

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



Prepared under the Programmatic Cooperation Framework Project  
“Improving Women’s Access to Justice in the five Eastern Partnership Countries”  
Armenia, Azerbaijan, Georgia, Republic of Moldova, and Ukraine

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Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**

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This national study, "Barriers, remedies and good practices for women's access to justice in Ukraine", has been prepared by Olena Uvarova. The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe or the European Union. The information contained in this document is up to date as of February 2017.

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# GENERAL INTRODUCTION TO THE FIVE NATIONAL STUDIES

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Important efforts have been made to strengthen gender equality standards both at the level of the Council of Europe and within its member states. Four major treaties underpin the core Council of Europe gender equality standards. These are the “foundational” treaties: the European Convention on Human Rights and the European Social Charter (revised), and the two “new generation” treaties, the Convention on Action against Trafficking in Human Beings<sup>1</sup> and the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).<sup>2</sup> A number of recommendations of the Committee of Ministers on gender equality topics have been adopted since the 1970s.<sup>3</sup>

The first Council of Europe Gender Equality Strategy 2014-2017<sup>4</sup> provides the strategic framework for the implementation of these standards to bring member states closer to *de facto* gender equality. One of the five objectives of the Council of Europe Gender Equality Strategy is to work with member states towards guaranteeing equal access of women to justice. The Strategy establishes that action in this area seeks to: analyse national and international frameworks to gather data and identify the obstacles women encounter in gaining access to the national courts and to international justice; identify, collect and disseminate existing remedies and good practices to facilitate women’s access to justice; and make recommendations to improve the situation.

The regional project Improving Women’s Access to Justice in Five Eastern Partnership countries (Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine) contributes to the overall implementation of the Gender Equality Strategy and in particular the realisation of Objective 3 of the Strategy: guaranteeing equal access of women to justice. The project is funded by the Council of Europe/European Union Eastern Partnership Programmatic Cooperation Framework (PCF) 2015-2017,<sup>5</sup> and implemented by the Council of Europe Gender Equality Unit.

The main objectives of the project are to:

- ▶ identify and support the removal of obstacles to women’s access to justice;
- ▶ strengthen the capacity of Eastern Partnership countries to design measures to ensure that the justice chain is gender-responsive, including through the training of legal professionals.

While knowledge has increased, there are still systematic gaps in data collection concerning different aspects of women’s access to justice. In order to fill such gaps with respect to the beneficiary countries of the project, the Gender Equality Unit of the Council of Europe commissioned five national studies to map the barriers,

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1. Entered into force on 1 February 2008.

2. Entered into force on 1 August 2014.

3. See factsheet with the main Council of Europe standards on gender equality and women’s rights, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168058feef>, accessed 28 November 2016.

4. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680590174>, accessed 28 November 2016.

5. See <http://pjp-eu.coe.int/en/web/eap-pcf/home?desktop=true>, accessed 28 November 2016.

remedies and good practices for women's access to justice in Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine. The objectives of each of these studies were to provide:

- ▶ an analysis of the main obstacles to women's access to justice, both legal and procedural, as well as socio-economic and cultural;
- ▶ a set of recommendations for measures to improve women's access to justice in the respective countries, including examples of good practices, where they exist;
- ▶ background information for the subsequent organisation of training for legal professionals (judges, prosecutors, lawyers, and possibly law enforcement).
- ▶ The studies were carried out by five independent national experts who were asked to answer the following questions:
  - ▶ what are the gender gaps in access to justice in your country?
  - ▶ how responsive is the justice system to women's needs?
  - ▶ what can be done to improve the gender responsiveness of the justice system?

All five studies are structured around a similar set of themes and issues. The first part of each study addresses gender gaps in the access to justice, by analysing the legislative and policy frameworks as well as the implementation practices and mechanisms that affect women's access to justice. Socio-economic and cultural barriers to women's access to justice are also discussed in this first part. The second part of each study examines the gender responsiveness of the justice system in the respective country. The following issues are addressed in all five studies: women's access to courts; whether sex-disaggregated data on court applicants is available; gender stereotypes among legal professionals, especially the judiciary; and the availability of gender equality training in the initial and further education of legal professionals. The third part of each study presents the available remedies and good practices and formulates a set of recommendations. When relevant, and to the extent possible in the scope of addressing these general themes and issues, attention has been paid to obstacles affecting women from disadvantaged groups, such as women in rural areas; disabled women; elderly women; women from ethnic minorities; women victims of violence; lesbian, bisexual and transwomen; and women held in detention/prison.

Research for the five studies was mostly desk-based and the national consultants sampled as extensively as possible the existing sources available. In Armenia and Azerbaijan, the consultants conducted a limited number of interviews with lawyers and civil society advocates. In Georgia and the Republic of Moldova, the consultants also requested official data from a number of institutions. In Ukraine, the national consultant conducted a small survey among judges, based on a pre-defined questionnaire. The initial findings of the five studies were presented at the regional conference on Improving Women's Access to Justice in Five Eastern Partnership countries that took place on 5 and 6 November 2015 in Kvareli, Georgia. Feedback received from governmental officials, academic experts and civil society representatives at this conference was integrated in the studies. Furthermore, each consultant presented the findings of their country study to a national audience in the first months of 2016. Feedback from these validation meetings was also integrated in the final version of the studies.

The studies found that there are still significant gaps in women's access to justice, despite progress made especially in the adoption of laws and policies.

With respect to legal and policy frameworks, Eastern Partnership countries have made significant progress in passing legislation and adopting policies to advance gender equality. Guarantees of equality between women and men are included in the constitutions of each participating country, including most recently the Constitution of Armenia. All five countries have specific laws on gender equality, with Azerbaijan having adopted one in 2006, Armenia in 2011, Georgia in 2010, the Republic of Moldova in 2006, and Ukraine in 2005. Special anti-discrimination laws were adopted in Georgia in 2014, the Republic of Moldova in 2012 and Ukraine in 2012. There is no separate anti-discrimination law in Azerbaijan, though a special law on domestic violence was adopted in 2010. In addition, Georgia, the Republic of Moldova and Ukraine have all adopted specific legislation against domestic violence (in 2006, 2007 and 2001, respectively). Armenia, meanwhile, is preparing an anti-discrimination legislation and a law to prevent and combat domestic violence.

As of February 2017, three of the beneficiary countries, Georgia, the Republic of Moldova and Ukraine, have signed the Istanbul Convention with ratification pending. The other two countries have not yet signed the Istanbul Convention.

Despite the significant legislative progress, legal obstacles to women's access to justice persist. Specific barriers include *de jure* discrimination of women or gaps in the anti-discrimination legislative frameworks. The national



studies offer numerous examples of the discriminatory effects of protective labour legislation in each of the five countries. Further barriers have been observed in the area of labour law, such as unlawful dismissal of pregnant women or limitations on fathers' access to parental leave or the.

With respect to implementation practices and mechanisms, the studies found that while national laws uphold equality on the basis of sex, women rarely invoke these laws in court to protect their rights. The standards of proof and the legal mechanisms that are necessary to prove indirect discrimination are not well developed, while this is arguably the more prevalent manifestation of gender inequality. In all countries studied, gaps in access to justice for women victims of gender-based violence persist, in particular regarding non-criminalisation of all forms of violence against women; severe underreporting of crimes of violence against women; very few convictions of rape; and scarce or no state funding for support services for victims.

The studies also reveal a number of common socio-economic and cultural barriers to women's access to justice. A prominent obstacle is women's economic dependence on or economic inequality to men, which means they have less access to resources, often needed for legal proceedings. In addition to women's lower employment rates and significantly lower participation in the business sector, as either employees or entrepreneurs, there is a significant gender pay and revenue gap in all five countries. Secondly, patriarchal attitudes and beliefs persist about men's superiority to women and the naturalness of segregated gender roles that see women mainly as caregivers and men as breadwinners. The belief in men's superiority underpins the still-present practice of prenatal sex selection and selective forced abortions, addressed in the studies on Armenia, Azerbaijan, and Georgia, that results in skewed sex ratios in favour of men and represents a severe violation of women's rights. The same gender-biased attitudes also underlie the high social tolerance or even justification of domestic violence in the five countries. Thirdly, lack of access to information is a significant obstacle, especially among women from rural areas.

The studies provide ample evidence of the limited gender responsiveness of the justice systems in the five countries. There is very limited use of international standards in judicial decisions. In some of the countries, women are also significantly underrepresented in the judiciary. Gender stereotypes persist in the justice system and they are compounded by other stereotypes linked to age, ethnicity or social status. The national studies provide illustrations of such stereotypes, particularly affecting women confronted with gender-based violence.

The studies also present a number of good practices. In Armenia, an action plan to promote gender equality and gender balance in the judiciary was adopted by the judicial self-governance body (the Armenian Council of Court Chairpersons) in 2015. It includes measures such as the development of gender equality training materials and thematic training programmes. The equality bodies set up in Georgia and the Republic of Moldova offer potentially effective mechanisms to combat sex-based discrimination. Since 2013, the Public Defender's Office of Georgia has had a specific Gender Equality Department that monitors the implementation of gender-related legislation and policies, and studies complaints and individual cases of sex and gender-based violations of human rights. It also conducts public-awareness activities and training, collects data to monitor the effectiveness of protection mechanisms to prevent violence against women, and prepares annual reports. In Azerbaijan, the law takes into account the needs of rural women in respect of maternity leave. Women working in agriculture get more days of maternity leave: from 70 calendar days after birth up to 110 calendar days in cases of multiple births. In the Republic of Moldova, the Equality Council set up as an independent body under the anti-discrimination law in 2013 examines individual complaints, including cases of sex-based discrimination. It also analyses draft laws for compliance with anti-discrimination legislation and conducts awareness-raising activities on discrimination issues. The National Human Rights Action Plan of Ukraine, covering the period 2015-2020, offers a good practice example of a human rights policy that contains ample provisions on gender equality closely matching priority areas of the Council of Europe Gender Equality Strategy. A number of civil society initiatives, such as the online Virtual Legal Aid Service for women set up by the Women's Consortium of Ukraine, as well as the specialist support services provided by women's organisations to women victims of gender-based violence, show that civil society expertise is an important resource to improve women's access to justice.

Access to justice is central to the rule of law and integral to the enjoyment of human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. The requirement of equality, including gender equality, is at the centre of the scope, exercise and fulfilment of the right to justice. It is hoped that these five national studies will contribute to the further development of tools to improve women's access to justice. In particular, the information provided by the national studies will be used in the elaboration of a training manual for judges and prosecutors on ensuring access to justice for women, to be used by judicial training institutions in the five beneficiary countries of the project.



# UKRAINE

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Report prepared by Olena Uvarova

## 1. INTRODUCTION

### The concept of access to justice

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

Access to justice is a broad concept which refers to all the measures that improve access to courts, legal representation and alternative dispute resolutions, as well as access to or action by equality bodies and ombudsman institutions aimed at bridging the gap between the law and *de facto* enjoyment of rights by individuals. Access to justice implies but goes well beyond the right to an effective remedy, the right to equal access to courts, the right to a fair trial or the right to legal aid for those who lack sufficient resources. (PACE 2015)<sup>6</sup>

### International standards on gender equality

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Ukraine has ratified key international and European legal instruments that guarantee gender equality – the European Convention on Human Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, the European Social Charter (revised), the Convention on Action against Trafficking in Human Beings, among others. Ukraine has also signed the Istanbul Convention with ratification planned for 2017.

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

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

While Article 15 of the European Convention on Human Rights does provide the possibility for states to derogate in exceptional circumstances, this has to be done in a temporary, limited and supervised manner and only to the extent strictly required by the exigencies of the situation. Moreover, restrictions taken cannot be applied in a discriminatory manner. Ultimately, it is for the European Court of Human Rights to determine in each case whether the restrictions introduced by Ukraine have been applied in a proportional manner.<sup>7</sup>

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

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

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

In Ukraine, there was an attempt to challenge the actions of the Ukrainian Parliament to derogate from its international obligations on human rights. The corresponding claim was submitted to the High Administrative Court of Ukraine by the NGO Institute of Legal Policy and Social Protection, but the High Administrative Court did not consider it, declaring that the issue fell under the jurisdiction of the Constitutional Court of Ukraine (see decision of the High Administrative Court on 30 June 2015 in Case No. 800/220/15).<sup>8</sup>

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

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

The courts and other authorities have to understand that the decree of derogation does not exempt the state from the obligation to justify the reasonableness and proportionality of the restrictions on human rights, the legitimate purpose of these restrictions and their necessity in a democratic society. In this light, the decision of a Lviv court to refuse the request of a serviceman to take parental leave until his child reached three years of age is controversial. The court reasoned that such a refusal is legitimate, stating that the legislation of Ukraine concerning military service allows granting parental leave only to the father who brings up a child without a mother. The court also found that the reference to the decision of the European Court of Human Rights in the case of *Konstantin Markin v. the Russian Federation* (22 March 2012)<sup>9</sup> against discrimination based on sex was not valid because Ukraine had derogated from its obligations under the European Convention on Human Rights (see decision of the Lviv District Administrative Court on 9 June 2015 in).<sup>10</sup> The court went beyond the statement that was made by Ukraine and refused to apply the requirements of the Convention, which are binding for Ukraine. The formal reason for this was the derogation from the obligations under the Convention, but the court had misunderstood the essence of such a derogation, violating the right to judicial protection.

## Key definitions

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Ukrainian legislation provides for definitions of gender equality, discrimination, direct discrimination and indirect discrimination, as provided for in the 2005 Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men<sup>11</sup> and in the 2013 Law of Ukraine on Principles of Prevention and Combating Discrimination in Ukraine.<sup>12</sup>

### Discrimination based on sex

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

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

9. ECtHR (2012), *Konstantin Markin v. the Russian Federation*, (Application No. 30078/06), Grand Chamber decision of 22 March 2012.

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

11. Government of Ukraine (2005), Law of Ukraine on Ensuring Equal Rights and Opportunities of Women and Men, available at <http://zakon5.rada.gov.ua/laws/show/2866-15> accessed 28 February 2017.

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

## Sexual harassment

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

In the absence of colleagues, the manager hugged her from behind, offered to join him in a sexual relationship, but she did not agree. She also claimed that the chief did not raise her salary because of her refusal. The plaintiff informed the company's management about the facts of sexual harassment only after the dismissal. She did not inform them before because of the fear of losing her job. The plaintiff did not appeal to the law enforcement bodies because she thought that she could not prove the facts of sexual harassment.<sup>13</sup>

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

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

## Discrimination

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

[...] a situation in which a person and/or a group of persons experience limitations in the recognition, realisation or use of their rights and freedoms because of their race, colour of skin, political, religious or other beliefs, sex, age, disability, ethnic or social origin, nationality, family and property status, place of residence, linguistic or any other status, except when such behaviour has a legitimate, objectively justified goal, that is to be achieved through appropriate and necessary methods.<sup>14</sup>

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

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

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

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

## Direct discrimination

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

## Indirect discrimination

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

The concepts of direct discrimination and indirect discrimination were referenced in seven judgments between the entry into force of the Law on Principles of Prevention and Combating Discrimination in Ukraine and 2015. However, the courts used the concept of indirect discrimination substantively only once, in the case on deprivation of the Ukrainian Orthodox Church of parish tax incentives from which other religious organisations benefit.<sup>15</sup>

## The issue of women’s rights in Ukrainian constitutional reform

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In the context of constitutional reform in Ukraine, which was initiated in 2014, work continues on the preparation of amendments to the Constitution. The working group on human rights, which is functioning within the Constitutional Commission and includes Ukrainian academics, political leaders and human rights activists, released a new version of Part II of the Constitution of Ukraine.<sup>16</sup> In contrast to the existing Constitution, in which the principle of equality, particularly equality between women and men, is enshrined at the beginning of Part II, under Article 24, in the new version, the constitutional prohibition of discrimination and the right to equality is referenced under Articles 35 and 36, respectively. It is considered that the rules are arranged according to their importance to society, without directly affecting their validity and this rearrangement is seen as a sign that a particular issue has been deprioritised.

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

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

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

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

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

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

16. Please see the proposed draft at <http://constitution.gov.ua/publications/item/id/38>, accessed on 28 February 2017.

## 2. GENDER GAPS IN ACCESS TO JUSTICE

### Analysis of the national legal and policy frameworks to identify the obstacles women encounter in gaining access to the justice system

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#### Discriminatory laws or policies

Analysis of Ukrainian legislation and its implementation indicate some discriminatory provisions. For instance, the Labour Code includes a prohibition of night work for women, prohibition in employment of women in work that involves heavy lifting and jobs with hazardous or dangerous working conditions such as underground work, and the ban on women with children under the age of three working overtime and on weekends or travelling on business trips. The survey conducted as part of this study shows that judges mostly agree with the legality of such a ban.

Such provisions can be characterised as paternalistic and lead to a number of negative consequences for women. This includes a significant difference in the financial security of women and men, diametrically different expectations for women and for men, and the image of women as uninformed persons in need of external control and care.

However, the ban on night work for women is even more serious. To understand the ban, it is essential to know that the domestic Labour Code actually duplicates the provisions of the ILO's convention concerning night work of women adopted on 29 October 1919 and provides an exception – night work for women is allowed at enterprises where only members of the same family are employed.<sup>17</sup> This Convention has been shelved, and is currently open for denunciation.<sup>18</sup>

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

The second interpretation of the prohibition of night work for women is no better. The prohibition of night work for women, except night work with members of their own families, aims to eliminate a situation where a woman is alone at night with men who are not members of her family, not only making an unclear insinuation but also shifting the burden on the women.

It is hoped that this prohibition will be abolished soon: the new draft labour code, currently on the agenda of the Ukrainian Parliament, contains a prohibition of night work only for pregnant women.<sup>19</sup> This draft was submitted to the Ukrainian Parliament for by the Speaker and deputies belonging to the ruling coalition in May 2015, but as of February 2017 it had not been considered. Once hearings are organised, the chances that the proposal will be adopted are high.

Further, there are over 500 professions that are prohibited for women by law. The current list of "heavy" work and work with harmful and dangerous conditions prohibited for women is provided by Decree No. 256 of the Ukrainian Ministry of Healthcare, adopted on 29 December 1993. It is important to note that the list has not become a "dead rule". Courts continue to apply it and it leads to violations of women's rights to work. An example of this is a case in which the Manevichsky District Court of Volyn region dismissed a woman's claim on reinstatement on 25 May 2015. The court dismissed the plaintiff's argument that her not being offered the position of a watchperson at a raw materials warehouse, due to the application of the prohibition on night work for women also included in the collective agreement with the employer, was a violation of her right to work. The court noted that according to Article 175 of the Labour Code, night work is prohibited for women,

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

18. *ibid.*

19. See the draft labour code here: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=53221](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53221).

except for those sectors of the economy where it is caused by special need and is allowed as a temporary measure. One of the provisions of the list prohibits the employment of women if a job relates directly to fire-fighting. Because the duty of fire-fighting was included in the employment instructions of a watchperson, the court found that in this case, the condition of the collective agreement, which prohibits night work for women, particularly working as a watchperson, did not violate the woman's right to work.<sup>20</sup>

Moreover, the practice of the courts goes even beyond the list and recognises the refusal to hire women as street cleaners as legitimate, referring to the fact that this work involves trimming tree branches that may hang over the sidewalks. In a decision of the Tlumach District Court of Ivano-Frankivsk Region of 29 April 2013, it was ruled that a woman should not be accepted for this position even if she agrees to perform such duties.<sup>21</sup>

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

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

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

At national level, there are many provisions in the laws guaranteeing gender equality. For example, Ukraine has laws on ensuring equal rights and opportunities for women and men (2005); on principles of prevention and combating discrimination in Ukraine (2012); on employment (this law, adopted in 2012, prohibits the advertisement of work vacancies only for women or only for men, except for specific work that can be performed only by persons of a particular sex); on preventing domestic violence (2001); on guaranteeing the right to a fair trial (2015) and many others. The new version of the Law on Local Elections was adopted by the Ukrainian Parliament on 14 July 2015. Under Article 36 of this law, each political party is required to include a minimum of 30% of persons of the same sex on its electoral lists.

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

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

Broadly in Ukraine, but especially in rural areas, women have little knowledge about international standards in the area of protection from gender-based discrimination. Most women are not aware that their rights have been infringed due to discrimination, and as a result they do not turn to the courts. This is demonstrated by the fact that in the 10 years that the Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men has been in force, 2005-2015, it has been referred to in only 115 judicial decisions. Moreover, the vast majority of the cases are initiated by state-controlled bodies, not by the victims of discrimination. Very often, women cannot identify discriminatory attitudes towards them, and they are not aware of their rights as enshrined in law.

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

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



As an example to illustrate this, here is a situation that came before the NGO Women's Consortium of Ukraine, when a woman turned to them for legal advice. The woman in question worked at the support call centre service of one of Ukraine's banks. At the time, she had a 9-month-old baby that she breastfed, to which end, she had an informal agreement with colleagues to substitute her at work twice a day. Each time, the woman was worried that her absence would be registered by the personnel department causing a potential conflict. She did not know that the law of Ukraine (Article 183 of the Labour Code) provides that a woman with a child under the age of 18 months is entitled to an additional break for feeding her baby. These breaks are given to women not less than every three hours for a minimum of 30 minutes each. If there are two or more babies, the break is at least an hour in duration. The employer sets the terms and procedure for granting breaks, taking into consideration the wishes of the mother. Breaks for feeding a baby are included in working time and are paid for. An analysis of judicial decisions shows that there have been no petitions to the courts regarding refusals to grant breaks to women to feed their babies.

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

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

There are some cases of obvious discrimination in which NGO experts on gender discrimination have expressed doubts about the prospects of a legal case. The following example is illustrative. A woman applied to the Virtual Legal Aid Service of the Women's Consortium of Ukraine. She informed them that she was a programmer in a company where all the other programmers were men. Two other women worked at the company, as a secretary and an accountant. The applicant even had the nickname "Bill Gates in a skirt" due to her high professional skills. The applicant was concerned by the fact that throughout the entire period of her employment in the company, of five years, she had never been appointed project manager, while men had. Moreover, the applicant accidentally discovered that men who performed the same job duties received a salary that was 1.5 times or higher than her salary.<sup>22</sup> However, even NGO experts who answered this question were sceptical about the positive prospects of a judicial review of such practices by employers.

### **Perception by judges of international instruments on gender equality as abstract models**

Judges in Ukraine often feel that international instruments on gender equality are abstract, and do not offer specific models for solving real-life disputes. As a result, in judicial decisions there are almost no references to the relevant international instruments. In the State Register of judgments, there are only 18 judicial decisions that contain references to CEDAW. While this is a very low number, reviewing them can lead to further positive references in decisions.

For instance, CEDAW was referred to by the Kyiv Court of Appeal in a ruling on an electoral dispute. The Law on Political Parties (2013) provides that the electoral lists of candidates should contain a minimum level of representation of women of 30% of the total number of candidates. The Central Election Commission, however, has explained that a violation of the gender quota is not a ground to prohibit a political party from participating in elections. The political party "Samopomish" ("Self-help") appealed to the courts to recognise the position of the Central Election Commission as illegal. The Kyiv Court of Appeal referred to Article 7 of CEDAW. According to this article, 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;
- ▶ to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- ▶ to participate in NGOs and associations concerned with the public and political life of the country.

<sup>22</sup> Women's Consortium of Ukraine (2014), Virtual Legal Aid Service, Q&A, available at <http://legal.wcu-network.org.ua/question/15>, accessed on 28 February 2017.

As a result, the Kyiv Court recognised the position of the Central Election Commission as illegal in its decision of 30 September 2015.<sup>23</sup>

In other cases, CEDAW was referred to by plaintiffs, and courts included relevant information in their decisions. For example, a woman demanded the eviction from the apartment she lived in of her ex-husband, who systematically committed physical or psychological violence against her.<sup>24</sup> In another case, a financial inspection pointed out that the payment of a bonus to a man to mark International Women's Day was a violation of CEDAW, and therefore it called for a fine of the company that paid the bonus.<sup>25</sup>

### **Lack of awareness among lawyers of good practices of "identification" of gender-based discrimination in cases, identification of discriminatory provisions of existing legislation and settlement of the case through reference to relevant international standards**

This problem is confirmed by research in the publication on "Issues of prohibition and combating discrimination: guidelines for lawyers" (2015).<sup>26</sup> In particular, the publication states that a majority of practicing lawyers:

- ▶ do not know about the problem of discrimination and do not realise its importance for Ukrainian society;
- ▶ do not understand the nature of discrimination as a general legal principle and legal category that has an interdisciplinary nature, and which is used both in international and national law and applied in both public and private spheres, in substantive and procedural law;
- ▶ do not possess the proper level of special legal terminology (direct or indirect discrimination, oppression, reasonable accommodation, victimisation, segregation, positive discrimination, affirmative action, temporary special measures, etc.);
- ▶ do not possess the legal skills for the qualification of relevant factual situations as discrimination on relevant grounds, or the skills of legal reasoning required to establish cases of discrimination;
- ▶ restrict the scope of application of the principle of non-discrimination to "typical" problems (discrimination based on disability, age, etc.) or associate it only with selected "latest" problems (discrimination against persons with HIV/AIDS, LGBT persons, etc.);
- ▶ do not consider the anti-discrimination provisions to be effective legal instruments;
- ▶ do not have the practical skills to apply standards in combating discrimination that are produced in the practice of the European Court of Human Rights (the test on non-discrimination, anti-discrimination standards, etc.).

While the application of the principle of non-discrimination is generally limited, in the case of women it is even more so. For example, all instances (except one) of discrimination cited in the *Practical Guide to Argumentation in Cases of Discrimination* are about men. The case about women deals with domestic violence.

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

There are two different procedures involved. The first is the analysis of draft regulations to verify their compliance with the principle of equality between women and men. This is conducted by the Ministry of Justice of Ukraine, and results are published regularly.<sup>27</sup> On average, six acts pass this gender-based legal scrutiny annually. In 2015, these legal acts included the laws "On resorts", "On tourism", "On innovation activity", and "On indexation of money incomes". Unfortunately, this gender analysis is an absolutely formalistic procedure. While the conclusions of the Ministry of Justice should indicate that an analysis of articles of a given law demonstrates that the provisions do not contain discriminatory norms on the basis of sex, in effect, such conclusions are usually based on the fact that the terminology used in the law is gender-neutral.

The second procedure is the anti-discrimination analysis of the drafts of normative legal acts. This is conducted by the legal service of executive state bodies at the time of legal review of the drafts of normative acts.

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

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

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

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

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

Unfortunately, there is no formal procedure to obtain systematised information about the results of such an expertise.

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

These processes not only lack sufficient rigor but moreover result in cases in which courts refuse to consider plaintiff's references to discriminatory regulation, citing the fact that the relevant regulation passed the anti-discrimination or gender analysis. It is thus presumed to be in compliance with the principle of non-discrimination.<sup>28</sup>

## Access to legal aid

Ukraine has a law on free legal aid. The law, *inter alia*, provides that some categories of persons are entitled to free legal aid in the form of protection from prosecution (in criminal cases) and representation of their interests in court (in any category of cases – civil, criminal, and administrative). These categories of individuals include:

- ▶ a) low-income persons (if the income of such person is less than approximately 120 euros per month);
- ▶ b) orphans, children deprived of parental care, children in difficult circumstances, children affected by military operations and armed conflicts;
- ▶ c) internally displaced persons;
- ▶ d) persons against whom administrative detention is applied;
- ▶ e) persons against whom administrative arrest is applied;
- ▶ f) persons sentenced to penalties of imprisonment, detention in a disciplinary military unit or other restriction of liberty;
- ▶ g) persons undergoing criminal proceedings and has been invited by the investigator, prosecutor, investigator judge or by the court under the Criminal Procedure Code of Ukraine;
- ▶ h) refugees;
- ▶ i) war veterans and persons who are the subjects of the law of Ukraine «On the status of war veterans, guarantees of their social protection», persons with special merits and special labour merits, persons who are the victims of Nazi persecution.

Women do not receive free legal aid in cases dealing with domestic violence, human trafficking, and division of property during divorces, etc. The law does not give them the right to free legal aid on the basis of these claims or legal problems. Most women's rights NGOs deal with legal advice and representation of women's interests in courts, but on a limited basis given minimal resources.

The initiative of the Women's Consortium of Ukraine, which founded the Virtual Legal Aid Service in February 2014 was created to protect the rights of women in employment and entrepreneurship; family relationships; in communication with officials; and to combat discrimination based on sex.<sup>29</sup> The Virtual Legal Aid Service has provided more than 100 consultations on legal advice between 2014 and 2015, the most frequent being in the areas of labour and the family.

The International Women's Rights Centre, La Strada Ukraine, provides assistance through national hotlines on domestic violence, human trafficking and gender discrimination (0 800 500 335, short number 386). For the 1st quarter of 2015, the total number of calls was 2 632, including on the following issues: gender discrimination (1.1%), human trafficking (4.2%), IDPs (36.3%) and domestic violence (58.4%). The gender distribution of calls was 80.8% women and 19.2% men. The types of violence involved were sexual (3.3%), economic (11.7%), physical (36.4%) and psychological (48.6%). For IDPs, the greatest urgency is the question of humanitarian aid (51.8% of calls) and also the question of information support (21.1%). IDPs also seek assistance about social benefits, psychological help, departure from the zone of military conflict, verification of status, restoration of documents, registration of location, housing, employment, health care, schooling, returning to a permanent residence, volunteering, and theft, among others.<sup>30</sup>

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

29. See <http://legal.wcu-network.org.ua>, accessed 28 November 2016.

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

### Prevalent challenges for women's access to justice

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

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

As an example of the gender-neutral legislation, according to the Ukrainian Family Code, a parent who lives separately from the child has to pay alimony. The minimum amount of alimony for one child may not be less than 30% of the living wage for a child (approximately €50-60 in 2015). However, in the case of divorced parents in Ukraine, a child lives with his or her mother in 99% of cases. So the situation is such that a man is mandated to pay only 30% of the child's living wage, while the woman pays 70%, placing the overwhelming financial costs on the woman, who will often earn less than the man.

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

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

The solutions offered were as follows:

- 1) Article 184 of the Family Code of Ukraine provides that the amount of child support is determined by certain circumstances that may be important: for example, the court takes into account whether the maintenance payer has other children. The legislator sets the minimum amount of maintenance for one child; it cannot be less than 30% of the subsistence minimum for a child of appropriate age. The court ruled on the provisions of the Family Code of Ukraine. So the judgment in this case is lawful;
- 2) When there is a divorce, in most cases the child lives with the mother. If we take the minimum subsistence level as the reference point, the parent who lives with the child should ensure 100% of the maintenance. The other parent (which usually is the father of the child) pays alimony of 30% of the minimum that is required for the maintenance of the child. So one of the parents (usually the mother) ensures 70% and the other 30%. This is unfair and it contradicts the requirements of international standards on equal distribution of rights and responsibilities of parents on upbringing and child support.

Of the respondent judges, 90% chose answer No. 1. The judges who chose answer No. 2 added a footnote that in practice, the case would be resolved as described in the first option.

The development of legislation on domestic violence and violence against women requires special attention. According to statistics from the Ministry of the Interior of Ukraine, in 2014, the police received 117 941 applications about domestic violence, and 77 709 persons were booked for committing domestic violence offences. Some researchers state that the level of violence against women in Ukraine is very high, and prevailing prejudices, including among judges, are the main obstacles to effective protection of women's rights. For so many women, domestic violence comprises psychological torture and regular beatings that reduces their quality of life and even threatens their lives. Ukrainian society, which is traditional, does not address this problem seriously.

Active work to prepare for the ratification of the Istanbul Convention is now underway in Ukraine. Ukraine signed this important international legal document on 7 November 2011. The Council of Europe project Preventing and Combating Violence Against Women and Domestic Violence in Ukraine was implemented in Ukraine in 2013-2016. The purpose of the project was to promote the ratification of the Istanbul Convention by Ukrainian authorities and to provide the authorities with an accurate picture of what needs to be changed in order to bring the situation in Ukraine in closer compliance with Council of Europe standards, notably the Istanbul Convention.<sup>31</sup> As part of the project, the assessment report "Preventing and combating violence against women and domestic violence in Ukraine: compliance of selected Ukrainian laws with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul

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31. Council of Europe Project on Preventing and Combating Violence Against Women and Domestic Violence in Ukraine. More information is available at [www.coe.int/en/web/stop-violence-against-women-ukraine/vaw-dv-project](http://www.coe.int/en/web/stop-violence-against-women-ukraine/vaw-dv-project), accessed 28 November 2016.

Convention)“ was presented in 2015 (Truchero Cuevas and Khrystova 2015). The project, through legislative review, assisted the Ukrainian authorities in identifying how the legal framework on violence against women should be improved in order to bring it into compliance with the obligations of the Istanbul Convention. The report and its ensuing recommendations have a limited scope pointing to legal changes required by the Istanbul Convention. The main recommendations are that Ukraine:

- ▶ should introduce a definition of violence against women/gender-based violence in its legislation;
- ▶ should re-define the subjective scope of the application of its laws and policies to ensure they address all forms of violence against women and domestic violence, while paying particular attention to women victims of gender-based violence;
- ▶ may improve its legal framework on anti-discrimination and on equality between women and men (the Istanbul Convention Working Group on Legislation Review agreed that the Law on ensuring Equal Rights and Opportunities of Women and Men should be amended to recognise violence against women as a form of discrimination, thus establishing a linkage between these two policy areas);
- ▶ should establish a legal basis for co-operation with relevant NGOs and civil society representatives active in combating violence against women;
- ▶ should ensure the collection of relevant, gender-disaggregated data at regular intervals on cases of all forms of violence covered by the Istanbul Convention;
- ▶ should promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes in accordance with the aims of the Istanbul Convention. Such campaigns and activities should allow for the appropriate participation of civil society and NGOs;
- ▶ should include teaching materials in formal curricula and at all levels of education aiming at preventing all forms of violence against women and promoting equality between women and men in accordance with the Istanbul Convention.

#### **A brief review of the role of specialised equality bodies, such as the national anti-discrimination body**

In Ukraine, the Ministry of Social Policy is a special authorised central executive body on equal rights and opportunities for women and men and for the prevention of domestic violence. Also of direct significance are the Department of Non-discrimination and the Department of Gender Equality in the Office of the Ukrainian Ombudsperson.

Ukraine’s previous State Programme to Ensure Equal Rights and Opportunities for Women and Men for the period of 2013-2016, was approved by the Cabinet of Ministers of Ukraine on 26 September 2013. The head of the programme is the Minister of Social Policy, and it was implemented by the Ministry of Social Policy, the Ministry of Education and Science, the Ministry of Culture, the State Committee on Economic Development, regional and Kyiv city state administrations, international organisations and NGOs. One of the programme’s key aims was the development of a mechanism for implementing the right to protection from gender discrimination and to take the necessary steps for the review of cases of such discrimination, in particular, to ensure an effective response to sex discrimination. As one of the planned activities, a study was included, on the level of women’s access to justice, discrimination and gender-based violence.

The regulation establishing the Expert Council on Combating Gender Discrimination was approved by the Ministry of Social Policy on 18 December 2012. The tasks of the Expert Council are to consider the complaints on the facts of sex discrimination; to consider issues of equal rights and opportunities for women and men in Ukraine; to prepare proposals for amendments to legislative acts for the purpose of compliance with the principle of equal rights and opportunities for women and men; and to prevent all forms of discrimination based on sex. The Expert Council sent letters to institutions and organisations for the immediate elimination of violations. Analysis showed that most of the appeals are focused on sexist advertisements, which impose or promote negative stereotypes about the social and gender roles of women and men.

The Expert Council on non-discrimination and gender equality was established in the Office of the Ombudsperson.<sup>32</sup> Its main goals are to conduct research on systematic violations in the field of non-discrimination and gender equality; to prepare proposals to address the main causes of discrimination; to inform the general public and international institutions about the activities of the Ombudsperson and her or his representatives in the field of non-discrimination and gender equality; to make proposals for the Ombudsperson on improving legal culture and legal awareness among the Ukrainian people.

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<sup>32</sup> The Expert Council on Combating Gender Discrimination and the Expert Council on Non-Discrimination and Gender Equality are two distinct institutions with different tasks.

The first meeting of the working group on gender equality policy and combating discrimination in education was held on 23 July 2015 in the Ministry of Education and Science with the participation of Inna Sovsun, First Deputy Minister of Education and Science of Ukraine. It was expected that experts on gender equality were to be recruited to develop standards that will include knowledge of gender issues by graduates.

Information about the consideration of complaints regarding gender-based discrimination lodged with the Office of the Human Rights Commissioner was included in the eighth periodic report of Ukraine on the implementation of commitments under CEDAW (para. 68). Most of these complaints are related to domestic violence. At the same time, the number of complaints is relatively low, approximately 100 complaints per year. The Commissioner explains this is due to the low levels of legal awareness of people, a lack of knowledge on how to “identify” manifestations of gender-based discrimination or cases of domestic violence, and traditional gender stereotypes in public thinking regarding the place and role of women and men in the family and society.

The number of complaints submitted to the Expert Council at the Ministry of Social Policy is even smaller - 26 complaints were received in the period of 2010-2013. Most of the complaints are related to sexist advertisements that impose negative stereotypes about social and gender roles of women and men (para. 69 of the eight periodic report to CEDAW).

## **Socio-economic and cultural barriers to women’s access to justice**

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### **Level of women’s awareness of their rights**

Women’s low awareness of their rights is one of the main reasons for the severe underreporting of discrimination or other violations of these rights. Many women are not aware that certain situations constitute violations of their rights, or they are not aware of the existing mechanisms that can protect their rights and interests. Moreover, there are many stereotypes on the social role of women in society. This is felt particularly acutely in rural areas. A 2015 study focuses on rural women and CEDAW standards, and was carried out with the support of the Ombudsperson’s Office and the United Nations Development Programme in Ukraine (Vološevych, Konoplytska, Kostyuchenko, and Martsenyuk 2015). It covers: rural women’s participation in political life and in NGOs; rural women’s access to adequate health care, including information, counselling and family planning services; their use of social insurance programmes; formal and informal education, including functional literacy; economic opportunities and participation in collective activities; violence against women in rural areas; and women’s level of legal awareness of their rights and mechanisms for their protection. Among the problems identified is that 17% of rural women who are employed claim that their employer does not pay them when they are sick. Lack of paid sick leave is another, which, 42% of women believe, is caused by the fact that employers often only offer informal work to women, because they do not want to bear the onerous social obligations prescribed by law in Ukraine. About a quarter (23%) of women surveyed stated that they refuse formal employment for higher salaries of their own volition; 15% of women do not apply for sick leave because they are afraid of being fired; and 14% of women who worked before pregnancy say that their leave is not paid and most do not know the reasons for this. Thus, every tenth rural woman who is on maternity leave has the right to social protection, but cannot obtain it. Only 52% of respondents are sure that their employers will offer them the same or a similar position following maternity leave, 34% have no guarantees, and 14% are sure that their employer will not offer the same or similar work.

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

According to another study, published by the Ministry of Social Policy of Ukraine,<sup>33</sup> there is higher awareness in the population of the laws that prohibit various forms of domestic violence against women than of the laws that are intended to improve the position of women in the labour market and representation in politics. Half of the respondents know about the Ukrainian laws that prohibit human trafficking, including sexual or labour exploitation of women (45%). Awareness about Ukrainian laws that prohibit the exploitation or the prostitution of women, even with the consent of the women, stands at 40%. More than a third of respondents are aware of the existence of Ukrainian laws that prohibit physical and sexual violence against women in the

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33. Study from the Ministry of Social Policy, available at [www.mlsp.gov.ua/labour/control/uk/publish/category%3Bjsessionid=3FEE35A10D5AAF74725F8F130263E382.app1?cat\\_id=166710](http://www.mlsp.gov.ua/labour/control/uk/publish/category%3Bjsessionid=3FEE35A10D5AAF74725F8F130263E382.app1?cat_id=166710), accessed 28 November 2016.

family (39% and 36% respectively). Ukrainians are less aware of laws that prohibit psychological and economic violence in the family (29% and 23% respectively).

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

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

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

Other socio-economic and cultural barriers that may affect women's access to justice include the following:

- ▶ Ukraine is going through a military conflict on its territory, a part of which is recognised as occupied. Certain categories of personal safety are much more relevant to women than to men, such as for example sexual violence;
- ▶ Experts expect that there will be a surge of domestic violence in Ukrainian society, as the men who participate in military operations in the east of Ukraine return home.<sup>34</sup> This is linked to psychological trauma and post-traumatic stress disorder, as well as difficulties finding jobs and families facing economic hardship. Men who were needed for military operations may feel they are no longer necessary in civilian life;
- ▶ Ukraine is facing a difficult economic situation. The national currency depreciated three times during 2014-15 and the inflation index reached 37% in the first four months of 2015. The question is to which extent is the crisis affecting women more than men? For example, women who have taken credit in foreign currency are in a more difficult situation than men because, on average, women have less income than men. According to official statistics in Ukraine, there are 296 000 unemployed women and 210 000 unemployed men. The average monthly salary in Ukraine is €121 for women and €159 for men. The highest salaries are paid in the financial and insurance sectors: €237 for women and €368 for men. In an interview on 8 March 2015, Aksana Filipishyna, the representative of the Ombudsperson responsible for children's rights, non-discrimination and gender equality, drew attention to the fact that women make up 54% of Ukraine's population, that they have high educational and intellectual levels, but that their average salary in the public sector is 24% less than that of men,<sup>35</sup>
- ▶ The norm according to which the indexation of cash income depends on the financial resources of the budgets of all levels for the relevant year may lead to indirect discrimination against women, because budgetary institutions in 2015 abandoned indexation of money incomes of their employees, and most of these employees are women;
- ▶ Ukrainian's society is largely traditional: the possibility of legalising same-sex marriage is rarely raised, aside by civil society representatives. It is not on the agenda of public discourse; there is a very biased attitude towards persons of a non-heterosexual orientation; a majority of the population disapproves of transgender persons. Therefore, lesbian, bisexual, and transwomen need special guarantees, especially those living outside of urban areas;
- ▶ There is a common belief that it is sufficient to have gender-neutral laws and a gender-neutral judicial practice. It exists despite the fact that there are very few women in politics or high-level managers in public and private structures. According to information from the Virtual Legal Aid Service of the Women's Consortium of Ukraine, women seek help when they want to work, but their husbands are usually strongly against this and pressure them to choose between family and work.
- ▶ There are many prejudices in Ukrainian society, even at the official level. For example, the Cabinet of Ministers of Ukraine approved dress code recommendations for women employees of the Government of Ukraine, which state: "At the workplace a woman should look feminine, stylish and elegant. Woman should have a unique charm, despite some limitations of business etiquette. The main thing is the look of a businesswoman – well-groomed, a sense of proportion, elegance and expediency";

34. See [www.rferl.org/content/ukraine-conflict-domestic-violence/26979064.html](http://www.rferl.org/content/ukraine-conflict-domestic-violence/26979064.html), accessed 28 November 2016.

35. See <http://khpg.org/index.php?id=1425814399>, accessed 28 November 2016.

- ▶ There has been an initiative to prohibit abortions in Ukraine. At the beginning of June 2015, Igor Mosiychuk, a Ukrainian parliamentary member who is a member of the governing coalition, announced that he had initiated a draft law on the prohibition of abortions. Activists and human rights defenders were shocked by the news, and on 27 June, a demonstration against the draft law took place in Kyiv. Demonstrators argued that the adoption of this law would have catastrophic consequences for Ukrainian society and that state intervention in a woman's choice is an attack on reproductive rights. The draft law was not adopted, but the issue may resurface.

The issue of IDPs in Ukraine needs special attention. According to the UN Human Rights Monitoring Mission, 6 362 deaths, including at least 625 women and girls, have been documented since the beginning of the armed conflict in April 2015. During this time, 15 775 people were injured in the conflict zone in eastern Ukraine and many are reported as missing.<sup>36</sup> Experts noted that the Ukrainian media ignore the problems of women who are in the conflict zone. In February 2017, the UN Human Rights Mission published the report "Conflict-Related Sexual Violence in Ukraine 14 March 2014 to 31 January 2017" addressing documented patterns and trends of sexual violence in the conflict areas, accountability and available services for survivors and victims, as well as providing a series of recommendations (OHCHR 2017).

More widely, Ukrainians receive information about losses of fighters on the frontlines every day, but unfortunately, they know almost nothing about the fate of women who are in the occupied territories. Gender-based violence in the conflict zone is persistently ignored; this crime is marginalised in Ukraine. Society believes that it is not worth the attention, as compared with other news, crimes, and developments.<sup>37</sup>

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

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

- ▶ of 217 claims that are considered on application of the Law of Ukraine on the Rights and Freedoms of Internally Displaced Persons, 95% were submitted to the courts by women;
- ▶ failure to obtain a certificate of registration of IDPs, or a lack of awareness of other formal requirements are the main obstacles for women seeking to defend their rights in court; see for example, the decision of the Svyatoshinsky District Court in Kyiv, 24 June 2015, Case No. 2/759/4430/15;<sup>38</sup> the decision of the Moscow District Court of Kharkiv, 19 January 2015, Case No. 643/455/15-ц,<sup>39</sup> and the decision of the Berdyansk District Court of Zaporozhye Region, 4 February 2015, Case No. 310/1071/15-a,<sup>40</sup>
- ▶ the main categories of cases involving women who are IDPs are family affairs (alimony, divorce, establishing the fact of birth); social (the receipt of targeted assistance, appealing a refusal to pay a pension at the new place of residence); administrative (an appeal against a refusal to register an IDP); employment (see the decision of the Rivne City Court of Rivne Region, 26 March 2015, Case No. 569/3293/15-a,<sup>41</sup> and the decision of the Volodarsky District Court of Donetsk region on 24 February 2015 in Case No. 222/100/15-a,<sup>42</sup> etc.).

## Brief overview of key statistics concerning women's position in society, the economy and politics vis-à-vis men's position

Women constitute only 11% of members of the Ukrainian Parliament. Of the 27 committees in the Parliament, only 6 are headed by women. The cross-party association Equal Opportunities has been set up in Parliament

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

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

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

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

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

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

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



to develop legislative initiatives directed to ensure gender balance and respect for equal rights for women and men. It publishes a regular digest.<sup>43</sup>

The Civic Network OPORA analysed the activity of parliamentary members in 2015. The results of this study show that women participated in legislative activity twice as often as men.<sup>44</sup> However,

- ▶ in February 2017, there were only three women ministers in the government of Ukraine;
- ▶ since 1991, there have been 18 governments in Ukraine, and only one of these has been headed by a woman;
- ▶ in February 2017 only one woman was a member of the Constitutional Court of Ukraine, out of a total of 18 judges;
- ▶ the heads of the higher courts in Ukraine are all men as of February 2017. Only one woman holds the position of deputy chairman of the Supreme court for civil and criminal cases.

The UNDP Gender Development Index (GDI) ranked Ukraine 83 out of 187 in 2015 and 84 out of 188 in 2016.<sup>45</sup>

### 3. GENDER RESPONSIVENESS OF THE JUSTICE SYSTEM

#### An overview of the number of cases women bring before national courts in comparison to men

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

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

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

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

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

#### Mapping existing training for judges and lawyers on gender

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According to the Law of Ukraine on the Judicial System and Status of Judges, the National School of Judges of Ukraine is a public institution with a special status that provides for the organisation of special trainings for

43. See a recent edition at <https://drive.google.com/file/d/0B7N541d2jwrgc1N0QIM5RHc5NUE/view>, accessed 28 November 2016.

44. Civic Network OPORA, 2015, available at <http://oporacv.org/v-ukrajinskomu-parlamenti-zhinky-pratsovytishi-od-cholovikiv-analiz-skladu-fraktsij-komitativ-aktyvnostej>, accessed 28 November 2016.

45. UNDP, Human Development Index, available at <http://hdr.undp.org/en/composite/GDI>, accessed on 28 February 2017.

candidate judges; trainings for judges who are appointed for the first time or have been elected for a lifetime; research on improving justice; and study of international experience in the administration of courts, etc.<sup>46</sup>

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

In 2010, the Ukrainian-Canadian project on judicial co-operation developed, published and distributed among members of the judiciary of Ukraine the following: a textbook for judges on "Principles of Gender Equality"; the manual for teacher-trainers "Fundamentals of Gender Equality"; "Creation of Gender Equality Society: International Experience and the laws of foreign countries on gender equality"; the brochure on "Sexual Harassment at the Workplace"; "Judicial Protection from Domestic Violence: Information Material for Judges"; and "Legal Protection from Domestic Violence. Information Material for the Public".

Trainings for law enforcement officers on the protection of women's rights has also taken place in Ukraine. The Ministry of Social Policy reports that seven seminars on "Interaction of state and local governments on prevention of domestic violence" were held in 2010 as part of the UNDP and EU Project on Equal Opportunities and Women's Rights in Ukraine. Seminars for district police officers were held in all regions of Ukraine in 2010-2011 with the aim of ensuring operative consideration of appeals in cases of domestic violence and to prevent rejection of the registration of these applications.

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

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

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

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

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

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

<sup>46</sup>. See also [www.coe.int/t/dghl/cooperation/cepej/cooperation/Eastern\\_partnership/default\\_en.asp](http://www.coe.int/t/dghl/cooperation/cepej/cooperation/Eastern_partnership/default_en.asp), accessed 28 November 2016.

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

## 4. REMEDIES, GOOD PRACTICES AND RECOMMENDATIONS

### Existing remedies to facilitate women's access to justice

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#### Anti-discrimination legislation

Ukraine has the following anti-discrimination legislation:

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

#### National programmes

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

#### Specialised equality bodies

In Ukraine, the Ministry of Social Policy is a special authorised central executive body on equal rights and opportunities for women and men and for the prevention of domestic violence.

Ukraine has a Department of Non-discrimination and a Department of Gender Equality in the Office of the Ukrainian Ombudsperson.

The Expert Council on Non-discrimination and Gender Equality has been set up in the Office of the Ombudsperson.

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

#### Special measures

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

#### Gender-based legal analysis

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

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

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

- ▶ national hotlines for domestic violence, human trafficking and gender discrimination have been set up by the International Women's Rights Centre, La Strada Ukraine;

- ▶ the Women’s Consortium of Ukraine founded the Virtual Legal Aid Service in February 2014. It was created to protect the rights of women in employment and entrepreneurship; family relationships; in communication with officials; and to combat discrimination based on sex;<sup>47</sup>
- ▶ there is close interaction of state authorities (the Ministry of Social Policy, the Ministry of International Affairs, the Ministry of Internal Affairs, the Ombudsperson, the Supreme Court of Ukraine), NGOs and international organisations (including the Council of Europe) in preparing for the ratification of the Istanbul Convention;
- ▶ the cross-party association Equal Opportunities has been established in the Parliament of Ukraine. It aims to develop legislative initiatives directed towards ensuring gender balance and respect for equal rights for women and men.

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

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

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

### **Proposed measures to address the research and data needs in the field of women’s equal access to justice**

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Recommendations to address research and data needs include:

- ▶ further explore the level of awareness among judges on international standards in the areas of gender-based discrimination and violence against women, and how this is connected to ensuring women’s access to justice. In particular, further explore judges’ understanding of the mechanism of implementation of these standards at the national level, as well as their use of such standards in judgments, including through indicators such as:
  - the references to existing international and regional instruments in the area of protection against gender-based discrimination and violence against women, including the European Convention on Human Rights, and the Istanbul Convention, as well as the nature in which such references are made;
  - the references to domestic law, to ensure equal rights and opportunities for women and men, including the Law of Ukraine on Principles of Prevention and Combating Discrimination in Ukraine, and the Law of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men, and the nature of such references;
  - the application of gender-neutral legislation in court, resulting in *de facto* discrimination and application of gender-discriminatory legislation;
  - identifying the types of cases that are the most vulnerable to manifestations of gender discrimination, and the degree of representation of these cases in the administration of justice in the general courts, as well as administrative and commercial judicial proceedings;
  - the frequency and extent of the resolution of cases by different instance courts;
  - existence of cases in which there were grounds to appeal to the Supreme Court of Ukraine or the Constitutional Court of Ukraine to address issues of non-compliance of certain laws with the Constitution of Ukraine because of their discriminatory nature;

<sup>47</sup> Women’s Consortium of Ukraine, available at <http://legal.wcu-network.org.ua>, accessed 28 November 2016.

- ▶ collect statistical information on:
  - the number of court cases initiated by women, compared to the number of court cases initiated by men;
  - the average duration of disputes that dealt with gender-based discrimination;
  - the percentage of appeals and cassation appeals of decisions rendered in cases of gender discrimination;
  - the number of court decisions in which reference was made to relevant international and national law relevant to gender-based discrimination and violence against women;
  - gender-disaggregated data, including on numbers of court decisions on cases of domestic violence, their distribution by type of domestic violence, and the outcomes of the cases;
  - the number of cases where a woman claimed to be a victim of discrimination, compared with the number of cases where a woman complained about the violation of her rights and legal interests, not realising that the violation was the result of gender-based discrimination;
- ▶ evaluate the readiness of judges to apply international standards in the area of protection from gender-based discrimination, including cases where the claimant does not associate violations of her rights and legitimate interests with gender-based discrimination. In particular, develop criteria and methods of analysis of judicial decisions and create a form of judicial decision analysis to identify those cases where infringement of rights and legitimate interests is a result of gender-based discrimination, direct or indirect;
- ▶ develop methods for the identification by judges of cases where the violation of rights and legitimate interests is the result of:
  - discriminatory legislation;
  - gender-neutral legislation that in practice has discriminatory consequences;
  - judicial gender stereotypes.
- ▶ prepare a review of best practices in the area of judicial protection from gender discrimination by analysing the practice of resolving cases in the area of gender discrimination by the courts of other Council of Europe member states, as well as the EU and the European Court of Justice; prepare a selection of cases in which the ability of judges to identify cases of gender discrimination is illustrated vividly, including with references to international and regional standards of protection in this area.

### **Mapping relevant actors in the field of women’s access to justice (official institutions, civil society organisations and academia)**

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

- ▶ government authorities and state institutions: the National School of Judges; the National Academy of the Office of the Public Prosecutor, the Ministry of Justice; the Ministry of the Interior, the Ministry of Social Affairs; the relevant committees of the Parliament of Ukraine, including the Committee on Legal Policy and Justice, the Committee on Human Rights, National Minorities and International Relations; the Ombudsperson’s Office; the State Judicial Administration of Ukraine; the High Qualifications Commission; and the Council of Judges of Ukraine, among others;
- ▶ civil society organisations: the International Women’s Rights Centre, La Strada Ukraine; the Women’s Consortium of Ukraine; the Association of Women Judges of Ukraine; and the Kharkiv Regional Foundation, Public Alternative, among other organisations, national, regional and local.

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**Questionnaire for judges**

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

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

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

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

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

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

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

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

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

- ▶ a. Yes

In what cases and what laws do you apply?

- ▶ b. No.

### Select solutions you think are right.

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

How should the court decide the case?

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

1.1. The claim should be satisfied; the prohibition of night work for women is discriminatory; it restricts women's right to equal access to work. If the position subject to redundancy was occupied by a man he would be offered the vacant post, with the need to work at night. The mere fact that an employer terminated the contract with a woman became an obstacle for the preservation of her employment at the same enterprise;

1.2. The proceedings must be suspended; the court appeals to the Supreme Court of Ukraine to address the Constitutional Court of Ukraine about the issue of constitutionality of Article 175 of the Labour Code;

1.3. The claim must be rejected; the legislator set a clear ban on night work for women. This prohibition corresponds to Article 24 of the Constitution of Ukraine, which provides the possibility of special measures to protect the safety and health of women.

#### **Of judges who were respondents, 90% chose answer 1.3.**

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

How should the court decide the case?

2.1. The director must be held accountable, because in this case there is an unambiguous violation of Article 176 of the Labour Code, which prohibits business trips for women with children under the age of three without exceptions for cases where the woman herself agrees to a trip and Article 41 of the Administrative Code establishes liability for the violation of the labour law;

2.2. The court must recognise the fact that the administrative violation has occurred, but considering the employee's claim, the company director should be released from the liability due to the insignificance of the breach with an oral remark;

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

#### **Of judges who were respondents, 85% chose 2.1.**

3. *Plaintiff B. appealed to the court with a claim to recognise the refusal to hire her as unlawful. She informed the court that the announcement of a vacancy for a bulldozer driver was placed by the company, which refused her this job because it is included on the list of heavy work and work with harmful and dangerous conditions, which prohibits the employment of women. How should the court decide the case?*

3.1. Refusal to accept women as bulldozer drivers should be declared illegal. It violates women's right to work and to be equal with men. In a similar situation a man who applied would get the job. The list of prohibited work for women is not applicable because it is contrary to higher legal acts (the international treaties that Ukraine has ratified, and the law on ensuring equal rights and opportunities for women and men, etc.);



3.2. Refusal to accept women for the job of bulldozer drivers is lawful. This work is included on the list of prohibited work for women. The corresponding list is approved in accordance with Article 174 of the Labour Code, which is not recognised as unconstitutional, and therefore it retains its validity.

**Of judges who were respondents, 90% chose 3.2.**

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

1. *Under the current law of state X, the right to pension is guaranteed for persons who have 15 years of work experience, but the 15 years are calculated based on full employment. A woman who appealed to the court worked as a cleaner for 18 years part-time – her working time was four hours per day. The reason for this schedule was the fact that the woman is the mother of three children whom she took care of. How should the court decide the case?*

1.1. The Court has concluded that such a regulation leads to indirect discrimination. The proof of this is statistical figures: despite the fact that the legislation does not set any specifics in addressing the pensions of women and men, the actual situation is such that women are victims of such a procedure because there are many more women than men who work part-time. This situation exists because traditionally, women do all the housework and raise children. Accordingly, there is a violation of the applicant's right to a pension;

1.2. The pension system is in the competence of the legislative body. It takes into account the economic capacity of the country. In this case, the law that requests relevant, full working experience corresponds to the requirements of reasonableness, proportionality and predictability (the person knew about the requirements of pension legislation and that, working only part-time, s/he would not receive the same pension as that received by people who worked full-time). Consequently, there is no violation of the right to pension.

**Of judges who were respondents, 90% chose 1.2.**

2. *The law prohibits the dismissal of pregnant women and men who are on maternity leave. It has been reliably established that in this case the employer began to prepare the release of the woman when she informed him about her pregnancy (the employer posted a vacancy with the prospect of career growth and indicated the time when such a vacancy would be available; this time coincided with the time of the future release of the woman). The employer informed her about her dismissal after the completion of her maternity leave. So formally, he fulfilled the requirements of the law. Is there a violation of the ban?*

2.1. Yes, there is a violation. The main goal of the prohibition is to protect a pregnant woman or a woman who has recently given birth. The woman will be put under stress if she feels under threat of dismissal or if she knows that the employer is already preparing her release. In addition, the employer who is preparing to release the woman as soon as she comes back from maternity leave cannot provide another motive of release other than the fact that the employee has a small child;

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

**Of judges who were respondents, 90% chose 2.2.**

3. *The law of state G, provides that achieving retirement age can be a ground for the dismissal of a person. There is a different retirement age for women and men in state G. This is 60 years for women and 65 for men. Citizen S. of this state filed a lawsuit on the illegality of her dismissal after reaching 60 years; men are not subject to release when they are 60. What should be decided in the case?*

3.1. Dismissal is legal. The legislator who is guided by the desire to create new jobs for young people provides that the achievement of retirement age is an independent ground for dismissal. This basis is the same for both women and men;

3.2. Dismissal of women on the sole ground that they have reached retirement age that under national law is different for women and men is discrimination based on sex.

**Of judges who were respondents, 90% chose 3.1.**

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