



**Twinning project “Implementation of the best European practices with the aim of strengthening the institutional capacity of the apparatus of the Ukrainian Parliament Commissioner for human rights to protect human rights and freedoms (apparatus)”**

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**Activity 2.1.4. Developing new or improving the existing methodologies and procedures to carry out a monitoring of the observance of human rights, ensuring activities of the Ombudsperson in preventing such violations**

<b>Document</b>	Checklist for Implementing Field Monitoring Visits on Discrimination
<b>Short description of the document</b>	The Checklist for implementing field monitoring visits on discrimination aim to help to identify cases of discrimination and shall give support to deal with concrete situations of discrimination. An Ombudsman has the task of helping victims of many kinds of discrimination by ensuring state authorities realise their rights. As such, anti-discrimination is one of the main objectives of each Ombudsman Institution. For this purpose Section 1 of this document provides a checklist for the preparation of a visit. Section 2 provides a checklist for the conduct of a visit as well as a description of four different grounds of discrimination including examples of discrimination. Section 3 explains the SMART-recommendation model, an international best practice model of how to deal with recommendations.
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# **Checklist for implementing field monitoring visits on discrimination**

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## 1. Introduction

In the present Situation in Ukraine, there is no established separate equality body to deal with issues of discrimination and equality as it is in most European states. The Department for Observance of the Rights of the child, non-discrimination and gender equality is one of 10 departments operating within the Commissioner's office<sup>1</sup>. Furthermore the regional visits are conducted not by representatives of the Commissioner, but by certain NGOs, are not regulated.<sup>2</sup>

Considering also that the regional visits are conducted not by representatives of the Commissioner, but by certain NGOs, which are part of the platform Ombudsman+.

For these reasons a checklist for implementing field monitoring visits on discrimination is required.

This checklist shall help to identify cases of discrimination and shall give support to deal with concrete situations of discrimination.

In 2016 a United Nations Development Programme together with the Ombudsperson's Office and civil society developed a pilot report in order to identify possible remedies to observe basic non-discrimination principles in the Ukraine. As a result, it can be assessed that “sexual minorities” like Homosexuals or LGBTIs, disabled people, ethnical groups and older people are facing discrimination the most.

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<sup>1</sup> <http://www.ombudsman.gov.ua/en/page/secretariat/struktura-sekretariatu>

<sup>2</sup> Activity 2.1.1. Mission Report, p. 57.

## 2. Checklist for preparation of the visit

### Research and information gathering

- Get Information about the place you intend to visit
- Get an overview of target groups and their specific needs
- Find out legal basis – international and national (eg. CRPD, UN monitoring committees; EERWM, PPCDU)
- Talk with complainant and witnesses
- Get statistical data
- Read visit reports of the Commissioner
- Read reports from NGOs, from other visiting organisations
- Read individual complaints
- Use other sources of information (media)
- Try to receive information about best practice in other countries

In order to ensure comparability of all visits, visits should be standardized and conducted by the same personnel

### Mental and operational preparation of the visit

- Think about your mandate and your attitude (ensure confidence and ensure respect for the dignity of the persons)
- Consider that vulnerable persons held in closed institutions are especially exposed to discrimination
- Fix timing, transportation and other organisational details, like who is leading the visiting group, who is asking questions, who is writing the protocol
- Decide how many team members are needed
- What expertise must they have
- Does the team has enough expertise in their group or does the team need external experts
- Should it be an announced or an unannounced visit
- Should specific materials be provided in the institution (e.g. information about specific rights of the target groups, information about the work of the Commissioner for Human Rights)

The better a visit is prepared with the experts, the sooner it will be successful.

### 3. Checklist for carrying out visits

Some elements of conducting a visit are crucial and should be followed in any type of visit:

- Initial talk with the director or other responsible persons
- Ask the director about vulnerable groups and discrimination
- Find out if the director has awareness about discrimination and if he is willing and able to deal with the problem.
- Get an overview of the premises
- Interviews with employers, employees, staff, etc.
- If the person does not want to stay anonymous, take down his/her name, address, telephone number, email contact
- Do observations; in some cases also debriefing during the visit could be reasonable
- Final talk with the director or the head of the Institution
- “Do no harm”: be aware that interviews must not traumatize victims.
- “Two-man-rule”: at least two persons should conduct a visit.
- The minutes should describe the facts as precisely as possible. Added photos or videos are helpful as well.

If the person concerned complains about discrimination, the infringement must be verified. The team must therefore set cross-checks during the visit.

To find out if a relevant case of discrimination has occurred, it is helpful to use a catalogue of questions to be asked to alleged victims of discrimination. As elaborated in the “Guidelines for detecting cases of discrimination”<sup>3</sup> following these questions will ensure that you get all the relevant information for finding out whether discrimination took place or not.

- What happened to you?
- When did it happen to you?
- Where did it happen to you?
- Who did this to you? (Please provide personal data on the alleged perpetrator)
- Why do you think that he/she/they did this to you?
- Have you already taken any action in response to what happened to you? If you have, what did you do? When did you do this?
- Do you have any pieces of evidence (e.g. documents) or information about witnesses? (please provide personal data on potential witnesses)

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<sup>3</sup> Zimmer, Guidelines for detecting cases of discrimination, 2013, p. 26.

## Grounds of discrimination

Discrimination can occur in every field of life, like in employment, housing, education, access to justice or any other. The ombudsman has to ensure that the administration does not discriminate and that acts of discrimination in the private sector have effective legal consequences. There is no best model for handling cases of discrimination. Depending on the vulnerable group or the ground of discrimination, different questions have to be asked. The following examples will illustrate the some forms of discrimination, such as discrimination ethnic origin, discrimination on the ground of nationality, discrimination on the ground of language, discrimination on the ground of disability, discrimination on the ground of age, discrimination on the ground of sexual orientation. And there are many more.

The following examples illustrate the main detected forms of discrimination. These are international examples and they are not to be connected to any cases of discrimination in the Ukraine.

### Discrimination on the ground of disability or health status

The prohibition of discrimination on the grounds of disability includes all forms of physical, mental, psychological, and sensory discrimination irrespective of the degree of the disability. The fact that individuals have a disability serves as an excuse for the majority to define them as “not-belonging” to their group. The consequence is that these persons are excluded from their rights and access to resources. Discrimination on the ground of disability become evident in barriers in the access to the labor market, in searching for accommodation, in the access to goods and services as well as in (non-) participation in economic and political power-sharing.

- No access facilities for disabled in public buildings and the public transport system; Accessibility in medical care centers or medical institutions means not only physical barriers but also fixation or restriction of movement due to administration of medicine
- No employment for HIV-infected persons
- “Good physical health” as necessary precondition for employment in public service

#### Example:

According to the UN CRPD, access for persons with disabilities to health care services must be the same in terms of scope and quality as for those with no disability. The Austrian Ombudsman Board is thus making an effort to standardise barrier-free accessibility as an obligatory tendering requirement for a contract doctor’s practice in the Ranking Criteria Regulation.

## Discrimination on the ground of sexual orientation

LGBTI stands for Lesbian, Gay, Bisexual, Transgender and Intersex. For transgender people, there is an inconsistency between their sense of their own gender and the sex they were assigned at birth. An intersex person may identify as male or female or as neither.

The discrimination of people on the grounds of sexual orientation is a form of heterosexist discrimination. The fact that individuals are homosexual or bisexual serves as an excuse for the heterosexual majority to define them as “not-belonging” to their group. The consequence is that these persons are excluded from their rights and access to resources. The concrete implications of heterosexist discrimination for the individual become evident in barriers in the access to the labor market, in searching for accommodation, in the access to goods and services as well as in (non-) participation in economic and political power-sharing.

In the recognition of homosexual marriage there are still deficiencies in some EU- member states and EU- Council states. In the adoption laws of some EU- member states and EU- Council states, heterosexual couples are still given preference over homosexual couples. A working environment in which homosexuals do not have to hide their sexual identity remains the exception than the rule. More often than not the fear of bullying, harassment and even firing is legitimate and therefore difficult to overcome

- Criminalization of homosexuality
- Prosecution for indecent acts
- Exclusion from the military because of homosexuality
- Isolation of these people in prison as a matter of routine (only with the informed consent of the people concerned, and without depriving them of services to which other detainees have access)

For transgender persons there should be special procedures in place concerning body searches.

### Example:

The Austrian Ombudsman Board criticized the prohibition against donating blood for risk groups, like homosexuals.

## Discrimination on the grounds of Age

The discrimination of people on the grounds of age is ageism in the form of anti- youth and anti-elderly discrimination. Individuals being younger than 25 or older than 50 presents an excuse for the majority (people aged 25 to 50) to define them as “not yet belonging” or as no longer belonging to this group.

The consequence is that these persons are excluded from their rights and access to resources. The concrete implications of ageist discrimination for the individual become evident in barriers in the access to the labor market, in searching for accommodation, in the access to goods and services as well as in (non-) participation in economic and political power-sharing.

- Limited access to medical rehabilitation services
- Unjustified minimum or maximum age employment requirements

Example:

The company policy of an airline prohibits the employment of pilots above the age of 60.

## Minorities

Are understood as national, ethnic, cultural, religious and linguistic minorities. Consider that these groups are often characterized by precarious economic conditions and that they are often victims of discrimination. Mostly, these groups are overrepresented in detention.

## Discrimination on the ground of ethnic origin

- Lower chances of getting jobs
- No entry for ethnic minorities into bars and Restaurants
- Ethnic motivated police violence

Examples:

- The director of a company says in public that he does not want to hire people of a foreign ethnic origin, because his customers would object.
- A majority of residents of a certain part of a Roma settlement was cut off by electricity. Other parts of the town with no Roma population had enough supply of electricity.

### Discrimination on the ground of nationality

- Limited social security for foreigners
- Limited access to unemployment benefits for foreigners with history of legal employment

### Discrimination on the ground of language

- Requirement of unnecessary language skills of job applicants
- Instruction of civil servants not to respond to letters in languages other than official language
- Inability of accused to express themselves in official court language

**Example:**

- In a job advertisement, “perfect German skills” are listed as a criterion for Hiring. The advertisement does not indicate any further specifications as to why language skills to the level of fluency are needed for the job.

## 4. Recommendations

For recommendations the „SMART-Recommendation-Model“ can be used. This model was used first in management in the early 80ties to write goals and objectives, for example in project management, employee-performance management and personal development.

- **Specific:** Each recommendation should address one specific issue only.
- **Measurable:** In future it must be verifiable whether a recommendation has been implemented or not.
- **Achievable:** The implementation of a recommendation has to be feasible.
- **Results-oriented:** The action suggested in the recommendation should be designed to lead to a concrete result.
- **Time-bound:** realistic time frame for implementation

## **5. Conclusion**

Summing up it must be clear that equality and anti-discrimination are at the heart of every human right. Therefore, it is always a crucial area in the Ombudsman's dealings. An Ombudsman has the task of helping victims of many kind of discrimination by ensuring state authorities realise their rights. As such, anti-discrimination is one of the main objectives of each Ombudsman Institution.

At least there are no final checklists for dealing with cases of discrimination. The groups of vulnerable persons are different, the situations differ and the forms of discrimination are manifold.