

CRI(2020)28

**ECRI CONCLUSIONS
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS
IN RESPECT OF UKRAINE
SUBJECT TO INTERIM FOLLOW-UP**

Adopted on 7 April 2020 ¹

Published on 2 June 2020

¹ Except where specifically indicated, any developments which occurred after 24 January 2020, the date on which the response of the Ukrainian authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, have not been taken into account in this analysis.

ECRI Secretariat
Directorate General II - Democracy
Council of Europe
F - 67075 STRASBOURG Cedex
Tel.: +33 (0) 390 21 46 62
E-mail: ecri@coe.int

www.coe.int/ecri

 @ECRI_CoE

FOREWORD

As part of its fifth round of monitoring work, ECRI has renewed its process of interim follow-up with respect to two specific recommendations made in each of its country reports.

In line with the Information Document on ECRI's fifth monitoring cycle brought to the attention of the Ministers' Deputies on 14 November 2012¹, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim follow-up recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

¹ CM/Del/Dec(2012)1154/4.2.

1. *In its report on Ukraine (fifth monitoring cycle) published on 19 September 2017, ECRI strongly recommended that sexual orientation and gender identity are specifically included as grounds in Article 161(1) and (2) of the Criminal Code as well as in all the aggravated forms of offences and the general provisions on aggravating circumstances under Article 67(1)(3).*

In its fifth report, ECRI noted that there was no punishment of incitement to hatred under Article 161(1) of the Criminal Code or violence under Article 161(2) motivated by homo/transphobia. Further, there was no reference to the grounds of sexual orientation and gender identity under the aggravated forms of certain offences or in Article 67(1)(3) on circumstances aggravating punishment, although the Action Plan on Implementation of the National Human Rights Strategy provides for the inclusion of the grounds of sexual orientation and gender identity in Article 67 of the Criminal Code.

Amendments to the Criminal Code entered into force on 31 October 2019. However, ECRI notes that no modifications were made to either paragraph of Article 161. As concerns Article 67, the only amendment was the inclusion of the ground of “sexual belonging” (*статевої приналежності*). Thus, the circumstances aggravating punishment now include committing crimes on the basis of racial, national or religious enmity or discord or on the grounds of sexual belonging. This covers only the aspect of gender and does not extend to sexual orientation or gender identity. While the inclusion of gender is a welcome development, it does not respond to ECRI’s recommendation.

ECRI concludes that its recommendation has not been implemented.

2. *In its report on Ukraine (fifth monitoring cycle), ECRI recommended that court fees are waived in cases of Roma seeking to prove their identity for the purpose of obtaining personal identification documents.*

The authorities informed ECRI that Article 8 of the Law on Court Fees 2012 provides for the postponement of payment of court fees, reduction of their amount or exemption from payment. A court may reduce the amount or exempt from payment only in cases where the court fee exceeds 5 percent of the annual income of the plaintiff for the previous calendar year.

ECRI understands that the legislation is of little use to Roma seeking to prove their identity, since – paradoxically – there is a requirement to prove inability to pay the fees by providing documentary evidence to the court. In this context, ECRI has found no indication that the Article has ever been applied in such cases.

All information gathered by ECRI points to the fact that no changes have occurred in this respect. ECRI, therefore, concludes that its recommendation has not been implemented.

