in 1970, and 101 in 1979. However, for the 1989 census, the Institute of Ethnography of the Academy of Sciences of the USSR proposed a list of 128 existing nationalities.*³⁶⁶

The determination of what was considered a “nationality” (“національність”) was a political one, rather than an assessment based on self-identification. During the Soviet period, a person’s “nationality” was not a free choice but was determined by the “nationality” of their parents: if both parents had the same “nationality”, so would their children. If the parents were of different “nationalities”, the child would choose, at age 16, between the two.³⁶⁷ Once determined, a person’s “nationality” would be recorded on their internal passport and was usually fixed for life. The internal passport was a compulsory document introduced in 1934 for all Soviet citizens. The “nationality” recorded in one’s internal passport was considered one of the “three aspects of the structure and functioning of the neo-Stalinist state” in ethnic relations, whereby “internal passports [were] used by the regime in order to maintain almost impassable boundaries between nationalities”.³⁶⁸ A person’s “nationality” was also reflected in official state records regarding birth, education and employment.³⁶⁹

Initially, this system of ethnic registration was used to promote the rights and career advancement of members of certain national minorities,³⁷⁰ and, indeed, during the 1930s individuals were encouraged to declare non-Russian

366 Khazanov, A., *After the USSR: Ethnicity, Nationalism, and Politics in the Commonwealth of Independent States*, University of Wisconsin Press, 1995, p. 98. Note that “національність” is often rendered as “nationality” in English translations and English language literature, as in this case.

367 *Ibid.*, p. 16.

368 Zaslavsky, V., *The Neo-Stalinist State: Class, Ethnicity, and Consensus in Soviet Society*, Routledge, 1994, p. 92.

369 Arel, D., “Fixing Ethnicity in Identity Documents: The Rise and Fall of Passport Nationality in Russia”, *National Council for Eurasian and East European Research*, 2001, p. 4.

370 *Ibid.*, p. 10.

identities.³⁷¹ However, starting in the 1930s and 1940s, the position of the Soviet authorities changed: whole “nationalities” began to be viewed with suspicion. With a system of strict national/ethnic registration already in place, it was relatively straightforward for the state to subject entire groups to repression. Germans and Jews were particularly vulnerable across the USSR.³⁷²

Upon independence, the approach to ethnicity taken by the new state of Ukraine was markedly different. In 1992, Ukraine removed the requirement that a person’s “nationality” be recorded on their passport. The 1996 Constitution makes no reference to the concept of “nationality” as understood during the Soviet period; instead, Article 24, paragraph 2 prohibits “privileges or restrictions” based on, *inter alia*, race, skin colour and ethnic origin. The 2001 census recorded an individual’s ethnicity (“національність”) on the basis of self-identification.

As noted in Part 3 of this report, the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” prohibits discrimination on, *inter alia*, race, colour, and ethnic origin.³⁷³ Article 161 of the Criminal Code prohibits “deliberate actions aimed at inciting national, racial or religious enmity and hatred”.³⁷⁴ The government of Ukraine has also adopted various strategies aimed at tackling discrimination on the basis of race and ethnic origin such as Plans of Action to Combat Xenophobia and Racial and Ethnic Discrimination for the periods 2008–09 and 2010–12.

2.5.1 The Roma

The Roma (referred to in Ukraine as the Tsyhany)³⁷⁵ are an ethnic group found mostly in Europe, who have lived in the territory making up modern-

371 *Ibid.*, p. 5.

372 *Ibid.*, p. 14.

373 See above, note 51, Article 1, paragraph 2.

374 Кримінальний кодекс України (Відомості Верховної Ради України, 2001, № 25–26, с. 131), as amended between 2002 and 2015.

375 Although the term “Roma” is the most commonly used and understood designation in the English-speaking world, the equivalent term in Ukrainian (“Ромá”) is little used in Ukraine, even amongst Roma themselves. Instead, the term “Tsyhany” (in Ukrainian, “Цигани”) is used. Given the familiarity with the term “Roma” in English, however, this chapter uses that term.

day Ukraine since the 15th century. The 2001 census suggested a total Roma population in Ukraine of 47,600,376 (around 0.1% of the population), although unofficial estimates put the number much higher, between 120,000 and 400,000 (between 0.27% and 0.89%).³⁷⁷ The Roma population is not uniformly distributed across the country, with the largest numbers in the oblasts of Odesa, Poltava, Cherkasy, Donetsk, Dnipropetrovsk, Kharkiv, Chernivtsi and Transcarpatia. In certain parts of Transcarpatia, the Roma officially constitute up to 3% of the population.³⁷⁸

The Roma are considered by many to be the most discriminated minority ethnic group in Ukraine.³⁷⁹ They face difficulties in obtaining identification documents, struggle to find long-term employment, experience high levels of poverty, low standards of housing, and poor quality of education and health-care.³⁸⁰ These problems are interrelated. The difficulties in obtaining identification documents can present obstacles in access to services such as education and healthcare. Lower levels of education leads, in turn, to difficulties in securing employment and a consequent higher rate of unemployment.

The Roma's difficulties in accessing services and obtaining various forms of social welfare and the higher levels of poverty amongst the community are compounded by other factors such as higher than average birth rates and large number of children; high rates of teenage pregnancy (sometimes "explained" with racist observations that early births are for the purposes of obtaining social assistance which may be the only source of income for the

376 See above, note 363.

377 European Commission, *An EU Framework for National Roma Integration Strategies up to 2020*, 2011.

378 European Roma Rights Centre, *Ukraine: A Report by the European Roma Rights Centre: Country Profile 2011–12*, 2013, p. 7.

379 See, for example, Український незалежний центр політичних досліджень, *Аналітичний звіт "Дискримінація в Україні – проблеми й перспективи їх подолання"*, September 2012.

380 See, for example, United Nations Human Rights Committee, *Concluding Observations: Ukraine*, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, Para 12, noting the "prevalence of discrimination, including the difficulties encountered in access to personal documents, education, health care, housing and employment"; and above, note 300, Para 8, noting "the problems faced by Roma in accessing employment, social security, housing, health care and education".

family);³⁸¹ failure to register marriages as in Romani communities, a marriage validity is a matter of complex custom and not of placing signatures on paper; lack of identification documents and difficulties in obtaining such; and a low level of knowledge and understanding of their legal rights. Low levels of literacy and negative cultural attitudes towards women – such as preferences for educating men over women, and a tolerance for early marriage – also limit the equal enjoyment of economic and social rights, particularly in the field of employment.³⁸² However, it must be stressed that the single most important root cause of Roma disadvantage is anti-Gypsism, often manifested as racial discrimination.

The Roma are often visibly identifiable in Ukraine on account of their appearance and dress. There is a strong social prejudice against the Roma in Ukraine, with data from 2013 showing a higher degree of intolerance towards the Roma than any other ethnic group.³⁸³ The police consider the Roma to be potential criminals and therefore encourage the spread of stereotypes among the population. Since the 1990s, there have been hundreds of documented cases of police brutality against Roma and taking unlawful action against them.³⁸⁴ Law enforcement agencies and officials from state and local authorities exploit the vulnerability of the Roma to extort money from them, as well as ignore complaints made by them.³⁸⁵

381 Марценюк, Т., “Ранні шлюби в Україні: хто і чому одружується в ранньому віці”, *Наукові записки НаУКМА*, Vol. 161, Соціологічні науки, 2014, pp. 83–90, p. 88.

382 Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, August 2014, p. 23.

383 Марценюк, Т., “‘Я б хотіла, аби мої діти не знали, що таке циганська життя’: становище ромських громад в українському суспільстві”, *Вісник НТУУ “КПІ”. Політологія. Соціологія. Право*, No. 1(21), 2014, pp. 66–72, p. 67. The same was true in a survey from 2010: Національний інститут стратегічних досліджень, “Оцінка стану толерантності українського суспільства: ризики і можливості для формування національної єдності: Аналітична записка”, 2010.

384 European Roma Rights Centre, *The Misery of Law: The Rights of Roma in the Transcarpathian Region of Ukraine*, 1997. See also Харківська правозахисна група, *Права людини в Україні 2011. XIII. Захист від дискримінації, расизму та ксенофобії*, 2012.

385 Харківський інститут соціальних досліджень, *Дотримання прав ромського населення в діяльності ОБС України*, 2013, p. 37; European Commission against Racism and Intolerance, *Report on Ukraine (fourth monitoring cycle)*, CRI(2012)6, 21 February 2012, Para 162.

As a result of discrimination at the hands of state agents, there is a high degree of mistrust of public authorities among the Roma. The most strongly negative attitudes the Roma have towards the police, hospitals and the departments for labour and social protection,³⁸⁶ that is, the state institutions tasked with ensuring Roma exercise on an equal basis with others their rights to security and safety of the person, access to justice, health, employment and social assistance. 74% of Roma do not trust public authorities entirely or in part.³⁸⁷ Maria Kolokolova of the Kharkiv Institute for Social Researches has summarised the position:

*An analysis of the public comments on the responses shows that this mistrust is primarily caused by the fact that the Roma encounter these state institutions most frequently, but the results of this interaction are mainly negative.*³⁸⁸

As a consequence, the Roma in Ukraine struggle to use the law as a means of protection. They live largely segregated from the rest of society, instead utilising their own traditional forms of dispute resolution and community leaders to settle disputes.³⁸⁹ In particular, in Transcarpatia, where the highest numbers of Roma reside, the Roma tend not to go to lawyers or state authorities when faced with legal problems, but to members of their own community: a survey by the Kharkiv Institute of Social Researches found that 63% of Roma in Transcarpatia will go to relatives and friends to solve problems, 41% to community leaders, 37% will try to solve the dispute themselves, and 33% to NGOs.³⁹⁰ The majority stated that they needed the help of lawyers to solve their problems (21% always and a further 46% sometimes), but a large majority (79%) considered this to be impossible.³⁹¹ The most significant obsta-

386 Колоколова М., Щербань С., *Вивчення правових потреб ромського населення в Закарпатській та Черкаській областях*, 2012, pp. 20–21.

387 *Ibid.*

388 Харківський інститут соціальних досліджень, *Дискримінація та правова ізоляція ромських громад обмежують розвиток держави в цілому*, 25 July 2012.

389 International Renaissance Foundation and Kharkiv Institute of Social Researches, *Study of Legal Problems of Roma People in Transcarpathia and Cherkasy Regions of Ukraine*, 2012, p. 14.

390 *Ibid.*

391 *Ibid.*, p. 27.

cle to obtaining qualified legal support is its cost (51% of Roma saying that such support is “too expensive”).³⁹²

In preparing this report, the authors reviewed a number of cases collected, and conclusions made, by Poltava Media Club, an NGO with long experience of working with the Roma community in the Poltava oblast, and on monitoring Roma rights in the region. Using a wide range of sources, the Poltava Media Club considers that neither the Ukrainian state nor the Ukrainian people acknowledge that the Roma as a group are in a disadvantaged position. Even the publication of information detailing violations of Roma rights meets with incomprehension and sometimes indignation by non-Roma. Stereotypes forming part of the phenomenon of anti-Gypsyism are firmly rooted within the Ukrainian culture and society. A review of posts and comments on the internet as well as official crime statistics both indicate that the degree of intolerance has steadily increased in recent years. However, there is no state encouragement of tolerance towards Roma, and there is no judicial practice of considering crimes targeted towards the Roma to be hate crimes.

Violence and Hate Crime

The Roma, both as individuals and as a community, face violence and other ethnically motivated hate crimes. In 2013, the HRC expressed its concern at:

*[R]eports of hate speech, threats and violence against members of ethnic groups (...) and national minorities, in particular Roma (...) resulting in physical assaults, acts of vandalism and arson, most of which are committed by groups driven by extreme nationalist and racist ideology.*³⁹³

Examples are commonplace. In June 2013, a group of men attacked and set fire to a Roma camp in Kyiv, leaving 40 people homeless and their proper-

³⁹² *Ibid.*

³⁹³ United Nations Human Rights Committee, Concluding Observations: Ukraine, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, Para 11.

ty, including personal documents, destroyed.³⁹⁴ In early 2014, in Slovyansk, Donetsk oblast, a group of over 20 men targeted seven Roma households, entering the houses and beating Roma families, including children, demanding money and stealing anything of value.³⁹⁵ In February 2014, a group of about 15 people attacked four Roma households in Korosten, Zhytomir oblast, and in April 2014, a Roma family's house in Cherkassy was set on fire.³⁹⁶

State officials have, on occasion, made comments about the Roma which amount to hate speech. In May 2013, for example, Sergei Ilish, the Secretary of Yalta City Council, stated that all Roma women who are fortune-tellers and do not have passports should be either detained or evicted from the city and "Believe me, we will not cry over them", before calling Roma and homeless people "little beasts".³⁹⁷

Harassment by Law Enforcement Agencies

Research has found that the majority of the police consider Roma to be one of the population groups which is most inclined to commit crime.³⁹⁸ Roma have reported that the police (primarily investigators and district inspectors) often use offensive language towards them as a group and as individuals.³⁹⁹ As documented by international organisations, law enforcement officials regularly target the Roma community, in some instances requiring only identity checks, fingerprinting and verification of documents, but in others using unlawful violence,⁴⁰⁰ extorting bribes, unlawfully detaining people without a

394 European Roma Rights Centre and Chiricli, *Written Comments concerning Ukraine for Consideration by the Committee on Economic, Social and Cultural Rights (CESCR) at its 52nd Session from 28th April to 23rd May 2014*. 2014, p. 7.

395 European Roma Rights Centre, "Joint Statement on Violence Against Roma in Ukraine", *errc.org*, 30 April 2014.

396 *Ibid.*

397 Gazeta.ua, "Регионал", который хочет стать мэром Ялты, назвал местных бомжей и цыган "зверушками", *Gazeta.ua*, 24 May 2013.

398 Харківський інститут соціальних досліджень, *Дотримання прав ромського населення в діяльності ОВС України*, 2013, pp. 21–23.

399 European Commission against Racism and Intolerance, *ECRI Report on Ukraine (fourth monitoring cycle)*, CRI(2012)6, 21 February 2012, Para 162.

400 See above, note 378.

court order, or beating confessions out of people.⁴⁰¹ However, unlawful acts by the police enjoy impunity: they are rarely punished by disciplinary action or prosecution.

A series of police raids in Lviv in September and October 2011, for example, resulted in Roma individuals being taken to police stations, where they were fingerprinted, photographed and in some cases beaten up.⁴⁰² In Uzhhorod, in January 2012, a Roma settlement was subjected to a violent police raid in which police used tear gas and rubber batons against local residents, including children, older people, and persons with disabilities.⁴⁰³

As noted by the European Commission against Racism and Intolerance (ECRI):

*Some sources suggest that police corruption and serious abuses are not only directed at Roma but also affect the broader population; however, most are clear that Roma are the main victims of such misconduct as they are perceived by the police as having little education or knowledge of their rights and, therefore, as easy targets. Representatives of civil society who attempt to report allegations of police misconduct often face reluctance to investigate or denial of the reported events by officials.*⁴⁰⁴

A number of cases documented in research for this report show the high levels of harassment faced by the Roma. For example, Volodymyr Nikolaenko told the Trust's researchers that in July 2012, several officers from the Chutiv district police department in Poltava oblast came to his home and told him that "an order had come from Kyiv to register all the Roma" as there had been an increase in theft and robbery by Roma persons.⁴⁰⁵ As such, they were required to take his fingerprints and secure a commitment from him not to leave

401 See above, note 399.

402 See above, note 378.

403 *Ibid.*, pp. 17–18.

404 See above, note 399.

405 Equal Rights Trust interview with Volodymyr Nikolaenko, 23 February 2014, Chutiv, Poltava oblast.

the district. Initially, Volodymyr refused, but the police told him that if he did not submit, he would be summoned to the police department where the talk would be “rather different”. Under this pressure, he gave his fingerprints, provided personal information (his place of birth, details of his employment, his income, etc.) and signed a document confirming that he would not leave the district. Mr Nikolaenko stated that many other Roma in the Chutiv district have been treated the same way.

In early 2010, police from the Novi Sanzhary district police department, also in Poltava oblast, used threats to force Hanna Boldyzhar to provide fingerprints and be photographed.⁴⁰⁶ The police told her that they were required to fingerprint “all people of Gypsy nationality” and to provide the information on them to the oblast department of the Ministry of Internal Affairs, due to the high number of crimes committed by “persons of Gypsy nationality”.

Olena Petrenko, a Romani woman, told Equal Rights Trust researchers about a case of racial abuse by police in Myrhorod, Poltava oblast.⁴⁰⁷ On the evening of 6 December 2010, Ms Petrenko and three of her relatives arrived at the railway station in Myrhorod in order to return home from a funeral that they had attended. Before their train departed, officers from the Myrhorod municipal police took the four Roma women to the police department, preventing them from boarding the train. At the municipal police department, the officers took their passports and money without officially registering the confiscation. The police verbally abused the women, calling them thieves, took their fingerprints and photographs, and forced them to confess to crimes they had not committed. One of the police sprayed one of the women’s heads with deodorant before setting it alight with a cigarette lighter. At around 1 am the next morning, they were released and told to return later that morning to collect their belongings. When they did so, only Olena Petrenko was given her money back; the others women’s money was kept. The women complained about their treatment, but the acting chief of the municipal police department told them that he considered their detention to be lawful, that his officers had not exceeded their powers and that they would receive no apology. He told them that they were slandering his officers and that none of the police would corroborate their story.

406 Equal Rights Trust interview with Hanna Boldyzhar, 27 February 2014, Novi Sanzhary, Poltava oblast.

407 Equal Rights Trust interview with Olena Petrenko, 27 February 2014, Myrhorod, Poltava oblast.

Another case documented for this report concerned Rayisa Markivska and seven of her relatives. In 2010, Ms Markivska and her relatives travelled to the Cherkasy oblast for a wedding.⁴⁰⁸ In Chyhyryn, Cherkasy oblast, their cars were stopped by the police and they were taken to the district police department. There they were detained for two hours in order to “check them through the database”. Their fingerprints were taken, they were photographed, and then ordered to cover the expenses for the fuel that the police used to take them to the department to be checked. They were forced to pay 200 hryvnia (approximately 8 euro) in total to be released.

On occasions, the police themselves commit crimes against the Roma which is followed by a failure properly to investigate. In 2012, the European Court of Human Rights issued its judgment in *Fedorchenko and Lozenko v Ukraine*, a case involving an arson attack against three Roma households committed by a police officer in retaliation for certain members of the households’ failure to pay him a monthly bribe – whom he alleged to be drug traffickers – and in which a number of members of the household died.⁴⁰⁹ The Court held that there had been a failure properly to investigate the attack by the police and that:

*[G]iven the widespread discrimination and violence against Roma in Ukraine (...) it cannot be excluded that the decision to burn the houses of the alleged drug traffickers had been additionally nourished by ethnic hatred and thus it necessitated verification.*⁴¹⁰

On this basis, the Court held that there had been a violation of Articles 14 of the ECHR taken in combination with Article 2.

Identification Documents

Many Roma do not possess the personal identification documents such as birth certificates, internal passports or residence registration, which are

408 Equal Rights Trust interview with Rayisa Markivska , 27 February 2014, Chyhyryn, Cherkasy oblast.

409 *Fedorchenko v Ukraine* (Application No. 387/03), 20 September 2012.

410 See above, note 394, p. 4.

needed in order to obtain many public services.⁴¹¹ Indeed, in some communities, between 30 and 40% of Roma lack necessary identification documents.⁴¹² Without such documents, children are not always able to enrol in school; persons over the age of 16 cannot enrol in further education or obtain work; access to certain health care services is limited; and it is not possible to vote.⁴¹³ The absence of identification documents can be attributed to a number of factors, including: the social isolation of the Roma in general; missed deadlines for exchanging documents after the collapse of the Soviet Union; lack of knowledge that such deadlines existed; and failure to have certain documents during the Soviet period proving place and date of birth.⁴¹⁴ The Ukrainian Parliament Commissioner for Human Rights has highlighted the administrative barriers that Roma face:

[T]he major problem of many Roma is absence of documents certifying their identity. While drawing up of these documents there is the largest number of abuse by employees of appropriate state bodies, which for obtaining Ukrainian citizen passports require Roma to hand in additional documents that current regulations are not foreseen [sic].⁴¹⁵

Roma without the necessary identification documents face difficulties in accessing a wide range of state services, including education, housing and healthcare, and experience problems in securing employment.⁴¹⁶ Indeed, the Ukrainian Parliament Commissioner for Human Rights has said that it is the absence of identification documents which makes it impossible for the Roma to realise their rights.⁴¹⁷

411 See above, note 399, Para 70.

412 See above, note 394.

413 See above, note 399, Para 70.

414 See above, note 394.

415 Ukrainian Parliament Commissioner for Human Rights, *Information of the Ukrainian Parliament Commissioner for Human Rights concerning implementation of provisions of the International Covenant on Economic, Social and Cultural Rights*, 2014, p. 1.

416 See above, note 378.

417 See above, note 415.

The issue of missing identification documents has been a repeated theme of Ukraine's reviews by UN Treaty Bodies: in recent years, the Human Rights Committee, CESCR and CERD have all called upon Ukraine to put in place a system by which all Roma can obtain the necessary identification documents to access state services.⁴¹⁸ Despite these calls, the government has failed to act.⁴¹⁹

Social Assistance and Healthcare

In addition to the difficulties faced by Roma without identification documents in accessing certain forms of social assistance and healthcare, research for this report identified cases in which individual Roma were treated with hostility by those providing such services. For example, Nadiya Buzna, a Romani woman, stated that in February 2012, she visited the district Labour and Social Protection Department of the Myrhorod District State Administration in Poltava oblast to apply for a "loss of breadwinner" pension for her and her son.⁴²⁰ When she entered the room, inspectors working there approached and said that she was "another Gypsy woman coming to ask for money". She left the office in tears. Nadiya stated that every time she had to go to the office it was like torture for her, as the workers there humiliated her simply because she was Roma and requested social assistance to which she was entitled.

The Romani woman Oksana Dyudya told the Equal Rights Trust's researchers that in autumn 2013, she went to the Labour and Social Protection Department of the Poltava oblast State Administration to apply for social assistance.⁴²¹ She was pregnant for the seventh time and had requested various forms of social assistance over a number of years. One of the inspectors asked her, "why do you Gypsies produce so many children, is it for money?" She also complained that each time she applied for social assistance, she was rebuked and humiliated. In order to create a ground to reject her assistance requests, authorities forced her to submit a letter prepared by the local council stating

418 See above, note 380, Para 12; above, note 300, Para 8; and United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations: Ukraine*, UN Doc. CERD/C/UKR/CO/19-21, 14 September 2011, Para 15.

419 See above, note 399, Para 70.

420 Equal Rights Trust interview with Nadiya Buzna, 27 February 2014, Myrhorod, Poltava oblast.

421 Equal Rights Trust interview with Oksana Dyudya, 16 January 2014, Novi Sanzhary, Poltava oblast.

that she was cohabiting with a man with whom she had had children and thus did not need assistance as a single mother.

One interviewee, Yevhen Horvat, stated that on 15 February 2014, his sister, Alla, was informed that she had been denied a low income pension, a form of social assistance for single mothers and their children.⁴²² On 18 February, having arranged a meeting beforehand, Alla, her lawyer and a journalist attended the district Labour and Social Protection Department to seek information on the reasons for the refusal. Even with her lawyer and a journalist present, the staff of the department made racist remarks, stating that the Roma have numerous children, that they raise “idiots” as they give their children no education, and that they themselves have no desire to learn how to read and write or fill in forms without help. She was blamed for the “sins” of the Gypsies: a desire to have many children, illiteracy, poverty, being workshy but happy to receive social assistance. The staff showed contempt towards the Roma and activists who supported Roma rights. They came out from different rooms, shouting and making statements that the Roma “always made problems”.

Equal Rights Trust researchers found evidence of healthcare professionals directly discriminating or harassing Roma individuals, largely in response to their own prejudices towards the Roma people. For example, in May 2012, Tetyana Snizhko stated that, having recently given birth, she was told by the obstetrician at the Poltava Municipal Clinic Maternity Home that “[t]he only thing you Gypsies are able to do is breed”.⁴²³ Another interviewee, Yuriy Roshtash, spoke of the treatment he received when his baby was admitted to Kobelyaky District Central Hospital:

Our two month old baby was hospitalised at the Kobelyaky District Central Hospital, in the Poltava oblast, due to a cough and fever. The Director of the Children’s Department, Ms. T. Elbiyeva, said that the baby should not undergo an X-ray examination to confirm the diagnosis. For two days, the baby was not examined (following the Director’s instructions) and the nurses in the department refused to hold the child. The Director and

422 Equal Rights Trust interview with Yevhen Horvat, 27 February 2014, Chutiv, Poltava oblast.

423 Equal Rights Trust interview with Tetyana Snizhko, 16 January 2014, Chutiv, Poltava oblast.

the head nurse stated that the father should call relatives from his village to hold “their little Gypsy” during the X-ray procedure. Yuriy told them that one of the six nurses there could do this, however he was told that they “were not obliged” to do this. The village where he lived, Chapaieve, was 30km from the hospital, with no public transport available, making it too expensive for Yuriy to pay for a taxi to go back. Despite his protestations, the staff at the hospital refused to change their mind. Yuriy overheard words like “dirty” and “black” being used in loud conversations between staff. The Director threatened to call the police to explain to him “his rights and duties”. Yuriy’s brother rented a car to travel from the village in order to help hold the baby for thirty seconds during the X-ray examination, costing a total of 150 hryvnia (approximately 6 euro).⁴²⁴

Furthermore, the research for this report also identified discrimination by local government officials, diverting public funds such that Roma families were unable to benefit – the case of the village of Chervoni Kvity in Poltava oblast. On 14 June 2012, a tornado and a series of storms in the Kobelyaky district of Poltava oblast caused damage to over 80 houses in the village of Chervoni Kvity: houses and other buildings lost their roofs, electric cables were torn, trees fell and harvests were spoiled. In the village of Chapayeve, one quarter of the population is Roma, having moved there from Transcarpatia several years earlier. The oblast had a reserve fund and allocated 486,000 hryvnia (approximately 20,700 euro) for the purpose of addressing the damage caused by the disaster. The money was sufficient to repair all of the damage caused to the households. The village council of Chervoni Kvity was appointed to administer the funds. However, the head of the village council misrepresented the purpose of the funds, telling the Roma population that compensation for their losses was “not authorised”. Together with the deputy leader of the village council, she visited each household and prepared a report on measures to repair the damage, but did not visit any of the households occupied by Roma families. As they were not mentioned in the resulting report, these families were unable to receive building

424 Equal Rights Trust interview with Yuriy Roshtash, 27 February 2014, Kobelyaky, Poltava oblast.

materials or financial compensation. In July 2012, Lyudmyla Kucherenko, a local human rights defender, demanded the village council establish a special commission to deal with the claims that the Roma households had not received any state assistance. A commission was established and the households of the Roma visited. When she was asked why she had not visited the households of Roma families previously, the head of the village council falsely claimed that she had knocked at their doors but that there had been no-one at home.⁴²⁵

Employment

According to representatives of Roma organisations, only 38% of the Roma are employed and only 28% work full-time.⁴²⁶ It is very difficult for Roma to find employment, given the lack of identification documents and high levels of illiteracy.⁴²⁷ ECRI has noted that “few Roma appear to be employed in the public sector; Roma who do find work in this sector tend to conceal their ethnic origin for fear that they will be refused employment or promotion.”⁴²⁸ ECRI has also reported that in the private sector, “prejudices remain rife” and that “Roma tend to be the first to lose their jobs in difficult times or to be blamed if something goes wrong”.⁴²⁹ As a result, most Roma are self-employed, selling in markets or collecting scrap metal in order to gain an income.⁴³⁰ As Roma girls are often prevented from accessing education (see below), and due to the persistence of traditional stereotypes regarding the roles and responsibilities of women, Roma women suffer particular disadvantage in the labour market.⁴³¹

425 Interview conducted by Lyudmyla Kucherenko with various victims in Chervoni Kvity, Summer 2012, Chervoni Kvity, Poltava oblast.

426 See above, note 399, Para 144; European Commission against Racism and Intolerance, *Third Report on Ukraine*, 12 February 2008, CRI(2008)4, 2008, pp. 65–83.

427 See above, note 399, Para 144.

428 *Ibid.*, Para 145.

429 *Ibid.*

430 *Ibid.*

431 See above, note 382.

Education

Roma children often complete only five to six years of education, despite the fact that a full secondary education in Ukraine lasts eleven years.⁴³² While problems faced by Roma children in accessing education are often blamed on an alleged lack of interest to education in Roma families,⁴³³ or on the itinerant lifestyle of the Roma, there is evidence that Roma children experience discrimination when they attempt to enter education.⁴³⁴ There is evidence that some schools refuse admission to Roma students due to a lack of identification documents such as birth certificates; others require an unofficial financial contribution from parents to cover running costs which Roma parents cannot afford to pay; in yet other cases, Roma students are simply refused admission without reason.⁴³⁵ Irrespective of the causes, the major disparity in levels of schooling between Roma and non-Roma children is evidence of a violation of the Roma right to equality and needs urgent positive measures to close the educational gap between Roma and non-Roma.

There is also evidence that once in the education system, Roma students receive poorer quality education than their peers, or are subjected to bullying and abuse. For example, the mother of Alyona Havrylenko, a Roma child from Zachepylivka in the Novi Sanzhary district, spoke to the Equal Rights Trust's researchers about the abuse her daughter experienced at school and the impact on her education. Ms Havrylenko stated that she often misses lessons at school due to the behaviour of her teachers and classmates. Some of the teachers treat her coldly while others humiliate her in front of the students, mocking her clothes and appearance, and calling her "stupid Gypsy". Mimicking the teachers, her classmates treat her similarly, and often worse, physically bullying her during breaks, pulling at her hair and subjecting her to verbal abuse. On occasion, the level of hostility is so severe that she does not attend classes for weeks. On one occasion, during a lunch break, the children collectively avoided her and mocked her until she broke down in tears. Her mother

432 Харківський інститут соціальних досліджень, *Вивчення правових потреб ромського населення в Закарпатській та Черкаській областях*, 2012, р. 33.

433 *Ibid.*, pp. 33–34.

434 Виртосу, І. "До школи в шльопках, або Як переконати ромських дітей учитися", *Українська правда*, 24 April 2013.

435 See above, note 394.

is fearful of naming the teachers and classmates who are involved, fearing victimisation, though she is convinced that the cause of the bullying is due to her daughter being Roma.⁴³⁶

The European Roma Rights Centre has collected evidence indicating that Roma children are frequently educated in separate schools, often of lower standards. In 2014, the organisation reported that:

*[Roma children] often study in fully segregated and sub-substandard schools, are not permitted to register in integrated schools, and are overrepresented in so-called 'special education' schools which have adapted curricula for children diagnosed with special education needs.*⁴³⁷

Housing

The Constitution provides a right of everyone in Ukraine to housing (Article 47, paragraph 1) and a right to social housing for citizens who require social assistance. However, the Housing Code of Ukraine provides only that *citizens* of Ukraine have a right to obtain social housing, sets out the criteria for people to be recognised as needing improvement in their housing conditions, and outlines mechanisms and processes to obtain housing. These provisions mean that Roma without personal documentation are often unable to benefit and access housing.

In addition, there is evidence that the aforementioned hostility towards the Roma in law enforcement and the provision of state services is shared by local government bodies with responsibility for housing. Research undertaken for this report indicates that these authorities can prevent Roma families from acquiring housing, and even encourage hostile attitudes towards the Roma amongst the local population, accusing them of settling on “their territory”. Yelyzaveta Chernyavets, interviewed for this report, stated that in February 2011, she and her family wanted to purchase a house in the village of Mushy-

436 Equal Rights Trust interview with Olha Havrylenko, 27 February 2014, Zachepylivka, Poltava oblast.

437 See above, note 394, and above, note 300, Para 25.

na Hreblya in Novi Sanzhary district in the Poltava oblast.⁴³⁸ They had already spoken to one of the residents in the village, but were soon after informed by the house owner that he would not sell them the house. When Yelyzaveta asked for a reason, the owner told her that the head of the village council, having heard that a Roma family were going to purchase a house in the village, had come to him and told him not to sell his house to them, allegedly saying, “we don’t want the Gypsies to flow onto our territory”.

Eviction and threats of eviction are commonplace, often because Roma lack the necessary documents relating to home ownership.⁴³⁹ In July 2013, in Khust, Transcarpatia, around 300 people were threatened with eviction, despite having lived on the land for five years, as they did not have the necessary proof of ownership.⁴⁴⁰ A similar situation occurred in Uzhhorod, affecting around 40 Roma families in August 2013.⁴⁴¹ In July 2014, in the neighbourhood of Pasichna in Ivano-Frankivsk, the police reportedly forced Roma families to leave their settlement.⁴⁴² There have also been reports of cases in which vigilantes took it upon themselves to evict Roma settlements: in June 2013, a group of men attacked a Roma camp in Kyiv leaving 40 people homeless; in July 2013, two men attacked a Roma settlement in Bereznyaki, Kyiv, by setting fire to the camp.⁴⁴³

The case of Mykola Kovach, who lived with his family in the village of Chapayeve in Kobelyaky district, Poltava oblast, in a house belonging to his brother, illustrates some of the problems faced by Roma when interacting with local authorities on housing and land issues. The house was attached to a 75 acre plot of land. In 2013, a local farmer had used this land for farming without permission saying, “Go away you nomads; the Gypsies don’t need any more land”. Mr Kovach’s brother protested, but with no result. In 2014, Mr Kovach wished to use the land to grow food and rear animals. On 12 March 2014, the head of the village council telephoned him and told him that he could not use his brother’s

438 Equal Rights Trust interview with Yelyzaveta Chernyavets, 11 January 2014, Mushyna Hreblya, Poltava oblast.

439 See above, note 399, Para 152; OSCE/OIDHR, *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*, August 2014, pp. 21–22.

440 See above, note 394.

441 *Ibid.*

442 See above, note 382, p. 21.

443 *Ibid.*

land as he had no right: the land belonged to his brother, the owner of the house, and not to him. When Mr Kovach's brother spoke to the head, she answered, "I have said it and it shall be so; who are you to give me orders what to do?"⁴⁴⁴

Most Roma live in housing which is of a lower standard than that of the rest of the population. Roma settlements are often isolated and with underdeveloped infrastructure.⁴⁴⁵ In 2014, the CESCR expressed concerns that:

*[T]he majority of Roma continue to live in substandard housing conditions without safe drinking water or sanitation facilities, electricity, heating, sewage, waste disposal or legal security of tenure, which exposes them to the risk of eviction.*⁴⁴⁶

Developments since March 2014

The conflict in Donbas has had a significant impact upon the local Roma population. As of September 2014, Roma non-governmental organisations in Ukraine estimated that there were around 9,000 internally displaced Roma, largely women and children, from Eastern Ukraine.⁴⁴⁷ Anti-Roma prejudice has resulted in many of these internally displaced persons (IDPs) being treated with suspicion when they arrive in other parts of the country. There are reports of new Roma settlements being monitored by local authorities and the police, and even reports of Roma IDPs being told to leave.⁴⁴⁸

As many Roma IDPs lack identification documents, they have been unable to register as IDPs with the authorities. Yet more fear that registration might lead to detention or mistreatment.⁴⁴⁹ A monitoring visit by the NGO Chiricli to Kharkiv, where 3,000 Roma IDPs had settled, indicated that only 36% of 125 displaced Roma were registered as IDPs with the local authorities. In a series

444 Equal Rights Trust interview with Mykola Kovach, 27 February 2014, Chapaieve Poltava oblast.

445 See above, note 399, Para 152.

446 See above, note 300, Para 18.

447 International Charitable Organisation Roma Women Fund "Chiricli", *Monitoring the human rights situation of Roma in Ukraine*, September 2014, p. 6.

448 *Ibid.*, p. 29.

449 *Ibid.*, pp. 28–29.

of monitoring visits Chiricli conducted in 2014, 82.8% of Roma IDPs interviewed spoke of a lack of concern from the local authorities which translated into lack of access to basic amenities such as accommodation and food: of 411 Roma IDPs interviewed, less than 30% had been provided with accommodation by the local authorities; as such, many resorted to living in train stations or parks.⁴⁵⁰ Instead of local authorities, civil society organisations and churches had provided the bulk of assistance in the form of accommodation and food.⁴⁵¹ Even with this assistance, conditions were extremely difficult for many: Chiricli estimates that 85% of Roma IDPs did not have enough money even to provide for themselves and their families.⁴⁵²

Conclusions

Roma are rightly considered to be the most discriminated ethnic group in the country, experiencing a number of discriminatory practices ranging from discrimination by state agents and difficulties in obtaining identification documents to high levels of unemployment and poverty and poor quality education and housing. Roma are exposed to widespread social prejudice, with levels of intolerance higher towards them than towards any other ethnic group, and this corresponds to high levels of hate speech and hate crime. Prejudice also has an impact on interaction with state agents, and the research for this report documented numerous cases of discrimination by law enforcement officials. For a range of historical and social reasons, many Roma lack identification documents, and many experience problems today in trying to secure such documents, as a result of discrimination by the relevant authorities. Lack of identification documents results in turn in difficulties in accessing social and healthcare. The Roma also experience discrimination and inequality in education, employment and housing. Roma IDPs are treated less favourably than other IDPs from the Donbas area.

2.5.2 The Crimean Tatars

The part of Ukraine comprising Crimea (a peninsula in the far south of Ukraine) and Sevastopol (a city on the Crimean peninsula but just outside

450 *Ibid.*, pp. 30–32.

451 *Ibid.*, p. 31.

452 *Ibid.*, p. 27.

of the Autonomous Republic of Crimea) has a particular unique history and status. As noted in Part 1 of this report, Crimea's history was, for many centuries, entirely distinct from the rest of the territory which constitutes modern-day Ukraine. From 1478 to 1774, the most territory of Crimea formed part of the Crimean Khanate, a vassal state of the Ottoman Empire. In the late 18th century, the territory was absorbed into the Russian Empire. Between 1921 and 1945, it was a distinct territory, the Crimean Autonomous Soviet Socialist Republic within the Russian Soviet Federative Socialist Republic. However, after World War II and the deportation of most ethnic minorities, above all the Crimean Tatars, the region was transformed into an ordinary oblast. It was transferred to the Ukrainian SSR in 1954. Today, Crimea has a unique status as an autonomous republic (the Autonomous Republic of Crimea) and is the only region of Ukraine where the majority of the population is ethnically Russian, rather than Ukrainian.

On 16 March 2014, disputed referenda on Crimea's status were held in the Autonomous Republic of Crimea and Sevastopol, with over 95% of voters in both reportedly supporting Crimea and Sevastopol joining Russia as new federal subjects. Within days, the Crimean peninsula was annexed by Russia. As such, the Ukrainian government no longer has *de facto* control over the Autonomous Republic of Crimea and the city of Sevastopol. Russia considers Crimea and Sevastopol to be federal subjects within Russia. Only a handful of other countries recognise Crimea and Sevastopol as part of Russia, however, and, in April 2014, the United Nations General Assembly adopted Resolution 68/262 on the territorial integrity of Ukraine, stating that the referenda had "no validity" and that Crimea remained part of Ukraine.⁴⁵³

One of the things which marks Crimea as unique is its place as home to the Crimean Tatars (the Qırımtatarlar or Qırımlar in Crimean Tatar language), a Turkic ethnic group resident in the region since the 9th century. As citizens of the Crimean Autonomous Soviet Socialist Republic, the Crimean Tatars were subjected to forced assimilation, marginalisation and exile by the Soviet regime. In 1942 and 1943, Stalin ordered the forcible deportation of all Crimean Tatars for alleged collaboration with the Nazis. More than 230,000 people were deported, mostly to the Uzbek Soviet Socialist Republic, with over 100,000 dying of

453 United Nations General Assembly, *Resolution 68/262: Territorial Integrity of Ukraine*, UN Doc. A/RES/68/262, 1 April 2014.

starvation or disease. 95% of place names of villages and towns in the Crimean Tatar language were replaced with Russian names.⁴⁵⁴ Though pardoned in 1967, it was not until the 1980s that the Crimean Tatars were permitted to return.

The 2001 census showed a total of 248,000 Crimean Tatars living in Ukraine, of whom about 98% (243,400) lived in Crimea and a further 0.7% (1,800) in Sevastopol.⁴⁵⁵ By 2013, the total was estimated to have risen to around 265,985 Crimean Tatars in Ukraine as a whole.⁴⁵⁶ Together, the Crimean Tatars constituted between 10% and 13% of the total population of Crimea. As a result of the annexation of Crimea by Russia, large numbers of Crimean Tatars fled the peninsula for other places in Ukraine; the Ukrainian Presidential Commissioner for the Crimean Tatar People stated that of the 19,000 or so people who had left the peninsula by the end of 2014, over half were Crimean Tatars.⁴⁵⁷

The CERD has regularly highlighted the many disadvantages faced by the Crimean Tatars, noting difficulties:

*[I]ncluding lack of access to land, employment opportunities, insufficient possibilities for studying their mother tongue, hate speech against them, lack of political representation, and access to justice.*⁴⁵⁸

Many of the disadvantages faced by the Crimean Tatars stem from prejudice towards them from others, including the authorities. Attempts to commemorate events in the Crimean Tatars' history, to speak about their forced deportation or to counter the false accusations of Nazi collaboration of the Crimean Tatars have faced a negative reaction.⁴⁵⁹ Such initiatives, whether by Crimean

454 Organisation for Security and Cooperation in Europe, *The integration of formerly deported people in Crimea, Ukraine, Needs assessment*, August 2013, p. 23.

455 See above, note 363.

456 See above, note 454.

457 УНІАН, "Анексований Крим покинули більше 9 тисяч кримських татар", *unian.ua*, 22 December 2014.

458 United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations: Ukraine*, UN Doc. CERD/C/UKR/CO/19-21, 14 September 2011, Para 17.

459 Дзеркало тижня, "У Криму на бюджетні гроші випустили книгу із звинуваченнями кримських татар у співпраці з фашистами", *dt.ua*, 26 July 2013.

Tatars themselves or by others, have been blocked by local authorities, as in the case of the proposal to name Simferopol International Airport in honour of the famous Soviet aviator and twice Hero of the Soviet Union, Amet-Khan Sultan, a Crimean Tatar.⁴⁶⁰

ECRI has raised concerns over reports that “local Crimean authorities resort to anti-Tatar discourse for electoral purposes” and that:

*[H]igh-ranking politicians, including government ministers, have reportedly engaged in markedly intolerant discourse against Crimean Tatars, suggesting for example that their deportation under Stalin was justified or that Crimean Tatars are a legitimate target of anger of the local population.*⁴⁶¹

Further, ECRI has concluded that:

*[A]nti-Tatar sentiment remains an issue in Ukraine and appears to have increased in recent years as politicians' rhetoric has given it a semblance of respectability. Local politicians' tendency to ignore or deny the specific problems faced by Crimean Tatars also pushes the latter to seek their own solutions and voice their identity more strongly. The end result is a risk of radicalisation rather than resolution of the issues, to the detriment of Crimean society as a whole and Tatars in particular as targets of prejudice.*⁴⁶²

The Crimean Tatars have been underrepresented in political life. While at the community level in rural areas, Crimean Tatars make up around 16% of deputies of local councils,⁴⁶³ at the district council level the figure is 9%, and in the

460 Притула, В., “До 90-ліття легендарного льотчика Амет-хана Султана”, *Радіо Свобода*, 25 October 2010.

461 See above, note 399, Para 50.

462 *Ibid.*, Para 94.

463 Avdet, “Доклад Мустафы Джемилева”, *avdet.org*, 23 July 2012.

Verkhovna Rada of the Autonomous Republic of Crimea only 7%.⁴⁶⁴ Within state bodies, only 5% of employees are Crimean Tatars.⁴⁶⁵

Violence and Hate Crime

Crimean Tatars face violence and hate crimes, and their property, including mosques and graveyards, is often attacked by extremists. In May 2012, in the Bakhchisarai District, the tombstone of an important Muslim leader, Eskender, was destroyed.⁴⁶⁶ In August of that year, swastikas were painted on memorial stones with the names of the place where the Crimean Tatars were deported.⁴⁶⁷ In 2013, the HRC raised concern over:

*[R]eports of hate speech, threats and violence against members of ethnic groups, religious and national minorities, in particular (...) Crimean Tatars, resulting in physical assaults, acts of vandalism and arson.*⁴⁶⁸

As noted below, since the annexation of Crimea in March 2014, which was strongly opposed by the Crimean Tatar population, there has been a notable rise in violence and hate crimes against the Crimean Tatars. These attacks go largely unpunished. Crimean Tatars make up just 4% of the police force and relations between the police and this group are poor.⁴⁶⁹

Economic, Social and Cultural Rights

Since their return to Crimea in the 1980s and 1990s, one of the most significant problems faced by the Crimean Tatars has been that of land ownership. Following their deportation in the 1940s, land owned by the Crimean

464 Unrepresented Nations and Peoples Organization, *Alternative Report submitted to the United Nations Human Rights Committee at its 108th Session during the consideration of the Seventh Periodic Report of Ukraine*, June 2013, p. 5.

465 *Ibid.*, p. 8.

466 United States Department of State, *2012 Report on International Religious Freedom: Ukraine*, 2013.

467 Qirimtatar.org, "В Крыму очередной раз осквернено мусульманское кладбище", *qirimtatar.org*, 13 February 2013.

468 See above, note 393.

469 See above, note 464, p. 10.

Tatars (more than 10,000 km², over a third of Crimea) was seized and redistributed by the Soviet authorities. Since their return, those Crimean Tatars who themselves, or whose families, owned land prior to the deportation, have found virtually impossible, to resume ownership. It was only in 2014 that the Verkhovna Rada passed legislation which would enable Crimean Tatars to receive either the land which was seized or compensation,⁴⁷⁰ however, with the Ukrainian state having no effective control over Crimea, it has not been possible for the legislation to be implemented and enforced.

Until the 2014 law was passed, Ukrainian law did not provide for any restitution of property confiscated unlawfully during the Soviet period. Indeed, until that point, there had been no official recognition of the Crimean Tatars as victims of land violations. With their land occupied by others, those Crimean Tatars who returned to Crimea had to try to obtain empty plots of land to build a home, but this had been an extremely slow and difficult process. Starting in the early 1990s, various governmental commissions and working groups were set up, involving relevant government departments and state agencies. However, none of their conclusions or recommendations were accepted and implemented and resolution of the problem was repeatedly postponed. As of December 2012, only around 50,000 Crimean Tatars had received land allotments for either personal or work use, leaving the vast majority of the population without any land rights.⁴⁷¹ Even those who had received land had received plots only in the most inhospitable areas.⁴⁷²

470 Закон України "Про відновлення прав осіб, депортованих за національною ознакою" (Відомості Верховної Ради, 2014, № 26, с. 896).

471 United Nations Committee on Economic, Social and Cultural Rights, *Sixth Periodic Report of States Parties: Ukraine*, UN Doc. E/C.12/UKR/6, 27 December 2012, Para 405. According to the state's report, a total of 22,900 former deportees had received land allotments totalling 126,100 hectares; 300 returnees had set up farms on land totalling 4,900 hectares; 1,600 persons had joined newly created farming businesses totalling 8,500 hectares; and 24,800 persons had received land allotments for farming purposes totalling 24,300 hectares in area. A further 21,300 returnees had been permitted to prepare project documentation in order to obtain licenses to work private allotments covering a total area of 21,100 hectares.

472 Unrepresented Nations and Peoples Organization, *Alternative Report submitted to the UN Committee on the Economic, Social and Cultural Rights for the consideration of the sixth report of Ukraine during the 52nd session*, March 2014, pp. 9 and 20; Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Ukraine Adopted on 22 March 2012*, ACFC/OP/III(2012)002, 28 March 2013, Para 14.

With so many Crimean Tatars without any land, some have chosen to occupy empty plots. These Crimean Tatars are accused of “squatting”, causing conflict with the majority population and the authorities.⁴⁷³ As of 2012, around 2,000 hectares were occupied in 56 unauthorised settlements, involving between 8,000 and 15,000 people.⁴⁷⁴ While it is true that there are some Crimean Tatars squatting, the same is true of members of the so-called “Slavic population” of Crimea (the Russians and Ukrainians that constitute the vast majority of the population of the region); however, the local authorities have only ever sought to intervene when it has been the Crimean Tatars who have “squatted”.⁴⁷⁵ On the night of 1 December 2012, for example, local dwellers and so-called Crimean Cossacks headed by Sergei Aksyonov, the leader of the political party Russian Unity, destroyed a number of buildings occupied by Crimean Tatars on the “Protest Glade” near Simferopol.⁴⁷⁶ The Crimean Tatars have also been often accused of occupying the land plots to sell them rather than live on them. As with the issue of “squatting”, while this does happen on occasion, the same has been said of some of the ethnic Ukrainians and Russians who have also occupied plots of land.⁴⁷⁷

The high cost of living in the larger Crimean cities has meant most Crimean Tatars search for land in the rural areas, where around 86% now live.⁴⁷⁸ While the land is cheaper, the areas are underdeveloped, with many of them considered to be inhospitable prior to the return of the Crimean Tatars. More than half of Crimean Tatars either do not have their own home or live in a dwelling which meets the minimum acceptable standards of living.⁴⁷⁹ In its recent state party report to the CESCR in 2012, Ukraine stated that only 75% of the area where Crimean returnees are concentrated had a water supply, only 32% had

473 Радіо Свобода, “Проблеми інтеграції кримських татар в українське суспільство”, *radiosvoboda.ua*, 9 February 2015.

474 OSCE High Commissioner on National Minorities, *The integration of formerly deported people in Crimea, Ukraine: Needs assessment*, August 2013, p. 12.

475 See above, note 473.

476 Гуленко, С., “Лидер партии «Русское единство»: «Мы снесли крымскотатарский самозахват, потому что это законно!»”, *Комсомольская правда*, 3 December 2012.

477 Черемісіна С.Г., “Проблеми формування і розвитку ринку землі в АР Крим”, *АгроІнКом*, Nos. 1 and 2, 2008, p. 80.

478 See Unrepresented Nations and Peoples Organization, above, note, 472, p. 8.

479 Avdet, “М. Джемилев: Альтернативы Курултаю быть не может ...”, *avdet.org*, 6 February 2012.

natural gas and only 9% had hard-surface roads. There were few educational, healthcare and cultural facilities.⁴⁸⁰

Poverty is a particular problem. Although Crimea generally suffers from high levels of poverty, Crimean Tatars are particularly affected, with 43% of Crimean Tatar households qualifying as poor in 2013, compared to 33% for ethnic Russians and 38% for ethnic Ukrainians.⁴⁸¹ This is partly due to the fact that Crimean Tatar households are, on average, larger (3.20 people per household, compared to 2.28 among ethnic Russians and 2.19 among ethnic Ukrainians) and have a lower ratio of working to non-working persons.⁴⁸² In 2012, the unemployment rate amongst Crimean Tatars was more than double that of the population as a whole.⁴⁸³ The Crimean Tatars themselves consider this to be the result of discrimination during recruitment, with particular difficulties faced by women and those in their 40s and 50s.⁴⁸⁴

The Crimean Tatar language remains a language of limited communication. The authorities have not undertaken any measures to promote or encourage its use, and use of the language in public service and the media has been minimal.⁴⁸⁵ The vast majority of Crimean Tatars have been unable to receive an education in their native language and to use the language in their day-to-day life. Despite the increase in the population of the Crimean Tatars in the region in the last 25 years – to the point where they constituted between 10% and 13% of the population – in 2013 there were only 15 Crimean Tatar schools out of 576 schools in Crimea, and no Crimean Tatar pre-schools.⁴⁸⁶ As a result of a lack of textbooks available in the Crimean Tatar language, many classes in these schools are in fact taught in Russian or Ukrainian.⁴⁸⁷ Where there are settlements with large numbers of Crimean Tatars, there is both the demand and the feasibility of establishing primary school classes with a curriculum in

480 See above, note 471, Para 404.

481 See above, note 474.

482 *Ibid.*

483 See above, note 399, Para 92.

484 Mirimanova, N., "Political participation and representation of Crimean Tatars and other formerly deported people: needs assessment", *Social Science Research Network*, 2013, pp. 7–12.

485 See above, note 474, pp. 23–24.

486 See above, note 474, p. 27.

487 *Ibid.*

the Crimean Tatar language, but local authorities have reportedly resorted to pressure in order to prevent parents from calling for it.⁴⁸⁸

Developments since March 2014

Following the annexation of Crimea by Russia in March 2014, the Ukrainian authorities lost *de facto* control of the territory. In April 2014, the Verkhovna Rada adopted the Law of Ukraine “On the Restoration of Rights of Persons Deported on Ethnic Grounds”, which entered into force between August 2014 and 1 January 2015.⁴⁸⁹ This Law has the potential to address many of the social and economic problems faced by the Crimean Tatars, particularly in relation to restitution of property lost following deportation and support to the acquisition of land and homes.

Meanwhile, the situation of the Crimean Tatars inside Crimea has deteriorated. The Crimean Tatars boycotted the referendum on Crimea’s status in March 2014,⁴⁹⁰ maintaining a strong pro-Ukrainian stance.⁴⁹¹ The pro-Russian authorities regularly denigrate the Crimean Tatars; Sergei Aksyonov, the Head of Russian authorities of Crimea, has called for Crimean Tatars to be tried for treason or deported for undermining Russian rule in Crimea.⁴⁹²

There have been a number of enforced disappearances of Crimean Tatar activists.⁴⁹³ The first took place on 3 March 2014 when a young man, Reshat Ametov, was dragged away during a protest by three men in military-style jackets. His corpse was found on 16 March 2014 around 67km away, report-

488 Qirimtatar.org, “765 первоклашек пошли в классы с крымскотатарским языком обучения”, *qirimtatar.org*, 4 September 2012, available at: <http://www.qirimtatar.org/news/social/item/1425-826-pervoklashek-poshli-v-klassi-s-krimskotatarskim-yazikom-obucheniya.html>.

489 Закон України “Про відновлення прав осіб, депортованих за національною ознакою” (Відомості Верховної Ради, 2014, № 26, с. 896).

490 BBC News, “Ukraine crisis: Tatars plan to boycott referendum”, *bbc.co.uk*, 10 March 2014.

491 Sneider, N., “Mindful of Past, Many Tatars Fear a Russian Future”, *The New York Times*, 13 March 2014.

492 Rayfield, D., “How the Crimean Tatars have survived”, *The Guardian*, 21 June 2014.

493 Human Rights Watch, “Crimea: Enforced Disappearances”, *hrw.org*, 7 October 2014; Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine: 15 November 2014*, 20 November 2014, Para 209.

edly showing signs of ill-treatment.⁴⁹⁴ By October 2014, at least 19 Crimean Tatars had been abducted or disappeared.⁴⁹⁵ One of the victims was found hanged in a deserted sanatorium in the city of Evpatoria.⁴⁹⁶

The authorities have conducted large numbers of raids in search of weapons and “extremist” literature, routinely targeting Crimean Tatar properties, including the houses of officials at the Mejlis (the executive-representative body of the Crimean Tatars), mosques and eight of the 10 madrassas in Crimea.⁴⁹⁷ Article 20.29 of the Administrative Code of the Russian Federation prohibits the possession or distribution of “extremist material” and has been used to fine individuals found in possession of Islamic texts, including one of the deputy heads of the Crimean Muftiyat in charge of education issues and a librarian of a boarding school whose school library contained three books with sermons by a Turkish Muslim theologian.⁴⁹⁸

2.5.3 Ethnic Russians

At the 2001 national census, a total of 8,334,141 persons in Ukraine considered themselves to be ethnic Russians, making up 17.3% of the total population.⁴⁹⁹ This represents a drop from 22.1% of the population who identified as ethnic Russians in the 1989 census. As such, ethnic Russians represent by far the biggest ethnic minority group in Ukraine, though the proportion of ethnic Russians in each oblast varies greatly: from 1.2% in Ternopil oblast and 1.8% in Ivano-Frankivsk oblast in the west to 38.2% in Donetsk oblast and 39.0% in Luhansk oblast in the east.⁵⁰⁰

Ukrainian legislation neither imposes any requirement on individuals to declare their ethnic identity, nor directly links the ethnic background of a per-

494 Council of Europe, *Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe Following his Mission in Kyiv, Moscow and Crimea from 7 to 12 September 2014*, 27 October 2014, Para 13.

495 Rupert, J., “Four More Crimean Tatars Vanish, One Dead Amid Russian Crackdown”, *Atlantic Council*, 16 October 2014.

496 See above, note 493, Para 212.

497 *Ibid.*, Paras 209 and 218 to 221; see also above, note 494, Para 21.

498 See above, note 493.

499 See above, note 363.

500 *Ibid.*

son with the language they speak. Therefore, an individual's ethnic identity and mother tongue/first language is rather a matter of personal choice. As for a number of generations people have chosen their "nationality", and as this choice has been of very little personal meaning or social consequence in any area of life, there has been no clear line between ethnic Russians and the rest of the population. It is only after the annexation of Crimea by Russia and the war in Donbass, and only in these territories, that a Russian ethnic identity began to slowly emerge as more distinct, as a result of the inevitable politicisation of ethnicity; however, at the same time, the opposite process can be observed: a formation of a united Ukrainian political nation irrespective of ethnic origin.

Prior to the 2014 conflict, relations between ethnic Russians and the majority population in Ukraine were generally harmonious, with little evidence of discrimination or disadvantage. The UN Special Rapporteur on Minority Issues reported in 2015 that:

*Russian minority representatives acknowledged that, prior to the unrest, they did not face a repressive environment, widespread discrimination, exclusion, or violence based on their identity.*⁵⁰¹

While the conflict between Ukraine and pro-Russian separatists in the east of the country has resulted in a more negative image of the Russian state among the Ukrainian public, this does not appear to have translated into a negative attitude or behaviour towards ethnic Russians in Ukraine. Indeed, on the basis of a visit to Ukraine in April 2014, the Special Rapporteur reported that:

The Special Rapporteur was not provided with evidence that anti-Russian sentiment was widespread. There have been few incidents of discrimination, harassment or abuse of individuals or groups on the basis of their Russian identity in Kyiv or other localities. Russians and ethnic Ukrainians frequently stated that their relations remained good. Incidents of intercommunal violence

501 Human Rights Council, *Report of the Special Rapporteur on minority issues, Rita Izsák: Addendum: Mission to Ukraine*, UN Doc. A/HRC/28/64/Add.1, 27 January 2015, Para 33.

*were extremely rare or non-existent in most localities at the time of the Special Rapporteur's visit.*⁵⁰²

As part of the research for this report, in April 2015, the Equal Rights Trust conducted a series of interviews with ethnic Russians in Kyiv, Dnipropetrovsk and Odessa. The Trust found that the developments of 2013-2014 have created an identity crisis for the Ukraine's Russian community, forcing its members to question what it is to be Russian in Ukraine. Such identity elements as speaking Russian as a first language, being Orthodox Christians or loving Russian culture do not appear to be sufficient as there are many ethnic Ukrainians and members of other ethnic groups in Ukraine who also share these characteristics. Moreover, these cultural identifications do not impede a person to feel a part of the multi-ethnic Ukrainian political nation. This trend to choose multi-ethnic democratic Ukraine may be growing among Ukraine's Russians. On the opposite side of a political rather than ethnic spectrum are Russians who do not accept an independent Ukraine and see it as a threat to the "Russian world" pursued by the Kremlin. Thus, rather blurred identity markers of Ukraine's Russians within Ukrainian realities are considered to be one of the major challenges of this community.

The testimonies collected by the Equal Rights Trust in April 2015 suggest that while there was no evidence of discrimination against ethnic Russians on the basis of ethnicity, and while there has been no experience of any hostility at the personal level, the conflict has forced Russians in Ukraine to clarify and determine their belonging in an Ukrainian state, not as a "national minority" but as a constituent of the Ukrainian political nation which has always been characterised by the presence of Russian language and culture.

Almost all of those interviewed noted the historically good relations between ethnic Ukrainians and ethnic Russians in the country. One respondent stated that, "violations of our rights take place regardless of ethnicity, be it Russian or Ukrainian – in fact, for us ethnicity has never been a decisive factor".⁵⁰³ However, several interviewees noted an increase in hostility as a result of the crisis and conflict and the resulting increasing politicisation of ethnicity.

502 *Ibid.*, Para 23.

503 Equal Rights Trust interview with Oleksander Kondryakov, Chair of the Board of the All-Ukrainian Public Organisation "Russian School", 7 April 2015, Kyiv.

Larysa Abramovych, Chair of the Board of International Public Organisation “International Union”, stated that:

I am a Russian who has lived in Ukraine since 1993. For 10 years I lived in the Donbas (Mariupol). I cannot say that my rights were violated. However, today when the relations between our countries have entered the conflict phase, I started feeling the problem. I try not to say that I am Russian because I see the reaction. I understand the reasons for such reactions. At the same time, the issue of terminology is very important in today’s Ukraine, as Russians could hardly be called “a national minority”.⁵⁰⁴

Vyacheslav Potapov, Chair of the Kyiv City Organisation of the All-Ukrainian National Cultural and Educational Society “Russian Assembly”, told the Equal Rights that:

When the Russian annexation of Crimea took place, even some of my friends started to address this issue to me. But I was born and raised here, in Kyiv, and this is my motherland. When people talk about Russian aggression in Ukraine, I suggest to them to call it the Kremlin’s aggression. It is the government and not the entire country that takes decisions even if someone is against it.⁵⁰⁵

Oleksandr Prigarin, Associate Professor at the Department of Archaeology and Ethnology of Ukraine at the Odessa I.I. Mechnikov National University provided the Equal Rights Trust with an analysis of the impact of the crisis and the events in Crimea and Donbas on public perceptions of ethnic Russians:

While previously, ethnicity in Ukraine was determined by blood or by language, during the last one and a half

504 Equal Rights Trust interview with Larysa Abramovych, Chair of the Board of International Public Organisation “International Union”, 7 April 2015, Kyiv.

505 Equal Rights Trust interview with Vyacheslav Potapov, Chair of the Kyiv City Organisation of the All-Ukrainian National Cultural and Educational Society “Russian Assembly”, 10 April 2015, Kyiv.

years we have observed the radicalisation of the ethnic factor. Previously one could easily be an ethnic Russian citizen of Ukraine. Now this formulation is at least naïve. (...) For a long time the issue of ethnicity was attributed to the private sphere, though it still was able to find ways to the public sphere. (...) Odesa is an example where numerous different ethnic groups normally coexist with each other. In fact, Russian culture has always been an integral part of the region and of the city. Russians have never felt as a minority here and would probably never accept this role. This is determined rather not by Russian ethnic factor, but by the Russian-speaking contents of the public space here. However, over the last one and a half years we can observe certain changes of the attitudes towards Russians and this is a result of a general politicisation of ethnicity. Perhaps for the first time, Russians acknowledge themselves as a minority here. At the private level, the attitude towards Russians did not change, but it has changed at the political level. Nevertheless, people continue watching Russian TV and films and reading Russian books.⁵⁰⁶

Mr Prigarin further commented on the shrinking space for the promotion of Russian culture:

Today it is very difficult to maintain of a Russian-oriented cultural organisation in the public space, i.e. an organisation which is not engaged in politics and works exclusively in the sphere of culture. With regard to Odessa, there are two aspects. First, there is an external political aspect. We had a centre of Russian culture which was opened in the university following a number of scandals. Now it ceased to exist. Second, there is a regional aspect. Most of the active Russian activists basically left Odessa:

⁵⁰⁶ Equal Rights Trust interview with Oleksandr Prigarin, Associate Professor at the Department of Archaeology and Ethnology of Ukraine at the Odessa I.I. Mechnikov National University, 8 April 2015, Kyiv.

some of them are in jail, others emigrated. One may not share their political and ideological views, but these people were able to organise cultural and social space in order to promote Russian culture. Today people are cautious in expressing their Russianness. We face a situation in which Russian ethnic affiliation is perceived as an allegiance with the regime of Putin. Last spring the majority of people were not pro-Russian or pro-Putin. They rather did not accept Ukrainian ethnicisation and their protest was aimed at that. (...) Until recently, there were a number of local programmes for schoolchildren, teachers, or veterans financed from the Russian state budget and backed by access to the media in Russia. These programmes were not sufficient but they existed. Now they virtually ceased to exist. Thus, allegorically speaking, local Russians were forgotten by both Ukraine and Russia.⁵⁰⁷

Some interviewees blamed the media for increasing the level of tension between ethnic Ukrainians and ethnic Russians. For example, Larisa Abramovich stated that:

In today's Ukraine, there is a huge stream of xenophobia coming from the media. While trying to cover "hot topics", they start increasing stereotypes. Moreover, they often are ignorant and do not have enough knowledge of history. The state currently does not have any programme which is focused on the media training them on why they should not use certain provocative approaches that incite xenophobia and hate speech.⁵⁰⁸

Similarly, Nadiya Fedoseyeva-Yefymyshch, President of the Union of the Uralic Peoples of Ukraine told the Trust that:

507 *Ibid.*

508 Equal Rights Trust interview with Larysa Abramovych, Chair of the Board of International Public Organisation "International Union", 7 April 2015, Kyiv.

*My organisation brings together representatives of Uralic (Finno-Ugric) peoples who have their homelands in the Russian Federation. (...) The Finno-Ugric factor is often used in anti-Russian rhetoric. In the media one can read or hear about the “Finno-Ugric onslaught”, or that Russians are actually not Slavs but a certain mixture of Finno-Ugric and Turkic peoples. These stereotypes construct obviously negative attitudes towards representatives of these nations.*⁵⁰⁹

Conclusions

Ethnic Russians are by far the largest ethnic minority in Ukraine, constituting almost one fifth of the population. In light of the conflict between pro-Russian separatists and the Ukrainian state in the Donbass region of eastern Ukraine, the Equal Rights Trust sought evidence of discrimination against this group, in order to establish whether discrimination was a factor in creating or perpetuating the conflict. Interviews conducted for the report, together with research undertaken by other independent actors, found that relations between ethnic Russians and the majority were historically good, with no evidence of ethnic discrimination. However, the research revealed that the conflict had increased the tension between the two previously hardly distinguishable groups, though even at the time of writing, ordinary Ukrainians appeared to draw a clear distinction between their opposition to the Russian state and their attitude towards ethnic Russian Ukrainians.

The position of the Russian community as of mid-2015 can be summarised as follows: Ukraine’s Russians generally do not perceive themselves as a national minority. This is largely determined by the historical experiences of this community, its size and the spread of the Russian language in the Ukrainian public space. The 2014–2015 Ukrainian-Russian conflict has significantly affected the ethnic Russians in numerous ways, including: (i) politicisation of ethnicity has resulted into the situation in which Russian ethnic identity is often intentionally or unintentionally confused/associated with Putin’s regime; (ii) the mobilisation of ethnic Russians in Ukraine could be traced along two

⁵⁰⁹ Equal Rights Trust interview with Nadiya Fedoseyeva-Yefymyshch, President of the Union of the Uralic Peoples of Ukraine. 7 April 2015, Kyiv.

diverging lines: either to identify with a multi-ethnic Ukrainian political nation or with the political concept of “the Russian world” pursued by Kremlin; (iii) the latter has been largely determined by the Kremlin’s efforts to support pro-Russian political projects rather than to focus on Russian culture in Ukraine; (iv) as a result of the conflict Russians in Ukraine face an identity crisis; (v) Russian cultural organisations have become less active and less visible; (vi) the conflict between Ukraine and Russia has significantly decreased the scope of opportunities for cooperation of Ukraine’s Russians with their kin-state; (vii) similar challenges are also experienced by other ethnic communities in Ukraine which have their homelands on the territory of the Russian Federation.

2.5.4 Jews

According to the 2001 census, there were a total of 103,591 Jews in Ukraine, just over 20% of the total number living in Ukraine at the time of the 1989 census (486,326).⁵¹⁰ The figure in the 2001 census has been called into question by some Jewish organisations and activists. The European Jewish Congress, for example, has reported that the actual number of Jews in Ukraine is between 360,000 and 400,000, with the largest communities in Kyiv (110,000), Dnipropetrovsk (60,000), Odesa (45,000) and Kharkiv (45,000).⁵¹¹ Regardless of the actual number, it is undeniable that, upon independence in 1991, many Jews emigrated from Ukraine to Israel and the USA, largely as a result of the poor Ukrainian economy.⁵¹² However, the fall of the Soviet Union – under which Jews suffered significant repression – led to something of a renaissance of Jewish life across the former Soviet Republics, including Ukraine. Today, 98.5% of Jews in Ukraine live in urban areas, making them one of the most urbanised groups in the country. 83% of Ukrainian Jews are native Russian speakers, 13.4% declare Ukrainian as their mother tongue, while only 3.1% (mostly elderly people) regard Yiddish as their first language.⁵¹³

510 See above, note 363.

511 European Jewish Congress. “The Jewish Community of Ukraine”, available at: <http://www.eurojewcong.org/communities/ukraine.html>.

512 Abramson, H., “Ukraine”, *Encyclopedia of Jews in Eastern Europe*, available at: <http://www.yivoencyclopedia.org/article.aspx/Ukraine>; European Jewish Congress. “The Jewish Community of Ukraine”, available at: <http://www.eurojewcong.org/communities/ukraine.html>.

513 See above, note 363.

The conflict in Donbas has coincided with an increase in Jewish emigration from Ukraine to Israel; in 2013, 2,020 Jews left Ukraine to go to Israel while the following year this figure almost tripled to 5,840.⁵¹⁴ However, some of the individuals interviewed in preparing this report suggested that the conflict has actually increased cooperation and understanding between ethnic Ukrainians and Jews. Indeed, Ihor Shchupak, head of the Dnipropetrovsk Museum of Jewish Memory and the Holocaust, has been quoted as saying that the present is a “golden age” for Jews in Ukraine.⁵¹⁵ Borys Treiherman, advisor to the Head of the Dnipropetrovsk Oblast State Administration, argued in an interview with the Equal Rights Trust that the events since the EuroMaidan crisis have united Ukraine’s different groups, overcoming historic divisions:

*The recent events in Ukraine showed a turning point when people stopped dividing themselves into nationalities and when all realized that Ukraine is a multi-ethnic state where all live under the same sky. Before this moment all communities lived here, but they lived as communities and did not have such an identification with Ukraine. Today we understood that we must not divide our people into nationalities because we are all Ukrainians. Everyone who stood to defend Ukraine said that he is Ukrainian, though not forgetting about his or her own ethnic affiliation. I would make a parallel with the US where all people regardless of their origin say: “I am American”. Today all people say: “We are Ukrainians”. They perfectly understand that Ukrainians means affiliation with the country they live in. When an aggressor comes, you can lose everything. When you lose everything, your ethnic affiliation is not important and all have to unite to stand against the aggressor.*⁵¹⁶

514 The Jewish Agency for Israel, “Aliyah Hits Ten-Year High: Approximately 26,500 New Immigrants Arrived in Israel in 2014”, *jewishagency.org*, 2 January 2015.

515 Simone, A., “The conflict in Ukraine has led to a Golden Age for Jews – though some are still leaving”, *Public Radio International*, 18 March 2015.

516 Equal Rights Trust interview with Borys Treiherman, advisor to the Head of the Dnipropetrovsk Oblast State Administration, 9 April 2015, Dnipropetrovsk.

Generally, Jews in Ukraine interviewed for this report in April 2015 believed that there was little, if any, discrimination against them and that the Jewish population was well-integrated within society. Arkadii Monastyrskyi, President of the Jewish Forum of Ukraine, stated that:

*Ukrainian Jews actively participate in politics on different levels. There are many Jews in the Parliament and state public bodies. However, these Jews rather view themselves as Ukrainian citizens and not as Jews.*⁵¹⁷

Similarly, Pavlo Kozlenko, Director of the Odesa Holocaust Museum, spoke of how Jews “like many other groups are deeply integrated into Ukrainian society”, continuing:

*It is very difficult to separate [Jews] from other nationalities. In fact, on the personal level, ethnic allegiance is not important for the people. We do not speak about bizarre anti-Semitism, but about normal people. In today’s Ukraine we have Jews on both sides of the barricades. This is because Jews are members of society with their own opinion which does not depend on their ethnic affiliation. Other nationalities do not have a special attitude towards Jews. Indeed, even though there could be a certain percentage of those who are narrow-minded (...) normal people perceive us in an ordinary way without prejudices.*⁵¹⁸

Roman Shvartsman provided the Trust with a historical perspective:⁵¹⁹

517 Equal Rights Trust interview with Arkadii Monastyrskyi, President of the Jewish Forum of Ukraine, 7 April 2015, Kyiv.

518 Equal Rights Trust interview with Pavlo Kozlenko, Director of the Odesa Holocaust Museum, 8 April 2015, Odesa.

519 Equal Rights Trust interview with Roman Shvartsman, Head of the Odesa Regional Association of Jews and former Prisoners of Ghettos and Nazi Concentration Camps, 8 April 2015, Odesa.

Testimony: Roman Shvartsman, Head of the Odessa Regional Association of Jews and former Prisoners of Ghettos and Nazi Concentration Camps

I am almost 79 years old now and I have seen many things in my life. 55 years of my life I lived in the Soviet Union. I can see a clear dividing line in my life, marked by the collapse of the Soviet Union and the emergence of an independent Ukraine. I have said it in my numerous interviews and will say it now. I want to say that when Ukraine became independent, Jews came to life and felt that they lived in an independent country. While previously we were told that religion is the opium of the masses, now we feel that we have Jewish religion, traditions and culture. They do not exist on paper, they are actively developing. For instance, in Odessa we have Jewish secondary and higher educational establishments. Though the education process is conducted in Ukrainian, much attention is being paid to Jewish culture and traditions. Today, in Odessa and in the whole of Ukraine, Jews feel free and comfortable. We communicate with the Jewish communities in other regions of our country and can definitely emphasise that now we can proudly say that we are Jews.

I can show you the changes with examples of my family. During the Soviet period, one of my brothers had to change his surname, the son of another brother had to take the surname of his Ukrainian mother and my daughter could not become a student at a medical institute. I could go further with the examples which I experienced myself or which my family members did. During 24 years since independence, I experienced a totally different attitude. For instance, in independent Ukraine I got two Orders of Merit.

(...) Comparing what was under Soviet rule and what is now, I can say that the attitude towards Jews is nearly perfect. People often try to find their Jewish roots. We deal with it, we help them. Previously people tried to hide their Jewish background. Now the situation is totally different. When I come to the authorities, they greet and welcome me, while in the Soviet time I knew that I could face negative attitudes only because I am a Jew.

(...) I do not accept the phrase “national minority”. This term is to a certain extent humiliating. We are the people of Ukraine and we live here. The other thing is that we are all of different ethnicities, cultures and traditions. I do not feel now that my ethnicity is worse than any other one.

Similar to Mr Shvartsman, some of the Jews interviewed objected to being considered members of a “national minority”. Pavlo Kozlenko, Director of the Odesa Holocaust Museum, for example, stated that:

Here in Odessa Jews do not feel as a minority, especially as a deprived minority. On the contrary, they actively participate in the political and cultural life of the city, the region and the country in general. Moreover, the enormous contribution made by Jews to the local culture, arts and sports can hardly be compared with other nationalities. So, we can ask who represents a minority and who constitutes a majority, in these terms.

For these reasons, accusations made by commentators from Russia to the effect that Ukraine is anti-Semitic have been fiercely contested by the Jewish population in Ukraine.⁵²⁰ Borys Treiherman, advisor to the Head of the Dnipropetrovsk Oblast State Administration, stated that:

Generally, Jews of our region are used by the Russian propaganda, which claims that they are oppressed, discriminated, etc. When a representative of the US State Department for countering anti-Semitism came here, I told him: “Jews are oppressed here! Judge for yourself: the governor is Jewish, his deputy and members of the team are Jews. The largest synagogue and the largest Jewish cultural centre in the world, “Menorah”, are also located in Dnipropetrovsk. Do you see how we are oppressed?” He smiled and said: “This is already an indicator!” I do not want to be under any illusion. Perhaps, on the people’s level there are still traits of anti-Semitism. However, many people in social networks write that today Jews demonstrate what it is to be a patriot. All elements of discrimination, including anti-Semitism, derive from people’s ignorance and lack of knowledge.⁵²¹

520 Kondrachuk, M. and Ennis, S., “Jews reject Russia claims of Ukraine anti-Semitism”, *BBC News*, 12 November 2014.

521 Equal Rights Trust interview with Borys Treiherman, advisor to the Head of the Dnipropetrovsk Oblast State Administration, 9 April 2015, Dnipropetrovsk.

Violence and Hate Crimes

In recent years, there have been numerous incidents of anti-Semitic hate crimes and violence, including assaults and desecration and graffiti at Jewish cemeteries.⁵²² In 2013, there were a total 13 reported anti-Semitic incidents.⁵²³ However, in September 2014, the UN High Commissioner for Human Rights has maintained that according to impartial research Jews did not appear to feel threatened in Ukraine.⁵²⁴ Worryingly, recognizable patterns of anti-Semitic crime have been downplayed by the Jews interviewed in the research for this report, accepting such crime as “normal” and explaining the desecration of graves with factors such as the near absence of Jews in some regions, as a result of which Jewish cemeteries have not been maintained.⁵²⁵ A number of people spoke to the Equal Trust about anti-Semitic hate crime in Ukraine:

A.: As for the manifestations of anti-Semitism, we always know about them among the first. Usually two or three times a year some anti-Semitic graffiti appears. It does not bother me much because it is popular anti-Semitism and we have survived state anti-Semitism. In such a case we contact the relevant authorities who act within the scope of Ukrainian laws. The main emphasis here is different: in Ukraine a person is not humiliated because of his or her ethnicity when this person deals with the state authorities. We do not face it!

B.: As for the general situation with discrimination, there are a number of organisations who prepare monthly reviews on this topic. Indeed, we take into account all facts

522 See, for example, Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine*, UN Doc. A/HRC/27/52, 19 September 2014, p. 18.

523 Безп'ятчук, Ж., “Євреї об’єднують зусилля для захисту України від агресора”, *Радіо Свобода*, 12 November 2014.

524 The High Commissioner for Human Rights has noted that “when interviewed by an impartial and reliable source representative of the various Jewish communities in Ukraine, it appears that these communities do not feel threatened”. See above, note 522.

525 Equal Rights Trust interview with A., B. and C., 8 April 2015, Odesa. (Initials changed.)

and claims and they are all checked (publications, cases of vandalism, xenophobia). If there are flagrant violations, we contact the Commissioner for Ethno-national Policy and he issues statements. In the case of Jews, they sometimes become subjects of attacks; this concerns mainly religious adherents because this fraction of the Jewish community is more visibly recognisable. However, these attacks are not specific to Ukraine, since they are also typical for many other countries. There are also manifestations of vandalism on the cemeteries. In fact, cemeteries in Ukraine (not only Jewish) are in a very bad condition. However, the Jewish peculiarity rests upon the fact that there are areas of Western Ukraine where the Jewish population is nearly non-existent. Thus, there is no one to take care of the cemeteries and buildings. This becomes the reason for vandalism.

C.: To a certain degree we can observe popular anti-Semitism. But this is rather the ignorance of our society. It existed and will always exist. When a neighbour lives better than you, it is easier to be jealous than to focus on your own shortcomings. As for desecration of monuments (regardless of their nature), sometimes it has a political message and is often in fact a cheap provocation.⁵²⁶

That being said, two interviewees noted that Article 161 of the Criminal Code – which prohibits deliberate actions aimed at inciting ethnic, racial or religious hatred – is difficult to enforce, and that anti-Semitic offences are instead treated as a lesser offence of hooliganism.⁵²⁷

⁵²⁶ *Ibid.*

⁵²⁷ Equal Rights Trust interview with X., 7 April 2015, Kyiv; Equal Rights Trust interview with Y., 8 April 2015, Odesa. (Initials changed.)

Testimonies: Criticism of Incitement provisions

X.: Art. 161 of the Criminal Code foresees punishment for the violation of citizens' equality based on their race, ethnicity or religion. However, its fulfilment is problematic because of quite complicated and time-consuming procedure foreseen by the article. For instance, a violation must take place during a public event when the accused person must incite against someone or something. It also requires an expert opinion and there is a very big problem in that state experts are non-existent. Thus, it is difficult to prove that a crime was committed on the ground of ethnicity and was not an act of hooliganism or similar misconduct. In this regard, I should point out that stereotypes still exist in the Ukrainian society. We have organised plenty of exhibitions and projects on this topic. However, the effectiveness of these endeavours is limited to the target groups willing to participate in it and learn it.

Y.: In general, we have very good laws but these laws do not always work. The existing mechanisms are not always effective, there is a problem with collecting evidence, etc. The law enforcement bodies often think that it is easier to qualify certain acts as hooliganism than interethnic hatred. It is easier to impose administrative sanctions. In general, I should say that much depends on opportunities and the willingness of the people in charge to pursue certain activities or measures. If one wants to deal with a certain question, it will be successfully solved; otherwise the shortcomings could be explained in numerous possible ways.

Conclusions

Ukrainian Jews have historically been subjected to severe repression, but are today well-integrated into society, experiencing little, if any, discrimination. As illustrated above, Jewish community leaders consider Ukrainian Jews to be sufficiently integrated so that most consider themselves Ukrainian citizens first and foremost. While those interviewed did identify Anti-Semitic practices, they emphasised the fact that these are relatively rare acts by private individuals, rather than the state sanctioned Anti-Semitism of the Soviet era.

2.5.5 Xenophobia against Foreign Nationals

Research for this report identified evidence of xenophobia and discrimination against non-nationals in Ukraine, primarily manifested in discriminatory violence and hate crimes, as well as discriminatory treatment by law enforcement agencies. This appears to be more often the case when the person has a dark skin colour. The victims are often students and immigrants from countries which were not previously part of the USSR.

At the time of the 2001 census, there were a total of 230,072 foreign nationals and 84,047 stateless persons in Ukraine, together making up just 0.7% of the population. Of the foreign nationals, the majority were from former Soviet republics (163,464) with 66,608 coming from other countries.⁵²⁸ The number of new immigrants each year is relatively low: between 30,000 and 37,000 a year between 2008 and 2012.⁵²⁹ At the end of 2011, the total number of migrants in Ukraine registered with the Ministry of Interior was around 313,000.⁵³⁰

Discrimination on the basis of skin colour is prohibited both by Article 24 of the Constitution, which prohibits “privileges or restrictions” based on, *inter alia*, skin colour”, and the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”.⁵³¹ There are a number of provisions in the Criminal Code relating both to the incitement of hatred (primarily Articles 161 and 300) and hate crime – aggravated offences where the motive is race, which would include skin colour, or other characteristics. In addition to Article 161 of the Criminal Code, Article 300 prohibits the “importation, making or distribution of works that propagandise violence and cruelty, racial, national or religious intolerance and discrimination” and there are also other offences which can be aggravated if motivated by racial hatred (for more detail, see section 3.2.3.1. of this report).

528 Migration Policy Centre, *Migration Profile: Ukraine*, 2013, p. 1.

529 *Ibid.*, p. 3.

530 *Ibid.*, p. 2.

531 See above, note 51.

Violence and Hate Crime

The most significant form of xenophobia towards foreign nationals and recent immigrants comes in the form of hate crime and hate speech. Complete statistics on the number of incidents are difficult to obtain. However, the Kharkiv Human Rights Protection Group documented 62 hate crimes in 2012, including 27 attacks resulting in 48 foreign nationals being injured; in 2011, 35 foreign nationals were attacked.⁵³² While the Ministry of Internal Affairs for 2011 gave a similar figure for the number of attacks on foreign nationals (33), none of these was classified as hate crime.⁵³³ Skin colour is invariably the motivation for such attacks. In 2012, ECRI noted that:

*[M]ost racist incidents reported to the authorities or – more often – to civil society consist of physical attacks committed against foreign students, migrants, refugees, asylum seekers, Roma and other persons of non-Slavic appearance, including Africans, Central and South-East Asians and persons from the Middle East or the Caucasus. Such attacks clearly target people based on their appearance and most commonly occur in Kyiv and other major urban centres where there is a significant number of foreign students or migrants. (...) Such attacks are frequently severe, resulting in serious wounding by beating, knifing or shooting. Some observers also indicate that racist attacks tend to increase during electoral periods, when the political climate is less stable.*⁵³⁴

According to the ECRI, hate crimes are most commonly carried out by groups of skinhead youths who, while not necessarily members of structured right-wing organisations, may belong to a “skinhead subculture”.⁵³⁵

532 Харківська правозахисна група, Права людини в Україні 2012. Узагальнена доповідь правозахисних організацій: 14. Вразливі групи як об’єкт дискримінації, расизму, ксенофобії та злочинів на ґрунті ненависті, 2013.

533 *Ibid.*

534 See above, note 399, Para 43.

535 *Ibid.*

While Article 161 of the Criminal Code provides for an offence of “deliberate actions aimed at inciting national, racial or religious enmity and hatred, humiliation of national honour and dignity or insult to the feelings of citizens”, the reference to “citizens” appears to exclude non-citizens from its scope. This has led to criticism from the CERD in 2011.⁵³⁶ However, the Ukrainian authorities responded that there is a special note in the Criminal Code which confirms that stateless persons and foreigners are included in the term “citizens” and that the term does not only include Ukrainian nationals.⁵³⁷ Whether this is correct or not, it is not disputed that Article 161 is seldom used in practice. Before 2007, only one conviction had ever been secured, in 2002, following an attack on a synagogue.⁵³⁸ It was only in 2008 that the first conviction for an attack against a foreign national took place, following the murder of a Nigerian man in Kyiv.⁵³⁹ In 2009, only four investigation proceedings were initiated by the Public Prosecutor’s Office, six in 2010, and two in 2011. Even with these low numbers, not all of the proceedings resulted in charges being brought to court: no court proceedings were initiated in 2009, while there were three in 2010 and a further three in 2011.⁵⁴⁰

In 2014, the HRC expressed its concern “that article 161 of the Criminal Code (...) which requires proving deliberate action on the part of the perpetrator, is rarely used and that such crimes are usually prosecuted under hooliganism charges”. The Committee urged the Ukrainian authorities to:

[S]trengthen its efforts to combat hate speech and racist attacks, by, inter alia, instituting awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity. The State party should also step up its efforts to ensure that alleged hate crimes are thoroughly investigated, that perpetrators are prosecuted under article 161 of the Criminal Code

536 See above, note 458, Para 9.

537 See European Commission against Racism and Intolerance, above, note 426, Para 21.

538 Kyiv Post, “Synagogue attack ringleader jailed for 4 years”, *kyivpost.com*, 13 March 2003.

539 Amnesty International, *Ukraine: Government Must Act to stop Racial Discrimination*, 2008, p. 20.

540 Харківська правозахисна група, *Права людини в Україні 2012. Узагальнена доповідь правозахисних організацій: 14. Вразливі групи як об’єкт дискримінації, расизму, ксенофобії та злочинів на ґрунті ненависті*, 2013.

*and, if convicted, punished with appropriate sanctions, and that victims are adequately compensated.*⁵⁴¹

Relations with Law Enforcement Agencies

Foreign nationals and recent immigrants commonly face discriminatory treatment by law enforcement agencies, primarily the police, who sometimes racially profile them for the purpose of identity checks or even to extort money.⁵⁴²

In a survey of foreign nationals conducted by the Kharkiv Human Rights Protection Group in the city of Kharkiv at the end of 2011, 79.1% of respondents stated that they had been detained by representatives of law enforcement agencies with the most obvious reason for this being their skin colour or appearance.⁵⁴³ In addition, 67% of respondents had had their documents checked, and 13.2% had had money extorted from them. More than half stated that law enforcement agents had detained them, despite their having the correct documentation with them, and 45% of those detained were only released after they had paid a bribe to the police.

One student from Turkmenistan at Kharkiv National University of Economics attested:

*They are so insolent. Well, how to say, they have a small salary, and it is necessary to live somehow, so they extort. Maybe they have some personal hostility against us, foreigners, but when they capture one of us, they don't take us to their office, they just say, "give us money", and if they get money, they just let us go. But if the person who is captured knows his rights and starts to argue with the policemen, they just let him go.*⁵⁴⁴

541 See above, note 380, Para 11.

542 See above, note 399 Para 166.

543 Ангорская, Л. "Почти половина иностранцев в Харькове подвергались преследованиям (данные опроса)", *Городской дозор Харькова*, 30 January 2012.

544 Николаев, И., "Чужой среди чужих: как складываются отношения иностранных студентов с украинцами", *Харьковского профсоюза студентов*, 23 June 2011.

Another student, A. Markse, studying at the Kharkiv National Automobile and Highways University, said, "Once a policeman was asked, 'Why do you stop us and extort money out of us constantly?' and he replied, 'Why? Because you are foreigners'".⁵⁴⁵

The CERD has castigated the Ukrainian authorities over the:

*[A]ttitudes and reluctance to accept the racist or discriminatory nature of hate crimes by the law enforcement authorities as well as the repeated incidents of ethnic and racial profiling by the police, resulting in a majority of the reported hate crimes remaining unanswered.*⁵⁴⁶

The Committee urged the Ukrainian authorities to:

*[T]ake immediate measures to effectively investigate reported hate crimes and ensure that the police do not engage in racial or ethnic profiling when conducting document checks on foreigners or members of "visible minorities". To that end, the Committee recommends that the State party investigate and bring to justice perpetrators of such acts regardless of their official status, and continue to expand training on human rights issues for staff of the Ministry of the Interior, State Migration Service, State Border Guard Service and the police.*⁵⁴⁷

Conclusions

There is evidence of hate speech and violent hate crime by skinhead youth groups against "visible" minorities in the country, primarily immigrants and students of darker skin or non-European features, though there are currently no official statistics on the prevalence of such acts.⁵⁴⁸ Ukraine has been criti-

545 *Ibid.*

546 See above, note 458, Para 10.

547 *Ibid.*

548 See above, note 399, Paras 43 and 128.

cised for its inadequate response to these crimes, with both the relevant laws and their implementation called into question. In addition to hate crime, recent immigrants are disproportionately likely to be stopped and detained by law enforcement agencies.

2.6 Discrimination on the Basis of Nationality and Citizenship

Ukraine's obligations to prohibit discrimination on the basis of nationality and citizenship differ from its obligations in respect of race, ethnic origin and colour. In respect of the latter three characteristics, Ukraine is required to prohibit all forms of discrimination. In respect of nationality and citizenship, however, the international human rights treaties to which Ukraine is party do not require that all rights and freedoms guaranteed to citizens are guaranteed to non-citizens equally. Some distinctions are justifiable and permissible, though these exceptions are limited. These distinctions are discussed in more detail in Part 3 of this report.

At the time of the 2001 census, there were a total of 230,072 foreign nationals and 84,047 stateless persons in Ukraine, together making up just 0.7% of the population. Of the foreign nationals, the majority were from former Soviet republics (163,464) with 66,608 coming from other countries.⁵⁴⁹ The number of new immigrants each year is relatively low: between 30,000 and 37,000 per year between 2008 and 2012.⁵⁵⁰ By the end of 2011, the total number of migrants in Ukraine registered with the Ministry of Interior was around 313,000.⁵⁵¹

Legal and Policy Framework

Article 24, paragraph 1 of the Constitution of Ukraine provides that “[c]itizens shall have equal constitutional rights and freedoms and shall be equal before the law”. Article 26 provides that foreign nationals and stateless persons in Ukraine enjoy the rights and freedoms, and also bear the duties, of citizens of Ukraine, save for exceptions expressly provided for by the Constitution, national legislation or international treaties to which Ukraine is

549 See above, note 528.

550 *Ibid.*, p. 3.

551 *Ibid.*, p. 2.

party. Together, these provisions mean that foreigners and stateless persons enjoy the same constitutional rights and freedoms as citizens, unless explicitly provided otherwise in law. In addition to the protection provided by Article 26, it should be noted that the majority of the rights and freedoms listed in the Constitution are guaranteed to “everyone”, though there are a significant number which are explicitly guaranteed only to “citizens”. One of these provisions is the first paragraph of Article 24 itself, thus making the right to equality itself an exception to the general proposition that non-citizens enjoy rights and freedoms listed in the Constitution. This is a regrettable failure of the constitutional protection of equality rights; the general constitutional principle should be the guarantee of a right to equality to “everyone”, including non-citizens; and exceptions should be defined, specifying those areas and circumstances in which less favourable treatment would be permitted.

Article 3, paragraph 1 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons”⁵⁵² mirrors Article 26 of the Constitution, providing that foreigners and stateless persons lawfully in Ukraine have the same rights, freedoms and duties as citizens of Ukraine, save as excluded by the Constitution or laws of Ukraine, or international law. Further, Article 3, paragraph 2 provides that “[f]oreigners and stateless persons under the jurisdiction of Ukraine, regardless of the legality of their stay are entitled to recognition of their legal and fundamental rights and freedoms”.

The precise exceptions and limitations to rights for non-citizens are discussed in more detail in Part 3 of this report. In practice, however, the existence of some distinctions between citizens and non-citizens in respect of certain constitutional rights does not present a significant problem. As the CERD has stated:

*[I]n practice foreign nationals and stateless persons legally present in Ukraine enjoy the same rights and freedoms and have the same obligations as Ukrainian citizens, subject to restrictions provided by law.*⁵⁵³

552 Закон України “Про правовий статус іноземців та осіб без громадянства” (Відомості Верховної Ради України, 2012, № 19-20, с. 179), as amended between 2012 and 2015.

553 See above, note 458, Para 9.

The Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” was amended in 2014 to prohibit discrimination based on citizenship.⁵⁵⁴

Discriminatory Legal Provisions

In addition to legislation governing the rights and freedoms which are restricted to citizens in the Constitution, other pieces of legislation make distinctions between citizens and non-citizens, some of which are more justifiable than others.

Many of the restrictions placed on non-citizens are in the field of employment. Only Ukrainian citizens are eligible for positions in the civil service, in local government bodies, in the military, in the prosecutor’s office, at the Security Service of Ukraine, in internal affairs bodies, at the State Customs Service of Ukraine, as judges, and as counsellors-at-law, notaries and auditors.⁵⁵⁵ Foreign nationals are also not allowed to establish farms, although they are allowed to work on them.⁵⁵⁶ Save for these provisions, foreign nationals and stateless persons permanently resident in Ukraine, as well as those who have refugee status or who have been granted asylum, enjoy the same rights in employment as Ukrainian citizens, although work permits are required.

554 See above, note 51, Article 1, paragraph 2.

555 Article 4 of Закон України “Про державну службу” (Відомості Верховної Ради України, 1993, № 52, с. 490), as amended between 1995 and 2015; Закон України “Про місцеве самоврядування в Україні” (Відомості Верховної Ради України, 1997, № 24, с. 170), as amended between 1998 and 2015; Article 1 of Закон України “Про військовий обов’язок і військову службу” (Відомості Верховної Ради України, 1992, № 27, с. 385), as amended between 1992 and 2015; Article 46 of Закон України “Про прокуратуру” (Відомості Верховної Ради України, 1991, № 53, с. 793), as amended between 1993 and 2015; Article 19 of Закон України “Про Службу безпеки України” (Відомості Верховної Ради України, 1992, № 27, с. 382), as amended between 2000 and 2014; Article 52 of Закон України “Про судоустрій і статус суддів” (Відомості Верховної Ради України, 2010, № 41–42, № 43, № 44–45, с. 529), as amended between 2010 and 2015; Article 8-1 of Закон України “Про нотаріат” (Відомості Верховної Ради України, 1993, № 39, с. 383), as amended between 1998 and 2015; and Закон України “Про аудиторську діяльність” (Відомості Верховної Ради України, 1993, № 23, с. 243), as amended between 1995 and 2015.

556 Закон України “Про фермерське господарство” (Відомості Верховної Ради України, 2003, № 45, с. 363), as amended between 2005 and 2014.

As noted above, international law provides for certain exceptions to the general prohibition on discrimination on the basis of nationality or citizenship. Of greatest relevance when considering the provisions above is the exception contained in Article 2(3) of the ICESCR, which reads:

Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

This provision permits developing countries to differentiate between citizens and non-citizens in respect of the right to work, an exception to the general prohibition on discrimination in respect of Covenant rights which is provided in Article 2(2). Establishing whether this exception covers the provisions listed above is complex. First, there is a question as to whether Ukraine is a “developing country” as there is no single universal definition of what constitutes a “developing country”. While the Development Assistance Committee of the Organization for Economic Cooperation and Development defines Ukraine as a “lower middle income country” which is therefore eligible for development assistance,⁵⁵⁷ the United Nations Development Programme considers Ukraine to have a “High Development Index”.⁵⁵⁸ More fundamentally, there are legitimate questions over the extent to which laws which prevent non-citizens from accessing employment meet the requirement arising under Article 26 of the ICCPR – whose application is “not limited to those rights which are provided for in the Covenant” – that the content of legislation should not be discriminatory.⁵⁵⁹

Article 24 of the Law of Ukraine “On Freedom of Conscience and Religious Organisations”⁵⁶⁰ imposes certain restrictions on religious activity by foreign citizens (but not stateless persons). It provides that priests, religious preach-

557 Organization for Economic Cooperation and Development, *Development Assistance Committee, List of ODA Recipients Effective for reporting on 2014, 2015 and 2016 flows*, 2014.

558 United Nations Development Programme, *Country Profiles: Ukraine*, 2014.

559 United Nations Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.1 at 26, 1989, Para 12.

560 Закон України “Про свободу совісті та релігійні організації” (Відомості Верховної Ради УРСР, 1991, № 25, с. 283), as amended between 1992 and 2014.

ers, teachers, and foreign representatives of foreign organisations may engage in religious preaching, performance of religious rites and other canonical activity only for those religious organisations which invited them to do so, and only with the official approval of the state body which registered the religious organisation in question.

Article 212, paragraph 12 of the Family Code prohibits stateless persons from adopting children,⁵⁶¹ and Article 213 gives preferential treatment amongst adopters to Ukrainian citizens over foreign nationals.

Whereas there are questions over the extent to which Ukrainian legal provisions restricting access to employment for non-citizens could be permissible under the ICESCR, no such justification can be made for restrictions on rights protected under the ICCPR. The HRC has noted that: “the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens”,⁵⁶² while neither Article 2(1) nor Article 26 of the Covenant draw distinctions between citizens and non-citizens. Thus, restrictions on religious practice would be prohibited under Article 18 read with Article 2(1), while limitations on adoption would be a breach of Article 26, which requires states to prohibit discrimination in the law.

Conclusions

While international human rights law recognises a degree of state discretion in deciding whether and if so how to differentiate between citizens and non-citizens in certain areas of life, states must act within the scope of permissible limitations. In the case of Ukraine, evidence indicates that the state has exceeded its discretion, retaining a number of laws which discriminate, without justification, against non-citizens.

In particular, many legislative provisions restrict certain professions or professional activities to citizens. It may be justified to limit access to certain professions and professional activities to citizens where there is a genuine occupational requirement inherent in the particular profession or professional

561 See above, note 204.

562 United Nations Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant*, UN Doc. HRI/GEN/Rev.1 at 18, 1994, Para 2.

activity such that only a citizen could or should do it. Applying this test, the provisions limiting some of the profession and professional activities to citizens – such as auditors and farming – are patently unjustified.

2.7 Discrimination on the Basis of Language

Language is one of the characteristics explicitly listed in Article 2 of both the ICCPR and the ICESCR, and as such Ukraine is required to ensure the enjoyment of all civil, political, economic, social and cultural rights provided in these Covenants without discrimination on this basis. Further, as with other characteristics discussed elsewhere in this Part, Ukraine is required, by virtue of Article 26 of the ICCPR, to prohibit discrimination on the basis of language. Further, the ECHR requires Ukraine to prohibit discrimination based on language in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.

In addition, Ukraine is required by Article 27 of the ICCPR to ensure that persons belonging to linguistic minorities are not denied the right, “in community with the other members of their group, (...) to use their own language” and, as part of the regional human rights framework, Ukraine has obligations under the Council of Europe Framework Convention for the Protection of National Minorities (FCNM). Article 5(1), for example, requires Ukraine to:

*[P]romote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, **language**, traditions and cultural heritage. (emphasis added)*

The FCNM contains further obligations in respect of ensuring freedom to hold opinions and to receive and impart information and ideas in minority languages (Article 9), the right to use freely and without interference a minority language, in private and in public, orally and in writing (Article 10) and to receive education in minority languages (Article 14).

Ukraine also has obligations in respect of minority languages under the European Charter for Regional or Minority Languages. Upon ratification of the

Charter in 2005, Ukraine declared that it would apply various provisions of the Charter, in respect of the Russian language and an extensive list of regional and minority languages, namely all of those listed in the 2001 census with the exception of Armenian.⁵⁶³

History of Language Use

There is, perhaps, no issue which excites more attention and controversy amongst Ukrainian politicians than the question of language and, specifically, the status and use of the two major languages in the country: Ukrainian and Russian. As Nicolai Petro has noted, “language politics is so contentious that politicians will go to almost any lengths to deny that the issue even exists”.⁵⁶⁴ More colourfully, Professor Bill Bowring noted prophetically, in 2012, that the language situation in Ukraine “resembles an overheated kettle about to explode”.⁵⁶⁵

Russian and Ukrainian are both East Slavic languages which started to become distinct in the 14th century.⁵⁶⁶ When Russia assumed control of the central and eastern part of what are now the Ukrainian lands in the 17th century, the Russian language began to dominate in urban areas, while Ukrainian was spoken more widely in rural areas.⁵⁶⁷ In the early 18th century, under Peter the Great, the growth in literacy and education helped to standardise the Russian language across the Russian Empire, while other languages were suppressed. By the early 19th century, the Ukrainian language had become known as the Malorossiyskiy dialect, even by many educated Ukrainians.⁵⁶⁸

Later in the 19th century, however, many liberals and intellectuals sought to promote the Ukrainian language. Language became linked with identity,

563 The languages listed in the 2001 census were Crimean Tatar, Moldavian, Hungarian, Romanian, Bulgarian, Belarusian, Armenian, Gagauz, Romani, Polish, German, Slovak, Hebrew and Greek.

564 Petro, N., “Ukraine’s Ongoing Struggle With Its Russian Identity”, *World Politics Review*, 6 May 2014.

565 Bowring, B., “Law in a Linguistic Battlefield: The Language of the New State Versus the ‘Language of the Oppressors’ in Ukraine”, *Language & Law*, Vol. 1, 2012.

566 See above, note 564.

567 *Ibid.*

568 Goodman, B., “The Ecology of Language in Ukraine”, *Working Papers in Educational Linguistics*, 24/2, 2009, p. 20.

with liberals associating the use of local languages with nationalism and the end of tsarist autocracy.⁵⁶⁹ The Russian government responded with force: in 1863, the Interior Minister, Pyotr Valuyev, issued a decree which prohibited the publication of religious and popular literature in the Ukrainian language, even claiming that Ukrainians themselves “insist that no special Malorussian language has ever existed; [it] does not exist, and cannot exist”. A few years later, when Ukrainian literature arrived across the border from the Austro-Hungarian Empire, Alexander II issued a decree in 1876 prohibiting the importation of any literature published in Ukrainian.

The attitude of the Bolsheviks was markedly different. After coming to power in 1917, a policy of “Ukrainianisation” was adopted. A series of decrees made Ukrainian the language of the Ukrainian SSR and mandatory in all spheres.⁵⁷⁰ This policy was short-lived. In the 1930s, Stalin implemented a new policy on the question of nationality directed against “bourgeois nationalist” thinking. In 1938, the Russian language was made mandatory in all schools and the first all-Ukrainian newspaper in Russian, *Ukrainskaya Pravda*, was established.

The policy of Russification continued until the 1980s when, shortly before the collapse of the USSR, the government of the Ukrainian SSR passed legislation, in 1989, which made Ukrainian the sole official language of the state.⁵⁷¹ When the Constitution of newly independent Ukraine was adopted in 1996, Article 10 – which sets out the status of languages in Ukraine – largely mirrored the principles in the 1989 law: Ukrainian was established as the sole “state language” and the state was required to ensure “the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine”. Russian was given secondary status, Article 10 of the Constitution only guaranteeing “the free development, use and protection of Russian” alongside “other languages of national minorities”. Volodymyr Kulyk has called this combination

[A] result of an uneasy compromise between those parliamentary forces seeking to ensure the functioning of

569 See above, note 564.

570 See above, note 568, p. 21.

571 Закон Української “Радянської Соціалістичної Республіки Про мови в Українській РСР” (Відомості Верховної Ради УРСР, 1989, Додаток до № 45, с. 631).

*Ukrainian as the sole public language and those striving for the preservation of the free use of Russian in all social fields.*⁵⁷²

The 1990s saw the Ukrainian language given a dominant status: laws were passed requiring all Ukraine-based television stations and billboards to be in Ukrainian; Ukrainian language and literature were established as mandatory subjects at schools, and foreign films were required to be subtitled or dubbed in Ukrainian.⁵⁷³ This process was strongly encouraged under President Viktor Yushchenko in the early 2000s. When the pro-Russian Viktor Yanukovich – himself from Donetsk oblast and with significant support from the southern and eastern parts of the country – took office in 2010, language policy strengthening the legal rights of those who preferred to speak Russian was introduced. In 2012, the Law of Ukraine “On the Principles of State Language Policy”⁵⁷⁴ was adopted, replacing the 1989 law. The 2012 Law provides that where a minority language is spoken by 10% or more of the inhabitants of a particular territory, special measures must be taken in that territory in respect of that language, practically giving it an equivalent status to Ukrainian in that particular territory.⁵⁷⁵ If a minority language is spoken by less than 10% of the territory’s inhabitants, it will be the subject of special measures if the local council so decides.⁵⁷⁶ Within two years, thirteen of Ukraine’s twenty-seven territories had given Russian special status.⁵⁷⁷ The Law was strongly opposed by many, and resulted in riots, primarily as a result of its strengthening the position of the Russian language.⁵⁷⁸

Despite the fact that the 2012 Law strengthened the use of Russian, some pro-Russian activists who called for its adoption and for a stronger status

572 Kulyk, V., “Normalisation of ambiguity: Policies and discourses on language issues in post-Soviet Ukraine”, in Törnquist-Plewa, B. (ed.), *History, Language and Society in the Borderlands of Europe: Ukraine and Belarus in Focus*, Sekel Bokförlag, 2006, pp. 117–140.

573 See above, note 568, p. 22.

574 Закон України Про засади державної мовної політики (Відомості Верховної Ради, 2013, № 23, с. 218), as amended between 2013 and 2014.

575 *Ibid.*, Article 7³.

576 *Ibid.*

577 Українська правда, “Турчинов пообіцяв поки не скасовувати закон про мови нацменшин”, *pravda.com.ua*, March 3 2014.

578 Stern, D., “Ukrainians polarised over language law”, *BBC News*, 5 July 2012.

for the Russian language more broadly expressed disappointment in the outcome.⁵⁷⁹ In February 2014, following the impeachment of President Viktor Yanukovich, the Verkhovna Rada, in a belated attempt to pacify fast growing discontent and opposition to Kyiv among the Russian-speaking eastern and southern regions, passed legislation which would have repealed the Law. However, the acting President, Oleksandr Turchynov, vetoed the legislation, stating that he would not sign it “until a new bill to enable development of all languages is drawn up and passed in Rada”.⁵⁸⁰ The decision to cancel the law of 2012 was one of the pretexts for pro-Russian separatists in Donetsk and Luhansk oblasts to rise to arms and subsequently to declare independence from Kyiv, in April 2014.

Legal Framework

As noted above, Article 10 of the Constitution provides that the state language of Ukraine is Ukrainian and that the state will ensure the “comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine”. Ukrainian is thus given a privileged position over all other languages. Article 10 also provides for the recognition of other languages, guaranteeing “the free development, use and protection of Russian, and other languages of national minorities”.

Although Article 10 provides that the use of languages thus guaranteed by the Constitution is to be regulated by law, Article 53 (which provides for a right to education) states that citizens who belong to national minorities are guaranteed the right to receive instruction in their native language, or to study their native language in state and communal educational establishments and through national cultural societies. Thus, Article 53 meets, in part, the requirements of Article 27 of the ICCPR, Article 14 of the Framework convention on National Minorities, and the European Charter for Regional or Minority Languages listed above.

As noted, the Law of Ukraine “On the Principles of State Language Policy” provides that where a minority language is spoken by 10% or more of the

579 Столяренко, А., “Все про статус русского языка”, *Українська правда*, 13 March 2014.

580 Ria Novosti, “Ukraine’s 2012 Language Law to Stay Until New Bill Ready – Turchynov”, *en.ria.ru*, 3 March 2014.

inhabitants of a particular territory, special measures must be taken in that territory in respect of that language, essentially giving it an equivalent status to Ukrainian in that particular territory.⁵⁸¹ If a minority language is spoken by less than 10% of the territory's inhabitants, it will be given special measures if the local council so decides.⁵⁸²

On the specific issue of discrimination on the basis of language, such discrimination is prohibited by both Article 24 of the Constitution and the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine".⁵⁸³

Use of Languages in Practice

In practice, it is extremely difficult to classify people in Ukraine into groups on the basis of their language. A person may consider one of the two languages to be their "first language" or their "native language", even if raised to speak both fluently. They may, for reasons of identity, consider one language to be their preferred language of communication, but in practice speak the other even better. Friends may switch between Ukrainian and Russian when speaking with each other. There are even various dialects (known collectively as Surzhyk) which contain a mixture of both Russian and Ukrainian.

While the vast majority of people in Ukraine speak both languages,⁵⁸⁴ attempts to classify individuals generally utilise one of two indicators: (i) language identity and (ii) language practice.⁵⁸⁵ When examining these two indicators, it is important also to consider the actual relationship between language and ethnicity, as there is a common misconception that ethnicity and language are always correlative. The 2001 census showed that 77.8% of the population self-

581 See above, note 574, Article 7³.

582 *Ibid.*

583 See above, note 51.

584 See, for example, Fomina, J., "Language, Identity, Politics – the Myth of Two Ukraines", *Institute of Public Affairs*, 2014, p. 5. A survey undertaken by the Razumkov Centre in 2002 suggested that 94.1% of persons in Ukraine spoke Russian and 91.0% spoke Ukrainian (Центр Разумкова, Які мови Ви знаєте, тобто, якими мовами Ви можете спілкуватися?, available at: http://www.razumkov.org.ua/ukr/journal.php/poll.php?poll_id=594).

585 For further detail on the distinction between language identity and language practice, particularly as it applies in Ukraine, see: Kulyk, V., "Language identity, linguistic diversity and political cleavages: evidence from Ukraine", *Nations and Nationalism*, 17 (3), 2011, pp. 627–648.

identified as ethnic Ukrainian and only 17.3% as ethnic Russian. The census also asked individuals which language they considered their “native language” (thus generating data against the first indicator): 67.5% of people stated that Ukrainian was their native language and 29.6% that Russian was their native language.⁵⁸⁶ Those who said that their native language was Ukrainian were predominant in the northern and western regions while those who said that they spoke Russian as their native language dominated in the eastern and southern regions. Instantly, it is clear that ethnicity and native language are not always correlative. More recently, in 2008, the Razumkov Centre undertook a survey which asked people which language they considered their native language, with the results broken down by region.⁵⁸⁷

Table 5: Language Considered Native Language by Language and Region

	West	Centre	East	South
Ukrainian	89.9%	59.6%	15.2%	13.9%
Russian	3.8%	10.1%	44.4%	48.0%
Both Ukrainian and Russian	4.9%	29.1%	39.0%	35.4%
Other	1.0%	0.6%	0.6%	2.2%
Hard to Say	0.7%	0.5%	0.8%	0.4%

Asking people which is their language of practice (the second indicator) can produce very different results. To give one example, a survey from 2011 asked individuals which language they spoke at home, finding that 42.8% of respondents spoke Ukrainian at home (up from 36.8% in 1996) while 38.6% spoke Russian (up from 29.0%). 17.1% spoke both (down from 32.0%).⁵⁸⁸

Looking at these figures, a complex picture emerges. While the proportion of the population who considered themselves to be ethnically Russian was, in 2001, around 17.3%, the proportion of people who considered their native

586 State Statistics Committee of Ukraine, “About number and composition population of UKRAINE by All-Ukrainian population census 2001 data”, available at: <http://2001.ukrcensus.gov.ua/eng/results/general/language>.

587 Центр Разумкова, Яка мова є для Вас рідною? (регіональний розподіл, динаміка 2006-2008), 2008.

588 Kramar, O., “Russification via Bilingualism”, *The Ukrainian Week*, 18 April 2012.

language to be Russian was almost double: 29.6%. When one looks at the language that people use at home, the proportion stating that they speak Russian is higher still: approximately 38.6% in 2011. Professor Volodymyr Kulyk has explained these differences as part of an analysis of the results of a mass survey undertaken in 2006 by the Hromadska Dumka Centre:

Given that native language is often considered to be the language of one's nationality rather than one's own use, many people speaking mostly or even exclusively Russian still declare their native language to be Ukrainian (...) Even more ambiguous is the declaration of one's Ukrainian nationality, which encompasses not only different language identifications (in our sample, 30 per cent of those defining themselves as Ukrainians declared their native language to be Russian or both). For Ukrainian-speakers, therefore, the primary determinant of policy preferences is the main language of everyday use. For Russian-speakers, however, native language – in this case, closely related to nationality – is of more importance because the fact of speaking Russian does not itself tell much about an individual's preferences in language use and language policy.⁵⁸⁹

While resentment or frustration may arise when an individual is not able to use their preferred language (whether Ukrainian or Russian), such situations cannot always be classified strictly as discrimination. Indeed, only a small proportion of people living in Ukraine are concerned about discrimination on the basis of language. An opinion poll from 2012 showed that the status of the Russian language was ranked just 31st out of a list of issues of concern to Ukrainians.⁵⁹⁰ A more recent sociological survey from 2014 showed that across the whole of Ukraine, only 2.5% of people feared discrimination on the basis of language or ethnic origin; the figure in south eastern Ukraine – the region with a predominantly Russian-speaking population – was only 4.4%.⁵⁹¹

589 Kulyk, V., "Language Policies and Language Attitudes in Post-Orange Ukraine" in Bester-Dilger, J., (ed.), *Language Policy and Language Situation in Ukraine: Analysis and Recommendations*, Peter Lang, 2009, pp. 41–42.

590 Корреспондент, "Среди приоритетов украинцев статус русского языка находится на 31-м месте", *korredpondent.net*, 14 June 2012.

591 Mirror Weekly, "Survey: Ukraine's South East destroys myth of Russian language oppression", *mw.ua*, 31 December 2014.

It should be noted that in the context of the war in the Donbas, the situation may be rapidly evolving and data obtained even as recently as 2012 may no longer be representative of the current position at time of writing. In interview with the Equal Rights Trust conducted in February 2015, Volodymyr Kulyk explained the difference in the perception of discrimination between Ukrainian speakers and Russian speakers, in a context where more and more people actually choose to speak Ukrainian:

Many more Russian speakers consider themselves to be discriminated on the basis of language than Ukrainian speakers (...) [The] explanation is [that] Russian speakers experience a new situation: they are accustomed to the situation when their language opens them every door, when they can use their language freely in every situation and now there appear some situations – few, but some situations – where their language is not accepted (...) some situations where a different language is spoken and they are uncomfortable. Ukrainian speakers are more accustomed to the reality that their language is not spoken everywhere; for decades they had to use Russian for some purposes and they do not consider this anything noteworthy. Their sense of discrimination is weaker and focus group discussions show that.⁵⁹²

In addition to Russian, a number of other languages are spoken in Ukraine, albeit by much smaller minorities. The 2001 census identified small proportions of people stating that a language other than Ukrainian or Russian was their native tongue: Crimean Tatar (0.48%), Moldavian (0.38%), Hungarian (0.34%), Romanian (0.3%), Bulgarian (0.28%), Belarusian (0.12%), Armenian (0.11%), Gagauz (0.05%), Romani (0.05%), Polish (0.04%), German (0.01%), Slovak (0.01%), Hebrew (0.01%) and Greek (0.01%).⁵⁹³ The minority groups speaking these languages are generally fluent also in Ukrainian, Russian or both and concerns over discrimination are seldom, if ever, raised.

592 Equal Rights Trust interview with Volodymyr Kulyk, 25 February 2015.

593 State Statistics Service of Ukraine, “On execution of the law of Ukraine ‘On the principles of state language policy’”, available at: <http://www.ukrcensus.gov.ua/eng/notice/news.php?type=2&id1=21>.

One exception is the concerns raised by the Crimean Tatars over their treatment generally, including the treatment of the Crimean Tatar language, particularly since the annexation of Crimea by Russia in 2014. Given the close connection between the Crimean Tatar language and Crimean Tatar ethnicity, this issue is explored in section 2.5 of this report.

Article 7, paragraph 2 of the European Charter for Regional or Minority Languages requires Ukraine to eliminate:

Any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it.

In 2014, the Committee of Experts on the Charter stated that they had “not been made aware of problems relating to this provision”.⁵⁹⁴

Discrimination against those using the Russian Language

Concerns have been raised by Russian speakers when, in certain circumstances, they are not able to use the Russian language. Such situations are uncommon, but do exist. For example, certain medicines contain instructions only in Ukrainian, which can create difficulties for those, particularly elderly, persons, who only speak Russian. In 2009, the Ministry of Healthcare promised to recommend to pharmaceutical companies that medicinal instructions should be provided in Russian as well as Ukrainian, but this has not yet become compulsory, and most continue only to include Ukrainian-language instructions.⁵⁹⁵

Discrimination against those using the Ukrainian Language

Complaints of language discrimination occur when a person is unable to obtain state services or obtain information in Ukrainian. Despite Ukrainian being the official language and the language of the majority most printed, audio and

594 Council of Europe, *Application of the Charter in Ukraine, 2nd monitoring cycle, Report of the Committee of Experts on the Charter*, ECRML (2014) 3, 15 January 2014, Para 90.

595 TCH, “МОЗ України погодилося на російськомовні інструкції до ліків”, *tsn.ua*, 22 December 2009.

video materials are published in Russian, as are often products of Russian origin, which are commonplace given the trading links between the two countries.⁵⁹⁶

Conclusions

Language is a deeply contentious issue in Ukraine, with the question of how the two most widely-spoken languages – Ukrainian and Russian – should be treated in law and policy, an issue of particular significance. However, the political tension surrounding the question of language identity and use and is not strongly reflected in the practice and everyday experience of most Ukrainian citizens. The majority of Ukrainians can and do speak both languages and census and survey responses indicate that there is no clear correlation between a person’s ethnicity, their language identity and their language use. Most importantly, opinion polls indicate that even in the south eastern region which is home to the largest concentration of ethnic Russians, very few people expressed concern about discrimination on the basis of language. This said, the Equal Rights Trust did identify a small number of cases of apparent language discrimination, particularly in print, online and video media.

2.8 Discrimination on the Basis of Religion

Ukraine is required to ensure the enjoyment of all rights guaranteed under the ICCPR and the ICESCR without discrimination on the basis of religion by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. In addition, Ukraine is required by virtue of Article 26 of the ICCPR to ensure that its law prohibits discrimination on grounds including religion. Further, the ECHR requires Ukraine to prohibit discrimination based on religion in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.

Compared to many other European countries, the proportion of the Ukrainian population who consider themselves to be religious is high and increasing. The overwhelming majority of those professing a religious faith are Christian. A 2014 study carried out by the Razumkov Centre revealed that 76.0% of

⁵⁹⁶ Bigmir.net, “Ситуація з мовами в Україні: російська переважає на ТБ, у ЗМІ та рекламі, українська домінує в освіті та кіно”, *bigmir.net*, 7 November 2013.

Ukrainians considered themselves religious, up from 57.8% in 2000. A further 7.9% were unsure whether they were believers or not, down from 22.5%.⁵⁹⁷ Of those considering themselves religious, 70.2% were Orthodox Christians; 17.4% of the population belonged to the Ukrainian Orthodox Church – Moscow Patriarchate (UOC MP), 22.4% to the Ukrainian Orthodox Church – Kyiv Patriarchate (UOC KP), 0.7% to the Ukrainian Autocephalous Orthodox Church (UAOC), 28.1% stated that they were “just Orthodox” and 1.4% stated that they did not know the denomination.⁵⁹⁸ Of the remaining 29.8% of those surveyed, 16.1% stated that they were non-Orthodox Christians; 7.8% were members of the Ukrainian Greek Catholic Church (UGCC), 1.0% were Roman Catholic, 1.0% were Protestant and 6.3% were other Christians; and there were small numbers of Buddhists (0.2%), Muslims (0.2%) and Jews (0.1%). In total, 12.5% did not consider themselves as affiliated with any particular religion.⁵⁹⁹

As can be seen from the table below, however, the Christian population is not spread uniformly across Ukraine. In all regions, Orthodox Christians make up a majority of the population, but whereas the UOC KP forms a plurality of Orthodox Christians in the west, in all other regions a plurality of Orthodox Christians consider themselves as “just orthodox”.

Table 6: Religious Self-Identification by Religion and Region

Religion	West	Centre	South	East	Total	
Ukrainian Orthodox Church (Moscow Patriarchate)	12.0%	16.4%	9.8%	24.2%	17.4%	
Orthodox	Ukrainian Orthodox Church – Kyiv Patriarchate	25.4%	28.8%	13.5%	17.0%	22.4%
	Ukrainian Autocephalous Orthodox Church	1.9%	0.3%	0.9%	0.1%	0.7%
	“Just Orthodox”	13.4%	32.4%	42.3%	28.1%	28.1%
	Orthodox but “no idea”	1.2%	1.2%	0.9%	1.7%	1.4%

597 Razumkov Centre and Konrad Adenauer Stiftung, *Ukraine 2014: Socio-Political Conflict and the Church, Positions of Religious Figures, Experts and Citizens*, 2014, p. 29.

598 *Ibid.*, p. 31.

599 *Ibid.*, p. 30.

Religion	West	Centre	South	East	Total
Greek Catholicism	36.2%	0.7%	0.5%	0.0%	7.8%
“Just Christian”	4.1%	10.3%	6.5%	3.8%	6.3%
Roman Catholicism	1.0%	1.5%	0.9%	0.6%	1.0%
Protestantism	1.4%	0.3%	2.3%	0.9%	1.0%
Islam	0.0%	0.0%	0.5%	0.4%	0.2%
Buddhism	0.0%	0.1%	0.0%	0.3%	0.2%
Judaism	0.0%	0.1%	0.0%	0.1%	0.1%
Other	0.2%	0.0%	0.0%	0.0%	0.0%
Not affiliated with any confession	3.1%	7.1%	18.1%	21.7%	12.5%
No answer	0.0%	0.3%	3.7%	0.6%	0.7%

Discrimination on the basis of religion in Ukraine tends to be directed towards groups of people professing a particular faith, restricting the ability of members of that group to practice their faith, rather than at specific individuals. Invariably, such discrimination occurs only where the affected religious group is in a minority in the particular region.

Legal and Political Context

During the Soviet period, the official state ideology of atheism resulted in the suppression of religious organisations. Since Ukraine gained independence in 1991, this situation has changed significantly, with the official atheism of the Soviet state replaced by acknowledgment of freedom of belief, including religion, and the prohibition of any compulsory religion or ideology. Indeed, Article 35 of the Constitution specifically establishes the separation of church and state and guarantees freedom of religion and belief:

Everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint religious rites and ceremonial rituals, and to conduct religious activity.

The exercise of this right may be restricted by law only in the interests of protecting public order, the health and morality of the population, or protecting the rights and freedoms of other persons.

The Church and religious organisations in Ukraine are separated from the State, and the school – from the Church. No religion shall be recognised by the State as mandatory.

However, despite the official separation of church and state, the role of the churches in Ukrainian society and public life is increasingly important: churches have the highest rates of trust amongst all social and state institutions and they exert significant influence within society.⁶⁰⁰ Moreover, the personal religious views expressed by state and local authorities have called into question the extent to which the principle of separation of church and state is in fact observed and respected in practice. For example, in 2014, Prime Minister Arseniy Yatsenyuk, in referring to religious education in schools, stated:

*It is important that such a course really preaches the God's Word and teaches children how to behave, to think about their country, how to pray together and fulfil God's Word.*⁶⁰¹

His predecessor, Mykola Azarov, said in 2012 that:

*Orthodox morality, Orthodox culture is the basis of our country's cultural development. It is important now for us, in the time, I would say, of swaying morality, to produce good films based on Orthodox values.*⁶⁰²

600 Hinz, O., "Ukraine's united, divided churches", *Deutsche Welles*, 15 June 2014.

601 Інститут Релігійної Свободи, "Голова ВР Турчинов та Прем'єр Яценюк зустрілися з Всеукраїнською Радою Церков", *irs.in.ua*, 3 October 2014.

602 Подробности, "Украине нужны фильмы с православной моралью, – Азаров", *podrobnosti.ua*, 11 October 2012.

Discrimination on grounds of “religious and other beliefs” is prohibited under Article 24 of the Constitution and religion is listed as a protected ground in legal provisions prohibiting discrimination, including the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”.⁶⁰³ There is also legislation guaranteeing freedom of religion – primarily the Law of Ukraine “On Freedom of Conscience and Religious Organisations”.⁶⁰⁴ However, it should be noted that, in certain cases, this latter Law allows the state and local authorities to impose unreasonable restrictions upon the activities of religious organisations, as set out below.

Hate Speech and Hate Crime against Jehovah’s Witnesses

The Jehovah’s Witnesses estimate there to be to around 275,000 followers in Ukraine.⁶⁰⁵ In 2013, the HRC expressed its concern over:

*[R]eports of hate speech, threats and violence against members of ethnic groups, religious and national minorities, in particular Roma, Jehovah’s Witnesses and Crimean Tatars, resulting in physical assaults, acts of vandalism and arson, most of which are committed by groups driven by extreme nationalist and racist ideology.*⁶⁰⁶

Jehovah’s Witnesses are the religious group whose members are most often subjected to hate crimes in Ukraine and the numbers of such incidents have increased in recent years. In 2010, the Jehovah’s Witnesses recorded fewer than ten acts of vandalism against the group’s property and a similar number of physical attacks on members of the faith; by 2013, these figures had increased to 80 and 24 respectively.⁶⁰⁷ These incidents included mob attacks upon reli-

603 See above, note 51.

604 See above, note 560.

605 European Association of Jehovah’s Christian Witnesses, *Contribution to the Report of the U.N. High Commissioner for Human Rights on the implementation of the new review mechanism of the Human Rights Council, established by GA Resolution 60/251 and by the Human Rights Council in Resolution 5/1 of 18 June 2007 for the 14th session 2012 of the UPR (Dates of the WG: October/November 2012; Ukraine, April 2012, p. 1.*

606 See above, note 393 Para 11.

607 Jehovah’s Witnesses, “Inaction of Law Enforcement Officials Results in Impunity and Further Injury in Ukraine”, *jw.org*, 28 July 2014.

gious ceremonies, arson attacks on Kingdom Halls (places of worship for Jehovah's Witnesses) and assaults on worshippers, including children.⁶⁰⁸

Jehovah's Witnesses have accused the Ukrainian authorities of not prosecuting offences against them, even where the offences were witnessed by others.⁶⁰⁹ They have also expressed concern that on the rare occasion that prosecutions were initiated, offenders were charged with "hooliganism" rather than the more serious offences aimed at inciting religious enmity or hatred prohibited by Article 161 of the Criminal Code.⁶¹⁰

Compulsory Military Service and Conscientious Objectors

Article 35 of the Constitution of Ukraine guarantees the right to conscientious objection – that is, the right to refuse to perform military service where this is contrary to an individual's religious beliefs.⁶¹¹ Only men are required to undertake compulsory military service under Ukrainian law. The Law of Ukraine "On Alternative (Non-military) Service"⁶¹² allows Ukrainian men to replace this military service with an alternative, non-military service, according to their religious beliefs. A Decree of the Cabinet of Ministers lists those religious organisations whose beliefs are such that members cannot bear arms and are thus covered by the Law.⁶¹³

608 See above, note 601; see also European Association of Jehovah's Christian Witnesses, *Religious Freedom Concerns in Ukraine*, October 2012, available at: <http://www.osce.org/odihr/94485?download=true>.

609 See above, note 393, Para 11.

610 *Ibid.*

611 In full, the relevant provision of Article 35 reads, "No one shall be relieved of his or her duties before the State or refuse to perform the laws for reasons of religious beliefs. In the event that the performance of military duty is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service."

612 Закон України "Про альтернативну (невійськову) службу" (Відомості Верховної Ради України, 1992, № 15, с. 188), as amended between 1999 and 2012.

613 The list includes the Adventist Reform Church, Seventh Day Adventists, Evangelical Christians, Evangelical Christian-Baptists, the Slavic Church of the Holy Spirit (Pokutnyky), Jehovah's Witnesses, the Charismatic Christian Churches and the International Society for Krishna Consciousness: Кабінет Міністрів України, Постанова від 10 November 1999 р. № 2066 "Про затвердження нормативно-правових актів щодо застосування Закону України Про альтернативну (невійськову) службу".

The use of an exhaustive list means that, the Law does not allow for men to undertake alternative, non-military service in accordance with other religious, or non-religious beliefs grounded in conscience. In 2013, this was criticised by the HRC.⁶¹⁴

Of even greater concern, the Law of Ukraine “On Mobilisation Preparation and Mobilisation” does not contain provisions which allow for conscientious objectors to refuse to undertake military service when mobilised.⁶¹⁵ While of limited concern initially, the government’s decisions in 2014 and 2015 to mobilise tens of thousands of men to fight in the conflict in Donbas has resulted in complaints being brought to the Ukrainian Parliament Commissioner for Human Rights by individuals whose religious or conscience-based beliefs were such that they were unable to undertake military service.⁶¹⁶ Failure to enter military service upon being mobilised is a criminal offence. However, in 2014 and 2015, both a court of first instance and an appeal court in Dnipropetrovsk acquitted a Jehovah’s Witness, Vitaly Shalayko, who had refused to undertake military service following his mobilisation, on the basis that he had a constitutional right, under Article 35 of the Constitution, to undertake alternative service.⁶¹⁷

Churches’ Property Rights

In general, Ukrainian religious groups face difficulties in those regions where they constitute a minority. For the UOC MP, this is in the western regions; for the UOC KP, the UGCC and the Roman Catholics, this is the southeast of the country; and for Muslims, this is in Crimea. Smaller religious groups can experience discrimination across the whole country. The most common problems relate to ownership and use of religious buildings. In particular, conflicts arise when the state tries to restore ownership of a historical building, confiscated during the Soviet period, to a particular church.

614 See above, note 393, Para 19.

615 Закон України “Про мобілізаційну підготовку та мобілізацію” (Відомості Верховної Ради України, 1993, № 44, с. 416), as amended between 1999 and 2015.

616 Information obtained from the Ukrainian Parliament Commissioner for Human Rights, February 2015.

617 Рацибарська, Ю., “В Україні вперше слухають судову справу про ухилення від мобілізації з релігійних мотивів”, Радіо Свобода, 27 February 2015.

Ukrainian legislation does not provide for churches to obtain legal status as a whole; instead, religious organisations register as separate communities, monasteries, religious educational establishments, and so on. Competition between the various Orthodox churches in Ukraine (primarily between the UOC MP and UOC KP, but also the UAOC and other smaller groups) results, on occasion, with one part of the local community, registered as a legal entity and in possession of religious buildings, deciding to transfer to another church. On other occasions, a large number of people will simultaneously transfer from one church to another, with an immediate impact on the question of legal ownership of the land. The weaknesses of the legislation and the sympathy of local authorities towards certain churches can lead to conflicts in which different churches are in unequal positions.

The first major pattern of discrimination occurs when two rival churches both claim possession and use of the same church. Sometimes local authorities will try to resolve the issue through compromise, suggesting that the churches use the building in rotation, but relations between the different churches are usually so hostile that such a proposal is not workable. In the majority of cases, the “stronger” church will obtain exclusive use of the building with the assistance of local authorities, politicians and influential public figures, leaving the other churches with no use. While such cases were most common in the 1990s, immediately after the end of the Soviet period, they continue to occur.⁶¹⁸

The second major pattern of discrimination occurs when local authorities, sympathetic toward a particular church, refuse to allocate land for the construction of religious buildings where there is hostility towards it from the dominant church in the region. The City Council of Khmelnyk in the Vinnytsya oblast, for example, is dominated by members of the UOC MP and has refused to allocate land for the building of a Greek Catholic chapel; at the same time, the authorities in Lviv, dominated by Greek Catholics, have refused to allocate land for the building of a cathedral for the UOC MP.⁶¹⁹ The Sevastopol City Council has, for many years, refused to return to the Roman

618 See, for example, Львівський портал, “Рейдерство по-християнськи, або навіщо міліції храм у Мостиськах?”, *portal.lviv.ua*, 22 July 2011.

619 Релігійно-інформаційна служба України, “Конфлікт у Хмельнику: «Відносини з УГКЦ ми хотіли б вибудувати симетрично» – архієпископ Луганський і Алчевський Митрофан”, *risu.org.ua*, 8 September 2012.

Catholic Church an abandoned and decaying building which was originally a Catholic church. The Simferopol City Council refused to provide land for the building of a mosque for seven years until the Prime Minister of Crimea personally intervened on the issue.⁶²⁰

State Registration of Religious Organisations

The Law of Ukraine “On Freedom of Conscience and Religious Organisations” provides that registration is not required for religious communities to perform their activities.⁶²¹ However, in order to obtain the status of a legal entity which would allow a religious community to undertake any economic and financial operations, the community must register its statute with the local state administration (or, in Crimea, with the Council of Ministers of the Autonomous Republic of Crimea).⁶²² Thus, religious centres, administrations, monasteries, brotherhoods, missions and educational facilities are all required to register their statutes with the executive authority responsible for state policy in the field of religion. The authority which undertakes the registration must examine the statute within one month (or, if additional consultation is required, within three months) and, within ten days of that date, inform the religious organisation of the decision.⁶²³

In practice, however, there are numerous cases where the registering body has denied the registration to a religious organisation without grounds, solely on the basis that the faith in question is “non-traditional” or the religious group is a minority in the area. For example, in June 2011, the KCSA repeatedly refused to register a statute for the Kyiv Church of Scientology in the Dniprovskiy district of Kyiv.⁶²⁴ The Church appealed against the refusal. On 22 February 2012, the District Administrative Court of Kyiv found

620 Подробности, “Крымским татарам таки выделили землю под Соборную мечеть”, *podrobnosti.ua*, 15 February 2011.

621 Article 8 of Закон України “Про свободу совісті та релігійні організації” (Відомості Верховної Ради УРСР, 1991, № 25, с. 283), as amended between 1992 and 2014.

622 *Ibid.*, Articles 13 and 14.

623 *Ibid.*, Article 14.

624 Інститут релігійної свободи, Права людини в Україні 2013. Доповідь правозахисних організацій: Свобода думки, совісті та релігії, 25 April 2014.

the refusal to be illegal and resolved to examine the submitted registration documents again. The Court held:

[N]either the content of the appealed resolution of the KCSA, nor the abovementioned conclusion of the State Committee on Nationalities and Religions of 27 July 2011 (...) can allow for a conclusion that the articles of the Statute of "Kyiv Scientology Church" contradict the legislation of Ukraine. During the court hearing representatives of defendants were unable to indicate such provisions of the Statute. Therefore the defendants' arguments that the Statute of the religious community "Kyiv Scientology Church" in Dniprovskiy district of Kyiv that was submitted for registration contradicts the current legislation of Ukraine are not worthy of court's attention.⁶²⁵

On 27 September 2012, the judgment was affirmed by the Kyiv Administrative Court of Appeal. On 22 August 2013, the Supreme Administrative Court of Ukraine dismissed an appeal by the KCSA and left the judgment on 27 September in force. Consequently, the KCSA was required to examine the documents submitted for registration again.

On occasion, where the state authorities are reluctant to allow the registration of a particular religious organisation, they will use all means possible to delay the process of registration and demand that the applicants supply documents or information not required under the legislation. This was the case with the religious group the True Orthodox Independent Parish of Nativity:⁶²⁶

625 Ухвала Округного адміністративного суду міста Києва, 9 April 2014, № 2а-11740/11/2670.

626 See above, note 624.

Case Study: The True Orthodox Independent Parish of Nativity

On 4 April 2012, a group of citizens submitted an application to the Head of the Sumy Oblast State Administration (SOSA) to register a religious community, the “True Orthodox Independent Parish of Nativity” in Sumy. On 27 April 2012, officials at the Head Department on Public Relations of the SOSA forwarded the application to the Department on the Religions and Nationalities of the Ministry of Culture, seeking religious expertise. This contradicted the relevant legislation (particularly the Law “On Freedom of Conscience and Religious Organisations”) as religious expertise is outside of that Ministry’s competence. The Ministry returned the documents with a recommendation that the community should prepare information following the Questionnaire on Cult Practice and Social Activity of Religious Organisations. The authority imposed a requirement to prepare answers to the questionnaire, with a deadline of 25 June 2012.

On 3 July 2012, when the claimant refused to answer the questions, the Head Department on Public Relations returned the documents together with the application and made no recommendation to the Head of SOSA regarding registration or a refusal to register the Statute. This was also contrary to the legislation: it was empowered neither to forward the documents for expertise nor to return the documents to the applicant without an official decision to register or a refusal to register the Statute.

The Sumy District Administrative Court upheld a claim brought against the Head Department on Public Relations of SOSA, the Department of Culture and Tourism of SOSA and the Department on the Religions and Nationalities of the Ministries of Culture for refusal to register the community.

On 12 March 2013, the Kharkiv Administrative Court of Appeal rejected the appeal of the Department of Informational Activity and Housing of SOSA and upheld the decision of the first instance court. On 16 May 2013, the Supreme Administrative Court refused to initiate cassation proceedings.

Compulsory Religious Worship for Schoolchildren

Since 1997, beginning in the western regions of Ukraine, and subsequently in other regions, optional courses in Christian Ethics or Ethics and Beliefs have

been introduced in schools. Although these classes are technically optional, there are reports that schools have pressurised parents into requiring their children to attend these classes.

There is also evidence that pupils are compelled to take part in religious worship. For example, at School No. 25 in Kyiv, a conflict arose between parents and the school's director, lasting a year.⁶²⁷ A programme was implemented based on the pedagogical theories of Kostiantyn Ushynskiy (an influential Christian teacher in the 19th century) which included religious classes. The school administration pressurised students to undertake religious classes and worship. A number of parents complained that their children were taking these classes without their consent and that they involved priests leading prayers, psalms and church attendance. On 15 December 2013, the parents organised a picket near the school, demanding that the program be ended.

There have been other instances in which the children were compelled to take part in the religious worship of the dominant church in the region.⁶²⁸

Developments since March 2014

The close link between geography and religious denomination in Ukraine has created a particular religious dimension to the crisis and conflict in Donbas. The UOC MP which dominates in the eastern regions of Ukraine is under the jurisdiction of the Russian Orthodox Church. It has not condemned Russian aggression and has indeed been generally supportive of the actions of pro-Russian separatists.⁶²⁹ Certain battalions within the separatist armed forces fought under religious-themed banners and used rhetoric based upon the superiority of the Russian Orthodox Church.⁶³⁰

627 *Ibid.*

628 See, for example, За Збручем, "Архієпископ УПЦ КП: Вчителів силою зганяють у Зарваницю", *zz.te.ua*, 15 February 2013.

629 See above, note 597 p. 5. See also Center for Civil Liberties and International Partnership for Human Rights, *When God Becomes the Weapon: Persecution based on religious beliefs in the armed conflict in Eastern Ukraine*, April 2015, pp. 8–11.

630 *Ibid.*, Center for Civil Liberties and International Partnership for Human Rights, p. 8.

Following the annexation of Crimea by Russia and the expansion of separatist activities in the Donetsk and Luhansk oblasts, discrimination and violence against particular religious groups in these regions increased noticeably: the victims were primarily Christians who do not belong to the pro-Russian UOC MP, namely those of the Kyiv Patriarchate, Greek Catholics, Roman Catholics and Protestants. There have been reports of repression of religious organisations and clergy through prohibition of religious activities,⁶³¹ and of extortion, kidnappings and even murder of those belonging to churches other than the UOC MP.⁶³² The Jehovah's Witnesses have reported that 14 Kingdom Halls have been seized by armed men representing the "Donetsk People's Republic" and the "Luhansk People's Republic".⁶³³

The Muslim Crimean Tatars have also suffered an increase in religious harassment and discrimination since Crimea's annexation. While the situation of the Crimean Tatars is dealt with more fully in chapter 2.5.1 of this report, it should be noted here that some of the harassment and discrimination against this group has had a particular impact upon their practice of Islam. For example, mosques have been searched by the Russian authorities under the pretence of searching for "extremist literature", while individual Muslim Tatars have been summoned to police stations and questioned about their religious beliefs.⁶³⁴

In June 2015, a draft law on freedom of conscience and religious associations was introduced into the State Council of Crimea by Svetlana Savchenko, the

631 See, for example: Teraze, "Еще одна церковь Киевского Патриархата закрылась в Крыму", *teraze.org.ua*, 21 July 2014; Informator.lg.ua, "Религия в ЛНР: боевики закрыли римско-католический приход в Луганске", *informator.lg.ua*, 24 July 2014; Institute for Religious Freedom, "Ukrainian Churches are facing imminent ban in Crimea", *irf.in.ua*, 25 March 2015.

632 See, for example: Institute for Religious Freedom, "Terrorists kidnapped, tortured, and threatened believers in eastern Ukraine", *irf.in.ua*, 5 June 2014; Мир Вам, "Паночко выразил соболезнования семьям погибших братьев церкви ХВЕ в Славянске", *mirvam.org*, 15 July 2014; Institute for Religious Freedom, "Chronic of terror: Religious persecution by pro-Russian militants in east Ukraine", *irf.in.ua*, 19 August 2014; Institute for Religious Freedom, "Donbas and Crimea: new challenges for religious freedom in 2014", *irf.in.ua*, 3 February 2015; above, note 629, Center for Civil Liberties and International Partnership for Human Rights, pp. 11–20.

633 Jehovah's Witnesses, "Religious Buildings Seized in Eastern Regions of Ukraine", *jw.org*, 13 February 2015.

634 Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, 2014, pp. 16–17.

chair of the State Council's Committee on Culture.⁶³⁵ If enacted, this law would create within the Ministry of Culture a Department for Religious Affairs. Organisations would be required to inform the new Department about the arrival of any foreign preachers. The Department would also have vaguely-worded powers such as "forecasting the development of the religious situation" and "facilitating the strengthening of mutual understanding and tolerance". The draft law defines a traditional religion as one "having formative cultural significance for the historical community" and a "totalitarian sect" (also referred to in the draft law as a "destructive cult") as "an organization that uses a complex of special techniques (mind control) with the goal of suppressing the will of an individual and controlling feelings and conduct, causing harm to the individual and society". The draft law does not, however, then use any of the terms in its main text.

Conclusions

Religious discrimination in Ukraine is manifested in a range of patterns, each adversely affecting the adherents of different religions, including both minority and larger faith groups. This section presents evidence of religious hate speech and hate crime affecting Jehova's Witnesses and of states officials mobilising men to fight the separatists in south east Ukraine, without due regard to their conscientious objection. The Equal Rights Trust also found evidence of discrimination and corruption in the allocation of land for church use; and discrimination by state actors involved in registering religious bodies. More recently, our research revealed that minority churches in the areas of Donetsk and Luhansk had experienced increased repression since the conflict there began, while in the Crimea, Muslim Crimean Tatars had experienced an increase in religious harassment.

2.9 Discrimination against Internally Displaced Persons

The annexation of Crimea by Russia in March 2014 and the rise of pro-Russian separatist movements in Donetsk and Luhansk oblasts has created new challenges and brought to bear new forms of discrimination not previously

635 Human Rights Without Frontiers International, "Law on religion prepared for Crimea: Annexed Crimea plans to adopt law against 'totalitarian sects' and 'destructive cults', *hrwf.eu*, 5 June 2015.

encountered in Ukraine. As noted in Part 1 of this report, the Crimean peninsula and those parts of Luhansk and Donetsk oblasts occupied by pro-Russian separatists were, as of May 2015, no longer under the *de facto* control of the Ukrainian government. As a consequence, many people have fled these regions and become internally displaced persons (IDPs). This section of the report focuses on the recent phenomenon of discrimination against persons in Ukraine on the basis of their former place of residence or their status as an IDP.

In April 2014, the total population of Crimea amounted to 1,968,550, while that of the city of Sevastopol was 385,998.⁶³⁶ The population of Donetsk was 4,334,556 and of Luhansk, 2,234,612. The Ministry of Social Policy estimates that at least 20,000 people have fled Crimea since its annexation and are now IDPs. A much greater number – at least 1,250,000 – are reported to have fled Donetsk and Luhansk regions with numbers continuing to grow.⁶³⁷ IDPs largely flee to the eastern parts of Ukraine and to Kyiv.⁶³⁸

The arrival of large number of IDPs from Crimea and Donetsk and Luhansk oblasts has resulted in tensions in their new places of residence and there is evidence of intolerance on the part of some individuals towards IDPs, fuelled to some degree by the media.⁶³⁹ While IDPs fleeing from Crimea are generally seen as supportive of the Ukrainian government, the perception of IDPs from eastern Ukraine is that they are separatist sympathisers hostile to the government who are not willing to work and may be interested in making trouble.⁶⁴⁰ The UN Special Rapporteur on the human rights of IDPs has re-

636 Data taken from State Statistics Service of Ukraine, available at: <http://ukrstat.gov.ua>.

637 United Nations High Commissioner for Refugees Ukraine, *Internally Displaced Persons*, available at: <http://unhcr.org.ua/en/2011-08-26-06-58-56/news-archive/1231-internally-displaced-people>.

638 *Ibid.* See also Kritskiy, V., “Divided and displaced in Ukraine: two groups facing two different futures?”, *Internal Displacement Monitoring Centre*, 15 August 2014.

639 See, for example, КримSOS, “За час конфлікту ставлення до внутрішньо переміщених осіб погіршилось, - моніторинг КримSOS”, *krymsos.com*, 13 March 2015; Syzov, V., Tereshchuk, H. and Bigg, C., “In Western Ukraine, Attitudes Cooling Toward IDPs”, *Radio Free Europe/Radio Liberty*, 18 May 2015.

640 Kritskiy, V., “Divided and displaced in Ukraine: two groups facing two different futures?”, *Internal Displacement Monitoring Centre*, 15 August 2014; Organization for Security and Co-operation in Europe, “Latest from OSCE Special Monitoring Mission (SMM) to Ukraine based on information received as of 18:00 (Kyiv time), 19 September 2014”, *osce.org*, 20 September 2014.

ported “anecdotal evidence of emerging tensions between host communities and displaced persons” and that:

*As the political situation has evolved, some described a growth in negative perceptions towards IDPs, which impacts on how those who have been internally displaced, particularly those from the east, are viewed, and could affect their integration. Some are perceived to be separatist sympathisers or unpatriotic on the basis of their places of origin, which may impact on reactions to them in host communities, and their ability to gain employment or to integrate easily into new localities.*⁶⁴¹

As a result of this intolerance, IDPs, particularly from Donetsk and Luhansk oblasts, face challenges in obtaining employment and housing, once their status is known.

The Legal and Political Context

Ukraine is required to ensure non-discrimination on the basis of national origin in the enjoyment of all rights guaranteed under the ICCPR and the ICESCR by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. Further, under Article 26 of the ICCPR, it is required to ensure that of its law provides effective protection against discrimination on the basis of national origin. The CESCR, in interpreting the term “national origin” under Article 2(2), has stated that it includes a person’s state, nation or place of origin.⁶⁴² In addition, the CESCR has stated that Article 2(2) of the ICESCR also prohibits discrimination against a person on the basis of their “current or former place of residence”.⁶⁴³

Further, Article 14 of the ECHR prohibits discrimination on the basis of national origin in the enjoyment of the rights contained within the ECHR and Protocol

641 Human Rights Council, *Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani: Addendum: Mission to Ukraine*, UN Doc. A/HRC/29/34/Add.3, 2 April 2015, Para 58.

642 See above, note 250, Para 24.

643 *Ibid.*, Para 34.

No. 12 to the ECHR provides a freestanding right to non-discrimination on the basis of national origin in the “enjoyment of any right set forth by law”.

The Constitution of Ukraine includes “place of residence” as a characteristic upon which discrimination is prohibited under Article 24, paragraph 2. The Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” also includes this characteristic among its list of explicitly protected grounds. The Constitutional Court of Ukraine has issued a number of decisions interpreting “place of residence” in Article 24, paragraph 2, holding that it prohibits distinctions made between persons in Crimea and persons in other parts of Ukraine.⁶⁴⁴ The courts have not yet, however, indicated whether “place of residence” would include former place of residence, thus protecting IDPs when they move to another part of Ukraine.

The status of IDPs in Ukraine (of greatest relevance to IDPs from Crimea, and from Donetsk and Luhansk oblasts) is regulated primarily by the Law of Ukraine “On the Rights and Freedoms of Internally Displaced Persons”.⁶⁴⁵ Article 4 sets out the process by which IDPs obtain certification of their status and Article 5 provides that such a certification is considered proof that a person is an IDP for the purposes of the Law. Articles 6 to 9 guarantee various rights for IDPs at their place of residence. Most importantly, Article 14 prohibits discrimination against an IDP in the exercise of any right or freedom on the basis that they are an IDP.

In addition to these general provisions, the status of Ukrainian citizens from Crimea and the city of Sevastopol is governed by various laws which were passed following Crimea’s annexation, in particular the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine”⁶⁴⁶ and the Law of Ukraine “On

644 Рішення Конституційного Суду України у справі за конституційним поданням Президента України щодо відповідності Конституції України (конституційності) Закону Республіки Крим “Про об’єднання громадян” (справа про об’єднання громадян в Автономній Республіці Крим), 3 March 1998, № 2-рп/98.

645 Закон України “Про забезпечення прав і свобод внутрішньо переміщених осіб” (Відомості Верховної Ради, 2015, № 1, с. 1), as amended in 2015.

646 Закон України “Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України” (Відомості Верховної Ради, 2014, № 26, с. 892), as amended in 2015.

the Creation of the Free Economic Zone ‘Crimea’ and the Specificities of Economic Activity on the Temporarily Occupied Territory of Ukraine”.⁶⁴⁷ The first of these Laws aims to guarantee the rights and freedoms of citizens in the Autonomous Republic of Crimea and Sevastopol by means of a “special legal regime” and “special procedure” (Article 4). Article 5, paragraph 1 provides that Ukraine shall take “all necessary measures to safeguard the human and citizens’ rights and freedoms provided by the Constitution and laws of Ukraine and international treaties” to citizens in Crimea and Sevastopol. However Article 5, paragraph 3 states that liability for violation of such human and citizens’ rights and freedoms rests with Russia as the “state-occupier”, in accordance with international law. By virtue of Article 10, Ukrainian citizens are permitted free and unimpeded access into and out of Crimea and Sevastopol upon presentation of an identification document, though foreign nationals and stateless persons require special permission. Article 18 provides that citizens of Ukraine are guaranteed full respect of their rights and freedoms under the Constitution, including social, labour and voting rights, and the right to education, upon leaving Crimea or Sevastopol.

Employment and Housing

The United Nations Special Rapporteur on the human rights of IDPs has spoken of “reports of stigmatization and discrimination experienced by some IDPs on account of their situation”.⁶⁴⁸ This discrimination is largely experienced in employment and housing.⁶⁴⁹ Following a visit in September 2014, the Special Rapporteur noted that IDPs described:

*[D]iscrimination when they identify themselves as displaced persons. Some described negative reactions by potential employers in relation to their situation, where they are from and the fact that they may not stay long term.*⁶⁵⁰

647 Закон України “Про створення вільної економічної зони “Крим” та про особливості здійснення економічної діяльності на тимчасово окупованій території України” (Відомості Верховної Ради, 2014, № 43, с.2030).

648 Office of the High Commissioner for Human Rights, *Ukraine: UN expert calls for swift response to growing internal displacement plight as winter closes in*, 25 September 2014.

649 Syzov, V., Tereshchuk, H. and Bigg, C., “In Western Ukraine, Attitudes Cooling Toward IDPs”, *Radio Free Europe / Radio Liberty*, 18 May 2015.

650 See above, note 641 Para 48.

The UN High Commissioner for Refugees has similarly noted that IDPs from eastern Ukraine in particular have reported discrimination when seeking jobs in Kyiv and that prospective employers “refuse to hire people from the east for political reasons – accusing them of supporting the anti-government forces – or because it is perceived that they will leave the region soon”.⁶⁵¹

In respect of housing, the UN High Commissioner for Refugees has also noted that:

*IDPs from the Donbas or Luhansk region are often stigmatized and struggle against discrimination. People are often denied tenancy, and volunteers will sometimes arrange accommodations on their behalf by explaining that the apartment is for relatives.*⁶⁵²

Conclusions

The existence of IDPs is a new phenomenon in Ukraine, with the result that it is difficult to draw firm conclusions on the nature, scope and prevalence of discrimination against the group. Nevertheless, despite the existence of a strong domestic legal framework providing protection from discrimination and guaranteeing the enjoyment of rights, recent reports indicate that IDPs – particularly those from the Donbas region – are experiencing discrimination, largely as a result of prejudice against them.

2.10 Disadvantages Faced by Certain Groups of Children

This section focuses on two types of disadvantage affecting children in Ukraine. The first concerns groups of children whose disadvantage arises solely on the basis of their age. This group, which includes primarily orphans and children who have been removed from their parents, but also children in the criminal justice system, face particular disadvantages not shared by

651 United Nations High Commissioner for Refugees, *Profiling and Needs Assessment of Internally Displaced Persons (IDPs)*, 17 October 2014, p. 8. See also Council of Europe, Parliamentary Assembly, *The Humanitarian Situation of Ukrainian Refugees and Displaced Persons, Addendum to the Report*, Doc. 13651 Add., 26 January 2015, Para 7.

652 *Ibid.*, United Nations High Commissioner for Refugees, p. 54.

adults. The second concerns those children within other groups which are exposed to discrimination, such as children with disabilities and children living with HIV. These children experience aggravated disadvantage as a result of the intersection between their age and their other characteristics.

As a party to the Convention on the Rights of the Child (CRC), which it ratified in 1991, Ukraine is required to protect the rights of all children. Under Article 2(1) of the Convention, Ukraine is required to:

[R]espect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

The CRC defines “child” as a “human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.⁶⁵³ The Family Code and the Law of Ukraine “On Child Protection” also define a child as a person under the age of eighteen.⁶⁵⁴ The number of children in Ukraine and the proportion of the population who are children has been steadily falling in the 21st century, from over 10 mln in 2002 (21.4% of the total population)⁶⁵⁵ to just under 8 mln in 2013 (17.6% of the total population).⁶⁵⁶

Legal and Policy Framework

The Constitution contains a number of provisions on children’s rights. Article 51, which protects the family, provides, at paragraph 2, that “[p]arents are

653 Convention on the Rights of the Child, G.A. Res, 44/25, 1989, Article 1.

654 See above, note 204, Article 6; Article 1 of Закон України “Про охорону дитинства” (Відомості Верховної Ради України, 2001, № 30, с. 142) as amended between 2002 and 2014.

655 United Nations Committee on the Rights of the Child, *Third and Fourth Periodic Reports of States Parties: Ukraine*, UN Doc. CRC/C/UKR/3-4, 3 March 2010, Para 33.

656 United Nations Children’s Fund, *Children in Ukraine: Population under 18 Years of Age*, 2013, available at: <http://www.unicef.org/ukraine/children.html>. The precise figure given by UNICEF for 2013 is 7,971,000.

obliged to support their children until they attain the age of majority” and, at paragraph 3, that “[t]he family, childhood, motherhood and fatherhood are under the protection of the State”. Article 52 focuses specifically on children, stating that:

Children are equal in their rights regardless of their origin and whether they are born in or out of wedlock.

Any violence against a child, or his or her exploitation, shall be prosecuted by law.

The maintenance and upbringing of orphans and children deprived of parental care is entrusted to the State. The State encourages and supports charitable activity in regard to children.

In legislation, the rights of the child are primarily guaranteed by the Law of Ukraine “On Child Protection”.⁶⁵⁷ However, as its name suggests, this Law – and, indeed, state policy more broadly – considers children not as subjects in their own right, but as objects in need of protection. This policy position means that Ukrainian legislation on the rights of the child is largely declarative. The Committee on the Rights of the Child has noted that “domestic legislation on the rights of the child remains inadequate, with significant scope for further legislative implementation of the Convention and its Optional Protocols.”⁶⁵⁸

In particular, Ukrainian legislation gives little regard to the views of children when decisions are taken regarding matters affecting them. This is despite the requirement in Article 12(1) of the CRC that States Parties:

[A]ssure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being

657 Закон України “Про охорону дитинства” (Відомості Верховної Ради України, 2001, № 30, с. 142) as amended between 2002 and 2014.

658 United Nations Committee on the Rights of the Child, *Concluding Observations: Ukraine*, UN Doc. CRC/C/UKR/CO/3-4, 21 April 2011, Para 8.

given due weight in accordance with the age and maturity of the child.

In 2011, the Committee on the Rights of the Child stated:

While noting as positive changes in the Family Code allowing for the child to be heard in the context of adoption, the Committee is nevertheless concerned that the views of the child remain unheard in the context of civil and administrative proceedings and in the administration of juvenile justice. In this context, the Committee regrets the lack of information on how respect for the views of the child is guaranteed in legislative, administrative and judicial decisions as well as in the family and in schools.⁶⁵⁹

Article 3, paragraph 1 of the CRC requires that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. Despite this, the Committee on the Rights of the Child has raised concern that “there is no systematic analysis of State policies and programmes in terms of the best interests of the child” and that “the principle is poorly integrated in laws and policies relating to children deprived of parental care and children in contact with the law”.⁶⁶⁰

There is no state policy directed towards combating discrimination towards vulnerable and marginalised groups of children. For example, the National Programme “Youth of Ukraine” for the period 2009 to 2015, which is the basic programme setting out the activities of the Departments on Family, Youth and Sports in the regional administrations, contains nothing on vulnerable or marginalised groups of children.⁶⁶¹ Further, state programmes and plans related to children generally are funded using the “leftover” principle, i.e. funds

659 *Ibid.*, Para 33.

660 *Ibid.*, Para 29.

661 Кабінет Міністрів України, Постанова від 28 January 2009 р. № 41 “Про затвердження Державної цільової соціальної програми “Молодь України” на 2009–2015 роки”.

are allocated where money is unspent, rather than through allocated specified share or amount of the total national budget.⁶⁶²

Institutionalisation of Orphans and Children without Parental Care

In 2011, the Committee on the Rights of the Child raised concerns “at the high rates of children deprived of their family environment at birth and in later stages of childhood”.⁶⁶³ As of the end of 2013, there were a total of 117,600 children in Ukraine (approximately 1.5% of all children) being raised in a variety of institutions and family-type settings for orphans and children without parental care.⁶⁶⁴ The number of children classified as orphans or children without parental care has increased in the 21st century, despite the overall decline in the number of children in Ukraine, increasing from approximately 98,000 in 2003, to 103,000 in 2006, to the current figure of 117,600.⁶⁶⁵

Only a small proportion of this larger group is actually comprised of orphans. Of the 117,600 children in Ukraine being raised in institutions and family-type settings for orphans and children without parental care, only 13,000 are actually orphans in the true sense. The vast majority are what is known in Ukraine as “social orphans” – children who have at least one living parent but who have been removed from their family at birth or during childhood.⁶⁶⁶

662 Ukrainian Helsinki Human Rights Union, *Human Rights in Ukraine 2011: Chapter XXI: Children's Rights*.

663 See above, note 658.

664 Адміністрація Президента України, Уповноважений Президента України з прав дитини, Звіт про здійснення Уповноваженим Президента України з прав дитини моніторингового дослідження стану функціонування закладів для дітей-сиріт та дітей, позбавлених батьківського піклування, дітей, які не мають необхідних умов для виховання та навчання в сім'ї, дітей з особливими потребами, ефективність використання такими закладами бюджетних коштів, спрямованих на забезпечення їх діяльності (на виконання Доручення Президента України № 1-1/1852 від 22 липня 2013 року), 2013, р. 3.

665 For the figures for 2003 and 2006, see above, note 655, Para 83.

666 УНІАН, “Українським дітям не місце в інтернатах”, *unian.ua*, 20 November 2013.

Table 7: Number of Children and Number of Orphans and Children without Parental Care in Ukraine⁶⁶⁷

Year	Number of Children	Number of Orphans and Children Without Parental Care (% of all children)
2002	10,306,976	Unknown
2003	9,878,630	96,112 (0.97%)
2004	9,503,315	97,590 (1.03%)
2005	9,129,178	97,829 (1.07%)
2006	8,801,969	102,912 (1.17%)
2007	8,536,066	102,924 (1.21%)
2008	8,325,687	103,542 (1.24%)
2009	n/k	Unknown
2010	n/k	Unknown
2011	n/k	Unknown
2012	n/k	Unknown
2013	7,971,000	117,600 (1.47%)

There are a variety of different institutions and family environments in which orphans and children without parental care reside. Despite the government's repeated insistence that it considers the deinstitutionalisation of children to be a priority – and a variety of legislative and policy efforts towards this end⁶⁶⁸ – the vast majority of children remain in institutions. Many children live in state-run institutions, though there is a complex division of responsi-

667 Figures taken from above, note 655, Para 33; Institute For Demography And Social Studies of the National Academy of Science of Ukraine, United Nations Children's Fund and Ukrainian Centre for Social Reforms, *Child Poverty and Disparities in Ukraine*, 2010, p. 141; and Адміністрація Президента України, Уповноважений Президента України з прав дитини, *Звіт*, 2013, p. 3.

668 See, for example, Закон України "Про забезпечення організаційно-правових умов соціального захисту дітей-сиріт та дітей, позбавлених батьківського піклування" (Відомості Верховної Ради України, 2005, № 6, с. 147), as amended between 2006 and 2014, which foresaw a reduction in the use of residential schools for orphans and children without parental care, and Указ Президента України, Указ № 609/2012 "Про Національну стратегію профілактики соціального сирітства на період до 2020 року", 22 October 2012, implementing a strategy involving the reduction of the number of children in boarding schools.

bility across government, such that institutions are regulated variously by the Ministry of Education and Science, the Ministry of Healthcare and the Ministry of Social Policy.

The Ministry of Healthcare operates so-called “baby houses” for children aged between 0 and 4 years old. These serve as the entry point into the institutional system and house all children, including both children with disabilities and those without.⁶⁶⁹ At age 4, children in these institutions are assessed to determine whether or not they have any disabilities and if so, whether they are “educable” or “non-educable”.⁶⁷⁰ On the basis of this information, a decision is made on whether a child should remain institutionalised and, if so, in which kind of institution. If the child is classified as “educable”, it will be referred to a “specialised boarding school”, regulated by the Ministry of Education. If they are judged to be “non-educable”, the child will be referred to an institution regulated by the Ministry of Social Policy.⁶⁷¹

Only a small proportion of orphans or children without parental care are adopted or are in foster families or “family-type orphanages”.⁶⁷² Indeed, the Committee on the Rights of the Child has expressed concern at the fact that “in the absence of a clear reform strategy, focus has not yet shifted towards deinstitutionalization”; the Committee has also stated that it “is concerned at the large number of children who remain in residential care and at the absence of services for family reintegration”.⁶⁷³

In 2013, the total annual funding for these various institutions was 5.7 bln hryvnia (approximately 233 million euro). However, only approximately 15% of this money is spent directly on the children’s food, accommodation, clothing and medication, with 66% of the total amount covering the salaries of staff personnel and the remainder allocated to the maintenance of the institutions.⁶⁷⁴

669 Disability Rights International, *No Way Home: The Exploitation and Abuse of Children in Ukraine’s Orphanages*, 2015, p. 4.

670 *Ibid.*

671 *Ibid.*

672 “Family-type orphanages” are state-supported institutions in which a family looks after at least five adopted children, up to a total of ten children (including their own children).

673 See above, note 658 Para 46.

674 Незалежне бюро новин, “На утримання інтернатів йде 7,7 млрд на рік, до дітей доходить 15%”, *nbnews.com.ua*, 22 October 2013.

Many concerns have been raised relating to children housed in residential establishments for orphans and children without parental care.⁶⁷⁵ There are reports of physical and sexual abuse and even torture which is, on occasion, instigated and even perpetrated by staff and older students at the establishments.⁶⁷⁶ Disability Rights International has reported that there is extensive evidence of systematic abuse throughout Ukraine's entire institutional system, with thousands of children both with and without disabilities subjected to "severe emotional and physical pain, restraint, seclusion and dangerous or neglectful medical care".⁶⁷⁷

Many children are housed and educated in the same establishment and research indicates that the quality of education in these institutions is often low, such that "most orphans are not equipped with adequate knowledge or skills to successfully enter higher education or even mainstream society".⁶⁷⁸ One commentator has stated that teachers and caretakers expectations of children in institutions are grounded in "genetic deficit ideology which posits that orphans are biologically inferior given their parents' struggles with drugs and alcohol", with the result that they "guide these children toward paths that make it a self-fulfilling prophecy".⁶⁷⁹ Further, as a result of sub-standard quality education, the children are frequently placed in vocational schools, "the quality of which has deteriorated since the collapse of the Soviet Union" and which provide them with "obsolete" skills, no longer needed in a modern economy.⁶⁸⁰

As a result of physical and sexual abuse, limited socio-economic opportunities and the psychological impact of institutionalisation many orphans become susceptible to alcohol, drugs, crime, prostitution, and suicide.⁶⁸¹

675 For a thorough examination, see Korzh, A., *Educational Inequalities and Ukrainian Orphans' Future Pathways: Social Reproduction or Transformation through the Hidden Curriculum*, 2013.

676 *Ibid.*, p. 128.

677 See above, note 659, p. 13.

678 See above, note 675, p. 4.

679 *Ibid.*

680 *Ibid.*, p. 5.

681 *Ibid.*

Children in the Criminal Justice System

Article 40 of the CRC guarantees:

[T]he right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Further, Article 37 provides, *inter alia*, that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

Ukraine started to introduce a separate juvenile justice system in 2008. Despite this, in 2011, the Committee on the Rights of the Child expressed deep concern at:

[T]he risk for retrogression towards a punitive approach with respect to children in conflict with the law, as indicated also in the frequent pretrial and trial detention of children, the high percentage of juveniles sentenced to imprisonment, and the high proportion of children in the prison population.⁶⁸²

682 See above, note 658, Para 84.

There are reports of children being beaten by police or other investigators during questioning.⁶⁸³ In 2011, the Committee on the Rights of the Child expressed concern over

*[T]he significant number of allegations of physical ill-treatment of detainees, including children, notably during initial questioning in district police stations. In particular, the Committee is gravely concerned at alleged cases of torture and ill-treatment of juveniles by Militia officers to extract confessions and of migrant children while in the custody of the Ukraine State Border Guard Services.*⁶⁸⁴

Children with Disabilities

As of 1 January 2014, 168,280 children with disabilities were registered with the Ministry of Social Policy.⁶⁸⁵ However, as with the number of persons with disabilities more generally (see section 2.3. of this report), this figure is likely to be a significant underestimate. The WHO estimates that around 15% of all people live with some form of disability,⁶⁸⁶ of whom 2–4% experience significant difficulties in functioning.⁶⁸⁷ This would suggest an actual figure in Ukraine of around 1,200,000 children with disabilities and between 160,000 and 320,000 children with significant difficulties in functioning.

The Committee on the Rights of the Child has raised various concerns with respect to the rights of children with disabilities in Ukraine and “the persisting inadequacy of educational, social and health services for children with disabilities and their families”.⁶⁸⁸ In addition, the Committee has expressed its regret that:

683 Romanov, M., Tokarev, G., Pushkar, V., and Kartopol'tceva, N., *Torture and ill-treatment of children in Ukraine*, Kharkiv Human Rights Protection Group, Kharkiv, 2013, pp. 131–132.

684 See above, note 658, Para 41.

685 Державна служба статистики України, Соціальний захист населення України: Статистичний збірник, 2014, р. 70.

686 See above, note 255, p. 7.

687 *Ibid.*, p. 8.

688 See above, note 658, Para 52.

*[M]any obstacles remain in ensuring equal access to education for children with intellectual disabilities and that, due to the lack of early intervention and special education, many children with disabilities are placed in institutions. Furthermore, the Committee is concerned at the placement of children with or without disabilities during their first three years of age in infant homes and at the qualification of such children as having medical conditions, which negatively affects their development and quality of life and further reinforces institutionalization.*⁶⁸⁹

On the basis of visits to various institutions for children with disabilities, Disability Rights International has concluded that Ukraine's orphanages are:

*[A] gateway to life-long institutionalization for children with disabilities. Children with disabilities rarely "graduate" from orphanages and are instead shuffled between adult wards in orphanages, psychiatric hospitals, and adult social care homes. Children who do graduate from orphanages face a harsh life on the streets – where suicide, trafficking, drug addiction and re-institutionalization are constant threats.*⁶⁹⁰

As a result of their particular vulnerability, children with disabilities are at even greater risk of abuse than other children in institutions. Disability Rights International has catalogued various abuses which take place including medical neglect, forced abortions and sterilisations, physical and chemical restraints, and even sexual abuse.⁶⁹¹

Children with disabilities who are deemed "non-educable" receive only a very basic education with no real support.⁶⁹² The attitude of the directors of the institutions is invariably that the children will never be able to re-join the

689 *Ibid.*

690 See above, note 669, p. 2.

691 *Ibid.*, pp. 19–28.

692 *Ibid.*, p. 7.

community and so there is no need even to attempt to prepare children for independent living. Upon reaching 18, most young adults with disabilities are simply transferred to adult institutions where they will spend the rest of their lives.⁶⁹³ Few resources are provided to rehabilitate children with disabilities and to enable integration at a future point. Staff members are required to look after such high numbers of children that proper attention and care is essentially impossible.⁶⁹⁴

Children Living with HIV/AIDS

Children in Ukraine risk HIV infection from a variety of sources and many children are born with HIV each year. As noted in section 2.4 of this report, Ukraine has one of the highest proportions of people living with HIV/AIDS in Europe. In 2013, the Joint United Nations Programme on HIV/AIDS estimated that there were 210,000 people living with HIV in Ukraine (0.47% of the population).⁶⁹⁵ Other estimates put the figure slightly higher, at 238,000, (0.53% of the population).⁶⁹⁶ However, as of August 2014, only 144,655 people were registered as having HIV/AIDS and under any kind of medical supervision, only around 60% of the total number of people living with HIV/AIDS. A large number of people who have HIV/AIDS simply do not know it; indeed, in 2013, it was estimated that as many as 50% of people living with HIV did not know about their status.⁶⁹⁷

The Ministry of Health estimates that between 1995 and 2013, 36,557 children were born to mothers living with HIV, of whom 26,403 were HIV-negative, 2,929 were HIV-positive, 6,899 were children under the age of 18 months awaiting confirmation of their HIV status, 829 had AIDS and 326 children had

693 *Ibid.*

694 *Ibid.*, p. 18.

695 Joint United Nations Programme on HIV/AIDS (UNAIDS), *HIV and AIDS Estimates: Ukraine*, 2013, available at: <http://www.unaids.org/en/regionscountries/countries/ukraine>.

696 Joint United Nations Programme on HIV/AIDS (UNAIDS), "Ukraine Harmonized AIDS Response Progress Report: Reporting period: January, 2012 – December 2013", p. 4.

697 Український центр контролю за соціально небезпечними хворобами Міністерства охорони здоров'я України, Національна оцінка ситуації з ВІЛ/СНІДу в Україні станом на початок 2013 року, 2013, p. 16.

died of AIDS.⁶⁹⁸ The Ministry of Health of Ukraine estimated in the same year that a total of 3,898 women living with HIV gave birth to a child in 2013. As of 1 January 2014, there were a total of 3,129 children born with HIV from mothers living with HIV and 6,195 children awaiting confirmation of their HIV status.⁶⁹⁹

In addition, sexual health awareness amongst young people is low, resulting in a risk of HIV transmission. A study from 2012 indicated that only 44.8% of girls and 42.8% of boys aged between 15 and 24 years had correct and comprehensive knowledge about HIV/AIDS.⁷⁰⁰ The proportion of young people aged between 15 and 24 years who had had sexual contact carrying risk during the previous year was 69.5% amongst girls and 95.9% amongst boys. Only 72.7% of girls and 74.4% of boys had used a condom during their most recent sexual intercourse.⁷⁰¹

In 2011, the Committee on the Rights of the Child raised alarm “at the high rates of HIV infections and AIDS-induced deaths among children, and that, notwithstanding progress in prevention, the proportion of mother-to-child transmissions remains high”.⁷⁰² The Committee was also concerned “at the lack of access to care and support services for children living with HIV/AIDS and at the limited funds for the requisite technology, equipment and treatment with respect to HIV/AIDS”.⁷⁰³

Children living with HIV face discrimination on the basis of their HIV status, particularly in education.⁷⁰⁴ The situation of a claimant in a case supported by the Foundation for Strategic Affairs of the Coalition for Combating Discrimination is typical. The claimant in this case is the mother of a 13 year old girl living with HIV. On 17 April 2013, her daughter was called “holisticAIDSy”

698 United Nations Children’s Fund (UNICEF), *Ukraine: HIV/AIDS*, available at: http://www.unicef.org/ukraine/ukr/activities_11400.html.

699 *Ibid.*

700 Фонд народонаселення ООН в Україні, Молодь – найбільш вразлива до ВІЛ група населення, 28 November 2012.

701 *Ibid.*

702 See above, note 658, Para 62.

703 *Ibid.*

704 *Ibid.*

by a schoolmate. The schoolmate told other students that anyone who made friends with her would “become infected with AIDS”. The following day, the same schoolmate beat her up. When the claimant arrived, the schoolmate shouted that her daughter did not deserve a place amongst “normal” children and that she was a danger to other children. She promised to do everything possible to stop her from attending the school.⁷⁰⁵

Conclusions

Despite its clear obligations under the Convention on the Rights of the Child, there is significant evidence that Ukraine has failed to ensure equal rights to children, in particular those who are most vulnerable. The institutionalisation of children continues on a significant scale, despite clear commitments to reform. The institutionalisation of children is a significant human rights problem in and of itself. Of even greater concern are the poor conditions within Ukraine’s children’s institutions, and the poor quality of education for those residing in them, which have an adverse impact on children’s equal enjoyment of a wide range of human rights. Ukraine has failed to take effective measures to establish a system of juvenile justice which is appropriate for the needs of children who are in conflict with the law. Finally, there is compelling evidence that children with disabilities and children with HIV are subjected to multiple discrimination and disadvantage, as minors within groups which are already exposed to significant discrimination.

705 Коаліція з протидії дискримінації в Україні, Справи КПД, *antidi.org.ua*, 16 May 2014.

3. THE LEGAL AND POLICY FRAMEWORK RELATED TO EQUALITY

This part of the report describes and analyses the legal and policy framework related to equality in Ukraine in order to assess its adequacy to address the patterns of inequality and discrimination highlighted in the preceding part. It examines both Ukraine's international legal obligations and the domestic legal and policy framework which protects the rights to equality and non-discrimination. In respect of domestic law, it examines the Constitution, specific anti-discrimination laws, and non-discrimination provisions in other areas of law. It also examines government policies which have an impact on inequality, before turning to an assessment of the enforcement and implementation of existing laws and policies aimed at ensuring equality, including an examination of the most significant specialised body whose functions are related to equality, the Ukrainian Parliament Commissioner for Human Rights. Finally, this part reviews existing judicial practice related to discrimination.

Throughout this part, Ukraine's legal and policy framework is analysed in relation to the extent to which it complies with Ukraine's international human rights obligations and international best practice on equality. In order to assess the full picture of the Ukrainian legal and policy framework as it relates to equality, this part should be read together with, and in the context of, the previous part, which contains an appraisal of laws that discriminate overtly or are subject to discriminatory application.

3.1 International and Regional Law

Ukraine has signed and ratified (or acceded to) a number of international treaties since its independence in 1991. In addition, the Ukrainian Soviet Socialist Republic (Ukrainian SSR), one of the Soviet republics of the Union of Soviet Socialist Republics (USSR), signed and ratified a number of international treaties prior to the USSR's dissolution in 1991 which continue to apply in Ukraine as the successor state to the Ukrainian SSR. Through these ratifications, Ukraine has committed to respect, protect and fulfil the rights contained in these instruments, and to be bound by the legal obligations contained therein.

3.1.1 Major United Nations Treaties Related to Equality

Ukraine has a good record of participation in the major UN human rights treaties. It has ratified seven of the nine core UN human rights treaties: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD).

Ukraine also has a good record of allowing for individual complaints to be made to the relevant Treaty Bodies, having ratified the first Optional Protocol to the ICCPR, made a declaration under Article 14 of the ICERD, ratified the Optional Protocol to the CEDAW, ratified the Optional Protocol to the CAT (CAT-OP) and ratified the Optional Protocol to the CRPD.

Instrument	Signed	Ratified / Acceded
International Covenant on Civil and Political Rights (1966)	20 March 1968	12 November 1973 (Ratified)
Optional Protocol to the International Covenant on Civil and Political Rights (1976)	n/a	25 July 1991 (Acceded)
International Covenant on Economic, Social and Cultural Rights (1966)	20 March 1968	12 November 1973 (Ratified)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	24 September 2009	No
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	7 March 1966	7 March 1969 (Ratified)
Declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (allowing individual complaints)	n/a	28 July 1992

Instrument	Signed	Ratified / Acceded
Convention on the Elimination of All Forms of Discrimination against Women (1979)	17 July 1980	12 March 1981 (Ratified)
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	7 September 2000	26 September 2003 (Ratified)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	27 February 1986	24 February 1987 (Ratified)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002)	23 September 2005	19 September 2006 (Ratified)
Convention on the Rights of the Child (1989)	21 February 1990	28 August 1991 (Ratified)
Optional Protocol I to the Convention on the Rights of the Child (2000) (involvement of children in armed conflict)	7 September 2000	11 July 2005 (Ratified)
Optional Protocol II to the Convention on the Rights of the Child (2000) (sale of children, child prostitution and child pornography)	7 September 2000	3 July 2003 (Ratified)
Optional Protocol III to the Convention on the Rights of the Child (2011) (communicative procedure)	20 November 2014	No
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	No	No
Convention on the Rights of Persons with Disabilities (2006)	24 September 2008	4 February 2010 (Ratified)
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	24 September 2008	4 February 2010 (Ratified)
International Convention for the Protection of All Persons from Enforced Disappearances (2006)	20 December 2006	6 July 2015 (Ratified)

The failure to sign or ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICM-

RW) represents arguably the most notable gap in Ukraine's international legal obligations related to equality. At the second Universal Periodic Review (UPR) of Ukraine at the UN Human Rights Council in 2012, three states made recommendations to Ukraine that it ratify the ICMRW.⁷⁰⁶ The government of Ukraine rejected these recommendations, while stating that it "still remains fully committed to the protection of rights of vulnerable groups, including migrants".⁷⁰⁷

A further weakness is Ukraine's failure to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP), despite having signed it in 2009. Also at the UPR of Ukraine in 2012, one state made a recommendation to Ukraine that it ratify the ICESCR-OP.⁷⁰⁸ This recommendation, too, was rejected by the government, which stated that:

*Ukraine considers that an analysis of the legal framework in the respective fields, as well as assessment of financial, economic and socio-political consequences of the implementation of a document should precede the recommendations implementation relating any international document ratification. According to this Ukraine at the moment cannot make a definitive statement on the recommendation regarding Optional Protocol to the ICESCR, however possible ratification of the abovementioned Protocol will be examined in due course.*⁷⁰⁹

706 United Nations Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Ukraine*, UN Doc. A/HRC/22/7, 20 December 2012, Paras 97.2 (Argentina), 97.3 (Indonesia) and 97.4 (Philippines).

707 United Nations Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Ukraine: Addendum*, UN Doc. A/HRC/22/7/Add.1, 21 February 2013, p. 2.

708 See above, note 706, Para 97.1 (Spain).

709 See above, note 707.

In relation to the treaties that it has ratified, Ukraine has largely done so without declaration or reservation. The Ukrainian SSR signed the ICCPR and ICESCR in March 1968 and ratified them in November 1973. At the time of its signature of each treaty, it made declarations (which it confirmed upon ratification) that it considered Article 48(1) of the ICCPR and Article 26(1) of the ICESCR, both of which declare which states are eligible to sign the Covenant, to be of a discriminatory nature. In doing so, it declared that each Covenant “in accordance with the principle of sovereign equality of States, should be open for participation by all States concerned without any discrimination or limitation.” It had made a similar declaration in relation to Article 17(1) of ICERD on signing the Convention in 1966, which it then confirmed upon ratification.

A number of positive declarations have been made by Ukraine in addition to that identified in the table above. In July 1992, Ukraine made a declaration under Article 41 of the ICCPR recognising the competence of the Human Rights Committee (HRC) to receive and consider communications to the effect that a state party claims that another state party is not fulfilling its obligations under the Covenant. On ratifying Optional Protocol I to the CRC which relates to the involvement of children in armed conflict, Ukraine made a declaration that the minimum age for voluntarily joining into its national armed forces was 19 years, a year older than the minimum age stipulated by Article 1 of the Optional Protocol. It ratified Optional Protocol II to the CRC in September 2000 and ratified it in July 2003.

Ukraine has a good record of compliance with its reporting obligations under the treaties it has ratified. While some reports have been submitted late, many have been on time or early and, at the time of publication, only one report remains outstanding.⁷¹⁰

3.1.2 Other Treaties Related to Equality

Ukraine has a very good record in relation to other international treaties which have a bearing on the rights to equality and non-discrimination. Ukraine ratifi-

⁷¹⁰ The combined twenty-second and twenty-third periodic report under ICERD which was due to be received by the Committee on the Elimination of Racial Discrimination in April 2014 had not, as of May 2015, been submitted.

ed the 1951 Convention Relating to the Status of Refugees in 2002, of particular importance given that there are an estimated 3,100 refugees and 5,700 asylum seekers in the country.⁷¹¹ Ukraine has also ratified the key Conventions relating to statelessness: the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

In the field of labour standards, Ukraine has also ratified all eight of the fundamental International Labour Organization (ILO) Conventions including the Equal Remuneration Convention and the Discrimination (Employment and Occupation) Convention. In the field of education, Ukraine has ratified the 1960 UNESCO Convention against Discrimination in Education.

Instrument	Signed	Ratified/ Acceded
Convention Relating to the Status of Refugees (1951)	n/a	10 June 2002 (Acceded)
Convention Relating to the Status of Stateless Persons (1954)	n/a	25 March 2013 (Acceded)
Convention on the Reduction of Statelessness (1961)	n/a	25 March 2013 (Acceded)
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	7 September 1956	3 December 1958 (Ratified)
UN Convention against Transnational Organized Crime (2000)	12 December 2000	21 May 2004 (Ratified)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)	15 November 2001	21 May 2004
Rome Statute on the International Criminal Court (2002)	20 January 2000	No
UNESCO Convention Against Discrimination in Education (1960)	n/a	19 December 1962

711 UNHCR, 2015 UNHRC regional operations profile – Eastern Europe: Overview (as of July 2014), available at: <http://www.unhcr.org/pages/49e48d4d6.html>.

Instrument	Signed	Ratified/ Acceded
Forced Labour Convention (1930) (ILO Convention No. 29)	n/a	10 August 1956
Equal Remuneration Convention (1951) (ILO Convention No. 100)	n/a	10 August 1956
Discrimination (Employment and Occupation) Convention (1958) (ILO Convention No. 111)	n/a	4 August 1961
Worst Forms of Child Labour Convention (1999) (ILO Convention No. 182)	n/a	14 December 2000

It is noteworthy that Ukraine is, however, one of a very small number of countries in Europe (although not worldwide) that has not ratified the Rome Statute. As such, save for the period covered by the declaration described below, Ukraine does not recognise the jurisdiction of the International Criminal Court and so the international crimes which fall within the Court's jurisdiction – genocide, crimes against humanity and war crimes – cannot be prosecuted if they have taken place within the territory of Ukraine.

Only in Europe Andorra, Belarus and Russia have similarly failed to ratify the Rome Statute. Although Ukraine signed the Rome Statute in 2000, the Constitutional Court of Ukraine ruled in 2001 that the Rome Statute was inconsistent with the Constitution of Ukraine.⁷¹² In 2006, the Chargé d'Affaires of Ukraine to the United Nations announced that the government would nonetheless submit a draft law to the Verkhovna Rada, ratifying the Statute, taking into account the decision of the Constitutional Court. In 2012, the Minister for Foreign Affairs told the President of the International Criminal Court that Ukraine intended to join the Rome Statute “once the necessary legal preconditions have been created in the context of the upcoming review of the country's constitution.”⁷¹³

712 Висновок Конституційного Суду України № 3-в/2001 у справі за конституційним поданням Президента України про надання висновку щодо відповідності Конституції України Римського Статуту Міжнародного кримінального суду (справа про Римський Статут), Справа № 1-35/2001, 11 July 2001.

713 International Criminal Court, “ICC President meets Minister for Foreign Affairs of Ukraine”, 4 April 2012.

While such legislation is still forthcoming, on 17 April 2014, the government of Ukraine lodged a declaration under Article 12(3) of the Rome Statute accepting the jurisdiction of the International Criminal Court over alleged crimes committed on its territory during the period of 21 November 2013 to 22 February 2014.⁷¹⁴

3.1.3 Regional Human Rights Treaties (Council of Europe)

Ukraine also has a very good record in relation to European treaties which have a bearing on the rights to equality and non-discrimination. In particular, Ukraine ratified the European Convention on Human Rights (ECHR) in 1997 and Protocol No. 12 to the ECHR, which provides a freestanding right to non-discrimination, in 2006.

Instrument	Signed	Ratified/ Acceded
European Convention on Human Rights (1950)	9 November 1995	11 September 1997
Protocol No. 12 to the European Convention on Human Rights (2000)	4 November 2000	27 March 2006
European Social Charter (revised) (1996)	7 May 1999	21 December 2006
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)	2 May 1996	5 May 1997
European Charter for Regional or Minority Languages (1992)	2 May 1996	19 September 2005
Framework Convention for the Protection of National Minorities (1995)	15 September 1995	26 January 1998
European Convention on Nationality (1997)	1 July 2003	21 December 2006
Convention on Preventing and Combating Violence against Women and Domestic Violence (2011)	7 November 2011	No

⁷¹⁴ Embassy of Ukraine, No. 61219/35-673-384, available at: http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Documents/997/declarationRecognitionJurisdiction09-04-2014.pdf.

3.1.4 Treaties not Ratified by Ukraine

While the few treaties which have not been ratified by Ukraine do not bind the state they, together with comments of their respective treaty bodies, do have an important interpretative function when determining the obligations of Ukraine. They should be used to elucidate: (i) Ukraine's obligations under the treaties to which it is a party, to the extent that the treaties to which it is not a party can explain concepts which are also found in those treaties to which it is a party; (ii) the content of the right to equality and non-discrimination for persons covered by the ICESCR, the ICERD, the CEDAW and the CRC who are vulnerable to multiple discrimination on grounds which include those protected by other treaties; and (iii) Ukraine's obligations under customary international law.

3.1.5 Customary International Law

Under international law, binding legal obligations on states derive from customary international law as well as from treaty law. Customary international law is deduced over time from the practice and behaviour of states.⁷¹⁵ Customary international laws are particularly significant when they reach a level at which certain norms known as peremptory norms are binding on all states and from which there can be no derogations.⁷¹⁶ It is largely accepted that the prohibition of racial discrimination is a peremptory norm of international customary law.⁷¹⁷ In addition, it can be said that the prohibition of discrimination on other grounds, such as gender and religion, may now be part of customary international law, although not

715 Shaw, M., *International Law*, Fifth edition, Cambridge University Press, 2003, p. 69.

716 *Prosecutor v Anto Furundzija*, ICTY-IT-95-17/1-T (10 December 1998), Para 153; Parker, K. and Neylon, L. B., "Jus Cogens: Compelling the Law of Human Rights", *Hastings International and Comparative Law Review*, Vol. 12, 1988–1989, p. 417. See also Vienna Convention on the Law of Treaties, Article 53.

717 De Schutter, O., *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010, pp. 64-68 and the materials referred to therein; Pellett, A., "Comments in Response to Christine Chinkin and in Defense of *Jus Cogens* as the Best Bastion against the Excesses of Fragmentation", *Finnish Yearbook of International Law*, Vol. 17, 2006, p. 85; cf Shaw, M., *International Law*, Sixth edition, Cambridge University Press, 2008, p. 287, who refers to it as part of customary international law, with no reference to it being a peremptory norm.

yet reaching the status of a peremptory norm.⁷¹⁸ Some argue, and it has been stated by the Inter-American Court of Human Rights, that the broader principle of non-discrimination is a peremptory norm of customary international law⁷¹⁹ but this is subject to debate.⁷²⁰ Accordingly, it is clear that, as a matter of customary international law, Ukraine cannot derogate from the obligation to protect, respect and fulfil the right to be free from racial discrimination; it is obliged to protect, respect and fulfil the right to be free from gender and religious discrimination; and it is arguably obliged to protect, respect and fulfil the right to be free from discrimination on other grounds.

3.1.6 Status of International Obligations in National Law

Ukraine is a monist state with Article 9 of the Constitution providing that: “[i]nternational treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine.” The question then becomes how the ratified treaties fit within the hierarchy of the Constitutional legal order and which laws take precedence in a case of inconsistency.

Article 9 of the Constitution makes clear that treaties which are inconsistent with the Constitution cannot be ratified until and unless the Constitution is amended accordingly. Article 151 provides that the Constitutional Court of Ukraine may, on an appeal from the President or the Cabinet of Ministers, provide an opinion on the conformity of international treaties which are in force or which have been submitted to the Verkhovna Rada with the Constitution. In theory, no international treaty which is inconsistent with the Constitution can be ratified, thus rendering the question of

718 *Ibid.*, Shaw, p. 287; *Ibid.*, Pellett, p. 85; and Cassel, D., “Equal Labor Rights for Undocumented Migrant Workers”, in Bayefsky, A. (ed.), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton*, Martius Nijhoff Publishers, 2006, pp. 511–512.

719 Inter-American Court of Human Rights, *Advisory Opinion OC-18/03 – Juridical Condition and Rights of Undocumented Migrants*, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003), 17 September 2003, p. 23. See also, by way of example, Martin, F.F. et al., *International Human Rights and Humanitarian Law: Cases, Treaties and Analysis*, Cambridge University Press, 2006, pp. 34–35.

720 See Bianchi, A., “Human Rights and the Magic of *Jus Cogens*”, *The European Journal of International Law*, Vol. 19, 2008, p. 506; see Cassel, above, note 718, pp. 511–512; see Pellett, above, note 717, p. 85.

which would take priority moot. However, the Constitutional Court only reviews treaties when they are submitted to it by either the President or the Cabinet of Ministers, thus leaving open the possibility of a treaty being ratified which is inconsistent with the Constitution, it not having been submitted beforehand to the Constitutional Court for review. Thus, in practice, ensuring consistency between the Constitution and international treaties relies on the goodwill of the President and the Cabinet of Ministers submitting potentially inconsistent treaties to the Constitutional Court before their ratification.

The Constitution is silent on the relationship between ratified international treaties and other pieces of legislation. Article 19, paragraph 2 of the Law of Ukraine “On International Agreements of Ukraine” fills this gap clearly, providing that where there is an inconsistency between national legislation and the provisions of an international treaty which has been ratified, the provisions of the treaty take precedence.⁷²¹

There is one exception to these general rules. The ECHR has a special status within the Ukrainian legal system which makes its treatment by the courts distinct from other treaties. Article 17 of the Law of Ukraine “On Execution of Decisions and Application of European Court of Human Rights” requires courts to apply the ECHR and the European Court of Human Rights’ case-law when considering cases.⁷²² The Constitutional Court has, since its establishment, made reference to the ECHR and the case-law of the European Court of Human Rights over 80 times.⁷²³

721 Закон України “Про міжнародні договори України” (Відомості Верховної Ради України, 2004, № 50, с. 540), as amended in 2014. However, see Judge Shapoval’s dissent in Рішення Конституційного Суду України № 14-рп/2004, Справа № 1-14/2004, 7 July 2004, in which he stated that “(...) the Constitution of Ukraine does not establish the primacy of international treaties or international law in general. In the case of non-compliance, for example, between the law of Ukraine and international treaties of Ukraine, one can only speak about inconsistencies and determining such inconsistencies is essentially a question of law and not within the powers of the Constitutional Court of Ukraine.”

722 Закон України “Про виконання рішень та застосування практики Європейського суду з прав людини” (Відомості Верховної Ради України, 2006, № 30, с. 260), as amended between 2011 and 2014.

723 Letter from the Secretariat of the Constitutional Court of Ukraine № 4-17-17/317 of 27 February 2015, on file with Nash Mir.

The courts have referred to other international treaties ratified by Ukraine in their judgments on occasion, although have never made a decision based solely on the provisions of a treaty, instead using the treaty as an additional source in reaching their decision. Customary international law has no formal status in Ukraine (unless it is in some way connected to a particular treaty provision) and has not been considered by the courts.⁷²⁴ Cases in which the courts have referred to international treaties are not commonplace, although there are a few useful judgments. In 2012, for example, the Constitutional Court referred to equality and the unacceptability of discrimination as “fundamental values of the international community” referring to instruments such as the Universal Declaration of Human Rights (UDHR) and the ICCPR.⁷²⁵ However, the relevant provisions of the treaties themselves were not interpreted or even spelled out, the Court merely referring to the Article numbers, rather than the text; instead, the provisions were referenced as a means of bolstering the importance the Court attached to the rights to equality and non-discrimination as protected in the Constitution. At the lower level, in 2010, the Kyiv District Administrative Court considered that the CRPD formed part of the national legislation of Ukraine and reviewed particular provisions of the Convention in determining the state’s obligations.⁷²⁶ These cases are rare. Indeed, the review of jurisprudence in section 3.4 of this report finds scant reference, let alone usage, of the international treaties ratified by Ukraine when courts are faced with cases of discrimination.

3.2 National Law

In addition to a certain degree of protection from discrimination in the Constitution, Ukraine also has comprehensive anti-discrimination legislation, two further pieces of legislation which specifically seek to tackle inequality on the basis of gender and disability respectively, and a variety of standalone

724 Equal Rights Trust interview with Professor Mykola Kozyubra, Head of the Department of General and Public Law at National University of “Kyiv-Mohla” Academy and former judge of the Constitutional Court of Ukraine, 27 February 2015; Letter from the Secretariat of the Constitutional Court № 4-17-17/317 of 27 February 2015, on file with Nash Mir.

725 Рішення Конституційного Суду України № 9-рп/2012, Справа № 1-10/2012, 12 April 2012.

726 Київський апеляційний адміністративний суд, Справа № 2а-4637/10/2670, 12 August 2010.

non-discrimination provisions within pieces of legislation regulating various fields of activity. This section contains an analysis of constitutional and legislative provisions both in terms of their substance and their impact in practice.

3.2.1 The Constitution

The Constitution of Ukraine in force was adopted in 1996 replacing an earlier version adopted by the Ukrainian SSR in 1978. While the legislation repealing the former Constitution and enforcing the new Constitution was not promulgated until mid-July 1996, the Constitutional Court has held that the new Constitution took effect at the time when the result of the vote of the Verkhovna Rada adopting the Constitution was announced, namely 9 am on 28 June 1996,⁷²⁷ a day now celebrated as Constitution Day. Rules for amending the Constitution are restrictive, intended to preserve it, and Article 157 provides that the Constitution cannot be amended so as to abolish or restrict human rights and freedoms, or if the amendments are oriented towards liquidation of the independence or violation of the territorial indivisibility of Ukraine.⁷²⁸

The preamble to the Constitution states that the Constitution is adopted, in part, in order to provide “for the guarantee of human rights and freedoms and of the worthy conditions of human life”. The substantive text of the Constitution itself contains a number of provisions protecting the rights to equality and non-discrimination. Paragraph 2 of Article 3 (one of the “General Principles” in Chapter I of the Constitution) provides that:

Human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State. The State is answerable to the individual for its activity. To affirm and ensure human rights and freedoms is the main duty of the State.

727 Рішення Конституційного Суду України № 4-зп, Справа № 18/183-97, 3 October 1997.

728 According to Chapter XIII, the Constitution can only be amended by draft law introduced into the Verkhovna Rada by the President or by no less than one third of all deputies and with at least two thirds of all deputies voting in favour of it unless it amends Chapter I (General Principles), Chapter III (Elections and Referendums) or Chapter XIII itself, in which case it cannot take effect unless it is also supported by a majority of voters at a referendum.

Building upon this, Chapter II of the Constitution sets out the rights, freedoms and duties of “persons and citizens” (“людини і громадянина”) in Ukraine.⁷²⁹ Accordingly, Chapter II sets out a series of rights, freedoms and duties, the majority of which are guaranteed to all persons, and a small number of which are guaranteed only to citizens.

The first of these, Article 21, is clearly based upon the first sentence of the UDHR, stating that “[a]ll people shall be free and equal in their dignity and rights”. Article 21 also provides that “[h]uman rights and freedoms shall be inalienable and inviolable”.

The first paragraph of Article 22 provides that the “[p]ersons’ and citizens’ rights and freedoms affirmed by this Constitution shall not be exhaustive”. Through Article 22, paragraph 1, the Constitution, in theory at least, guarantees rights which are not explicitly enumerated, although it makes no provision as to how further rights protected by the Constitution are to be determined. The second paragraph of Article 22 provides that “[t]he constitutional rights and freedoms shall be guaranteed and shall not be abolished”, reinforcing Article 157. Nor can legislation be used to limit the rights in the Constitution, the third paragraph of Article 22 providing that “[t]he content and scope of existing rights and freedoms shall not be diminished by the adoption of new laws or in the amendment of laws that are in force”.

Article 24 is the most significant constitutional provision protecting the rights to equality and non-discrimination:

Citizens shall have equal constitutional rights and freedoms and shall be equal before the law.

There shall be no privileges or restrictions based on race, skin colour, political, religious, and other beliefs,

729 While “людини і громадянина” is most commonly translated as “men and citizens”, it is not intended to be a gendered phrase as the rights apply to either everyone or citizens and not to only men or citizens. Accordingly, we use the more accurate interpretation of “persons and citizens” throughout.

gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

Equality of the rights of women and men shall be ensured by providing women with opportunities equal to those of men in public, political and cultural activities, in obtaining education and in professional training, in work and remuneration for it; by taking special measures for the protection of women's health and occupational safety; by establishing pension benefits; by creating conditions that make it possible for women to combine work and motherhood; by adopting legal protection, material and moral support of motherhood and childhood, including the provision of paid leave and other privileges to pregnant women and mothers.

The first paragraph of Article 24 sets out the right to equality, as protected by the Constitution. It is most obviously problematic in that it provides only that “citizens” have “equal constitutional rights and freedoms” and are equal before the law, thus excluding non-citizens from its protection. This is mitigated somewhat by Article 26 which provides that foreigners and stateless persons in Ukraine enjoy all the rights and freedoms, and also bear all duties, of citizens of Ukraine, save for exceptions expressly provided for by the Constitution, national legislation or international treaties of Ukraine. As noted below, many of the rights and freedoms listed in the Constitution are guaranteed to “everyone”, but there are a small number which are explicitly guaranteed only to “citizens”. One of these is the right to equality, as according to the first paragraph of Article 24, this right is guaranteed to “citizens” and is thus an exception to the general proposition that both citizens and non-citizens enjoy the rights and freedoms listed in the Constitution. Having said this, a decision of the Constitutional Court discussed in section 3.2.4 below appears to suggest that Article 24 taken with Article 26 may be interpreted as providing the right to equality to non-citizens too, at least in certain circumstances.⁷³⁰ The right to equality ought to be guaranteed to all persons, regardless of citizenship, as is made

⁷³⁰ See above, note 725, as discussed at section 3.4.2 below.

clear both in Principle 9 of the Declaration of Principles on Equality⁷³¹ and in the international treaties to which Ukraine is party,⁷³² subject to certain limited exceptions, discussed below.

The scope of Article 24 is also narrower than is demanded by international best practice and Ukraine's obligations under the international treaties to which it is party. The right to equality as protected under Article 24 encompasses two areas: (i) equal constitutional rights and freedoms and (ii) equality before the law. The right to equality, as defined in Principle 1 of the Declaration of Principles on Equality, however, is much broader, including (i) the right to recognition of the equal worth and equal dignity of each human being; (ii) the right to equality before the law; (iii) the right to equal protection and benefit of the law; (iv) the right to be treated with the same respect and consideration as all others; (v) the right to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. The right to equality as protected by Article 24 recognises only the second of these, the right to equality before the law. Although it does also provide for "equal constitutional rights and freedoms", it thereby takes a subsidiary approach, requiring a pre-existing right or freedom before the right to equality "kicks in". This is in contrast to the approach taken by Principle 1 of the Declaration which does not require the right to equality to be based on or related to the enjoyment of any other human right. Article 21 stating that ("[a]ll people shall be free and equal in their dignity and rights") arguably meets the first of the five elements in Principle 1 of the Declaration, although it is seldom utilised by the courts who invariably refer to Article 24 in cases involving discrimination.

Article 26 of the ICCPR provides that "all persons are equal before the law" and that all persons are "entitled without any discrimination to the equal

731 Principle 9 reads "[t]he right to equality is *inherent to all human beings* and may be asserted by *any person* or a group of persons who have a common interest in asserting this right." (emphasis added) (The Equal Rights Trust, *Declaration of Principles on Equality*, London, 2008, p. 8.)

732 See, for example, Article 26 of the ICCPR which provides that "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to *all persons* equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (emphasis added)

protection of the law". The first paragraph of Article 24 recognises only the first of these and does not provide for "equal protection of the law".

Perhaps the most significant gap in the second paragraph of Article 24 is that it only prohibits "privileges or restrictions", thus falling far short in its content in defining all acts which would constitute discrimination as understood under both the Declaration of Principles on Equality and under the international treaties to which Ukraine is party. Under Principle 5 of the Declaration of Principles of Equality, states are required to prohibit three forms of discrimination: direct discrimination, indirect discrimination and harassment. The definition of "direct discrimination" in Principle 5, namely "when (...) a person or group of persons is treated less favourably than another person or another group of persons, has been, or would be treated in a comparable situation" or where "a person or groups of persons is subjected to a detriment" is far broader than a simple prohibition of "privileges or restrictions". It is also difficult to see how "privileges or restrictions" could be interpreted to prohibit all forms of indirect discrimination, defined in Principle 5 as "when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary". While it is possible that "restrictions" could materialise indirectly against persons due to their possession of a particular characteristic, the term "restrictions" is far narrower than "disadvantage", thus precluding prohibition of all forms of indirect discrimination. Further, there has been no interpretation of the term "privileges or restrictions" by the Ukrainian judiciary as including indirect as well as direct discrimination. Finally, it is difficult, if not impossible, to interpret "privileges and restrictions" as including harassment, defined in Principle 5 as when "unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment".

The list of protected characteristics in the second paragraph of Article 24 explicitly lists race, skin colour, political, religious, and other beliefs, gender, ethnic and social origin, property status, place of residence and language. This list largely, but not entirely, corresponds to the list of grounds upon

which discrimination is prohibited under Articles 2(1) and 26 of the ICCPR and Article 2(2) of the ICESCR. Some are identical: the second paragraph of Article 24 includes “race”, “colour”, “sex”, “political or other opinion” and “property”. Some are similar, but not identical: the second paragraph of Article 24 includes “linguistic characteristics” instead of “language”; “religious beliefs” instead of “religion”; and “ethnic or social origin” rather than “national or social origin”. One characteristic is absent entirely – “birth” – and there is one characteristic included not found in the ICCPR or the ICESCR – “place of residence”.⁷³³

Further, the second paragraph of Article 24 omits several grounds which either or both of the HRC and the Committee on Economic, Social and Cultural Rights (CESCR) have, in interpreting the ICCPR and the ICESCR respectively, recognised as falling within “other status” in Articles 2(1) and 2(2) of the respective Covenants, namely disability, age, nationality, marital and family status, sexual orientation, gender identity, health status and economic and social situation.⁷³⁴ In addition to these characteristics, the Declaration of Principles on Equality also requires discrimination be prohibited on the basis of descent, pregnancy, maternity, carer status, association with a national minority, and genetic or other predisposition toward illness.⁷³⁵

The second paragraph of Article 24 does, however, provide for an open list of characteristics upon which discrimination is prohibited, through the term “or other characteristics”, allowing for further characteristics to be recognised (including those not explicitly mentioned above), thus mirroring internatio-

733 The United Nations Committee on Economic, Social and Cultural Rights has, however, stated that “other status” in Article 2(2) includes, *inter alia*, place of residence: United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 34.

734 *Ibid.*, Paras 8, 29, 30, 31, 32, 33 and 35; United Nations Human Rights Committee, *Edward Young v Australia*, Communication No. 941/2000, UN Doc. CCPR/C/78/D/941/2000, 2003 (sexual orientation); *Ibrahima Gueye et al. v France*, Communication No. 196/1985, UN Doc. CCPR/C/35/D/196/1985, 1989 (nationality).

735 “Descent” is a protected characteristic under Article 1 of the ICERD; “association with a national minority” is a protected characteristic under Article 14 of the ECHR and Protocol No. 12 thereto.

nal best practice⁷³⁶ and the international treaties to which Ukraine is party.⁷³⁷ For a characteristic not explicitly mentioned in Article 24, there are two ways to determine whether it is included: either by applying to the Constitutional Court for an official interpretation of the Constitution, or by initiating legal proceedings in an ordinary court for infringement of Article 24. It is also possible for Article 22 to be cited in such circumstances, providing as it does that the list of rights and freedoms referred to in the Constitution is not exhaustive, thus allowing for the rights contained therein to be expanded upon. However, there is no provision which contains any guidance on how further rights are to be determined. In addition, the right to appeal to the Constitutional Court for individuals is very limited and only permitted, in practice, where there is inconsistent application of the provisions by the courts. As such, it is difficult for individuals to obtain an official interpretation of the constitutional provisions on grounds of discrimination not explicitly mentioned.

It is unclear from the second paragraph of Article 24 whether the prohibition on “privileges or restrictions” based on the protected characteristics includes privileges or restrictions which are based upon an association with a person with a protected characteristic (discrimination by association) or where they are imposed due to a perception that a person has a particular protected characteristic (discrimination by perception). There has been no jurisprudence by the Constitutional Court on either of these

736 See Principle 5 of the Declaration of Principles on Equality which provides that, in addition to being prohibited on the explicitly listed characteristics, “[d]iscrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.” (See above, note 731, p. 6.)

737 See, for example, Article 26 of the ICCPR which provides that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination *on any ground* such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth *or other status*.” (emphasis added). See also Article 2(1) of the ICCPR and Article 2(2) of the ICESCR which require the rights in the Covenants to be guaranteed “without distinction of any kind” (in the case of the ICCPR) and “without discrimination of any kind” (in the case of the ICESCR) and, in both cases, in addition to the explicitly listed characteristics, on any “other status”. See also Article 14 of the ECHR which requires enjoyment of the rights in the Convention to be secured “without discrimination on any ground” and, in addition to the explicitly listed characteristics, on any “other status”. Article 1 of Protocol No. 12 to the ECHR uses identical language save that it refers to enjoyment of “any right set forth by law”.

issues. Both the Declaration of Principles on Equality⁷³⁸ and the international treaties to which Ukraine is party require that both of these forms of discrimination be prohibited.⁷³⁹

It is also unclear from the second paragraph of Article 24 whether the prohibition on “privileges or restrictions” based on the protected characteristics includes privileges or restrictions based upon a combination of characteristics (multiple discrimination). There has been no jurisprudence by the Constitutional Court on this issue. Both the Declaration of Principles on Equality⁷⁴⁰ and the international treaties to which Ukraine is party require that multiple discrimination be prohibited. The Committee on Economic, Social and Cultural Rights, for example, has noted that some individuals or groups of individuals, such as women with disabilities, face multiple discrimination on two or more protected grounds, and has stressed that “such cumulative discrimination merits particular consideration and remedying”⁷⁴¹.

The third paragraph of Article 24 is the Constitution’s only provision specifying measures to be taken by the state which could be termed “positive action” measures. It provides a long list of measures which the state is required to take in order to ensure “equality of the rights of women and men”:

- Providing women with opportunities equal to those of men in public, political and cultural activities, in obtaining education and in professional training, in work and its remuneration;

738 See Principle 5 of the Declaration of Principles on Equality which provides that “Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.” (See above, note 731, pp. 6–7).

739 The United Nations Committee on Economic, Social and Cultural Rights, for example, has said in its General Comment No. 20 that: “Membership [of a protected group] also includes association with a group characterized by one of the prohibited grounds (e.g. the parent of a child with a disability) or perception by others that an individual is part of such a group (e.g. a person has a similar skin colour or is a supporter of the rights of a particular group or a past member of a group)”. (See above, note 733, Para 16.)

740 See Principle 12 of the Declaration of Principles on Equality which provides that: “Laws and policies must provide effective protection against multiple discrimination, that is, discrimination on more than one ground.” (See above, note 731, p. 10.)

741 See above, note 733, Paras 17 and 27.

- Taking special measures for the protection of women’s occupational safety and health;
- Establishing pension benefits;
- Creating conditions that make it possible for women to combine work and motherhood;
- Providing legal protection, material and moral support of motherhood and childhood, including the provision of paid leave and other privileges to pregnant women and mothers.

Ukraine is required under its international treaty obligations to implement positive action measures; it is also international best practice, with Principle 3 of the Declaration of Principles on Equality making clear that “[t]o be effective, the right to equality requires positive action” and that:

Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.

Principle 3 mirrors the obligations under the international treaties to which Ukraine is party. The HRC has stated, for example, that:

[T]he principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.⁷⁴²

Similarly, the CESCR has stated that:

In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent rea-

742 United Nations Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.1 at 26, 1989, Para 10.

*sonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and reasonable accommodation of persons with sensory impairments in accessing health-care facilities.*⁷⁴³

It is the Committee on the Elimination of Discrimination against Women (CEDAW Committee), however, which has given the most detailed guidance on the use of temporary special measures to ensure equality between women and men. The CEDAW Committee has stated that the purpose of these temporary special measures is:

*[T]o accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation.*⁷⁴⁴

The CEDAW Committee has also made clear that temporary special measures are not an “exception to the norm of non-discrimination” but “part of a necessary strategy by States parties directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms”.⁷⁴⁵

While the third paragraph of Article 24 does not provide for the measures to be taken thereunder to be considered as exceptions to the general right to non-discrimination in the second paragraph of Article 24, all five of the

743 See above, note 733, Para 9.

744 United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 25: on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, UN Doc. HRI/GEN/1/Rev.7 at 282, 2004, Para 15.

745 *Ibid.*, Para 18.

measures are, however, problematic. The first, providing women with “opportunities equal to those of men” in particular fields is laudable but is not a requirement to take positive action measures; rather, it is a statement for the need for equal opportunities to be available to women and men.

To the extent that the state takes special measures in respect of women’s health, this, too, cannot really be considered a positive action measure; it is simply recognition of the particular health needs of men and women and so ensuring that women’s health needs are met, as, indeed, should be men’s particular health needs.

Special measures taken in respect of women’s occupational safety are potentially problematic. While during pregnancy and the postnatal period women will have particular needs that may require adjustments in their work conditions, women do not, *per se*, have any particular occupational safety requirements that men do not have, or vice versa. The Article betrays an approach which is likely directly discriminatory on grounds of sex. This is evident elsewhere in the law, e.g. the Code of Labour Laws which restricts women who are pregnant or with young children from undertaking certain forms of work, even if they are fit and willing to do so.

The establishment of pension benefits is also not a positive action measure. Different pension benefits for men and women constitute *ipso facto* discrimination, and ought to be prohibited rather than considered a positive action measure. Indeed, Article 11(1)(a) of the CEDAW provides that:

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (...)
(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave (...)

Thus, the CEDAW requires equality between men and women in entitlement to social security, not additional benefits to be provided to women.

The fourth of these, “creating conditions that make it possible for women to combine work and motherhood” is problematic in that difficulties in combining work and parenthood are experienced by both men and women and not women alone (save for during pregnancy and the postnatal period). As such, while well-meaning, this provision reinforces the stereotypical notion that it is women who should be primarily responsible for the bringing up of children and be required to combine work with parenthood, rather than the same being equally true for men. Of course, Ukraine is not alone in this respect. Many states continue to discriminate against men with respect to parenting rights arguably to the detriment of both men and women, as well as children.

Similarly, the fifth and final of these, “providing legal protection, material and moral support of motherhood and childhood, including the provision of paid leave and other privileges to pregnant women and mothers”, while again a common approach to this issue, reinforces the stereotypical notion that it is primarily women who should be responsible for the bringing up of children and be required to combine work with parenthood, rather than the same being equally true for men. Arrangements such as parental leave and pay, assistance in childcare provision, etc., should all be equally available for fathers as for mothers.

The CEDAW does not, of course, require that temporary special measures be set out in the Constitutions of states parties. As such, the weaknesses in the third paragraph of Article 24 do not necessarily constitute a failure of Ukraine to meet its obligations under the CEDAW, particularly as provisions relating to temporary special measures are set out in legislation. Nonetheless, by including a provision on what can be considered as positive action measures, it would be preferable for the third paragraph of Article 24 to be more consistent with the requirements of the CEDAW, particularly as the state is then obligated to act in conformity with the provision when implementing positive action measures through legislation or policy. This is particularly pertinent given that, during the gender analysis of legislation that is required by the Law of Ukraine “On Equal Rights and Opportunities for Women and Men”, provisions of legislation which would otherwise be considered as discriminatory on the basis of sex have been considered unproblematic, in part because they are arguably measures which fall within the third paragraph of Article 24.⁷⁴⁶

746 See section 2.1 of this report.

Further, while the third paragraph of Article 24 requires measures to be taken to ensure gender equality, no measures are required in relation to equality between persons on the basis of other characteristics. Both the ICCPR and the ICESCR, as interpreted by the respective treaty bodies as outlined above, require positive action measures to be taken to ensure equality and to combat discrimination on *all* grounds protected by the Covenants, where necessary. In addition, the Committee on the Elimination of Racial Discrimination (CERD) has stated that states parties are required to take special measures to ensure equality between different ethnic and racial groups.⁷⁴⁷ As such, Article 24's failure to require the state to take measures in respect of equality generally can be considered a weakness.

Article 25 of the Constitution protects Ukrainian citizens from being made stateless, by prohibiting absolutely the deprivation of citizenship, thus meeting, and, indeed, going beyond, its obligations under Article 8 of the 1961 Convention on the Reduction of Statelessness.

As noted above, Article 26 of the Constitution provides that foreigners and stateless persons in Ukraine enjoy all the rights and freedoms (and also bear all duties) as citizens of Ukraine, save for exceptions expressly provided for by the Constitution, national legislation or international treaties of Ukraine. The international human rights treaties to which Ukraine is party do not require *all* rights and freedoms guaranteed to citizens to be guaranteed to non-citizens; however, exceptions to the general principle of equality between citizens and non-citizens are extremely limited.

The ICCPR, for example, provides at Article 2(1) that states parties must ensure the rights contained therein to "all individuals within its territory and subject to its jurisdiction" and guarantees the rights to equality and non-discrimination in Article 26 to "all persons". As the HRC has made clear, "the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens".⁷⁴⁸ One category of exceptions are certain political rights contained within Article 25 which are guaranteed only

⁷⁴⁷ United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination*, UN Doc. CERD/C/GC/32, 2009.

⁷⁴⁸ United Nations Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant*, UN Doc. HRI/GEN/Rev.1 at 18, 1989, Para 2.

to citizens: the rights (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (c) to have access, on general terms of equality, to public service in one's country. Further, the right to liberty of movement and to choose one's residence in Article 12(1) is guaranteed only for persons "lawfully within the territory of a State".

The situation with regards to the ICESCR is more complicated. Article 2(2) provides that the rights contained therein must be guaranteed "without discrimination of any kind" and the CESCR has interpreted this to include discrimination on the basis of nationality.⁷⁴⁹ However, this is subject to Article 2(3) which creates an exception for developing countries:

Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Thus, developing countries may limit economic rights (and economic rights only) in respect of non-citizens. As noted above at section 2.6, however, determining whether a state is a "developing country" is not straightforward as there is no single universal definition of what constitutes a "developing country". With respect to Ukraine, while the Development Assistance Committee of the Organization for Economic Cooperation and Development defines Ukraine as a "lower middle income country" which is therefore eligible for development assistance,⁷⁵⁰ the United Nations Development Programme considers Ukraine to have a "High Development Index".⁷⁵¹

While Article 1(2) of the ICERD provides that "[t]his Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State

749 See above, note 733, Para 30.

750 Organization for Economic Cooperation and Development, *Development Assistance Committee, List of ODA Recipients Effective for reporting on 2014, 2015 and 2016 flows*, 2014.

751 United Nations Development Programme, *Country Profiles: Ukraine*, 2014, available at: <http://hdr.undp.org/en/countries/profiles/UKR>.

Party to this Convention between citizens and non-citizens”, the CERD has stated that this provision:

*[M]ust be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (...)*⁷⁵²

The CERD has also highlighted the fact that Article 5 of the ICERD incorporates the obligation of states parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights.⁷⁵³ Since these rights (with some exceptions) are human rights to be enjoyed by all persons, states parties are required to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognised under international law. Thus, Article 1(2) of the ICERD cannot be used to detract from states’ obligations to guarantee human rights under other instruments to all persons, regardless of citizenship.

At the regional level, the ECHR requires Ukraine to prohibit discrimination based on language in respect to all Convention rights, by virtue of Article 14, and, by virtue of Protocol No. 12 to the ECHR, to prohibit discrimination in the enjoyment of other right set forth by law.

Despite the narrow exceptions to the general principle that citizens and non-citizens enjoy equal rights, a notable number of rights in the Constitution are guaranteed only to citizens, highlighted in the table below.

752 United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination against Non-citizens*, UN Doc. CERD/C/64/Misc.11/rev.3, 2004, Para 2.

753 *Ibid.*, Para 3.

Article	Right	Right-Holders
23	The right to free development of his or her personality if the rights and freedoms of other persons are not violated thereby (...)	Everyone
24, para 1	Equal constitutional rights and freedoms and equality before the law.	Citizens
24, para 2	No privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.	Unclear
25, para 1	The right not to be deprived of citizenship and of the right to change citizenship.	Citizens
25, para 2	The right not to be expelled from Ukraine or surrendered to another state.	Citizens
27	The right to life (para 1) and the right to protect his or her life and health, the lives and health of other persons against unlawful encroachments (para 2).	Everyone
28	The right to respect for one's dignity (para 1), freedom from torture, cruel, inhuman, or degrading treatment, or punishment that violates his or her dignity (para 2) and the right not to be subjected to medical, scientific or other experiments without his or her free consent (para 3).	Everyone
29	The right to freedom and personal inviolability (para 1) and various minimum standards during arrest and detention (paras 2 to 6).	Everyone
30	The right to inviolability of one's dwelling place (para 1) and a prohibition of entry into a dwelling place or other possessions of a person, and the examination or search thereof other than pursuant to a substantiated court decision (para 2).	Everyone
31	The right to privacy of one's correspondence, telephone conversations, telegraph, and other communications.	Everyone
32, para 1	The right to freedom from interference in one's personal and family life, and access to personal information.	Everyone
32, para 2	Prohibition of the collection, storage, use and dissemination of confidential information about a person without his or her consent (with certain exceptions).	Everyone
32, para 3	The right to examine information about himself or herself, that is not a state secret or other secret protected by law, at the bodies of state power, bodies of local self-government, institutions and organisations.	Citizens

Article	Right	Right-Holders
32, para 4	Judicial protection of the right to rectify incorrect information about himself or herself and members of his or her family, and of the right to demand that any type of information be expunged, and also the right to compensation for material and moral damages inflicted by the collection, storage, use and dissemination of such incorrect information.	Everyone
33, para 1	The right to freedom of movement within Ukraine.	Everyone law-fully in Ukraine
33, para 2	The right to return to Ukraine at any time.	Citizens
34	The right to right to freedom of thought and speech, and to free expression of one's views and beliefs (paragraph 1) and to freely collect, store, use and disseminate information by oral, written or other means of his or her choice (paragraph 2).	Everyone
35	The right to freedom of religion.	Everyone
36, para 1	The right to freedom of association into political parties and public organisations.	Citizens
36, para 2	The right to be a member of a political party.	Citizens
36, para 3	The right to take part in trade unions.	Citizens
38, para 1	The right to right to participate in the administration of state affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to the bodies of State power and local self-government.	Citizens
38, para 2	The right to equal access to the civil service and to the service in local self-government bodies.	Citizens
39	The right to assemble peacefully without arms and to hold rallies, meetings, processions, and demonstrations.	Citizens
40	The right to address individual or collective petitions, or to personally recourse to public authorities, local self-government bodies, officials, and officers of these bodies obliged to consider the petitions.	Everyone
41, para 1	The right to own, use, or dispose of his property and the results of his intellectual or creative activities.	Everyone
41, para 3	The right to use the objects of state and communal property in accordance with the law.	Citizens
41, para 4	The right not to be deprived of personal property.	Everyone
42	The right to entrepreneurial activity.	Everyone

Article	Right	Right-Holders
43, para 1	The right to work.	Everyone
43, para 3	The prohibition of forced labour.	Everyone
43, para 4	The right to proper, safe and healthy work conditions, and to remuneration no less than the minimum wage as determined by law.	Everyone
43, para 6	The right to protection from unlawful dismissal.	Citizens
44	The right to strike.	Everyone who is employed
45	The right to rest.	Everyone who is employed
46	The right to social protection, including the right to provision in cases of complete, partial or temporary disability, the loss of the principal wage-earner, unemployment due to circumstances beyond their control and also in old age.	Citizens
47, para 1	The right to housing.	Everyone
47, para 2	Citizens in need of social protection are provided with housing by the State and bodies of local self-government, free of charge or at a price affordable for them, in accordance with the law.	Citizens
47, para 3	The prohibition of forced deprivation of housing without a court order.	Everyone
48	The right to a standard of living sufficient for themselves and their families including adequate nutrition, clothing, and housing.	Everyone
49, para 1	The right to health protection, medical care and medical insurance.	Everyone
49, para 3	An obligation on the state to create conditions for effective medical service.	Citizens
50	The right to an environment that is safe for life and health (para 1) and free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information (para 2).	Everyone
51	Equal rights and duties in the marriage and family.	Everyone
52	Equal rights of children regardless of their origin and whether they are born in or out of wedlock.	Everyone

Article	Right	Right-Holders
53, para 1	The right to education.	Everyone
53, para 4	The right to obtain free higher education at the state and communal educational establishments on a competitive basis.	Citizens
53, para 5	The right to receive instruction in their native language, or to study their native language in state and communal educational establishments and through national cultural societies.	Citizens who belong to national minorities
54, para 1	The right to freedom of literary, artistic, scientific, and technical creative activities, protection of intellectual property, their copyright, moral and material interests arising in connection with various types of intellectual activity.	Citizens
54, para 2	The right to the results of his or her intellectual, creative activity.	Citizens
55, para 2	The right to challenge in court the decisions, actions, or inactivity of State power, local self-government bodies, officials and officers.	Everyone
55, para 3	The right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine.	Everyone
55, para 4	After exhausting all domestic legal remedies, the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.	Everyone
55, para 5	The right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.	Everyone
56	The right to compensation, at the expense of the State authorities or local self-government bodies, for material and moral damages caused by unlawful decisions, actions, or inactivity of State power, local self-government bodies, officials, or officers while exercising their powers.	Everyone
57	The right to know his rights and duties.	Everyone
58	The prohibition of non-retrospective legislation.	Everyone
59	The right to legal assistance.	Everyone
61	The prohibition of double jeopardy.	Everyone

Article	Right	Right-Holders
62	The presumption of innocence.	Everyone
63	The prohibition of testifying against oneself.	Everyone

Thus, a total of twenty-one provisions guarantee certain rights only to citizens and not to non-citizens (or, in the case of the right to move freely, to persons lawfully within the territory of Ukraine). Some of these demand closer consideration. The limitation of the right to information about oneself that is not a state secret or other secret protected by law, held by bodies of state power, bodies of local self-government, institutions and organisations (paragraph 3 of Article 32) to citizens is problematic. Ukraine has ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data which contains protections securing the right to privacy with regard to automatic processing of personal data relating which must be guaranteed regardless of nationality (Article 1). Further, while Ukraine's international treaty obligations do not contain an explicit right to personal information as such, some elements of such a right can be derived from the prohibition of arbitrary or unlawful interference with one's private life (Article 17(1) of the ICCPR) and the freedom to seek, receive and impart information and ideas of all kinds (Article 19(2) of the ICCPR). Both of these rights are guaranteed to everyone and must be guaranteed "without distinction of any kind" by virtue of Article 2(1) of the ICCPR. As such, to the extent that the right in paragraph 3 of Article 32 reflects the rights in the ICCPR, the limitation of the right to citizens is in violation of the ICCPR. Similarly, such a right can be derived from the right to respect one's private life (Article 8(1) of the ECHR) and the freedom to receive and impart information and ideas without interference by public authority (Article 10(1) of the ECHR), both of which must be secured without discrimination on any ground by virtue of Article 14 of the ECHR. Similarly, to the extent that the right in paragraph 3 of Article 32 reflects the rights in the ECHR, the limitation of the right to citizens is in violation of the ECHR.

The right to freedom of association in political parties and public organisations is guaranteed only to citizens (paragraph 1 of Article 36), in contravention of Article 22(1) of the ICCPR and Article 11(1) of the ECHR which both guarantee the right to freedom of association with others to "everyone". Similarly problematic is limiting the right to be a member of a political par-

ty to citizens (paragraph 2 of Article 36). While the international treaties to which Ukraine is party do not provide for a specific right to membership of a political party, and, indeed, limit certain political rights only to citizens, it is difficult to classify a political party as anything other than an association within the meaning of Article 22(1) of the ICCPR and Article 11(1) of the ECHR. Indeed, in respect of the latter, the European Court of Human Rights stated in *United Communist Party of Turkey v Turkey* that: “In view of the importance of democracy in the Convention system (...) there can be no doubt that political parties come within the scope of Article 11.”⁷⁵⁴ Limiting membership of such parties only to citizens is in all likelihood in contravention of Article 22(1) (even if certain political rights which relate to political parties (such as voting and standing for election) *can* be limited to citizens) and certainly a violation of Article 11(1) of the ECHR.

The limitation of the right to take part in trade unions to citizens (paragraph 3 of Article 36) is a clear contravention of Article 22(1) of the ICCPR and Article 11(1) of the ECHR which both state that “everyone” has the right to freedom of association with others “including the right to form and join trade unions for the protection of his interests”.

Further limits concern certain political rights, namely the right to participate in the administration of state affairs, in national and local referendums, and to freely elect and to be elected to bodies of state power and bodies of local self-government, providing these only to citizens (paragraph 1 of Article 38). These limitations are in accordance with Article 25 of the ICCPR which limits political rights to citizens (as described above). Similar are the limitations of the right of access “to the civil service and to service in bodies of local self-government” to citizens (paragraph 2 of Article 38). While Article 22(1) limits to citizens the right and opportunity “to have access, on general terms of equality, to public service in his country”, the term “public service” is not defined. However, the interpretation of “public service” given in the HRC’s General Comment No. 25 suggests that the term refers to senior public positions rather than the entirety of the civil service.⁷⁵⁵ Further, it could be argued that

754 *United Communist Party of Turkey v Turkey* (Application No. 133/1996/752/951), 30 January 1998, Para 25.

755 United Nations Human Rights Committee, *General Comment No. 25*, UN Doc. CCPR/C/21/Rev.1/Ad.7, 1996, Paras 23–24.

limiting positions in the entirety of the civil service to citizens would likely contravene the prohibition of non-discrimination in the right to work, as protected by Articles 2(2) and 6 of the ICESCR.

The next limitation concerns the right “to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations”, given only to citizens (paragraph 1 of Article 39). This is in contradiction to Article 21 of the ICCPR and Article 11(1) of the ECHR which make no limitations on the basis of citizenship to the general right to peaceful assembly.

A number of rights relating to access to economic and social rights are limited only to citizens in contravention of ICESCR. For example, although Article 7 of the ICESCR does not provide for an explicit right to protection from unlawful dismissal, it does provide for the right “of everyone to the enjoyment of just and favourable conditions of work”. In addition, this right must be guaranteed on a non-discriminatory basis by virtue of Article 2(2). As such, the limitation on protection from unlawful dismissal in Article 43, paragraph 6, is in contravention of Ukraine’s obligations under the ICESCR. Likewise Article 46, paragraph 1’s limitation of the right to social protection to citizens is in clear contravention of Article 9 of the ICESCR which guarantees the right “to social security, including social insurance” to “everyone”. Further, these limitations likely violate Protocol No. 12 to the ECHR which prohibits discrimination in the enjoyment of “any right set forth by law”.

While the right to housing is guaranteed to everyone, the provision of housing for persons in need of social protection by the state is guaranteed only to citizens (paragraph 2 of Article 47). While Article 11(1) of the ICESCR only guarantees a right to housing, and not to state provision of housing, the general right to housing is guaranteed for “everyone”. Thus, any discrimination in the enjoyment of that right, including in determination of who is eligible for state provision of housing, is in violation of Article 2(2) of the ICESCR which requires that the rights in the Covenant be exercised without discrimination of any kind. This limitation also likely violates Protocol No. 12 to the ECHR.

Similarly, while the right to health protection, medical care and medical insurance is guaranteed to everyone, the state is only obliged to create conditions for effective medical service to citizens (paragraph 3 of Article 49). This is in clear violation of Article 12 of the ICESCR which guarantees, at Ar-

ticle 12(1) “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” which requires, via Article 12(2)(d), the state to take steps necessary for the “creation of conditions which would assure to all medical service and medical attention in the event of sickness”. Again, this limitation is likely to violate Protocol No. 12 to the ECHR.

While the right to education is guaranteed to everyone, the right to obtain free higher education in state and communal educational establishments on a competitive basis is guaranteed only to citizens (paragraph 4 of Article 53). This is clear violation of Article 13(2)(c) of the ICESCR which, in addition to guaranteeing the right to education to “everyone” in Article 13(1), specifically requires states to ensure that:

Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

Article 64, paragraph 1 of the Constitution provides that restrictions on the rights contained therein are only permitted when they are stipulated by the Constitution itself, however neither the right to equality in paragraph 1 of Article 24 nor the right to non-discrimination in paragraph 24 of Article 24 provide for any permissible restrictions. This is problematic. The rights to equality and non-discrimination are not absolute and exceptions can be justified in certain circumstances. The HRC, for example, has stated that:

[N]ot every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.⁷⁵⁶

The CESCR has also adopted this “reasonable and objective test”, but has elaborated on its practical meaning:

Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for

⁷⁵⁶ See above, note 742, Para 13.

*differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.*⁷⁵⁷

The European Court of Human Rights has stated that:

*[A] difference in treatment is discriminatory if ‘it has no objective and reasonable justification’, that is, if it does not pursue a ‘legitimate aim’ or if there is not a ‘reasonable relationship of proportionality’ between the means employed and the aim sought to be realised.*⁷⁵⁸

There are many instances in which unequal treatment is not only permissible but required under the international treaties to which Ukraine is party. The requirements of the CRC, for example, require that children (defined as persons under the age of 18) be protected from certain harmful practices, including child marriage, thus requiring states to impose a minimum age for marriage.⁷⁵⁹ By providing no guidance on where unequal treatment is permissible, the combination of Articles 24 and paragraph 1 of Article 64 risks confusion and a lack of clarity for the courts in interpreting the rights to equality and non-discrimination.

Certain rights can also be limited during a period of “martial law or a state of emergency” under Article 64, paragraph 2; however, again, these rights do not include the rights to equality and non-discrimination as protected by Article

757 See above, note 733, Para 13.

758 *DH v Czech Republic* (Application No. 57325/00), 13 November 2007, Para 196.

759 United Nations Committee on the Elimination of Discrimination against Women and the United Nations Committee on the Rights of the Child, *Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices*, UN Doc. CEDAW/C/GC/31-CRC/C/GC/18, 2014, Para 19.

24. This is particularly welcome and, indeed, goes beyond that which is required under the treaties to which Ukraine is party. Article 4(1) of the ICCPR allows derogations in times of a “public emergency which threatens the life of the nation”, including derogations from the rights to equality and non-discrimination in Articles 2(1) and 26, unless they involve “discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

In addition to the general framework on the rights to equality and non-discrimination set out in Articles 24 and 64, there are other provisions in the Constitution which have an impact upon the rights to equality and non-discrimination.

For example, Article 10 of the Constitution regulates language in Ukraine. Paragraph 1 provides that the state language is “the Ukrainian language” and paragraph 2 requires the state to ensure “the comprehensive development and functioning of the Ukrainian language in all spheres of life throughout the entire territory of Ukraine”. However, Article 10 also recognises the importance of other languages, paragraph 3 guaranteeing “the free development, use and protection of Russian and other languages of national minorities of Ukraine. Paragraph 5 provides that “the use of languages in Ukraine is guaranteed by the Constitution of Ukraine and is determined by law”. The relevant “law” is the Law of Ukraine “On the Principles of State Language Policy”,⁷⁶⁰ discussed in section 2.7 of this report.

Article 11 provides that:

The State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.

While welcome in ensuring the development of the “ethnic, cultural, linguistic and religious identity” of all indigenous peoples and national minorities, Article 11 is a “General Principle” rather than an enforceable right, limiting its usefulness.

⁷⁶⁰ Закон України “Про засади державної мовної політики” (Відомості Верховної Ради, 2013, № 23, с. 218), as amended between 2012 and 2015.

Similarly, Article 12 states that, “Ukraine provides for the satisfaction of national and cultural, and linguistic needs of Ukrainians residing beyond the borders of the State”. Again, this is a “General Principle” rather than an enforceable right, limiting its utility.

Article 52 provides that “[c]hildren are equal in their rights regardless of their origin and whether they are born in or out of wedlock”, thus prohibiting distinctions being made between children based on whether their parents were married or not.

3.2.2 Specific Equality and Anti-discrimination Legislation

As a party to the ICCPR and the ICESCR, Ukraine has an obligation to provide protection from discrimination by state and non-state actors through the adoption of equality legislation. The HRC has stated that under Article 26 of the ICCPR, all states parties have an obligation to ensure that the “law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds”.⁷⁶¹ It has also noted that Article 2 “requires that States Parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations”.⁷⁶² The CESCR has stated that “[s]tates parties are therefore encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights”.⁷⁶³ Under the ECHR, Ukraine is required to prohibit discrimination on the same list of grounds.

Thus, Ukraine has an obligation to ensure that its legislation prohibits discrimination on all grounds which are explicitly listed in Articles 2(1) and 26 of the ICCPR, Article 2(2) of the ICESCR, and Article 14 of the ECHR, together with those characteristics recognised by the relevant UN Committees and by the European Court of Human Rights as covered by “other status”. Therefore, the list of grounds on which Ukraine should provide protection from discrimination includes: race, colour, sex, language, religion, political or other opi-

761 See above, note 742, Para 12.

762 United Nations Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed on states parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add. 13, 2004, Para 7.

763 See above, note 733, Para 37.

nion, national or social origin, property, birth, family status, nationality, association with a national minority, economic status, sexual orientation, gender identity, age, disability and health status. In order to ensure consistency with international treaties, such legislation should also provide protection from discrimination which arises on the basis of “other status”. Moreover, in order to ensure consistency with the Covenants as interpreted by the relevant Committees, such legislation should prohibit discrimination by association and perception,⁷⁶⁴ and multiple discrimination.⁷⁶⁵

Anti-discrimination law should, as explained by the CESCR, prohibit both direct and indirect discrimination,⁷⁶⁶ incitement to discriminate and harassment.⁷⁶⁷ The CESCR has also stressed that legislation and other instruments should “provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights”.⁷⁶⁸ The HRC, when discussing the general obligations of states arising under Article 2 of the ICCPR, has stated that they “must ensure that individuals also have accessible and effective remedies to vindicate those rights”, and that “the Covenant generally entails appropriate compensation” for breaches of rights.⁷⁶⁹ The ECHR provides in Article 13 the right to effective remedy to victims of violations of all Convention rights, including the right to non-discrimination:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

In addition to the general obligations arising under the ICCPR, the ICESCR and the ECHR, as a party to the ICERD, the CEDAW, the CRPD and the FCNM, Ukraine has specific obligations to prohibit discrimination against women,

764 *Ibid.*, Para 16.

765 *Ibid.*, Para 17.

766 *Ibid.*, Para 10.

767 *Ibid.*, Para 7.

768 *Ibid.*, Para 40.

769 See above, note 762, Paras 15 and 16.

against racial or ethnic groups and against persons with disabilities by public and private actors in all areas of activity covered by these treaties.⁷⁷⁰

Until 2012, Ukraine had no comprehensive anti-discrimination legislation. That year, however, the Verkhovna Rada passed the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” which prohibits discrimination on a large number of grounds in various areas of life. In addition, there is also a specific law on gender equality, the Law of Ukraine “On Equal Rights and Opportunities for Women and Men”. There is also a law which is designed to protect the rights of persons with disabilities which, while not strictly a piece of anti-discrimination legislation, nonetheless does prohibit discrimination against persons with disabilities. Finally, there are also standalone provisions which either prohibit discrimination or guarantee equal rights in a number of other pieces of legislation regulating specific fields.

3.2.2.1 *Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”*

The Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”⁷⁷¹ is a short framework law which came into force on 7 September 2012 for the purpose of complying with one of the criteria set down in the EU-Ukraine Visa Liberalisation Action Plan. The law was rushed through the Verkhovna Rada, without considerations of the views of the European Union, experts from the Council of Europe and Ukrainian or international NGOs. As such, the original law contained a number of gaps, deficiencies and weaknesses which were highlighted by, *inter alia*, the HRC in 2013⁷⁷² and the CESCR in 2014.⁷⁷³ The Equal Rights Trust also provided a critical analysis

770 ICERD, Article 2(1); CEDAW, Article 2; CRPD, Article 5(2); Framework Convention on the Protection of National Minorities, Article 4(1).

771 Закон України “Про засади запобігання та протидії дискримінації в Україні” (Відомості Верховної Ради, 2013, № 32, с. 412), as amended by the Закон України “Про внесення змін до деяких законодавчих актів України щодо запобігання та протидії дискримінації” (Відомості Верховної Ради, 2014, № 27, с. 915).

772 United Nations Human Rights Committee, *Concluding Observations: Ukraine*, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, Para 8.

773 United Committee on Economic, Social and Cultural Rights, *Concluding Observations: Ukraine*, UN Doc. E/C.12/UKR/CO/6, 13 June 2014, Para 7.

and a set of recommendations.⁷⁷⁴ The Law was amended significantly in May 2014,⁷⁷⁵ addressing some, but not all of these issues.

Part I: General Provisions

The Law defines “discrimination” in a potentially confusing manner. Article 1, paragraph 2 contains a definition of discrimination *per se*:

A situation in which an individual and/or group of persons, because of their race, colour, political, religious or other beliefs, sex, age, disability, ethnic or social origin, nationality, family and property status, place of residence, language or other features, whether real or imputed, experiences a restriction in the recognition, enjoyment or exercise of a right or freedom in whatever form prescribed by this law, save where such a restriction is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

This definition bears resemblance to that used in international instruments, such as the ICERD,⁷⁷⁶ the CEDAW⁷⁷⁷ and the CRPD,⁷⁷⁸ as well as that used by

774 The Equal Rights Trust, *Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”*: Legal Analysis, October 2013.

775 Закон України “Про внесення змін до деяких законодавчих актів України щодо запобігання та протидії дискримінації” (Відомості Верховної Ради, 2014, № 27, с. 915).

776 Article 1 defines “discrimination” as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

777 Article 1 defines “discrimination” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

778 Article 2 defines “discrimination” as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

the HRC⁷⁷⁹ and the CESCR.⁷⁸⁰ Article 5 of the Law then lists five forms of prohibited discrimination (i) direct discrimination; (ii) indirect discrimination; (iii) incitement to discrimination; (iv) assistance in discrimination; and (v) harassment. Although the wording of Article 1, paragraph 2, is unclear, it appears that the reference to “whatever form prescribed by this law” is a reference to these five forms of discrimination. Article 1, paragraphs 3-7 define each of these five forms. The confusion arises in relation to how these definitions interact with Article 1, paragraph 2. Elements of the test contained in Article 1, paragraph 2 and the definitions of some of the sub-categories are repeated. As Ahlund and Sorgdrager have noted, international law and best practice dictate that discrimination should be defined as either “direct” or “indirect” and unambiguous definitions for both have been developed which are widely accepted.⁷⁸¹ There is therefore no need for a separate definition of discrimination *per se* – this risks confusion and misinterpretation.

In the following analysis of the anti-discrimination protection provided under the Law, we turn first to the definitions of the five forms of prohibited conduct before then considering who is protected under the Law and its material scope.

With respect to the definitions of the five forms of prohibited discrimination, given that the purpose of the Law is to fulfil various criteria of the EU-Ukraine Visa Liberalisation Action Plan, it is unsurprising that the definitions used in the Law are virtually identical to the definitions used in the EU’s various anti-discrimination Directives. Given the confusion in relation to how these

779 See above, note 742, Para 7 which defines “discrimination” as “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”.

780 See above, note 733, Para 7 which defines “discrimination” at paragraph 7 as “any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights”.

781 Ahlund, C. and Sorgdrager, W., *Comments on the Draft Law on the Principles of Prevention and Combating Discrimination in Ukraine*, 2012. Although the wording has changed since the draft the authors were commenting upon, this aspect of their commentary remains pertinent for the Law as adopted.

definitions relate to Article 1, paragraph 2, our analysis below takes them as stand-alone provisions in the first instance.

Paragraph 6 of Article 1 defines “direct discrimination” as:

A situation in which an individual and/or group of persons is treated less favourably than another person and/or group of persons in a similar situation, because of a specific characteristic, save where such treatment is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

This definition largely reflects international best practice and the definitions used by the UN Treaty Bodies.⁷⁸² However, it is unclear from the wording whether there is a requirement for an actual comparator person or group in a similar situation rather than a hypothetical one to meet this test. Internationally, it has been acknowledged that it can be difficult to establish a comparator in some situations and so a comparator can instead be hypothetical; or rather in order to establish direct discrimination, it is necessary and sufficient to establish whether a person is subjected to a detriment connected to a prohibited ground.⁷⁸³ When legislation is unclear, as in this case, it becomes a matter for the court.⁷⁸⁴ There is currently no case law to indicate whether Ukrainian courts would interpret the definition in line with international best practice. And, with no case law yet on this point, it is arguably preferable for an explicit provision to be included in the legislation.

The definition itself is based upon EU Law and the first half of the definition bears much similarity to that used in the EU anti-discrimination Directives

782 See for example Principle 5 of the Declaration of Principles on Equality, above, note 733, p. 7, and United Nations Committee on Economic, Social and Cultural Rights, above, note 733, Para 10.

783 This is recognised both in Principle 5 of the Declaration of Principles on Equality and by the Committee on Economic, Social and Cultural Rights: see above, note 731, p. 7, and above, note 733, Para 16 respectively.

784 For an example of a court using its interpretative function to declare that an actual comparator is not always necessary, see *Dekker v Stichting Vormingscentrum voor Jong Volwassenen (VJV-Centrum) Plus*, Case C-177/88, [1990] ECR I-3941, 8 November 1990, European Court of Justice. In the case the European Court of Justice held that discrimination against a woman because she is pregnant will always constitute discrimination on grounds of sex, even though there is no obvious comparator.

(“where one person is treated less favourably than another is, has been or would be treated in a comparable situation” on a particular ground).⁷⁸⁵ However, whereas the EU anti-discrimination Directives do not foresee direct discrimination as possible of being justified (with some, limited, explicit exceptions, including on grounds of age in employment), the definition in paragraph 6 of Article 1 permits direct discrimination where it is “objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”. This justification clause was not in the government’s original draft law, but was inserted as an amendment during its passage in the Verkhovna Rada. The possibility of putting forward justifications for direct as well as indirect discrimination therefore puts the Law out of step with EU anti-discrimination law but not, however, those international treaties to which Ukraine is party: both the HRC and the CESCR, for example, similarly to the European Court of Human Rights in interpreting the ECHR, accept that both direct and indirect discrimination can be justified, and use the same test for both.⁷⁸⁶

Article 1, paragraph 3, defines “indirect discrimination” as:

A situation where, as a result of the application of formally neutral or legal rules, evaluation criteria, rules, requirements or practices for an individual and/or group of persons put them in a less favourable position, because of a specific characteristic, than other individuals and/or groups of persons, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

785 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 2(2)(a); Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Article 2(2)(a); 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, Article 2(a); and 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), Article 2(1)(a).

786 See above, note 742, Para 13; above, note 731, Para 13; and *Petrovic v Austria* (Application No. 156/1996/775/976), 27 March 1998, Para 30.

The definition largely reflects both international best practice and the definition used by the UN Treaty Bodies.⁷⁸⁷ It also mirrors the definition used in the EU anti-discrimination Directives almost verbatim.⁷⁸⁸ Accordingly, aside from the confusion caused by its relationship with Article 1, paragraph 2, this definition is welcome.

A third form of prohibited discrimination under the Law is also commonly recognised in international and regional law and best practice: “harassment”. Article 1, paragraph 7, defines “harassment” as:

Unwanted conduct for an individual and/or group of persons, related to a certain characteristic, the purpose or effect of which is violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Consideration of harassment as a form of discrimination is in line with international best practice and the requirements of the UN Treaty Bodies.⁷⁸⁹ The definition used in the Law largely reflects international best practice⁷⁹⁰ and reflects, near verbatim, the definition used in the EU anti-discrimination Directives.⁷⁹¹

The remaining two forms of prohibited discrimination are not commonly used in international law. Article 1, paragraph 4, defines “incitement to discrimination” as “directions, instructions or calls for discrimination against an individual and/or group of persons because of their specific characteristics”.

787 See for example, Principle 5 of the Declaration of Principles on Equality above, note 731, p. 7, and United Nations Committee on Economic, Social and Cultural Rights, above, note 733, Para 10.

788 See above, note 785, Articles 2(2)(b), 2(2)(b), 2(b) and 2(2)(b) respectively. It should be noted that Article 2(2)(b) of Council Directive 2000/78/EC of 27 November 2000 contains an exception where as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 of the Directive in order to eliminate disadvantages entailed by such provision, criterion or practice.

789 See above, note 733, Para. 7.

790 Principle 5 of the Declaration of Principles on Equality defines “harassment” as “unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment”. (See above, note 731, p. 7.)

791 See above, note 785, Articles 2(3), 2(3), 2(c) and 2(2)(a) respectively.

This is presumably to reflect the fact that the EU anti-discrimination Directives deem “instructions to discrimination” a form of discrimination, albeit without a definition.⁷⁹² The inclusion of a definition in the Law is welcome. However, acts which fall under this definition would, in any case, be covered by the definition of direct discrimination above. Finally, Article 1, paragraph 5¹, defines “assistance in discrimination” as “any deliberate assistance in the commission of acts or omissions directed at causing discrimination”. This is the only form of discrimination which does not stem from EU anti-discrimination law, although similar provisions can be found in the national legislation of certain states.⁷⁹³ Again, this definition creates no problems from an international legal perspective. However, its inclusion is one of emphasis in the law rather than a distinct offence as such acts would in themselves amount to discrimination under the definitions already included.

Although it is not entirely clear from the drafting, references to “specific characteristics” in the five definitions of the prohibited forms of discrimination are likely intended to refer to the characteristics (or “grounds” of discrimination) found within Article 1, paragraph 2. A number of grounds are explicitly listed: race; colour; political, religious or other beliefs; sex; age; disability; ethnic or social origin; nationality; family and property status; place of residence; and language. These largely correspond to the grounds listed in Article 24 of the Constitution, with four further grounds included: age; disability; nationality; and family status.

Missing, however, are several other grounds recognised as requiring protection under the international treaties to which Ukraine is party and international best practice. One, “birth”, is explicitly listed in the ICCPR the ICESCR, and ECHR; a second, “descent”, is explicitly listed in the ICERD. A further four grounds have been recognised as falling within “other status” in Articles 2(1) and 2(2) of the ICCPR or the ICESCR by the HRC, the CESCR or both, and the European Court of Human Rights, namely sexual orientation,⁷⁹⁴

792 *Ibid.*, Paras 2(4), 2(4), 1(4) and 2(2)(b) respectively.

793 See, for example, section 112 of the United Kingdom’s Equality Act 2010 which provides that: “A person (A) must not knowingly help another (B) to do anything which contravenes [the Act].”

794 See United Nations Human Rights Committee, *Young v Australia*, (Communication No. 941/2000), UN Doc. CCPR/C/78/D/941/2000, 2003; above, note 733, Para 32; and *Smith and Grady v the United Kingdom* (Application Nos. 33985/96 and 33986/96), 27 September 1999.

gender identity,⁷⁹⁵ health status⁷⁹⁶ and economic and social situation.⁷⁹⁷ In addition, Principle 5 of the Declaration of Principles on Equality also requires discrimination be prohibited on the basis of pregnancy,⁷⁹⁸ maternity,⁷⁹⁹ carer status, association with a national minority⁸⁰⁰ and genetic or other predisposition toward illness.

However, Article 1, paragraph 2, uses an open list of protected grounds, through use of the phrase “or other features”, enabling courts to provide protection on grounds not explicitly listed, reflecting the international treaties to which Ukraine is party⁸⁰¹ and international best practice.⁸⁰² As noted below at section 3.4.2, amongst other relevant jurisprudence, the High Specialised Court of Ukraine for Civil and Criminal Cases has stated that Article 1, paragraph 2 (as well as other pieces of legislation which use the phrase “or other features”) includes sexual orientation; however, such a statement is not binding on other courts.

The definition of discrimination in Article 1, paragraph 2 refers to acts made in respect of a person which relate to “their” characteristic, thus appearing to exclude discrimination which takes place against a person because of their association with someone who possesses the protected characteristic, also known as discrimination by association. Both the Declaration of Principles on Equality⁸⁰³ and the international treaties to which Ukraine is party

795 See above, note 733, Para 32, and *P.V. v Spain* (Application No. 35159/09), 30 November 2010.

796 See above, note 733, Para 33, and *Kiyutin v Russia* (Application No. 2700/10), 10 March 2011.

797 See above, note 733, Para 35.

798 CEDAW, Article 11.

799 *Ibid.*

800 ECHR, Article 14 and Protocol No. 12 to the ECHR.

801 See above, note 737.

802 See Principle 5 of the Declaration of Principles on Equality which provides that, in addition to being prohibited on the explicitly listed characteristics, “Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person’ rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.” (See above, note 731, p. 6.)

803 See Principle 5 of the Declaration of Principles on Equality which provides that: “Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies.” (See above, note 731, p. 7.)

require that discrimination by association be prohibited.⁸⁰⁴ This limitation is also contrary to EU anti-discrimination law: although the definitions largely mirror those in EU anti-discrimination Directives, the EU Directives do not use the word “their” but simply refer to discrimination “on the grounds of” the characteristics, and have thus been interpreted to include discrimination by association.⁸⁰⁵

The definition in Article 1, paragraph 2 provides that the characteristic upon which the discrimination is based may be “real or imputed” thus prohibiting discrimination based on a perception (whether correct or incorrect) that a person has a particular protected characteristic (discrimination by perception). This is fully in line with both the Declaration of Principles on Equality⁸⁰⁶ and the international treaties to which Ukraine is party.⁸⁰⁷ However, again a lack of clarity remains given the language used in the more specific definitions of prohibited conduct and a conclusion that, in this respect, the Law is in line with international law and best practice is based on the presumption that Article 1, paragraph 2 is to be taken together with those more specific definitions and read as a whole.

It is also unclear whether the Law protects people from discrimination based upon a combination of characteristics (multiple discrimination). There has been no jurisprudence by the Constitutional Court on this issue. Both the

804 The United Nations Committee on Economic, Social and Cultural Rights, for example, has said in its General Comment No. 20 that: “Membership [of a protected group] also includes association with a group characterized by one of the prohibited grounds (e.g. the parent of a child with a disability).” (See above, note 735, Para 16.)

805 *Coleman v Attridge Law and Steve Law*, Case C-303/06 [2008] I-5603, 17 July 2008.

806 See Principle 5 of the Declaration of Principles on Equality which provides that: “Discrimination must also be prohibited when it is on the ground of (...) the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.” (See above, note 731, p. 7.)

807 The United Nations Committee on Economic, Social and Cultural Rights, for example, has said in its General Comment No. 20 that: “Membership [of a protected group] also includes (...) perception by others that an individual is part of such a group (e.g. a person has a similar skin colour or is a supporter of the rights of a particular group or a past member of a group).” (See above, note 733, Para 16.)

Declaration of Principles on Equality⁸⁰⁸ and the international treaties to which Ukraine is party require that multiple discrimination be prohibited. The CESCR, for example, has noted that some individuals or groups of individuals, such as women with disabilities, face multiple discrimination on two or more protected grounds,⁸⁰⁹ and has stressed that “such cumulative discrimination merits particular consideration and remedying”⁸¹⁰

Article 6, paragraph 2 and Article 4, paragraph 1, together set out the Law’s material scope. The former provides that discrimination is prohibited where it is carried out by state authorities, authorities of the Autonomous Republic of Crimea, local governments and their officials, legal entities of public and private law and natural persons. The latter sets out the areas in which discrimination is prohibited, namely “the relationship between legal entities in public and private law, the location of which is registered on the territory of Ukraine, as well as individuals on the territory of Ukraine”. Article 4, paragraphs 3–22 set out a number of specific areas to which the Law applies, as part of the material scope:

- Social and political (socio-political) activities;
- Public service and service in local government;
- Justice;
- Labour relations, including the application of the principle of reasonable accommodation by the employer;
- Health;
- Education;
- Social protection;
- Housing;
- Access to goods and services; and
- Other areas of social relations.

Thus, the scope of the Law is a broad one: any kind of social relationship involving legal entities (whether public or private) or individuals. In this re-

808 See Principle 12 of the Declaration of Principles on Equality which provides that: “Laws and policies must provide effective protection against multiple discrimination, that is, discrimination on more than one ground.” (See above, note 731, p. 10.)

809 See above, note 733, Para 17.

810 *Ibid.*, Para 27.

gard, the Law largely complies with international best practice which requires discrimination to be prohibited in all areas of life regulated by law or by public authorities.⁸¹¹ The scope of the rights to equality and non-discrimination under Ukraine’s international treaty obligations varies depending on the treaty. Article 2(1) of the ICCPR prohibits discrimination in the enjoyment of the rights contained within the Covenant, whereas Article 26 has been interpreted by the HRC as “prohibit[ing] discrimination in law or in fact in any field regulated and protected by public authorities”.⁸¹² Article 2(2) of the ICESCR, similarly to Article 2(1) of the ICCPR, prohibits discrimination in the enjoyment of the rights contained within the Covenant. Thus, together, Ukraine is required to prohibit discrimination in the enjoyment of all civil, political, economic, social and cultural rights (through Article 2(1) of the ICCPR and Article 2(2) of the ICESCR) *and* any discrimination in law or in any field regulated and protected by public authorities (Article 26 of the ICCPR). Further, Article 14 of the ECHR guarantees non-discrimination as an accessory right, prohibiting discrimination in the enjoyment of the substantive rights contained within the Convention, and Protocol No. 12 to the ECHR provides a freestanding right to non-discrimination prohibiting both discrimination in “the enjoyment of any right set forth by law” and by public authorities. The broad scope of the Law largely meets these requirements save that it does not prohibit legislation which is itself discriminatory. Under Ukraine’s constitutional and legal framework, discriminatory legislation is only prohibited if it violates the Constitution (see section 3.2.1 of this report).

Article 6, paragraph 3, provides that positive action is not to be considered as a form of discrimination in four cases:

- Special protection by the state of certain categories of persons that require such protection;
- Measures aimed at the preservation of the identity of particular groups of people, where such measures are necessary;
- Subsidies to particular groups of people in cases provided for by the law; and

811 See, for example, Principle 8 of the Declaration of Principles on Equality which provides that: “[t]he right to equality applies in all areas of activity regulated by law.” (See above, note 731, p. 8.)

812 See above, note 742, Para 12.

- Special requirements, provided for by the law, in respect of the exercise of certain rights of persons.

The approach taken in Article 6, paragraph 3 in respect of positive action measures is out of step with the Declaration, international best practice and the international treaties to which Ukraine is party which, as identified above, require rather than permit positive action to be taken.

Part II: Mechanisms for Ensuring the Prevention and Combating of Discrimination

Article 9, paragraph 1, lists the bodies empowered to prevent and combat discrimination: (i) the Verkhovna Rada; (ii) the Ukrainian Parliament Commissioner for Human Rights; (iii) the Cabinet of Ministers of Ukraine; (iv) other state authorities, authorities of the Autonomous Republic of Crimea, and local government; and (v) community organisations, individuals and legal entities. Articles 10 to 14 set out in more detail the specific duties and powers of each of these bodies. The broad range of actors empowered to take steps to prevent and combat discrimination is a particularly positive aspect of the Law although category (v) may be so broad as to create significant implementation challenges.

Article 9, paragraph 2, provides that the bodies can apply positive action measures to achieve the objectives of the Law. This, too, is a welcome aspect of the Law. “Positive action” is defined in Article 1, paragraph 5 as:

Special temporary activities implemented by law and in pursuance of a legitimate, objectively reasonable aim directed at eliminating legal or de facto inequality in the opportunities of individuals and/or groups of persons to exercise the equal rights and freedoms granted by the Constitution and laws of Ukraine.

As noted above, Ukraine is required under its international treaty obligations to implement positive action measures. Under international law and best practice this obligation is usually one placed directly on the state. Permitting a large number of different actors to take “positive action”, as the Law does, may be a recipe for disputes between private parties as to whether action taken by one party can be said to be “positive action” or rather prohibited discrimination.

For now, however, there is little evidence thus far of the bodies listed in Article 9, paragraph 1, taking “positive action” measures.

Article 10 provides the Ukrainian Parliament Commissioner for Human Rights with powers of parliamentary control over the observance of constitutional rights and freedoms, their protection in Ukraine, and, within its jurisdiction, duties to prevent any form of discrimination and to implement anti-discrimination measures. These include duties to monitor; initiate discrimination claims before court; maintain records and make proposals for legislative change. The broad range of powers of the Commissioner in respect of combating discrimination is welcome, particularly the ability of the Commissioner to receive complaints of discrimination, to provide submissions in cases of discrimination where requested to do so by a court, and to make proposals for legislative reform. The specific work of the Commissioner is considered below at section 3.4.1.

Article 11 sets out the duties of the Cabinet of Ministers which are largely powers of coordinating the work of government and the extent to which they will be effective depends primarily on the political will of the government of the day. The government is only required to “take into account” the principle of non-discrimination when preparing legislation, for example, but not to ensure that legislation is non-discriminatory. Further, the provision is not enforceable, resulting in a lack of accountability where the Cabinet of Ministers fails to fulfil its duties.

Article 12 sets out powers rather than duties of other public bodies, authorities of the Autonomous Republic of Crimea and local authorities including: preparing proposals for legislative improvements; undertaking positive action measures; and conducting educational activities. The extent to which the powers are exercised will depend upon the political will of the body or local government, and there is no means by which they can be compelled to do so.

Finally, Article 13 sets out rights rather than duties of NGOs, individuals and entities of mixed value. Some of these powers – such as monitoring discrimination and reviewing draft legislation – could be carried out without express statutory authorisation, and so are of little benefit. Others, such as the right to participate in decisions of state and local authorities and to represent individual victims of discrimination in court are of far more utility, and in ac-

cordance with international best practice. Principle 20 of the Declaration of Principles on Equality, for example, provides that:

States should ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality.

Part III: Liability for Violations of Legislation on Prevention and Combating Discrimination

Article 14, paragraph 1, provides that a person who believes that they have been discriminated against may file a complaint with the state authorities, the authorities of the Autonomous Republic of Crimea, local governments and their officials, the Commissioner and/or courts, in the manner established by law. The broad range of actors to whom a complaint of discrimination can be brought is, in some sense, welcome. There is, however, a risk of a lack of clarity over precisely to whom a victim should bring their complaint. The Law does not provide any guidance on when a victim should bring their complaint to the Commissioner as opposed to a court, or to a state or local authority as opposed to a court or the Commissioner.

Article 14, paragraph 2, prohibits victimisation, providing that use of the law cannot be grounds for biased treatment and cannot result in any adverse effect on either the person who claimed their rights, or others. This prohibition brings the Law into line with Principle 19 of the Declaration which requires states to prohibit victimisation in legislation as well as the EU anti-discrimination Directives, all of which prohibit victimisation.⁸¹³

Article 15, paragraph 1, provides that a person who has suffered discrimination is entitled to compensation for material and moral damage. Under paragraph 2, the procedure for obtaining such compensation is that set out in the Civil Code and other legislation. Article 16 provides that persons

⁸¹³ See above, note 785, Articles 9, 11, 11 and 24 respectively.

found guilty of violating the legislation on preventing and combating discrimination bear civil, administrative and criminal liability. This is one of the most problematic provisions in the Law since it requires other legislation to be harmonised. Neither the Civil Code, nor the Code on Administrative Offences contains provisions prohibiting discrimination, thus making it difficult for courts to determine precisely what civil, administrative or criminal liability is attached in any particular case.⁸¹⁴ Discussion of the available remedies under the Civil Code and Administrative Code is set out below at section 3.4.1 of this report.

3.2.2.2 *Law of Ukraine “On Equal Rights and Opportunities for Women and Men”*

In addition to the general rights to equality and non-discrimination under Articles 2(1) and 26 of the ICCPR, Article 2(1) of the ICESCR, and Article 14 of the ECHR, Ukraine has specific obligations to ensure equality between women and men primarily through the CEDAW, but also through Articles 3 of the ICCPR and the ICESCR, both of which provide that: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all (...) rights set forth in the present Covenant.” The Law of Ukraine “On Equal Rights and Opportunities for Women and Men”⁸¹⁵ was adopted by the Verkhovna Rada in 2005 and came into force on 1 January 2006 and is Ukraine’s most significant piece of legislation designed to ensure equality between women and men and thus meet these international treaty obligations. The situation created by the continued existence of this Law in parallel with the more recent and comprehensive Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, which prohibits discrimination on many grounds, including on the basis of sex, rather than having simply been harmonised within the new Law, is not ideal. Many of its provisions are now dealt with in the later law. However, some of its provisions have no equivalent

814 The European Commission has raised concerns that: “[w]hile provisions were introduced referring to the right of appeal before national courts, to compensation claims and to the individual liability of offenders, as well as references to the civil, administrative and criminal responsibilities, it remains to be clarified what sanctions and what type of compensation the respective Codes and legislation provide for acts of discrimination.” European Commission, *Report from the Commission to the European Parliament and the Council, Fourth Report on the implementation by Ukraine of the Action Plan on Visa Liberalisation*, Brussels, COM(2014) 336 final, 27 May 2014.

815 Закон України “Про забезпечення рівних прав та можливостей жінок і чоловіків” (Відомості Верховної Ради України, 2005, № 52, с. 561), as amended between 2012 and 2014.

in the broader anti-discrimination law, such as the requirement to carry out gender-based assessment of legislation, and thus retain their utility.

The Law provides at Article 2, paragraph 2, that “if an international treaty of Ukraine, ratified by the Verkhovna Rada, establishes rules other than those stipulated in this Law, the rules of the international treaty shall prevail”. Thus, to the extent that the Law is inconsistent with the ICCPR, the ICESCR, the ECHR and the CEDAW, courts *should* prefer the requirements of the treaties – this is of course only good news to the extent that international treaty obligations go further than those under the Law. And in practice, there is no evidence of this Article being taken into account in the application of the Law.

Part I: General Provisions

The Law begins by setting out the principles of state policy on ensuring equal rights and opportunities for women and men at Article 3:

- Gender equality;
- Non-discrimination on grounds of sex;
- The use of affirmative action;
- Ensuring the equal participation of women and men in decision-making of public importance;
- Equal opportunities for women and men on a combination of professional and family responsibilities;
- Supporting families with responsible motherhood and fatherhood;
- Education and propaganda among the population of Ukraine of a culture of gender equality, distribution of educational activities in this area; and
- Protection of society against media aimed at sex discrimination.

A number of these terms are defined in Article 1. “Gender equality” is defined broadly as “the equal legal status of men and women and equal opportunities for its implementation, allowing individuals of both sexes equally to participate in all spheres of society”. The definition thus encompasses both formal equality of women and men before the law and equality of opportunity for women and men in all spheres of society.

“Discrimination on grounds of sex” is defined as an “action or inaction that results in a distinction, exclusion or benefit on the basis of sex, and if it limits or prevents the recognition, enjoyment or exercise of equal human rights and freedoms for women and men”. This definition mirrors that of Article 1 of the CEDAW in some respects, although it has been criticised by the CEDAW Committee, in that “it does not explicitly encompass indirect discrimination, in conformity with article 1 of the [CEDAW]”.⁸¹⁶ Indeed, the Law does not prohibit or define different forms of discrimination, and the definition therefore falls far short of international best practice.

“Positive action” is defined as “special temporary measures to eliminate imbalances between women and men to exercise equal rights provided by the Constitution and laws of Ukraine”.

Article 6 is the only provision which provides a substantive prohibition on discrimination, although it simply states that “discrimination based on sex is prohibited”. Article 6 provides for a number of exceptions to the general prohibition:

- Special protection of women during pregnancy, childbirth and breast-feeding;
- Compulsory military service for males;
- Differences in retirement age for men and women;
- Specific requirements for the protection of women and men related to the protection of their reproductive health; and
- Positive action.

The first of these, special protection of women during pregnancy, childbirth and breastfeeding is unproblematic, with the excepted measures solely relating to those elements of maternity which are biologically particular to women. Indeed, the exception is narrower than that permitted by Article 4(2) of the CEDAW which provides that “special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory”.

816 United Nations Committee on the Elimination of Discrimination against Women, *Concluding Observations: Ukraine*, UN Doc. CEDAW/C/UKR/CO/7, 5 February 2010, Para 16.

The second, compulsory military service for males, is clearly discriminatory on the basis of sex in that it makes requirements of men that are not made of women and cannot be justified. The Law of Ukraine “On Military Duty and Military Service” provides that women may be conscripted for military service only where they have a profession related to a relevant military occupational specialty specified in a list approved by the Cabinet of Ministers of Ukraine, and are fit for military service taking into account their health, age and marital status.⁸¹⁷

The third, differences in retirement age for men and women, is also clearly discriminatory on the basis of sex in that it forces men to work longer than women before becoming entitled to retire. Indeed, Article 11(1)(e) of the CEDAW requires states parties “to ensure, on a basis of equality of men and women, the same rights, in particular: (...) (e) the right to social security, particularly in cases of retirement”.

The fourth, specific requirements for the protection of women and men related to the protection of their reproductive health, is clearly justified and, indeed, mandated by Article 12(1) of the CEDAW which requires states parties to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning”.

The fifth, positive action, is, as elsewhere in Ukrainian law, considered an exception to the principle of non-discrimination rather than a requirement and, as discuss above, such an approach is not in line with international best practice.

Article 4 establishes “gender-related assessments”, defined in Article 1 as “analysis of the current legislation and draft legal acts, resulting in an opinion on their compliance with the principle of equal rights and opportunities for women and men”. Under Article 4, all existing legislation is to be subjected to a “gender-related assessment”. Where legislation is found to be inconsistent with the principle of equal rights and opportunities for women and men, the results of the assessment are sent to the agency which prepared the legislation. New legislation is required to be drafted with the principle of equal

817 Закон України “Про військовий обов’язок і військову службу” (Відомості Верховної Ради України, 1992, № 27, ст.385), as amended between 1992 and 2015.

rights and opportunities for women and men. Drafts of legislation are also required to be subjected to a “gender-related assessment” to be published alongside the draft legislation for consideration.

In April 2006, the Cabinet of Ministers issued a Decree requiring the Ministry of Justice to develop and approve the form by which legislation would undergo a gender-related assessment.⁸¹⁸ In May 2006, the Instructions on how to conduct gender-related assessments were published by the Ministry of Justice.⁸¹⁹ The Instructions provide that all draft legislation was to be assessed from 1 June 2006 onwards, and existing legislation to be assessed from 1 January 2007 onwards.

The requirement to assess legislation (and draft legislation) for its compatibility with the principles of gender equality has been taken seriously by the Ministry of Justice. The Ministry has issued guidelines on how to conduct gender-related assessments on both existing legislation and draft legislation⁸²⁰ which require assessment both against the CEDAW and other relevant international treaties. Each year, the Ministry of Justice publishes a list of laws to be reviewed during the year, with reports published following the conclusion of each assessment making recommendations for amendments to the legislation if necessary.

Since 2007, the Ministry of Justice has conducted gender assessments of 38 pieces of legislation. Of these, ten were considered to contain provisions which discriminated on the basis of gender and were inconsistent with the prohibition of gender-based discrimination. Of these ten, four have since been amended to remove the gender-discriminatory provisions; however, six have not been amended.⁸²¹

818 Кабінет Міністрів України, Постанова № 504, 12 April 2006, "Про проведення гендерно-правової експертизи".

819 Міністерство юстиції України, Наказ № 42/5, 12 May 2006, "Деякі питання проведення гендерно-правової експертизи".

820 Міністерство юстиції України, *Методичні рекомендації щодо проведення гендерно-правової експертизи чинного законодавства*, available at: <http://www.minjust.gov.ua/15654>; Міністерство юстиції України, *Методичні рекомендації щодо проведення гендерно-правової експертизи проектів нормативно-правових актів*, available at: <http://www.minjust.gov.ua/15653>.

821 See section 2.1 of this report and, specifically, Table 1.

Many of the provisions reviewed under the gender assessment process did, in fact, discriminate against women but the different treatment was considered by the reviewers to fall within the exceptions listed in Article 24, paragraph 3 of the Constitution or Article 6 of the Law, and thus not to be discriminatory for their purposes. Regrettably, this included provisions such as those in the Code of Labour Laws which place restrictions of the types of work that women can do and which have been criticised by, *inter alia*, the CEDAW Committee as having “the sole effect of restricting women’s economic opportunities, and [are] neither legitimate nor effective as a measure for promoting women’s reproductive health”;⁸²² and as creating “obstacles to women’s participation in the labour market”.⁸²³ It is clear from this example that some work is needed for this mechanism to effectively prevent the passing of discriminatory laws without amendment.

Article 5 requires the central executive authority in the field of statistics (the State Statistics Committee of Ukraine) to collect, process, analyse, disseminate, store, protect and use statistical data on the characteristics of women and men in all areas of society, grouped by sex. The collection of statistics, including the disaggregation of relevant data, is in compliance with international best practice⁸²⁴ and the CEDAW Committee’s General Recommendation No. 9.⁸²⁵

Part II: Mechanism for Equal Rights and Opportunities for Women and Men

Articles 7 to 14 establish duties and provide powers for various institutions in respect of ensuring equal rights and opportunities for women and men. Article 7 lists these out as: (i) the Verkhovna Rada; (ii) the Ukrainian Parliament

822 United Nations Committee on the Elimination of Discrimination against Women, *Fifteenth Session Report*, UN Doc. A/51/38, 9 May 1996, Para 286.

823 United Nations Committee on the Elimination of Discrimination against Women, *Twenty-Sixth and Twenty-Seventh Sessions Report, Concluding Observations: Ukraine* UN Doc. A/57/38, 2 May 2002, Para 293.

824 See, for example, Principle 24 of the Declaration of Principles on Equality. (See above, note 731, p. 14.)

825 United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 9: Statistical data concerning the situation of women*, contained in UN Doc. A/44/38, 1989.

Commissioner for Human Rights; (iii) the Cabinet of Ministers; (iv) a specially authorised central executive body on equal rights and opportunities for women and men; (v) executive authorities and local government; and (vi) associations. Article 7 also provides that state authorities and local governments, businesses, organisations and institutions, and civic associations should promote balanced representation of sexes in management and decision-making. In doing so, they are permitted to use positive action. As with the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine”, the Law, in Articles 8 to 14, sets out the specific duties and powers of these various bodies. The Verkhovna Rada (Article 8) has only powers to define the basic principles of gender policy and to apply the principle of equality between women and men in its legislative activity.

Under Article 9, the Ukrainian Parliament Commissioner for Human Rights has the power to consider complaints of discrimination based on sex and to produce an annual report on equality between women and men. Given that this body has similar powers under the Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine” in respect of discrimination and equality generally, the specific powers in respect of sex now add little.

Article 10 sets out the powers of the Cabinet of Minister which include: to provide a unified state policy on gender equality, to adopt a national action plan and ensure its implementation, to direct the work of other ministries in respect of gender equality, and to consider gender equality when preparing legislation. These are all powers, however, rather than duties and so, while welcome, their actual impact will depend largely on the political will of the particular government of the day.

Article 11 sets out a long list of powers of the specially authorised central executive body on equal rights and opportunities for women and men. These include developing public policy, coordinating the work of ministries and central executive authorities, monitoring discrimination, providing training, considering complaints of discrimination and conducting research. Various powers are also provided to executive authorities and local governments in Article 12; Article 12 also enables executive authorities to appoint a coordinator for equal rights and opportunities for women and men who also has various powers listed in Article 13.

Finally, associations have various rights, some of which do not require statutory authority (such as monitoring discrimination), others which are of more use, such as participating in the decision-making process of executive authorities and local government, and sending delegates to advisory bodies established by state and local authorities.

Part III: Equal Rights and Opportunities for Women and Men in the Social and Political Sphere

Articles 15 and 16 set out specific provisions relating to the social and political sphere. Under Article 15, women and men are guaranteed equal voting rights, and political parties and electoral blocs are required to include representation of women and men in their electoral lists during elections.

The first of these requirements helps meet Article 7(a) of the CEDAW which requires states parties to ensure to women, on equal terms with men, *inter alia*, the right to vote in all elections and public referenda. The second of these, however, is weak in that while it requires political parties and electoral blocs to ensure representation of women and men in their electoral lists during elections, it makes no specific requirement as to what that representation should look like, for example by setting a quota, or mandating “zippered” lists of women and men. As noted in section 2.1 of this report, the proportion of women in the Verkhovna Rada remains extremely low.⁸²⁶

Under Article 16, the civil service and local government are to ensure equal representation of women and men when making appointments. Article 16 also specifically prohibits discrimination on the basis of sex within the civil service and in local government, and allows for positive action measures to ensure a balanced representation of women and men in the civil service and local government.

Part IV: Equal Rights and Opportunities for Women and Men in the Socio-Economic Sphere

Article 17 deals with employment, providing that men and women are to enjoy equal rights and opportunities in “employment, promotion at work, training and re-training”. In particular, employers have a duty:

826 As of May 2015, a total of 11.7% of deputies (49 out of 420) were women.

- To create conditions that would allow men and women to carry out employment on an equal basis;
- To ensure men and women have the opportunity to combine work with family responsibilities;
- To implement equal pay for women and men with the same qualifications and working conditions;
- To take measures to create safe and healthy working conditions; and
- To take measures to prevent cases of sexual harassment.

Article 17 also prohibits job advertisements which advertise vacant positions only for men or women (save when the work can only be performed by persons of a particular sex); and various requirements which give preference to men or women. Article 17 also prohibits questioning applicants about their personal lives or plans for having children. Finally, Article 17 permits employers to take positive action measures to ensure a balanced ratio of men and women.

These requirements help meet Ukraine's obligations under Article 11(1) of the CEDAW which specifically require equal rights in the field of employment. The provision requiring equal pay for women and men "with the same qualifications and working conditions" goes some way to meeting Ukraine's obligations both under Article 11(1)(d) of the CEDAW (which guarantees the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value) as well as under the 1951 ILO Equal Remuneration Convention (Convention No 100). However, the ILO Committee of Experts has highlighted a number of weaknesses in the wording of Article 17:

Section [sic] 17 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men, 2006, requiring the employer to ensure equal pay for men and women for work involving equal skills and working conditions is more restrictive than the principle of equal remuneration for men and women for work of equal value as set out in the Convention. Furthermore, by linking the right to equal remuneration for men and women to two specific factors of comparison (skills, working conditions), the Committee considered that section 17 may have the effect of discouraging or even excluding

*objective job evaluation on the basis of a wider range of criteria, which is crucial in order to eliminate effectively the discriminatory undervaluation of jobs traditionally performed by women.*⁸²⁷

Article 18 provides that whenever collective bargaining takes place, any collective agreements reached must include provisions for equal rights and opportunities between women and men. Article 19 guarantees women and men equal rights and opportunities “in business activity”. Article 19 also allows for positive action measures to be taken at the national and regional level to eliminate imbalances between women and men in business, by encouraging entrepreneurship, preferential loans, training and other activities.

Under Article 20, executive bodies, local authorities, businesses, institutions and organisations must take into account the interests of women and men in the implementation of any social security measures. Any less favourable treatment of either men or women in social insurance, pensions or other forms of social assistance is prohibited. This prohibition helps to meet Ukraine’s specific requirement under Article 11(1)(e) of the CEDAW which requires equality between women and men in the field of enjoyment, specifically the right to social security.

Part V: Equal Rights and Opportunities for Women and Men in Education

Article 21 requires the state to ensure equal rights and opportunities for women and men in education. Article 21 also imposes obligations on educational institutions to ensure:

- Equal opportunities for men and women in admission to schools, assessments, grants and loans to students;
- The preparation and publication of textbooks, free from stereotypes about the role of women and men;
- An education culture of gender equality and the equal distribution of work and family life.

⁸²⁷ International Labour Organization, Observation (CEACR) adopted 2010, published 100th ILC session (2011) Equal Remuneration Convention, 1951 (No. 100) – Ukraine.

Article 21 requires the central executive agency for Education and Science to provide examination curricula, textbooks and teaching aids for schools regarding compliance with the principle of equal rights and opportunities for women and men.

Finally, Article 21 also requires the curriculum of higher education, courses and retraining courses to include studying the issue of ensuring equal rights and opportunities for women and men, and an optional study of the legal principles of gender equality through harmonisation of national and international law. These requirements help to meet Ukraine's obligations under Article 10 of the CEDAW which specifically require equal rights in the field of education.

Part VI: Responsibility for Violations of Legislation of Ukraine on Equal Rights and Opportunities for Women and Men

Article 22 provides that a person who has been subjected to discrimination or sexual harassment can file a complaint with state bodies, bodies of the Autonomous Republic of Crimea, local government and their officials, the Ukrainian Parliament Commissioner for Human Rights and/or the courts. Where domestic remedies have been exhausted or the application of such remedies is unreasonably prolonged, people can also bring complaints to the CEDAW Committee. As with the general anti-discrimination law, the broad range of actors to whom a complaint of discrimination can be brought is welcome but with the caveat that more certainty as to whom a victim should bring their complaint is necessary.

Article 23 sets out the remedies available where a violation is found, namely compensation for material and moral damage. Article 24 provides that persons found guilty of violation of the Law bear civil, administrative and criminal liability. Discussion of the available remedies under the Civil Code and Code on Administrative Offences is set out below at section 3.4.1 of this report. As with the general anti-discrimination Law, these are particularly problematic provisions in the Law since they require other legislation to be harmonised. Neither the Civil Code, nor the Code on Administrative Offences contains provisions prohibiting discrimination on the basis of sex, thus making it difficult for courts to determine precisely what civil, administrative or criminal liability is attached in any particular case. Indeed, the CEDAW Committee has expressed its concern "at the lack of clarity of the law with respect

to complaints and sanctions mechanisms in case of sex-based discrimination, which may prevent from its full implementation”.⁸²⁸

3.2.2.3 Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine”

Ukraine has a broad-ranging obligation under the CRPD “to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability” (Article 4(1)). In addition, it seems clear from international law and best practice that “disability” is a protected characteristic falling within the term “other status” in Article 2(2) of the ICESCR, Articles 2(1) and 26 of the ICCPR and Article 14 of the ECHR.

In addition to protection provided through Ukraine’s general anti-discrimination legislation, the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, discussed above at section 3.2.2.1, there is also specific legislation on persons with disabilities, the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine”.⁸²⁹ The Law was adopted in 1991 and has since undergone significant amendment. As with the Law of Ukraine “On Equal Right and Opportunities between Women and Men”, the adoption of the broader anti-discrimination law which includes disability as a protected characteristic makes many of the provisions of this Law which relate to discrimination redundant now that they have been repeated in the new Law.

However, while containing some provisions related to discrimination, the Law is not anti-discrimination legislation *per se*. Indeed, when originally enacted, the Law contained only a single provision on discrimination (Article 2), stating that “disability discrimination is prohibited and punishable by law”. The Law is primarily a means of setting out various mechanisms by which the rights and interests of persons with disabilities are protected, rather than empowering individual persons with disabilities with an enforceable right to equality.

828 See above, note 816.

829 Закон України “Про основи соціальної захищеності інвалідів в Україні” (Відомості Верховної Ради УРСР, 1991, № 21, с. 252), as amended between 1994 and 2014.

The preamble nonetheless sets out a bold purpose for the Law, namely:

[To] defin[e] the framework for social protection of disabled people in Ukraine and guarantee them equal opportunities to participate in economic, political and social spheres of society with all other citizens, creating the conditions that enable disabled people to effectively implement the rights and freedoms of man and citizen, and enjoy a full life according to their individual capabilities, abilities and interests.

Article 1, paragraph 1, provides that: “[d]isabled people in Ukraine enjoy all socio-economic, political, and personal rights and freedoms enshrined in the Constitution of Ukraine, laws of Ukraine and international treaties ratified by the Verkhovna Rada of Ukraine.”

Article 2 sets out definitions of various terms used in the Law. “Disabled person” is defined in paragraph 1 as:

[A] person with a persistent disorder of body functions that can, when interacting with the environment, result in limitation of the person’s life activity, due to which the State must provide conditions for the person to exercise his/her rights on an equal basis with others and must secure his/her social protection.

The extent to which this definition complies with that under the CRPD would depend on its interpretation. As will be discussed in 3.4.2 below, the courts are generally applying the CRPD when interpreting national laws relating to people with disabilities. The CRPD provides that persons with disabilities “include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

Paragraph 3 provides that the terms “reasonable accommodation” and “universal design” are to have the same meanings as in the CRPD.

Article 2, paragraph 2 provides that: “[d]iscrimination on the basis of disability is prohibited.” Paragraph 3 provides that “discrimination on the basis

of disability” is to have the meaning in the CRPD *and* the Law of Ukraine “On Prevention and Combating Discrimination in Ukraine”. This is confusing as the two definitions are rather different. However, this approach provides an opportunity for lawyers to require that the law is interpreted in line with the CRPD, the most progressive international law on the rights of persons with disabilities.

Despite prohibiting discrimination, the Law’s focus is to set out specific actions designed to ensure equal opportunities for persons with disabilities. In Part IV (Employment, Education and Vocational Training of the Disabled), for example, Article 17 requires the establishment of special jobs for persons with disabilities funded by the State Fund for Special Protection of Disabled People, or by companies, organisations or institutions, including through the adaptation of equipment and technical facilities in the workplace. Article 18 requires the allocation of jobs and the creation of conditions for employment of people with disabilities by all employers, and, if disabled persons are unable to work outside of their home, the public employment service must assist them in finding home-based work. Article 19 requires employers to ensure that at least 4% of employees are persons with disabilities. The CESCR has, however, raised concern that the quota has “a limited impact owing to the lack of compliance by employers”.⁸³⁰ Quotas in such a situation are controversial: the Committee on the Rights of Persons with Disabilities has not criticised the use of quotas,⁸³¹ but organisations representing persons with disabilities have argued that quotas send a message that people with disabilities are employed because they have a disability, while the rest of the employees are employed because of their abilities and that they put too much focus on employment and not enough on career development, leading to an overrepresentation of staff with disabilities among the less skilled and less paid employees.⁸³² Nonetheless, taken together, the provisions go some way to meeting Ukraine’s obligation under Article 27 of the CRPD to “safeguard and promote the realization of

830 See above, note 773, Para 12.

831 See, for example, United Nations Committee on the Rights of Persons with Disabilities, *Concluding Observations, Austria*, UN Doc. CRPD/C/AUT/CO/1, 13 September 2013, Para 27, where the Committee appears to consider the use of a quota for persons with disabilities in employment as welcome, or, at least, not objectionable.

832 See, for example, International Disability Alliance, *IDA contribution to the OHCHR thematic study on work and employment of persons with disabilities*, p. 7.

the right to work, including for those who acquire a disability during the course of employment”.

Part V is devoted to conditions for providing persons with disabilities with access to social infrastructure: vehicles, public transport facilities, airports, housing and other buildings, car parks, etc. It also provides for equipping public transport vehicles with special sound devices to inform passengers of the stops, and duplicating information signs in Braille. These provisions partly meet Ukraine’s obligations under Article 9 of the CRPD to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to various forms of infrastructure. However, the plethora of difficulties faced by persons with disabilities in respect of access to infrastructure highlighted in Part 2 of this report indicate an implementation gap.

This may in part be due to the fact that the Law does not set out any specific mechanisms by which these obligations are to be enforced, instead simply stating that those who violate the law bear financial, disciplinary, administrative and/or criminal responsibility (Article 42). As with the two laws discussed above, the Civil Code, Code of Administrative Offences and Criminal Code have not been harmonised effectively to set out a clear process by which complaints can be brought and heard. In the same way, courts are left to determine for themselves how to approach complaints which are brought under the Law. (Discussion of the available remedies under the Civil Code and Code of Administrative Offences is set out below at section 3.4.1 of this report.)

3.2.2.4 Law of Ukraine “On Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV”

While not anti-discrimination legislation *per se*, the Law of Ukraine “On Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV”⁸³³ contains provisions which prohibit discrimination against an individual eit-

⁸³³ Закон України “Про протидію поширенню хвороб, зумовлених вірусомімунодефіциту людини (ВІЛ), та правовий і соціальний захист людей, які живуть з ВІЛ (Відомості Верховної Ради України”, 1992, № 11, с. 152), as amended between 1998 and 2012.

her because he or she has HIV or because he or she belongs to a group at risk of HIV infection. Article 14, paragraph 1, states that persons living with HIV and persons in groups at high risk of HIV infection enjoy all of the rights and freedoms under the Constitution, laws and other legal acts. Under paragraph 2, the state guarantees to all persons living with HIV and most-at-risk populations equal opportunities with all other citizens, particularly with regards to the possibility of administrative and judicial protection of their rights.⁸³⁴ Perhaps most importantly, paragraph 3 provides that “discrimination against persons on the basis of their living with HIV or belonging to one of the groups most at risk of HIV infection is prohibited”. Paragraph 3 defines discrimination as:

[A]n act or omission which directly or indirectly creates limitations or divests a person of their proper rights or degrades their human dignity on the basis of one or more grounds related to actual or possible infection of HIV or gives grounds for referring such person to groups at increased risk of HIV.

Article 13 of the Law also makes clear that a person’s HIV status is private information and cannot be shared with third parties.⁸³⁵ However, this provision applies only to the staff of medical institutions, prosecutors and other authorities while carrying out their professional duties, and as such does not prohibit the disclosure of HIV status by others who might have access to the patient’s records. The Law requires that people infected by HIV inform their previous sexual partners of their status (Article 12).

3.2.3 Non-Discrimination Provisions in Other Legal Fields

Given its wide scope, the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, with the exception of specific provisions in the criminal law, is the primary piece of legislation regulating matters of discrimination. However, some non-discrimination provisions (or guarantees

834 Article 14, paragraph 2 refers to all “people” living with HIV or in high risk groups but then refers to equal opportunities with all other “citizens”, thus making the personal scope of this protection unclear.

835 *Ibid.*

of “equal rights”) are found in legislation regulating some particular fields of activity: family law, employment, education, healthcare, social security, immigration and sports. Such provisions have rarely been utilised by victims of discrimination and are largely symbolic.

3.2.3.1 *Criminal Law*

In general, international best practice requires that discrimination be dealt with as a matter of civil, rather than criminal law. However, adequate protection from discrimination demands that certain more severe discriminatory conducts be recognised as criminal.

Principle 7 of the Declaration of Principles on Equality provides that:

Any act of violence or incitement to violence that is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground constitutes a serious denial of the right to equality. Such motivation must be treated as an aggravating factor in the commission of offences of violence and incitement to violence, and States must take all appropriate action to penalise, prevent and deter such acts.

Thus Principle 7 requires states to treat offences of violence and incitement to violence as aggravated where the offence is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground.

The Criminal Code of Ukraine,⁸³⁶ which came into force on 1 September 2001, contains a number of provisions in respect of both of these requirements (namely offences of inciting hatred and considering offences motivated by hostility as aggravated), and a further offence of certain forms of discrimination.

Incitement of Hatred and Certain Forms of Discrimination

Article 161 of the Criminal Code creates various offences, namely:

⁸³⁶ Кримінальний Кодекс України (Відомості Верховної Ради України, 2001, № 25–26, с. 131), as amended between 2002 and 2015.

[D]eliberate actions aimed at inciting national, racial or religious enmity and hatred, humiliation of national honour and dignity or insult to the feelings of citizens in connection with their religious beliefs as well as direct or indirect restriction of rights or establishment of direct or indirect privileges for citizens on grounds of race, colour, political, religious or other beliefs, sex, disability, ethnic or social origin, property, residence, language or other grounds.⁸³⁷

Article 161 is thus wide-ranging and prohibits various forms of conduct:

- deliberate actions aimed at inciting national, racial or religious enmity and hatred;
- deliberate actions aimed at humiliation of national honour and dignity;
- deliberate actions aimed at insult to the feelings of citizens in connection with their religious beliefs;
- direct or indirect restriction of rights for citizens on grounds of race, colour, political, religious or other beliefs, sex, disability, ethnic or social origin, property, residence, language or other grounds; and
- the establishment of direct or indirect privileges for citizens on grounds of race, colour, political, religious or other beliefs, sex, disability, ethnic or social origin, property, residence, language or other grounds.

The available sentence for the offence in Article 161 varies depending on who has committed the offence and the consequences.

837 Article 161 did not originally include “disability” as a protected characteristic. “Disability” was inserted by Article I(1) of the Закон України Про внесення змін до деяких законодавчих актів України щодо захисту прав інвалідів (Відомості Верховної Ради, 2014, № 32, с. 1124), which came into force in June 2014.

Perpetrator / Consequence	Sentence
Standard offence	Fine of 200 to 500 tax-free minimum incomes, or restraint of liberty for up to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.
Offence accompanied with violence, deception or threats; or Offence committed by an official	Fine of 500 to 1,000 tax-free minimum incomes, or restraint of liberty for between two and five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.
Offence committed by an organised group of persons; or Offence causing grave consequences	Imprisonment for between five and eight years.

The first of the five actions prohibited by Article 161 largely meets the requirements of Article 20(2) of the ICCPR. Indeed, Article 161 goes further in that there is no requirement that the action only need incite “national, racial or religious enmity”, i.e. hatred against the group, rather than “discrimination, hostility or violence”.

Alone, Article 161, while meeting the requirements of Article 20(2) of the ICCPR, does not go so far as to meet the requirements of Article 4 of ICERD which requires the prohibition of “dissemination of ideas based on racial superiority or hatred” and “incitement to racial discrimination”. Article 300 of the Criminal Code, instead, meets this gap somewhat. One particular weakness of Article 161, however, is that it only prohibits certain forms of discrimination against citizens, rather than all persons.

Article 161 has been little used in practice. In 2006, the CERD raised concerns over “the absence of any prosecutions under article 161 of the Criminal Code which only applies to cases where intent can be proven and only if the victim of such discrimination is a citizen”.⁸³⁸ The Committee, controversially, urged Ukraine to consider:

838 United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations: Ukraine*, UN Doc. CERD/C/UK/CO/18, 8 February 2007, Para 10.

*[A] relaxation of the strict requirement of wilful conduct set out in article 161 of the Criminal Code in order to facilitate successful prosecutions under that article [and to consider] extending the application of article 161 of the Criminal Code to cases where the victim of discrimination is not a citizen.*⁸³⁹

Similarly, in 2013, the HRC raised concerns that “Article 161 of the Criminal Code (...) which requires proving deliberate action on the part of the perpetrator is rarely used and that such crimes are usually prosecuted under hooliganism charges”.⁸⁴⁰

Although in subsequent years prosecutions have begun to be brought, these are infrequent. Between 2006 and 2009, a total of 11 cases were considered by courts which had been brought under Article 161 (three in 2006, two in 2007, six in 2008 and one in 2009).⁸⁴¹ Of these cases, all but three related to hate speech.⁸⁴² Three cases in 2008 involving violence were the first in which Article 161 was used to punish violent offences motivated by racism. The low number of cases being brought has continued after 2009. In 2013 and the first half of 2014, only three cases were instigated involving violations of Article 161.⁸⁴³ Some NGOs have suggested that prosecutions have been brought only because of substantial public outcry or international pressure on Ukrainian authorities.⁸⁴⁴

839 *Ibid.*

840 See above, note 772, Para 11.

841 United Nations Committee on the Elimination of Racial Discrimination, *Combined Nineteenth to Twenty-First Periodic Reports: Ukraine*, UN Doc. CERD/C/UKR/19-21, 23 September 2010, Para 476.

842 Organisation for Security and Cooperation in Europe, *Observations re hate crimes and racism manifestations in Ukraine – “No Borders” Project*, Social Action Centre (Ukraine), HDIM. NGO/0284/11, 3 October 2011.

843 High Specialised Court of Ukraine for Civil and Criminal Cases, *EU Experts and HSCU Judges Discussed Ukrainian Legislative Norms Concerning Counteraction to Discrimination*, 11 February 2015.

844 Joint Report submitted for the Universal Periodic Review: Ukraine, 2012, Para 9, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/UA/JS2_UPR_UKR_S14_2012_JointSubmission2_E.pdf.

In 2010, the Criminal Code was amended in several places to deal with crimes motivated by racial, national or religious intolerance.⁸⁴⁵ Article 300 was amended to prohibit the importation, creation and distribution of various works which cause social harm, including those that promote intolerance and discrimination on grounds of race, nationality or religion:

[T]he importation into Ukraine of works that promote violence and cruelty, racial, national or religious intolerance and discrimination, with the purpose of sale or distribution, or production, storage, transportation or other relocation of them for the same purpose, or sale or distribution of them, and also compulsion to participate in their creation.

Thus, Article 300 goes a long way to meeting the requirements of Article 4 of ICERD.

Offences Motivated by Hatred

Prior to its amendment in 2010, Article 67 of the Criminal Code was the only provision recognising racial, national or religious hatred as an aggravating factor. Article 67 applies to all offences, stating that racial, national or religious hatred is a general aggravating factor (alongside many others) at the sentencing stage, without making any specific requirement as to an increased penalty.

In 2010, however, a number of existing offences in the Criminal Code were also amended to provide for aggravated forms of six violent offences with higher sentences where they were motivated by racial, national or religious intolerance: murder (Article 115); intended grievous bodily harm (Article 121); intended bodily injury of medium gravity (Article 122); battery and torture (Article 126); torture (Article 127); and threats to kill (Article 129).

⁸⁴⁵ Закон України “Про внесення змін до Кримінального кодексу України щодо відповідальності за злочини з мотивів расової, національної чи релігійної нетерпимості” (Відомості Верховної Ради України, 2010, № 5, с. 43).

Article	Offence	Regular Sentence	Aggravated Sentence
115, para 2(14)	Murder	Imprisonment of between seven and 15 years.	Imprisonment of between 10 and 15 years.
121, para 2	Intended grievous bodily harm	Imprisonment of between five and eight years.	Imprisonment of between seven and 10 years.
122, para 2	Intended bodily harm of medium gravity	Correctional labour for up to two years or restraint of liberty of up to three years or imprisonment of up to three years.	Imprisonment of between three and five years.
126, para 1	Beating and torture	Fine of 50 minimum incomes, or community service for up to 200 hours, or correctional labour for up to one year.	Restraint of liberty or imprisonment for up to five years.
127, para 2	Torture	Imprisonment of between two and five years.	Imprisonment of between five and 10 years.
129, para 2	Threats to kill	Restriction of liberty of up to six months or imprisonment for up to two years.	Imprisonment of between three and five years.

These offences go some way to meeting international best practice, with two significant shortfalls: first, they provide for aggravated forms of only some, not all, violent offences; secondly, the aggravated forms only apply where the offence was motivated by hostility on the basis of race, national origin or religion, and not any other characteristics.

3.2.3.2 *Family Law*

While family relationships are generally considered to be private relations and thus outside of the scope of rights to equality and non-discrimination both under Ukraine's international treaty obligations and international best practice,⁸⁴⁶ where relationships are in some way regulated by law (for examp-

⁸⁴⁶ See, for example, above, note 742, Para 12, where the Human Rights Committee interpreted Article 26 as "prohibit[ing] discrimination in law or in fact in any field regulated and protected by public authorities"; and Principle 8 of the Declaration of Principles on Equality which provides that: "The right to equality applies in all areas of activity regulated by law." (See above, note 731, p. 8.)

le rights and responsibilities which arise through marriage, parenthood or rights upon divorce), such rights and responsibilities must be enjoyed on an equal basis and in a non-discriminatory manner. For example, Article 16(1) of the CEDAW requires states parties to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”. Similarly, Article 23(4) of the ICCPR requires states parties to “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution”.

Family law in Ukraine is largely regulated by the Family Code.⁸⁴⁷ Depending on the family members in question, the Code regulates both “personal non-property and property relations”.⁸⁴⁸ Article 7, paragraph 5 contains a general prohibition of discrimination, stating that:

A participant of family relations may not have privileges or restrictions on grounds of race, colour, sex, political, religious or other beliefs, ethnic or social origin, property, place of residence, language and other grounds.

In the absence of guidance notes or jurisprudence interpreting this provision, its application is unclear. It creates an important principled protection if it relates to the way in which family disputes are to be settled by state authorities. However, it would be a restriction on the right to private and family life and so contrary to international human rights law, to prohibit individuals from discriminating against each other in areas of their lives not regulated by law.

Within marital relations, Article 7, paragraph 6, provides that: “Women and men have equal rights and responsibilities in family relations, marriage and family.” While the provision is potentially unproblematic from the perspective of sex discrimination, its scope, which is unclear, may be problematic as “responsibilities” are not clearly defined. The same is true in relation to Article 141 which, in respect of parenthood, provides that mothers and fathers have equal rights and responsibilities for their children, regardless of whether they are married to each other. Article 142 provides that children have equal

847 Сімейний Кодекс України (Відомості Верховної Ради України, 2002, № 21–22, с. 135), as amended between 2003 and 2015.

848 *Ibid.*, Article 2.

rights and responsibilities towards their parents. The meaning of this Article is unclear, but in any case, giving children legal responsibilities towards their parents without further clarification is problematic.

In addition to these provisions, as noted above in section 2.2 of this report, the Family Code itself contains provisions which discriminate against persons on the basis of sexual orientation and gender identity through the failure to recognise relationships between same-sex couples and the prohibition of same-sex couples and transgendered persons to adopt children.

3.2.3.3 *Employment Law*

Article 6(1) of the ICESCR guarantees the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts. Article 7 of the ICESCR guarantees the right of everyone to the enjoyment of just and favourable conditions of work. Both of these rights must be guaranteed “without discrimination of any kind” by virtue of Article 2(2).

As discussed above in section 3.2.2.1, the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” prohibits discrimination in labour relations. Given its broad scope, it is likely to be the primary law relied upon by those seeking to enforce their right to non-discrimination at work. However, work and employment are regulated in Ukraine by the Code of Labour Laws and this also contains two provisions on discrimination in employment.⁸⁴⁹ Article 2¹ (inserted in 1991) provides a general principle of equality:

Ukraine guarantees equality of labour rights of all citizens regardless of their origin, social and property status, race, nationality, sex, language, political opinions, religious beliefs, type of occupation, place of residence or other factors.

The most problematic aspect of this provision is its limitation of the guarantee of equality of labour rights only to citizens. This is in clear contradiction to the ICESCR which provides the right to work and the right to enjoyment of

⁸⁴⁹ Кодекс законів про працю України (Затверджується Законом № 322-VIII від 10.12.71 ВВР, 1971, додаток до № 50, ст. 375), as amended between 1973 and 2015.

just and favourable conditions of work to “everyone” and without discrimination of any kind, including on the basis of nationality.

A more specific prohibition of discrimination is found in Article 22, as amended in 1995:

The unjustified denial of employment is prohibited.

According to the Constitution of Ukraine, any direct or indirect restriction of rights or establishment of direct or indirect benefits when concluding, changing and terminating labour contracts, based on the origin, social and property status, race, nationality, sex, language, political opinions, religious beliefs, membership in trade union or other association of citizens, type of occupation, or place of residence is not permitted.

Requirements regarding the age, education and health of workers may be established by legislation of Ukraine.

In contrast to the open list of grounds upon which discrimination is prohibited under the Constitution, Article 22 contains a closed list, thereby preventing the prohibition of discrimination on other grounds not explicitly mentioned. No definition of discrimination, or the different forms it can take, is provided. Furthermore, as section 2.1 of this report has identified, elsewhere in the Code there are a number of discriminatory provisions on the ground of gender.

That said, one valuable provision of the Code from an equality perspective is Article 172 which requires employers, in cases established by law, to create jobs and the necessary conditions for persons with disabilities to work.

3.2.3.4 Education Law

Article 13(1) of the ICESCR guarantees to “everyone” the right to education and this is a right which must be enjoyed without discrimination of any kind. The Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” prohibits discrimination in education. The Ukrainian education system is regulated by a number of laws and specific education laws do

not add significantly to its content or scope. Article 3 of the Law of Ukraine “On Education”,⁸⁵⁰ for example, states that:

Citizens of Ukraine have the right to free education in all public schools, regardless of gender, race, nationality, social status, wealth, type of occupation, philosophical beliefs, membership of parties, attitude towards religion, creed, health status, place of residence and other circumstances.

Article 6 of the Law of Ukraine “On General Secondary Education” and Article 9 of the Law of Ukraine “On Out-of-School Education” are similarly worded.⁸⁵¹ Article 5 of the Law of Ukraine “On Vocational Education” provides simply that “Citizens of Ukraine have the equal right to vocational education in accordance with their abilities and inclinations”.⁸⁵² The Law of Ukraine “On Higher Education”, however, contains no anti-discrimination provisions.⁸⁵³ Although these laws refer only to “citizens” rather than “everyone”, some of the laws also include provisions stating that foreign nationals and stateless persons enjoy the same rights as citizens.⁸⁵⁴

850 Закон України “Про освіту” (Відомості Верховної Ради УРСР, 1991, № 34, с. 451), as amended between 1993 and 2014.

851 Закон України “Про загальну середню освіту” (Відомості Верховної Ради України, 1999, № 28, с. 230), as amended between 2000 and 2014, and Закон України “Про позашкільну освіту” (Відомості Верховної Ради України, 2000, № 46, с. 393), as amended between 2002 and 2015, respectively.

852 Закон України “Про професійно-технічну освіту” (Відомості Верховної Ради України, 1998, № 32, с. 215), as amended between 1999 and 2013.

853 Закон України “Про вищу освіту” (Відомості Верховної Ради, 2014, № 37–38, с. 2004), as amended between 2014 and 2015.

854 Article 6, paragraph 4 of Закон України “Про загальну середню освіту” (Відомості Верховної Ради України, 1999, № 28, с. 230), as amended between 2000 and 2014, provides that: “Foreigners and stateless persons who are lawfully in Ukraine shall receive secondary education in the manner prescribed for the citizens of Ukraine”; similar provisions can be found at Article 6, paragraph 3 of Закон України “Про позашкільну освіту” (Відомості Верховної Ради України, 2000, № 46, с. 393), as amended between 2002 and 2015; Article 5 of Закон України “Про професійно-технічну освіту” (Відомості Верховної Ради України, 1998, № 32, с. 215), as amended between 1999 and 2013, and Article 4, paragraph 2 of Закон України “Про вищу освіту” (Відомості Верховної Ради, 2014, № 37–38, с. 2004), as amended between 2014 and 2015.

3.2.3.5 Healthcare Law

Article 6(н) of the Law of Ukraine “Fundamentals of Legislation of Ukraine on Health Care” provides “legal protection from any illegal forms of discrimination related to the health status”.⁸⁵⁵

In addition, the Law of Ukraine “On Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV”⁸⁵⁶ provides specific protection for persons living with HIV not to be discriminated against. This is particularly welcome since the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” does not explicitly include “health status” as a protected characteristic, despite this being a requirement under Ukraine’s international human rights obligations.⁸⁵⁷

Article 4, paragraphs 6 and 14 of the Law on HIV impose a requirement on the state to encourage non-discrimination and tolerance towards persons living with HIV. Article 13 prohibits medical staff from sharing information about the HIV status of a patient with other people, except under the decision of a court in cases set down by law. Article 14 guarantees equal rights and opportunities, and prohibits discrimination against persons living with HIV and persons belonging to groups at risk of HIV infection. Discrimination is defined in paragraph 3 as:

[A]n act or omission that directly or indirectly creates restrictions, depriving an individual of their rights or humiliating their human dignity on the basis of one or more attributes associated with the actual or potential presence of HIV, or giving reason to attribute the person to being in a group at risk of HIV infection.

The list of groups at risk of HIV infection are specified in an Order of the Ministry of Health as: (i) injecting drug users; (ii) persons who provide sexual services for payment; (iii) men who have sex with men; (iv) sexual partners of injecting drug users; (v) customers of persons who provide

855 Закон України “Основи законодавства України про охорону здоров’я” (Відомості Верховної Ради України (ВВР), 1993, № 4, с. 19), as amended between 1993 and 2015.

856 See above, note 833, Article 14.

857 See above, note 733, Para 33.

sexual services for payment; and (vi) those who are partners of men who have sex with men.⁸⁵⁸

Article 15 provides that persons with HIV are also entitled to compensation for damage caused to them by the revealing of information about their HIV status, and the right to free provision of essential drugs. Article 16 prohibits dismissal from work, denial of employment, denial of access to educational, social or medical institutions, and any restriction of the rights of persons with HIV. It also ensures an opportunity to bring cases to court on the basis of misconduct by officials who violate the rights of persons with HIV and their families and friends. Article 17 guarantees the right to compensation for damage caused to the health of a person caused by exposure to HIV during medical procedures or official duties. Statistics on the number of prosecutions and cases brought under the Law are not available, making it unclear to what extent the provisions are realised and enforced in practice; however, if utilised, such provisions present a strong degree of protection for victims of discrimination based on their HIV status as well as for unauthorised disclosure of their status.

3.2.3.6 *Social Security Law*

The major Ukrainian legislation on social protection, the Law of Ukraine “On Social Services”, prohibits discrimination occurring from persons providing social services, stating, at Article 11, that: “Persons who provide social services must (...) respect the dignity of citizens, [and] prevent abusive and discriminatory practices against people receiving social services.”⁸⁵⁹ However, there is no further elaboration within the Law about what should happen where such discrimination takes place, rendering it a rather symbolic (and weak) protection.

3.2.3.7 *Immigration Law*

The Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” contains no provisions which explicitly prohibit discrimination against indi-

858 Міністерство охорони здоров'я України, Наказ, 8 February 2013, № 104, “Про затвердження Переліку та Критеріїв визначення груп підвищеного ризику щодо інфікування ВІЛ”.

859 Закон України “Про соціальні послуги” (Відомості Верховної Ради України, 2003, № 45, с. 358), as amended between 2004 and 2012.

viduals on the basis of their nationality or lack thereof.⁸⁶⁰ However, Article 3 of the Law provides that:

- i. Foreigners and stateless persons staying in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same responsibilities as the citizens of Ukraine; exceptions are established by the Constitution, the laws or international treaties of Ukraine.*
- ii. Foreigners and stateless persons who are under the jurisdiction of Ukraine, irrespective of the legality of their stay, are eligible for recognition of their legal and fundamental rights and freedoms.*

These provisions essentially repeat Article 26 of the Constitution. As noted above, the international human rights treaties to which Ukraine is party do not require all rights and freedoms guaranteed to citizens to be guaranteed to non-citizens, but exceptions to the general principle of equality between citizens and non-citizens are very limited.⁸⁶¹

3.2.3.8 Sports Law

There is no specific right to engage in physical training or sport under Ukraine's international treaty obligations, although the promotion of physical activity and sport among all segments of society may be considered a means of promoting and protecting the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, guaranteed under Article 12(1) of the ICESCR. In any case, where any field of activity is regulated by law, international best practice requires that the rights to equality and non-discrimination apply.⁸⁶²

Article 3, paragraph 1, of the Law of Ukraine "On Physical Culture and Sports" states that "citizens have the right to engage in physical training and sports reg-

⁸⁶⁰ Закон України "Про правовий статус іноземців та осіб без громадянства" (Відомості Верховної Ради України, 2012, № 19–20, с. 179), as amended between 2013 and 2015.

⁸⁶¹ See the discussion in respect of Article 26 of the Constitution above at section 3.2.1 of this report.

⁸⁶² Principle 8 of the Declaration of Principles on Equality. (See above, note 731, p. 8.)

ardless of grounds of race, colour, political, religious or other beliefs, sex, ethnic or social origin, property, residence, language or other characteristics”.⁸⁶³

The most significant gap in this non-discrimination provision is that it only applies to “citizens” rather than “everyone”. However, this limitation may be of little consequence in practice since the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” guarantees the right to non-discrimination to everyone, in all social relations involving legal or natural persons, which would likely include sport and related physical training.

3.3 National Policies Impacting on Discrimination and Inequality

Ukraine does not have a current comprehensive national policy on equality or non-discrimination, although there are national policies in relation to certain groups vulnerable to discrimination, including women and persons with disabilities. Policies are developed by particular ministries before being approved by the Cabinet of Ministers. Measuring their success is difficult as there is little available assessment of their implementation and results during and after the period covered by the policy. Nonetheless, the fact that such policies are produced at all does indicate some willingness on the part of the government to make progress in these areas.

The **State Programme on Ensuring Equal Rights and Opportunities of Women and Men until 2016** was adopted by the Cabinet of Ministers in September 2013, and is the successor to the State Programme on Gender Equality in Ukrainian Society 2006–2010.⁸⁶⁴ Unfortunately, there was a three year gap between the closing of the first State Programme and the finalisation of the second. The government has stated that, after 2010, the number of central executive agencies and civil servants was cut by the government in order to recover from the financial crisis of 2008–2009. One agency cut was the Ministry of Youth and Sport which was responsible for gender equality policies. This had a negative impact on national gender me-

863 Закон України “Про фізичну культуру і спорт” (Відомості Верховної Ради України, 1994, № 14, с. 80), as amended between 1994 and 2015.

864 Кабінет Міністрів України, Постанова, 26 September 2013, № 717, “Про затвердження Державної програми забезпечення рівних прав та можливостей жінок і чоловіків на період до 2016 року”.

chanisms, causing a loss of coordination between the different elements of the system and weakening the effectiveness of any gender equality mainstreaming action. Eventually, in 2011, government functions on the issue of gender equality were transferred to the Ministry of Social Policy, but the absence of a central authority for the coordination of gender equality activities from 2009 to 2011 resulted in a significant delay in the adoption of the second programme of action, leaving the country without a policy for gender equality for three years.⁸⁶⁵

The government has noted that the State Programme is based on the Millennium Development Goals for Ukraine, the Concluding Observations of the CEDAW Committee, results of national and civic monitoring of the previous State Programme, and best practice from other European jurisdictions.⁸⁶⁶ It also draws inspiration from the EU Strategy for Equality between Men and Women 2010–2015.⁸⁶⁷

The State Programme identifies the most significant problems to be:

- the gap between the number of men and women participating in the political, economic and social decision-making of the country;
- the gender pay gap and the segregation of women at the lower-level positions of the labour market;
- the low numbers of women in entrepreneurial activity and business;
- the lack of conditions which allow women to combine their work and family life; and
- the presence of gender stereotypes in society and in the media.

In response to these problems, the State Programme sets out an ambitious number of steps to be taken in the years 2013–2016:

865 Ukraine National Review, Implementation of the Beijing Declaration and Platform for Action (1995) and the outcomes of the twenty-third special session of the General Assembly (2000) in the context of the twentieth anniversary of the Fourth World Conference on Women and the adoption of the Beijing Declaration and Platform for Action (2015), April 2014.

866 *Ibid.*

867 Кабінет Міністрів України, Розпорядження, 21 November 2012, № 1002-р, "Про схвалення Концепції Державної програми забезпечення рівних прав та можливостей жінок і чоловіків на період до 2016 року".

- improvement of the regulatory framework relating to opportunities for women and men, bringing it up to date with international and EU standards;
- implementation of measures to meet the UN Millennium Development Goals with particular reference to the promotion of gender equality and empowerment of women;
- the provision of information to employers on EU legislation and standards on gender equality at work;
- taking measures to reduce the gender pay gap;
- awareness-raising campaigns promoting equal sharing of family responsibilities and child-raising;
- training to develop women's leadership skills and capacity to participate in the political, social, and economic life, with a particular attention to the needs of women from minorities, women living in rural areas, and disabled women;
- campaigns to promote awareness of equality of opportunity of women and men among experts;
- mainstreaming gender within the education system;
- awareness-raising campaign addressing media, schools and other institutions to overcome gender stereotypes;
- developing mechanisms to protect the right to non-discrimination on the grounds of gender and to review claims of discrimination;
- implementing international obligations in respect of gender equality; and
- collaboration with international organisations and NGOs pursuing equality between men and women.

The State Programme has a total budget of 5,897,140 hryvnia (approximately 250,000 euro) and in 2014 the first tranche of the funding was made available.⁸⁶⁸ Whether it will achieve its aims remains to be seen.

In February 2010, the Cabinet of Ministers approved the **Plan of Action to Combat Xenophobia and Racial and Ethnic Discrimination for the Period 2010–2012**. The Plan of Action listed 38 activities to be carried out du-

⁸⁶⁸ Кабінет Міністрів України, Постанова, 26 September 2013, № 717, "Про затвердження Державної програми забезпечення рівних прав та можливостей жінок і чоловіків на період до 2016 року".

ring its implementation which include review and improvement of existing legislation; educational activities to tackle xenophobia and racism in school and amongst young people; preventing hate crimes; inter-religious dialogue; training for public officials on best practice for preventing xenophobia and racism; and public awareness-raising campaigns. Its efficacy has not been assessed, making it difficult to determine the extent to which its laudable aims have been realised.

In August 2012, the Cabinet of Ministers approved the **National Plan of Action for the Implementation of the Convention on the Rights of Persons with Disabilities up to 2020**.⁸⁶⁹ The Plan of Action seeks to ensure the enjoyment by persons with disabilities of the rights protected under the CRPD through various activities including awareness-raising of the needs of persons with disabilities; legislative reform to ensure compliance with the CRPD; improved access to infrastructure; improving the conditions of remuneration for educational and rehabilitation specialists who work with children with disabilities; and strengthening the rights of persons with disabilities including through greater responsibility for failure to eliminate barriers.

Particularly welcome is the Action Plan's elucidation of clear and mostly measurable targets towards better inclusion of people with disabilities. The Action Plan aims that:

- the proportion of infrastructure, landscaping, transport infrastructure and road service meeting the needs of persons with disabilities reaches 15% by 2015, 35% by 2018 and 50% by 2020;
- the proportion of routes in the country which can be used by vehicles adapted to transport persons with disabilities reaches 15% by 2015, 35% by 2018 and 50% by 2020;
- the proportion of broadcasts which are accessible for persons with hearing difficulties reaches 15% by 2015, 35% by 2018 and 50% by 2020;
- 100% of all government websites are accessible for persons with visual and hearing difficulties by 2015;

869 Кабінет Міністрів України, Постанова, 1 August 2012 № 706, "Про затвердження Державної цільової програми "Національний план дій з реалізації Конвенції про права інвалідів" на період до 2020 року".

- from 2013, all technical and other rehabilitative needs for persons with disabilities are met;
- the number of children with disabilities enrolled in primary, secondary, vocational and higher education increases to 107,000 by 2015, 122,000 by 2018 and 138,000 by 2020; and
- the number of persons with disabilities in employment reaches 706,200 by 2015, 750,300 by 2018 and 794,600 by 2020.

The Action Plan has a total budget of 14 bln hryvnia (approximately 600 mln euro), all of which comes from the state budget. While on its face the Action Plan is positive, the NGO Expert Council of Public Organisations has criticised its implementation, noting that although it was developed with the involvement of public organisations of persons with disabilities, there is a lack of proper monitoring, financing and responsibility of those implementing the Action Plan.⁸⁷⁰ The Action Plan's effectiveness is also hindered by the lack of reliable statistics on persons with disabilities and the continued use of a medical model with regards to disability, rather than a social model.

In April 2013, the Cabinet of Ministers approved the **Strategy for the Protection and Integration of the Roma national minority into Ukrainian society up to 2020** and, in September 2013, published a **National Action Plan (NAP) on Implementation of the Strategy**.

The Strategy aims to:

- create conditions for the implementation of the recommendations towards EU visa regime liberalisation for Ukraine;
- ensure the integration of the Roma national minority into Ukrainian society;
- prevent discrimination against the Roma;
- increase the educational level of the Roma;
- improve the health conditions of the Roma;
- improve the housing conditions of the Roma;
- ensure the enhancement of employment of the Roma;

⁸⁷⁰ *The "Lost" Rights: An alternative report by public organizations on compliance with the UN Convention on the Rights of Persons with Disabilities, 2012, Para 12.*

- solve problems experienced by the Roma while obtaining identity documents, proof of citizenship and certificates of state registration of civil status; and
- ensure the preservation and development of the cultural originality of the Roma.

The Strategy contains a mix of realistic goals with declaratory statements of intent; however, the fact that the Strategy was adopted at all is a positive step in and of itself.

A number of weaknesses in the Strategy have been highlighted. Although neither the Strategy nor the NAP were subject to consultation with OSCE and the Council of Europe, both were discussed with local civil society.⁸⁷¹ The development of regional action plans by regional administrations has been hindered by a lack of reliable data on the number of Roma living in each region and the lack of knowledge on which indicators to use.⁸⁷² Further, the Strategy and the NAP have been criticised for not guaranteeing adequate resources and for lacking a strong coordination body and monitoring system.⁸⁷³ According to the European Roma Rights Centre, neither the Strategy nor the NAP were developed with the sufficient participation of Roma representatives; the NAP does not provide for any budget responsibilities or allocations; the NAP lacks concrete targets in many areas, and contains no indicators for successful monitoring of its implementation; and no nation-wide monitoring mechanisms were created.⁸⁷⁴

Ukraine also has two Action Plans promoting integration of migrants and refugees respectively: the **Action Plan on Integration of Migrants into Uk-**

871 Note, however, that civil society opinions and recommendations were not included in the approved text. European Commission, *Report from the Commission to the European Parliament and the Council: Third report on the implementation by Ukraine of the Action Plan on Visa Liberalisation*, Brussels, 15 November 2013, COM(2013) 809 final.

872 European Roma Rights Centre and Chiricli, *Written Comments concerning Ukraine for consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (28th April to 23rd May 2014)*.

873 European Commission, *Report from the Commission to the European Parliament and the Council: Third report on the implementation by Ukraine of the Action Plan on Visa Liberalisation*, Brussels, 15 November 2013, COM(2013) 809 final, p. 25.

874 European Roma Rights Centre, *Written Comments concerning Ukraine for Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (28th April to 23rd May 2014)*, March 2014, p. 4.

rainian Society for 2011–2015⁸⁷⁵ and the **Action Plan on Integration of Refugees and Persons in Need of Complementary Protection into the Ukrainian Society for the Period until 2020**.⁸⁷⁶ These are both short Action Plans which set out various steps to be taken at the national and local level in an effort to integrate migrants, refugees and others into Ukrainian society.

As of May 2015, the government of Ukraine was also in the process of developing a **National Human Rights Strategy** and published a draft in March 2015.⁸⁷⁷ The final strategy will cover the period 2015 to 2020. This is the first strategy in this field to be set up since the new government and President were elected in 2014. Indeed, the preamble to the draft Strategy recognises the recent events:

In their turn, developments of Maidan proved irreversible commitment of Ukrainian people [sic] towards shaping a true constitutional and democratic state, where rights and freedoms of each and every person are respected. New challenges are occupation of the part of Ukraine's territory and military conflict in eastern Ukraine.

The draft Human Rights Strategy is divided into 27 “strategic areas” covering a broad range of human rights. One of the principles governing the draft Strategy is “non-discrimination, which envisages equal rights and freedoms for everyone without any limitations”. The draft Strategy contains a number of sections in respect of the rights to equality and non-discrimination.

Section 9 covers non-discrimination. The draft Strategy recognises that the practical implementation of anti-discrimination norms is complicated because of the absence of an effective mechanism for the right not to be subjected to discrimination and prejudices and stereotypes prevalent in society. The goal of this section is bold: “to combat discrimination on any

875 Кабінет Міністрів України, Розпорядження, 15 June 2011, № 653-р, Про затвердження плану заходів щодо інтеграції мігрантів в українське суспільство на 2011–2015 роки.

876 Кабінет Міністрів України, Розпорядження, 22 August 2012, № 605-р, Про затвердження плану заходів щодо інтеграції біженців та осіб, які потребують додаткового захисту, в українське суспільство на період до 2020 року.

877 Ministry of Justice of Ukraine, *National Strategy on Human Rights*, available at: <http://old.minjust.gov.ua/file/44710>.

grounds in all areas of public and private life, to develop and implement efficient mechanisms for prevention and combating discrimination". The section does not specify the means which will be taken to achieve this goal, only the expected outcomes:

- comprehensive legislation is adopted aiming at prohibition of discrimination in all areas and at prohibition of incitement of hatred;
- an effective mechanism for protection and combating all forms of discrimination is provided; and
- programmes on raising awareness on equality and non-discrimination are implemented.

The draft is disappointingly weak on the means by which these outcomes will be achieved. While recognising the key obstacles to an effective legal framework (namely the need to refine the existing legislation and to ensure effective mechanisms to combat discrimination), simply stating these without any further detail on precisely what amendments to legislation are needed and what sort of mechanisms will be established renders the policy far too short on detail.

Separate from the general strategic area of non-discrimination, section 10 relates to equality between women and men. The draft Strategy notes that there is a problem of unequal access of men and women in exercising their rights. The goal, similarly bold, is "to ensure equal rights and opportunities for women and men in all areas of public life". The outcomes are similarly broad:

- international and national laws on protecting women's rights and gender equality are duly implemented in national policies and programmes;
- the national mechanism for ensuring equal rights and opportunities for women and men is strengthened;
- conditions are provided for balanced participation of women and men in the political and public decision-making;
- provisional special measures are implemented to combat gender discrimination; and
- the opportunities and conditions for overcoming gender stereotypes and sexism are provided.

There is nothing in this section which cannot already be found in existing legislation (particularly the Law of Ukraine “On Equal Rights and Opportunities for Women and Men”) and policies (particularly the State Programme on Ensuring Equal Rights and Opportunities of Women and Men until 2016). While welcome to see the issue of gender equality included in the draft Strategy, it contains nothing new in its substance.

3.4 Enforcement and Implementation

While there is a relatively comprehensive legal framework protecting the rights to equality and non-discrimination in Ukraine, the extent to which the Constitution and legislative provisions can be said to be effective depends on how they are enforced and implemented in practice. As this section identifies, there are many areas in which their enforcement and implementation needs to be strengthened.

3.4.1 Enforcement

States do not meet their obligation to protect people from discrimination by simply prohibiting discrimination in the law. They must also ensure that the rights to equality and non-discrimination are effectively enforced in practice. This means that, in addition to improving legal protection from discrimination, Ukraine must also put in place mechanisms which guarantee victims of discrimination effective access to justice and appropriate remedies. According to Principle 18 of the Declaration of Principles on Equality:

Persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy. They must have effective access to judicial and/or administrative procedures, and appropriate legal aid for this purpose. States must not create or permit undue obstacles, including financial obstacles or restrictions on the representation of victims, to the effective enforcement of the right to equality.⁸⁷⁸

878 See above, note 731, Principle 18, p. 12.

Access to Justice

Access to justice will only be effective where victims of discrimination are able to seek redress unhindered by undue procedural burdens or costs. Remedies must be “accessible and effective”⁸⁷⁹ and legal aid must be provided where necessary. Rules on standing which allow organisations to act on behalf, or in support, of victims of discrimination are particularly important in overcoming the disadvantages faced by individuals in the justice system. It is also important to allow groups of victims who have experienced similar discriminatory treatment to bring claims on behalf of a group, if the systemic nature of discrimination is to be effectively addressed.

The means by which individuals in Ukraine are able to enforce equality and non-discrimination provisions depend on whether the provision is found in the Constitution or in legislation.

Access to Justice under the Constitution

Although the Constitution of Ukraine sets out a number of rights and freedoms, and establishes a Constitutional Court as the “sole body of constitutional jurisdiction in Ukraine” (Article 147), Article 153 of the Constitution delegates “the procedure for the organisation and operation of the Constitutional Court of Ukraine, and the procedure for its review of cases” to be set out in legislation. The Law of Ukraine “On the Constitutional Court of Ukraine”⁸⁸⁰ provides the framework under which the claims to the Constitutional Court can be brought, including claims alleging a violation of the Constitutional provisions protecting the rights to equality and non-discrimination (primarily Article 24).

Article 42 of the Law provides that appeals can be brought to the Constitutional Court for official interpretations of the Constitution *and* legislation in order to ensure the exercise or protection of constitutional rights and freedoms, and the rights of a legal entity. Such an appeal can be brought by citizens of Ukraine, foreigners, stateless persons and legal entities. Article 94 of the Law,

879 See above, note 762, Para 15.

880 Закон України “Про Конституційний Суд України” (Відомості Верховної Ради України, 1996, № 49, с. 272), as amended between 2006 and 2014.

however, limits the circumstances under which appeals can be brought by providing that:

The reason for a constitutional appeal on the official interpretation of the Constitution and laws of Ukraine shall be the presence of non-uniform application of the Constitution or laws of Ukraine by Ukrainian courts or other public authorities, if the subject of the right to constitutional appeal considers that this can lead, or has led, to a violation of his constitutional rights and freedoms.

In accordance with Article 46, the decision as to whether or not the case will be taken up is at the discretion of the Constitutional Court sitting in a plenary session.

It appears from the Law that standing to bring an appeal is limited to individuals and legal entities. It is not clear, however, whether legal entities are only able to bring cases on their own behalf (i.e. because the legal entity has itself suffered a violation of a constitutional right) or also on behalf of individuals who have suffered such a violation. Principle 20 of the Declaration of Principles on Equality states that:

States should ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality.⁸⁸¹

If legal entities are only able to bring an appeal when the entity itself has suffered a violation, this would limit standing more narrowly than international best practice would suggest.

Notwithstanding its discretion as to whether or not it will initiate proceedings following receipt of a constitutional appeal, Article 45 provides for four

881 See above, note 731, Principle 20, pp. 12–13.

specific grounds upon which the Constitutional Court can refuse to initiate proceedings: where the Constitution of Ukraine or the Law do not provide for a right to constitutional appeal; where a constitutional appeal does not meet requirements envisaged by the Constitution of Ukraine or the Law where the Constitutional Court of Ukraine has already decided on an analogous constitutional appeal; and where the Constitutional Court of Ukraine has no jurisdiction over issues raised in a constitutional appeal.

In addition to bringing cases to the Constitutional Court, Article 55 of the Constitution provides that individuals are able to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers. Further, everyone has the right to appeal for the protection of his or her rights to the Ukrainian Parliament Commissioner for Human Rights. Finally, after exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to “the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant”.

Access to Justice under Legislation

For cases brought under ordinary civil proceedings, rather than the Constitution, individuals are able to bring cases in the local courts. A third party has the right to join a case, either on the side of the claimant or the defendant, “if a decision of the case could affect their rights or obligations relative to either of the parties”.⁸⁸² If a person opposes the third party being added to the case, the court will decide whether or not they should be added.⁸⁸³ It appears that, although organisations cannot bring cases on their own behalf in civil proceedings, they may be able to join the case with the approval of the court. Nevertheless, this provision does not fully guarantee the ability of associations, organisations and other legal entities to engage in litigation, since their involvement is subject to the acceptance of the other party or the approval of the court.

882 Цивільний процесуальний кодекс України (Відомості Верховної Ради України, 2004, № 40–41, 42, с. 492), as amended between 2005 and 2015, Article 35, para 1.

883 *Ibid.*, Article 36, para 5.

The Law of Ukraine “On Amendments to Some Legal Acts of Ukraine on Prevention and Combating Discrimination”⁸⁸⁴ inserted new subparagraph 6¹ into Article 5, paragraph 1 of the Law of Ukraine “On Court Fees”, which provides that claimants are exempt from paying court fees in cases involving discrimination.⁸⁸⁵ As such, cases brought under the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” do not require the payment of any court fees.

In addition to appropriate procedures, effective access to justice requires an independent and impartial judiciary. Many criticisms have been made of the judiciary in Ukraine. In 2006, the HRC expressed concern that “corruption remains a persistent problem, and the process for appointment of judges is not transparent”⁸⁸⁶ The state has made some attempts to deal with these concerns. In 2010, the Verkhovna Rada passed the Law of Ukraine “On the Judicial System and Status of Judges”⁸⁸⁷ with the aims of safeguarding the independence of the judiciary and helping to prevent, or reduce, the level of corruption in the judicial system. The Law provides for a more transparent, competitive process for selection of judges and institutes new disciplinary procedures. In 2011, the Law of Ukraine “On Principles of Preventing and Combating Corruption” was adopted to address wider concerns of corruption in the country.⁸⁸⁸ Between 2008 and the start of 2012, criminal proceedings for offences of corruption were brought against 63 judges with 45 convicted.⁸⁸⁹

Despite these reforms, in 2013, the HRC iterated its concern that “judges still remain vulnerable to outside pressure due to insufficient measures to guarantee the security of their status” and that Ukraine “still does not fully ensu-

884 See above, note 771.

885 Закон України “Про судовий збір” (Відомості Верховної Ради України, 2012, № 14, с. 87), as amended between 2012 and 2015.

886 United Nations Human Rights Committee, *Concluding Observations: Ukraine*, UN Doc. CCPR/C/UKR/CO/6, 28 November 2006, Para 17.

887 Закон України “Про судоустрій і статус суддів” (Відомості Верховної Ради України, 2010, № 41–42, № 43, № 44–45, с. 529), as amended between 2011 and 2015.

888 Закон України “Про засади запобігання і протидії корупції” (Відомості Верховної Ради України, 2011, № 40, с. 404), as amended between 2013 and 2015.

889 United Nations Human Rights Council, *National Report: Ukraine*, UN Doc. A/HRC/WG.6/14/UKR/1, 13 August 2012, Para 58.

re the independence of judges from the executive and legislative branches of government and that their status is not adequately secured by law”.⁸⁹⁰

Evidence of state interference with the judiciary continues to emerge. In March 2014, the Verkhovna Rada recommended that the General Prosecutor initiate criminal proceedings against a number of judges who, in September 2010, declared the Law of Ukraine “On Introducing Amendments to the Constitution of Ukraine” unconstitutional. This interference by the state was criticised by the International Commission of Jurists as “inconsistent with respect for the independence of the judiciary and the rule of law”.⁸⁹¹

Legal Aid System

Ukraine’s obligations under international treaties to which it is party only provide for a limited explicit right to legal aid. Article 14(3)(d) of the ICCPR, for example, requires states parties to provide legal assistance in criminal proceedings only, and only “in any case where the interests of justice so require” and “if he does not have sufficient means to pay for it”. Similarly, Article 6(3)(c) of the ECHR requires states parties to provide free legal assistance in criminal proceedings where a person “has not sufficient means to pay for legal assistance” and “when the interests of justice so require”. In respect to the CEDAW, however, the CEDAW Committee has stated that:

*States must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary.*⁸⁹²

In addition, Article 2(3)(a) of the ICCPR requires states parties to ensure that “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”. Article 13 of the ECHR likewise requires effective remedy when Convention rights are violated. Without effective access to jus-

890 See above, note 772, Para 17.

891 International Commission of Jurists, “Ukraine: Dismissal and criminal prosecution of judges undermine independence of the judiciary”, 20 March 2014.

892 United Nations Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28: On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/2010/47/GC.2, 2010, Para 34.

tice, including legal aid where the person cannot otherwise afford to bring a claim, it is arguable that the state is failing to ensure an “effective remedy” for violations of the rights to equality and non-discrimination as guaranteed under Articles 2(1) and 26 of the ICCPR. International best practice requires “appropriate legal aid” to be provided in cases where an individual asserts their right to equality or non-discrimination.⁸⁹³

The legal aid system in Ukraine has only relatively recently been established. Despite Article 59 of the Constitution providing that “[e]veryone has the right to legal assistance” and that such assistance “is provided free of charge in cases envisaged by law”, the implementing legislation was only adopted in 2011 (the Law of Ukraine “On Free Legal Assistance”)⁸⁹⁴ and will not be fully in force until 2017.

The law makes a distinction between primary and secondary legal assistance. Primary legal assistance covers the provision of legal information and advice, explanations on legal issues and assistance in drafting statements, complaints and other documents of a legal nature in both civil and criminal proceedings. All people are entitled to free primary legal assistance. Secondary legal assistance includes legal representation in court and the drafting of legal documents. Only certain low-income and vulnerable groups are entitled to free secondary legal assistance, namely:

- i. persons with low incomes, specifically those whose average monthly family income is lower than the minimum subsistence level or, where the person has a disability, where their pension (or allowance) is less than two minimum subsistence levels;*⁸⁹⁵
- ii. orphaned children, children whose parents have had their parental rights and responsibilities removed, and children that are, or may become, victims of family violence;*

893 See above, note 731, Principle 18 p. 12.

894 Закон України “Про безоплатну правову допомогу” (Відомості Верховної Ради України, 2011, № 51, с. 577), as amended between 2012 and 2014.

895 Закон України “Про прожитковий мінімум” (Відомості Верховної Ради України, 1999, № 38, с. 348), as amended between 2005 and 2012. See above, note 113.

- iii. *persons who are under administrative detention*,⁸⁹⁶
- iv. *persons who are under administrative arrest*,⁸⁹⁷
- v. *criminal suspects detained by investigation agencies;*
- vi. *persons taken into custody as a form of preventive measure;*
- vii. *persons whose cases must be pleaded in the presence of a lawyer in accordance with the provisions of the Criminal Procedural Code of Ukraine;*
- viii. *persons covered by the Law of Ukraine “On Refugees” until a decision is made on granting them refugee status or if the person appeals against the decision on granting refugee status;*
- ix. *war veterans and persons indicated in the Law of Ukraine “On the Status of War Veterans and Guarantees of their Social Protection”, persons with special merits, those who have rendered special labour services to the country, and victims of Nazi persecution;*
- x. *persons in relation to whom the court is considering restriction of their civil capacity, recognition of the individual as incapacitated, and recovery of the person’s civil capacity;*
- xi. *persons in relation to whom the court is considering rendering forced psychiatric care; and*
- xii. *persons rehabilitated in accordance with the legislation of Ukraine.*

The provisions on free primary legal assistance came into force in 2011. The provisions on free secondary legal assistance are being staged in with groups (iii) to (vii) being able to receive free legal assistance as of 1 January 2013, and the remaining groups from 1 July 2015, although in October 2014, the government put forward a draft law which would delay this until 1 January

896 Administrative detention is a form of preventative measure whereby a person is detained at the discretion of various state agencies such as the police or the State Border Guard Service for a maximum of three hours, and in some exceptional cases up to seventy two hours (at which point the agency may apply for judicial authorisation for further detention).

897 Administrative arrest is a punishment for having committed an administrative offence whereby a person is detained for up to 15 days.

2017. The legal aid scheme is coordinated by the National Legal Aid Coordination Centre and the services are delivered by 27 regional centres across the whole of Ukraine.⁸⁹⁸

Evidence and Proof

International law recognises that it can be difficult for a person to prove that discrimination has occurred, and thus requires that legal rules on evidence and proof are adapted to ensure that victims can obtain redress. Principle 21 of the Declaration of Principles on Equality states that:

Legal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, the rules on proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination (prima facie case), it shall be for the respondent to prove that there has been no breach of the right to equality.⁸⁹⁹

As this principle indicates, international law requires that the “burden of proof” in cases of discrimination be transferred to the defendant, once a prima facie case that discrimination has occurred has been made. The CESCR has stated in its General Comment No. 20 that:

Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively.⁹⁰⁰

898 Namoradze, Z. and Romanov, R., *Access to Justice Advances in Ukraine*, Open Society Justice Initiative, 13 February 2013, available at: <http://www.opensocietyfoundations.org/voices/access-justice-advances-ukraine>.

899 See above, note 731, Principle 21, p. 13.

900 See above, note 733, Para 15.

As noted above at section 3.2.2.1, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Prevention and Combating Discrimination”, *inter alia*, amended Article 60 of the Civil Procedure Code to introduce a reversal of the burden of proof in discrimination cases. Article 60 now provides:

In cases relating to discrimination, the claimant must provide evidence that discrimination has taken place. After bringing such evidence, the burden of proof lies with the defendant.

The reversal of the burden of proof in discrimination cases is formulated in Principle 21 of the Declaration of Principles on Equality as well as international best practice: both the CESCRC and the CERD recommend that states provide for a reversal of the burden of proof in discrimination proceedings,⁹⁰¹ and such provisions can be found in all European Union anti-discrimination Directives.⁹⁰² Article 60 appears to comply with these stipulations, although the lack of clarity around the extent of the evidence to be provided before the burden shifts under Article 60 means a higher threshold may be applied under Ukrainian law than is applied under international best practice, which requires only *prima facie* evidence to be presented by the claimant.

Remedies and Sanctions

Principle 22 of the Declaration of Principles on Equality sets out the importance of appropriate remedies and sanctions where the rights to equality and non-discrimination are violated:

Sanctions for breach of the right to equality must be effective, proportionate and dissuasive. Sanctions must provide for appropriate remedies for those whose right to equality has been breached including reparations for material and non-material damages; sanctions may also require the elimination of discriminatory practices and the implementation of structural, institutional, or-

901 See above, note 733, Para 40, and above, note 752, Para 24.

902 See above, note 785, Articles 8, 10, 9 and 19 respectively.

ganisational, or policy change that is necessary for the realisation of the right to equality.

At the international level, the HRC has stated that remedies must be “accessible and effective”⁹⁰³ while the CESCR has said that “effective” remedies include compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies.⁹⁰⁴

The Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” and the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” both only provide for compensation for material or moral damage where the Law has been violated. However, both also provide that those who violate the Law bear civil, criminal and administrative liability.

With respect to civil liability, the available remedies are set out in Article 16, paragraph 2 of the Civil Code which lists 10 specific remedies a court may grant:

- i. Recognition of a right;*
- ii. Recognition of a legal action as invalid;*
- iii. Termination of an action which violates a right;*
- iv. Restoration of the situation prior to the violation;*
- v. Enforcement of the fulfilment of obligations in kind;*
- vi. Modification of legal relationship;*
- vii. Termination of legal relationship;*
- viii. Damages and other means of compensation for material damage;*
- ix. Compensation for moral (non-material) damages; and*
- x. Recognition of a decision, actions or inaction of a state authority, the Autonomous Republic of Crimea or of local self-government, as well as their officials and employees, to be unlawful.*⁹⁰⁵

903 See above, note 762, Para 15.

904 See above, note 733, Para 40.

905 Цивільний кодекс України (Відомості Верховної Ради України, 2003, №№ 40–44, с. 356), as amended between 2004 and 2015.

A court may protect a person's civil right or interest in any other way established by agreement between the parties or legislation.

Where administrative liability is found, the court has various powers listed in Article 162, paragraph 2 of the Code of Administrative Procedure:

- i. To invalidate the decision, act or omission challenged;*
- ii. To require the defendant to perform certain actions;*
- iii. To require the defendant to refrain from certain actions;*
- iv. To order recovery of funds from the defendant;*
- v. To impose a temporary ban (suspension) of certain types or all activities of an association;*
- vi. To force the dissolution (liquidation) of an association;*
- vii. To force the expulsion of a foreigner or stateless persons from Ukraine; and*
- viii. To recognise the presence or absence of jurisdiction (authority) of a particular power.*

Article 162 also provides that the court “may adopt another resolution that would ensure compliance and protect the rights, freedoms and interests of citizens, other actors in the field of public law relations from violations by government entities.”⁹⁰⁶

The list of available remedies is largely drawn from international best practice and, in particular, those which have been referred to by the UN Treaty Bodies. The HRC has stated in its General Comment No. 31 that:

[W]here appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations (...) In general, the purposes of the Cov-

906 Кодекс адміністративного судочинства України (Відомості Верховної Ради України, 2005, № 35–36, № 37, с. 446), as amended between 2005 and 2015.

enant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State Party's laws or practices.⁹⁰⁷

The CESCR has stated in its General Comment No. 20 that:

[I]nstitutions should (...) be empowered to provide effective remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies, and State parties should ensure that these measures are effectively implemented.⁹⁰⁸

The CERD has stated in a General Recommendation that:

[T]he right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, which is embodied in article 6 of the Convention, is not necessarily secured solely by the punishment of the perpetrator of the discrimination; at the same time, the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate.⁹⁰⁹

The CEDAW Committee, in relation to Article 2(b) of the CEDAW, has stated in its General Recommendation No. 28 that:

907 See above, note 762, Paras 16 and 17.

908 See above, note 733, Para 40.

909 United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 26: Article 6 of the Convention*, UN Doc. A/55/18, annex v. at 153, 2000, Para 2.

This obligation requires that States parties provide reparation to women whose rights under the Convention have been violated. Without reparation the obligation to provide an appropriate remedy is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.⁹¹⁰

While the specific remedies available under the Civil Code and Code of Administrative Procedure do meet many of those required to be available under Ukraine's international human rights obligations, some do not, particularly remedies which go beyond the specific victim and seek to ensure the structural or policy changes necessary to ensure non-repetition of the discrimination. However, both Codes provide for a general power of courts to provide any other remedy necessary to provide redress to the complainant. This general power in respect of remedies, in theory at least, would enable courts to provide the sorts of remedies required by Ukraine's international human rights obligations.

Where complaints are brought to the Ukrainian Parliament Commissioner for Human Rights, however, the Commissioner, unlike the courts, has no power to impose any sanctions or remedies, but rather may apply to other government agencies in order to remedy the violation.

The Ukrainian Parliament Commissioner for Human Rights

Principle 23 of the Declaration of Principles on Equality highlights the important role of specialised bodies in the protection of the right to equality:

States must establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality. States must ensure the independ-

910 See above, note 892, Para 32.

*ent status and competences of such bodies in line with the UN Paris Principles, as well as adequate funding and transparent procedures for the appointment and removal of their members.*⁹¹¹

The importance of specialised bodies has also been highlighted by, *inter alia*, the CESCR which has stated that:

*National legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights. Institutions dealing with allegations of discrimination customarily include courts and tribunals, administrative authorities, **national human rights institutions and/or ombudspersons**, which should be accessible to everyone without discrimination.*⁹¹² (Emphasis added)

While Ukraine has not established a specialised body focussed on the protection and promotion of the right to equality, it does have a National Human Rights Institution (NHRI), the Ukrainian Parliament Commissioner for Human Rights, which was established in December 1997 by the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights”.⁹¹³ Nina Karpachova, a former deputy of the Verkhovna Rada, was appointed the first Commissioner in 1998. In 2012, after three terms, Valeriya Lutkovska took over the position. Initially accredited as a “B” status NHRI by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in 2008, it was upgraded to “A” status in 2009, a status reaffirmed in 2014.

The Commissioner has general competence over “parliamentary control over the observance of constitutional human and citizens’ rights and freedoms and

911 See above, note 731, Principle 23, p. 13.

912 See above, note 733, Para 40.

913 Закон України “Про Уповноваженого Верховної Ради України з прав людини” (Відомості Верховної Ради України, 1998, № 20, с. 99), as amended between 2008 and 2015.

the protection of every individual's rights on the territory of Ukraine and within its jurisdiction".⁹¹⁴ Its purposes are:

- i. *The protection of human and citizens' rights and freedoms envisaged by the Constitution of Ukraine, the laws of Ukraine and international treaties of Ukraine;*
- ii. *The observance of and respect for human and citizens' rights and freedoms by public authorities and their officials;*
- iii. *The prevention of violation of human and citizens' rights and freedoms or the facilitation of their restoration;*
- iv. *The facilitation of the process of bringing legislation of Ukraine on human and citizens' rights and freedoms in accordance with the Constitution of Ukraine and international standards in this area;*
- v. *The improvement and further development of international cooperation in the area of the protection of human and citizens' rights and freedoms;*
- vi. *The prevention of any forms of discrimination in relation to fulfilment of person's rights and freedoms; and*
- vii. *The promotion of legal awareness of the population and protection of confidential information about a person.*⁹¹⁵

The Law sets out that the Commissioner must perform their duties independently from any state bodies and officials and the Commissioner themselves must be free of any incompatibility with the post (e.g. by holding positions at other state bodies, or belonging to a political party).⁹¹⁶ The Commissioner is appointed or dismissed by the Verkhovna Rada by a secret ballot for a term of five years, with dismissal only permitted in specific circumstan-

914 *Ibid.*, Article 1.

915 *Ibid.*, Article 3.

916 *Ibid.*, Articles 4 and 8.

ces.⁹¹⁷ The criteria for appointment of the Commissioner do raise concerns from the perspective of age discrimination. The Commissioner must be a citizen of Ukraine aged 40 years or older, have a good command of the state language, have high moral qualities, have experience in human rights protection, and have resided in Ukraine for the previous five years.⁹¹⁸ The Commissioner has a Secretariat and may set up the Advisory Board comprising persons with “practical experience in the area of protection of human and citizens' rights and freedoms”.⁹¹⁹

Funding for the Commissioner comes from the state budget, at that the Commissioner her/himself work out her/his budget and submit it to the Verkhovna Rada for its approval.⁹²⁰ In 2013, the HRC expressed some concern at possible inadequacy of financial and human resources allocated to the Commissioner, which would undermine its effectiveness.⁹²¹

The Commissioner has a number of specific powers:

1. To be received by the President of Ukraine, the Chairman of the Verkhovna Rada, the Prime Minister, the chairmen of the Constitutional Court, the Supreme Court and higher specialised courts of Ukraine, the Prosecutor General, the heads of other state bodies, bodies of local self-government, associations of citizens, enterprises, institutions, organizations;
2. To attend sessions of the Verkhovna Rada, the Cabinet of Ministers, the Constitutional Court, the Supreme Court, higher specialised courts, collegiums of prosecutors' offices and other collegiate bodies;
3. To appeal to the Constitutional Court with regard to: conformity of the laws of Ukraine and other legal acts issued by the Verkhovna Rada, acts issued by the President, acts issued by the Cabinet of Ministers, and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea concerning human and citizens' rights and freedoms under the Constitution, and the official interpretation of the Constitution and the laws of Ukraine;

917 *Ibid.*, Articles 5 and 9.

918 *Ibid.*, Article 5.

919 *Ibid.*, Article 10.

920 *Ibid.*, Article 12.

921 See above, note 772, Para 7.

4. To make proposals for improvement of legislation in the sphere of protection of human and citizen's rights and freedoms;
5. To visit bodies of state power, bodies of local self-government, enterprises, institutions, organisations and be present at their sessions;
6. To review documents, including those which contain classified information and obtain copies from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organisations, and bodies of prosecution, including court cases.
7. To demand from officials and officers of bodies of state power, bodies of local self-government, enterprises, institutions and organisations facilitation in conducting inspection regarding the activity of enterprises, institutions and organisations under their control and subordination;
8. To invite officials and officers, citizens of Ukraine, foreigners and stateless persons to submit oral and written explanations with regard to cases under review;
9. To visit places of detention, psychiatric institutions, temporary refugee accommodation, units for passenger transit at checkpoints, institutions where children are housed, neuropsychiatric centres, boarding houses for senior citizens and persons with disabilities, houses for war and labour veterans, and rehabilitation centres;
10. To interview persons who stay in such places and obtain information on their treatment and living conditions;
11. To attend court sessions of all instances;
12. To appeal to a court so as to protect human and citizens' rights and freedoms of persons who cannot do this on their own due to reasons of health or any other appropriate reasons, and also attend judicial proceedings personally or through a representative pursuant to law;
13. To submit to respective bodies documents containing the response of the Commissioner to instances of violation of human and citizens' rights and freedoms, for taking respective measures;
14. To supervise the observance of established human and citizens' rights and freedoms by respective bodies of state power, including those who conduct investigative activities, make proposals for improving activity of such bodies in this area pursuant to established procedure; and
15. To exercise control over the ensuring equal rights and opportunities for women and men.⁹²²

922 See above, note 913, Article 12.

Additionally, the Commissioner can receive complaints by citizens of Ukraine, foreigners, stateless persons or persons acting in their interests if the appeal is not under review in court.⁹²³

The Commissioner has absolute discretion over how it utilises its various statutory powers. In addition to those contained within the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights”, the Commissioner also has various powers in relation to discrimination set out in Law of Ukraine “On Principles of Preventing and Combating Discrimination in Ukraine” and, more recently, in other fields of human rights including personal data and freedom of information. The Commissioner also acts as the National Preventive Mechanism on torture under CAT-OP. Concerns have been raised by, *inter alia*, the HRC that the Commissioner will need additional financial and human resources with its expanded role in order to ensure that it can carry out all of its functions effectively.⁹²⁴

Within these broad fields of activity and the various powers, the Commissioner has prioritised four key areas, one of which is non-discrimination. Within this, the Commissioner has prioritised education and provides training to judges, police officers and lawyers on non-discrimination.⁹²⁵

The Commissioner publishes an annual report (as well as special reports) highlighting the number of cases and complaints received, as well as assessing the general human rights situation in Ukraine. Since 2012, these reports have contained distinct sections on discrimination, and assessed progress (or lack thereof) in this area. The 2014 report also contained figures for the number of complaints made relating to discrimination to the Commissioner. As can be seen, the overwhelming majority of complaints relate to religious or other beliefs.

923 *Ibid.*, Article 17.

924 See above, note 772, Para 7.

925 Equal Rights Trust interview with Serhii Ponomaryov, Deputy Head of the Department for Discrimination, Ukrainian Parliament Commissioner for Human Rights, Kyiv, 25 February 2015.

Ground of Complaint	Number of Complaints
Race	3
Colour	1
Ethnic Origin	18
National Origin	24
Association with a National Minority	17
Political Beliefs	1
Religious or other Beliefs	1,788
Language	11
Social Origin	3
Residence	9
Age	4
Sex	37
Other Attributes	21
“Equality Before the Law”	20
Freedom and Development of the Ukrainian Language	5
Freedom to Use Minority Language	75
Freedom of Religion	34
Total	2,051

As part of its work to combat discrimination, in 2014, the Commissioner developed a Strategy for Preventing and Combating Discrimination in Ukraine for the period 2014–2017, supported by an Action Plan. As of the end of 2014, the Commissioner had taken various steps as part of the Action Plan including the review of legislation and regulations from the perspective of non-discrimination, the review of draft legislation and the provision of opinions to relevant committees within the Verkhovna Rada, and monitoring the work of executive bodies and local government in the field of non-discrimination.⁹²⁶

Overall, the Commissioner plays a critical role in the promotion of the rights to equality and non-discrimination in Ukraine. As an A-rated NHRI with an ext-

⁹²⁶ Ukrainian Parliament Commissioner on Human Rights, *Report on Realization in 2014 of the Action Plan toward implementation of the Strategy for Preventing and Combating Discrimination in Ukraine in 2014–2017*.

remely broad range of powers in the field of equality and non-discrimination (as well as on human rights more broadly), the Commissioner can be considered as meeting Ukraine's international human rights obligations. Though it is arguable that its remit is unachievably broad for one body, the fact that the Commissioner has prioritised tackling discrimination is very welcome.

The Commissioner for the Rights of People with Disabilities

In December 2014, the position of Commissioner for the Rights of People with Disabilities was established in Ukraine by a Presidential Decree.⁹²⁷ The Decree specifies seven main tasks for the Commissioner:

1. monitoring the observance of the rights and interests of persons with disabilities, the implementation of Ukraine's international obligations, and making proposals to the President to eliminate and prevent any limitations on such rights and interests;
2. taking measures to establish cooperation between executive and local authorities on the rights and interests of persons with disabilities;
3. submitting proposals to the President on draft laws and decrees on protection the civil, social economic and cultural rights and interests of persons with disabilities;
4. participating in drafting legal acts on the protection of the rights and interests of persons with disabilities, establishing the conditions for the realisation of their civil, social, economic and cultural rights, non-discrimination and equal opportunities in all areas of life;
5. participating in the examination of laws submitted for the signature of the President which relate to the rights and interests of persons with disabilities;
6. preparing and organising of events involving the President, including international events, on the rights and interests of persons with disabilities; and
7. public awareness-raising on the implementation of the constitutional powers of the President to ensure the observance of the rights and interests of persons with disabilities.

927 Указ Президента України № 902/2014 "Про Уповноваженого Президента України з прав людей з інвалідністю", 1 December 2014.

The first Commissioner appointed was Valeriy Sushkevych, President of the National Paralympic Committee of Ukraine, and Head of the National Assembly of the Disabled of Ukraine.⁹²⁸ Given the short period of time between the establishment of the position and the publication of this report, it is too early to make any conclusions as to the effectiveness of the Commissioner in enhancing the protection of persons with disabilities from discrimination. The specific tasks for the Commissioner, while welcome, focus largely on reviewing legislation and making proposals for legislative and policy change rather than overseeing their implementation. If the Commissioner is able to put forward proposals which would tackle discrimination and disadvantage faced by persons with disabilities and takes an active role in seeing them implemented, there is the potential for the role to have a positive impact.

3.4.2 Jurisprudence on Equality and Non-Discrimination

Any analysis of the jurisprudence on equality and non-discrimination must, at its starting point, take into account the legal system of Ukraine. Ukraine has a civil law system, similar to the majority of countries in Europe, and thus no formal recognition of precedent comparable to common law countries. As such, the focus must be on the text of the relevant constitutional or legislative provisions as little weight is given to interpretation of these provisions. Indeed, only the Constitutional Court is empowered to give official, authoritative interpretations of the Constitution and legislation which are binding upon other courts.⁹²⁹ Any review of jurisprudence in Ukraine must therefore take into account both the limited role of jurisprudence within the legal system, and the fact that only decisions of the Constitutional Court will be legally binding on judicial practice. As such, this section examines and analyses the relevant decisions of the Constitutional Court. It also examines a small number of decisions of lower courts of general jurisdiction; while they carry no formal precedential power, they nonetheless provide examples of how the courts of general jurisdiction have sometimes approached issues of equality and non-discrimination when faced with them.

928 President of Ukraine, “President appointed Valeriy Sushkevych to the post of Commissioner for the Rights of People with Disabilities”, *president.gov.ua*, 3 December 2014.

929 Article 13 of Закон України “Про Конституційний Суд України” (Відомості Верховної Ради України, 1996, № 49, с. 272), as amended between 2006 and 2014.

The few cases decided by the Constitutional Court paint a mixed picture. While there are some, albeit not many, judgments in which the Constitutional Court has used principles of equality and non-discrimination, it has failed to engage in any detailed analysis of what the rights to equality and non-discrimination require. The same can also be said of the courts of general jurisdiction. Further, while courts are generally willing to make reference to international treaties to which Ukraine is party in reaching their decisions, there is little, if any, discussion of the specific requirements of the treaties, their interpretations by relevant treaty bodies, and their specific application to the question faced by the court.

Constitutional Court of Ukraine

The Constitutional Court of Ukraine has only made one decision considered an official interpretation of the most important provision of the Constitution from the perspective of the rights to equality and non-discrimination (Article 24) in a case from 2012. It has also, however, made a number of decisions which included interpretation of Article 24 and thus give guidance on the extent to which Article 24 protects the rights to equality and non-discrimination.

Official Interpretation: Equality of Opportunity to Participate in Civil Legal Proceedings

Decision of the Constitutional Court of Ukraine of 12 April 2012 No. 9-пп/2012

Facts: Troyan Anton Pavlovych was a Ukrainian citizen and convicted prisoner who wanted to attend, in person, a trial in the civil courts in which he was a party. However, as a convicted prisoner, he was prevented from doing so. Mr Troyan argued that the fact that he was prevented from attending the trial due to his status as a serving prisoner was discriminatory and in violation of his constitutional right to equal access to justice.

Decision: The Constitutional Court held that the prevention of Troyan's attendance in person in civil proceedings in which he was a party constituted a violation of various articles of the Constitution, including Article 24, paragraph 1.

Reasoning with respect to equality/non-discrimination: The Constitutional Court began its analysis by reference to Article 24, which provides that citizens have equal constitutional rights and freedoms and are equal before the law (paragraph 1) and that privileges or restrictions based upon a protected characteristic are prohibited (paragraph 2). It also stated that, under Article 26, foreigners and stateless persons enjoyed the same rights and freedoms as citizens save where the Constitution, a law, or international treaties ratified by Ukraine provided otherwise.

The Court noted that equality and the unacceptability of discrimination were not only constitutional principles of the Ukrainian legal system, but fundamental values of the international community, emphasised in international instruments for the protection of rights and freedoms, including the ICCPR, the ECHR and Protocol No. 12 thereto, and the UDHR.

As the Constitution guaranteed equality of all “people” in their rights and freedoms, this implied the need to provide them with equal legal opportunities, of both a material and procedural nature, for their realisation. In a state based upon the rule of law, the ability to apply to a court was a universally recognised mechanism of protecting those rights, freedoms and a person’s legal interests.

The Court also made reference to Article 63 which provides that a convicted person enjoys all human and citizens’ rights, with the exception of restrictions determined by law and established by a court verdict. The Court noted that although legislation guaranteed the right of persons to participate in legal proceedings, legislation did not regulate the procedure by which persons could participate in person where they were serving a sentence of arrest, confinement, or detention in a penal establishment for a set period or for life imprisonment.

Taking into consideration Article 24 of the Constitution, as well as Article 55 (which provides that every person has the right to appeal decisions, acts and omissions of public authorities, local authorities, officials and public servants) and Article 129, paragraph 2, (which provides that one of the main principles of judicial proceedings is equality before the law and the court of all participants in a trial), the Constitutional Court concluded that every person, whether citizen, foreigner or stateless person, has equal rights, guaranteed by the state, for the protection of their rights

and freedoms in the judicial order and participation in consideration of their case in a manner established by legislation, in courts of all jurisdictions, specialisations and instances, including convicted persons serving a sentence of imprisonment.

In its decision, the Constitutional Court chose to go beyond a simple consideration of the rights to a fair trial and to participate in a trial, instead taking into consideration equality and discrimination arguments, particularly the discrimination faced by convicted prisoners in being unable to participate in person at trials in civil courts. Although a matter not relevant for the facts of the case it was deciding, the Court also appeared to accept that foreigners and stateless persons are, by virtue of Article 26 of the Constitution, also entitled to equality in Ukraine. However, the judgment is unclear on this point. While the decision itself makes use of general principles of human rights rather than a detailed analysis of the arguments put forward, it is nonetheless a positive example of using equality and discrimination arguments in a case which could have been decided more narrowly on fair trial arguments.

Age Discrimination

The Constitutional Court has been faced a number of times with challenges to legislation argued to constitute discrimination on the basis of age. A number of these cases challenged minimum and maximum age requirements set out in legislation for particular positions, although others have examined age qualifications in other fields of activity. The decisions indicate significant inconsistency and a lack of clarity in the legal analysis and approach of the Court. We give a detailed focus here to this line of jurisprudence as it demonstrates some serious problems with the way in which Article 24 is being interpreted by the Court.

The first decision, from 2000, related to the position of the Ukrainian Parliament Commissioner on Human Rights.

**Decision of the Constitutional Court of Ukraine
of 18 April 2000 No. 5-пп/2000**

Facts: Forty seven deputies of the Verkhovna Rada asked the Constitutional Court to examine the constitutionality of Article 5 of the Law of Ukraine “On the Ukrainian Parliament Commissioner on Human Rights” which states that the Commissioner must be at least 40 years old on the date of his or her election.

Arguments: The deputies argued that the age requirement was contrary to various provisions of the Constitution including:

- Article 8, paragraph 1 (the principle of the rule of law is recognised and effective);
- Article 19 (requirement that bodies of state power and bodies of local self-government and their officials act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine);
- Article 23 (all people are free and equal in their dignity and rights);
- Article 23, paragraph 3 (the content and scope of existing rights and freedoms shall not be diminished in the adoption of new laws or in the amendment of laws that are in force);
- Article 24, paragraph 1 (citizens have equal constitutional rights and freedoms and are equal before the law);
- Article 24, paragraph 2 (no privileges or restrictions based on protected characteristics);
- Article 43, paragraph 1 (the right to labour);
- Article 43, paragraph 2 (requirement that the state must create conditions for citizens to fully realise their right to labour); and
- Article 64, paragraph 1 (constitutional human and citizens’ rights and freedoms shall not be restricted, except in cases envisaged by the Constitution of Ukraine).

The deputies argued that the age requirement was contrary to these provisions of the Constitution as Article 101 did not set out an age limit for citizens to fill the position of the Ukrainian Parliament Commissioner on Human Rights.

Both the Chairman of the Verkhovna Rada and the Ukrainian Parliament Commissioner on Human Rights, however, referred to Article 85, paragraph 17, of the Constitution which empowers the Verkhovna Rada to “appoint to office and dismiss from office the Ukrainian Parliament Commissioner on Human Rights”. They argued that this provision was not able to specify everything relating to the complex office of the Commissioner and that special legislation was therefore required. It was consistent legislative practice to set out minimum age requirements in Ukraine.

Decision: The Constitutional Court held that the requirement that the Commissioner must be at least 40 years old on the date of their election was not unconstitutional.

Reasoning: Although the Constitution did not use the term “qualifications”, it did, in many instances, make age requirements for persons to hold certain positions of public office, including deputies, judges and the President. Legislation, similarly, often imposed age requirements for persons to hold other positions of public office. Qualification requirements are dictated by the nature and type of activities required of the particular officials and, therefore, cannot be deemed as restricting citizens’ equal rights to access to public service.

Setting out qualification requirements in the Constitution and legislation does not, *per se*, violate the constitutional principle of equality in Article 24 since all citizens compliant with those specific qualification requirements are eligible for occupation of positions.

Qualification requirements in legislation must, nevertheless, comply with Article 24. Given the special importance of the Commissioner’s activities, namely parliamentary control over the observance of constitutional rights and freedoms of man and citizen, the Verkhovna Rada was empowered to establish qualification requirements for the person who apply for the position. Article 101 of the Constitution did not prohibit this. These qualification requirements include experience and social maturity, which are possessed only by persons of a certain age. The Court held that “[t]he criterion for establishing legislative requirements of a qualifying age is expediency”.

In its decision, the Constitutional Court made reference only to domestic legislation and not to those international human rights treaties to which Ukraine

was party (although as of 2000, age was not generally recognised as a ground upon which discrimination was prohibited at the international or European level).⁹³⁰ The Court correctly asserted that qualification requirements for certain positions in public office, *per se*, did not constitute a violation of the right to equality but that any qualification requirements must nonetheless not be discriminatory and violate Article 24. However, the Court's reasoning fell short when determining that "only persons of a certain age" could have the experience and social maturity required of the position of the Commissioner. While experience and social maturity are valid requirements, being above the age of 40 does not, in and of itself, guarantee that a person would have sufficient experience and social maturity; similarly, being under the age of 40 does not, in and of itself, preclude an individual from having sufficient experience and social maturity. The Court failed to go into any reasoning as to why only persons over the age of 40 could have a sufficient degree of experience and social maturity, thus failing to establish a sufficiently close link between the age requirement and the aim the requirement sought to meet. Indeed, the only test set out by the Court as to when age qualifications would be justified was "expediency".

One judge, Mykola Kozyubra, dissented. While accepting that qualifications for the position of Ukrainian Parliament Commissioner on Human Rights could be established in order to ensure a certain level of maturity and relevant social experience and skills, Judge Kozyubra considered that an explicit age requirement was not permissible as, unlike in the cases of minimum age requirements for deputies to the Verkhovna Rada (Article 76), the President (Article 103), judges (Article 127, paragraph 3) and judges of the Constitutional Court (Article 148, paragraph 3), such a requirement was not explicitly provided for in the Constitution. Judge Kozyubra concluded that Article 5 of the Law was unconstitutional and criticised the majority's decision as opening the door to introducing qualifications not explicitly permitted by the Constitution.

Both the majority judgment and the dissent in this case are out of step with international best practice with respect to minimum and maximum age requi-

930 One exception to this general position was discrimination in employment where the International Labour Organization's Recommendation No. 162 of 1980 (Older Workers Recommendation) called upon states to prohibit discrimination on the basis of age in employment. This recommendation, however, as its name suggests, was targeted at protecting older workers rather than prohibiting minimum age requirements for positions.

rements as criteria for applicants for a particular post, the legitimacy of which has been almost universally rejected. It is also indicative of the failure to understand the nature of the comparator in discrimination cases: the alleged discrimination was on the ground of age, and the comparison in determining whether discrimination had occurred should have been between persons below and above 40. However, in its reasoning, the Court effectively compared persons above 40 with other persons also above 40, and was satisfied that there was equality among persons of this group “since all citizens compliant with those specific qualification requirements are eligible for occupation of positions”.

A year later, the Court examined an age qualification in legislation governing the return of savings to those who had lost money between 1992 and 1995 following the collapse of the USSR and the establishment of an independent Ukraine.

Decision of the Constitutional Court of Ukraine of 10 October 2001 No. 13-пп/2001

Facts: The Ukrainian Parliament Commissioner on Human Rights asked the Constitutional Court to examine the constitutionality of the Law of Ukraine “On State Guarantees of Restoration of Savings of Citizens of Ukraine” which differentiated on grounds of the age of the depositor in determining the way in which money lost following independence (for example because it had been held by the Savings Bank of the USSR which collapsed and fell into liquidation in 1991) would be returned.

Arguments: The Ukrainian Parliament Commissioner on Human Rights argued that the process by which money would be restored at different times depending on the age of the depositor violated Article 24 of the Constitution. The First Vice Prime Minister argued that it was not possible to return all money in one instance and that it was necessary to stagger the return.

Decision: The Court held the Law violated the requirement under Article 24 of the Constitution that rights and freedoms – specifically the right to property – be guaranteed on an equal basis.

Reasoning: The Court analysed the provisions of the Constitution relating to the right to property (Article 41) before turning to Article 24. The

Court simply noted that Article 24 guaranteed citizens equal rights and freedoms. Therefore the right to property in Article 41 had to be guaranteed on an equal basis for all citizens. As such, the distinction in the way in which money would be returned based on the age of the depositor violated Article 24.

The Court did not explicitly state that age was a characteristic protected under “other circumstances” in Article 24, paragraph 2, instead making its decision on the basis of Article 24, paragraph 1 which guarantees equal rights and freedoms of all citizens. As such, while leaving the question of whether age discrimination was prohibited by Article 24, paragraph 2, the Court’s decision nonetheless confirmed that distinctions on the basis of age would, at least in some circumstances, fall foul of Article 24, paragraph 1.

Two judges dissented, one of whom, Judge Volodymyr Shapoval, focused his dissent entirely on the majority’s conclusion on Article 24. While the majority had not explicitly stated that age was a characteristic protected under Article 24, paragraph 2, Judge Shapoval rejected any such conclusion, stating that it was “logical and justified” that age was not included in the list of protected grounds. He noted that people moved from one age category to another throughout their lives; as they move on, they may lose certain rights, privileges and restrictions upon rights, but will gain others in later age categories. Judge Shapoval criticised the majority for essentially amending Article 24 by including “age” as a characteristic in paragraph 2, and for delivering a decision which was “inconsistent” with that in Decision No. 5-пп/2000.

In 2004, the Constitutional Court faced a challenge to a law similar to that in Decision No. 5-пп/2000, this time against a minimum age requirement for candidates for the position of head of a higher education institution.

Decision of the Constitutional Court of Ukraine of 7 July 2004 No. 14-pp/2004

Facts: Fifty six deputies of the Verkhovna Rada asked the Constitutional Court to examine the constitutionality of Article 39 part 1, paragraph 2, of the Law of Ukraine “On Higher Education” which stated that higher education institutions could not set a minimum age requirement for the heads of the institutions greater than 65 years old.

Arguments: The deputies argued that this provision was contrary to Article 24, paragraph 1 of the Constitution under which citizens enjoy equal constitutional rights and freedoms, and Article 24, paragraph 2 which prohibits privileges and restrictions on a list of prohibited grounds and which includes the term “or other characteristics”. The deputies argued that “other characteristics” should include “age”. This position was supported by the President of Ukraine.

The Chairman of the Verkhovna Rada argued, however, that Article 24 did not prohibit the legislature from imposing requirements for certain positions, and that the age requirement was due to the specific constraints and nature of the work involved.

The Yaroslav Mudryi National Law University, the Taras Shevchenko National University of Kyiv and the Institute of International Relations Kyiv all argued that the provision was contrary to the Constitution.

The Centre for European and Comparative Law at the Ministry of Justice argued that the provision was contrary to the Constitution of Ukraine, international instruments and the ECHR.

Decision: The Constitutional Court held that the age requirement amounted to unjustified discrimination on the basis of age, contrary to the rights to equality and non-discrimination (Article 24) and the right to work (Article 43).

Reasoning: The Constitutional Court began its analysis by reviewing the right to work under Article 43 of the Constitution which guarantees the right to work (paragraph 1) and requires the state to guarantee citizens’ equal opportunities in the choice of profession and of types of labour activi-

ty (paragraph 2). The Court noted that the right to work necessarily includes a prohibition of discrimination in entering into employment relations.

The Court also noted that the constitutional principle of equality did not preclude the legislature from regulating employment relations by setting out conditions for certain positions where necessitated by the nature of the professional activity concerned. Legislation already imposed age requirements in respect of law enforcement officials, the military and in local government. The Court referred to its decision No. 5-πΠ/2000 in which it highlighted certain provisions in the Constitution itself which imposed minimum age requirements for certain positions. However, the Court stated that the reason for establishing differences (requirements) in the legal status of workers should be a valid one, and any differences (requirements) established for pursuing that goal, should comply with constitutional provisions, be objectively justifiable, reasonable and fair. Otherwise, the restrictions would amount to discrimination.

In noting this, the Court stated that this interpretation of Article 43 of the Constitution was compliant with international treaties. The Court referred to the ICCPR, Article 4 of which provides that states may subject the rights therein only to such limitations as are determined by law only in so far as this is compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

The Court then turned to the Law itself. Neither the provisions of the Law, nor the arguments of the state authorities, provided for a determination for the reasons for the restriction. However, given the possible purposes which are implied by the Law, the restrictions could not be said to be justified, reasonable and fair. There were less burdensome ways for achieving these purposes other than an automatic deprivation of the right of citizens over the age of 65 to apply for the positions. The provisions of the Law might prohibit persons over 65 from the possibility of applying for the positions, regardless of their abilities, experience or qualifications. Such a conclusion, the Court stated, was consistent with Recommendation No. 162 of the International Labor Organization concerning Older Workers which stated that older workers should, without any discrimination by reason of their age, enjoy equality of opportunity and treatment with other workers, in particular, in access, taking account of their personal skills, experience and qualifications, to employment of their choice

in both the public and private sectors; with age limits permitted only in exceptional cases due to special requirements, conditions or rules of certain types of employment.

The Court also noted that no age limitations were put upon research and educational staff of educational institutions. Indeed, no element of the work of scholars, teachers or the heads of higher educational institutions could provide objectively justified reasons for imposing age limitations.

The provisions of the Law thus imposed an unequal age-based legal condition, restricting the guarantee of equal opportunities in the realisation of the constitutional right to work. The age requirement therefore amounted to discrimination in the realisation of the right to work and was thus contrary to paragraphs 1 and 2 of Article 43 and paragraphs 1 and 2 of Article 24 of the Constitution.

In this majority decision,⁹³¹ the Constitutional Court provided greater clarity on how it would assess whether different treatment could be justified or not. First, the purpose of the different treatment or restriction must be a valid one; secondly, the different treatment or restriction established for pursuing that goal must be “objectively justified, reasonable and fair”. While not explicitly addressing the question of whether “age” was a characteristic upon which discrimination was generally prohibited, by finding that there had been a violation both of the right to work *and* the rights to equality and non-discrimination, the Court appeared to accept that age limitations were, in principle, discriminatory restrictions which required justification.

However, the Court’s progressive judgment in the case stands in contrast to a later decision of 2007 when it examined mandatory retirement for certain positions in the civil service, local government and the diplomatic service.

931 One judge, Volodymyr Shapoval, dissented. Judge Shapoval considered that Article 43 did not guarantee the right to a specific post, or even to apply for specific posts; “age” was not a characteristic which fell under “other circumstances” in Article 24 and this conclusion was “logical and justified” based on the temporal nature of the age characteristic; international law did not support the majority’s conclusion and, in any event, the Constitution did not establish the primacy of international law over national.

**Decision of the Constitutional Court of Ukraine of 16 October 2007
No. 8-пп/2007**

Facts: Forty seven deputies of the Verkhovna Rada asked the Constitutional Court to examine the constitutionality of a number of legislative provisions (Article 23 of the Law of Ukraine “On Civil Service”, Article 18 of the Law of Ukraine “On Service in Bodies of Local Self-Government” and Article 42 of the Law of Ukraine “On the Diplomatic Service”) which prescribed mandatory retirement at 60 years for men and 55 years for women for certain positions in the civil service, local government and the diplomatic service.

Arguments: The deputies argued that the term “other status” in Article 24 of the Constitution should be interpreted to include “age”. The provisions discriminated on the basis of age without any objective justification, and thus amounted to discrimination in the right to work contrary to Articles 24, 38 and 43 of the Constitution.

Decision: The Constitutional Court held that “age” was not a protected ground under “other status” in Article 24 of the Constitution.

Reasoning: The Court began by referring to its earlier Decision No. 14-пп/2004 and the analysis therein on the nature of the right to work under Article 43 of the Constitution.

The Court then looked at Article 38 which guarantees citizens equal right of access to the civil service and to service in bodies of local self-government. The equal right of access to the civil service was a legal opportunity and did not require immediate and unconditional realisation. The setting of age boundaries in legislation for tenure in the civil service was determined by the tasks and functions of the various bodies and the special nature of their activity. Some of the laws being challenged permitted extensions of tenure, taking into account the person’s professional qualities and creative potential once they had reached the maximum age. As such, the age restrictions on holding certain offices within the civil service were not a violation of the principles of equality.

The Court then looked at the rights to equality and non-discrimination in Article 24. Paragraph 1 of Article 24 guaranteed equality of citizens before the law and thus established the equally obligatory nature of a particular

law for all citizens. However, not all distinctions in privileges and restrictions were connected with the characteristics listed in paragraph 2. The general principle by which privileges and restrictions based on social or personal characteristics were prohibited was thus not absolute. Bodies of state power in the field of economic or social policy were able to set restrictions at their discretion on the basis of special requirements, conditions and rules for certain types of work. In reaching this conclusion, the Court referred to its earlier Decision No. 14-пн/2004 and its conclusion that the constitutional principle of equality did not preclude the legislature from regulating employment relations by setting out conditions for certain positions where necessitated by the nature of the professional activity concerned. Thus, Article 24 did not prevent the establishment of differences in the legal regulation of employment for persons belonging to different kinds of activities and categories.

The Court then turned to the question of whether “age” was a characteristic protected under the term “other status” in paragraph 2 of Article 24. The Court noted that age “is a changeable category” and that individuals “sequentially proceed from one age category to the other, forfeiting rights and privileges set for the individuals of one age, disposing of the respective restrictions in rights and acquiring of other rights defined for a particular age category”. On this basis, “all people are equal and differ only by age” and, as such, “establishing age restrictions shall not be considered as infringement of the principle of equality of citizens”.

In defending this conclusion, the Court stated that it was consistent with provisions of international and European Union law:

- Article 4 of the ICESCR which permits limitations on the Covenant rights “as are determined by law” and “in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”.
- Article 1.2 of the ILO Convention No. 111 on Discrimination (Employment and Occupation) which provides that: “Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.”
- Paragraph 5(b)(ii) of the ILO’s Recommendation No. 162 concerning Older Workers which provides that “in exceptional cases age limits may be set because of special requirements, conditions or rules of certain types of employment”.

- Article 6 of the European Union’s Council Directive 2000/78/EC which provides that “differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary”.

Thus, the Court concluded, international and European Union law allowed for the possibility of national legislation setting certain age restrictions for particular types of labour activity.

The Court’s decision betrays a lack of understanding of the operation of the right to non-discrimination as well as significant misinterpretations of a number of international and European laws. It also appears impossible to reconcile this decision with the Court’s own earlier and more progressive decision of 2004. While the 2004 decision did not explicitly state that “age” fell within the term “other status” in Article 24, the Court’s analysis implied that restrictions on the basis of age were, in principle, discriminatory and required justification.

Unfortunately, the 2007 decision represents the Court’s most recent ruling on this issue and so is arguably the current legal position. It falls short of international best practice. Despite the Court’s recognition that the relevant international treaties and European Union law both prohibited discrimination on the basis of age and permitted age-based different treatment only in very limited circumstances, its insistence that its decision was consistent with these provisions confuses exceptions to the general prohibition of discrimination on the basis of age with its own conclusion that age-based discrimination was unproblematic, *per se*. The Court failed to note that such discrimination can only be justified under the international and European Union provisions to which it referred in strictly limited circumstances, namely where they are objectively and reasonably justified by a legitimate aim and if the means of achieving that aim are appropriate and necessary (in the case of European Union law), and if “based on the inherent requirements” of the particular job (in the case of the ILO Convention on Discrimination (Employment and Occupation)). In any event, if the Court’s conclusion was that discrimination on the basis of age was not prohibited by Article 24 of the Constitution, it is not clear

why it felt the need to undertake any analysis of when different treatment on the basis of age was justified.

The Court's key conclusion was that age discrimination was unproblematic even in principle, on the basis that any privileges or limitations based on age would be felt by all people at some point in their lives, and that there was thus no infringement of the right to equality. Such a conclusion is not only out of step with current international and European law, which requires discrimination on the basis of age to be prohibited in principle, but fails to acknowledge the specific harm individuals feel at a certain point in their lives, simply due to their age, and which is not justified solely on the basis that others will experience it similarly when they reach that age (or experienced it when they were that age).

Disability Discrimination

In a decision relating to an adjustment to the requirement to vote in a voting booth, the Court reached the right outcome but using sparse reasoning.

Decision of the Constitutional Court of Ukraine of 24 December 2004 No. 22-пн/2004

Facts: 46 deputies of the Verkhovna Rada asked the Constitutional Court to examine the constitutionality of a number of provisions of the Law of Ukraine "On Peculiarities of the Law of Ukraine 'On the Election of the President of Ukraine' in the second ballot on 26 December 2004", arguing that they imposed unconstitutional restrictions. One of the challenged provisions was Article 6, paragraph 1, which only allowed voting outside of the voting booth for persons with a disability of group I and unable to move unassisted.

Arguments: The deputies argued that Article 6, paragraph 1 limited the rights of many citizens to vote.

Decision: With one judge dissenting, the Court held that Article 6, by allowing only persons with disabilities of group I – and not other persons who were unable to vote in a voting booth – to vote outside of a voting booth, violated Article 24, paragraph 1 of the Constitution.

Reasoning: The Court noted that it was not only persons who had a disability of group I who were unable to vote in a voting booth. Others might be unable to do so including persons with disabilities in other groups or because of their age or health status. Allowing persons with disabilities of group I but not other persons unable to vote in a voting booth violated the principle of equality of citizens guaranteed by Article 24, paragraph 1.

Discrimination on the Basis of Residence

The Court has made a small number of decisions which involved challenges to legislation on the basis that they discriminated on the basis of place of residence. The first was the **Decision of the Constitutional Court of Ukraine of 3 March 1998 No. 2-pp/1998** which related to a Law adopted within the Autonomous Republic of Crimea – the Law “On Public Associations” which permitted political parties to be established which would operate only within the Autonomous Region of Crimea and not across the entirety of Ukraine. The Court held that the Law “On Public Associations” was unconstitutional for a variety of reasons, including that it was inconsistent with Article 24, paragraphs 1 and 2.

In the case, the Court took a particularly strict approach towards the issue of political parties being established in one part of the country. Such political parties are commonplace worldwide, able to highlight the concerns of residents of a particular region within a state. Nothing in international human rights law, which prohibits discrimination based on place of residence, forbids the establishment or operation of political parties only in one part of a particular state. Despite this, and making its decision solely on the basis of the Constitution, the Court struck down this provision. It is possible, given the particular status of the Autonomous Republic of Crimea in Ukraine, that political considerations, too, played a part.

The second case was the **Decision of the Constitutional Court of Ukraine of 28 September 2000 No. 10-pp/2000** which concerned a Law preventing some buildings from being privatised, including certain forms of housing such as housing in disrepair, housing in military bases and housing in the location of the Chernobyl disaster. Deputies alleged this violated, *inter alia*, Article 24, paragraph 2 of the Constitution by discriminating on the basis of place of residence. The Court rejected this submission, holding that for the purposes of Article 24 of the Constitution, “residence” meant the place of residence of a citizen on

a territorial basis (i.e. a village, town, city or other administrative unit) rather than a specific dwelling (such as a house or apartment).

In the third judgment, **Decision of the Constitutional Court of Ukraine of 23 October 2003 No.17-пн/2003**, the Court, at the request of the Ukrainian Parliament Commissioner on Human Rights, examined the constitutionality of Article 30 of the Law of Ukraine “On the Election of Deputies of Local Councils and Village, Town and City Mayors”. Paragraph 3 of Article 30 required candidates for deputies of local councils and village, town and city mayors to live or work in the territory for which they sought to run for office. The Ukrainian Parliament Commissioner on Human Rights submitted that this requirement violated, *inter alia*, Article 24 of the Constitution by discriminating on the basis of place of residence or employment. The Court held that the limitation in paragraph 3 of Article 30 violated Articles 24, 38 and 71 of the Constitution although did so without providing much analysis of the relevant constitutional provisions. The Court did not, for example, enter into any analysis of whether the restriction on the basis of residence could be justified, instead concluding that the limitation was *ipso facto* prohibited by Article 24.

Other Challenges Related to the Right to Equality

In one case, the Court appears to have used Article 24, paragraph 1 – the right to equality – in order to reject distinctions based not on personal characteristics but on other factors and which it deems to be unjustifiable.

Decision of the Constitutional Court of Ukraine of 2 November 2004 No. 15-пн/2004

Facts: The Supreme Court asked the Constitutional Court to examine the constitutionality Article 69 of the Criminal Code which allowed courts to impose sentences lower than those specified by the Criminal Code for moderate, serious or very serious offences committed where there were several mitigating circumstances. In contrast, Article 69 did not provide for such an opportunity for those who had committed minor offences (the four classifications of offences set out in Article 12 of the Criminal Code).

Arguments: One of the arguments raised was that Article 24 of the Constitution guaranteed to all persons who had committed offences equal rights and equal restrictions to those rights.

Decision: The Court held that the distinction made by Article 69 was inconsistent with Article 24 and thus unconstitutional.

Reasoning: The Court considered that equality before the law required consistent principles of establishing liability for criminal offences. However, Article 69 only permitted certain persons who had committed offences to have the court consider the possibility of a sentence lower than that provided for in the Criminal Code (namely those who had committed moderate, serious or very serious offences) and not others, thus only allowing more individualised sentencing for some persons but not others. The failure to allow consistently individualised punishments for all persons who had committed an offence thus amounted to a violation of the principle of equality before the law.

This reasoning is highly problematic. As a matter of international law and best practice, a state may be able to justify taking a different approach to sentencing in respect of minor offences and more serious offences. This is not a matter which distinguishes between groups of people as such but rather between types of offences. There may be reasons to challenge a lack of flexibility in sentencing on other human rights grounds but there appears to be no reason to invoke Article 24 in this case.

High Specialised Court of Ukraine for Civil and Criminal Cases

As noted above, in Part 2 of this report, in May 2014, in the context of Ukraine's requirement to prohibit discrimination on the basis of sexual orientation as part of the Action Plan for Visa Liberalisation, the Ministries of Justice and Foreign Affairs requested that the High Specialised Court of Ukraine for Civil and Criminal Cases provide clarity on whether the Constitution and existing legislation prohibited such discrimination. In May 2014, the Chairman of the High Specialised Court of Ukraine for Civil and Criminal Cases responded to that request by writing a letter to the various heads of the Courts of Appeal.⁹³²

932 Вищий спеціалізований суд України з розгляду цивільних і кримінальних справ, 7 Мау 2014, № 10-644/0/4-14, "Про належне забезпечення рівності трудових прав громадян при розгляді спорів, що виникають у сфері трудових відносин".

High Specialised Court of Ukraine for Civil and Criminal Cases

Letter No. 10-644/0/4-14 of 7 May 2014 on ensuring equality of labour rights in disputes arising from labour relations

Decision: The High Specialised Court of Ukraine for Civil and Criminal Cases determined that in disputes arising in labour relations, the courts should take into account the fact that the list of characteristics upon which privileges and restrictions are prohibited is not exhaustive. The list of characteristics in Article 24, paragraph 2, of the Constitution and Article 2¹ of the Labour Code and Article 1 of the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” was not exhaustive but also included age, skin colour, physical characteristics (weight, height, speech defects, defects of the face), marital status, sexual orientation and so on.

Reasoning: The Court's Head did not reason his decision in any detail. It simply listed a number of relevant documents and their requirements (specifically, the Constitution, the Charter of Fundamental Rights of the European Union, the Labour Code, the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, the ECHR and Protocol 12 thereto) before concluding that discrimination on the basis of sexual orientation (and other characteristics) in the field of labour relations was prohibited. The Court noted the following provisions of the documents:

- Paragraphs 1 and 2 of Article 24 of the Constitution which provide that citizens have equal constitutional rights and freedoms and are equal before the law; and that there shall be no privileges or restrictions based on race, colour, political, religious and other beliefs, sex, ethnic or social origin, property status, place of residence, linguistic or other characteristics;
- Paragraph 1 of Article 21 of the Charter of Fundamental Rights of the European Union which prohibits discrimination of any kind, including on the grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion, political or other opinion, membership of a national minority, property, birth, reduced disability, age or sexual orientation;
- Article 2-1 of the Labour Code which provides that Ukraine guarantees equal employment rights for all citizens regardless of their origin, social or property status, race and ethnicity, gender, language, political views, religion, type and nature occupation, place of residence and other circumstances;

- Articles 1 and 6 of the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” which (then) prohibited decisions, actions or omissions which resulted in privileges or restrictions on the basis of race, colour, political, religious or other beliefs, sex, age, disability, ethnic or social origin, nationality, family and property status, place of residence, language or other features;
- Article 14 of the ECHR which prohibits discrimination in the enjoyment of the Convention rights on the basis of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status; and
- Protocol No. 12 to the ECHR which provides a freestanding right to non-discrimination using the same grounds as the Convention itself.

However, the letter carries no legislative weight, nor is it even an official interpretation of the law, since the right to interpret legislation is exclusively that of the Constitutional Court. Its conclusion that discrimination on the basis of age is prohibited by Article 24 of the Constitution is also in direct contradiction to the Constitutional Court’s explicit ruling in 2007 that age is not a characteristic protected under the term “other characteristics”. This contradiction raises questions as to the inconsistency of approach amongst Ukraine’s judiciary and the resulting lack of clarity as to the interpretation of relevant anti-discrimination provisions.

Courts of General Jurisdiction

The courts of general jurisdiction have dealt with relatively few cases raising discrimination issues, and even fewer which involve interpretation of relevant legislation. As noted above, only the Constitutional Court is empowered to provide authoritative interpretations of both the Constitution and legislation, resulting in courts of general jurisdiction avoiding giving interpretations of the legal provisions relevant to their decision. There are, however, some exceptions, largely in the field of reasonable accommodation for persons with disabilities.

Discrimination on the Basis of Age

In **Decision No. 2018/2-4146/11** on 18 January 2012 the Kyiv District Court in Kharkiv found that a company had violated national law by establishing a

requirement for a position with a requirement that applicants be under 30. The Court noted that Articles 24 and 43 of the Constitution guaranteed citizens an equal constitutional right to work regardless of gender, origin or other characteristics. In addition, Article 4 of the Law of Ukraine “On Employment” (which has since been repealed) and Article 5¹ of the Labour Code prohibited unjustified refusals to hire people. On that basis, the Court concluded that the age limitation applied by the company in the case was unjustified and unlawful.

In reaching its decision, the Court determined that discrimination on the basis of age was included within the term “other characteristics” used in the Constitution and legislation. This cannot be reconciled with the Constitutional Court’s explicit ruling in its Decision No.8-пп/2007 that “age” is *not* a characteristic falling within the term “other characteristics” in the Constitution.

Discrimination on the Basis of Disability

There have been several useful disability cases before the courts and it is arguably the area of discrimination law in which the courts have shown the most progressive approach. Not only do the cases indicate a firm approach to the implementation of national legislative protections for people with disabilities, but they also show that the courts are referring to and applying the CRPD.

In 2010, the Kyiv City District Administrative Court was asked to recognize a failure by the Cabinet of Ministers’ to ensure adequate subtitling and sign language translation of television programmes, films and other forms of communication as unlawful and violating their obligation under the Law of Ukraine “On Fundamentals of Social Protection of the Disabled”. Article 23, paragraph 3 of this Law requires that:

Television and radio companies (regardless of ownership and departmental subordination) shall provide subtitling and translation in sign language for official reports, film, videos, broadcasts and programs in the terms and conditions determined by the Cabinet of Ministers of Ukraine.

The Cabinet of Ministers argued that it had taken sufficient steps to comply with Article 3, paragraph 3. The Court noted that the Cabinet had attempted

to discharge its obligations through Order No. 1480-p “On urgent measures to implement the provisions of Article 23 of the Law of Ukraine “On Fundamentals of Social Protection of the Disabled”. However, the Court held that this Order did not discharge the Cabinet’s obligations under national law and the CRPD and ordered that the Cabinet meet the requirements under paragraph 3 of Article 23. The decision is particularly welcome as the Court examined in some detail the steps taken by the Cabinet and the extent to which they comply not only with Article 23 but also the CRPD. With respect to the CRPD, the Court considered the following articles of relevance to the case:

- Article 9(1), which requires States Parties, inter alia, to “take appropriate measures to ensure to persons with disabilities access, on an equal basis with others (...) to information and communications, including information and communications technologies and systems;
- Article 9(2), which requires States Parties, inter alia, to “take appropriate measures to (...) (f) promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information [and] (...) (h) promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost”; and
- Article 21, which guarantees the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and requires States Parties, inter alia, to “[provide] information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost”.

The Cabinet of Ministers was ultimately responsible for Article 23, paragraph 3 being implemented – it is the state which has the main duty to protect human rights according to Article 3 of the Constitution. The Order’s obligation upon the State Committee for Television and Broadcasting and the National Television and Radio Broadcasting Council of Ukraine to develop and submit to the government, within three months, procedures and standards for subtitling and sign language translation in the media was not sufficient. As the procedures and standards had not been developed and submitted, the Cabinet of Ministers was responsible for failure to implement Article 23, paragraph 3.

The Cabinet of Ministers appealed the decision to the Kyiv Administrative Court of Appeal which upheld the decision,⁹³³ and subsequently to the Supreme Administrative Court of Ukraine which, too, upheld the decision.⁹³⁴ As a result this strong and progressive decision, which references both national law and the CRPD, stands. A similarly strong and reasoned approach was taken by the Lviv Oblast Court of Appeal in 2013 in **Decision No. 22-ц/783/6003/13 of 2 October 2013**. The claimant, Andrii Stehnytskyi, a visually impaired lawyer, brought a claim against the Ukrainian Railways (Укрзалізниця) arguing that the website was not sufficiently adapted for persons with visual disabilities. While Mr Stehnytskyi had software on his computer which could convert text to speech, the website distinguished between available and occupied seats when booking tickets through colouring and not by text, thus rendering the software unable to make a distinction. Further, the website did not allow for the discount available for persons with disabilities to be obtained when booking tickets. Mr Stehnytskyi asked Ukrainian Railways to modify their website but they failed to do so. Ukrainian Railways argued that the right to discounted travel required presentation of an original copy of a document proving that the person had a disability and it was simply not possible to adapt the website so as to enable this to be done.

The Court found for the claimant and held that the inaccessibility of the website for persons with visual impairments violated Articles 1, 2, 3, 4, 9 and 21 of the CRPD and Articles 1, 2 and 26 of the Law of Ukraine “On Fundamentals of Social Protection of Disabled Persons in Ukraine”. In addition to finding violations, the Court made an order requiring Ukrainian Railways to upgrade their website such that it would allow persons with visual impairments to purchase tickets with discounts for persons with disabilities and would allow computer software to determine whether a particular seat was available or occupied.

Summary

A court can only make a decision on the case before it and thus the limited jurisprudence from the Constitutional Court on Article 24 is not necessarily a criticism of the Court itself. That being said, the decisions that this Court has

933 Київський апеляційний адміністративний суд, Справа № 2а-4637/10/2670, 21 October 2010.

934 Вищий адміністративний суд України, Ухвала № К-36824/10, 8 December 2010.

made involving Article 24 demonstrate a confused and inconsistent approach towards issues of equality and non-discrimination and, in some cases, a complete misapplication of the principles. Determining what is going wrong in the interpretation is difficult as the Court has been hesitant to provide anything approaching a detailed interpretation of Article 24, instead largely stating whether or not a particular legislative provision is consistent or inconsistent in no more than a sentence or two. The inconsistency of the Court's approach to Article 24 is most clearly demonstrated by its entirely contradictory decision in relation to whether or not age is a protected characteristic under Article 24, paragraph 2. Its misapplication of the principles is clearest in its judgments with respect to the setting up of a political party in Crimea and in relation to the approaches to different types of offences under criminal law.

Some of the stronger and more clearly reasoned decisions have come from the lower courts. However, these do not bind other courts and are, in some cases, impossible to reconcile with the binding precedent of the Constitutional Court. Furthermore, the lower courts have dealt with relatively few cases involving discrimination. Given the civil law system used within Ukraine, interpretation of legislative provisions is rarely considered necessary, although the latter of the two decisions cited in this section demonstrates willingness, on occasion, to go beyond the particular piece of legislation itself and make reference to Ukraine's international human rights obligations in reaching a decision, suggesting that a progressive approach can be seen, albeit seldom.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

This report assesses the extent to which people in Ukraine enjoy the rights to equality and non-discrimination. It does so by examining the lived experience of those groups commonly exposed to discrimination and by analysing the framework of laws, policies and institutions established to combat discrimination and promote equality. In so doing, it provides the first comprehensive assessment of the enjoyment of these rights in the country.

The overarching conclusion of our assessment of equality and non-discrimination in the country is that Ukraine is caught between two worlds. While historically Ukraine has been perceived from a Russian perspective as being the western borderland of the Russian civilisation, today the country sits between two spheres of influence – Russian and West European. Since independence, political power has alternated between leaders professing strongly pro-European or pro-Russian visions for the country's future, while pledging to work for a balance. The armed conflict which began in the winter of 2013–2014 in the eastern Donbas regions can be seen as a modern expression of a centuries-long tension between opposite geopolitical orientations.

Ukraine's progress towards achieving equality and non-discrimination for all has been profoundly influenced by these competing visions for the country's future. Thus, while a drive to comply with European Union standards led the country to adopt comprehensive anti-discrimination legislation, much of the political class refused to engage with the process, perceiving the new law as a European imposition, rather than a reflection of a political or social consensus. Indeed, as amendments to strengthen this law were being developed, some parliamentarians were seeking support for Russian-inspired "anti-homosexual propaganda" legislation. One consequence is that, even after its amendment, the anti-discrimination law contains numerous inconsistencies which impede its effective enforcement. Elsewhere in the legal framework, the legacy of the Soviet approach to groups commonly exposed to discrimination can still be seen. Thus, while the Constitution and legislation contain strong social welfare provisions in favour of women and persons with disabilities, paternalistic approaches remain in evidence, in the form of discriminatory legal provisions and practices.

Ukraine's position between two different political worlds is also reflected in the patterns of discrimination and inequality identified in this report. Most prominently, issues of language, and latterly ethnicity, have become new key battlegrounds for those promoting different visions of Ukraine's future. In light of the slow-burning and recently more heated discourse over the status of the Russian language in Ukraine, we sought evidence of discrimination on the basis of language, targeting Russian speakers in particular, but found little. This may be due to the unwillingness of respondents to identify certain practices by reference to the still scary term "discrimination", which has historically been understood in the region as something serious, criminal and intentional, contrary to the modern expert understanding of discrimination. Alternatively, it may be that the politicisation of language in the context of the armed conflict in the East of the country where Russian prevails is relatively recent. Thus, it may be that while on the political surface the issue is being dramatized, everyday practice has not yet caught up and most people continue to use both Russian and Ukrainian interchangeably, but with a gradual emergence of choice of language as a political marker.

Similarly, we interviewed prominent ethnic Russians to identify possible links between ethnic discrimination and the pro-Russian separatist movements in the east of the country, but were repeatedly told that historic relations between ethnic Russians and the majority were cordial; that Ukrainians liked the Russians but didn't like the Putin regime. However, our research also found emerging evidence that the conflict may be creating increased ethnic tensions, as those who identify with the Russian language or culture feel forced to choose.

The rights of lesbian, gay, bisexual and transgender (LGBT) persons are another key battleground in Ukraine's nation building. Indeed, socially conservative pro-Russian politicians have made strenuous efforts to paint pro-Europeans as pro-LGBT, in an attempt to discredit them. In the face of homophobic rhetoric from increasingly influential religious leaders, even pro-European politicians have been reluctant to speak out in favour of these groups.

The report also finds consistent evidence that the annexation of Crimea and the conflict in the Donbas have had an adverse impact on minorities within these regions. The Crimean Tatars – victims of Soviet time and independence time discrimination – have experienced a new wave of violence and discrimi-

nation since the annexation of Crimea by Russia in 2014. Roma have been targeted for racist abuse and evictions in areas controlled by pro-Russian separatists in the Donetsk and Luhansk oblasts. Homophobic Russian legislation has been enacted in Crimea, while homophobic hate crime has increased in the Donbas. There is emerging evidence that religious minorities face increased hardships – including violence – in the conflict areas. Moreover, one direct consequence of the annexation and the conflict has been the creation of a new group subjected to discrimination – internally displaced persons.

Thus, in many ways, Ukraine stands at a crossroads in terms of the protection of the rights to equality and non-discrimination. Since 2012, the country has made great progress in improving its legal framework, largely as a result of the state's desire to pursue greater European integration. Yet these protections – and even older ones in respect of women and persons with disabilities – remain largely unenforced and unimplemented. Moreover, as the fight for the country's future continues, it will be important for the state to guard against a descent into identity politics and increasing intolerance of minorities.

Patterns of Discrimination and Inequality

Extensive research by the Equal Rights Trust and its partners has identified evidence of discrimination and disadvantage on the basis of **gender; sexual orientation and gender identity; disability; HIV status; ethnicity, national origin and colour; citizenship; language; religion; status as an internally displaced person; and age.**

Women experience **gender** discrimination in a range of areas of life, limiting their ability to participate in society on an equal basis with men. Despite the existence of a strong protective legal framework and a legal process to identify and amend discriminatory laws, patriarchal legal provisions remain in force in a number of areas of law, in particular in labour and social welfare laws. These provisions both reflect and reinforce persistent stereotypes about gender roles and responsibilities, limiting women's choices in employment and in other areas of life. Our research has identified evidence of discrimination in all areas of employment, from recruitment through to promotion. The gender pay gap remains stubbornly high, in part reflecting continued vertical and horizontal segregation in the labour market. Violence against women remains a significant problem: rates of domestic violence are high, and there

are good grounds to believe that official figures are underestimates. Women are severely under-represented in public life: only one in eight members of the Verkhovna Rada is female. Finally, this report finds that sexist and misogynistic images of women in product advertisements and media imagery are rife, presenting an image of women as sexual objects.

The situation of **LGBT persons** is of significant concern. Ukrainian law does not provide explicit protection from discrimination on the basis of sexual orientation or gender identity. Calls to introduce such provisions have been strongly resisted, and have contributed to an increase in homophobic statements by political and religious leaders. Surveys conducted by Nash Mir indicate that prejudice and intolerance towards LGBT persons is high and may be increasing. Legislation contains a number of provisions which discriminate on the basis of sexual orientation, particularly in family law where there is no legal recognition of same-sex couples. Transgender persons also face a range of discriminatory laws: they are required to undergo surgery before being able to change their legal gender and subject to various prerequisites before they can undergo a sex change. Our research found evidence of sexual orientation discrimination in many areas of life. Discrimination by the law enforcement agencies ranges from abuse, harassment, blackmail and extortion to a failure to protect from discriminatory violence. In employment, openly gay, lesbian or bisexual people can face workplace harassment and threats of being fired. LGBT people also face discrimination in healthcare and education. Of immediate concern is the increased level of homophobia in Crimea and the areas controlled by pro-Russian separatists in Donbas since the start of the armed conflict in and the annexation of Crimea.

Persons with disabilities are unable to participate in any area of life on an equal basis with others, as a result of both direct discrimination and failure to make reasonable accommodation. Ukraine is a party to the Convention on the Rights of Persons with Disabilities and has reformed its laws to reflect its Convention obligations, but implementation remains poor. Thus, despite the recent reforms, the state displays a tendency to treat persons with disabilities as objects of social concern and welfare, rather than as autonomous rights-holders. Reasonable accommodation obligations are not implemented and enforced, with the result that many buildings, including public buildings such as courts and hospitals, and means of transportation remain inaccessible. The unemployment rate for persons with disabilities is extremely high

and policy measures adopted to promote employment – including quotas and requirements for employers to provide reasonable accommodation – appear to have had little impact. In education, the needs of children with disabilities are not sufficiently addressed, a point which the government itself has acknowledged. Our research also found evidence of obstacles preventing equal access to healthcare and to other services for persons with disabilities.

Ukraine has one of the highest prevalence rates of HIV in Europe but as many as half of **persons living with HIV** are unaware of their status. Stigma and prejudice against persons living with HIV is high and manifests itself in many areas of life. Interviews conducted by the Equal Rights Trust indicate that persons living with HIV face direct discrimination and harassment in education, employment and – a matter of significant concern – in healthcare, where discrimination can prevent persons living with HIV from accessing services for which they have a particular need.

In researching this report, the Equal Rights Trust has identified significant evidence of discrimination and disadvantage experienced by Roma and Crimean Tatars on account of their **ethnicity**. The Trust also found evidence of discrimination against Ukrainian Jews. The report also found evidence of serious discrimination and violence against visible minorities – predominantly those from Africa and Asia – on the basis of skin colour.

The **Roma**, as in many other parts of Europe, suffer particularly high levels of discrimination in almost all areas of life regulated by law, and are rightly considered the most discriminated ethnic group in the country. The Roma are exposed to widespread social prejudice, with levels of intolerance higher towards them than towards any other ethnic group. High levels of violence and hate crime against the Roma are exacerbated by failures to properly investigate and prosecute such incidents. Indeed, the Roma are often harassed by the police themselves. As a result of various historical factors, many Roma do not have identification documents, while many continue to face problems in accessing such documents today. Lack of identification documents restricts access to certain state services, such as healthcare and social welfare. Unemployment amongst the Roma community is particularly high and Roma children often receive poorer quality education. A high proportion of Roma children do not go to school, or fail to complete even primary education.

Crimean Tatars have long experienced severe discrimination as a result of their status as a localised ethnic minority subject to prejudice from their neighbours in the region. They experience significant problems resulting from the seizure of their land during the Soviet period following their deportation in 1943. While many Crimean Tatars have returned in recent decades, restoration of land ownership has been slow. Living standards are generally low and the Crimean Tatars suffer high rates of poverty and unemployment. Crimean Tatars continue to express concern that insufficient efforts are being made to preserve their language. There is evidence of anti-Tatar political discourse and intolerance, sometimes manifested in violence and hate crimes. Since the annexation of Crimea, and Crimea's coming under the de facto jurisdiction of Russia, the situation of the Crimean Tatars has deteriorated with Crimean Tatar activists being abducted or disappearing.

Ethnic Russians make up by far the largest ethnic minority in Ukraine, though in general members of the group, due to a high degree of prior integration and a low degree of differentiation among ethnic Ukrainians and ethnic Russians, do not feel as if they belong to a minority. In researching this report, we sought evidence of discrimination against this group, to establish whether this was a factor in causing the conflict between ethnic Russian separatists and the state in eastern Ukraine. While there have been grievances among ethnic Russians in the east and south prior to the conflict of 2013–2014, these did not appear to have been based on ethnicity *per se*. Indeed, many ethnic Russian interviewees were keen to stress the historically good relations between ethnic Russians and ethnic Ukrainians. Rather than ethnicity, the dividing factor seems to have been **political opinion**: divergent geopolitical orientations to Russia and to the West and the closely related language preference among otherwise bilingual populations have been both the cause and the consequence of the armed conflict. Interviews conducted in April 2015 found, unsurprisingly, that the conflict had antagonised ethnic Russians to a certain degree, even though political choice, experienced as a choice between two rather different civilisations, remained the much stronger marker of identity. Some ethnic Russian respondents talked about an “identity crisis” for ethnic Russian Ukrainians, as aspects of identity which were historically compatible with membership of a multi-ethnic Ukrainian state have begun to become associated with political preference for the Russian state. It is too early to assess what impact this will have on experiences of discrimination, though the trend is a cause for concern.

While **Ukrainian Jews** have suffered severe human rights abuses in the past, our research found that today Jewish community leaders consider the community to be well-integrated. Indeed, leaders interviewed by the Trust indicated that most Jews consider themselves Ukrainian citizens first and foremost. While interviewees did identify anti-Semitic incidents, they emphasised the fact that these were relatively rare acts by private individuals, in contrast to the state sanctioned anti-Semitism of the Soviet era. This said, given the critical time in major Ukrainian cities at the time of these interviews, the way in which Jewish leaders downplayed racist anti-Semitic incidents against their communities should be viewed with great caution. This attitude may be the result of a protective profession of loyalty to the authorities of the state which they have chosen as their future. The political polarisation among Jews is obvious in the fact that Jewish emigration from Ukraine has increased very considerably since 2013.

The report presents evidence of hate crimes and violence directed towards persons on the basis of their **nationality or skin colour** and finds that such crimes are not properly investigated and prosecuted. Indeed, there are reports of the police harassing foreign nationals. Migrants and students from outside of the former USSR, particularly those with dark skin, have been victims of violent assaults, prejudice and intolerance.

This report found that **non-citizens** face discrimination in the field of employment, with legislation restricting many professions to Ukrainian citizens, including the civil service, local government bodies and the military. While in some limited cases, there may be a genuine occupational requirement for a particular field of employment to be restricted to citizens, it is clear that a number of the limitations in Ukrainian law – such as those applicable to auditors or to work in agriculture – are manifestly unjustified.

Few issues excite more attention and controversy amongst Ukrainian politicians than the question of **language** and, specifically, the status and use of the two major languages in the country: Ukrainian and Russian. Despite the heated politics surrounding the issue, the report did not find evidence of a significant or widespread problem of discrimination on the basis of language, though isolated examples, particularly in print, online and video media, were identified. In the context of the armed conflict since November 2013, language has become strongly politicised: there are indications that in the public

mind, the choice of language spoken in various circumstances is more noticeably associated with political opinion, despite vigorous attempts by human rights minded individuals interviewed for this report to de-couple language and politics.

Religious discrimination in Ukraine is manifested in a range of different patterns. Both minority and larger faith groups can experience discrimination, with larger religious groups most frequently experiencing problems where they are in a localised minority. Our research identified evidence of religiously motivated hate crime and hate speech affecting Jehovah's Witnesses and of state officials drafting men from this community into the army, without due regard to their conscientious objection. The Trust also found evidence of discrimination and corruption in the allocation of land for church use; and discrimination by state actors involved in registering religious bodies. Moreover, as with a number of other patterns of discrimination, our research found that the annexation of the Crimea and the conflict in the Donbas have had an adverse impact on the enjoyment of the right to non-discrimination on the basis of religion. In Crimea, Muslim Crimean Tatars have experienced increased religious harassment since the annexation, while in Donetsk and Luhansk, minority churches have faced increased difficulties since the conflict there began.

One significant impact which the annexation of Crimea and the conflict in the Donbas have had is the creation of a population of **internally-displaced persons** (IDPs). As this is a new phenomenon in Ukraine, it is difficult to draw firm conclusions on the nature, scope and prevalence of discrimination against the group. Nevertheless, recent reports indicate that IDPs are experiencing discrimination, notably in employment and housing, caused in large part by prejudice against them.

Our research found that Ukraine has failed to ensure equal rights to **children**, in particular those who are most vulnerable. The institutionalisation of children continues on a significant scale, despite clear commitments to reform. Institutionalisation is a significant human rights problem in itself. Moreover, the poor conditions and poor quality of education within institutions have an adverse impact on children's equal enjoyment of a wide range of human rights. Ukraine has failed to take effective measures to establish a system of juvenile justice which would be appropriate for the needs of chil-

dren who are in conflict with the law. Finally, there is compelling evidence that children with disabilities and children with HIV are subjected to multiple discrimination and disadvantage, as minors within groups which are already exposed to significant discrimination are exposed to violence and abuse. Ukraine still continues to categorise children with more severe disabilities as “uneducable”, in contravention of both human rights and modern medical standards.

Legal and Policy Framework on Equality

While certainly stronger than the majority of other countries worldwide, when compared to other European states, Ukraine’s **legal and policy framework related to equality** remains below European standards. Most importantly, good legislative provisions on paper are not matched by measures to ensure effective enforcement and implementation. The result is a clear gap between the purported protections in law and the actual enjoyment of the rights to equality and non-discrimination in practice.

With respect to ratification of **international human rights treaties**, Ukraine’s record is good. The country has ratified seven of the nine core UN human rights treaties, omitting only the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Significantly, Ukraine also has a good record of allowing people within its jurisdiction to bring individual complaints to relevant UN treaty bodies. It permits individual complaints under five of the seven treaties which it has ratified, with the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child being the exceptions, though in the latter case the state has signed but not yet ratified the relevant protocol. Ukraine also has a good record in relation to other international treaties which have a bearing on the rights to equality and non-discrimination. It has ratified the 1951 Convention Relating to the Status of Refugees and the key Conventions relating to statelessness. Ukraine has ratified all eight of the fundamental International Labour Organization Conventions pertaining to non-discrimination and equality in employment and the 1960 UNESCO Convention against Discrimination in Education.

Ukraine has also taken on important legal obligations through **regional human rights instruments**. The state has ratified both the European Convention

on Human Rights (ECHR) and Protocol 12 to the Convention, which provides a free-standing right to non-discrimination. It has also ratified the European Social Charter (revised), the European Charter for Regional or Minority Languages, the Convention on Preventing and Combating Violence against Women and Domestic Violence, the Framework Convention for the Protection of National Minorities and the European Convention on Nationality.

Together, the Constitution and legislation provide that Ukraine's **international treaty obligations form part of national law** and, where there is conflict, international treaties take precedence. The ECHR has an even stronger position in national law, with legislation requiring the courts to apply the ECHR and the case-law of the European Court of Human Rights when deciding cases. Despite these provisions, references to international treaties and relevant decisions of the European Court of Human Rights are rare, and appear to have little impact upon judicial thinking.

The national legal framework related to equality comprises both constitutional protections and legislation. Article 24 of the **Constitution** is the most important, containing both a freestanding right to equality and a prohibition of discrimination on certain grounds. However, in both cases, there are notable weaknesses. The right to equality is, specifically, a guarantee that citizens have "equal constitutional rights and freedoms" and are "equal before the law". Thus, protection is limited only to citizens and the right to equality, as defined, is more limited than international best practice would suggest. The prohibition of discrimination is limited to a prohibition of "privileges or restrictions". It is not clear that this definition would prohibit all forms of discrimination (particularly indirect discrimination). Moreover, while the list of grounds is open-ended, it omits many which are recognised at international law, such as sexual orientation, gender identity, disability and health status. There has been limited jurisprudence on what further grounds should enjoy protection; judgments on whether "age" is a protected characteristic, in particular, are contradictory and difficult to reconcile. Article 24 also provides for a list of measures which the state is required to take in order to ensure "equality of the rights of women and men"; however, these are problematic, reinforcing stereotypical notions of the role of women in society as needing protection.

At the level of **national legislation**, the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine", adopted in 2012 and

amended significantly in 2014, is the most important. The Law, while imperfect, can be considered a **comprehensive anti-discrimination law**. The text of the law, as amended, is largely in line with international best practice: there are appropriate definitions of the different forms of discrimination; discrimination is prohibited on an extensive and open-ended list of protected characteristics, though sexual orientation and gender identity are notably omitted from the listed grounds; and the law has a broad material scope. However, there are also a number of weaknesses. These include a failure to require positive action measures where necessary to accelerate progress towards equality, a limited range of remedies and a failure to harmonise the law with other pieces of legislation and thus ensure that the Law is understandable and usable by lawyers and judges. Since its entry into force in September 2012, the Law has not often been utilised by discrimination victims, possibly as a result of its awkward place within the Ukrainian legal framework.

In addition to the comprehensive anti-discrimination law, there are **two specific anti-discrimination laws** in Ukraine, focused on women and persons with disabilities respectively. The Law of Ukraine “On Equal Rights and Opportunities for Women and Men” has some strengths, including in particular the requirement that the government undertake “gender-related assessments” of other pieces of legislation to identify and amend gender discriminatory provisions. Beyond this, however, the law has a number of weaknesses and the prohibition of gender discrimination in the Law has had little, if any, impact, as illustrated by the evidence in section 2.1 of this report. The Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine” has been substantially amended since its adoption, such that it now provides some measure of protection from discrimination on the basis of disability. While the approach of the law when adopted was firmly rooted in the “medical model” of disability, with most provisions providing various forms of social assistance to persons with disabilities, amendments have encouraged a shift towards the “social model” with provisions requiring reasonable accommodation and universal design in the public and private sector. Some court judgments, making reference to the Convention on the Rights of Persons with Disabilities, show the potential impact of the law, though such judgments are relatively uncommon.

Beyond the comprehensive and specific anti-discrimination laws, there are **standalone non-discrimination provisions in legislation** regulating cer-

tain areas of life such as employment, education and family law. These provisions are little used in practice and appear to be more symbolic than practical. Within the criminal law, there are offences in the Criminal Code which prohibit discrimination, the incitement of national, racial or religious hatred, and the importation of various works which cause social harm, including those that promote intolerance and discrimination on grounds of race, nationality or religion. While these go some way to meeting Ukraine's international obligations in this field, they could be strengthened by prohibiting incitement to hatred on further grounds, including sexual orientation, and through more effective enforcement by the police and prosecuting authorities. The Criminal Code also provides for aggravated offences where these are motivated by racial, national or religious intolerance and provides a general power for courts to increase sentences where racial, national or religious hatred was a motivating factor in the commission of an offence. Again, these provisions could be strengthened through inclusion of further protected characteristics and more rigorous use.

There is no comprehensive equality policy although, as of May 2015, the government was preparing a broader human rights strategy to include sections on non-discrimination and gender equality. There are, however, a number of **specific policies** in respect of gender, race and ethnicity, disability and the Roma. While certainly well-intentioned, it is difficult to find evidence of the impact and outcomes of the various policies, strategies and action plans, raising questions as to their efficacy.

The institutions and procedures in place to ensure the **implementation and enforcement** of the rights to equality and non-discrimination are relatively strong. Ukraine has a well-structured court system, and there are no significant obstacles to bringing a case of discrimination and, indeed, those who bring cases of discrimination are exempt from paying court fees (although not necessarily entitled to legal aid). A provision permitting the reversal of the burden of proof in discrimination cases was introduced in 2014, making it too early to assess its interpretation or impact. While Ukraine has not established a specialised body focussed on the protection and promotion of the right to equality, it does have a National Human Rights Institution (NHRI), the Ukrainian Parliament Commissioner for Human Rights (the Commissioner), whose remit includes discrimination. As an A-rated NHRI with an extremely broad range of powers in the field of equality and non-discrimination (as well

as within human rights more broadly), the Commissioner can be considered as meeting Ukraine's international human rights obligations. Though it is arguable that its remit is unachievably broad for one body, the fact that the Commissioner has prioritised tackling discrimination is very welcome.

Jurisprudence on equality and non-discrimination is limited, with a small number of cases decided by the Constitutional Court and lower courts which have interpreted the constitutional and legislative provisions. While this, in part, is a result of Ukraine operating a civil law system with less weight placed on the judgments and reasoning of courts, the decisions that have been made indicate – with some notable exceptions – a reluctance to make use of international standards and best practice in interpreting the rights to equality and non-discrimination.

This report's overall conclusion is that the system of laws, policies and practices in place to prevent discrimination in Ukraine remains a work in progress. While Ukraine has implemented a number of important reforms in recent years, bringing its framework largely into line with international standards, gaps and inconsistencies remain. More importantly, as both the analysis of patterns of discrimination and the assessment of the enforcement of the framework indicate, implementation remains poor. Strong legal protections on paper have not yet translated into a significant reduction in discrimination in practice. Thus, while Ukraine is certainly heading in the right direction, **there is much more to be done by the government of Ukraine to ensure that it fulfils its obligations to respect, protect and fulfil the rights to equality and non-discrimination.**

4.2 Recommendations

In light of the foregoing conclusions, the Equal Rights Trust offers to the government of Ukraine a set of recommendations whose is to enable Ukraine to meet its obligations under international law to respect, protect and fulfil the rights to equality and non-discrimination.

All recommendations are based on international law related to equality and the Declaration of Principles on Equality, a document of international best practice which sums up the most essential elements of international best practice related to equality.

The recommendations are presented below:

**Recommendation 1:
Strengthening of International Commitments Related to Equality**

Ukraine should ratify the following United Nations human rights instruments which are relevant to the rights of equality and non-discrimination:

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and
- The Third Optional Protocol to the Convention on the Rights of the Child (communicative procedure).

Ukraine should also make the necessary constitutional amendments so that it can ratify the Rome Statute on the International Criminal Court.

**Recommendation 2:
Constitutional and Legislative Reform**

Ukraine should undertake a review of certain provisions of the Constitution, as well as all legislation and policy, in order to (i) assess their compatibility with the rights to equality and non-discrimination as defined under the international instruments to which it is party and (ii) amend, and where necessary, repeal existing laws, regulations and policies that conflict with the right to equality. The following provisions have been highlighted in this report as being either discriminatory in and of themselves or applied in a discriminatory manner, and so should be amended as a priority:

Constitutional Provisions

- Article 24, paragraph 1, which limits the personal scope of the right to equality only to citizens;
- Article 24, paragraph 3 which requires the state to take “special measures” in order to ensure “equality of the rights of women and men” but which ultimately results in legislation reinforcing paternalistic gender stereotypes and limiting the opportunities of both women and men;

- Article 36 which guarantees the right to freedom of association into political parties and public organisations only to citizens;
- Article 38 which guarantees the right to participate in the administration of state affairs, in national and local referendums, to freely elect and to be elected to the bodies of State power and local self-government, and equal access to the civil service and to the service in local self-government bodies only to citizens;
- Article 39 which guarantees the right to assemble peacefully without arms and to hold rallies, meetings, processions, and demonstrations only to citizens;
- Article 46 which guarantees the right to social protection only to citizens;
- Article 51 which limits marriage only to opposite-sex couples;
- Article 54 which provides the right to freedom of literary, artistic, scientific, and technical creative activities, protection of intellectual property, copyright, and moral and material interests arising in connection with various types of intellectual activity only to citizens.

Legislative Provisions

Code of Labour Laws of Ukraine

- Article 33, paragraph 3 of which creates an exception for female but not male parents to employers' right temporarily to reassign staff members without their consent for a period of up to one month;
- Article 51, paragraph 4 of which allows employers to reduce the number of working hours for employees who are women with children under the age of fourteen years old or who have a disability, but not a father in the equivalent position;
- Articles 55 and 175 which prohibit employers from requiring women to work at night except in those sectors of the economy where there is a special need only as a temporary measure;
- Articles 55 and 176 which prohibit employers from requiring pregnant women and women with children under the age of three years old from working at night;
- Article 56 which permits pregnant women or women with a child under the age of fourteen years old or who has a disability to request part-time work, but does not grant the same permission for a father in the equivalent position; and which permits only

women but not men who are caring for a sick family member to request part-time work;

- Articles 63 and 176 which prohibit pregnant women and women with children under the age of three from working at night, at weekends, overtime or being sent on business trips;
- Articles 63 and 177 which require employers to obtain the consent of women with children aged between three and fourteen years old or who have a disability before requiring them to work overtime or to go on business trips;
- Article 174 which prohibits the employment of women to undertake heavy work, to work in hazardous or dangerous conditions, and underground work, save where the underground work is non-physical and involves sanitary or domestic service. and which prohibits the employment of women to undertake work involving lifting and moving objects where the weight exceeds their limits;
- Article 178 which allows only for pregnant women and women with children under three years old to be transferred to another job which is less demanding;
- Article 179 which grants parental leave only for women;
- Article 182 which provides 56 days leave only for women who adopt a child from birth (70 days if the woman adopts two or more children);
- Article 182¹ which provides what where a woman has two or more children under fifteen years old, or a disabled child, or an adopted child, or is a single mother, or where a father is bringing up a child without a mother, they shall receive an additional seven days annual leave;
- Article 184 which prohibits the dismissal of pregnant women, women with children under three years old and single mothers of children who are under fourteen years old or have a disability;
- Article 185 which allows pregnant women and women with children under the age of fourteen to claim vouchers to sanatoriums and rest homes as well as material aid; and
- Article 186 which requires organisations with a significant proportion of women to establish nurseries or kindergartens.

Family Code of Ukraine

- Article 21 which defines marriage as between one man and one woman, thus excluding same-sex couples from marriage;

- Article 74 which provides that where a man and a woman live together as an unmarried couple, the property they acquire during the period of living together belongs to them as joint matrimonial property unless a written agreement between them provides otherwise, thus excluding same-sex couples;
- Article 211, paragraph 3 which prohibits same-sex couples from adopting children;
- Article 212, paragraph 12 which prohibits stateless persons from adopting children; and
- Article 213 which gives preferential treatment amongst adopters to Ukrainian citizens over foreign nationals.

Law of Ukraine “On the Civil Service”

- Article 4 which limits working in the civil service to Ukrainian citizens.

Law of Ukraine “On Citizenship of Ukraine”

- Article 9 which provides that the mandatory five-year term of residence in Ukraine in order to obtain citizenship does not apply to spouses of Ukrainian citizens, thus discriminating against same-sex couples, one of whom is a Ukrainian citizen.

Law of Ukraine “On Farming”

- Article 1 which limits establishing a farm to Ukrainian citizens.

Law of Ukraine “On Freedom of Conscience and Religious Organisations”

- Article 24 which imposes certain restrictions on religious activity by foreign citizens (but not stateless persons).

Law of Ukraine “On Immigration”

- Article 4 which provides for the establishment of a quota for spouses of immigrants, but provides that spouses of Ukrainian citizens can receive permits for immigration regardless of this quota, thus discriminating against same-sex couples, one of whom is a Ukrainian citizen.

Law of Ukraine “On Leave”

- Article 10, paragraph 7 which grants the right of employees to request annual leave prior to having worked for the employer for six months continuously in the first year of employment to women due to pregnancy, childbirth and after childbirth as well as for women with two or more children under 15 years of age or with a child with a disability, but not to fathers in the equivalent position;
- Article 10, paragraph 12 which grants the right of employees to request leave at any convenient time to women with two or more children under 15 years of age or with a child with a disability but not to fathers in the equivalent position;
- Article 19, paragraph 1 which grants an additional period of seven days’ paid annual leave to certain persons, namely women with two or more children under 15 years of age or a child with a disability, or who have adopted a child; single mothers, but not to fathers in the equivalent position; and
- Article 25, paragraph 1 which grants an additional period of 14 days’ unpaid annual leave, at their request, to certain persons, namely mothers with two or more children under 15 years of age, or with a child with a disability and fathers who are bringing up such children only where there is no mother (including where the mother is in hospital for a long period).

Law of Ukraine “On Local Government”

- Article 3 which limits employment in local government to Ukrainian citizens.

Law of Ukraine “On Military Duty and Military Service”

- Article 1 which limits employment in the armed forces to Ukrainian citizens.

Law of Ukraine “On the Militia”

- Article 10-21 which requires the militia to identify and report to healthcare institutions information on people who are at risk of AIDS,

and, at the request of a healthcare institution, to issue warrants for such persons, as well as those infected with HIV.

Law of Ukraine “On Notaries”

- Article 3 which limits employment as a notary to Ukrainian citizens.

Law of Ukraine “On Protection of the Population against Infectious Diseases”

- Article 24, paragraph 4, which prohibits persons with tuberculosis in active form and HIV from obtaining visas to enter Ukraine.

Law of Ukraine “On Service in Local Government”

- Article 17 which requires officials working in local government to be assessed once every four years unless they fall into one of the categories listed in paragraph 2. Paragraph 2 includes, inter alia, pregnant women and women who have worked for less than one year after returning from maternity leave, childbirth or childcare, but not men in the equivalent position.

Law of Ukraine “On State Support to Families with Children”

- Article 5, paragraph 2 and Articles 18-1 to 18-3 which provide for social assistance for single mothers but not single fathers.

Order of the Ministry of Health of Ukraine No. 479 of 20 August 2008

- The Order includes transsexuality on the list of diseases, the possession of which prevents a person from adopting a child, thus discriminating against persons on ground of gender identity.

Order of the Ministry of Health of Ukraine No. 60 of 3 February 2011

- The Order requires there to be surgery before a medical certificate certifying a change of sex can be issued and prohibits certain groups of persons from being able to undergo corrective surgery including

persons with children under the age of 18, gay men, lesbians and transvestites, persons with “sexually perverse tendencies” and persons with “morphological features which would make it difficult for them to adapt to their desired gender” such as being androgynous or have a sex disorder development.

**Recommendation 3:
Implementation and Enforcement of the Law of Ukraine
“On Principles of Prevention and Combating Discrimination in Ukraine”**

The Cabinet of Ministers and other relevant agencies should ensure the full and effective implementation of the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, as amended in 2014, in particular, by:

- Amending the Law to explicitly include “sexual orientation” and “gender identity” in the list of protected characteristics;
- Harmonising other pieces of legislation, including the Civil Code and the Administrative Code, to ensure that the Law is properly enforceable and that appropriate remedies are available;
- Publishing guidance on the interpretation of the Law in the form of “Explanatory Notes” or otherwise, accessible for judges, lawyers, businesses, non-governmental organisations and victims (or potential victims) of discrimination; and
- Providing specialised training for judges and lawyers on the Law.

**Recommendation 4:
Reform, Implementation and Enforcement of Other Laws
Aimed at Prohibiting Discrimination**

The Cabinet of Ministers should introduce reforms to improve other pieces of legislation which aim to prohibit discrimination. For this purpose:

- The Cabinet of Ministers should undertake a comprehensive review of all legislation which prohibits discrimination including (i) the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, (ii) the Law of Ukraine “On Equal Rights and Oppor-

tunities for Women and Men”, (iii) the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine” (iv) and standalone non-discrimination provisions in other pieces of legislation. The review should seek to harmonise the provisions so that the relationship between the different protections offered is clear and complementary, and should consider the repeal or amendment of provisions which have been, in practice, superseded by the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”;

- The Cabinet of Ministers and the Verkhovna Rada should introduce amendments to the Criminal Code such that provisions prohibiting the incitement of hatred on specific grounds and which set out aggravating factors for offences can be enforced in respect of offences motivated by hatred on the basis of other characteristics for which there is evidence that they motivate hate in Ukrainian society, e.g. sexual orientation.
- The Cabinet of Ministers should ensure that the final Human Rights Strategy includes strong, measurable actions and targets in respect of non-discrimination and is monitored and reviewed regularly to ensure that they are being implemented effectively.

Recommendation 5: Actions to Address Discrimination against Specific Groups

The state should take specific actions in order to address the discrimination and disadvantage faced by different groups in Ukraine, including all of those highlighted in Part 2 of this report. Such steps should be taken in addition to improving protection from discrimination in law by acting on recommendations 2, 3 and 4. These steps should include, but not be limited to, the following:

Gender

- The Cabinet of Ministers and the Verkhovna Rada should amend all legislative provisions set out in Recommendation 2 above which discriminate on the basis of gender;
- As per Article 5 of the Law of Ukraine “On Equal Rights and Opportunities for Women and Men”, the Cabinet of Ministers should ensure

that all draft legislation, whether submitted by the Cabinet of Ministers or by individual deputies, is assessed for its compliance with the principle of gender equality, whether by the Ministry of Justice, the Central Scientific Experts Office or otherwise;

- The Cabinet of Ministers and the Verkhovna Rada should consider the adoption of legislation providing for specific positive action measures in those areas of employment where women are under-represented;
- The Cabinet of Ministers should enforce vigorously Article 17 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” and Article 11 of the Law of Ukraine “On Employment of the Population” which prohibit advertisements seeking candidates of only one gender as well as employers making different demands from employees based on their sex or requiring from them information about their personal life or plans to have children;
- The Cabinet of Ministers should take immediate steps to tackle the persistently high gender pay gap;
- The Cabinet of Ministers should ensure sufficient numbers of child-care centres and other facilities in order to allow parents with young children – irrespective of their gender – to work;
- Notwithstanding the generality of Recommendation 7 below, the Ministry of Education should provide education aimed at eliminating gender stereotypes and gender roles and at promoting gender equality in schools and at all ages;
- The Cabinet of Ministers should also consider informational and awareness-raising campaigns aiming to eliminate gender stereotypes regarding the role of men and women in society amongst the population at large;
- The Cabinet of Ministers should ensure civil servants and all other public officials, including the police and judges, receive specific training on gender equality, with ongoing refresher courses available;
- The Cabinet of Ministers should take immediate steps to tackle the high levels of domestic violence against women as well as its under-reporting, including through appropriate training for police officers and prosecutors;
- The Cabinet of Ministers and the Verkhovna Rada should consider the adoption of legislation providing for specific positive action measures, including quotas where appropriate, in order to address the

low representation of women in many areas of political and public life, including in the Verkhovna Rada and in local government.

Sexual Orientation and Gender Identity

- The Verkhovna Rada should reject all attempts to introduce legislation which discriminates on grounds of sexual orientation or gender identity, including any proposed legislation which would prohibit the “propaganda of homosexuality” amongst minors;
- The Ministry of Health of Ukraine should review all handbooks and other materials produced by the Ministry to ensure that references to sexual orientation and gender identity are in line with international standards and to remove any reference to homosexuality or transsexuality as diseases, disorders or perversions.
- The Ministry of Internal Affairs of Ukraine should introduce training for all law enforcement agencies on working with lesbian, gay, bisexual and transgender persons so as to prevent all forms of discrimination. Any law enforcement agent found to have discriminated against a person on the basis of their sexual orientation or gender identity should face appropriate disciplinary proceedings.
- The Ministries of Education and Health of Ukraine should similarly introduce training for all public servants working in the education and health sector on working with lesbian, gay, bisexual and transgender persons.
- All state representatives should refrain from any homophobic or transphobic public statements.

Disability

- The Cabinet of Ministers should review all relevant national legislation with a view to completing the transition from a medical model of disability to a social model, with a focus on eliminating barriers faced by persons with disabilities.
- The Cabinet of Ministers should more rigorously enforce legal provisions requiring reasonable accommodation to be provided for persons with disabilities, particularly in access to infrastructure and to information.
- The Cabinet of Ministers should take greater efforts to enforce legal provisions and policies supporting persons with disabilities in obtai-

ning employment, including the requirement that employers take measures of reasonable accommodation for employees with disabilities.

- The Cabinet of Ministers should urgently reform all educational institutions, including higher education institutions and boarding schools, to ensure that students with disabilities are able to participate on an equal basis with others.

HIV Status

- The Ministry of Health of Ukraine should provide all medical staff with training on the prohibition of sharing an individual's HIV status with third parties under Article 13 of the Law of Ukraine "On Combating the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV";
- Where medical staff do disclose an individual's HIV status, the Office of Public Prosecutor should rigorously enforce Article 132 of the Criminal Code which makes such disclosure a criminal offence;
- The Ministry of Health of Ukraine should take steps to counter discrimination against persons living with HIV in healthcare facilities, both public and private;
- The Cabinet of Ministers should implement and encourage awareness-raising programmes and campaigns amongst the public on HIV and AIDS with the aim of countering prejudice and stigma towards those living with HIV/AIDS, including through school-age education.

Ethnicity, Nationality and Skin Colour

- The Ministry of Internal Affairs of Ukraine should introduce training for all law enforcement agencies to ensure that all hate crimes against ethnic minorities and foreign nationals are properly investigated;
- The Ministry of Internal Affairs of Ukraine should introduce training for all law enforcement agencies on preventing ill-treatment of ethnic minorities and foreign nationals;
- The Ministry of Internal Affairs of Ukraine should ensure that any law enforcement agent found to have ill-treated a person on the basis of their ethnicity, nationality or skin colour, or to have failed to protect persons with such characteristics from hate crime, should face appropriate disciplinary proceedings;

- The Cabinet of Ministers should take steps to ensure that Roma individuals are able to obtain identification documents and state services;
- The Cabinet of Ministers should take steps to tackle the high unemployment rate amongst Roma;
- The Cabinet of Ministers and the Ministry of Education and Science should take steps to ensure that every Roma child goes to school, that all Roma children are integrated within the education system and that they do not receive poorer quality education than their peers;
- If and when Crimea returns to the *de facto* control of the Ukrainian authorities, the Cabinet of Ministers and the Crimean authorities should take immediate steps to ensure that Crimean Tatars are allocated land on a fair and equitable basis;
- The Cabinet of Ministers and the Crimean authorities should take steps to improve the living standards of the Crimean Tatars and to reduce the level of poverty;
- The Cabinet of Ministers and the Crimean authorities should work closely with the Crimean Tatars to ensure a mutually acceptable arrangement for the use of the Crimean Tatar language in education and communication;
- The Cabinet of Ministers should promote Ukraine's history of peaceful co-existence and harmony between ethnic Ukrainians and ethnic Russians;
- The Ministry of Internal Affairs of Ukraine should introduce training for all law enforcement agencies to ensure that anti-Semitic acts are recognised as hate crime, rather than lesser offences.

Language

- The Cabinet of Ministers should develop, in consultation with members of the Verkhovna Rada and representatives of all of the country's oblasts, proposals to guarantee and protect the use of minority languages by persons resident in Ukraine, in line with its international legal obligations.

Religion

- The Ministry of Internal Affairs of Ukraine should introduce training for all law enforcement agencies to ensure that all hate crimes aga-

inst Jehovah’s Witnesses and other religious minorities are properly investigated;

- The Cabinet of Ministers should review its Decree adopted under the Law of Ukraine “On Alternative (Non-military) Service” to ensure that all those with a conscientious objection to military service can undertake alternative service;
- The Verkhovna Rada should review and amend the Law of Ukraine “On Mobilisation Preparation and Mobilisation” to allow for conscientious objectors to refuse to undertake military service when mobilised;
- The Cabinet of Ministers should review the operation of local authorities in registering religious organisations and entities and in allocating land to religious bodies, and adopt measures to ensure that localised minorities are not subject to discrimination;

Place of Origin and Displacement Status

- The Cabinet of Ministers should take measures to ensure the full enforcement of the Law of Ukraine “On the Rights and Freedoms of Internally Displaced Persons”, which provides that internally displaced persons should be protected from discrimination on the basis of their status.

Children

- The Cabinet of Ministers should take immediate steps to end the institutionalisation of children, including orphans, “social orphans” and others;
- The Cabinet of Ministers should ensure the full implementation of the separate juvenile justice system established in 2008;
- The Cabinet of Ministers should take immediate steps to end the institutionalisation of children with disabilities, and to ensure that children with disabilities can access education on an equal basis with others;

Recommendation 6: Data Collection

During the research for this report, it has been established that there is a lack of information, including statistics, in relation to key indicators of equality in Ukraine. State authorities and the State Statistics Committee of Ukraine should

collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within Ukrainian society. Hate crime statistics must be collected and publicised, including statistics on gender-based violence. Ukraine should further ensure that such information is not used in a manner that violates human rights.

**Recommendation 7:
Education on Equality**

Ukraine should take action to raise public awareness about equality, and to ensure that all education establishments, including private, religious and military schools, provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices which are based on the idea of the superiority or inferiority of one group within society in relation to another.

**Recommendation 8:
Prohibition of Regressive Interpretation**

In adopting and implementing laws and policies to promote equality, Ukraine should not allow any regression from the level of protection against discrimination that has already been achieved.

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потребами, ефективність використання такими закладами бюджетних коштів, спрямованих на забезпечення їх діяльності (на виконання Доручення Президента України № 1-1/1852 від 22 липня 2013 року), 2013.

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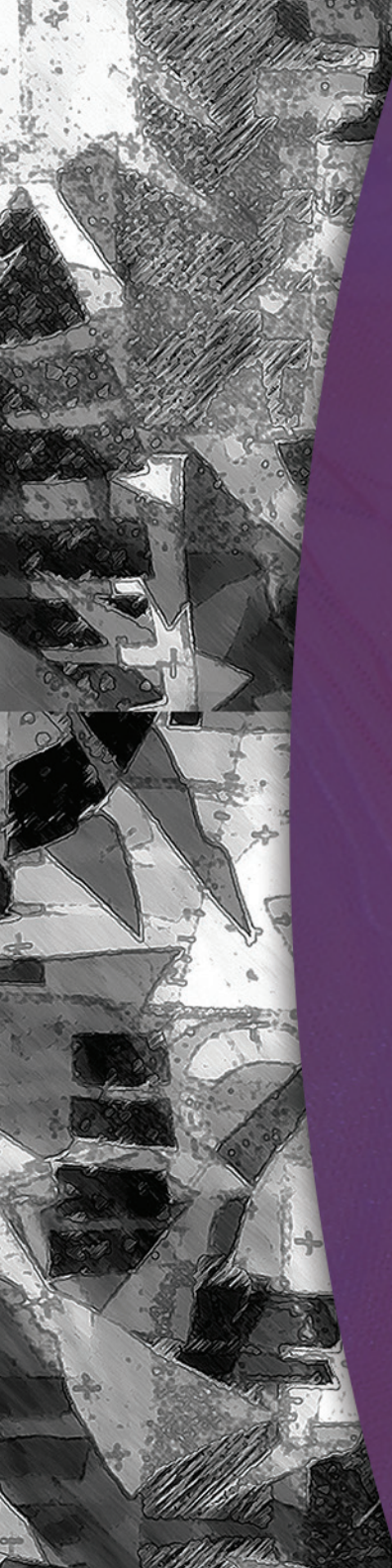
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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

Nash Mir Center is a Ukrainian non-governmental organisation, which aims to promote equal rights and protects the interests of Ukrainian LGBT people.

Ukraine today is caught in the crosscurrents created by powerful forces fighting for its identity. Will it become an ally of the European Union, or a junior partner of an increasingly antagonised Russia?

This report finds that the main line dividing people in Ukraine today is not ethnic, religious, linguistic or regional, but political. Yet while it finds that ethno-linguistic discrimination was not a key cause of the conflict, division and disadvantage are among its consequences. Most prominently, issues of language, and latterly ethnicity, have become key battlegrounds for those promoting different visions of Ukraine's future. LGBT rights have also become strongly politicised. Discrimination against ethnic, religious and sexual minorities has increased in Crimea and the separatist-controlled areas, while the conflicts in these regions have created an internally displaced population which is vulnerable to discrimination. The report also concludes that long-standing patterns of discrimination persist in the midst of conflict: Roma, women and persons with disabilities, for example, experience discrimination resulting largely from culturally entrenched attitudes.

There are grounds for hope, however. In just three years, the legal framework on equality and non-discrimination has improved radically. Now the state must turn to the difficult task of realising equal rights, while resisting those who seek to foster division.



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