

# EQUAL EMPLOYMENT OPPORTUNITIES IN UKRAINE – IS THERE STILL DISCRIMINATION AND HOW SHOULD WE TACKLE IT?

## POLICY BRIEF

### SUMMARY

From the legal standpoint, equal treatment in employment is secured and regulated in Ukraine. A set of positive actions was imbedded into Ukrainian legislation to ensure equal treatment of the most vulnerable groups. However, there are a number of shortcomings and gaps in the laws, which are further hindered by obstacles in implementation, such as inefficient mechanisms for guaranteeing employees' protection and lack of encouragement for employers. Consequently, equal treatment in employment is often only nominal. In reality, people report discrimination on different grounds when looking for a job or when being dismissed from one. Unemployment rate and data on people employed versus those seeking jobs further confirm that discrimination is present in Ukraine's labor market.

What are the most common forms of workplace discrimination in Ukraine? Does Ukraine fully comply with the minimum standards set by the Employment Equality Framework Directive 2000/78/EC as required by the Association Agreement with the EU? What actions are required of the state to ensure employment equality? What is the key to understanding the real situation with employment equality guarantees in Ukraine and what are the next steps to ensure effective mechanisms of protection from discrimination? These and other questions are analyzed in this policy brief, together with suggestions on how to improve the situation and move towards equality in employment that goes beyond mere statements.

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<sup>1</sup> This list is broader than the one in the Law of Ukraine “On Basics of Prevention and Combating Discrimination in Ukraine”, which is considered to be the framework law defining and prohibiting discrimination in Ukraine. The list from Labor Code includes grounds such as race, color, ethnic origin, religious beliefs, political views, language, age, sex, gender identity, sexual orientation, nationality, citizenship, social, financial or marital status, health, disability, HIV-positive status, union membership and other grounds not related to the character of the job.

<sup>2</sup> The Law “On Basics of Prevention and Combating Discrimination in Ukraine” of 2 October 2012 is available at: <http://zakon2.rada.gov.ua/laws/show/5207-17>.

<sup>3</sup> The Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”, adopted in 2005, is available at: <http://zakon3.rada.gov.ua/laws/show/2866-15>.

<sup>4</sup> The Law of Ukraine “On Basics of Social Protection of Persons with Disabilities in Ukraine”, adopted in 2009, is available at: <http://zakon3.rada.gov.ua/laws/show/875-12>.

## INTRODUCTION

The EU-Ukraine Association Agreement sets a minimum standard in guaranteeing equal employment opportunities. To achieve it, Ukraine has to change its legal framework and evaluation of its programs to comply with Employment Equality Framework Directive 2000/78/EC. This task can be considered half complete because the grounds mentioned in the Directive 2000/78/EC are included into the Labor Code of Ukraine. There are also provisions included in many laws that appear to provide positive actions and aim at achieving equality in employment.

But statistical data and court rulings show that the legal framework alone is not a sufficient guarantee of equality in employment and the positive measures are not effective enough to protect the most vulnerable groups. For example, the data demonstrates the ineffectiveness of employment quota for persons with disabilities. This is a result of limited research and needs assessment and evaluation to make sure that adopted measures are effective. Effective measures ensure that employees with disabilities benefit from state protection, while providing employers with tools on how to employ persons with disabilities without discrimination and stereotypes. The same work should be done to ensure employment equality for other groups, such as women, people of different age groups, etc.

In addition, there are other gaps in preventing and fighting employment discrimination that need to be addressed. To effectively prevent discrimination, the state should improve implementation of its own legal guarantees for eradicating discrimination in job advertisements. This implies constant monitoring of such advertisements and sanctions for those that discourage candidates by setting requirements that are not related to genuine occupation requirements. State Employment Agency (SEA) should devote more time to informational campaigns, educating people how reasonable accommodation in employment can help prevent discrimination on different grounds. Additionally, SEA should provide assistance, to both candidates and employers, in preventing and combating discrimination.

## LEGAL BASIS – WHAT IS PRESENT AND WHAT IS LACKING?

Ukrainian legislation concerning equal treatment in employment is rather broad and complex at a first glance. It may appear that legislation already covers all issues and it is now merely a matter of ensuring that these laws are working. But is it really so?

Basic anti-discrimination provisions are included in the Labor Code of Ukraine. Article 2<sup>1</sup> titled “Equality of labor rights of citizens of Ukraine” prohibits workplace discrimination, including direct and indirect discrimination, based on a broad list of protected grounds<sup>1</sup>. Even characteristics such as sexual orientation and gender identity, which were added in 2015 as part of implementation of the Visa Liberalization Action Plan (VLAP), are presently covered. The Labor Code also contains a number of other provisions guaranteeing equal treatment of women and men and including positive actions for working parents and employees with certain health conditions and disabilities.

Besides the Labor Code, several other laws prohibit discrimination in employment and provide guarantees of equal treatment for certain groups. There is a framework anti-discrimination law<sup>2</sup> that specifies that discrimination is forbidden in all spheres of social life, including employment by both public and private entities. The law on equal treatment and opportunities for women and men, which is aimed at tackling gender-based discrimination and sexual harassment<sup>3</sup>, led to creation of gender consultant positions in ministries and local self-government bodies. The law on persons with disabilities<sup>4</sup>, adopted after ratification of the UN Convention on Persons with Disabilities, puts forth a requirement for reasonable accommodation and sets a 4% quota for employing persons with disabilities. In addition, there are two laws<sup>5</sup> aimed at combatting discrimination in job advertisements.

However, all these laws have a significant drawback that undermines the effectiveness of the entire anti-discrimination policy — lack of implementation and redress for victims of discrimination in employment. Legal mechanisms provided by these laws entail claiming employment discrimination by filing a lawsuit or complaint with the National Equality Body<sup>6</sup>. The latter lacks sanctioning authority and can only give recommendations. The lawsuit is a very lengthy process and can only result in moral or material damage compensation to the victim, but no other sanctions for the perpetrator. Aware of this lack of liability, employers feel no responsibility to refrain from discrimination. Consequently, even less is done to prevent workplace discrimination.

Statistics prove that legal and implementation gaps are real issues in combatting employment discrimination.

” There is a quota for employers<sup>7</sup> requiring that 4% of their employees are persons with disabilities.

<sup>5</sup> These two laws, adopted in 2013, are the Law of Ukraine “On advertisement”, available in Ukrainian at: <http://zakon3.rada.gov.ua/laws/show/270/96-вп>, and the Law of Ukraine “On Employment of Citizens”, available at: <http://zakon2.rada.gov.ua/laws/show/5067-17>.

<sup>6</sup> In accordance with the anti-discrimination law, the National Equality Body powers were handed to the Parliament Commissioner of Human Rights (the Ombudsman), who has authority to accept claims of discrimination and investigate them. Once the Ombudsman establishes there was discrimination in a particular case, he or she can issue a written recommendation to abstain from further discrimination. The Ombudsman has no power to impose any other sanctions or fines. This leaves the offenders unpunished.

<sup>7</sup> This quota applies only to employers who have more than 8 employees. They also have the option to pay a fine and not hire a person with disability, which many prefer.

<sup>8</sup> Data provided by the Ministry of Health and Ministry of Social Affairs and was analysed by NGOs. Available at <http://socportal.info/2016/09/28/pratsevlashtuvannya-lyudej-z-invalidnistyu-v-ukrayini-formal-nist-i-realiyi.html>. More evidence based on official statistics is available at: <http://nau.org.ua/pidtrymka-bez-prymusu-chomu-ignoruyutsya-yevropejski-pryntsy-py-pratsevlashtuvannya-osib-z-invalidnistyu/>.

<sup>9</sup> Data from the State Statistical Committee of Ukraine “Women and Men” publication, p 36. Also data used in Ukrainian Helsinki report about women’s rights, Ukrainian version is available at: <http://www.helsinki.org.ua/files/docs/1157723430.pdf>. Same data segregated by gender is available from the State Statistical Committee at: [https://ukrstat.org/uk/druk/publicat/Arhiv\\_u/15/Arch\\_gc\\_zb.htm](https://ukrstat.org/uk/druk/publicat/Arhiv_u/15/Arch_gc_zb.htm).

<sup>10</sup> Currently there are 52 women MPs in the Parliament, accounting for 12% of all MPs and establishing a record high number in all 8 convocation of the Ukrainian Parliament. The number of women in the executive branch (the Cabinet of Ministers) is 3 and it is the highest number in the whole history of independent Ukraine.

The employers do not meet the required quota, which is proven by data from the Ministry of Health – out of more than 2 million working-age persons with disabilities that are meant to be covered by the established quota, only one third are officially employed<sup>8</sup>. Furthermore, CSOs that represent the interests of persons with disabilities claim that many employers are complying only formally—they hire people on paper, paying them minimal salary, instead of creating real working places and integrating persons with disabilities into the workforce.

On the other hand, employers who want to hire persons with disabilities cannot easily find information or tools on how to do it. The SEA does not provide information about reasonable accommodation and how it can help an employee build effective relationships. The only information available deals with legal norms and a few “success stories”. According to data provided by the Agency, in the first 10 months of 2016, only 11.2 thousand people with disabilities were employed, while 39.1 thousand were unemployed. This raises the question why all other unemployed people with disabilities are not trying to find employment? Perhaps they do not want to work or employers simply do not want to hire them. It is also possible that the SEA is not effective in helping to employ this group of people and other positive actions are necessary in addition to the 4% quota.

73% of all public officials are women, but that figure drops dramatically to only 37% when checking how many of them hold managerial or top civil service positions.

**“ Women make up only 21% of officials in the top three categories of civil service<sup>9 10</sup>.**

At the same time unemployment data for January-October 2016 shows that among the unemployed 54.9% are women and 45.1% are men<sup>11</sup>. Ukraine has recently introduced a gender quota in political parties, which was applied to the last local and national elections<sup>12</sup>. Even recognizing that the quota approach is not the best option, introducing a flexible gender quota in the public sector might be a solution to ensure equal career opportunities for women.

**“ According to a survey conducted by NGO “Women Consortium”, 55.1% of women were asked about their marital status during job interviews, 46.8% - whether they had kids, and 55.7% - about their age. In contrast, only 35% of men claimed they had been asked about their age.**

Among respondents who claimed to be single, 17% had been asked about their plans to have family and kids, and only 6.9% of them were men<sup>13</sup>.

In June 2016, the NGO “Campaign Against Discrimination” began cooperating with rabota.ua, the biggest job-searching platform in Ukraine. The team at rabota.ua participated in special trainings on how to evaluate job advertisements, identify discriminatory criteria (based on sex, age, place of residence, health or disability, etc.) and alert the employers of such advertisements.

**“ According to estimates of the website team, since they began cooperation, rabota.ua returns each fourth or fifth job advertisement to employers, asking them to rewrite it without discriminatory criteria.**

However, the “Campaign Against Discrimination” team also reports seeing an average of 3-5 discriminatory job advertisements each week.

These examples do not mean that only women and people with disabilities face employment discrimination in Ukraine. These are only a few examples to demonstrate the scale of the problem. People report facing discrimination when applying for jobs based on their sexual orientation and gender identity, health (PLHIV), age (both men and women after 40), marital status (mostly young women with kids), etc.

<sup>11</sup> Data from the State Statistical Committee of Ukraine, available at: [http://www.ukrstat.gov.ua/operativ/operativ2016/rp/sz\\_br/sz\\_br\\_u/kzbr\\_m\\_u2016.htm](http://www.ukrstat.gov.ua/operativ/operativ2016/rp/sz_br/sz_br_u/kzbr_m_u2016.htm).

<sup>12</sup> In 2013 Ukraine adopted a gender quota of 30% for the Parliament, by introducing amendments to the Law of Ukraine “On Political Parties in Ukraine”, text is available in Ukrainian at: <http://zakon3.rada.gov.ua/laws/show/2365-14>. In 2015 quota 30/70 was introduced into the Law of Ukraine “On Local Elections”, text is available at: <http://zakon4.rada.gov.ua/laws/show/595-19>. Both laws contain at least one gap — this quota does not provide for any specification and a party can easily fulfill the quota formally, presenting party lists with 30% women. However, when it comes to elections and number of persons with passing rating, there is no mechanism to ensure the 30/70 quota. Data on how this quota worked during local elections is available in Ukrainian at: <http://icps.com.ua/chy-spratsyuvahenderna-kvota-na-mistsevykh-vyborakh/>.

<sup>13</sup> Survey results and short analysis available at: [http://wcu-network.org.ua/ua/possessing-equal-rights/article/genderna-diskriminaciya\\_na\\_rinku\\_praci](http://wcu-network.org.ua/ua/possessing-equal-rights/article/genderna-diskriminaciya_na_rinku_praci).

## NEXT IMPORTANT STEPS TO ENSURE EQUALITY IN EMPLOYMENT

As discussed above, the reasons for the discrepancy between legal provisions and implementation are fairly evident. First, it is the ineffective redress for discrimination – a person can complain of discrimination to the court or to National Equality Body, but can only claim moral and material damage. The laws do not require the offenders to face any other sanctions or fines. When a person decides to file a complaint with the National Equality Body, the only positive outcome is a recommendation to the employer. If a person files a complaint to the State Employment Agency about discrimination in a job advertisement and it is found discriminatory, there is a small fine imposed on the employer, but few people know of this tool and it is, therefore, rarely used. The section on sanctions in the legislation needs to be changed. There is also a need to invest time and effort into building mediation capacity of the National Equality Body and proactively using mediation as a remedy in employment discrimination cases. Finally, there should be a body overseeing and controlling job advertisements.

Another reason behind high level of employment discrimination is the lack of proactive actions from the state. The SEA website lists a number of suggestions on how to behave during a job interview and how to avoid answering questions about age or marital status. Yet, it does not provide advice on what to do when one sees a discriminatory job advertisement, is discriminated during an interview or harassed at work. The State Employment Agency should revise its approach to work, conduct a needs assessment of each underemployed group, and come up with an action plan to provide services in employment and proactively prevent discrimination.

Data of the All-Ukrainian Court Decisions Register shows a very low number of court decisions on cases where people claim discrimination during interview or in the workplace, with few of them being successful. On the one hand, there is a clear need to encourage people to use the court as a mechanism to protect one's rights. At the same time, it is necessary to improve the work of courts and train judges on how to deal with cases of discrimination and how to use the shift of the burden of proof. Future analysis of court decisions and statistics will show whether there have been any improvements.

Another reason for the lack of adequate and timely response to employment discrimination is the absence of educational campaigns for employers. This work should be complemented by tools and incentives — for example, those who hire persons with disabilities (within or beyond the 4% quota) should also receive tools to help create working conditions for these employees, including arrangements for reasonable accommodation, and financial incentives to introduce them if they are costly.

## CONCLUSION

There is an adequate anti-discrimination legal framework in Ukraine, but it requires some improvement in sanctioning mechanisms to motivate employers to comply with it. The legal basis in Ukraine is also comprehensive enough to introduce proactive positive measures to improve equality in employment. However, to do so, it is important to first conduct needs assessments before developing targeted programs for each group facing employment discrimination. Ukraine's public officials should learn how to evaluate real situations, identify gaps and causes of the problem, and develop tailored solutions to tackle these problems. It is also necessary to introduce an evaluation procedure of positive measures to ensure that they achieve their goals. This will help avoid the oversights of the employment quota—a positive measure to incorporate persons with disabilities in the workforce that did not provide employers with any education or support. Apart from sanctions, tailored positive measures should also include incentives for employers to respect equality. Informational and educational campaigns and events, targeting both the employers and employees, can be an integral part of activities that might help combat discrimination. It is very important to provide people with knowledge and examples of how to defend their rights and to equip employers who want to organize their workplace without discrimination with the tools and support required to do so.

## RECOMMENDATIONS

To ensure successful changes in Ukraine's approach to reaching equality in employment, the following recommendations can be given to key stakeholders.

### ***The Ukrainian authorities:***

- provide effective complaint, redress and sanctioning mechanisms in cases of discrimination;
- strengthen and focus the role of the National Equality Body, provide it with sanctioning mechanisms;
- develop a system for collecting data on discrimination and base policy-making on data analysis;
- evaluate discrimination on different grounds in employment and develop plans to combat it;
- provide employers with tools and expertise on creating accessible working places and using reasonable accommodation for persons with disabilities;
- provide employers who create discrimination-free working places with bonuses and incentives;
- conduct informational campaigns for employees to ensure they know their rights and how to defend them.

### ***The European Union:***

Continue monitoring Ukraine's obligations under the Association Agreement and evaluate not only formal compliance of Ukrainian legislation with the Directive 2000/78/EC but also its implementation in practice. The work of each state body (especially the Ministry of Social Affairs, the Ministry of Healthcare, the Ministry of Education and the National Police) should be guided by its strategy for eliminating discrimination against different social groups in the sphere of its competence.