

# BARRIERS, REMEDIES AND GOOD PRACTICES FOR WOMEN'S ACCESS TO JUSTICE IN UKRAINE



Co-funded  
by the European Union



EUROPEAN UNION

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Co-funded and implemented  
by the Council of Europe



**BARRIERS, REMEDIES  
AND GOOD PRACTICES  
FOR WOMEN'S ACCESS  
TO JUSTICE  
IN UKRAINE**

This national study, “Barriers, remedies and good practices for women’s access to justice in Ukraine,” was first prepared in 2017 by Olena Uvarova and updated in 2022 by Tamara Buhaiets in the context of the EU/Council of Europe joint programme, the Partnership for Good Governance.

This document was produced with the financial support of the European Union and the Council of Europe, in the framework of the project *Women’s Access to Justice: implementing Council of Europe’s gender equality and violence against women standards* as part of the Partnership for Good Governance. Its contents are the sole responsibility of the author(s). Views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe.

The reproduction of extracts (up to 500 words) is authorised, except for commercial purposes as long as the integrity of the text is preserved, the excerpt is not used out of context, does not provide incomplete information or does not otherwise mislead the reader as to the nature, scope or content of the text. The source text must always be acknowledged as follows  
“© Council of Europe, 2023”.

All other requests concerning the reproduction/translation of all or part of the document, should be addressed to the Directorate of Communications, Council of Europe (F-67075 Strasbourg Cedex or [publishing@coe.int](mailto:publishing@coe.int)).

All other correspondence concerning this document should be addressed to the Partnership for Good Governance of the Council of Europe.

Strasbourg Cedex 67075 FRANCE

E-mail: [dpc\\_pgg@coe.int](mailto:dpc_pgg@coe.int)

Photos: Shutterstock

Design and layout: Documents and Publications Production Department (SPDP), Council of Europe

© Council of Europe, July 2023

All rights reserved.  
Licensed to the European Union under conditions.

# Table of Contents

---

<b>ACRONYMS AND ABBREVIATIONS</b>	<b>5</b>
<b>GENERAL INTRODUCTION TO THE NATIONAL STUDIES</b>	<b>6</b>
<b>UKRAINE</b>	<b>10</b>
<b>1. Introduction</b>	<b>10</b>
1.1. The concept of access to justice	10
1.2. International standards on gender equality	10
1.3. International standards and access to justice in the context of armed conflict	12
1.4. Key definitions	13
1.4.1. Discrimination	13
1.4.2. Direct discrimination	14
1.4.3. Indirect discrimination	14
1.4.4. Discrimination based on sex	14
1.4.5. Sexual harassment	14
1.4.6. Gender-based violence	15
1.4.7. Domestic violence	15
1.4.8. Sexual violence	16
1.5. The issue of women's rights in Ukrainian constitutional reform	16
1.6. Obligations of Ukraine to ensure gender equality according to the Association Agreement between the EU and Ukraine	17
1.7. Ensuring gender is mainstreamed into security and defence sector policy	17
<b>2. Gender gaps in access to justice</b>	<b>17</b>
2.1. Analysis of the national legal and policy frameworks to identify the obstacles women encounter in accessing the justice system	17
2.1.1. Discriminatory laws and policies	17
2.1.2. Shortcomings of special laws aimed at equality between women and men or the protection of women	19
2.1.3. Access to legal aid	24
2.2. Analysis of the practice and mechanisms for the implementation of laws	28

2.2.1. Challenges for women’s access to justice	28
2.3. Socio-economic and cultural barriers to women’s access to justice	32
2.3.1. Women’s awareness of their rights	32
2.3.2. Specific socio-economic and cultural barriers that may affect women’s access to justice	33
2.3.3. Brief overview of key statistics concerning women’s position in society, the economy and politics	35
2.3.4. The impact of Covid-19 on women’s rights and interests in Ukraine: a brief overview	36
<b>3. Gender responsiveness of the justice system</b>	<b>37</b>
3.1. Comparison of the number of cases brought before national courts by women and men	37
3.2. Training for judges and lawyers on gender	38
3.3. Mapping curricula of basic education and further training for legal professionals and police to gauge the extent to which women’s rights and gender equality issues have been introduced in their initial and further education	40
<b>4. Remedies, good practices and recommendations</b>	<b>40</b>
4.1. Existing remedies to facilitate women’s access to justice	40
4.1.1. Anti-discrimination legislation	40
4.1.2. National programmes	40
4.1.3. Specialised equality bodies	41
4.1.4. Special measures	41
4.1.5. Gender-based legal analysis	42
4.2. National good practices to promote equal access of women to justice	42
4.3. Proposed measures to address the obstacles to equal access to justice for women	42
4.4. Proposed measures to address the research and data needs in the field of women’s equal access to justice	43
4.5. Mapping relevant actors in the field of women’s access to justice	44
<b>BIBLIOGRAPHY</b>	<b>45</b>
<b>APPENDIX I: RESULTS OF QUESTIONNAIRE FOR JUDGES</b>	<b>47</b>
<b>APPENDIX II. NORMATIVE LEGAL ACTS TO PREVENT AND COUNTERACT DOMESTIC VIOLENCE AND GENDER-BASED VIOLENCE</b>	<b>51</b>

## ACRONYMS AND ABBREVIATIONS

---

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>ECHR</b>	European Convention on Human Rights
<b>EU</b>	European Union
<b>GGGI</b>	Global Gender Gap Index
<b>GII</b>	Gender Inequality Index
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IDP</b>	Internally displaced person
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>LGBT</b>	Lesbian, gay, bisexual and transgender
<b>NGO</b>	Non-governmental organization
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>UAH</b>	Ukrainian hryvnia
<b>UNDP</b>	United Nations Development Programme
<b>UNHCR</b>	UN Refugee Agency
<b>USRCD</b>	Unified State Register of Court Decisions

# GENERAL INTRODUCTION TO THE NATIONAL STUDIES

---

The regional project on improving women's access to justice in five Eastern Partnership countries (Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine), which is part of the Partnership for Good governance, co-funded by the European Union and the Council of Europe and implemented by the latter aims to identify and support the removal of obstacles to women's access to justice and to strengthen the capacity of national partners in each country to ensure that the justice chain is gender-responsive. Key results of the project, which is presently at the conclusion of its third phase, include national studies that map the obstacles to women's access to justice; a training manual and guidance materials addressed to judges and prosecutors as well as other legal practitioners; an open-access online course on Access to Justice for Women<sup>1</sup> and an interactive checklist for gender mainstreaming of law school curricula; and a pioneering mentoring programme for legal professionals in order to build capacity and increase gender-sensitivity through peer-to-peer learning.<sup>2</sup>

From its inception, the project has placed emphasis on increasing awareness of and identifying the critical barriers that stand in the way of women accessing justice. Thus, in 2017, the Gender Equality Division of the Council of Europe commissioned national studies to map the barriers, remedies and good practices for women's access to justice in the five partnership countries.<sup>3</sup> The objectives of each of these studies were to provide:

- ▶ an analysis of the main obstacles to women's access to justice, both legal and procedural, as well as socio-economic and cultural;
- ▶ a set of recommendations for measures to improve women's access to justice in the respective countries, including examples of good practices, where they exist;
- ▶ background information for the subsequent organisation of training for legal professionals (judges, prosecutors, lawyers, and when relevant law enforcement).

Since the time that these analyses were conducted, the world, the region and each country have experienced a number of positive changes but also the negative consequences of unforeseen events, namely the global Covid-19 pandemic, armed hostilities around the Armenian-Azerbaijani border and the military invasion, and subsequent war, against Ukraine. In many complex ways, these recent events have challenged the functioning of justice systems and raised new impediments to justice users. In order to assess how the balance has tipped for women as users of justice systems, the Gender Equality Division saw the value in revisiting the original national studies and updating them to reflect the situation in 2022. The process of revising the studies, for Azerbaijan, Georgia, the Republic of Moldova and Ukraine, also contributed to a stand-alone publication on how Covid-19 has impacted women's access to justice throughout the member states.<sup>4</sup>

Women's right to access to justice is fundamental to the realisation of gender equality as well as all other human rights. Foremost, the Council of Europe core gender equality standards are articulated in its foundational treaties: the European Convention on Human Rights and the European Social Charter (revised), and the two "new

---

1. Prepared in the framework of the Council of Europe Human Rights Education for Legal Professionals (HELP) Programme and available at <https://help.elearning.ext.coe.int>.

2. Project materials and publications can be accessed at <https://www.coe.int/en/web/genderequality/strengthening-access-to-justice-for-women-victims-of-violence-2019-2021->.

3. The five country studies of 2017 are available in English and each national language at [https://www.coe.int/en/web/genderequality/equal-access-of-women-to-justice#%2214965347%22:\[0\]](https://www.coe.int/en/web/genderequality/equal-access-of-women-to-justice#%2214965347%22:[0]).

4. *Impact of Covid-19 on Women's Access to Justice*. 2022, <https://rm.coe.int/pgg-waj-research-final-covid-2022/1680a9cb8f>



generation” treaties, the Convention on Action against Trafficking in Human Beings<sup>5</sup> and the Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).<sup>6</sup> In addition to recommendations of the Committee of Ministers on gender equality, adopted during the last four decades, recent recommendations have drawn attention to persistent manifestations of inequality, in the form of sexism and sexist norms,<sup>7</sup> and to women and girls that are in situations that render them especially vulnerable to human rights violations, namely as migrants, refugees and asylum-seekers.<sup>8</sup>

The Council of Europe Gender Equality Strategy 2018–2023<sup>9</sup> builds upon the achievements of the first such strategy (for 2014–2017) and aims to address both long-standing and new challenges. The current Gender Equality Strategy serves as the framework for member states to implement gender equality standards, and it is significant that one of the six strategic objectives is ensuring the equal access of women to justice. In fact, this strategic objective is mutually reinforcing with others on preventing and combating gender stereotypes (in this case, gender bias in the legal system), preventing and combating violence against women and domestic violence and gender mainstreaming (here, implicating methods to increase the gender-sensitivity of the justice sector). The strategy establishes specific actions, including the identification and dissemination of good practices among the member states to facilitate women’s access to justice and supporting research and standardised data collection to tackle gaps.

The 2019–2022 regional project “Women’s access to justice: delivering on the Istanbul Convention and other European gender equality standards,” a joint EU–Council of Europe programme, Partnership for Good Governance II, contributes to the overall implementation of the Gender Equality Strategy and in particular the realisation of Strategic Objective 3 on ensuring the equal access of women to justice by strengthening access to justice for women, especially women victims of violence in line with the Council of Europe gender equality standards and contributing towards the Eastern Partnership countries’ ratification of the Istanbul Convention.

Four independent national experts updated the research, focusing on where developments have occurred related to the following core issues of the first studies: (i) the most critical gender gaps in access to justice in the particular country; (ii) the extent to which the justice system responds to women’s needs, in other words, how gender-responsive it is; and (iii) recommendations for areas of improvement. All studies retained their original structure, with new findings and analysis added where relevant. Thus, the studies begin with an assessment of gender gaps and obstacles to women’s access to justice, considering legislative and policy frameworks, implementation of laws and socio-economic and cultural barriers that affect women as justice users. Here, the impacts of Covid-19 on women’s access to justice and gender equality are addressed. The studies include a discussion of the gender responsiveness of the justice systems of each country, covering such issues as the influence of gender stereotyping, availability of specialised training and education for justice sector professionals and public perceptions of and trust in the justice system. The final part of each study presents the available remedies, highlights emerging promising practices and formulates a set of recommendations that are relevant to each national context.

On the whole, the studies reveal that significant gaps in women’s access to justice remain and are common for the Eastern Partnership countries. Yet, despite the unprecedented challenges to health, well-being and security brought about by the Covid-19 pandemic and conflict, that have “turned back the clock” on gender equality, there have also been moments of brightness and important progress in the region.

Each country adopted specific legislation on gender equality more than a decade ago, but efforts to strengthen the laws and the institutions responsible for their implementation are ongoing. In Georgia, 2018 and 2020 amendments to the national gender equality law established the Standing Parliamentary Council on Gender Equality as a permanent body, as well as municipal Gender Equality Councils, to improve coordination around gender policy between the central and regional levels. In Ukraine, the State Strategy for Equal Rights and Equal Opportunities for Women and Men until 2030 was approved in 2022, with a corresponding operational plan for 2022–2024. A government Commissioner for Gender Policy position was created in 2017. Since it was established in 2013, the Council on Preventing and Eliminating Discrimination and Ensuring Equality of the Republic of Moldova has proven to be an effective mechanism for combatting discrimination. In 2021, for example, the Equality Council reported that based on a review of its cases in which discrimination was identified, discrimination on the basis of sex or gender is the second most common form; this appears to be an increase from the decisions of

---

5. Entered into force on 1 February 2008.

6. Entered into force on 1 August 2014.

7. Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism.

8. Recommendation CM/Rec(2022)17 of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls.

9. Council of Europe Gender Equality Strategy 2018–2023, available at <https://www.coe.int/en/web/genderequality/gender-equality-strategy>

five years ago. On the other hand, experts in Azerbaijan call for amendments to the Law on Gender Equality in order to bring the definition of “discrimination against women” into compliance with international law (specifically, to recognize both direct and indirect discrimination).

Despite the existence of anti-discrimination laws, women still very seldom invoke them when their rights have been violated, due to factors such as the high burden of proof and legal professional’s lack of familiarity with the norms of indirect discrimination.<sup>10</sup> Thus, legal precedent on either sex- or gender-based discrimination remains limited. Furthermore, progress has been slow in repealing discriminatory provisions in the law, most specifically concerning restrictions on women’s employment. At the same time, in both the Republic of Moldova and Georgia, the understanding of hate crimes, motivated by either sex or gender, has improved and led to an increase in the number of cases concerning women victims.

One of the areas in which progress has been the most apparent is the amendment of national law and adoption of policy that have increased the protection of women who have experienced gender-based violence. For instance, the adoption of the Law of Ukraine on Prevention and Counteraction of Domestic Violence, as well as amendments to the Criminal Code, have expanded the legal understanding of victims of varied forms of domestic violence as well as sexual violence. Likewise, in Georgia, the Law on Violence against Women and Elimination of Domestic Violence, Protection and Support of Victims of Violence now covers all forms of gender-based violence against women in compliance with the Istanbul Convention, and sanctions for failure to comply with a protective or restraining order have been increased. In the Republic of Moldova, legal amendments have improved access to legal aid and to emergency protection for victims of gender-based violence.

Ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) has undoubtedly been a catalyst for legal reform in this area. Since the first national studies were published, three of the beneficiary countries have ratified the Istanbul Convention: Georgia (2017), the Republic of Moldova (2022), and Ukraine (2022). Georgia and the Republic of Moldova submitted their first (baseline) evaluations to the Council of Europe Expert Group on Action against Violence against Women and Domestic Violence (GREVIO) in 2020 and 2022, respectively. Azerbaijan has not yet signed the Istanbul Convention, but the government adopted a National Action Plan on Combating Domestic Violence for 2020–2023.

The institutions that respond to cases of violence against women have taken steps to becoming more gender-responsive. Amendments to the Republic of Moldova law on preventing and combating family violence called for updating regulations and instructions that would guide the police, social services and medical institutions in coordinated interventions. In 2022, the Instruction on the Mechanism for Intersectoral Cooperation on intervention in cases of domestic violence was approved by the Ministry of Labour and Social Protection, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Health, and the National Council for State Guaranteed Legal Aid of the Republic of Moldova. In both Georgia and Ukraine, law enforcement has introduced tools for standardized risk assessments in cases of domestic violence. The Prosecutor’s Office of Georgia created a unit of investigators and prosecutors, specializing in domestic violence and domestic offences, in 2018. In all of the countries that were reviewed a general trend in an increase in the number of protection orders issued for women victims of domestic violence has been observed. This finding does not necessarily indicate an increase in the occurrence of domestic violence incidents but, rather, improved confidence in and use of protection measures. Still, it should be noted that this measure is more often used by the police than prosecutors or judges, and such orders are not always used effectively (for instance, not issued in a timely manner).

Among society at large, attitudes appear to be changing, gender norms are becoming less rigid and stereotypes are starting to dissipate, as seen in a Georgian population survey that suggests a growing receptivity to the idea of a more equitable future. However, the legal systems seem slower to adapt. The studies also reveal that gender stereotypes persist in the justice system, especially concerning victims of violence against women.

The studies find that when the Covid-19 pandemic reached the Eastern Partnership countries, its impacts on women’s access to justice were significant. First, when emergency measures were implemented to stop the spread of the virus, legal processes were impacted. In each country, courts closed their doors for months at a time, and legal proceedings were transferred to online systems or postponed. Each country determined the priority for cases to be heard under quarantine conditions, but by in large, this process itself was not gender-sensitive. As a result, civil cases, concerning divorce, child custody, alimony and protective orders in domestic violence cases, for example, were frequently deprioritised or were even suspended. Yet these are also the cases in which women are the majority of those who are seeking assistance through the legal system.

---

10. For example, the national study for Azerbaijan recommends that legislation be amended to include a definition of indirect discrimination; the national study for Ukraine notes that while indirect discrimination is defined in the law, courts very rarely refer to this concept.

Second, lockdown measures had direct and negative consequences for women who were experiencing domestic violence, essentially isolating them in the home with an abuser. Each study identifies some of the most serious impacts on women. In the Republic of Moldova, for example, a significant reduction in calls to specialised telephone hotlines was observed during quarantine periods at the same time as an increase in texting for assistance, which is an indication of the level of control that perpetrators were exercising over victims. In Georgia, law enforcement classified gender-based violence as a less important police matter, and no mechanism for remote legal procedures was introduced. Social services for women who were experiencing violence were greatly reduced or inaccessible. In the Republic of Moldova, shelters were required to change how they operated and could not accept new clients; some had to suspend their activities. The study for Ukraine points out that public sector funds were diverted from social services to address the Covid-19 pandemic. In Azerbaijan, state-funded social services were not suspended generally, but restrictions on travel made women's access to shelters, which are only located in large cities, *de facto*, impossible.

Third, the pre-existing socio-economic and cultural barriers that had previously complicated women's access to justice, were exacerbated by the pandemic and measures introduced to contain it. Before the pandemic, women's economic dependence and economic inequality meant that they had more limited access to the resources needed for legal proceedings. The studies show that women's economic situation deteriorated further, as in each country they are the majority of healthcare workers and over-represented in sectors in which economic declines have been the most significant. In both Azerbaijan and Ukraine, for instance, women represent a large share of individual entrepreneurs and small business owners, but due to difficulties operating under Covid-19 restrictions and lack of support measures, many were forced to stop working. In the Republic of Moldova, women employed in service provision and small trade lost their livelihoods when their activities were suspended. In addition, the pandemic highlighted the disproportionate role that women play in unpaid domestic work. Stay-at-home measures had a discriminatory impact on women in increasing this burden, and yet this effect seems neither to have been considered in planning nor in subsequent assistance measures. In many ways, the Covid-19 pandemic highlighted the structural sex and gender discrimination that persists in the studied countries.

Access to justice is central to the rule of law and integral to the enjoyment of human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. The requirement of equality, including gender equality, is at the centre of the scope, exercise and fulfilment of the right to justice. The national studies confirm that progress toward gender equality had generally been moving at a steady yet slow pace. However, recent events such as the global health crisis and war in Ukraine have halted, if not reversed, this progress, in key ways. It is ever more critical that gender equality not be further undermined, which also requires dedicated efforts to strengthening women's access to justice.

# UKRAINE

---

*Initial 2017 report prepared by Olena Uvarova and 2022 update prepared by Tamara Buhaiets*

## 1. INTRODUCTION

### 1.1. The concept of access to justice

---

This study is based on the understanding that access to justice is central to the rule of law and integral to the enjoyment of basic human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. Access to justice can be construed as the ability of an individual, including persons from disadvantaged groups, to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards, without legal, procedural, socio-economic or cultural obstacles. The requirement of equality, including gender equality, is at the centre of the meaning, the exercise and the fulfilment of the right to justice, as elaborated in the Council of Europe report on equality and non-discrimination in the access to justice:

Access to justice is a broad concept which refers to all the measures that improve access to courts, legal representation and alternative dispute resolutions, as well as access to or action by equality bodies and ombudsman institutions aimed at bridging the gap between the law and *de facto* enjoyment of rights by individuals. Access to justice implies but goes well beyond the right to an effective remedy, the right to equal access to courts, the right to a fair trial or the right to legal aid for those who lack sufficient resources (PACE 2015).<sup>11</sup>

### 1.2. International standards on gender equality

---

Ukraine has ratified key international and European legal instruments that guarantee gender equality – the European Convention on Human Rights (ECHR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the European Social Charter (revised) and the Convention on Action against Trafficking in Human Beings, among others.

Ukraine signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) on 11 July 2011 and ratified it 11 years later. The first attempt to ratify it in 2016 was opposed by the All-Ukrainian Council of Churches and several members of parliament who claimed that the Convention “imposes a gender ideology”. More recently, two petitions were sent to President Volodymyr Zelenskyy demanding support for the Convention, in 2020 and 2021. Both collected the necessary 25 000 signatures. However, it was only in June 2022 that the Verkhovna Rada of Ukraine supported ratification of the Istanbul Convention. Ratification was one of the conditions for granting Ukraine the status of candidate for European Union (EU) accession. Law No. 2319-IX of 20 June 2022 notes that the Istanbul Convention has been ratified with the following declarations:

---

11. Parliamentary Assembly of the Council of Europe (2015), Explanatory report Doc. 13740 to PACE Resolution 2054 (2015) on Equality and non-discrimination in the access to justice, Rapporteur Viorel Riceard Badea, 31 March 2015, available at <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=21619&lang=en>, accessed 28 February 2017.

According to Article 62, paragraph 3, the Convention is the legal basis for cooperation on mutual legal assistance in criminal matters, extradition or execution of judgments in civil or criminal cases in the event of a request from a State party to the Convention with which Ukraine has no treaty on mutual legal assistance in criminal matters, extradition or execution of judgments in civil or criminal cases.

Ukraine recognizes that the purpose of the Convention is to protect women from all forms of violence and to prevent, prosecute and eliminate violence against women and domestic violence, which is also committed against men and children (boys and girls).

Ukraine does not regard any of the provisions of the Convention as obliging it to amend the Constitution or the Family Code or other Ukrainian legislation on the institutions of marriage, family and adoption, or as interfering with the right of parents to bring up their children in accordance with their own beliefs.

Ukraine notes that, under the Ukrainian Constitution, the State does not recognize any ideology as obligatory or subject to implementation.

Ukraine declares that it will apply the Convention in accordance with the values, principles and norms defined by the Constitution of Ukraine, in particular on protection of human rights and fundamental freedoms, equal rights and opportunities of women and men, gender identity, formation of responsible motherhood and fatherhood, family support and child protection.

Ukraine declares that as a result of large-scale armed aggression by the Russian Federation the fulfilment by Ukraine of its obligations under the Convention in the temporarily occupied territories, the Autonomous Republic of Crimea and Sevastopol is not guaranteed the full restoration of the constitutional order of Ukraine in those territories. Any bodies, their officials and officers in the temporarily occupied territories, the Autonomous Republic of Crimea and the city of Sevastopol are illegitimate and their activities are illegal, if these bodies were created or persons were elected or appointed in a manner not prescribed by the Constitution and laws of Ukraine, and any acts (decisions, documents) adopted by them are invalid and do not create any legal consequences.

Further, the Istanbul Convention was adopted with one reservation:

According to paragraph 2 of Article 78 of the Convention, Ukraine reserves the right not to apply the provisions of paragraph 2 of Article 30 of the Convention to bring national legislation into conformity with the said provisions of the Convention.

In researching the original country study in 2017, the author conducted a survey of 30 judges from various regions of Ukraine. A question on their awareness of key international standards was included in the questionnaire, with 30% of the judges responding that they were very familiar with the European Convention on Human Rights, while 70% of the judges said they had heard about it. Only 3% of the judges indicated that they were familiar with all the above-mentioned documents, including the Istanbul Convention. Notwithstanding, the judges noted that they only applied the European Convention on Human Rights, explaining this with reference to the adequacy of national legislation.

The survey was repeated in 2022, and the results indicate that judges have become more aware of international standards over the past five years. All of the surveyed judges are aware of the European Convention on Human Rights. Judges are less aware of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (53.8% of surveyed judges for each treaty). A majority of judges (84.6%) are aware of the norms of the Istanbul Convention, which is a positive finding. Despite the fact that the Istanbul Convention was ratified only in June 2022, judges have been referring to its norms in their decisions. As stated in a 2020 judgement of the Supreme Court, for example:

Although the Istanbul Convention has not yet been ratified by Ukraine, its direct reference in the law obliges the Court, when defining “domestic violence” and “crime of domestic violence,” to take into account not only national legislation, but also the provisions of this Convention, as well as other international treaties and the practice of international bodies insofar as they are relevant for understanding its provisions. ...<sup>12</sup>

12. Decision of the Supreme Court of Justice of the First Trial Chamber of the Court of Criminal Cassation of 07 April 2020, Case No. 647/1931/19 (proceeding No. 51–174km20, available at: <https://reyestr.court.gov.ua/Review/89035028>).

### 1.3. International standards and access to justice in the context of armed conflict

In the context of the armed conflict in eastern Ukraine, ongoing since 2014, the Parliament of Ukraine adopted a decree on 21 May 2015, declaring derogations from certain obligations under the European Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR), applying to certain territories in eastern Ukraine. The decree states that the main reason for the derogation is the occupation by the Russian Federation of parts of the Donetsk and Luhansk regions. These are derogations from ECHR Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy) and Article 2 of Protocol No. 4 (freedom of movement).

While Article 15 of the ECHR does provide the possibility for states to derogate in exceptional circumstances, this has to be done in a temporary, limited and supervised manner and only to the extent strictly required by the exigencies of the situation. Moreover, restrictions taken cannot be applied in a discriminatory manner. Ultimately, it is for the European Court of Human Rights to determine in each case whether the restrictions introduced by Ukraine have been applied in a proportional manner.<sup>13</sup>

Similarly, the decree declares derogations from ICCPR Article 2 para. 3 (to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy), Article 9 (right to liberty and security of person), Article 12 (right to liberty of movement and freedom to choose residence), Article 14 (equality before the courts and tribunals), and Article 17 (no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation).

There was an attempt to challenge the actions of the Ukrainian Parliament to derogate from its international human rights obligations. The corresponding claim was submitted to the High Administrative Court of Ukraine by the Institute of Legal Policy and Social Protection, a non-governmental organization, but the High Administrative Court did not consider it, declaring that the issue fell under the jurisdiction of the Constitutional Court of Ukraine (see decision of the High Administrative Court on 30 June 2015 in Case No. 800/220/15).<sup>14</sup>

It should also be noted that when the decree on derogation was adopted, Ukrainian laws already allowed for some limitations on the application of human rights. For example, the law permits preventive detention for a period of more than 72 hours but not more than 30 days in the area of counter-terrorist operations with the consent of the prosecutor and without court authorisation; and the introduction of a special regime of pre-trial investigation, according to which the investigative powers of judges are transferred to the prosecutors.

Ukraine has introduced a temporary procedure for monitoring the movement of persons, vehicles and goods along the contact line within the eastern regions. Citizens of Ukraine, foreigners and stateless persons who want to enter the uncontrolled territory or leave it must have a passport and special permission.

The courts and other authorities must understand that the decree of derogation does not exempt the state from the obligation to justify the reasonableness and proportionality of the restrictions on human rights, the legitimate purpose of these restrictions and their necessity in a democratic society. In this light, the decision of a Lviv court to refuse the request of a serviceman to take parental leave until his child reached three years of age is controversial. The court reasoned that such a refusal is legitimate, stating that Ukrainian legislation concerning military service allows granting parental leave only to the father who is raising a child without a mother. The court also found that the reference to the decision of the European Court of Human Rights in *Konstantin Markin v. the Russian Federation* (22 March 2012)<sup>15</sup> on sex-based discrimination was not valid because Ukraine had derogated from its obligations under the ECHR (see decision of the Lviv District Administrative Court on 9 June 2015).<sup>16</sup> The court went beyond the statement that was made by Ukraine and refused to apply the standards of the Convention, which are binding for Ukraine. The formal reason for this was the derogation from the obligations under the ECHR, but the court had misunderstood the essence of such a derogation, violating the right to judicial protection.

Ukraine has been under martial law since 24 February 2022, and this has also affected the peculiarities of court proceedings and access to justice. During martial law, according to Article 10 of the Law of Ukraine on the Legal Regime of Martial Law,<sup>17</sup> the powers of courts cannot be terminated, and the second part of Article 26 provides that reduction or acceleration of any forms of judicial proceedings is prohibited. But at the same time, the judicial

13. See the European Court of Human Rights Press Unit (2017), Factsheet on derogation in times of emergency, available at [www.echr.coe.int/Documents/FS\\_Derogation\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf), accessed 28 February 2017.

14. High Administrative Court of Ukraine, 30 June 2015, available at [www.reyestr.court.gov.ua/Review/46059183](http://www.reyestr.court.gov.ua/Review/46059183), accessed 28 November 2016.

15. European Court of Human Rights (2012), *Konstantin Markin v. the Russian Federation*, (Application No. 30078/06), Grand Chamber decision of 22 March 2012.

16. Lviv District Administrative Court (2015), decision in case No. 813/2538/15, 9 June 2015, available at [www.reyestr.court.gov.ua/Review/44809591](http://www.reyestr.court.gov.ua/Review/44809591), accessed 28 November 2016.

17. Available at: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

branch has been affected by the war and its consequences, which, in turn, have compromised access to justice and the implementation of judicial proceedings in general. Due to active hostilities and the temporary occupation of Ukrainian territory, some courts have suspended their operation. In many regions, the territorial jurisdiction of courts in locations of active hostilities and temporary occupation has been changed, in accordance with the Order of the Chairperson of the Supreme Court on changing the territorial jurisdiction of court cases under martial law<sup>18</sup> and changes to part seven of Article 147 of the Law of Ukraine on the Judicial System and Status of Judges.<sup>19</sup> At the same time, even after many months of war, some courts are beginning to resume their work in the de-occupied territories; although the reconstruction process itself is complicated. Some court premises have been completely or partially destroyed, and in others all the computers have been stolen and all furniture destroyed.

Ukrainians face other obstacles to accessing justice under martial law. There are no safe regions in Ukraine due to daily rocket attacks, and air raid sirens sound daily in many regions and sometimes throughout Ukraine. When the siren sounds, case participants, as well as judges and court employees must move to safe areas, regardless of whether the proceedings take place online or offline. Ignoring these instructions can have serious consequences, such as the unfortunate occurrence in the Mykolaiv region when a missile attack on the Mykolaiv Regional State Administration, the location of the Commercial Court of Mykolaiv, resulted in the death of court employees. Thus, during air raids, the court session must be interrupted so that all those involved can move to shelter. Not all courts have appropriate shelters, however, and so it is often necessary to move to another room nearby. The number of such forced “interruptions” per day varies, as does their duration. These new negative experiences for Ukraine necessitate the expansion of opportunities for remote proceedings, as well as ensuring that courts have safe premises. Another obstacle to effective proceedings and access to justice is the forced change of residence (stay) of case participants. This, in turn, has given rise to situations in which a court or a party to a case sends documents to another party to a known postal address, but it is clear that the party to the case, who is temporarily residing in another area, has no way of receiving such documents. Of course, martial law is a valid reason for missing filing deadlines, but each judge assesses this reason individually, within the framework of the case at hand. Also, for some time it was not possible to access services to check the “status of cases” or the “list of cases due for consideration” throughout Ukraine, which prevented access to information even in regions that were not experiencing active military operations.

Of course, the work of the courts and judges has undergone changes due to martial law, and this has affected access to justice overall. It is worth noting, however, that more and more courts are adapting to operate under these new temporary conditions.

## 1.4. Key definitions

---

Ukrainian legislation includes definitions of gender equality and discrimination (direct and indirect) as provided in the 2005 Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men<sup>20</sup> and in the 2013 Law of Ukraine on Principles of Prevention and Combating Discrimination in Ukraine.<sup>21</sup> Ukrainian law also defines various forms of gender-based violence.<sup>22</sup>

### 1.4.1. Discrimination

The 2013 Law of Ukraine on Principles of Prevention and Combating Discrimination in Ukraine defines discrimination in Article 1(2) as:

[...] a situation in which a person and/or a group of persons experience limitations in the recognition, realisation or use of their rights and freedoms because of their race, colour of skin, political, religious or other beliefs, sex, age, disability, ethnic or social origin, nationality, family and property status, place of residence, linguistic or any other status, except when such behaviour has a legitimate, objectively justified goal, that is to be achieved through appropriate and necessary methods.<sup>23</sup>

---

18. Available at: [https://supreme.court.gov.ua/supreme/gromadyanam/terutor\\_pidsudnist/](https://supreme.court.gov.ua/supreme/gromadyanam/terutor_pidsudnist/)

19. Available at: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

20. Government of Ukraine (2005), Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men, available at <http://zakon5.rada.gov.ua/laws/show/2866-15> (in Ukrainian) accessed 31 August 2022.

21. Government of Ukraine, Law of Ukraine on Principles of Prevention and Combating Discrimination in Ukraine (2013), available at <https://zakon.rada.gov.ua/laws/show/en/5207-17#Text> (in English) 31 August 2022.

22. Definitions of various forms of violence are contained in the Law of Ukraine “On Preventing and Combating Domestic Violence”, available at <https://zakon.rada.gov.ua/laws/show/2229-19#Text> (in Ukrainian) accessed 31 August 2022, Criminal Code of Ukraine available at <https://zakon.rada.gov.ua/laws/show/en/2341-14#Text> (in English), accessed 31 August 2022.

23. Government of Ukraine, Law of Ukraine on Principles of Prevention and Combating Discrimination in Ukraine (2013), available at <http://zakon0.rada.gov.ua/laws/show/5207-17> accessed 28 February 2017.

Ukrainian judges sometimes reference discrimination in judicial decisions, but it usually does not affect the resolution of the case. The main reason for this is that judges believe that a person who claims discrimination must prove it. The burden of proof is therefore laid completely on the plaintiff. The procedural basis for this approach is Article 60 of the Civil Procedural Code of Ukraine, according to which each party to the proceedings must prove the circumstances to which they refer as the basis of their claims and objections. At the same time, the Law of 5 December 2014 included in the Civil Procedural Code of Ukraine the norm according to which, in cases of discrimination, the plaintiff must provide evidence proving that discrimination took place. Where such evidence is provided, refuting it is the responsibility of the defendant. However, the courts have not yet formed a systematic approach to the application of the rules and mostly do not understand its procedural significance.

On the other hand, according to the Law on Court fees of 6 September 2012, plaintiffs who file claims “regarding disputes related to discrimination” are exempt from court fees (Article 5). Therefore, plaintiffs often claimed to have been subjected to discrimination for the sole purpose of being exempt from paying court fees. This norm was abolished on 1 September 2015.

#### **1.4.2. Direct discrimination**

The Law of Ukraine on Principles of Prevention and Combating Discrimination in Ukraine defines direct discrimination as “a situation in which a person and/or group of persons with certain characteristics are treated less favourably than another person and/or group of persons in a similar situation, except when such behaviour has a legitimate, objectively justified goal, that is achieved through appropriate and necessary methods.”

#### **1.4.3. Indirect discrimination**

Indirect discrimination is defined as “a situation when implementation or application of formally neutral legal norms, evaluation criteria, rules, requirements or practice create less favourable conditions or situation for an individual and/or a group of individuals compared to other individuals and/or groups of individuals, except when such behaviour has a legitimate, objectively justified goal, that is achieved through appropriate and necessary methods.”

The concepts of direct discrimination and indirect discrimination were referenced in seven judgments from the time that the Law on Principles of Prevention and Combating Discrimination entered into force, in 2013, and 2015. However, the courts used the concept of indirect discrimination substantively only once, in a case on deprivation of the Ukrainian Orthodox Church of parish tax incentives from which other religious organisations benefit.<sup>24</sup>

#### **1.4.4. Discrimination based on sex**

Discrimination based on sex is defined as action or inaction that contains any distinction, exclusion or benefits on the basis of sex, if they intend to limit or prevent recognition, implementation or enjoyment of equal rights and freedoms for women and men (Article 1 of Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men). The concept of discrimination based on sex is used in judicial decisions, but when used, judges usually cite this concept in a formalistic manner, without its reference affecting the resolution of the case.

The concepts of “gender equality” and “positive measures” are also defined by the law, but they are not applied in judicial decisions.

#### **1.4.5. Sexual harassment**

Sexual harassment includes sexual acts expressed verbally (threats, intimidation, indecent remarks) or physically (touching, slapping), which humiliate or insult persons who are in a relationship of employment, formal service, financial or other subordination (Article 1 of Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men). There are few examples of sexual harassment being cited in judicial decisions. In one illustrative case, a woman demanded reinstatement, claiming that she was a victim of sexual harassment when she worked at a particular organisation. She claimed that the real reason behind her dismissal was her refusal to have sexual relations with her superior:

In the absence of colleagues, the manager hugged her from behind, suggested that she join him in a sexual relationship, but she did not agree. She also claimed that the boss did not raise her salary because of her refusal. The plaintiff informed the company’s management about the facts of sexual harassment only after the dismissal. She

---

24. Kyiv District Administrative Court (2015), Decision in case No. 826/4593/15, 18 June 2015, available at [www.reyestr.court.gov.ua/Review/45456147](http://www.reyestr.court.gov.ua/Review/45456147), accessed 28 November 2016.



did not inform them before because of the fear of losing her job. The plaintiff did not appeal to the law enforcement bodies because she thought that she could not prove the facts of sexual harassment.<sup>25</sup>

Witnesses explained that the manager showed interest in the plaintiff, that he always danced with her and held her in his arms during parties. Instead, the manager denied the information as false and claimed compensation for moral damage caused to him. The woman was not reinstated and the court refused to satisfy the claim. The court informed law enforcement authorities of the claim of sexual harassment, in other words implying that a woman can get redress for a violation of her rights only if the fact of sexual harassment is established by law enforcement bodies according to the manner prescribed in the criminal procedural law. The situation is further complicated by the fact that sexual harassment is not a specific offence in the legislation of Ukraine. Even though compensation for “material losses and moral damage caused due to discrimination or sexual harassment” is referenced under Article 23 of the Law of Ukraine on Ensuring Equal Rights and Opportunities of Women and Men, courts in Ukraine do not apply it. This is in part due to judges’ and lawyers’ lack of awareness of the issue of sexual harassment and associated taboos, despite there being sufficient provisions in Ukrainian legislation to oblige an offender to pay moral and material damages.

#### **1.4.6. Gender-based violence**

The Law of Ukraine on Ensuring Equal Rights and Opportunities of Women and Men defines gender-based violence as acts directed against persons due to their sex, or socially prevalent customs or traditions (stereotypical ideas about the social functions [position, duties, for example] of women and men), or acts related primarily to or affecting disproportionately persons of a particular sex, causing physical, sexual, psychological or economic harm or suffering, including threats of such acts, in public and private life. National legislation provides for administrative liability for gender-based violence within Article 173–2 of the Code of Administrative Offences of Ukraine.<sup>26</sup> However, this article does not specify a definition of gender-based violence, and in practice authorized agencies have identified very few cases.<sup>27</sup>

#### **1.4.7. Domestic violence**

The Law of Ukraine on Preventing and Combating Domestic Violence defines domestic violence as an act (action or inaction) of physical, sexual, psychological or economic violence committed within the family or within the residence or between relatives, between former or current spouses, between other persons who live (lived) together as a family, but who are not related or married to each other, regardless of where the person who committed the domestic violence resides (resided). The law also defines four forms of domestic violence: physical, psychological, economic and sexual. Responsibility for committing domestic violence varies depending on the form of the violence. The commission of psychological, economic and physical (not resulting in bodily harm) domestic violence is subject to administrative responsibility under Part 1 of Article 173–2 of the Code of Administrative Offences of Ukraine. If violence has been committed repeatedly, then there will be responsibility under part 2 of this article. If domestic violence occurs for the third time, in this case criminal liability will occur under Article 126–1 of the Criminal Code of Ukraine.<sup>28</sup> In more than 90% of cases, the court applies an administrative penalty in the form of a fine. Such fines are, ineffective deterrents because in most cases of domestic violence, the perpetrator commits violent acts against his wife and any fines are paid from the family budget. Statistics confirm that the vast majority of domestic violence victims are women. Women with disabilities, the elderly and women with mental illness are the most vulnerable. Cases of domestic violence against this latter category of women remain very latent.

Covid-19 and acts of aggression by the Russian Federation against Ukraine have unfortunately become significant barriers for women victims to obtain protection from the state in situations of domestic violence. Although national legislation has improved significantly in recent years, the practice of its implementation demonstrates that the state does not respond appropriately to all cases of domestic violence.

---

25. Balakliyskiy District Court of Kharkiv region on 14 December 2009, available at [www.reyestr.court.gov.ua/Review/7118756](http://www.reyestr.court.gov.ua/Review/7118756), accessed 28 November 2016.

26. This article also provides for administrative liability for domestic violence, failure to comply with emergency barring orders and failure to notify the perpetrator of his/her temporary location.

27. For example, in 2021, according to the official statistics of the National Police 2 330 cases of gender-based violence were reported. After consideration of these cases in courts, the court applied administrative prosecution in the form of fines to 731 perpetrators; the court applied community service to 66 perpetrators; administrative arrest was applied to 25 perpetrators; and 150 perpetrators were released from administrative responsibility.

28. There may also be liability under other articles of the Criminal Code of Ukraine, for committing various degrees of bodily harm (minor, moderate and severe), inciting to suicide, etc. There will always be criminal liability for committing sexual violence.

### 1.4.8. Sexual violence

The adoption in 2017 of the Law of Ukraine on Amendments to the Criminal and Criminal Procedure Code of Ukraine in order to implement the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence brought about a number of amendments to the Criminal and Criminal Procedure Codes of Ukraine, which came into force in January 2019. The Criminal Code of Ukraine was supplemented with Article 153, which criminalizes sexual violence and updates the wording of the article criminalizing rape.

Currently, in Ukraine, **rape** is recognized as: committing acts of a sexual nature involving vaginal, anal or oral penetration into the body of another person with the use of genitals or any other object, without the voluntary consent of the victim. **Sexual violence** is the commission of any violent acts of a sexual nature, not involving penetration into the body of another person, without the voluntary consent of the victim.

At the same time, in practice, the number of prosecutions for these crimes remains at a very low level. For example, in 2020, only 288 indictments for rape were sent to court, in 2021, 309 indictments were made, and between January and July 2022 there were only 84 indictments. Regarding sexual violence, 50 indictments were sent to court in 2020, 56 indictments in 2021 and 18 indictments between January and July 2022.<sup>29</sup>

Unfortunately, another current form of violence against women in Ukraine is **conflict-related sexual violence**. Ukrainian legislation does not contain a separate definition of conflict-related sexual violence. The fact that Ukraine has not ratified the Rome Statute<sup>30</sup> and has not made the necessary changes in national legislation complicates the protection of victims. Ukraine has now established an Interdepartmental Working Group on Combating Sexual Violence Related to Russia's Armed Aggression against Ukraine and Providing Assistance to Victims. The first meeting of this working group was held on 9 June 2022.<sup>31</sup> As reported by the official representative of the Office of the Prosecutor General, such crimes as conflict-related sexual violence are considered violations of Article 438 of the Criminal Code of Ukraine, violation of laws and customs of war.

## 1.5. The issue of women's rights in Ukrainian constitutional reform

In the context of constitutional reform in Ukraine, which was initiated in 2014, work continues on the preparation of amendments to the Constitution. The working group on human rights, which is functioning within the Constitutional Commission and includes Ukrainian academics, political leaders and human rights activists, released a new version of Part II of the Constitution of Ukraine.<sup>32</sup> In contrast to the existing Constitution, in which the principle of equality, particularly equality between women and men, is enshrined at the beginning of Part II, under Article 24, in the new version, the constitutional prohibition of discrimination and the right to equality is referenced under Articles 35 and 36, respectively. It is considered that the rules are arranged according to their importance to society, without directly affecting their validity. This rearrangement is seen as a sign that a particular issue has been deprioritised.

Article 43 of the draft of the new edition of the Ukrainian Constitution defines the principle of equality of rights for women and men. It ensures equality of women and men in all spheres of society, including employment, work and benefits. The state is obliged to maintain equality of rights and opportunities for women and men by adopting measures that provide special measures for the underrepresented sex.

An expert group is currently preparing proposals for improving this version of Article 43 of Part II. It has drawn attention to the incorrect use of the phrase "equality for women and men," the limited focus on labour relations and the need to unify the terminology with EU law. On the latter point, experts proposed the rejection of the wording "measures that provide special benefits for the underrepresented sex" because, first, it refers to activities that are known in European law as positive actions. Second, they are not only confined to providing special advantages, and, third, their focus is not limited to the problem of insufficient representation of a particular sex. These proposals were not taken into account by the Constitutional Commission.

29. Information taken from the Uniform Criminal Offenses Report for 2020, 2021, and 2022 (January-July). Available at: <https://gp.gov.ua/ua/posts/pro-zareystrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.

30. Rome Statute of the International Criminal Court.

31. As of the date of the first meeting of the relevant Interagency Working Group, three individuals had been charged with conflict-related sexual violence, one person had been served with an indictment and the case had been sent for trial. Also in the three de-occupied oblasts: Kyiv, Sumy and Chernihiv oblasts, specialized mobile groups were established to identify victims of conflict-related sexual violence, record the case and provide assistance to the victims.

32. See proposed draft at <http://constitution.gov.ua/publications/item/id/38>, accessed on 28 February 2017.

## 1.6. Obligations of Ukraine to ensure gender equality according to the Association Agreement between the EU and Ukraine

---

According to Article 419 of the EU-Ukraine Association Agreement, the parties to the agreement shall strengthen their dialogue and cooperation on promoting a decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and non-discrimination. Cooperation in the area covered by Article 419 of the Agreement shall pursue, *inter alia*, the goal of gender equality and ensuring equal opportunities for women and men in employment, education, training, economy, society, decision making, and combating discrimination on all grounds.

In 2015, a volume was published and translated into Ukrainian containing the EU directives on gender equality and equal opportunities for women and men in employment, presenting a number of decisions from the European Court of Justice (Uvarova 2015).

## 1.7. Ensuring gender is mainstreamed into security and defence sector policy

---

The National Action Plans for the implementation of UN Security Council Resolution 1325 on women, peace and security are designed to ensure gender mainstreaming of security and defence sector policy. In 2016, for the first time, the Government approved a National Action Plan for the implementation of UN Security Council Resolution 1325 on women, peace and security for the period to 2020 (Cabinet of Ministers Decree of February 24, 2016 № 113-p). Subsequently, this plan was amended according to which the central and local executive authorities must ensure the establishment of interagency coordination councils on the implementation of UN Security Council Resolution 1325. A second national plan was approved on 28 October 2020.<sup>33</sup> Presently, each regional administration must approve an action plan for the implementation of the National Action Plan to implement UN Security Council Resolution 1325 for the period to 2025 for each region, as well as a corresponding monitoring plan.

## 2. GENDER GAPS IN ACCESS TO JUSTICE

### 2.1. Analysis of the national legal and policy frameworks to identify the obstacles women encounter in accessing the justice system

---

#### 2.1.1. Discriminatory laws and policies

Analysis of Ukrainian legislation and its implementation indicate some discriminatory provisions. For instance, the Labour Code prohibits women from undertaking some forms of employment: night work, work that involves heavy lifting and jobs with hazardous or dangerous working conditions such as underground work, and from working overtime and on weekends or from travelling on business trips, if they have children under the age of three.

A survey, conducted as part of this study in 2017, indicated that judges mostly agree with the legality of such prohibitions. When the survey was repeated with judges in 2022, the respondents were presented with a scenario involving a female plaintiff who claimed unlawful dismissal and an employer who relied on the prohibition on night work, with three options for how the case could proceed. More than half of the judges (53.8%) selected an answer that the plaintiff had a valid claim; the prohibition of night work for women is discriminatory. Almost a quarter of judges (23.1%) selected an answer that proceedings should be suspended and the Supreme Court of Ukraine should address the Constitutional Court of Ukraine about the constitutionality of Article 175 of the Labour Code. The remaining respondents (23.1%) thought that the claim must be rejected as the intent of the legislation was to set a clear ban on night work for women. This group agreed with the statement that the prohibition corresponds to Article 24 of the Constitution of Ukraine, which allows for special measures to protect the safety and health of women.

Such provisions can be characterised as paternalistic and lead to a number of negative consequences for women. Such consequences include a significant difference in the financial security of women and men, diametrically

---

33. Order of the Cabinet of Ministers of Ukraine from 28 October 2020 No. 1544-p). This plan contains 5 strategic goals, namely: (1) Participation of women in decision making; (2) Resilience to security challenges; (3) Post-conflict recovery and transitional justice; (4) Countering gender-based violence and conflict-related sexual violence; (5) Institutional capacity of implementers of the national plan.

different expectations for women and for men, and the image of women as uninformed persons in need of external control and care.

The ban on night work for women is particularly problematic. To understand the ban, it is essential to know that the Ukrainian Labour Code duplicates the provisions of the International Labour Organization (ILO) convention concerning women and night work that was adopted in 1919. The ILO convention provides an exception; night work for women is allowed in enterprises in which only members of the same family are employed.<sup>34</sup> This convention has been withdrawn and is closed for ratification.<sup>35</sup> At that time when it entered into force, the convention's prohibition of night work for women was justified to reduce women's mortality, protect them from exploitation, poor working conditions and sexual harassment.

There are two possible interpretations of these regulations on women's employment. The first sees the prohibition of night work for women as necessary for ensuring their safety, especially their physical and reproductive health. Following this understanding of the prohibition, the state assumes a positive obligation to ensure order and personal security. Such limitations to the right to work are not acceptable in a democratic society because the legitimate aim of women's security, which public authorities refer to, is achieved in a way that is obviously disproportionate and discriminatory for women. Moreover, this regulation establishes the paternalistic idea that a woman is defenceless and requires external protection – either from the state or from members of her family. This is a breach of personal autonomy, as the woman is not given the opportunity to choose whether or not to work at night.

The second interpretation of the prohibition of night work for women is no better. The prohibition, with an exception for night work with members of their own families, aims to eliminate a situation in which a woman is alone at night with men who are not members of her family. This understanding not only makes an unclear insinuation but also shifts the burden to women to protect themselves and away from men's responsibility.

Although there have been attempts to change the relevant norm in Ukraine, it is still specified in Article 175 of the Labour Code.

ILO Convention No. 171 on night work (1990) responds to the realities of employment today and complies with the principle of gender equality. Unlike previous conventions, which contained restrictions for night work in certain fields of activity (motor transport, for example) or for certain categories of workers (women), in Convention No. 171 the emphasis is shifted to the health and safety of all night workers, regardless of their gender, profession or sphere of activity. Ukraine has not ratified this convention, which can result in violations of women's rights. Prohibiting women from working at night because they are women is also contrary to European Union law, namely Directive 76/207 on the implementation of the principle of equal treatment of men and women regarding access to employment, vocational training and promotion and working conditions.

The negative impact of the legal prohibition of night work for women is significant and is reflected in judicial practice. Heads of enterprises have been prosecuted over the fact that women are involved in night work. For instance, a court cited the following, “[d]uring the inspection it was found that women are working at night at the enterprise. Thus, PERSON 4 and PERSON 5 work at the enterprise as paramedics. According to the book on the pre-inspection of drivers it was found that female workers regularly work at night, which is unacceptable. This fact violates the requirements of Article 175 of the Labour Code of Ukraine...”<sup>36</sup>

Under Ukrainian labour law, over 500 professions are prohibited for women. The current list of “heavy” work and work with harmful and dangerous conditions from which women are prohibited is set forth in Decree No. 256 of the Ukrainian Ministry of Healthcare, adopted on 29 December 1993. It is important to note that the list has not become a “dead rule.” Courts continue to apply it, which, in turn, leads to violations of women's right to work. An example of this is a case in which the Manevychskiy District Court of Volyn region dismissed a woman's claim on reinstatement in 2015. The court dismissed the plaintiff's argument that when she was not offered the position of a watchperson at a raw materials warehouse, due to the application of the prohibition on night work for women also included in the collective agreement with the employer, her right to work was violated. The court noted that according to Article 175 of the Labour Code, night work is prohibited for women, except for those sectors of the economy where there is a special need and such work is allowed as a temporary measure. According to the list, women are prohibited from jobs that relate directly to fire-fighting. Because the duty of

34. Convention concerning Employment of Women during the Night of 1919, Article 3: “Women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed”, available at [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:P12100\\_ILO\\_CODE:C004](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:P12100_ILO_CODE:C004), accessed 28 November 2016.

35. Ibid.

36. Babushkynskiy District Court of Dnipropetrovsk, decision on 03 June 2016, case No. 200/8553/16-n, available at <https://reyestr.court.gov.ua/Review/58286186>, accessed 06 July 2022.

fire-fighting was included in the employment instructions of a watchperson, the court found that in this case, the condition of the collective agreement, which prohibits night work for women, particularly working as a watchperson, did not violate the woman's right to work.<sup>37</sup>

Moreover, the practice of the courts may even go beyond the list, as was the case in which the court recognised the refusal to hire women as street cleaners as legitimate, referring to the fact that this work involves trimming tree branches that may hang over sidewalks. In a decision of the Tlumachskyi District Court of Ivano-Frankivsk Region in 2013, the court ruled that a woman should not be hired for this position even if she agrees to perform such duties.<sup>38</sup>

Importantly, the ban on night work for women, the prohibition on travel for women with children under the age of three, and the ban on women taking a job that is listed as hazardous or heavy work, have never become grounds for a petition to the Constitutional Court of Ukraine, under Article 8 of the Civil Procedure Code of Ukraine.

The survey of judges conducted for this study reflects the confidence of the vast majority of judges that there is no discrimination on any basis (sex, material or social status, nationality, ethnic origin, sexual orientation, etc.) in Ukraine. The exceptions are those judges who self-identified as having a special interest in the theme of discrimination, first of all discrimination against women, and namely those judges who are members of the All-Ukrainian Association of Women Judges, a non-governmental organization (NGO). The 45 students of Ukrainian law universities who were interviewed for this study also assessed the situation in a slightly different way. According to them there are no obstacles to justice for women in Ukraine (95% of respondents gave this answer), on the grounds of sexual orientation or religion (95% of respondents). There are however some problems with access to justice for rural people (30% of respondents said that access to justice in rural areas is more difficult than in urban areas), for persons who belong to a national or ethnic minority (20% gave this answer), for elderly people (20%) and for persons with disabilities (25%). All respondents indicated that there is a lack of equality in access to justice depending on social status.

### **2.1.2. Shortcomings of special laws aimed at equality between women and men or the protection of women**

At the national level, there are many provisions in the laws guaranteeing gender equality. For example, Ukraine has laws on ensuring equal rights and opportunities for women and men (2005). This law was significantly amended in December 2017. Among the main focuses are the following:

- ▶ The law was supplemented with concepts such as: “gender discrimination,” “gender-based violence,” “prevention of gender-based violence,” “combating gender-based violence” and others;
- ▶ The law defines a list of subjects for prevention and counteraction to gender-based violence;
- ▶ The law was supplemented by a separate section on “Prevention and counteraction to gender-based violence,” which, in particular, determines the rights of victims, the specifics of applying special measures: restrictive orders, placing the abuser on the preventive register and conducting preventive measures with him, implementation of programs for perpetrators.

Also in December 2017, the Law of Ukraine on Prevention and Counteraction of Domestic Violence was adopted. The law significantly expands the persons covered by the law, defines four forms of domestic violence (physical, economic, psychological and sexual), provides a list of subjects of prevention and counteraction to domestic violence and defines their main powers. The law also defines the rights of victims, including child victims. With regard to children, the law specifies that children who witnessed domestic violence are also victims. The law provides for special measures against domestic violence: an emergency restraining order, a protective order, preventive registration of perpetrators and a program for perpetrators. In implementing the law, Ukraine has adopted many different regulations (See Appendix II to this study) and the law making process continues even during the period of martial law.

Despite numerous legislative changes, such amendments are not always applied in the interests of the victim. First, there are misunderstandings of the distinction between cases of domestic violence and gender-based violence, which results in cases being closed on procedural grounds and without reaching the merits. For example,

37. Manevychskyi District Court of Volyn Region (2015), Decision in Case No. 353/509/13-п, 25 May 2015, available at [www.reyestr.court.gov.ua/Review/44526303](http://www.reyestr.court.gov.ua/Review/44526303), accessed 28 November 2016.

38. Tlumachskyi District Court of Ivano-Frankivsk Region (2013), Decision in Case No. 353/509/13-п, 29 April 2013, available at [www.reyestr.court.gov.ua/Review/31437350](http://www.reyestr.court.gov.ua/Review/31437350), accessed 28 November 2016.

a judge of the Markivskiy District Court of the Luhansk region in his decision of 19 January 2021 closed an administrative case against a husband for committing psychological violence against his wife, because:

As is evident from the content of the protocol, PERSON\_1 “committed domestic violence on the basis of gender of a psychological nature”. The disposition of Part 1 of Article 173–2 of the Code of Administrative Offences does not contain such an administrative offence as domestic violence based on gender of a psychological nature, therefore, there are no grounds for bringing PERSON\_1 to administrative responsibility.<sup>39</sup>

In another example,<sup>40</sup> a judge of the Kremenetskiy District Court of the Ternopil region closed a domestic violence case brought against a man who abused his civil partner (wife), because he concluded that the actions of the perpetrator specified in the protocol of administrative offence were not domestic violence of a psychological nature but a “usual conflict.” The judge stated:

“Namely, [the husband] used obscene words, pulled her outer clothing, threatened physical harm that could cause psychological harm to the victim”.

It is worth noting that in the second case, the perpetrator, as well as the victim, also confirmed that there was a conflict between them. It is evident that judges often do not understand the specifics of the relationship between victim and perpetrator. Furthermore, judges lack familiarity with the cycle of domestic violence and why victims withdraw their claims. In practice, when this situation occurs, judges may stereotype this category of cases, which can cause the victim to feel guilty and then not address the police and court for her protection.

Other laws have been adopted in Ukraine that advance gender equality, for instance laws on principles of prevention and combating discrimination in Ukraine (2012); on employment (this law, adopted in 2012, prohibits the advertisement of work vacancies only for women or only for men, except for specific work that can be performed only by persons of a particular sex); on guaranteeing the right to a fair trial (2015) and many others. The new version of the Law on Local Elections was adopted by the Ukrainian Parliament on 14 July 2015. Under Article 4 of this law, each political party is required to include a minimum of 30% of persons of the same sex on its electoral lists.

Despite Ukraine having recognised basic international standards in the area of gender equality to be mandatory for the country, including through the inclusion of the principle of non-discrimination based on gender at the constitutional level, the adoption of a special law on ensuring equal rights and opportunities for women and men, preventing and combating domestic violence and the establishment of certain institutional capacities in this area, the issue of women’s access to justice and ensuring gender equality in civil litigation remains a critical problem for the country.

### **Low level of awareness of women**

Generally, in Ukraine, but especially in rural areas, women have little knowledge about international standards in the area of protection from gender-based discrimination. Most women are not aware that their rights have been infringed due to discrimination, and as a result they do not turn to the courts. Very often, women cannot identify discriminatory attitudes towards them, and they are not aware of their rights as enshrined in law. This is demonstrated by the fact that in the first ten years that the Law on Ensuring Equal Rights and Opportunities for Women and Men had been in force, 2005–2015, references to the law were made in only 115 judicial decisions. Moreover, the vast majority of cases were initiated by state-controlled bodies, not by the victims of discrimination.

As an illustrative example, a woman turned to the Women’s Consortium of Ukraine for legal advice. She had worked at the support call centre service of one of Ukraine’s banks. At the time, she had a nine-month-old baby that she breastfed, and therefore she had an informal agreement with colleagues to take her place at work twice a day. Each time, the woman was worried that her absence would be registered by the personnel department causing a potential conflict. She did not know that under Ukrainian law (Article 183 of the Labour Code), a woman with a child under the age of 18 months is entitled to an additional break for feeding her baby. These breaks are given to women not less than every three hours for a minimum of 30 minutes each. If there are two or more babies, the break is at least an hour in duration. The employer sets the terms and procedure for granting breaks, taking into consideration the wishes of the mother. Breaks for feeding a baby are included in working time and are remunerated. An analysis of judicial decisions shows that there have been no petitions to the courts regarding refusals to grant breaks to women to feed their babies.

39. Markivskiy District Court of Luhansk region, decision on 19 January 2021, case No.417/55/21, available at <https://reyestr.court.gov.ua/Review/94251587>, accessed 06 July 2022.

40. Kremenetskiy District Court of Ternopil region, decision on 11 February 2022, case No. 601/326/22, available at <https://reyestr.court.gov.ua/Review/103247465>, accessed 06 July 2022.

It should be added that with the 2017 introduction of broad amendments to the law on Ensuring Equal Rights and Opportunities of Women and Men, the number of court decisions that refer to the relevant law significantly increased. Thus, if in the three-year period from 2015–2018 the Unified State Register of Court Decisions (US-RCD) lists only 14 court decisions in civil proceedings that contain references to the equal rights law, from January 2018 to June 2022, there were 459 such decisions. While the previous trend was to cite the law in cases related to labour relations, now this law is used in cases of issuing a protective order, one of the measures to combat domestic violence and gender-based violence.

### **Gender-insensitive interpretation of the process for issuing protective orders**

Concerning the issuance of protective orders, the general practice of applying for such an order is increasing each year. Yet, at the same time it is also fairly common for judges to reject victims' applications for protective orders. Judges may strictly apply the rules about the evidence that a victim must submit or may refuse to grant a protection order because the judge prioritises the perpetrator's parental or property rights.

An additional problem is the fact that consideration of victims' applications for protective orders can take months, instead of the statutory 72 hours. In one case, a judge of the Saksahanskyi District Court of Kryvyi Rih<sup>41</sup> considered an application for a protective order from 23 October 2020 to 30 August 2021 (in other words, for 10 months). The judge in this case noted that he had to open the proceedings and take the case into consideration within the first 72 hours. Evidently, judges often interpret the requirement that the court consider the application for a protective order within 72 hours to mean that a case must merely be opened in that period. This interpretation is the reason that protective orders are often not available to victims for their intended purpose—to provide timely protection in exigent circumstances.

In 2020, the Council of Europe analysed 568 first-instance court decisions on protective orders in Ukraine.<sup>42</sup> Of the decisions, 64% did not include the date the victim applied for a protective order, and so it could not be determined whether the court had issued a decision within the 72-hour period, as required by law. However, in those decisions where a date was specified, judges made a decision within 72 hours in only 8% of cases. In 14% of cases, the decision was made within 4 to 9 days; in 6% of cases the decision was made within 10 to 25 days; in 4% of cases the decision was made within one month, in 2% of cases, the process lasted more than 1.5 months; and in 1% of cases, it lasted between 2 and 3 months. There were also precedents of cases lasting for four months or even up to six and a half months. It is also important to note that judges in isolated cases have applied the practice of the European Court of Human Rights, and especially the practice that deals specifically with cases of domestic violence, and this trend continues.

### **Inability of judges to identify gender discrimination**

There are many instances in which judges have been unable to identify cases of violations of women's rights as a result of discriminatory legislation, gender-neutral legislation that in practice leads to discriminatory consequences, or gender stereotypes that exist in society. Moreover, the judges who were interviewed as part of this study noted that they could not conclude in their decisions that discrimination took place if the claimant did not refer to it in her/his claim. Judges believe that in this case, the rule of their connectedness with the claim should be applied, namely, they cannot go beyond the requirements of the plaintiff, and if the plaintiff does not refer to discrimination, the court cannot consider the case in this context. However, the issue of discrimination is not a matter of a claim; it is rather a question of the correct qualification of the legal situation. Even if the victim of discrimination claims violations of her/his rights but does not refer to the fact that the violation was the result of discrimination, it should not prevent the judge from providing correct legal qualifications with references to discrimination.

There are some cases of obvious discrimination in which NGO experts on gender discrimination have expressed doubts about the prospects of a legal case. For example, a woman applied to the Virtual Legal Aid Service of the Women's Consortium of Ukraine. She informed them that she was a programmer in a company where all the other programmers were men. Two other women worked at the company, as a secretary and an accountant. The applicant even had the nickname- "Bill Gates in a skirt"- due to her high level of professional skills. The applicant was concerned by the fact that throughout the entire five-year period of her employment in the company, she had never been appointed project manager, while men had. Moreover, the applicant accidentally discovered that men who performed the same job duties received a salary that was at least 1.5 times higher than her

41. Saksahanskyi District Court of Kryvyi Rih, decision on 30 August 2021, case No. 214/7323/20, available at <https://reyestr.court.gov.ua/Review/99491041>, accessed 06 July 2022.

42. Council of Europe (2020), Court Considerations on Issuing Restraining or Protection Orders in Cases of Domestic Violence: International Standards and Overview of Ukrainian National Practice (prepared by national expert Tamara Buhaiets), available at: <https://rm.coe.int/restraining-protection-orders-dv-report-ukraine/1680a0129>.

salary.<sup>43</sup> However, even NGO experts who considered this case were sceptical that the court would review it or would find discrimination by employers.

### **Judges' perceptions of international instruments on gender equality as abstract models**

Judges in Ukraine often feel that international instruments on gender equality are abstract and do not offer specific models for solving real-life disputes. As a result, in judicial decisions there are almost no references to relevant international instruments. In 2017, when the first country study was prepared, there were only 18 judicial decisions with references to CEDAW in the USRCD, for example. While the number was very low, case reviews indicated that there were positive references in decisions.

For instance, the Kyiv Court of Appeal referred to CEDAW in a ruling on an electoral dispute. The Law on Political Parties (2013) requires that candidate lists contain a minimum of 30% women among the total number of candidates. The Central Election Commission, however, has explained that a violation of the gender quota is not grounds to prohibit a political party from participating in elections. The political party "Samopomich" ("Self-help") appealed to the courts to recognise the position of the Central Election Commission as illegal. The Kyiv Court of Appeal referred to Article 7 of CEDAW. According to this article, State parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, *inter alia*, shall ensure to women, on equal terms with men, the right to be eligible for election to all publicly elected bodies. As a result, the Kyiv Court recognised the position of the Central Election Commission as illegal.<sup>44</sup>

In other cases, plaintiffs have referred to CEDAW, and courts have included relevant information in their decisions. For example, a woman demanded that her ex-husband be evicted from her apartment because he systematically committed physical and psychological violence against her.<sup>45</sup> In another case, a financial inspection pointed out that the payment of a bonus to a man to mark International Women's Day was a violation of CEDAW, and therefore it called for the company that paid the bonus to be fined.<sup>46</sup>

As of June 2022, a review of the USRCD indicates that CEDAW is mentioned in 364 court judicial decisions. Many of these decisions relate to the dissolution of marriage. In one typical decision, the judge stated: "[G]iven the principles of equality of women and men, the law requires that consent to marry must be mutual. The principle of voluntariness of marriage applies not only at the stage of registration, but also at the time of entry into marriage, as well as at its dissolution, in accordance with Article 16 (1) of the Universal Declaration of Human Rights and Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, paragraph 1, subparagraph (c).<sup>47</sup> The increase in references to CEDAW may well be a reflection of the fact that in recent years, judges and lawyers have received various trainings on the application of the CEDAW.

### **Limited awareness among lawyers of good practices to identify gender-based discrimination in cases, discriminatory provisions in existing legislation and settlement of cases through reference to international standards**

Research, undertaken to develop practical guidance for lawyers litigating discrimination cases,<sup>48</sup> identifies the following areas of weakness among the majority of practicing lawyers:

- ▶ they lack knowledge about the problem of discrimination and do not realise its importance for Ukrainian society;
- ▶ they do not understand the nature of discrimination as a general legal principle and legal category that has an interdisciplinary nature, and which is used both in international and national law and applied in both public and private spheres, in substantive and procedural law;
- ▶ they do not possess the proper level of special legal terminology (direct or indirect discrimination, oppression, reasonable accommodation, victimisation, segregation, positive discrimination, affirmative action, temporary special measures, etc.);

43. Women's Consortium of Ukraine (2014), Virtual Legal Aid Service, Q&A, available at <http://legal.wcu-network.org.ua/question/15>, accessed on 28 February 2017.

44. Kyiv Court of Appeal, Decision of 30 September 2015, available at [www.reyestr.court.gov.ua/Review/51659827](http://www.reyestr.court.gov.ua/Review/51659827), accessed 28 November 2016.

45. See [www.reyestr.court.gov.ua/Review/29239068](http://www.reyestr.court.gov.ua/Review/29239068), accessed 28 November 2016.

46. See [www.reyestr.court.gov.ua/Review/16062765](http://www.reyestr.court.gov.ua/Review/16062765), accessed 28 November 2016.

47. Izmail City District Court of Odesa Region, decision on 25 January 2022, case No. 946/9165/21, available at <https://reyestr.court.gov.ua/Review/102803044>, accessed 06 July 2022.

48. Zayets S. and Martynovsky R. (2015), Practical Guide to Argumentation in Cases of Discrimination, Council of Europe, Strasbourg, available in Ukrainian at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016803034ea>, accessed 28 November 2016.



- ▶ they do not possess the legal skills for the qualification of relevant factual situations as discrimination on relevant grounds, or the skills of legal reasoning required to establish cases of discrimination;
- ▶ they tend to restrict the scope of application of the principle of non-discrimination to “typical” problems (discrimination based on disability, age, etc.) or associate it only with selected “new” problems (discrimination against persons with HIV/AIDS or lesbian, gay, bisexual, transgender [LGBT] persons, for example);
- ▶ they do not consider the anti-discrimination provisions to be effective legal instruments; and
- ▶ they lack practical skills in applying standards for combating discrimination from the practice of the European Court of Human Rights (for example, the test on non-discrimination, anti-discrimination standards).

While the application of the non-discrimination principle is generally limited among legal professionals, it is even more so where discrimination against women is concerned. For example, all but one instance of discrimination cited in the above-mentioned practical guide are about men. The only case concerning women deals with domestic violence.

The Association of Women Lawyers “YurFem,”<sup>49</sup> one of the first associations of women lawyers in Ukraine that is to become a platform for sharing experiences, developing and supporting women in the legal profession, is engaged in improving lawyers’ understanding of gender issues in the law. The members of this organization are women lawyers representing different professions: judges, prosecutors, attorneys, notaries, human rights defenders, civil servants and police officers. YurFem conducts many activities to raise awareness among the community on various gender issues. In particular, the association has held three all-Ukrainian forums. The key focus of the First All-Ukrainian Forum was drawing the attention of the legal community to the protection of women’s rights, in particular their access to the legal profession, and the challenges faced by lawyers, as well as a discussion of the professional achievements of female lawyers. The key topics of the Second Ukrainian Forum of Women Lawyers were public and internal communication, advocacy campaigns on the protection of women’s rights and the visibility of women lawyers in the professional environment. The Third YurFem Women Lawyers Forum focused on gender-sensitive communication. Many female law students have been involved in the work of the Association of Women Lawyers “YurFem.”

The Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men requires gender-based legal expertise of laws and drafting of legal acts to determine their compliance with the principle of equal rights and opportunities for women and men. Further, the Law of Ukraine on Principles of Prevention and Combating Discrimination in Ukraine requires conducting an anti-discrimination analysis of the drafts of normative legal acts.

There are two different procedures involved. The first is an analysis of draft regulations to verify their compliance with the principle of equality between women and men. This is conducted by the Ministry of Justice of Ukraine, and results are published regularly.<sup>50</sup> On average, six acts pass this gender-based legal scrutiny annually. In 2015, these legal acts included the laws “on resorts,” “on tourism,” “on innovation activity,” and “on indexation of money incomes.” Unfortunately, the gender analysis is purely a formalistic procedure. While the conclusions of the Ministry of Justice should indicate that an analysis of articles of a given law demonstrates that the provisions do not contain discriminatory norms on the basis of sex, in effect, such conclusions are usually based on the fact that the terminology used in the law is gender-neutral.

The second procedure is an anti-discrimination analysis of the drafts of normative legal acts. This is conducted by the legal service of executive state bodies at the time that drafts of normative acts are submitted to legal review. Unfortunately, there is no formal procedure to obtain systematised information about the results of such expertise.

Therefore, there exist two parallel analyses, based on gender and on anti-discrimination. They are undertaken by different bodies and according to different procedures, without co-ordination.

These processes not only lack sufficient rigor but, moreover, result in cases in which courts refuse to consider a plaintiff’s references to discriminatory regulations, citing the fact that the relevant regulation passed either the anti-discrimination or gender analysis. The regulation is thus presumed to be in compliance with the principle of non-discrimination.<sup>51</sup>

49. See: <http://jurfem.com.ua/en/home-page-2/>

50. See the website of the Ministry of Justice of Ukraine, [http://old.minjust.gov.ua/law\\_gendpravexp](http://old.minjust.gov.ua/law_gendpravexp), accessed 28 November 2016.

51. Kyiv District Administrative Court (2014), Decision in Case No. 826/9399/14 of 11 September 2014, available at [www.reyestr.court.gov.ua/Review/40511798](http://www.reyestr.court.gov.ua/Review/40511798), accessed 28 November 2016.

A study of the integration of gender into legal acts,<sup>52</sup> conducted by the Organization for Security and Co-operation in Europe (OSCE) in 2020, highlights a number of problems related to gender legal expertise of legislation that require further solution:

1. Issues related to non-compliance with the norms of the current legislation, primarily the Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men, in terms of monitoring the entire volume of legislation, not only documents of the Cabinet of Ministers of Ukraine and the central executive bodies.
2. Insufficient institutional and individual ability of executive authorities to take into account the principle of gender equality when developing normative legal acts.
3. Lack of an institutional component for gender legal expertise in the Secretariat of the Verkhovna Rada of Ukraine and the Office of the President of Ukraine.
4. Resolution of the Cabinet of Ministers of Ukraine No. 930, adopted in 2020 is of recommendatory/non-binding nature (to recommend, within the limit of the number of employees to consider the possibility), and due to limited financial resources and staffing, not all authorities of different levels will form structural subdivisions.
5. The selectivity of the examination of the current legislation and the low percentage of acts which are examined. Each year the Ministry of Justice carries out examination of approximately ten acts.
6. The complexity of expertise and proving the necessity of changes rests in the fact that the concept of “taking into account the principle of equal rights and equal opportunities of women and men” is not standardized and operationalized. There is no such description in any instructions or methodological recommendations.
7. Developers of draft legal documents have difficulty with the definition of the implementation of positive actions by the state. Ensuring gender equality involves not only ensuring equal rights (equal legal status meaning, non-discrimination), but also equal opportunities for its implementation. In a situation of existing long-term discrimination, equal opportunities can be ensured by the application of affirmative action. Because definitions of the state’s positive obligations are often general and descriptive, this makes it difficult to translate them into the language of legal acts.

### 2.1.3. Access to legal aid

Free legal aid is guaranteed under Ukrainian law. The Law of Ukraine on Free Legal Aid, *inter alia*, provides that some categories of persons are entitled to free legal aid in the form of protection from prosecution (in criminal cases) and representation of their interests in court (in any category of cases – civil, criminal and administrative). Since the law was passed, the list of eligible persons has expanded considerably, and includes categories related to legal issues that disproportionately impact women. The law stipulates the types of legal services that are provided, and the main categories of people eligible for legal aid are summarized as follows:

- ▶ persons who are under the jurisdiction of Ukraine, if their average monthly income does not exceed two minimum subsistence incomes (around €140), calculated and approved in accordance with the law for persons belonging to the main social and demographic groups, as well as persons with disabilities who receive a pension or assistance instead of a pension, in the amount not exceeding two subsistence minimums for persons unable to work;
- ▶ children, including orphans, children deprived of parental care, children in difficult circumstances, children affected by war or armed conflict;
- ▶ internally displaced persons (IDPs);
- ▶ citizens of Ukraine who have applied for registration as internally displaced persons, for issues related to obtaining a certificate on registration as an internally displaced person;
- ▶ citizens of Ukraine who own land plots and reside in rural areas;
- ▶ Ukrainian citizens residing in temporarily occupied territory – for legal services on issues related to the protection of violated, unrecognized or contested rights, freedoms or interests of individuals (including on compensation for damage caused due to restrictions in exercising the right to real property or its

52. OSCE (2020), Gender Policy in Legal and Regulatory Documents. Part 1, available in Ukrainian at <https://www.kmu.gov.ua/storage/app/sites/1/18%20-%20Department/18%20-%20PDF/02.2021/genderna-polityka.pdf>.

destruction, damage) in connection with the armed aggression of the Russian Federation and temporary occupation of Ukrainian territory;

- ▶ persons in administrative detention;
- ▶ persons who, in accordance with the provisions of criminal procedure law, are considered detained;
- ▶ persons in criminal proceedings in respect of whom, in accordance with the provisions of the Code of Criminal Procedure of Ukraine, the defender is engaged by the investigator, prosecutor, investigating judge or the court to conduct the defense by appointment or to conduct a separate procedural action, as well as persons convicted to the penalty of imprisonment, maintenance in the disciplinary battalion of military personnel or restriction of freedom;
- ▶ refugees, foreigners or stateless persons who are in need of temporary protection;
- ▶ undocumented persons (without documents certifying their identity and confirming Ukrainian citizenship);
- ▶ war veterans and family members of deceased war veterans, persons with special merits and special labour achievements before the homeland, persons belonging to the number of victims of Nazi persecution;
- ▶ persons in respect of whom the court is considering a case on restriction of civil legal capacity of an individual, declaring an individual legally incapable and renewal of civil legal capacity of an individual;
- ▶ persons in respect of whom the court is considering a case for compulsory psychiatric assistance;
- ▶ victims of domestic violence or gender-based violence;
- ▶ victims of criminal offences against sexual freedom and sexual inviolability, torture or ill-treatment during military operations or armed conflict;
- ▶ whistle-blowers in connection with providing information on corruption or corruption-related offences.

According to Article 13 of the Law of Ukraine on Free Legal Aid, free secondary legal aid is guaranteed by the state that creates equal opportunities for access to justice. The law also stipulates that free secondary legal aid includes the following types of legal services:

- 1) protection;
- 2) representation of the interests of persons entitled to free secondary legal aid in courts, other state bodies, local self-government bodies before other persons
- 3) preparation of procedural documents.

At the same time, victims of domestic violence and gender-based violence (where the vast majority of victims are women and girls) still have very limited access to *pro bono* legal aid. Comparing the number of registered administrative offenses for domestic violence or gender-based violence under Article 173–2 of the Code of Administrative Offences, by year, against the number of victims of these offences who received unpaid legal assistance through the state fund/program, the unmet needs of victims become clear.

**Table 1. Comparison of numbers of violence against women offenses and victims who received legal aid, by year**

	2019	2020	2021	January-May 2022
Number of administrative offenses for domestic violence	107 221	13 0285	141 085	3 615
Number of administrative offenses for gender-based violence	1 762	1 680	2 320	673
Number of victims who received legal aid	790	1 177	2 127	554

Source: Information provided by the Coordination Centre for Legal Aid 25(h)/901 on 23 June 2022.

For each of the identified offenses, the victim has the right to receive free secondary legal aid, which includes the representation of her/his interests by a lawyer at the expense of the state. At the same time, in practice, properly informing victims about their guaranteed rights remains a critical shortcoming.

The International Women’s Rights Centre La Strada Ukraine provides assistance through national hotlines on domestic violence, human trafficking and gender discrimination (0 800 500 335, short number 386). In the first quarter of 2015, the hotlines received 2 632 calls. The majority of callers were women (80.8%), while men made up 19.2% of callers. In comparison, in 2020,<sup>53</sup> the hotline received 29 511 calls, with most of the callers being women (83.6% women and 16.4% men). The nature of the calls changed over this five-year period, most notably in the increase in calls concerning domestic violence. The main issue that the callers raised was domestic violence, and other concerns are indicated in the table below.

**Table 2. Share of callers to the La Strada Ukraine hotline, by issue and year**

Issues	2015 (first quarter)	2020
Prevention of domestic violence	58.4%	95.7%
Issues related to internally displaced persons	36.3%	0.3%
Human trafficking	4.2%	3.4%
Gender discrimination	1.1%	0.5%
Inquiries received from the occupied territories	-	0.1%

Source: Data from La Strada Ukraine, <https://la-strada.org.ua/garyachi-liniyi>.

Within the category of domestic violence, in 2015 most calls concerned psychological violence (48.6%), followed by physical violence (36.4%), economic violence (11.7%) and sexual violence (3.3%). In 2020, the types of violence involved were similar: psychological violence (51.3%), physical violence (34.7%), economic violence (12.8%) and sexual violence (1.2%). Note that in 2020, appeals from the temporarily occupied territories were related to cases of domestic violence.

For IDPs in 2015, the greatest urgency was the question of humanitarian aid (51.8% of calls), followed by information support (21.1%). IDPs were also seeking assistance about social benefits, psychological help, departure from the zone of military conflict, verification of status, restoration of documents, registration of location, housing, employment, health care, schooling, returning to a permanent residence, volunteering, and theft, among other issues.<sup>54</sup>

With regard to calls on human trafficking, most consultations concerned employment abroad. Regarding issues of gender equality, most consultations concerned discrimination in the labour sphere.

The Order of the Ministry of Social Policy of 11 December 2018 No. 1852 on the establishment of the State institution “Call Centre of the Ministry of Social Policy of Ukraine on combating human trafficking, preventing and combating domestic violence, gender-based violence and violence against children” created a state-supported specialized hotline for victims of domestic violence, gender-based violence, human trafficking and child victims of crime. The government hotline (short number 1547) received the most calls on domestic violence, with a considerable increase after 2020, as shown in the table below.

**Table 3. Number of callers to the government hotline, by issue and year**

Issues	2020	2021	January-May 2022
Domestic violence	7 920	11 135	3 345
Gender-based violence	6	48	47
Violence against children	55	210	43
Anti-trafficking	38	64	20

Source: Information provided by the State Institution “Government Contact Centre,” 27 June 2022, No. 0038–22/ZI.

Although there is a trend of increasing calls to the government hotline, the number is still very small compared to the scale of violence. This can be explained by the fact that information about this resource for victims is generally not known, and it is necessary to increase public awareness.

53. See: <https://la-strada.org.ua/garyachi-liniyi>

54. See [www.la-strada.org.ua](http://www.la-strada.org.ua), accessed 28 November 2016.

Also, the number calls in 2022 was much higher compared to previous years for same period. This is due to an increase in cases of war violence. At the same time, because victims are still insufficiently informed about state support services, the number of victims who do not contact the hotline can be presumed to be significantly larger.

### **Lack of sex-disaggregated data**

An important sign of gender policy making is the collection of sex-disaggregated statistics. On 2 December 2020, the Cabinet of Ministers of Ukraine issued Order No. 1517-p on The issue of data collection for monitoring gender equality, which includes the following actions:

1. To approve a list of indicators in the context of which data collection for monitoring of gender equality is to be carried out.
2. To the State Statistical Service:
  - ▶ To ensure the collection of data for the monitoring of gender equality and its publication on its official website;
  - ▶ To coordinate the development of metadata on the indicators approved by this decree.

Accordingly, the State Statistics Service shall collect data on the following gender equality indicators:

- ▶ Population
- ▶ Fertility, family and household
- ▶ Employment and the economy
- ▶ Education
- ▶ Public life and decision-making
- ▶ Health and mortality
- ▶ Delinquency and violence
- ▶ Science and information and communication technologies
- ▶ The balance of working life
- ▶ Social protection

The collection of statistical information is extremely important because positive actions can be taken at the national and regional levels to address imbalances in inequalities between women and men based on statistical indicators. At the same time, the proposed indicators of gender equality are not also disaggregated by age and, thus, they do not take into account gender differences among children.

As for statistics on domestic violence, under the Law of Ukraine on Preventing and Combating Domestic Violence, the Ministry of Social Policy is responsible for collecting, analysing and disseminating information on domestic violence in accordance with the legislation and improving a system of indicators in state statistical reporting forms on preventing and combating domestic violence. The law also stipulates that other actors involved in preventing and combating domestic violence shall report to the Ministry of Social Policy on the results of exercising their powers. This reporting generates important information for monitoring the situation and for collecting sex-disaggregated statistics on incidents of domestic violence, which are also needed for prevention work. At the same time, the Ministry of Social Policy does not publish statistical data on domestic violence. Also, access to statistical information that is collected by different actors is limited and not coordinated. In general, among the actors responsible for the prevention of domestic violence, there is very limited reliance on statistical data disaggregated by gender in decision-making.

## 2.2. Analysis of the practice and mechanisms for the implementation of laws

### 2.2.1. Challenges for women's access to justice

The 30 judges surveyed for this study were asked to consider model cases based on Ukrainian labour legislation (see the Appendix I for the full questions and responses). On the basis of the replies, the general conclusion that can be drawn is that Ukrainian judges do not identify discrimination and do not test the provisions of legislation for compliance with the international instruments ratified by Ukraine.

#### The negative impact of gender-neutral legislation and recommendations of the Istanbul Convention

As an example of gender-neutral legislation, according to the Ukrainian Family Code, a parent who lives separately from the child has to pay alimony. The minimum amount of alimony for one child may not be less than 30% of the living wage for a child (approximately €56–€72 in 2022). However, in the case of divorced parents in Ukraine, a child lives with his/her mother in virtually all cases. Thus, the situation is such that a man is mandated to pay only 30% of the child's living wage, while the woman pays the remaining 70%, placing the overwhelming financial costs on the woman, who, statistically, will earn less than the man. But it should be noted that in recent years, judges are moving away from the usual practice of awarding custody of the children to mothers and are making more decisions in which children remain with their fathers after a divorce. Although in most cases the children do live with their mothers, who often cover all the expenses.<sup>55</sup>

Some model cases were prepared for the study, based on gender-neutral legislation, with several proposals for how the case could be resolved. The model cases were addressed in interviews with the judges. The aim of the interviews was to determine the ability of judges to recognise indirect discrimination. One of the model cases was as follows:

The court of the first instance ordered child support in the amount of 30% of the minimum subsistence level for a child of appropriate age. It took into account the fact that the defendant has a new family into which a child will be born soon. Ms D., who is a plaintiff in this case, filed an appeal against this decision.

The solutions offered were as follows:

1) Article 184 of the Family Code of Ukraine provides that the amount of child support is determined by certain circumstances that may be important: for example, the court takes into account whether the maintenance payer has other children. The legislator sets the minimum amount of maintenance for one child; it cannot be less than 30% of the subsistence minimum for a child of appropriate age. The court ruled on the provisions of the Family Code of Ukraine. Thus, the judgment in this case is lawful;

2) When there is a divorce, in most cases the child lives with the mother. If we take the minimum subsistence level as the reference point, the parent who lives with the child should ensure 100% of the maintenance. The other parent (which usually is the father of the child) pays alimony of 30% of the minimum that is required for the maintenance of the child. So one of the parents (usually the mother) ensures 70% and the other 30%. This is unfair and it contradicts the requirements of international standards on equal distribution of rights and responsibilities of parents on upbringing and child support.

Of the respondent judges, 90% chose answer number 1. The judges who chose answer number 2 added a footnote that in practice, the case would be resolved as described in the first option.

The development of legislation on domestic violence and violence against women requires special attention. Despite the fact that statistics indicate that the number of perpetrators of domestic violence brought to administrative and criminal responsibility is increasing, still many cases of domestic violence remain without the attention of the police, prosecutors and courts. Data on the number of calls regarding domestic violence made to the police, compared to the number of individuals who are identified as perpetrators, either of administrative offenses or crimes, indicate a pattern in which a small proportion of cases enter the justice system. Data for several years, indicates the situation as shown in the following table.

55. According to the results of the analysis of court practice in the study Gender aspects of cases of non-compliance with parental responsibilities and determination of the child's place of residence. The analytical report: "Courts have determined the child's place of residence with the mother in almost 70% of cases because fathers have not expressed a desire for the children to live with them, but have not filed a suit or counterclaim" (p. 26). Available (in Ukrainian) at: <http://jurfem.com.ua/dosladdgennya-genderni-aspekty-sprav-ditei-dejure/>.

**Table 4. Comparison of number of calls made to police on domestic violence with the number of administrative and criminal cases, by year**

	2019	2020	2021	January-May 2022
Number of calls made to national police “102” line, preliminarily identified as incidents of domestic violence	462 719	597 061	457 557	110 849
Number of identified perpetrators of domestic violence as an administrative offense	76 186	96 257	104 928	2 938
Number of people reported on suspicion of committing domestic violence under Article 126–1 of the Criminal Code of Ukraine	no data	1 678	1 905	495

Sources: National Police of Ukraine report of prevention and combating domestic violence (Form 1-DN) for 2019, 2020, 2021 and 5 months of 2022; and results of the Uniform Report on Perpetrators of Criminal Offences<sup>56</sup>

Some researchers state that the level of violence against women in Ukraine is very high, and prevailing prejudices, including among judges, are the main obstacles to effective protection of women’s rights. For so many women, domestic violence comprises psychological torture and regular beatings that reduces their quality of life and even threatens their lives. Ukrainian society, which is traditional, does not take this problem seriously.

There is great hope that the ratification of the Istanbul Convention, which took place after 11 years of hard work by many lawyers and human rights activists, will improve the investigation of domestic violence cases, increase the prosecution of perpetrators, and expand programs for perpetrators, which as of 2022 are not functioning as required by national law.

Many cities do not have specially trained professionals to conduct programs for perpetrators. Furthermore, there is no court practice of referring perpetrators of domestic violence to special programs. As the judges themselves point out, they do not know where to send perpetrators and who should conduct the programs for them. Given that the national legislation provides for criminal liability for failure to complete a program for perpetrators in accordance with Article 390–1 of the Criminal Code of Ukraine, judges are not taking appropriate decisions, since it is not possible to complete such a program in many regions.

An additional problem that becomes a barrier to justice for victims of domestic violence is the inadequate response of the judicial system. For example, according to information of the USRCD in 2020, the courts of Cherkasy<sup>57</sup> considered 545 administrative protocols on bringing the perpetrators to administrative responsibility under article 173–2 of the Code of Administrative Offences, out of which in only 46% (252 cases) did judges find the perpetrator responsible and impose administrative penalties. In virtually all of these cases, the fine was minimal and would likely have no deterrent effect. In the remaining cases, the judges made no decisions. The case was either closed due to the expiration of the statute of limitations, closed by the court due to a finding of “insignificance,” (note that the Code of Ukraine on Administrative Offenses allows for a determination that a case was insignificant and the sanction takes the form of an oral reprimand), closed when it was determined that there was no administrative offense, or the administrative protocol was sent for revision.

As a result, the perpetrators were not punished. Such practice is inherent not only in regional cities. For example, in 2020 the Kalushskyi City District Court of the Ivano-Frankivsk region examined 217 administrative cases of bringing perpetrators to administrative responsibility under Article 173–2 of the Code of Administrative Offences. In 63 cases (29%) the judges brought the perpetrators to administrative responsibility and imposed an administrative penalty, and in 94% of these cases the penalty was a fine. This situation only strengthens perpetrators’ understanding that they will not be adequately punished. Victims lose faith in the system and may not report domestic violence to the police again in the future.

56. Order of the General Prosecutor Office on 30 June 2020 No. 299.

57. Study from the Ministry of Social Policy, available at [www.mlsp.gov.ua/labour/control/uk/publish/category%3Bjsessionid=3FEE-35A10D5AAF74725F8F130263E382.app1?cat\\_id=166710](http://www.mlsp.gov.ua/labour/control/uk/publish/category%3Bjsessionid=3FEE-35A10D5AAF74725F8F130263E382.app1?cat_id=166710), accessed 28 November 2016.

## **Overview of the importance of the Ministry of Social Policy as the specially authorized central body for ensuring equal rights and opportunities for women and men and to prevent and counteract domestic violence**

The Laws of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men and on Preventing and Combating Domestic Violence stipulate that the Ministry of Social Policy of Ukraine is the “specially authorized central body of the executive branch to ensure equal rights and opportunities for women and men.” As such it conducts the following activities:

- ▶ Participates in the formation and implementation of state policy to ensure equal rights and opportunities for women and men and in the sphere of preventing and combating gender-based violence.
- ▶ Coordinates the activities of ministries and other executive bodies aimed at introducing gender equality, coordinates the activities of entities carrying out activities in the field of preventing and combating gender-based violence.
- ▶ Carries out information and awareness-raising work in the media, organizes educational activities in the field of gender equality and in the field of preventing and combating gender-based violence.
- ▶ Develops measures aimed at ensuring equal rights and opportunities for women and men and at changing social and cultural patterns of behaviour based on discriminatory ideas about the social roles and responsibilities of women and men in all spheres of society.
- ▶ Formulates the National Plan of Action to promote gender equality and to prevent and combat gender-based violence.
- ▶ Controls the observance of gender equality in solving personnel issues in the central and local bodies of executive power.
- ▶ Organizes training of civil servants on implementation of equal rights and opportunities of women and men, preventing and combating gender-based violence, as well as coordinates the training of specialists representing entities that carry out activities in the field of preventing and combating gender-based violence.
- ▶ Together with other central bodies of the executive, prepares scientifically substantiated proposals on gender equality and in the field of preventing and combating gender-based violence.
- ▶ Organizes scientific and expert studies on ensuring equal rights and opportunities for women and men and in the field of preventing and combating gender-based violence.
- ▶ Makes proposals for the application of positive actions and their termination.
- ▶ Monitors the effectiveness of measures in the field of preventing and combating gender-based violence, as well as their impact on different social groups, provides relevant methodological and practical assistance to actors implementing activities in the field of preventing and combating gender-based violence.
- ▶ Ensures the development and approval of model programs for perpetrators, as well as methodological guidelines for their implementation.
- ▶ Approves the standards for the provision of social services to victims and the methodology for determining the needs of territorial communities for the creation of specialized support services for victims.
- ▶ Together with other central bodies of the executive, prepares scientifically substantiated proposals on gender equality and in the field of preventing and combating gender-based violence.
- ▶ Organizes scientific and expert studies on ensuring equal rights and opportunities for women and men and in the field of preventing and combating gender-based violence.
- ▶ Makes proposals for the application of positive actions and their termination.
- ▶ Monitors the effectiveness of measures in the field of preventing and combating gender-based violence, as well as their impact on different social groups, provides relevant methodological and practical assistance to actors carrying out activities in the field of preventing and combating gender-based violence.
- ▶ Ensures the development and approval of model programs for perpetrators, as well as methodological guidelines for their implementation.
- ▶ Approves the standards for the provision of social services to victims and the methodology for determining the needs of territorial communities for the creation of specialized support services for victims.



As a specially authorized body that ensures the formation and implementation of state policy on preventing and combating domestic violence, the Ministry of Social Policy of Ukraine is responsible for:

- ▶ Formation of state policy on preventing and combating domestic violence.
- ▶ Legal regulation in the area of preventing and combating domestic violence.
- ▶ Coordinating the activities of actors implementing measures to prevent and combat domestic violence.
- ▶ Ensuring the development and approval of model programs for victims, as well as methodological recommendations for their implementation.
- ▶ Ensuring the development and approval of model programs for perpetrators, as well as methodological recommendations for their implementation, including taking into account the age, health status, and gender of the abuser.
- ▶ Implementation of methodological support to local state administrations and local self-government bodies in the sphere of preventing and combating domestic violence.
- ▶ Approving standards for the provision of social services to victims and the methodology for determining the needs of territorial communities in creating specialized support services for victims.
- ▶ Implementation of international cooperation in preventing and combating domestic violence.
- ▶ Implementation of the state policy in the field of preventing and combating domestic violence.
- ▶ Ensuring the creation and operation of the Unified State Register of Domestic Violence and Gender-Based Violence, exercising the powers of the holder of this register.
- ▶ Ensuring the functioning of support services for victims and exercising control over their activities.
- ▶ Coordination of the training of specialists representing actors who carry out activities in the field of preventing and combating domestic violence.
- ▶ Organizing and conducting nationwide sociological, legal, psychological and pedagogical and other studies on domestic violence, its causes and consequences.
- ▶ Collecting, analysing and disseminating, in accordance with the legislation, information on domestic violence, improving the system of indicators in the forms of state statistical reporting on preventing and combating domestic violence.
- ▶ Monitoring the effectiveness of legislation on preventing and combating domestic violence, the practice of its application, and measures to prevent and combat domestic violence, providing methodological and practical assistance to actors engaged in preventing and combating domestic violence.
- ▶ Preparing and making publicly available an annual report on the state of implementation of government policy in preventing and combating domestic violence.
- ▶ Maintaining records of the activity of general and specialized support services for victims at the national level.

It is important to note that in accordance with Cabinet of Ministers of Ukraine Decree No. 658 of 22 August 2018 on Approval of the Procedure of Interaction of Entities Carrying Out Activities in the Field of Preventing and Combating Domestic Violence and Gender-Based Violence, interaction of all entities carrying out activities to prevent and combat domestic violence and gender-based violence is carried out at the central level (by the Ministry of Social Policy of Ukraine), at the regional level (by the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations) and at the local level (by district, district in Kyiv and Sevastopol state administrations and executive bodies of village, settlement, city, city district councils, including united territorial communities). At the local level, structural subdivisions of district, rayon councils in Kyiv and Sevastopol state administrations, whose competencies include the implementation of measures to prevent and combat domestic violence and gender-based violence, are structural subdivisions on family issues.

Advisory bodies – **local coordination councils**– are formed in order to ensure interagency cooperation on the implementation of state policy on preventing and combating domestic violence and gender-based violence at the local level, to coordinate activities in this area, to improve their effectiveness, to coordinate awareness-raising activities, to develop proposals for improving legislation and the practice of its application. The local coordination councils include authorized representatives of local executive authorities and local self-government

bodies, prosecutors and courts, public associations, religious organizations, international and foreign non-governmental organizations (by consent).

Despite the existence of these councils, the practice of the relevant local coordination councils in the field is not always effective, and the work is often of a formal nature. For instance, meetings are held only on a quarterly basis with formal hearings of reports from the responsible actors. Obviously, the more effective the work of the relevant local coordinating councils is, the more effective the system of preventing and combating domestic violence and gender-based violence at the local level will be. This work has a direct impact on victims' access to justice, because the more support a survivor experiences, the easier it will be for victim to advance through the chain of justice.

The problematic issue remains the lack of a specially approved **needs assessment form** for the victim with regard to social services, shelter, medical or psychological assistance. The corresponding form must be approved by the Ministry of Social Policy. In fact, in practice it is very uncommon for a comprehensive assessment of the needs of victims of domestic violence and gender-based violence to be conducted.

The coordination of interaction between different actors of prevention and counteraction to domestic violence and gender-based violence could possibly be improved if Ukraine were to introduce a Unified State Register of Domestic Violence and Gender-Based Violence. The legal framework for the operation of this register is in place, and the relevant legal acts have been adopted. At the same time, there is no technical support for this register and it is unlikely to appear in the coming years.

## 2.3. Socio-economic and cultural barriers to women's access to justice

---

### 2.3.1. Women's awareness of their rights

Women's low awareness of their rights is one of the main reasons for the severe underreporting of discrimination and other violations of these rights. Many women are not aware that certain situations constitute violations of their rights, or they are not aware of the existing mechanisms that can protect their rights and interests. Moreover, there are many stereotypes on the social role of women in society. This is felt particularly acutely in rural areas.

A 2015 study focusing on rural women and CEDAW standards, carried out with the support of the Ombudsman's Office and the United Nations Development Programme in Ukraine (Vološevych, Konoplytska, Kostyuchenko, and Martsenyuk 2015), covers the topics of rural women's participation in political life and in NGOs; rural women's access to adequate health care, including information, counselling and family planning services; their use of social insurance programmes; formal and informal education, including functional literacy; economic opportunities and participation in collective activities; violence against women in rural areas; and women's level of legal awareness of their rights and mechanisms for their protection. Among the problems identified, 17% of rural women who are employed claim that their employer does not pay them when they are sick. Lack of paid sick leave is due to the fact that employers often only offer informal work to women because they do not want to bear the onerous social obligations prescribed by Ukrainian law, which was noted by 42% of surveyed women. About a quarter (23%) of women surveyed stated that they refuse formal employment for higher salaries of their own volition; 15% of women do not apply for sick leave because they are afraid of being fired; and 14% of women who worked before pregnancy say that their leave is not paid and most do not know the reasons for this. Thus, every tenth rural woman who is on maternity leave has the right to social protection but cannot obtain it. Only 52% of respondents are sure that their employers will offer them the same or a similar position following maternity leave, 34% have no guarantees, and 14% are sure that their employer will not offer the same or similar work.

In case of job loss, most rural women do not seek help from the state: 71% of unemployed rural women stated that they are not registered at an employment centre. The main reason is the lack of belief that the centre can find them a suitable job (as indicated by 48% of the unemployed rural women who responded to the survey). The distance to the employment centre (20%) and difficulties in collecting documents for registration (19%) are barriers to accessing the employment centre's help for unemployed rural women.

According to another study, published by the Ministry of Social Policy of Ukraine,<sup>58</sup> there is higher awareness in the population of the laws that prohibit various forms of domestic violence against women than of the laws that

---

58. Study from the Ministry of Social Policy, available at [www.mlsp.gov.ua/labour/control/uk/publish/category%3Bjsessionid=3FEE-35A10D5AAF74725F8F130263E382.app1?cat\\_id=166710](http://www.mlsp.gov.ua/labour/control/uk/publish/category%3Bjsessionid=3FEE-35A10D5AAF74725F8F130263E382.app1?cat_id=166710), accessed 28 November 2016.

are intended to improve the position of women in the labour market and representation in politics. Half of the respondents know about Ukrainian laws that prohibit human trafficking, including sexual or labour exploitation of women (45%). Awareness about Ukrainian laws that prohibit the exploitation or the prostitution of women, even with the consent of the women, stands at 40%. More than a third of respondents are aware of the existence of Ukrainian laws that prohibit physical and sexual violence against women in the family (39% and 36% respectively). Ukrainians are less aware of laws that prohibit psychological and economic violence in the family (29% and 23% respectively).

One-third of respondents know about the Ukrainian laws that prohibit sexual harassment at the workplace, but only 22% of respondents are aware of the laws that require the employer to create conditions for women and men for combining family obligations with raising children and professional duties. The level of knowledge of the Ukrainian laws that prohibit sex-specific job offers or unequal pay is the lowest (14% and 15% respectively).

The Ministry of Social Policy of Ukraine states that combating any kind of discrimination against women requires a high level of women's awareness about their rights. A large-scale information campaign to inform Ukrainian women about the legislative guarantees of equal rights and opportunities is necessary. Effective ways of informing employers and employees, as well as legal professionals, particularly judges and representatives of law enforcement agencies, as well local authorities are also needed.

### **2.3.2. Specific socio-economic and cultural barriers that may affect women's access to justice**

From the time that the previous national study for Ukraine was published, there have been significant socio-economic changes in the country. These socio-economic, as well as cultural, barriers continue to affect women's access to justice.

Sexual violence during the acts of aggression by the Russian Federation against Ukraine, perpetrated by Russian troops as a genocidal weapon of war, became widely publicized after the full-scale invasion of 2022. In the city of Bucha (Kyiv region) alone, 25 rapes were discovered,<sup>59</sup> and a number of high-profile cases became known worldwide. Undoubtedly, there are many more such cases. Many victims refuse to testify or report to the police. The National Police documents sexual crimes in three ways: through calls to the 102 telephone line, through social networks (special chatbots have been created) and through the work of specialized police teams that travel to populated areas and talk to civilians there. Specialized police groups are involved in recording, identifying and documenting sexual crimes. The prosecutor's office then determines the jurisdiction of such cases.

A surge of domestic violence has been observed in Ukrainian society, as the men who participate in military operations in the east of Ukraine and war and return home. This is linked to psychological trauma and post-traumatic stress disorder, as well as difficulties finding jobs and families facing economic hardship. Men who were needed for military operations may feel they are no longer necessary in civilian life. The war will also lead to an increase in juvenile delinquency.

Ukraine has found itself in a difficult economic situation due, in particular, to increasing inflation and high energy prices, both global trends, and internal factors, primarily those related to the acts of aggression by the Russian Federation against Ukraine. Ukraine is experiencing disruption of production and logistics routes, destruction of assets and infrastructure, limited reserves and import opportunities, occupation of territories, among other events that effect the economy.

The norm according to which the indexation of cash income depends on the financial resources of the budgets of all levels for the relevant year may lead to indirect discrimination against women, because budgetary institutions in 2015 abandoned indexation of money incomes of their employees, and most of these employees are women. In 2018, the difference between the average monthly earnings of women and men was 22.3% (men earned on average 10 000 Ukrainian hryvnia [UAH], compared to UAH 8 000 for women. The average salary of men in 2019 was UAH 2 000 per month, and for women, it was UAH 9 000. In 2020, the gender pay gap narrowed slightly; men received an average of UAH 13 000 per month, and women earned UAH 10 000. As of the first quarter of 2021, women received on average almost 18% lower wages than men in Ukraine.

Ukrainian society is largely traditional. The possibility of legalising same-sex marriage is rarely raised, other than by civil society representatives. It is not on the agenda of public discourse, and there is a very biased attitude towards persons of a non-heterosexual orientation. A majority of the population disapproves of transgender persons. Therefore, the rights of lesbians, bisexuals and transwomen need special protection, especially those living outside of urban areas. However, a modern democratic state is obliged to take into account, as far as possible,

59. Information from open sources. Available at: <https://hromadske.radio/news/2022/04/12/denisova-vidomo-pro-prybylyzno-25-divchat-iakykh-rosiys-ki-viys-kovi-zgvaltuvaly-u-buchi>.

the interests of all social groups and to counteract manifestations of intolerance against vulnerable groups, in particular, homophobia, as discussed in many international documents concerning Ukraine. Ukraine recognizes this responsibility, as evidenced by the government's Action Plan to Implement the National Human Rights Strategy to 2020. Among other elements, it provides for "the development and submission to the Cabinet of Ministers of Ukraine of a bill on legalization of registered civil partnership in Ukraine for different-sex and same-sex couples, taking into account property and non-property rights, in particular ownership and inheritance of property, retention of one partner by another in case of disability, constitutional right not to testify against their partner" by the end of the second quarter of 2017. However, as of 2022, the relevant initiative has not yet been implemented.<sup>60</sup>

There is a common belief that it is sufficient to have gender-neutral laws and gender-neutral judicial practice. This belief persists despite the fact that there are very few women in politics or high-level managers in public and private structures. According to information from the Virtual Legal Aid Service of the Women's Consortium of Ukraine, women seek help when they want to work, but their husbands strongly oppose this and pressure them to choose between family and work.

Ukrainian society is changing the tendencies of prejudice at the official level. This is evidenced by the cancellation of the Cabinet of Ministers' order on the dress code for women in public service.<sup>61</sup>

There has been an initiative to prohibit abortions in Ukraine. At the beginning of June 2015, Ihor Mosiychuk, a Ukrainian parliamentary member who is a member of the governing coalition, announced that he had initiated a draft law on the prohibition of abortion. Activists and human rights defenders were shocked by the news, and on 27 June, a demonstration against the draft law took place in Kyiv. Demonstrators argued that the adoption of this law would have catastrophic consequences for Ukrainian society and that state intervention in a woman's choice is an attack on reproductive rights. The draft law was not adopted, but the issue has resurfaced. On 23 May 2022 an electronic petition No 22/138582-ep on the prohibition of abortions in Ukraine<sup>62</sup> was created on the official internet site of the President of Ukraine. As of 6 September 2022, 1 302 people had signed the petition. If the barrier of 25 000 people supporting the corresponding petition is reached, the initiative must be considered by the President of Ukraine. Such petitions have a negative impact on efforts to promote gender equality in Ukraine.

The issue of IDPs in Ukraine merits special attention. According to the UN Human Rights Monitoring Mission, 6 362 deaths, including at least 625 women and girls, have been documented since the beginning of the armed conflict in April 2015. During this time, 15 775 people were injured in the conflict zone in eastern Ukraine and many are reported as missing.<sup>63</sup> Experts noted that the Ukrainian media ignore the problems of women who are in the conflict zone. In February 2017, the UN Human Rights Mission published a report *Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017* addressing documented patterns and trends of sexual violence in the conflict areas, accountability and available services for survivors and victims, and provided a series of recommendations (OHCHR 2017).

More widely, Ukrainians receive information about losses of fighters on the frontlines every day, but unfortunately, they know almost nothing about the fate of women who are in the occupied territories. Gender-based violence in the conflict zone is persistently ignored; this crime is marginalised in Ukraine. Society believes that it is not worth the attention, as compared with other news, crimes and developments.<sup>64</sup>

The Yaremchenko Ukrainian Institute for Social Research in its report *Assessing the needs of internally displaced women and elderly people in Ukraine* states that priority needs for IDP women are receiving food and non-food products, health care, financial assistance, help in searching for housing, registration at the place of temporary residence, registration of social benefits, pensions and care (Yaremchenko Ukrainian Institute for Social Research 2015). The analytical report *Policy on internally displaced persons in Ukraine* identifies similar priorities (Solodko and Doronyuk 2015).

In this regard, an analysis of the judgments of the first half of 2015 showed that:

- ▶ of 217 claims that are considered on application of the Law of Ukraine on the Rights and Freedoms of Internally Displaced Persons, 95% were submitted to the courts by women;

60. See: Same-sex partnership in Ukraine and the world: main facts and conclusions // <https://gay.org.ua/documents/Key-information.pdf>

61. Order is no longer in force in accordance with the Order of the Secretariat of the Cabinet of Ministers of Ukraine from April 23, 2018 № 78.

62. See: <https://petition.president.gov.ua/petition/138582>

63. For the latest reports by the UN Human Rights Monitoring Mission in Ukraine see [www.un.org.ua/en/publications-and-reports/un-in-ukraine-publications/3592-un-reports-on-human-rights-situation-in-ukraine](http://www.un.org.ua/en/publications-and-reports/un-in-ukraine-publications/3592-un-reports-on-human-rights-situation-in-ukraine), accessed on 28 February 2017.

64. See <https://voxukraine.org/2014/12/19/zhinki-na-vijni-storona-medali-pro-yaku/> accessed 28 November 2016.

- ▶ failure to obtain a certificate of registration of IDPs, or a lack of awareness of other formal requirements are the main obstacles for women seeking to defend their rights in court; see for example, the decision of the Sviatoshynskiy District Court in Kyiv, 24 June 2015, Case No. 2/759/4430/15;<sup>65</sup> the decision of the Moskovskiy District Court of Kharkiv, 19 January 2015, Case No. 643/455/15-ц;<sup>66</sup> and the decision of the Berdianskiy District Court of Zaporizhia Region, 4 February 2015, Case No. 310/1071/15-a;<sup>67</sup>
- ▶ the main categories of cases involving women who are IDPs are family affairs (alimony, divorce, establishing the fact of birth); social (the receipt of targeted assistance, appealing a refusal to pay a pension at the new place of residence); administrative (an appeal against a refusal to register an IDP); employment (see the decision of the Rivne City Court of Rivne Region, 26 March 2015, Case No. 569/3293/15-a,<sup>68</sup> and the decision of the Volodarskiy District Court of Donetsk region on 24 February 2015 in Case No. 222/100/15-a,<sup>69</sup> etc.).
- ▶ The International Organization for Migration (IOM) estimates that the number of persons considered IDPs as of mid-May 2022 is approximately 7.1 million. The Ministry of Social Policy reported in early May that over 2.7 million people had registered and received IDP certificates. IDPs who arrived from the eastern regions account for more than half (55%) of the total number, and 13% are from the southern regions. While their share has gradually increased, the proportion of IDPs from Kyiv and the northern regions has significantly decreased in comparison to the first month of the full-scale war; it is now 16% and 12%, respectively. The number of people who have returned after being displaced within the country, according to IOM estimates, is about 4.5 million.
- ▶ According to the State Border Guard Service of Ukraine, from 24 February -3 June 2022, more than 5.2 million people left Ukraine, the vast majority of whom are Ukrainian citizens. According to the UN Refugee Agency (UNHCR), as of 9 June 2022 there are more than 4.9 million refugees in Europe who left Ukraine because of the war. More than 3.2 million refugees from Ukraine have registered in Europe for temporary protection or similar status. Among the European countries in which IDPs from Ukraine are most frequently registered are: Poland (1.1 million), Germany (565 000), the Czech Republic (366 000), Spain (118 000), Bulgaria (113 000) and Italy (97 000). As of 19 May 2022, 31 699 people had applied for refugee status.<sup>70</sup>

### 2.3.3. Brief overview of key statistics concerning women's position in society, the economy and politics

The proportion of women deputies in the Verkhovna Rada has increased steadily, but the overall share of women deputies remains low. In the current Verkhovna Rada, there are 421 deputies: 335 men (79.6%) and 86 women (20.4%) - the best indicator since Ukraine's independence.<sup>71</sup> Despite the fact that the quota for women is not equal to 50%, every year the number of women deputy's increases, which is a positive trend.

While the share of women parliamentarians in the Verkhovna Rada is increasing, the Cabinet of Ministers tends to be gender imbalanced. Currently, there are only five women ministers out of 22 in the government.

The State Judicial Administration of Ukraine has summarized the gender composition of courts and court administration. As of 1 January 2020, out of a total of 30 363 judges and appellate employees who work in local and appellate courts in Ukraine, 75% (22 821) are women and 25% (7 542) are men.<sup>72</sup>

Ukraine ranked 81 out of 146 countries in the 2022 Global Gender Gap Index (GGGI) (World Economic Forum 2022). The GGGI measures a country's progress toward gender equality based on four subindexes (economic participation; educational attainment; health and political empowerment). Ukraine also ranked 49 out of 170 countries on United Nations Development Programme (UNDP) Gender Inequality Index (GII) in 2021. The GII is a gender *inequality* metric based on three dimensions (reproductive health, empowerment and the labour market). Ukraine also ranks 66 of 170 countries in the Women Peace and Security Index, compiled by

65. Sviatoshynskiy District Court in Kyiv, 24 June 2015, available at [www.reyestr.court.gov.ua/Review/45835966](http://www.reyestr.court.gov.ua/Review/45835966), accessed 28 November 2016.

66. Moskovskiy District Court of Kharkiv, 19 January 2015, available at [www.reyestr.court.gov.ua/Review/42893769](http://www.reyestr.court.gov.ua/Review/42893769), accessed 28 November 2016.

67. Berdianskiy District Court of Zaporizhia Region, 4 February 2015, available at [www.reyestr.court.gov.ua/Review/42602739](http://www.reyestr.court.gov.ua/Review/42602739), accessed 28 November 2016.

68. Rivne City Court of Rivne Region, 26 March 2015, available at [www.reyestr.court.gov.ua/Review/43339098](http://www.reyestr.court.gov.ua/Review/43339098), accessed 28 November 2016.

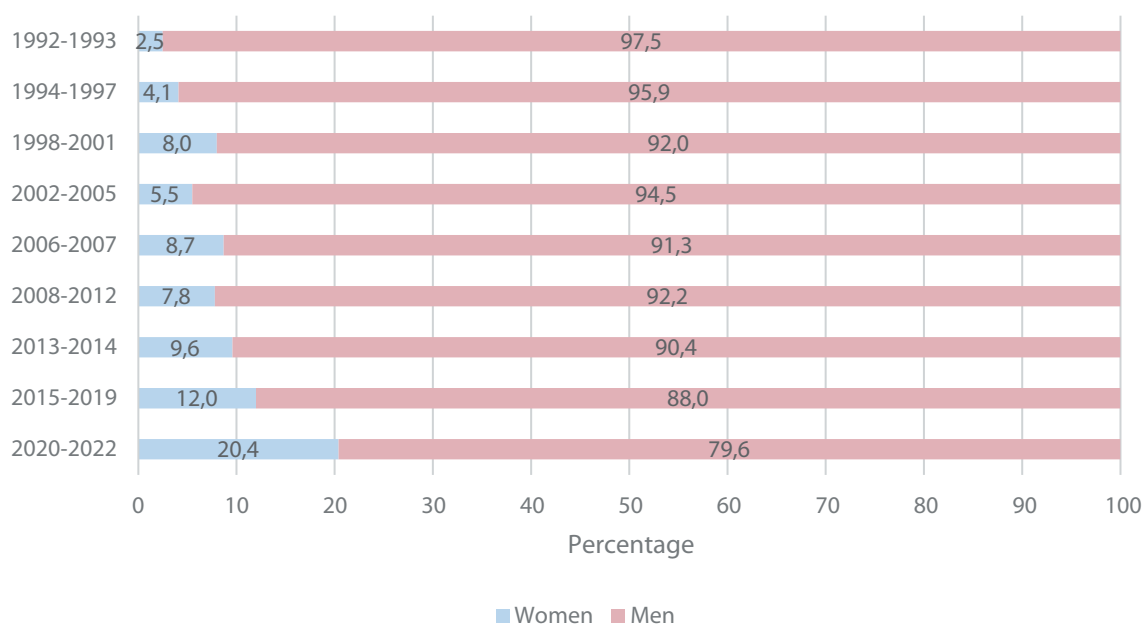
69. Volodarskiy District Court of Donetsk Region, 24 February 2015, available at [www.reyestr.court.gov.ua/Review/42917734](http://www.reyestr.court.gov.ua/Review/42917734), accessed 28 November 2016.

70. See: <https://cedos.org.ua/researches/vymushena-migracziya-i-vijna-v-ukrayini-24-bereznya-10-cherhvnya-2022/>.

71. See: <https://www.slovovidilo.ua/2021/08/23/infografika/polityka/30-rokiv-nezalezhnosti-yak-zminyuvavsya-henderniy-sklad-verhovnoyi-rady>

72. <https://ukrainepravo.com/news/ukraine/skilky-zhinok-ta-cholovikiv-pratsyuye-u-sudakh-ukrayiny-informatsiya-vid-dsa/>

**Figure 1. Gender composition of the Verkhovna Rada, by convocation**



Source: Slovo i dilo information portal (2021),

<https://www.slovoidilo.ua/2021/08/23/infografika/polityka/30-rokiv-nezalezhnosti-yak-zminyuvavsya-hendernyj-sklad-verhovnoyi-rady>.

Georgetown University's Institute for Women, Peace and Security and the Peace Research Institute Oslo (Women Peace and Security Index 2021/2022). The Women Peace and Security Index measures women's inclusion in decision-making and peace-building processes, post-conflict resolution, justice and security.

#### **2.3.4. The impact of Covid-19 on women's rights and interests in Ukraine: a brief overview**

Covid-19 was a significant test for women in Ukraine. According to the results of a rapid gender assessment of the situation and needs of women in the context of the Covid-19 pandemic in Ukraine,<sup>73</sup> women were most affected by the socio-economic crisis caused by the introduction of a large number of restrictive measures. Among the main violations of women's rights and interests that women faced were:

- ▶ Women constitute the majority of those working in the public sector, which was the most affected (it was at the expense of the public sector that funds were allocated to address the consequences of Covid-19);
- ▶ Ukrainian women's wages and pensions are lower than men's, so it was much more difficult or impossible to live on savings in the conditions of the pandemic;
- ▶ During the pandemic, there was a reduction in the provision of social services, which are used more by women due to the fact that they are more often in difficult life circumstances (including situations of domestic violence);
- ▶ Women as owners of small and medium-sized enterprises (their share is 74%) did not have sufficient social protection; some of them had to stop working altogether because of the measures taken to address the pandemic;
- ▶ The most vulnerable groups of women: Roma women, IDP women and women with disabilities, for example, faced additional restrictions, including difficulties with moving, finding a job, registering their place of residence and a lack of physical ability to seek help;
- ▶ Ukraine adopted a large number of legal acts to address the impacts of Covid-19, but their drafting and approval did not take into account gender equality obligations; as a consequence, gender issues were ignored and led to a deterioration in women's circumstances. Furthermore, the bodies that were formed to address the pandemic were not gender-balanced;

73. Available at: [https://eca.unwomen.org/en/digital-library/publications/2020/05/rapid-gender-assessment-of-the-situation-and-needs-of-women\\_europe](https://eca.unwomen.org/en/digital-library/publications/2020/05/rapid-gender-assessment-of-the-situation-and-needs-of-women_europe)

- ▶ As a result of a response that was not gender-sensitive, women's needs, such as access to reproductive services, services to counteract domestic and gender-based violence, services to care for children and elderly people, and persons with disabilities, remained outside the focus of bodies authorized to develop the operational response to Covid-19;
- ▶ Women who are single parents and raising children on their own (their share is 92.2%) faced multiple pressures during the pandemic, including having to combine work with household responsibilities, childcare during schooling and loss of financial resources;
- ▶ Women victims of domestic violence faced additional barriers in the context of the pandemic as they had to stay at home with the abuser, with insufficient opportunities to call the police or receive counselling by phone for fear that the abuser would hear them. Further, women victims of violence lacked of access to legal assistance, courts and social services;
- ▶ The tendency for human rights violations concerning the protection from domestic violence to increase is confirmed by the fact that reports to the office of the Commissioner for Human Rights of the Verkhovna Rada on violations of the right to protection of victims by the police and social services increased by 70%. In particular, victims' statements were not accepted by the police, domestic violence crimes were qualified as bodily injuries or property disputes, or investigations were closed when they were deemed insignificant."

### 3. GENDER RESPONSIVENESS OF THE JUSTICE SYSTEM

#### 3.1. Comparison of the number of cases brought before national courts by women and men

In Ukraine, statistics are not disaggregated by the sex of applicants to the courts, but the USRCD of all court decisions is open to the public, in civil, administrative, commercial and criminal cases. An analysis of the materials of this register helps to establish the proportion of cases brought by women before national courts, in comparison to men, including in the context of certain types of cases:

- ▶ in cases dealing with illegal dismissal and reinstatement, 55% of claims are brought by men and 45% by women; appeals by men are twice as high as appeals by women;
- ▶ in cases dealing with alimony, all of the claims (100%) are brought by women;
- ▶ in cases dealing with the division of property upon divorce, 90% are claims brought by women. The main reason for this is that usually, the official owner of the property is the man. In such cases, a woman must prove in court that the property was jointly acquired in marriage and that she also has ownership rights.

Moreover, as an indication of an average for court filings, the Association of Women Judges of Ukraine reported that in one specific week in 2015, 36 women and 57 men filed claims to three local courts.

In addition, in Ukraine's eighth periodic report to CEDAW, the Ministry of Social Policy of Ukraine indicated that it is not possible to provide statistical information on the number of court decisions in criminal cases, civil cases and cases on administrative offences related to gender issues, or the number of judgments, confirming the facts of discrimination against women (para. 46). The report also includes information about two court cases on discrimination against women that were considered in Ukraine and brought before the court by the International Women's Rights Centre La Strada Ukraine. One was brought against the former Prime Minister, Mykola Azarov, for his discriminatory remarks that women have no place in government. The second case was against the Ministry of the Interior for discrimination against women being barred entry to the ministry. In both cases, the courts found no gender discrimination. Finally, the report stresses the need to submit proposals to change the court's data collation in order to facilitate gender analysis.

It is also relevant to note that there are more than 7 000 professional judges in Ukraine, of which 49.7% are women, and there are 58.6% women in the commercial courts of appeal. However, there are no women among the heads of the courts.

According to the Generalization of gender composition of appellate and local courts of Ukraine, the State Judicial Administration of Ukraine and its territorial administrations as of 1 January 2020<sup>74</sup> out of a total 30 363 judg-

74. Available at: [https://su.court.gov.ua/userfiles/media/new\\_folder\\_for\\_uploads/tu19/21.pdf](https://su.court.gov.ua/userfiles/media/new_folder_for_uploads/tu19/21.pdf)

es and staff members working in local and appellate courts of Ukraine, 75% (22 821 persons) are women and 25% (7 542 persons) are men.

For certain categories of positions, the gender composition of local and appellate courts of Ukraine is as follows:

- ▶ of 5 022 judges, 53% (2 661) are women and 47% (2 361) are men;
- ▶ of the 25 341 employees of the court apparatus (patronage service, civil servants, employees performing service functions, workers) 80% (20 160) are women and 20% (5 181) are men;
- ▶ of the 6 065 employees in the patronage service (assistant presiding magistrate assistant to the vice-head of the court, assistant to the judge) 77% (4 693) are women and 23% (1 372) are men;
- ▶ of the 15 704 civil servants (chief of staff, deputy chief of staff, head of department, deputy head of department, chief specialist, leading specialist, court clerk, court clerk, senior court clerk, court administrator) 81% (12 672) are women and 19% (3 032) are men;
- ▶ of the 991 civil servants who are heads of departments and their deputies, 77% (763) are women and 23% (228) are men;
- ▶ of the 1 799 staff members in service functions (computer typist, office clerk, file clerk, archivist, printer) 82 % (1 477) are women and 18 % (322) are men;
- ▶ of the 1 773 workers (office janitor, messenger, service worker, driver), 74% (1 318) are women and 26% (455) are men.

As of January 1, 2020 in local and appellate courts of Ukraine:

- ▶ of the 575 judges holding the position of court president, 37% (211 persons) are women, and 63% (364) are men;
- ▶ of the 208 judges serving as deputy presiding judges, 35% (73) are women, and 65% (135) are men;
- ▶ of the 651 chiefs of staff, 77% (499) are women and 2 % (152) are men; and
- ▶ of the 671 deputy chiefs of staff, 82% (549) are women and 18% (122) are men.

### 3.2. Training for judges and lawyers on gender

According to the Law of Ukraine on the Judicial System and Status of Judges, the National School of Judges of Ukraine is a public institution with a special status that provides for the organisation of special trainings for candidate judges; trainings for judges who are appointed for the first time or have been elected for a lifetime; research on improving justice; and study of international experience in the administration of courts, as well as other activities.<sup>75</sup>

The Ministry of Social Policy of Ukraine in its report on the implementation of CEDAW notes that a Ukrainian-Canadian project on judicial co-operation (funded by the Canadian International Development Agency) was implemented in Ukraine. In 2010, there were 16 educational workshops on gender equality and a roundtable discussion on gender-based violence in the family; 497 individuals (210 judges and 287 court staff) took part in this project. The concepts of discrimination as a legal category; *de jure* and *de facto* discrimination, as well as affirmative action (temporary special measures) were analysed during the trainings.

In 2010, the Ukrainian-Canadian project on judicial co-operation developed, published and distributed among members of the judiciary of Ukraine the following publications:

- ▶ a textbook for judges on “Principles of Gender Equality;”
- ▶ manuals for teacher-trainers- “Fundamentals of Gender Equality” and “Creation of Gender Equality Society: International Experience and the laws of foreign countries on gender equality;”
- ▶ brochures on “Sexual Harassment at the Workplace;” “Judicial Protection from Domestic Violence: Information Material for Judges;” and “Legal Protection from Domestic Violence. Information Material for the Public.”

Trainings for law enforcement officers on the protection of women’s rights have also taken place in Ukraine. The Ministry of Social Policy reports that seven seminars on “Interaction of state and local governments on

75. See also [www.coe.int/t/dghl/cooperation/cepej/cooperation/Eastern\\_partnership/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/cepej/cooperation/Eastern_partnership/default_en.asp), accessed 28 November 2016.



prevention of domestic violence” were held in 2010 as part of the UNDP and EU Project on Equal Opportunities and Women’s Rights in Ukraine. Seminars for district police officers were held in all regions of Ukraine in 2010–2011 with the aim of ensuring operative consideration of appeals in cases of domestic violence and to prevent rejection of the registration of these applications.

Interactive classrooms for practical skill training to combat domestic violence were opened at three universities from 2009–2011 with the support of the OSCE in Ukraine. Six workshops and trainings on the themes “Judicial protection of the rights of domestic violence victims in Ukraine,” “Preventing and combating of domestic violence,” “Court cases relating to violence against children,” and “Litigation of domestic violence cases” were organised and conducted by the National School of Judges from 2011–2013. A training programme for specialists of the Ministry of the Interior on the prevention of violence against women was developed by the Ukrainian Foundation for Public Health in cooperation with the Ministry of Social Policy and the Ministry of the Interior with the support of UN Women. From 2013–2014, 150 district police officers were trained.

Further, the Kharkiv Regional Foundation, Public Alternative, ran the project Monitoring of Court Decisions Regarding Gender Discrimination, with a focus on the application of relevant Ukrainian legislation and international laws. The main purpose of this project, funded by the US Agency for International Development, was to enhance the judicial system of Ukraine by providing effective protection of women against gender discrimination.

However, there are no unified, systematised training programmes on women’s access to justice, as part of a formal training programme for judges in Ukraine.

In 2021 and 2022, the National School of Judges of Ukraine and its regional branches held the following events.

- ▶ A lecture on “Problematic Issues in the Application of Legislation to Prevent and Combat Domestic Violence. Peculiarities of consideration of applications for restraining orders”.
- ▶ Online training for candidates for the position of judge, “Overcoming gender stereotypes in the exercise of justice”.
- ▶ Lecture “Problematic issues of qualification of criminal offences related to domestic violence, application of norms of new legislation on closure of proceedings and retroactive effect of the law in time. European Court of Human Rights jurisprudence”.
- ▶ Lecture “National Mechanism for Protection from Domestic Violence”.
- ▶ Lecture “Application by the Courts of Law on Preventing and Combating Domestic Violence. Case law of the European Court of Human Rights”.
- ▶ Lecture on “Current Status and Trends of Combating Trafficking in Human Beings in Ukraine”.
- ▶ Lecture on “Application of legislation on combating domestic violence”.
- ▶ Lecture “Gender-specific features of cases under Article 115 of the Criminal Code of Ukraine”.
- ▶ Lecture “Peculiarities of consideration of cases of crimes against sexual freedom and sexual inviolability”.
- ▶ Lecture “Gender and justice: implementation of a gender approach in the judicial system of Ukraine”.
- ▶ Lecture “Combating Trafficking in Human Beings. Consideration of criminal proceedings related to human trafficking”.
- ▶ Training on “Practical Aspects of Dealing with Domestic Violence Proceedings”.
- ▶ Seminar “Domestic Violence: National Protection Mechanisms and Court Practice”.
- ▶ Seminar “Rule of law and its role in prevention of conflicts and peace building” (during the seminar the issue of gender aspect of the influence of conflicts on the lives of men and women, increase of gender-based violence, etc.)
- ▶ Seminar “Handling cases of domestic violence”.
- ▶ Training course for judicial candidates on “Overcoming gender stereotypes in the administration of justice”.
- ▶ Distance learning course on “Promoting Gender Equality”.

All training activities are conducted by the National School of Judges of Ukraine using the latest innovative teaching methods such as mini-lectures with presentations, work using clicker systems, brainstorming, watching videos followed by discussion, general discussion, solving practical problems (tests, cases) and the like.

Also, the practice and decisions of the European Court of Human Rights, which have received the status of final decisions, are used in the training programs.

In 2022, due to military operations in Ukraine, training for judges and court officials has been conducted online on the Zoom platform, which is highlighted on the official website of the National School of Judges of Ukraine.

### **3.3. Mapping curricula of basic education and further training for legal professionals and police to gauge the extent to which women's rights and gender equality issues have been introduced in their initial and further education**

---

There are 134 higher educational institutions from which students can obtain a law degree in Ukraine. The curricula of the following higher educational institutions of Ukraine were analysed:

- ▶ the law faculties of Kyiv National University named after Shevchenko
- ▶ Kharkiv National University named after Karazin
- ▶ Lviv National University named after Ivan Franko
- ▶ National University "Lvivska Politehnika"
- ▶ Odesa National University named after Mechnikov
- ▶ Sumy State University
- ▶ National University "Kyiv Mohyla Academy"
- ▶ National Law University named after Yaroslav Mudryi
- ▶ Odesa National Law University.

However, none of the leading law schools in Ukraine have a compulsory training programme course on women's rights, gender equality or non-discrimination on the grounds of sex. Lectures and classes on specified topics are conducted only on an optional basis, through such activities as meetings with students, non-official workshops, roundtables and master classes. They are not part of the basic education curricula.

## **4. REMEDIES, GOOD PRACTICES AND RECOMMENDATIONS**

### **4.1. Existing remedies to facilitate women's access to justice**

---

#### **4.1.1. Anti-discrimination legislation**

Ukraine has the following laws with provisions on anti-discrimination:

- ▶ Law on Ensuring Equal Rights and Opportunities for Women and Men
- ▶ Law on Principles of Prevention and Combating Discrimination in Ukraine
- ▶ Law on Employment (this prohibits advertising vacancies only for women or only for men, with certain exceptions as provided by the Labour Code)
- ▶ Law on Preventing Domestic Violence

#### **4.1.2. National programmes**

As indicated previously, Ukraine adopted a State Programme to Ensure Equal Rights and Opportunities for Women and Men for the period 2013–2016, approved by the Cabinet of Ministers of Ukraine on 26 September 2013. The head of the programme is the Minister of Social Policy.

On 11 April 2018, the Cabinet of Ministers of Ukraine approved the State Social Program for Equal Rights and Opportunities of Women and Men for the period until 2021.<sup>76</sup> The goal of the program is to improve the mecha-

---

<sup>76</sup> Available at: <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-derzhavnoyi-socialnoyi-programi-zabezpechennya-rivnih-prav-ta-mozh-livostej-zhinok-i-cholovikiv-na-period-do-2021-roku>.

nism for ensuring equal rights and opportunities for women and men in all areas of society and to introduce European standards of equality.

On 16 September 2020, the Cabinet of Ministers approved Order No. 1128-r on Approval of the Concept of Communication in the Field of Gender Equality. The Concept aims to create a future in which every woman and man living in Ukraine enjoys equal rights and opportunities necessary for the full participation in all spheres of social life, without discrimination, violence or exploitation. The goal of the concept is to improve public understanding of the essence and tasks of the state gender policy and its perception as an integral part of a democratic and lawful state. This will increase the awareness and understanding of public authorities and the public of the concept of gender equality, the main directions of state policy, the benefits for Ukrainian society, as well as their paramount importance for development and peace in Ukraine.<sup>77</sup>

On 12 August 2022, the Cabinet of Ministers of Ukraine approved the State Strategy for Equal Rights and Equal Opportunities for Women and Men until 2030 and approved the operational plan for the implementation of the strategy until 2030 for 2022–2024 by Order No. 752-r.<sup>78</sup> The documents focus on the following strategic goals:

*Strategic Objective 1:* The national mechanism for equal rights and opportunities for women and men functions effectively and is able to support the formation, implementation, monitoring and evaluation of gender equality policies in various spheres of public life and at all levels.

*Strategic Objective 2.* Women and men are free from violence, in particular related to war and armed conflict, have equal access to justice, and participate in peace development and post-conflict reconstruction.

*Strategic Objective 3.* Women and men enjoy equal rights and opportunities for human development in education, health, social protection, culture and sports.

*Strategic Objective 4.* Women and men shall participate in all economic activities, enjoy the benefits of sustainable economic development and have equal access to all economic resources.

#### 4.1.3. Specialised equality bodies

In Ukraine, the Ministry of Social Policy is a special authorised central executive body on equal rights and opportunities for women and men and for the prevention of domestic violence. The Ministry created the Directorate for the Development of Social Services and Protection of Children's Rights, which has an Expert Group on Countering Human Trafficking, Domestic Violence, and Gender Equality.

The Department for Monitoring Equal Rights and Freedoms was established in the Secretariat of the Ombudsman of the Verkhovna Rada, which includes a department for ensuring and combating discrimination and gender equality, as well as a department for observing the rights of victims of domestic violence and human trafficking.

The working group on gender equality policy and combating discrimination in education was established in July 2015 in the Ministry of Education and Science.

Also, the Government of Ukraine adopted a resolution "On the Government Commissioner for Gender Policy" of 7 June 2017 No. 390. The Resolution introduced the position of the Government Commissioner for Gender Policy. This strengthens the coordination of the executive authorities for the practical implementation of the principle of gender equality in all spheres of society. In addition, the Regulation on the Government Commissioner for Gender Policy was approved. According to the regulation, the main tasks of the Government Commissioner are, *inter alia*: to promote the implementation of a unified state policy aimed at achieving equal rights and opportunities for women and men in all spheres of society; to participate, in accordance with their competence, in coordinating the work of ministries and other central and local bodies of executive power on this issue; to monitor the consideration of the principle of gender equality in the adoption of legal acts of the Cabinet of Ministers of Ukraine; cooperation and interaction with civil society..

#### 4.1.4. Special measures

The Law on Political Parties (2013) states that women must comprise at least 30% of the electoral lists of political parties. On 14 July 2015, a new edition of the Law on Local Elections was adopted by the Ukrainian Parliament. Under Article 36 of the Law on Local Elections, each political party is required to provide a minimum of 30% candidates of each sex in its electoral lists. This provision is largely not implemented, and political parties do not bear consequences for their inaction.

77. Available at: <https://zakon.rada.gov.ua/laws/show/1128-2020-%D1%80#n8>.

78. Available at: <https://zakon.rada.gov.ua/laws/show/752-2022-%D1%80#n463>.

#### 4.1.5. Gender-based legal analysis

On the books, Ukrainian legislation provides a requirement for gender-based legal analysis of laws and the drafts of legal acts to determine their compliance with the principle of equal rights and opportunities for women and men. This is a requirement of the Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men. The Law of Ukraine on Principles of Prevention and Combating Discrimination in Ukraine also requires an anti-discrimination analysis of the drafts of normative legal acts.

Several related normative legal acts have been adopted:

- ▶ Order of the Ministry of Justice of Ukraine No. 3719/5 on approval of methodological recommendations on conducting gender legal expertise of legislative acts and drafts of regulatory legal acts, recognition of the order of the Ministry of Justice of Ukraine No. 42/5 of 12 May 2006 as no longer valid, adopted 27 November 2018;
- ▶ Resolution of the Cabinet of Ministers of Ukraine No. 997 on Issues of Conducting Gender-Legal Expertise, adopted 28 November 2018; and
- ▶ Order of the Ministry of Social Policy of Ukraine No. 86 on approval of the Instruction on integration of gender approaches in the development of legal and regulatory acts, adopted 7 February 2020.

#### 4.2. National good practices to promote equal access of women to justice

---

The following good practices in promoting equal access of women to justice exist in Ukraine, initiated largely by civil society organisations, but also by government authorities:

- ▶ national hotlines for domestic violence, human trafficking, gender discrimination and child rights protection have been set up by the International Women's Rights Centre La Strada Ukraine;
- ▶ The Association of Women Lawyers of Ukraine "YurFem" was established, which is one of the first associations of women lawyers in Ukraine and is intended to become a platform for sharing experiences, developing and supporting women in the legal profession. The Association established the YurFem-Education, Analytical Centre, which promotes many different educational activities, teaching and analytics on protecting the rights and interests of women. An important focus of the organization is YurFem-Support, through which victims can receive advice and professional legal counsel in cases of rape, sexual violence (particularly during the war), forced sexual intercourse, dismissal or denial of employment due to their sex, pregnancy, having minor children or raising children independently, sexual harassment, other actions involving discrimination on the basis of sex or social status.

#### 4.3. Proposed measures to address the obstacles to equal access to justice for women

---

Recommendations to address obstacles to equal access to justice for women include:

- ▶ conduct, on a regular basis, information campaigns in order to raise women's awareness about their rights, the procedures and mechanisms for their protection, and in order to combat and change existing stereotypes in society;
- ▶ develop and implement a comprehensive system of training on gender equality, non-discrimination, and women's rights for judges, prosecutors, law enforcement officials, lawyers, and other legal professionals, to be implemented by national training institutions;
- ▶ incorporate women's rights and gender equality issues in the curricula of basic education and further training for legal professionals and law enforcement officers;
- ▶ initiate joint discussion of the protection of women's rights in Ukraine;
- ▶ conduct women's rights advocacy campaigns, including to increase the visibility of female lawyers in the professional community.

#### 4.4. Proposed measures to address the research and data needs in the field of women's equal access to justice

---

Recommendations to address research and data needs include:

- ▶ further explore the level of awareness among judges on international standards in the areas of gender-based discrimination and violence against women and how this is connected to ensuring women's access to justice. In particular, further explore judges' understanding of the mechanism of implementation of these standards at the national level, as well as their use of such standards in judgments, including through indicators such as:
  - the references to existing international and regional instruments in the area of protection against gender-based discrimination and violence against women, including the European Convention on Human Rights, and the Istanbul Convention, as well as the nature in which such references are made;
  - the references to domestic law, to ensure equal rights and opportunities for women and men, including the Law of Ukraine on Principles of Prevention and Combating Discrimination in Ukraine, and the Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men, and the nature of such references;
  - the application of gender-neutral legislation in court, resulting in *de facto* discrimination and application of gender-discriminatory legislation;
  - identifying the types of cases that are the most vulnerable to manifestations of gender discrimination, and the degree of representation of these cases in the administration of justice in the general courts, as well as administrative and commercial judicial proceedings;
  - the frequency and extent of the resolution of cases by different instance courts;
  - existence of cases in which there were grounds to appeal to the Supreme Court of Ukraine or the Constitutional Court of Ukraine to address issues of non-compliance of certain laws with the Constitution of Ukraine because of their discriminatory nature;
- ▶ collect statistical information on:
  - the number of court cases initiated by women, compared to the number of court cases initiated by men;
  - the average duration of disputes that dealt with gender-based discrimination;
  - the percentage of appeals and cassation appeals of decisions rendered in cases of gender discrimination;
  - the number of court decisions in which reference was made to relevant international and national law relevant to gender-based discrimination and violence against women;
  - gender-disaggregated data, including on numbers of court decisions on cases of domestic violence, their distribution by type of domestic violence, and the outcomes of the cases;
  - the number of cases where a woman claimed to be a victim of discrimination, compared with the number of cases where a woman complained about the violation of her rights and legal interests, not realising that the violation was the result of gender-based discrimination;
- ▶ evaluate the readiness of judges to apply international standards in the area of protection from gender-based discrimination, including cases where the claimant does not associate violations of her rights and legitimate interests with gender-based discrimination. In particular, develop criteria and methods of analysis of judicial decisions and create a form of judicial decision analysis to identify those cases where infringement of rights and legitimate interests is a result of gender-based discrimination, direct or indirect;
- ▶ develop methods for the identification by judges of cases where the violation of rights and legitimate interests is the result of:
  - discriminatory legislation;
  - gender-neutral legislation that in practice has discriminatory consequences;
  - judicial gender stereotypes.

- ▶ prepare a review of best practices in the area of judicial protection from gender discrimination by analysing the practice of resolving cases in the area of gender discrimination by the courts of other Council of Europe member states, as well as the EU and the European Court of Justice; prepare a selection of cases in which the ability of judges to identify cases of gender discrimination is illustrated vividly, including with references to international and regional standards of protection in this area;
- ▶ developing training programs for judges, prosecutors, police, and lawyers on gender equality, women's rights and interests, access to justice, and systematic training for legal professionals;
- ▶ implementation of the norms of the Istanbul Convention in the national legislation of Ukraine and the development of gender-sensitive practices.

#### **4.5. Mapping relevant actors in the field of women's access to justice**

---

In Ukraine, initiatives to improve women's access to justice should engage a number of actors in universities, national training institutions, academia, and civil society organisations. The following is a non-exhaustive list of the relevant actors:

- ▶ government authorities and state institutions: the National School of Judges; Training centre for prosecutors, the Ministry of Justice; the Ministry of the Interior, the Ministry of Social Affairs; the relevant committees of the Parliament of Ukraine, including the Committee on Legal Policy, the Ombudsperson's Office; the State Judicial Administration of Ukraine; Supreme Court, Government Commissioner for Gender Policy, among others;
- ▶ civil society organisations: the International Women's Rights Centre La Strada Ukraine; the Women's Consortium of Ukraine; the Association of Women Judges of Ukraine; and the Kharkiv Regional Foundation, Public Alternative, Association of Women Lawyers of Ukraine "YurFem", among other organisations at the national, regional and local levels.

## BIBLIOGRAPHY

---

Khrystova G. (2015), "Issues of prohibition and combating discrimination: guidelines for lawyers", available at [www.coe.int/uk/web/kyiv/-/assistance-to-ukrainian-lawyers-how-to-protect-oneself-against-discrimination-using-legal-methods](http://www.coe.int/uk/web/kyiv/-/assistance-to-ukrainian-lawyers-how-to-protect-oneself-against-discrimination-using-legal-methods), accessed 14 December 2016.

Ministry of Social Policy of Ukraine/UNFPA (2014), "Eighth periodic report on the implementation of CEDAW in Ukraine", Kyiv, available at [www.un.org.ua/images/CEDAW\\_report\\_eng.pdf](http://www.un.org.ua/images/CEDAW_report_eng.pdf), accessed 14 December 2016.

Office of the United Nations High Commissioner for Human Rights (2017), "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017", available at [www.ohchr.org/Documents/Countries/UA/Report-CRSV\\_EN.pdf](http://www.ohchr.org/Documents/Countries/UA/Report-CRSV_EN.pdf), accessed 28 February 2017.

Parliamentary Assembly of the Council of Europe (2015), "Explanatory report to the Resolution 2054 (2015) on equality and non-discrimination in the access to justice", adopted on 24 April 2015, available at <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=21619&lang=en>, accessed 28 February 2017.

Solodko A. and Doronyuk T. (2015), "Policy on internally displaced persons in Ukraine", International "Renaissance" Foundation, available at [www.irf.ua/content/files/dp-2015-7.pdf](http://www.irf.ua/content/files/dp-2015-7.pdf), accessed 14 December 2016.

Truchero Cuevas J. and Khrystova G. (2015), "Assessment report on compliance of selected Ukrainian laws with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)", Council of Europe, Strasbourg, available at [rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168044e7bf](http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168044e7bf), accessed 14 December 2016.

UNDP (2015), "Gender Inequality Index", Human Development Report, available at [hdr.undp.org/sites/default/files/2015\\_human\\_development\\_report\\_1.pdf](http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf), accessed 14 December 2016.

Uvarova O. (2015), Equality on the grounds of sex in the economic sphere: Ukraine's obligations according to the EU: Key EU Directives to ensure gender balance in the labour market and professional activity, their development in the practice of the Court of Justice, NTMT Publication, Kharkiv.

Volosevych I. et al. (2015), "Rural women: a comprehensive study of the status of women who live in rural areas", UNDP and the Office of the Ukrainian Parliament Commissioner for Human Rights, Ukraine, summary in English available at [www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2015/05/04/new-study-on-rural-women-rights-reveals-gaps-and-challenges.html](http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2015/05/04/new-study-on-rural-women-rights-reveals-gaps-and-challenges.html)

Women's Consortium of Ukraine (2014), Virtual Legal Aid Service, Q&A, available at <http://legal.wcu-network.org.ua/question/15>, accessed on 28 February 2017.

World Justice Project (2015), "Rule of Law Index", available at [worldjusticeproject.org/sites/default/files/roli\\_2015\\_0.pdf](http://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf), accessed 14 December 2016.

Yaremenko Ukrainian Institute for Social Research (2015), "Assessing the needs of internally displaced women and elderly people in Ukraine".

Zayets S. and Martynovsky R. (2015), Practical Guide to Argumentation in Cases of Discrimination, Council of Europe, Strasbourg, available in Ukrainian at [www.coe.int/uk/web/kyiv/-/assistance-to-ukrainian-lawyers-how-to-protect-oneself-against-discrimination-using-legal-methods](http://www.coe.int/uk/web/kyiv/-/assistance-to-ukrainian-lawyers-how-to-protect-oneself-against-discrimination-using-legal-methods), accessed 28 November 2016.

Council of Europe (2020), study «Court Considerations on Issuing Restraining or Protection Orders in Cases of Domestic Violence: International Standards and Overview of Ukrainian National Practice» (prepared

by national expert Tamara Buhaiets), available at: <https://rm.coe.int/restraining-protection-orders-dv-report-ukraine/1680a01299>.

OSCE (2020), study «Gender Policy in Legal and Regulatory Documents. Part 1», available at: <https://www.kmu.gov.ua/storage/app/sites/1/18%20-%20Department/18%20-%20PDF/02.2021/genderna-polityka.pdf>.

YurFem(2020), study «The impact of COVID-19 on women's rights in Ukraine» <http://jurfem.com.ua/wp-content/uploads/2020/11/%D0%92%D0%9F%D0%9B%D0%98%D0%92-%D0%9A%D0%9E%D0%92%D0%86%D0%94-19-%D0%9D%D0%90-%D0%9F%D0%A0%D0%90%D0%92%D0%90-%D0%96%D0%86%D0%9D%D0%9E%D0%9A-%D0%92-%D0%A3%D0%9A%D0%A0%D0%90%D0%87%D0%9D%D0%86.pdf>.



# APPENDIX I: RESULTS OF QUESTIONNAIRE FOR JUDGES

---

## 1. Do you know the content of these international documents:

- a. International Covenant on Civil and Political Rights
- b. European Convention on Human Rights
- c. European Social Charter
- d. Convention on the Elimination of All Forms of Discrimination against Women
- e. Convention on the Rights of the Child
- f. Convention on the Rights of Persons with Disabilities
- g. Convention on the Elimination of All Forms of Racial Discrimination
- h. Convention on Action against Trafficking in Human Beings
- i. Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

## 2. Do you apply international treaties in your practice?

- a. If yes;  
What international treaties do you apply? \_\_\_\_\_  
How often do you apply international treaties? \_\_\_\_\_  
In what cases do you apply international treaties? \_\_\_\_\_
- b. If no, why not?
  - i. The adequacy of national legislation to resolve disputes;
  - ii. Requirements of international treaties too abstract;
  - iii. Lack of adequate information about the content of relevant international treaties;
  - iv. Other reasons (What are these reasons?) \_\_\_\_\_.

## 3. One of the essential requirements of the rule of law is access to justice. In Ukraine justice is equally accessible for all, irrespective of:

- |   |        |       |
|---|--------|-------|
| ▶ financial position of the person                          | a) Yes | b) No |
| ▶ social status   | a) Yes | b) No |
| ▶ place of residence (for residents of cities and villages) | a) Yes | b) No |
| ▶ sex (for women and men)                                   | a) Yes | b) No |
| ▶ age (including for elderly people)                        | a) Yes | b) No |
| ▶ the physical state of the person (disability)             | a) Yes | b) No |
| ▶ nationality or ethnic origin                              | a) Yes | b) No |

- |                      |        |       |
|----------------------|--------|-------|
| ▶ religion           | a) Yes | b) No |
| ▶ sexual orientation | a) Yes | b) No |

**4. Do you know the content of these Ukrainian laws?**

- The Law on Ensuring Equal Rights and Opportunities for Women and Men?
- The Law on Principles of Prevention and Combating Discrimination in Ukraine?
- The Law on Preventing Domestic Violence”?

**5. Do you apply these laws?**

- Yes  
In what cases and what laws do you apply?
- No.

**Model cases**

Select solutions you think are right.

- The plaintiff A. appealed to the court to recognise the unlawfulness of her dismissal, reinstall her at work and pay an average salary for the period of her forced absence. The employer did not offer her a vacant post in the company because this position involves night work. The employer relied on the fact that Article 175 of the Ukrainian Labour Code prohibits night work for women.*

How should the court decide the case?

The judges were asked to think of solutions to this case:

- 1.1. The claim should be satisfied; the prohibition of night work for women is discriminatory; it restricts women’s right to equal access to work. If the position subject to redundancy was occupied by a man he would be offered the vacant post, with the need to work at night. The mere fact that an employer terminated the contract with a woman became an obstacle for the preservation of her employment at the same enterprise;
- 1.2. The proceedings must be suspended; the court appeals to the Supreme Court of Ukraine to address the Constitutional Court of Ukraine about the issue of constitutionality of Article 175 of the Labour Code;
- 1.3. The claim must be rejected; the legislator set a clear ban on night work for women. This prohibition corresponds to Article 24 of the Constitution of Ukraine, which provides the possibility of special measures to protect the safety and health of women.

**In 2017, of judges who were respondents, 90% chose answer 1.3.**

**In 2022, 53.8% of judges chose answer 1.1, 23.1% chose answer 1.2, and 23.1% chose answer 1.3.**

- The labour inspection carried out an administrative protocol under Article 41 of the Code on Administrative Offences in connection with the finding that a woman with a child under the age of three was directed to go on a business trip. The protocol submitted to the court for a hearing on bringing the company director to administrative liability in the form of a fine of 30 to 100 non-taxable minimum (from UAH 510 to UAH 1700). The director explained that business trips are an important component of the job of this employee; she would have to be transferred to another position otherwise. In addition, the woman employee in this case agreed to go on business trips regularly. She also pointed out that the father of the child had the opportunity to take care of the child during her absence.*

How should the court decide the case?

- 2.1. The director must be held accountable, because in this case there is an unambiguous violation of Article 176 of the Labour Code, which prohibits business trips for women with children under the age of three without exceptions for cases where the woman herself agrees to a trip and Article 41 of the Administrative Code establishes liability for the violation of the labour law;
- 2.2. The court must recognise the fact that the administrative violation has occurred, but considering the employee’s claim, the company director should be released from the liability due to the insignificance of the breach with an oral remark;

- 2.3. The court must waive Article 176 of the Labour Code because it contradicts the principle of equality and the international obligations of Ukraine, in particular Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women, as a woman who has a child under the age of three, as opposed to the man who is the father of the child of the same age, cannot claim to occupy the position if she is required to travel regularly.

**In 2017, of judges who were respondents, 85% chose 2.1.**

**In 2022: 23.1% of judges chose answer 2.1, 15.4% chose answer 2.2, and 61.5% chose answer 2.3.**

3. *Plaintiff B. appealed to the court with a claim to recognise the refusal to hire her as unlawful. She informed the court that the announcement of a vacancy for a bulldozer driver was placed by the company, which refused her this job because it is included on the list of heavy work and work with harmful and dangerous conditions, which prohibits the employment of women. How should the court decide the case?*
  - 3.1. Refusal to accept women as bulldozer drivers should be declared illegal. It violates women's right to work and to be equal with men. In a similar situation a man who applied would get the job. The list of prohibited work for women is not applicable because it is contrary to higher legal acts (the international treaties that Ukraine has ratified, and the law on ensuring equal rights and opportunities for women and men, etc.);
  - 3.2. Refusal to accept women for the job of bulldozer drivers is lawful. This work is included on the list of prohibited work for women. The corresponding list is approved in accordance with Article 174 of the Labour Code, which is not recognised as unconstitutional, and therefore it retains its validity.

**In 2017, of judges who were respondents, 90% chose 3.2.**

**In 2022, 53,8% of judges chose answer 3.1, and 46,2% chose answer 3.2**

Additionally, several model cases drawn from the practice of the Court of Justice of the European Union were presented for review by the judges.

1. *Under the current law of state X. the right to pension is guaranteed for persons who have 15 years of work experience, but the 15 years are calculated based on full employment. A woman who appealed to the court worked as a cleaner for 18 years part-time – her working time was four hours per day. The reason for this schedule was the fact that the woman is the mother of three children whom she took care of. How should the court decide the case?*
  - 1.1. The Court has concluded that such a regulation leads to indirect discrimination. The proof of this is statistical figures: despite the fact that the legislation does not set any specifics in addressing the pensions of women and men, the actual situation is such that women are victims of such a procedure because there are many more women than men who work part-time. This situation exists because traditionally, women do all the housework and raise children. Accordingly, there is a violation of the applicant's right to a pension;
  - 1.2. The pension system is in the competence of the legislative body. It takes into account the economic capacity of the country. In this case, the law that requests relevant, full working experience corresponds to the requirements of reasonableness, proportionality and predictability (the person knew about the requirements of pension legislation and that, working only part-time, s/he would not receive the same pension as that received by people who worked full-time). Consequently, there is no violation of the right to pension.

**In 2017, of judges who were respondents, 90% chose 1.2.**

**In 2022, 46,2% of judges chose answer 1.1, and 53,8% chose answer 1.2**

2. *The law prohibits the dismissal of pregnant women and men who are on maternity leave. It has been reliably established that in this case the employer began to prepare the release of the woman when she informed him about her pregnancy (the employer posted a vacancy with the prospect of career growth and indicated the time when such a vacancy would be available; this time coincided with the time of the future release of the woman). The employer informed her about her dismissal after the completion of her maternity leave. So formally, he fulfilled the requirements of the law. Is there a violation of the ban?*
  - 2.1. Yes, there is a violation. The main goal of the prohibition is to protect a pregnant woman or a woman who has recently given birth. The woman will be put under stress if she feels under threat of dismissal or if she knows that the employer is already preparing her release. In addition, the employer who is

preparing to release the woman as soon as she comes back from maternity leave cannot provide another motive of release other than the fact that the employee has a small child;

- 2.2. No, there is no violation. The legislator expressed his position clearly by setting the ban on dismissal during the employee's pregnancy and the period when she is on maternity leave. The employer can terminate her employment contract.

**In 2017, of judges who were respondents, 90% chose 2.2.**

**In 2022: 84,6% of judges chose answer 2.1, and 15,4% chose answer 2.2**

3. *The law of state G. provides that achieving retirement age can be a ground for the dismissal of a person. There is a different retirement age for women and men in state G. This is 60 years for women and 65 for men. Citizen S. of this state filed a lawsuit on the illegality of her dismissal after reaching 60 years; men are not subject to release when they are 60. What should be decided in the case?*
  - 3.1. Dismissal is legal. The legislator who is guided by the desire to create new jobs for young people provides that the achievement of retirement age is an independent ground for dismissal. This basis is the same for both women and men;
  - 3.2. Dismissal of women on the sole ground that they have reached retirement age that under national law is different for women and men is discrimination based on sex.

**In 2017, of judges who were respondents, 90% chose 3.1.**

**Question excluded from the 2022 survey.**

## APPENDIX II.

# NORMATIVE LEGAL ACTS TO PREVENT AND COUNTERACT DOMESTIC VIOLENCE AND GENDER-BASED VIOLENCE

---

1. Order of the Ministry of Internal Affairs of 01 August 2018 No. 654 on approval of the Procedure for the issuance by authorized units of the National Police of Ukraine urgent restraining order against the perpetrators.
2. Cabinet of Ministers of Ukraine Decree No. 824 of 21 August 2019 on approval of model regulations on the day centre for social and psychological assistance to victims of domestic violence and/or gender-based violence, and specialized service of primary social and psychological counselling to victims of domestic violence and/or gender-based violence.
3. Resolution of the Cabinet of Ministers of Ukraine of 22 August 2018 No. 654 on approval of the Model Regulation on the mobile team of socio-psychological assistance to persons affected by domestic violence and/or gender-based violence.
4. Cabinet of Ministers of Ukraine Decree of 22 August 2018 No. 655 on approval of the Model Regulation on the shelter for persons affected by domestic violence and/or gender-based violence.
5. Resolution of the Cabinet of Ministers of Ukraine of 22 August 2018 No. 658 on approval of the Order of interaction of the subjects carrying out activities in the sphere of preventing and combating domestic violence and gender-based violence.
6. Order of the Ministry of Social Policy of 01 October 2018 No. 1434 on approval of the Model Program for perpetrators.
7. Order of the Ministry of Social Policy of 11 December 2018 No. 1852 on the establishment of the State institution "Call Centre of the Ministry of Social Policy of Ukraine on combating human trafficking, prevention and counteraction to domestic violence, gender-based violence and violence against children.
8. Order of the Ministry of Health of 01 February 2019 No. 278 on approval of the Procedure for conducting and documenting the results of medical examination of victims of domestic violence or persons likely to suffer from domestic violence, and providing them with medical care.
9. Order of the Ministry of Internal Affairs of 25 February 2019 No. 124 on approval of the Order of taking on the preventive record, conducting preventive work and removal from the preventive record of the abuser by the authorized unit of the National Police of Ukraine.
10. Order of the Ministry of Social Policy, the Ministry of Internal Affairs of 13 March 2019 No. 369/180 on approval of the procedure for assessing the risks of committing domestic violence.
11. Decree of the Cabinet of Ministers of Ukraine from 20 March 2019 No. 234 on approval of the Order of formation, maintenance and access to the Unified State Register of cases of domestic violence and gender-based violence.
12. Order of the Ministry of Social Policy of 03 July 2019 No. 1037 on approval of the forms of documents from which the personal file of the victim, arranged in a shelter for victims of domestic violence and/or gender-based violence is formed.
13. Resolution of the Cabinet of Ministers of 21 August 2019 No. 824 on approval of the model regulations on the day centre of social and psychological assistance to persons affected by domestic violence and/or gender-based violence, and a specialized service of primary social and psychological counselling of persons affected by domestic violence and/or gender-based violence.

14. Order of the Ministry of Social Policy of 30 November 2020 No. 787 on approval of the Methodology for determining the needs of territorial communities in creating specialized support services for victims of domestic violence and gender-based violence.
15. Order of the Ministry of Social Policy of 13. October 2021 No. 587 on approval of the Model Program for Victims.



In 2017, the Gender Equality Division of the Council of Europe commissioned national studies to map the barriers, remedies and good practices for women's access to justice in the five Eastern Partnership countries (Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine). Since that time, events such as the Covid-19 pandemic and conflict in the region have raised new challenges for justice systems on the whole and for women as justice users. Yet, in the last five years, there are also examples of progress in each country in terms of removing some of the most critical barriers, in the legislation and in legal practice, that prevent women from accessing justice. These updated national studies revisit core questions of the previous research and present new information about both promising practices and areas of regression as a result of health, economic and security crises. These studies contribute to the EU-Council of Europe joint programme, Partnership for Good Governance II regional project on "Women's access to justice: delivering on the Istanbul Convention and other European gender equality standards", which supports the strategic objective of the Council of Europe Gender Equality Strategy 2018–2023 on ensuring the equal access of women to justice across the member states.

The Member States of the European Union have decided to link together their know-how, resources and destinies. Together, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

[www.europa.eu](http://www.europa.eu)

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European convention on Human rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

[www.coe.int](http://www.coe.int)

Co-funded  
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented  
by the Council of Europe