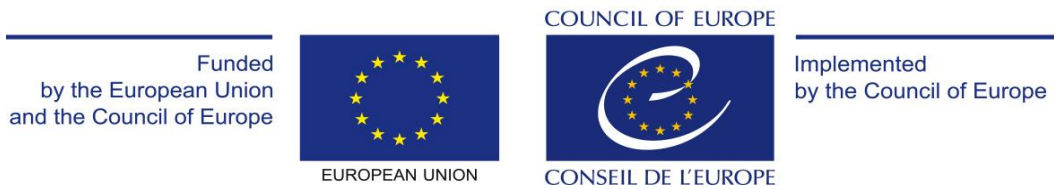


**Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**



**Training Manual for Judges and Prosecutors on Ensuring Women's
Access to Justice**

COUNTRY CHAPTER FOR UKRAINE

In the framework of the project

“Improving Women’s Access to Justice in the Eastern Partnership Countries”
(Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine)

December 2016

The project “Improving Women’s Access to Justice in the Eastern Partnership Countries” (Armenia, Azerbaijan, Georgia, Republic of Moldova and Ukraine) is a co-operative regional initiative between the Council of Europe and the European Union (EU) for the period 2015-2017. As part of the Programmatic Cooperation Framework (PCF), it is funded by the Council of Europe and the European Union and is implemented by the Council of Europe.

The project aims to identify and support the removal of obstacles to women’s access to justice while also strengthening the capacity of each participating country to design measures to ensure that the justice chain is gender-responsive, with a focus on training for legal practitioners.

This project published five country studies on *Barriers, Remedies and Good Practices for Women’s Access to Justice*¹ for Armenia, Azerbaijan, Georgia, the Republic of Moldova, and Ukraine, subsequently bringing together national stakeholders and experts at regional conferences to share experience and good practices, and organised national training seminars for judges and prosecutors, in partnership with national training legal institutions.

The *Training Manual for Judges and Prosecutors on Ensuring Access to Justice for Women* was developed by a group of national and international experts and includes a general common part and a national part specific to the relevant country.

The opinions expressed in this manual are those of the authors and do not reflect the official position of the Council of Europe or the European Union. The reproduction of extracts from this document is authorised on the condition that the source is properly cited.

¹ The country studies on *Barriers, Remedies and Good Practices for Women’s Access to Justice* in five Eastern Partnership countries is available at the gender equality website of the Council of Europe.

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List of Abbreviations and Acronyms

- Constitution of Ukraine – the Law of Ukraine ‘On Constitution of Ukraine adaptation and its entry into force’ of 28/06/1996, No. 254/96-VR
- Law on Equal Rights – the Law of Ukraine ‘On Ensuring Equal Rights and Opportunities for Women and Men’ of 08/09/2005, No. 2866-IV
- Law on Combating Discrimination – the Law of Ukraine ‘On Principles of Prevention and Combating Discrimination in Ukraine’ of 06/09/2012, No. 5207-VI
- Law on the Public Prosecutor’s Office – the Law of Ukraine ‘On the Public Prosecutor’s Office’ of 14/10/2014, No. 1697-VII
- Law on the Judicial System – the Law of Ukraine ‘On the Judicial System and Status of Judges’ of 02/06/2016, No. 1402-VIII
- On the National Police – Law of Ukraine ‘On the National police’ of 02/07/2015, No. 580-VIII
- Law of Ukraine on agencies and services for children – the Law of Ukraine ‘On the bodies and services for children and special facilities for children’ of 24/01/1995, No. 20/95-VR
- Law on Local Elections – the Law of Ukraine ‘On Local Elections’ of 14/07/2015, No. 595-VIII
- Law on Domestic Violence – the Law of Ukraine ‘On Prevention of Domestic Violence’ of 15/11/2001, No. 2789-III
- Law on Human Trafficking – the Law of Ukraine ‘On Combating Trafficking in Human Beings’ of 20/09/2011, No. 3739-VI
- ECHR – European Court of Human Rights
- EU – European Union
- CAPU – Code of Administrative Procedure of Ukraine of 06/07/2005, No. 2747-IV
- LCU – Labour Code of Ukraine of 10/12/1971, No. 322-VIII
- CrCU – Criminal Code of Ukraine of 05/04/2001, No. 2341-III
- CEDAW – Committee on the Elimination of Discrimination against Women
- CCU – Constitutional Court of Ukraine
- CUAO – Code of Ukraine on Administrative Offences of 07/12/1984, No. 8073-X
- CPCU – Criminal Procedure Code of Ukraine of 13/04/2012, No. 4651-VI
- FCU – Family Code of Ukraine of 10/01/2002, No. 2947-III
- CiPCU – Civil Procedural Code of Ukraine of 18/03/2004, No. 1618-IV
- Art. – article
- p. – part;
- para – paragraph;;
- USRCD – Unified State register of court decisions
- URPI – Unified Register of Pretrial Investigation

INTRODUCTION

Purpose and objectives of the National Part of the Manual. Despite recognition of Ukraine as binding of the principal international documents in the field of gender equality, constitutional enshrinement of the principle of non-discrimination on the grounds of sex, adoption of the special law to ensure equal rights and opportunities for women and men, and establishment of the relevant institutional safeguards in this area, the problem of women's access to justice and the observance of gender equality in judicial proceedings remains topical for Ukraine.

The main reasons for this situation include:

- *low awareness by the general public of international standards in the field of protection against gender discrimination;*²
- *insufficient ability of members of the legal profession, including judges, to identify those cases where a violation of legitimate rights and interests becomes a consequence of discriminatory legislation or gender-neutral legislation, which in practice results in discriminatory consequences or gender stereotypes that exist in society;*³
- *predominant perception by the public, including lawyers, and the authorised government agencies that the texts of international documents on gender equality issues do not offer any specific models of solutions to real-life disputes; as a result, judicial judgments make almost no reference to the relevant international instruments;*⁴
- *low exposure to training programmes on gender equality and non-discrimination in the higher legal schools, creating a negative impact on the legal professionals' subsequent professional activities.*

Lack of familiarity of the provisions of the UN Convention on the Elimination of All Forms of Discrimination Against Women, and the lack of opportunities for its application among the judiciary, law enforcement and women themselves, was emphasised by the UN Committee (paragraph 14 of the Concluding Observations on the Combined Sixth and Seventh Periodic Report of Ukraine). In this regard, the Committee has urged Ukraine to conduct campaigns to raise awareness about the Convention and the Optional Protocols thereof for judicial and legal professionals and the general public. It has also encouraged Ukraine to strengthen education and training programmes, in particular for judges, lawyers and law enforcement personnel on the Convention in order to encourage them to utilise the Convention in legal proceedings.⁵ Similar recommendations may be heard within the country from the civil society institutions.⁶

² See the National Report 'Barriers, Remedies and Good Practices for Women's Access to Justice in Ukraine' // <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b0f41>.

³ See *Захист від гендерної дискримінації в судових рішеннях українських судів: звіт за результатами моніторингу / Підготовлено: Олена Уварова, Марія Ясенівська. – Харків : ФОП Бровін О. В., 2016 // Protection from Gender Discrimination in Judgments by Ukrainian Courts: Monitoring Report / Prepared by: Olena Uvarova, Maria Yasenovska. – Kharkiv, Private Entrepreneur O. V. Brovin, 2016. – 182 с.*

⁴ CEDAW's attention was also drawn to this problem by NGOs who have submitted alternative reports (see Submission on The list of Questions Related Ukraine's Implementation of the Recommendations of the Committee on the Elimination of Discrimination against Women No. 30 on women in conflict prevention, conflict and post-conflict situations, and UN Resolution 1325 Women, Peace, and Security of the UN Convention on the Elimination of All Forms of Discrimination Against Women to the 66 CEDAW Pre-Sessional Working Group Geneva, 25 July 2016 // http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/UKR/INT_CEDAW_NGO_UKR_24646_E.pdf).

⁵ <http://tbinternet.ohchr.org/layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fUKR%2fCO%2f7&Lang=en>.

⁶ *Захист від гендерної дискримінації в судових рішеннях українських судів: звіт за результатами моніторингу / Підготовлено: Олена Уварова, Марія Ясенівська. – Харків : ФОП Бровін О. В., 2016 // Protection from Gender Discrimination in Judgments by Ukrainian Courts: Monitoring Report / Prepared by: Olena Uvarova, Maria Yasenovska. – Kharkiv, Private Entrepreneur O. V. Brovin, 2016.*

It should be noted that steps are being taken in Ukraine to overcome these problems. Thus, the Eighth periodic report on implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (paras. 76-85) contains the following information on the events aimed at raising the level of practical application of the Convention by courts and law enforcement authorities: as part of the Ukrainian-Canadian project on judicial cooperation, 16 theoretical and practical workshops on gender equality, as well as round-table discussions on the problems of gender-based violence in the family were conducted in 2010 (attended by 210 judges and 287 court administration employees); the National School of Judges of Ukraine held 9 workshops and 1 training for trainers (attended by 184 judges and 68 court administration employees); throughout Ukraine, trainings are conducted for the police force on the issue of domestic violence; in addition, the National School of Judges of Ukraine conducts workshops on such topics as ‘Court proceedings in the cases of domestic violence’, ‘Preventing and combating domestic violence’, ‘Specifics of proceedings in the cases of abuse of children’, etc.; a number of tutorials have been published, aimed at raising awareness among the judiciary in the field of women’s rights.

Furthermore, the Decree of the President of Ukraine No. 501/2015 of 25/08/2015⁷ approved the National Human Rights Strategy of Ukraine. It establishes, among its other key tasks, the need to *ensure equal rights and opportunities for women and men*. Combating gender-based violence, human trafficking and slavery was referred to as a separate task. Measures in the field of education, among other things, provide for educational curricula encompassing the issue of human rights education, including gender equality. This stresses the importance of training for judges, public prosecutors and representatives of other government authorities in order to ensure efficient response to cases of gender-based discrimination and to protect women’s rights. Thus, the Action Plan for the National Human Rights Strategy Implementation Until 2020, approved by the Order of the Cabinet of Ministers of Ukraine No. 1393-r⁸ of 23/11/2015, establishes the need for:

Improving the skill levels of police officers, public prosecutors, lawyers and judges in respect to the specifics of criminal proceedings in the cases of human trafficking, with particular focus on the restoration and protection of the victims’ rights (beginning in Q4 2016);

- systematic training of judges and public prosecutors in the specifics of investigating and hearing cases of domestic violence (beginning in Q3 2016);
- subsequent introduction of specialist training for police officers, public prosecutors and judges in respect to cases of gender-based violence, including human trafficking (beginning in Q4 2018).

However, neither in the Justice Sector Reform Strategy 2015-2020 for Ukraine approved by the Decree of the President of Ukraine No. 276/2015⁹ of 20/05/2015, or the Ukraine Judiciary Development Strategy 2015-2020,¹⁰ and including the Strategy for Sustainable Development ‘Ukraine 2020’ approved by the Decree of the President of Ukraine No. 5/2015 of 12/01/2015, was any consideration given to the issue of gender, proving the failure of Ukrainian law to perceive gender as a , cross-sectional problem that permeates all aspects of public life and court proceedings.¹¹

⁷<http://www.president.gov.ua/documents/5012015-19364>.

⁸ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>.

⁹ <http://zakon5.rada.gov.ua/laws/show/276/2015>.

¹⁰ <http://court.gov.ua/142663/>.

¹¹ Фулей Т.І. Гендерна рівність при здійсненні правосуддя / Т.І. Фулей. – К.: ВАІТЕ, 2016. – С. 15 // Т.І. Fuley. Gender Equality in Administration of Justice / T.I. Fuley, Kyiv, VAITE, 2016, p. 15.

In this regard, the project of the Council of Europe “Improving Women’s Access to Justice in the Eastern Partnership Countries (Azerbaijan, Armenia, Georgia, Moldova and Ukraine)” represents a very opportune initiative, offering combined knowledge and experience of international and national experts in determining the most common barriers faced by women in the exercise of their rights, identification of problems common among all countries and specific to each one of them, discovery of the best practices in the operation of justice administration systems and law enforcement agencies for the purpose of overcoming manifestations of gender discrimination, facilitating women’s access to justice, and improving the protection of their rights by the justice system.

The purpose of the National Part of this Manual is as follows:

- to provide a definition for the concept of access to justice, determine its significance for gender equality, list safeguards for implementation of this principle, as enshrined in the laws of Ukraine, to provide a brief overview of the status of accessibility of justice in Ukraine, and to determine the role of judges and public prosecutors in supporting accessibility of justice and gender equality;
- to summarise information on the principal international and regional instruments aimed at protecting the rights of women, which are discussed in the General Part of this Manual, from the viewpoint of their status in Ukraine (whether ratified or in the process of being ratification), as well as to reveal the impact mechanism by international instruments on the domestic legislation;
- to describe the role of the case-law of international agencies (UN Committees, European Court of Human Rights, Court of Justice of the European Union, etc.) and its potential application in the adjudication by domestic courts;
- to provide a review of national legislation that contains anti-discrimination provisions, as well as of the practice of its application;
- to review those key problematic areas in legal relations where the risk of gender discrimination is the highest, along with the role played by judges and public prosecutors in protecting women’s rights, indicating the powers within which they should operate;
- to provide guidance on the identification of facts of discrimination (to describe the contents of a non-discrimination test);
- to develop exemplary training programmes for judges and public prosecutors.

Please note that a general overview of women’s access to justice in Ukraine is provided in the respective country study “Barriers, Remedies and Good Practices for Women’s Access to Justice in Ukraine”.¹²

The role of judges in promoting gender equality. An important safeguard for gender equality is the nation’s efficient and unbiased justice administration system that should be equally accessible both for men and women. Courts play a unique role in society, because by solving disputes, protecting a violated right or legitimate interest, establishing the guilt of a person and imposing penalties, and prescribing compensation in cases of violation of rights, the judicial system is the guarantor of stability of social relations, thereby contributing to sustainable development.¹³ Beyond an efficient justice administration system, any statutory provisions, even the most progressive ones, would be incapable to ensure such

¹² . Available on the gender equality website of the Council of Europe.

¹³ Фулей Т.І. Гендерна рівність при здійсненні правосуддя / Т.І. Фулей. – К.: ВАІТЕ, 2016. – С.20 // Т.І. Fuley. Gender Equality in Administration of Justice / T.I. Fuley, Kyiv, VAITE, 2016, p. 20.

changes in society all by themselves.¹⁴ The Constitution is unable to resolve prejudices ingrained in the society or to overcome the existing discriminatory attitudes.¹⁵

The leverage of the judiciary system in ensuring gender equality and overcoming discrimination on the grounds of gender or gender identity also depends on a sufficiently wide range of powers granted to judges such as:

- they may refer issues of unconstitutionality of any statutory provisions that are discriminatory to the courts of constitutional jurisdiction;
- they do not have to wait for the adoption of any specific regulations in order to provide protection against manifestations of discriminatory treatment which result in violation of human rights;
- judges can adopt judgments aimed at overcoming the established discriminatory attitudes or practices;
- they can use the language of international and regional human rights treaties (even if not ratified, the treaty may be used as a persuasive, rather than binding source of law) in their judgments which only enhances the legitimacy of a judgment delivered by the court in a specific case;
- judges may directly apply constitutional provisions that ensure protection against discrimination or enshrine equality, such as gender equality;
- judges may refer to the case-law of international and regional judicial agencies (the European Court of Human Rights, the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination against Women, the European Court of Justice, etc.) to motivate their own stance in pending cases;
- judges may establish facts of discrimination, even if a person applying to the court for protection does not refer to discrimination as the reason for the violation of his/her rights, etc.

Accordingly relevant information on the issues of accessibility of justice for women in Ukraine, gender discrimination and the role of judges in combating it should be integrated into the specialised training of candidates to positions of judges (Article 77 of the Law on the Judicial System¹⁶), as well as into the training to maintain a judge's qualification (Articles 56.5 and 56.7, Article 89 of the Law on the Judicial System). . As indicated in the second paragraph of Article 89.3 of the Law on the Judicial System, the National School of Judges of Ukraine, in order to provide training for judges, the school shall organise two types of trainings: those that are mandatory as part of the training course, and trainings that a judge may choose as an option depending on his/her needs. Based on this Manual, programmes for such trainings have been developed (see Annexes 1–3). In addition, it has been suggested that the existing training programmes dedicated to special topics ('Judicial ethics. Integrity', 'Application of the ECHR and ECtHR Case-Law in the Administration of Justice', etc.) be expanded to include relevant items that reflect the need for judges to take into consideration gender aspects during the proceedings (see Annex 4).

This training, offered by the National School of Judges of Ukraine, should be focused on making judges aware of:

- the concepts of 'gender', 'gender equality', 'discrimination', 'gender stereotypes' and other related definitions; the types, manifestations of gender discrimination in public/private spheres; gender stereotypes and their action mechanisms; international legal instruments (both universal, adopted

¹⁴ Mahlangu L. and Baloyi M. Redesignation of Courts: bringing justice closer to home // Justice Today. – 2009. – Volume 1. – P. 4.

¹⁵ Anleu S. Courts and social change: a view from the magistrates' courts / Social Change in the 21st Century Conference, 20 October 2005, Queensland University of Technology, Brisbane.

¹⁶ <http://zakon5.rada.gov.ua/laws/show/1402-19>.

by the UN or the ILO, and regional, adopted by the Council of Europe) in the field of gender equality and Ukraine's obligations under them; judgments of the ECtHR, findings of the UN Human Rights Committee and the UN Committee on the Elimination of Discrimination against Women as regards discrimination on grounds of gender; domestic legislation that governs such legal relations; safeguards and methods of protection (where provided in a legal regulation mechanism);

- the need to apply a gender-sensitive approach, particularly in cases of gender-based violence, including domestic violence, human trafficking, etc.;
- and also on giving them the skills to discern gender aspects when considering each particular case; to identify discriminatory situations and actions; to provide theory, i.e. to find relevant provisions (principles, standards) in the legal and regulatory framework, including international treatments binding on Ukraine and the practice of their application; to identify instances where the violation of rights and legitimate interests of a person constitutes the result of discriminatory provisions in domestic legislation or neutral legislative provisions that actually lead to discriminatory consequences, as well as gender stereotypes, in the light of which laws are interpreted or applied; to know the standards of proof in cases of gender discrimination and other gender sensitive cases.¹⁷

The role of public prosecutors in protecting women's rights. Prosecutors play a significant role in the implementation of fair, efficient and unbiased prosecution of crimes, in consolidation of the rule of law, in safeguarding equality before the law, presumption of innocence, respect for human rights. They must respect and protect human dignity by enforcing human rights, thus contributing to ensuring the proper functioning of the system of administration of justice.¹⁸

Recommendation R(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system, adopted on October 6, 2000,¹⁹ and accompanied by a detailed Explanatory Memorandum, forms the foundation for European standards in the activities of public prosecutors. Recommendation Rec(2000)19 states that, in the performance of their duties, public prosecutors should in particular: carry out their functions fairly, impartially and objectively; respect and seek to protect human rights, as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms; seek to ensure that the criminal justice system operates as expeditiously as possible; abstain from discrimination on any grounds; ensure equality before the law, and make themselves aware of all relevant circumstances including those affecting the suspect, irrespective of whether they are to the latter's advantage or disadvantage, etc.²⁰

Ukraine's domestic legislation, in line with the established international and regional standards, provides that the public prosecutor's office be responsible for the following: public prosecution in court; organisation and procedural guidance in pre-trial investigation, addressing, according to law, other issues during criminal proceedings, supervision over covert and other investigatory and detective activities by

¹⁷ Фулей Т.І. Гендерна рівність при здійсненні правосуддя / Т.І. Фулей. – К.: ВАІТЕ, 2016. – С.78-79 // // Т.І. Fuley. Gender Equality in Administration of Justice / T.I. Fuley, Kyiv, VAITE, 2016, pp. 78–79.

¹⁸ Report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/20/19), para. 93.

¹⁹ [http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/7442a47eb0b374b9c2257d8700495f8b/\\$FILE/%D0%A0%D0%B5%D0%BA%D0%BE%D0%BC%D0%B5%D0%BD%D0%B4%D0%B0%D1%86%D1%96%D1%8F%20Rec%20\(2000\)%2019.pdf](http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/7442a47eb0b374b9c2257d8700495f8b/$FILE/%D0%A0%D0%B5%D0%BA%D0%BE%D0%BC%D0%B5%D0%BD%D0%B4%D0%B0%D1%86%D1%96%D1%8F%20Rec%20(2000)%2019.pdf).

²⁰ It should be noted in this part, that terminological differences exist between the cited Recommendation and the applicable CPCU: under CPCU, it is not possible 'not to prosecute', since, under Article 214, the information must be immediately entered into the Unified Register of Pretrial Investigations; at the pre-trial stage, the 'case' is referred to as 'criminal proceedings', only at the judicial proceedings stage the concept of 'criminal case' occurs; a public prosecutor at the pre-trial stage is referred to as procedural supervisor, etc. However, these terminological differences do not negate the importance of those standards of public prosecutors' activities.

law enforcement agencies and representation of interests of the State in court in exceptional cases and in the manner determined by law (Article 131-1 of the Constitution). The public prosecutor's office shall act with the purpose of upholding the rule of law and recognising the human being, his/her life and health, honour and dignity, inviolability and security as the highest social value (Articles 2 and 3 of the Law on the Public Prosecutor's Office²¹).

Violence against women and girls is among the most common and serious violations of human rights. This is a violation that entails significant physical, psychological, emotional and social consequences. That is why the proceedings related to the protection of women's rights impose additional requirements on public prosecutors, especially where it comes to treatment of such vulnerable groups as victims of domestic violence, human trafficking, sexual violence. Furthermore, such cases are always complicated by a number of problems due to the personal nature of the violence committed.

It should be noted that, at the level of the international community, the following is widely recognised: public prosecutors play a crucial role in the fight waged by criminal justice to combat violence against women and girls. It is the public prosecutors who embody the authority of the State and ensure compliance with the law during criminal processes. Thus, CEDAW in one of its judgments pointed out that

women are far more affected than men by the failure of public prosecutors to take domestic violence seriously as a real threat to life... Women are also disproportionately affected by the practice of not prosecuting and punishing offenders in domestic violence cases appropriately. Furthermore, women are disproportionately affected by the lack of coordination of law enforcement and judicial personnel, the failure to educate law enforcement and judicial personnel about domestic violence and the failure to collect data and maintain statistics on domestic violence. (CEDAW Communication in the case of Şahide Goekce v. Austria, August 6, 2007).²²

Public prosecutors should give due regard to the fact that victims of violence may experience difficulties and trauma during a pre-trial investigation process for many reasons. Gender-based discrimination, stereotypes prevailing in the society in respect of victims of such violence result in a situation where many victims of violence do not report such cases. A decision by a victim to report gender-based violence and afterwards to continue participation in the process of investigation and trial of a criminal case is one of the essential factors influencing the efficiency of combating gender-based violence. The manner in which experts in the field of criminal justice initially respond to appeals by victims of violence is crucial to the victim's determination either to participate in further legal actions or to withdraw from them as a result of harsh treatment of such person by the criminal justice system.

Public prosecutors carry special responsibility, since they must supervise the observance of laws during pre-trial investigation in the form of procedural guidance of pre-trial investigations; their actions often define whether the victim agrees to cooperate with the investigation; public prosecutors can combat manifestations of discrimination which are based on stereotyped ideas about the way the victims of violence should be treated in court. The purpose of criminal prosecution is to protect victims, bring perpetrators to justice and give a strong signal to the society that violence against women and girls may not be ignored. The rule of law can never be achieved if the response of the criminal justice system to violence against women and girls is characterised by impunity. In particular, the following should be assessed: is it easy enough for women to contact public prosecutor's offices, especially in rural areas? Do the activities by public prosecutor's offices take into account the needs of vulnerable groups (victims of domestic violence, human trafficking, sexual violence, etc.)? Are the employees of public prosecutor's

²¹ <http://zakon3.rada.gov.ua/laws/show/1697-18>.

²² The full text of the judgment is available at <http://juris.ohchr.org/Search/Details/1715>.

offices aware of domestic, regional and international human rights standards? Are funds allocated to conduct trainings in a gender-sensitive approach in the work of the public prosecutor's office? Do public prosecutor's offices provide adequate protection to victims of gender-based crimes? Do public prosecutor's offices cooperate with non-governmental organisations whose activities are aimed at protecting the rights of women? Do public prosecutor's offices inform victims and witnesses of their rights and of the services that they can use, and if so, how? Does the public prosecutor's office have special department for gender-based crimes? Are public prosecutors trained in the specifics of treatment of, including the specifics of communication with, victims of sexual violence, domestic violence, human trafficking, including the specifics of treatment of girls – victims of such violence? Moreover, consideration should be given to the number of female public prosecutors, what the ratio between women and men is, and which formal requirements are imposed on eligibility for the positions of public prosecutors. Separate assessment is made regarding whether women occupy senior positions in public prosecutor's offices. The question is also raised of whether requirements are imposed on public prosecutors to carry out their duties in an unbiased manner, to prevent any manifestations of discrimination based on political beliefs, religious beliefs, ethnicity, gender, sexual orientation, etc.; whether trainings are held for public prosecutors on issues of discrimination and the need to combat it.²³

Public prosecutors, in addition, should be aware that a number of categories of women and girls exist who may be victims of multiple discrimination, thus constituting particular risk groups concerning violence against them. In 2010, the UN General Assembly²⁴ drew up a list of such categories of women and girls: girls and women belonging to minority groups (the problem of the Roma minority is particularly pertinent to Ukraine); girls and women with disabilities, homeless girls and women; women sex workers; elderly women and, vice versa, young girls and women; refugee and internally displaced women, migrant women; women living in rural or remote communities; girls and women in institutions or in detention; girls and women in situations of armed conflict or on occupied territories; girls and women with HIV/AIDS status; lesbians and transsexuals. Such groups of women – victims of violence – usually suffer multiple forms of discrimination. Gender-based discrimination intersects with discrimination based on other forms of 'otherness'.²⁵

Public prosecutors need to understand the behaviour of victims of gender-based violence and its social context. Public prosecutors are generally used to dealing with victims of violent crimes who want justice and therefore are eager to cooperate with the investigation. Women and girls who have become victims of violence either from an intimate partner, male relative or a stranger may not behave like victims of other crimes, and public prosecutors should not expect such familiar behaviour from them. A victim of gender-based violence may exhibit hostility, refusing to cooperate, which is often misunderstood by investigators as the general belief is that "if the victim does not want the trial, that means there was no violence", or "if the victim does not care, then why should we bother". The victim may make inconsistent statements to downplay the consequences of what happened, and conceal certain facts. By public prosecutors, this may be perceived as deliberate deception.

The problem may also lie in the fact that the victim does not trust or even fears the criminal justice system. This may be due to the negative experience associated with this system; or the victim might feel that she will be treated in a biased manner; she might think that criminal prosecution would not help her,

²³ Gender in the Criminal Justice System Assessment Tool CRIMINAL JUSTICE ASSESSMENT TOOLKIT UNITED NATIONS New York, 2010

²⁴ General Assembly resolution 65/457.

²⁵ Report of the Special Rapporteur on violence against women, its causes and consequences to the Preparatory Committee for the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance on the subject of race, gender and violence against women, A/CONF.189/PC.3/5.

etc. Furthermore, the victim, especially where domestic violence is concerned, may fear for the fate of the offender. Besides, unlike other crimes, in cases of domestic violence the victim may be economically dependent on the offender and she may be convinced that her duty is to remain with the offender for the sake of their children as she may be afraid of losing habitation together with her children and other related issues. Further, the victim may have no legal status in the country (and, accordingly, be afraid to contact law enforcement officials). She may be unaware of a possibility to contact social services. She may feel ashamed and afraid of condemnation by society, her family members, friends and acquaintances. Family, friends and even children can pressure the victim into withdrawing the case against the offender. The victim might fear remaining without a husband, if she continues with the prosecution. Moreover, actions against the husband or other relative may contradict the victim's religious beliefs.

These and other circumstances greatly complicate the work of investigators and prosecutors who supervise the compliance with law during a pre-trial investigation in the form of providing procedural guidance in a pre-trial investigation, as well as carry out public prosecution in court. The following recommendations as to the conduct of such criminal proceedings may be pointed out:

- victims must be treated kindly, their dignity must be honoured, their experiences of the situation and their sufferings should be respected;
- the victim must be provided with all the necessary information (on contacting social services, relevant non-governmental organisations; procedural specifics of the proceedings; on the possibility of filing a civil claim for damage, etc.);
- at the victim's request, the opportunity for the victim's lawyers, relatives and friends to attend the interview with investigators must be provided, if this appropriate support is required in order to make it easier for the victim to cope with her negative emotions;
- a venue for the interview with the victim should be chosen carefully – a neutral place (by no means where the offender may have access to the victim), where the victim feels comfortable and safe, would be ideal
- where the victim requires an interpreter, his/her competence should be verified, since any errors in interpretation might affect the efficiency of the proceedings;
- the victim must be prepared for the trial, her role in it and subsequent procedural steps should be explained to him/her, since the victim is likely to be unaware of the specifics of the operation of judicial system; it should also be clarified that an interval between the start of the pre-trial investigation and the trial itself may be quite long;
- the importance of her participation in the trial should be stressed, she should neither be blamed nor judged for her actions ;
- where objectively possible, the opportunity should be provided for the victim to communicate with an investigator or public prosecutor of the same sex;
- when interviewing the victim, short sentences, clear wording, active, rather than a passive voice (i.e. 'Did the accused hit you?', rather than 'Were you hit by the accused?'), positive/leading sentences ('Did you tell somebody?'), rather than sentences in a negative tone ('Didn't you tell somebody?') should be used, eye contact should be maintained, and interest to answers should be shown; hypothetical situations (if you had the opportunity, would you...) and pressure must be avoided; prior to the interview, the interrogator must introduce him/herself by name (not just by surname and position).²⁶

In CEDAW's general recommendation on women's access to justice, they emphasised the role of public prosecutors in upholding women's rights. It recommends that States parties, in particular:

²⁶ Handbook on effective prosecution responses to violence against women and girls. UNITED NATIONS New York, 2014, 182 p.

- to consider establishing specialised gender units within law enforcement, penal and prosecution system as an effective measure in protecting women against secondary victimisation in their interactions with law enforcement and judicial authorities.
- use a confidential and gender-sensitive approach to avoid stigmatisation during all legal proceedings, including secondary victimisation in cases of violence, during questioning, evidence collection and other procedures related to the investigation;
- improve their criminal justice response to domestic violence, which can be done through recording of emergency calls, taking photographic evidence of destruction of property as well as signs of violence; and reports from doctors or social workers, which can show how violence, even if committed without witnesses, has material effects on the victims' physical, mental and social well-being;
- take steps to guarantee that women are not subject to undue delays in applications for protection orders and that all cases of gender-based discrimination under criminal law, including violence, are heard in a timely and impartial manner (para. 51).

The Committee also noted that prosecutors, law enforcement officials and other actors often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence. Stereotypes undermine the claims of the victim/survivor and simultaneously supporting the defences advanced by the alleged perpetrator. Stereotyping, therefore, permeates both the investigation and trial phases, finally shaping the judgment (para. 27). In this regard, it urged States parties to provide capacity building to judges, prosecutors, lawyers and law enforcement officials on the application of international legal instruments related to human rights, including the Convention on the Elimination of All Forms of Discrimination Against Women and the jurisprudence of the CEDAW Committee, as well as the application of legislation prohibiting discrimination against women.

To this purpose, the duty to improve and upgrade professional skills is imposed on public prosecutors by the laws of Ukraine (Article 19.2 of the Law on the Public Prosecutor's Office). Such periodic training provided by the National Academy of Public Prosecutors of Ukraine (Article 80 of the Law) should include briefing of public prosecutors on the special role played by the public prosecutor's office in the protection of women's rights, as well as on the key problematic areas in the exercise by women of their rights and interests. Based on this tutorial, plans have been developed for trainings of public prosecutors on issues of women's rights, and separately on the issues of domestic and gender-based violence (see Annex 6).

Part I. Accessibility of Justice in Ukraine

In this Part, the general idea of access to justice is defined and the importance of this concept for judges and public prosecutors is highlighted. Further, enshrinement of safeguards for access to justice in the laws of Ukraine is discussed. Particular attention is given to the problem of women's access to justice in the conflict and post-conflict period.

1.1. Accessibility of justice as a guarantee of gender equality. Accessibility of justice is a fundamental requirement of the rule of law, a critical element of a properly functioning democracy, an important prerequisite for the effectiveness of human rights and, at the same time, a reliable tool for their exercise.²⁷ Some authors rightly note that 'access to justice' represents a notion referring to a concept that indicates a perfect situation. Like happiness, access to justice is what most people want, but nobody can explain what it is exactly.²⁸ However, where happiness is just a feeling, access to justice is a legal

²⁷ Handbook on European law relating to access to justice. P. 16.

²⁸ Stefan Wrbka, Steven van Uytsel, and Mathias M. Siems. Access to justice and collective actions: 'Florence' and beyond P. 1-2.

requirement that includes relevant elements, such as accountability, provision of remedies, competence, efficiency, economic and physical accessibility, etc.

To summarise the approaches currently offered in the legal literature, *access to justice may be defined as the ability of people (including those from marginalised groups) to seek and obtain remedies to protect their rights through formal or informal institutions of justice for grievances in compliance with recognised human rights standards, without encountering legal, procedural, socio-economic or cultural barriers.* The requirement of equality, particularly gender equality, is at the centre of comprehension, support and enjoyment of the right to justice.²⁹

Gender discrimination (discrimination based on gender or gender identity) in its various manifestations may be a significant barrier in ensuring access to justice: at the level of international expert community, European or other regional organisations and judicial agencies. Increasing attention is currently paid to the problems of the influence of gender stereotypes on the administration of justice, to the necessity of developing the ability to identify instances of gender discrimination in judges and to respond to them adequately through legal means.

Access to the justice system is often more difficult for women than for men. This may be the result of discriminatory rules and practices in the judiciary and the society as a whole, while another reason could be the lack of awareness on behalf of women or all participants in the process. Besides, this is often due to the fact that the threats made to women are not prioritised by law enforcement agencies. These threats become even more pronounced in conflict and post-conflict environments. As once pointed out by Yasmine Sherif, UNDP Senior Adviser, Rule of Law, Justice & Security, ‘women and girls bear an unequal burden of violence and hardship in times of crisis. Rape and other forms of gender-based violence have become institutionalised as tools of warfare, and cultures of violence in the domestic sphere continue long after conflicts have ceased. Where rule of law, access to justice and human rights have been suspended for long periods of time, impunity is the norm. Rebuilding the justice system under such circumstances is particularly challenging, and gender justice can be particularly elusive.’³⁰ It should be noted that the problem of women’s rights in situations of armed conflict in the east of Ukraine drew particular attention from civil society organisations who had submitted alternative reports to the UN Committee on the Elimination of Discrimination against Women during the Committee’s consideration of the eighth periodic report of Ukraine.³¹ In this connection, we dedicated an entire subsection to the problem.

1.2. Accessibility of justice for women in the armed conflict environment and in the post-conflict period. Since the beginning of the armed conflict on Ukraine’s territory in the spring of 2014, international and domestic human rights organisations have reported substantial violations of human rights in the east of the country. Insecurity and intense fighting have led to the lack of effective protection of persons in the territory not controlled by Ukraine, as well as on the Ukrainian territory bordering the zone of conflict. A number of problems exist associated with protection of human rights and women’s rights in

²⁹ Various criteria may be offered to determine the level of access to justice and gender equality in any particular State. In this context, various ratings of States are of interest. Ukraine’s ratings (The World Justice Project Rule of Law Index 2016: 78 among 113 countries / http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf; The Global Gender Gap Report 2016: 69 among 144 countries / www.weforum.org/reports/the-global-gender-gap-report-2016/; 2015 Gender Inequality Index: 83 among 150 countries / <http://hdr.undp.org/en/content/table-4-gender-inequality-index>) indicate insufficient efforts made by Ukraine in the promotion of gender equality and non-discrimination in the key spheres of public life.

³⁰ “The role of the judiciary in promoting gender justice in Africa” / Accra, Ghana. 19-21 November 2008 // Report of the Partners for Gender Justice Conference hosted by the Judicial Service of Ghana. – P. 7.

³¹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fUKR%2f8&Lang=en/

particular; residents of the Donetsk and Luhansk oblasts face significant difficulties in accessing courts or public prosecutor's offices in government-controlled territories, such as loss or destruction of case files before and during the process of transferring or changing the territorial or investigative jurisdiction of these bodies. People in the non-government-controlled territory attempting to submit claims or attend court hearings in the government-controlled territory are often forced to travel long distances through conflict-affected areas.³²

It should be noted that armed conflicts definitely affect both women and men; however, women in these conflict or post-conflict environments encounter a number of additional problems not faced by men. We are talking primarily about sexual and physical violence. It is generally accepted that risks of gender-based violence increase in the environment of hostilities and humanitarian crisis³³. In addition, international experts draw attention to the fact that women in the conflict environment are generally perceived as having a secondary role in society. It should also be noted that, in the post-conflict period, the level of domestic violence grows, whose victims are predominantly women.

Violence against women. Observers who travel to territories bordering on the front-line of conflict, as well as to the occupied territories, point out, among other things, to the fact that the information on incidents of gender-based and, in particular, sexual violence is extremely limited due to the difficulties involved in its verification. Since law enforcement agencies lack sufficient resources to investigate such cases, victims rarely seek help. It is stressed that allegations of torture and ill-treatment are very rarely investigated. Only a few cases are known where perpetrators were brought to liability for their offences. In certain instances, judges ignored or dismissed complaints of torture victims.³⁴ One in ten victims did not contact law enforcement officials for fears of possible further violence. Some women said that they had intended to contact law enforcement after being subjected to violence, but their reports were either rejected or not accepted, and criminal proceedings were either stalled or not initiated.³⁵

Public attention was also drawn to a case of an underage girl raped by an Anti-Terrorist Operation soldier. The reason for this close attention was an extremely lenient sentence given by the court. The court found that, at 2.00 on 09/07/2015, the accused, under the influence of alcohol, was walking down the street with the underage victim, using physical and psychological violence to overcome her resistance and, against her will, satisfied his sexual passion in an unnatural manner. The rape victim had not been sexually active before that. The accused, refusing to admit his guilt in court, stated that 'when he invited the victim to engage in sexual relations, she neither gave any affirmative answer nor refused to do so, and continued to walk with him,' which, in his opinion, fully justifies his actions. The court found the accused guilty. However, the court referred to his participation in the Anti-Terrorist Operation in the country's east as a mitigating circumstance. As a result, the court gave him a conditional sentence of 4 years (sic) for raping a minor in an unnatural manner. The accused was also ordered to pay moral damages of UAH3,000 (about 110 euros) (judgment by the Ivankiv District Court in the Kyiv Oblast, No. 366/2351/15-k³⁶, 10/06/2016).

³² THEMATIC REPORT. Access to Justice and the Conflict in Ukraine. December 2015. – OSCE Special Monitoring Mission to Ukraine 2015 // <http://www.osce.org/ukraine-smm/212311?download=true>.

³³ Герасименко Г. Гендерно обумовлене насильство в умовах конфлікту: результати соціологічного дослідження в п'яти регіонах Східної України // Hanna Herasymenko. Gender-based violence in conflict environment: results of sociological studies in five regions of Eastern Ukraine: <http://www.razumkov.org.ua/upload/Gender-FINAL-S.pdf> И //

³⁴ Office of the United Nations High Commissioner for Human Rights. Report on the human rights situation in Ukraine 16 February to 15 May 2016 // http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf

³⁵ GENDER-BASED VIOLENCE IN THE CONFLICT – AFFECTED REGIONS OF UKRAINE – UKRAINIAN CENTRE FOR SOCIAL REFORMS. KYIV, 2015 // https://www.humanitarianresponse.info/en/system/files/documents/files/final_report_eng.pdf

³⁶ <http://www.reyestr.court.gov.ua/Review/58249890>.

The public prosecutor's office appealed against the judgment. Unfortunately, no information on the outcome of this appeal was available by the time of the completion of this Tutorial.

On the whole – with the above case being merely one example of this – experts emphasise low awareness and comprehension among the judiciary of the problems of gender-based violence faced by women. In the area of conflict, this problem is further exacerbated because of the lack of mechanisms for responding, recording, and provision of adequate assistance to victims of gender-based violence.

Domestic legislation. On August 12, 2014, the Law of Ukraine 'On Administering Justice and Conducting Criminal Proceedings in Connection with the Anti-Terrorist Operation' No. 1632-VII³⁷ was adopted, defining the legal measures in the ATO area and designed to provide access to court for individuals and legal entities. This law determines the specifics of criminal proceedings in the area of ATO. , Due to the inability of certain courts to administer justice in the ATO area, changes were proposed to the territorial jurisdiction in cases considered by courts located in the ATO area.

It should also be noted that the Law on the Public Prosecutor's Office was amended to include provisions concerning the establishment of the military prosecutor's offices (Article 13). When speaking about the specifics of criminal proceedings in the area of ATO, we should stress the point that, in the Law of Ukraine 'On Combating Terrorism' No. 638-IV³⁸ of 20/03/2003, after the outbreak of hostilities on the territory of Ukraine, Article 14 was subject to serious criticism by human rights activists as it contained a provision stating that, in the ATO area, temporary restrictions on the rights and freedoms of citizens may be imposed, such as preventive detentions for a period exceeding 72 hours, but not more than 30 days, of persons involved in terrorist activities. Preventive detention is carried out under a substantiated decision by the Head of the Central Department of the Security Service of Ukraine or by a chief of a territorial body of the National Police, with a public prosecutor's consent and without the need for a ruling by an investigating judge or court.³⁹

Furthermore, under the Law of Ukraine 'On Amendments to the Criminal Procedure Code of Ukraine Regarding the Special Regime of Pre-Trial Investigation Under Martial Law, in State of Emergency or in the Anti-Terrorist Operation Area' No. 1631-VII⁴⁰ of 12/08/2014, the CPCU was amended to include Article 615 that establishes a special regime of pre-trial investigation under martial law, in a state of emergency or in the Anti-Terrorist Operation area.

International and regional standards. As of today, a number of international and regional standards have been developed to protect women's rights in the conflict environment and in the post-conflict period. Primary examples of these are the General Recommendations No. 30 of the Committee on the Elimination of Discrimination Against Women on women in conflict prevention, conflict and post-conflict situations, and the UN Resolution No. 1325 'Women, Peace and Security'.

Among the recommendations made by CEDAW, special attention should be paid to the aspects that are particularly important in the work of judges and public prosecutors:

- use gender-sensitive practices (e.g. use of female police officers) in the investigation of violations during and after conflict to ensure that violations by State and non-State actors are identified and addressed. (para. 17 of the CEDAW General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations); It should be noted that experts do

³⁷ <http://zakon4.rada.gov.ua/laws/show/1632-18>.

³⁸ <http://zakon4.rada.gov.ua/laws/show/638-15>.

³⁹ <http://zakon4.rada.gov.ua/laws/show/z1038-14>.

⁴⁰ <http://zakon4.rada.gov.ua/laws/show/1631-18>.

noy necessarily believe that women are better than men in investigating or dealing with cases of gender-based violence, however, gender balance creates more comfortable environment for victims of violence;⁴¹

- women should be detained in separate quarters from men and under the immediate supervision of women; women must receive sanitary conveniences; women must also be searched by women (para. 21);
- States parties are under obligation to prevent, investigate and punish trafficking and sexual and gender-based violence (para. 23).

Among other measures, the States are encouraged to:

- adopt gender-sensitive investigative procedures to address gender-based violence, in particular sexual violence;
- conduct gender-sensitive training and adopt codes of conduct and protocols for the police, the military, and peacekeepers;
- build the capacity of the judiciary, including in the context of transitional justice mechanisms to ensure their independence, impartiality and integrity;
- collect data on the incidence and prevalence of gender-based violence, in particular sexual violence in different settings and against different categories of women;
- take steps to prevent, prosecute and punish trafficking and related human rights violations by adopting specific protection measures for women and girls, including those internally displaced and refugees;
- ensure that support for reconciliation processes does not result in blanket amnesties for any human rights violations, especially sexual violence against women and girls and ensure that such processes reinforce efforts to combat impunity for such crimes;
- enhance criminal accountability; strengthen capacity of security, medical and judicial personnel to collect and preserve forensic evidence related to sexual violence in conflict and post-conflict contexts. In his Guidance Note, the UN High Commissioner stresses, in turn, the need to adopt adequate procedural rules to prove facts of conflict-related sexual violence, realising that in such circumstances these facts may be difficult to prove,⁴² i.e. the adoption of a lower standard of proof may be considered;⁴³
- enhance women's access to justice, including through the provision of legal aid and establishment of specialised courts, such as domestic violence and family courts, providing mobile courts for camps and settlement settings, as well as for remote areas; and ensure adequate protection measures for victims and witnesses, including non-disclosure of identity and the provision of shelters. Furthermore, the models of 'all-women' court hearings are practised to create more comfortable surroundings for a woman victim of gender violence.

⁴¹ HUMAN RIGHTS WATCH, SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDAN GENOCIDE AND ITS AFTERMATH 4 (1996), <http://hrw.org/reports/1996/Rwanda.htm>. Examples from the domestic court practice could be given: thus, in one criminal case, a woman only reported a theft to the police, but concealed the fact of rape, because, in her words, 'when I was reporting the robbery, I couldn't overcome the sense of shame, since only men were among those present at the district police station to take my report.'(Galytskiy District Court in Lviv, No. 461/3105/13к, 26/12/2013 // <http://reyestr.court.gov.ua/Review/36504599>).

⁴² GUIDANCE NOTE OF THE SECRETARY- GENERAL Reparations for Conflict- Related Sexual Violence JUNE 2014 UNITED NATIONS NATIONS UNIES 20 p.

⁴³ See Prosecutor v. Thomas Lubanga Dyilo: Decision establishing the principles and procedures to be applied to reparations, ICC-01/04-01/06-2904, Trial Chamber I, 7 August 2012, para. 253 (currently on appeal).

It should be noted that in Ukraine, the National Action Plan to implement the UN Security Council Resolution 1325 on Women, Peace and Security Until 2020 was approved by Resolution 113 of the Cabinet of Ministers of Ukraine on February 24, 2016.⁴⁴ It, in particular, provides for the following:

- development of training programmes to implement the UN Security Council Resolution 1325, gender aspects of involuntary resettlement, disarmament, mediation, demobilisation, reintegration, access to justice with a view to their subsequent integration into the curricula of the security and defence system's higher educational institutions, as well as into the refresher course curricula;
- conduct of exercises for military personnel, law enforcement officers, including key personnel, focused on the application of affirmative actions in law enforcement, the Armed Forces, as well as on combating sexual violence in the conflict environment, taking protective and rehabilitation measures for women victims of conflicts and crises, countering the spread of HIV/AIDS;
- conduct of criminal investigation and prosecution of perpetrators of crimes against women and girl victims of violence;
- improving the reporting mechanism for incidents of sexual violence.

Part II. International Obligations of Ukraine in the Field of Women's Rights

International human rights standards enshrined in international treaties ratified by Ukraine represent the mandatory source of law, i.e. they may form the grounds for regulating social relations within the country or may be used directly as the basis for adjudicating cases. Provisions of international treaties should not only be used to further support a legal stance in the case, but also to prevail over domestic legislation in the event of conflict. Moreover, the human rights approach requires that the relevant provisions be the reference points in the work of judicial and law enforcement authorities, whether any particular instrument has been ratified or not. In other words, agents of the State should not use the absence of ratification or refer to the abstract nature of provisions of international instruments or their conflict with domestic law as a reason to refrain from striving for the utmost implementation of international and regional human rights standards in their day-to-day activities. However, it should be admitted that, in certain cases, judges and public prosecutors find themselves in a situation when such implementation is only possible after appropriate steps have been taken by the legislator (e.g. criminalisation of certain types of gender-based violence, as provided for in the Istanbul Convention). However, the number of such cases is limited. On the whole, international and regional human rights standards, along with implementation of gender equality must be the guiding principle in their work.

Another thing to be taken into consideration is that the provisions of international and regional human rights treaties are further elaborated in the decisions of the relevant international and regional agencies, such as the UN Committees, the European Court of Human Rights, the European Court of Justice. Cognisance of these agencies' practice enriches the judges and public prosecutors knowledge of specific behavioural models, empowers them with information about good and bad practices, gives them information regarding mechanisms for the implementation of certain provisions of international and regional instruments, gives an insight into their correct interpretation and scope of operation, as well as into the available approaches to their application in adjudication of particular cases.

2.1. International treaties as a source of law in the proceedings involving the rights of women. The Declaration of State Sovereignty of Ukraine proclaims that 'Ukraine recognises... the priority of generally accepted standards of international law over the standards of the domestic law' (Article X.3)⁴⁵. At the constitutional level, it is also provided that 'international treaties that are in force,

⁴⁴ <http://zakon2.rada.gov.ua/laws/show/113-2016-%D1%80>.

⁴⁵ <http://zakon3.rada.gov.ua/laws/show/55-12>.

agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine' (Article 9 of the Constitution of Ukraine).

The status of international treaties is set out in greater detail in Article 19 of the Law of Ukraine 'On International Treaties of Ukraine' No.1906-IV⁴⁶ of 29.06.2004, which, in particular, states that 'Where an international treaty of Ukraine, which entered into force according to the established procedure, sets forth other rules than those provided in the relevant act of Ukrainian legislation, the rules of such international treaty shall apply'.

The above suggests that *the rules of applicable international treaties of Ukraine, agreed to be binding by the Verkhovna Rada of Ukraine, constitute a part of domestic laws and prevail over any other acts of Ukrainian legislation.* This principle is also confirmed in Article 27 of the Vienna Convention on the law of treaties of May 23, 1969⁴⁷ (to which Ukraine acceded): 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.'⁴⁸ This principle is also reflected in the procedural legislation of Ukraine (Article 9 of CPCU, Article 8 of CiPCU, Articles 5 and 9 of CAPU, Article 4 of the Economic Procedural Code of Ukraine). The obligation to follow international treaties of Ukraine, agreed to be binding by the Verkhovna Rada of Ukraine, is also established for judges by Article 2 of the Law on the Judicial System, and for the public prosecutors – by Article 4 of the Law on the Public Prosecutor's Office.

Thus, it is important for both judges and public prosecutors to remember that the provisions of international and regional treaties ratified by the Verkhovna Rada of Ukraine (the principal ones that directly establish the standards of women's rights protection are listed in Annex 6) constitute a binding source of law in Ukraine. Therefore, relevant parties in a dispute may refer to them directly to defend their rights, while law enforcing authorities – above all, the courts – should refer to their texts to support their position in a case. **Moreover, if a conflict is discovered between an act of the national legislation and a provision of a ratified treaty, the latter should prevail.**

One example of this is the ban established by the laws of Ukraine on business trips for pregnant women and women who have children below three years, irrespective of a woman's consent to such business trip (Article 176 of LCU). In turn, Article 41 of CUAO establishes the penalty of 30 to 100 tax-free minimum incomes of citizens (UAH510 to UAH1,700) for the employer in the event of breach of labour laws. In one case, a woman sued her employer, demanding that business trips be allowed for her. In the lawsuit, she stated that she was employed as an instructor flight attendant. On February 8, 2015, she gave birth to a son, after which she exercised her right to a parental leave to attend to the child until he reaches 3 years of age. On February 22, 2016, she interrupted her leave (this opportunity is also provided for by applicable laws of Ukraine) and returned to work. However, the employer, pursuant to Article 176 of LCU, refused to let her go on business trips that make up the bulk of her duties. The employer, being a defendant in the case, supported the claim by indicating that he had no objections to its satisfaction. Furthermore, the woman also pointed out during the hearing that her husband was attending to the child, since, upon her return to work, he availed himself of the parental leave to attend to the child until he reaches 3 years of

⁴⁶ <http://zakon3.rada.gov.ua/laws/show/1906-15>.

⁴⁷ http://zakon5.rada.gov.ua/laws/show/995_118.

⁴⁸ See also: Співвідношення міжнародного і національного права // Теорія держави і права: підруч. для студ. юрид. вищ. навч. закл. [текст] / За ред. О. В. Петришина. – Х.: Право, 2014. – С. 14 // Correspondence between international and domestic law / Theory of state and law. A textbook for students of higher legal education institutions [text]. Ed. by O. V. Petryshyn. Kharkiv, Pravo, 2014, p.14.

age. However, the court dismissed the claim, stating that Article 176 of LCU has an imperative character, while the claimant's child has not yet reached the age of three. In the court's opinion, the fact that the child is being attended to by her husband 'has no legal significance'. Moreover, the court accused the woman of abusing her right to appeal to court, since a clear statutory provision exists, establishing such ban.⁴⁹

In this case, the court violated the safeguards for women's access to justice. When considering the case, the court might have referred to the constitutional provisions that guarantee equality of rights between men and women, to those of the UN Convention on the Elimination of All Forms of Discrimination Against Women, which, in particular, provides for the States Parties' obligation to take appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular, the right to free choice of profession or employment (Article 11.1(c) of the Convention), to the practice of the UN Committee on the Elimination of Discrimination against Women, which, in one of its views, pointed out that such legislation (meaning the laws that ban certain types of work for women) 'reflects persistent stereotypes concerning the roles and responsibilities of women and men in the family and in society that have the effect of perpetuating traditional roles for women as mothers and wives and undermining women's social status and their educational and career prospects'⁵⁰, or to the anti-discrimination laws of Ukraine, including the Law on Equal Rights, which stipulates that the state policy shall be aimed at equal opportunities of women and men in combining professional and family responsibilities (Article 3). Besides, the court should have taken into account the fact that the ban on business trips for women who have children is set forth in Article 176 of LCU, which was adopted in 1971. Since then, significant changes occurred in the society's values and standards and, accordingly, Article 176 of LCU should be interpreted in light of these new standards: business trips may not be allowed for women who have children under three years of age, *where such women do not consent thereto*.

2.2. Implications of judgments by international and regional judicial agencies in adjudicating cases of gender discrimination. Findings by international and regional judicial agencies (the UN Human Rights Committee, CEDAW, ECtHR, ECJ, etc.) have different legal implications for Ukraine's national legal system and, accordingly, their binding character, when taken into account in the adjudication of relevant cases by courts of Ukraine, would also differ.

Thus, among these judicial agencies, the ECtHR judgments will have the strongest legal force. It is widely known that the text of the Convention for the Protection of Human Rights and Fundamental Freedoms is quite concise. The content and the meaning of its provisions are mostly elaborated in the ECtHR's case-law. Ukraine has adopted one of the most progressive laws in this regard – the Law of Ukraine 'On Execution of Judgements and Application of Practice of the European Court of Human Rights' No. 3477-IV⁵¹ of 23/02/2006, which directly establishes in its Article 17 that 'the Courts shall apply the Convention and the Court's case-law as a source of law.'⁵² The approach stated by the legislator points out that the fundamental human rights and basic freedoms secured by the Convention shall be subject to interpretation and application in the national legal system with regard to ECtHR's case-law, or, in a broader context, – should be implemented within the standards developed by the ECtHR.

⁴⁹ <http://www.reyestr.court.gov.ua/Review/57237515>.

⁵⁰ CEDAW's findings in the case of Svetlana Medvedeva vs the Russian Federation of February 25, 2016 // http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2f63%2fD%2f60%2f2013&Lang=en.

⁵¹ <http://zakon3.rada.gov.ua/laws/show/3477-15>.

⁵² <http://zakon4.rada.gov.ua/laws/annot/3477-15>.

Therefore, each Member State of the Convention must take into account not only those ECtHR judgments that have been delivered in respect of such particular State, but also the judgments adopted in respect of third countries, since they can teach it how to avoid similar violations in the future and accordingly change its own legal system and law-enforcement practice⁵³. ECtHR judgments should encourage Member States to amend their legislation and law enforcement practices in order to eliminate violations of human rights in these States and to avoid subsequent judgments delivered against these States in the cases involving the same or similar issues.⁵⁴ Moreover, the Plenary Assembly of the Supreme Court of Ukraine specifically stressed in its resolution ‘On judgments in civil cases’ that ‘in the reasoning part of each judgment... where necessary, references should be made to the Convention and judgments of the European Court of Human Rights.’⁵⁵

This requires awareness of the ECtHR case-law on behalf of judges and public prosecutors and being guided by it in their activities.⁵⁶ We would like to emphasise that this covers both the judgments adopted in respect of Ukraine and those delivered in respect of other countries, since problematic issues considered by the Court in these judgments are often relevant for the Ukrainian society as well.

Ukraine’s judicial practice has positive examples of courts referring to the ECtHR case-law in matters of gender equality and non-discrimination on grounds of gender. For example, in one case, a man went to court demanding that the actions by the State Border Guard Service of Ukraine (the SBGSU) be declared illegal. The plaintiff was employed by the SBGSU in a senior officer position. Between 13/10/2014 and 28/09/2015, he was on a parental leave to attend to a child until he reaches 3 years of age. On September 24, 2015, he applied for a parental leave until the child reaches the age of six years due to the fact that the child required care for health reasons. The defendant, referring to the Law of Ukraine ‘On Social and Legal Protection of Servicemen and Their Family Members’, which entitles to such leave servicemen only (this rule has been kept in the current revision of the Law), refused such leave. The court allowed the claim, referring to the ECtHR judgement in the case of Konstantin Markin vs the Russian Federation, which, among other things, stated that ‘gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation’. The court also referred to the principle of equality of women and men, as enshrined in the Constitution of Ukraine. All this allowed the court to justify its finding that the provision of the Law of Ukraine ‘On Social and Legal Protection of Servicemen and Their Family Members’ was contrary to international treaties and the Constitution of Ukraine, and therefore should not be applied.⁵⁷

⁵³ Беляневич О. А. Про застосування практики Європейського суду з прав людини / Беляневич О. А. // Вісник КНУ ім. Тараса Шевченка. Сер. Юридичні науки. – 2009. – № 81. – С. 32-38 // О. А. Belyanevych. Application of case-law of the European court of human rights / Belyanevych O. A. // Bulletin of the Taras Shevchenko Kyiv National University. ‘Legal science’ series, 2009, No. 81, pp. 32–38.

⁵⁴ Юдківська Г. Ю. Еволюція ролі Європейського суду на шляху до процедуралізації фундаментальних прав / Юдківська Г. Ю. // Вісник Верховного Суду України. – 2011. – № 7. – С. 19-22 // Н. Yu. Yudkivska. Evolving role of the European Court towards procedural consolidation of fundamental rights / Н. Yu. Yudkivska // Bulletin of the Supreme Court of Ukraine. 2011, No. 7, pp. 19–22.

⁵⁵ Постанова Пленуму Верховного Суду України від 18.12.2009 р. № 14 «Про судові рішення у цивільній справі» // Вісник Верховного Суду України. – 2010. – № 1. – Стр. 4 // Resolution of the Plenary Assembly of the Supreme Court of Ukraine ‘On judgments in civil cases’ No. 14 of 18/12/2009. Bulletin of the Supreme Court of Ukraine, 2010, No.1, p. 1.

⁵⁶ See the review of ECtHR judgments in the cases related to women’s rights in the General Section of this Tutorial. See also Судове вирішення справ у спорах, пов’язаних із гендерною дискримінацією: збірка кращих практик / Упорядники: Олена Уварова, Марія Ясеновська. – Харків, 2016. – 184 с. // Adjudication in cases of gender-based discrimination: A handbook of best practices / Compiled by: Olena Uvarova, Maria Yasenovska. – Kharkiv, Private Entrepreneur O. V. Brovin, 2016, 184 p.

⁵⁷ <http://www.reyestr.court.gov.ua/Review/52810098>.

In regards to judgments of the Court of Justice of the European Union, more attention should be paid to them within Ukraine, given this country's European integration aspirations. The Association Agreement between Ukraine, of the one part, the European Union, its Member States, and European Atomic Energy Community, of the other part (the Law of Ukraine on Ratification No. 1678-VII⁵⁸ of 16/09/2014), prescribes, among other things, that the Parties shall strengthen their dialogue and cooperation on promoting gender equality and non-discrimination (Article 419). The EU makes this task easier by providing a number of standards, models for governing the relevant spheres of relations, and best practices. Ukraine can use the experience already accumulated by the European States, in order to avoid any mistakes made by them.

It should be noted that EU Directives⁵⁹ are quite generic in their nature. Therefore, it is important for Ukraine to give due regard to the fact that any significant development or actual implementation of EU Directives takes place in the case-law of the Court of Justice. Ukraine should embrace both the legal positions and the approach that implies application by merits, rather than formal, of the Directives in such case-law. Moreover, the same case-law of the Court of Justice⁶⁰ demonstrates the importance of maintaining a reasonable balance in the pursuit of women's rights, progress towards gender equality, so that gender equality would not be substituted with a paternalistic approach to women. Judges and public prosecutors may use legal positions of the Court of Justice to strengthen their arguments.⁶¹

See the following subsection on the importance of the CEDAW practice for the domestic legal system

2.3. UN Convention on the Elimination of All Forms of Discrimination Against Women: status and practical application in Ukraine. The Convention on the Elimination of All Forms of Discrimination Against Women⁶² was adopted on December 18, 1979, and entered into force on September 3, 1981⁶³. The Ukrainian SSR signed the Convention on July 17, 1980, and ratified it on March 12, 1981. Under Article 6 of the Law of Ukraine 'On Succession of Ukraine' No. 1543-XII⁶⁴ of 12/09/1991, Ukraine confirmed its obligations under international treaties executed by the Ukrainian SSR prior to the proclamation of independence of Ukraine.

The Convention, like other ratified international treaties, forms a part of Ukraine's domestic legislation, is legally binding, and can be used by participants in trials to support their position, and by courts – to reason their judgements. The fact that the respective area of relations is governed by the domestic legislation (laws and regulations) cannot be the basis for preventing court (and public prosecutors) from referring to the provisions of the Convention. Its significance during the proceedings should manifest in the following:

⁵⁸ http://zakon4.rada.gov.ua/laws/show/984_011.

⁵⁹ See the list of the key EU directives in the field of gender equality in Annex 8.

⁶⁰ Судове вирішення справ у спорах, пов'язаних із гендерною дискримінацією: збірка кращих практик / Упорядники: Олена Уварова, Марія Ясеновська. – Харків: ФОП Бровін О. В., 2016. – С. 31, 37, 43, 46, 83 // Adjudication in cases of gender-based discrimination: A handbook of best practices / Compiled by: Olena Uvarova, Maria Yasenovska. – Kharkiv, Private Entrepreneur O. V. Brovin, 2016, pp. 31, 37, 43, 46, 83.

⁶¹ See Рівність за ознакою статі в економічній сфері: зобов'язання України перед ЄС (ключові Директиви ЄС щодо забезпечення гендерного балансу на ринку праці та в професійній діяльності, їх розвиток у практиці Суду Справедливості) / Упорядник О.О. Уварова. – Х.: Видавництво «НТМТ», 2015. – 150 с. // Gender equality in economic field: Ukraine's obligations before EU (key EU Directives on gender balance in the labour market and professional activities, their development in the case-law of the Court of Justice) / Compiled by O.O. Uvarova. Kharkiv, NTMT Publishing House, 2015, 150 p.

⁶² http://zakon0.rada.gov.ua/laws/show/995_207.

⁶³ See the status of the Convention at http://zakon0.rada.gov.ua/laws/show/995_i41.

⁶⁴ <http://zakon0.rada.gov.ua/laws/main/1543-12>.

domestic law must be interpreted in light of the Convention; where any rule allows for differences in interpretations, and the judgement should be interpreted in a manner that is most compliant with the Convention or other international human rights standards;

- provisions of the Convention may be used as additional support for the prosecution's position in the case, as represented by a public prosecutor, or as reasoning in judgments, even if domestic law fully governs the situation;
- provisions of the Convention may serve as the direct basis for a judgment in the event of the 'silence of the legislator';
- where acts of domestic legislation contradict the Convention, the Convention shall apply.

The key provisions of the Convention are described in the General Section of the Tutorial (see subsection 1.2 of the General Section of the Tutorial).

In addition to the text of the Convention, the State, as represented by its bodies, should take into account the CEDAW recommendations following the consideration of periodic reports on the implementation of the Convention submitted by Ukraine. Ukraine's initial report was considered by the Committee in 1983. At the time of writing, the eighth periodic report of Ukraine was being considered by the Committee.

The question regarding the use of the text of the Convention in any particular proceedings was raised by the CEDAW members during consideration of Ukraine's Initial report (para. 160⁶⁵), and since then, this aspect has always been of interest for CEDAW. Moreover, CEDAW has repeatedly drawn Ukraine's attention to the need for trainings of judges and law enforcement officials (see, in particular, para. 296 of the Concluding CEDAW comments following consideration of the Third periodic report⁶⁶ in 1996). Further, they also expressed concern at the lack of knowledge by representatives of the judiciary and law enforcement agencies, as well as in women themselves regarding the Convention and its applicability (para. 277 of the Concluding CEDAW comments following consideration of the Combined fourth and fifth periodic reports in 2002; para. 14 of the Concluding CEDAW comments following consideration of the Combined sixth and seventh periodic reports). CEDAW recommends the introduction of education and training programmes on the Convention, in particular for judges, lawyers and law enforcement personnel, as well as information campaigns targeted at women so that they can avail themselves of legal remedies when their rights under the Convention are violated. The Committee invited Ukraine to provide, in its next report, information about complaints filed in courts based on the Convention, including any court decisions that refer to the Convention (para. 278 of the Concluding CEDAW comments following consideration of the Combined fourth and fifth periodic reports), as well as complaints filed in the Office of the Prosecutor and Ombudsman's office (para. 15 of the Concluding CEDAW comments following consideration of the Combined sixth and seventh periodic reports).

As of November 2016 the Unified State Register of Adjudications contains only 29 judgements that mention the Convention, which, of course, is extremely low. In most cases, these references are purely formal and have no influence on the outcome of the proceedings or on the validity of the court's position. The majority of the judgments fail to specify which article of the Convention is applicable in any pending case and why. Still certain positive examples exist where references are made to the provisions of the Convention in the proceedings involving cases of gender equality.

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[http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f39%2f45%5bVOL.I%5d\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f39%2f45%5bVOL.I%5d(SUPP)&Lang=en)

⁶⁶ [http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f51%2f38\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f51%2f38(SUPP)&Lang=en)

For instance, in a ruling by the Kyiv Administrative Court of Appeal, No. 875/36/15, 30/09/2015, there was a case concerning the election dispute on the application of the so-called ‘gender quota’⁶⁷. Unfortunately, this judgment by the court of first instance was repealed by the court of appeal⁶⁸. In this ruling, the court referred to the relevant provisions of the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, European Social Charter, EU Directives. The case was based on the administrative claim filed by the Kyiv City Organisation of the political party Samopomich Union against the Central Electoral Commission on invalidation and revocation of paragraph 4 of the CEC’s clarifications regarding the application of certain provisions of the Law on local elections⁶⁹ during registration of candidates. The said paragraph of the clarifications cited a provision of Article 4.3 of the Law on local elections concerning the requirement for representation of persons of the same gender in the electoral lists of candidates for deputies of local councils in multi-seat constituencies at least at 30 percent of the total number of candidates in the electoral list (the principle of gender equality), after which it pointed out that this provision was missing from the grounds, as stipulated by Article 46.1 of the Law on local elections, for refusal to register a candidate for deputy, candidate for the position of a village, settlement, or city council head, starosta of a village or settlement, who were nominated in the local elections. Given this, the CEC clarified that the refusal to register, under Article 46.1.1 of the Law on local elections, candidates in a multi-seat constituency for the election of deputies on the grounds of non-compliance with the provisions of the Law concerning the representation of persons of the same gender in the electoral lists of candidates for deputies of local councils in multi-member constituencies was not allowed.

In considering the claim, the court proceeded on the basis that the principle of equal suffrage constituted a key principle in holding elections. The gender quota requirement for representative bodies, as set forth in Article 4.3 on local elections, represents an important element in ensuring equal rights and opportunities for women and men. The board of judges also pointed out that, under Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women, States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.⁷⁰

Here is another positive example of a court referring to the Convention to support its position. Citizen H. filed a lawsuit for illegal dismissal, reinstatement at work, and payment of average wages during his forced absence from work. As established during the proceedings, on 20/01/2010, his wife was taken to hospital and diagnosed with extensive dermatitis. On that day, Citizen H. was absent from work, because there was no one that he could leave his two underage children with. On 20/01/2010, he applied for leave to attend to the children, since his wife was in the hospital, or, if granting such leave was impossible, for the annual 2009-2010 leave to be granted urgently. When considering the case, the court, among other things, took into account the provisions of the UN Convention on the Elimination of All Forms of Discrimination Against Women, and allowed the claim (Lviv Oblast Court of Appeal, No. 22-ц-560/11⁷¹,

⁶⁷ Судове вирішення справ у спорах, пов’язаних із гендерною дискримінацією: збірка кращих практик / Упорядники: Олена Уварова, Марія Ясенівська. – Харків: ФОП Бровін О. В., 2016. – С. 97 // Adjudication in cases of gender-based discrimination: A handbook of best practices / Compiled by: Olena Uvarova, Maria Yasenovska. – Kharkiv, Private Entrepreneur O. V. Brovin, 2016, p. 97.

⁶⁸ The High Administrative Court of Ukraine subsequently supported the position, according to which a failure by a political party to comply with a ‘gender quota’ in the local elections should not entail negative consequences in the form of refusal to register its candidates (see judgments No. 875/37/15 of 02/10/2015 // <http://www.reyestr.court.gov.ua/Review/52079317>; No. 875/36/15 of 04/10/2015 // <http://www.reyestr.court.gov.ua/Review/52079370>).

⁶⁹ <http://zakon5.rada.gov.ua/laws/show/595-19>.

⁷⁰ <http://www.reyestr.court.gov.ua/Review/51659827>.

⁷¹ <http://www.reyestr.court.gov.ua/Review/18565537>

31/01/2011). At the same time, it should be noted that the court's judgment would have been more convincing if it had referred to specific provisions of the Convention, in particular, Article 5 under which States Parties shall take all appropriate measures to ensure the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases, as well as Article 16 of the Convention, under which States Parties shall ensure, on a basis of equality of men and women, the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children. Accordingly, despite the fact that the applicable laws of Ukraine (Article 25 of the Law of Ukraine 'On Vacations' No. 504/96-VR⁷² of 15/11/1996) oblige employers to grant leave without pay at the request of employees only where the mother of two or more children under the age of 15 years is involved (men have the same right only if raising children without mother), the court, citing the joint responsibility of parents for their children and their similar rights and obligations as parents, could have substantiated its opinion that these legal provisions should extend to men as well.

In another case, a reference to the Convention allowed the court to put correct emphasis in the reasoning part of its judgment. The circumstances of the case were as follows. On July 19, 2016, the petitioner filed a lawsuit with the Kyivsky District Court in Poltava for dissolution of marriage and alimony. She submitted that, after the birth of her daughter, her husband changed his attitude to her, became aggressive, constantly throws obscenities at her, threatening violence, beating her, and causing her injuries. She could not stand any more bullying from the respondent and left him. Recently, she started receiving threats from him that he would blow up her and her parents with a grenade. The court allowed the petition, citing the following grounds. Article 24.1 of the Family Code of Ukraine stipulates that marriage is based on the free consent of a woman and a man. Forcing a woman and a man into marriage may not be allowed. On July 12, 1995, the Verkhovna Rada of Ukraine adopted the Resolution 'On recommendations to participants of parliamentary hearings on implementation in Ukraine of the UN Convention on the Elimination of All Forms of Discrimination Against Women', which explicitly stated the need to create state structures for the provision of skilled psychological and counselling services to women victims of violence and neglect in the family. The court emphasised that domestic violence committed by the respondent against the petitioner was unacceptable and constituted one of the main grounds for dissolution of marriage, since any continued stay with the respondent in a registered marriage would put the petitioner's life and health under threat (see judgment of the Kyivsky District Court in Poltava, No. 552/3769/16-ц⁷³, 16/08/20016).

However, despite this definitely positive fact of reference by the court to the State's obligations in terms of the implementation of the Convention, its argument appears to be incomplete. Besides, it should be noted that women often refer to domestic violence as grounds for divorce. Courts allow such claims, but fail to respond to facts of domestic violence. Thus, in one case of dissolution of marriage, the petitioner informed the court of the instances of physical, psychological, and economic violence against her: the respondent had forced her to have an abortion, beat her, which resulted in stillbirth in the petitioner's previous pregnancy, and failed to provide funds for her treatment, etc. The court restricted itself to allowing the petition for dissolution of marriage, without considering the issue of bringing the respondent to justice for violence⁷⁴. In yet another case, a woman cited sexual harassment of her daughter from her first marriage by her husband as grounds for dissolution of marriage. The court allowed the petition for dissolution of marriage, but ignored the fact that sexual harassment of a minor had been stated in court⁷⁵ (despite having a procedural opportunity to deliver a special ruling – under Article 211 of CiPCU, the

⁷² <http://zakon5.rada.gov.ua/laws/show/504/96-%D0%B2%D1%80>.

⁷³ <http://www.reyestr.court.gov.ua/Review/59772622>.

⁷⁴ <http://reyestr.court.gov.ua/Review/38279850>.

⁷⁵ <http://www.reyestr.court.gov.ua/Review/1317273>.

court, upon discovery, during the proceedings in the case, of violation of law and having established the causes and conditions that contributed to the commission of such violation, may adopt a special ruling and forward it to the relevant persons or authorities in order to take measures to eliminate such causes and conditions. The court that delivered a special ruling must be advised, within one month from the date of receipt of such special ruling, of the measures taken). Such situations are not rare.⁷⁶

At the same time, it should be noted that the mere reference in a judgment to an international human rights instrument does not automatically imply correct understanding of the standards contained in such instrument or its correct application to the specific circumstances of the case. Sometimes such references may have the opposite effect. Thus, despite references being made in some judgments to the UN Convention on the Elimination of All Forms of Discrimination Against Women, such references often turn out to be extraneous, or even incorrect or irrelevant to the circumstances of the case. This makes the references to international links look artificial. At first glance, this situation does not seem to be harmful. Moreover, one could say that by merely mentioning such international instrument as the UN Convention on the Elimination of All Forms of Discrimination Against Women in the text of its judgment, the court generates a positive attitude toward the justice administration system, demonstrating its respect for the principle of gender equality. However, this goal cannot be attained if, in the eyes of participants in the trial, the said principle appears only as a formula that does not affect the substantive judgment and whose mentioned is merely becoming a part of a certain established ritual or a nod to fashion.

Furthermore, under Articles 1 and 2 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women of September 7, 2000, CEDAW is authorised to receive and consider individual complaints concerning violations of rights guaranteed in the Convention. Ukraine has recognised the CEDAW jurisdiction.⁷⁷ Legal positions expressed by the CEDAW in its findings are not binding on Ukraine and are of purely advisory nature. However, they should be taken into account by law-enforcing officials and judicial authorities due to their professional credibility. Such findings are rightly regarded as acts of ‘soft law’.

Regretfully, the Committee has yet to consider any complaint concerning Ukraine, which may also be regarded as evidence of very low awareness on behalf of the Ukrainian population of this opportunity. However, this does not mean that CEDAW’s case-law is of no interest for the national judicial system, as well as for law enforcement, human rights organisations, experts or women themselves. CEDAW’s findings in the cases that it considers in respect of other states may serve as a persuasive (authoritative) source of law, reference to which, although insufficient to evidence the binding nature of any rules, may offer additional legal arguments. Their application is optional and is exercised at the discretion of a law-enforcing entity.⁷⁸ For example, the Committee’s findings in the case of Svetlana Medvedeva vs the Russian Federation of February 25, 2016 are of interest to Ukraine.⁷⁹ The Committee considered the ban

⁷⁶ <http://www.reyestr.court.gov.ua/Review/54494958>.

⁷⁷ Закон України «Про ратифікацію Факультативного протоколу до Конвенції про ліквідацію усіх форм дискримінації щодо жінок» від 5 червня 2003 року № 946-IV // Офіційний вісник України. – 2003. – № 26. – Стор. 41. – Ст. 1271 // The Law of Ukraine No. 946-IV ‘On Ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women’ of June 5, 2003. Official Journal of Ukraine, 2003, No. 26, p. 1271.

⁷⁸ See Поняття і види джерел права // Теорія держави і права: підруч. для студ. юрид. вищ. навч. закл. [текст] / За ред. О. В. Петришина. – Х.: Право, 2014. – С. 214 // Concept and types of sources of law / Theory of state and law. A textbook for students of higher legal education institutions [text]. Ed. by O. V. Petryshyn. Kharkiv, Pravo, 2014, p. 214.

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http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2f63%2fD%2f60%2f2013&Lang=en. Переклад українською: Судове вирішення справ у спорах, пов’язаних із гендерною дискримінацією: збірка кращих практик / Упорядники: Олена Уварова, Марія Ясенівська. – Харків: ФОП Бровін О. В., 2016. – С. 29-31 // Ukrainian translation in: Adjudication in cases of gender-based discrimination: A handbook of best practices / Compiled by: Olena Uvarova, Maria Yasenivska. – Kharkiv, Private Entrepreneur O. V. Brovin, 2016, pp. 29–31.

imposed by the Labour Code of the Russian Federation on certain types of arduous and/or dangerous work for women. Ukraine's Labour Code also contains a similar rule. The relevant list includes more than 500 occupations prohibited to women. The Committee acknowledged the fact of discrimination and urged States to review these provisions of domestic legislation. In its communication, the Committee, in particular, stated:

[The Committee considers that the blanket] prohibition [that] applies to all women, regardless of their age, marital status, ability or desire to have children <...> constituted a violation of her rights to have the same employment opportunities and to freely choose her profession and employment. <...> [The relevant legislation] reflects persistent stereotypes concerning the roles and responsibilities of women and men in the family and in society that have the effect of perpetuating traditional roles for women as mothers and wives and undermining women's social status and their educational and career prospects. <...> [The State party is required] to create safe working conditions in all industries, rather than preventing women from being employed in certain areas and leaving the creation of safe working conditions to the discretion of employers. <...> [Moreover,] the State party is required to provide equal protective measures to safeguard the reproductive functions of both men and women. <...> [T]he denial of employment puts the author in a position that she cannot earn a living through the profession for which she was educated. <...> [The Committee makes the following recommendation:] grant the author appropriate reparation... and facilitate her access to jobs for which she is qualified.

Special attention should also be paid to the General recommendations issued by CEDAW: interpretations of the provisions of the Convention, which are contained in the General recommendations (comments) by CEDAW, are of advisory nature. However, these interpretations should be taken into account by law enforcers because of the recognised professional credibility of international experts – members of respective institutions – and the respect for their position.⁸⁰ Please note that General recommendation No. 33 was specifically dedicated to the issues of women's access to justice.

Part III. Support for Gender Equality in Ukraine

This Part contains an overview of the legislative acts of Ukraine which are particularly important for women's rights and gender equality, such as the Laws of Ukraine 'On Ensuring Equal Rights and Opportunities for Women and Men', 'On Principles of Prevention and Combating Discrimination in Ukraine', 'On Prevention of Domestic Violence', 'On Combating Trafficking in Human Beings', as well as of certain anti-discrimination provisions in other legislative acts. Special attention is given to the proceedings in those categories of cases which are the most problematic from the women's rights viewpoint.

3.1. Legislative strengthening of the gender equality principle. At the constitutional level, it is established that 'citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics' (Article 24.1). A separate provision is aimed at ensuring equal rights of women and men (Article 24.2).⁸¹

If a judge, when considering a case, has doubts as to the compliance of a certain provision of law with the principle of equality, including gender equality, this question should be referred to the CCU. To this end, the judge suspends the trial and applies to the Supreme Court of Ukraine for petitioning the CCU in

⁸⁰ The full list of CEDAW's general recommendations is available at:

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.

⁸¹ At present, draft Section II of the Constitution has been developed in Ukraine, which dedicates Articles 41–43 to the issues of equality, incl. that of women and men (<http://constitution.gov.ua/publications/item/id/51>).

respect of the constitutionality of a law or any other legal act. The relevant procedure is set out in the CiPCU (Article 8.3)⁸² and the CAPU (Article 9.5).⁸³ A public prosecutor, as a party to judicial proceedings, may apply to the court for the need to petition the CCU in order to determine compliance of any given legislative provision, applicable to the pending case, with the constitutional principle of equality.⁸⁴

Furthermore, in certain instances, a relevant legislative provision may come in direct conflict with the Constitution of Ukraine due to the violation of the principle of equality. For example, the Law of Ukraine ‘On Public Prosecutor’s Office’ No. 1789-XII⁸⁵ of 05/11/1991 entitled women to the inclusion of a paid 3-year childcare leave into the length of service granting the right to pension. Men were not entitled to a similar right (Article 50-1.6)⁸⁶. In order to waive the application of this provision, the court did not have to wait for a ruling by the CCU: it would have been sufficient to mention the fact that this provision contradicts the principle of equality of women and men, as enshrined in the Constitution of Ukraine and developed in other legislative acts. The court could have further referred to international treaties ratified by Ukraine, as well as to findings of international institutions that describe and elaborate the principle of equality and non-discrimination. A positive example of such adjudication is the judgment delivered by the Uzhhorod District Court in the Zakarpattia Oblast No. 308/14422/13-a⁸⁷ of 18/11/2013, in which the court noted that:

there is a deterioration in the situation of males compared to females in the application of the provisions of the Law on the Public Prosecutor’s office... which is contrary to the requirements of Article 20 of the Law of Ukraine ‘On Ensuring Equal Rights and Opportunities for Women and Men’, Articles 19 and 24 of the Constitution of Ukraine and provisions of international law, in particular Article 1, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which have been ratified by Ukraine and provide for the prohibition of gender-based discrimination in the enjoyment by a person of any statutory right.

The principle of equality is also enshrined as a fundamental principle of court proceedings by procedural codes of Ukraine. Thus, under Article 5 of CiPCU⁸⁸, the court is obliged to respect the honour and dignity of all participants in civil process and to administer justice on the basis of their equality before the law and court irrespective of gender and other characteristics. This is reflected not only in the proper application of the provisions of national and international law to a specific case, but also in the requirements imposed on the treatment by a judge of participants in the case, or on the model of judge’s behaviour in court. For example, using masculine nouns in the Ukrainian official style, including speech, to refer to both male

⁸² <http://zakon2.rada.gov.ua/laws/show/1618-15>.

⁸³ <http://zakon2.rada.gov.ua/laws/show/2747-15>.

⁸⁴ Unfortunately, it should be noted that, in practice, judges rarely petition the Constitutional Court in the event of doubts in the compliance of a certain law provision with the Constitution of Ukraine, which thus cannot be relied upon when hearing cases of discrimination on the grounds of gender or other grounds. According to a survey conducted in 2015-2016, only 2 of 62 judges mentioned any previous experience of such petitions. The excessively long time of proceedings at the Constitutional Court, unacceptable because during that period hearings are suspended in the cases that prompt the question of constitutionality, is cited by the judges as the main reason for absence of petitions to the Constitutional Court. // *Захист від гендерної дискримінації в судових рішеннях українських судів: звіт за результатами моніторингу / Підготовлено: Олена Уварова, Марія Ясеновська. – Харків: ФОП Бровін О. В., 2016. – 182 с. // Protection from Gender Discrimination in Judgments by Ukrainian Courts: Monitoring Report / Prepared by: Olena Uvarova, Maria Yasenovska. – Kharkiv, Private Entrepreneur O. V. Brovin, 2016, p. 182.*

⁸⁵ <http://zakon5.rada.gov.ua/laws/show/1789-12/print1452878547146820>.

⁸⁶ The Law of Ukraine ‘On Public Prosecutor’s Office’ No. 1697-VII of 14/10/2014 entitled women to the inclusion of a paid 3-year childcare leave into the length of service granting the right to pension, where such leave is granted both to women and men (Article 86.6).

⁸⁷ <http://reyestr.court.gov.ua/Review/35420719>.

⁸⁸ <http://zakon5.rada.gov.ua/laws/show/1618-15/page>.

and female persons is widely spread. For example, most judges, even when addressing women, tend to use masculine versions of the words ‘petitioner’ or ‘respondent’, instead of their feminine versions. Moreover, using an openly condescending tone towards women is also deep-rooted. This is evident in such diminutive forms of address as ‘missie’, ‘little lady’, etc. This is unacceptable and discriminatory. The use of such words may be regarded as a violation of Article 5 of CiPCU concerning the respect for the honour and dignity of all participants in civil process and administration of justice on the basis of their equality before the law and court irrespective of gender. The general trend in democratic societies implies the transition, if possible, to gender-neutral or gender-sensitive language. First of all, statements that reinforce gender stereotypes in communication or public consciousness should be avoided such as men are excellent leaders and women are excellent subordinates. Both noun genders should also be widely applied by using gender-symmetrical forms of address for groups of people of different sexes: dear participants, ladies and gentlemen. Use of feminine endings in nouns that have them, or at least of the corresponding endings in verbs would be desirable. Caution should be exercised regarding any generalisations about male and female roles in society.⁸⁹

Equality in procedural rights is guaranteed by Article 10 of CPCU⁹⁰. The ruling by the Frankivskiy District Court in Lviv No. 465/2893/15-к⁹¹ of 18/05/2015 is an example of a judgment where the court could have referred to Article 10 of CPCU to argue for its position more convincingly. The essence of the case had to do with a complaint filed by the victim against an investigator’s decision to close criminal proceedings in a criminal offence under Article 125.1 of CrCU (deliberate minor bodily injury). In the complainant’s view, the investigator formed his opinion solely on the basis of clarifications provided by the accused, ignoring such evidence as an expert opinion that established injuries inflicted to her. The victim referred in her complaint to the Convention on the Elimination of All Forms of Discrimination Against Women, arguing that, in a situation where both her testimony and the testimony of the accused were available, the investigator gave priority to the latter only because the accused is a man. The court found the complaint valid, since the investigator restricted the victim’s right to prove her charges before the investigation according to the established procedural order. The proceedings were referred to a public prosecutor for additional pretrial investigation.

The CAPU⁹² also declares: ‘All participants in administrative process are equal before the law and the court. There shall be no privileges or restrictions on the rights of participants in administrative process based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics’ (Articles 10.1 and 10.2); ‘In the cases concerning appeals against decisions, actions or omissions by power entities, administrative courts shall examine whether they were adopted (committed) in compliance with the principle of equality before the law, preventing all forms of discrimination’ (Article 2.3.7). Only seven judgments refer to this statutory provision, and in a purely formal (declarative) manner. A ruling by the High Administrative Court of Ukraine No. K/9991/71038/12⁹³ of 13/06/2013 may be cited as an exception. The case concerned a claim submitted by a woman – a biological mother of four children and a mother to an adopted child – for a pension to be granted to her as a mother of many children. Under Article 17 of the Law of Ukraine ‘On

⁸⁹ Основи теорії гендеру: Навчальний посібник. – К.: “К.І.С.”, 2004. – 536 с. / Basics of gender theory: A textbook. Kyiv, KIS, 2004, 536 p. As a negative example, a judgment by the Obolon District Court, No. 2756/2872/14, 10/07/2014, could be given. This judgment concerned the refusal to employ a pregnant employee after passing the test and numerous violations during the execution of an employment contract. In its judgment, the court refers to her as ‘pregnant plaintiff’ (in masculine gender).

⁹⁰ <http://zakon5.rada.gov.ua/laws/show/4651-17>.

⁹¹ <http://www.reyestr.court.gov.ua/Review/44231198>.

⁹² <http://zakon4.rada.gov.ua/laws/show/2747-15>

⁹³ <http://www.reyestr.court.gov.ua/Review/31894918>.

Provision of Pensions' No. 1788-XII⁹⁴ of 05/11/1991, women who gave birth to five or more children and raised them up to eight years of age, and mothers of children disabled since childhood, who raised them up to this age, shall be entitled to a retirement pension upon attaining 50 years of age and with at least 15 years' length of service, with the attendance to children included into such service.⁹⁵ The court of first instance proceeded from the fact, and the appellate court concurred, that this article imposed the requirement to have five children on persons applying for pension as mothers of many children. Since the petitioner gave birth only to four children, while the fifth child was adopted, she was not entitled to a retirement pension as the mother of many children. The High Administrative Court of Ukraine pointed out that, when considering this case, the courts had failed to check the decision of the Pension Fund to deny pension for compliance with the criteria established by Article 2.3.7 of CAPU (conformity with the principle of equality and non-discrimination), in particular, the courts had failed to compare the legal status of biological and foster parents.

On the whole, the Ukrainian legislation is described as non-discriminatory. Certain exceptions may be found in labour laws (as mentioned above, see also subsection 3.3). In addition, laws on preventing and combating violence in the family and gender-based violence also currently require improvements. However, the problem has largely to do with the law-enforcing practice: disregard of relevant provisions, purely formal reference to them, as well as a gender-neutral approach adopted in the proceedings involving women's rights result in violations of the right to equal access to justice. The role of judges and public prosecutors in ensuring the best practice in the application of anti-discrimination laws of Ukraine is becoming crucial.

3.2. Anti-discrimination laws of Ukraine. Dedicated anti-discrimination laws exist in Ukraine:⁹⁶ the laws of Ukraine on equal rights, on preventing discrimination,⁹⁷ with an important role in the protection of women's rights also played by the laws on domestic violence⁹⁸ and human trafficking. It is important that judges and public prosecutors should be aware of the provisions of these laws, interpret and apply them against the background of international and regional standards of women's rights.

The Law on Equal Rights came into force on 01/01/2006. The Law defines a few key concepts, to which judges and public prosecutors should refer in their practical activities (see Annex 8). They refer to concepts including gender-based discrimination, affirmative actions and sexual harassment. On the whole, the Law is rightly regarded by experts as declarative and lacking efficient tools and mechanisms to combat gender discrimination. Those provisions of Law that still have some practical value include the following:

- mandatory gender-based legal review of legislation (Article 4). Unfortunately, in practice, courts sometimes reject references made by a party in the proceedings to the discriminatory nature of statutory provisions, basing such rejection on the fact that the relevant provisions have undergone anti-discrimination or gender-based review and, therefore, are presumed to be compliant with the principle of non-discrimination;⁹⁹
- mandatory reflection in state statistics of women and men's status indicators in all aspects of public life; these statistics should become an integral part of the state statistical reporting (Article 5). Such statistical information is actually being collected under a number of

⁹⁴ <http://zakon4.rada.gov.ua/laws/show/1788-12>.

⁹⁵ By the way, the same rule provides that a person may only qualify for a retirement pension where raising a disabled child is involved and in the absence of mother. Such person must be at least 55 years of age and have 20 years' length of service. This rule may be regarded as discriminatory against men.

⁹⁶ <http://zakon4.rada.gov.ua/laws/show/2866-15>.

⁹⁷ <http://zakon4.rada.gov.ua/laws/show/5207-17>.

⁹⁸ <http://zakon4.rada.gov.ua/laws/show/2789-14>.

⁹⁹ <http://www.reyestr.court.gov.ua/Review/40511798>.

indicators (e.g. population, economic activity, employment and unemployment, average wages by economic activity types, etc.)¹⁰⁰ and may be used in court to prove the relevant position (see subsection 3.3 ‘Evidentiary Issues’ of the General Section of the Tutorial). However, the available statistics are very limited. For example, no statistics exist on the number of lawsuits filed by women and men, respectively;

- when nominating candidates for people’s deputies of Ukraine in a multi-seat nationwide constituency, political parties and electoral blocs must provide representation of women and men in the relevant electoral lists. Compliance with this requirement is monitored by election commissions (Article 15). Since the Law failed to establish any specific rates of such representation, this standard remained a mere declaration. Following the 2014 parliamentary elections, the proportion of women in the Parliament is 11%. It is precisely the political participation indicator that puts Ukraine in a very weak position (although Ukraine ranks 26th in educational attainment according to Global Gender Gap Report 2016, it is only 107th in political empowerment among 144 countries);
- ban on offering female-only or male-only vacancies by employers in their job advertisements, by imposing various requirements that give preference to either gender and demanding information about the private lives or maternity plans of job applicants (Article 17). This is actually the only specific rule, also backed by the same ban in the Law on Employment and Law on Advertising, that gives governmental authorities the powers to monitor employers’ compliance with it. Moreover, in a few cases, job applicants have managed to successfully challenge the actions by employers who groundlessly included requirements as to the employee’s gender in their advertisements.¹⁰¹

The Law on Equal Rights also provides for an opportunity to appeal against gender-based discrimination, sexual harassment (Article 22) and entitlement to compensation for material and moral damages caused by gender-based discrimination or sexual harassment (Article 23). However, it fails to offer any special mechanisms, tools, or particular procedures, merely referring to the general appeal procedure provided for in procedural legislation and to the general procedure for compensation for damage, as established by the Civil Code of Ukraine, without giving any specifics. This is the reason for the low degree of practical application of the Law’s provisions.

Similar comments concerning the overall abstract and declarative nature and the lack of efficient mechanisms and tools of action in Ukraine’s legal system were rightly awarded to the ***Law on Combating Discrimination***¹⁰². This law gives definitions to such concepts as discrimination, indirect discrimination, direct discrimination, instigation to discrimination, affirmative actions, aiding and abetting in discrimination and harassment (see Annex 8). Similar to the Law on Equal Rights, the Law on Combating Discrimination guarantees the right to appeal against decisions, actions or omissions in matters of discrimination (Article 14), compensation for material and moral damages caused by discrimination (article 15), and also establishes civil, administrative and criminal liability for persons guilty of violating the laws on preventing and combating discrimination (Article 16). However, the Law merely provides references to general rules, without setting out any particulars associated with discrimination. This, in particular, explains the fact that the Law on Combating Discrimination has been mentioned only in 114 judicial acts since its adoption in 2012. All such references were made at the petitioners’ initiative – the

¹⁰⁰ <http://www.ukrstat.gov.ua/>.

¹⁰¹ See, for example, a ruling by the Lviv Administrative Court of Appeal, No. 4522/09/9104 of 12/10/2010 // <http://www.reyestr.court.gov.ua/Review/13101548>; a ruling by the Dnipropetrovsk Administrative Court of Appeal, No. 2a-13998/08/0470 of 10/03/2011 // <http://www.reyestr.court.gov.ua/Review/22435263> and others.

¹⁰² <http://zakon2.rada.gov.ua/laws/show/5207-17>

courts merely cited in their judgments the grounds for their demands, which included references to the Law. For the most part, these cases do not address the issue of gender equality.

*The Law on Domestic Violence*¹⁰³ defines basic concepts in this sphere of legal relations (see Annex 8), establishes the grounds for taking measures to prevent domestic violence (Article 4), governs powers of respective government authorities in the prevention of domestic violence, as well as provides for special steps to be taken to prevent domestic violence such as:

- an official warning for the inadmissibility of domestic violence, issued by authorised units of the National Police (Article 10); in the event of domestic violence committed by a person after receiving an official warning of inadmissibility of domestic violence, such person would be sent to a crisis centre to undergo a correctional programme, and a restraining order against such person may be issued in the cases stipulated by the Law;
- preventive registration of family members who committed domestic violence and their de-registration (Article 12);
- granting a restraining order, with the consent of a head of the relevant National Police unit and a public prosecutor (Article 13);
- collection of funds to keep victims of domestic violence in specialised institutions (Article 14).

Administrative legislation of Ukraine contains a special rule that establishes administrative liability for domestic violence, failure to comply with a restraining order or failure or to undergo a correctional programme. These actions are categorised under Article 173-2 of CUAO.¹⁰⁴ It stipulates, in particular, that commission of domestic violence, or failure to comply with a restraining order by a person against whom it was granted, or failure to undergo a correctional program by a person guilty of domestic violence, entails bringing such person through judicial procedures (Article 221 of CUAO), on the basis of a report compiled by the National Police (Article 255 of CUAO) to administrative liability in the form of community service from 30 to 40 hours or administrative detention up to 7 days. In the event that the person, already subjected to administrative penalty for any of the above violations within a year commits the acts provided for by Article 173-2 of CUAO again, the court, on the basis of a report compiled by the National Police, shall bring such person to administrative liability in the form of community service from 40 to 60 hours or administrative detention up to 15 days.

Criminal liability for acts of violence committed against a family member shall occur only where such acts constitute elements of a crime, e.g. deliberate or negligent infliction of minor, medium or grave bodily injury, rape, etc. CrCU provides no special elements of a crime in respect of acts associated with domestic violence.¹⁰⁵

Upon entry into force (on 20/11/2012) of the new Criminal Procedure Code of Ukraine, recording of data on criminal offences, offenders, and generation of official reports of crime in the Unified Register of Pretrial Investigations is carried out by public prosecutor's offices. Before November 20, 2012, these powers belonged to the Ministry of Internal Affairs of Ukraine. A relevant form provides separate fields to highlight information on the crimes associated with domestic violence, offenders, and victims.¹⁰⁶ The Prosecutor General's Office has initiated amendments to e-cards to include information on the relations

¹⁰³ <http://zakon4.rada.gov.ua/laws/show/2789-14>.

¹⁰⁴ <http://zakon0.rada.gov.ua/laws/show/80731-10>.

¹⁰⁵ <http://zakon4.rada.gov.ua/laws/show/2341-14>.

¹⁰⁶ Preventing and combating violence against women and domestic violence in Ukraine. recommended minimum common data categories required for collecting comprehensive data on cases of violence against women and domestic violence: conclusions of the inter-agency working group on data collection. Document based on the work of the Istanbul Convention : Inter-Agency Working Group on data collection on violence against women and domestic violence (Article 11 of the Istanbul Convention) facilitated by the CoE project. May 2016.

between offenders and victims (husband, wife, sexual partner, former spouse, former partner, relative). In addition, the possibility of improving the procedure for collection of information about victims, particularly in terms of inclusion of personal data is being discussed. In the above context, amendments are expected, primarily to Form 1-NS ‘Report of outcomes of activities by internal affairs units to prevent domestic violence’, which is to be expanded with quality indicators, such as age, gender, type of relations between victim and offender, type of violence (physical, sexual, psychological, economic), and repeated violence.¹⁰⁷

It should be noted that Ukraine is actively working to prepare for ratification of the Istanbul Convention (the Council of Europe Convention on preventing and combating violence against women and domestic violence).¹⁰⁸ Ukraine signed this important international legal instrument on November 7, 2011, becoming one of the 20 member States. However, the preparation for ratification of the Convention is still continuing.¹⁰⁹

Another problem is that, under the current CPCU, the vast majority of cases of domestic violence were referred to private prosecution. Thus, under Article 26.4 of CPCU, criminal proceedings in the form of private prosecution commence only on the basis of a victim’s statement. Withdrawal of charges by a victim constitutes absolute grounds for termination of criminal proceedings in the form of private prosecution. Private prosecution applies, in particular, to criminal offences such as deliberate minor or moderate bodily injury without aggravating circumstances, deliberate assault and battery or other acts of violence without aggravating circumstances, threat of murder without aggravating circumstances, rape without aggravating circumstances, compulsion to sexual intercourse, evasion of alimony to support children without aggravating circumstances, evasion of payment of funds to support disabled parents without aggravating circumstances, and other related issues. Moreover, deliberate moderate bodily injury with aggravating circumstances, battery and torture with aggravated circumstances, negligent grave or moderate bodily injury, repeated rape, violent satisfaction of sexual passion in an unnatural manner, etc., have also been included into criminal offences prosecuted in the form of private prosecution (Article 284 of CPCU), **where committed by a husband (wife) of the victim**. These provisions do not comply with the Istanbul Convention. In this regard, amendments to the laws of Ukraine are expected in the nearest future.¹¹⁰

On October 20, 2016, the draft Law of Ukraine ‘On Preventing and Combating Domestic Violence’¹¹¹ was submitted to the Parliament of Ukraine. It contains the definition of domestic violence, aimed at bringing Ukrainian laws in line with international standards. Furthermore, the Parliament is currently considering the draft Law ‘On Amendments to Certain Laws of Ukraine in Connection with Ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence’.¹¹² Judges and public prosecutors should monitor the relevant changes in the proposed

¹⁰⁷ Ibid.

¹⁰⁸ <http://www.coe.int/en/web/stop-violence-against-women-ukraine/vaw-dv-project>.

¹⁰⁹ In May 2015, ‘Compliance of Selected Ukrainian Laws With the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence’, an assessment report prepared and edited by Javier Truchero Cuevas and Ganna Khrystova for the Council of Europe with the contribution of Mykola Havroniuk, was published. An important part of the report includes assessment of Ukraine’s applicable laws for compliance with the Istanbul Convention and guidelines for further support of such compliance // <http://www.coe.int/uk/web/stop-violence-against-women-ukraine/publications/project>. Recommended reading.

¹¹⁰ AN ASSESSMENT REPORT prepared and edited by Javier Truchero Cuevas and Ganna Khrystova for the Council of Europe with the contribution of Mykola Havroniuk. PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN UKRAINE. GOOD INTERNATIONAL PRACTICES AND STANDARDS. A report prepared by Javier Truchero Cuevas and Ganna Khrystova for the Council of Europe.

¹¹¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60306.

¹¹² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648.

draft training programmes for judges and public prosecutors on preventing and combating gender-based violence accordingly (see Annex 3 and Annex 5, respectively).

Ukraine has also enacted *the Law on Human Trafficking*¹¹³. Among the principles on which the activities aimed at combating human trafficking are founded it lists the principle of non-discrimination of victims of trafficking based on race, colour of skin, political, religious or other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics. It is specifically stated that central executive authorities, under the powers established in the prescribed manner in the field of combating human trafficking, shall take measures designed to eradicate the preconditions for human trafficking, in particular, regarding the prevention of domestic violence and gender discrimination (Article 7.1.7(a) of the Law). CrCU establishes liability for trafficking in human beings (Article 149 of CrCU).

3.3. Categories of cases requiring particular attention. The very nature of certain types of relationships predetermines an increased risk of violations of women’s rights, including those related to the persisting public stereotypes of social roles played by men and women. They, in particular, include family or labour relationships, relations associated with certain types of social security or with women’s access to politics, including the use of gender quotas in the elections.. Furthermore, as evidenced by practice, certain types of offences and crimes are gender based: the victims in the vast majority of cases are women. This is referring specifically to domestic violence, rape, and human trafficking. In this subsection, we present summarised information on the cases that require special attention from the judges and public prosecutors, particularly in regards to the need to apply a gender-sensitive approach. We would like to emphasise that this subsection does not purport to provide an exhaustive list of such categories of cases or all necessary recommendations for their consideration. Its task is different: outline the range of common problems, provide certain guidelines that may be applied by analogy to other cases requiring a gender-sensitive approach.

Criminal cases¹¹⁴

Criminal offence	Specifics of proceedings
Criminal offences against life and health of a person (murder, incitement to suicide, infliction of bodily injury of varying severity, etc.) Section II of CrCU	A gender-sensitive approach on behalf of public prosecutors and judges is particularly required in the instances where domestic violence results in crimes against life and health. Public prosecutors and judges must pay attention to the nature of the relationship between the victim and the defendant, whether any instances of domestic violence were previously registered, etc. A special category comprises the cases where the offence is committed by a woman against a man who committed violence against her. Circumstances that point to the violence committed against the female defendant by the male victim should be taken into account (administrative reports under Article 173-2 of CUAO, unreported appeals to the National Police, testimonies, medical reports, etc.). Besides, upon review of judgments, several cases were found where the accused included women who killed their husbands, ex-husbands or boyfriends for raping them. Murders were committed in the heat of passion and, as a rule, instances of rape and violence occurred repeatedly prior to murder. Despite this, court disregard these circumstances and categorise such crimes under Article 115 of CrCU (murder), rather than under Article 116 of CrCU (murder committed in the heat of passion). When considering cases of crimes associated with domestic violence and categorised as minor or medium gravity offences, courts predominantly discharge the defendants

¹¹³ <http://zakon0.rada.gov.ua/laws/show/3739-17>.

¹¹⁴ The table relies on the analysis of judgments, carried out in 2015-2016 by Women’s Prospects Centre, a civil society organisation, to define obstacles faced by women in access to justice and the issues associated with application of international laws, case-law of the European Court of Human Rights, and anti-discriminatory laws of Ukraine. In all these categories of cases, pre-trial investigation of criminal offences is carried out by the National Police investigators.

	<p>on probation, by applying Article 75 of CrCU ('soft' sentences). Courts rarely issue special rulings intended to draw the attention of social services or internal affairs units to families, prevent further any domestic violence or even more serious crimes, protect victims' rights.¹¹⁵</p>
<p>Trafficking in human beings and other illegal transactions in respect of a human being Article 149 of CrCU</p>	<p>Research conducted in Ukraine shows that, in 95 per cent of cases related to human trafficking, victims are women.¹¹⁶</p> <p>Officers of the National Police mention difficulties in coordinating their work with public prosecutor's offices, say that public prosecutor's offices often tend to recategorise crimes under Article 149 of CrCU into those under Article 303 (trading in prostitution or engaging a person into prostitution), since the first category is much harder to prove and, therefore, has less favourable judicial prospects. This practice should be regarded as improper.</p> <p>A common problem during the investigation of and legal proceedings in this category of cases is that victims often refuse to accept the status of victims. In these instances, they are granted the status of witnesses (Article 55.7). Interests of the investigation are thereby observed, however, victims/witnesses lose the right to claim damages, since only victims are entitled to this. Public prosecutors should explain to victims the benefits they would have if they were recognised as victims, rather than witnesses.</p> <p>The reluctance of victims to testify against traffickers should be noted as well. The reasons include heavy emotional state, embarrassment when testifying in court, mistrust of law enforcement officers, bias against victims on behalf of officials and general public. This is due to the widespread social stereotype about conscious employment in the sex industry by the majority of such persons. Besides, some victims have prior convictions for prostitution, which entails negative attitude towards them from law enforcement officers and judges.</p> <p>Victims also often highlight the fact that representatives of law enforcement agencies and judges lack the necessary skills to work with victims of trafficking. They do not understand personal psychological, moral, or emotional problems, fail to inform victims of the activities of non-governmental organisations and their ability to provide psychological support, legal aid, financial and other assistance, and generally lack the skills needed to communicate and work with victims.</p> <p>Neglect of the principle of confidentiality poses yet another problem: disclosure of information about the things that victims had to endure abroad creates significant obstacles for cooperation between victims and law enforcement agencies. Another issue is the lack of cooperation between law enforcement agencies and non-governmental organisations. Humiliating questions, a reluctance to talk about intimate things that the victim had to suffer. Victims say that it would be easier for them to testify if investigators were female.</p> <p>Judges and public prosecutors often fail to take into account individual traits of victims, for example, their education or development, legal literacy, and put very intricate questions, which affects the victims' testimony and subsequent judgments. Generally, contemptuous attitude generates a feeling of dejection in the victims who no longer wish to cooperate, fail to attend subsequent hearings, etc.</p> <p>Maintaining the privacy of the victims in the cases of human trafficking is extremely important, given the nature of such cases: so long as the suspect is engaged in recruitment, paperwork, etc., he holds all the information on potential witnesses, and even a minimum of data would be sufficient to identify the victims. Ukrainian legislation offers an opportunity to use technical facilities to arrange for remote</p>

¹¹⁵ Alternative report of NGOs to Universal Periodical Overview on women's rights in Ukraine
http://www.la-strada.org.ua/ucp_mod_library_view_190.html

¹¹⁶ Куц В.М., Орлеан А.М. Прокурорські засоби протидії торгівлі людьми: Науково* практичний посібник / За ред. Г.П. Середи. – К.: Варта, 2007. – 168 с. // V. M. Kuts, A. M. Orlean. Public prosecutor's means to combat human trafficking. Theoretical and practical textbook. Ed. by G. P. Sereda. Kyiv, Varta, 2007, 168 p.

	<p>testimony by victims or witnesses in the event of their absence in the courtroom (Article 232 of CPCU). However, this provision is rarely put to practice due to the lack of technical capacity in courts and the underestimation of risk and trauma associated with public testimony for victims.</p> <p>As a general rule, trafficking in human beings does not fall into a category of offences that, under the laws of Ukraine, are to be heard <i>in camera</i>. However, the judge may order an <i>in camera</i> court session at his/her sole discretion, at the request of the victim or her lawyer.</p> <p>To implement efficient coordination between law enforcement and judicial authorities in the matters of combating human trafficking, permanent task teams are to be established at the oblast level, comprising representatives of the National Police, the SBU, public prosecutor's office, border guard service, and involving non-governmental organisations and the State's social services; their joint training is to be conducted in order to study practical application of Article 149 of CrCU, to clarify the application of international rules on combating human trafficking, to study the specifics of victims' mentality, to acquire the skills of working with victims, sharing with law enforcement and judicial authorities from other countries the experience of solving the human trafficking crimes; to study the methods of protecting the victims, their rights and interests, etc.</p>
Crimes against sexual freedom and sexual inviolability of a person (rape, violent satisfaction of sexual passion in an unnatural manner, compulsion to sexual intercourse) Section IV of CrCU	<p>In 98 per cent of cases victims are women.</p> <p>Public prosecutors and judges need to pay attention to the relationship between the male accused/defendant and the female victim.</p> <p>One should also remember that this category of cases is particularly influenced by gender stereotypes.</p> <p>Precedents include cases where the victim and the defendant execute a conciliation agreement, however, such agreement generally fails to include a provision for compensation of moral and material damage caused by rape.</p> <p>In cases of rape, conducting investigative actions and communicating between the victim and male persons is problematic even at the pre-trial stage of investigation, which results in the refusal by women to report. For example, in one criminal case, a woman reported a theft, but concealed the fact of rape, because, in her words, 'when I was reporting the robbery, I couldn't overcome the sense of shame, since only men were among those present at the district police station to take my report.'¹¹⁷</p>
Evasion of alimony to support children Article 164 of CrCU	<p>As evidenced by the analysis of court practice, in 95 per cent of cases, men are defendants in this category of cases.</p> <p>Evasion of alimony entails the following types of penalties: fines, community service, correctional labour, and restriction of liberty. Courts mostly sentence the offenders to community service. Nevertheless, in certain cases, the court would impose such penalty as fine on a defendant who has large arrears in alimony.¹¹⁸</p> <p>This kind of penalty would be inefficient here, because of considerable amount of debt accumulated by the defendant, – rather than motivate the defendant to pay the debt, the State imposes a fine on him, having paid which (instead of alimony), he will continue to evade payment of debts and alimony.</p>
Persistent failure to perform duties related to the care of a child or a person under guardianship or trusteeship Article 166 of CrCU	<p>The Unified State Register of Adjudications contains 13 judgments in this category, 12 of them against women. Meanwhile, courts never raise the questions of fathers' duties to attend to a child or children and his responsibility. Almost each case is associated with women's dire financial situation, however, no questions are raised in this context of fathers' participation in child support, whether any grounds exist for family welfare benefits, whether the family receives such benefits, etc.</p>
Violation of citizens'	<p>The Unified State Register of Adjudications contains a total of 11 judgments that refer</p>

¹¹⁷<http://reyestr.court.gov.ua/Review/36504599>.

¹¹⁸<http://www.reyestr.court.gov.ua/Review/53378960>.

equality (direct or indirect restriction of rights or granting direct or indirect privileges to citizens based on... sex...) Article 161 of CrCU	to this Article, however, no judgments were delivered. Moreover, no cases exist under this Article, where components of crime include direct or indirect limitation of rights or granting direct or indirect privileges to citizens based on sex. This mostly has to do with the vagueness of the components of crime.
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General guidance:

1. Analysis of the court practice has shown that women (suspects, accused) are less likely to resort to legal aid than men. In view of this, investigators, public prosecutors, investigating magistrates, courts should adopt a less formal approach to their duty of explaining to suspects or accused their rights and should secure their right to a knowledgeable legal aid from a counsel, either of their choice or appointed. (Article 20.2 of CPCU). Female victim must be told that she can demand reimbursement of legal aid from the suspect.

2. Practice shows that women victims are much less likely than men to file civil actions in criminal proceedings. Public prosecutors and judges should explain to victims this right.

3. In practice, investigators are sometimes known to inform the victim of an opportunity to file an action, but fail to explain what it means. Or inform of an on opportunity to claim compensation for material damage only, failing to mention moral damage.

4. With the introduction of the new CPCU, conciliation agreements are increasingly concluded in criminal procedures in the cases that are associated with such category of cases as the evasion of alimony, infliction of minor bodily injury, battery and torture. However, they generally do not contain terms of compensation of material and moral damage to victims. Judges and public prosecutors should pay attention to such things.

5. Women may be victims of multiple discrimination (in particular, if a woman is a representative of an ethnic minority or an internally displaced person, or has a disability, HIV/AIDS, is of non-traditional sexual orientation, belongs to marginalised sections of the population). Public prosecutors and judges should pay particular attention to such cases, without showing bias or being influenced by stereotypes. Thus, where a public prosecutor discovers that the investigator, under the influence of stereotypes, conducts inefficient pre-trial investigation (for example, is guided by the stereotype that a woman who was prosecuted for prostitution (under Article 1811 of CUAO) cannot be a victim of rape), he/she should raise before the head of a pre-trial investigation body the question of the removal of such investigator from the pre-trial investigation and the appointment of another investigator (Article 36.2.8 of CPCU).

6. In the cases of gender-based violence, where the suspect (accused) and the victim are members of the same family, room-mates, or even acquaintances, the suspect (accused) has plenty of opportunities to influence the victim. In this regard, the application of relevant protective measures (Article 177 of CPCU) would be appropriate.

7. To ensure the safety of the victim, the issue also should be considered of conducting the interrogation or identification via videoconference during a pre-trial investigation (Article 232 of CPCU).

8. Since, under Article 477 of CPCU, a significant portion of criminal proceedings that require a gender-sensitive approach have been categorised as proceedings in the form of private prosecution, public prosecutors, based on the relevant facts, should conduct an appropriate conversation with the victim to make her initiate the corresponding criminal proceedings.

9. It is also recommended that, in cases of gender-based violence and human trafficking, hearings be conducted only *in camera*, whether a relevant petition was submitted by participants in the case or not; separate waiting rooms for victims and witnesses be allocated at the court's premises; adequate security be provided; more active involvement of female law enforcement be facilitated in the process of obtaining evidence at the pre-trial investigation stage.

10. Appropriate specialisation should be introduced for public prosecutors and judges in order to improve investigation of cases of human trafficking and gender-based violence.

11. The training of judges and public prosecutors should include the information about key provisions of the Istanbul Convention. In view of the fact that Ukraine is preparing for its ratification, substantial amendments and modifications to the laws of Ukraine, including CrCU, are expected.

In regards to **civil cases**, the range of problems associated with gender equality is most evident in the following cases:

- *labour disputes*, including those related to the statutory prohibition to engage women in night work (Article 175 of LCU), to send pregnant women or women who have children below three years on business trips (Article 176 of LCU), and also restrictions on heavy and hazardous work for women (Article 174 of LCU + a corresponding list that comprises more than 500 types of work), etc.

- disputes with employers concerning the recognition of a single mother status and granting of respective additional vacations are also associated with the issues of women's rights. The main reason for such disputes is that the laws of Ukraine lack certainty about the list of documents that evidence the single mother status, which is usually interpreted not in women's favour;

- *family disputes*, mostly about determining a child's place of residence – where discrimination against men manifests itself most often, regarding problems such as determining the amount of alimony, disputes about a child's name or changes to the child's surname following the divorce, etc. Regarding the last category of cases, it should be noted that children mostly stay with their mothers after divorce. Where the mother, following the divorce, reverts to her maiden name at her own discretion, any change in the child's surname – which is predominantly that of the father's – may only be effected by the mother, without the consent of the child's father, only by going to court and proving that the father does not participate in bringing up the child.¹¹⁹ In court practice, courts sometimes dismiss actions for change of child's surname, citing Ukrainian national traditions¹²⁰, without considering which solution might be in the child's best interests;

- *property disputes*, including eviction, especially those where violence is committed. These mostly involve the cases where previously married persons continue to dwell in the same accommodation. Controversial practice develops in such cases; however, the predominant approach among judges is to not regard systematic use of violence (despite victims being women in all the cases) as the grounds for the forced eviction of a husband, including situations where other cohabitants offer to reimburse his share in the property;

- *disputes concerning the division of corporate rights between divorcing spouses*. At one point, the Plenary Assembly of the Supreme Court of Ukraine, in its resolution No. 11 'On the practice of application of legislation by courts when considering cases of the right to marriage, dissolution of marriage, annulment of marriage and the division of marital property' of 21/11/2007, explained to the courts that, under Articles 61.2 and 61.3 of FCU, where contributions to the authorised capital of a business entity are made from marital property, the spouse who is not a member of such entity shall be entitled, in the interests of the family, to the division of its earnings. Besides, if one of the spouses uses joint marital funds in contravention of Article 65 of FCU, the other spouse shall be entitled to reimbursement of his/her share. On the basis of this position, courts, when considering disputes associated with the division of corporate rights in a divorce, argue that 'neither the contribution nor corporate rights to the LLC may be divided, and the other spouse shall be entitled to reimbursement in the amount of half of the contribution made by the defendant to the LLC's authorised capital.' Since founders (members) of LLC are overwhelmingly men, in the event of divorce the wife may only claim half of the amount for which the original interest in the LLC was purchased, irrespective of its value at the time of the divorce. In other words, all that the other spouse (usually the wife) may expect in the event of division of corporate rights in an LLC, is the reimbursement of half of contribution to the authorised capital of such company, provided that such contribution was made from the joint marital funds of the spouses and that the procedure for disposal of marital property, as set forth by Article 65 of FCU, was violated;

¹¹⁹ <http://www.reyestr.court.gov.ua/Review/43954999>.

¹²⁰ <http://www.reyestr.court.gov.ua/Review/32320863>.

- *disputes concerning moral damages for sexual harassment*. The concept of sexual harassment is defined in Article 1 of the Law on Equal Rights (see Annex 8). Furthermore, the Law states that discrimination on the grounds of gender includes sexual harassment comprising acts of sexual nature, behaviour (including gestures, remarks and physical contact) that is threatening, abusive, exploitative or coercive (Article 3.1). A similar rule is included in the draft Labour Code which, in particular, states that ‘discrimination on the grounds of gender shall include sexual harassment, expressed in the form of unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity or honour of a person (creating an intimidating, hostile, offensive or insulting environment)’ (Article 4¹²¹). In court practice, a few isolated examples of using this term include sexual harassment alleged by a party in the case,¹²² with the following general findings: a woman may restore her rights violated as a result of sexual harassment, only where the fact of such sexual harassment has been established by law enforcement authorities in the manner established by the procedural legislation for investigations of crimes. The situation is further complicated by the fact that applicable Ukrainian laws do not stipulate components of a crime such as sexual harassment.¹²³ As it can be seen, the burden of proving the claim that rights have been violated precisely because of the fact that sexual harassment is often an issue related to the rights of women.

Regarding **administrative offences**, particular attention should be paid to the *cases of domestic violence*. Studies show that, in 98 per cent of cases in this category, women are victims of domestic violence. Unfortunately, even when the court establishes the fact that the family has a child or children (or that children reside in the same room where violence occurred), it neither ascertains nor takes into account during the proceedings, whether the child was a witness to domestic violence¹²⁴. Besides, courts make mistakes, when, for example, referring to Article 3 of FCU, according to which family is composed of persons who live together, have a joint household, mutual rights and responsibilities; while this excludes family relations between a brother and sister who, despite living together in the same apartment, have neither joint household nor mutual rights and responsibilities. Such findings lead to situations where the use of obscene language or death threats against a sister are not recognised as domestic violence by courts¹²⁵, or for example, when obscene language addressed at an ex-wife is also not regarded as the grounds for taking measures to combat domestic violence¹²⁶. Instances have also been recorded where courts fail to categorise the relevant ‘physical, sexual, psychological or economic’ actions as domestic violence, referring to purely formal grounds such as the lack of the victim’s registration at the same place of residence as the person who committed violence¹²⁷, or that the persons residing with a man who committed violence are not his family members (e.g. where violence is committed against sister-in-law)¹²⁸. Moreover, the court practice, where omissions by law enforcement agencies, contacted by women wishing to report domestic violence committed against them (and children), are found justifiable on the

¹²¹ Правове регулювання гендерної рівності у трудових відносинах: міжнародні стандарти та громадська думка – К.: [Агентство “Україна”], 2010 – Вип. 1 / О.А. Богданюк, В.М. Євсюкова, К.Б. Левченко (кер. авт. кол.) [та ін.]. С. 55. // Legal regulation of gender equality in labour relations: international standards and public opinion. Kyiv, Ukraine Agency, 2010, Vol. 1 / O. A. Bogdanyuk, V. M. Yevsyukova, K. B. Levchenko (leader of a team of authors), et al. 96 p., p. 55.

¹²² <http://www.reyestr.court.gov.ua/Review/7118756>.

¹²³ The situation may change, if the required amendments and modifications are introduced to the applicable laws of Ukraine as part of preparation for the ratification of the Istanbul Convention. See relevant recommendations in COMPLIANCE OF SELECTED UKRAINIAN LAWS WITH THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (ISTANBUL CONVENTION). An assessment report prepared and edited by Javier Truchero Cuevas and Ganna Khrystova for the Council of Europe with the contribution of Mykola Havroniuk, 142 p.

¹²⁴ See, for example, <http://www.reyestr.court.gov.ua/Review/28781141>.

¹²⁵ <http://www.reyestr.court.gov.ua/Review/40720314>; <http://www.reyestr.court.gov.ua/Review/43857792>, etc.

¹²⁶ <http://www.reyestr.court.gov.ua/Review/21857880>; <http://www.reyestr.court.gov.ua/Review/43983329>, etc.

¹²⁷ <http://reyestr.court.gov.ua/Review/1304237>.

¹²⁸ <http://reyestr.court.gov.ua/Review/5534585>.

grounds that no administrative reports, and, therefore, no records of violence were made by such agencies¹²⁹, should be regarded as inappropriate and contrary to the ECtHR and CEDAW's practice¹³⁰; *Cases of evasion by parents or persons who substitute them of their duties in respect to their children*. Monitoring conducted in Ukraine shows that, in overwhelming majority of cases, women are brought to administrative liability for evasion of parental duties. Meanwhile, Ukraine's legislation is gender neutral. Courts, after receiving administrative reports, do not wonder if fathers ever participate in bringing up their children.¹³¹

Among **administrative disputes**, the problems of gender equality are most vividly illustrated by the disputes around the application of gender quotas during elections (relevant examples cited elsewhere).

Generally, the following guidance may be given to judges in respect of the above categories of cases:

1. Refer to international acts in order to establish conformity of national legislation with the provisions of international treaties ratified by Ukraine (where conflicts are identified, international treaties must prevail). Furthermore, interpretation of domestic law in the context of international obligations should provide an additional safeguard in the adequate protection of human rights. Links to international instruments, which makes judgments even more convincing and increases the court's credibility, are yet another argument in favour of these references.
2. Apart from the texts of international treaties, judges should take into account the practice of the ECtHR, the UN Human Rights Committee, and the UN Committee on the Elimination of Discrimination against Women.
3. Where doubts exist as to the conformity of certain provisions of laws with the principle of gender equality, the Constitutional Court should be petitioned via the Supreme Court of Ukraine to resolve the issue of constitutionality of relevant legislative provisions. If non-conformity is obvious, the use of such provisions should be avoided, and the case should be considered directly on the basis of the Constitution of Ukraine international instruments and related documents.
4. Attention should be paid to being self-aware of ones gender stereotypes and biases, and remain aware whether any actions in the proceedings or the case occur under the influence of stereotypes about women and men, etc.
5. Use gender sensitive language and feminine versions of such words as 'plaintiff', 'defendant', 'petitioner', etc., when communicating with the participants in the proceedings.
6. Attention should be paid to the rules on the burden of proof in cases of discrimination (see section 4.3).

Part IV. Peculiarities of prosecutor activity in criminal proceedings related to gender violence

¹²⁹<http://reyestr.court.gov.ua/Review/21877969>.

¹³⁰Судове вирішення справ у спорах, пов'язаних із гендерною дискримінацією: збірка кращих практик / Упорядники: Олена Уварова, Марія Ясеновська. – Харків: ФОП Бровін О. В., 2016. – С. 147-169 // Adjudication in cases of gender-based discrimination: A handbook of best practices / Compiled by: Olena Uvarova, Maria Yasenovska. – Kharkiv, Private Entrepreneur O. V. Brovin, 2016, pp. 147–169.

¹³¹ <http://www.reyestr.court.gov.ua/Review/3007073>;
<http://www.reyestr.court.gov.ua/Review/7439651>; <http://www.reyestr.court.gov.ua/Review/6737700>;
<http://www.reyestr.court.gov.ua/Review/3168047>; <http://www.reyestr.court.gov.ua/Review/548185>;
<http://www.reyestr.court.gov.ua/Review/902367>; <http://www.reyestr.court.gov.ua/Review/1091770>;
<http://www.reyestr.court.gov.ua/Review/581666>; <http://www.reyestr.court.gov.ua/Review/1304139>.

Separate issues that require close attention during the training of prosecutors engaged in procedural pre-trial investigation of criminal proceedings (cases) are related to domestic violence, women trafficking and pornography trafficking, measures to protect the rights and legitimate interests of victims of such acts (women and children) and support of the public prosecution in court in such cases.

Annexes 10–12 given examples of programs with prosecutors.

4.1. Prosecutor activity in criminal proceedings related to domestic violence.

Today, CrCU does not define domestic violence or family violence as a separate crime and does not entail the availability of any intimate or family relationship between the injured party and the criminal as a factor that aggravates the punishment. However, CrCU establishes a series of crimes covering various forms of physical and sexual abuse (see. Annex 9). Regarding the cases of psychological and economic violence, it should be noted that CrCU stipulates responsibility for forcing a person to commit suicide (Art. 120), threat to homicide (Art. 129), and committing a crime against a minor, an elderly person who is helpless, or the person who is in material or other dependence on the guilty part which are a matter of aggravation (para. 6, 8 p. 1 Art. 67).

Analysis of investigative practice shows that the prosecutor who performs procedural administration in criminal proceedings on crimes related to domestic violence, in particular, should pay special attention to the following issues:

- establishment and proof the form of the guilt (intentional, involuntary, mixed / complex / double) and its type (section V of CrCU) including the purpose and motive of the crime, which is crucial for the correct qualification especially in distinguishing murder, reckless homicide or intentional infliction of serious bodily injury that caused death of the victim; establishing the state of emergency or necessary defense (Articles 36, 39 of CrCU);
- clarifying the information on the availability of prior evidence of violence against the victim from the accused. Not defining information and important characteristics of an accused person leads to negligence of them when bringing to justice (including in deciding on the appropriateness and reasonableness of the application of Art. 69 ‘Appointment of softer punishment than stipulated by law’ and/or Art. 75 ‘Board of probation and parole’ of CrCU). As a result, it undermines the fairness and reasonableness of the relevant court judgments in domestic violence cases;
- detailed insight of the injured party with its right to compensation of material and moral damage caused due to the commitment of crime and features to prove the fact of the injury and its size;
- informing an injured party about the bodies and institutions on which with the implementation of measures to prevent domestic violence is entrusted, including specialized establishments for victims of such violence; system of social and specific measures to address the causes and conditions that contribute to domestic violence, and stopping such violence, order and grounds to take these measures. It is necessary to inform present governmental organizations that provide assistance to victims of domestic violence;
- in case of the refusal of the injured party from the prosecution in criminal proceedings, before closing it, it is important to ascertain the voluntariness of such refusal. For this purpose it is necessary to ask the victim about the reasons for the rejection of the accusation, in addition to informing on the system of state bodies, institutions and non-governmental organizations dealing with domestic violence., e It is necessary to clarify the legal consequences of such a refusal, and note that the law does not forbid to address the crime again with an application during the term of limitation for criminal liability for committing certain crimes (Art. 478 of CrCU).

Moreover, it should be highlighted that the provisions of p. 4 Art. 26, para 7 p. 1 Art. 284, Art. 477 of CrCU concerning referring domestic violence crimes to private prosecution cases that are to be closed if the victim withdraws her or his statement or complaint, contradicts Art. 55 «Ex parte and ex officio proceeding» of the Convention of Council of Europe on preventing violence against women and domestic violence and combating these phenomena (Istanbul Convention). According to this Convention, investigations into or prosecution of offences shall not be wholly dependent upon a report or complaint filed by a victim and that the proceedings may continue even if the victim withdraws her or his statement or complaint. Therefore, it is expected that CrCU and CPCU will be amended after Ukraine ratifies the Istanbul Convention making the closure of a proceeding mandatory, even in the case where the victim withdraws her or his statement or complaint.

Prosecutor that supports the public prosecution in court in criminal cases on crimes related to domestic violence, should ensure that the court pays attention to the inadmissibility (in terms of international norms) when considering gender violence in cases as a fact that mitigates punishment, in crimes committed under the influence of strong emotion caused by illegal or immoral actions of the victim (para. 7 p. 1 Art. 66 of CrCU) or in general – provocative, immoral behavior of the victim. This is contrary to Art. 42 of the Convention of Council of Europe on preventing violence against women and domestic violence and combating these phenomena (Istanbul Convention), which dwells on the unacceptable justifications for crimes, including crimes committed in the name of so-called ‘honor’. As negative examples it should be provided that the courts of first and appeal instance from 2015 in cases under number (according to URPI): 221/1283/15-k¹³², 548/308/15-k¹³³, 596/1629/15-k¹³⁴.

A manifestation of discrimination against the victim is also a determining mitigating sentence that the guilty party directly involved in anti-terrorist operations has a veteran status. For example, the verdict in the case 439/21/14-k/1-kp¹³⁵.

In criminal cases involving domestic violence, the fact that a culprit is the only breadwinner in the family should be considered the aggravating circumstance rather than the extenuating one – ‘committing a crime against a person, who is in financial or other dependence on the perpetrator’ (para. 8 p. 1 Art. 67 of CrCU).

There exists a common practice, which contradicts the procedural requirement of legality and fairness of court decisions, of recognizing the presence of dependent on the perpetrator underage/minor children as extenuating circumstance while stating in the verdict that the accused is unemployed or works unofficially;

To appeal against the court decision if there are grounds to believe that the penalty imposed by court is manifestly unjust because of its type or size softness (p. 2 Art. 409, Art. 414, para. 3 p. 1 Art. 438 of the CPCU). Analysis of judicial practice of 2015 in respect of conviction for domestic violence cases shows that courts usually impose minimum possible term punishment, even if its softness is obvious and/or death of the injured woman has occurred. For example, the verdict in the case № 287/391/14-k¹³⁶.

¹³² <http://www.reyestr.court.gov.ua/Review/49052074>

¹³³ <http://www.reyestr.court.gov.ua/Review/43057747>

¹³⁴ <http://www.reyestr.court.gov.ua/Review/51735703>

¹³⁵ <http://www.reyestr.court.gov.ua/Review/45142177>

¹³⁶ <http://www.reyestr.court.gov.ua/Review/42750374>

The study of above-mentioned court decisions has also detected cases of groundless release of domestic violence offenders on probation pursuant to Art. 75 of CrCU. In these cases courts often arrive at verdicts based rather on victim's request not to punish the culprit severely and not to impose a real prison sentence, regardless of caused body injuries (including numerous bruises or stab wounds to vital organs) than on a conclusion whether the rehabilitation of the convict is possible without serving a sentence. At the same time, there exists a possibility that the victim's requests are the results of her being under pressure from the accused, of her financial or other dependence on the culprit etc. The stated above can breed a sense of impunity and creates risks of future violent behavior toward the victim.

Courts apply release on probation pursuant to Art. 75 of CrCU even when domestic violence resulted in death of the victim and the offender is charged with negligent homicide pursuant to Art. 119 of CrCU. A prosecutor should pay careful attention to court decisions' proper justification and should appeal against them if there are grounds. For example, the release on probation is not properly justified in following three cases occurred in 2015:

1) *victim's death was caused by mechanical asphyxia due to the compression of her neck by convict's hands (strangulation) ('it is evident from identified during the investigation numerous bruises and abrasions on the neck and face, bleeding in the soft tissues of the neck, fractured hyoid bone')* (case № 329/1235/15-к)¹³⁷;

2) *victim's death was caused by complications such as cerebral swelling and compression by hemorrhage under the dura mater after three punches in the head and one kick in the back while the victim had already had grievous bodily harm and the culprit had known it* (case № 502/2043/15-к)¹³⁸. In this case, the judge, despite other evidences, took into account the testimonies of the victim's relative who asked not to punish the accused severely as the deceased 'had behaved herself badly';

3) *victim's death was in direct causal connection with grievous bodily harm caused by multiple blows struck by the accused on the grounds of jealousy* (case № 643/16881/13-к)¹³⁹. This criminal case has already been for a retrial twice in the court of the first instance and the judge has applied Art. 75 of CrCU to the accused twice. In this case it is obvious that the court has arrived at a verdict based on negative characteristics of the victim.

Another example of undue softness of criminal liability applied by court is the verdict in the criminal case № 234/10996/15-к¹⁴⁰, however the prosecutor had appealed against the decision in this case and the court of appeal reversed it. According to the content of this verdict, the accused had beaten his mother severely, so that she died in hospital. However, the court did not consider and did not give proper assessment of nature and severity of actions done by the culprit and at first invoked Art. 69 of CrCU awarding a punishment below the lowest limit laid down in sanction of p. 2 Art. 121 of CrCU, and then – Articles 75, 76 of CrCU, releasing the accused on probation. Only because of the prosecutor activity, the Court of Appeal reversed this verdict in part of awarding sentence, adopted a new one sentencing the culprit to 7 years in prison pursuant to p. 2 Art. 121 of CrCU;

According to para. 3 p. 3. Art. 394, para. 3 p. 3. Art. 424 of CPCU the court verdict on the basis of plea agreement between the victim and the suspect (accused) can be challenged by prosecutor only if no plea agreement could be reached in the particular proceeding according to law. However, in court the prosecutor is obliged to express his/her opinion on the possibility of arriving at a verdict basing on a specific plea agreement. In domestic violence cases, the prosecutor should object to reaching plea agreement if there are reasonable grounds to believe that voluntariness of victim's decision to come to

¹³⁷ <http://www.reyestr.court.gov.ua/Review/53546952>

¹³⁸ <http://www.reyestr.court.gov.ua/Review/56212917>

¹³⁹ <http://www.reyestr.court.gov.ua/Review/55755485>

¹⁴⁰ <http://www.reyestr.court.gov.ua/Review/55671414>

plea agreement is affected by her cohabitation with the offender, her financial dependence on him, nature of bodily harm, information about previous domestic violence cases (possibility of systematic violence in the family) and other factors that can keep the victim in a state of fear and greatly suppress her will.

Also the prosecutor expressing his opinion in court about the possibility of approval of the plea agreement should consider that if under such agreement the unemployable person is sentenced with a fine, the victim of domestic violence and other family members will have to pay for this fine instead of him.

In the meantime, it should be emphasized that in national legislation, the legal possibility to conclude the reconciliation agreement contradicts Art. 48 of Istanbul Convention that prohibits mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention. As a result, the conclusion of the reconciliation agreements in domestic violence cases will become impossible with ratification of the above-mentioned Convention.

4.2. The activities of the prosecutor in criminal proceedings related to human trafficking. The financial situation in Ukraine for women is worse than that of men. There is a particular phenomenon under which a woman works in a low-paid ‘feminized’ sector, which underlies in a ‘professional pyramid’ and is also the sole breadwinner in a single-parent family. This creates the conditions for its gradual move to the marginal domain of a society. Thus, differences in the economic situation of men and women is as serious socio-demographic problem resulting in excessive poverty of women, a weak position of women in family relationships and other related issues. One of the main manifestations of gender-based violence is human trafficking. Gender discrimination is one of the key reasons for the relevance of the slave trade as a global problem. Ukraine – is one of the main countries where the human trafficking is exercised with the aim of further labor and sexual slavery.

Women are the first victims of such types of trafficking including sexual exploitation (prostitution and pornography), as well as labor exploitation.

The problem has a socio-economic nature and is difficult to resolve due to the fact that women more often agree to unregulated work because of low living standards or the absence of other work. Sexual exploitation is also the basis for the development of an expansive global network of slavery and human trafficking¹⁴¹.

When considering the gender aspect of the prevention of human trafficking, attention must be paid to the fact that women are the main target group for traffickers.

It should be noted that there are topical issues in the relationship between law enforcement bodies and victims of trafficking. Very often, the victims are unaware of the fact to which law enforcement bodies or other agencies to apply for legal and psychological help, and even if they dare to apply to the police, it is rare that they find real legal protection. As a rule, women do not find moral support even among close relatives, the largest scale of the helpless victims of trafficking can be found in rural areas. Victims themselves are usually legally illiterate, they do not know their rights and laws -making their situation hopeless¹⁴².

¹⁴¹ [Смирнова О.В.](http://www.mediascope.ru/node/1130) Торговля людьми в гендерной проблематике СМИ / О.В. Смирнова [Электронный ресурс]. – Режим доступа: <http://www.mediascope.ru/node/1130> // [Smirnova O.V.](http://www.mediascope.ru/node/1130) Human trafficking in gender topicality of mass media / O.V. Smirnova [Elektronic resource]. – Available at: <http://www.mediascope.ru/node/1130>

¹⁴² Бутаева М.А. Гендерные проблемы в отношении насилия в семье / М.А. Бутаева [Электронный ресурс]. – Режим доступа: <http://cyberleninka.ru/article/n/gendernye-problemy-v-otnoshenii-nasiliya-v-semie> // Butaeva M.A. Gender issues in

Analysis of criminal proceedings on crimes related to human trafficking shows that features of procedural administration techniques of pre-trial investigation of these crimes is caused by the mechanism of their commission. In particular, **human trafficking is characterized by several interrelated phases of criminal activity and its careful planning, mandatory elements of which usually are:** 1) creation of various companies, which under the cover of business or sponsorship establishments effectively recruit women and traffick abroad; 2) establishment of corrupt relations with officials of state bodies involved in production and issue of needed documents to travel abroad, and exercise direct control of relocation of citizens across the state border of Ukraine; 3) selection and recruitment of people outside Ukraine with the participation of foreigners for access to ‘markets’ to sell the victims for the purpose of further sexual exploitation; 4) selection and recruitment of persons with regard to age and appearance can be used for the purpose of sexual exploitation; 5) choice of ways to move victims across the state border of Ukraine - legally (with a valid passport and other necessary documents) or illegally (by using fake documents or even without any documents); 6) forcing women for prostitution and control of their arrival in the destination country; 7) choice of payment method and transportation of money for the ‘goods’¹⁴³.

That’s why the **prosecutor should ensure** that the complex investigation (search) activities during the investigation of *crimes related to human trafficking* are carried out and aimed at obtaining information on the facts:

- recruitment, transportation, harboring, transfer and receipt of a person by customer due to deception, blackmail or use of vulnerable state of the victim;
- receive a reward, its nature and size by the person who carried out the delivery and transmission of ‘live goods’ to the customer;
- presence or absence of labor agreement;
- forcing to perform work (by deceiving, threatening, beating, etc.);
- absence of salary for work or discrepancy of its agreed sum before;
- limit of any legal rights of ‘the hired’;
- presence of joined parties and functions performed by them;
- establishment of all episodes of criminal activity;
- establishment of all possible witnesses, search and seizure of evidence¹⁴⁴.

In addition, during the detection and investigation of facts on human trafficking globalization of computer space must be taken into account. Today we can define such **following trends of information technology use during the study of human trafficking process in Ukraine and abroad as:**

- some types of sexual exploitation of victims and trafficking are made exclusively on the Internet (online). Among these forms of violence against victims is a videoshow and live sex chat rooms;
- blackmail of victims is made due to previously collected information related to the profiles of the victims found on the Internet, including private email correspondence, accounts in social networks, family relationships or places of employment;
- in criminal activity traders use specially created for this kind of work websites (e.g. escort sites) and public common website advertisement of employment;

relation to violence in family / M.A. Butaeva [Elektronic resource]. – Available at: <http://cyberleninka.ru/article/n/gendernye-problemy-v-otnoshenii-nasiliya-v-semie>

¹⁴³ Пясковський В.В. Методика розслідування торгівлі людьми: дис... канд. юрид. наук: 12.00.09. – К., 2004. – С. 39 // Piaskovskiy V.V. Human trafficking investigation methodology: candidate of legal sciences: 12.00.09 / Piaskovskiy Vadim Valeriyovich. – К., 2004. – P. 39.

¹⁴⁴ Розслідування торгівлі людьми: навч. посіб. / М.І. Андрієнко та ін.; [за ред. П.В. Коляди]. – К.: Конус-Ю, 2009. – С. 62–63 // The investigation of human trafficking: [teach guidances.] / M.I. Andrienko et al.; [under the dition of P.V. Koliada]. – К.: Konus-U, 2009. – p. 62–63.

- online platforms allow organized criminal groups to use trafficking victims on a large scale.
- information about the victims of sexual exploitation involved in prostitution is published on the specially created collections, catalogs available on the Internet online;
- development of new technologies makes it possible to organized criminal groups to give orders and simultaneously track their victims by phone or online;
- cooperation between criminal groups internationally or creation of criminal groups whose members are citizens of different countries;
- in the context of sexual exploitation of children, social media give attackers easy access to potential victims and greatly simplify their recruitment; anonymously distribute pornographic content on-line. Attackers may also use anonymous forums and online groups where besides sharing images and videos of child pornography they share their experience of sexual exploitation of children or possible ways of its implementation, child sex tourism, etc;
- Internet usage greatly facilitates human trafficking and international trafficking with sexual exploitation, that are performed in conspiracy with specialists that operate websites, services and administrators¹⁴⁵.

There are the following peculiarities of individual investigative (search) procedures while investigating criminal proceedings involving human trafficking.

The interrogation of witnesses. The specificity of this interrogation depends on the category of witnesses, which falls into three groups:

1. *The first group of witnesses* consists of those people who can testify the carrying of certain actions aimed at the preparation or commission of human trafficking by suspects. Its specificity lies in better informational content of their testimonies in comparison to testimonies of other witnesses, and in possibility of verification of the process of their testimonial evidences forming. In particular, those persons are involved in issuance of foreign passports and of other travel documents and can therefore point at persons who have contacted with them on this issue or have asked them to expedite issuance or to forge documents are to be interrogated.

2. *The second group of witnesses* consists of those people who are familiarly acquainted with the victims (friends, acquaintances, employees, neighbors, relatives of victims etc.). The testimonies of victims' relatives or acquaintances can be of a great importance for proving human trafficking as this group of people can be directly aware of the fact that victims were taken abroad by fraud (e.g. for likely employment), that they were forced into being engaged in prostitution through violence, threats, debt bondage. They can possess letters sent by victims, notes with requests for help to return to Ukraine or to find money to pay debt etc.

3. *The third group of witnesses* consists of those people who are familiarly acquainted with the suspects. Interrogation of such persons should aim to obtain information about a crime, prior to commission of human trafficking actions of the suspect, identity of the suspect¹⁴⁶.

The interrogation of victims. This is almost the only source of information about the time, place and

¹⁴⁵ Виявлення, попередження та розслідування злочинів торгівлі людьми, вчинених із застосуванням інформаційних технологій (проект): навч. курс / [В. Гузій, Д. Девіс, В. Дубина, М. Каліжєвський, О. Манжай, В. Марков]. – К., 2015. – С. 9–10 // Detection and prevention of human trafficking crimes, committed with the use of information technologies (project): study course / [V. Guziy, D. Davis, V. Dybina, M. Kalizhevskiy, O. Manzhai, V. Markov]. – K., 2015. – P. 9–10.

¹⁴⁶ Пясковський В.В. Методика розслідування торгівлі людьми: дис... канд. юрид. наук: 12.00.09. – К., 2004. – С. 144–146 // Pyaskovskiy V.V. Methods of investigating trafficking dis ... candidate. Legal. Sciences: 12.00.09. – K., 2004. – P. 144–146.

method of committing human trafficking. One should note that human trafficking victims consider their procedural status differently. It depends on education, area of residence, type of temperament, nature of relationships with family members; productivity of rehabilitation; presence of pressure from criminal gangs, adoption of security precautions, quality of legal aid, the duration of investigation, the attitude of police and court etc. *Conventionally victims in these criminal proceedings fall into two groups: 1) persons who consider themselves victims; 2) persons who do not consider themselves victims*¹⁴⁷.

Sometimes victims cannot identify discriminatory treatment. Unacceptable situations occur when the victim of gender violence faces misunderstanding, condemnation, humiliation, accusations of provocation and other forms of discriminatory treatment¹⁴⁸.

That is why during the interrogation of human trafficking victim the following factors must be taken into consideration:

- relations with trafficker(s) which can be very complicated and give rise to different feelings - a combination of fear, dependence, sometimes dedication and commitment;
- fear of revenge due to low social status in the country of origin. In addition, in their home the fact that they were forced to engaged in certain activities may be considered as their own fault. This does not encourage them to testify publicly;
- personal conditions and reactions. Except for some common trends and characteristics, conditions of a victim of trafficking right now are specific and can not be predicted in advance. This also applies to the reactions of the victim. The reluctance to cooperate, concealed hostility and inability to recall events in detail, inconsistencies in the testimony or inventing episodes of certain events are possible consequences of the injury and should be treated in that way. It's important to remember that there is no single right or wrong response to human trafficking¹⁴⁹.

Interrogation of victims requires a special preparation from a psychological point of view. During the first interrogation, there may be situations in which it is difficult to identify who is in front of you - the victim or the offender. It is necessary to explain to victims their rights and obligations. Particular attention should be paid to the fact that they are guaranteed the right of non-disclosure of information that discredits them, and the right on protection. During interrogation, formal communication is unacceptable, and the conditions of interrogation should contribute to building the trust to the prosecutor. From the psychological point of view, to establish a trusting relationship between the prosecutor and the victim of human trafficking, it is desirable to carry out the interrogation by an employee of the same article as the injured party¹⁵⁰. To establish psychological contact, the prosecutor must be careful and able to control himself under different circumstances, not to react inappropriately to emotions and treat victims of trafficking without bias.

¹⁴⁷ Ахтирська Н.М. Торгівля людьми в Україні: про що свідчить судова практика. – К.: Академія суддів України, 2006. – С. 81 // Ahtyrskya N.M. Trafficking in Ukraine, as evidenced Litigation. – К.: Academy of Judges of Ukraine, 2006. – P. 81.

¹⁴⁸ Фулей Т.І. Гендерна рівність при здійсненні правосуддя / Т.І. Фулей. – К.: ВАІТЕ, 2016. –180 с. – С. 173, 175. // Fuley T.I. Gender equality while exercising justice / T.I. Fuley. – К.: ВАІТЕ, 2016. –180 p. – P. 173, 175.

¹⁴⁹ Марія Антонія Ді Майо. Первинна ідентифікація дітей–жертв торгівлі людьми: огляд рекомендацій та інструментів / Марія Антонія Ді Майо. – Київ, 2012. – 88 с. – С. 63–64 // Maria Antonia Di Mayo. Primary identification of human trafficking children-victims: overview of recommendations and instruments / Maria Antonia Di Mayo. – Kyiv, 2012. – 88 p. – P. 63–64.

¹⁵⁰ Крепышева С.К. Некоторые особенности тактики производства освидетельствования при расследовании преступлений, связанных с торговлей людьми и использованием рабского труда / С.К. Крепышева // Вестник Нижегородского университета им. Н.И. Лобачевского. – 2014. – № 3(2). – С. 122–125 // Krepisheva S.K. Several features on tactics of investigation of crimes related to human trafficking and slave labor / S.K. Krepisheva // Herald Nizhegorodskiy university named after N.I. Lobachevskogo. – 2014. – № 3(2). – P. 122–125.

Psychological characteristics of trafficked persons include: personality disorders of varying intensity and direction, high irritability, anxiety, depression, sleep disorders and more. In addition, there may be a compulsive behavior, i.e. behavior that has no rational purpose and is spontaneous and obsessive. It usually starts with performing stereotypical actions, and by attempting to change this behavior, this creates anxiety for the victim.

Women who experience violence are in a stressful condition, which is characterized by certain features: fragmentation of memory, difficulty of replaying events, distortion of actions of criminals; loss of real time sense; apathy, indifference to their fate; inability to make decisions, inadequate behavior; mental disorders (may be manifested in constant fear, grief, despair, embarrassment or in a state of isolation, with a marked reluctance to communicate, aggressive behavior, etc.). Apart from this, the received psychological trauma does not allow victims to adequately evaluate the event and make the best steps to properly build their behavior. Often women who have experienced sexual exploitation just do not seek help in the police, fearing publicity, condemnation and ridicule from society and revenge of traffickers¹⁵¹. *While planning the interrogation of human trafficking victims it is worth taking into account the regulations, stipulated in Articles 225, 232 of CPCU. While talking about the necessity to carry out the interrogation in the order of defined articles it is also important to take into account p. 2 Art. 12, Art. 28 of European Convention of Council of Europe on measures against human trafficking.*

It is important while interrogating to take into consideration the state of reminiscences (recall) as it is not always appropriate to question a person immediately after release so that they have time to calm down emotionally. However, one should not delay the interrogation, because after a while it begins the process of forgetting.

The groups of issues that should be clarified during the interrogation of victims in criminal proceedings involving human trafficking:

- questions about personal data of the victim;
- questions about recruitment of the victim;
- questions about trafficking victim abroad;
- questions about destination;
- questions about the work of the victim;
- questions about other working conditions;
- questions about forcing the victim to work;
- questions about liberation of the victim¹⁵².

Examination. During the investigation of criminal proceedings involving human trafficking the objects of examination are brothels, hotel rooms and other places where victims were held and where there was a sexual or other exploitation, cars, mobile phones, information on Internet sites, e-mail boxes, documents¹⁵³.

The following types of crime scenes related to human trafficking committed by organized criminal groups can be distinguished: the place of voluntary or forcible retention of the victim; the place of offender's

¹⁵¹Ларин А.Н. Психологические особенности жертв торговли людьми / А.Н. Ларин // Психология и право. – 2015. – Т. 5. – № 3. – С. 90–97 // Larin A.N. Psychological features of human trafficking victims / A.N. Larin // Psychology and law. – 2015. – V. 5. – № 3. – P. 90–97.

¹⁵²Пясковський В.В. Методика розслідування торгівлі людьми: дис... канд. юрид. наук: 12.00.09. – К., 2004. – С. 148–151 // Pyaskovskiy V.V. Methods of investigating trafficking dis ... candidate. Legal. Sciences: 12.00.09. – К., 2004. – P. 148–151.

¹⁵³Розслідування торгівлі дітьми: навч. посіб. / кол. авт. – К., 2011. – С. 181 // The investigation of trafficking in children, teach. guidances. / Count. com. – К., 2011. – p. 181.

detention.

The other important aim of place of victims' retention examination is to detect audio and video equipment, tapes, which could have recorded images of the victim to submit possible "clients", including via the Internet. They can be recorded scenes of violence on victims or torture¹⁵⁴.

Search. When investigating this type of crime searches in the premises of organizations and institutions involved in the preparation of travel documents must be carried out, to detect and remove all existing copies, the copies associated with their execution and subsequent use and also searches at place of residence of persons involved in the commission of these crimes.

The video can be removed in case:

- the process of recruiting the victim visited the agency or office, equipped with technical security system, which can handle video surveillance system that captures people who come into the room; if such video surveillance system exists, there may be video cassettes with recordings;
- confirmation of the victim's presence in the embassy or consulate, travel agencies, points of entry and exit in the countries of transit and destination;
- in the case of street prostitution – the local police can establish surveillance systems¹⁵⁵.

During the search, the facts of the suspect's presence of stationary PCs, laptops, netbooks, tablets, televisions with SMART feature, digital information media (disks, floppy disks, flash media, etc.), peripherals (printers, scanners, etc.), and mobile computer devices with phone function must be established.

An important task in the investigation of human trafficking is to analyze the content of mobile phones, given that the modern mobile phone - is actually a small computer that combines many different functions, including: telephone and address book, diary with a list of meetings, messaging device (SMS, MMS, e-mail), notepad, tape recorder, camera and camcorder, etc. It should also be noted that photographs made by modern mobile devices (e.g., iPhone) with GPS functionality often contain information about the coordinates of the photograph, allowing in some cases to find out the location of the person¹⁵⁶.

Thus the prosecutor who conducts procedural guidance in the criminal proceedings of that category must consider these factors when planning the investigation (search) operations. According to p.4, p.2, art.36 of CPC of Ukraine prosecutor if necessary, can personally conduct investigative (detective) and proceedings in the manner prescribed by CPC of Ukraine. Prosecutor must consider that the use of information technology makes the need for a review of computer technology, search, accompanied by a specific procedure fixation, seizure and investigation of electronic evidences¹⁵⁷.

¹⁵⁴ Санакоєв Д. Організаційно-тактичні засади виявлення слідів злочинів, пов'язаних із торгівлею людьми, вчинених організованими групами / Д. Санакоєв // Підприємництво, господарство, право. – 2008. – № 10. – С. 170–171 // Sanakoev D. Organizational and tactical principles to detect traces of crimes related to human trafficking by organized groups / D. Sanakoev // Entrepreneurship, economy, law. – 2008. – № 10. – P. 170-171.

¹⁵⁵ Ibid. – p. 113.

¹⁵⁶ Виявлення, попередження та розслідування злочинів торгівлі людьми, вчинених із застосуванням інформаційних технологій (проект): навч. курс / [В. Гузій, Д. Девіс, В. Дубина, М. Каліжевський, О. Манжай, В. Марков]. – К., 2015. – С. 110–111 // Detection, prevention and investigation of trafficking crimes committed using information technology (draft): teaching course / [V. Guzyi, J. Davis, V. Dubina, M. Kalizhevskiy, O. Manzhay, V. Markov]. – K., 2015. – P. 110–111.

¹⁵⁷ Мурадов В.В. Електронні докази: криміналістичний аспект використання / В.В. Мурадов // Порівняльно-аналітичне право. – 2013. – № 3–2. – С. 313–315 // Muradov V.V. Electronic evidences: forensic aspect / V.V. Muradov // Analytical

Judicial examinations, which are often appointed in the investigation of criminal proceedings in this category, include: forensic, forensic psychological, forensic fingerprint, forensic handwriting expertise, computer-technical; telecommunication expertise, portrait, technical examination of documents and more. Examination fees in the investigation are prescribed depending on the situation.

Part V. Specifics of Proceedings in Cases of Gender Discrimination

This section focuses on important and complex topics such as the identification of instances of discrimination, and provides a general algorithm that answers the question of how to recognise discrimination.

5.1. The notion of discrimination and its identification in legal cases. The legal understanding of discrimination is derived from the fundamental principles of law and human rights law, having the principle of human dignity as its starting point. The term ‘*discrimination*’ is used to describe a situation where a person is marginalised because of his/her ‘protected characteristic’. Protected characteristics include gender, age, nationality, language, ethnic origin, skin colour, physical impairment (disability), sexual orientation, gender identity, religious, ideological and political beliefs.

The Law on Equal Rights gives the following definition to gender discrimination: act or failure to act which expresses any difference, exclusion or privileges by gender, if aimed at restriction or rendering impossible the acknowledgement, use or exercise of human rights and freedoms of women and men on equal grounds (Article 1 of the Law). As noted by K. Levchenko, this approach to the definition is much narrower than those used in UN documents, for example, in the International Convention on the Elimination of All Forms of Racial Discrimination or in the Convention on the Elimination of All Forms of Discrimination Against Women. In these documents, discrimination is defined not merely as acts or omissions, but as any distinction, exclusion, restriction or preference which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Distinction, exclusion or restriction may be manifested not only in actions or decisions.¹⁵⁸ In practice, the said conflict between domestic and international law was obvious at the time of a lawsuit filed against the then Prime Minister of Ukraine, Mykola Azarov, for his gender-discriminatory statement that women have no place in the management of public affairs: ‘Some say our government is large, others – that there are no women in the government, no one to look at during the Cabinet’s meetings. Only boring persons are there. With all due respect to women – carrying out reforms is not women’s business.’ The courts of all instances found no action and, therefore, discrimination in his words, referring to the quoted statement as a value judgment. No attention, meanwhile, was paid to the fact of distinction, which brings limits to women’s rights.¹⁵⁹

The concept of ‘gender-based discrimination’ is currently used in Ukraine’s court practice (as of November 1, 2016, 283 judicial acts mention this concept), but usually without elaborating the concept and merely referring to it. Most often, such references are purely formal and have no influence on the outcome of the proceedings.¹⁶⁰ The above examples demonstrate the need for a deeper understanding of

Comparative Law. – 2013. – № 3–2. – P. 313–315.

¹⁵⁸ Левченко К. Дискримінація: протидія чи її дискредитація? // К. Levchenko. Discrimination: combating or discrediting? // <http://www.pravda.com.ua/columns/2012/05/17/6964708/>.

¹⁵⁹ Левченко К. Дискримінація: правове визначення поняття // Наше право. – 2011. – № 2. ч.1. – С. 40–45 // К. Levchenko. DISCRIMINATION: A LEGAL DEFINITION. Nashe Pravo, No. 2, Part 1, 2011, pp. 40–45.

¹⁶⁰ See Захист від гендерної дискримінації в судових рішеннях українських судів: звіт за результатами моніторингу / Підготовлено: Олена Уварова, Марія Ясеновська. – Харків: ФОП Бровін О. В., 2016. – 182 с. // Protection from Gender Discrimination in Judgments by Ukrainian Courts: Monitoring Report / Prepared by: Olena Uvarova, Maria Yasenovska. –

discrimination by judges and other litigants, including public prosecutors. Furthermore, the inclusion of appropriate provisions into the reasoning part of judgments would allow judges to provide a more sound support for their position in the case, which would increase the credibility of the court and have an optional effect of raising public awareness of discrimination issues.

Thus, the **requirement of non-discrimination** means:

1. *Equal treatment of persons who are in a equal situation: no one may treat individuals in a less favourable way (otherwise) just because they are of a certain gender or a certain nationality, or a certain sexual orientation, etc. (i.e. direct discrimination is inadmissible).*

An example of direct discrimination may be seen in the ban established by the laws of Ukraine on engaging women in night work, heavy work or work in harmful or hazardous working environment, underground work,¹⁶¹ as well as in the ban on engaging women who have children below three years in overtime or weekend work, or on sending them on business trips. The imposition of such 'special care' results in a number of negative consequences such as a significant difference in material well-being between women and men, a prevalence of diametrically opposite expectations for women and for men, and builds the image of woman as a dependent and inapt person who requires outside control and care.¹⁶²

2. *Different treatment of persons who are in different situations.* The attitude must be different to the extent necessary to enable the relevant persons the use of specific opportunities on equal terms with others (i.e. the requirement to prevent *indirect discrimination* applies). For example, if a pregnant woman is treated by employer in the same way as other employees (refusal to transfer her to less arduous/hazardous work, failure to provide maternity and childbirth leave, etc.), discrimination would occur.

In other words, indirect gender-based discrimination occurs where an apparently neutral rule/provision, criterion or practice would put persons of the same gender at a disadvantage in a similar situation compared with persons of a different gender, unless that rule/provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Thus, for example, indirect discrimination of women may be caused by a provision of the Law of Ukraine No. 1282-XII¹⁶³ 'On Indexation of Monetary Incomes of the Population' of 03/07/1991, which states that 'indexation of monetary incomes shall be carried out within the financial resources of budgets of all levels in the corresponding year' (this provision is valid as of January 1, 2015). This gave the opportunity for budget-funded entities to neglect indexation of monetary incomes of their employees in 2015, the majority of which are women. Indirect discrimination, in particular, may constitute a situation where a gender-neutral law might have a negative impact that primarily affects women and statistical data may be used, among other things, as evidence. In the high-inflation environment, such measures may be particularly burdensome for women.

Thus, indirect gender-based discrimination occurs under the following conditions:

- an apparently neutral rule of general nature exists, i.e. applicable to everyone, regardless of gender;

Kharkiv, Private Entrepreneur O. V. Brovin, 2016, p. 182.

¹⁶¹ The List of arduous occupations and occupations with harmful and hazardous working environment, prohibiting the employment of women (Order No. 256 of the Ministry of Health of Ukraine of 29/12/1993) in about 500 occupations, is still in force in Ukraine.

¹⁶² See the National Report for more details

¹⁶³ <http://zakon3.rada.gov.ua/laws/show/1282-12>.

- in practice, the effect of such a neutral rule results in the occurrence of certain adverse consequences. Furthermore, the consequences to a significant extent occur for representatives of one gender, compared to representatives of the opposite gender. This characteristic differentiates indirect discrimination from direct discrimination: it shifts our attention from differences in the treatment to differences in the consequences. When considering such matters, the EU Court of Justice and the European Court of Human Rights invoke statistical data to demonstrate that representatives of one gender suffered disproportionately negative consequences compared to other persons in a similar situation. These institutions are looking for evidence to prove that a large percentage of adversely affected persons belong to a 'protected group'. Thus, the following wordings may be found in the case-law of the Court of Justice: for a measure to be found discriminatory, it should affect 'a far greater number of women than men'¹⁶⁴, 'a considerably smaller percentage of men than women'¹⁶⁵, or 'far more women than men'.¹⁶⁶

One should also bear in mind that proceedings in the cases of discrimination and, in particular, gender-based discrimination, are closely connected with the problem of *stereotypes*. In the field of legal regulation, situations are mentioned where stereotyped ideas are applied to a particular member of a specific group, in respect of which any given stereotype is established. In other words, the existing generalised ideas about characteristics, roles, qualities of men or women are extended to a specific man or a specific woman. A judge (or the public prosecutor) may be unconsciously guided by stereotypes when making legally significant decisions. For example, a judge, when considering a case of rape, may proceed from a stereotyped idea that a woman in revealing attire would be inviting a man to sexual contact. Or a public prosecutor, when carrying out public prosecution, may refute the testimony by a witness for the defence, pointing out, for example, that the witness leads an immoral life and therefore may give false statements. Another example: a judge who hears the case where the place of residence for a child is to be determined with either of the parents, may be guided by stereotypes that all women are good mothers and take better care of children than men, and may conclude on this basis that the child should in any case stay with the mother. When considering cases of domestic violence, a judge may be influenced by stereotyped ideas that quarrels between spouses concern them only, that it would be unwise to give them publicity, or that the woman herself provoked the violence against herself and other stereotypical attitudes.¹⁶⁷

5.2. Non-discrimination test. When it comes to discrimination, there is an understanding that criteria should exist that would allow the identification of a situation as discriminatory. Without identification, establishing a violation of a person's rights is sometimes impossible. First of all, it is important to have a 'reference standard', i.e. a person who is basically in a similar situation compared to a person who complains of a different treatment. This, naturally, is not enough to establish the fact of

¹⁶⁴<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1462523466738&uri=CELEX:61988CJ0171>.

¹⁶⁵<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1462525188677&uri=CELEX:61989CJ0184>;

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1462525240447&uri=CELEX:61989CJ0033>.

¹⁶⁶<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1462530501061&uri=CELEX:61994CJ0280>.

¹⁶⁷ Unfortunately, stereotypes also seep into methodological literature. Thus, one can find the following advice to judges in a textbook (Кадрова політика в суді: сучасний досвід. – Київ, 2016 // Personnel policy in courts: current experience. Kyiv, 2016): 'Deliver on your promises! If you are not sure whether certain judgments could be enforced promptly, better don't promise. Perhaps, you often found yourself in a situation when someone gave you a promise and failed to keep it. This is very frustrating, and we no longer regard such person as a man of his word. The only exception is a purely feminine forgetfulness for flirting purposes. She promises and then says, 'Oops, I forgot!' (p. 124); 'The nature and treachery of conflictogenes may be explained as follows. We are far more sensitive to what other people say than to what we say ourselves. As a maxim goes, 'Women do not attach any importance to their words, but attach huge importance to what they hear themselves.' In fact, all of us, not just the fair sex, are guilty of this' (p. 128); 'Gossip is more likely to circulate in organisations where there are more women than men. There is only one solution: when putting together a team, try to make it as varied by gender and age as possible' (p. 110), etc.

discrimination. The different treatment discovered by this comparison must be caused the person's gender (where gender-based discrimination is alleged), and, therefore, it is necessary to establish a causal link between less favourable treatment of such person and his/her gender. For this purpose, the so-called 'non-discrimination test' is used, developed largely from studying and generalising the practice of the relevant international judicial institutions (the European Court of Human Rights, the European Court of Justice, the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination against Women).

The gender non-discrimination test includes the following questions:

- *Was there a difference in treatment/attitude? Would the person be subjected to less favourable treatment if he/she were of the opposite sex?*
- *Did the difference in treatment have objective and reasonable justification? Does the difference in treatment pursue lawful (legitimate) aim? Are the measures of achieving this legitimate aim proportionate?* Thus, according to the position of the European Court of Human Rights, 'a difference in the treatment of persons in relevantly similar situations... is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.'¹⁶⁸

Below are a few examples of the cases of gender-based discrimination tried by courts. Thus, one of the disputes,¹⁶⁹ after being considered by a court of first instance and a court of appeal, was referred to the High Specialised Court of Ukraine for Civil and Criminal Cases. The plaintiff filed a lawsuit demanding that the refusal of the defendant to employ him be declared groundless, that the defendant sign an employment contract with him, that the job of a typesetting operator be declared non-specific, i.e. not to be performed solely by persons of a certain gender or age, and that non-pecuniary damage of UAH5,000 be recovered from the defendant. The claim was based on the fact that the plaintiff, as instructed by an employment centre, applied for the vacancy of typesetter operator offered by the defendant, but was denied employment, since the defendant wanted this position to be taken by a woman aged 30 to 45. Dismissing the lawsuit, the court of first instance, whose findings were shared by the court of appeal, presumed that the employment of the plaintiff would violate the legitimate rights and interests of other female employees, since the defendant, with regard to the specifics of work, had created particular environment to ensure labour safety for the women. The above department employs 29 persons (including 5 persons in the computer typesetting unit), all of them – women. The defendant, with regard to female physiology, had installed the appropriate sanitary amenities for female employees of the computer typesetting unit. Furthermore, the defendant had no space available for the installation of separate amenities for male employees. Thus, employment of a person of the opposite gender would result in the violation of the rights of other employees (women).¹⁷⁰

It appears that the court erred in identifying gender-based discrimination. The only argument put forward by the employer was that he employed an all-female team for which the proper work environment was provided. However, this cannot constitute an appropriate ground or legitimate aim for justification of a significant difference in the treatment of a person of the opposite sex, which was reflected in the denial of employment for such person. The only basis for denial of employment was the applicant's gender. Moreover, the court also maintained that, under the provisions of Article 21 of LCU, an employment

¹⁶⁸Burden v. UK [GC], ECtHR, 13378/05, § 60, April 29, 2008.

¹⁶⁹See Захист від гендерної дискримінації в судових рішеннях українських судів: звіт за результатами моніторингу / Підготовлено: Олена Уварова, Марія Ясеновська. – Харків: ФОП Бровін О. В., 2016 // Protection from Gender Discrimination in Judgments by Ukrainian Courts: Monitoring Report / Prepared by: Olena Uvarova, Maria Yasenovska. – Kharkiv, Private Entrepreneur O. V. Brovin, 2016.

¹⁷⁰<http://www.reyestr.court.gov.ua/Review/40568581>.

contract, like any other bilateral agreement, requires the consent not only from an employee, but also from an owner or a body authorised by such owner. Otherwise, as emphasised in the judgment, the owner or the body authorised by the owner would be denied an opportunity to carry out in full their functions associated with manpower deployment, to bear responsibility for the employees' compliance with job specifications, and to satisfy demands of their business for the employees having particular skills and appropriate experience.¹⁷¹ In other words, in the court's opinion, staffing principles, or whether to deny employment on the grounds of gender only, is a purely internal matter of the employer.¹⁷²

However, one should also keep in mind that differences in treatment on such grounds as gender may have reasonable justification, i.e. pursuit of a legitimate aim, and the difference in treatment may be proportionate to such aim. A traditional example in the field of employment is the protection of pregnant women and women who have recently given birth. In this situation, the difference in treatment is obvious, however, it pursues a legitimate aim and the measures applied such as additional leave, job retention, prohibition of dismissal, etc. are proportionate.

5.3. Burden of proof in cases of gender discrimination. Proving discrimination, i.e. actions whose purpose (direct discrimination) or consequence (indirect discrimination) was a violation of a right, remains one of the key problems. In European law, the principle under which the plaintiff is charged with the burden of proof operated for a long time. Accordingly, proving the discriminatory nature of certain actions by the defendant was almost impossible. This practice had existed in Europe, prior to the adoption of the EU Council Directive on the burden of proof in cases of discrimination based on sex. Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex (repealed and replaced by Directive 2006/54), stipulates that when a plaintiff refers to facts that point to gender-based discrimination, *it shall be for the respondent* to prove that there has been no breach of the principle of equal treatment. Member States are required to: (1) take such measures as are necessary to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them; (2) establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination. The burden of proving that there has been no breach of the principle of equal treatment lies with the respondent. This shifts the burden of proof from the plaintiff to the respondent, thereby significantly improving the situation of a potential victim of discrimination in judicial proceedings. This principle of proof in discrimination cases implies that the alleged victim may confine her/himself to referring before a relevant body to facts that point to discrimination, and the burden of proof shall lie with the person accused of discriminatory treatment. The only thing is that principle of the burden of proof does not apply to criminal proceedings.

In Ukraine, unfortunately, *the courts assume that a person who alleges discrimination in civil proceedings must prove that such discrimination has really occurred*. In other words, the burden of proof is entirely on such person. The procedural basis for such position of the court is provided by Article 60 of CiPCU¹⁷³, according to which each party must prove the circumstances that it refers to as the basis for its claims or

¹⁷¹<http://www.reyestr.court.gov.ua/Review/32105992>.

¹⁷² The above case, even before trial, was considered by the Expert Council on Combating Gender-Based Discrimination under the Ministry of Social Policy of Ukraine. In the Council's opinion, the advertised vacancy, where additional requirements for the position of a typesetter operator include a woman between 30 and 45 years of age, is discriminatory against men by limiting their right to perform a respective work or to take a specified vacant position. At the same time, it is also discriminatory against women, since it imposes age limitations on their right to and eligibility to this position – between 30 and 45 years. No reasonable explanations exist as to why this vacancy cannot be filled by women aged 18 to 30 and 45 to 60 years (See Як оскаржити дискримінацію? Організація та досвід роботи Експертної ради з питань протидії дискримінації за ознакою статі / Бочкор Н.П., Левченко К.Б., Мазуренко В.Ю. та ін. – К.: Міжнародний жіночий правозахисний центр “Ла Страда-Україна”, 2013. – С. 16-17 // How discrimination can be challenged. Organisation and track record of the Expert Council on Combating Gender-Based Discrimination / N. P. Bochkor, K. B. Levchenko, V. Yu. Mazurenko et al. Kyiv, La Strada – Ukraine, International Women's Rights Centre, 2013, pp. 16–17).

¹⁷³<http://zakon3.rada.gov.ua/laws/show/1618-15>.

objections. At the same time, the Law of 13/05/2014 included a rule into CiPCU, according to which a plaintiff in the case of discrimination must provide factual evidence that discrimination really occurred. *If such information has been provided, its rebuttal shall be on the defendant.* Thus, the approach built into the procedural legislation of Ukraine is identical to that adopted in the EU anti-discrimination laws: it is sufficient for a plaintiff to state the facts, based on which it may be assumed that the discriminatory attitude/treatment occurred; after that, the burden of proving the opposite shifts to the person against whom the claim was made.

Note also that an obstacle to gender equality is also represented in the position – quite widespread among the judges – according to which the judge is not entitled to an opinion in his/her judgment that discrimination occurred, unless the plaintiff her/himself refers to it. Judges believe that here the rule of them being restricted by a lawsuit applies as they cannot go beyond the plaintiff's claims and, where the plaintiff her/himself does not refer to discrimination, it means that the court may not consider the case in this context. It should be noted in this connection that, in our opinion, the issue of discrimination is not that of a plaintiff's claim. It is an issue of correct legal classification of the situation. Even if the victim of discrimination alleges a violation of her/his rights without referring to the fact that such violation resulted from discrimination, this shall not restrict the judge in providing a correct legal classification.¹⁷⁴

¹⁷⁴ Захист від гендерної дискримінації в судових рішеннях українських судів: звіт за результатами моніторингу / Підготовлено: Олена Уварова, Марія Ясеновська. – Харків: ФОП Бровін О. В., 2016. – С. 170 // / Protection from Gender Discrimination in Judgments by Ukrainian Courts: Monitoring Report / Prepared by: Olena Uvarova, Maria Yasenovska. – Kharkiv, Private Entrepreneur O. V. Brovin, 2016, p. 170.

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Annex 1

Programme of Training

on the topic of ‘Adjudication of disputes involving discrimination: best practices (on the example of gender discrimination)’

Day 1

08.30 - 09.40	Registration of participants
09.40 - 10.00	Welcoming speech
10.00-10.20	Introducing the participants; their expectations
10.20-11.30	Testing of participants, followed by discussion
11.30-11.40	Break
11.40-12.10	An interactive mini-lecture using a PowerPoint presentation The concept of discrimination, its types and manifestations (using specific examples and prompting the audience to vote, whether there is discrimination (in any form); working with a flip chart; the algorithm of questions put to the audience, which should provide correct answers) Differences in treatment under the same circumstances, which do not create discrimination. Prohibited grounds of discrimination. The concept of positive discrimination A practical exercise in identifying discrimination in model cases: work in groups (analysis of the case text, group reports, conclusions of an expert)
12.10-13.10	
13.10 - 14.10	Break
14.10 – 15.00	An interactive lecture using a PowerPoint presentation International and regional standards of judicial protection against discrimination (UN, Council of Europe, EU) Prohibition of discrimination in the Convention for the Protection of Human Rights and Fundamental Freedoms The scope of the prohibition of discrimination established by Article 14 of the Convention, its optional nature and autonomous status Best practices: judgments by the European Court of Human Rights, the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination against Women, the European Court of Justice
15.00 – 16.00	Practical exercise: a role-playing game on the basis of a previous judgment (from the case-law of the European Court of Human Rights / the UN Human Rights Committee / the UN Committee on the Elimination of Discrimination against Women / the European Court of Justice)
16.00 - 16.50	An interactive lecture using a PowerPoint presentation Discrimination de jure and de facto in Ukraine. Anti-discrimination laws of Ukraine and their application in practice. Brief overview. Analysis of problematic issues.
16.50 – 17.00	Summing up the first day of the workshop Discussion Homework: model cases for small groups to determine whether there has been discrimination

(if yes, in what form); which acts – international and domestic – apply; what judgment should be adopted

Day 2

10.00 - 10.50	Homework presentation by small groups Discussion
10.50-11.10	An interactive mini-lecture using a PowerPoint presentation and instructional video Stereotypes and their impact on the administration of justice and conduct of judges and trial participants
11.10 - 11.50	A practical exercise concerning the impact of stereotypes on the administration of justice in model cases: work in groups (analysis of the case text, group reports, conclusions of an expert)
11.50 - 12.00	Break
12.00 - 13.00	An interactive lecture using a PowerPoint presentation Burden of proof in cases of discrimination. International and regional standards. Practice of the ECtHR, UN Committees, the European Court of Justice. Procedural requirements under the laws of Ukraine: a comparison of approaches
13.00 - 14.00	Lunch break
14.00 – 14.40	Identifying categories of cases with the highest risk of discrimination: brainstorming Comments by an expert
14.40 - 15.00	An interactive mini-lecture using a PowerPoint presentation The problem of multiple discrimination. Standards of adjudication in cases of multiple discrimination
15.00 – 16.20	A practical exercise in specifics of multiple discrimination in model cases: work in groups (analysis of the case text, group reports, conclusions of an expert)
16.20 – 17.00	Summary. Presentation of certificates.

Annex 2

Programme of Training on the topic of 'Gender equality in the administration of justice' as part of a weekly training for judges of local courts of law

Objectives:

- introduce the participants to such concepts as 'gender', 'gender equality', 'discrimination', 'gender stereotypes' and others; the types, manifestations of gender discrimination in public/private spheres; gender stereotypes and their action mechanisms; international legal instruments (both universal and regional) in the field of gender equality and Ukraine's obligations under them; judgments of the ECtHR, findings of the UN Human Rights Committee and the UN Committee on the Elimination of Discrimination against Women as regards discrimination on grounds of gender; domestic legislation that governs such legal relations; safeguards and methods of protection;
- inform of the importance of compliance with gender sensitive approach, particularly in cases of gender-based violence, including domestic violence, human trafficking, etc.;
- build the skills to discern gender aspects when considering each particular case; to identify discriminatory situations and actions; to identify instances where the violation of rights and legitimate interests of a person constitutes the result of discriminatory provisions in domestic legislation or neutral legislative provisions that actually lead to discriminatory consequences, as well as gender stereotypes, in the light of which laws are interpreted or applied;
- introduce to the standards of proof in cases of gender discrimination and other gender sensitive cases.

09.30-09.40	Start of training Introducing the trainers, meeting the participants
09.40-09.50	Brainstorming (flip chart): 'What are the main barriers to access to justice for women and men in Ukraine?'
09.50-11.30	MODULE 1. The content of the gender equality principle and the role of courts in implementing it in practice Objectives: <ul style="list-style-type: none">- introduce the participants to the concept of gender equality, describe the state of gender equality in Ukraine;- discover the role of courts in ensuring gender equality;- explain the importance of a gender-sensitive approach in cases with potential manifestations of gender discrimination;- illustrate negative impact of stereotypes on the administration of justice. <p>A mini-lecture using a PowerPoint presentation</p> <p>Gender equality in the administration of justice as a safeguard of its accessibility</p>
09.50-10.10	<ul style="list-style-type: none">• The concept of accessibility to justice and its key elements. International standards of accessibility to justice• The concept of gender equality, its importance in the exercise of human rights. Legal and actual equality• The role of judges in ensuring gender equality and overcoming discrimination on the grounds of gender. A gender-sensitive approach in proceedings• Implementation of the principle of gender equality in Ukraine: evaluation criteria, the most problematic areas
10.10-10.20	Q&A. Discussion

10.20-10.40	Work in small groups (6 groups) Practical exercises concerning the influence of stereotypes on the administration of justice in model cases (one plot, six tasks)
10.40-11.10	Presentation of solutions to practical exercises
11.10-11.30	Module 1: Summing up
11.30-11.40	Break
11.40-13.20	<p>MODULE 2. Identification of gender discrimination</p> <p>Objectives:</p> <ul style="list-style-type: none"> - build in the participants the capacity to identify cases of discrimination, including by reference to the non-discrimination test; - give an overview of international and regional standards of protection against discrimination, illustrated by judgments of the European Court of Human Rights, the UN Human Rights Committee, the UN Committee on the Elimination of Discrimination against Women, the European Court of Justice; - clarify the rules on the burden of proof in cases of discrimination. <p>A mini-lecture using a PowerPoint presentation</p> <p>The concept of discrimination: basic definitions</p>
11.40-12.00	<ul style="list-style-type: none"> • Types and forms of discrimination • The concept of positive discrimination • International and regional standards of judicial protection against discrimination • Burden of proof in cases of discrimination
12.00-12.10	Q&A. Discussion
12.10-12.30	Work in small groups (6 groups) Practical exercises in identifying discrimination in model cases
12.30-13.00	Presentation of solutions to practical exercises
13.00-13.10	Trainer's comments on each group's performance (in terms of conformity with non-discrimination test)
13.10-13.20	Module 2: Summing up
13.20-14.20	Break
14.20-17.00	<p>MODULE 3. Proceedings in the cases of gender discrimination</p> <p>Objectives:</p> <ul style="list-style-type: none"> - give the participants an idea of those categories of cases where the risk of gender discrimination is the highest; - brief the participants of the results of court monitoring, the purpose of which is to determine compliance of court practice, in the cases related to gender discrimination, with international and regional standards of judicial protection; - determine the problematic aspects of proceedings in the cases of gender discrimination
14.20-15.20	<p>A mini-lecture using a PowerPoint presentation</p> <p>An overview of typical categories of disputes associated with gender discrimination</p> <ul style="list-style-type: none"> • Gender discrimination in employment • Resolving family disputes associated with gender discrimination

- Electoral disputes
- Domestic violence and gender-based violence
- Human Trafficking

15.20-15.30	Q&A. Discussion
15.30-15.40	Break
15.40-15.50	Instructional video. Discussion
15.50-16.10	Work in small groups (6 groups) Practical exercises in the specifics of proceedings in certain categories of cases
16.10-16.40	Presentation of solutions to practical exercises
16.40-16.50	Module 3: Summing up
16.50-17.00	Summing up.
17.00-18.00	Survey (questionnaire) of judges – participants in the training. Assessment

Annex 3

Programme of Training on the topic of 'Specifics of proceedings in the cases of gender-based violence' as part of a weekly training for judges of local courts of law

09.30-09.40	Start of training Introducing the trainers, meeting the participants
09.40-10.00	Questionnaire survey of judges
10.00-12.00	MODULE 1. Gender-based violence as manifestation of discrimination Objectives: <ul style="list-style-type: none">- introduce the participants to the basic categories of cases associated with gender-based violence (domestic violence, human trafficking, rape, etc.);- describe the role of the court in protecting the rights of women in the proceedings related to gender-based violence; explain the importance of a gender-sensitive approach in such cases;- illustrate negative impact of stereotypes on the administration of justice in this category of cases.
10.00-10.40	A lecture using a PowerPoint presentation Gender-based violence: basic categories of cases. General overview of Ukrainian legislation and the practice of its application
10.40-10.50	Q&A. Discussion
10.50-11.00	Break
11.00-11.20	Work in small groups (6 groups) Practical exercises concerning the influence of stereotypes on the administration of justice in the cases associated with gender-based violence
11.20-11.50	Presentation of solutions to practical exercises (5 minutes for presentation from each group)
11.50-12.00	Module 1: Summing up
12.00-12.30	Instructional video. Discussion
12.30-13.30	Break
13.30-15.30	MODULE 2. International standards of proceedings in the cases on violence against women and domestic violence Objectives: <ul style="list-style-type: none">- introduce the participants to the requirements of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention);- identify the key problems in the domestic legislation in connection with the non-compliance with the Istanbul Convention- review relevant prospective legislation (the draft Law 'On Amendments to Certain Laws of Ukraine in Connection with Ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence') A mini-lecture using a PowerPoint presentation

13.30-14.00	The Istanbul Convention: key provisions
14.00-14.30	Work in small groups (6 groups) Finding solutions to practical problems using the text of the Convention
14.30-15.00	Presentation of solutions to practical exercises (5 minutes for presentation from each group)
15.00-15.20	Trainer's comments on each group's performance
15.20-15.30	Module 2: Summing up
15.30-15.40	Break
15.40-17.20	MODULE 3. Proceedings in the cases of domestic violence Objectives: <ul style="list-style-type: none"> - conduct comparative analysis of international standards of proceedings in the cases of domestic violence and domestic legislation; - provide an overview of the main issues that occur when considering cases involving domestic violence; - brief the participants of prospective legislation in this area (draft Law of Ukraine 'On preventing and combating domestic violence')
15.40-16.10	A mini-lecture using a PowerPoint presentation Review of international standards of proceedings in the cases of domestic violence
16.10-16.20	Instructional video. Discussion
16.20-16.40	Work in small groups (6 groups) Practical exercises in the specifics of proceedings in certain categories of cases
16.40-17.10	Presentation of solutions to practical exercises (5 minutes for presentation from each group)
17.10-17.20	Module 3: Summing up
17.20-17.30	Summing up.
17.30-18.00	Assessment

Annex 4

Suggstions for Mainstreaming Gender Components into the Training of Legal Professionals

Topics	Suggestions for incorporating a gender component
Problematic issues of judicial review of criminal proceedings in the court of first instance	To add: 1) Due regard to the gender aspect during hearings 2) Specifics of proceedings in the cases of gender-based violence
Judicial ethics. Integrity	To add: 1) Gender-balanced speech as a manifestation of respect for participants in the trial 2) Preventing the influence of gender stereotypes on the work of judges
Application of the ECHR and the ECtHR case-law in the administration of justice	To add: 1) Protection from discrimination under the ECHR
Civil proceedings in the court of first instance	To add: 1) Due regard to the gender aspect during hearings 2) Burden of proof in cases of discrimination
Psychological adaptation to the profession of judge. Preventing the development of professional burnout	To add: 1) Gender stereotypes associated with the profession of judge
Writing the judgments	To add: 1) Gender-balanced speech of a judgment
Certain aspects of resolving disputes arising from labour relations	To add: 1) Gender-based discrimination in employment
Evidence and proving in criminal proceedings in the court of appeal	To add: 1) Proving in the cases of gender-based violence
Staffing of courts	To add: 1) Gender balance in the courts' staffing

Annex 5

Programme of Training

on the topic of 'Combating gender-based violence: the mission of public prosecutors' offices' for public prosecutors

Day 1

09.30-09.40	Start of training Introducing the trainers, meeting the participants
09.40-10.00	Questionnaire survey of public prosecutors
10.00-11.30	MODULE 1. Gender-based violence as manifestation of discrimination Objectives: <ul style="list-style-type: none">- introduce the participants to the basic categories of cases associated with gender-based violence (domestic violence, human trafficking, rape, etc.);- describe the role of public prosecutors in the criminal proceedings in cases of gender-based violence;- illustrate negative impact of stereotypes on the investigative activities in this category of cases.
10.00-10.40	A lecture using a PowerPoint presentation Gender-based violence: basic categories of cases. General overview of Ukrainian legislation and the practice of its application
10.40-10.50	Q&A. Discussion
10.50-11.00	Break
11.00-11.20	Work in small groups (6 groups) Practical exercises concerning the standards of conduct when dealing with a victim of gender-based violence
11.20-11.50	Presentation of solutions to practical exercises (5 minutes for presentation from each group)
11.50-12.00	Module 1: Summing up
12.00-12.30	Instructional video. Discussion
12.30-13.30	Break
13.30-15.30	MODULE 2. International standards of investigation and proceedings in the cases on violence against women and domestic violence Objectives: <ul style="list-style-type: none">- introduce the participants to the requirements of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention);- identify the key problems in the domestic legislation in connection with the non-compliance with the Istanbul Convention- review relevant prospective legislation (the draft Law 'On Amendments to Certain Laws of Ukraine in Connection with Ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence') as regards the mission of public prosecutor's offices A mini-lecture using a PowerPoint presentation

13.30-14.00	The Istanbul Convention: key provisions
14.00-14.30	Work in small groups (6 groups) Finding solutions to practical problems using the text of the Convention
14.30-15.00	Presentation of solutions to practical exercises (5 minutes for presentation from each group)
15.00-15.20	Trainer's comments on each group's performance
15.20-15.30	Module 2: Summing up
15.30-15.40	Break
15.40-17.20	MODULE 3. The role of public prosecutors in combating domestic violence Objectives: <ul style="list-style-type: none"> - conduct comparative analysis of international standards and domestic legislation; - brief the participants of prospective legislation in this area (draft Law of Ukraine 'On preventing and combating domestic violence')
15.40-16.10	A mini-lecture using a PowerPoint presentation Review of international standards
16.10-16.20	Instructional video. Discussion
16.20-16.40	Work in small groups (6 groups) Finding solutions to practical problems
16.40-17.10	Presentation of solutions to practical exercises (5 minutes for presentation from each group)
17.10-17.20	Module 3: Summing up Homework: analysis of model plots to identify mistakes made by a public prosecutor in the relevant criminal proceedings
Day 2	
9.30-10.00	Homework presentation in small groups
10.00-10.30	Discussion. Comments by a trainer
10.30-13.00	MODULE 4. Mission of a public prosecutor in combating human trafficking Objectives: <ul style="list-style-type: none"> - analyse international standards and domestic legislation; - introduce the participants to the practice of investigating cases of human trafficking, give an overview of major problems and provide guidelines for overcoming them
10.30-12.20	A mini-lecture using a PowerPoint presentation Review of international standards
11.00-11.30	Work in small groups (6 groups) Finding solutions to practical problems
11.30-12.00	Presentation of solutions to practical exercises (5 minutes for presentation from each group)
12.00-12.10	Comments by a trainer
12.10-12.20	Module 4: Summing up
12.20-13.20	Break

13.20-15.20	MODULE 5. Criminal proceedings in cases of sexual violence
	Objectives:
	<ul style="list-style-type: none"> - analyse international standards and domestic legislation; - introduce the participants to the practice of criminal proceedings in cases of sexual violence - describe the role of a public prosecutor
13.20-14.10	A mini-lecture using a PowerPoint presentation
	Review of international standards
14.10-14.30	Work in small groups (6 groups) Finding solutions to practical problems
14.30-15.00	Presentation of solutions to practical exercises (5 minutes for presentation from each group)
15.00-15.10	Comments by a trainer
15.10-15.20	Module 5: Summing up
15.20-15.30	Summing up
15.30-16.00	Assessment

Annex 6

International Instruments Aimed at Protecting the Rights of Women

Instrument	Ratified by Ukraine on ¹⁷⁵
Convention on the Political Rights of Women ¹⁷⁶	15/11/1954
International Convention on the Elimination of All Forms of Racial Discrimination ¹⁷⁷	21/01/1969
International Covenant on Civil and Political Rights ¹⁷⁸	18/09/1973
Optional Protocol to the International Covenant on Civil and Political Rights ¹⁷⁹	25/12/1990
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty ¹⁸⁰	16/03/2007
International Covenant on Economic, Social and Cultural Rights ¹⁸¹	19/10/1973
UN Convention on the Elimination of All Forms of Discrimination Against Women ¹⁸²	12/03/1981
Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination Against Women ¹⁸³	05/06/2003
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	26/01/1987
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ¹⁸⁴	21/07/2006
Convention on the Rights of the Child ¹⁸⁵	27/02/1991
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	23/06/2004
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ¹⁸⁶	Not ratified
Convention on the Rights of Persons with Disabilities	16/12/2009
Optional Protocol to the Convention on the Rights of Persons with Disabilities ¹⁸⁷	16/12/2009
Convention for the Protection of Human Rights and Fundamental	17/07/1997

¹⁷⁵ International treaties concluded by the Ukrainian SSR are binding for Ukraine by virtue of Article 6 of the Law of Ukraine 'On Succession of Ukraine' of 12/09/1991. № 1543-XII (<http://zakon5.rada.gov.ua/laws/show/1543-12>).

¹⁷⁶ http://zakon5.rada.gov.ua/laws/show/995_156.

¹⁷⁷ http://zakon3.rada.gov.ua/laws/show/995_105.

¹⁷⁸ http://search.ligazakon.ua/l_doc2.nsf/link1/MU66003U.html.

¹⁷⁹ http://zakon3.rada.gov.ua/laws/show/995_086.

¹⁸⁰ http://zakon3.rada.gov.ua/laws/show/995_187.

¹⁸¹ http://zakon5.rada.gov.ua/laws/show/995_042.

¹⁸² http://zakon5.rada.gov.ua/laws/show/995_207.

¹⁸³ http://zakon3.rada.gov.ua/laws/show/995_794.

¹⁸⁴ http://zakon4.rada.gov.ua/laws/show/995_f48.

¹⁸⁵ http://zakon4.rada.gov.ua/laws/show/995_021.

¹⁸⁶ http://zakon4.rada.gov.ua/laws/show/995_203.

¹⁸⁷ http://zakon4.rada.gov.ua/laws/show/995_g72.

Freedoms ¹⁸⁸	
European Social Charter ¹⁸⁹	14/09/2006
Council of Europe Convention on Action against Trafficking in Human Beings ¹⁹⁰	21/09/2010
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ¹⁹¹	20/06/2012
Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence ¹⁹²	Not ratified Ukraine has signed the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) and is currently in the process of its ratification which is expected in 2016.
ILO Equal Remuneration Convention (No. 100) ¹⁹³	10/08/1956
ILO Abolition of Forced Labour Convention ¹⁹⁴	14/12/2000
ILO Discrimination (Employment and Occupation) Convention ¹⁹⁵	04/08/1961
ILO Minimum Age Convention ¹⁹⁶	03/05/1979
ILO Worst Forms of Child Labour Convention ¹⁹⁷	14/12/2000
ILO Maternity Protection Convention (Revised) ¹⁹⁸	14/09/1956
ILO Convention concerning the revision of the Maternity Protection Convention (Revised) ¹⁹⁹	Not ratified
ILO Convention concerning decent work for domestic workers ²⁰⁰	Not ratified

¹⁸⁸ http://zakon3.rada.gov.ua/laws/show/995_004.

¹⁸⁹ http://zakon4.rada.gov.ua/laws/show/994_062.

¹⁹⁰ http://zakon4.rada.gov.ua/laws/show/994_858.

¹⁹¹ http://zakon4.rada.gov.ua/laws/show/994_927.

¹⁹² <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680096e45>.

¹⁹³ http://zakon4.rada.gov.ua/laws/show/993_002.

¹⁹⁴ http://zakon4.rada.gov.ua/laws/show/993_013.

¹⁹⁵ http://zakon4.rada.gov.ua/laws/show/993_161.

¹⁹⁶ http://zakon4.rada.gov.ua/laws/show/993_054.

¹⁹⁷ http://zakon3.rada.gov.ua/laws/show/993_166.

¹⁹⁸ http://zakon3.rada.gov.ua/laws/show/993_122.

¹⁹⁹ http://zakon3.rada.gov.ua/laws/show/993_294.

²⁰⁰ http://zakon4.rada.gov.ua/laws/show/993_530.

Annex 7

Selected list of relevant Directives of the European Union

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security²⁰¹

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)²⁰²

Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC²⁰³

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation²⁰⁴

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services²⁰⁵

Council Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation²⁰⁶

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity²⁰⁷

²⁰¹<http://old.minjust.gov.ua/45891>; <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31979L0007>.

²⁰²<http://old.minjust.gov.ua/45891>; <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>.

²⁰³<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996L0034>.

²⁰⁴<https://minjust.gov.ua/file/32391>; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.

²⁰⁵<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:en:PDF>.

²⁰⁶<http://old.minjust.gov.ua/45891>; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:en:PDF>.

²⁰⁷old.minjust.gov.ua/file/32556; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:180:0001:0006:en:PDF>.

Annex 8

Relevant definitions found in national legislation of Ukraine

The laws of Ukraine provide the following definitions:

discrimination means the situation when one person and/or a group of persons undergo limitations in recognition, realization or exercise of their rights and freedoms in any form, stipulated by this Law, in terms of race, skin colour, political, religious or any other beliefs, gender, age, disability, ethnic or social origin, citizenship, marital or property status, place of residence, language and any other characteristics, which are available or may be actual or presumable, except for the cases when such limitations have legal, objectively justified purpose, which can be reached by acceptable and necessary means (Article 1 of the Law on Combating Discrimination);

direct discrimination means the situation when one person and/or a group of persons with certain characteristics are treated less favourably than another person and/or group of persons in a similar situation, except for the cases when such treatment has legal, objectively justified purpose, which can be reached by acceptable and necessary means (Article 1 of the Law on Combating Discrimination);

indirect discrimination means 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, unless such implementation or application has legal, objectively justified purpose, which can be reached by acceptable and necessary means (Article 1 of the Law on Combating Discrimination);

gender equality means the equal legal status of women and men and equal opportunities to exercise it, which allows persons of both sexes to participate in all spheres of social life on equal terms (Article 1 of the Law of Ukraine 'On Ensuring Equal Rights and Opportunities for Women and Men');

gender-based discrimination means act or failure to act which expresses any difference, exclusion or privileges by gender, if aimed at restriction or rendering impossible the acknowledgement, use or exercise of human rights and freedoms of women and men on equal grounds (Article 1 of the Law on Equal Rights);

instigation to discrimination means directions, instructions or calls for discrimination against a person and/or a group of persons with certain characteristics (Article 1 of the Law on Combating Discrimination);

aiding and abetting in discrimination means any conscious assistance in actions or omissions aimed at bringing about discrimination (Article 1 of the Law on Combating Discrimination);

harassment means an undesirable for a person and/or a group of persons behaviour whose purpose or consequence is the abasement of their human dignity on any particular grounds or creating for such person or a group of persons any tense, hostile, offensive or disdainful environment (Article 1 of the Law on Combating Discrimination);

affirmative actions means special temporary measures aimed at adjusting an imbalance between opportunities of women and men in exercising equal rights granted to them by the Constitution and laws of Ukraine (Article 1 of the Law on Equal Rights);

sexual harassment means verbally expressed sexual actions (threats, intimidation, scurrilities) or physical actions (touching, patting) which humiliate or offend persons in the state of work, service, material or other subordination (Article 1 of the Law on Equal Rights);

domestic violence means any deliberate actions of physical, sexual, psychological, or economic nature committed by one family member against another family member, where such actions violate constitutional rights and freedoms of a family member as a person and citizen and inflict moral harm on her/him, harm to her/his physical or psychical health (Article 1 of the Law on Domestic Violence);

physical domestic violence means deliberate causing by one family member to other family member of beatings, bodily injuries, that can lead or has led to death of a victim, violation of his/her physical or psychical health, causing of harm to her/his honour and dignity (Article 1 of the Law on Domestic Violence);

sexual domestic violence means illegal encroachment of one family member on sexual inviolability of other family member, and also action of a sexual nature to a juvenile family member (Article 1 of the Law on Domestic Violence);

psychological domestic violence means violence related to influence by one family member on the psyche of other family member by verbal offences or threats, pursuit, intimidations which intentionally cause emotional uncertainty, inability to protect her/himself and can cause or causes harm to psychical health (Article 1 of the Law on Domestic Violence);

economic domestic violence means intentional deprivation by one family member of other family member of habitation, meal, clothes and other property or funds, for which a victim has a legal right, that can cause her/his death, harm to physical or psychical health (Article 1 of the Law on Domestic Violence);

family members means persons who are married; live as one family but are not married to each other; their children; persons under guardianship or trusteeship; are relatives of direct or indirect line of relationship, subject to cohabitation (Article 1 of the Law on Domestic Violence);

human trafficking means execution of an illegal transaction with regard to a person, as well as recruitment, movement, concealment, transfer or receipt of such person, committed for the purpose of exploitation, including sexual, with the use of deceit, fraud, blackmail or a vulnerable state of such person, or through the use of violence or a threat thereof, abuse of office, financial or other dependence on another person, which is regarded as crime under the Criminal code of Ukraine (Article 1 of the Law on Human Trafficking).

Another draft Law (No. 3501 of 20/11/2015) has been recently registered in the Parliament, also aimed to harmonise the legislation in the field of preventing and combating discrimination with the laws of European Union²⁰⁸ (a positive opinion of the Committee was received on 27/01/2016). It proposes the introduction of the following concepts:

discrimination by association means a situation where a person and/or a group of persons are subjected to discrimination in any form defined in this Law through the existing relationship between them and persons and/or groups of persons, based on the latter's certain characteristics;

multiple discrimination means a situation where a person and/or a group of persons are subjected to discrimination in any form defined in this Law on more than one grounds simultaneously.

²⁰⁸http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57162.

Annex 9

List of articles from Criminal Code of Ukraine according to which there is a criminal responsibility in case of violence commitment against people:

- Art. 120 ‘Incitement to suicide’;
- Art. 121 ‘Intentional infliction of serious bodily injury’;
- Art. 122 ‘Intentional moderate infliction of serious bodily injury’;
- Art. 123 ‘Intentional infliction of serious bodily injury committed in a strong mental disturbance state’;
- Art. 125 ‘Intentional infliction of slight bodily injury’;
- Art. 126 ‘Assault and torment’;
- Art. 127 ‘Torture’;
- Art. 128 ‘Unintentional infliction of serious or moderate bodily injury’;
- Art. 129 ‘Threat of homicide’;
- Art. 135 ‘Failure to give assistance to persons in danger’;
- Art. 136 ‘Letting die’;
- Art. 149 ‘Human trafficking or any other pactum illicitum’
- Art. 152 ‘Rape’;
- Art. 153 ‘Forcible sodomy’
- Art. 154 ‘Coerce to carnal knowledge’;
- Art. 155 ‘Sexual relation with minors’;
- Art. 156 ‘Corruption of minors’;
- Art. 314 ‘Illegal injection of drugs, psychotropic substances or their analogues’;
- Art. 315 ‘Corruption to take drugs, psychotropic substances or their analogues’;
- Art. 324 ‘Corruption of minors to take intoxicated substances’;
- Art. 301 ‘Import, manufacture, sale and distribution of pornographic materials’;
- Art. 302 ‘Creation of brothels and procuration of women’;
- Art. 303 ‘Pimping or involving a person in prostitution’;
- Art. 304 ‘Criminalization of minors’.

List of articles from Code of Ukraine on Administrative Offences, according to which there is a administrative responsibility in case of violence commitment against people:

- Art. 173-2 ‘Committing domestic violence, non-fulfillment of protective order failure to pass intervention program’;
- Art. 180 ‘Bringing a minor to a state of intoxication’;
- Art. 184 ‘Parental negligence in performing their duties’.

Annex 10

Course Programme: PROSECUTOR'S ACTIVITY ON DOMESTIC VIOLENCE COUNTERACTION AND GENDER DISCRIMINATION OF WOMEN (8 hours)

Target audience: prosecutors of local and regional prosecutions.

Aim: improving professional knowledge and skills to identify different forms of domestic violence and gender discrimination against women, legal qualification of these crimes, proof and maintenance of public prosecution and the application of mechanisms for protection of victims during criminal proceedings.

Tasks:

1. Change attitude to domestic violence and gender discrimination against women.
2. Deepen understanding of legislation in the sphere to combat domestic violence and gender discrimination.
3. Dismiss gender stereotypes among prosecutors that may adversely affect the course of criminal proceedings.
4. Develop theoretical knowledge and practical skills in the system 'identification – qualification – presentation – public accusation support', including:
 - work out efficient methods and tactics to collect evidence in problematic situations during investigation of criminal proceedings of this category;
 - improve the skills of interrogation of persons in criminal proceedings related to domestic violence, including minors-victims;
 - dwell on forensic examination set and collaboration with a specialist in the relevant criminal proceedings;
 - improve legal assessment skills of court decisions on the subject of the need to appeal.
5. Identify additional needs to improve applied meaning of the course.

Methods:

- **single interactive lecture** with the use:
 - PowerPoint presentation;
 - examples of complex / untypical situations of law administration;
 - hand out material;
- **three lessons / trainings (roundtable, group work, role games)** with the use:
 - PowerPoint presentations;
 - examples of negative and positive practice;
 - situational tasks (cases);
 - hand out material.

Learning approaches:

- brief introductory lecture;
- analysis of examples from practice;
 - discussion;
 - Q & A;
 - analysis;
 - group work / practical tasks;
 - role-play games;
 - survey.

Interactive lecture

Topic: ‘International standards and national legislation in sphere of counteraction against violence in a family. Practice of European Court on human rights in cases connected with violence in a family’.

Plan:

1. Overview of international standards in combating domestic violence.
2. Overview of national legislation of Ukraine in combating domestic violence.
3. Basic concepts in the field of family domestic violence and its forms.
4. Gender stereotypes and their impact on criminal proceedings.
5. Analysis of decisions by the European Court of Human Rights in cases related to domestic violence and gender violence.

Practical training 1 (round table)

Topic: ‘Indicators to detect gender discrimination and domestic violence. Legal responsibility for domestic violence’

Issues to be considered (4 at choice):

1. Indicators to detect domestic violence.
2. Preventive measures and system of bodies (establishments), that are relied on to perform the tasks.
3. Qualification of violent actions and legal responsibility.
4. Refusal of injured party from accusation in private accusation cases.
5. Making a peace treaty between the injured and prosecution party.
6. Preparation of motivated, appeal and cassational complaints.
7. Cooperation with specialists-psychologists / psychiatrists, legal governmental organizations and others.

Practical training 2 (group work)

Topic: ‘Procedural administration of pre-trial crimes investigation connected with domestic violence’

Plan:

- performance of tasks in groups (procedural decisions adaptation including provision of support to the injured party), investigation planning);
- results presentation;
- mutual discussion of results (by each group separately).

Practical training 3 (role-game)

Topic: ‘Support of public accusation in court on criminal cases connected with domestic violence’

Plan:

- in the form of role play theory on support for public prosecution in court on the proposed (in the previous training) is implemented;
- special attention is paid to the interrogation in a court proceeding;
- further overview of training’s video and mistakes analysis.

CASE 1. In May 3, 2016, around 04:00pm, X., being in hostile relations with his wife and knowing that his wife is sleeping, brought a gas tank to the house corridor, opened it and the room started to fill with gas. XX. woke up, went to the corridor, ran to X. and closed the tank’s tap. At this time, X took a match and lit the gas in which XX. was standing, as a result there was an explosion. As a result of injuries XX died in the burn department of the hospital in May 8, 2015.

CASE 2. In September 5, 2015, around 6:00pm in the apartment, located on the 8th floor of a multistory building, there was a quarrel between X and his cohabitor XX. During the quarrel X. grabbed an eight child of XX., put a knife to her throat and began to threaten the woman by saying if she doesn't jump off the balcony, he will kill her child. XX. jumped off the balcony and died on the spot. According to the neighbors, X. was abusing with alcohol on a regular basis and was systematically beating XX., and during one of their fights neighbours heard him threatening to murder XX.

CASE 3. In October 9, 2015, at approximately 4, X., being drunk came to the residence of the former wife XX., who at that time was in the shed and poured gasoline from one canister into another. There was a conflict between X and XX. caused by family and domestic problems. During the conflict, XX., being in emotionally excited state, accidentally spilled gasoline canisters on the floor of the shed and gasoline spilled on her clothes X. With the aim to end the conflict decided to go out, but knowing that the floor had easily flammable substance (gas), he intentionally threw a cigarette stub that he was smoking during the conflict on the floor of the shed where XX. was standing. The fire started and the clothes of XX. inflamed. XX. received significant burns, from which she died.

CASE 4. In November 3, 2016, at 7:15pm, X. was informed by his cohabitor - XX. that she loves another man and wants to leave him. This fact made X. angry and he, being drunk made five punches in the face and punches in stomach of XX. In order to avoid further beating, XX. ran into the yard of the house. X. caught her and made six punches in the face of XX., took a wooden stick and hit XX. on the head. When she lost consciousness, he was afraid and ran away. XX., lying unconscious near the house was found by an adult son of X - Y. Y, together with a friend brought the woman to the house and went to look for X. Around 11:30pm they returned to the house and saw that the woman died.

TASKS TO CASES:

1. Give qualification of actions that happened to XX.?
2. What investigative (search) activities are to be carried out? What procedural decisions can prosecutor accept / approve of?
3. Enumerate forensic examinations that are to be set and the questions to them.

Annex 11

Course Programme: PROSECUTOR'S ACTIVITY IN CRIMINAL PROCEEDINGS CONNECTED WITH DOMESTIC VIOLENCE AGAINST CHILDREN (6 hours)

Target audience: prosecutors of local and regional prosecutions

Aim: improve professional knowledge and skills to identify different forms of domestic violence against children, especially their legal qualification, proof and support of public prosecution and the application of mechanisms to protect minors-victims in such criminal proceedings.

Tasks:

1. Master the basic concepts of domestic violence against children and its form (in accordance with international norms and national legislation).
2. Deepen knowledge on the qualification of violent acts against children and bringing to legal responsibility the guilty in the committed.
3. Identify indicators of domestic violence against minors.
4. Look into the order of preventive measures implementation and a system of state bodies (institutions) entrusted with their implementation.
5. Study problematic situations that arise during criminal proceedings concerning crimes related to domestic violence against children.
 - refusal of victim from prosecution in cases of private prosecution;
 - agreement on reconciliation between the victim and the accused party;
 - interaction with agencies and services for children, professional psychologists / psychiatrists, human rights organizations and others.
6. Overview the decisions by the European Court of Human Rights in cases related to domestic violence and abuse against children.
7. Identify additional needs to improve the practical importance of the course.

Methodology:

- **three practical trainings** with the use:
- PowerPoint presentation;
 - examples of negative and positive practice;
 - examples of complex / untypical situations of law administration;
 - situational tasks (cases);
 - hand out material;

Learning approaches:

- short introduction lecture;
- sample analysis from practice;
- discussion;
- Q s A;
- analysis;
- group work / practical trainings;
- interrogation.

Training 1

Topic: 'International standards and national legislation on combating violence against children. Identifying indicators and forms of domestic violence against children'.

Training 2

Topic: ‘The problems of bringing to responsibility for committing violence against children. European Court of Human Rights in cases related to domestic violence’

Training 3 (group work)

Topic: ‘Procedural administration of pre-trial investigation of crimes related to domestic violence against children’

Plan:

- group work (taking procedural decisions (including on protection of the victim-children), qualification of actions and planning of investigation);
- results presentation;
- group discussions (each group separately).

CASE 1. Citizen X. was in marriage with XX. since 1986. They had children, born in 1987 and 1989. In August 1991, due to husband’s alcohol abuse, immoral lifestyle and constant threat of violence couple divorced.

Due to the absence of place of residence, X., along with children had to live in the same room with XX after the divorce, but in different rooms. For over 10 years after the the divorce, XX constantly insulted X, threatened, intimidated and two minor children lived in the unbearable atmosphere.

Due to constant fear, strong emotion, tense atmosphere at home children's mental health aggravated. Both teenagers are registered in the mental hospital.

TASK: Determine the type of violence and give its legal qualification.

CASE 2. Minor X., born in 2000, who is registered and lives with his father and mother in Kiev since his birth, could not get in the apartment in April 2016 because the door lock was replaced. Father opened the door and said that he would not let his son in the apartment. For further numerous attempts of X to get to the apartment father again refused. X did not have any other places to stay in. There were his belongings, clothes and so on in the apartment.

TASK: Determine the type of violence and give its legal qualification.

CASE 3. Mother of a 9 year-old girl addressed the police with a statement accusing her husband of committing sexual acts against their daughter. The statement reads as follows.

For the last 3 months her daughter's behavior changed to the inadequate for her age behavior, she got interest in lingerie, kissing, licking her lips in a sleep (noticed by her mother and grandmother), flirtatious behavior with men, masturbation, imitation movements (noticed by mother or grandmother), demonstrating the intimate parts of her body.

From 12 to 13.11.2016 woman was visiting the parents and returned earlier than usual, she saw that her daughter was sitting naked on the lap of her husband and they watched TV.

When the daughter went to the kitchen, the mother began to ask her husband about what she saw. He immediately started quarreling with her and said it was a normal loving relationship between a father and a daughter. The next day, she addressed the police.

TASK:

1. Give the qualification of an act that happened to a child?
2. Which version should be put forward given the available information?
3. Establish a list of priority investigative (search) activities.
4. Establish a list of forensic examinations to be set.

CASE 4. Minor X. is suspected of having committed several thefts of cell phones. During the interrogation which took place at presence of his legal representative XX. - his mother, there were noticed the presence of scars on his head and skin without hair, and on the forearm there were two round burns similar to burns from cigarettes. He refused to explain the presence of such damages and XX. referred to the fact that the burns were made by X.

During the investigation it was found out that X. lives with XX., her cohabitor and a sister. XX. was earlier

brought to responsibility according to p. 2 art. 304 CC of Ukraine for involving the minor in beggary.

TASK:

1. What can the given information regarding the juvenile suspect state?
2. What are the conditions to be established in the criminal proceedings?
3. What, in your opinion, investigative (search) actions should be conducted? What other procedural decisions may accept / approve of prosecutor?
4. What can the given information state according to the actions of minor?
5. What circumstances need to be clarified in this criminal proceeding?
6. In your opinion what investigative (search) activities need to be carried out? What other procedural decisions can approve of / accept the prosecutor?

CASE 5. There was a statement from the hospital facility that the minor aged 10 years old was admitted with the burns of II stage (deep) on right wrist, cuts and bruises on the body that were made by his father's cohabitor.

TASK:

1. Give qualification of actions that happened to the minor?
2. What is the algorithm of investigative (search) activities and other procedural activities in such cases?

CASE 6. X. – mother of minor XX., starting from the birth of her child, since 2009 and up to today allows for permanent stay of her child in unsanitary conditions, leaving her unattended for a long time.

Due to the limit of clothes and food, XX. asks neighbours the food, looks unneat and dirty, does not attend the school since 2016. According to the school principle the child has a serious psychological and social deviation.

X. on repeated warnings by employees of office of children's services, teaching school staff on the proper exercise of parental duties, did not respond and continued leading asocial way of life, often in a state of intoxication.

TASK:

1. Give qualification of actions that could happen to the child?
2. In your opinion what investigative (search) activities need to be carried out? What other procedural decisions can approve of / accept the prosecutor?
3. Define the number of forensic examinations that are to be set.

Annex 12

Programme of practical trainings: PROSECUTOR'S ACTIVITY IN CRIMINAL PROCEEDINGS, CONNECTED WITH HUMAN TRAFFICKING (4 hours)

Objectives	<ul style="list-style-type: none"> – improve professional knowledge on peculiarities of legal sphere in human trafficking or other illegal issues concerning the people; – work out efficient methodology on evidence collection tactics in problematic situations during pretrial proceedings of criminal cases of this category; – improve skills in carrying out separate investigative (search) activities; – improve interrogation tactics in court by prosecutor
Target audience	<ul style="list-style-type: none"> – prosecutors of local prosecution bodies; – prosecutors of regional prosecution bodies
Tasks	<ol style="list-style-type: none"> 1) give an overview of international documents that concern counteraction against human trafficking of children and women; 2) dwell on topical issues on injured persons and witnesses defense in criminal proceedings of the defined category; 3) based on procedural documents (theory) define objective, subjective and qualifying features of human trafficking or any other illegal agreement on people; 4) define delimitation features of human trafficking or any other illegal agreement on people from adjacent crime content; 5) make the listeners acquainted with the investigation practice of criminal proceedings of the defined category and provide examples of the main issues and give recommendations; 6) look into investigative (search) activities peculiarities during proceedings of the defined type of crimes: <ul style="list-style-type: none"> – propose evidence collection tactics in problematic situations; – improve procedural request composition tactics on giving a permission to the investigator-judge to carry out investigative (search) activities; – improve interrogation tactics; – dwell on assign of forensic examination during the investigation on human trafficking; – based on decrees on forensic examinations outline the made mistakes' – teach to critically evaluate the expert conclusion
Method practical exercises with involvement of the audience	<ol style="list-style-type: none"> 1) work in small groups to make practical exercises (drawing up a petition for permission to investigating judge to conduct investigative search procedures) on the plots provided by the teacher. Groups must determine what procedural decisions must be conducted, conduct investigative search procedures to obtain necessary information and collect evidences. <i>At the beginning</i> of the class the teacher speaks about: <ul style="list-style-type: none"> – basic mistakes in the preparation of relevant applications; – the reasons for dissatisfaction by the investigating judge applications for conducting certain investigative search procedures.

	<p><i>At the end</i> of classes teacher presents results of practical tasks, analyzes the results of each group;</p> <p>2) conducting the role-playing game ‘Participation of the prosecutor in interrogation of witness during the preliminary investigation in court’. The game takes place in the classroom that imitates the courtroom using video cameras and multimedia equipment.</p> <p><i>At the end</i> of classes the audience reviews a video record of lessons and analyzes mistakes made by prosecutors during simulated practical situations.</p>
<p>Methods of involving audiences</p>	<ul style="list-style-type: none"> – review of positive and negative examples from practice; – analysis; – work in groups to perform practical tasks; – role-playing game; – use of materials
<p>Materials for critical analysis</p>	<ul style="list-style-type: none"> – samples of applications for investigating judge permission to conduct investigative search procedures ; – samples of investigating judge decisions; – samples of decrees on appointment of judicial examination; – list of common mistakes that a prosecutor performs in the preparation of procedural documents
<p>Cases of the first practical training</p>	<p>CASE 1. In February 2015 citizen N. according to the prior agreement with citizen A., dividing the roles among themselves carried out recruitment of women for sexual exploitation abroad. Citizen N. searched for women for sexual exploitation abroad, sent their pictures to citizen A., who, in his turn, approved of candidates for sexual exploitation abroad, organized meetings with women in the city H., registration and travel documents for departure abroad and financial issues. In February 25, 2015 citizen N., met in a town café with a citizen X., who at that time was in a difficult financial situation, did not have work and did not have a permanent source of income, as well as did not have parents and any relatives. That is why N. proposed X. to work as a prostitute in Switzerland. N. explained X. all living conditions and fees for providing her sexual service to clients and assured that all the costs and travel documents to Switzerland would be managed by her.</p> <p>Later citizen N. periodically called from her cell phone to the citizen X., chatted with her via social network ‘Vkontakte’, received the necessary information (photos) by e-mail and continued to recruit her to travel to Switzerland for prostitution.</p> <p>Within two months citizen N. proposed similar work to 4 more women who did not have a permanent source of income and had young children, N. along with the citizen A. managed all the necessary documents to go abroad.</p> <p>ASSIGNMENT:</p> <ol style="list-style-type: none"> 1. Give qualification of actions made by N. and A.? 2. What circumstances are to be defined in this criminal proceedings? 3. In your opinion what investigative (search) activities are to be performed?

	<p>4. Define what forensic examination is to be made and indicate the list of questions.</p> <p>CASE 2. During the summer of 2009, citizens A., B., C. repeatedly visited the municipal enterprise "Night stay house" located by address: city N., str. N., 1, which is the only institution in the city that provides social services to homeless people and people released from detention facilities.</p> <p>In the summer of 2009, on the territory of municipal enterprise 'Night stay house' in city N., citizen A. found a citizen N. for engaging of her in beggary, who is an orphan, and by using psychological influence caused by the state of depression due to financial problems and lack of work and residence, offered a job to N. in Moscow city (Russian Federation) in the sphere of leaflets distribution, and by infoming the last with false information about conditions outside the territory of Ukraine. A. received an approval of citizen N. to live under these conditions.</p> <p>Citizens A., B., C., having made the recruitment of the victim N., i.e. making her agree to work under these conditions and hiding from her the real information about the work, organized the relocation of N. by train in summer 2009 from the city N. to Moscow (Russian Federation) where they lived illegally in a rented apartment.</p> <p>Citizens A. and B., being on the territory of Russian Federation, and with the aim to control N., who had no documents was blackmailed, i.e. was made to work to give back the money spent on the relocation of hers to another city and was engaged in begging in Moscow within a month.</p> <p>ASSIGNMENTS:</p> <ol style="list-style-type: none"> 1. Give qualifications of actions made by A., B., C.? 2. What circumstances are to be defined in this criminal proceedings? 3. In your opinion what investigative (search) activities are to be performed? 4. Define what forensic examination is to be made and indicate the list of questions.
<p>Case of the second practical training (role game)</p>	<p>In January 16, 2015 around 2:00pm citizen A. met with N. in the cafe 'Star', where A. started recruiting the young person who was in difficult living condition with the purpose of sexual exploitation of N. to Greece, namely - convinced her that she could earn good money in that country (60 EUR per hour for sexual services). A. also informed N. that he would cover the flight to the specified country and living costs. During this meeting N. gave her approval to the proposal of A., but A. continued to search for other people for sexual exploitation, that is why he asked N. to ask her friends and find girls who would agree to fly to the Republic of Greece with her for sexual exploitation.</p> <p>In this way the citizen A. recruited three girls who were in difficult living conditions and they were chosen for sexual exploitation. Further communication with girls was made via social network Facebook and Viber (photographs, copies of documents, etc.).</p> <p>Citizen A. is informed on suspicion in committing a criminal offence according to p. 2 Art. 149 of CrCU.</p> <p>During the pre-trial proceedings it was found out that actions of</p>

citizen A. were known to witness Z., who got acquainted with A. in 2014 in the city N.

Z. stated that citizen A. liked lying about himself to seduce the girls. At the beginning of 2015 A. got acquainted with N. And Z. was present at the meeting as well. At this meeting, A. proposed N. a work abroad, which was to provide sexual services. However, Z. did think that A. intended to implement the proposal.

During the pre-trial investigation prosecutor applied to court and requested an interrogation of the witness Z. according to the Art. 225 of CPCU given the fact that he is leaving for Germany for the treatment which will make it impossible to interrogate him in court. Request is agreed, investigator judge assigned a court proceedings and called the parties of criminal proceedings.

ASSIGNMENT: distribute the roles – ‘investigator judge’, ‘prosecutor’, ‘defendant’ and ‘witness’:

- 1) **prosecutor** – justify the need for examination of a witness in court according to the Art. 225 of CPCU;
- 2) **defendant** – express the position on the request of prosecutor;
- 3) **prosecutor** – conduct a direct examination of a witness Z.
- 4) **defendant** – conduct a cross-examination of a witness Z.