

Deficiencies and Directions for Improving Ukraine's Anti-Discrimination Legislation

Author: Iryna Fedorovych

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Ukraine committed to developing and implementing anti-discrimination legislation in 2010 when it signed the Action Plan on Visa Liberalisation with the EU¹. Block 4 of this Plan contained tasks relating to fundamental rights and, in particular, protection against discrimination. It is important (although partially ignored by Ukraine) that in the Second Progress Report² on the progress in implementing the Action Plan, the European Commission reminded Ukraine that protection against discrimination and the national legal system should be based on the standards of the UN and the Council of Europe. Separately, the European Commission emphasised the need to take into account that:

“The comprehensive legislation should cover minimum international standards on legal instruments and remedies in order to ensure effective implementation of the principle of equality and non-discrimination, the provision of judicial and administrative procedures to the victims of discrimination in order to obtain effective remedy, the establishment of a specialised institution to promote equality of treatment and sanction all forms of discrimination (remaining mindful of the fact that all public and private entities have obligations in this field), as well as aspects related to prevention of discrimination. The law should apply to all persons, as regards both the public and private sectors, including public bodies”.³

Analysing Ukraine's progress in implementing the requirements of Block 4 and ultimately adopting comprehensive anti-discrimination legislation in its Third Progress Report for 2013, the European Commission specifically noted Ukraine's failure to take into account all recommendations, in particular the absence of a prohibition of discrimination on grounds of sexual orientation and gender identity (hereinafter - SOGI), as well as the prohibition of multiple discrimination, segregation and victimisation, etc. Particular attention was paid to the need to extend the scope of the law to all areas of public life and to strengthen the role of equality institutions⁴.

¹ The dialogue began in 2008, and the first Plan was presented in 2010. More information about the course of events and EU reports on the implementation of the Plan in English can be found at the [link](#).

² Second progress report of the EC for 2012 at the [link](#)

³ Quote from the [Second Progress Report](#), page 28.

⁴ See more in the [Third Progress Report](#) of the European Commission.

Later, Ukraine made further amendments to the Labour Code of Ukraine, in particular adding “sexual orientation and gender identity” to the list of characteristics protected from discrimination in the workplace in 2015 and banning mobbing in 2022. Amendments were made to the Law of Ukraine “On Advertising” of 2023, introducing the definition of discriminatory advertising, and some other, mostly cosmetic, changes⁵. Separately, the government attempted to amend the Criminal Code of Ukraine and regulate the prohibition of hate speech and punishment for crimes based on intolerance, but these attempts are still awaiting consideration by the Verkhovna Rada of Ukraine⁶.

I. Deficiencies of the current Ukrainian anti-discrimination legislation

As of 2025, Ukraine already has a certain stable system of anti-discrimination legislation, which is partly based on the requirements of some relevant EU Directives and Council of Europe standards, but contains several deficiencies⁷ (see Table No. 1):

Table No. 1

Standard	Legislation
Guarantees of equality at the highest level	Article 24 of the Constitution of Ukraine
An anti-discrimination law with a broad list of protected characteristics, definitions of specific forms of discrimination, and granting the Ukrainian Parliament Commissioner for Human Rights specific powers as an equality institution	Law of Ukraine “On the Principles of Prevention and Combating Discrimination in Ukraine”, 5207-VI, current edition — dated 30 May 2014 ⁸ .
Prohibition of discrimination in certain areas of public life	Labour Code of Ukraine, 322-08, current edition — dated 12 September 2025 ⁹ ; Law of Ukraine “On Employment of the Population”, 5067-VI, current edition — dated 12

⁵ For a more detailed analysis of changes to anti-discrimination legislation and its deficiencies, see [the report](#) “Roadmap for Anti-Discrimination Legislation in Ukraine”.

⁶ First and foremost, this concerns [Draft Law No. 13597](#), which was submitted in the summer of 2025, and its predecessors, which never reached the second reading and were technically withdrawn from consideration.

⁷ For a detailed analysis of the deficiencies of the entire system and comments on their non-compliance with EU requirements, see [the report](#) “Shadow report on Chapter 23 “Justice and Fundamental Rights” of the European Commission’s report on Ukraine in 2023”, pages 352–358.

⁸ Law of Ukraine “On the Principles of Prevention and Combating Discrimination in Ukraine” at the [link](#).

⁹ The Labour Code of Ukraine can be found at the following [link](#).

	September 2025 ¹⁰ ; Law of Ukraine “On Media”, 2849-IX, current edition — dated 1 January 2025 ¹¹ ; Law of Ukraine “On Advertising”, 270/96-VR, current edition — dated 08 May 2025 ¹² ; Law of Ukraine “On Education”, 2145-VIII, current edition — dated 22 September 2025 ¹³ ; State building standards, in particular DBN B.2.2-40:2018 Inclusivity of buildings and structures ¹⁴ .
Prohibition of discrimination on certain grounds	Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”; Law of Ukraine “On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine”; Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons”; Law of Ukraine “On Counteracting the Spread of Diseases Caused by the Human Immunodeficiency Virus (HIV) and Legal and Social Protection of People Living with HIV”.
Separate prohibition on restricting the rights or offending the feelings of citizens, as well as on liability for crimes motivated by “racial, national or religious intolerance”	Criminal Code of Ukraine (in particular, Articles 115, 121, 122, 126, 127, 129, 161, and 300), 2341-III, current edition — dated 17 July 2025 ¹⁵ .

Despite significant progress in developing the anti-discrimination system, it still has several deficiencies that significantly affect protection against discrimination in Ukraine as a whole, as well as the ability of certain population groups to utilise this protection.

Firstly, the provisions of the basic law are fragmentary and inconsistent with other provisions and acts of legislation. The norms listed in the table above use different approaches and terms, which also leads to inconsistencies in law enforcement practice. An analysis of court practice for 2012–2020 shows that both applicants and

¹⁰ The Law of Ukraine “On Employment of the Population” can be found at the following [link](#).

¹¹ The Law of Ukraine “On Media” can be found at the following [link](#).

¹² The Law of Ukraine “On Advertising” can be found at the following [link](#).

¹³ Law of Ukraine “On Education” can be found at the following [link](#).

¹⁴ DBN B.2.2-40:2018 Accessibility of buildings and structures can be found at the following [link](#).

¹⁵ Criminal Code of Ukraine can be found at the followutilising [link](#).

their defence teams, as well as judges, still “do not know how” to work with definitions of specific forms of discrimination, lists of protected characteristics¹⁶. The comments of international bodies on expanding the forms of discrimination in the basic law have not yet been taken into account: it still does not contain definitions of multiple discrimination, associative discrimination, and refusal to provide reasonable accommodation¹⁷.

Secondly, the list of protected characteristics has not been unified or consistently expanded, as required by the realities of our time and Ukraine’s international obligations. In particular, characteristics such as SOGI, internal displacement, veteran status, and professional affiliation were not included in the basic law. In practice, this creates difficulties in protecting violated rights. The above analysis of court decisions shows that courts apply and understand the formula “other characteristics” rather selectively and are poor at analysing the circumstances presented to determine what constitutes a characteristic and to make a proper comparison of circumstances in cases, as required by the ECtHR’s approach to considering complaints of discrimination¹⁸. As an example:

“Direct discrimination occurs when a person is treated less favourably compared to how others were or would be treated in a similar situation, and the reason for such treatment is that the person has certain characteristics that fall within the category of ‘protected characteristics’” - European anti-discrimination directives prohibit differential treatment based on “protected characteristics”.

“In this case, the subjects of regulatory influence of the Disputed Order are children who are not registered in the city of Ternopil. At the same time, the exceptions specified in Paragraph 3 of the Disputed Order, in the opinion of the court, do not cover the concept of discrimination on the grounds of race, colour, skin, gender, language, religion, political or other beliefs, national, ethnic or social origin, property status, health status and birth of children and their parents (or persons acting in their stead) or any other circumstances, as specified in the current legislation of Ukraine”¹⁹.

In this case, it is evident that the ground of “place of residence” should have been applied, as well as the provisions of the Law of Ukraine “On Ensuring the Rights and Freedoms of Internally Displaced Persons”, which the court failed to take into account.

¹⁶ [Analysis](#) of court practice for 2012–2020.

¹⁷ See the European Commission reports mentioned above, or the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities and the UN Committee on the Elimination of Racial Discrimination.

¹⁸ See, in particular, [Handbook](#) to European anti-discrimination law.

¹⁹ Quote, [decision](#) in case No. 1940/1387/18 of 7 November 2018.

Thirdly, there are no effective mechanisms to protect against discrimination. Despite the formula mentioned in Article 16 of the Basic Law, “Liability for discrimination may be administrative, civil and criminal”, in the 13 years since the Law was adopted, administrative liability has not been included in the legislation. Instead, the European Court of Human Rights emphasises²⁰, that criminal liability for discrimination²¹ is not an effective means of protection, as criminal law instruments can create a risk of formality and limited applicability: high standards of proof, complexity of evidence, time limits for consideration. Court statistics show that Article 161 of the Criminal Code of Ukraine is not applied in cases of discrimination not related to intolerance and crimes against the person²².

Fourthly, the Criminal Code of Ukraine does not cover all “extreme forms of discrimination” and does not contain a broad list of protected characteristics that would respond to the challenges faced by the law enforcement system in Ukraine. The Criminal Code of Ukraine contains Article 161, which lists several types of offences and various lists of characteristics, in particular criminalising the incitement of national, regional, racial or religious enmity and hatred, separately criminalises the humiliation of national honour and dignity, or the insulting of citizens’ feelings related to their religious beliefs, and also criminalises non-violent discrimination (violation of citizens’ equal rights). Parts 2 and 3 of this Article separately criminalise discrimination related to violence. This leads to several problems at once. Criminalising discrimination not related to violence is an ineffective and inaccessible means of protection for victims²³. It is impossible to apply this article to criminalise hate speech due to the need to prove intent to discriminate (motive of intolerance). Proving motive in cases of non-violent discrimination and hate speech is not always necessary, as the European Court of Human Rights has repeatedly pointed out²⁴. There is also a lack of systematic

²⁰ The ECtHR notes that not all manifestations of discrimination require criminal prosecution. It is more important that the national system has a set of measures in place: criminal provisions against violent manifestations of hatred, administrative sanctions for less serious cases, and effective civil remedies for the restoration of rights, such as the judgments in the cases of [Danilenkov](#) and Others v. Russia or [Bărbulescu](#) v. Romania. The Court has repeatedly emphasised that the effectiveness of the system is assessed by its results: whether the victim can actually obtain protection and restoration of rights, for example, see the decision on Ukraine in the case of Kornilova v. Ukraine 2020 ([decision](#)).

²¹ This refers to the provisions of Article 161 of the Criminal Code of Ukraine regarding violations of citizens’ equal rights.

²² The current wording of Article 161 contains four different types of offences: criminalisation of statements (hate speech), criminalisation of restrictions on equality (in fact, discrimination), criminalisation of offences based on intolerance committed by one person or a group of persons, or by an official.

²³ Spending the resources of the law enforcement system on investigating and proving cases of refusal to provide services or dismissal from employment is, at the very least, inefficient in terms of resource use.

²⁴ The ECtHR refers to the applicant’s obligation to provide evidence “beyond reasonable doubt”. When the applicant proves facts that suggest discrimination or hate speech, the burden of proof shifts to the state (it must show that there was no discrimination or hostile motive). For example, in the case of [Vejdeland and Others v. Sweden](#) (2012) – the distribution of leaflets in a school describing homosexuality

application of this article for the punishment of violent crimes: despite the significant number of hate-motivated attacks recorded each year²⁵, the statistics of the State Judicial Administration on the use of Article 161 of the Criminal Code of Ukraine are negligible. In addition, the current Criminal Code of Ukraine provides for private prosecution in cases of both incitement to intolerance and crimes motivated by intolerance²⁶, which hinders justice as victims are often afraid of or distrustful of law enforcement agencies.

Fifthly, existing anti-discrimination instruments are weak in their application. The failure to use the burden of proof distribution tool in discrimination cases remains problematic, in particular due to the unsuccessful wording of Article 81 of the Civil Procedure Code of Ukraine²⁷ and the judges' lack of understanding of this process, as the courts "expect" plaintiffs to "prove" the fact of discrimination:

"PERSON_1 failed to prove with proper and admissible evidence that the statement was written by them under the pressure of their employer and that they had no intention of resigning"²⁸.

Regarding the institution of equality, the role of the Ukrainian Parliament Commissioner for Human Rights (hereinafter - the Commissioner) is mainly limited to considering individual complaints and separate statements regarding significant cases of inequality. When considering complaints of discrimination, judges do not take into account that the provision of conclusions by the Commissioner in discrimination cases at the request of the court is one of the measures to combat discrimination²⁹. This does not contribute to the development of this institution's capacity to analyse discrimination.

During 2013-2024, the Ukrainian government received signals and specific recommendations from international partners and institutions, which drew attention to the need to address the above-mentioned gaps. In particular, in its Ukraine Progress Report 2024, the European Commission once again notes the following³⁰:

as a "deviation" – the court emphasised that even without direct calls for violence, statements that insult and humiliate a group constitute hate speech.

²⁵ Manifestations of discrimination on one ground or another related to violence or incitement to violence

²⁶ See, in particular, Article 477 of the Criminal Code of Ukraine.

²⁷ Civil Procedure Code of Ukraine at the [link](#).

²⁸ See, for example, the [decision](#) in case No. 709/1960/14-ц of 10 December 2014.

²⁹ According to amendments to the Law of Ukraine "On the Principles of Prevention and Combating Discrimination in Ukraine" dated 13 May 2014, judges must take into account that the provision of conclusions by the Ukrainian Parliament Commissioner for Human Rights (hereinafter - the Commissioner) in cases of discrimination upon request of the court is one of the measures to counteract discrimination, which is regulated by paragraph 7 of Part 1 of Article 10 of Law No. 5207-VI, as noted in its [letter](#) by the High Specialised Court of Ukraine for Civil and Criminal Cases (hereinafter - the HSC).

³⁰ [Progress Report](#) assessing Ukraine's progress for 2024.

“Overall, Ukrainian society is becoming increasingly open and tolerant towards vulnerable individuals, and hate speech and hate crimes are generally prosecuted under the law. Ukrainian legislation in the field of non-discrimination still needs to be fully brought into line with European and international standards, both in terms of scope and definition of areas and in terms of data collection. The definitions of hate speech proposed by the European Commission against Racism and Intolerance (ECRI) are still not fully implemented. Criminal legislation does not cover issues of sexual orientation and gender identity”.

“The Parliamentary Commissioner for Human Rights (Ombudsman) is the main institution that receives and considers complaints about discrimination, and in 2023 became a member of the European Network of Equality Bodies (EQUINET), potentially expanding its capacity to develop its work in line with the EU acquis in the field of non-discrimination, including the role of equality bodies. The capacity of police officers, prosecutors, judges and staff of the Ombudsman’s office has increased, but further efforts are needed to combat discrimination, hate speech and hate crimes through adequate training and effective law enforcement”.

Therefore, the question of the need to amend the current anti-discrimination law is currently part of the implementation of the Roadmap to Chapter 23³¹ of the negotiation process with the EU.

II. Minimum standards that Ukraine must implement into its national system

The list of conditional “tasks” that the Ukrainian government must complete to demonstrate compliance with EU standards, take into account the previous comments of UN committees, the provisions of the Council of Europe’s General Policy Recommendations, and ultimately, implement the ECtHR’s decision against Ukraine, can be structured according to the source of the following norms:

Table No. 2

EU directives, in particular: 2000/43/EC — Racial Equality Directive ³² , 2000/78/EC — Employment Equality Directive ³³ ,	<ul style="list-style-type: none"> • The prohibition of discrimination should apply to all areas of public life (employment, social protection, health care, education, access to goods and services) and be transposed into national legislation accordingly;
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³¹ Full text of the Roadmap on the Rule of Law at the [link](#).

³² 2000/43/EC — Racial Equality Directive at the [link](#).

³³ 2000/78/EC — Employment Equality Directive at the [link](#).

<p>2006/54/EC — Gender Equality Directive³⁴, 2004/113/EC — Goods and Services Directive³⁵</p>	<ul style="list-style-type: none"> • A broad list of protected characteristics, including SOGI explicitly mentioned in the basic law; • The mandatory establishment of an independent equality body with the authority to consider complaints, monitor cases of discrimination and support victims in court proceedings; • The introduction of proportionate and effective sanctions (accessible to victims), as well as those that deter the spread of discrimination; • The establishment of a mechanism for shifting or sharing the burden of proof in discrimination cases (in civil proceedings).
<p>General Policy Recommendations No. 7, No. 15 and No. 16 of the European Commission against Racism and Intolerance (ECRI) of the Council of Europe³⁶</p>	<ul style="list-style-type: none"> • The definition of discrimination should include the prohibition of multiple discrimination; • Lists of protected characteristics should include SOGI; • Protection against discrimination should extend to all areas of life – from the public sector to private relations (employment, social protection, health care, education, access to goods and services); • The equality body should have adequate powers, resources and independence; • Only those forms of hate speech that actually harm public order or incite violence should be criminalised. At the same time, civil and administrative mechanisms should be in place to counter other forms of discrimination; • There should be constant monitoring, collection and analysis of data on various cases of discrimination. It should also be noted that the EU Fundamental Rights Agency

³⁴ 2006/54/EC — Gender Equality Directive at the [link](#).

³⁵ 2004/113/EC — Goods and Services Directive at the [link](#).

³⁶ General Policy Recommendations [No. 7](#), [No. 15](#) and [No. 16](#) of the European Commission against Racism and Intolerance. [Website](#) of ECRI.

	(FRA) ³⁷ also requires EU member states to provide data from such monitoring.
Progress Reports of the Committee on the Elimination of Racial Discrimination ³⁸ concerning Ukraine	<ul style="list-style-type: none"> • Drew attention to ineffective means of protection against racial discrimination, particularly in cases of crimes motivated by intolerance; • Noted the lack of data; • Recommended that Ukraine conduct regular training for public servants and law enforcement agencies³⁹.

In addition, the European Court of Human Rights (ECtHR) has repeatedly emphasised Ukraine's obligation to ensure effective investigation of cases involving signs of discriminatory motives. The Court specifically emphasises that even where there are several motives, it is the state that is obliged to make every reasonable effort to analyse the issue of intolerance. Table No. 3 below sets out the ECtHR's key observations on Ukraine.

The issue of ineffective investigation	In Fedorchenko and Lozenko v. Ukraine (2012) ⁴⁰ the ECtHR found that the investigation into the arson attack that killed a Roma family was ineffective and that the possible racist motive was ignored. The Court made similar observations in the case of Burlya and Others v. Ukraine (2019) ⁴¹ , where the police failed to protect the Roma community from mass attacks, and the investigation of the attacks was conducted in a perfunctory manner, without due attention to the ethnic basis of the attacks. The investigation into the pogroms in Loshchynivka was just as perfunctory ⁴² . This case is still awaiting consideration by the ECtHR, which indicates that the government has failed to acknowledge and correct its mistakes.
Lack of consistency	In the cases of Zagubnya and Tabachkova v. Ukraine (2020)

³⁷ [Website](#) of the EU Agency for Fundamental Rights (FRA).

³⁸ [Website](#) of the Committee on the Elimination of Racial Discrimination, see in particular Concluding observations on the combined twenty-fourth to twenty-sixth periodic reports of Ukraine, CERD/C/UKR/CO/24-26 of 25 June 2025.

³⁹ See, for example, [the concluding observations](#) of the Committee on Ukraine's progress reports.

⁴⁰ Judgment in the case of [Fedorchenko and Lozenko v. Ukraine](#) (2012).

⁴¹ Judgment in the case of [Burlya and Others v. Ukraine](#) (2019).

⁴² More about the pogroms in Loshchynivka at the [link](#).

in qualification	and Kornilova v. Ukraine (2020) ⁴³ , the Court noted that the authorities had refused, without explanation, to apply Article 161 of the Criminal Code, classifying attacks on Jehovah's Witnesses as ordinary "personal conflicts" or minor bodily harm. This indicates an unwillingness to seriously consider the motive of intolerance and deprives victims of access to remedies.
Absence of SOGI among the list of protected characteristics	In Karter v. Ukraine (2024) ⁴⁴ , which concerned homophobic attacks, it was precisely the absence of any reference to sexual orientation as a protected characteristic in Article 161 of the Criminal Code that prevented the crime from being properly classified. The police ignored evidence of a homophobic motive.
Ineffective and protracted investigation	In the case of Uzu v. Ukraine (2024) ⁴⁵ , despite the presence of racially motivated insults, the authorities delayed the appointment of an expert examination for almost three years, reclassified the case several times and, ultimately, closed it. The ECtHR emphasised that such delays and unwillingness to properly consider the racist motive were indicative of serious procedural deficiencies that effectively legitimised hate crimes.

The ECtHR has repeatedly reminded Ukraine that the de facto existence of certain regulatory provisions is not sufficient to comply with the Convention on Human Rights and Fundamental Freedoms, as only the possibility for each person to benefit from real protection demonstrates the country's compliance with its obligations. In cases of preventing and combating discrimination, this means taking all reasonable measures to ensure that victims have the status of participants in the process, access to information, and adequate compensation for damage. In addition, law enforcement agencies and courts must be able to identify, analyse and prove discriminatory motives, as well as refrain from displaying their own prejudices.

III. Analysis of Draft Law No. 13597

On 4 August 2025, Draft Law No. 13597⁴⁶ (hereinafter – the Draft Law), was registered in the Verkhovna Rada of Ukraine, which could become a serious attempt to finally eliminate the deficiencies of the current anti-discrimination framework and create an

⁴³ Judgements in the cases of [Zagubnya and Tabachkova v. Ukraine](#) (2020) and [Kornilova v. Ukraine](#) (2020).

⁴⁴ Judgment in the case of [Karter v. Ukraine](#) (2024).

⁴⁵ Judgment in the case of [Uzu v. Ukraine](#) (2024).

⁴⁶ Draft Law No. 13597, available at the [link](#), is not the first attempt to amend the Criminal Code and the basic law. Previous draft laws were withdrawn for technical reasons. These draft laws are Nos. 4881, 5488, 7290, 0931, 3369-IX, 4598-1, 5344-D and others.

effective protection system, provided that it is carefully revised to take into account the obligations and comments listed above.

The strengths of the Draft Law, which partially address gaps in legislative regulation, are as follows:

- Sexual Orientation and Gender Identity (SOGI) are proposed to be added to Article 1 of the Law of Ukraine “On the Principles of Prevention and Combating Discrimination in Ukraine”.
- Symmetrically, SOGI as protected characteristics is proposed to be added to the definition of “intolerance”, which should also expand Article 1 of this law. According to lawmakers, this should protect the LGBTQI+ community from both discrimination and crimes motivated by intolerance. However, there is a certain caveat here, which will be described in the list of deficiencies of the Draft Law.
- It is proposed to establish administrative liability for discrimination, which could potentially make it easier for victims to restore justice in cases of minor manifestations of discrimination and remove the burden of judicial appeal, with complaints to be reviewed and administrative sanctions imposed by the Ukrainian Parliament Commissioner for Human Rights. The very fact that a mechanism for bringing administrative liability for discrimination has been created is a step forward, but the question of its implementation and the ability of the Commissioner to perform the function of an equality institution will be addressed in the list of deficiencies.
- The wording of Article 161 of the Criminal Code of Ukraine is to be completely revised – it should become the article that criminalises the most extreme and severe forms of hate speech, as required by Ukraine’s international obligations, in particular the EU Framework Decision 2008/913/JHA⁴⁷.
- Removal of Article 161 of the Criminal Code of Ukraine from the list of privately prosecutable offences. This should enable law enforcement agencies to initiate proceedings for incitement to hatred without complaints from specific victims, which in cases of hate speech often constitute an obstacle to justice.
- The prohibition of incitement to hatred or intolerance should extend to legal entities, as provided for in EU and Council of Europe standards.

However, the significant list of issues that require further work does not allow us to conclude that Ukraine has implemented all the recommendations mentioned in Sections I and II above, actually eliminated the deficiencies in the current anti-discrimination framework, and harmonised its legislation with EU requirements, as stated in the Roadmap to Chapter 23.

⁴⁷ EU Framework Decision 2008/913/JHA at the [link](#).

Therefore, when preparing the Draft Law for readings in the Verkhovna Rada of Ukraine, the following should be taken into account:

- Since, as judicial practice shows, the formula “other characteristics” is unclear, it is worth expanding the list of protected characteristics in Article 1 of the Basic Law and, in addition to SOGI, adding the fact of internal displacement, veteran status, HIV-positive status or health condition, etc. The present circumstances in Ukraine highlight rapid changes and demonstrate that lists of protected characteristics will never be static, as discrimination evolves together with society.
- The definition of forms and manifestations of discrimination in Article 1 of the basic law should include at least a prohibition of discrimination on several grounds (multiple discrimination), discrimination by association and refusal to provide reasonable accommodation. The obligation to provide reasonable accommodation as a form of protection against discrimination should extend to all areas of public life, not just the workplace.
- Defining the motive of intolerance is a possible way to build a framework for protection in cases of crimes motivated by intolerance, but the explanation of its composition should be contained not in a separate basic law, but in the Criminal Code of Ukraine. At present, the proposed structure is not clear and logical, and references to norms outside the Criminal Code of Ukraine will lead to its being ignored by law enforcement agencies.
- Administrative liability should be established not only for discrimination in general, but also for each of its forms. Amendments to Article 188-58 of the Code of Administrative Offences of Ukraine should explicitly prohibit all forms of discrimination prohibited by the basic Law.
- The issue of granting the Ukrainian Parliament Commissioner for Human Rights the power to impose administrative penalties for discrimination requires consideration of several factors. Firstly, under the current Ombudsman model in Ukraine, there is a conflict of powers, because according to the Paris Principles⁴⁸ the Ombudsman should not be a punitive body, but rather an institution of equality that may have instruments of punishment. Secondly, previous experience of granting the Commissioner the power to impose administrative penalties in cases of violations of the right to information has revealed several deficiencies in this approach, which, if this proposal is retained in Draft Law No. 13597, would require at least the following: a) clarification of the time limits for considering complaints of discrimination and issuing decisions, b) assessment and enhancement of the capacity of the Commissioner’s office to consider such complaints, c) provision of appropriate resources.

⁴⁸ Paris Principles at the [link](#).

- Intolerance was not added as an aggravating circumstance to the articles of the Criminal Code of Ukraine on hooliganism and minor bodily harm, while public monitoring of cases of intolerance-based attacks and ECtHR decisions indicate that such crimes are the most common. Therefore, failure to take into account the motive of intolerance will deprive victims of access to justice and allow perpetrators to continue to evade responsibility.
- In addition to removing Article 161 of the Criminal Code of Ukraine from the list of private prosecution articles, articles that criminalise crimes based on intolerance (namely Articles 115, 121, 122, 126, 127, 129, as well as Article 300) should also be removed from this list, as victims often do not report crimes to the police due to a lack of trust, fear of re-victimisation, etc., which leads to perpetrators avoiding punishment.

Correcting these deficiencies will significantly improve the quality of the Draft Law and its compliance with the minimum standards of the EU and other international commitments of Ukraine. In addition, the vote in the Verkhovna Rada of Ukraine on this Draft Law will enable the government to fulfil the relevant tasks of the Roadmap on the Rule of Law (Chapter 23).

The next steps involve focusing on information work, awareness-raising, and the integration of the principle of non-discrimination into the work of public officials, law enforcement officers, and judges, ensuring that every person in their workplace knows how to act in order not to discriminate, and what actions within their official powers can protect someone who has already faced discrimination. These tasks are also envisaged in the Roadmap.

However, Draft Law No. 13597 has the potential to improve the quality of law-making in Ukraine, provided that its revision involves civil society and takes into account the arguments and proposals set out in this analysis.

Specific recommendations for the revision of Draft Law No. 13597 have been compiled in Table No. 4 for ease of use.

IV. Recommendations

The first steps Ukraine should take to advance the Roadmap tasks are:

1. Improve anti-discrimination legislation and mechanisms for protection against discrimination, namely, expand the lists of protected characteristics, define and prohibit additional forms and types of discrimination, unify terminology in various normative legal acts, introduce administrative liability for discrimination, and amend legislation to criminalise certain extreme manifestations of intolerance.
2. Build the capacity of the equality institution, which requires defining the body's clear powers, providing it with resources, training and expert support, and introducing clear deadlines for considering complaints of discrimination.

Also, for the further harmonious development of the anti-discrimination law system and considering that in the future Ukraine, as a candidate country for EU membership, will need to submit information on monitoring compliance with legislation, below are some more general recommendations that the Ukrainian government should pay attention to:

3. Build the capacity of public authorities and local governments to collect, analyse and use disaggregated data on discrimination, and to respond to such cases to develop policies and prevention measures at national and local levels.
4. Strengthen regular information and education efforts, in particular with public servants, law enforcement agencies and judges, to develop their capacity to effectively and promptly identify cases of discrimination and respond to complaints, as well as to enhance the capacity of public authorities to communicate in an equal and barrier-free manner.

	Standard (international obligation)	Taken into account in No. 13597	Needs further development
1	A broad list of characteristics, including SOGI (transposition of EU Directives 2000/43/EC, 2000/78/EC, 2006/54/EC, 2004/113/EC, and others)	Partially taken into account , it is proposed to include SOGI in the basic law.	It is necessary to symmetrically include SOGI in the Criminal Code, as well as expand the list of protected characteristics in the basic law, in particular, to add the fact of internal displacement, veteran status, HIV-positive status or health condition, etc.
2	Definition and prohibition of multiple discrimination and associative discrimination, prohibition of refusal to provide reasonable accommodation	Not taken into account	Add to the definition of forms and manifestations of discrimination in Article 1 of the law at least the prohibition of discrimination on several grounds (multiple discrimination), associative discrimination and refusal to provide reasonable accommodation. The obligation to provide reasonable accommodation as a form of protection against discrimination should extend to all areas of public life, not just the workplace.

3	Effective and accessible sanctions for various forms of discrimination and manifestations of intolerance, including liability for incitement to hatred and crimes motivated by intolerance, as required by EU Framework Decision 2008/913/JHA and ECRI recommendations ⁴⁹	Partially taken into account: <ul style="list-style-type: none"> • Administrative sanction added to the Code of Administrative Offences • Amendments were made to Article 161 of the Criminal Code of Ukraine. 	Further steps required: <ul style="list-style-type: none"> • To specify all forms of discrimination in the Code of Administrative Offences; it is necessary to clarify the terms and procedures: • To include explanations of the grounds for intolerance not in the basic law (as is currently the case), but in the Criminal Code; add SOGI as a motive in the Criminal Code.
4	Transfer and distribution of the burden of proof	Not taken into account	The wording of Article 81 of the Civil Procedure Code of Ukraine needs to be revised.
5	Establishment of an independent equality body (European Commission)	Not taken into account	The Ombudsman has a conflict of powers. It is necessary either to establish a separate equality body or to substantially strengthen the Ombudsman's institutional capacity, setting clear time limits and procedures for the consideration of complaints and the adoption of decisions.
6	Removal of articles criminalising extreme manifestations of intolerance from the list of private prosecution articles, as required by EU Framework Decision 2008/913/JHA and	Partially taken into account – Article 161 of the Criminal Code of Ukraine was removed.	Not taken into account concerning Articles 115, 121, 122, 126, 127, 129, and 300 of the Criminal Code of Ukraine.

⁴⁹ In particular, in its conclusion for 2017, ECRI drew the state's attention to the fact that it is more appropriate to combat discrimination through civil and administrative law and recommended amending Article 161 of the Criminal Code. This includes implementing General Policy Recommendation No. 7.

	ECRI recommendations		
7	Motivation of intolerance as an aggravating circumstance (ECRI and ECtHR)	Partially taken into account	Separately, it should be added to the article on hooliganism, minor bodily harm, etc., to unify the list of protected characteristics or the definition of intolerance directly in the Criminal Code.
8	Implementation of ECtHR decisions in cases against Ukraine, in particular regarding the obligation to conduct effective investigations	Partially taken into account (regarding the amendment to the disposition of Article 161, removal of private prosecution)	<p>Additionally required:</p> <ul style="list-style-type: none"> • To develop SOPs for the police and the prosecutor's office; • To specialise law enforcement officers in the investigation of hate crimes; • To provide systematic and cross-cutting training for law enforcement officers and judges on identifying, investigating, and prosecuting hate crimes; • To conduct monitoring of such cases; • To implement six judgments against Ukraine.
9	Data collection, analysis and use (FRA and ECRI)		The data collection system should be further developed – amendments are needed to the requirements of the Cabinet of Ministers of Ukraine regarding datasets and data transparency, the Unified State Demographic Register, and the Unified State Register of Court Decisions.