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Anti-discrimination in Ukraine - rapprochement with Europe



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ANTI-DISCRIMINATION IN UKRAINE - RAPPROCHEMENT WITH EUROPE

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Abstract

The article examines the state of anti-discrimination in Ukrainian society through various lenses, highlighting both progress and persistent challenges. Findings from a 2023 survey by the Kyiv International Institute of Sociology reveal prevalent grounds for discrimination, including language, sexual orientation, disability, age, ethnicity, and gender. Despite constitutional protections against discrimination, the effectiveness of existing legislation, such as the Law of Ukraine "On Principles of Prevention and Counteraction of Discrimination," faces obstacles like the absence of affirmative action requirements and limited legal remedies. Concerns raised by the UN Human Rights Committee underscore the need for comprehensive anti-discrimination legislation aligned with international standards.

The media law enacted in December 2022 aims to combat hate speech, but reports indicate ongoing intolerance and prejudice targeting vulnerable groups. While Ukrainian criminal legislation addresses hate crimes based on race, nationality, and religious beliefs, gaps remain regarding sexual orientation and gender identity, as recommended by international bodies. Efforts toward legislative reform, including the Law of Ukraine "On National Minorities (Communities) of Ukraine," are underway, though complicated by the conflict with Russia.

Gender equality initiatives, such as the 2030 state strategy and the establishment of the Commission on Gender Policy, demonstrate progress but face challenges like women's underrepresentation in leadership roles and persistent wage gaps. Despite ratifying the Istanbul Convention, gender-based violence prevention efforts encounter setbacks due to budget constraints, especially in conflict-affected regions.

Persons with disabilities confront barriers in employment and access to public services, despite legislative efforts like the National Strategy for Barrier-free Environment. Integration into the workforce remains limited, with challenges exacerbated by outdated registration methods and conflict-related strains on public services.

Ukraine has seen increasing tolerance toward the LGBTIQ community, reflected in decreasing hate crimes and legislative reforms to protect against discrimination. Draft bills on same-sex marriage and government support for LGBTIQ rights signal a commitment to inclusivity. However, challenges persist for the Roma minority, facing discrimination, economic and social exclusion, and displacement exacerbated by the conflict with Russia.

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Efforts to address the needs of internally displaced persons (IDPs) include state policies and international assistance, but income loss and limited access to social services remain significant challenges.

As Ukraine pursues EU membership, addressing anti-discrimination recommendations presents crucial opportunities for civil society advocacy and policy reform.

Key words

Anti-discrimination, Ukraine, Hate speech, National minorities, Gender equality, Persons with disabilities, Roma minority, LGBTIQ rights, Internally Displaced Persons (IDPs), EU membership candidacy, Civil society advocacy

I. Introduction

In the realm of anti-discrimination, Ukrainian society demonstrates a general openness and tolerance toward individuals in vulnerable situations. A survey conducted in October 2023 by the Kyiv International Institute of Sociology, in collaboration with the European Union Consultative Mission in Ukraine, shed light on public perceptions of discrimination in the country. According to the survey, the identified grounds for discrimination and the respective percentages include language (45%), sexual orientation (34%), presence of disability (28%), age (27%), ethnicity (23%), and gender (22%).

To address these concerns and uphold the principle of equality, the Constitution of Ukraine protects against discrimination. Efforts spurred by public initiatives and the requirements of the Association Agreement with the European Union led to the adoption of the Law of Ukraine "On Principles of Prevention and Counteraction of Discrimination in Ukraine" in 2012. Although considered comprehensive anti-discrimination legislation, the law grapples with several challenges. Affirmative action requirements are lacking, impeding accelerated progress toward equality. Furthermore, the law's alignment with a broader legislative framework poses obstacles for victims seeking protection from discrimination. Issues such as the limited range of legal remedies and the absence of administrative responsibility for discrimination hinder its effectiveness. Notably, the criminal justice system's lack of corresponding articles creates loopholes, allowing perpetrators of discrimination to evade appropriate punishment over the years.

On February 9, 2022, the UN Human Rights Committee expressed concerns in its Concluding Observations on Ukraine's 8th periodic report regarding the absence of comprehensive anti-discrimination legislation aligned with the International Covenant on Civil and Political Rights. The committee highlighted insufficient information on measures taken to address stigmatization and discrimination against various groups, encompassing ethnic minorities, LGBTIQ communities, internally displaced persons (IDPs), and persons with disabilities.

In December 2022, Ukraine enacted the Law on media, prohibiting the dissemination of videos inciting hatred or discrimination based on various characteristics, including national, racial, or religious characteristics, as well as ethnicity, citizenship, race, religion and beliefs, age, gender, sexual orientation, gender identity, disability, or any other characteristic. The National Council of Ukraine for Television and Radio Broadcasting formalizes criteria for identifying such violations and possesses the authority to respond to media outlets committing such infractions. However, concerns persist as reports indicate manifestations of intolerance, prejudice, and hate speech in the media targeting representatives of vulnerable groups and minorities.

Ukrainian criminal legislation currently addresses hate crimes and hate speech based on three characteristics – race, nationality, and religious beliefs. However, it falls short of covering sexual orientation and gender identity, recommended as a priority by the European Commission against Racism and Intolerance. A draft law prepared by the Ministry of Internal Affairs to include these additional protected grounds was introduced to Parliament in 2021 but is yet to be adopted. The National Police of Ukraine implemented a new data collection form to investigate hate crimes and offenses in the first two months of 2023, launching a pretrial investigation into 26 criminal offenses based on hatred. However, concerns raised by the Committee indicate that the majority of hate crimes against minority groups do not qualify under existing legal provisions.

A key recommendation by the European Commission in Ukraine's pursuit of EU membership was the completion of legislative reform to realize the rights of national minorities (communities). Subsequently, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On National Minorities (Communities) of Ukraine," aligning with the development of a sovereign, independent, democratic, social, and legal state. The full-scale invasion by the Russian Federation further complicated the situation, leading to a deterioration in Ukrainians' attitudes toward Russians and Belarusians.

The Ukrainian Parliament's Commissioner for Human Rights plays a pivotal role in combating discrimination, receiving 395 reports of discrimination on various grounds in 2022. It operates as an independent body with powers equivalent to those attributed to national equality bodies. To enhance the capacities of law enforcement and legal aid systems, suitable training is crucial. Additionally, strengthening the legal aid system is essential for the effective implementation of legislation combating discrimination, hate speech, and hate crime.

II. Gender Equality

Ukraine has made strides in enacting legislation to promote gender equality, including the 2005 Law on ensuring equal rights and opportunities for men and women, the 2012 Law on principles of prevention and combating discrimination, and the 2018 Law on prevention of domestic violence. Despite these legal frameworks, they are often seen as declarative, providing limited guidance. To address this, the Cabinet of Ministers adopted a comprehensive 2030 state strategy in August 2022, focusing on equal rights and opportunities across public institutions, economics, and environmental issues.

Since 2017, gender policy coordination in the government has been overseen by the office of the Deputy Prime Minister for European and Euro-Atlantic integration. The Commission on Gender Policy was established to ensure concerted involvement of all executive bodies, fostering a more effective horizontal approach to gender equality.

However, concerns persist, with the UN Human Rights Committee noting a low level of women's representation in the public sector, especially at senior levels, and a continuing wage gap between men and women. To address gender-based violence, Ukraine ratified the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) in July 2022. Despite these efforts, gender-based violence prevention faced setbacks in 2022 due to budget constraints and degradation of social services, especially in conflict-affected regions.

While documented cases of gender-based violence decreased by almost 50% in the first half of 2022, the number of non-documented cases likely increased. Conflict-related and gender-based sexual violence emerged as significant issues, with hundreds of confirmed cases and an estimated large number of unreported cases. The UN Committee on the Elimination of Discrimination against Women

expressed concerns about gross human rights violations against Ukrainian women and girls during the military attack, impacting various vulnerable groups.

Ukraine revised the National Action Plan on UN Security Council Resolution 1325 on women, peace, and security, incorporating measures on conflict-related sexual violence. Full implementation requires the inclusion of women in reconciliation and decision-making processes, systematic training for law enforcement agencies and the military, and the detection of violence forms within institutions.

Justice with a gender-sensitive approach, prevention, investigation, and punishment of sexual and gender-based crimes during armed conflicts need attention. Efforts include aligning the legal framework with international standards and establishing comprehensive response systems, one-stop response centers, and investigation mechanisms. A memorandum of cooperation between the government and the UN on preventing and counteracting sexual violence in wartime was signed in May 2022.

In a positive development, since February 2022, all positions in the Ukrainian armed forces have been open to women. By March 2023, over 60,000 women were serving, many on the frontline. This shift is accompanied by increased societal acceptance of equal rights for women soldiers, necessitating focused attention on their needs, including equipment, protection against sexual violence and harassment, medical support during and after combat, and reintegration support into civilian life post-retirement from the armed forces.

III. People with Disabilities

In 2010, Ukraine ratified the UN Convention on the Rights of Persons with Disabilities, emphasizing a commitment to eliminating discrimination based on disability. The Law on the basis of social protection of persons with disabilities prohibits such discrimination and introduces quotas for companies. However, integration into the workforce remains limited, with the application of reasonable accommodation principles for persons with disabilities being rare.

The National Strategy for a Barrier-free Environment in Ukraine, spanning until 2030, aims to empower persons with disabilities and ensure their fundamental rights. The 2023-2024 action plan focuses on monitoring and adapting the physical environment and transport, aiming for barrier-free infrastructure by 2024. Challenges include limited disaggregated data due to outdated registration methods and inadequate legal capacity for persons with disabilities.

As of January 2020, 2.7 million persons with disabilities were registered in Ukraine, a number expected to rise due to the conflict with Russia. The situation is especially challenging for those with intellectual and psychosocial disabilities, facing high institutionalization rates. Reforms to reduce institutionalization have seen limited success, requiring prioritization at local and regional levels.

Equal participation and opportunities for persons with disabilities face obstacles in transportation, healthcare, social services, and public buildings. Legislation lacks incentives for employing persons with disabilities in the open labor market, exacerbated by strains on public services due to the conflict.

IV. LGBTIQ+ Rights

Ukraine has witnessed a positive trend in increasing tolerance and acceptance of LGBTIQ individuals over the last decade. Hate crimes against this community have decreased by 44% since 2020, reflecting societal shifts. Surveys in 2022 indicate majority support for same-sex partnerships and equal rights for LGBTIQ persons.

Existing legislation, such as the Labor Code, offers some protection against discrimination based on sexual orientation, with ongoing reforms to ensure equal rights. The media law adopted in December 2022 prohibits hate speech and incitement based on sexual orientation and gender identity. The National Human Rights Action Plan 2021-2023 envisions progress, including amendments to the Criminal Code and drafting laws for the elimination of discriminatory provisions and the introduction of registered civil partnerships.

In March 2023, a draft bill on the legalization of same-sex marriage was introduced, with a government commitment to approval by the end of 2023. A June 2023 European Court of Human Rights judgment emphasized the state's obligation to ensure equal treatment for same-sex couples in Ukraine. The government's clear communication in support of LGBTIQ rights and participation in events like Kyiv Pride contributes to fostering an inclusive society.

V. Roma Minority

The Roma minority faces severe challenges in Ukraine, enduring discrimination, anti-gypsyism, economic and social exclusion, limited access to ID documents, inadequate education, ongoing segregation, poverty, and substandard housing. Educational attainment among the Roma population is notably low, with 24% having no education, and only 1% achieving higher education. Empowering women, family planning, children's rights protection, and preventing teen pregnancies are essential, alongside addressing the misappropriation of child support funds and discrimination by the police.

The Russia-led invasion exacerbated existing challenges, displacing a significant part of the Roma minority within and outside Ukraine. Approximately 100,000 Roma Ukrainians have been displaced since February 2022. The conflict hindered efficient evacuation, leading to mob violence against Roma individuals and settlements. Civil society organizations emphasize the need for anti-discriminatory aid delivery, simplified documentation procedures for Roma, and the inclusion of Roma in Ukraine's recovery and reconstruction efforts.

Ukraine adopted a strategy in July 2021 to realize the rights of the Roma minority until 2030, but its slow implementation and the absence of an aligned action plan pose concerns. Involving the Roma community in developing the plan and allocating sufficient resources for implementation are crucial for its success.

VI. Internally Displaced Persons (IDPs)

The Ukrainian government's state policy strategy on internal displacement until 2025, along with the operational plan for 2023-2025, aims to address issues related to IDPs comprehensively. As of June 2023, an estimated 5,088,000 Ukrainians were internally displaced, and 6,303,500 were registered as refugees. Around 4,757,000 people returned to their habitual residence in Ukraine, with 20% returning from abroad.

War-related challenges severely impacted the income sources of IDPs, leading to increased difficulties in allocating adequate state budget funds for social services. External assistance remains crucial, with 24% of responding IDPs relying on monthly livelihood cash assistance, and 72% reporting a total monthly household income equal to or less than UAH 2,500 (EUR 55), the subsistence minimum as of January 2023.

VII. Conclusion

The historical trajectory of anti-discrimination legislation in Ukraine has been profoundly influenced by collaborative efforts with the European Union (EU). With Ukraine's attainment of candidate status for EU accession, the issue of anti-discrimination has emerged as a central priority within the accession process. This emphasis is underscored in the European Commission's 2023 report on Ukraine, which articulates stringent imperatives for legislative and practical reforms to be enacted by Ukraine.

The report delineates a spectrum of imperatives spanning anti-discrimination in employment, gender parity, deinstitutionalization for individuals with disabilities, social welfare provisions, inclusive practices, and anti-discriminatory educational policies. The alignment with these directives delineates a critical juncture for Ukraine, signifying both significant opportunities and pressing advocacy obligations for its civil society.

A pivotal instrument in the contemporary landscape is the Ukraine Facility, endorsed by the European Council in February of this year. Embedded within its framework are stipulations pertinent to anti-discrimination, notably the mandate for deinstitutionalization, particularly concerning children, including those with disabilities and those requiring substantial support.

Presently, Ukraine stands poised to synchronize its domestic legal framework with European standards, thereby fulfilling its obligations in the realm of human rights and anti-discrimination. This juncture necessitates concerted efforts from civil society organizations, as well as national and local authorities, to effectuate substantive reforms. It underscores a period ripe for concerted action and collaboration to advance the principles of equality and anti-discrimination in Ukrainian society.

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Table of Contents

| | |
|---|----------|
| Anti-discrimination in Ukraine - rapprochement with Europe | 0 |
| Abstract | 1 |
| Key words | 2 |
| I. Introduction | 2 |
| II. Gender Equality | 3 |
| III. People with Disabilities | 4 |
| IV. LGBTIQ+ Rights | 5 |
| V. Roma Minority | 5 |
| VI. Internally Displaced Persons (IDPs) | 5 |
| VII. Conclusion | 6 |
| Bibliography | 6 |

Note: if you do not destroy the formatting (and use the headings as appropriate) your table of contents writes itself. It will also be “clickable” after the document is saved as pdf.