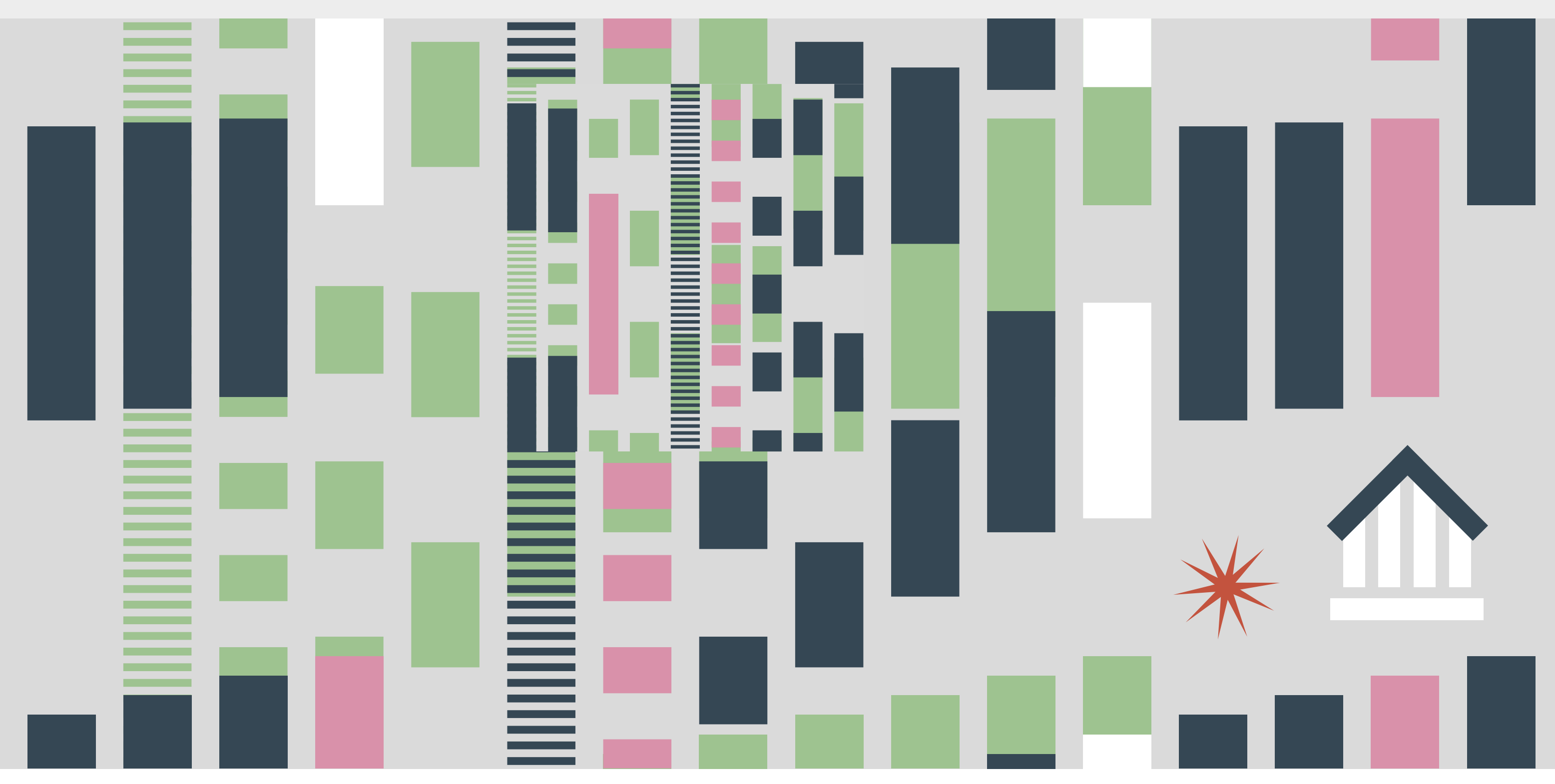
DISCRIMINATION: CASE LAW

Overview of the 2012-2020 Case Law of Ukrainian Courts on Discrimination



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DISCRIMINATION: CASE LAW

Overview of the 2012-2020 Case Law of Ukrainian Courts on Discrimination

Council of Europe

Ukrainian edition:
ДИСКРИМІНАЦІЯ: СУДОВА ПРАКТИКА ЗА ПЕРІОД 2012 – 2020 РР.
Огляд рішень судів у справах про дискримінацію в Україні за 2012 – 2020 роки

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List of abbreviations

CoE — Council of Europe
Commissioner – the Ukrainian Parliament Commissioner for Human Rights
CSO — Civil society organization
ECHR — European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR — European Court of Human Rights
EU — European Union
IDP — Internally displaced person
LLC — Limited liability company
SOGI — Sexual orientation and gender identity
URPI — Unified Register of Pre-Trial Investigations

Foreword

The *Discrimination*: 2012-2020 Case Law offers a comparative analysis of court decisions delivered over almost the entire period while the anti-discrimination law in Ukraine has been in effect.[1]

This research seeks to overview and analyze lawsuits filed with various courts in Ukraine, where the plaintiffs alleged discrimination as the main violation or one of the violations of their rights. This overview explores the development of case law on discrimination, and identifies the most frequent claims and complaints, the trends followed by courts in the review of these claims, as well as model decisions. It also offers recommendations on key issues for all stakeholders in this area.

This is the second overview in a series of studies of case law on discrimination in Ukraine. In 2020, the Social Action Centre[2] published *Discrimination: Case Law 2019*, a report on the pilot analysis of court decisions rendered in 2019. The methodology developed in the previous report underlies the analysis of court decisions delivered in 2012-2020.

Adopted in 2012, the Law of Ukraine *On the Principles of Preventing and Combating Discrimination in Ukraine* (the Law) defines discrimination, outlines an extensive and non-exhaustive list of protected characteristics, explains various forms of discrimination, and imposes liability for discrimination. To be more precise, the law only outlines the possible liability for discrimination, as it does not impose any particular sanctions. The law only indicates that liability can be civil, administrative and/or criminal without establishing particular sanctions in any of the codes.

To define and prohibit discrimination on particular grounds, two other laws were adopted prior to that: the Law of Ukraine *On Ensuring Equal Rights and Opportunities for Women and Men* in 2005 and amendments to the Law of Ukraine *On Social Protection of Persons with Disabilities* in Ukraine in 2009. Amended after 2012, two more laws were supposed to regulate the prohibition of discrimination in employment (vacancy announcements) and in general advertising: amendments to the Law of Ukraine *On Advertising* and the Law of Ukraine *On Employment of Population*, which came into force in 2013. In 2015, Article 2-1 of the Labor Code of Ukraine (the Labor Code) was amended to expand the list of protected characteristics by adding such

1 The overview of case law and development of this publication was done before the launch of the Russian Federation's war of aggression against Ukraine on 24 February 2022, in the framework of the project "Strengthening the access to justice through non-judiciary redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries", funded by the European Union and the Council of Europe and implemented by the Council of Europe in their Partnership for Good Governance II 2019-2022 programme.

2 The Social Action Centre is a non-profit organization that develops and promotes change to achieve equal rights for everyone in Ukraine. The organization focuses on advocacy to build an effective system of protection against discrimination, awareness raising about mechanisms for protection and counteraction to discrimination, and promotion of equality and diversity in society.

grounds as sexual orientation and gender identity. The latest amendments introduced in September 2021 to the laws on advertising seek to increase liability for sexist and discriminatory advertising.[3] Furthermore, other draft laws are in the making to increase liability for hate crimes and impose administrative liability for discrimination not involving physical violence.[4] A debate has been ongoing for several years about a pressing need to develop a draft law that would regulate civil partnership and address discrimination against same-sex couples in the exercise of their right to private and family life. This is currently in the Action Plan for the National Human Rights Strategy 2021-2023.[5]

All these amendments seek to extend protection against discrimination to various social areas and establish redress mechanisms. The case law analysis aims to illustrate the effectiveness and possibility of applying the current legal framework through judicial mechanisms, as well as to assess the quality of the laws and regulations, and develop recommendations for different stakeholders to improve the use of judicial mechanisms against discrimination. Recommendations outlined at the end of the analysis are addressed not only to the judiciary, but also for legal practitioners, lawyers, civil servants, and CSOs that support or represent plaintiffs.

3 Law of Ukraine No. 1750-IX On Amendments to the Law of Ukraine On Advertising to Combat Sex-Based Discrimination dd. September 10, 2021, available at https://zakon.rada.gov.ua/laws/show/1750-IX.

4 For example, Draft Law No. 0931 Amending Certain Legislative Acts of Ukraine regarding Harmonization of Anti-Discrimination Laws with the Law of the European Union dd. August 29, 2019, available at http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66561; Draft Law No. 5488 Amending the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine regarding Combating Discrimination dd. May 13, 2021, available at http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71891

5 https://www.kmu.gov.ua/npas/pro–zatverdzhennya–planu–dij–z–realizaciyi–nacionalnoyi–strategiyi–u–sferi–prav–lyudini–na–20212023–roki–i230621–756

Feedback of the legal community

Yulia Naumenko, a lawyer

The research covers a wide range of discrimination-related cases and the case law of national courts, as well as the case law of the European Court of Human Rights as applied by national courts in discrimination cases. Whereas Ukraine is only building a sustainable and consistent anti-discrimination case law, the analysis and systematization of the case law is of great practical value for lawyers and people who have experienced discrimination.

The systematization by section and area showcases the most prevalent areas of protection against discrimination. This compilation of the case law gives both potential plaintiffs and defense lawyers an overview of tactics of protection against discrimination in courts, grounds for filing cases with courts, and the most prevalent cases where discrimination is recognized.

The case law described in this study on the application of discrimination laws is also of great value for legal practitioners. Relying on the case law, a lawyer can assess the prospects of success in a case as early as at the consultation stage, help collect evidence, identify protected characteristics, and finalize claims. Moreover, this compilation of the case law may be referred to by an individual filing a case with a court to strengthen his/her legal reasoning.

Monitoring the case law improves people's legal awareness and helps lawyers improve their skills in the area of protection against discrimination. Finally, it can increase the number and improve the quality of discrimination case trials.

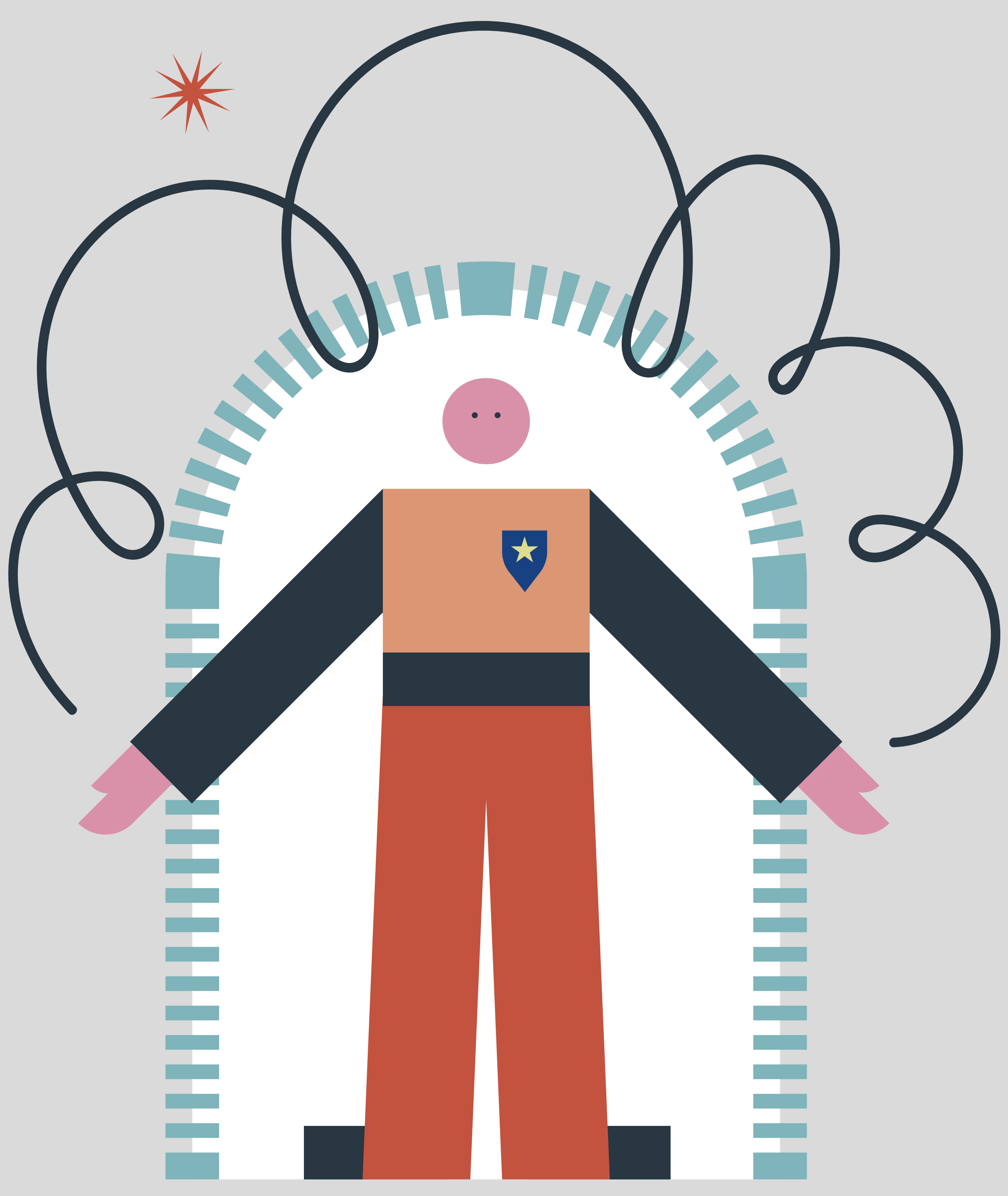
Oksana Huz, a lawyer

The analysis proves a steady rise in the number of cases where discrimination issues are brought before court. This is indicative of a growing number of plaintiffs who experience or even intuitively feel discriminatory treatment. Although the quality of reasons for judgment in court decisions still needs significant improvement, the quality of justification of the claims is no less important.

Unclear or poorly structured presentation of evidence of discrimination, lack of position on shifting the burden of proof to a defendant, failure to show protected characteristics of an individual who experienced discrimination enable defendants to avoid liability. Another difficulty is that not all plaintiffs in this category have sufficient knowledge to defend their interests or can afford to hire a defense lawyer to represent their interests in court, and not all defense lawyers want to work on such cases.

The situation is gradually changing indeed, but progress is too slow, and this analysis can be useful not only for a small circle of stakeholders working in this area, but also for defense lawyers who are already practicing law on discrimination or would like to start this career. Indeed, the analysis does not offer ready-to-use tools, such as templates for claims or a set of “good” court decisions, but it helps develop skills to analyze the case law on preventing and combating discrimination, as well as offers a roadmap sufficient to start developing tactics in a particular case.

Methodology



Analysis tools

As in the first research of the series,[6] we used the *Verdictum court documents* database by *Ligazakon* solution to search for documents for analysis.[7] Compared with the reyestr.court.gov.ua database, these tools enable filtering and categorization of documents by group, type, form of decision, and other filters, and ensure the accuracy of search.

For example, a search for the exact wording "discrimination on the ground of" in the Unified State Register of Court Decisions[8] yielded 21,499 documents for the period. However, some of the documents simply contained the word "discrimination" used in very different contexts and therefore could not give proper samples for the analysis of cases that are likely to involve discrimination within the meaning of the Law of Ukraine *On the Principles of Preventing and Combating Discrimination* and, for example, Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention/ECHR). A similar search in the *Verdictum* system displays only documents with the exact phrase, thus enabling the analysis.

The Ukrainian Parliament's Commissioner for Human Rights (the Commissioner), as well as national and international organizations have stressed the need and recommended collecting statistics on discrimination cases tried by Ukrainian courts. Moreover, the National Human Rights Strategy directly sets an objective "to introduce an integrated system for collecting data on violations of laws on preventing and combating discrimination and on prosecuting perpetrators".[9] However, there is currently no statistics that could be used to compare quantitative results.

Sampling

The analysis was based on the keywords:

"discrimination"
"discrimination on the ground of"
"discrimination on the grounds of"

6 Discrimination: Case-law 2019. Overview of case law of Ukrainian Courts on Discrimination 2019 / Fedorovych I., Bondarenko O.//Social Action Centre. – Kyiv, 2020, available at https://issuu.com/home/published/discrimination_report_final_final

7 https://verdictum.ligazakon.net/

8 https://reyestr.court.gov.ua/

9 National Human Rights Strategy approved by the Presidential Decree No. 119/2021 dd. March 24, 2021, available at https://www.kmu.gov.ua/npas/pro-zatverdzhennya-planu-dij-z-realizaciyi-nacionalnoyi-strategiyi-u-sferi-prav-lyudini-na-20212023-roki-i230621-756

The research then analyzes texts of documents retrieved by searching for the keywords "discrimination on the ground of" and "discrimination on the grounds of", where decisions in the cases were made exclusively between September 6, 2012[10] and December 31, 2020. This paper also builds on materials used for the previous research, *Discrimination: Case Law 2019*, to make comparison and conclusions on the general trends. The documents for 2019 were not analyzed in this research, except when it was necessary to compare the methodology or approaches in different years. For a detailed overview of the case law in 2019, please see the publication.[11]

In total, the system had 338,014 documents containing words that included the part "discriminat*" (for example, discrimination, discriminatory, etc.).

The number of mentions of the word "discrimination" and similar words has been growing since 2015 **(see Figure 1)**. In 2014, Ukraine amended laws in this area, in particular, Article 60 of the Civil Procedure Code, to shift the burden of proof to the defendant, and specified the scope of the Law, forms of discrimination, etc.

Data for analysis

In total, we have analyzed 1,668 documents in detail; including 453 (27%) documents where cases did not relate to discrimination (the parties did not claim discrimination and/or the court did not recognise discrimination in cases[12]). To decide whether a particular case related to discrimination, we have relied on the definition of discrimination in the national laws and standards based on the case law of the ECtHR. Certain documents did not indicate a specific protected characteristic. In some cases, the court brought this issue to attention and stressed the need to indicate protected characteristics in cases of alleged discrimination.[13]

The analysis shows that the number of discrimination cases has been growing steadily each and every year, except for 2016 **(see Figure 2)** characterized by a great number of cases related to discrimination based on profession/occupation. This stems from amendments introduced in 2015 to the pension laws and from termination of payment of old-age pensions to civil servants, public prosecutors, judges, etc.

10 Date of approval of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine https://zakon.rada.gov.ua/laws/show/5207–17/ed20120906#Text

11 Discrimination: Case-law 2019. Overview of case law of Ukrainian Courts on Discrimination 2019 / Fedorovych I., Bondarenko O.//Social Action Centre. – Kyiv, 2020, available at https://issuu.com/home/published/discrimination_report_final_final

12 Such mentions of the word "discrimination" were a result of citations of certain legal provisions where discrimination was mentioned among other human rights violations. For example, many decisions involving child custody were sampled, because they quoted the UN Convention on the Rights of the Child https://zakon.rada.gov.ua/laws/show/995_021#Text

13 For more information, please see Section 3.

Discrimination-related documents are divided into categories by protected characteristics **(see Section 3)** and areas **(see Section 4)**.

Forms of discrimination

Pursuant to Article 5 of the *Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine*, forms of discrimination include direct discrimination, indirect discrimination, incitement to discrimination, aiding and abetting in discrimination, and harassment. Article 1 of the Law defines each of these forms and gives a general definition of discrimination. The definition contains, among other things, a list of protected characteristics[14] and establishes exceptions, i.e. cases/situations do not amount to violations.[15]

In line with this Law, the methodology also relies on the search for court decisions where plaintiffs alleged one or another form of discrimination and decisions where the courts analyzed certain violations and concluded whether violations constituted one of the forms of discrimination established by the Law.

Among mentions of the forms of discrimination in the documents, the phrase "indirect discrimination" was the most common. However, the analysis will show later **(see Section 2)** that the term "indirect discrimination" was often used by courts when referring to other forms of discrimination. This can explain its frequent use compared to "direct discrimination", for example. Plaintiffs rarely indicated a specific form of discrimination in their claims **(see Figure 3)**.

14 "…on the grounds of race, color, political, religious and other beliefs, sex, age, disability, ethnic and social origin, nationality, marital and property status, place of residence, language or other characteristics that were, are, or may be actual or alleged", Article 1 of the Law of Ukraine On the Principles of Preventing and Combating Corruption in Ukraine https://zakon.rada.gov.ua/laws/show/5207–17#Text

15 "...except where such restriction is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary," ibid.

Fig. 1. The term «discrimination» mentioned in the URPI

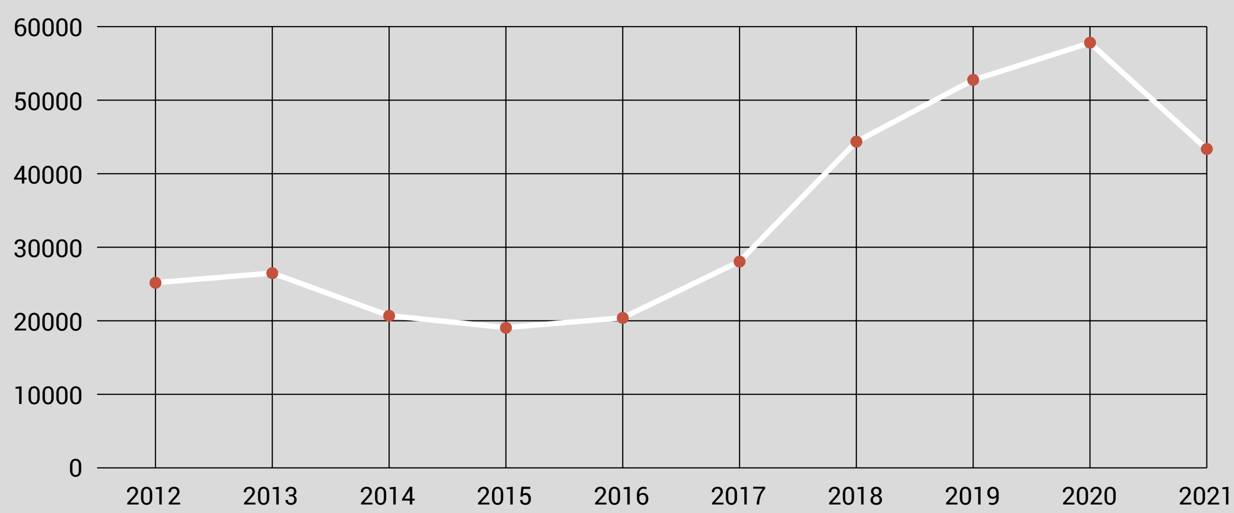


Fig. 2. Number of documents in discrimination cases, URPI

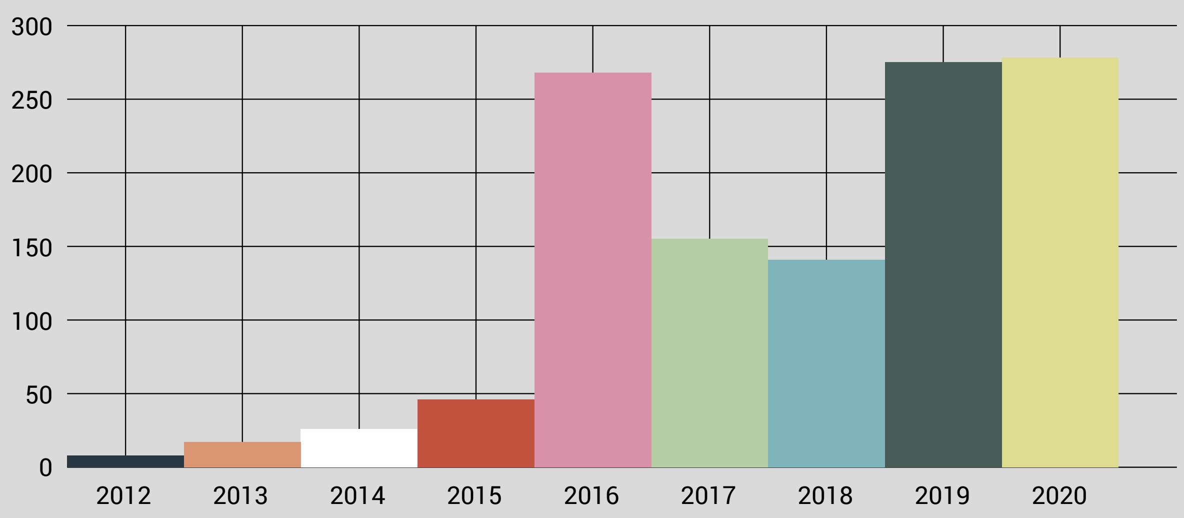


Fig. 3. Breakdown of documents by discrimination forms

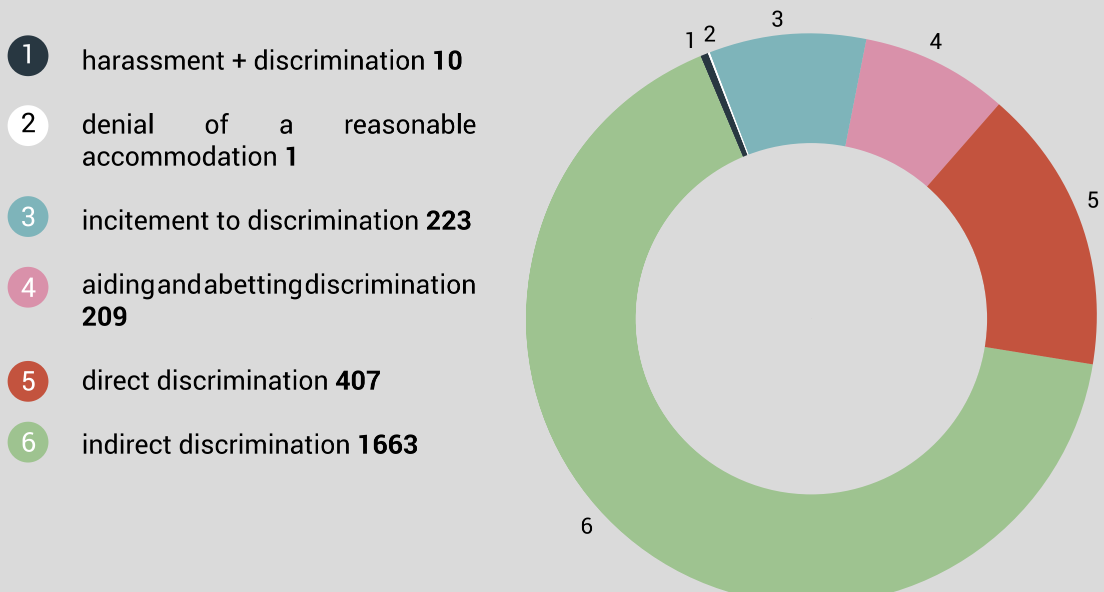
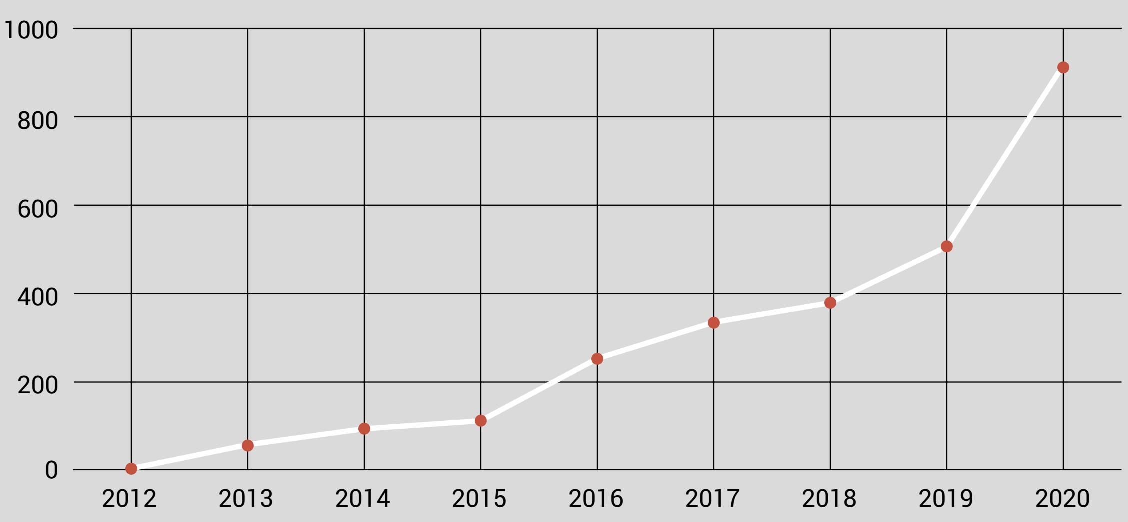


Fig. 4. References to the Law On the Principles of Preventing and Combating Discrimination in Ukraine



Laws

The quantity of documents indicating discriminatory treatment and references to the Law *On the Principles of Preventing and Combating Discrimination in Ukraine* was constantly growing in court decisions over the period under review. This shows a progressive increase in the number of cases of potential discrimination, approaches developed by courts to deal with the issues, and the need to analyze and systematize cases **(see Figure 4)**.

Particular aspects of the methodology

A pilot case law research in 2019 showed that a court decision in the form of a ruling in the majority of administrative, civil and commercial cases did not show the court's position on the merits of the case, but rather outlined procedural decisions. Therefore, for the purpose of the 2012-2020 research, the authors chose to analyze resolutions and decisions in all cases and rulings in criminal cases only.

Areas

The entire dataset for 2012–2020 has been provisionally categorized according to social areas where discrimination took place:

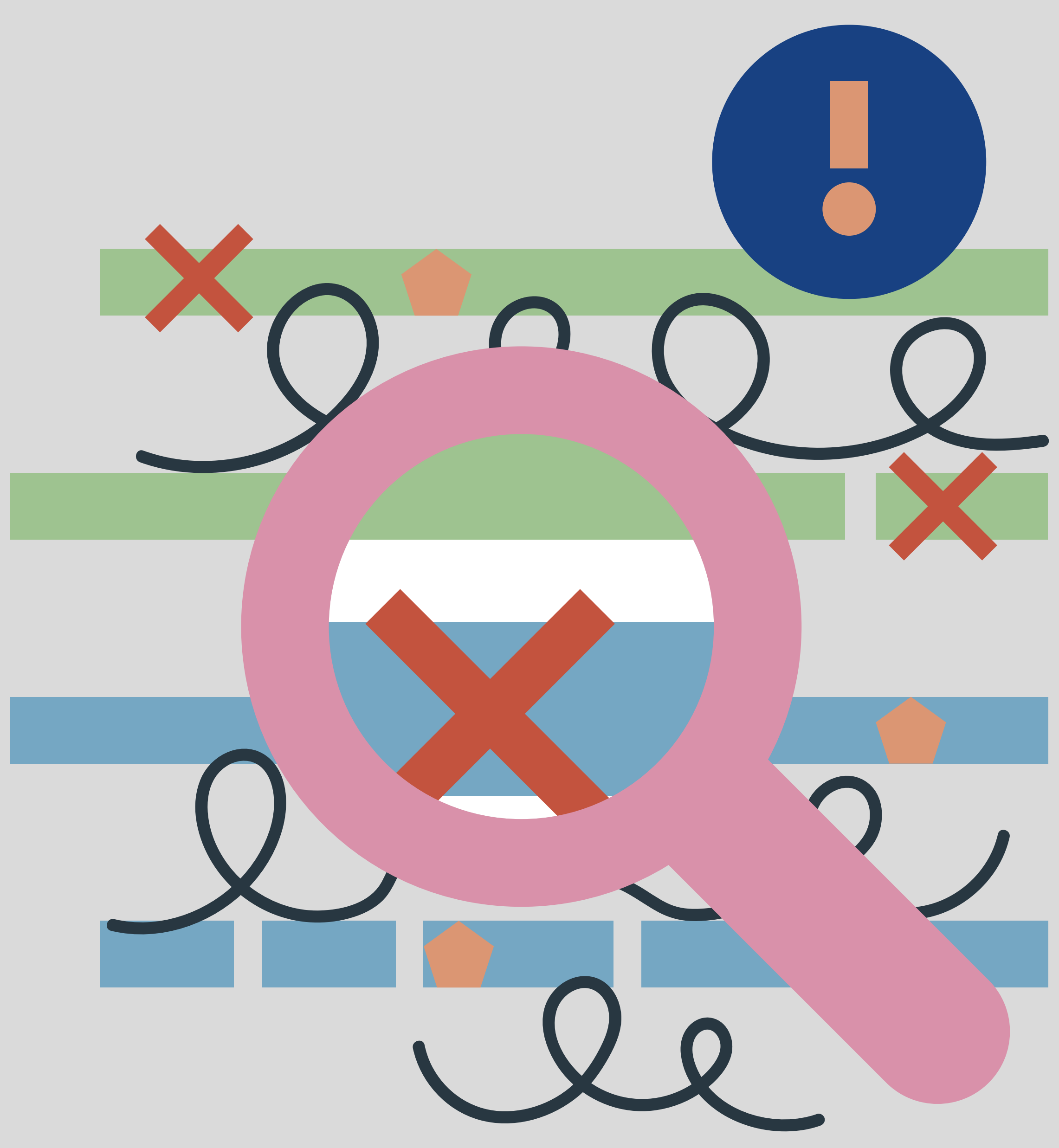
- Employment: this category includes, among others, cases of non-compliance with the employment quota requirements for people with disabilities and denial of reasonable accommodation.
- Pensions and other social benefits: includes complaints about calculations of pension benefits and entitlements, termination of pension benefits and other issues related to the violation of other social benefits.
- Housing: includes a few claims related to the exercise of the right to housing and refusals by authorities to allow privatization and/or put the applicants on waiting lists for subsidized housing under the national programs.
- Advertising: a compilation of decisions related to sexist and other discriminatory advertising.
- Political participation concerns compliance with measures introduced to ensure gender equality in the exercise of the right to vote and to stand for election, as well as the compliance with the principle of equality concerning already elected MPs and councilors.
- Education: covers issues related to the exercise of the right to education in preschool institutions.
- Services: includes a number of important cases related to the exercise of consumer rights without discrimination on various grounds.

These decisions were analyzed to assess the quality of the court's arguments about whether discrimination did or did not take place and the solution of the problem (taking into account limitations inherent in court decisions).

The analysis also covered references to decisions of domestic and international courts, including the positions of the Supreme Court of Ukraine and the European Court of Human Rights, and the relevance of citations thereof to the circumstances of the case, which related exclusively to discrimination.

This Report provides an overview of the results of the analysis.

Section 1. Development of approaches to discrimination cases by courts in 2012-2020



Why the law is necessary

Year 2012, the year of adoption of the Law of Ukraine *On the Principles of Preventing and Combating Discrimination in Ukraine* (the Law), was a starting point for the research. The necessity to adopt this Law stemmed, inter alia, from the need to develop tools of protection against discrimination for individuals in court. After all, it was crucial to establish clear timelines and criteria for prohibited behavior to ensure due judicial review and compliance with the principle of legal certainty, although the declarative provisions on equality of labor rights as outlined in the Labor Code of Ukraine and Article 24 of the Constitution of Ukraine were in place. Once adopted, the Law addressed this issue.

In particular, the court had noted the following in a case concerning the dispute before the anti-discrimination law was adopted:

> **"Whereas Law of Ukraine No. 5207-VI has not been adopted at the time of the dismissal [...], the court finds it unfounded to apply provisions of these regulations to legal relations that existed before the adoption thereof. [...] Dismiss the claim [...] asking for recognition of inaction and the dismissal order as discriminatory on the grounds of disability and for award of compensation".**[16]

In this decision, the court did not mention anti-discrimination rules laid down in the European Convention, although the courts began to apply the case law of the European Court of Human Rights (the ECtHR) quite regularly in the subsequent years, starting from 2014-2015. The majority of claims about various violated rights referred to a standard set of the ECtHR judgments and standards enshrined therein, adopting this as a sustainable approach, which could be recommended for further use (see Section 3 for more information).

The ECtHR case law was misinterpreted by Ukrainian courts only in a few cases analyzed herein. For example, a court referred to derogation from certain obligations under the ECHR[17] exclusively in the conflict area (so-called Anti-Terrorist Operation area) in a case of sex-based discrimination:

> **"The court finds that it was unreasonable for the plaintiff to refer to a judgment delivered by the European Court of Human Rights on March 22, 2012 in the case of K. Markin v. Russia[18] related to sex-based discrimination,**

16 https://reyestr.court.gov.ua/Review/36911850

17 https://zakon.rada.gov.ua/laws/show/462-19#Text

18 Apparently, the court referred to the ECtHR judgment in the case of Konstantin Markin v. Russia. Available at http://hudoc.echr.coe.int/ukr?i=001-109868 Authors' note: the analysis uses names transliterated from the English original and gives word-for-word citations from the decisions of Ukrainian courts without correcting spelling, grammatical or stylistic errors.

> **as derogation from obligations[19] under the European Convention on Human Rights** took place during a special period in the country that pursued the legitimate aim of protecting national and public security".[20]

Meanwhile, another court referred in its decision on dismissal based on age to other relevant sources of law, both international and domestic, including the Labor Code of Ukraine (the Labor Code) and explanations of the High Specialized Court of Ukraine for Civil and Criminal Cases:

> **"[...] the employer actually focused on his old age, although Article 21 of the Labor Code of Ukraine and Article 21.1 of the Charter of Fundamental Rights of the European Union[21] dd. December 7, 2000 prohibit discrimination on the grounds of age. This was further explained by the High Specialized Court of Ukraine for Civil and Criminal Cases on May 7, 2014".[22]**

Moreover, a court suggested an alternative to the "no law, no discrimination" approach in a case where the husband asked to take the time spent on parental leave into account for the purpose of length-of-service pension allocation. The Law of Ukraine On the Public Prosecutor's Office then in effect allowed only women to have this option. In this case, the court focused on international treaties and the Law of Ukraine On Ensuring Equal Rights and Opportunities for Women and Men, using reasoning by analogy, and saw the disadvantaged position of men compared to women:

> **"As no law is in place that regulates relations concerning the inclusion of the time spent by a man on parental leave until the child turns three years old into the length of employment for the purposes of determining eligibility for a length-of-service pension, the court, acting in line with Article 9.7 of the Code of Administrative Court Procedure of Ukraine, applies Article 50-1 of the Law of Ukraine On the Public Prosecutor's Office, which regulates similar legal relations in regard to women and allows for the inclusion of a partly paid parental leave until the child turns three years of age into the length of employment".[23]**

Even after the adoption of the anti-discrimination law, there were a few decisions in 2012-2014 where the courts did not pay attention to discrimination-related claims raised by the plaintiffs. The situation has been changing with the development of the

19 Please note that the court uses the wrong term in this case, because the resolution of the Verkhovna Rada outlines Ukraine's derogation from certain obligations under International Covenant on Civil and Political Rights and Convention for the Protection of Human Rights and Fundamental Freedoms https://zakon.rada.gov.ua/laws/show/462-19#Text

20 https://reyestr.court.gov.ua/Review/44809591

21 It is interesting, but unclear why the court chose these provisions to refer to in its decision, because this international document is not binding on Ukraine as a non-EU country.

22 https://reyestr.court.gov.ua/Review/40752444

23 https://reyestr.court.gov.ua/Review/35420719

case law, and courts analyze cases from the anti-discrimination perspective more often now.

Who has to recognize discrimination?

Essentially, two tendencies can be followed in the case law that have a negative impact on protection against discrimination in court.

On the one hand, courts often disregard discrimination claims. Many of the analyzed documents included decisions, where the issue of discrimination was simply not considered in the court's analysis of the circumstances.

On the other hand, there were decisions in cases where plaintiffs did not even mention discrimination. One of the decisions did not indicate discrimination-related issues among other claims. The court analyzed this aspect on its own initiative and even determined that discriminatory treatment was in place, but it did not mention discrimination in the operative part of its decision, focusing on the claims raised:

> **"Therefore, both the Law of Ukraine On Preventing and Combating Discrimination in Ukraine and the case law of the European Court of Human Rights establish that discrimination means treating differently, without an objective and reasonable justification, persons in analogous, or relevantly similar, situations.**
> **In view of the above, the court finds that actions of the defendant lacked a uniform approach to the payment of pensions to Ukrainian nationals under applicable laws. This indicates discrimination against the plaintiff as an internally displaced person".**[24]

In 2018, the analysis found an explanation of the approach discussed in the 2019 case law research. Following the approach, courts stated that it was impossible to recognize discriminatory actions:

> **"Therefore, the current Code of Administrative Court Procedure of Ukraine does not provide for a remedy for the violated right by recognizing actions as discriminatory, and recognition of the defendant's inaction unlawful is a sufficient and appropriate means of protection in the disputed legal relations".** [25]

As discussed earlier in the pilot research, courts take different approaches to selection of a remedy for an individual alleging discrimination.

24 https://reyestr.court.gov.ua/Review/72872804

25 https://reyestr.court.gov.ua/Review/71849672

- Recognition of discrimination is not obligatory for the protection of rights, i.e. the court finds that recognition of actions as unlawful is a sufficient and appropriate remedy.
- The Code of Administrative Court Procedure does not provide for such a remedy as recognition of actions as discriminatory.
- Discrimination is a part of the assessment of whether a decision (action or inaction) is lawful, i.e. a discriminatory decision cannot be a lawful one.

Currently, based on the review, we cannot state that a uniform case law or a coordinated approach are in place in the adjudication of discrimination claims.

A comparator

Searching for a so-called comparator is an exercise undertaken by the ECtHR to analyze cases of alleged discrimination. The exercise is meant to find a suitable comparison with another person or persons who found themselves in similar circumstances, but did not have the protected characteristic claimed by the plaintiff. This comparison helps understand whether a differential treatment is in place in relation to other people who do not have the same protected characteristic.[26]

Although finding the comparator is key to understanding whether the unequal treatment occurred, only a few decisions offered comparisons with other individuals in identical or relevantly similar situations. Nevertheless, this particular exercise may help answer key questions faced by courts in discrimination cases.

Courts gave comparison in some cases, and this often helped them determine whether the applicant had actually been discriminated, for example:

> **"In pursuance of Para 42 of a judgment delivered by the European Court of Human Rights [in the case of Pichkur v. Ukraine — Authors' note.], the court established that, if the applicant had marks in his passport about the registration of his residence in Donetsk in late June – early July 2014, he would, without any obstacles, be registered as an internally displaced person, receive a relevant IDP status certificate, and be entitled to all related benefits, allowances, social assistance, etc. This was confirmed by the defendant's representative in his testimony in court".**[27]

26 For more about finding a comparator by the ECtHR, see the Handbook on European Anti-Discrimination Law at https://www.echr.coe.int/Documents/Handbook_non_discri_law_ENG.pdf

27 https://reyestr.court.gov.ua/Review/43654403

Forms of discrimination

The analysis has found that court decisions failed to detail the nature and forms of discrimination to a sufficient extent. Save for a few decisions, courts rarely analyzed what form of discrimination took place. Courts often cited definitions of forms of discrimination as listed in Article 1 of the Law *On Preventing and Combating Discrimination in Ukraine*, without analyzing what form of discrimination actually took place. In the pension eligibility case, for example, the court cited Law No. 5207-VI, but did not further analyze whether discrimination occurred or which of these forms could have taken place in this case:

> **"Pursuant to the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine, forms of discrimination include direct discrimination, indirect discrimination, incitement to discrimination, aiding and abetting in discrimination, and harassment (Article 5).**
>
> **Pursuant to Article 1 of this Law, indirect discrimination means a situation where application of formally neutral regulations, rules, assessment criteria, requirements or practices disadvantages a person and/or group of persons who share a particular characteristic compared to other persons and/or groups unless the application thereof is justified by a legitimate aim and means of achieving that aim are appropriate and necessary".**[28]

In certain cases, courts only indicated direct or indirect discrimination as defined by the Law. Courts were much more likely to analyze circumstances and establish discrimination as such, without specifying its form, although the mere recognition of discrimination is not enough. If direct discrimination as a situation of less favorable treatment is more obvious and clear for analysis, indirect discrimination as a situation of unjustified equal treatment of persons where their protected characteristics require differential treatment needs a thorough analysis, a mandatory search for a comparator, and appropriate analysis tools. If a court is reluctant to delve into the topic and attempts to consider claims from the perspective of the general meaning of discrimination, thus disregarding the specifics of each form, this narrows the court's conclusions. As a result, the court may overlook circumstances that may be relevant to a particular case.

When determining a form of discrimination, courts classified the violation incorrectly (given the context and circumstances of the case) in some cases. For example, in the case of pension payments for IDPs, the court called the differential treatment of IDPs indirect discrimination, although the provisions segregated this category of persons directly, i.e. it was direct discrimination:[29]

28 https://reyestr.court.gov.ua/Review/93072878

29 Direct discrimination is a situation where a person and/or a group of persons with their particular characteristics is treated less favorably than another person and/or group in a similar situation unless such treatment has a legitimate, objectively justified aim, and ways to achieve that aim are appropriate and necessary.

> **"…Paragraphs 7, 8, 9, and 13 of the Procedures for Granting (Restoring) Social Benefits to Internally Displaced Persons and Procedures for Control over Payment of Social Benefits to Internally Displaced Persons at Their Actual Residence/Stay as approved by Resolution No. 365 adopted by the Cabinet of Ministers of Ukraine on June 8, 2016, restrict the plaintiff and other IDPs in exercising their rights, in particular their entitlement to pensions and social benefits, and thus result in indirect discrimination on the grounds of place of residence and registration of IDPs".**[30]

In a case of accessibility of train ticket purchase, for example, the court analyzed the issue of discrimination as follows, describing the actual situation where indirect discrimination might have occurred:[31]

> **"[...] procedures for purchase of tickets by people with disabilities cannot be considered discrimination on the grounds of disability, because these procedures are established by regulations and apply not only to people with disabilities, but also to other groups".**[32]

In the years that followed, the case law has been changing, often due to the application of the case law of the European Court of Human Rights, in particular its judgments in cases of *Pichkur v. Ukraine, Konstantin Markin v. Russia*, and *Thlimmenos v. Greece*. It is the ECtHR's approach to distinguishing between forms of discrimination that has been frequently cited by courts since 2015.

In particular, the court analyzed the situation of direct discrimination, citing the judgment in the *Fedorchenko and Lozenko v. Ukraine* case, though failing to mention the anti-discrimination law that was then in effect:

> "**According to the case law of the European Court of Human Rights, namely paragraph 62 of the judgment dd. September 20, 2012 in the Fedorchenko and Lozenko v. Ukraine case (application no. 387/03), discrimination means treating differently, without any objective and reasonable justification, persons in relevantly similar situation... This is exactly the situation characterizing treatment of the plaintiff by the defendant in comparison with other individuals who were also forced to leave their homes in Donetsk and Luhansk Oblasts. After all, other individuals with the registered place of**

30 https://reyestr.court.gov.ua/Review/75172804

31 Indirect discrimination means a situation where application of formally neutral regulations, rules, assessment criteria, requirements or practices disadvantages a person and/or group of persons who share a particular characteristic compared to other persons and/or groups unless the application thereof is justified by a legitimate and means of achieving that aim are appropriate and necessary.

32 https://reyestr.court.gov.ua/Review/30234654

> **residence (relevant marks in passports) in one of the above oblasts received IDP status certificates, and the plaintiff was denied the certificate".**[33]

As an example of good practice, we refer to a decision where the court made an analogy between the approach in the Thlimmenos v. Greece case and the Law On Preventing and Combating Discrimination in Ukraine, and analyzed the applicant's situation:

> **"The right not to be discriminated against in the exercise of the rights guaranteed by the Convention may also be violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different. A similar approach has been enshrined in the national law. [...] Pursuant to Article 1 of this Law, indirect discrimination means a situation where application of formally neutral regulations, rules, assessment criteria, requirements or practices disadvantages a person and/or group of persons who share a particular characteristic compared to other persons and/or groups unless the application thereof is justified by a legitimate and means of achieving that aim are appropriate and necessary.**
>
> **This was exactly the situation in which the plaintiff in this case found himself. Over the disputed period, the plaintiff worked at the mines. As the archives of the mines are currently in the temporarily occupied territory of Ukraine, he cannot provide additional documents required by the defendant.**
>
> **The court finds that the requirement to provide a supporting certificate or statement can be considered quite justified in a normal situation, but in the plaintiff's situation, this requirement is regarded as discriminatory treatment of individuals who worked at enterprises that are now in the temporarily occupied territory, because such individuals cannot even theoretically provide the relevant documents and are thus deprived by this approach of the entitlement to pension benefits".**[34]

A law in effect cannot be unlawful

Over the years, several courts concluded that violations could not have taken place (including discrimination claimed by applicants) because the defendant had complied with applicable law. In particular, the court noted in the case related to the possibility for people with disabilities to buy train tickets on a website:

33 Case No. 569/2646/15–a, Rivne City Court, Rivne Oblast, March 27, 2015, available at https://reyestr.court.gov.ua/Review/43654403

34 https://reyestr.court.gov.ua/Review/75071522 and also the case at https://reyestr.court.gov.ua/Review/70644447

> **"…without amendments to be made to applicable regulations governing the purchase of tickets by benefit-entitled categories, there is no possibility to make appropriate changes in the specified website"**.[35]

In another case, the plaintiff claimed that the requirement for a presidential candidate to make a security deposit for his/her registration was discriminatory on the ground of property status. The court did not consider the merits of the case in the context of the Law *On the Principles of Preventing and Combating Discrimination in Ukraine*, but cited a decision of the Constitutional Court of Ukraine in another case that related to another law, stating that provisions of the law had not been recognized unconstitutional:

> **"The judicial panel finds that the plaintiff violated Article 49.1 of the Law of Ukraine On Elections of the President of Ukraine, as Articles 49, 51, and 52 of the said Law that regulate the security deposit matters have not been recognized unconstitutional and are therefore valid and binding".**[36]

In 2015, courts took different approaches in decisions related to IDP payments (though in some decisions courts found that the mere existence of a resolution of the Cabinet of Ministers was a sufficient ground not to question its provisions):

> **"The fact that these provisions are enshrined in law does not justify the discriminatory nature of the relevant provisions"**.[37]

Even later, in 2018, some courts again regarded it proven a priori that a regulatory act in effect could not be discriminatory, without analyzing the specific situation:

> **"[...] the Cabinet of Ministers' Resolution No. 365 was issued on the basis, within the mandate, and according to procedures prescribed by the Constitution of Ukraine, using the powers for the purpose for which these powers are granted, in a justified, impartial, good-faith, reasonable way, in compliance with the principles of equality before the law and non-discrimination"**. [38]

Nevertheless, discrimination cases, particularly those related to indirect discrimination, may deal directly with challenges against current regulations that do not accommodate interests of a particular group of individuals. This was the case with complaints against criteria established by the a municipal program *Care. Helping Kyiv Citizens (Turbota. Nazustrich Kyianam)* in 2019:

35 https://reyestr.court.gov.ua/Review/32409717

36 https://reyestr.court.gov.ua/Review/38054460

37 Case No. 569/2646/15–a, Rivne City Court, Rivne Oblast, March 27, 2015, available at https://reyestr.court.gov.ua/Review/43654403

38 https://reyestr.court.gov.ua/Review/73374308

> **"The above regulations point out that the law provides for equal legal opportunities for both Ukrainian and foreign nationals legally residing in Ukraine unless otherwise explicitly established by law. It is prohibited to restrict the rights of foreign nationals on grounds of citizenship. Regulations, in particular regulatory acts adopted by local government authorities that establish rights of certain categories, including foreign nationals, must contain clear, unequivocal, and predictable provisions that do not allow multiple interpretations and comply with the principle of legal certainty and "quality of law".**[39]

Burden of proof

The reverse burden of proof introduced in May 2014 is one of the important amendments made to the Law.[40] The Civil Procedure Code of Ukraine has been supplemented as follows (currently Article 81 of the Code): "In discrimination cases, the plaintiff shall provide factual evidence that discrimination has taken place. If such evidence is available, the burden of proving that they did not take place lies on the defendant". However, after the adoption of these amendments, in December 2014, the court expected the plaintiff to prove discrimination, and ruled against the plaintiff as a result (for example, in the case of dismissal due to the applicant's religious beliefs[41]). In the case where the applicant complained that she had been forced to resign on religious grounds, the court noted:

> **"PERSON_1 did not prove with proper and admissible evidence that she wrote a letter of resignation under pressure put by her employer and that she did not intend to resign".**[42]

This approach was typical for many of the court decisions delivered over the period under review and analyzed in the research.

It is notable, however, that positive practices were also in place that took into account the reverse burden of proof:

> **"The plaintiff provided evidence of being discriminated by the defendant based on his membership in the Pobratymy Independent Trade Union of Agromars Complex LLC and his active position to defend the rights of workers at the enterprise. In particular, existence of discrimination stems from the fact that PERSON_2 was not paid a bonus component of his salary,**

39 Decision in case No. 826/7929/18 dd. March 27, 2019, available at https://reyestr.court.gov.ua/Review/80759773

40 https://zakon.rada.gov.ua/laws/show/1263–18#Text

41 https://reyestr.court.gov.ua/Review/41864079

42 https://reyestr.court.gov.ua/Review/41864079

because PERSON_2 had joined Pobratymy Independent Trade Union of the LLC and had been elected vice chairperson of the union.

Therefore, the responsibility to prove that the plaintiff had not been discriminated lies with the defendant in this case. At the same time, statements made by a representative of Complex Agromars LLC about the plaintiff's failure to prove the facts confirming his discrimination by the defendant are not based on the above requirements of the Law and do not correspond to the circumstances of the case.

Therefore, the court considers proven the fact of discrimination against PERSON_2 by Complex Agromars LLC on the ground of his membership in Pobratymy Independent Trade Union of Complex Agromars LLC in the form of non-payment of the bonus component of the plaintiff's salary".[43]

43 https://reyestr.court.gov.ua/Review/78920299

Section 2. Expanding the list of protected characteristics

The vast majority of decisions (84%) rendered during the selected period related to four characteristics:

place of residence (455)
profession / occupation (278)
disability (238)
sex (92).

There were also cases of discrimination on the grounds of ethnicity[44], property status[45], marital status[46], trade union membership[47], sexual orientation[48], religious beliefs[49], recourse to courts[50], etc.

By other grounds[51], we mean protected characteristics that are not explicitly mentioned in any of the analyzed Ukrainian laws, but are essentially similar to the characteristics listed by the laws, and are an important and integral part of the personality.

Among other characteristics claimed by the plaintiffs were (the wording is that of the original):

membership of a civil-society organization, social status, war child status, refugee status, self-identification, qualifications assessment, inferiority, level of education, type of income (different groups of sole proprietors), date of retirement, legal status, imprisonment[52] (legal situation), status of a person and type of proceedings, political beliefs about the acting village head, vaccination status, criminal record[53], type of punishment, wearing of a face mask, etc.[54]

44 https://reyestr.court.gov.ua/Review/75925635

45 https://reyestr.court.gov.ua/Review/38054460, https://reyestr.court.gov.ua/Review/93960056

46 https://reyestr.court.gov.ua/Review/54876338

47 https://reyestr.court.gov.ua/Review/75407237

48 https://reyestr.court.gov.ua/Review/90191887

49 https://reyestr.court.gov.ua/Review/65006468

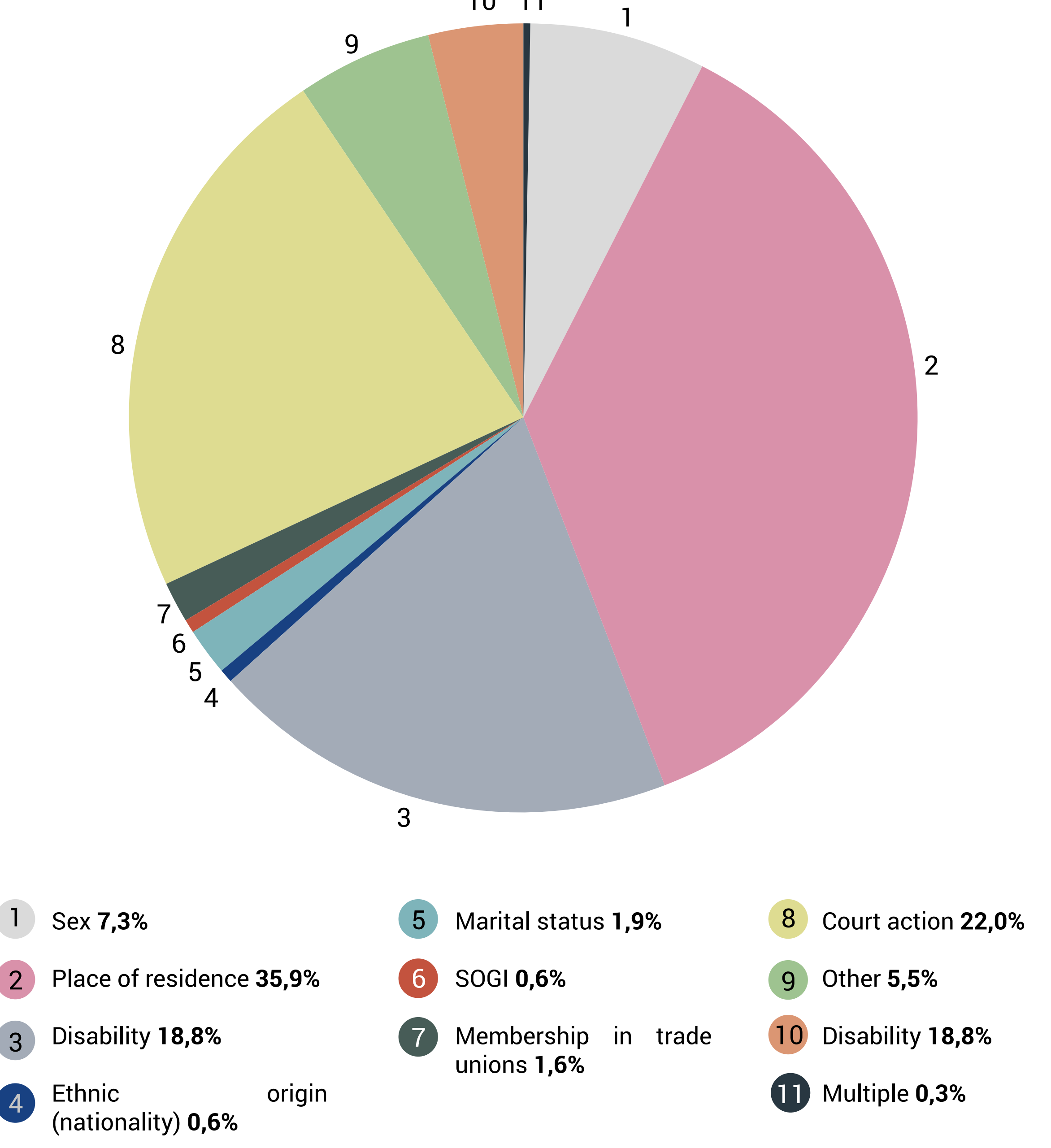
50 https://reyestr.court.gov.ua/Review/76014795

51 The phrase “or other characteristics” means that the list given in the Law is not exhaustive, but illustrative. This interpretation finds confirmation in practices of international judicial and quasi-judicial bodies in applying the law, as well as in the case law of the European Court of Human Rights. The ECtHR established the following protected characteristics (prohibited grounds): sexual orientation, gender identity (transgender or transsexual), trade union membership, HIV status, disability, genetic characteristics, association with a national minority, etc. Ponomariov S. Yu., Fedorovych I. Yu. Preventing and Combating Discrimination in Ukraine: A Handbook for Staff Members of Central and Local Government Authorities. - Kyiv: International Organization for Migration Ukraine, 2014. – 74 p. Available at https://iom.org.ua/sites/default/files/iom_booklette–06_1kolonka_screen.pdf

52 For example, see the court decision in case No. 579/109/13-k dd. June 20, 2013, available at https://ukraine.iom.int/sites/g/files/tmzbdl1861/files/documents/iom_booklette-06_1kolonka_screen.pdf

53 For example, see the court decision in case No. 501/842/18 dd. November 11, 2020, available at https://reyestr.court.gov.ua/Review/92825002

54 For example, see the court decision in case No. 640/12695/19 dd. March 20, 2020, available at https://reyestr.court.gov.ua/Review/88353353



Some of these wordings were in line with the definition of protected characteristics listed in Ukrainian anti-discrimination laws. It should be noted though that the lists given in the Constitution of Ukraine, the Law of Ukraine *On the Principles of Preventing and Combating Discrimination in Ukraine*, and the Labor Code do not match and contain different definitions. In its case law, the ECtHR also tends to expand the list of protected characteristics (prohibited grounds) and their interpretation by analyzing the similarity of every subsequent "new" characteristic claimed in a new complaint against violation of Article 14 of the ECHR and comparing the characteristic with others mentioned in Article 14 and already covered by the case law.

What do other characteristics mean?

In 2012-2014, some Ukrainian courts delivered decisions, disregarding the requirements for the interpretation of the wording "other characteristics". The wording is found in both international and Ukrainian law and is a standard for drafting certain laws or regulations on prohibition and protection against discrimination. Courts do not always understand the meaning and scope of this wording:

> **"The Company's refusal to provide services to the plaintiff was justified on the grounds that the plaintiff had a number of diseases. The refusal was not related to any of the listed protected characteristics defining this concept"**.[55]

This court had delivered this decision before the High Specialized Court of Ukraine for Civil and Criminal Cases published explanations to ensure equality of workers' rights. In the explanations below, the court stressed that the list of protected characteristics was open and explained how to interpret the expression "other characteristics", as well as what these other characteristics were or could be:

> **"[...] when considering disputes regarding workplace relations, courts must take into account that the list of grounds on which no privileges or restrictions may be given/imposed in the exercise of work-related rights is non- exhaustive. In particular, it is prohibited to violate the equality of work-related rights not only on the grounds mentioned in Article 24.2 of the Constitution of Ukraine, Article 2-1 of the Labor Code, Article 1.1.2 of the Law, but also on the grounds of age, skin color, other physical characteristics (weight, height, speech defects, facial defects), marital status, sexual orientation, etc".** [56]

In the decision quoted above[57] the court apparently referred to the health condition belonging to the list of possible "other characteristics" after publication of these explanations.

Even in 2018, the approach to understanding the list of characteristics was not yet final, but it was more about different variations/wordings of the protected characteristics:

> **"Direct discrimination is a situation where a person is treated in a less favorable way compared to how others have been or could be treated in a similar situation, and the reason for such treatment is that the person has certain identities that belong to protected characteristics. European anti-discrimination directives prohibit differential treatment on the basis of protected characteristics. To establish discrimination, one needs to prove the**

55 https://reyestr.court.gov.ua/Review/38794973/

56 https://zakon.rada.gov.ua/laws/show/v-644740-14#Text

57 https://reyestr.court.gov.ua/Review/38794973/

> **existence of differential treatment based on protected characteristics that cannot be objectively justified.**
> **In this case, the regulatory impact of the disputed order was on children whose place of residence was not registered in Ternopil. However, the court holds that the exceptions mentioned in Para 3 of the disputed order fall under the definition of discrimination on the grounds of race, color, skin, sex, language, religion, political or other beliefs, national, ethnic or social origin, health, property status, birth of children and their parents (or persons replacing them) or any other circumstances, as established by applicable laws of Ukraine".**[58]

Taking such a narrow approach, the court left out the full list of protected characteristics specified by the Law of Ukraine *On the Principles of Preventing and Combating Discrimination in Ukraine*. Unlike anti-discrimination directives of the European Union, the list contains the characteristic of the place of residence that should have been taken into account in this case.

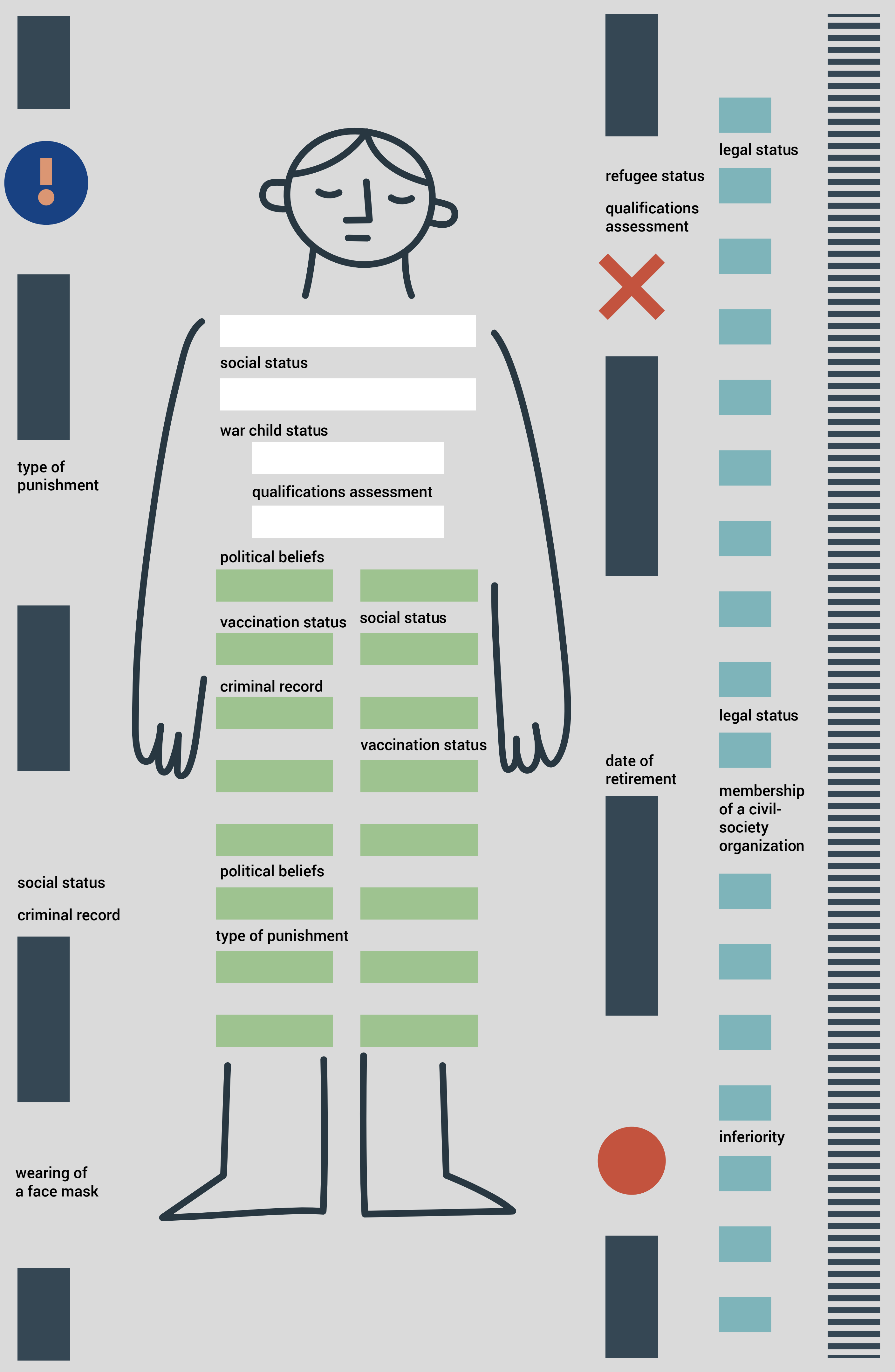
Some cases related to multiple discrimination,[59] in particular:

- age and social status;
- age and health;
- age and sex;
- IDP status and disability;
- IDP status and religious beliefs;
- property status and sex;
- place of residence and marital status;
- education and occupation;
- political beliefs and IDP status;
- social and property status;
- sex, age, and disability;
- sex, age, and education;
- sex and marital status.

However, the number of documents dealing with multiple discrimination is low compared to the total number of analyzed documents – 47 cases (3.7%) in 2012-2020

58 https://reyestr.court.gov.ua/Review/77908532

59 For the purposes of this analysis, multiple discrimination means cases where discrimination is claimed/occurs on the basis of two or more characteristics.



type of
punishment
social status
criminal record
wearing of
a face mask
social status
war child status
qualifications assessment
political beliefs
vaccination status
social status
criminal record
vaccination status
political beliefs
type of punishment
refugee status
qualifications
assessment
date of
retirement
legal status
legal status
membership
of a civil-
society
organization
inferiority

Examples of decisions categorized by protected characteristics

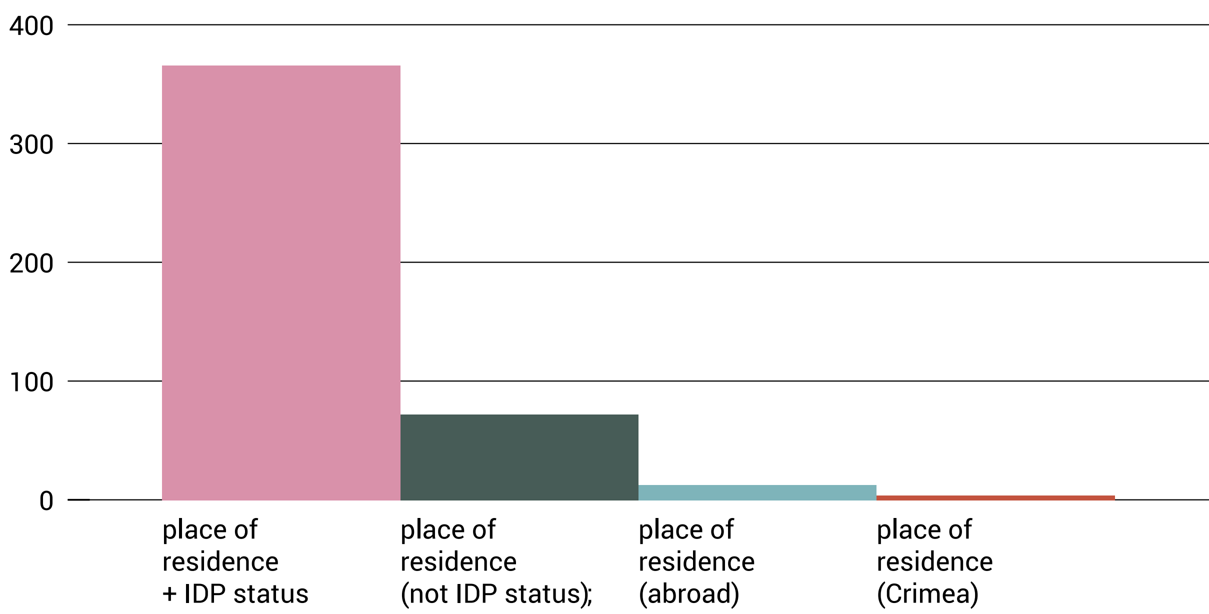
The most common characteristics claimed in cases has varied over the years (for more information, see Annex 1). In 2013-2015, the vast majority of documents related to discrimination on the grounds of disability. In 2016, the highest number of documents dealt with profession/occupation, with disability discrimination cases being the second-largest category. In 2017-2020, most cases reviewed in this paper related to such protected characteristic as the place of residence.

Place of residence

The place of residence category consists of several subcategories, namely:

- place of residence + IDP status;
- place of residence (not IDP status);
- place of residence (abroad);
- place of residence (Crimea).

Each of these subcategories show a particular trend in the matters of disputes and thus the issues faced by people who go to court.



For example, in the place of residence (abroad) subcategory, the vast majority of cases related to the payment of pensions to those residing in other countries. The case law in this area is quite well-established, relying on the relevant judgments of the European Court of Human Rights, for example, *Pichkur v. Ukraine:*

> **"As the European Court of Human Rights indicated in Paras 51 and 54 of its judgment in the Pichkur v. Ukraine case (no. 10441/06), the right to a pension cannot depend on the applicant's place of residence. The difference in treatment was in breach of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms".**[60]

Place of residence + IDP status

In this subcategory, a high number of cases dealt with pension and other payments or benefits tied to certain conditions or statuses, such as checks of IDP's place of residence, IDP status certificates, etc.
The courts had no common approach to applying a decision made by the Supreme Court in December 2018 which established that provisions of the Cabinet of Ministers Resolution No. 365 "Certain Aspects of Paying Social Benefits to Internally Displaced Persons" were discriminatory:

> **"Applicable laws do not provide for verification of information on permanent or temporary residence of pensioners and insurance beneficiaries who are not registered as IDPs where such verification is conducted through visits of their places of stay at the relevant addresses by staff members of government authorities.**
>
> **Therefore, the court of first instance was correct, stating that additional eligibility requirements established for IDPs, in particular, for internally displaced pensioners, for social benefits (including pensions) indicate unequal treatment compared to other pensioners, thus limiting the affected group in the exercise of their social protection rights guaranteed by the government".**[61]

However, the courts had made similar conclusions already before the decision of the Supreme Court of Ukraine (the Supreme Court). In particular, a decision that referred to national and international laws, adopted a year before the decision of the Supreme Court, indicated:

> **"In view of the above, the court finds that actions of the defendant lacked a common approach to the payment of pensions to Ukrainian nationals under applicable laws.**

60 https://reyestr.court.gov.ua/Review/73468503

61 https://reyestr.court.gov.ua/Review/78808062

This indicates discrimination against the plaintiff as an internally displaced person.

In this case, the plaintiff's IDP status creates certain obstacles preventing him from receiving his workplace pension to which he is entitled and require additional actions from the pensioner as compared to other Ukrainian nationals".[62]

Other cases in the place of residence category, which did not deal with the residence abroad or internal displacement, covered such issues as:

- land rights for residents of certain territories;[63]
- differentiation of fringes for teachers in rural areas;[64]
- imposition of restraint measures;[65]
- costs of meals in kindergartens and schools for children with different registered places of residence;[66]
- opening a current account and issuing a card by a bank;[67]
- housing and utilities subsidies.[68]

These cases usually dealt with decisions that allowed provision of certain services or rights to persons having a certain place of residence. The analysis shows that the plaintiffs faced such restrictions in quite different social areas.

Profession / occupation

In the research, discrimination on the ground of occupation or profession occurred largely in relation to pensions for certain categories of employees, such as judges, civil servants, public prosecutors, etc. For example, the court indicated differential treatment on the ground of occupation in its decision regarding limitation of a pension size:

"In contradiction to Article 14 of the Convention that guarantees equality in the exercise of fundamental freedoms, the plaintiff faced limitations, without any objective and reasonable justification, in pension payments on the ground of his occupation, while other persons, who were in the same position as him

62 https://reyestr.court.gov.ua/Review/71849672

63 https://reyestr.court.gov.ua/Review/44353577

64 https://reyestr.court.gov.ua/Review/42472938

65 https://reyestr.court.gov.ua/Review/50124215

66 https://reyestr.court.gov.ua/Review/66407159

67 https://reyestr.court.gov.ua/Review/64863457

68 https://reyestr.court.gov.ua/Review/73704933

> **but resigned from public prosecutor's offices and had no other occupation, were paid such pension in full".**[69]

The courts provided similar reasoning in a varying degree of detail and references to international law in many other similar cases. In particular, the court indicated in a case of restart of pension payments to a civil servant:

> **"Introduced by the Law of Ukraine No. 911-VIII dd. December 24, 2015 On Amendments to Certain Legislative Acts of Ukraine and the Law of Ukraine No. 213-VIII dd. March 2, 2015 On Amendments to Certain Legislative Acts of Ukraine on Pension Benefits, temporary restrictions imposed on the payment of pensions to individuals working in positions and on the conditions set out by the Law of Ukraine On Civil Service contradict Article 14 and Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms as they discriminate individuals in their entitlement to pension benefits on the ground of occupation".**[70]

Disability

Cases involving this protected characteristic included both claims filed directly by people with disabilities complaining of violations of their work-related rights, housing rights, medical and social services, use of services and amenities (access to facilities, services, transport), pension benefits, and other violations, and cases brought by the Pension Fund regarding alleged non-compliance with the employment quota for persons with disabilities.

One of such first decisions was a case on the possibility for people with disabilities to purchase train tickets on the website of Ukrzaliznytsia national rail operator. The online ticket sale service was inaccessible for the passengers with vision disabilities, because the service did not support the screen reading function:

> **"Therefore, provisions of the Convention on the Rights of Persons with Disabilities, the Law of Ukraine On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine, and amendments to Cabinet of Ministers' Resolutions No. 3 dd. January 4, 2002 and No. 1302 dd. August 29, 2002 [...] oblige defendants to take measures to ensure accessibility of websites for people with disabilities and adapt these websites to accommodate their needs, including measures enabling purchases of discounted tickets online".**[71]

69 https://reyestr.court.gov.ua/Review/74885927

70 https://reyestr.court.gov.ua/Review/71374807

71 https://reyestr.court.gov.ua/Review/34204864

Interestingly, this online purchase function was finally introduced only eight years after this court decision.[72]

In a 2013 case on access to a nightclub, the court took the position that was still relevant for all organizations that offered services:

> **“The court has found that Litsa night club owned by the defendant, Element LLC, provides entertainment services to customers, and this fact has not been disputed by the parties at the hearing. Therefore, the court holds that the denial of access to the nightclub for PERSON_1 is discrimination on the ground of disability.**
>
> **[...] Referring to the absence of ramps on the premises, the defendant’s representative has not provided evidence that the installation of ramps in the Faces nightclub is absolutely impossible. This indicates non-compliance with the Law”.**[73]

Decisions on discrimination on the ground of disability were among search results in every year covered by this research. There were 238 documents under this category (19%), with their number gradually increasing (5 decisions in 2012, and 37 in 2020). A great number of decisions referred to non-compliance with requirements for employment of people with disabilities. For more information, see Section 3 *Non-compliance with the employment quota.*

Sex

The case law clearly shows that both women and men face discrimination on the ground of sex.

For example, men filed claims with the court regarding parental leave, child guardianship, employment, and other situations (see the example above[74]). To solve such cases, courts relied on the case law of the European Court of Human Rights, namely the judgment in the *Konstantin Markin v. Russia*[75] case:

> **“Making its decision, the court takes into account the judgment delivered by the European Court of Human Rights on March 22 2012 in a case of PERSON_7 against Russia on discrimination on the ground of sex. [...] The court notes that gender stereotypes that dictate the perception of a woman as a person who mainly cares for children and a man as a breadwinner may not be a sufficient**

72 https://ua.interfax.com.ua/news/general/759292.html

73 https://reyestr.court.gov.ua/Review/32002298

74 https://reyestr.court.gov.ua/Review/35420719

75 http://hudoc.echr.coe.int/ukr?i=001–109868

> **justification of differential treatment, just as other stereotypes related to race, origin, skin color or sexual orientation".**[76]

In another case related to parental leave, the court further emphasized the case law of the European Court of Human Rights in the Weller v. Hungary case:

> **"The European Court recognized that exclusion of a biological father from paternity allowances is tantamount to discrimination on the ground of paternity status, because mothers, foster parents, and guardians are entitled to such benefits".**[77]

In a case of rejection for a job, the court did not conduct a proper analysis of discrimination, arguing in favor of the defendant that refused to hire an employee because of the lack of a men's restroom and finding excuses for the employer:

> **"In view of the above, the defendant has created appropriate sanitation conditions, taking into account the physiology of female employees of its typesetting agency. Moreover, the defendant does not have free space for arranging separate sanitary and amenity facilities for male workers. Therefore, hiring a person of the opposite sex will violate the rights of other employees (women)".**[78]

In the same decision, the court also found that actions were illegal and discriminatory, but later courts adopted the following position: the courts took the applicants' claims into account, but indicated in their decisions that certain actions were unlawful, leaving the issue of discrimination without conclusions and often even without a dedicated consideration.

In a case where the applicant complained of hiring discrimination, the court, acting in its sole discretion to determine whether discrimination occurred, gave its opinion on the total number of candidates only, instead of finding a comparator to see whether only the applicant was treated in that way or other candidates who did not have the same protected characteristic were treated likewise:

> **"The case files show that the total number of female candidates who participated in the selection (and were subsequently admitted to the interview following the previous testing stages) is much lower than the total number of male candidates. Therefore, the plaintiff's allegations of direct discrimination against women on the ground of sex in the selection of winners are baseless".**[79]

76 https://reyestr.court.gov.ua/Review/52810098

77 Case No. 817/591/16, https://reyestr.court.gov.ua/Review/57955763

78 https://reyestr.court.gov.ua/Review/32105992

79 https://reyestr.court.gov.ua/Review/74318240

Gender identity

The analysis has revealed a biased attitude of courts towards transgender matters. In a case on prohibition of gender reassignment (correction) in a family with minor children, the court relied on its own vision of the impact of the father's gender reassignment on a child, without providing any evidence or confirmation of such judgement:

> **"Therefore, gender reassignment (correction) of one of the parents may cause moral or psychological trauma to the child and thus violate the rights and interests of the child"**.[80]

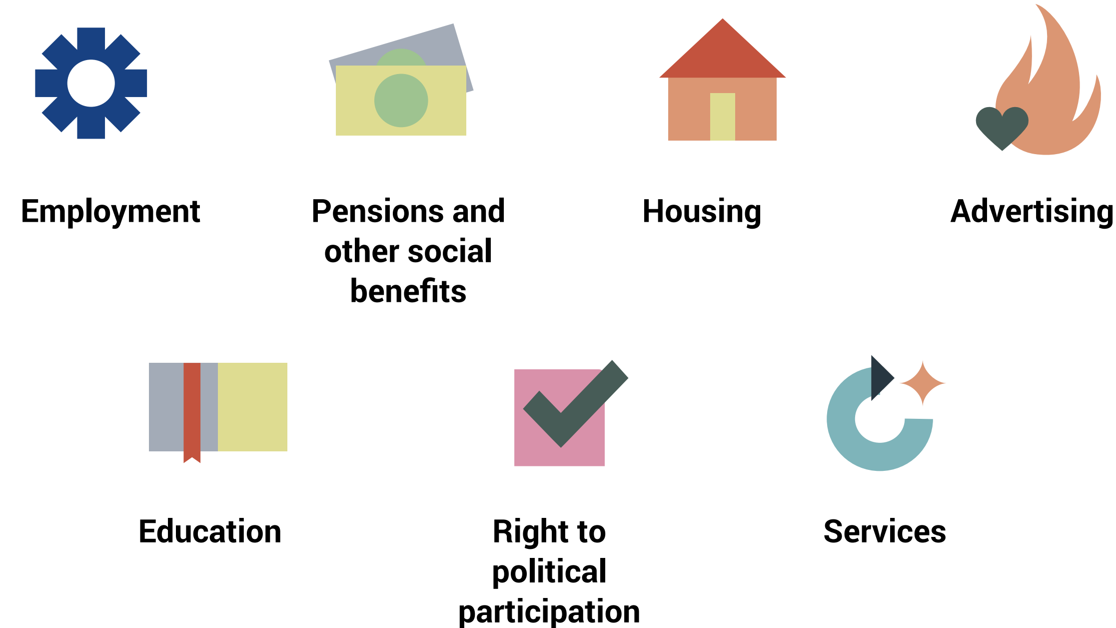
This position is contrary to the principle of equality and impartiality lying at the core of the right to a fair trial. Furthermore, we can refer, among other things, to the Bangalore Principles of Judicial Conduct: "5.1. A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, color, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").[81]

80 Case No. 826/16044/14, Kyiv Administrative Court of Appeals, June 30, 2015.

81 https://zakon.rada.gov.ua/laws/show/995_j67#Text

Section 3. Analysis by category of relations in the public sphere

For the purposes of this overview, all analyzed documents for 2012–2020 were grouped into seven clusters by category of relations in the public sphere where the alleged discrimination took place:



Below is the analysis of decisions in these categories and the case law produced during these years.

Employment

This Section outlines cases of non-compliance with the employment quota for people with disabilities, the denial of reasonable accommodation, and denial of parental leave for men on an equal basis with women.

In a dismissal case brought by an employed woman on parental leave, the court reminded again about special procedures for dismissal of such workers and referred to the European Social Charter[82], which prohibits discrimination on the grounds of sex in employment:

> **"Employed women, in case of maternity, have the right to special protection [...]**
>
> **Article 20, Part II of the European Social Charter establishes that, with a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on**

82 https://zakon.rada.gov.ua/laws/show/994_062#Text

the grounds of sex, the Parties undertake to recognize that right and to take appropriate measures to ensure or promote its application in the following areas: a. access to employment, protection against dismissal and occupational reintegration; b. vocational guidance, training, retraining and rehabilitation; c. terms of employment and working conditions, including remuneration; d. career development, including promotion".[83]

Parental leave for women and men

In cases brought against the refusal to grant men parental leave to care for a child under three years of age, the courts predominantly followed the ECtHR's approach in the Konstantin Markin v. Russia case. They noted that different procedures were in place for men and women to take parental leave as established by the Labor Code of Ukraine and these procedures amounted to discrimination, thus confirming that the law itself might contain discriminatory provisions:

> **"The European Court of Human Rights considered that the exclusion of servicemen from the entitlement to parental leave, while servicewomen were entitled to such leave, could not be said to be reasonably or objectively justified. The Court concluded that this difference in treatment, of which the applicant was a victim, amounted to discrimination on grounds of sex. There was therefore a violation of Article 14 taken in conjunction with Article 8, the Court ruled.**
>
> **Pursuant to** Article 17 of the Law of Ukraine On the Execution of Judgments and Application of the Case Law of the European Court of Human Rights**, courts shall apply the Convention and the case law of the European Court as a source of law while hearing cases. Analyzing the foregoing, the court concludes that the difference established by Article 184 of the Labor Code of Ukraine between male and female employees and faced by the plaintiff amounts to discrimination on the ground of sex.**
>
> **Pursuant to Articles 8.1 and 8.2 of the Code of Administrative Court Procedure of Ukraine, the courts shall adhere to the rule of law while trying cases. According to the rule of law, an individual, his/her rights and freedoms are the highest values and shall direct the course of the State.**
> **The court follows the rule of law, taking into account the case law of the European Court of Human Rights. The court therefore concludes that the guarantees established by Article 184 of the Labor Code of Ukraine apply to the plaintiff as well, and the defendant was obliged to offer him other job he could do, but he failed to do so, thus failing to perform this obligation".**[84]

83 Decision in case No. 825/3811/15-a dd. June 7, 2017, available at https://reyestr.court.gov.ua/Review/67032593

84 Resolution in case No. 876/9214/17 dd. October 5, 2017, available at https://reyestr.court.gov.ua/Review/69465532

Non-compliance with employment quota for people with disabilities

This area includes the calculation, collection, and enforcement of fines for non-compliance with Article 20 of the Law of Ukraine *On the Fundamentals of Social Protection of Persons with Disabilities*, namely the obligation to create jobs for, and employ, people with disabilities. This article is laid down in such a way that employers must create and announce vacancies for a person or persons with disabilities, but the Law does not provide for the employer's responsibility in case of the absence of candidates willing to fill the vacancies. In this regard, the courts of first and second instance developed the case law to consider such claims filed by employers against the collection of fines and claims filed by the Social Protection Fund for People with Disabilities. Courts took the position that:

> **"Article 19.2.4 of the Law of Ukraine On Employment[...] establishes the right of the State Employment Service to refer people with disabilities seeking employment to enterprises, institutions, and organizations of any form of ownership that have vacancies, depending on those people's level of education, training, recommendations of the Physical Disability Board of Review, their qualifications, knowledge, expertise, and wishes.**
>
> **In view of the above, the obligation to ensure employment of people with disabilities as required by the Law rests with both employers and the State Employment Service.**
>
> **At the same time, the enterprise's obligation to create jobs for people with disabilities does not include its obligation to search for people with disabilities for employment".**[85]

In another case, which challenged a fine imposed for the failure to create jobs for people with disabilities, the court found that the employer took no effort to comply with Article 20 of the Law of Ukraine On the Fundamentals of Social Protection of Persons with Disabilities and concluded:

> **"[...] The Court of Appeals premised its holding on the fact that the defendant did not create jobs for people with disabilities, and its notification of the Employment Center about seven vacancies at a 0.1 time rate for employment of people with disabilities proves failure to create any of these jobs within the meaning of the Law of Ukraine On Rehabilitation of People with Disabilities in Ukraine. The court held that the defendant's notification of seven jobs at a**

85 Decision in case No. 920/836/15 dd. November 16, 2015, available at https://reyestr.court.gov.ua/Review/53734331

> **0.1 time rate did not fulfill any of the guarantees and objectives of the Law of Ukraine On Rehabilitation of People with Disabilities in Ukraine in relation to a disabled person who has physical impairment, which may limit the person's activities of daily living. Therefore, the State must create the environment for the person to exercise his/her rights on an equal footing with other people and ensure his/her social protection.**
>
> **The Court of Appeals concluded that the Employment Center did not and could not refer people with disabilities to the defendant for employment, because such jobs had not been created, just as people with disabilities could not apply directly to the defendant for employment. Therefore, the defendant did not take all possible measures to create jobs for employment of people with disabilities and shall be subject to administrative and economic sanctions".**[86]

In a case of refusal to hire a person with disabilities, the court assessed, inter alia, the employer's obligation to provide reasonable accommodation during the interview and appropriate evidence in case of alleged discrimination during the interview:

> **"Clause 4 of Procedures for Non-Discrimination in Candidate Selection does not exclude the obligation to use a reasonable accommodation during an interview of a job seeker with disabilities, nor does it exclude the possibility to take positive action according to the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine.**
>
> **In pursuance of Clause 4 of the Procedures, settings were arranged to allow the use of a reasonable accommodation for a job seeker with disabilities. However, the plaintiff did not request the reasonable accommodation for a person with disabilities from the Selection Commission.**
>
> **The defendant claimed that the plaintiff's arguments regarding discrimination committed by the defendant against the plaintiff were baseless and not confirmed by any documents. Given the list of assessment criteria applied during the interview, the plaintiff's disability could not in any way impact his professional competence assessment".**[87]

86 Decision in case No. 9901/13878/18 dd. August 22, 2018, available at https://reyestr.court.gov.ua/Review/76008664

87 Decision in case No. 818/1318/17 dd. November 24, 2017, available at https://reyestr.court.gov.ua/Review/70578887

Denial of reasonable accommodation

Among such cases was one where the employer refused to provide reasonable accommodation to an employee with disabilities (whose disability status was confirmed by an opinion of the Physical Disability Board of Review) and dismissed the employee after the latter refused to engage his wife as his permanent free guide:

> **“The court of first instance [...] premised its holding on the fact that the plaintiff’s dismissal by the defendant amounted to indirect discrimination against the plaintiff on the ground of disability, as the plaintiff showed to the court that he could perform the duties without significant restrictions, because PERSON_6 could work in the position according to the medical findings. The defendant, however, did not provide evidence to the court, proving why he as an employer had not properly provided a reasonable accommodation for the plaintiff’s workplace.**
>
> **According to the case file, the State Labor Service [...] sent a letter to the defendant, explaining that the disability status assigned to an employee could not be a ground for dismissal of the employee by the employer or its authorized body under Article 40.2 of the Labor Code of Ukraine. [...] Whereas the administration of Semenivka Children’s Music School has had an individual rehabilitation program for PERSON_6 (an individual with Category 1 disability) since February 2016, and it has been determined that PERSON_6 can work in the position, the employer must carry out the vocational rehabilitation of the person with the disability. In such circumstances, the dismissal by the employer of the employee with disabilities under Article 40.2 of the Labor Code of Ukraine is an unacceptable gross violation of the right of PERSON_6 to work.**
>
> **The employer may file a request with the Physical Disability Board of Review, which assigns the disability status to the employee, to provide an opinion on whether the actual working conditions are fit for his/her health status and indicate factors dangerous to the health of the employee with disabilities. Having received an opinion of the Physical Disability Board of Review on the conditions and type of works for an employee with disabilities, the employer must offer him/her other positions or works that will be in line with the conditions outlined in the opinion, as well as with his/her profession and qualifications.**
>
> **The Court of Appeals found that the defendant, Semenivka Children’s Music School, did not file a request with the Physical Disability Board of Review to provide an opinion on whether the actual working conditions of PERSON_6 were fit for his health status and indicate factors dangerous to the health of the employee with disabilities, nor did it offer another job to the plaintiff”.**[88]

88 Ruling in case No. 744/552/16-k dd. October 19, 2016, available at https://reyestr.court.gov.ua/Review/62217416

In another case, the court also reviewed the refusal to hire an employee referred by the Employment Center:

> **"The court of first instance established correctly that PERSON_1 did not belong to a group of individuals with whom the defendant was obliged to conclude an employment contract [...]. The list of the employer's obligations to enter into an employment contract with an employee under the Labor Code is exhaustive, and the defendant did not breach this obligation. The refusal to hire PERSON_1 is not connected with a protected characteristic.**
>
> **[...] The court of first instance made substantiated conclusions that the plaintiff did not meet the complete higher education requirements set by the employer at the time PERSON_1 turned to the defendant to fill the vacancy. Referral of an employee by the Employment Center is not an unconditional ground for his/her hiring, as this is at the discretion of the employer".**[89]

The court found that the referral was not a ground for hiring and the refusal to hire had to be related to a protected characteristic to claim discrimination, which had not been established in this case.

Pensions and other social benefits

This category includes complaints about calculations of pension benefits and entitlements, termination of pension benefits, and other issues related to the social benefits violations. We analyzed a great number of cases related to pension benefits and alleged discrimination in this area in the pilot report for 2019,[90] so this section outlines only some cases not covered by the previous research.

In a claim against the refusal to grant a pension because the plaintiff could not provide a certificate confirming certain period of his employment, the court thoroughly analyzed the case law of the European Court of Human Rights and underlined the obligation to avoid indirect discrimination and take into account the different situations of individuals, given their certain protected characteristics:

> **"It is worth noting that discrimination can be direct (different treatment of people in the same situation) and indirect (same treatment of all people that disadvantages some group, which is in a certain special situation). In the case of Thlimmenos v. Greece, [...] the ECtHR considered that, according to Article 14 of the Convention, the right not to be discriminated against in the enjoyment**

89 Decision in case No. 161/15476/19 dd. May 13, 2020, available at https://reyestr.court.gov.ua/Review/89335835

90 See the 2019 pilot report available at https://issuu.com/socialactioncentre/docs/discrimination_report_final_final

of the rights guaranteed under the Convention was violated not only when States treated differently persons in analogous situations without providing an objective and reasonable justification. However, this is not the only aspect of the prohibition of discrimination under Article 14 of the Convention. The right not to be discriminated against in connection with the exercise of the rights guaranteed by the Convention may also be violated when the States do not apply differential approaches to persons in significantly different situations, acting without objective and reasonable justification.

This was exactly the situation in which the plaintiff in this case found himself. Over the disputed period, the plaintiff worked at the mine. As the archives of the mine are currently in the temporarily occupied territory of Ukraine, he cannot provide additional documents required by the defendant. The court finds that the requirement to provide a supporting certificate can be considered quite justified in a normal situation, whereas this requirement is based on Clause 20 of Procedures for Confirmation of the Length of Employment [...] as approved by the Cabinet of Ministers' Resolution No. 637 dd. August 12, 1993 and seeks to confirm the length of employment in positions and jobs specified in the employment record books. In the plaintiff's situation, however, this requirement is regarded as discriminatory treatment of persons who worked at enterprises that are now in the temporarily occupied territory, because such persons cannot even theoretically provide the relevant documents and are thus deprived by this approach of the entitlement to pension benefits".[91]

Referring to the Convention on the Rights of Persons with Disabilities, which prohibits discrimination on the ground of disability, the court analyzed the nature of various social and pension benefits and made conclusions about their different nature and non-interchangeability in a case against termination of pension benefits due to assignment of a disability status after retirement and provision of lifetime benefits to the defendant as a former judge:

"Disability pension is a social pension benefit financed by the Pension Fund of Ukraine and is a kind of insurance payment, i.e. it is paid in case of occurrence of an insured event, disability. It is granted to persons subject to compulsory state pension insurance and depends on the insured person's salary and contributions deducted from this salary. Analysis of the above legal provisions shows that the lifetime allowance for a retired judge and the disability pension are payments of different legal nature and have different sources of funding".[92]

91 Resolution in case No. 415/3024/17 dd. November 30, 2017, available at https://reyestr.court.gov.ua/Review/70644447

92 Decision in case No.335/1973/17 dd. July 21, 2017, available at https://reyestr.court.gov.ua/Review/68139146

In another similar case, the court also held that:

> **“Fringe benefits, allowances, and pensions are possessions according to interpretation by the European Court of Human Rights of Article 1 of Protocol No. 1 to the European Convention on Human Rights, as they exist in the form of claims laid by a plaintiff on the basis of his/her legitimate expectation (grounded on legislative provisions) he may have for acquisition of the right of possession.**
>
> **Introduced by the Law of Ukraine No. 911-VIII dd. December 24, 2015 On Amendments to Certain Legislative Acts of Ukraine and the Law of Ukraine No. 213-VIII dd. March 2, 2015 On Amendments to Certain Legislative Acts of Ukraine on Pension Benefits, temporary restrictions imposed on the payment of pensions to individuals working in positions and on the conditions set out by the Law of Ukraine On Civil Service contradict Article 14 and Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, as they discriminate the individuals in their entitlement to pension benefits on the ground of occupation, deprive them of the right of enjoyment of due possessions in the form of pension benefits. In addition, the temporary restrictions contradict Articles 22, 46, and 58 of the Constitution of Ukraine as to the prohibition to diminish the content and scope of existing rights and freedoms, including the rights to social protection and pension benefits, and principles enshrined in the Law of Ukraine On Compulsory State Pension Insurance as to equality of insured persons in receiving pension benefits”.**[93]

The court analyzed deeply the applicant’s situation in comparison with others and, in fact, found direct discrimination in the Procedures for Provision of Monthly Targeted Assistance to Persons Displaced from the Temporarily Occupied Territories of Ukraine and Areas of the Counter-Terrorism Operations. In the case, the plaintiff complained about the refusal by the Department of Labor and Social Protection to register him as an internally displaced person and issue an IDP status certificate, because he had no registration at the place of previous residence in Donetsk:

> **“According to the case law of the European Court of Human Rights, namely Para 62 of the judgment dd. September 20, 2012 in the Fedorchenko and Lozenko v. Ukraine case (application no. 387/03), discrimination means treating differently, without any objective and reasonable justification, persons in relevantly similar situation... This is exactly the situation characterizing treatment of the plaintiff by the defendant in comparison with other individuals who were also forced to flee their homes in Donetsk and Luhansk Oblasts. After all, other individuals with the registered place of residence (relevant marks in passports) in one of the above oblasts receive IDP status certificates, and the plaintiff was denied the certificate.**

93 Decision in case No.523/16224/17 dd. December 14, 2017, available at https://reyestr.court.gov.ua/Review/71374807

The fact that these provisions are enshrined in law does not justify the discriminatory nature of the relevant provisions.

The second sentence of Paragraph 42 of the judgment delivered by the ECtHR on November 7, 2013 in the case of Pichkur v. Ukraine (application no. 10441/06) establishes the following: although Protocol No. 1 does not include the right to receive a social security payment of any kind, if a State does decide to create a benefits scheme, it must do so in a manner which is compatible with Article 14. However, it does not comply with the rule of law and Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention how social benefits are provided to IDPs according to the Law of Ukraine On Ensuring the Rights and Freedoms of Internally Displaced Persons and Procedures for Provision of Monthly Targeted Assistance to Persons Displaced from the Temporarily Occupied Territories of Ukraine and Areas of the Counter-Terrorism Operations to cover housing expenses, including public utility bills, as approved by the Cabinet of Ministers' Resolution No. 505 dd. October 1, 2014

The court established a less favorable treatment of PERSON_1 in comparison with other persons who were forced to leave their place of residence in Donetsk. The only reason for such less favorable treatment was the lack of registration of his residence at the place of actual stay. The court holds that such treatment is definitely unlawful and discriminatory, as it has no objective and reasonable justification, namely it does not pursue a legitimate aim".[94]

The court should compare the situation of the applicants who alleged discrimination and other people in analogous or relevantly similar situations in each case of discrimination.

The court arguments regarding discrimination in the process of claiming or receiving social benefits are of great interest. In its decision on the claim against Kyiv City State Administration relating to the discriminatory citizenship demand for obtaining a benefit within the program Care. Helping Kyiv Citizens (Turbota. Nazustrich Kyianam) the court focuses on the analysis of the discriminatory nature of the regulation as well as the mandatory legal certainty of the regulation.

"**According to the above mentioned legal regulations, the law provides for equal legal opportunities for both the citizens of Ukraine and foreign nationals who are legally residing in Ukraine (unless otherwise explicitly established by law).**

94 Resolution in case No. 569/2646/15 dd. March 27, 2015, available at https://reyestr.court.gov.ua/Review/43654403

It is prohibited to restrict the rights of foreign nationals on grounds of citizenship. Regulations, in particular regulatory acts adopted by local government authorities that establish rights of certain categories, including foreign nationals, must contain clear, unequivocal, and predictable provisions that do not allow multiple interpretations and comply with the principle of legal certainty and "quality of law".

At the same time the panel of judges established that Clauses 3 and 4 of Resolution of Kyiv City Council No.116/116 do not clearly state that the provisions of the Resolution are also applied to the foreign nationals who permanently reside in Ukraine, belong to one of 10 categories of citizens as specified by the City Council (parents of children in large families, pensioners, people with disability of category 3, participants in war, family members of veterans who have been killed or died, etc.) and at the same time do not fall within the category of IDPs. Thus, the provisions of the City Council Resolution are neither explicit nor predictable as to their application and do not meet the principles of "quality of law" and legal certainty.

In addition, Clauses 3 and 4 of Resolution of Kyiv City Council No. 116/116 establish that two groups of people are entitled to the benefits and they have to meet one of the established criteria (parents of children in large families, pensioners, people with disability of category 3, participants in war, family members of veterans who have been killed or died, etc.): 1) citizens of Ukraine with the registered place of residence in Kyiv and 2) internally displaced people (IDPs). Thus, foreign nationals who stay in Ukraine legitimately and permanently reside in Kyiv and do not belong to the category of IDPs do not fall within any of the groups outlined above. This means that Clauses 3 and 4 of Resolution of Kyiv City Council No.116/116 do not comply with Article 26 of the Constitution of Ukraine and Article 3 of Law No.3773-VI and are discriminatory towards such persons according to Article No.5207-VI.[95]

Inclusion of parental leave in the employment period for pension calculations for men and women

Considering that courts tend to incorporate gender equality approaches in their practices, there is an interesting decision of the court on the claim of a man against the Pension Fund's refusal to include the time he had spent on parental leave taking

95 Resolution in case No. 826/7929/18 dd. March 27, 2019, available at https://reyestr.court.gov.ua/Review/80759773

care of the child in the calculations of employment length. The claim referred to Article 50-1 of the Law of Ukraine On the Public Prosecutor's Office which does not provide the right for men to have their parental leave included in their total length of employment (three years' parental leave and six years' parental leave), which will then entitle them to length of employment pension benefits regardless of their age (see the quote regarding the decision above in Section 1 "Why do we need the law" or follow the link[96]).

Housing

This category has few claims (21 documents)[97] relating to the exercise of the right to housing by certain categories of citizens and refusals of authorities to conduct privatization and/or put the applicants on the waiting list for subsidized housing within the state program.

There is a claim seeking to declare unlawful the inaction of the Cabinet of Ministers of Ukraine and the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine in regard to Article 30 of the Law of Ukraine On Fundamentals of Social Protection of Persons with Disabilities in Ukraine. In particular, this refers to their failure to develop and ensure the implementation of procedures for changing housing for persons with disabilities in the event it fails to meet the accessibility criteria and cannot be adapted to meet the needs of persons with disabilities, as well as their failure to issue instructions to develop and adopt the appropriate procedures. Having analyzed the provisions of the Convention on the Rights of Persons with Disabilities, the court ruled the following as to the obligation of the State to meet its obligations:

> **"By adopting these regulations, the State represented by its government agencies committed itself to create acceptable living conditions for persons with special needs, take measures to eliminate discrimination and provide them with living conditions that will help develop their abilities and take into account their needs, including housing needs. The central and local government authorities shall take actions to demonstrate their will to meet the commitments and focus on creating the proper living conditions for people with special needs.**
>
> **Moreover, the authorities shall satisfy the actual needs of a specific person in any way, which the latter finds acceptable and which is seen as possible by the national or local government authorities. The balance between the interests of this particular person and the public shall be found subject to the interests**

96 Resolution in case No. 308/14422/13-a, dd. November 18, 2013, available at https://reyestr.court.gov.ua/Review/35420719

97 There are 21 cases in total in the period under review.

> **of all the parties concerned and show the true willingness of the central and local government authorities to perform their duties in this area. By creating these conditions they ensure accessibility options that allow the persons with disabilities to enjoy the opportunities available to other people in the country, in particular in regard to housing".**[98]

Another court provides similar opinion as to the obligation of the State to perform its commitments under the Convention in a similar case concerning refusal to provide housing that is accessible and adapted to meet the specific needs of persons with disabilities:

> **"Thus, as the representative of the defendants failed to comply with his procedural duty to provide proper and irrefutable evidence to support their position, as well as assessing the relevance, admissibility and reliability of each piece of evidence, as well as taking into account the sufficiency and the entirety of evidence, and how they are connected, and considering that the circumstances referred to by the plaintiff as the basis of the claim have been partially confirmed at the trial, the court rules to partially uphold the claim in the part relating to the obligation of Kharkiv City Council, the Department of Housing of Kharkiv City Council, the Executive Committee of Kharkiv City Council to provide a residential room for use to PERSON_1, which shall be located on the ground floor or any other room adapted for persons with disabilities in accordance with the requirements of State Building Codes of Ukraine (DBN) for persons with disabilities, instead of the room at ADDRESS_1.**
>
> **The reference of the representative of the defendants to the lack of vacant housing on the ground floor, which would meet the requirements of the plaintiff as a wheelchair user both in a residential building at ADDRESS_1 and in other buildings, as well as to the order of priority in providing such living space to persons in need of better housing conditions, cannot be used as justification for the failure to provide the plaintiff with a residential room on the ground floor or any other room adapted for persons with disabilities, and therefore it constitutes a violation of the right of the plaintiff (as a person with disabilities) to accessible housing. Also, the court believes that the right of the plaintiff to privatize the residential premises - a room at ADDRESS_1 - cannot be used as a ground for rejection to exercise the rights described by PERSON_1 in the claim, in particular, the right to accessible residential premises".**[99]

As to the claim regarding the denial in the right to housing due to the type of occupation, the court held the following:

98 Decision in case No.640/15966/19 dd. October 7, 2020, available at https://reyestr.court.gov.ua/Review/92136140

99 Decision in case No.638/968/18 dd. 19 February, 2020, available at https://reyestr.court.gov.ua/Review/87783154

"At the same time, contrary to Article 14 of the Convention, which guarantees equal enjoyment of fundamental freedoms, the plaintiff, on a ground of occupation, was denied privatization of the premises occupied by him and his family members, while other persons in the same situation as the plaintiff but with different occupation were allowed privatization, without any objective and reasonable justification to this discrimination. Free-of-charge transfer of apartments into the ownership of citizens (privatization) is allowed for other persons who work in other areas and sectors of economy and state influence. Thus, there is a clear case of discrimination against the plaintiff as to the plaintiff's right to peaceful enjoyment of the property".[100]

Advertising

This category includes decisions relating to sexist and other discriminatory advertising. The pilot 2019 report provides partial analysis of the cases in this area. Lack of established case law and disregard of expert opinions on discrimination by courts remained the major problems in 2018 and 2020. [101]

Right to political participation

Following the amendments to the Election Code of Ukraine[102] and the local elections in 2020, some case law has developed concerning the obligations of local councils to deny the registration of councilor candidates included in the national and territorial candidate registers in violation of the councilor nomination procedures under Article 219.9 of the Election Code (requirement to meet the quota of female candidates in the list). The court draws attention to the following:

"The national and territorial registers of councilor candidates to Berdychiv District Council nominated by Zhytomyr Oblast branch of Nash Krai ("Our Land") political party include 31 candidates. The court notes that the first five positions on the above mentioned electoral list do not meet the gender quota requirement of Article 219.9 of the Election Code of Ukraine (at least two candidates of each sex (male and female) in every five positions on the list) as the first five positions include one woman and four men [...].

100 Decision in case No.658/4027/19 dd. May 22, 2020, available at https://reyestr.court.gov.ua/Review/90903686

101 See more in the report Discrimination: Case Law 2019. Overview of Case Law of Ukrainian Courts on Discrimination 2019 / Fedorovych I., Bondarenko O.//Social Action Centre. – Kyiv, 2020, pp. 74-81, available at https://issuu.com/socialactioncentre/docs/discrimination_report_final_final

102 https://zakon.rada.gov.ua/laws/show/805–20#n1590

The circumstances established by court suggest that there is a clear violation of the gender equality principle during the formation of lists of candidates by Zhytomyr Oblast branch of Nash Krai ("Our Land") political party [...]".[103]

There is one more case regarding equal participation in political life. This refers to the exercise of the right to elect and be elected and involves indirect discrimination of a councilor of village council. Being a person with disability and a wheelchair user, he was not able to get to the session hall located on the third floor of the building.

Having analyzed the case the court ruled the following:

"Taking into account the availability of other premises located on the first floor of the building at ADRESS_1, which can be also used for sessions, the court believes that by using the premises on the third floor without any technical means to help the plaintiff to get to the venue the defendant failed to reach the lawful and objectively justified goal with proper and necessary means".[104]

The cases under this category also cover issues relating to discrimination on the ground of property status during the registration of candidates for the President of Ukraine[105] and termination of the activity of the Communist Party of Ukraine on the ground of political views.[106]

Services

This category includes a number of important cases relating to the exercise of consumer rights without discrimination on any grounds.

In the case seeking to recognize unlawful the actions of the National Bank of Ukraine or declare them discriminatory on the ground of place of residence/registration/place of location due to restrictions for individuals and legal entities located (registered/permanently reside) on the territory of the Crimea free economic zone in exercising the right to banking transactions and exchange of currency, the court, despite all the argument of the plaintiffs, believes that the exclusive competence of the defendant (the National Bank of Ukraine) includes the authority to establish the procedures for opening accounts as well as determine the account rules and therefore confirms the right of the state to enact laws deemed necessary to control the use of property in line with public interests or ensure payments of taxes or other charges or penalties.

103 Decision in case No.240/16892/20 dd. September 30, 2020, available at https://reyestr.court.gov.ua/Review/91875484

104 Decision in case No.500/1717/20 dd. October 13, 2020, available at https://reyestr.court.gov.ua/Review/92159442

105 https://reyestr.court.gov.ua/Review/38054460

106 https://reyestr.court.gov.ua/Review/54392066

In addition, the court did not see any indication of discrimination in this case as the defendant provided the anti-discrimination expert analysis of the law under dispute, and the court believes that the legislation meets the requirements of the legitimate aim:

> “**Having assessed the statements of the plaintiffs and the third person regarding the failure of the National Bank of Ukraine to comply with the applicable anti-discrimination laws the panel of judges wants to note the following. According to the provisions of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine, as well as the Decisions of the European Court of Human Rights in cases Pichkur v. Ukraine, Willis v. the United Kingdom and Van Raalte v. the Netherlands, discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations without a legitimate aim or a reasonable relationship of proportionality between the means employed and the aim. At the same time, in compliance with Article 8 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine, the defendant conducted the anti-discrimination expert analysis of draft Resolution No.699, which is reflected in the respective opinion. Thus, the defendant applied certain restrictions to comply with the provisions of the Law of Ukraine On Establishment of the Crimea Free Economic Zone and Special Aspects of Doing Business in the Temporarily Occupied Territory of Ukraine, which are generally binding, and thus, pursue a legitimate aim and cannot be considered as such that contain elements of discrimination against people**”.[107]

There is one more important element of the case, which is probably the reason for the court’s decisions and its failure to give proper assessment of the plaintiffs’ claim regarding discrimination effects of Resolution of Kyiv City Council No.699. This is lack of proper consideration of the anti-discrimination expert analysis[108] allegedly conducted by the defendant and mentioned by the court, as well as the quality of this analysis. The European Court of Human Rights believes that the very fact of conducting the required analyses by a lawmaker in the drafting process does not automatically render the law legitimate or all restrictions of the rights and freedoms in the law legitimate and proportionate.

Another interesting case already mentioned in Section 1 refers to the claim against Ukrzaliznytsia’s inaction to solve the problem with its website,[109] in particular, to

107 Resolution in case No.826/17587/14 dd. July 27, 2016, available at https://reyestr.court.gov.ua/Review/59317282

108 The procedures for conducting anti-discrimination analysis specified by the Resolution of the Cabinet of Ministers do not contain any clear criteria and indicators for conducting the procedures and the findings of the analysis usually contain very general wording like “the draft law does not contain any discriminatory provisions”. https://zakon.rada.gov.ua/laws/show/61–2013–п#Text

109 https://reyestr.court.gov.ua/Review/30234654

make the website accessible for online purchase of tickets by the blind or people with visual impairments (the website did not have a special software for a blind user or a user with visual impairment to read the text using a speech synthesizer).

The Ukrainian Parliament Commissioner for Human Rights acted as third party in this case as it has the duty to exercise control over the observance of constitutional human and citizens' rights and freedoms and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction, prevent any form of discrimination and take measures to eliminate discrimination. This is one of the striking examples of improper discrimination case analysis and wrong decision of the court, accordingly. This decision was then taken to the Court of Appeals, which established the violation and obliged Ukrzaliznytsia to take measures to address the situation.

There is one more example of improper analysis of a discrimination complaint in the provision of goods and services: the case where a request for a consumer loan for a person with disabilities was denied. The court believes that without a written rejection letter, there are grounds to believe that no actual rejection took place and there is no need to analyze the claim of the plaintiff regarding possible discrimination.

> **"The court has failed to establish that the plaintiff applied to the defendant with a written proposition to conclude a consumer loan agreement, the fact to which the defendant refers to. According to Article 60.1 of the Civil Procedure Code of Ukraine, each party shall prove the circumstances which it refers to as the ground of their claims and objections, except as prescribed in Article 61 of this Code. The court has not received any evidence to suggest that Public Joint Stock Company Delta Bank turned down the request of PERSON-1 to grant him a consumer loan".**[110]

The claim regarding the terms and conditions of the tender for transportation of passengers is also interesting from the point of the court's analysis. In this case, the plaintiff claimed that the tender for public long-distance transportation of passengers did not contain a mandatory requirement to have at least one vehicle accessible for people with disabilities at the tender facility, which shall be regarded as discrimination. The plaintiff made a big mistake here: instead of claiming discrimination, which the court was trying to properly analyze, it would have been worth talking about the lack of positive action that could be embedded in the tender design and contain the plaintiff's requirement to have one vehicle accessible for people with disabilities:

> **"In addition, the court draws attention of the parties to Article 6.3 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine, which states that actions that do not restrict the rights and freedoms of other persons and do not impede their exercise, as well as do**

110 Decision in case No. 638/2480/13–c dd. September 23, 2014, available at https://reyestr.court.gov.ua/Review/40618958

not provide unjustified privileges to individuals and/or groups of persons on their particular grounds, in respect of which positive actions are taken, shall not be regarded as discrimination, namely: special advocacy by the state of particular categories of persons who require such protection; implementation of measures to preserve the identity of certain groups of people, when such measures are necessary; provision of benefits and compensation to certain categories of persons in the cases provided by law; establishment of state social guarantees for certain categories of people; special requirements specified by the law relating to the exercise of certain rights of persons.

At the same time, the claim does not contain any evidence to prove that the defendant has failed to comply with the requirements of the applicable laws in the part relating to introduction of the requirement for transport carriers to have at least one vehicle accessible for people with disabilities when conducting the tender for public long-distance transportation of passengers at the tender facility".[111]

In the case regarding the rejection to sell a foreign travel insurance policy to a person with a disability, the plaintiff pointed out to discriminatory provisions of the Foreign Travel Insurance Contract, which prohibited provision of travel insurance for people with disabilities of Category 1 or 2. In addition, the insurance policy became invalid from the moment of its signing provided the policyholder was a person with a disability of Category 1 and 2. Following the provisions of the domestic and international law the court ruled the following:

"As there is a general ban on discrimination in Ukraine and Clause 2.25 of the License Terms and Conditions requires from the insurer to harmonize the internal rules with the laws of Ukraine, the discriminatory provisions of the insurance rules developed by the defendant violate the rights of people with disabilities.
The court also underlines that Article 9 of the Convention on the Rights of Persons with Disabilities establishes the right of persons with disabilities to have access, on an equal basis with others, to all aspects of public life, including to the physical environment, to transportation, to information and communications, and to other facilities and services provided to the public.

Under the above mentioned circumstances the court holds to grant the claim of the plaintiff as it has been reasonably confirmed at the trial and the above mentioned clauses of the rules and the contract do violate the rights of the plaintiff and other people with disabilities to have access to insurance".[112]

111 Decision in case No.826/10211/15 dd. July 25, 2015, available at https://reyestr.court.gov.ua/Review/47612105

112 https://reyestr.court.gov.ua/Review/65364042

However, the Court of Appeals left the discrimination issue without consideration and established to reverse the decision of the first instance court as the Court of Appeals believed that the plaintiff should have first challenged the insurance rules in the National Commission responsible for the state regulation of financial services market or should have directly applied to the defendant.[113]

Further, the Supreme Court adopted the Resolution dd. October 31, 2019 reversing the decision of the Court of Appeals and upholding the decision of the first instance court in the case.

Education

The case law in this area includes two very interesting cases relating to education issues, in particular, the cost of school meals in pre-school facilities and lack of special meal arrangement for children suffering from allergy, that were considered by the courts of the first and second instances.

In the first claim regarding the cost of school meals in a pre-school facility, the plaintiff claimed that the Resolution of Ternopil City Council to provide a subsidy on school meals for parents of children registered in Ternopil compared to the parents of children registered in the suburbs of the city was to be seen as discrimination on the ground of place of registration. The court conducted a thorough consideration of the situation to establish whether there was the violation of the right, if it was a benefit and whether the principle of non-discrimination applied to the benefit payment scheme, as well as if the burden of proof should be transferred to the defendant:

> **"The distinction of children on the ground of place of residence in Clauses 2, 4, 8.6 and 10.2 of Resolution of the Executive Committee of Ternopil City Council No.131 dd. February 22, 2017 On Establishing School Meals Payment Scheme and Procedures for Charging Parents in Pre-school Facilities and Educational Institutions of Ternopil City, which is used as a ground for providing benefits in payment for meals, is neither reasonably nor objectively justified as the place of residence does not suggest that people require special protection from the state in the form of benefits and compensations in regard to residents from a certain location (Ternopil City) or provision of special social guarantees or preservation of their (Ternopil residents) identity.**
>
> **Thus, the court believes that Clauses 2, 4, 8.6 and 10.2 of Resolution of the Executive Committee of Ternopil City Council No.131 dd. February 22, 2017 On Establishing School Meals Payment Scheme and Procedures for Charging Parents in Pre-school Facilities and Educational Institutions of Ternopil City violate the rights of children who attend pre-school and educational facilities and reside outside Ternopil City that are guaranteed by Article 14 and Article 1**

113 Decision of the Court of Appeals No. 201/13021/16-ц dd. August 22, 2017, available at https://reyestr.court.gov.ua/Review/68468003

of Protocol 12 of the Convention, and constitute discrimination on the ground of place of residence. Thus, it is possible to state that as a result of adoption of the above mentioned clauses under dispute the plaintiff and his children, as well as other children who attend pre-school facilities and educational institutions in Ternopil but reside outside Ternopil, as well as their parents, have suffered indirect discrimination. As a result of implementation and application of the provisions of the Resolution of the Executive Committee of Ternopil City Council, which is subject to dispute, the plaintiff and his children as well as other children who attend pre-school facilities and educational institutions in Ternopil but reside outside Ternopil, as well as their parents, enjoy less favorable terms and conditions as well as less favorable status on the ground of place of residence compared with children and their parents who are residents of Ternopil".[114]

There is one more case in which the plaintiff believed that the regulations approved by the Resolution of the Cabinet of Ministers of Ukraine On Approving Meal Standards for Educational Facilities and Recreation and Healthcare Children Institutions and the failure of the Ministry of Healthcare to develop diet provisions and the respective changes to legislative acts were illegal, in particular discriminatory against children on the ground of health. When considering the claim the court decided to avoid a separate analysis and ignore the issue of discrimination, which was caused by lack of regulation, but focused on a thorough analysis of the regulation under dispute and the faults of the regulation that had led to violation of the right to education:

"Thus, the dispute arose from the lack of legal regulation of public relations in healthcare, and the court believes that the inaction has taken place regardless of the plaintiff's direct complaint to the Ministry of Health of Ukraine on this issue. The complaint is required in case of a specific and clearly defined action that the government agency has failed to implement. In this particular case, the issue under dispute refers to the performance of the Ministry of Health of Ukraine of its key objectives and functions. Thus, the court believes that the lack of legal regulation in the area of meals for children with lactose malabsorption in pre-school facilities is the issue of the national level and thus, it provides sufficient ground for making a conclusion about the inaction of the Ministry of Health of Ukraine".[115]

Criminal justice

Prisoners' access to healthcare services

114 Decision in case No.607/2986/17 dd. May 5, 2017, available at https://reyestr.court.gov.ua/Review/66407159

115 Decision in case No.640/7879/19 dd. 12 February, 2020, available at https://reyestr.court.gov.ua/Review/87753611

The case law in this category mostly includes cases on prisoners' access to medical services (19 documents in total[116]), with the courts often referring to international standards, for example:

> **"In the case of Lutsenko v Ukraine No. 2 the European Court of Human Rights referred to the Recommendation of the Cabinet of Ministers to member states on the European Prison Rules, adopted on 11 January 2006 at the 952nd meeting of the Ministers' Deputies, which provides a framework of guiding principles for conditions of detention and health service, in particular:**
>
> **[...] Clause 40.3. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.**
>
> **Thus, the above listed legal regulations of Ukraine and the case law of the European Court of Human Rights demand to provide access for prisoners to the health services available in the country without discrimination on the grounds of their legal situation, including those available at municipal institutions, including a free choice of a doctor".**[117]

There are also cases concerning the failure to enter information on an alleged criminal offence into the Unified Register of Pre-trial Investigations: the persons affected reported the violation of Article 161 of the Criminal Code on the ground of disability[118], place of residence[119], etc. The 2019 Report draws attention to the importance of improving the anti-discrimination legislation as such cases must be classified under other categories like labor disputes or administrative cases, but the applicable laws still place discrimination within the criminal justice system.

The cases under review included only one hate crime, in particular a homophobic hate incident. Representatives of the victims note that not all participants of the incident acted out of selfish motives and only one attacker acted "on the grounds of homophobia as a way to humiliate the victims and restrict their right to privacy." Using incorrect terminology,[120] not provided by the laws, the court makes differentiation between the motive and the reason, which is not specified in the criminal law:

> **"The arguments of the representative of the victims that the motive of the attack committed by PERSON_5 was to humiliate the victims because of their sexual orientation (homosexual) were not confirmed at the trial. Thus, sexual**

116 The reference to documents here means decisions and rulings of the court.

117 https://reyestr.court.gov.ua/Review/72665497. The Cabinet of Ministers of the Council of Europe keeps close watch on this and other similar cases for the purpose of implementation of the ECtHR decision in the case Kats and others v. Ukraine by Ukraine.

118 https://reyestr.court.gov.ua/Review/87578680

119 https://reyestr.court.gov.ua/Review/89382330

120 For example, recommended terminology is available at https://bf.in.ua/lhbtik/homoseksualnist/

orientation of the victims was only a pretext for committing violent acts. The courts of the first instance reasonably established that the reason to assault PERSON_3 and PERSON_4 and use violence threatening the life and health of victims was the intention of the convicted to take possession of the personal belongings of the victims.

In view of the above, the arguments of the victim's representatives regarding the elements of other crime in the actions of PERSON_5, in particular, of the crime specified by Article 161.2 of the Criminal Code, are deemed unfounded".

Section 4. Using expert opinion of the Ukrainian Parliament Commissioner for Human Rights in discrimination cases

According to the amendments to the Law of Ukraine *On the Principles of Preventing and Combating Discrimination in Ukraine*[121] dd. May 13, 2014, judges shall keep in mind that provision of the opinion by the Ukrainian Parliament Commissioner for Human Rights (hereinafter the Commissioner) in cases on discrimination at the request of the court is one of the measures to combat discrimination, which is regulated by Paragraph 7 of Article 10.1 of Law No. 5207-VI, as stated in the letter of the High Specialized Court of Ukraine for Civil and Criminal Cases (the High Specialized Court).[122]

At the request of the Commissioner, the High Specialized Court of Ukraine for Civil and Criminal Cases prepares and sends to the judges its explanations regarding the relevance of sending requests to the Commissioner and explains some of its aspects:

- Requesting an opinion of the Ukrainian Parliament Commissioner for Human Rights on discrimination cases is a tool that helps judges ensure proper use of the measures for preventing and combating discrimination in case there are signs of restrictions or limitations on the recognition, enjoyment or exercise of human rights in any form, which is covered by the term "discrimination" as established by law.
- The court may apply to the Ukrainian Parliament Commissioner for Human Rights to obtain his/her opinion on the discrimination case either on its own initiative or on the motion of the parties to the case.
- It would be relevant to use the the power to request opinions by the Ukrainian Parliament Commissioner for Human Rights through procedure under Article 45.3 of the Civil Procedure Code of Ukraine.[123]

The High Specialized Court of Ukraine for Civil and Criminal Cases also draws attention of judges to the transfer of burden of proof and notes that discrimination cases shall be considered with account of the procedural requirements to burden of proof for this type of cases as specified by Article 81.2 of the Civil Procedure Code.[124]

121 Amendments to Law No. 5207-VI introduced through Law of Ukraine dd. May 13, 2014 No. 1263-VII On Amendments to Certain Legislative Acts of Ukraine on Preventing and Combating Discrimination.

122 Letter dd. February 16, 2015 N 9-199/0/4-15 On the Need for Courts to Request for the Opinion of the Ukrainian Commissioner for Human Rights in Cases on Discrimination, full text is available at http://consultant.parus.ua/?doc=09HHOF9E98

123 Article 45.3 of the Civil Procedure Code: The central and local government agencies may be involved in a case by court or take part in case on their own initiative to submit conclusions/opinions pursuant to carrying out their authority. Participation of these bodies in civil proceedings for submitting conclusions/opinions on the case is mandatory in cases established by law or if the court finds it necessary.

124 Article 81.2 of the Civil Procedure Code: 2. In discrimination cases, the plaintiff shall provide factual evidence to prove that discrimination has taken place. If such evidence is available, the burden of proof regarding non-discrimination lies on the defendant.
In cases regarding the recognition of assets as unexplained and their forfeiture to the state of Ukraine the plaintiff shall provide factual data to prove the connection of the assets with the person authorized to perform the functions of the state or local self-government as well as the fact that the assets are unexplained that is the discrepancy between a public official's legal income and the value of his or her assets as specified by Article 290.2 of the Code. In case the court finds sufficient evidence of the facts on the basis of evidence submitted by the plaintiff, then the burden of proof shifts to the defendant who must refute the claim that his or her assets are unexplained.

Below are the analysis and quotes from several cases in which the plaintiff asked the court to call for the Commissioner's opinion as well as the key challenges faced in practice over the years. It is worth noting that there are very few cases like this: neither plaintiffs nor judges have made efficient use of this instrument for preventing and combating discrimination and the Ukrainian Parliament Commissioner for Human Rights is only rarely engaged.

The first problem is the lack of understanding on the part of plaintiffs how to engage the Commissioner as well as the difference between the "engagement of the Commissioner as the third party" and the "request for an expert opinion".

In case No.823/351/17 the plaintiff first asked the court to engage the Commissioner as a third party without an independent claim on the side of the defendant regarding the subject matter of the claim, but the court dismissed the motion noting the following:

> **"…the plaintiff failed to specify how the decision in this case can affect the rights and obligations of PERSON-4, Ukrainian Parliament Commissioner for Human Rights and PERSON_5 and the court decides to dismiss the motion in regard to engagement of the above mentioned person as a third party in the case".**[125]

Then the plaintiff submitted one more motion requesting for the opinion of the Commissioner regarding the case on discrimination. The court granted the motion noting that it is allowed to request the opinion of the Commissioner either on the initiative of the court or on the motion of the party in the court proceedings and ruled in favor of requesting an expert opinion of the Commissioner. The court also decided to take a break and impose a one-month stay of proceedings to give time for a proper expert opinion.

The second problem refers to proper procedures for execution of the court request for an expert opinion of the Commissioner and the right of the court to impose a stay of proceedings for obtaining an expert opinion. Case No.320/5975/18 was lodged by Human Rights Bureau "We are!" against Chernivtsi Regional Council and related to incitement to discrimination based on sexual orientation.

In the first instance court, the plaintiff lodged a motion seeking for an opinion of the Commissioner. The court granted the motion pursuant to Article 10 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine and provisions of Article 102.1 of the Code of Administrative Court Procedure of Ukraine.

> **"The ruling of Kyiv District Administrative Court dd. January 24, 2019 calls for an expert opinion in the administrative case based on the claim of Human**

125 https://reyestr.court.gov.ua/Review/65160609

Rights Bureau "We are!" against Chernivtsi Regional Council seeking to recognize their actions as unlawful.

According to Article 236.2.4 of the Code of Administrative Court Procedure in Ukraine, the court has the right to impose a stay of proceedings in case of necessity to call for an expert opinion on the case until the expert opinion is ready.

In view of the above, the court has decided to impose a stay of proceedings until the court obtains the expert opinion".[126]

The defendant did not agree with the court's decision to order the opinion of the Commissioner and lodged an appeal stating that the opinion of the Commissioner cannot be regarded as expert's opinion.

"Disagreeing with the court's decision the defendant lodged an appeal seeking to overturn the decision and refer the case for consideration to the first instance court stating that the Ukrainian Parliament Commissioner for Human Rights cannot be seen as an expert and that the court did not have any grounds to call for an expert opinion and instruct the above mentioned public authority to conduct it.

The appealer states that the Ukrainian Parliament Commissioner for Human Rights shall provide his/her opinion on the case on discrimination as part of parliamentary control rather than in the course of forensic examination.

The appealer believes that the first instance court has made its decision in breach of the provisions of substantive and procedural law, which further led to the wrong decision to call for a forensic examination".[127]

The Court of Appeals analyzed the case files, the decision of the first instance court as well as the provisions of the Law of Ukraine On Forensic Examination and the Law of Ukraine *On the Principles of Preventing and Combating Discrimination in Ukraine* and made the respective comparison. The court concluded that the Commissioner could not be seen as an expert as understood in the Law of Ukraine On Forensic Examination and thus could not be engaged as an expert in the case (actually this was not the demand of the plaintiff as the motion was about calling for an expert opinion of the Commissioner as required by provisions of Article 10 of the Law of Ukraine *On the Principles of Preventing and Combating Discrimination in Ukraine*):

According to Article 1 of the Law of Ukraine On Forensic Examination, a forensic examination is the research based on specific expertise in the field

126 https://reyestr.court.gov.ua/Review/79374399

127 https://reyestr.court.gov.ua/Review/79373656

> **of science, technology, art, craft, etc. regarding objects, phenomena and processes with the purpose to provide an opinion on the issues that are or will be the subject matter of the court proceedings.**
>
> **According to Article 10 of the above Law, forensic experts are individuals of specialized state institutions who possess the relevant higher education, are qualified as specialists, have undertaken the respective professional training, and are qualified as forensic experts with specific specialization.**
>
> **Forensic examinations, except for those that are to be carried out exclusively by specialized state institutions, can be conducted with engagement of forensic experts who are not employees of these institutions provided they have the respective higher education, are qualified as specialists, have undertaken the respective professional training at specialized state institutions of the Ministry of Justice of Ukraine, have been certified and qualified as forensic experts n a certain area according to the procedures established by law. <…>**
>
> **<…> Therefore, the law gives a clear definition of a forensic examination and establishes qualification requirements to people who are entitled to conduct forensic examination. One of the requirement is for the person to be qualified as a forensic expert.**
>
> **Thus, the opinion of the Ukrainian Commissioner for Human Rights in the case on discrimination is not an expert opinion as understood by the above-mentioned special provisions of the Law of Ukraine On Forensic Examination, and the Ukrainian Commissioner for Human Rights is not qualified as a forensic expert.**
>
> **In view of the foregoing, the panel of judges concludes that there are no legal grounds to call for a forensic examination based on the motion of the plaintiff seeking for an expert opinion of the Ukrainian Parliament Commissioner for Human Rights according to the procedures established by Article 10 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine”.**[128]

As a result of this analysis, the Court of Appeals concluded that the expert opinion of the Commissioner in cases on discrimination amounted to forensic examination and dismissed the plaintiff’s motion.

The case was remanded to Kyiv District Administrative Court, which conducted its own analysis trying to establish whether an expert opinion of the Commissioner could be regarded as proper evidence, whether it was written evidence which could

128 https://reyestr.court.gov.ua/Review/80579300

be attached to the case file and whether the court's refusal to grant the plaintiff's motion seeking for request of an expert opinion on discrimination case was lawful:

> **"According to Articles 91, 96 and 99 of the Code of Administrative Court Procedure of Ukraine, the opinion of the Ukrainian Parliament Commissioner for Human Rights is neither material evidence, nor electronic evidence, nor a witness testimony. The court cannot regard it as written evidence either. According to the definition provided for in Article 94 of the Code of Administrative Court Procedure of Ukraine, written evidence means documents (except for electronic documents) that contain data on the circumstances that may be relevant for the right resolution of dispute. Thus, written evidence cannot be created after the dispute has arisen and can only contain data (information) on the circumstances of the case but not an opinion, which suggests assessment of certain circumstances of the case after the dispute has arisen.**
>
> **The definition of "an expert opinion", which is given in Article 101 of the Code of Administrative Court Procedure of Ukraine, allows the court to include the opinion of the Ukrainian Parliament Commissioner for Human Rights in this category of evidence. According to Article 101.1 of the Code of Administrative Court Procedure of Ukraine, an expert opinion is a detailed description of expert studies and conclusions made on the basis of their results, as well as grounded answers to the questions that were addressed to the expert; with the document to be executed according to the procedures established by law. This definition does not specify that qualifying the expert opinion of the Ukrainian Parliament Commissioner for Human Rights shall be regulated by the Law of Ukraine On Forensic Examination. In addition, the definition specified in Article 101 of the Code of Administrative Court Procedure of Ukraine suggests that the term "expert opinion" as an evidence in the case is wider that the term "forensic examination", which is given in Article 1 of the Law of Ukraine On Forensic Examination.**
>
> **The term "expert" in Article 68.1 of the Code of Administrative Court Procedure of Ukraine cannot be construed in the same way as the term "forensic expert", which is given in Article 10 of the Law of Ukraine On Forensic Examination. Thus, to qualify a person as an expert in administrative proceedings the court does not need to establish that the person possesses the respective authorities, in particular, the status of a forensic expert, and the rights to conduct professional forensic activity."**[129]

The court also draws attention to the impossibility to impose a stay of proceedings until the expert opinion of the Commissioner is ready:

129 https://reyestr.court.gov.ua/Review/81756951

> **"The above mentioned opinion is specified by the law maker as a special type of analysis - anti-discrimination analysis. This conclusion is made on the basis of Paragraph 1 of Article 1.1 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine, namely: anti-discrimination analysis means analysis of draft legal acts resulting in an opinion as to their compliance with the non-discrimination principle. According to Article 10 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine, providing an opinion on discrimination cases at the request of the court is an exclusive authority of the Ukrainian Parliament Commissioner for Human Rights.**
>
> **Considering that the Ukrainian Parliament Commissioner for Human Rights is the only entity authorized to conduct special anti-discrimination analysis and provide the respective opinion as specified by Article 10 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine and Article 1 of the Law of Ukraine On the Ukrainian Parliament Commissioner for Human Rights, the court ruled in favor of requesting an opinion of the Ukrainian Parliament Commissioner for Human Rights.**
>
> **As the Code of Administrative Procedure of Ukraine does not specify the right of the court to impose a stay of proceedings for the period required for the ruling implementation, the court, subject to the principle of reasonable time for consideration of an administrative case as specified by Paragraph 8 of Article 2.3 of the Code of Administrative Procedure of Ukraine, also ruled to apply to the Ukrainian Parliament Commissioner for Human Rights with the request to consider the present ruling and prepare the opinion as soon as possible".**[130]

Kyiv District Administrative Court makes an interesting statement regarding the defendant's objection to the ruling, which calls for an expert opinion of the Commissioner. The court states once again that the Commissioner is the only specialized authority entitled to prepare opinions on the issues of discrimination or lack of discrimination and the court is only responsible for following proper procedures to obtain the opinion:

> **The court notes that it reissued the ruling calling for an expert opinion of the Ukrainian Parliament Commissioner for Human Rights because it can't be placed under any other type of evidence specified by Article 72 of the Code of Administrative Court Procedure of Ukraine other than an expert examination. While expressing its disagreement with the Court of Appeals, the court wanted to ensure the principle of legal formality in the case by requesting the expert opinion from the only authority entitled to prepare an opinion on the matter of**

130 https://reyestr.court.gov.ua/Review/83038638

discrimination, which is the subject matter of the dispute, in particular, from the Ukrainian Parliament Commissioner for Human Rights.

When reversing the ruling of the first instance court in connection with the expert opinion the Court of Appeals mentioned only the failure of the court to apply proper procedures to obtain the opinion and said nothing about the expert opinion of the Ukrainian Parliament Commissioner for Human Rights not falling into any category of evidence in a case".[131]

This is also one of the few decisions in which the court gives a proper analysis of the expert opinion prepared by the Ukrainian Parliament Commissioner for Human Rights and uses it as one of the arguments in the case.

"In response to the ruling of Kyiv District Administrative Court calling for an expert opinion on discrimination, the Ukrainian Parliament Commissioner for Human Rights provided an opinion on discrimination case No.320/5975/18, which states that the decision of Chernivtsi Regional Council No.73-22/18 dd. May 23, 2019 contains elements of incitement to discrimination on the ground of sexual orientation, gender identity and violates human rights, in particular, the right to liberty, freedom of thought and speech, freedom of opinion and expression, as well as the right to participate in peaceful assemblies, meetings and demonstrations guaranteed by domestic and international laws.

In view of the opinion of the Ukrainian Commissioner for Human Rights, the court rules that the decision of Chernivtsi Regional Council On the Appeal of councilors of Chernivtsi Regional Council of the 7th Convocation to the Verkhovna Rada of Ukraine, the President of Ukraine, and the Cabinet of Ministers of Ukraine as to the protection of the institution of the family in Ukraine No.73-22/18 dd. May 23, 2018 was made in breach of Article 6 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine as there are elements of incitement to discrimination in the decision. Thus, the actions of Chernivtsi Regional Council in connection with their appeal to the Verkhovna Rada of Ukraine, the President of Ukraine, and the Cabinet of Ministers of Ukraine as to the protection of the institution of the family also have the elements of incitement to discrimination". [132]

Case No.297/377/18 is interesting from two perspectives. Firstly, how the plaintiff identifies the protected characteristic: the issue is about repeat victimization or punishment for the use of the right to appeal against discriminatory actions:

"The plaintiff states that he suffered discrimination from the Director of a state company Berehiv Forest Management (Berehiv Lishosp) as a result of

131 https://reyestr.court.gov.ua/Review/85957245

132 https://reyestr.court.gov.ua/Review/90191887

> **his claim or intent to apply to the court or other law enforcement agencies for protection of his rights. Thus, in this particular case the plaintiff did not refer to any of the discrimination characteristics specified by paragraph 2 of Article 1.1 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine. In addition, Articles 251 and 252 provide clear grounds for imposing a stay of proceedings and they do not include the right or obligation of the court to impose a stay of proceedings in connection with the request to the Ukrainian Parliament Commissioner for Human Rights to provide an expert opinion**".[133]

Article 14.2 Appealing against Acts or Omissions Related to Discrimination prohibits discrimination in connection with exercising one's right to appeal and states the following:

> **"The use of the mentioned right cannot be a basis for prejudice and may not cause any negative effects on the person who uses the right or any other persons".**[134]

The court decided to dismiss the motion seeking to request the Commissioner's expert opinion of the Commissioner. During the appellate proceedings, the plaintiff once more submitted the motion requesting for the expert opinion of the Commissioner and it was granted by the Court of Appeals. The second interesting aspect of the case refers to the court's vision of proper procedures for obtaining the opinion and the functions of the Commissioner:

> **"Thus, Ukrainian Parliament Commissioner for Human Rights can be engaged by the court at the stage of appellate proceedings to provide an expert opinion on discrimination in pursuit of the authorities established by the law. In this case, a person involved in the case shall have the procedural rights and obligations as specified by Article 43 of the Civil Procedure Code of Ukraine as well as be entitled to express his/her views regarding the settlement or decision on the merits (Article 57.6 of the Civil Procedure Code of Ukraine).**
>
> **The Civil Procedure Code does not provide for a stay of proceedings in connection with engagement of Ukrainian Parliament Commissioner for Human Rights in pursuit of his/her authorities to provide an opinion or in connection with the request to provide an expert opinion (Articles 251 and 252 of the Civil Procedure Code of Ukraine). In addition, a civil case pending, in particular, before the Court of Appeal, can be neither reclaimed nor sent to anyone outside the procedures set out in the Civil Procedure Code. There are no grounds for sending the case to Ukrainian Parliament Commissioner for**

133 https://reyestr.court.gov.ua/Review/75532927 and https://reyestr.court.gov.ua/Review/75990548

134 https://zakon.rada.gov.ua/laws/show/5207–17#Text

Human Rights for the purpose of obtaining an expert opinion on discrimination as specified by the Civil Procedure Code.

In view of the above and considering the necessity for a full and thorough review of the case to establish all the circumstances and provide the parties with a possibility to properly exercise their procedural rights and perform their procedural obligations (Articles 12.2, 12.3, 12.5, 13.1, 13.3, 81.1, 81.2, 214.2, and 263.5 and other provisions of the Civil Procedure Code of Ukraine), the court upholds the plaintiff's motion in part. Proper procedures for obtaining the opinion on the discrimination case by the court suggest following Article 56.6 of the Civil Procedure Code of Ukraine and engage the Ukrainian Parliament Commissioner for Human Rights for providing an opinion subject to the requirement to settle the labor dispute within a reasonable time". [135]

For the purpose of this studyб it is also interesting to consider the case law from case No. 804/2823/16 on labor dispute. The case went through all judicial instances and even contains a dissenting opinion of the judges of the Supreme Court of Ukraine.

First of all, the claim of discrimination was very well stated and defined (it is clear and understandable compared to many other cases):

"2.1 Recognize the decision and actions of the National Bank of Ukraine (failure to add the plaintiff to the talent pool, rejection to transfer the plaintiff to the central headquarters, a wrongful dismissal, restrictions on the plaintiff's access to occupation, official duties and positions) committed on the basis of Regulations No.96 as unlawful and discriminatory on the grounds of sex, age, and education during the exercise of the plaintiff's right to labor that involved the breach of provisions of the anti-discrimination laws.

2.2. Recognize that the National Bank of Ukraine discriminated against the plaintiff on the ground of sex, age, education, etc., during her work at and dismissal from the civil service on the basis of Regulations No.96".[136]

The first instance court states the following in regard to the motion of the plaintiff's representative to obtain an expert opinion of the Commissioner:

"The motion is based on the belief that the expert opinion may help establish all the circumstances of the case and ensure full protection of fundamental rights, freedoms and interests of PERSON_5 in the area of public law relations with the public authority.

135 https://reyestr.court.gov.ua/Review/87983970

136 https://reyestr.court.gov.ua/Review/89082843

> **Having considered the materials of the case and having analyzed the laws regulating the issue, the court rules to grant the motion on the basis of the following: Articles 71.3, 71.4 and 71.5 of the Code of Administrative Court Procedure state that if a person involved in a case cannot provide the evidence on his/her own this person shall give the reasons why the evidence cannot be provided and state where it is possible to find the evidence. The court helps perform the obligation and makes a request for the required evidence. The court issues a ruling either to call for evidence or reject the request to call for evidence. The ruling rejecting the call for evidence is not subject to a separate appeal. All objections to the ruling can be specified in an appeal or cassation appeal against the decision of the court following the consideration of the case.**
>
> **The public authority shall provide the court with all the documents and materials which can be used as evidence in the case. In case of its failure to meet the obligation the court shall reclaim the documents and materials.**
>
> **The court can collect evidence on its own initiative. According to Articles 79.1 and 79.3 of the Code of Administrative Court Procedure written evidence means documents (including electronic documents), acts, letters, telegrams, and any other written records that contain information on the circumstances significant for the case.**
>
> **Written documents requested by the court shall be sent directly to the administrative court. The court can also authorize the party concerned or other party involved in the case to obtain a written evidence to be further submitted to the court.**
>
> **To ensure full and thorough review of the case and provide an objective decision, the court believes it is necessary to request an opinion of the Ukrainian Parliament Commissioner for Human Rights regarding the case initiated on March 12, 2016 on the claim of PERSON_5 in connection with discrimination on the ground of sex and age while exercising the right to labor at the National Bank of Ukraine".**[137]

The Court of Appeals used the opinion of the Commissioner as an argument to prove the fact of discrimination:

> **"Subject to the provisions of the Law of Ukraine On the Ukrainian Parliament Commissioner for Human Rights and the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine, and considering that the subject matter of the case refers not only to reinstatement but also to the issue of discrimination, under Articles 2 and 9 of the Code of Administrative Court**

137 https://reyestr.court.gov.ua/Review/68399340

Procedure of Ukraine, the court issues ruling No.804/2823/16 dd. February 19,2018, which grants the motion of the plaintiff seeking to obtain an opinion of the Ukrainian Parliament Commissioner for Human Rights.

With consideration of the opinion of the Ukrainian Parliament Commissioner for Human Rights in case on discrimination dd. June 04, 2018, received by the court on June 14, 2018 (volume 4, case sheet 115-121), it was established that failure to add PERSON-7 to the talent pool of the National Bank of Ukraine, which later made it impossible for the plaintiff to continue the work within the National Bank of Ukraine constitutes direct discrimination on the ground of age and sex".[138]

The decision of the Court of Appeals to go beyond the claims stated in the case is also of great interest:

"Considering that one of the plaintiff's demands is to recognize the decisions and actions (failure to add the plaintiff to the talent pool, rejection to transfer the plaintiff to the central headquarters, a wrongful dismissal, restrictions on the plaintiff's access to occupation, official duties and positions) committed by the National Bank of Ukraine on the basis of Regulations No.96 dd. March 17, 2006 as unlawful in regard to the plaintiff as well as discriminatory on the grounds of sex, age, and education during the exercise of the plaintiff's right to labor that involved the breach of provisions of the anti-discrimination laws; and considering that the case materials prove that PERSON-7 was excluded from the talent pool without any grounds, the court believes that it is possible to go beyond the claims stated in the case, according to the procedures established by Article 9.2 of the Code of Administrative Court Procedure of Ukraine. In particular: recognize as unlawful the actions of the National Bank of Ukraine as to exclusion of PERSON-7 from the talent pool of the Board of the National Bank of Ukraine in Dnipropetrovsk Oblast".[139]

The decision of the Supreme Court of Ukraine and a dissenting opinion of three judges to the decision are also of great interest. Both documents refer to an expert opinion of the Commissioner in cases on discrimination and the necessity to take into account the opinion as proper evidence:

"76. The Grand Chamber of the Supreme Court agrees with the Court of Appeals that states that the opinion of the Ukrainian Parliament Commissioner for Human Rights in case on discrimination dd. June 04, 2018 cannot be regarded as evidence in the understanding of the provisions of Articles 73-76 of the Code of Administrative Court Procedure as the above mentioned circumstances were not taken into account when resolving the issue on

138 https://reyestr.court.gov.ua/Review/79376437

139 Idem.

> **discrimination against the plaintiff on the ground of age. Also, the opinion specifies that according to the case materials the court established other reasons for rejection to include the plaintiff into the succession pool, in particular, her level of education".**[140]

At the same time, three judges issued a dissenting opinion, in which they draw attention to the following aspects of the case (in addition to consideration of another very important issue, jurisdiction of the case (civil or administrative):

> **"26. Secondly, in its ruling the Grand Chamber of the Supreme Court ruled to uphold the assertion of the Court of Appeals that the opinion of the Ukrainian Parliament Commissioner for Human Rights cannot be regarded as evidence as understood by Articles 73-76 of the Code of Administrative Court Procedure of Ukraine. We believe there were no legal grounds to uphold it.**
>
> **26.1. Articles 73-76 of the Code of Administrative Court Procedure of Ukraine establish the principles of independence, admissibility, reliability and sufficiency of evidence. Neither the Court of Appeal nor the Cassation Court could explain why the opinion of the Ukrainian Parliament Commissioner for Human Rights is improper, inadmissible, unreliable and insufficient at the same time to prove the fact of discrimination against the plaintiff on the ground of sex and age.**
>
> **26.2. In addition, Ukrainian Parliament Commissioner for Human Rights belongs to the authorities entitled to prevent and combat discrimination (Paragraph 3 of Article 9.1 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine); the Unified State Register of Court Decisions, 20.12.2021, 16:41 https://reyestr.court.gov.ua/Review/89793579 Page 7 of 7). The mandate of the Commissioner gives the authority to provide an opinion on discrimination on request of the court (Paragraph 8, Article 10.1 of the Law of Ukraine On the Principles of Preventing and Combating Discrimination in Ukraine). Thus, the opinion of the Ukrainian Parliament Commissioner for Human Rights dd. June 04, 2018, which proves the fact of discrimination against the plaintiff on the ground of sex and age (the reason why she lodged a claim) cannot be regarded as improper evidence, that is the evidence, which does not contain information as to the facts to be proven (Article 73.1 of the Code of Administrative Court Procedure of Ukraine).**
>
> **26.3. The ruling dd. February 19, 2018 demands to call for an opinion of the Ukrainian Parliament Commissioner for Human Rights with account of the adversarial principle, optionality and formal establishment of the circumstances, stating that without this opinion further consideration of the case may be biased and partial. In view of the above, neither the Court of**

140 https://reyestr.court.gov.ua/Review/89082843

Appeals nor the Grand Chamber of the Supreme Court had grounds to believe that the opinion of the Ukrainian Parliament Commissioner for Human Rights dd. June 04, 2018 was inadmissible evidence, that is evidence obtained in violation of the procedures established by law (Article 74.1 of the Code of Administrative Court Procedure of Ukraine)".[141]

There is one more key argument about proving in discrimination cases, which was ignored by the courts of the first and the second instance but rightly regarded by the three judges of the Supreme Court of Ukraine in their dissenting opinion: the burden of proof in the discrimination cases and its jurisdiction:

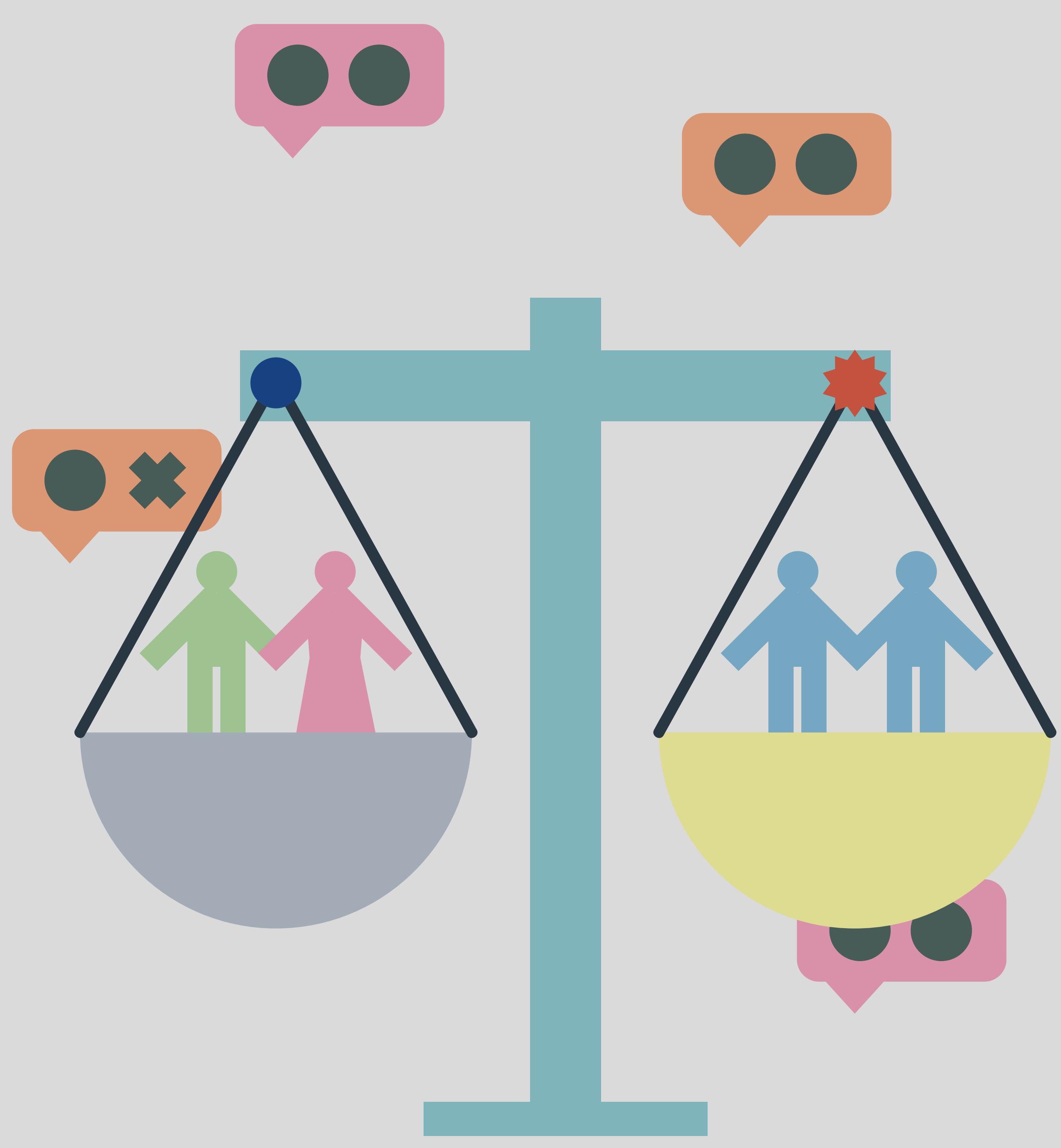
"After all, the burden of proof regarding the lawfulness of the decision, @acts or omissions was placed on the National Bank of Ukraine, not on the plaintiff (Article 77.2 of the Code of Administrative Court Procedure of Ukraine). The National Bank of Ukraine denied the claims of the plaintiff stating that this claim could not be said to be reasonably or objectively justified or substantiated with any evidence (objections to the administrative claim, volume 2, case sheet 18-22; response to the administrative case – volume 3, case record sheet 173-177). In its response to the appeal, the NBU claims that the employer has the right and not the obligation to add the plaintiff to the talent pool and the employer rejected to do so because of poor performance of obligations by the plaintiff and not as a result of discrimination on the ground of age (volume 5, case sheet 14-17) (the NBU failed to provide any objections as to the claim of discrimination on the ground of sex). However, we think that these statements did not give grounds to the Grand Chamber of the Supreme Court to believe that the NBU complied with the provisions of Article 77.2 of the Code of Administrative Court Procedure of Ukraine and proved the absence of discrimination against the plaintiff. Although the defendant states that it is the plaintiff who has not provided any evidence to support her claim of discrimination, the NBU has failed to refute the arguments given in the opinion of the Ukrainian Parliament Commissioner for Human Rights dd. June 04, 2018".[142]

Although there were few cases where the plaintiffs' requests for an expert opinion of the Ukrainian Parliament Commissioner for Human Rights in discrimination cases were granted by the courts there is some established case law in this area (confirmed with the conclusions of the Supreme Court of Ukraine). The case law shows the importance and relevance of using this tool for preventing and protecting against discrimination and should be used in the courts of all instances.

141 https://reyestr.court.gov.ua/Review/89793579

142 Idem.

Section 5. Using standards and citing the ECtHR case law



The extensive analysis of the court decisions shows that recently (2015-2020) the courts have often used references to a standard set of ECTtHR judgments and the standards enshrined in the ECtHR case law. This approach can be further used and developed (see examples above, citing texts from judgments in cases *Thlimmenos v. Greece, Konstantin Markin v. Russia, Pichkur v. Ukraine, Weller v. Hungary, Fedorchenko and Lozenko v. Ukraine case, etc.*).[143]

One more thing to be noted is that the existing ECtHR case law under Article 14 of the Convention and Protocol 12 is much more diverse that the legal standards cited by the Ukrainian courts. So, judges should look at a wider range of cases and apply widely the new approaches developed by the ECtHR.

In most cases, Ukrainian courts cite the ECtHR case law in discrimination cases in connection with the following standards (which shows close connections of the issue of discrimination with other violations of human rights and the importance of a separate thorough analysis)

Rule of law and legal certainty

> **"Article 17.1 of the Law of Ukraine On the Execution of Judgments and Application of the Case Law of the European Court of Human Rights specifies that courts shall apply the Convention and the case law of the Court as a source of law while hearing cases. According to the preamble and Article 6.1 of the Convention, judgment of the ECtHR in case Sovtransavto Holding v. Ukraine dd. July 25, 2002 (no.48553/99), as well as the judgment of the ECtHR in case Brumărescu v. Romania (no. 28342/95)) dd. October 28, 1999 there is established case law to declare the principle of legal certainty as one of the fundamental aspects of the rule of law, which requires, inter alia, that where the courts have finally determined an issue, their ruling should not be called into question.**
>
> **The European Court of Human Rights established that one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires respect for the principle of res judicata, that is the principle of the finality of judgments. This principle states that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure form that principle is justified**

143 Please, note, that different court decisions have different approaches as to the way they specify the case title, different standards of translation of foreign names of plaintiffs, etc. Thus, it is recommended that courts develop a unified approach as to the use of the ECtHR judgment titles in the Ukrainian case law.

only when made necessary by circumstances of a substantial and compelling character. (PONOMARYOV v. UKRAINE, § 40, ECtHR, April 03, 2008, no. 3236/03)".[144]

Good governance

"In particular, in case Rysovskyy v. Ukraine (no.29979/04) the Court underlines the importance of the principle of "good governance". It requires that where an issue in the general interest is at stake, in particular when the matter affects fundamental human rights such as property rights, the public authorities must act in good time and in an appropriate and above all consistent manner (see Beyeler v. Italy [GC], no. 33202/96, § 120, ECHR 2000-I; Öneryıldız v. Turkey [GC], no. 48939/99, § 128, ECHR 2004-XII; S.r.l. v. Moldova, no. 21151/04, § 72, April 8, 2008; and Moskal v. Poland, no. 10373/05, § 51, September 15, 2009). In particular, it is incumbent on the public authorities to put in place internal procedures which enhance the transparency and clarity of their operations, minimise the risk of mistakes (see, for example, Lelas v. Croatia, no.55555/08, § 74, May 20, 2010, and Toşcuță and Others v. Romania, no. 36900/03, § 37, November 25, 2008) and foster legal certainty in civil transactions affecting property interests (see Öneryıldız v. Turkey, § 128, and Beyeler v. Italy, § 119).

The 'good governance' principle should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence (see Moskal v. Poland, § 73). Holding otherwise would, inter alia, amount to sanctioning an inappropriate allocation of scarce public resources, which in itself would be contrary to the public interest (ibid.). On the other hand, the need to correct an old "wrong" should not disproportionately interfere with a new right which has been acquired by an individual relying on the legitimacy of the public authority's action in good faith (see, mutatis mutandis, Pincová and Pine[145] v. the Czech Republic, no. 36548/97, § 58, ECHR 2002-VIII)".[146]

Principle linked to proper administration of justice

"The Court also takes into account the position of ECtHR (in the part relating to its assessment of the arguments of participants to the case in the cassation proceedings) outlined in Para 58 of the judgment in case of Seryavin and

144 Decision in case No.344/17247/19 dd. September 24, 2020, available at https://reyestr.court.gov.ua/Review/91818575

145 The court made a mistake in the English title of the judgment: it must be Pincová and Pinc v. the Czech Republic

146 Decision No.640/12695/19, dd. March 23, 2020, available at https://reyestr.court.gov.ua/Review/88353353

Others v. Ukraine dd. February 10, 2010 (no.4909/04): According to its established case law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms dd. November 04, 1950 obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument; The extent to which this duty to give reasons applies may vary according to the nature of the decision (see Ruiz Torija v. Spain, judgment dd. December 9, 1994, § 29, no. 18390/91)".[147]

The Court also takes into account the position of ECtHR (in the part relating to its assessment of the arguments of participants to the case in the cassation proceedings) that was stated in case of Salov v. Ukraine (judgment dd. September 6, 2005, § 89, no.65518/01); Pronin v. Ukraine (judgment dd. July 18, 2006, § 23, no.63566/00); and Seryavin and Others v. Ukraine dd. February 10, 2010, § 58, no.4909/04): according to the principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms obliges courts to give reasons for their judgments, but it cannot be understood as requiring a detailed answer to every argument raised by the parties. The extent to which this duty to give reasons applies may vary according to the nature of the decision (see Ruiz Torija v. Spain, judgment dd. December 9, 1994, Series A no. 303-A, § 29)".[148]

Proportionality of human rights restrictions

"In the case Trosin v, Ukraine (judgment dd. February 23, 2012) the ECtHR, in particular, noted that the administrative courts are expected to assess the proportionality (not only the legality) of the decision under dispute adopted by a regulatory body. According to the ECtHR, the principle of proportionately means to strike a fair balance between the public interests and the obligation to protect the human rights. Therefore, human rights can be restricted only to the extent necessary to protect the public interests.

147 Decision No.640/293/19, dd. July 21, 2020, available at https://reyestr.court.gov.ua/Review/90497920

148 Decision in case No.826/12123/16 dd. December 20, 2018, available at https://reyestr.court.gov.ua/Review/78808062

In this case the impugned decision violated the principle of proportionality. The State failed to ensure a necessary balance between the aims the State sought to achieve and the outcome for an internally displaced person".[149]

Positive obligations of the State under Article 1 of the Convention in cases relating to the territories over which the State does not exercise effective control

"As seen from motives and circumstances established in Judgment of the ECtHR dd. July 08, 2004 in case of Ilaşcu and Others v. Moldova and Russia, the ECtHR granted the claim stating that the Moldovan Government, the only legitimate government of the Republic of Moldova under international law, does not exercise authority[150] over part of its territory, namely that part which is under the effective control of the "Moldavian Republic of Transdniestria" (the "MRT"). However, even in the absence of effective control over Transdniestria region, Moldova still has a positive obligation under Article 1 of the Convention to take the measures that are in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention. Considering that the judgments of the ECtHR are applied as the source of law and are binding for Ukraine according to Article 46 of the Convention, the court, when considering cases, must apply the case law of the ECTHR, including the judgments in cases Pichkur v. Ukraine, Ilaşcu and Others v. Moldova and Russia as the source of law according to Article 17 of the Law of Ukraine On the Execution of Judgments and Application of the Case Law of the European Court of Human Rights".[151]

The requirement to have an effective judicial remedy in domestic law (Article 13 of the Convention)

"When making the decision the court took into account the legal position of the ECtHR, which states that Article 13 requires a remedy in domestic law in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, for example, Keegan v. the United Kingdom, § 40, no.28867/03; Bagiyeva v. Ukraine, § 57, no.41085/05).

149 Decision in case No.826/12123/16 dd. December 20, 2018, available at https://reyestr.court.gov.ua/Review/78808062

150 Recommended wording under European standards -"presence/absence of effective/actual control" (see, for example, https://www.kmu.gov.ua/news/249734247)

151 Decision in case No. 805/1901/18 dd. June 19, 2018, available a: https://reyestr.court.gov.ua/Review/73507092

In the case of Zinchenko v. Ukraine (no. 63763/11) the ECtHR points out that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order (§ 108).

At the same time, in Para 110 of its judgment in the case of Vintman v. Ukraine (no. 28403/05)) the ECtHR notes that, in order to comply with Article 13 of the Convention, a remedy must be "effective" in practice as well as in law, in particular, in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see Aksoy v. Turkey, December 18, 1996, § 95, Reports of Judgments and Decisions 1996-VI). In other words, for a remedy to be effective it must be independent of any action taken at the authorities' discretion and must be directly available to those concerned (see Gurepka v. Ukraine, no. 61406/00, § 59, September 6, 2005); able to prevent the alleged violation from taking place or continuing; or provide adequate redress for any violation that had already occurred (see Kudła v. Poland [GC], no. 30210/96, § 158, ECHR 2000-XI)".[152]

Approaches of the ECtHR to property right and interference with the right to possessions, which may constitute a violation of Protocol 1 of the Convention taken in conjunction with Article 14 of the Convention and Protocol 12.

"The ECtHR reiterates that the right to obtain social security benefits is a property right specified by Protocol 1 to the European Convention for the protection of Human Rights and Fundamental Freedoms and the reduction or discontinuation of a sufficiently established benefit may constitute an interference with possessions (see Khoniakina v. Georgia), no.17767/08, § 72, June 19, 2012). The failure of the State to adopt an act setting up a mechanism for exercising the rights and freedoms provided for by the constitutional and other acts as well as keeping the applicants in uncertainty constituted an interference with the applicants' rights under Article 1 of Protocol No. 1 (see Sukhanov and Ilchenko v. Ukraine, no. 68385/10 and no. 71378/10, September 26, 2014).[153]

Considering that the property interest of the plaintiff is based on the provisions of the applicable laws, in particular, Article 14 of the Law of Ukraine On Pension Provision, the ECtHR standards may and shall apply to this case.

152 Decision in case No. 826/10049/17 dd. June 27, 2018, available at https://reyestr.court.gov.ua/Review/74975808

153 Decision in case No.426/542/17 dd. February 1, 2017, available at https://reyestr.court.gov.ua/Review/64458755

In that connection, the Court reiterates that the object and purpose of the Convention requires its provisions to be interpreted and applied in such a way as to make their stipulations not just theoretical or illusory but practical and effective (see, PERSON_3 v. Ukraine, § 53, Melnichenko v. Ukraine, § 59, Chuikina v. Ukraine, § 50, etc.).
According to Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Article 1 of Protocol 12 to the Convention specifies general prohibition of discrimination. 1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1".[154]

Gender equality

"In its judgment dd. March 22, 2012, in case PERSON_4 [Konstantin Markin] v. the Russian Federation, the European Court of Human Rights, whose jurisdiction extends to all matters concerning the interpretation and application of the Convention[155] **(Article 32.1 of the Convention), states that the advancement of gender equality is a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention. In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex. Article 8 of the Convention specifies neither the right to parental leave nor the right to parental leave allowances. However, parental leave and parental allowances come within the scope of Article 8 of the Convention. It follows that Article 14, taken together with Article 8, is applicable. Accordingly, if a State does decide to create a parental leave scheme, it must do so in a manner which is compatible with Article 14 of the Convention.**

The ECtHR has already found that, as far as parental leave and parental leave allowances are concerned, men are in an analogous situation to women. Indeed, in contrast to maternity leave which is intended to enable the woman to recover from the childbirth and to breastfeed her baby if she so wishes, parental leave

154 Decision on case No. 415/3024/17 dd. November 30, 2017, available at https://reyestr.court.gov.ua/Review/70644447

155 Note by the authors, Konstantin Markin v. Russia case, available in the English language

and parental leave allowances relate to the subsequent period and are intended to enable a parent concerned to stay at home to look after an infant personally.

In view of the foregoing, the Court considers that the exclusion of servicemen from the entitlement to parental leave, while servicewomen are entitled to such leave, cannot be said to be reasonably or objectively justified. The Court concludes that this difference in treatment, of which the applicant was a victim, amounted to discrimination on grounds of sex".[156]

Access of prisoners to medical services without discrimination

"In the case of Lutsenko v Ukraine No. 2 (no.29334/11), the European Court of Human Rights referred to the Recommendation of the Cabinet of Ministers to member states on the European Prison Rules, adopted on January 11, 2006 at the 952nd meeting of the Ministers' Deputies, which provides a framework of guiding principles for conditions of detention and health service".[157]

Difference in treatment is discriminatory without a legitimate aim

"According to §48 and 49 of the *Judgment of the European Court of Human Rights* dd. November 07, 2013 (see Pichkur v. Ukraine) the Court's case law establishes that discrimination means treating differently, *without an objective and reasonable justification*, persons in relevantly similar situations (see Willis v. the United Kingdom, no. 36042/97, § 48, ECHR 2002-IV).

A difference in treatment is discriminatory *if it has no objective and reasonable justification*, in other words, *if it does not pursue a legitimate aim* or if there is not *a reasonable relationship of proportionality* between the means employed and the aim sought to be realized. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment (see Van Raalte v. the Netherlands, February 21. 1997, § 39, Reports 1997-I)".[158]

156 Decision in case No.876/9214/17 dd. October 5, 2017, available at https://reyestr.court.gov.ua/Review/69465532

157 Ruling in case No. 523/1823/15-k dd. December 13, 2017, available at https://reyestr.court.gov.ua/Review/71036080

158 Ruling in case No.826/17587/14 dd. January 22, 2015, available at https://reyestr.court.gov.ua/Review/42444834

Conclusions and recommendations

- Discrimination issues cover a wide range of areas of life as well as a great number of people with different protected characteristics. Discrimination may occur anywhere regardless of the region or form of judicial proceedings. This is one of the main reasons why it is important to focus on the development of unified approaches to consideration of discrimination complaints and proper protection and remedies and form the position of the court based on the principles of the rule of law.

- It is clear that a separate anti-discrimination law should not be seen as a silver bullet for preventing discrimination. However, with adoption of special law we have seen a rise in the number of discrimination reports as well as cases where the issue of discrimination is properly addressed. At the same time, there are legal regulations that should be considered by the court, for example, the Labor Code of Ukraine, ECHR, certain laws of Ukraine, etc.

- Yet, despite a separate anti-discrimination law being in effect for many years, the courts still try to avoid decisions establishing the violation of the right not to be discriminated, giving very little attention to the case analysis and the arguments in support of the court's opinion regarding the absence of discrimination in the case.

- There is a need to explain to the courts which forms of discrimination exist, using the domestic and ECtHR case law, provide an in-depth analysis regarding the importance of combining the approach of Ukrainian anti-discrimination law and the approaches applied by ECtHR[159] as well as explain other forms of discrimination to contribute to better analysis of the circumstances of the case and their proper assessment.

- There is also a need to train judges in protected characteristics and explain how to consider possible wordings of characteristics and how to interpret the expression "other characteristics". It is important to train judges how to conduct a proper search, find a comparator to ensure a comprehensive consideration of reports on possible discrimination.

- To ensure a thorough and comprehensive analysis of discrimination cases, it is very important to develop approaches based on the rule of law, when courts, inter alia, understand that provisions of the Ukrainian laws may also lead to violation of human rights.

- There are very few cases (where the court "has seen" discrimination) that contain the arguments at least partially corresponding to the test developed by the ECtHR for consideration of such cases. In most cases covered by this

159 This suggests comparing cases with different forms of discrimination under the Ukrainian laws with the ECtHR approach (for more, see, for example, judgments in D.H. and Others v. the Czech Republic, Thlimmenos v. Greece, etc.).

report, the analysis of discrimination does not comply with the requirements of the test developed by the ECtHR. Although courts (in particular, the Supreme Court of Ukraine[160]) refer to the respective judgments of the ECtHR, stating that the court is not obliged to give a detailed answer to every argument or analyze every argument, still, this particular argument cannot be regarded as a complete justification in each case as in some claims discrimination is the main violation that requires an in-depth analysis for administering justice.

- It appears that judgments of the ECtHR are often cited for the sake of formality. In addition, the courts only specify the title of the ECtHR judgments given in the exemplary decisions of the Supreme Court of Ukraine and usually fail to give full text of the appropriate quotes from the judgments or specify to which part or which particular ECtHR argument in the judgment they refer and thus make citing completely pointless.[161]

- Moreover, there is a problem with the consistency of the case law regarding certain standard claims or approaches used in consideration of certain types of claims (recognition of actions as discriminatory); this is mostly the problem of the courts of the first and second instances.

- Lack of proper evidence analysis, and poor analysis of the distribution of the burden of proof in some cases makes the position of the plaintiffs definitely much worse compared with the defendants' position and deprives them of the possibility to use effective judicial remedy.

160 In its decision dd. February 10, 2010 in case of Seryavin and Others v. Ukraine the European Court of Human Rights reiterates that, according to its established case law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms obliges courts to give reasons for their judgments, but it cannot be understood as requiring a detailed answer to every argument raised by the parties. The extent to which this duty to give reasons applies may vary according to the nature of the decision. In the case of Trofimchuk v. Ukraine the ECtHR reiterates that while Article 6 § 1 of the Convention obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, the issue whether the court has fulfilled its obligation to provide reasons as stated in Article 6 of the Convention can be determined in the light of specific circumstances of the case. According to §41 of Opinion no.11 (2008) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions the obligation on courts to give reasons for their decisions does not mean replying to every argument raised by the defense in support of every ground of defense. The scope of this duty can vary according to the nature of the decision." Full text of the decision is available at the website of Unified State Register of Court Decisions: https://reyestr.court.gov.ua/Review/92136999

161 The case law of the courts of appeals and the Supreme Court of Ukraine looks much better compared with the case law of the first instance courts on this matter. It's worth noting that quite often their decisions contain mistakes, even in the title of the ECtHR judgments.

Recommendations as to the position of plaintiffs:

- It is obvious that not all plaintiffs are in the position to pay for legal assistance. However, the number of cases with the properly stated arguments in support of the discrimination claims is rapidly growing. Problems vary from identifying the discrimination grounds[162] and up to arguments in support of the alleged violation of the right not to be subject to discrimination. Considering that all persons under the jurisdiction of Ukraine are entitled to free primary legal assistance, one of the solutions to the problem may be engaging and training free legal aid specialists to deal with discrimination complaints and provide consultations in this type of cases. If plaintiffs have access to free legal assistance and obtain explanations and legal consultations in discrimination cases, the quality of their claims may improve and more effective legal solutions may be found.

- Another problem in most cases on discrimination is very little evidence and its poor quality. Still, there are a few claims in which plaintiffs and their lawyers provided enough evidence demonstrating the importance of evidence collection and analysis in discrimination cases (the issue, which is usually of much concern for lawyers). The examples of successful use of evidence of pecuniary and non-pecuniary damage should be used in other similar cases (if possible).

- Also, it is important to focus on the quality of arguments in support of claims relating to regular violations, such as pension payments or claims relating to the issues that have been previously analyzed by the ECtHR: in such cases the valid position of the plaintiffs and their lawyers is properly analyzed by the court and can be used as guidelines for similar claims.

Recommendations for defense lawyers working on discrimination cases:

- Conducting a thorough search for a comparator (a sample for comparison) to illustrate unequal treatment or claims that treatment should be different (depending on the alleged discrimination form) and giving proper attention to

162 See, for example, decision in case no.640/6183/19: "According to the case law of the European Court of Human Rights, a three-part discrimination test must be applied to establish whether the discrimination has taken place as well as its circumstances: the first step is to establish two categories of persons that are comparable and different as under the Convention discrimination is based on belonging to a certain group. the second step is to establish if there has been a difference in assessment of members of these groups; and the third step is to identify if such difference – or absence of difference – is objectively justified. At the same time, the claim lodged by the plaintiff does not contain any information that rejection to recalculate the pension is based or somehow connected with any specific characteristic." Full text is available at https://reyestr.court.gov.ua/Review/84671527

the choice of specific protected characteristic[163] are mandatory elements of each discrimination complaint.

- Other mandatory requirements include the analysis of the circumstances of the case based on the ECtHR test and clear presentation of the arguments to the court. Using other standards established in the ECtHR case law would be useful to support own arguments.

- Every reference to the ECtHR case must include a specific quote of the respective judgment to make it clear which of the ECtHR principles and/or standards should be applied in the claim.

- Working with evidence and preparing arguments to apply the 'reverse burden of proof' principle. This is an extremely important principle in discrimination cases, which should be used more often. To this end, it is necessary to develop sustainable practice, where arguments provided to the court are based on real facts and not merely on allegations.

- Using materials of domestic case law and studying similar cases as well as sustainable approaches used by courts to deal with cases of certain categories should be the cornerstone of the strategy in each discrimination complaint.

163 Defense lawyers are recommended to see case no. 120/1361/19-a, in which the court analyses the absence of the specified characteristic and notes that the lack of characteristic means the lack of discrimination: "Therefore, discrimination occurs when a person suffers restrictions because of certain characteristics. At the same time, the plaintiff has failed to justify the existence of the characteristic, which, as he believes, was the ground for discrimination against him by the defendant. Therefore, the arguments stated in the appeal regarding the violation of the principles of equal opportunities and non-discrimination in employment and occupation by the selection panel have not been confirmed at the trial as the selection panel acted in line with Instructions No.542/1255, which establish the procedures for competitive selection of candidates for vacancies in military training universities, as confirmed in the case materials ". Full text of the decision is available at https://reyestr.court.gov.ua/Review/85742109

Number of documents in discrimination cases per protected characteristic (2012-2020)

Characteristics	2012	2013	2014	2015	2016	2017	2018	2019	2020
Age	0	0	1	0	1	0	0	0	2
Sex	0	2	0	6	0	5	8	42	28
Place of residence	0	0	3	13	3	58	67	160	151
Disability	5	14	11	18	61	42	17	33	37
Ethnic origin (nationality)	0	0	0	0	0	0	2	3	2
Citizenship	0	0	1	0	0	0	0	0	1
Marital status	0	0	0	0	2	1	0	0	1
Property status	0	0	2	1	0	0	3	15	3
Language	0	0	0	0	0	0	1	2	0
SOGI	0	0	0	3	0	0	0	3	2
Religion	0	0	1	0	0	1	0	2	0
Political beliefs	0	0	1	1	0	0	0	0	0
Health condition	0	0	2	0	2	0	0	0	2
Membership in trade unions	2	0	0	2	5	0	5	6	0
Court action	0	0	0	0	0	0	1	1	0
Occupation	0	0	2	0	191	39	11	15	20
Other	1	1	2	1	3	9	14	18	21
Multiple	0	0	0	1	0	6	11	27	4
	8	**17**	**26**	**46**	**268**	**161**	**140**	**327**	**274**

The publication "Discrimination: Case Law" offers a comparative analysis of court decisions delivered over almost the entire period while the anti-discrimination law in Ukraine has been in effect. This research seeks to overview and analyze lawsuits filed with various courts in Ukraine, where the plaintiffs alleged discrimination as the main violation or one of the violations of their rights. This overview explores the development of case law on discrimination, and identifies the most frequent claims and complaints, the trends followed by courts in the review of these claims, as well as model decisions. It also offers recommendations on key issues for all stakeholders in this area.

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