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Belarus – Moldova – Ukraine

Ensuring equality on ethnic grounds in Belarus, Moldova, and Ukraine. Normative framework, organizational underpinnings, and civic mechanisms

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This report was prepared by the team of the European Centre for Minority Issues (Flensburg, Germany) together with experts from Belarus, Moldova, and Ukraine. The listed authors do not necessarily agree to all the contents and conclusions of the report.

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Introduction

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Belarus, Moldova and Ukraine are countries with ethnically diverse populations. All three states acknowledge and discuss the necessity to create the conditions for people of various ethnic groups to live together harmoniously. As everywhere else in the contemporary world, ethnic relations include the issue of equality of people on ethnic basis. Equality has various interpretations, both broad and narrow, and includes various aspects and dimensions, such as equality of individuals and groups, equality of rights and opportunities, equality of dignity, equality of access to social goods as well as equality in a symbolic sense. The key notion in the discourse and practical policies on ensuring equality is discrimination; however, the protection and promotion of equality are not limited to combating discrimination.

All three counties bear international responsibility to secure equality, including equality on ethnic grounds. In all three countries equality before the law as well as prohibition of discrimination are stipulated in constitutions and legislative acts, and at least on paper the designated public bodies are obliged to take measures to ensure equality; civil society organizations are also preoccupied with different aspects of equality protection.

The goal of this report is to analyse which problems and aspects of equality resonate most within the society and are perceived as priorities; which approaches to ensuring equality on ethnic grounds define public discourse and the development of legislation; which legal, political and civic mechanisms of ensuring equality appear most relevant, how they work and what effect they cause.

This report is neither an inventory nor an exhaustive list of all manifestations of inequality, the available legal means, mechanisms, and civic initiatives in the field of equality protection in Belarus, Moldova, and Ukraine. The authors did not strive to duplicate multiple descriptive and analytical texts dedicated to the issues of equality and discrimination in the three countries.

The report was created as a compilation of conclusions of public discussions organized by the European Centre for Minority Issues in 2014–2016. Having studied the results of these discussions and the available sources, the authors tried to establish viable and effective initiatives with the highest potential to create better opportunities for ensuring and protecting equality. Within the framework of this project, remedies and mechanisms are regarded as effective and viable if they were accessible, easy to use and yielded results for ordinary individuals, including those who

consider themselves as victims of discrimination. The report also aims at identifying the main factors impeding the use of existing means and mechanisms and formulating tangible suggestions on how to develop sustainable strategies of ensuring equality based on interplay of different public bodies.

The report is devoted to the issues of equality and non-discrimination on ethnic grounds. Forms of discrimination other than based on ethnicity are touched upon only when it helped to explain and describe common problems of discrimination in a better way and to provide an overview of the protection tools.

(1) General information and conceptual remarks

Belarus, Moldova and Ukraine came into being as independent states simultaneously with the breakdown of the USSR in 1991. These three countries differ from each other in terms of territory and population size. Belarus occupies 207,600 km² and has a population of 9,498,000 (according to the most current administrative records from 2016); Moldova's territory is 33,846 km² with a population of 2,913,000 (according to the census of 2014); Ukraine is 603,549 km² with a population of 42,488,000 (according to the most current administrative records from 2016). All three countries have industrial and agrarian economies: Belarus is an upper mid-level developed country, while Moldova and Ukraine are at a lower middle level. According to the World Bank, the 2015 GDP per capita (adjusted for purchasing power parity) was 17,700 USD in Belarus, 5,040 in Moldova and 7,940 in Ukraine.[2]

Belarus has an authoritarian regime with strong centralized presidential power, Moldova is a parliamentary republic while Ukraine has a semi-presidential system. According to the Heritage Foundation and World Street Journal's 2016 assessment of economic freedom, Moldova is a "mostly unfree" country and scores 57.4 points on a 100-point graded scale (where 100 points mean full economic freedom), while Belarus scores 48.8 and Ukraine scores 46.8 points, putting them in the category of "repressed" states.[3] According to Transparency International's 2015 corruption perception index, Moldova received 33 points on a 100-point graded scale (where 0 points means maximum corruption in the public sector; 100 points indicates the absence of corruption), Belarus scored 32 and Ukraine scored 27.[4] In other words, all three countries are characterized by poor public governance, an excessive bureaucratic burden on the economy and, in some cases, on other spheres of public life.

Moldova has no control over part of its territory: the left (eastern) bank of Dniester – the internationally unrecognized Pridnestrovian (Transnistrian) Moldavian Republic, which is under Russian patronage.

[2] The World Bank. Countries and Economies. http://data.worldbank.org/country.
[3] 2016 Index of Economic Freedom. Country Ranking. http://www.heritage.org/index/ranking.
[4] Transparency International. Table of results: Corruption Perceptions Index 2015. http://www.transparency.org/cpi2015#results-table.

Ukraine has no control over the Crimean Peninsula, composed of the Autonomous Republic of Crimea and the city of Sevastopol, which were occupied and annexed by the Russian Federation in 2014. In the east of the country, there is conflict with separatist enclaves directly supported and controlled by Russia.[5]

All three countries have ethnically diverse populations: the share of ethnic Belarusians in Belarus is 84% (according to the 2009 census), Moldovans in Moldova make up 76% (according to the 2004 census) and Ukrainians in Ukraine comprise 78% of the population (according to the 2001 census). Along with the main ethnic nations, these countries are populated by ethnic minorities including Russians, Poles, Jews, Roma and others; each of these three states are home to a large number of people belonging to the core nationalities of the two other states.

The three countries are, in principle, comparable with each other in terms of how ethnic minority issues are perceived and how their respective approaches are implemented. All three position themselves, albeit to differing degrees and in different forms, as primarily ethnonational states in the name and for the benefit of their major or "titular" ethnic groups. In other words, ethnic nationalism remains the countries' major conceptual framework, although its concrete manifestations vary significantly from country to country, and from region to region. Second, in all three countries, the Russian language and broad bilingualism play a similar role, which in many respects determines social processes and the perception of ethnic relations. Third, the soviet heritage persists in legislation as well as in conceptual approaches to ethnic relations.

(2) Key terms and notions

When it comes to describing ethnic differences and the provision of equality, various approaches and interpretations compete with one another. This is the case in law-making, translating international and national legal norms into practice, and to public discussions in Belarus, Moldova and Ukraine. International instruments set up a general framework and outline basic principles, rather than provide detailed definitions or practical guidelines. Therefore, we show the limits and possibilities of these terms – their usage and implementation in practice – rather than striving for a single correct interpretation of these key terms.

Equality and non-discrimination

There is no single interpretation of ***equality***, even in law. Usually, formal equality is juxtaposed with substantial or real equality. Formal equality has two major interpretations: The first is equality as a

[5] The present report includes a description of the situation in the Transnistrian region of the Republic of Moldova. However, it does not cover the Ukrainian territories that are currently beyond the control of the lawful government of the country: the Crimean Peninsula (Crimea) and temporarily occupied parts of Donetsk and Lugansk Oblasts (Donbas). The reason for this omission is that while Transnistria was examined and discussed within the EPP project, Crimea and Donbass were not. Second, Transnistria is an established, stable and peacefully developing institutional environment, while Crimea and Donbass are characterized by continuing inter-state armed conflict and foreign occupation.

normative requirement, enshrined in ideology or law; the second is equality as a factually fulfilled condition, or as equal or identical treatment. Real or substantive equality generally means ensuring freedom and dignity to people to an equal extent, which may require unequal treatment. Furthermore, substantive equality has various interpretations within national legislative systems and ideological doctrines, particularly as the equality of starting conditions, equality of opportunities or equality of social outcomes.

The notion of ***discrimination*** reflects only one component of equality. International instruments, national laws, and the case-law of international bodies and national judiciaries, view discrimination in general as unjustifiable treatment that places people in unequal conditions due to any of their characteristics. They also differentiate between "direct" and "indirect" discrimination.

Direct discrimination means less favourable treatment of persons in comparable conditions due to their distinction based on a certain characteristic, if such a treatment is arbitrary and unjustified.

Indirect discrimination means requirements, rules and practices that explicitly and formally fail to take into account a certain individual characteristic, at the same time having a relatively unfavourable impact upon members of the group distinguished by this characteristic, unless such requirement, rule or practice is reasonable and objectively justified.

Not all differentiation between people, or instances of imposing equal requirements upon people in different circumstances, are discriminatory. Only differentiating or ignoring the differences between people in an **arbitrary and unjustified** manner can be viewed as discrimination. In law, it means that either an action has no legitimate goal, or the means used to achieve the goal are disproportionate.

Ignoring special circumstances or special needs of any category of the population that places this group in an unfavourable position is particularly important for **national or ethnic minorities.** Such groups may differ in terms of their command of a language, social structure or territorial settlement, and, because of these specific characteristics, members of the group may experience greater difficulties than the majority in complying with legal requirements or governmental policies.

Discrimination does not necessarily imply violation of rights. In many situations, discriminatory treatment may create different conditions for people to exercise their rights, such that it affects but does not violate a certain right; such discrimination is also prohibited and should be eradicated. Discrimination may also mean unequal treatment in assigning obligations, exercising control or prosecution, as well as forced separation of groups (i.e. segregation).

Combating discrimination is different from protecting against the violation of rights. One of the key issues in discrimination disputes is the way and effectiveness of providing the proof (whether

in a civil court case or a special independent body), especially due to the fact that discrimination is often latent and not obvious. Even if exclusion or preferential treatment are racially or ethnically motivated, it may not be openly expressed. In a dispute about whether or not discrimination took place, the two sides may not be equal: the accused (perhaps an employer, property owner, public official) may have a stronger social standing and a broader spectrum of opportunities to protect their own interests. In the majority of such cases, it is impossible to collect full and complete evidence to the exclusion of doubt. Therefore, it is necessary to establish a minimum set of indicators and criteria which would suffice as proof of discrimination. Accordingly, the global trend is for legislators to **gradually lower the standard of proof.**

Furthermore, the main burden of proof should be shifted to the defendant – or the party accused of discrimination: the plaintiff only need demonstrate to the court that he/she was placed in special circumstances that had a negative impact upon him/her. The defendant should then be obliged to prove that his/her actions were not of discriminatory character. **Shifting the burden of proof in cases of discrimination to the defendant** is accepted, in some form and to some extent, by various national jurisdictions and international organizations. This principle was enshrined in the directives on equality and non-discrimination adopted by the governing bodies of the European Union (EU), and transferred to the national anti-discrimination legislation of many EU member states as well as Moldova and Ukraine.

Discrimination is not necessarily caused by xenophobia, intolerance or a desire to harm certain people or groups. Discriminatory behaviour may be caused by indifference, a desire to comply with the wishes of others (for examples, clients), one's own understanding of better ways to run business or communication with people around, or even a desire to benefit the group under control or patronage. In the contemporary world, any such motives are usually perceived as unjustifiable and do not legitimize exclusions or preferential treatment on ethnic grounds. International organizations, many national jurisdictions and most legal experts no longer no longer view any aims or motives to be relevant considerations in determining whether an act was discriminatory or not (unless it is a criminal case).

On the other hand, **manifestations of xenophobia,** especially in such acute forms as **hate crimes and hate speech**, constitute a separate problem. Such manifestations do not always lead to discrimination in terms of rights infringements, but countering them requires specific instruments, including criminal law.

The notion of discrimination only deals with unfair (unequal or similar) treatment within a limited number of social relationships – in employment, access to education, housing or other services. The key problem is that **it is not feasible to follow the same approach as in other domains**, as it may be difficult to establish whether compared groups or

individuals are in comparable circumstances, and what the criteria of unjustified or unfair treatment are. Such difficulties arise most often in relation to cultural policies and the use of languages.

The notions "equality" and "discrimination" are often used in a very broad sense, for example when there is a symbolic inequality between groups or when different languages have unequal social functions. This means that the domain in which complaints and claims are made is much broader than where legal mechanisms can be applied; this means that many problems don't have a clear legal solution.

Conversely, individuals, officials and even researchers cannot or do not use the concept of "discrimination", even when all the characteristics of the situation fall within the legal definition. As a result, such manifestations are "invisible" to society generating **a vicious circle: the inability to use appropriate tools leads to a reduction in their use which, in turn, contributes to the lack of understanding of discrimination in the legal sense and how to combat it.** In the three countries under consideration, this problem manifests itself in the fact that most public discussions about ethnic discrimination are speculative, because few people can say anything concrete about issues beyond narrow and well-known fields (such as the rights of Roma, the violation of foreigners' rights, violent crimes on racial grounds, etc.).

Ethnic and racial belonging

Various classifications of people based on their origin, skin colour, language, cultural traits and so on have arisen around the world. Many categorizations – racial, ethnic, and national – may be considered to have comparable social significance. **We therefore use the notion of "ethnic" and its derivatives in this report as an overarching term denoting group differentiation.** In Belarus, Moldova, and Ukraine, as in many other countries, different terms are used interchangeably and in parallel to depict ethnic, linguistic and cultural diversity in law, administration, science and daily life. The theme of ethnicity is densely intertwined with the theme of nationality. The term "nationality", in the sense of origin or cultural identity, is used not only in the former USSR but also in central and south-eastern Europe to denote the linguistic–cultural basis for statehood. In practice, "nationality" often serves as an absolute synonym of ethnic belonging, which is the meaning we will use in this report.

In the political and legal language of English-speaking countries, the word "race" is used in a broad sense to describe social divisions based on various characteristics related to origin and ethnic distinctiveness; due to the special significance of the English language, the term "race" also dominates in international organizations. In the constitutions and legislative acts in the countries to the east of the EU, the word "race" is used in the provisions that declare a general principle of equality and the prohibition of discrimination, and those that reflect the general requirements of

international instruments on human rights. In the juridical practice and public discourse, the term is hardly used and does not have a single, unified interpretation.

The protection of minorities

The protection of minorities is the second after combating discrimination main theoretical framework for raising and resolving questions around equality. It is important to note that the protection of minorities is not the same as non-discrimination; it is a common misconception that the prohibition of discrimination only benefits only, when in fact it is of a comprehensive and universal nature. The protection of minorities offers a different vision of the issue and brings about supplementary approaches and aspects.

Under the term "minorities", we understand both ethnic and national minorities. In Europe, the notion of "minority" stems from the idea of the nation state: minorities are groups that differ from the "nation" or "core population". There is no single generally accepted definition what a national or ethnic minority is, and it is standard practice either to define a minority within a particular context, or not to provide a definition at all, because the point is to implement certain legal and political principles regardless of the demographic classification used.

The notion of "minority" is widely used in national and international law. The idea of minorities as a theoretical model helps to describe some important situations. For example, if decisions in a society are made according to a majority vote, persons belonging to minorities cannot secure their interests through these common procedures, and thus special mechanisms are required to take them into consideration and accommodate them. If minorities are those people who do not belong to the "core" culture (which can be interpreted as the language, patterns of behaviour and traditions of the majority), they need protective mechanisms because they are compelled to adjust to that "core" culture and may find themselves in a relatively unfavourable position. International instruments tend to refer to the protection of rights of individuals belonging to minorities, rather than the rights of minorities as groups. This implies further specification and ensuring the rights of individuals in a particular context, but not the rights of a particular collective entity and the rights that would not be available to other people. Nor does "protection" imply special patronage from the state; it rather implies providing persons belonging to minorities the freedom to exercise common rights while maintaining and expressing their cultural identity.

The protection of minorities includes two main components: the provision of equal rights to those who do not belong to the "main nation" and their protection from compulsory assimilation. A third component of minority protection has developed in the recent years, namely the creation of conditions for their participation in public life and standing up for their own interests.

It should be mentioned that the problems of minorities in all three spheres arise, as a rule, not because of deliberate persecutions or

restrictions, or because someone wants to cause harm to minorities, but because the state and social institutions are unable or unwilling to take into account the peculiar circumstances or special needs of those who differ from the majority.

Positive and special measures

Formal equality does not ensure equal social opportunities for people of different origins and, more broadly, does not solve the issue of their social adaptation and integration. Some groups may, for various reasons, become totally or to a large extent excluded from political and social life, from prestigious or high-income jobs, or may have restricted access to healthcare, housing, and so forth. Ignoring such phenomena may have destructive consequences for the society, and it is impossible to overcome the marginalization of any ethnic group solely by prohibiting discrimination and persecution. To protect the unity of society and prevent cleavages and conflicts, it is necessary to change the whole system of existing relations and to create the conditions for greater social mobility of vulnerable groups, and to thus reduce inequality.

These policies may be described using various terms. The UN conventions (including the International Convention on the Elimination of All Forms of Racial Discrimination, ICERD) and some EU documents use the expression "special measures". In the USA and Canada, the notion of "affirmative action" has become common. European practices are dominated by the notion of "positive action". Other similar and related concepts are also in use, such as "mainstreaming" (bearing in mind the goal of ensuring equal opportunities in planning any social and economic measures) and "reasonable accommodation" (taking into account the special needs of some groups in arranging the work of organizations and enterprises to an extent that does not negatively affect their functioning).

The main goal of "positive measures" is to facilitate access for socially vulnerable or marginalized groups to the labour market and education, as well as eliminating all formal and informal social barriers to their full participation in society. The notion encompasses a wide range of approaches and is not limited to so-called "reverse discrimination" or "quotas". The emphasis is mostly placed on the promotion of social mobility and the creation of social elevators rather than a redistribution of resources. Concurrently, granting special rights and privileges to people belonging to certain groups is an auxiliary and rarely used instrument.

The dominant approach in international organizations, EU bodies and national courts envisages that "positive measures" shall be justified, serve clearly defined narrow goals, and be proportionate and temporary. In most cases, "positive measures" are not directly prescribed by law, but are exempted from the prohibition of discrimination, recommended, and promoted indirectly.

Positive measures are viewed as a temporary order that should be terminated when their goal – (the equalization of social indicators for previously "weak" and "strong" groups)

is achieved. Ethnic or national minorities require a different approach when special conditions are required for them to maintain their identities and represent their interests. The use of minority languages in the public sphere, provision of education to minorities and ensuring special mechanisms for their representation in legislative and executive bodies also imply certain preferential treatment. In contrast to positive action, special treatment of persons belonging to ethnic minorities should not be temporary, as it is presumed that minorities preserve their identities and specific needs for as long as necessary. Preferential treatment of ethnic minorities is not interpreted as discrimination because, in relation to the protection of distinct characteristics and needs, the majority and minority are not in comparable positions.

It should be emphasized that, apart from discrimination as such, two types of conflicts and claims related to violation of equality are of special importance for the present report. The first one is the manifestations of hatred or xenophobia on ethnic or national grounds. The second one concerns claims for recognition of ethnic groups and of their characteristics or attributes (language, culture, history) as a common value and public asset. In neither context is it always possible or expedient to describe and try to resolve issues and disputes as cases of discrimination.

Discrimination does not always result from xenophobia and the latter does not always affect the rights of concrete individuals; that is why manifestations of hatred require a specific response and special instruments. Also, differential symbolic attitudes towards ethnic groups (for example, their recognition or non-recognition), or different degrees of support granted to cultures and languages, may be hard to qualify and evaluate using the notion of discrimination. The reasons, as mentioned above, lie in the assessment of whether compared groups are in comparable circumstances, what criteria are being used, and if certain actions, measures, or decisions are justified and proportional. Such complex phenomena should be treated as similar and adjacent to the problem of discrimination because requirements and protests in such cases are often expressed in terms of a violation of equality. Therefore, apart from anti-discrimination measures as such, a different set of tools and effective mechanisms should be developed for resolving such disputes. Measures related to the protection of minorities are likely to be more effective for these purposes.

It should be stressed that anti-discrimination mechanisms and, specifically, filing a complaint about discriminatory treatment may not turn out to be the quickest or most effective means of resolving an issue from the perspective of an individual plaintiff. This may be due, for example, to the difficulty of presenting the factual proof of discrimination, the inefficiency of protective mechanisms, the lack of opportunities to receive adequate compensation, or the insufficient qualification of judges, servants of government bodies or their experts. The more effective approach is to simply restore the right that has been infringed upon with the help of judicial or administrative procedures

based on the violation of the law. Although discrimination may not be explicitly presented as the reason for the restoration of rights in such complaints and procedures, such an approach is in fact effective in combating discrimination and thus deserves to be upheld and promoted.

(3) International legal framework

International conventions prohibit discrimination on racial, ethnic, and related grounds, along with other characteristics.

Practically all human rights treaties and other international human rights instruments contain provisions on the inadmissibility of the discriminatory application of their norms, either based on an open-ended or closed short list of characteristics. Especially important is Article 26 of the International Covenant on Civil and Political Rights, stipulating equality before the law and the general prohibition of discrimination.

There are also special conventions and other instruments related to the prohibition of discrimination in specific areas, such as the Convention of the International Labour Organization No. 111 concerning Discrimination in Respect of Employment and Occupation (1958) or the UNESCO Convention against Discrimination in Education (1960), or discrimination on certain grounds, such as the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter – ICERD, 1965), the International Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981). These instruments not only compel participating states not to practice discrimination and to prohibit it, but also impose positive obligations upon them to take measures aimed at the eradication of discrimination practiced by any persons and organizations, and to ensure adequate means of protection from discrimination to everyone, along with the possibility of receiving compensation. The provisions of international treaties are further interpreted by international bodies in their recommendations, opinions in national periodic reports, and decisions on individual complaints and petitions.

In the UN system, the main special convention against racial and ethnic discrimination is the ICERD. The UN Committee on the Elimination of Racial Discrimination is the ICERD's monitoring body and may examine individual complaints in cases where national legal remedies are exhausted.

European regional instruments and approaches develop in coordination with the practices of supranational organizations, especially those of the UN and its specialized bodies (such as UNESCO and the International Labour Organization) which also have their own normative instruments on combating discrimination and minority protection.

The Council of Europe (CoE) is a pan-European organization that aims to promote international cooperation in the rule of law, human rights, cultural exchanges and

strengthening of democratic institutions. To achieve these goals, the CoE has adopted a number of legally binding conventions, some of which directly relate to the protection of equality. The most significant of these for the purpose of this report are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the Framework Convention for the Protection of National Minorities (FCNM) (1995).

The European Convention for the Protection of Human Rights contains Article 14 which prohibits discrimination on an open-ended list of criteria including belonging to national minorities. Protocol 12 to the Convention (2000) introduced the prohibition of discrimination in relation not only to the rights protected by the convention as in Article 14, but any rights safeguarded by national law. A number of articles of the Convention and Protocols to it are of special importance for ensuring equality on ethnic ground, and particularly their provisions securing the right to respect for private and family life, freedom of thought, conscience and belief, freedom of expression, freedom of assembly and associations, and right to education.

The FCNM does not provide a definition of "minority", leaving it to the discretion of participating states. However, according to the Advisory Committee on the Framework Convention, the FCNM should be applied according to its goals and spirit, which proscribes the arbitrary exclusion of any groups from the scope of the convention on such grounds as official recognition, citizenship, length of residence and so on. The FCNM is truly a framework document – due to a general nature of its provisions, it cannot be applied directly and thus requires translation into national legislation. The FCNM provides a weak protection mechanism as it does not allow for individual petitions. Its implementation is monitored by the Advisory Committee composed of independent experts.

FCNM ensures the protection of general human and civil rights for persons belonging to national minorities, as well as their protection from discrimination (Article 4, paragraph 2; Article 6, paragraph 3; Articles 12 and 15). It is important to note that the FCNM employs the concept of "full and effective equality", which cannot be reduced to formal equality, and presupposes that supportive measures in favour of minorities shall not be viewed as discrimination (Article 4, paragraph 3). The FCNM also envisages the protection of the right to preserve, express and protect the group specificity of minorities; some of the articles (Articles 5, 7, 8, 9, 10, 13, 14, 17) also assert the inadmissibility of arbitrary bans and restrictions with regard to the expression of minorities' distinctiveness.

The provisions of the FCNM relating to positive measures for the protection of minority cultures and languages are not formulated as straightforwardly binding norms; there are no criteria for their necessity or sufficiency and, in particular, no indications as to the spheres, resources, scope or conditions under which they may or shall be taken. The FCNM contains only general

recommendations for public support of schools and media outlets accommodating the needs of minorities under certain conditions (Article 14, paragraph 2).

The European Convention for the Protection of Human Rights and the FCNM established the following mechanisms of monitoring and control: The European Court of Human Rights (ECHR) and the Advisory Committee on the Framework Convention. The decisions of the ECHR are binding for all member states. The Advisory Committee on the Framework Convention issues recommendations based on national periodic reports and state parties' own monitoring of the implementation of the convention. Apart from that, the Advisory Committee issues Thematic Commentaries that provide interpretations of the FCNM. To date, four such commentaries have been issued: on education (2006), on participation of minorities in public life (2008), on language rights (2012) and on the scope of application of the Convention (2016).

Provisions on non-discrimination are included in a number of other conventions of the CoE (such as the renewed European Social Charter 1996 or the European Convention on Nationality 1997). The CoE also includes two bodies that are not treaty-based: the European Commission against Racism and Intolerance (ECRI) and the Venice Commission for Democracy through Law. They published a number of country-specific reports and commentaries on general and specific issues, the most significant of which are ECRI General Policy Recommendations No. 2 on equality bodies to combat racism and intolerance at national level and No.7 on national legislation to combat racism and racial discrimination.

Another pan-European organization that develops standards of minority protection is the Organization (up until 1995, the "Conference") for Security and Co-operation in Europe (OSCE/CSCE). The CSCE was created in 1975 as an instrument of "détente", but the range of its responsibilities was expanded to include all issues pertinent to ensuring political stability in Europe after the collapse of the communist bloc, including the security of member states. OSCE only deals with humanitarian issues inasmuch as they are necessary for the fulfilment of its primary function, but from its very outset, it has acknowledged the direct link between human rights protection and international security. The organization's activities in setting up the standards and principles of the so-called "human dimension" have included the issues of national minorities since the mid-1980s.

The High Commissioner on National Minorities (HCNM),[6] established in 1992, has a leading role in protection of minorities within the OSCE system. The mandate of the HCNM does not presuppose the protection of rights of persons belonging to minorities as such, but rather the prevention and resolution of conflicts related to minorities. The HCNM's key approach is "quiet diplomacy" and the search for political settlements of problematic situations. For this purpose, the

[6] OSCE High Commissioner on National Minorities, http://www.osce.org/hcnm.

office of the HCNM issues general recommendations on minorities that sum up the norms of relevant international instruments and accumulated practical experience. Although the HCNM's thematic recommendations are not legally or politically binding, they integrate and systematize the overall perspective of the High Commissioner and other European organizations on the approaches and principles related to minorities. Considering the political standing and authority of the HCNM, these documents are of great importance for defining the agenda and standards in our area of interest. The general recommendations do not directly address the prevention of discrimination, but almost all of them contain provisions on the elimination of barriers for the participation of minorities in public life.

Another important organization is the OSCE Office for Democratic Institutions and Human Rights and its unit on combating discrimination and the promotion of ideas and practices of tolerance.[7]

The EU is more than an international organization as it has features of a supranational state, with jurisdiction derived but separate from its 26. The founding documents of the EU proclaim that it is built, *inter alia*, on such values as human rights, equality, and cultural diversity. Consequently, support for the diversity of languages and cultures, and combating discrimination, are among the organization's main goals. Belarus, Moldova, and Ukraine have no tangible prospects of becoming EU member states at present, but they are addressees of the EU's European Neighbourhood Policy, which helps EU neighbours to gradually adopt its standards, especially with regard to the rule of law and the protection of human rights.

Combating discrimination is one of the main values proclaimed by Article 2 of the consolidated treaty of the EU, and as one of the key goals expressed in Article 3. The prohibition of discrimination is further developed in the so-called secondary, or non-treaty-based law of the EU. The EU Charter of Fundamental Rights and Freedoms, adopted as a declaration during the summit in Nice in 2000, became a legally binding document in 2007, when the Lisbon Treaty entered into force. In 2000, two legally binding EU Directives on Equality were passed;[8] they had to be transposed into national legislation and may be applied directly in the EU courts. As a result, practically all the EU member states have adopted specialized anti-discrimination acts, and most countries have a comprehensive codified law against discrimination that encompasses the main spheres of public life (access to goods and services, employment and occupation, education, housing, and health care).

[7] OSCE Office for Democratic Institutions and Human Rights. Tolerance and non-discrimination, http://www.osce.org/odihr/tolerance.

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

The so-called "Race Directive" (Directive 2000/43/EC) of the European Council on Equality identifies racial and ethnic origin as forbidden grounds for discrimination; it provides the definitions of both direct and indirect discrimination; sets up the prohibition on both types of discrimination in specific spheres of public life (access to goods and services, including accommodation, recruitment and employment, professional training, participation in professional associations, social protection, including health care, and education); it requires the of burden of proof in cases on discrimination to shift from plaintiff to defendant; exempts from the prohibition of discrimination so-called "special measures" for the protection of vulnerable groups (though it does not outline them directly); prescribes the establishment of effective mechanisms for the protection of individuals from discrimination and for receiving compensation for discriminatory treatment; and requires that governments pursue an active policy and promote a broad dialogue in society aimed at the prevention of discrimination.

The EU does not have its own normative framework specifically on the protection of minorities. Respect for the rights of persons belonging to minorities is mentioned as a fundamental value in Article 2 of the consolidated treaty of the EU (Maastricht Treaty of 1992) as amended by the Lisbon Treaty of 2007, which introduced changes and amendments into the founding treaties of the EU. In practice, the EU plays the leading role in establishing and promoting standards of minority protection in Europe due to the so-called principle of "conditionality". It means that, as part of EU enlargement or the European neighbourhood policies, future membership or partnership in bilateral relations is conditioned on compliance with the EU's human rights standards, including those on the protection of minorities and non-discrimination. These requirements have a crucial impact on changes in legislation and the domestic policies of pre-accession and neighbouring countries, since a relationship with the EU is a powerful incentive for national elites.

In practice, EU bodies use the approaches and principles developed by the CoE (primarily the FCNM) and OSCE (especially the HCNM's general recommendations). Furthermore, pre-accession countries and those that have signed or are preparing to sign Association Agreements with the EU are expected to implement the EU Directives on Equality and to adopt anti-discrimination legislation. We should also mention that the EU specifically demands prospective members and parties of the European neighbourhood policies to pass and implement **national Roma integration strategies.**[9]

The EU's European neighbourhood policies are partially institutionalized within the **Eastern Partnership Programme**, which started in 2009. It aims to promote integration between the EU and Azerbaijan, Armenia, Belarus, Georgia, Moldova and Ukraine. The

[9] See: EU and Roma, http://ec.europa.eu/justice/discrimination/roma/index_en.htm.

main spheres of integration are the development of democratic institutions, the promotion of human rights, strengthening of good governance, economic integration, energy security and advancing people-to-people contacts. A number of documents of the Eastern Partnership contain references to the need to combat discrimination and protect national minorities.

Moldova and Ukraine are formally members of the Eastern Partnership of the EU Neighbourhood Policy, while Belarus has yet to ratify this agreement. All agreements regarding partnership and cooperation with the EU[10] generally declare that the parties share the values on which the EU law is built. As part of the bilateral relations, the EU promotes the adoption of anti-discrimination legislation and encourages projects aimed at the protection and integration of minorities. Action Plans on the integration of Ukraine and Moldova into the EU, adopted in the beginning of 2005, contained obligations to protect minorities and adopt anti-discrimination legislation.[11] Passing such legislation became a condition for the liberalization of visa regimes during the negotiations with Ukraine and Moldova that started in 2008. Reform of national legislation and policies for the strengthening of human rights, protection of minorities and non-discrimination were also on the agenda in the course of negotiations regarding the EU Association Agreements with Ukraine and Moldova.[12]

(4) Previous studies

The issues of equality and non-discrimination in Belarus, Moldova and Ukraine are of primary importance for international organizations, human rights activists, and researchers; in principle, they are well studied and subjects of monitoring and professional discussions. The present report does not substitute for descriptive and analytical materials and is not a compilation thereof; our goal is rather to attract attention to systemic problems and possible ways of resolving them in the three countries.

All three countries are monitored by UN bodies. The most important is the review of periodic reports on the implementation of the International Covenant on Civil and Political Rights, the ICERD and the Universal Periodic Review on the situation of human rights at the national level. There is also a UN Special Rapporteur on Belarus.[13] Materials produced by specialized UN bodies are of special value for examining the situation in Belarus, which regularly submits its periodic reports on compliance with the International Covenant on Civil and Political Rights and the ICERD. Belarus cooperates with the Human Rights Committee and the Committee for the Elimination of All Forms

[10] Signed by Moldova and Ukraine in 1994 and entered into force in 1998.
[11] For details, see the official website of the European External Action Service, http://eeas.europa.eu/enp/index_en.htm.
[12] For more information see Ferrari, H. "Partnership for all? Measuring the impact of Eastern Partnership on minorities", *MRG Policy Paper* (2014), http://minorityrights.org/wp-content/uploads/old-site-downloads/download-1373-Policy-paper-English.pdf.
[13] http://www2.ohchr.org.

of Racial Discrimination respectively.[14] The work of the UN Special Rapporteur is also of special importance.[15]

As members of the CoE, Moldova and Ukraine submit periodic reports on the implementation of the FCNM,[16] and Ukraine also reports on the Language Charter.[17] Moldova and Ukraine are also periodically monitored by ECRI.[18] Reports of these three CoE bodies provide a detailed overview of the current problems and processes and these bodies' opinions and recommendations; they also expose gaps and shortcomings in the national legislative and administrative frameworks.

OSCE, specifically the HCNM, has a special role in monitoring the situation in Ukraine and Moldova. The CoE and OSCE also issue special ad hoc reports on, among other topics, issues of combating discrimination and the protection of minorities.[19] The Euromaidan protests that started in Ukraine in November 2013, resulting in the replacement of the national government, the occupation and annexation of Crimea by Russia, and the armed conflict in the east of the country are analysed in detail in special reports of international institutions.[20] These documents also touch upon the issues of discrimination, minorities, language policies and xenophobia.

Among the publications issued by national institutions on human rights, the most informative are overviews of decisions on individual complaints published by the Moldovan independent Council on Ensuring Equality.[21] In Ukraine, similar reports are published by the secretariat of the Parliament Commissioner for Human Rights (ombudsman),[22] mostly as a part of annual reports.[23] It should be noted that the secretariat of the Ombudsman[24] commissions and disseminates analytical and educational materials on the issues of equality and non-discrimination.

[14] http://www2.ohchr.org.
[15] http://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/SRminorityissuesIndex.aspx.
[16] http://www.coe.int/en/web/minorities/country-specific-monitoring.
[17] http://www.coe.int/t/dg4/education/minlang/Report/default_en.asp#Ukraine.
[18] http://www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry_en.asp.
[19] For example: *The Moldovan-Administered Latin-Script Schools in Transdniestria: Background, Current Situation, Analysis and Recommendations*. Report. November 2012. The Hague: OSCE HCNM, http://www.osce.org/moldova/99058.
[20] A/HRC/28. Report of the UN Special Rapporteur on Minority Issues, Rita Izsák-Ndiaye. Addendum. Mission to Ukraine (7 to 14 April 2014). 26 August 2014;
Report by Nils Muižnieks, Commissioner for Human Rights of the CoE following his mission in Kyiv, Moscow and Crimea from 7 to 12 September 2014. OSCE;
Office for Democratic Institutions and Human Rights and HC NM. Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015). The Hague, 17 September 2015, http://www.osce.org/odihr/180596.
[21] http://egalitate.md.
[22] http://www.ombudsman.gov.ua/ua/page/discrimination/.
[23] http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/.
[24] Although the Commissioner for Human Rights has, until recently, been exclusively occupied by women, we use the term "ombudsman" as it is prescribed by Ukrainian law.

The London-based Equal Rights Trust[25] also issues comprehensive reports on each of the three countries, containing a detailed overview of the issues of discrimination on various grounds and an analysis of corresponding remedies and mechanisms of protection and prevention.

National non-governmental human rights and research organizations also make a special contribution to monitoring and provide analytical insight into the problem of equality. In Belarus, these organizations are the National Human Rights Public Association "Belarusian Helsinki Committee"[26] and the project "Belarusian Forum for Equality".[27] In Moldova, non-governmental organizations form the National Non-Discrimination Coalition,[28] a member of which is the National Centre for Roma; the Association "Promo-LEX" is also active in the field of non-discrimination.[29] In Ukraine, these organizations include the Coalition on Combating Discrimination,[30] the Ukrainian Helsinki Human Rights Union which carries out a valuable practical and analytical work,[31] the "No Borders" movement,[32] the International Renaissance Foundation,[33] the Roma Women's Fund "Chirikli"[34] and the human rights fund "Rozvytok".[35] Today, most publications related to discrimination in Ukraine are devoted to internally displaced persons from Crimea and Donbass, and to the situation of Crimean Tatars and the Ukrainian minority in occupied Crimea.

II. The normative legal framework of Belarus, Moldova and Ukraine

The three countries have a largely similar normative framework for combating discrimination and the protection of minorities. Belarus differs from the other two as, first, it is not a member of the CoE and as such is not subject to its conventions and other instruments; second, Belarus is not an addressee of the conditionality policies of the

[25] *From Words to Deeds: Addressing Discrimination and Inequality in Moldova*. The Equal Rights Trust Country Report Series: 7. London, June 2016, http://www.equalrightstrust.org/ertdocumentbank/From%20 Words%20to%20Deeds%20Addressing%20Discrimination%20and%20Inequality%20in%20Moldova_0.pdf; *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine.* The Equal Rights Trust Country Report Series: 5. London, August 2015, http://www.equalrightstrust.org/sites/www.equalrightstrust.org/files/ertdocs/In%20the%20Crosscurrents%20 Addressing%20Discrimination%20and%20Inequality%20in%20Ukraine.pdf; *Half an Hour to Spring. Addressing Discrimination and Inequality in Belarus.* ERT Country Report Series: 3. London, November 2013, http://www.equalrightstrust.org/belarus-half-hour-spring.
[26] http://belhelcom.org.
[27] http://rounasc.info.
[28] http://nediscriminare.md.
[29] https://promolex.md.
[30] http://www.antidi.org.ua.
[31] http://helsinki.org.ua.
[32] http://noborders.org.ua/.
[33] http://www.irf.ua.
[34] http://www.chirikli.com.ua.
[35] http://rozvitok.org/.

EU and thus does not face the requirement to adopt anti-discrimination legislation according to the European model.

All three countries participate in the main treaties of the UN system related to combating discrimination and to the protection of minorities. All three are members of OSCE and are subject to its recommendations (at least formally, in the case of Belarus) for the treatment of minorities. Moldova and Ukraine are members of the CoE and participate in all relevant conventions. As part of the process of association with the EU, Ukraine and Moldova are subject to the conditionality policies that have encouraged their governments to adopt anti-discrimination legislation and develop minority protection policies. All three countries participate in bilateral treaties and agreements that either contain provisions on obligations to protect national minorities or are devoted exclusively to minority protection.

In the constitutions of all the three countries, there are general norms proclaiming the equality of human beings and citizens before the law, regardless of ethnic belonging. In sectoral legislation there are provisions prohibiting discrimination and stipulating the equality of citizens in exercising their rights, equal access to public goods and inadmissibility of the violation of equal rights. Such provisions are present in administrative and labour legislation, and the laws regulating education, health care and the consumer market. This situation is common for all post-Soviet and Eastern European countries. The problem is that general provisions on equality have mostly symbolic rather than practical significance. In real life situations, it is often impossible to understand which claims can be based on them and what result one can expect. As a rule, sectoral legislation allows for the protection of a specific right (and sometimes also lawful interests).

Complying with EU requirements, Moldova and Ukraine passed comprehensive laws against discrimination in 2012, with open-ended lists of prohibited grounds. There is no similar law in Belarus, though public discussions have started on the possibility of its adoption.

National laws on ethnic minorities also contain provisions about equality. These laws were adopted in all the three countries; there drafting had started in the Soviet times, and in general these laws are of a declaratory character and envisage no mechanisms or guarantees of implementation. All three laws contain general provisions on the equality of persons belonging to national minorities.

There are also laws and regulations concerning hate speech and hate crime within the system of criminal and administrative justice. The motive of racial, ethnic or religious hate is acknowledged as an aggravating circumstance in the criminal codes of all three countries. Manifestations of hate speech (defined as incitement of feud or hatred on ethnic, racial or religious grounds) are criminally liable. In line with the Soviet tradition, non-violent discrimination entails criminal responsibility in all three countries, although it is generally not enforced.

All three countries have national laws on the equality of men and women and on protection of people with disabilities. Their significance for this report is that they familiarize professional communities, including judges, with the concept of discrimination and related notions, such as "reasonable accommodation", raise awareness and contribute to the accumulation of practical experience.

(1) Belarus

International obligations

Article 21 of the Belarus Constitution asserts that "the state guarantees the rights and freedoms of citizens of Belarus enshrined in the Constitution and laws and specified by the state's international obligations". However, the Constitution does not contain provisions stipulating that international treaties are directly applicable and have supremacy over domestic norms if they contradict them. The implementation of international treaties is realized through their transposition into national legislation.

Belarus is party to international conventions on the protection of minorities and combating racial and ethnic discrimination, adopted within the UN system. Among them are the International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), ICERD (1965), Convention on the Rights of the Child (1989), UNESCO Convention against Discrimination in Education (1960), and Convention of the International Labour Organization No.111 concerning Discrimination in Respect of Employment and Occupation (1958). Belarus did not recognize the right to file individual complaints according to Article 14 of the ICERD.

The Republic of Belarus is not a member of the CoE and not a party to the main European conventions on the protection of minorities. Belarus remains a member of the EU Eastern Partnership Programme. The cooperation of the Republic of Belarus with the EU on humanitarian issues is limited and does not have a substantial impact upon domestic policies.

The Republic of Belarus is party to several treaties adopted within the framework of the Commonwealth of Independent States (CIS is an intergovernmental formation that includes most of the countries of the former USSR) concerning the protection of minorities and non-discrimination, as well as regulation of migration. These include the CIS Charter (1991) (Article 3 on ensuring human rights and fundamental freedoms for all regardless of racial and ethnic belonging, language, religion, political and other views); the CIS Convention on Human Rights and Fundamental Freedoms (1995) (Article 20 on equality and non-discrimination and Article 21 on the rights of persons belonging to minorities); the Agreement on the Restitution of the Rights of Formerly Deported Persons, National Minorities and Peoples (1992); and the Agreement on Cooperation in Education (1992).

Convention on Providing the Rights of Persons Belonging to National Minorities

(21 October 1994) mostly duplicates the principles of the Law of the Republic of Belarus “On Protection of National Minorities” and uses the same terminology (see below). The Convention entered into force in January 1997 after having been ratified by Belarus. Belarus was the third country to ratify the Convention; at present, there are five parties to the Convention, but it remains inactive like other CIS instruments, mainly due to the lack of political will and the parties’ lack of motivation to apply them.

Almost all bilateral framework treaties about friendship and cooperation that Belarus concluded with other countries, including CIS members, contain provisions on mutual obligations to protect minorities. Belarus signed a special bilateral treaty with Ukraine in 1999: “Agreement between the Republic of Belarus and Ukraine about Cooperation in Ensuring the Rights of Persons Belonging to National Minorities”. A number of other intergovernmental and inter-institutional agreements on the protection of minorities have been signed with other countries and have entered into force.

General constitutional and legislative norms on equality[36]

Constitution

The Constitution of the Republic of Belarus adopted in 1994 (with amendments passed as a result of national referenda on 24 November 1996 and 17 October 2004) contains several provisions that directly concern equality, particularly on ethnic grounds.

Article 5. <…> The creation and activities of political parties and other public associations that aim to change the constitutional system by force, or to conduct propaganda of war, social, ethnic and racial hatred, shall be prohibited.

Article 11. Foreign nationals and stateless persons in the territory of Belarus shall enjoy rights and liberties and execute duties on equal terms with the citizens of the Republic of Belarus. <…>

Article 14. The State shall regulate relations among social, ethnic and other communities on the basis of the principles of equality before the law and respect their rights and interests. <…>

Article 22. All shall be equal before the law and entitled without discrimination to equal protection of their rights and legitimate interests.

Article 50. <…> Insults to national dignity shall be prosecuted by law. Everyone shall have the right to use one’s native language and to choose the language of communication. In accordance with the law, the state shall guarantee the freedom to choose the language of education and teaching.

The constitution has supreme legal force and direct effect only in cases when there is a discrepancy between the constitution and a law, decree, or edict (Article 137 of the constitution). Therefore, the abovementioned constitutional provisions are only applied after being incorporated into the normative legislative acts of a lower level; they cannot be applied in courts with general jurisdiction.

[36] The legislation of Belarus is drawn from the National Legal Internet Portal of the Republic of Belarus, http://pravo.by/.

Laws

Criminal code

The prohibition of violation of equality is guaranteed mostly by criminal law, as was the case in the USSR. According to Article 190 of the Criminal Code of the Republic of Belarus (1999) "Violation of equality of citizens" presupposes responsibility for "intended direct or indirect violation or limitation of the rights and freedoms, or establishment of direct or indirect privileges for citizens based on their gender, race, ethnicity, language, origin, property or employment situation, place of residence, religious beliefs, attitudes, membership of public associations that had a substantial negative impact on the rights, freedoms and lawful interests of the citizen". Therefore, violation of equality is defined only as a constituent element (completed crime), and the form of guilt is direct intention. The category "substantial negative impact on the rights, freedoms and lawful interests of the citizen" is not specified in legal practice. There are no official publications on the application of this article, most likely due to its limited scope.

Liability for hate crimes and hate speech

Article 130 of the Criminal Code prescribes responsibility for inciting racial, ethnic or religious hatred or feud that is defined as "intentional actions aimed at causing racial, ethnic, religious hatred or feud, denigration of ethnic honour and dignity".

The Criminal Code of the Republic of Belarus recognizes racial, ethnic or religious hatred or enmity as an aggravating circumstance (Article 64, Section 1, paragraph 9), and defines the elements of the crime in a number of articles. In the Administrative Code (Article 7.3, Section 1, paragraph 6), administrative violation motivated by racial, ethnic or religious hatred is also treated as an aggravating circumstance in defining administrative responsibility.

Incitement to ethnic hatred and dissemination of ideas of ethnic and racial supremacy are also prohibited by the laws of the Republic of Belarus "On National Minorities" (1992), "On Public Associations" (1994) and "On Combating Extremist Activities" (2007). "Extremist activities" or "extremism" are interpreted in the broadest possible sense, ranging from terrorism to fuelling enmity, and are defined not by qualifying characteristics but based on the list of possible manifestations. This gives law enforcement a broad margin for discretion, but the law only recently started being enforced. In 2014, the national expert commission was established under the Ministry of Information of the Republic of Belarus to assess information products according to the presence or absence of attributes of extremism, and in 2015, similar regional expert commissions started their work.

According to Article 17.11 of the Administrative Code, "dissemination of information products calling for extremist activities or propagating such activities as

well as the production, storing, or transportation of such products for the purpose of dissemination, if such actions have no elements of crime" are punished by pecuniary fine; the fine increases if such information products are listed in the national register of extremist materials.

Law on minorities

The law on national minorities was adopted in 1992; it was amended in 2004 and 2007 but in a way that did not change its substance. Article 1 of the law defines "persons belonging to national minorities" as "persons that permanently reside at the territory of the Republic of Belarus, have Belarusian citizenship, and differ in origin, language, culture or traditions from the main population of the Republic". Article 2 notes that belonging to a national minority is a matter of individual choice should not entail any unfavourable consequences. Article 5 prohibits the forced declaration or determination of national belonging, nor can members be compelled to prove or abandon their national belonging.

The law contains provisions on equality and non-discrimination: Articles 4 and 6 are of a declaratory nature, prohibiting the direct or indirect limitation of rights and freedoms of citizens for their belonging to an ethnic minority, and attempts at forcible assimilation; Article 6 proclaims equal political, economic, and social rights and freedoms. Article 13 declares equal protection of citizens by the state regardless of their ethnic belonging, and responsibility for any actions aimed to discriminate people on ethnic grounds, obstruct the exercise of minority rights, and incite interethnic hatred. Implementation of the law is outlined in a very general way, using general declarations and references to other norms.

Other legislation

The Civil Code of Belarus (1998) contains the principle of equality between subjects of civil relationships and declares the equal protection of rights and lawful interests without discrimination. In civil proceedings, an individual may, in principle, claim compensation for pecuniary and non-pecuniary damages in cases of violation of the right to equality and non-discrimination. Belarusian legislation does not envisage any procedural rights or guarantees for the judicial examination of discrimination.

Article 14 of the Belarusian Labour Code (1999, with subsequent amendments) defines discrimination as "restriction of employment rights or receiving preferences based on gender, race, ethnic origin, language, religious or political views, participation or non-participation in trade unions or other public associations, property or employment situation, or physical or mental disability that does not interfere with performance of professional duties". In accordance with corrections and amendments to the Labour Code adopted in January 2014, social origin, age and place of residence were added to the list of discriminatory criteria. According to the Labour Code, an individual considering him/herself as a victim of discrimination in employment has the right to file a complaint in court for discriminatory treatment. However, these cases are minimal since neither citizens nor legal practitioners are

aware of the difference between discrimination and the violation of rights, are not familiar with the standard of proof and do not know what demands could be made within the suit. Moreover, as in other countries of the former USSR, compensation for non-pecuniary damages resulting from discrimination, and the distribution of the burden of proof in civil discrimination lawsuits, remain unregulated.

In accordance with Article 2, paragraph 3 of the Law "On Languages of the Republic of Belarus" (1990, with subsequent corrections and amendments), "the Republic of Belarus takes care of free development and use of all national languages used by the population of the Republic". The legislation of Belarus does not regulate the use of languages in the unofficial sphere. Article 3 asserts that "citizens of the Republic of Belarus are guaranteed the right to use their national [attributed to their ethnic nationality] language" as well as "the right to address government institutions, local government and self-government bodies, enterprises, establishments, organizations and public associations in Belarusian, Russian or any other language acceptable to both parties". It follows that, according to Article 5, "state institutions, local government and self-government bodies, enterprises, institutes, organizations and public associations are obliged to accept and consider documents submitted by the citizens in Belarusian and Russian languages. Denial of the public servant to accept and consider a request of the citizen in the Belarusian or Russian languages because of referring a lack of command of the language entails liability according to the law".

Article 6 of this law prescribes that any privileges or limitations are inadmissible, whereas public humiliation, insult of the state language and other national languages, establishing hurdles and restrictions to their use, and propagating hatred on linguistic grounds entail liability according to the law, with responsibility for same prescribed by Article 9.22 of the Civil Code of the Republic of Belarus. The first two cases brought under the application of this article were registered in August and September of 2013, when public servants were fined for refusing to respond to citizens in the language of their request (i.e. Belarusian).

The Code of the Republic of Belarus on Education (Law No. 243-Z, Article 90, Section 6; 13 January 2011, with amendments introduced in 2011–2014) contains the following provision: "in accordance with the desire of pupils and their lawful representatives, and upon decision of the local executive and regulatory bodies approved by the Ministry of Education of the Republic of Belarus, groups may be created in the establishments of preschool education, classes and groups; in the establishments of general secondary education or establishments of preschool and general secondary education in which teaching is conducted in the language of a national minority, or the language of a national minority is studied as a subject".

The law of Belarus "On Protection of the Rights of Consumers" (No. 90-3, Art. 7 and

8, 9 January 2002) uses standard wording in relation to the need to provide information in Belarusian *or* Russian (author's emphasis). Thus, information about goods, works or services may only be available in one language. There are currently discussions about amending this law, with obligatory provision of information to consumers in two state languages being a leading issue. Public discussion and written communication with authorities and goods manufacturers highlight that proponents of obligatory bilingual marking appeal to equality on linguistic grounds, whereas opponents of this measure refer to the formal compliance of current practices with constitutional norms (Article 17) and economic expediency.

However, the law of Belarus "On Civil Service in the Republic of Belarus" (No. 204-Z, 14 July 2003) does not address disciplinary action against civil servants for discriminatory treatment. Article 21 of the law refers only to the obligation "to ensure protection of the rights and lawful interests of private and legal persons" as well as "to adhere to the norms of respectful communication and code of ethics for public service".

(2) Moldova

International obligations

The Constitution of Republic of Moldova establishes the primacy of international law over domestic law (Article 4, part 2). In 1993, Moldova acceded to the International Covenant on Civil and Political Rights and the ICERD. The Republic of Moldova also participates in other major conventions on human rights, including the ECHR and other instruments of the CoE. In 2012, Moldova recognized the competence of the UN Committee on the Elimination of All Forms of Racial Discrimination to receive and consider individual petitions on discrimination.[37] In 1996, Moldova signed and ratified the FCNM. Bilateral agreements on the protection of minorities were concluded with Ukraine, Bulgaria, Russia, Poland, and Belarus. In 2002, Moldova signed (but has not yet ratified) the European Charter for Regional and Minority Languages.

General constitutional and legislative norms on equality[38]

Constitution

The principle of equality is enshrined in Article 16 (2) of the Constitution of the Republic of Moldova:

> All citizens of the Republic of Moldova are equal before the law and public authorities irrespective of their race, nationality, ethnic origin, language, religion, gender, beliefs, political views, personal wealth or social origin.

Article 32 (3) also proclaims that:

[37] Fourth Report submitted by Moldova pursuant to Article 25, paragraph 2 of the FCNM. ACFC/SR/IV(2015)005. Strasbourg, 16 June 2015, p. 11.
[38] Legislation of Moldova is drawn from the *Registrul de Stat al Actelor Juridice al Republicii Moldova*, http://lex.justice.md/.

> All actions aimed at denying and libelling the state or the people shall be forbidden and prosecuted by the law as well as the instigations of war, ethnic, racial, or religious hatred, the incitement of discrimination, territorial separatism, public violence or other actions threatening the constitutional order.

The Constitution of the Republic of Moldova prescribes that the Moldovan language based on the Latin script shall be the state language (Article 13 (1)).[39] Moreover, the state "recognizes and protects the right to preservation, development and use of the Russian language and other languages of the country" (Article 13 (2)).

Laws

Current legislation contains general provisions on equality of rights and inadmissibility of discrimination (Civil Code, Labour Code, legislation on public service and others), however they are mostly declarative, allowing for the contestation of an overt violation of equal rights, but unsuited to combating more complicated forms of discrimination.

The law on equality

In May 2012. the parliament of the Republic of Moldova passed the law "On Ensuring Equality".[40] The law, as stated in the preamble, was adopted in accordance with the EU Directives on Equality. The goal of the law is not only to combat discrimination and ensure equal rights for all persons in Moldova, but also to prevent discrimination. The law defines discrimination in line with the EU Directives on Equality. The law uses an open list of criteria for discrimination, which includes: race, colour of skin, nationality, ethnic origin, language and religion. The law differentiates between direct and indirect discrimination, as well as specific forms of discrimination by association, racial segregation, harassment and victimization (persecution of persons for complaining of discrimination). The law envisages the possibility of positive measures and reasonable accommodation. The prohibition of discrimination applies to all natural and legal persons in private and public spheres. Combating discrimination is defined as its prevention through temporary positive measures,41 mediation procedures, sanctions for acts of discrimination and compensation to the victims for material and moral damage (Article 5).

Prohibition of discrimination encompasses the fields of employment (Article 7), access to goods and services (Article 8) and education (Article 9). The law sets out a limit to the prohibition of discrimination: it does not extend to the institutions of family and adoption, or to religious cults (Article 1). In the field of employment, occupational requirements do not constitute discrimination where, due to the specific nature of the work

[39] The same is prescribed by Article 1 of the Law on Languages.
[40] Law No. 121 of 25 May 2012; entered into force on 1 January 2013.
[41] This is the main technical weakness of the law – other articles mention other preventive measures, but they are not brought within the system and responsibilities are not clearly allocated.

or the conditions under which it is done, they are genuine, legitimate and proportionate (Article 7 (5)).

The institutions responsible for preventing and combating discrimination and ensuring equality are the Council on the Prevention and Elimination of Discrimination and Ensuring Equality, various public authorities, and the judiciary (Article 10). The Council is a collegial entity with the status of a statutory body, independent of public authorities. The Council consists of five members with no political affiliation, appointed by the parliament for a period of five years (Article 11). The chairman of the Council has a permanent position and convenes the rest of the members to meetings of the Council; the members are only reimbursed for attending the meetings. The Council is assisted in its work by an administrative service.

The Council has several tasks and responsibilities: First place, it reviews compliance of current legislation with non-discrimination standards and makes proposals regarding possible amendments; adopts advisory opinions on compliance of draft laws with legislation on preventing and combating corruption; monitors the implementation of relevant legislation; collects information on the scope, condition and trends in discrimination at the national level and prepares studies and reports; submits proposals to public authorities with general suggestions on preventing and combating discrimination; contributes to raising awareness in society; examines complaints of persons who consider themselves to be victims of discrimination; files requests to corresponding public bodies to open disciplinary proceedings in respect of persons in charge who have committed discriminatory acts in their work; establishes the facts and discriminatory elements of administrative violations; informs the prosecution when cases of discriminatory acts contain elements of a crime; and contributes to the amicable resolution of conflicts arising from discriminatory acts by seeking reconciliation and mutually acceptable solutions for the parties.

The work of the Council is also regulated by the Law "On the Work of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality" (No. 298, 21 December 2012). The Council may review the facts of discrimination on its own initiative, or examine the complaints of concerned individuals, trade unions and civil associations. A complaint may be submitted to the Council within one year from the date the act was committed, or the date it became known. It is not obligatory to submit a complaint to the Council prior to referring it to the court.

The burden of proof that the act does not constitute discrimination lies with the person charged with the deed. Unjustified refusal to provide the information requested by the Council is unfavourably interpreted and results in sanctions defined by law. Having examined the complaint, the Council adopts a motivated decision by majority vote of its members. Decisions of the Council contain recommendations on the restoration of the rights of the victim and prevention of similar acts in the future (Article 15).

In case the accused disagrees with the suggested measures, the Council has the right to appeal to higher authorities to enforce the necessary measures and/or to inform the public. On the one hand, Council resolutions are advisory; on the other hand, Articles 71–2 of the Administrative Code presuppose administrative responsibility (pecuniary fine), *inter alia*, for "intentional ignoring and incompliance with recommendations [of the Council]". If, in the course of examining the complaint, it appears to contain elements of a crime, the Council submits the protocol and materials of the case to the competent bodies for consideration (Article 15).

Other public authorities, according to their functional responsibilities, may also receive complaints from persons considering themselves to be victims of discrimination, may coordinate the work of decentralized bodies in this field, and can contribute to education and awareness among the population on the prohibition of discrimination (Article 16).

Acts of discrimination entail disciplinary, civil, administrative, and criminal liability (Article 17). A person, considering him/herself to be a victim of discrimination, may use a judicial defence and file a complaint in court demanding the establishment of the fact of the violation of his/her rights; prohibition of further violations of rights; restitution of the situation that existed prior to the violation; compensation for pecuniary and non-pecuniary damages as well as legal costs; and recognition of the act that led to discrimination as invalid (Article 18). The burden of proof that the deeds in question were not discriminatory lies with the accused, unless they are subject to criminal liability (Article 19).

As can be seen from the list above, the law is not flawless; specifically, preventive measures are not clearly or consistently outlined. Positive measures are defined insufficiently and too narrowly, and only as temporary measures. It also remains unclear how the prohibition of discrimination relates to the support and protection of the cultural distinctiveness of minorities. Furthermore, the Council consists of volunteers and is overburdened with functions and tasks, especially in analysing legislation, general monitoring and asserting the reliability of received data. Conversely, the Council has limited powers and may not make binding decisions regarding individual complaints; it can impose sanctions only for the denial to provide information and all other decisions are simply advisory or informational. The law also does not provide a clear-cut explanation of the responsibilities of governmental and municipal bodies.

Criminal code

In 2002 Moldova replaced the Soviet Criminal Code,[42] dividing the original article on equality (Article 71) into two: Article 176 "Violation of Citizens' Equality of Rights" prescribes responsibility for "any distinction, exclusion, restriction or preference in rights and freedoms of an individual or a group

[42] Criminal Code of the Republic of Moldova, Law No. 985-XV of 18 April 2002.

<…>”. Only aggravated offences entail liability, such as if the crime is committed by an official, if it inflicts considerable damage, if discriminatory messages and symbols are displayed in public spaces, or where discrimination is based on two or more criteria, or committed by a group of persons. The law prescribes punishments such as fines, imprisonment, or deprivation of the right to hold certain positions. Legal (as opposed to natural) persons may also be liable.

Article 346 on “Deliberate Actions Aimed at Inciting National, Ethnic, Racial or Religious Hatred, Feud or Hostility” prescribes responsibility for “inciting hatred, differentiation or feud” as well as “humiliation of national honour and dignity” and “direct or indirect limitations of rights or creating direct or indirect preferences of citizens based on their national, racial or religious affiliation”. The punishments range from a fine to imprisonment for up to three years.
The Criminal Code of the Republic of Moldova therefore resembles the previous Soviet code in that it does not clearly delineate hate speech or discrimination. Both current articles of the Criminal Code have extremely limited application in practice (see below).

The Criminal Code interprets motives of “social, national, racial or religious hatred” as aggravating circumstances in any criminal offence (Article 77, paragraph “d”). Social, national, racial or religious hatred may also be qualifying characteristics in a number of other crimes. Prosecution for crimes committed on the grounds of hate is only possible in cases where such crimes are accomplished and result in specific consequences.[43]

Legislation on administrative offences

Having adopted the law on equality, amendments were introduced into the Code on Administrative Offences of the Republic of Moldova in December 2012,[44] establishing administrative sanctions for discrimination and interfering with the work of the Council on Equality; it also defined the powers of the Council with regard to imposing administrative punishments.

Article 54-2 presupposes responsibility for actions that result in restricting or undermining equal opportunities or equal treatment during recruitment or dismissal, as well as actual employment or training. Such violations by individuals lead to a fine of between 100 and 140 conventional units (one unit was equal to two Euro in 2016), violations by an official are fined 200–350 conventional units, and violations by legal entities can be fined 350–450 conventional units. Pursuant to Part 2 of the article, harassment (actions on behalf of the employer based on racial, national, ethnic, linguistic, religious, or other grounds, which lead to the creation of an unfavourable,

[43] Submission prepared by the Council on the Prevention and Elimination of Discrimination and Ensuring Equality for the Universal Periodic Review of the Republic of Moldova, 26th session, 28 June 2016, http://egalitate.md/media/files/files/upr_eng_2713764.pdf.
[44] The Code on Administrative Offences of the Republic of Moldova, Law No. 218-XVI of 24 October 2008.

hostile, destructive, humiliating and insulting working environment) leads to a fine of 130–150 conventional units for individuals and 250–400 conventional units for officials.

Article 65-1 prescribes liability for discrimination in education, particularly in providing access to educational institutions of any kind and level, in setting out unlawful criteria of admission to educational institutions, in the process of studies (specifically in the assessment of acquired knowledge), and in the management of academic and scientific work. Violation is punishable by a fine of 100–140 conventional units for individuals, 200–350 conventional units for officials and 350–450 conventional units for legal entities.

Article 71-1 similarly establishes responsibility for discrimination in providing access to public services and goods, particularly in the field of health care and property rentals. Article 260 prescribes sanctions for discrimination in providing general services in the sphere of electronic communication, mail and information technology.

Article 71-2 concerns interference with the work of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality. It prescribes liability for actions aimed at manipulating its decisions, failing to provide the necessary information for examining complaints within the time allowed by law, intentionally ignoring and failing to comply with its recommendations, and impeding its work in any other way. Such actions are punishable with a fine of 50–100 conventional units for individuals and 75–150 conventional units for officials.

Pursuant to Article 423-5, offences outlined in the above articles shall be established by the Council on Prevention and Elimination of Discrimination and Ensuring Equality. Protocols of offences shall be submitted for further consideration to competent judicial bodies. The National Agency on Regulation of Electronic Communications and Information Technology also has the right to establish the fact of violation, compose protocols pursuant to Article 260 and subsequently refer them to court. It should be noted that such powers have not been granted to the Agency on Protection of Consumers' Rights, the State Inspection of Labour or other government bodies that operate in spheres related to the anti-discrimination articles of the code.

Actions committed on the grounds of hate that do not inflict serious physical or pecuniary damages are qualified, in most cases, as administrative offences. The Code on Administrative Offences does not presuppose such motives as hatred and prejudice and, in fact, prescribes symbolic sanctions.[45]

The law "On Combating Extremist Activity" has also been adopted in the Republic of Moldova (No. 54-XV of 21 February 2003).

[45] Submission prepared by the Council on the Prevention and Elimination of Discrimination and Ensuring Equality for the Universal Periodic Review of the Republic of Moldova, 26th session, 28 June 2016, http://egalitate.md/media/files/files/upr_eng_2713764.pdf.

It defines extremist activity as: incitement to national, racial or religious feud and discord, and fuelling social hatred if it creates threat of violence; and humiliation of national dignity, provoking civil unrest, hooliganism and vandalism based on hatred and feud. It also includes propaganda of supremacy, superiority or inferiority of citizens based on racial, national, ethnic, linguistic, religious or gender characteristics, as well as their views, political affiliation, wealth or social origin. The law, *inter alia*, regulates the responsibility of civil organizations and mass media but has limited practical application; for example, according to a decision of the Supreme Court, symbols of the *Falun Dafa* civil movement were included in the Registry of Extremist Materials.

The law on minorities

The main national law regulating ethnic relations is the law "On the Rights of Persons Belonging to National Minorities and the Legal Status of Their Organizations" (No. 382, 19 July 2001) (hereinafter the Law on Minorities). Article 1 (1) of the law identifies persons belonging to national minorities as those residing at the territory of Moldova, having Moldovan citizenship, and possessing ethnic, cultural, linguistic and religious features that differ from the majority of the population (Moldovans), and consider themselves to have an ethnic origin distinct from the rest of the population. The Law on Minorities does not provide a list of ethnic minorities of the Republic of Moldova and does not outline a procedure for their official recognition.

Article 4 of the Law on Minorities stipulates equality and non-discrimination of minorities. Article 23 proclaims that persons belonging to national minorities may be represented in parliament and local councils by participating in elections. Article 24 prescribes that persons belonging to national minorities have the right to proportional representation at all levels in the executive, judicial and law enforcement organs. These provisions have a declarative character and are not backed by implementation mechanisms such as reserved seats to secure representation.

Article 6 (1) guarantees the rights of persons belonging to national minorities to education and instruction in their native language, reproducing the norm of the Law on Languages. With respect to the language of records management, Article 8 (1) of the Law on Minorities prescribes that the state shall ensure publication of "normative documents, official announcements and other important information" in Moldovan and Russian. In autonomous areas, moreover, documents of local significance and official communication shall be "in other official languages envisaged by the law" (Article 8 (2)).

Other legislation

The Civil Code of the Republic of Moldova (No. 1107, 6 June 2002) presupposes that all persons enjoy equal legal status irrespective of their race, nationality or ethnic origin. It presupposes protection of personal non-property rights and the possibility of restitution of material and moral damages, as well as the prohibition of actions threatening

to inflict damage in the future. Pursuant to Articles 277 and 278 of the Civil Procedure Code of Moldova (No. 225, 30 May 2003) any person considering him/herself to be impaired in their lawful right by a public authority, through an administrative act or by the way of not responding to a request in the period allowed by law, has the right to refer to a competent judicial body with the goal of reversing the act or seeking compensation for the inflicted damage. Such claims are regulated by the Law of Moldova "On Administrative Court" (No. 793, 10 February 2000, subsequently amended); this law does not imply shifting the burden of proof to the defendant.

The Labour Code of the Republic of Moldova (No. 154, 28 March 2003) not only prohibits discrimination as a general principle (Articles 5, 8, 9), but also details the obligations of employers with regard to the prevention of discrimination (Articles 10, 128, 198), and presupposes the possibility of restitution of material and moral damages for discrimination through the court (Article 329). Article 386 sets out the right of trade unions to interfere in cases of discrimination on the grounds of gender.

The preamble to the Law of the Republic of Moldova "On the Use of Languages in the Territory of Republic of Moldova" (No. 3465-XI, 1 September 1989) (hereinafter the Law on Languages) proclaims that the state "ensures the protection of the constitutional rights and freedoms of citizens of any nationality <…> irrespective of the language they use given that all citizens are equal before the law". Article 31 declares that "propaganda of hatred, disrespect to any national language, creating hurdles for the use of the state language and other languages in the territory of the state, and violating the rights of citizens on linguistic grounds leads to liability as prescribed by the law".

Regulatory acts of the government and public bodies are drafted and passed in the state language, with translation into Russian (or Gagauzian in Gagauzia). In government bodies, especially those in charge of health care, education, culture, mass media, transportation, communication, trade and law enforcement, public officials shall have sufficient command of the Moldovan and Russian languages (or Gagauzian in the autonomous region of Gagauzia) for performing their duties. The corresponding provision of the legislation implies the right of citizens to choose their language of communication with public authorities (Article 7).[46] Citizens may submit documents to government bodies in Moldovan and Russian, or in Gagauzian in Gagauzia (Article 11).

The Code for Television and Radio Broadcasting 2006[47] prohibits the broadcasting of programmes containing

[46] Moreover, the law "On Public Service and the Status of Public Servant" (No. 158, 4 July 2008) prescribes that command of the Moldovan language and "one of the official languages of interethnic communication in the corresponding territory in the scope defined by law" is one of the criteria for admission to public service (Article 27, paragraph 1b).

[47] Law No.260 of 27 July 2006.

incitement of hatred on racial or ethnic grounds.[48] The monitoring of electronic mass media is conducted by the Council on TV and Radio Broadcasting.

The Law "On Education" (No. 547-XIII, 21 July 1995) was replaced by the Code on Education of the Republic of Moldova (No. 152, 17 July 2014, with subsequent amendments). The Code proclaims equal rights to education, details the principle of non-discrimination and declares protection of the rights of persons belonging to minorities in the education system. Pursuant to Article 10 (1), "the language of instruction in education is the Romanian language, or to the maximum extent possible within the educational system, one of the languages of interethnic communication, or pursuant to paragraph 2, the language of the national minority". Article 10 (2) prescribes that "in the areas of traditional settlement or numerical concentration of persons belonging to national minorities, in case of sufficient demand, the state ensures, as much as possible within the education system, that persons belonging to minorities have adequate means to study their language and receive compulsory education in their language". Studying the state language of the Republic of Moldova is compulsory in all educational institutions.

The specific situation in Transnistria

In spite of its name, Transnistria, or the Pridnestrovian Moldavian Republic (PMR), unrecognized by the international community, does not identify itself as a nation state in the ethnic sense. The PMR Constitution of 1996[49] proclaims equal rights and freedoms to "all" irrespective of gender, race, nationality, language, religion, social origin, beliefs, and personal or social status (Article 17) and prohibits "incitement of racial, national and religious hatred" (Article 8). Pursuant to Article 43, "everyone shall have the right to preserve his/her national affiliation, and no one shall be forced to determine or declare his/her national affiliation". According to paragraph 2 of the same article, "insult of national dignity shall be prosecuted by law".

Pursuant to Article 43, paragraph 3 of the Constitution, "everyone shall have the right to their use native language and choose their language of communication". Article 12 grants official language status equally to Moldovan, Russian and Ukrainian.

The 2002 Criminal Code of PMR prescribes liability for "the violation of equality of citizens" based on a broad list of criteria that includes race, nationality and language (Article 133); the Code of Administrative Offences presupposes responsibility for "discrimination" that is similarly the violation of rights, freedoms and lawful

[48] Along with other attributes such as religion, gender and sexual orientation (Article 6 of the Code on Television and Radio Broadcasting).
[49] The Constitution and laws of Transnistria are drawn from the legal information database on the official website of the PMR President: http://president.gospmr.ru/ru/zakon.

interests (Article 5.60), if the action (or lack thereof) does not contain elements of a crime. Similarly, Article 278 of the Criminal Code of PMR presupposes responsibility for "actions aimed at inciting national, racial, religious hatred, humiliation of national dignity, and propaganda of an exceptional nature, superiority or deficiency of citizens based on their religion, ethnicity or race". A number of norms on non-discrimination are included in the Labour Code, the Law "On Public Service", the Family and Marriage Code, Civil Code of Procedure and other laws.

In 2007, the law "On Combating Extremist Activity" was enacted. It essentially copied the Russian anti-extremist law of 2002 and reproduced all of its main provisions and wording. Three articles based on the 2007 law were introduced into the Criminal Code of PMR, namely "Public Calls to Extremist Activity" (Article 276), "Creating Extremist Organizations" (Article 278-1) and "Assisting the Work of Extremist Organizations" (Article 278-2). "Extremist activity" or "extremism" is interpreted in a broad sense and defined through a list of possible manifestations, such as the violation of rights of citizens based on their ethnic and religious affiliation as well as their beliefs. In practice, such a broad interpretation allows law practitioners to rely on their own discretion, leading to arbitrary application of legislative norms.

The 1992 Law on Languages of PMR[50] (with corrections and amendments in force since 2007), Article 1 guarantees "linguistic sovereignty of the citizen" which means, *inter alia*, the "naturally and legally equal right to freely choose the language of communication in all spheres of life". Pursuant to Article 3 (1) of the Law on Languages, all languages enjoy equal legal status and have equal protection and support of the state. The official languages are Moldovan, Russian, and Ukrainian (Article 3 (2)) and they also have the status of languages of interethnic communication (Article 5). The law proclaims the equality of the three main languages in official use. Article 26 declares free choice of the language of instruction and upbringing; use of the three main languages is guaranteed in education "taking into account the interests of ethnicities compactly residing in certain areas". Citizens have the right to choose their language of communication with government bodies.

It is peculiar that PMR only recognizes the Moldovan language in Cyrillic script, reflecting the ideological foundation of PMR's cultural and language policies. The ban on the use of Moldovan with the Latin alphabet is reinforced by Article 5.28 of the 2014 Code of Administrative Offences ("Violation of the Norms of the Law of the Pridnestrovian Moldavian Republic on Languages of the Pridnestrovian Moldavian Republic") which sets out a fine equivalent to 50 minimum wages (this was preceded by

[50] The law reproduces the ideology and part of the wording of the USSR law "On the Languages of Peoples of the USSR" of 24 April 1990.

Article 200-3 of the Code of Administrative Offences of 2002).

(3) Ukraine

International obligations

According to Article 9 of the 1996 Constitution of Ukraine, "international treaties that are in force, agreed as binding by the *Verkhovna Rada* [parliament] of Ukraine, are part of the national legislation of Ukraine". Ukraine participates in all major universal and European international instruments on human rights, including the International Covenant on Civil and Political Rights and the ICERD. Ukraine is also a member of other UN conventions on human rights. Ukraine is a party to all major human rights conventions of the CoE, including the ECHR, renewed European Social Charter and the FCNM; it has also signed and ratified the European Charter for Regional or Minority Languages. There are special chapters regulating the provision of the rights of persons belonging to ethnic minorities in intergovernmental treaties between Ukraine and its neighbours, namely Poland (1992), Moldova (1996), Romania (1997), Belarus (1997) and Russia (1997). A separate agreement on cooperation in ensuring the rights of persons belonging to national minorities was signed with, but has yet to be ratified by, the Republic of Moldova.

General constitutional and legislative norms on equality[51]

Constitution

Article 21 of the 1996 Constitution declares the equality of all people in their dignity and rights, and that human rights and freedoms are inalienable and inviolable. The Constitution presupposes equal fundamental rights and freedoms as well as the equality of citizens before the law, irrespective of their "race, colour of skin, political, religious and other affiliations, gender, ethnic and social origin, wealth, place of residence, linguistic and other characteristics" (Article 24). The rights and freedoms of an individual and citizen, enshrined in the Constitution, are not exhaustive, cannot be abolished or restricted in scope or content by way of adopting a new, or amending the existing, legislation (Article 22). In Ukraine, the free development, use and protection of the Russian language and other minority languages of Ukraine are guaranteed (Article 10).

Legislation

Most codes and numerous laws related to human rights declare the principle of non-discrimination and prescribe the prohibition of discrimination, or contain a ban on the violation of equality of rights. The specialized law against discrimination occupies a special place in the system of equality protection.

[51] The legislation of Ukraine is cited according to the database of the *Verkhovna Rada*, http://zakon2.rada.gov.ua/laws.

The law on equality

The law "On the Principles of Preventing and Combating Discrimination in Ukraine" (No. 5207-VI, 6 September 2012) was adopted as part of the government's efforts to fulfil the Association Agreement with the EU. It was significantly amended by Law No.1263-VII (13 May 2014).

Discrimination is defined by the law as "decisions, actions or omissions aimed at restriction or granting privileges with regard to individuals or groups of individuals" on certain grounds "if they render recognition and exercising of human rights and freedoms on equal grounds impossible" (Article 1). The law provides an open list of criteria for discrimination, namely race, skin colour, political, religious and other beliefs, gender, age, disability, ethnic and social origin, family and property status, place of residence and language.

The scope of the law covers all persons in the territory of Ukraine. The law concerns all public relations, and Article 4 provides an open list of the spheres of its application, namely civil and political activity, public service and service at local self-government bodies, justice, employment, health care, education, social protection, housing, and access to goods and services. The first draft of the law identified the forms of discrimination as direct discrimination, indirect discrimination, incitement to discrimination and harassment; in 2014, this list was complemented by assistance to discrimination.

Article 6 (3) establishes limits to the prohibition of discrimination such that positive measures are exempted. Positive measures are special protections for certain categories of persons, including the preservation of identity of particular groups, benefits and compensations, governmental social guarantees and special conditions for exercising certain rights.

The main components of governmental policies on preventing and combating discrimination are defined as non-discrimination, application of positive action, creating conditions for timely exposure of cases of discrimination and ensuring effective protection, education, advocacy and raising awareness about the issue among the population of Ukraine (Article 7). The law prescribes anti-discrimination expert evaluation as part of drafting of new legislation (Article 8).

The main tasks in preventing and combating discrimination are performed by the Parliament Commissioner for Human Rights (Article 10). The Parliament Commissioner has overall responsibility for ensuring compliance with the principle of non-discrimination; monitors adherence to the principle of non-discrimination in various spheres of public life; takes legal action in cases of discrimination to safeguard public interests; considers appeals of individuals and/or groups on issues of discrimination; provides expert conclusions on courts requests; puts forward suggestions on improving legislation; cooperates with international organizations and so on.

One of the problems concerning the implementation of Article 10 is that, in spite of the law enshrining the right of the Commissioner to lodge suits in court for the protection of public interests in cases of discrimination, no amendments have so far been introduced into Article 45 of the Code of Civil Procedure or Article 60 of the Code of Administrative Legal Proceedings of Ukraine. Hence, the Commissioner cannot file lawsuits in his/her own right but can only represent complainants in individual cases.

The Cabinet of Ministers of Ukraine are responsible for coordinating the work on prevention and combating discrimination (Article 11). Other public bodies, authorities of the Autonomous Republic of Crimea and local self-government bodies also have the power to submit suggestions on the improvement of legislation, take special measures, adhere to the principle of non-discrimination in their work, cooperate with public organizations on the implementation of the principle of non-discrimination, promote research in the field of preventing and combating discrimination, and undertake activities aimed at raising awareness on relevant issues (Article 12). It is important to note that this article does not grant powers on preventing and combating discrimination to other government bodies. Article 13 also lists of rights of civic organizations and natural and legal persons, including the right to represent persons contesting discrimination in courts.

Pursuant to Article 14, an individual considering him/herself a victim of discrimination, has the right to file a complaint with the government and local self-government bodies (in partial contradiction with Article 12 of the law), with the Parliament Commissioner on Human Rights and/or in court; such a complaint shall have no negative consequences for the claimant. Article 15 prescribes that an individual has the right to redress of material and moral damages inflicted by the act of discrimination. Individuals guilty of violating legislation on preventing and combating discrimination shall bear civil, administrative or criminal responsibility (Article 16). However, the law does not outline the procedure of compensating for pecuniary or non-pecuniary damages nor for apportioning guilt or responsibility, referring to other legislative acts of Ukraine. The first draft of the law did not include any procedural aspects of proving discrimination, such as the standards or burden of proof, but amendments were introduced into part 1 of Article 60 of the Code of Civil Procedure of Ukraine (13 May 2014), according to which the burden of proof in cases of discrimination is shifted to the defendant: the plaintiff submits factual data that indicate the presence of discrimination, and the defendant shall prove absence of discrimination.

Claims of discrimination are considered according to the standard procedure along with other requests submitted to the Commissioner. The law prescribes the following order: the claim is submitted to the Parliament Commissioner on Human Rights, or to the court. Where the Commissioner accepts the claim, he/she may:

- open proceedings on the case of violation of the rights of the individual;
- inform the complainant what actions he/she may undertake to defend their own rights, including consulting on alternative means of defence relevant for a specific case;
- refer the claim to a competent body and monitor its consideration.

If the claim is submitted directly to court, the Commissioner does not consider it; if the case is referred to court while being handled by the Commissioner, such handling is terminated.

The anti-discrimination law introduced amendments to the Code of Administrative Legal Proceedings. Pursuant to Article 2 of the new version, in court cases related to appealing the decisions or inaction of competent authorities, administrative courts have the power to conduct an investigation into whether such actions were taken in accordance with the principle of equality of all before the law, in order to prevent all forms of discrimination.

Criminal code

Article 161 of the Criminal Code of Ukraine addresses the violation of equality of citizens based on their race, ethnicity, or religious affiliation. It envisages liability for "intentional actions aimed at inciting national, racial of religious feud and hatred, humiliation of national honour and dignity or violation of feelings of citizens in relation to their religious affiliation, and direct or indirect restriction of rights or granting direct or indirect privileges to citizens on the grounds of race, colour of skin, political, religious or other beliefs, gender, ethnic and social origin, personal wealth, place of residence, language or other characteristics".

Article 300 prescribes liability for the importation, production and dissemination of products propagating the cult of violence and cruelty, racial, national and religious intolerance and discrimination. Punishment, according to this article, is up to three years' imprisonment. Moreover, motives of racial, ethnic or religious hatred and discord are viewed as aggravating circumstances pursuant to Article 3, part 67 of the General part of the Criminal Code; it is also a qualifying element of a number of other crimes such as murder, infliction of injury, torture and physical assault.

The law on minorities

Pursuant to Article 1 of the law "On National Minorities of Ukraine" (No. 2494-XII, 25 June 1992, further revised and amended):

> Ukraine shall guarantee equal political, social, economic, and cultural rights and freedoms to all citizens irrespective of their ethnic origin, as well as support to the development and expression of national identities. All citizens of Ukraine enjoy equal protection of the state. In ensuring the rights of persons belonging to national minorities, the state assumes that they are inalienable part of the universal human rights.

Article 9 prescribes that "citizens of Ukraine who belong to national minorities have the right to be elected or appointed on equal grounds to any positions in legislative, executive, judicial or local self-government bodies, the army, as well as in enterprises, establishments and organizations". Article 18 also proclaims that "any direct or indirect restriction of rights and freedoms of citizens on ethnic grounds is prohibited and punished according to law".

Electoral legislation

Ukraine has national elections (for president and parliament (Verkhovna Rada)) and local elections (for deputies of local councils at different levels, city and village mayors, etc). Verkhovna Rada and provincial, district and city councils are elected according to proportional or mixed representation systems. Political parties play a decisive role in the proportional electoral system.

The law "On Political Parties" (No. 2365-III, 5 April 2001) does not presuppose restrictions on the representatives of national minorities in creating their own political parties. Membership in political parties is free, and parties cannot restrict it to persons belonging to certain nationalities.

The law "On Election of People's Deputies of Ukraine" (No. 4061-VI, 17 November 2011, later revised and amended) guarantees equal electoral rights to citizens, inter alia, irrespective of their ethnicity. The law also guarantees against a division of single-member constituencies that would "disperse" the vote of national minorities and prevent them from electing "their" candidates. Article 18 specifies that:

<…>(T)he borders of single-member constituencies are defined taking into consideration the borders of administrative–territorial units, interests of territorial communities, and the settlement of national minorities in certain territories. Administrative–territorial units with compact settlement of particular national minorities and bordering each other shall constitute one electoral constituency. If in neighbouring administrative–territorial units the number of voters belonging to national minorities is higher than needed to form one electoral constituency, such constituencies are formed in a way that voters belonging to national minorities form the majority of voters in one of the constituencies".

The law "On Local Elections" (No. 595-VIII, 14 July 2015) does not set out any special privileges for representatives of national minorities. Article 4 of the law prescribes the equality of rights and opportunities to participate in electoral processes, ensured through a prohibition on privileges or restrictions for candidates on various grounds (race, colour of skin, political, religious and other beliefs, ethnic and social origin, wealth, place of residence, language and other characteristics).

Other legislation

Provisions on equality are included in a number of branch laws. According to the 1971 Labour Code (subsequently revised and amended) the state ensures equality of employment and labour rights for all citizens

irrespective of their origin, social and property status, race and ethnicity, gender, language, political views and religious affiliation, occupation, place of residence and other circumstances (Article 2[1]).

The law “On Public Service” (No. 3723-XII, 16 December 1993) guaranteed equal access to public services but does not directly prohibit discriminatory behaviour and only mentions ensuring the rights and lawful interest of citizens. This law has now been replaced by the law “On Public Service” (No. 889-VIII, 10 December 2015) which takes a similar approach, but here public servants are obliged to have a command of minority and regional languages within the scope required by law and by the conditions of public service, to prevent “discrimination of the state language”.

The law “On Television and Radio Broadcasting” (No. 3759-XII, 21 December 1993, and amended by Law No. 1715-VIII, 1 November 2016) stipulates the inadmissibility of violation of the freedom of television and radio outlets and specifically prohibits propaganda and incitement to national, racial, and religious feud and hatred, and propaganda of an exceptional nature, superiority or deficiency of people based, *inter alia*, on their belonging to a particular nation or race (Article 6). The National Council of Television and Radio Broadcasting of Ukraine has the power to promptly react to violations, take measures to terminate them and impose administrative sanctions. The law “On Print Mass Media (Press) in Ukraine” (No. 2783-XII, 8 December 1992) prohibits the inciting of racial, national and religious feud and presupposes the option of closing down a print media outlet following a decision of the court in cases of violation of this provision (Article 18). The law “On Advertising” (No.270/96-BP, 3 July 1996) bans commercials of a discriminatory character (Article 8). The law “On the Condemnation of Communist and National-Socialist (Nazi) Totalitarian Regimes and Prohibition of Propaganda of their Symbols” (No. 317-VIII, 9 April 2015) set out liability for demonstration and propaganda of communist and Nazi symbols.

III. Manifestations of discrimination and inequality, public reaction

There are publications and discussions on the topic of inequality on ethnic grounds, and discrimination in particular, in all three countries. It is most often raised by non-governmental organizations (NGOs), especially human rights organizations, and less often by ethnic minority organizations. The problem of discrimination on ethnic grounds is generally dealt with by a small number of professional and highly specialized NGOs that strive to follow international and European approaches, and which are mostly funded by foreign donors. In Moldova and Ukraine, activities to promote public discourse on issues of discrimination and inform the general public on the ways to combat it, are almost exclusively undertaken by specialized independent anti-discrimination bodies; this

work includes the publication of reports, dissemination of information, conducting training, press conferences and so on.

In all three countries, discrimination is mostly discussed as an abstract problem and as part of an agenda suggested by international organizations, rather than as a theme emerging internally from within society. Only a few instances of (systemic) discrimination on ethnic or racial grounds are regularly detected, analysed and countered; they mostly concern Roma and "visible minorities", including foreign citizens. There is much more attention paid to contiguous topics, such as hate crimes and hate speech. In both Moldova and Ukraine, there is a low level of trust in the government, including by minorities. Therefore, minorities tend to perceive all attempts to assert the ethnonational character of the state (through strengthening the position of the state language and the special role of the "titular" nationalities) as hostile to them. Thus, many people of "non-titular" nationalities have negative expectations for their future, viewing changes to language policies, culture and education as a coming abridgement of the rights and opportunities of minorities. Against this background, the real problems in the field of language policy, mass media, culture and education remain poorly examined, being mostly used for political propaganda.

The most prominent issue in all three countries remains the situation of Roma people. Roma belong to the poorest segment of the population and most are poorly educated; a large share has no official employment or they engage in unskilled labour. Many experience difficulties in accessing health care and other services, as well as in obtaining official identification documents. Low levels of income and general social deprivation in comparison with other people are combined with various forms of discrimination. Discrimination is most apparent in relations with law enforcement bodies, especially in the way searches and detentions are conducted, and in how detainees are treated. It is common for employers to refuse to hire Roma. Discrimination also manifests in the attitude of local authorities to taking care of the living conditions in localities where Roma communities live. These problems are most striking in Moldova and Ukraine, but less common and acute in Belarus.

Discrimination on ethnic grounds in relation to other groups remains "invisible"; even if the issue is raised, it is usually done in a purely speculative manner. Apart from the Roma, the most prominent discrimination is experienced by foreigners (mostly students) from Asian, African and Latin American countries.

There are manifestations of ethnic hatred and xenophobia in all three countries. Among the most common hate crimes are attacks on so-called "visible minorities" (people who differ from the majority in appearance or skin colour), and the vandalizing and ruining of Jewish gravestones. Hate speech is manifested mostly on the internet and in mass media; politicians and public officials sometimes resort to mild forms of hate speech with regard to minorities. The most

negative reaction among minorities in Ukraine is caused by real and perceived government support for radical nationalist groups and politicians.

The problem of disproportionately low representation of minorities in government is only voiced by minority organizations in Moldova.

There are critical commentaries regarding the language situation and policies as causes of inequality and even discrimination in all three countries. The reason for this is the broad bilingualism – the coexistence and competition of the language of the "titular" nation and Russian – in practically all spheres of private and public life. Both the real linguistic situation and official policies result in many asymmetries in the practical use of languages, leading to various types and degrees of public discontent. In Belarus, Belarusian and Russian have equal status as state languages. In Moldova, the only state language is Moldovan/Romanian Russian has the indistinctly defined status of a language of interethnic communication and Gagauzian is the official language of Gagauzia. In Ukraine, the sole state language is Ukrainian, while Russian (and some other languages) received the status of regional languages in certain territories after 2012. Therefore, situations emerge where the state language has a limited function, yielding instead to Russian; people are hence impaired in their opportunities to obtain information, access cultural assets and even receive state services in the state language. On the other hand, state policy can become a pretext (or genuine reason) for the limitation of rights and opportunities for those who have insufficient command of the state language, giving rise to concerns for the future. Discontent and demands on both sides are regularly formulated in terms of discrimination and violation of equality. Strictly speaking, the command of a language is not directly related to ethnic affiliation, but disputes on language policies are associated with nation building and are projected onto ethnic relations in public discourse.

Conflicts and discords concerning the use of languages are linked to other issues of symbolic significance. These concern the officially approved nationalist interpretations of history, the contribution of particular ethnic groups to national history and the role of nationalist movements. Ethnic minorities are often not represented – or are represented in a negative light – in textbooks, museum exhibitions or in the celebration of official holidays. Indeed, current governments in Moldova and Ukraine glorify historical figures and organizations that engaged in persecution, or even the extermination, of minorities.

In Ukraine, in the wake of the occupation of Crimea and the beginning of the war in the east, two new themes appeared: the situation of people displaced from those regions to other parts of country, and the situation of Ukrainian citizens who remain in the occupied territories. State measures create additional problems for these people and put them in special conditions, in comparison to other citizens of Ukraine, in exercising their rights protected by law. Discrimination based on one's prior or present place of residence is

an important test of how well anti-discrimination mechanisms work in Ukraine; moreover, everyday discrimination against internally displaced persons or residents of occupied territories show similarities to discrimination on ethnic grounds, because it goes hand-in-hand with xenophobia and stereotypes.

1. Belarus

The existence of discrimination in Belarus is not officially acknowledged. Pursuant to paragraph 19 of the Concept of National Security of the Republic of Belarus (adopted by Presidential Decree No.575, 9 November 2010), "the grounds for ethnic, confessional, racial, and political discrimination and hatred are absent in Belarus, and its specific manifestations are isolated and sporadic".

Situation of Roma

In Belarus, no special comprehensive surveys on the problems of Roma have been conducted, so information about their situation and the problems they face is too abstract and fragmentary. According to the available data drawn from various publications, Roma experience social and economic difficulties in Belarus just as in other Central and Eastern European countries; in particular, they experience significantly higher levels of unemployment, their income is lower, and their living conditions are worse than those of the surrounding population. Many Roma encounter xenophobia in daily life and there are problems with access to education. Another issue is police prejudice towards Roma, specifically ethnic profiling, arbitrary detentions and rude treatment that humiliates their dignity.[52]

Manifestations of xenophobia

Hate speech in Belarus is most often targeted at Roma. A detailed monitoring of hate speech directed at Roma was conducted from 1–20 January 2015 by the Grodno representation of the "Belarusian Helsinki Committee" (BHC).[53] According to the BHC's definition, the following manifestations are identified as hate speech: statements forming a negative image of the Roma community through references to specific incidents; portrayal of the Roma ethnicity in an insulting context; depiction of the Roma ethnicity as inseparable from a criminal context; expressions reinforcing xenophobic sentiments towards Roma; conclusions about human features or actions based on observable or assumed characteristics; expressions aimed at the social exclusion of citizens who do not correspond with a generally accepted pattern (in particular, questioning the citizenship of Roma since they are not ethnic Belarusians); as well as mechanical and uncritical reproduction of xenophobic expressions. The following media headlines serve as examples

[52] Nataliya Kutuzova, Язык вражды, этническое профилирование и правонарушения на почве ненависти как проявления дискриминационного отношения [Hate Speech, Ethnic Profiling and Violations on the Grounds of Hatred as Manifestations of Discriminatory Attitudes], in: *Право на равенство и недискриминацию этнических меньшинств в Беларуси. Аналитический отчет* [The Right to Equality and Non-Discrimination of Ethnic Minorities in Belarus. Analytical Report] / N. Kutuzova, M. Rybakov, D. Chernykh. Minsk: 2015, pp. 36–37.
[53] Data is provided by Roman Yurhel who conducted monitoring for the BHC.

of hate speech: "A Gypsy Thief Caught", "Gypsy Crosses Palm with Silver", "Gypsies Paid a Visit", "Gypsies Detained with Methadone". The BHC examined the official websites of six provincial (oblast) executive councils, eight city councils and 22 city administrations, 118 rayon (district) councils, the Ministry of Interior of the Republic of Belarus and its six oblast departments. Out of 154 official websites of executive bodies, 23 (14.9%) contained manifestations of hate speech. Of 152 national, oblast and rayon mass media outlets in Belarus, 46 (30.3%) contained hate speech in relation to Roma.54 Similar monitoring in the first half of 2016 demonstrated the same phenomenon but with a lower number of hate speech manifestations in both mass media publications and official statements.[55]

Inequality in language use opportunities[56]

The official position of Belarusian authorities with regard to bilingualism is that two state languages are recognized by law and are equal. In practice, most government bodies use one of the two languages – mostly Russian. Both languages are used in a few cases, and Belarusian even dominates in Belarusian-language schools and in some cultural establishments, higher educational and academic institutions, and civic society organizations. Russian continues to dominate in law-making, official and business communications, mass media, and most official public presentations. This mismatch between declarations and real practices may be characterized as "asymmetric bilingualism".

A major problem is that the bulk of legislative and regulating acts are published in one of the two state languages, but not both. As a result, only 3.1% of the more than 200,000 laws passed to date are in Belarusian.[57] In the course of implementing the laws, public authorities also use only one language, and citizens that use the other are disadvantaged. In practice, court proceedings are usually conducted in Russian a Belarusian interpreter is invited. There is a legal provision that public servants are obliged to have a command of both state languages, but this is not the case in practice, and many cannot communicate in one or other of the languages at all.

To rectify the situation, it seems expedient to draft and publish legislative and regulatory

[54] Data is provided by Roman Yurhel, the Grodno representative of the BHC. For a general overview of the issue, see: Nataliya Kutuzova, Язык вражды, этническое профилирование и правонарушения на почве ненависти как проявления дискриминационного отношения [Hate Speech, Ethnic Profiling and Violations on the Grounds of Hatred as Manifestations of Discriminatory Attitudes], in: *Право на равенство и недискриминацию этнических меньшинств в Беларуси. Аналитический отчет* [The Right to Equality and Non-Discrimination of Ethnic Minorities in Belarus. Analytical Report] / N. Kutuzova, M. Rybakov, D. Chernykh. – Minsk: 2015, pp. 35–39.
[55] Мониторинг языка вражды в информационных материалах [Monitoring of hate speech in information materials], http://romaintegration.by/wp-content/uploads/2016/11/monitoring.pdf.
[56] The issue the two state languages in Belarus is not related to ethnic divisions; nevertheless, this topic has a lot in common with the problems of equality on ethnic grounds, and the issues are closely intertwined in neighbouring Moldova and Ukraine.
[57] http://naviny.by/rubrics/society/2015/01/27/ic_articles_116_188085.

acts in both state languages. It should be noted that in 2015, the Chairman of the Constitutional Court asserted the necessity of issuing legislative acts in both languages pursuant to Article 17 of the Constitution regarding equality on linguistic grounds.[58] However, there was no practical follow-up. Going forward, laws already adopted and in force need official translations. In recent years, there has been some movement towards increasing the share of Belarusian in state and public use, but these measures are not sufficient to ensure real equality between the two state languages and, consequently, the equality of citizens in the language sphere.

According to many estimates, the situation of Belarusian education and culture is comparable to that of ethnic minorities in general. The "Francis Skaryna Belarusian Language Society", a civic association, conducted its own public survey in Homiel, the second largest city in Belarus, with the population over half a million. They found that there is not a single preschool educational institution functioning in the Belarusian language, and not a single Belarusian school. Having asked 120 kindergartens about the possibility of organizing groups in Belarusian, 30% responded that they did not have teachers with a command of the language, although all teachers learn Belarusian in college and university. In Homiel, Belarusian is not used in higher education, and local judges are not capable of conducting court proceedings in Belarusian.[59] Nevertheless, one class of 26 pupils was set up in Homiel with Belarusian as the language of instruction in September 2016.[60] In the beginning of 2017, the Centre for Belarusian Language started working with the aim of becoming a civic platform for Belarusian communication and the promotion of the Belarusian language.[61]

Possibilities for opening minority schools

At present, there are four schools in Belarus with a minority language as the main language of instruction. Two are Polish (in Grodno and Volkovysk) and two are Lithuanian (in Rymdzuny and Pelias); all four are in the Grodno oblast. These are general education state schools teaching curricula approved by the Ministry of Education of Belarus. State schools also teach national minority languages as subjects and there are optional school courses and various forms of complementary language and culture studies beyond the public school system.

There are formal and legal mechanisms for establishing new schools with instruction in minority languages, though none have been actually opened since the end of the 1990s. The most common explanations are the decrease in demand for this kind of education, the availability of spaces in existing schools, insufficient efforts and willingness of parents to teach their children

[58] Ibid.
[59] According to the data of the Homiel branch of the BHC.
[60] http://belsat.eu/news/u-gomli-26-dzetak-pajshli-u-pershy-belaruskamouny-klas/.
[61] http://gomel.today/rus/news/gomel-5077/.

in non-state languages[62] as well as the lack of political will to support the creation of such schools.

The Polish and Lithuanian associations have been the most active national minorities in establishing schools in minority languages since the end of the 1980s. The creation of minority-language schools is mostly due to their proactive approach and aid from the governments of Poland and Lithuania.

In the recent years, authorities (mainly at the local level) have attempted to convert the Polish-language schools by adding learning groups with instruction in Russian, or having some subjects taught in Russian or Belarusian. This provoked a negative reaction from parents and the authorities abandoned these plans.

It is important to note that Ministry of Education approval is required to set up a school with instruction in a minority language, and the process requires a sufficient number of active parents ready to send their children to this school. There are also a number of formalities along with securing adequate facilities and resources. In the 1990s, representatives of the Polish minority proposed a new Polish-language school in Novogrudok (Grodno oblast), but this initiative failed because the local authorities were adamant that the school would not attract a sufficient number of pupils.

The efforts of other national minorities to establish their own educational institutions within the state system are less noticeable. Complementary forms of language and culture training (electives, courses, Sunday schools, etc.) appear to be more appropriate under the circumstances.

Neglect of minority organizations

National minorities are, in many cases, dependent on various forms of financial help from their kin states; for ethnic communities without a kin state, aid from organizations of fellow nationals in other countries is important. This is especially the case in Belarus, given the lack of state funding for the activities of ethnic communities. Literature, school textbooks and other teaching materials, specific musical instruments, traditional national costumes and so on are usually supplied by other countries. Belarusian legislation is quite strict in regulating the receipt of such assistance from abroad, imposing a number of burdensome and often contradictory formalities on the process; there is a need to simplify the regulatory acts in this sphere.

The Code on Culture regulates all forms of culture-related activities (concerts, festivals, etc.), listing the restrictions in great detail. This often limits the activities of national minorities. For example, an organization must obtain a licence to organize concerts, which may require a civil society association to amend its statute and incur other difficulties. In reality, organizing an event

[62] The parents' position is due to the fact that it is virtually impossible for a child to receive professional education in their native language (including Belarusian), and there is an assumption that students from non-Russian schools will have less chance of being admitted to higher education institutions.

without the engagement of public authorities results in a wide range of formal and informal difficulties. There are other obstacles to holding events; for instance, the organizers, viewers and performers of a concert or disco party are prohibited from exposing any unregistered symbols. The notion of "unregistered symbols" is rather nebulous and not all symbols (including traditional attributes of a wide variety of nationalities) are included in the state register.

The most resonant conflict is one that took place in 2005 between the Union of Poles of Belarus (UPB) and the Belarusian government. In March 2005, the UPB congress elected Ms Andzelika Boris as its chairperson, but the Ministry of Justice of Belarus refused to acknowledge these elections on procedural grounds. A new leadership was elected at a new congress, but the leadership headed by Ms Boris refused to acknowledge the new elections, believing they were a ploy for the government. In some European (especially Polish) mass media, this incident was described as persecution of the Polish minority, though it was in fact a response to the political opposition activities, rather than the ethnic affiliation, of the Union's members.[63]

2. Moldova

In Moldova, the topic of equality on ethnic and linguistic grounds remains strongly politicized. Minority organizations often view language policies as a bid to gradually eliminate Russian ("the language of interethnic communication") and minority languages from the public sphere.[64] Access to jobs in the public sector is also often seen as a means of excluding non-Moldovans from governmental structures. Educational reform evokes a similar response. However, there has not been any careful consideration of these processes, even by minority organizations themselves, and reliable data is therefore non-existent.

The situation of Roma

According to the 2004 census data, there were 12,271 Roma in Moldova (0.4% of the population), though expert estimates are somewhat higher.[65] Experts and international organizations agree that the majority of Roma in Moldova experience systemic social difficulties and are subject to discrimination, in particular in access to goods and services, as well as facing xenophobia from mainstream society.[66] Roma are disproportionately unemployed or in low-paid, low-skilled jobs. Unequal opportunities are apparent in employment, access to land

[63] See: *Half an Hour to Spring. Report on Inequality and Discrimination in Belarus*. ERT Country Report Series: 3. London, November 2013, pp. 92–93.
[64] Резолюция Республиканской конференции, приуроченной к 20-летию принятия Рамочной конвенции о защите национальных меньшинств [Resolution of the National Conference on the 20th Anniversary of the Adoption of the Framework Convention for the Protection of National Minorities], 27 June 2015. The authors have a copy of the original.
[65] *From Words to Deeds: Addressing Discrimination and Inequality in Moldova*. The Equal Rights Trust Country Report Series: 7. London, June 2016, p. 38.
[66] Ibid., pp. 38–41.

and housing, health care and education.[67] Prejudiced, selective and degrading treatment by the police is particularly problematic.[68] The rate of school attendance is lower, even at primary level, for Roma children than for other ethnicities, mostly because of poverty; 43% of Roma children do not go to school in comparison with 6% for the rest of population.69 There have also been cases of refusal to register new-born Roma children, leading to social exclusion, for instance, in access to health care due to the absence of identity papers. The situation of Roma people is exacerbated by their lack of awareness of their rights and their inability to access justice. In addition to unequal opportunities and discrimination, Roma face poverty and social isolation. Roma generally do not participate in public and political life, including at the local level; the Roma political party has failed to win a single deputy's seat.70 Two Roma women were elected to local councils, for the first time, only in 2015.

Legislation on education

The education legislation of Moldova theoretically provides opportunities to be educated in, or to study, minority languages. However, preschool, professional and higher education in non-state languages is not guaranteed, apart from in Gagauzia. Since independence, opportunities to enrol in higher education institutions by taking exams in a non-state language, and to study in Russian or other languages, have gradually diminished. There have been two parallel processes: the number of classes and courses in Russian and other non-state languages is decreasing, and minority-language schools (especially Russian) do not facilitate sufficient command of the state language for admission to higher education. Nor does the latter provide additional language training for students. In practice, it limits non-Moldovan's access to higher education and leads to a decrease in the number of non-Moldovan students in higher education.

The Code on Education of the Republic of Moldova (No.152, 17 July 2014, subsequently amended) in Article 9 (3) declares the following principle: "The basic funding of general education is based on the principle that 'money follows students', according to which funding allocated to a pupil or student is transferred to the educational institution where he/she studies". Pursuant to Article 10 (1), "teaching is carried out in the Romanian language and, in line with the opportunities of the education system, in one of the languages of international communication or, in accordance with part (2), in the languages of national minorities". In practice, it leads to the "optimization" of schools, which means closing down local schools with a small number of pupils and transferring them to bigger schools serving several residential communities. Weak guarantees in relation to education in minority languages and reservations embedded in the law lead to the

[67] Ibid., pp. 48–64.
[68] Ibid., pp. 41–47.
[69] Ibid., p. 48.
[70] Ibid., p. 62.

closure and curtailment of classes in minority languages (along with mainstream schools and classes). The fact that the educational code was drafted behind closed doors, without consulting minorities or considering their opinions, provoked a strong negative reaction among minority activists.[71]

Manifestations of xenophobia

Manifestations of xenophobia in relation to "visible minorities", including dark-skinned people of foreign origin, are registered in Moldova, including racist speeches by politicians and discriminatory advertisements.[72]

Representation of minorities and access to justice[73]

Article 24 of the Law on Minorities proclaims that persons belonging to national minorities have the right to proportional representation at all levels in executive, judicial and law enforcement bodies. This provision is declarative in nature and is not underpinned by any mechanisms for implementation. The estimated level of minority inclusion in such bodies remains low for both larger and smaller groups; however, no special monitoring of minorities in government has been conducted.74 Another key factor limiting minority recruitment to governmental bodies is the lack of command of the state language. The government of Moldova acknowledges the limited representation of minorities in public service, noting that "one of the problems" in this field was the linguistic integration of minorities.75 Indeed, Article 27 (1b) of the law "On Public Service and the Status of Public Servants" (No.158, 4 July 2008) stipulates knowledge of Moldovan as a prerequisite for being admitted to public service.[76]

To date, teaching of the state language to non-native speakers in public education institutions has been unsatisfactory. There are almost no subsidies for state-language courses. The official programme of teaching

[71] See also Report of the UN Special Rapporteur on Minority Issues – Mission to the Republic of Moldova, 11 January 2017 (A/HRC/34/53/Add.2), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/004/38/PDF/G1700438.pdf?OpenElement.

[72] *From Words to Deeds: Addressing Discrimination and Inequality in Moldova*. The Equal Rights Trust Country Report Series: 7. London, June 2016, pp. 66–71.

[73] See also, Report of the UN Special Rapporteur on Minority Issues – Mission to the Republic of Moldova, 11 January 2017 (A/HRC/34/53/Add.2), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/004/38/PDF/G1700438.pdf?OpenElement.

[74] Advisory Committee on the FCNM. Third Opinion on Moldova, ACFC/OP/III(2009)003, 26 June 2009. Strasbourg: Council of Europe, § 169–170; CERD (Committee on the Elimination of Racial Discrimination), 2011. Report of the Committee on the Elimination of Racial Discrimination, Seventy-eighth session (14 February –11 March 2011)/Seventy-ninth session (8 August – 2 September 2011). Supplement № 18 (A/66/18). Geneva: United Nations, § 16.

[75] Comments of the Government of Moldova on the Third Opinion of the Advisory Committee on the Implementation of the FCNM by Moldova. GVT/COM/III(2009)001, 11 December 2009. Strasbourg: Council of Europe, p. 22.

[76] Also, command "of one of the official languages of interethnic communication used in the particular area in the scope defined by law". Similar provisions are contained in Article 7 of the Law on Languages.

the state language to adults was only adopted in 2015.[77]

Separately, access to justice and communication with government institutions is an issue since the legislation does not clearly assign responsibility to courts to respond to requests made in Russian – "the language of interethnic communication" – rather than in the state language.[78]

The Transnistrian region

Equality on ethnic and linguistic grounds is interpreted in Transnistria as the prohibition of violating equal rights, freedoms and lawful interests, a prohibition on incitement to hatred (broadly defined), and as equality of citizens in cultural and linguistic spheres, implying a recognition of the symbolic equality of cultures. The only means of protection is law enforcement, since the Ombudsman of the PMR does not deal with issues of equality and no special independent anti-discrimination bodies have been established.

The officials and public figures of Transnistria seem sincere in their belief that discrimination and inequality on ethnic and linguistic grounds do not exist in PMR, and that authorities effectively tackle any incitement to hatred. Hate crimes and hate speech are indeed very rare, but they do sporadically occur. For example, unidentified persons regularly defile the Holocaust remembrance monument in Bendery,[79] Jewish burials and cemeteries in Bendery, Grigoriopol, and Tiraspol have been vandalized,[80] and the only synagogue of PMR, located in Bendery, was damaged on one occasion.[81] There has been no public information about the exposure and punishment of the guilty. Since 2015, however, anti-extremist law is increasingly used in relation to opponents of the current political regime.

Equality in cultural and linguistic spheres is not backed by protective mechanisms; indeed, it is systematically violated and remains mostly declarative. External observers, and some Transnistrian civic activists, point out the factual inequality of

[77] *From Words to Deeds: Addressing Discrimination and Inequality in Moldova*. The Equal Rights Trust Country Report Series: 7. London, June 2016, pp. 224–225.
[78] Ibid., p. 223.
[79] Вандалы в очередной раз осквернили памятник жертвам Холокоста в Бендерах [Vandals Once Again Defiled the Holocaust Remembrance Memorial], *Novy Den'*, 18 September 2012, https://newdaynews.ru/pmr/404268.html.
[80] Очередное нашествие варваров. Тираспольские власти вновь бездействуют [Another Barbarian Invasion. Tiraspol Authorities are Yet Again Inactive], *Jewish News Agency*, 9 April 2004, http://www.aen.ru/index.php?page=article&article_id=207&category=sketches&PHPSESSID=992eb20bdbckg93166ic1o8eg5; Не пощадили могилу ветерана… [A Veteran's Grave was not Spared…], *Jewish News Agency*, 8 May 2006, http://www.aen.ru/index.php?page=brief&article_id=38230&PHPSESSID=992eb20bdbckg93166ic1o8eg5; Jewish cemetery vandalized in Transnistria, *Jewish.Ru*, 25 April 2008, http://www.jewish.ru/news/cis/2008/04/news994261961.php;
Осквернено еврейское кладбище в Приднестровье [Graves Defiled at Jewish Cemetery in Tiraspol], *Jewish.Ru*, 24 April 2012, http://www.jewish.ru/news/cis/2012/04/news994306950.php.
[81] В Бендерах осквернили синагогу [The Synagogue Vandalized in Bendery], *Komsomoskaya Pravda – Moldova*, 4 March 2009, http://www.kp.md/daily/24254/451868/.

official languages and how this disadvantages those who only use Moldovan and/or Ukrainian but not Russian.[82] In PMR, Russian dominates official communication, education, culture and mass media, and anecdotal evidence suggests that official bodies do not accept inquiries or requests submitted in other languages.

The most acute issue in the realm of ethnic relations and linguistic policy is that of schools using Moldovan with the Latin script. There are currently eight such schools with approximately 1,500 pupils[83] (or just over 1,000 pupils according to Promo-Lex data)[84] in comparison with 4,086 pupils in official Moldovan schools using Cyrillic script (in the 2015/16 school year).[85] In the early 1990s, a number of school administrations and parents opted for instruction in Moldovan based on the Latin alphabet. These schools were deprived of funding and were increasingly subjected to pressure from the PMR authorities (even being expelled from their premises, having utilities shut down and receiving direct threats); up until the mid-1990s, they were unable to function normally and were on the verge of closure. Most of these schools fell under the jurisdiction of the Ministry of Education of Moldova, and some had to relocate to territory controlled by Moldova.[86] Moreover, teachers, pupils and parents at these schools are continuously under pressure from PMR authorities.[87] This situation has created numerous other formal problems, including with the registration and licencing of such schools. Negotiations under the auspices of the OSCE mission in Moldova has led to an only partial improvement of the situation: five schools have now been registered, but they are not formally licenced and cannot issue diplomas recognized by the PMR.[88] The Grand Chamber of the ECHR in "Catan and Others v. Moldova and Russia"[89] acknowledged that this situation constitutes a violation of Article 2, Protocol No. 1 of the ECHR (the right to education) and stated that it shall be the

[82] Hammarberg, Thomas, *Report on Human Rights in the Transnistrian Region of the Republic of Moldova*, 14 February 2013. United Nations, http://md.one.un.org/content/dam/unct/moldova/docs/pub/Senior_Expert_Hammarberg_Report_TN_Human_Rights.pdf.

[83] *Доклад о соблюдении прав человека в Республике Молдова в 2015 году* [Report on Protection of Human Rights in the Republic of Moldova in 2015]. Chişinău: Office of the People's Advocate, 2016, p. 274.

[84] Observance of Human Rights in the Transnistrian Region of the Republic of Moldova, 2015 Retrospect, Promo-Lex Report, Chişinău, 2016, https://promolex.md/upload/publications/en/doc_1456905480.pdf.

[85] Аналитическая информация по основным показателям деятельности Министерства просвещения Приднестровской Молдавской Республики за 2015 год [Analytical information on the main criteria of the work of the Ministry of Education of the Pridnestrovian Moldavian Republic for 2015], http://minpros.info/index.php?option=com_content&task=view&id=234&Itemid=9&lang=rus.

[86] *The Moldovan-Administered Latin-Script Schools in Transdniestria: Background, Current Situation, Analysis and Recommendations*. Report. November 2012. The Hague: OSCE HCNM, pp. 11–18, http://www.osce.org/moldova/99058?download=true.

[87] *Доклад о соблюдении прав человека в Республике Молдова в 2015 году* [Report on Protection of Human Rights in the Republic of Moldova in 2015]. Chişinău: Office of the People's Advocate, 2016. p. 275.

[88] *The Moldovan-Administered Latin-Script Schools in Transdniestria: Background, Current Situation, Analysis and Recommendations*. Report. November 2012. The Hague: OSCE HCNM, pp. 41–44.

[89] ECHR. *Case of Catan and Others v Moldova and Russia* (Application nos. 43370/04, 8252/05 and 18454/06). Grand Chamber Judgment from 19 October 2012.

responsibility of the Russian Federation, as a country exercising effective control over the territory of Transnistria.

Roma are considered the most vulnerable ethnic group in Transnistria. According to the 2004 census, they number around 500 persons although some estimates put them at over 5,000. Due to poverty and settlement in isolated rural areas, they often have limited access to education, health care services, employment and so on. Roma children can often not read or write and do not have any personal documents, which means they are not supervised by the local health care system. Roma children also experience continuous discrimination from other children in their surroundings, including bullying, insults and humiliation.

Aside from ethnic relations, there is also discrimination on the basis of citizenship, namely a number of unjustified requirements and limitations on people living or working in PMR without its *de facto* citizenship.[90]

3. Ukraine

In general, the situation in Ukraine is similar to that of Moldova. Equality on the grounds of ethnicity and language are politicized and exacerbated by the state's public affirmations interpretations of history and the country's future development based on Ukrainian ethnic nationalism. Similarly, disputes around the law "On the Foundations of Language Policy", which provides opportunities for using Russian and other languages in the public sphere, and around the law's consideration by the Constitutional Court of Ukraine,[91] have prompted growing concern that linguistic rights will become more limited in the near future. There are similarly negative expectations regarding proposed amendments to the law on education which would see guarantees of minority-language education curtailed.[92] Nobody, however, including minority organizations, has conducted an accurate and detailed analysis of the processes in this area, and thus there is a lack of complete or reliable data.

The situation of Roma

Roma are one of the most socially vulnerable groups in Ukraine. According to the 2001 census, they constituted 47,600 people, with 14,000 living in Transcarpathia (Zakarpattia province (oblast)), 4,100 in Donetsk, 4,000 in Dnipropetrovsk and Odessa, 2,300 in Kharkiv and 2,200 in Luhansk oblasts. Other estimates put the number of Roma in Ukraine

[90] See: *Доклад о соблюдении прав человека в Республике Молдова в 2015 году* [Report on Protection of Human Rights in the Republic of Moldova in 2015]. Chișinău: Office of the People's Advocate, 2016. p. 274–278.
[91] Конституційний суд перегляне закон «про мовну політику» часів Януковича [The Constitutional Court Will Revise the Law "On Language Policy" from the Yanukovych Era], 1 November 2016, *Hromadske.Beta*, http://hromadske.ua/posts/konstytutsiinyi-sud-perehliane-zakon-pro-movnu-polityku.
[92] Валерія Лутковська звернулася до Верховної Ради України щодо внесення змін до проекту Закону «Про освіту» [Valeria Lutkovska Addressed the *Verkhovna Rada* of Ukraine on the Amendment of the Draft Law "On Education"], 28 November 2016, http://www.ombudsman.gov.ua/ua/all-news/pr/281116-jn-valeriya-lutkovska-zvernulasya-do-verxovnoii-radi-ukraiini-schodo-vnes/.

somewhere between 120,000 and 400,000.[93] Among the most well-known problems facing the Roma population of Ukraine are low levels of education and high level of unemployment, unsatisfactory health conditions, frequent absence of identity documents, poor living conditions and anti-Roma sentiment in broader society.[94] Human rights organizations report on the segregation of Roma children in education, with up to 90% of Roma children failing to graduate from school.[95] Roma who fled the eastern areas of Ukraine face specific challenges and even greater discrimination compared to other internally displaced persons.[96]

Manifestations of xenophobia

Mass media and human rights organizations repeatedly report public invectives against some ethnic groups, including calls for their discrimination and expulsion. Occasionally, violence against minorities takes place, or their property is demolished, including vandalism of synagogues and Jewish cemeteries. Most such crimes, including acts of hate-driven hooliganism, are accompanied by hate speech against the whole Jewish community of Ukraine. According to monitoring commissioned by the Eurasian Jewish Congress,[97] there was one case of violence (presumably based on anti-Semitism) and 19 cases of anti-Semitic vandalism registered in Ukraine in the first 11 months of 2016.[98] However, there has been a gradual decrease in anti-Semitic violence and vandalism since the peak of the mid-2000s. Nevertheless, various xenophobic and overtly inflammatory materials still circulate in print and online media, including such openly operating resources as “Antizionism” or “Chosenness of the Nation”.

Ethnically motivated violence and hate speech are developing in the background of the war in the east of Ukraine, especially with the appearance of paramilitary organizations, outside of government control, that attract people with radical nationalist views. Andriy Biletskiy, the commander of “Azov”, one of the biggest legally operating volunteer regiments, is also the leader of the “Social–National Assembly” and “Patriot of Ukraine”

[93] *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*. Warsaw, August 2014, p. 11.

[94] *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine.* The Equal Rights Trust Country Report Series: 5. London, August 2015, pp. 125–143;
International Charity Foundation Roma Women Fund “Chirikli”. Study of the Problems of Roma Population Based on Monitoring Conducted in the Autonomous Republic Crimea, Odessa and Zakarpattia Oblasts, Kyiv, 2014.

[95] Stakeholders’ Report concerning Ukraine’s Periodic Report under the International Convention on the Elimination of All Forms of Racial Discrimination. Evaluation of implementation of the CERD concluding observations on Ukraine’s 19–21st periodic reports (CERD/C/UKR/CO/19–21, 14 September 2011), pp. 10–11.

[96] See: Альтернативный отчет о выполнении Украиной Международной конвенции о ликвидации всех форм расовой дискриминации. Подготовлен Антидискриминационным центром «Мемориал» и Харьковской правозащитной группой к 90-й сессии КЛРД ООН [Alternative Report on Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination by Ukraine. Prepared by the Anti-Discrimination Centre “Memorial” and Kharkiv Human Rights Protection Group for the 90th Session of UN CERD], 2016. pp. 17–19.

[97] See Мониторинг ксенофобии [Monitoring of Xenophobia], http://www.eajc.org/page443.

[98] Vyacheslav Likhachev, Антисемитизм в Украине, 2016 [Anti-Semitism in Ukraine, 2016], 21 December 2016, http://eajc.org/page18/news56148.html.

organizations. As with many other members of "Azov", he does not hide his racist and neo-Nazi views. This did not prevent Biletskiy from becoming a deputy of the *Verkhovna Rada* as part of one of the ruling parties, however. Nor did it prevent the "Azov" regiment from being legalized as part of the National Guard of Ukraine.

There have also been some large-scale incidents of violence, or threats of violence occur, often involving the participation of a public official. On 26 August 2016, a child's body was found in an abandoned house on the outskirts of Loshchinovka (a village in Izmail rayon (district), Odessa oblast) with signs of a violent death. A local Roma man was deemed to be a suspect and detained, following which around 300 village inhabitants gathered and started to destroy the houses of the local Roma community. One house was set on fire and others had their windows and furniture broken.[99] The open-air rally of the local residents voted for a resolution to expel the Roma from Loshchinovka, which was signed by the head of the village administration. A criminal case on the demolition of property was commenced,[100] but none of the participants or instigators were brought to justice. Similar smaller incidents have occurred and continue to occur in other parts of Ukraine.[101]

Symbolic representation of minorities in culture and education

There are no textbooks or manuals on the history and culture of national minorities in Ukraine[102] approved by the Ministry of Education and Science. However, there are some public discussions on the matter,[103] notably around a private project[104] to create a textbook on the multi-cultural history of the country.

In 2015, encouraged by the official provision that "one of the main tasks of the National

[99] Убийство в Лощиновке: все подробности трагедии [The Murder in Loshchinovka: Details of the Tragedy], RBK – Ukraine, 29 August 2016, https://daily.rbc.ua/rus/show/ubiystvo-loshchinovke-podrobnosti-tragedii-1472460981.html;
Вбивство дівчинки на Одещині: з села Лощинівка виселяють всіх ромів [The Murder of the Girl in Odessa Region: All Roma are Expelled from the Village of Loshchynivka], UNIAN. 28 August 2016, http://www.unian.ua/society/1490536-vbivstvo-divchinki-na-odeschini-z-sela-loschinivka-viselyayut-vsih-romiv.html.

[100] В селі на Одещині вбили дитину: громада влаштувала погроми, вимагає виселити ромів [A Child Killed in the Village of Odessa Region: The Community Resorted to Pogroms Trying to Expel Roma], *Ukrainska Pravda*, 28 August 2016, http://www.pravda.com.ua/news/2016/08/28/7118910/.

[101] See for example, Запобігти «лощинівському сценарію»: правозахисна делегація відвідала село Шелудьківка [To Prevent the "Loshchynivka Scenario": Human Rights Organization Visited the Village of Sheludkivka], *Pravovyi Prostir*, 18 January 2017, http://legalspace.org/ua/napryamki/posilennya-romskikh-gromad/item/8598-zapobihty-loshchynivskomu-stsenariiu-pravozakhysna-delehatsiia-vidvidala-selo-sheludkivka.

[102] *Парламентські Слухання «Роль, значення та вплив громадянського суспільства на формування етнонаціональної політики єдності в Україні»* [Parliamentary Hearings "Role, Significance and Impact of the Civil Society in the Formation of Ethno-National Policies of Unity in Ukraine"]. Kyiv, 2015, p. 73–74.
See also Kabanchyk, I. Проблеми викладання висвітлення історії євреїв україни в підручниках з історії держави [The Problems of Teaching the History of Jews of Ukraine in Textbooks on the History of the Country], in: *Bulletin "Holocaust i Suchasnist'"*, Issue 11, http://www.holocaust.kiev.ua/bulletin/vip11/vip11_5.htm.

[103] http://www.memory.gov.ua:8080/ua/479.htm.

[104] http://oipopp.ed-sp.net/public/oipopp/repository/metod/1119_1_0.pdf.

Museum of History of Ukraine is to exhibit the history and culture of the ethnic groups of Ukraine", the Public Council under the Ministry of Culture suggested a permanent exhibit on national minorities. The Council approved the thematic structure of the exhibit and addressed a letter of request to Vyacheslav Kyrylenko, then the Minister of Culture. A similar request was submitted to the director of the National Museum of History of Ukraine. In both cases, consideration of the request was postponed for an indefinite period. The situation with other museums is largely the same. The main reason is that the museums' management see no value in the artefacts offered by minorities. One of the few exceptions is the Mykolaiv Regional Museum of Local History, which established an exhibition devoted to national minorities.[105]

The issue of exhibiting the historical heritage of national minorities and indigenous peoples is reflected in the Implementation Plan of the National Strategy in the Field of Human Rights, in a chapter named "Protecting the Rights of Indigenous Peoples and National Minorities" (paragraph 3, item 115 of "The Policy of Interethnic Tolerance"). The Ministry of Culture and the Commission on Interethnic Relations and Cultural Diversity of the Public Council under the Ministry suggest that ethnic minorities cooperate with museums (at both provincial and national levels) on thematic exhibitions, learning the standard requirements for museum exhibitions and finding items relevant to existing displays.

Since 2014, the country has begun to face discrimination in relation to former residents of Crimea and internally displaced persons from the temporarily occupied territories of Donetsk and Luhansk oblasts.[106] Discrimination on the grounds of citizenship therefore also deserves attention.[107]

IV. Counteraction and unresolved issues

The general norms on equality enshrined in constitutions and legislation are, to a large extent, symbolic. One can contest obvious or basic violations of equality by applying them in court or through administrative procedures. However, such violations are rare, and the aforementioned countermeasures are seldom used. In all three countries, criminal, and administrative measures for combating hate speech and non-

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[105] http://www.museum.mk.ua/2016-01-26-12-04-35.

[106] Альтернативный отчет о выполнении Украиной Международной конвенции о ликвидации всех форм расовой дискриминации. Подготовлен Антидискриминационным центром «Мемориал» и Харьковской правозащитной группой к 90-й сессии КЛРД ООН [Alternative Report on Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination by Ukraine. Prepared by the Anti-Discrimination Centre "Memorial" and Kharkiv Human Rights Protection Group for the 90-th Session of UN CERD], 2016, pp. 5–6;
Stakeholder Report to Ukraine's Periodic Report under the International Convention on the Elimination of All Forms of Racial Discrimination. Evaluation of implementation of the CERD concluding observations on Ukraine's 19–21st periodic reports (CERD/C/UKR/CO/19–21, 14 September 2011), p. 19.

[107] *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine.* The Equal Rights Trust Country Report Series: 5. London, August 2015, pp. 167–177.

violent discrimination have only limited application and are only used in a small number of cases. The reasons of this phenomenon are partly objective, in that investigating such cases and prosecuting the guilty is difficult, and law enforcement agencies prefer to either do nothing or choose a different definition for such crimes. Administrative bodies and public procurators[108] generally do not use their powers to counter non-violent discrimination.

Since the adoption of anti-discrimination legislation in Moldova and Ukraine in 2012, special independent anti-discrimination bodies play an increasingly prominent role and are practically alone in the protection of equality. All three countries have a very limited number of positive and special measures, including a few programmes for the support of Roma as well as assistance to minority NGOs.

Human rights associations and pressure from international organizations, together with the activities of national anti-discrimination bodies, are the main driving forces behind the development of an equality protection agenda. Both Moldova and Ukraine have coalitions of NGOs for the protection and promotion of equality. Similar initiatives are being developed in Belarus. For the mainstream political forces in all three countries, combating discrimination remains a marginal issue. Moreover, there are attempts, mainly on the part of the Orthodox Church, to undermine the equality agenda as it allegedly privileges the LGBT community.

1. Belarus

The official position of the Belarusian authorities is that there is no large-scale, systematic, ethnic or any other discrimination in the country. Belarus has no bodies that address discrimination, nor any evidence of legal action related to ethnic discrimination or the redress of rights of persons who suffer discrimination. The judicial practice related to equality and discrimination includes some decisions of the Constitutional Court of Belarus which, in the 2000s, provided legal interpretations of the provisions of the Labour Law upon request by state bodies, and explained the legal meaning of the prohibition of discrimination. Some Court decisions were further taken into account by the parliament, especially regarding the need to introduce an open list of discriminatory grounds Labour Law.

There have been very few prosecutions for violations of language legislation. There is no information on administrative measures taken against civil servants for discriminatory behaviour. State authorities in Belarus are generally unaware that they are obligated to guarantee equality on ethnic grounds. There is a potential opportunity to counteract discrimination through administrative procedures used by public procuracy and backed by a well-established and effective system of responding to citizens' appeals and

[108] The public procuracy lost the general supervision function with regard to the implementation of the legislation in Ukraine in 2014, and in Moldova in 2016.

complaints.[109] Based on the law "On Appeals from Citizens and Legal Persons" (No. 300-Z, 18 July 2001), this system envisages, *inter alia*, the obligation to respond in the language of appeal.

Public and expert discussions with state representatives are still in early stages. Some state bodies and institutions have only just begun to take an interest in the issue. For instance, the Belarus Ministry of Foreign Affairs organized a round table on the issue of discrimination in Minsk in June 2013 due to the initiative of the BHC and the Equal Rights Trust. A number of initiatives related to Roma rights including consulting Roma organizations, establishing the institute of Roma community mediators and fostering cooperation between Roma leaders and local authorities have been launched within the "Belarussian Forum for Equality" and "Social Integration of Roma in Belarus: Securing the Right to Equality" projects.

Belarus has no ombudsman. The Commissioner for Religious and Ethnic Affairs exercises general control over the implementation of the relevant legislation as well as over activities of religious and minority organizations. However, there is no information to confirm whether the Commissioner has in any way dealt with issues of discrimination, either through monitoring or reviewing complaints about inequality. However, this institution's activities, interactions with the Interethnic Advisory Council and its guidance on the implementation of programmes for ethno-cultural development do create the conditions for cooperation between the state and minority organizations. There are no special measures aside from minimal state funding for national–cultural associations.[110]

Relations between ethnic minority organizations and the authorities do not generally constitute a meaningful dialogue on issues beyond cultural expression. Even when the authorities initiate such dialogue, minority organizations are reluctant to raise their issues. Nevertheless, the authorities take an interest in preserving minority organizations; for instance, local authorities spent several years until 206 trying unsuccessfully to revive the non-functioning Union of Latvians in the Viciebsk oblast.

It is also worth noting that it is the responsibility of higher education institutions that enrol foreign students to integrate them into Belarusian society and ensure, in cooperation with law enforcement bodies, the prevention of discrimination.

Prosecution of discrimination and incitement to hatred

Article 190 on the "Violation of equality of citizens" of the Criminal Code of Belarus (1999) has never been applied. The 18th–19th

[109] See in detail in: О работе органов по делам религий и национальностей Республики Беларусь с обращениями граждан ["Dealing with Citizens' Appeals by the Bodies on Religions and Nationalities of the Republic of Belarus"], http://belarus21.by/Articles/1423481925.

[110] It refers to "The Programme of Development of the Confessional Sphere, Inter-Ethnic Relations and Cooperation with Compatriots Abroad for 2011–2015" and similar programmes for 2016–2020.

and 20th–23rd periodic reports on the implementation of the ICERD, covering the period from 2003 to 2016 and submitted to the UN Committee on the Elimination of Racial Discrimination in 2012 and in 2016 respectively, contain no information about cases initiated on the basis of this article.[111]

The 20th–23rd periodic reports on the implementation of the ICERD contain official information on the application of Article 130 of the Criminal Code of Belarus ("Incitement to hatred or feud"). Two persons were held to account between 2013 and 2015, with coercive medical measures being imposed in one case and a guilty verdict being delivered in the other.[112] According to the 18th– and 19th periodic reports, six persons were convicted on the basis of the aforementioned article in 2003–2010 and seven more were convicted of crimes for which a motive of ethnic hatred was a qualifying characteristic.[113]

As noted by human rights organizations and researchers, law enforcement agencies avoid the application of Article 130 and consider the motive of ethnic hatred to be an aggravating circumstance. Racist acts or acts of vandalism (such as defiling Jewish graves) are more often defined as "hooliganism".

Reaction to asymmetric bilingualism

Belarusian authorities assert that the introduction of full official bilingualism in 1995 resolved the "language issue" in the country and that every citizen has the right to choose their language for communicating and exercising their rights and lawful interests. Some officials acknowledge that the role of Belarusian has in fact decreased since 1995 and that this situation should be redressed, but such statements are sporadic and generally accompanied by disclaimers and reservations, as well as references to the equality of both state languages. In practice, however, the two languages to not have equal standing in public institutions or in communication between the state and its citizens.

The country has no governmental bodies responsible for monitoring the implementation of language legislation or the protection of citizens' language rights. As mentioned above, Article 9.22 of the Administrative Code of Belarus envisages punishment in the form of a pecuniary fine, but this norm is applied only in rare cases. For instance, two administrative cases related to insulting the Belarusian language took place in September 2016 and January 2017, resulting in the imposition of fines; these were the first of their kind since 1999.[114] The problem has been partly softened by legislation firmly prescribing that all state bodies provide quick and substantive

[111] CERD/C/BLR/18-19. Reports on Belarus from 18 November 2012. Eighteenth and nineteenth periodic reports on Implementation of the provisions of the International Convention for the Elimination of All Forms of Racial Discrimination presented on 8 May 2008. 15 November 2012. Paragraphs 48–54; CERD/C/BLR/20-23. Twentieth and twenty-third periodic reports by state parties to be presented in 2016. Belarus. 29 July 2016. Paragraphs 50–56.
[112] CERD/C/BLR/20-23. Paragraphs 55–56.
[113] CERD/C/BLR/20-23. Paragraphs 53–54.
[114] http://www.racyja.com/hramadstva/byloga-militsyyanta-buduts-sudzits-za-a/.

responses to citizens' complaints and appeals. It is worth noting that while public officials are very cautious about raising the issue of Belarusian, authorities do react to public statements that disparage or denigrate the language.[115]

2. Moldova

Implementation of the law on equality

The Council on the Prevention and Elimination of Discrimination and Ensuring Equality was formed in October 2013. Since then, it has been dealing with all kinds of activities prescribed by Moldovan legislation. The Council received 44 individual complaints in 2013, 151 complaints in 2014 and 156 in 2015.[116] Many of these appeals were found to be inadmissible – 38% in 2014 and 53% in 2015. In most of the cases that were considered, the fact of discrimination was acknowledged by the Council. The biggest share of complaints concerns the violation of the right to equal access to goods and services. In 2013–2015, the Council reviewed 13 cases of discrimination on the grounds of language and seven cases on the grounds of race or ethnicity. The language cases mostly related to access to justice and communication with public authorities. The Council also addressed the issue of "hate speech" (in relation to public statements by officials and in print media), which is interpreted as incitement to discrimination prohibited by law. Occasionally the Council commences the consideration of cases on its own initiative; there were 22 such cases in 2014 and 2 in 2015. In general, only half of the Council's decisions on individual complaints are executed (for instance, 77 out of 151 in 2014). The Council also takes the initiative in providing conclusions and recommendations on removing discriminatory provisions from current official acts (four conclusions in 2013, 10 in 2014 and 18 in 2015) and about drafting the new ones (11 in 2014 and 37 in 2015). Members of the Council and its administrative staff actively engage in educational and training activities for government agencies and the general public; they held five seminars in 2013, 27 in 2014 and 70 in 2015.

Regarding administrative responsibility for discrimination, the Council compiled 32 protocols of offences and submitted them with the court in 2013. The court convicted offenders in only three cases but failed to impose sanctions due to expiry under the statute of limitations. In the sphere of employment (Article 54-2) the Council

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[115] For example, in December 2016 the Belarusian Ministry of the Interior reacted negatively to assertions about Belarus and the Belarusian language by L. Reshetnikov who was the director of the Russian Institute of Strategic Research at the time: https://news.tut.by/economics/524798.html.

[116] Statistical data is taken from the Council's annual reports:
Council for Prevention and Elimination of Discrimination and Ensuring Equality. Report on the activity carried out in 2013;
Council for Prevention and Elimination of Discrimination and Ensuring Equality. Activity Report For 2014; General Report on the Situation in Preventing and Combating Discrimination in the Republic of Moldova 2015; all at: http://egalitate.md/index.php?pag=page&id=883&l=en.

drafted a protocol on Air Moldova as it had concluded temporary one-year employment agreements with women, but unlimited contracts with men. The court accepted the guilty verdict, but the statute of limitations had expired by that time. In the other two cases, the Council composed protocols pursuant to Article 71–2 (“Interference in the work of the Council”); in one case a fine was imposed. The other 29 cases submitted were declined on procedural grounds as the Council did not have, and could not obtain, the necessary personal data of the violator for compiling the protocol. It turns out that the Council does not have effective means of obtaining such data if the violator refuses to participate in the process. According to the Council, Article 260 of the Code of Offences (“Discrimination in provision of public services in the sphere of electronic communication, mail and information technology”) is out of scope of the Council’s competences.

There is no general data available on the courts’ application of the anti-discrimination provisions of other current legislation, particularly the Labour Code. Courts are not obliged to systematize or provide such data to the Council. Experts agree that, in considering labour disputes, the courts do redress violated rights but avoid providing conclusions on whether discrimination took place or not.

The People’s Advocate (with responsibilities similar to that of an ombudsman) can accept complaints about discrimination and deal with the problems of minorities. An advantage of this institution is that it has a network of regional offices. The People’s Advocate mostly tackles problems of gender discrimination, but also reacts to complaints by Roma and manifestations of hate speech by public figures and politicians. Furthermore, the thematic and annual reports of the People’s Advocate describe systemic problems rooted in inequality and discrimination; they also analyse the human rights situation in Transnistria. There has been an agreement between the Council on Equality and the People’s Advocate about cooperation since 2014, but it does not outline concrete mechanisms for forwarding complaints from one agency to the other, and the law does not envisage such a practice.

Combating hate crimes and hate speech

Article 176 of the Criminal Code of Moldova (“Violation of the equality of citizens”) and Article 346 (“Deliberate actions aimed at inciting national, ethnic, racial and religious hatred, differentiation and discord”) have had limited application. According to the data collected by the Council on Equality, 14 crimes were registered under Article 176 in 2010–16; one of them was directed to the public prosecutor’s office and then submitted to court (in 2014), but a verdict wasn’t reached; the rest were reclassified, suspended or closed. There were 16 crimes registered according to Article 346; in two cases the public prosecutor’s office approved indictment, but neither was submitted to court; the rest were closed or suspended.

The role of administrative bodies

The Bureau of Interethnic Relations monitoring the implementation of legislation on minorities and languages, among other thing, and liaises on behalf of Moldova during the consideration of individual complaints at the UN Committee on the Elimination of Racial Discrimination.[117] Beyond this, the Bureau does not address any issues of equality, including combating discrimination and monitoring social disparities among groups. Nor do specialized inspectors or local governmental bodies in charge of consumers' rights, in particular with regard to housing and health care, deal with the prevention or combating of discrimination. This may be partially explained by a common belief that the problems of inequality and discrimination belong exclusively to the prerogative of the Council on Equality. The situation began to change in 2016 when the law "On the State Inspectorate of Labour" (No. 140-XV, 10 May 2001) was amended[118] to prescribe that labour inspectors shall check the law's requirements concerning the prevention and combating of discrimination on any grounds, as well as sexual harassment in the workplace.

It should be mentioned that within the education system, school psychologists are obliged to register conflicts and problems that might have a discrimination component or lead to other forms of xenophobia; such conflicts shall be further addressed by the commissions on ethics under administrative bodies on educational affairs.

The Code of Conduct for Civil Servants of Moldova (No. 25-XVI, 22 February 2008) directly obliges civil servants to prohibit any manifestations of discrimination, including with regard to subordinates; violation of this principle leads to disciplinary action. There is no publicly available information on the practical application of these norms.

Positive and special measures

The main (and almost the sole) example of special measures is the National Action Plan for the Roma Population.

All post-Soviet governments of Moldova since 2001 have made action plans to improve of living conditions of Roma people. The first plan was a hollow declaration; it did not specify the sources of funding, mechanisms of implementation or the means of assessing the results. The next action plans were subject to the international expertise of the CoE and OSCE (particularly the Office for Democratic Institutions and Human Rights), but this failed to overcome its chief shortcoming: its declaratory character.

The National Action Plan for the Roma Population for 2011–2015 was also not specific enough. It listed measures aimed at facilitating relations between local Roma communities and local authorities, with the help of mediators from the Roma community, for the purpose of improving their access to

[117] Fourth Report submitted by Moldova pursuant to Article 25, paragraph 2 of the FCNM. ACFC/SR/IV(2015)005. Strasbourg, 16 June 2015, pp. 12, 14.
[118] The Law "On Introducing Changes and Amendments into Some Legislative Acts" (No. 71., 14 April 2016)

state services. Other priority areas included education, employment, health care, cultural affairs, mass media and housing. The Action Plan assumes that national ministries will take part in its implementation, and that local authorities will adopt their own action plans. But to date, an acute scarcity of funding and resources remains the major hindrance; the state relies to a large extent on aid from international donors.

Pursuant to the official statement of the UN Special Rapporteur on Minority Issues (Ms Rita Izsák-Ndiaye),[119] the plan was insufficiently realized because, among other things, the burden of implementation was largely shifted to local levels without proper funding. The Bureau of Interethnic Relations pointed out that only 37% of the provisions were implemented. In particular, only nine of the suggested 48 mediators are currently engaged, in spite of the fact that setting up a network of Roma mediators was among the key tasks.
The new Action Plan for the Support of Roma Ethnic Group in the Republic of Moldova was adopted for the period of 2016–2020 and was passed by a Resolution of the Government of Moldova (No. 734, 9 June 2016).[120]

3. Ukraine

Law on combating discrimination and the role of the Parliament Commissioner for Human Rights

The scope of the 2012 law "On the Principles of Preventing and Combating Discrimination in Ukraine" ((hereinafter the Law on Discrimination) is increasingly wide. The ombudsman, or the Parliament Commissioner for Human Rights, is responsible for the implementation of the Law on Discrimination and performs all the tasks envisaged by the Law in relation to combating discrimination. The anti-discrimination work of the secretariat of the Parliament Commissioner includes the protection of persons belonging to national minorities.

In 2013, the secretariat of the Commissioner received 2,051 petitions related to discrimination and minority rights. The largest share (1,768 in total) were complaints about equality on the grounds of religious and other beliefs; four concerned race and skin colour, 42 ethnic or national origin, 17 affiliation to national minorities and 91 complaints were about the use of languages, including five on the use of Ukrainian.[121] The number of petitions subsequently decreased so that in 2014, the secretariat received and

[119] Report of the UN Special Rapporteur on Minority Issues – Mission to the Republic of Moldova, 11 January 2017 (A/HRC/34/53/Add.2), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/004/38/PDF/G1700438.pdf?OpenElement. Paragraph 61.
[120] http://lex.justice.md/viewdoc.php?action=view&view=doc&id=365368&lang=2.
[121] *Щорічна доповідь Уповноваженого Верховної Ради України з прав людини про стан дотримання прав і свобод людини і громадянина* [Annual Report of the Parliament Commissioner for Human Rights of Ukraine on the State of Observance of Human and Citizen's Rights and Freedoms]. Kyiv: Prava liudyny, 2014, p. 375.

examined 496 complaints about discrimination and the violation of rights of national or religious minorities; 49 concerned race and ethnicity while 57 language.[122] In 2015, there were 359 complaints, of them 25 related to race and ethnicity and 11 to language.[123] There were 303 complaints in 2016, with 39 concerning race and ethnicity and nine related to language.[124] The Commissioner also commenced 22 cases on discrimination on all grounds on her own initiative in 2014, 53 in 2015 and 69 in 2016.[125]

The office of the Parliament Commissioner is active in all areas envisaged by the Law on Discrimination. The work is carried out in accordance with the Strategy of Actions on Preventing and Combating Discrimination in Ukraine for 2014–2017.[126] The Commissioner provides anti-discrimination expert evaluation of normative acts, suggests improvements to legislation, and organizes educational events and training for civil servants. The office of the Commissioner also initiated field research on the problems faced by the Roma and studied the manifestations of discrimination. The Commissioner's office also engages in countering hate speech; the Commissioner succeeded in initiating and reclassifying a number of criminal cases and sent official warnings to some media outlets when they used hate speech. The secretariat of the Parliament Commissioner has also started tackling "ethnic profiling" – where law enforcement bodies arbitrarily selecting persons for security checks or detention based on their ethnic characteristics.

The Commissioner develops training and information materials in cooperation with the "Coalition against Discrimination" and other NGOs. The Commissioner's office played an important part in development and adoption of the National Strategy on Human Rights in 2015,[127] as well as the Action Plan for its implementation. At present, the secretariat of

[122] *Щорічна доповідь Уповноваженого Верховної Ради України з прав людини про стан додержання та захисту прав і свобод людини і громадянина в Україні* [Annual Report of the Parliament Commissioner for Human Rights of Ukraine on the Compliance Protection of Human and Citizen's Rights and Freedoms]. Kyiv: Prava liudyny, 2015. pp. 272–273.
[123] *Щорічна доповідь Уповноваженого Верховної Ради України з прав людини про стан дотримання прав і свобод людини і громадянина в Україні. 2015* [Annual Report of the Parliament Commissioner for Human Rights of Ukraine on the State of Observance of Human and Citizen's Rights and Freedoms]. Kyiv: Prava liudyny, 2016, pp. 147–148.
[124] *Щорічна доповідь Уповноваженого Верховної Ради України з прав людини про стан додержання та захисту прав і свобод людини і громадянина в Україні* [Annual Report of the Parliament Commissioner for Human Rights of Ukraine on the Compliance Protection of Human and Citizen's Rights and Freedoms] Kyiv: Prava liudyny, 2017, p. 92.
[125] Ibid, p. 93.
[126] Стратегія діяльності у сфері запобігання та протидії дискримінації в Україні на 2014–2017 роки. Затверджена наказом Уповноваженого Верховної Ради України з прав людини від 15.11.2013 року № 23/02-13 [Strategy of Actions on Prevention and Combating of Discrimination in Ukraine for 2014–2017. Approved by order of the Parliament Commissioner for Human Rights of Ukraine of 15.11.2013 No. 23/02-13], http://www.ombudsman.gov.ua/ua/page/discrimination/activities/strategy/strategiya-diyalnosti-u-sferi-zapobigannya-ta-protidiii-diskriminaczii.html.
[127] http://hrstrategy.com.ua/

the Commissioner coordinates the monitoring of this implementation.[128]

The difficulties arise in the execution of the ombudsman's decisions as they are not legally binding. It is expected that amendments introduced by the draft law "On Introducing Changes to Certain Legislative Acts of Ukraine (concerning the harmonization of legislation on preventing and combating discrimination with the law of the European Union)" (No. 3501) will partly resolve this problem. The draft law suggests correcting Article 161 of the Criminal Code of Ukraine by eliminating criminal liability for discrimination and replacing it with administrative liability. The draft law also envisages amendments to the Law on Discrimination by providing definitions of "discrimination by association", "victimization" and "multiple discrimination", and equating the denial of "reasonable adaptation" with discrimination. The draft suggests granting the Parliament Commissioner for Human Rights the powers to make binding decisions after reviewing the petitions of individuals or groups on issues of discrimination; such decisions will prescribe the elimination of violations of laws that prevent or combat discrimination. The bill was initiated by a number of deputies of the *Verkhovna Rada* and passed the first reading on 16 February 2016. The secretariat of the Ombudsman contributed to the preparation of the draft along with the Ministry of Justice of Ukraine.

The role of the judiciary

The number of cases on discrimination taken to Ukrainian courts in civil and administrative proceedings is gradually increasing. There were ten civil cases in 2013 and 28 in 2014 (16 of which were examined in the course of the year). Administrative courts accepted 58 cases for processing in 2014, of which 33 were examined in the course of that year. However, there is no data available on court hearings concerning ethnic or linguistic discrimination. Furthermore, improvements in the level of qualification of judges has been slow, and they have been loath to apply the Law on Discrimination and related procedural novelties, such as shifting the burden of proof to the defendant.

Combating hate crimes and hate speech

There were no complete official statistics on hate crimes for 2011–2014.[129] The Ministry of Internal Affairs created a unified register for such crimes in 2015 and continues to improve it. According to the data provided by Ukraine in the fourth official periodic report on the implementation of the FCNM, law enforcement bodies initiated 62 cases primarily on Article 161 of the Criminal Code in 2013, but 44 of them were closed due to lack of evidence.[130] Within 11 months of

[128] See http://www.ombudsman.gov.ua/ua/page/secretariat/docs/natsionalna-strategiya-u-sferi-prav-lyudini/.
[129] Stakeholder Report to Ukraine's Periodic Report under the International Convention on the Elimination of All Forms of Racial Discrimination. Evaluation of implementation of the CERD concluding observations on Ukraine's 19–21st periodic reports (CERD/C/UKR/CO/19–21, 14 September 2011), pp. 9–10.
[130] Fourth Report submitted by Ukraine pursuant to Article 25, paragraph 2 of the FCNM. ACFC/SR/IV(2016)003. Strasbourg, 30 May 2016, p. 27.

2015, 66 cases were commenced of which 45 pertained to Article 161; no information is available regarding their outcomes.[131] Cases are occasionally initiated under public pressure but they do not go to court. Human rights organizations point out that "in recent years, none of the criminal cases initiated on Article 161 has received a court verdict".[132] The main difficulty in the application of Article 161 is the need to prove the motive of xenophobia.[133]

A department for monitoring human rights had been created within the Ministry of Internal Affairs to counteract racism and xenophobia, but it was dissolved in 2010. The inter-agency working group on fighting xenophobia and intolerance ceased its work in the same year and was formally closed down in 2012; it has never been reinstated.

The reform of the Ministry of Internal Affairs and the formation of the National Police are promising developments, specifically the creation of the Department for Human Rights[134] (unofficially referred to as the "police ombudsman"). Among its positive achievements is the introduction of compulsory courses on tolerance and non-discrimination for patrol police in 2015, and a similar pilot course for criminal investigators in 2016.[135]

The role of administrative bodies

National and regional executive bodies in charge of consumer markets, education, banking, health care and housing do not generally deal with issues of discrimination. The same is true for the public procuracy, which was also deprived of the function of supervision over general compliance with law in 2014. It is assumed that all responsibility for the provision of equality and non-discrimination lies with the Parliament Commissioner for Human Rights. One positive development is the Cabinet of Ministers' resolution of 1 June 2016 to include "discrimination" as an indicator in the national index of people's addresses and complaints submitted to public bodies.[136] There is no data available on public servants being found responsible for discriminatory behaviour or xenophobic speech.

[131] Ibid., p. 29.
[132]Alternative Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination by Ukraine. Prepared by the Anti-Discrimination Centre "Memorial" and Kharkiv Human Rights Protection Group for the 90-th Session of UN CERD, 2016, p. 2.
[133] Ibid.
[134] https://www.npu.gov.ua/uk/publish/article/1998717.
[135] Альтернативный отчет о выполнении Украиной Международной конвенции о ликвидации всех форм расовой дискриминации. Подготовлен Антидискриминационным центром «Мемориал» и Харьковской правозащитной группой к 90-й сессии КЛРД ООН [Stakeholder Report to Ukraine's Periodic Report under the International Convention on the Elimination of All Forms of Racial Discrimination. Evaluation of implementation of the CERD concluding observations on Ukraine's 19–21st periodic reports] (CERD/C/UKR/CO/19–21, 14 September 2011), p. 13.
[136] *Щорічна доповідь Уповноваженого Верховної Ради України з прав людини про стан додержання та захисту прав і свобод людини і громадянина в Україні* [Annual Report of the Parliament Commissioner for Human Rights of Ukraine on the State of Observance of Human and Citizen's Rights and Freedoms]. Kyiv, 2017, p. 95.

Positive and special measures

An important document on government policy is the “Strategy for the protection and integration of the Roma national minority into Ukrainian Society until 2020” adopted by presidential decree (No. 201/2013, 8 April 2013). EU pressure was decisive in the adoption of this strategy. The Strategy is a framework document that presupposes activities aimed at combating discrimination, at legal and social protection, promoting employment, increasing the level of education and health care, improving living conditions and accommodating the cultural and informational needs of Roma in Ukraine. Preserving and developing the cultural identity of Roma and resolving the problem of identity papers are among the major expected practical outcomes. The Strategy envisages active collaboration between the state and Roma NGOs.

The Cabinet of Ministers of Ukraine approved the corresponding National Action Plan on the Implementation of the Strategy (NAP) by decree (No. 701, 11 September 2013). NAP outlines the tasks, schedule for their realization and responsible agencies. It identifies the main goals of the Strategy, including educational and awareness-raising activities aimed at overcoming prejudices related to Roma. In the sphere of social security and employment, it prescribed the monitoring of the allocation and use of state social payments, particularly child benefits. One of the tasks was to better inform Roma about the services provided by the state employment agency.

The Plan included keeping track of school-aged children to involve as many of them as possible in education, and to encourage them to obtain vocational or higher education. NAP also presupposed raising awareness among health care workers and the Roma themselves to improve access to medical services and their efficacy. Preventive examinations and vaccination campaigns were also planned. There was a suggestion to disseminate information among Roma about easy-term loans for purchasing and building houses as a way to improve their living conditions. Measures in the cultural domain included maintaining Roma performance ensembles and conducting research on the history, culture, language and social–cultural integration of the Roma minority. There was also a plan to publish a “Roma Legal Bulletin”, a scientific journal “*Romenvad*” (Roma studies) and a book of stories and proverbs in the Roma language, and a programme on Roma issues was planned for broadcast on Odessa regional television. In 2016, the first all-Ukrainian festival of Roma art was held in Mykolaiv oblast with Roma performance ensembles and individual artists from nine Ukrainian oblasts.

However, the OSCE Office for Democratic Institutions and Human Rights reported that:

> ...the government of Ukraine has signalled its recognition of the need to address the situation of Roma through the development of specific policies. However, it failed to integrate a strong anti-discrimination approach in these policy documents or to respond to the specific needs of Roma women. In addition, the documents do not provide

> strategic objectives, clear indicators, a budget or effective mechanisms for their implementation and evaluation that ensure the effective participation of Roma. Roma were not involved or consulted in the drafting the Strategy or the NAP.[137]

Also, "the NAP does not define budget responsibilities and allocations, lacks concrete targets in many areas and does not outline indicators for its successful implementation".[138] The coalition of human rights organizations of Ukraine view the NAP as purely declarative.[139] Reports on its implementation, published by the Ministry of Culture of Ukraine, primarily describe measures on the dissemination of information and awareness-raising.[140] However, in some regions (Transcarpathia, for instance), the oblast administrations have been more successful in implementing the NAP, with information campaigns on employment opportunities, campaigns aimed at increasing school attendance among Roma children, and promoting medical check-ups and vaccinations among Roma populations.

Direct support to minority organizations on behalf of the state remains marginal. In 2016, there were nine target programmes in place across seven oblasts; their overall budget allocated to activities related to national minorities reached 2,665,000 hryvnia (approximately 94,000 Euros) for the period of 2016–2018.[141]

Conclusions

There have been significant achievements in Belarus, Moldova and Ukraine in creating the conditions for protecting and ensuring equality on ethnic grounds.

The most positive feature of all three countries is their actual avoidance of consistent ethnonational policies that would prioritize or privilege so-called "titular" nationalities. For example, linguistic policies allow for the use of non-state languages in the public sphere, and citizenship and immigration policies do not imply ethnicity-based restrictions. This allows people of various ethnic backgrounds and linguistic preferences to adapt to the situation relatively smoothly, and this prevents conflicts and discriminatory practices for the time being.

Furthermore, Moldova and Ukraine are parties to the main universal and European

[137] *Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis*. Warsaw, August 2014, p. 5.
[138] Ibid, p. 14.
[139] Stakeholder Report to Ukraine's Periodic Report under the International Convention on the Elimination of All Forms of Racial Discrimination. Evaluation of implementation of the CERD concluding observations on Ukraine's 19–21st periodic reports (CERD/C/UKR/CO/19–21, 14 September 2011), p. 11.
[140] Інформація про виконання у 2015 році плану заходів щодо реалізації Стратегії захисту та інтеграції в українське суспільство ромської національної меншини на період до 2020 року [Information on the Implementation of the Plan of Actions on the Realization of the Strategy for the protection and integration of the Roma national minority into Ukrainian society until 2020 in 2015]. 02.06.2016. http://mincult.kmu.gov.ua/control/uk/publish/article?art_id=245101460&cat_id=244949510.
[141] According to the data collected by the Dnipro oblast administration, systematized and provided by Olga Vasilyeva.

treaties on non-discrimination and the protection of minorities; Belarus participates in UN and CIS conventions. This affects the development of national legislation and shapes public agendas. All three countries are also subject to international monitoring to varying extents, and specific problems and individual complaints are considered by international bodies; this has a positive impact on domestic situation.

All three countries' constitutions and sectoral laws contain general provisions on the equality of individuals before the law and the courts, irrespective of their ethnic belonging. They provide an opportunity to contest discriminatory provisions of normative legislative acts, and in some cases to reverse certain discriminatory decisions and actions, stimulating campaigns and civic initiatives against discrimination. Notably, the law of Ukraine envisages the possibility of contesting the legislative norms, decisions and actions of the national and local government, and their individual representatives, in the system of administrative justice, especially where such decisions and actions are discriminatory.

The criminal and administrative codes of all three countries prohibit and penalize hate crimes and hate speech to some extent; where this coincides with political will and the cooperation of law enforcement bodies, the most socially dangerous manifestations of ethnic and racial intolerance can be counteracted. Another achievement is that the motive of racial, ethnic or religious hatred is acknowledged as an aggravating circumstance and qualifying element of crime in all the three countries.

Particularly important is the adoption of comprehensive anti-discrimination laws in Moldova and Ukraine in 2012. These laws transposed the EU's approaches to combating discrimination into national legal frameworks, provided individuals with a practical legal tool for contesting discriminatory treatment. It also led to the establishment of special bodies on combating discrimination and obliged the state to take systematic, including preventive, measures against discrimination. In the codes of civil procedure in both countries, the burden of proof in discrimination cases was shifted to the defendant.

It is noteworthy that in both countries, lawmakers acknowledged the need to take preventive and awareness-raising measures, and that in Ukraine, the independent anti-discrimination body (the Parliament Commissioner for Human Rights) can theoretically participate in court proceedings in discrimination cases. Anti-discrimination legislation provides a reference point for civil society and serves as a resource for raising awareness among public servants and judges.

Another positive development is the adoption and implementation of special strategic and targeted programmes on the protection of human rights and support of Roma by executive bodies of Moldova and Ukraine.

The presence of active civil society organizations in all three countries is grounds for optimism. Civil society engages in issues

of discrimination and the protection of minorities and is oriented to international standards and international cooperation; it seeks solutions through collaboration with the state while also raising awareness more broadly among the general public.

Along with positive trends and achievements, there are also a range of recurring problems in all the three countries.

Systemic direct discrimination is persistent everywhere. Roma are the primary victims of such discrimination along with "visible minorities", or the people who differ in appearance – mostly foreign citizens. Hate crimes and public manifestations of xenophobia, including in the media, remain a problem. Although the number of such crimes is relatively low, they occur regularly and create an unfavourable psychological atmosphere.

In Ukraine, systematic discrimination on grounds other than ethnicity, namely citizenship and place of residence, is particularly significant. This primarily affects citizens of Ukraine in Crimea, Sevastopol and the temporarily occupied territories of Donetsk and Luhansk oblasts, as well as those who moved from those regions to other areas of Ukraine. The treatment of these groups poses a significant challenge to Ukraine's anti-discrimination mechanisms and their capacity to prevent discriminatory practices.

In all three countries, there is a remarkably low level of trust in government institutions; this is particularly true for the judiciary, provoking a lack of respect for the law and limiting possibilities for preventing discrimination in general. Furthermore, discriminatory practices are nourished by the low quality of governance, corruption and economic difficulties. The current social dynamics (labour market conditions, access to education, and migration trends) gradually marginalize the "non-titular population" in both Moldova and Ukraine, also prompting a flow of minorities to other countries.

Politicians, civil servants, and society as a whole have a low level of awareness about the issues of equality and non-discrimination, although there have been some positive changes. Society is remarkably tolerant of hate speech, especially in its mild non-aggressive forms. This problem is partly caused by a lack of relevant training and educational programmes for civil servants.

It should be noted that current legislation is of a declarative character and shows numerous gaps and deficiencies. This is primarily true for the laws on minorities, language laws, the provisions of sectoral laws on equal rights, and to a smaller extent for special anti-discrimination laws. Having said that, declarative legislation is a lesser evil than legislation that is thoroughly elaborated but unimplementable and is certainly preferable to repressive or restrictive norms.

The Law on Equality of Moldova (in contrast to a similar law in Ukraine) does not envisage any special measures in relation to national minorities, aside from positive actions that are, by definition, only temporary. It also does not envisage the anti-discrimination

expert evaluation of regulatory acts or decisions of public bodies.

The anti-discrimination law of Ukraine contains adequately define direct discrimination or identify the denial of reasonable accommodation as a form of discrimination. Moreover, the responsibilities of governmental bodies (apart from the Parliament Commissioner for Human Rights) on the prevention and combating of discrimination is too narrowly defined in the law.

Across all three countries, there is a tendency for only one institution to be charged with providing equality and combating discrimination, and this situation requires a greater attention. The key actors are the Council on Equality in Moldova and the Parliament Commissioner for Human Rights in Ukraine, while all other governmental bodies are effectively excluded from this work or play a passive role. It is important to note that the content and effectiveness of the work of independent bodies on equality depend on human factors, especially the personalities of the ombudsman and the staff of the Council on Equality.

Furthermore, the independent anti-discrimination bodies in both Moldova and Ukraine have insufficient powers. For instance, they have limited access to information and personal data. Consequently, the Moldovan Council on Equality is only able to draw up a valid, executable protocol on administrative offences in exceptional cases. The Council on Equality can independently impose sanctions for a failure to provide requested information, but not for discrimination itself, and its decisions are non-binding such that real sanctions can only be imposed on an offender upon the decision of other bodies. Ukraine's Commissioner for Human Rights can also not make binding decisions, but rather submits conclusions on specific cases to other bodies with a recommendation to implement them.

These independent anti-discrimination bodies may further experience problems because of their limited capacity to fulfil the tasks prescribed by law, which include analysis of the situation, monitoring, development of proposals, devising preventive and special measures, and educational and awareness-raising activities, as well as processing a growing number of individual complaints. Another challenge is the absence of regional offices with powers to consider complaints, participate in court proceedings, provide expertise and draft recommendations.

Outside of anti-discrimination laws, there are no legislative provisions on combating discrimination, which reduces opportunities to resolve disputes about the equality of rights and equal treatment. Current legislation does not give sectoral inspectorates the power to consider complaints about discrimination, expose cases of discrimination, take remedial measures or impose sanctions. None of the three countries' legislation directly obliges executive bodies or local self-governments to take initiative in preventing discrimination or considering related complaints. Consequently, administrative bodies that

supervise spheres in which manifestations of discrimination are most likely – in the labour market, protection of consumers' rights, housing, education, health care and public service – play no significant role in preventing discrimination. Moreover, local (regional and municipal) authorities have a marginal or non-existent role in preventing and combating discrimination and in resolving disputes on matters of equal rights and the protection of minorities.

Criminal law provisions on the protection of equality are a matter of concern in all three countries. In Ukraine and Moldova, criminal law does not clearly differentiate between discrimination and hate speech. In all three countries, provisions on the violation of equality are excessively general and vague, reproducing the wording inherited from the Soviet past, and are not employed in practice. Provisions against hate speech also follow the Soviet approach and terminology in all three countries; liability is established for such nebulously defined deeds as "incitement to hatred", "instigation of feud" and "humiliation of national dignity" which predestines these provisions for limited and/or selective enforcement.

Certain problems remain in administrative law as well. Discrimination implies administrative liability only in Moldova; in Ukraine, a corresponding draft law is pending. In Belarus and Ukraine, no administrative responsibility is established for discriminatory expressions outside of commercial advertising. In Belarus and Ukraine, regulations on public and municipal service do not directly presuppose disciplinary responsibility for civil servants for discriminatory conduct.

The legislation on national minorities, and the provisions of sectoral laws related to cultural and language policies, contain no guidelines on how to resolve disputes on the use of languages, support for cultural events and minority organizations, and the funding of cultural and educational institutions serving the needs of national minorities.

Recommendations

The issues of equality on ethnic grounds entail various competing claims, demands and different conceptual approaches in Belarus, Moldova and Ukraine. In light of this, importing and fully implementing established anti-discrimination models or practices from the EU, other developed countries or international bodies seems unreasonable. A feasible strategy should rather focus on creating legal and civic mechanisms that correspond to the realities of the three countries and allow for solutions that would be acceptable to the parties concerned, while remaining open to improvement in the future.

Considering the political environment, elite capacities and economic situation, it is unrealistic to expect the adoption of far-reaching legislative innovations aimed at strengthening anti-discrimination mechanisms and expanding opportunities for national minorities. Even if such new laws are passed, there are no guarantees that they will be implemented. Also there are no reasons to expect that the three countries will

invest the available resources into the development of human rights protection mechanisms and moreover carry out programmes on fighting systemic discrimination and on the protection of vulnerable groups.

It is much more likely that possible changes would be detrimental to the protection of equality, especially in Moldova and Ukraine. Deepening economic problems will make budgetary cuts inevitable, and there will be new incentives for further administrative centralization and unification. Growing nationalist populism means that minority issues (and consequently equality) will be regarded from the perspective of national security and "nation building". The effect will be to strengthen the position of the "titular" nations and marginalize other groups, probably under the guise of "integration". Such changes will curtail opportunities for active policies ensuring and promoting equality, further limit the available resources for supporting cultural pluralism and decrease the already low level of trust between state institutions and minority activists.

Moreover, a creeping erosion of guarantees against discrimination and of minority protection is likely; in spite of public declarations on adherence to international obligations, detrimental changes for minorities might be introduced "under the radar" as technical measures to optimize the budget and administration in general.

Taking these prospects into account, preserving the fundamentals of the current legislation and organizational structures, avoiding drastic and deep changes in any direction, would actually help to mitigate risks, preserve the endurance of the existing mechanisms and provide tangible possibilities for protection against the most blatant manifestations of discrimination and harassment. Attempts to adopt new laws on languages and minorities entail particularly high risks; therefore, it is preferable to revise and amend existing laws.

Nevertheless, some correction of the current approach to anti-discrimination in Moldova and Ukraine could be proposed and achieved without radical legislative reforms. For example, to counter the current structure where all relevant responsibilities rest with independent anti-discrimination agencies, the range of options for contesting discrimination or disputes on issues of equality could be expanded. This might entail (1) a multiplicity of protective mechanisms capable of responding to all potential cases of violation of equality including discrimination; (2) maximal accessibility of protective mechanisms to interested persons, (3) possibility of obtaining a positive outcome within a reasonable timespan. The issue of duplicating functions or competences across different agencies seems of minor importance considering the aim of securing the genuine availability of protective mechanisms that form a coherent legal and civic infrastructure for ensuring equality.

To reach these goals, public institutions dealing with preventing and fighting discrimination should coordinate their activities. Such coordination would entail:

- the development and introduction of consistent procedures and criteria of registration, identification and selection of claims on discrimination and minority issues;
- maintaining a unified and integrated database;
- the avoidance of parallel consideration of the same complaints; while observing the right of the claimant to use various means of protection, certain claims should be handled by one body, which does not preclude the right to further submit the complaint to other bodies;
- joint strategic planning and monitoring by public bodies dealing with discrimination and protection of minorities;
- harmonization of educational and training programmes on discrimination and minority protection provided by public authorities, at least ensuring compatibility across content and approaches.

Enhancing the effectiveness and sustainability of equality policy would require:

- preserving guarantees of ethnic, linguistic and cultural diversity; counteracting attempts to disturb the current balance;
- promoting and strengthening trust between the state and citizens; a pact between major political forces about denouncing nationalist populism and technocratic manipulations which undermine the guarantees of protection;
- broaden responsibility for combating discrimination and the protection of minorities from a single government agency to a network of actors;
- the availability of a variety of tools for the protection of equality;
- coordination of the work of public bodies engaged in equality protection; the avoidance of duplication of their efforts and the unification of monitoring;
- guarantees against the possible abuse of power by government bodies and minimizing the increase in bureaucratic burden on enterprises due to additional reporting requirements;
- cooperation of government bodies with NGOs; strengthening the role of independent bodies on equality and/or ombudsmen as the link between the government and civil society;
- encouraging coalitions and networking among NGOs to disseminate best practices and make combating discrimination familiar to both citizens and authorities;
- the development and promotion of alternative forms of dispute resolution, in particular by arbitration and mediation.

1. Development of legal framework

The states in question should become party to the main international instruments related to non-discrimination and the protection of minorities. For Belarus, accession to the instruments of the CoE is at the top of the agenda; for Moldova, the priority is the ratification of the Language Charter.

Special anti-discrimination laws should be improved and further developed, particularly to:

- refine definitions;
- broaden the powers of independent anti-discrimination bodies on equality and clearly specifying their functions;
- develop procedural norms for challenging discrimination;
- establish compensation for victims of discrimination based on the decisions of both courts and independent anti-discrimination bodies.

Belarus is advised to develop its own anti-discrimination law.

Apart from anti-discrimination laws, provisions of other legislation related to ensuring equality should be developed or improved:

1. bring provisions on the protection of equality in other pieces of legislation into compliance with anti-discrimination law;
2. empower sectoral inspectorates and local authorities, carrying out control and supervision of labour relations, protection of consumers' rights, housing, banking, education, health care system, and commercials, with functions and powers of responding to individual claims for the prevention and stopping of discrimination either on their own or by filing complaints to law enforcement agencies, independent bodies on equality, or by going to court;
3. refine norms concerning the procedure and standards of proof regarding discrimination in both civil and administrative procedural legislation, including shifting the burden of proof to the defendant in cases of discrimination, and extending the possibility of protecting the interests of an indefinite range of persons in court;
4. broaden the range of options for persons to challenge official acts containing discriminatory provisions in court, along with shifting the burden of proof in such cases to the defendant;
5. introduce (in Belarus and Ukraine) disciplinary liability for civil servants for discriminatory behaviour.

It is expedient to develop norms on equality within national laws on the protection of ethnic minorities and to specify the relevant responsibilities of the state. It is important that laws on national minorities and ethno-cultural policies include the following:

- the responsibility of the state to consider the interests and needs of national minorities in designing and implementing policies concerning the use of languages, education, cultural activities, territorial administration and relations with civil society organizations;
- the obligation of the state to eliminate barriers to the social mobility of minorities and their effective participation in public life;
- exempting special measures for the support of minorities (creating conditions for the development of language and culture, special mechanisms for representation) from the prohibition of discrimination, if these measures do not lead to the discrimination of one minority over others;
- creation and maintenance of mechanisms for dialogue between state institutions and society at all levels, including with the help of advisory and expert councils and public deliberations;
- granting powers to government bodies that deal with minority issues to consider petitions and claims related to minorities but not covered by anti-discrimination law, and make decisions independently or in cooperation with other bodies;
- establishing the main principles of public support for minority organizations and institutions on a non-discriminatory basis;
- with the participation both of government bodies and civil society, setting up mediation instruments or joint commissions, working in a similar way to arbitration courts, for the public consideration of complaints and settling of disputes concerning relations between the state and minorities in cases where the parties are unable or unwilling to go to court or use anti-discrimination mechanisms.

It is important to improve criminal law as follows:

- delineate and distinguish between discrimination and incitement to hatred (for Ukraine and Moldova);
- keep criminal liability only for aggravated crime involving discrimination (organized discrimination involving abuse of authority);
- keep criminal liability only for the kinds of hate speech that include the dissemination of ideas of hatred and superiority, and instigation to violence on ethnic grounds.

The existing special laws on “fighting extremism” should be abolished as they are open to abuse and misuse by law enforcement bodies; instead, the norms in other legislative acts on the civil and administrative liability of mass media and NGOs should be specified and further developed.

Administrative liability should be introduced for discriminatory job and housing advertisements, as well as for the

discriminatory resolutions and orders of the management of enterprises and organizations.

Procedures for administrative and civil actions against mass media outlets and civic associations resorting to hate speech and instigation to discrimination should be clarified so as to avoid misuse by public authorities.

It is expedient to develop alternative forms of resolving disputes on equality, in particular, with the use of arbitration and mediation.

2. Structure and responsibility of public bodies on equality and ethnic diversity

It is important to provide private persons with opportunities to use various legal means to contest violations of equality and receive compensation by:

- prompting them to solve specific common problems at the local level through administrative complaints and mediation procedures;
- securing for them the freedom to choose how to solve disputes on equality.

All national and local bodies of government should use a uniform procedure for registering complaints about discrimination[142] and minority issues, and an integrated system of processing and systematizing such claims to avoid simultaneous consideration of specific complaints, and to monitor and effectively respond to them.

Ideally, courts and independent bodies on equality should come to consider only the most difficult and socially resonant claims. In the long run, independent bodies should focus on anti-discrimination expertise, the elaboration of proposals and legislative initiatives, monitoring and educational programmes.

The mechanisms of executing decisions on individual discrimination complaints need to be improved. Recommendations on individual cases by the Human Rights Commissioner in Ukraine and the Equality Council in Moldova are insufficient for the effective resolution of disputes on equality.

An ombudsman should be established in Belarus to make recommendations on the elimination of systemic discrimination, even in the absence of a special anti-discrimination law empowering this body to consider complaints about violations of equality.

In all three countries, anti-discrimination bodies need to be more physically accessible to private persons, particularly by opening regional offices of their respective independent equality bodies. These could have three key functions: providing consultations to individuals on options available for settling disputes about equality; collecting information about all submitted

[142] The first step in this direction was taken in Ukraine's Cabinet of Ministers' Resolution of 1 June 2016, which included "discrimination" as an indicator in the national index of people's addresses and complaints submitted to public bodies.

complaints and maintaining a database for the purpose of monitoring and for avoiding duplication in consideration of claims; and interaction with civil society organizations.

Combating discrimination by responding to individual complaints, consulting private persons, requesting and obtaining information and bringing class action lawsuits could be delegated to executive bodies and their sectoral inspectorates. It is important that executive bodies do not act on their own initiative, apart from contesting discriminatory regulatory acts, but react to complaints and petitions of individuals or groups and civic organizations that represent their interests. This redistribution of responsibilities is especially important for the education system; it is essential that universities and other educational institutions create and strengthen independent commissions or other forms of equality protection.

Some functions and tasks for combating discrimination may be assigned to the executive bodies in charge of ethnonational policies. This can include monitoring the implementation of legislation and the general situation of minorities, providing consultations to individuals and civic associations, issuing formal expert evaluations, strategic planning in the field of minority protection, elaborating and implementing special measures for the protection of minorities and educational programmes.

It is necessary to coordinate efforts of independent anti-discrimination bodies with and law enforcement, executive and local self-government bodies in sharing information, particularly on the results of monitoring and the collection of statistical data. This also applies to information on the development and implementation of educational and awareness-building programmes and projects. It is crucial that independent bodies responsible for the protection of equality cooperate closely with executive bodies in charge of ethnic relations; in the case of Moldova, this would be between the Equality Council and the Bureau of Interethnic Relations; In Ukraine, this would involve the Parliament Commissioner for Human Rights and the Ministry of Culture.

All three countries should design and adopt long-term comprehensive strategies for building up the system of combating discrimination.

National inter-agency commissions should be created to combat ethnic and racial intolerance, hate crimes and hate speech.

The Ministries of Justice in all three countries, in collaboration with experts, legal practitioners and human rights organizations, should look into commissioning forensic enquiries and conducting forensic expert investigations for dealing with cases of hate crime, discrimination and hate speech, and should elaborate methodological guidelines consistent with their findings.

Government bodies of all the three countries should:

- train their staff on preventing discrimination and processing individual complaints;
- systematically disseminate information about national legislation on combating discrimination and the protection of minorities, and the opportunities this legislation provides;
- cooperate with and facilitate the development of NGOs involved in ensuring equality;
- design and implement strategies and action plans on civic integration and teaching of the state languages;
- design and implement programmes for the promotion of tolerance, particularly in the education system.

3. Awareness-raising and education

It is necessary to create a system of anti-discrimination and minority protection training for civil servants and law enforcement bodies, at both national and local levels.

Legal aid (*pro bono*) lawyers should receive additional training to equip them with specific knowledge on the handling of cases related to discrimination, hate crimes, hate speech and minority issues.

It is necessary to coordinate efforts of independent anti-discrimination bodies and those responsible for ethnonational policies, particularly by creating joint expert councils, working groups and editorial teams to design a consistent methodology for training and educational programmes.

Courses on interethnic relations should be designed, introduced and/or upgraded for inclusion in higher education disciplines such as political science, law, sociology and public administration.

Special government and non-government programmes for training journalists and teachers are required.

It is essential to raise awareness among minorities and the general public about the culture and history of the ethnic groups of the country in question; this could be accomplished by means of textbooks that represent the country’s history as consisting of various groups, regions and families, and through museum exhibitions and radio programmes using a similar approach to content.

4. Civil society engagement

It is recommended that NGOs dealing with discrimination and the protection of minorities engage in the following issues:

- to jointly develop and select the most effective methods of monitoring, learning and acting for the protection of individual rights and public interests;
- to jointly define the best combination of activities for the redress of violated rights and lawful interests and for

counteracting discrimination in particular;

- to advance networking among organizations focused on counteracting discrimination for the purpose of sharing experience, monitoring methods and data;
- to combine resources for establishing structures at the local level to help individual claimants and represent their interests;
- to develop alternative forms of resolving disputes on equality, specifically through private arbitration and mediation.

Independent bodies on equality and local authorities should consider:

- maintaining and building up collaboration with NGOs for a more effective implementation of anti-discrimination laws;
- preparing to delegate some of their responsibilities and powers (consulting and representing citizens, monitoring and mediation procedures) to NGOs upon agreement on the provision of necessary funding.

FOR FURTHER INFORMATION SEE

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