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LEGAL PROTECTION OF VULNERABLE GROUPS OF POPULATION: PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract: The relevance of the problem under study is due to the need to monitoring the general situation to respect to human rights. The establishment, provision and realization of human rights is an important indicator in a state, which indicates its democracy, sociality, as well as the fact that such a state is legal. Purpose of the article in the study the issues of legal protection of vulnerable categories of population in the context of formation of active human rights policy of state aimed at increasing the capacity of socially vulnerable groups and reducing the risks of growing social tensions in society. The leading method for studying this problem is the legal sociological method, which allows us to study the effectiveness of state and legal regulation of human rights protection. The article presents an analysis of the results of the European experience in combating intolerance and discrimination. Its types main determined have been. Highlighted the criteria by which discrimination is prohibited. The legal system of human rights protection mechanisms is analyzed. The article presents scientific categories: discrimination, hate crimes,

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vulnerable groups. The practical significance lies in the development of proposals for improving domestic legislation.

Keywords: violations, ECHR practice, vulnerability, protection of the rights

1. INTRODUCTION

Analysis of scientific and practical research in the field of human rights in Ukraine, reports of national, regional and international human rights organizations, reports of the Ukrainian Parliament Commissioner for Human Rights, suggests that along with the positive results of reforming the legal system of Ukraine, human rights violations remain systemic. A special place in the list of such violations is occupied by vulnerable groups who are unable to counteract effectively illegal actions or to protect and restore their rights in case of their violation. The urgency of the problem is exacerbated by the fact that discrimination, as a manifestation of violations of the rights of members of certain groups (on the basis of age, health, social status, nationality, etc.) causes global negative consequences for society and state. Violation of the rule of law, legality, leveling of the rule of law, negative impact on international image of the state – only a small list of political and legal consequences of discrimination. In the current crisis, the population of Ukraine is acutely aware of instability – in families, personal security, in social environment, as well as in global politics. The general situation with respect for human rights in the state is reflected in numerous violations of the rights of vulnerable groups, which should cause special attention and concern to public authorities and human rights organizations. In practice, very often due to stigma and marginal characteristics of vulnerable groups, the vast majority of violations of their rights remain hidden from society. In such circumstances, the assessment of the real scale and features of these violations, the development of effective legal mechanisms for counteraction are quite difficult tasks.

Vulnerability is a condition in which a person is deprived or restricted in his/her ability to resist violent or other unlawful acts due to physical or mental characteristics or other circumstances caused by the relevant characteristics. Vulnerabilities can affect individuals,

groups of people, communities, organizations, society and ecological systems. It is expressed in the inability to withstand certain stressful situations. To one degree or another, all people are socially vulnerable to natural disasters or man-made disasters. The vulnerability of population increases during periods of political instability, economic downturn and legal uncertainty. Traditionally, vulnerable groups include elderly, sick persons, women, children, members of various minorities and people in temporary need of protection. Within a separate article it is impossible to present the features of protection of all groups, so the subject of the study is the features of protection of the rights of a particular ethnic group, namely the Roma population. The Roma of Ukraine belongs to a national minority that is constantly faced with discrimination in Ukrainian society. It is the Roma who are discriminated against, attacked by extremist groups and persons, they are the least socially protected group of the population and have a much lower standard of living than the rest of the population. Regardless of their way of life (dispersed or compact), Roma are considered one of the most vulnerable groups to stigmatization, as most of them face human rights abuses and are unable to defend themselves. Due to socio-economic, cultural and historical reasons, most members of this ethnic group belong to the poorest strata of population. Persistent negative stereotypes of the mass consciousness associated with the Roma exist in Ukrainian society. The tool of influence and formation of perception is often the media, which manipulate stereotypical attitudes, presenting a generalized portrait of the whole nation in a drug dealer and swindler image. Information appears to be an exception in the media, which portrays Roma as victims of racist violence. For example, in February 2014, a group of approximately 15 people attacked four Roma households in Korosten, and in April 2014, a Roma family home was set on fire in Cherkasy. In August 2016, a riot broke out in Loshchynivka, during which locals robbed and burned several Roma households. More than 300 people took part in acts of violence that resulted in property damage without inflicting bodily harm. Seven Roma families, including 17 children, fled the village after the village council decided to evict them. The European Commission against Racism and Intolerance notes

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that the central authorities have responded by institution of a criminal investigation into forced evictions and causing material damage (Report of the European Commission against Racism and Intolerance (ECRI)… 2017).

Vulnerability is not a clearly defined concept. This term is used by sociologists, demographers, psychologists, economists, ecologists, physicians, lawyers in the context of activities peculiarities in certain areas of public life. The works of leading Ukrainian scientists are devoted to various aspects of the system of legal protection of vulnerable groups in Ukraine, among them: Boychuk and Vovk (2018), Galan (2014), Guz (2012), Zhuravlyova (2016), Kravchuk (2018), Ponomarev and Fedorovich (2014), Radchuk (2014), and others. The subject of such research is the problem of legal policy formation, analysis of the causes of low efficiency of legal protection, development of conceptual foundations of organization, search for new and improvement of existing mechanisms for protection of vulnerable groups. However, the researches do not pay enough attention to evaluation and development of new areas of legal support. Particular attention needs to be paid to improve methodological approaches to evaluation of legal programs and entire system of legal support in Ukraine, as well as the interpretation of decisions of the European Court and their use in legal decisions. The theoretical importance and practical significance of these issues led to the choice of topic, purpose and objectives of research. The purpose of this study is to identify key areas for active legal policy aimed at increasing the capacity of socially vulnerable groups, including the Roma population, and reducing the risk of vulnerability in society. Analyze the European experience in combating intolerance and discrimination, and make proposals to improve domestic legislation.

2. MATERIALS AND METHODS

Among the methods that are considered the most effective for the study, the authors should mention primarily the dialectical method, analytical and synthetic methods, system method, activity method, hermeneutic method, concrete-historical method, sociological method, formal-dogmatic method, comparative-legal method,

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statistical method. In the study of the EU and Ukraine legal systems essence in their relationship, a civilizational approach becomes relevant, which allows to establish legal elements through the prism of the diversity of scientific positions of representatives of different legal systems and legal cultures. It helps to identify the national legal system features in the field of functioning of law principles and norms, pointing to the uniqueness of legal system of Ukraine and at the same time emphasizing the shortcomings and differences caused by public awareness, law enforcement. The dialectical method of scientific cognition is a general and universal method of forming legal concepts, it is a cognitive strategy and aims to identify the causes, origins and consequences of the studied phenomena, their internal contradictions, connections and relationships with other phenomena. Thus, with the help of this method it became possible to know the categories' content: "vulnerable groups", "discrimination", "hate crimes" and others.

Analytical and synthetic research methods allowed selecting and analyzing information on the research topic. The need to use the analytical-synthetic method is due to the inadequate parity of dichotomous connection analysis-synthesis. This method, expanding the possibilities of separate tools of analysis and synthesis in understanding the legal factors of reliable assessments, forms the preconditions for improving the legal regulation mechanism of rights' protection of vulnerable groups. The essence of the system method is that the studied phenomena are considered as a certain system that is included in the system of a broader order, performs certain functions in it and is associated with various connections. Thus, a systematic approach has given us the opportunity to analyze the case law of the European Court of Human Rights on vulnerable groups in relation to other phenomena of legal reality. The application of this method allowed studying the legal status of vulnerable groups, legal procedures and processes as interdependent systems. The systematic method has played an important role in the study of anti-discrimination norms of international, regional and national law. Application of the methods analyzed abovenecessitates the activity method involvementin the methodology of our study, which provides study of relevant legal

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phenomena through the prism of their effectiveness. It is the activity of law subjects that creates, changes, terminates and renews certain types of relations. This method is used in assessing the state bodies activities of Ukraine to create legal mechanisms to protect the rights of vulnerable groups.

The hermeneutic method in the legal sphere is based on a set of methods of interpretation and interpretation of legal texts, which take the form of both regulations and law enforcement, and scientific and monographic literature. The application of the hermeneutic method allowed analyzing and clarifying qualitatively the legal texts content in the field of protection of vulnerable groups and their application spractice. The use of concrete-historical method contributed to the chronological framework definition of the studied relations, allowed to trace the dynamics of its development. It is determined with the help of the sociological method the social conditionality of vulnerable groups formation in modern society, as well as the mechanism of their functioning and social interaction as a component of civil society. The formal-legal method made it possible to study the connection between the internal content and form of international and domestic cooperation of states and state bodies in the field of combating hate crimes, and was also used to formulate legal concepts and categories. The comparative law method made it possible to compare the legislation of Ukraine and other States-members, as well as the law of the Council of Europe on combating intolerance and combating hate crimes. The normative basis of legal protection study of vulnerable groups is the acts of current legislation of Ukraine, international acts in the field of protection of human rights and freedoms, as well as the case law of the European Court of Human Rights.

3. RESULTS

Based on the topic relevance, the authors emphasize that at the present stage of social evolution, it is very important to raise the issue of legal protection of vulnerable groups and discuss the problem both among scientists and at the level of public authorities, NGOs. The purpose of such discussions is to identify the scale and causes of existing problems, to determine the legal mechanism for the protection of vulnerable groups. The

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problem of overcoming discrimination is relevant for most modern states, and Ukraine in particular. The implementation of this task is related to ensuring the fundamental human rights and freedoms enshrined in international, regional and domestic regulations. Recognizing the nature of human rights, Article 1 of the Universal Declaration of Human Rights (1948) states that "all human beings are born free and equal in dignity and rights". And Article 2 states "everyone shall have all the rights and freedoms set forth in the Declaration, regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, status or other status". The Constitutions of many countries contain references to this international document and include a number of its provisions. The Declaration is often referred to in the interpretation of national human rights law, as well as in case law.

The International Covenant on Civil and Political Rights (1973) also establishes a general prohibition of discrimination on any basis (Art. 2). The Covenant obliges States to provide in national law not only for the prohibition of discrimination of any kind (Art. 26), but also for any derogation in favor of national, racial or religious hatred which constitutes incitement to discrimination, hostility or violence (Art. 20). In addition, Art. 4 of the Covenant provides that in a state of emergency in a state in which the life of a nation is endangered and officially declared, states-parties of the Covenant may take measures to derogate from their obligations under the Covenant only in to the extent that it is dictated by the severity of the situation, provided that such measures are not incompatible with their other obligations under international law and do not result in discrimination solely on the basis of race, color, sex, language, religion or social origin. (1966). There are no special provisions on the rights of national minorities in the International Covenant on Economic, Social and Cultural Rights (1973). However, under Art. 2 of the Covenant, States-parties undertake to ensure that the rights proclaimed in it are exercised without discrimination, in particular as regards race, language, religion and national origin. State-members undertake to guarantee the right of everyone to work and its fair and favorable conditions, the right to form trade unions, the right to social security, the right to protection of families and children and adequate food,

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clothing and housing, the right to the highest attainable standard, physical and mental health, the right to education, the right to participate in cultural life (1966). Thus, states that have ratified the Covenant recognize and guarantee these rights to every person without any discrimination on these bases, regardless of a person's membership in the majority or minority of the population, his/ her citizenship.

The principle of non-discrimination is also enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) in Article 14, according to which the using of rights and freedoms recognized by the Convention must be ensured without discrimination on any basis (1950). Whenever the European Court of Human Rights examines a possible violation of Article 14, it does so in conjunction with fundamental Convention law. Applicants often complain of fundamental right's violation and, in addition, of a violation of that right in conjunction with Article 14. In other words, interference with their rights, in addition to violating standards of observance of a fundamental right, also constitutes discrimination. Protocol No. 12 prohibits discrimination in the "exercise of any right provided for by law" and therefore has a wider scope than Article 14, which applies only to the rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). It should be noted that the protocol guarantees protection against discrimination primarily by the state, but it also applies to relations between individuals, which are usually subject to state regulation, "for example, arbitrary denial of employment, denial of access to restaurants or services, which may be provided to the public by private persons, such as health services or utilities, such as water or electricity" (2002). In December 1965, the General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination (1994), as discrimination on racial basis was recognized as the most common source of political and civil conflict. Racial discrimination is defined as "any distinction, exception, restriction or preference based on race, color, race, national or ethnic origin" that impedes the realization of human rights and fundamental freedoms. The Convention established for the first time a body to

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monitor compliance with all approved provisions, the Committee on the Elimination of Racial Discrimination, which consists of eighteen experts of high moral character and recognized impartiality, elected by States-Parties from among their citizens, must perform their duties personally and attention is paid to the fair geographical distribution and representation of various forms of civilization, as well as the main legal systems (1965).

The Framework Convention has historically become the first, legally binding, multilateral, international instrument devoted directly to the protection of national minorities in all spheres of public life. The legal document enshrines the principle that all its provisions are implemented exclusively through the national legislation of each state and its state policy. At the national level, the Constitution of Ukraine (1996) guarantees citizens equal constitutional rights and freedoms and equality before the law (Art. 24) without any privileges or restrictions (1996). The domestic legal system has created a legal framework aimed at combating hate crimes. The negative consequences of hate crimes do not only affect individuals and groups, but affect the entire social order and pose a threat to every member of society. It is the duty of the Ukrainian state to protect and ensure the safety of people who are on its territory, regardless of race, nationality, ethnic origin, language, skin color, religion, age, physical ability, sexual orientation, gender identity or other characteristics. In November 2012, the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" № 5207-VI came into force, which defines the organizational and legal framework for preventing and combating discrimination in order to ensure equal opportunities for human rights and freedoms of citizens. Discrimination is a situation in which a person and/or group of persons on the basis of race, color, political, religious and other beliefs, sex, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence , linguistic or other features that were, are and may be valid or presumed, is subject to restrictions in the recognition, realization or use of rights and freedoms in any form established by this Law, except where such restriction is lawful, objective a reasonable goal, the ways to achieve which are appropriate and necessary.

The law stipulates that manifestations of discrimination are direct and indirect discrimination, incitement and oppression (2012).

The provisions of the law provide for the prohibition of any discrimination. The only exception may be the so-called "positive discrimination" – actions aimed at eliminating legal or factual inequality in the ability of a person and / or group of persons to realize equal rights and freedoms. Punishment for discrimination on racial or ethnic basis is provided for in the Criminal Code of Ukraine (2001), which contains a number of articles in the General (67) and Special Parts (115, 121, 122, 126, 127, 129, 294), which provide for more severe punishment for crimes, committed on the basis of racial, national or religious intolerance (which are hate crimes). Article 161 establishes criminal liability for intentional acts aimed at inciting national, racial and religious hatred and hatred, as well as for discrimination on the basis of an open list of characteristics (2001). However, this article is also rarely used in practice, as it is difficult to prove intentionality in court. In 2009, amendments were made to the Criminal Code of Ukraine, which increased criminal liability for certain crimes committed on the basis of intolerance (Law of Ukraine "On Amendments to the Criminal Code of Ukraine…", 2009).

Rapporteurs of the Council of Europe criticize the imperfection of Ukrainian legislation on discrimination. In particular, the Criminal Code of Ukraine (Law of Ukraine "On Amendments to the Criminal Code of Ukraine…", 2009) does not provide for punishment for incitement to hatred motivated by homophobia, and the law on the principles of preventing and combating discrimination does not mention that sexual orientation may be basis for discrimination. The Verkhovna Rada of Ukraine registered the Draft Law "On Amendments to the Criminal Code of Ukraine" (2020). The bill provoked a wave of protests from the public, the church and religious organizations of various denominations. In our opinion, the bill as a basis is promising, but needs to be finalized, as in its current form the chances of its adoption are low. In general, the provisions on crimes based on racial hatred are rarely applied in the Ukrainian judiciary, and as a result the number of convictions under these articles is very low. Hate crimes are crimes based on

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prejudice. Such crimes happen everywhere, because no society is safe from the consequences of prejudice and intolerance. Hate crimes send a signal of rejection to entire communities and carry the seeds of potential conflict, as they can increase both quantitatively and given the level of violence. In Ukraine, foreigners, members of different ethnic communities and religious minorities, LGBT communities most often suffer from hate crimes. An indicator of prejudice presence is the fact that gives reason to believe that the crime could have been committed precisely because of prejudice. Such indicators serve as objective criteria for assessing the probable motives of a crime and can help in the preliminary detection of cases of hate crimes.

4. DISCUSSION

A. Kravchuk (2018) in his research provides statistics that Ukrainian state institutions register a relatively small number of manifestations of xenophobia. Thus, the Parliamentary Commissioner for Human Rights in 2017 received 37 complaints of discrimination on the basis of race, color and ethnic/national origin. In addition, according to the results of monitoring the media, social networks and other sources of information, 16 proceedings were instituted on the facts of alleged hate crimes and 14 proceedings on hate speech on the above basis. In 2017, independent observers provided the OSCE with 13 cases of racism and xenophobia, 4 cases of Roma-phobia and 21 cases of anti-Semitism (20 of which were property damage). In 2016, such data included 7 cases of racism and xenophobia (including 5 attacks on people) and 21 cases of anti-Semitism (of which 17 cases of property damage). The author concludes that in official statistics and data from non-governmental organizations, cases of xenophobia and racism are often mentioned together, which makes it impossible to separate crimes and incidents of national hatred from racist ones. At the same time, manifestations of xenophobia against Roma and Jews are mentioned separately from other ethnic/national groups (Kravchuk, 2018).

At the end of the XX-th century, the problem of discrimination against Roma attracted the attention of human rights organizations. Roma activists and defenders received support from the Open Society Institute (New York). In the Council of Europe, the “Roma issue”

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has become one of the special areas of work: the human rights situation is constantly monitored, seminars and trainings are held for young Roma and lawyers involved in the protection of Roma rights, and open discussions are held on Roma issues. With the participation of human rights defenders from various countries, the European Center for the Protection of Roma Rights was established in 1995, operating in Budapest with offices in many countries in both Western and Eastern Europe. The public of European countries has begun to pay attention to the cases of violence against Roma, which are increasingly occurring by the police. At the time, ECHR practice did not take into account racist motives for violence. While acknowledging the positive obligations of States to conduct effective investigations into forced abductions, torture and inhuman treatment, the Court did not, however, dare to apply the same approach to cases of racial violence.

This approach changes with the decision in the case of Nachova and Others v. Bulgaria: ECtHR judgment (2005). The case concerned the deaths of two young Roma men who were shot dead in a Roma settlement where they were hiding after their escape from imprisonment being accused for leaving the military service without permission. During the investigation into the legitimacy of the actions of Major G., who led the search and detention operation and opened fire, one of the witnesses said that shortly after the shooting, Major G. shouted at him: “You are damn gypsies”. Referring to the high levels of discrimination and hostility against Roma in Bulgaria, the applicants, relatives of the victims, alleged a violation of Article 14 of the Convention in conjunction with Article 2, pointing out that excessive violence against Roma had been used by the authorities because of their ethnic origin. The value of this decision is that the Court has established procedural obligations under which the state must investigate discriminatory motives for violent crimes if there is a reasonable suspicion of such motives. The European Court of Human Rights, in its rulings, emphasizes that crimes based on intolerance require a particularly decisive response from the state – “the state must use all available means to combat violence based on intolerance, thus strengthening the democratic principles of tolerance and pluralism”. (Nachova and Others v. Bulgaria, 2005). The ECHR has repeatedly emphasized

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that the application of the same methods and approaches to the investigation of intolerance crimes and other violent crimes that do not have such a motive is incorrect, as it means that the state ignores the particularly destructive nature of intolerance crimes.

The first Ukrainian case of discrimination is the “Fedorchenko and Lozenko v. Ukraine” (2012) one, in which the European Court of Human Rights found Ukraine guilty of non-compliance with Article 14 of the European Convention on Human Rights, together with Article 2 of the European Convention, which regulates the right to life and the need for prompt, effective and impartial investigation. The decision on which was on September 20, 2012. The text of the case concerns an attack on a Roma family on October 28, 2001, which resulted in the burning of their homes and the death of five family members, including two six-year-old children. The head of the family accused a police officer, who he and his relative refused to pay a bribe for not being prosecuted for alleged drug trafficking. During the investigation, information on a police officer involvement in the incident was not confirmed, and the prosecutor office refused to initiate a criminal case against him. At the same time, the main suspects were identified: N. and six other persons. Citizen N. was later charged, but no other suspects could be found. The case against N. was repeatedly remanded for further investigation, and on June 22, 2005, it was closed due to the latter's death. The investigation into the other suspects has not been completed. Having examined the case, the European Court of Human Rights concluded that insufficient evidence had been adduced to substantiate or disprove the police officer's involvement in the arson. However, ECHR found a violation: the state authorities limited themselves to basic procedural steps. In addition, the ECHR noted that none of the six suspects (except N.) had been found.

Given the widespread acts of violence and discrimination against Roma in Ukraine, the European Court did not rule out that the decision to set houses on fire was further reinforced by ethnic hatred. However, there is no evidence that the authorities tested the version of the xenophobic motives for the attack. The ECHR found it unacceptable that in these circumstances no significant steps had been taken in the course of the investigation, which had

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lasted for more than 11 years, to identify and convict the perpetrators. Ukraine was ordered to pay the applicant EUR 20,000 in respect of non-pecuniary damage. This is the first case that Ukrainian Roma has won in the European Court (Fedorchenko and Lozenko v. Ukraine, 2012). The ECtHR pointed to the presence of racist motives in the crime, which would affect future jurisprudence. After all, in Ukraine, such qualifications are usually avoided in cases involving national minorities who have been victims of violence. Also, the rulings of the European Court of Human Rights clearly emphasize that the presence of a violation of human rights and a sign protected from discrimination in the victim of the violation does not mean the existence of discrimination. The decision in the case of the ECHR "Burlya and Others v. Ukraine" was on November 6, 2018. The events took place in September 2002 in the village of Petrivka, Odessa region. The conflict essence was that after the death of a 17-year-old boy in the village, a group of several hundred of his fellow villagers began to destroy the houses where the Roma lived, with one of whom the victim allegedly had a conflict. The village council decided to evict the Roma ethnic group from the village and cut off the houses from electricity and gas, after which a crowd of several hundred people destroyed the houses of nineteen Roma, damaging their property, and police officers who were present. during the "action", had taken no measures to stop vandalism and preserve property.

The Court concluded that there had been a violation of the right to respect for private and family life, housing and correspondence (Art. 8 of the European Convention on Human Rights) and the prohibition of discrimination (Art. 14), as well as the prohibition of torture and ill-treatment (Art. 3). According to the ECHR, the damage caused to the applicants' homes amounted to serious and unjustified interference with the applicants' right to respect for their private and family life and home. The European Court of Human Rights has ordered Ukraine to pay 5 million hryvnias in compensation to the victims of the pogrom of the Roma camp in Odesa region (Burlya et al., V. Ukraine, 2018). In order to create appropriate conditions for the protection and integration of the Roma national minority into Ukrainian society, ensuring equal opportunities for its participation in the socio-economic and

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cultural life of the state by the Decree of the President of Ukraine of 08.04.2013 № 201 approved the Strategy for Protection and Integration of the Roma national minority for the period up to 2020 (2013). The main objectives of the Strategy are to promote legal and social protection of Roma, promote their employment, improve education, ensure the health of Roma, improve the living conditions of Roma, meet the cultural and information needs of Roma (The Strategy for Protection and Integration…, 2013). In 2013, the Cabinet of Ministers approved an action plan for the implementation of the strategy for the protection and integration of the Roma national minority into Ukrainian society for the period up to 2020 (2013), which identifies specific measures aimed at integrating the Roma minority into the Ukrainian society and their executors.

Current state policy of Ukraine, on the one hand, aimed at the inclusion of Roma in socio-economic life of the country, on the other hand, does not always cope with the challenges of Roma-phobia in society, with discrimination against the Roma minority. The report of the European Commission against Racism and Intolerance (ECRI) of the fifth cycle of monitoring on Ukraine of June 20, 2017 shows that legislation and law enforcement practices in Ukraine on combating intolerance and hate crimes are still imperfect and ineffective. ECRI is a special, independent and oversight human rights monitoring body that specializes in issues related to the fight against racism, discrimination based on "race", ethnic/national origin, color, nationality, religion, language, sexual orientation and gender identity, xenophobia, anti-Semitism and intolerance in Europe; it prepares reports and makes recommendations to Member States. The Commission shall be composed of independent and impartial members appointed on the basis of their moral authority and recognized experience in dealing with racism, xenophobia, anti-Semitism and intolerance. As part of its statutory activities, ECRI conducts country-by-country monitoring, which includes an analysis of the situation in each of the Council of Europe member states on racism and intolerance and makes suggestions and recommendations on how to address the issues identified.

On 2 June 2020, ECRI published its conclusions on the implementation of

two priority recommendations provided to Ukraine in 2017. First, ECRI strongly recommended that sexual orientation and gender issues be included in the Criminal Code as basis and considered aggravating. In this regard, ECRI notes that under the Criminal Code, there is no punishment for incitement to hatred or violence motivated by homo/transphobia. In addition, in aggravating circumstances, there are no references to sexual orientation and gender under aggravating forms of certain crimes or in an article of the Criminal Code. ECRI notes only one amendment to the Criminal Code, which came into force in 2019 – the inclusion of basis for "sexuality". Although the inclusion of a gender issue as an aggravating circumstance is welcome, it does not cover sexual orientation or gender and is therefore not in line with the recommendation, ECRI notes. This means that its recommendation was not implemented. Second, ECRI recommended refusing to hold court hearings on Roma cases seeking to prove their identities in order to obtain personal identification documents. The authorities informed ECRI that the 2012 Court Fees Act provides for deferral of the court fee, reduction in its amount or exemption from payment. ECRI, however, understands that the legislation is unfavorable for Roma seeking to prove their identity, as, paradoxically; there is a requirement to prove inability to pay the fee by providing documentary evidence to the court. In this context, ECRI did not find any indication of the application of this provision in such cases (News of the European Commission against…, 2020). Therefore, the conclusion is that the recommendation was not implemented, because all the information collected indicates that no changes have taken place in this regard. Thus, the Roma national minority is one of the most vulnerable in society. Marginalization, social exclusion and stigma, as well as other social and economic indicators, such as unemployment and poor financial conditions, affect access to legal services and the general legal situation.

5. CONCLUSIONS

Based on the above, it can be concluded that discrimination on racial or ethnic basis is particularly offensive form of discrimination. Discrimination against minorities remains a central issue

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and affects the realization of all rights. International human rights law prohibits discrimination on the basis of race, color, language, national or social origin, or other status. These human rights standards require States-Parties to take all appropriate measures to eliminate discrimination and ensure that all public bodies and institutions comply with this obligation. It is obvious that the correct solution of the problems related to the situation of Roma in Ukraine requires comprehensive, systematic and long-term program. Hate crimes are the result of cruelty and, without proper legal response, spread to large communities. The introduction of anti-discrimination law in Ukraine is a prerequisite for its formation as a European state governed by the rule of law. Any victim has the right to seek protection of their rights from the ombudsman and/or the court. At the same time, no court fee is paid for filing lawsuits related to discrimination disputes. Support and implementation of anti-discrimination policy should be provided at all levels of government. The introduction into the national legal system of mechanisms and tools that can stop or reduce hatred and protect human dignity, autonomy and equality of every person, creates the basis for effective protection of fundamental values, humanity and humanism. Only a systemic approach can guarantee overcoming the stereotype, both in the state and in the social perception of the Roma population.

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