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DOI <https://doi.org/10.32849/2663-5313/2024.1.06>**Anastasiia Orel,***Postgraduate Student, Interregional Academy of Personnel Management, 2 Frometivska Street, Kyiv, Ukraine, postal code 03039, orelanastasiia@ukr.net***ORCID:** [orcid.org/0009-0008-1277-7241](https://orcid.org/0009-0008-1277-7241)

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## ADMINISTRATIVE LEGISLATION ON PREVENTION AND COUNTERACTION OF DISCRIMINATION BASED ON GENDER IDENTITY IN UKRAINE

**Abstract. Purpose.** The purpose of the article is to provide a modern formal and legal analysis of administrative legislation on prevention and counteraction of discrimination based on gender identity in Ukraine. **Results.** The article provides a legal analysis of administrative legislation on prevention and counteraction of discrimination based on gender identity in Ukraine. It is determined that the system of administrative legislation on prevention and counteraction of discrimination based on gender identity in Ukraine consists of: - the Constitution of Ukraine; – laws of Ukraine that define the specifics of prevention and counteraction of discrimination, as well as the legal status and operational tools of actors involved in prevention and counteraction of discrimination on the basis of gender identity; - by-laws, among which strategic regulations are essential; - international standards for prevention and counteraction of discrimination in society. It is revealed that the administrative legislation of Ukraine is based on the fundamental principles of equality and inadmissibility of discrimination enshrined in the Constitution of Ukraine, with a combination of general legal guarantees of equality before the law with special measures to prevent and combat discrimination, including discrimination based on gender identity. It is established that Ukrainian legislation currently actively integrates gender equality issues into legal regulation, including mandatory mechanisms for gender impact assessment and ensuring equal opportunities for women and men in all areas, including education, employment or public administration, within the framework of administrative law. **Conclusions.** It is specified that the particularity of administrative legislation of Ukraine is the existence of mechanisms for administrative liability for manifestations of violence or discrimination based on gender or gender identity, which provides for administrative penalties and measures of organisational and legal influence. It is revealed that the implementation of the gender equality and anti-discrimination policy is largely ensured by by-laws which practically regulate the procedure for implementing gender approaches in public legal relations. It is established that the administrative legislation of Ukraine is supported by medium- or long-term state strategies aimed at reducing the gender gap, eliminating discriminatory barriers and raising public awareness of human rights.

**Key words:** administrative jurisdiction, administrative legislation, administrative and regulatory framework, administrative relations, administrative procedures, struggle, gender, discrimination, prevention, identity.

### 1. Introduction

The armed aggression of the Russian Federation against Ukraine and the temporary occupation of the Autonomous Republic of Crimea by the Russian Federation, as well as the full-scale invasion of the territory of Ukraine by Russian troops in 2022, in particular from the territory of the Republic of Belarus, leads to deaths and poses various security risks for women and men. However, statistical data on the number of killed soldiers and civilians, prisoners, hostages, missing persons, and those forcibly transferred to the temporarily occupied

territories and territories under the jurisdiction of the aggressor state, disaggregated by gender, are not available. The challenges also include inequality in access to decision-making and resources for women and men, as well as stereotypes about the social roles of women and men in public and political life, which negatively affects women's representation and participation in such processes (Order of the Cabinet of Ministers of Ukraine On approval of the State Strategy for ensuring equal rights and opportunities for women and men for the period until 2030, 2022).

The problem of discrimination based on gender identity is closely linked to the low level of public awareness of gender issues, insufficient legal framework and widespread stereotypes about social roles. In this context, administrative legislation plays a special role, being a key instrument for regulating social relations, including providing mechanisms for preventing and combating discrimination.

Special issues of administrative and regulatory framework for preventing and combating discrimination in Ukraine have been studied by the following scholars: O. Bezpalova, A. Borovyk, N. Derevianko, A. Druzenko, O. Drozd, A. Dovgopol, V. Honcharov, N. Hridina, O. Kravchenko, V. Lazarev, N. Liakh, O. Perunova, A. Sobakar, R. Shapoval, H. Shevchuk, O. Shevchenko, V. Chernenko, I. Fedorovych, Y. Yurynets, and others.

However, the facts of discrimination in Ukraine, unfortunately, do exist, while the corresponding response to such socially negative phenomena is carried out in the plane of administrative and regulatory framework, which makes the scientific challenge relevant.

The purpose of the article is to provide a modern formal and legal analysis of administrative legislation on prevention and counteraction of discrimination based on gender identity in Ukraine.

## **2. Prevention and counteraction of discrimination**

Section II of the Constitution of Ukraine is entitled 'Human and Citizen's Rights, Freedoms and Duties' and sets out the principles of anti-discrimination and guarantees the principle of equality in society, in particular:

- All people shall be free and equal in their dignity and rights. Human rights and freedoms shall be inalienable and inviolable (Article 21 of the Constitution of Ukraine);

- Citizens shall have equal constitutional rights and freedoms and shall be equal before the law. There shall be no privileges or restrictions based on race, skin colour, political, religious, and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics. Equality of the rights of women and men shall be ensured by providing women with opportunities equal to those of men in public, political and cultural activities, in obtaining education and in professional training, in work and remuneration for it; by taking special measures for the protection of work and health of women; by establishing pension privileges; by creating conditions that make it possible for women to combine work and motherhood; by adopting legal protection, material and moral support of motherhood and childhood, including the provision

of paid leave and other privileges to pregnant women and mothers (Article 24 of the Constitution of Ukraine);

- Citizens shall have the right to participate in the administration of state affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to the bodies of State power and local self-government. Citizens shall enjoy equal rights of access to the civil service and to the service in local self-government bodies (Article 38 of the Constitution of Ukraine);

- Everyone shall have the right to work, including a possibility to earn a living by labour that he freely chooses or to which he freely agrees. The State shall create conditions for citizens that will make it possible to fully realise their right to work, guarantee equal opportunities in the choice of profession and of types of labour activities, and implement programmes for vocational education, training, and retraining of personnel according to the needs of society (Article 43 of the Constitution of Ukraine) (Constitution of Ukraine, 1996).

The Special Law of Ukraine 'On Ensuring Equal Rights and Opportunities for Women and Men' is aimed at achieving parity between women and men in all spheres of social life by ensuring equal rights and opportunities for women and men, eliminating discrimination based on gender and applying special temporary measures aimed at eliminating the imbalance between the opportunities for women and men to exercise equal rights granted to them by the Constitution and laws of Ukraine (Law of Ukraine On Ensuring Equal Rights and Opportunities of Women and Men, 2005). Another special law in this field is the Law of Ukraine 'On the Principles of Prevention and Counteraction of Discrimination in Ukraine', which defines the organisational and legal framework for preventing and combating discrimination in order to ensure equal opportunities for the exercise of human and civil rights and freedoms (Law of Ukraine On the Principles of Preventing and Counteracting Discrimination in Ukraine, 2012).

Other administrative legislative enactments include those that define

- Specifics of prevention and counteraction of discrimination in certain areas of regulatory framework (for example, the Law of Ukraine 'On Education' (2017), 'On Employment of the Population' (2012), etc.);

- Legal status and operational tools for actors involved in preventing and combating discrimination based on gender identity (e.g., the Law of Ukraine 'On the National Police' (2015) etc.

An important part of administrative legislation is the Code of Administrative Offences,

which provides for administrative liability for committing gender-based violence and defines referral to a programme for a person who has committed domestic or gender-based violence as a measure of liability, in particular, in the case of domestic violence or gender-based violence, the court, when deciding on the imposition of a penalty for an administrative offence, has the right to simultaneously decide on the referral of the perpetrator of domestic violence or gender-based violence to a programme for such persons provided for by the Law of Ukraine 'On preventing and combating domestic violence' or the Law of Ukraine 'On ensuring equal rights and opportunities for women and men' (Code of Ukraine on Administrative Offenses, 1984).

### **3. By-laws regulating the implementation of prevention and counteraction of discrimination as part of administrative legislation**

By-laws are also an important component of administrative legislation to prevent and combat discrimination based on gender identity in Ukraine, for example, to create a system to ensure gender equality in all spheres of social life and to overcome discrimination: the Cabinet of Ministers of Ukraine adopted Resolution No. 930 of 9 October 2020 'Some issues of ensuring equal rights and opportunities for women and men' (Official Gazette of Ukraine, 2020, No. 84, p. 2697), which approved standard regulations on the responsible unit for ensuring equal rights and opportunities for women and men and on the advisor on ensuring equal rights and opportunities for women and men, preventing and combating gender-based violence; the Instruction on integration of gender approaches in drafting legal regulations (Order of the Ministry of Social Policy No. 86 of 7 February 2020) was approved, establishing general requirements for the application of gender approaches in drafting legal regulations to implement the provisions of the Law of Ukraine 'On ensuring equal rights and opportunities for women and men'; Methodological Recommendations for assessing the gender impact of sectoral reforms (Order of the Ministry of Social Policy No. 257 of 14 April 2020) were approved, setting out an algorithm for assessing the likely and/or existing impact of sectoral reforms on the situation of different groups of women and men, etc. (Order of the Cabinet of Ministers of Ukraine On approval of the State Strategy for ensuring equal rights and opportunities for women and men for the period until 2030, 2022).

The bylaws include strategic regulations, for example, the State Strategy for ensuring equal rights and opportunities for women and men for the period up to 2030, approved by the Cabinet of Ministers of Ukraine on 12 August 2022, No.

752, focuses on uniting society in understanding the values of human rights and freedoms, that are provided and protected based on the principles of equality and non-discrimination for all women and men, boys and girls, to consolidate the actions of central and local executive authorities and local self-government bodies, international organisations, social partners, public associations, other representatives of civil society, institutions, establishments and organisations of various sectors, the private sector, etc. to implement international and national commitments to ensure equal rights and opportunities for women and men for sustainable development of the state in all areas (Order of the Cabinet of Ministers of Ukraine On approval of the State Strategy for ensuring equal rights and opportunities for women and men for the period until 2030, 2022). Another instrument is the Concept of Communication in the Field of Gender Equality, approved by the Cabinet of Ministers of Ukraine on 16 September 2020, No. 1128-r, which aims to create a future in which every woman and man living in Ukraine enjoys equal rights and opportunities necessary for full participation in all spheres of public life, without discrimination, violence and exploitation (Resolution of the Cabinet of Ministers of Ukraine On Approval of the Concept of Communication in the Field of Gender Equality: approved by Resolution of the Cabinet of Ministers of Ukraine, 2020).

In addition, the Cabinet of Ministers of Ukraine approved the National Strategy for bridging the gender pay gap for the period up to 2030, dated 15 September 2023, No. 815-r, which was developed to ensure a systematic and steady reduction of the gender pay gap between women and men for work of equal value; as evidence of Ukraine's adherence to the principle of ensuring equal rights and opportunities for women and men in the field of remuneration, proclaimed as part of joining the Biarritz Partnership for Gender Equality and the International Coalition for Equal Pay (EPIC); to promote the implementation of the 2013 recommendations of the Council of the Organisation for Economic Co-operation and Development on ensuring gender equality in education, employment and entrepreneurship in terms of remuneration for women and men. The goal of the Strategy for bridging the gender pay gap until 2030 is to achieve a sustainable reduction of the gender pay gap by 2030 by creating favourable conditions and developing effective mechanisms to ensure progress in this field (Order of the Cabinet of Ministers of Ukraine On approval of the National Strategy for bridging the gender pay gap for the period until 2030, 2023).

With regard to the role of international regulatory framework, Ukrainian legislation provides that if an international agreement of Ukraine, consented to be bound by the Verkhovna Rada of Ukraine, establishes rules other than those provided for by the Law of Ukraine 'On ensuring equal rights and opportunities for women and men', the rules of the international agreement shall apply (Law of Ukraine On Ensuring Equal Rights and Opportunities of Women and Men, 2005). Over the past decades, Ukraine has made significant progress in ensuring equal rights and opportunities for women and men in all areas and has acceded to all major international treaties on gender equality and women's rights, including the Beijing Declaration, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, relevant International Labour Organisation conventions, and the Convention on the Rights of Persons with Disabilities. Ukraine is a party to key international human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms. In 2020-2021, Ukraine received official status as a member of international initiatives such as the Biarritz Partnership and the Coalition for the Advancement of Gender Equality, joined the International Coalition for Equal Pay (EPIC), and joined the Friends of Women, Peace and Security, demonstrating its commitment to implementing UN Security Council Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013), 2242 (2015), 2467 (2019) та 2493 (2019) (Order of the Cabinet of Ministers of Ukraine On approval of the State Strategy for ensuring equal rights and opportunities for women and men for the period until 2030, 2022). An important part of international regulatory framework is the provisions set out in International Labour Organisation Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, International Labour Organisation Convention No. 111 concerning Discrimination (Employment and Occupation), and International Labour Organisation Convention No. 156 concerning Equal Treatment and Equal Opportunities for Men and Women Workers: Workers with Family Responsibilities, the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, etc. (Order

of the Cabinet of Ministers of Ukraine On approval of the National Strategy for bridging the gender pay gap for the period until 2030, 2023).

#### 4. Conclusions

Therefore, the following conclusions can be drawn regarding the legal analysis of administrative legislation on prevention and counteraction of discrimination on the basis of gender identity in Ukraine:

- the system of administrative legislation on prevention and counteraction of discrimination based on gender identity in Ukraine consists of: - the Constitution of Ukraine; – laws of Ukraine that define the specifics of prevention and counteraction of discrimination, as well as the legal status and operational tools of actors involved in prevention and counteraction of discrimination on the basis of gender identity; - by-laws, among which strategic regulations are essential; - international standards for prevention and counteraction of discrimination in society;

- the administrative legislation of Ukraine is based on the fundamental principles of equality and inadmissibility of discrimination enshrined in the Constitution of Ukraine, with a combination of general legal guarantees of equality before the law with special measures to prevent and combat discrimination, including discrimination based on gender identity;

- Ukrainian legislation currently actively integrates gender equality issues into legal regulation, including mandatory mechanisms for gender impact assessment and ensuring equal opportunities for women and men in all areas, including education, employment or public administration, within the framework of administrative law;

- the particularity of administrative legislation of Ukraine is the existence of mechanisms for administrative liability for manifestations of violence or discrimination based on gender or gender identity, which provides for administrative penalties and measures of organisational and legal influence;

- implementation of the gender equality and anti-discrimination policy is largely ensured by by-laws which practically regulate the procedure for implementing gender approaches in public legal relations;

- the administrative legislation of Ukraine is supported by medium- or long-term state strategies aimed at reducing the gender gap, eliminating discriminatory barriers and raising public awareness of human rights;

- harmonisation with international standards in the field of human rights and gender equality is a separate area of development of administrative legislation of Ukraine, which indicates the state's desire to achieve high

standards of human rights protection, with the formation of a new concept of administrative law to regulate the prevention and combating of discrimination.

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**Анастасія Орел,**

*слухач аспірантури, Міжрегіональна Академія управління персоналом, вулиця Фрометівська, 2, Київ, Україна, індекс 03039, orelanastasiia@ukr.net*

**ORCID:** [orcid.org/0009-0008-1277-7241](https://orcid.org/0009-0008-1277-7241)

## АДМІНІСТРАТИВНЕ ЗАКОНОДАВСТВО ЩОДО ЗДІЙСНЕННЯ ЗАПОБІГАННЯ ТА ПРОТИДІЇ ДИСКРИМІНАЦІЇ ЗА ОЗНАКОЮ ГЕНДЕРНОЇ ІДЕНТИЧНОСТІ В УКРАЇНІ

**Анотація. Мета** статті полягає у тому, щоб здійснити сучасний формально-юридичний аналіз адміністративного законодавства щодо здійснення запобігання та протидії дискримінації за ознакою гендерної ідентичності в Україні. **Результати.** У статті здійснено юридичний аналіз адміністративного законодавства щодо здійснення запобігання та протидії дискримінації за ознакою гендерної ідентичності в Україні. Визначено, що система адміністративного законодавства щодо здійснення запобігання та протидії дискримінації за ознакою гендерної ідентичності в Україні складається із: – Конституції України; – законів України, які визначають особливості запобігання та протидії дискримінації, та правовий статус та оперативний інструментарій суб'єктів запобігання та протидії дискримінації за ознакою гендерної ідентичності; – підзаконного регулювання, серед яких вагомую роль відіграють акти стратегічного характеру; – міжнародних стандартів запобігання та протидії дискримінації в суспільстві. Розкрито, що адміністративне законодавство України базується на фундаментальних принципах рівності та неприпустимості дискримінації, закріплених у Консти-



туції України, з поєднанням загальних правових гарантій рівності перед законом із спеціальними заходами запобігання та протидії дискримінації, включаючи дискримінацію за ознакою гендерної ідентичності. Виявлено, що законодавство України нині активно інтегрує питання гендерної рівності в правове регулювання, серед яких у межах адміністративного права встановлено обов'язкові механізми оцінювання гендерного впливу та забезпечення рівних можливостей для жінок і чоловіків у всіх сферах, включаючи освіту, зайнятість або публічне управління. **Висновки.** Зазначено, що особливістю адміністративного законодавства України є наявність механізмів притягнення до адміністративної відповідальності за прояви насильства чи дискримінації за ознакою статі чи гендерної ідентичності, що передбачає адміністративні стягнення та заходи організаційно-правового впливу. Розкрито, що реалізація політики гендерної рівності та боротьби з дискримінацією значною мірою забезпечується підзаконними актами, якими практично врегульовується порядок впровадження гендерних підходів в суспільні правовідносини. Виявлено, що адміністративне законодавство України підтримується середньостроковими або довгостроковими державними стратегіями, спрямованими на зменшення гендерного розриву, усунення дискримінаційних бар'єрів та підвищення рівня обізнаності суспільства про права людини.

**Ключові слова:** адміністративна юрисдикція, адміністративне законодавство, адміністративне регулювання, адміністративні правовідносини, адміністративні процедури, боротьба, гендер, дискримінація, запобігання, ідентичність.

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