

## **Anti-discrimination developments and shortcuts in Ukraine - statement on behalf of the Coalition for combating discrimination in Ukraine**

For years on Ukraine had been recommended to develop and adopt comprehensive anti-discrimination legislation. Such recommendations were part of the review mechanisms, came from international human rights bodies and experts. These also became one of long list points within the EU-Ukraine Action Plan on visa liberalisation regime. This was the final push for the Ukrainian authorities to start working on the anti-discrimination legislation. But this was also a reason why such work was done in a hurry and without consultations with civic society. This is a reason why Ukraine now has weak and full of gaps anti-discrimination law and many NGOs including the Coalition are campaigning to immediately start work on its amendments. This is also a reason why other openly discriminatory acts are registered at the Parliament and accepted by the society.

### **History behind the law**

The Law was drafted by the Ministry of Justice without any consultations with civil society and NGOs. When the Law was submitted to the Parliament, NGO managed to provide comments and suggestions to the Parliament Committee on Human Rights, National Minorities and International Relations. The Committee established a working group to discuss NGOs comments. Ombudsman office also actively participated in the working process and presented its comments to the draft law. On the initiative of the Ombudsman the Law draft for send to the Council of Europe (ECRI) for comments. The Committee speakers clearly promised to continue work on the Law draft taking into account NGOs, Ombudsman recommendations. But despite these previous negotiations, despite the fact that ECRI made a commitment to provide their analysis of the Law draft by September 17, 2012 (the Committee was informed on this), the draft was urgently submitted for the second hearing and voted by the Parliament on September 6, 2012. NGOs comments, suggestions to continue work on the draft and proposal to include several missing aspects to make the Law effective were completely ignored by the Committee and the Parliament. In its current reding the Law is lacking precise definitions of the discrimination and its forms, effective mechanism of protection and redress and fails to cover such vulnerable protected characteristics as sexual orientation, gender identity, health condition, etc.. One of many dubious arguments from the state authorities behind such law quality work and failure to cover more protected characteristics within the Law, are statements about strong religious lobby and general HE oppression from the society for such Law.

**To develop situation worse, just yesterday despite many comments from Ukrainian civil society and international experts, the Parliament voted in the first reading sadly known draft law 8711 - namely called to protect minors from pornography, but in fact banning so called "propaganda of homosexuality". This particular homophobia and discriminatory act was on the contrary strongly supported by the Church.**

The Coalition is taking this opportunity to stress once more that the Anti-discrimination Law, as it was drafted and adopted by the State did not comply with the concept of effective legislation and would not provide much needed mechanism of prevention and investigation of discrimination in Ukraine. We are also taking this opportunity to remind Ukrainian authorities that Ukraine is a secular State and the Church should not influence state's policies and legislation, specially if it leads to human rights violations and discrimination.

**Thus the Coalition is asking OSCE member states to continue monitoring Ukraine's progress and recommend immediately start the process of amending anti-discrimination legislation in consultations with civil society and international experts to ensure that such legislation meets the following criteria:**

- Is comprehensive and contain precise definition of discrimination, it's clear interpretation and standards of identification;
- Clearly define basic concepts: "discrimination", "direct discrimination", "indirect discrimination", "positive anti-discrimination measures", "victimisation", "persecution", etc.;
- Includes comprehensive list of discriminatory characteristics, including sexual orientation and gender identity as explicitly defined protected grounds;
- Stipulate basic standards and principles for proving discrimination;

Anti-discrimination law should fulfil the state's duty to undertake positive measures on prevention of discrimination, compensation for damages linked with discrimination, as well as impose proportionate sanctions for infringements of anti-discrimination norms. These sanctions should allow for compensation to victims of discrimination.

State also needs to establish institutional framework necessary for effective implementation of anti-discrimination legislation and policy with the functions to:

- policy implementation;
- monitoring and public reporting
- coordination of other state actors
- investigation participation
- victims' assistance and redress.

#### **For reference:**

The Coalition for Combatting Discrimination in Ukraine (CCD) is an all-Ukrainian non-governmental human rights initiative founded on April 5, 2011 when several Ukrainian non-governmental organisations signed the Memorandum. 32 NGOs working to protect many vulnerable groups and as well as on human rights issues in general are getting together to campaign for Anti-discrimination legislation in Ukraine.

#### **Main areas of activities:**

- promotion of the principle of civil equality for all persons regardless of social or individual characteristics recognised in the international, European, and national law as protected grounds;
- development and improvement of the system of human rights protection in Ukraine;
- counteracting attempts to unreasonably and unjustly preclude certain categories of people from full enjoyment of their rights and freedoms;
- elimination of all forms of discrimination;
- further development of the human rights movement and civil society;

#### **The Coalition directs its activities toward four main objectives:**

- Adoption of a framework anti-discrimination law that aims at detailing and developing normative and procedural foundations of combatting discrimination in Ukraine;
- Unification of key terms and definitions in the field of combatting discrimination in the Ukrainian law and their harmonization with the law of the European Union;
- Introduction of the most comprehensive yet open list of explicitly defined protected grounds to the national law;
- Promotion of the knowledge and skills of individuals from various social and professional groups in anti-discrimination advocacy.

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