



EQUAL RIGHTS TRUST

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Report submitted to the 14th session of the Committee on the Rights of Persons with Disabilities:

Ukraine

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Statement of Interest

1. The Equal Rights Trust submits this alternative report to the Committee on the Rights of Persons with Disabilities (the Committee) as a parallel report to the initial report submitted by Ukraine for the Committee's consideration at its 14th session.
2. The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Established as an advocacy organisation, resource centre and think tank, it focuses on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.
3. The Trust has been actively involved in promoting improved protection from discrimination in Ukraine since 2012. Working in partnership with LGBT Human Rights Nash Mir Center (Nash Mir) we have trained, supported and consulted with civil society organisations from across the country, increasing their capacity to promote equality and combat discrimination. We have consistently advocated for improvements to equality laws in the country, and in 2013, we produced a detailed legal analysis of the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" which highlighted the gaps and weaknesses in this law and made recommendations for its amendment.
4. In the course of our work in Ukraine, we have undertaken extensive research on equality and non-discrimination in the country, in preparation for the publication of the first ever comprehensive report on discrimination and inequality in Ukraine. We have coordinated and conducted research through interviews, focus groups and roundtables with organisations working for those exposed to discrimination in Ukraine as well as with victims of discrimination themselves. In addition, we have conducted a detailed analysis of Ukraine's laws and policies on equality and non-discrimination, in order to assess the extent to which Ukraine has a legal and policy framework in place which is adequate to meet its obligations under international law. In August 2015, we will be publishing the findings of this research in a major report, *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine*. The findings of this research inform the present submission.
5. This submission focuses on the extent to which Ukraine has met its obligations to respect, protect and fulfil the rights of persons with disabilities to participate in society on an equal basis with others. In particular, the submission is concerned with Ukraine's performance under Articles 4, 9, 23, 24, 25, and 27 of the Convention on Rights of Persons with Disabilities (the Convention).

Article 4: General Obligations

6. Under Article 4(1) of the Convention, States Parties “undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability”. Further, under Article 4(a), States Parties undertake to “adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention”.
7. The post-independence 1996 **Constitution of Ukraine** approaches disability from the position of welfare and social assistance, rather than one in which persons with disabilities are rights-holders. As such, Article 24 of the Constitution of Ukraine, which provides for the rights to equality and non-discrimination, does not list “disability” as a protected characteristic. Instead, the needs of persons with disabilities are addressed through a specific reference in Article 46, which deals with social protection rights. It provides *inter alia*:

Citizens have the right to social protection that includes the right to provision in cases of complete, partial or temporary disability, the loss of the principal wage-earner, unemployment due to circumstances beyond their control and also in old age, and in other cases established by law.

This right is guaranteed by general mandatory state social insurance on account of the insurance payments of citizens, enterprises, institutions and organisations, and also from budgetary and other sources of social security; by the establishment of a network of state, communal and private institutions to care for persons incapable of work.

8. In 1991, Ukraine adopted the Law of Ukraine “**On the Fundamentals of Social Protection of Disabled Persons in Ukraine**”.¹ While containing some provisions related to discrimination, the Law as originally enacted was not anti-discrimination legislation *per se*. Indeed, as adopted, the Law contained only a single provision on discrimination (Article 2), stating that “[d]isability discrimination is prohibited and punishable by law”.
9. Article 2 sets out definitions of various terms used in the Law. “Disabled person” is defined in paragraph 1 as:

[A] person with a persistent disorder of body functions that can, when interacting with the environment, result in limitation of the person’s life activity, due to which the State must provide conditions for the person to exercise his/her rights on an equal basis with others and must secure his/her social protection.

This definition is not directly consistent with that provided in the Convention and the extent to which it complies with that under the Convention largely depends on interpretation. Nevertheless, our research has found that courts in Ukraine generally apply the Convention when interpreting national laws relating to people with disabilities.

¹ Закон України “Про основи соціальної захищеності інвалідів в Україні” (Відомості Верховної Ради УРСР, 1991, № 21, с. 252), as amended between 1994 and 2014.

10. As noted above, Article 2, paragraph 2 prohibits discrimination on the basis of disability. Paragraph 3 provides that “discrimination on the basis of disability” is to have the meaning in the CRPD *and* the Law of Ukraine “On Prevention and Combating Discrimination in Ukraine”. This has the potential to cause confusion as the two definitions are rather different. Paragraph 3 also provides that the terms “reasonable accommodation” and “universal design” are to have the same meanings as in the Convention.
11. Beyond these provisions, while it prohibits discrimination on the basis of disability, the Law is primarily a means of setting out various mechanisms by which the rights and interests of persons with disabilities are protected, rather than empowering individual persons with disabilities with an enforceable right to equality. The Law contains specific provisions which create obligations on the state in respect of *inter alia* accessibility, education, healthcare and employment. These provisions are discussed in the relevant sections of this submission, below.
12. In addition to the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine”, persons with disabilities enjoy protection under the Law of Ukraine “**On Principles of Prevention and Combating Discrimination in Ukraine**”,² which was adopted in 2012 and amended significantly in 2014. The Law, while imperfect, can be considered a comprehensive anti-discrimination law. The text of the law, as amended, is largely in line with international best practice: there are appropriate definitions of the different forms of discrimination; discrimination is prohibited on an extensive and open-ended list of protected characteristics; and the law has a broad material scope. However, there are also a number of weaknesses. These include a failure to require positive action measures where necessary to accelerate progress towards equality, a limited range of remedies and a failure to harmonise the law with other pieces of legislation and thus ensure that the Law is understandable and usable by lawyers and judges.

Article 9: Accessibility

13. Article 3(f) recognises that accessibility is a key principle of the Convention. Article 9 requires parties to the Convention to ensure that persons with disabilities have access “on an equal basis with others” to the physical environment, to transportation, to information and communications and to other facilities and services open or provided to the public.
14. Despite these obligations, one important manifestation of discrimination against persons with disabilities in Ukraine is a failure to ensure accessibility, particularly in respect of the built environment, transportation and access to information. While the Law of Ukraine “On Fundamentals of Social Protection of Disabled People in Ukraine” contains provisions requiring reasonable accommodation to be provided in access to buildings, infrastructure and the physical environment, such accommodation is not always so provided and thus persons with disabilities are often forced to bring complaints before any adjustment is made.
15. One example noted by the Ukrainian Parliament Commissioner for Human Rights is the case of Yevhen Bochkaryov, a person with a physical disability resident in Kyiv. Mr Bochkaryov lived on the eleventh floor of a block of flats, but the building initially had no

² Закон України “Про засади запобігання та протидії дискримінації в Україні” (Відомості Верховної Ради, 2013, № 32, с. 412), as amended by the Закон України “Про внесення змін до деяких законодавчих актів України щодо запобігання та протидії дискримінації” (Відомості Верховної Ради, 2014, № 27, с. 915).

ramp allowing him to enter it without assistance. As such, he was often unable to leave the building to go to work or to visit his doctor. It was not until he complained to the Parliament Commissioner for Human Rights that this situation was remedied. The Commissioner contacted the Kyiv city authorities to ensure that a ramp was built.³

Access to Infrastructure

16. The Law of Ukraine “On Fundamentals of Social Protection of Disabled People in Ukraine” contains provisions on the need to adapt infrastructure to meet the needs of persons with disabilities. Moreover, in June 2009, the Cabinet of Ministers approved an Action Plan entitled “Barrier Free Ukraine”.⁴ The Action Plan entails a gradual transition towards adapting public transport, reviewing and adopting relevant standards for buildings and streets, and making other modifications such as special signage, pedestrian crossings with lower kerbs, audible traffic signals and fencing. It also requires specialised training for architects and others involved in building to provide them with skills and knowledge on universal design, the creation of spaces free from barriers, and the needs of persons with disabilities. These requirements were further elaborated through the Law of Ukraine “On Architectural Activity”,⁵ and a number other legal and policy reforms.
17. However, the absence of effective enforcement mechanisms in the legislation on accessibility makes its implementation difficult. For example, the simplified and deregulated process of obtaining permission for buildings whose complexity is categorised as I to III (98% of all constructions in Ukraine) means that the designers and developers are not required to carry out any expert examination of designs and completed structures and that there is no means of supervising buildings’ constructions and reconstructions.⁶ In addition, there are no legislative provisions which provide for non-governmental organisations representing persons with disabilities to have any involvement in the creation of barrier-free spaces.⁷ Furthermore, as there is no clear responsibility for meeting the legislative requirements, and no clarity as to who can enforce the Law or inspect construction, ensuring compliance with the requirements is almost impossible.
18. A 2013 study by the Justice without Barriers campaign into accessibility of courts for persons with disabilities⁸ illustrates the problems faced by persons with disabilities in

³ Перший український Омбудсман, “Інвалід-спинальник Євген Бочкарьов: “Тільки благодаря вмешательству Уполномоченного по правам человека возле моего дома построили пандус!””, *first-ombudsman.org.ua*, 30 January 2012.

⁴ Кабінет Міністрів України, Постанова № 784, 29 July 2009, “Про затвердження плану заходів щодо створення безперешкодного життєвого середовища для осіб з обмеженими фізичними можливостями та інших маломобільних груп населення на 2009-2015 роки ‘Безбар’ерна Україна”.

⁵ Закон України “Про архітектурну діяльність (Відомості Верховної Ради України, 1999, № 31, с. 246), as amended between 2004 and 2013.

⁶ Expert Council of Public Organizations, *The “Lost” Rights: An alternative report by public organizations on compliance with the UN Convention on the Rights of Persons with Disabilities*, 2012, Para 67.

⁷ *Ibid.*

⁸ Правозахисний центр “Поступ”, *Українські суди недоступні для маломобільних груп населення – оприлюднені результати кампанії “Правосуддя без бар’єрів”*, available at: <http://postup.lg.ua/news/ukrayinski-sudi-nedostupni-dlya-malomobilnih-grup-naselennya-oprilyudneni-rezultati-kampaniyi>.

accessing public buildings. An inspection of 72 courts in 16 oblasts found that only 29 had ramps, of which only 12 met the standards in the State Buildings Codes; 46 had metal detectors and turnstiles making it difficult for persons in wheelchairs to enter; 69 court buildings had more than one level but 65 of these had no lifts; and doors were often too small and corridors too narrow for people in wheelchairs.⁹ In Krasnoarmiisk, the issue of accessibility of the City District Court has been under consideration since 2008. In that year, during a session of the committee responsible for ensuring accessibility of persons with disabilities and with limited mobility to the city's infrastructure, it was decided that the City District Court would be equipped with a ramp and rails by June 2009. However, as of May 2015, no such modifications had been made.

19. A number of persons with disabilities told the Equal Rights Trust of the problems they faced in accessing facilities and services. For example, A., a person with cerebral palsy from Lviv, told our researchers that:

There are ramps in the pharmacy on Uhorska Street [in Lviv]; but a pharmacy on Mazepy Street has no ramps; in grocery shops, the stairs are often damaged. Once I had huge problems trying to enter a shop with damaged stairs. The owner came in with me. I said, "Excuse me, I would like to know why the stairs are damaged?" The owner's answer was, "Come back when you get well".¹⁰

20. Another person, Mazhena, who has a visual impairment, told us:

When I am in a shop, I am asked where my aide is and why I walk along the aisles alone. I ask for somebody to help me with my shopping. I tell them that it is common everywhere like this, and they answer they have no staff able to do this. Nowhere do staff help me, even when there are many workers. I go shopping in the lunchtime, trying to choose a time when there are fewer people in the shop. But it is not everywhere that it is so. (...) We submitted an appeal, but there are many appeals there and no one reads them. There are other difficulties in the supermarkets: weighing fruits without asking for help, reading the ingredients of yogurt, buying new products for those who cannot see.¹¹

21. One particularly serious problem arises when persons with disabilities are unable to access healthcare facilities. In 2013, for example, then Prime Minister Mykola Azarov expressed the need to amend legislation to ensure that persons with disabilities were able to access pharmacies and other healthcare facilities.¹² However, despite this and other government declarations and policies, access to medical facilities remains restricted. Another person interviewed for our report stated that:

Near to our place in Simferopol, there is a three storey building (at 61 Kechkemetska Street) with a private medical establishment containing eye, dental and cosmetic clinics. The building was constructed and

⁹ *Ibid.*

¹⁰ Equal Rights Trust interview with an anonymous woman, Lviv, 20 March 2014.

¹¹ Equal Rights Trust interview with Mazhena, Lviv, 20 March 2014.

¹² Урядовий портал, Микола Азаров доручив змінити умови ліцензування аптек і медичних закладів під потреби інвалідів, 12 January 2013,

opened in 2010 in violation of Ukrainian law, without ensuring access for persons with disabilities and others with reduced mobility. My wife and I both have disabilities and use wheelchairs. I need to receive the services from these clinics but cannot access the building, as it is completely inaccessible for persons with wheelchairs. The facility is the closest one to where I live, and so easiest to get to. There are public dental clinics, but these are not accessible either as they were built many years ago before the relevant Building Codes. In addition, these clinics are far from where I live and it's difficult to access them using public transport.¹³

22. In addition to difficulties in access to infrastructure, there are also problems concerning escorting persons with disabilities in hospitals. In the city of Luhansk, for example, persons with visual impairments are treated at Polyclinic 12 in Artemivskiy district. A ramp was built to ensure access for persons with difficulties in mobility, but no reasonable accommodation had been made for persons with visual impairments such as signals for finding entrances, coloured staircases, highlighted numbers and signs. Treatments could not be provided outside of the hospital as the equipment could not be transported to the patient's home. Instead, the hospital provided an escort for persons with visual impairments. However, in some cases, these escorts had no training on the methods and techniques of how to provide such assistance. During the reconstruction of the building, the requirements of the State Building Code should have been considered, however they were not: funds were allocated to install a ramp, but no equivalent funding for ensuring accessibility for persons with visual impairments was made available, despite the fact that it was less expensive.¹⁴
23. In some instances, people try to bring complaints about inaccessible infrastructure, with little success. Oleksandr Voloshynskiy, a member of the Green Cross Society, an NGO which implements programmes to enhance the employment of persons with disabilities, told us:

Numerous appeals are submitted. Yaroslav Hrybalsk+yi and Lyuba Kukurudza submitted an appeal against restaurant Kumpel in Lviv, on Chornovola Avenue. The restaurant tried to ensure "accessibility", with two metal rails installed at an awkward angle. They addressed the State Architectural and Construction Inspection in Autumn 2013 and the owner was threatened with a fine; he asked us to withdraw the appeal and signed a letter of commitment that he would remove the rails and build a ramp as soon as the weather allowed. As of April 2014, the ramp has not been built; in any case, the State Architectural and Construction Inspection has been dissolved.¹⁵

Access to Transportation

24. There are significant problems with the accessibility of public transport, which is often not adjusted to ensure accessibility for persons with disabilities. Trains, for example,

¹³ Equal Rights Trust interview with an anonymous man, Simferopol, 11 March 2014.

¹⁴ Equal Rights Trust interview with Dmytro Mazurak, 1 February 2014. Following the annexation of Crimea by the Russian Federation in March 2014, the situation may have changed significantly.

¹⁵ Equal Rights Trust interview with Oleksandr Voloshynskiy, Lviv, 20 March 2014.

often do not contain toilets which are accessible for persons with certain disabilities, making them unusable for anything more than short journeys.

25. Persons with disabilities can also face other obstacles when using transportation, such as difficulties in purchasing train tickets. Persons with disabilities can also face other obstacles when using transportation, such as difficulties in purchasing train tickets. Andrii Stehnytskyi, for example, has a visual impairment, categorised as disabled in group I, and is therefore entitled to a discount in the price of train tickets. On 11 January 2013, he initiated a case against the State Railways Administration of Ukraine, Ukrzaliznytsia, as there was no possibility to purchase tickets with the discount online, using Ukrzaliznytsia's website. In addition, the website itself had not been adjusted to accommodate the needs of persons with visual impairments. In particular, the website used colour coding for vacant seats which the software for persons with visual impairments was not able to process. The Lviv oblast Court of Appeal ordered Ukrzaliznytsia and its Information Centre to remove the defects on its website to ensure that persons with visual impairments are able to access the website fully and to ensure that persons with disabilities could purchase discounted tickets.¹⁶

Access to Information

26. Persons with visual impairments also face difficulties in accessing information. There are an estimated 70,000 persons with visual impairments in Ukraine.¹⁷ During Equal Rights Trust research in Lutsk, persons with such impairments raised a number of concerns over the use of paper documents in local government institutions and the near impossibility of electronic documents and electronic signatures being made available for persons with visual impairments.¹⁸ Persons with visual impairments face problems accessing information in almost every area of life; the state either ignores obligations to provide reasonable accommodation or has no funds to make necessary adjustments.
27. In 2010, a case was initiated by a man with a hearing impairment concerning the failure of the government to introduce relevant secondary legislation on subtitling and translating into sign language television programmes and films. The Court held that the Cabinet of Ministers had not fulfilled its legal duty and that the failure to adopt an order amounted to discrimination and the violation of a number of articles of the Convention.¹⁹ However, the government has still not implemented the judgment and only a small proportion of television programmes, films and videos are available with subtitles or sign language.

Article 23: Home and Family Life

28. Under Article 23 of the Convention, Ukraine has an obligation to "take effective and appropriate measures" to eliminate discrimination against persons with disabilities "in all matters relating to marriage, family, parenthood and relationships". Article 23(2) requires that states ensure the rights and responsibilities of persons with disabilities "with regard

¹⁶ Facts taken from Рішення Апеляційного суду Львівської області, Справа № 461/431/13, 2 October 2013. See also Тимошук, О., "Боротьба з дискримінацією інвалідів: судові перемоги", *Дзеркало тижня*, No. 6, 21 February 2014.

¹⁷ Riabokon, L., "People of the White Cane", *Day Kiev*, 16 November 2004.

¹⁸ Equal Rights Trust interview with Bohdan Moisa, NGO of disabled persons with visual impairments "Generation of Successful Action", Lutsk, 19 January 2014.

¹⁹ Київський Апеляційний Адміністративний Суд, Справа № 2а-4637/10/2670, 12 August 2010.

to guardianship, wardship, trusteeship, adoption of children or similar institutions” and that they provide “appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities”.

29. In Ukraine, however, our research identified examples of situations where insufficient consideration is given to the rights of persons with disabilities to raise their children when decisions are made as to whether a child should be raised by its parents or be put into care or up for adoption. For example, in the case of the Shugaeva family, the family argued that the institution in which the couple lived was too quick to take their child away and failed to give sufficient weight to the parents’ rights. Although they brought a claim against the institution, the family was unsuccessful and so plan to appeal the European Court of Human Rights.²⁰

Article 24: Education

30. Under Article 24 of the Convention, Ukraine is obliged to guarantee “the right of persons with disabilities to education (...) without discrimination and on the basis of equal opportunity”.
31. The Laws of Ukraine “On the Fundamentals of Social Protection of the Disabled” and “On the Rehabilitation of the Disabled in Ukraine” both require educational establishments to ensure that suitable conditions are available for those students whose disabilities require particular accommodation.
32. However, these provisions have not been effectively implemented: our research found that there are insufficient numbers of educational institutions able to meet the needs of students with disabilities, few staff trained to deal with students with particular disabilities requiring specialised treatment and a lack of accessible educational materials. For example, materials printed in Braille are only available in the libraries of the Ukrainian Society for the Blind, a non-governmental organisation receiving no state funding; no public libraries contain books in Braille.
33. Some secondary schools are able to provide education for students with certain disabilities through appropriate adaptation. However, this is not always the case in higher education where universities and colleges are often unable or unwilling to provide appropriate educational adaptations. Yulia Sukhova, a student with visual difficulties, spoke to us about her experience; she stated that:

I graduated from the Lviv Pedagogical College, specialising in social pedagogy. I wanted to take a Master’s course, however [in the educational establishments] in Lviv, there are no social pedagogy courses, only social work (...) I went to Drohobych, I had done my studies well, the Ukrainian Society for the Blind supported me, I had attended seminars and had work experience outside the College. I passed the examinations and had the best results amongst all the entrants, but when I came to finalise the documents, I was told that I could not be admitted as I was blind. I asked why. They said, “you have already graduated [from the College] and that’s all”. I said that I needed higher education. They said, “For what? You are disabled. Have your pension. Stay at home. Don’t make difficulties for the

²⁰ Case study based on media reports and an interview with the family’s lawyer, Richard Sidney, in December 2013 by Dmytro Zharyi. See also Керменчикли, А. and Ковалева, И., “Скандал в Крыму: молодой семье инвалидов не отдадут здорового ребенка”, *Segdonya*, 3 August 2013.

lecturers, for us and for your parents.” This was in 2010. For a long time, they refused to accept my documents. I asked for a written refusal. They began to shout and became so rude that my dad and mum had tears in their eyes and were hysterical. (...) I ended up going to “International Ukraine” in Kyiv where they had an inclusive programme. Many people have problems in Drohobych.²¹

34. Despite a declared commitment to inclusive education, the parents of children with disabilities face many difficulties in practice. One of the participants of a focus group convened as part of our research was the mother of a 5 year old girl with a visual impairment from Balakleya, Kharkiv oblast, who was unable to find a suitable kindergarten for her.²² The administration of the local kindergarten told her that it was not able to create the conditions needed for her child.
35. The absence of inclusive education limits the options of parents: parents often have to send their children to special boarding schools instead. Indeed, there are around 50 specialised boarding schools, run by the Ministry of Social Policy, catering for around 7,000 children. In many of them (for those children with particular severe illnesses or disabilities), there is almost no education whatsoever due to an absence of special programmes, textbooks and teachers.²³

Article 25: Health

36. Under Article 25 of the Convention, Ukraine has an obligation to guarantee persons with disabilities the right “to the enjoyment of the highest attainable standard of health without discrimination”. This requires states parties to “provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons”.
37. The Law of Ukraine “On the Fundamentals of the Social Protection of Disabled Persons in Ukraine” governs the provision of medicines and rehabilitation to persons with disabilities. The details on the provision of medicines and means of rehabilitation programmes for persons with disabilities are set out in individual programmes.
38. However, persons with disabilities face difficulties in accessing healthcare, particularly in accessing medicines and rehabilitation. In particular, there are often delays in the development and implementation of rehabilitation programmes, which have recently increased as a result of budget cuts.²⁴ For example, Decree of the President of Ukraine No. 113/2009, which states that persons with visual impairments should receive free sound producing thermometers, blood glucose meters or blood pressure monitors, has not been

²¹ Equal Rights Trust interview with Yuliya Sukhova, Lviv, 20 March 2014.

²² Focus group in Kharkiv on 23 March 2014 hosted by the Kharkiv Foundation “Citizen Alternative” together with the Kharkiv Organisation of Blind Lawyers.

²³ Національна Асамблея інвалідів України, *Дотримання прав дітей з інвалідністю в будинках-інтернатах*, 2010, р. 36. See also Chapter 4.

²⁴ INVAK.INFO, “У Чернігові обговорили проблеми щодо виконання індивідуальних програм реабілітації інвалідів”, *invak.info*, 27 March 2014.

implemented, due to funding cuts:²⁵ sound-producing can be three to four times more expensive than regular equipment.

39. In addition, obligations to provide individual rehabilitation programmes for persons with disabilities have not yet been implemented following the suspension of relevant budget funding, despite funds being allocated for this specific purpose.²⁶

Article 27: Employment

40. Under Article 27 of the Convention, Ukraine has an obligation to “recognize the right of persons with disabilities to work, on an equal basis with others”, including “the opportunity to gain a living by work freely chosen or accepted in a labour market” and a “work environment that is open, inclusive and accessible to persons with disabilities”.
41. The Ministry of Social Policy has stated that employment for persons with disabilities is a priority and, indeed, Article 18 of the Law of Ukraine “On the Fundamentals of the Social Protection of Disabled Persons in Ukraine” requires employers to provide jobs and to create conditions for persons with disabilities to participate in work. Article 26 of the same Law, as recently amended, requires employers to ensure that the work environment is accessible for persons with disabilities. These provisions appear to be largely consistent with the requirements of the Convention. However, the provisions are not well enforced: failure to comply with the requirements is punished only by small fines, and many businesses simply choose to ignore the requirements, paying a fine rather than hiring persons with disabilities.²⁷
42. One way in which the government aims to increase the proportion of persons with disability who are in employment is through application of a quota. Article 19, paragraph 1 of the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine” requires employers to ensure that at least 4% of employees are persons with disabilities. Failure to meet the quota results in a penalty of an administrative fine which goes to support the Social Fund for Persons with Disabilities. NGOs representing persons with disabilities have noted, however, that the quota is not always observed,²⁸ and, in 2014, the Committee on Economic, Social and Cultural Rights stated that this had “a limited impact owing to the lack of compliance by employers”.²⁹
43. Data collected by the Equal Rights Trust and Nash Mir indicates that quotas are yet to have a significant impact on the employment rate of persons with disabilities. As of 1 January 2015, a total of 742,591 persons with disabilities were employed.³⁰ Assuming that

²⁵ Президента України, Указ “Про першочергові заходи щодо поліпшення становища осіб з вадами зору”, 2 March 2009, № 113/2009.

²⁶ Подробности, “В Украине прекратили финансировать реабилитацию инвалидов”, *podrobnosti.ua*, 13 April 2013.

²⁷ Phillips, S. “Civil Society and Disability Rights in Post-Soviet Ukraine: NGOs and Prospects for Change”, *Indiana Journal of Global Legal Studies*, Volume 16, Issue 1, 2009, pp. 275-291, p. 281.

²⁸ See above, note 6, Para 131.

²⁹ United Nations Committee on Economic, Social and Cultural Rights, *Concluding Observations: Ukraine*, UN Doc. E/C.12/UKR/CO/6, 13 June 2014, Para 12.

³⁰ Information obtained from the Ministry of Social Policy of Ukraine, March 2015. Letter held on file by Nash Mir.

the number of persons with disabilities has remained largely constant since 1 January, the employment rate of persons with disabilities in each of the three categories of disabilities used by the government can be calculated:

	Number of Persons	Number of Persons Employed	Proportion of Persons Employed
Group I	291,295	20,874	7.2%
Group II	1,042,340	193,494	18.6%
Group III	1,329,811	528,223	39.7%
Total	2,663,446	742,591	27.9%

44. As can be seen, the proportion of persons with disabilities in employment is very low. For those persons with the most significant disabilities (group I), the proportion is just 7.2%. The total number of persons with disabilities in employment has increased, however, in recent years: as the state party has noted in its report to the Committee, in 2012, the total number of persons with disabilities in employment was 662,000.³¹
45. Our research found that persons with disabilities face numerous disadvantages in employment, including prejudice, discrimination in the hiring process, or a refusal to provide reasonable accommodation. Refusal to hire persons with disabilities is particularly common, with employers often giving false reasons for their decision (such as that the applicant does not have appropriate qualifications, or that there are no vacancies). Employers also often fail to provide reasonable accommodation when faced with an applicant with a disability.
46. In an interview for our report, Oleksandr Voloshynskyi, a member of the Green Cross Society which implements programmes to increase the number of persons with disabilities in employment shared an experience he had with the director of a poultry farm in Pustomyty Lviv oblast:

I spoke to the director several times about hiring persons with disabilities to put the laid eggs into trays. He said, 'In my farm, the disabled will never work whilst I'm director.' He pays the fines and doesn't hire persons with disabilities.³²

47. It is also common for job vacancies submitted to Employment Centres to state that they are suitable for persons with disabilities, when in fact it would be extremely difficult for many persons with disabilities to perform the job.³³

Conclusions and Recommendations

48. Ukraine has a relatively robust domestic legal framework in place to prohibit discrimination on the basis of disability. However, the legacy of the Soviet era, during which the treatment of persons with disabilities was based on a welfare rather than human rights framework, continues to influence the approach taken towards disability. While recent reforms have brought the law on disability into line with current best practice, the state displays a tendency to treat persons with disability as objects of social

³¹ Convention on the Rights of Persons with Disabilities, *Initial reports of States parties due in 2012: Ukraine*, UN Doc. CRPD/C/UKR/1, 12 November 2014, Para 279.

³² See above, note 15,

³³ See above, note 18.

concern and welfare, rather than as autonomous rights-holders. Accessibility to public spaces and buildings remains a problem, despite the existence of clear legal obligations to ensure access and modify buildings and infrastructure. The government itself acknowledges that education remains inaccessible for many persons with disabilities. Persons with disabilities experience discrimination and disadvantage in access to healthcare. Persons with disabilities are unable to participate in employment on an equal basis with others, and rates of unemployment are very high, both because of failures to make reasonable accommodation and because of direct discrimination.

49. On the basis of our research and consultations with persons with disabilities in Ukraine, the Equal Rights Trust calls upon the Committee to make the following recommendations to the state party:

- Ukraine should ensure the full and effective implementation of the Law of Ukraine “On the Fundamentals of Social Protection of Disabled Persons in Ukraine”, in particular, by:
 - Publishing guidance to clarify that the definition of “disability” and “discrimination on the basis of disability provided in the Law are interpreted consistently with the definitions provided in the Convention.
 - Publishing guidance on the interpretation of the Law more broadly, in the form of “Explanatory Notes” or otherwise, accessible for judges, lawyers, businesses, non-governmental organisations and victims (or potential victims) of discrimination
 - Harmonising other pieces of legislation, including the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine” and other laws, to ensure that the Law is properly enforceable and that appropriate remedies are available;
 - Providing specialised training to public authorities on their obligations in respect of discrimination, accessibility and reasonable accommodation under the Law; and
 - Providing specialised training for judges and lawyers on the Law.
- Ukraine should ensure the full and effective implementation of the Law of Ukraine “On Principles of Prevention and Combating Discrimination in Ukraine”, as amended in 2014, in particular, by:
 - Harmonising other pieces of legislation, including the Civil Code and the Administrative Code, to ensure that the Law is properly enforceable and that appropriate remedies are available;
 - Publishing guidance on the interpretation of the Law in the form of “Explanatory Notes” or otherwise, accessible for judges, lawyers, businesses, non-governmental organisations and victims (or potential victims) of discrimination; and
 - Providing specialised training for judges and lawyers on the Law.
- Ukraine should review all relevant national legislation with a view to completing the transition from a medical model of disability to a social model, with a focus on eliminating barriers faced by persons with disabilities.
- Ukraine should more rigorously enforce legal provisions requiring reasonable accommodation to be provided for persons with disabilities, particularly in access to infrastructure, transportation and to information.
- Ukraine should review its framework of laws, policies and practices on questions of adoption and guardianship in order to eliminate discrimination against persons with disabilities “in all matters relating to marriage, family, parenthood and relationships”.

- Ukraine should urgently reform all educational institutions, including higher education institutions and boarding schools, to ensure that students with disabilities are able to participate on an equal basis with others.
- Ukraine should take greater efforts to enforce legal provisions and policies which prohibit discrimination on the basis of disability – including denial of reasonable accommodation – in healthcare.
- Ukraine should take greater efforts to enforce legal provisions and policies supporting persons with disabilities in obtaining employment, including the requirement that employers take measures of reasonable accommodation for employees with disabilities.