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**Ai rifugiati delle zone di conflitto negato il diritto voto alle elezioni locali**
**(CEDU, sez. V, sent. 21 ottobre 2021, ric. nn. 24919/16 e 28658/16)**

Con la decisione resa al caso in esame, la Corte EDU ha definito i ricorsi di quattro cittadini ucraini, i quali avevano lamentato la violazione dell'art. 1 del Protocollo n. 12 della Convenzione, per non essere stati autorizzati a partecipare alle elezioni locali del luogo ove erano stati registrati come sfollati interni. In buona sostanza, essi denunciavano la violazione del loro diritto di voto e, per tale ragione, avevano presentato ricorso amministrativo innanzi ai tribunali nazionali non ottenendo, però, la reintegrazione nelle liste elettorali. Tale esclusione veniva confermata anche dalla Corte d'appello, secondo la quale i ricorrenti non appartenevano alle comunità territoriali di riferimento e, quindi, non avevano il diritto di partecipare alle votazioni locali. Alla luce di siffatto quadro, la Corte EDU ha scrutinato la questione, ribadendo dapprima alcuni principi generali in materia di divieto di discriminazione. A tal proposito, essa ha ritenuto che l'articolo 1 del Protocollo n. 12 contempla un divieto generale di discriminazione e, soffermandosi sul contenuto e l'estensione del divieto stesso, ha precisato che una questione può definirsi discriminatoria allorché si applichi un trattamento differenziato per situazioni analoghe o, per lo più, simili. Inoltre, il diritto a non essere discriminato è violato anche quando gli Stati, senza una giustificazione obiettiva e ragionevole, non trattano diversamente situazioni differenti. In applicazione di tale principio, i giudici di Strasburgo hanno verificato se nel caso di specie si fosse realizzata una situazione discriminatoria ovvero se i ricorrenti si trovassero in una condizione significativamente diversa tale da richiedere un trattamento che li mettesse – di fatto – su un piano di parità con gli altri cittadini ucraini sotto il profilo del godimento del loro diritto di voto. Lo status di "sfollati interni" collocava i ricorrenti in una situazione diversa rispetto a quella dei cittadini con residenza elettorale; tale situazione avrebbe, pertanto, richiesto misure volte a garantire l'eguale diritto di voto. In questo senso, la Corte ha ribadito che esistono numerosi modi di organizzare e gestire i sistemi elettorali e una ricchezza di differenze nella diversità culturale e nel pensiero politico all'interno dell'Europa che spetta a ciascuno Stato contraente plasmare nella propria visione democratica. Posta tale precisazione, la decisione ha fatto leva anche sulla circostanza per cui i ricorrenti, pur contribuenti e fruitori di servizi locali di quella comunità territoriale, non avevano avuto riconosciuto il diritto di partecipare agli affari locali. Mentre nessun rilievo, ai fini del ragionamento conclusivo della Corte, ha avuto la constatazione dell'intervenuta modifica della disciplina interna, la quale di fatto ha reso possibile agli sfollati interni di essere integrati nell'elenco delle liste elettorali per le votazioni locali. E, per conseguenza, la Corte non ha potuto non rilevare come, all'epoca dei fatti, le autorità nazionali, negando la partecipazione dei ricorrenti alle votazioni locali, avessero violato l'art. 1 del Protocollo n. 12 della Convenzione e, con esso, il divieto generale di discriminazione.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

**CASE OF XXX v. UKRAINE**

*(Applications nos. 24919/16 and 28658/16)*

JUDGMENT

STRASBOURG

21 October 2021

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of XXX v. Ukraine,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*
Having regard to:
the applications (nos. 24919/16 and 28658/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Ukrainian nationals, Ms XXX, Ms XXX, Ms XXX and Ms XXX ("the applicants"), on 23 April 2016 (the first three applicants) and 14 May 2016 (Ms XXX), respectively;
the decision to give notice to the Ukrainian Government ("the Government") of the applications;
the parties' observations;
Having deliberated in private on 28 September 2021,
Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. The applicants complained under Article 1 of Protocol No. 12 to the Convention that they had not been allowed to participate in local elections at the place of their actual residence, in which they were registered as internally displaced persons (IDPs).

**THE FACTS**

2. Details about the applicants are indicated in the appended table. They live in XXX. Ms XXX, who was granted legal aid, was represented by Ms V. P. Lebid and Mr M. O. Tarakhkalo, lawyers from the Ukrainian Helsinki Human Rights Union, XXX. The other three applicants were represented by Mr S.A. Zayets, a lawyer from the Regional Centre for Human Rights, XXX, and Mr. J. Evans and Mr K. Levine, lawyers from the European Human Rights Advocacy Centre, London.
3. The Government were represented by their Agent, Mr I. Lishchyna, from the Ministry of Justice.
4. The facts of the case, as submitted by the parties, may be summarised as follows.
5. The applicants had lived respectively in Crimea and Donetsk and had had their registered places of residence there. After Crimea came under *de facto* Russian jurisdiction and the conflict in Eastern Ukraine started (hereinafter - events of 2014), all four applicants moved to XXX and registered there as IDPs on various dates in 2014 and 2015 (see the appended table for individual details) and were issued with IDP certificates. All of them maintained that their respective registered places of residence continued to be located in Crimea and Donetsk, as was indicated in their "internal passports" (identity documents for use in Ukraine – hereafter "passports"), while their IDP certificates indicated that the place of their actual residence was in fact XXX.
6. They all lodged applications to be included in the lists of voters who would participate in local elections in XXX scheduled to take place in October-November 2015, but their applications were dismissed on the grounds that their respective registered places of residence were not in XXX but elsewhere.
7. On 25 October 2015 one of the applicants, Ms XXX, lodged a complaint with the Central Electoral Commission. She alleged, *inter alia*, that her right to vote had been violated, given the fact that, because she was an IDP, she had not been allowed to participate in local elections.
8. The Central Electoral Commission replied that under section 3 of the Local Election Act, a person's place of residence for the purposes of voting in local elections was to be determined according to the registered place of residence, as indicated in the person's passport. It furthermore noted that elections on the territories that were outside the Government's control could be conducted only after the regaining of such control and the restoration of constitutional order on those territories; as soon as Parliament decided to conduct elections there, Ms XXX would be able to realise her right to vote in local elections.
9. All four applicants lodged administrative claims with their respective local courts in XXX seeking to oblige the respective electoral commissions to include them in the voters' lists for the local elections. On various dates the first-instance courts dismissed the applicants' claims, and those decisions were upheld on appeal by the XXX City Court of Appeal (for all relevant dates and names of the relevant institutions see the appended table).
10. All the applicants in their administrative claims submitted that they had been forced to move to XXX from their respective registered places of residence because of the events of 2014. In XXX they

were registered as IDPs, and on their IDP certificates their places of actual residence were indicated as being located in XXX. The applicants noted that they had a right to vote in the upcoming elections as they met all the criteria set forth in Article 70 of the Constitution. They also considered that since they resided in XXX (as confirmed by their IDP certificates) they "belonged" to the respective territorial communities there. They pointed to the provisions of the Ensuring the Rights and Freedoms of Internally Displaced Persons Act, which guaranteed them the right to participate in free elections – including local elections (see paragraph 24 below).

11. The first-instance courts, with reference to the domestic legislation described below, reiterated that the right to vote in local elections in Ukraine was conferred on citizens of Ukraine who "belonged" to their respective local communities and who resided within their respective voting constituencies. A person's residence within his local constituency and "belonging" (*належність*) to his respective community was confirmed by his registered place of residence, as indicated in his passport. The courts noted that everyone enjoyed the right to freedom of movement and of choice of residence but was required by law to register at any new place of residence, with that new information to be recorded in one's passport. As to IDPs, their temporary place of residence was indicated in their respective IDP certificates, but without that residence having to be registered in their passports. Under the Local Elections Act (see relevant provisions in paragraphs 14 and 15 below), persons who were not in the constituency of their electoral address on the day of elections could not participate in local elections. The applicants had their registered places of residence as being, respectively, in Crimea and Donetsk and had their electoral addresses there. Therefore, they could not participate in local elections in XXX. Their administrative claims were accordingly dismissed.

12. The appellate court reiterated the reasoning of the first-instance courts and noted that whether or not a citizen "belonged" to a particular territorial community (*територіальна громада*) and whether his residence was within that community was determined by his registered place of residence. The appellate court furthermore noted that a person's place of residence, as indicated in his passport, had a key legal meaning for the purposes of deciding disputes regarding whether a person could be included in a list of voters, since a voter's registered place of residence defined that person's election address. The court concluded that the applicants did not "belong" to their respective territorial communities in XXX as they did not have their registered places of residence there, and that they were therefore not entitled to vote in those communities' local elections. Decisions of the court of appeal were final and not subject to any further appeal.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine, 1996

13. Under Article 70 the right to vote is conferred on all citizens of Ukraine who have attained the age of eighteen, with the exception of those who have been declared legally incompetent by a court.

B. Local Elections Act, 2015 (in force until 1 January 2020)

14. Section 3 of the Act provided that whether a citizen "belongs" to a particular territorial community and whether that citizen had his or her residence within that community was determined by whether or not he or she had his or her registered place of residence there. Under

the same Article, the identity of a voter and his or her citizenship and registered place of residence were confirmed by information in his or her national passport.

15. Paragraph 3 of Section 30 of the Act provided insofar as relevant as follows:

"3. A voter who is outside the settlement in which he or she resides on the day of the election shall not participate in the local elections...

The provisions of paragraph 3 of Section 7 of the On the State Register of Voters Act do not apply in local elections."

C. State Register of Voters Act, 2007

16. Under paragraph 3 of section 7 the place of voting of a voter can be temporarily changed without a change being made to his or her electoral address.

17. Under paragraph 2 of section 8 of the Act the electoral address of a voter is determined by his registered place of residence and the address of the voter's home, in accordance with the Freedom of Movement and Free Choice of Residence in Ukraine Act.

18. With adoption of the Electoral Code in 2019 (see paragraph 28 below) section 7 of the Act was supplemented by a new paragraph 4, similar to that which was previously contained in the Local Elections Act (see paragraph 15 above) which stipulates that a temporary change of the place of voting does not apply to local elections.

19. Furthermore, section 8 of the Act was supplemented by a new paragraph 3 which foresees:

"At the request of a voter, the body which maintains the Register may determine a different electoral address than the one determined in accordance with paragraph 2 of this section."

D. Freedom of Movement and Free Choice of Residence in Ukraine Act, 2004

20. Under section 6 of the Act, any person who moves to a new place of residence must register it as such by submitting documents to the relevant registration authority. No one may have more than one official residence; if a person has several *de facto* places of residence, he or she must choose which of those he or she wishes to register as his or her official address.

E. Local Self-Government Act, 1997

21. Under section 1 of the Act a "territorial community" is defined as (i) inhabitants united by permanent residence within the boundaries of a village, settlement or city (which must be independent administrative-territorial units), or (ii) a voluntary association of inhabitants of several villages that share a single administrative centre.

F. Ensuring the Rights and Freedoms of Internally Displaced Persons Act, 2014 ("the IDP Act")

22. Section 1 of the Act defines an "internally displaced person" as a person with permanent residence in Ukraine who has been expelled or forced to leave his or her place of residence as a result of – or in order to avoid the negative consequences of – armed conflict, temporary occupation, widespread violence, human rights violations or emergencies of a natural or man-made nature.

23. Under section 5 of the Act, an IDP certificate certifies the place of residence of its holder for the period of existence of the grounds specified in section 1 of the Act.

24. Section 8 of the Act guarantees to IDPs the right to vote. In its original wording of 2014, it read as follows:

"An internally displaced person shall exercise his or her right to vote in elections of the President of Ukraine, people's deputies of Ukraine, local elections and referenda by changing the place of

voting without changing the electoral address in accordance with paragraph 3 of section 7 of the State Register of Voters Act."

25. With adoption of the Electoral Code in 2019 (see paragraph 28 below) the reference to paragraph 3 of section 7 of the State Register of Voters Act was replaced with the general reference "in accordance with the procedure established by law."

G. Ensuring the Rights and Freedoms of Citizens and the Legal Regime in respect of the Temporarily Occupied Territories within Ukraine Act, 2014

26. Paragraph 5 of section 8 of this Act stipulates that no local or regional elections or referenda should be conducted within the temporarily occupied territories.

H. Decision of the Supreme Court of 25 July 2018 in case no. K/9901/17330/18

27. The claimant in this case challenged the refusal by the Lutsk department of the State Register of Voters to include her name in the voters' list for local elections to be held at the place of her actual residence as an IDP (where she had resided for more than a year). The Administrative Court of Cassation (which forms part of the Supreme Court) in its decision upheld the finding of the lower-instance courts that the fact that a person "belonged" to a particular territorial community was confirmed by that person's registered place of residence, as indicated in his or her passport; the court also upheld the lower-instance courts' finding that the place of residence noted in a person's passport was of key legal significance in respect of the resolution of election-related disputes concerning a person's inclusion in a voters' list.

I. Electoral Code of Ukraine, 2019

28. On 19 December 2019 the Ukrainian Parliament adopted the Electoral Code (came into force on 1 January 2020), which introduced amendments to some of the legal instruments cited above (see paragraphs 17, 18 and 25 above) and allowed IDPs to participate in local elections without changing their registered place of residence in their passports.

II. INTERNATIONAL DOCUMENTS

A. Recommendation 419 (2018) by the Congress of Local and Regional Authorities of the Council of Europe, entitled "Voting rights at the local level as an element of the successful long-term integration of migrants and IDPs in Europe's municipalities and regions"

29. The Recommendation reads, in so far as relevant, as follows:

"1. In the context of mass migration that currently occurs in the area of the Council of Europe for political, humanitarian and socio-economic reasons as well as due to military conflicts, an increasing number of people have settled or have been re-settled with varying degrees of permanence in countries or regions other than their country or region of origin. Considering effective integration policies for Internally Displaced Persons (IDPs), voting rights are a natural starting point for a successful long-term integration as voting encourages IDPs to actively participate in the life of their community.

2. Even though IDPs are frequently disenfranchised because they face legal and practical challenges with regard to voting rights, international standards and best practices promote the enforcement of their right to political participation. In particular, the existence of a "genuine link" between IDPs and the place where they cast a ballot at local level is of critical importance with respect to voting rights as a successful element of their integration.

...

4. The Congress recognises the responsibility municipalities and regions bear with regard to promoting the integration, participation and non-discrimination of IDPs and encouraging good relations between them and local residents.

...

6. Against this background, the Congress has specifically examined the international standards and best practices with regard to voting rights at local level of IDPs. As a consequence, it recommends that the Committee of Ministers invite the governments of member States to ensure that:

- residence requirements do not prevent IDPs from exercising their voting rights, in particular that procedures for changing residence are appropriate so that IDPs can easily move their registration between their constituency of origin and their current constituency (and vice versa) without undue obstacles or delays;
- legal provisions do not require IDPs to choose between expressing their voting rights and being eligible for IDP status ..."

B. Recommendation Rec(2006)6 of the Committee of Ministers to member [S]tates on internally displaced persons

30. This recommendation, adopted by the Committee of Ministers on 5 April 2006, reads, in so far as relevant, as follows:

"The Committee of Ministers ...

Considering that a large number of citizens of the Council of Europe member [S]tates cannot fully benefit from their human rights as a consequence of the fact that they have been forced or obliged to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or man-made disasters, without crossing an internationally recognised state border;

...

Recognising that internally displaced persons have specific needs by virtue of their displacement;

...

Recommends that governments of member [S]tates be guided, when formulating their internal legislation and practice, and when faced with internal displacement, by the following principles:

...

2. Internally displaced persons shall not be discriminated against because of their displacement. Member states should take adequate and effective measures to ensure equal treatment among internally displaced persons and between them and other citizens. This may entail the obligation to consider specific treatment tailored to meet internally displaced persons' needs;

...

9. Member states should take appropriate legal and practical measures to enable internally displaced persons to effectively exercise their right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature..."

C. Code of Good Practice in Electoral Matters

31. This document, adopted by the European Commission for Democracy through Law (Venice Commission) at its 51st Plenary Session (5-6 July 2002) and submitted to the Parliamentary

Assembly of the Council of Europe on 6 November 2002, includes the Commission's guidelines as to the residence requirement in respect of voting and standing in elections:
"c. Residence:
i. a residence requirement may be imposed;
ii. residence in this case means habitual residence;
iii. a length of residence requirement may be imposed on nationals solely for local or regional elections;
iv. the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities; ..."
32. The explanatory report to the Code further elaborates:
"c. Thirdly, the right to vote and/or the right to stand for election may be subject to residence requirements, residence in this case meaning habitual residence. Where local and regional elections are concerned, the residence requirement is not incompatible a priori with the principle of universal suffrage, if the residence period specified does not exceed a few months; any longer period is acceptable only to protect national minorities. Conversely, quite a few states grant their nationals living abroad the right to vote, and even to be elected. This practice can lead to abuse in some special cases, e.g. where nationality is granted on an ethnic basis. Registration could take place where a voter has his or her secondary residence, if he or she resides there regularly and it appears, for example, on local tax payments; the voter must not then of course be registered where he or she has his or her principal residence.
The freedom of movement of citizens within the country, together with their right to return at any time is one of the fundamental rights necessary for truly democratic elections. If persons, in exceptional cases, have been displaced against their will, they should, provisionally, have the possibility of being considered as resident at their former place of residence."

**THE LAW**

I. JOINDER OF THE APPLICATIONS
33. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.
II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 12 TO THE CONVENTION
34. The applicants complained under Article 1 of Protocol No. 12 to the Convention that they had not been allowed to participate in local elections in XXX, where they were registered as IDPs. That provision reads as follows:
"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, 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."
A. Admissibility
35. The Government did not object to the admissibility of the applications.

36. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. *The applicants' submissions*

37. The applicants maintained that no local elections were held at their registered place of residence and that it was not easy for them to change their registered place of residence even if they wished to. Furthermore, changing their place of residence would entail the risk of losing their IDP status, as having one's registered place of residence in the occupied territories was a prerequisite for obtaining IDP status. They furthermore maintained that their registered residence had an important symbolic meaning for them as it signified their bond with their abandoned home and that changing their registered place of residence would mean a loss of their property and their right to live in it. They also noted that they could get access to all other services provided by the State, such as medical care, on the basis of the address indicated in the IDP certificate, so the right to vote in local elections was the only right to which they were not entitled in their current territorial community.

38. The applicants submitted that they could not be compared to other people who did not reside at their own registered places of residence, as they had been forced to leave their homes and could not go back to them. As no elections were held at their registered places of residence, they could not participate in local elections at all, which also distinguished them from those who could return to their registered places of residence and vote in local elections.

39. The applicants agreed that it was necessary to regulate the participation of citizens in local elections; they considered, however, that the way that such participation was regulated under national law and current administrative and judicial practice was to their detriment and did not take into account their situation as IDPs. They considered themselves to be more integrated into the local community – in which they had been residing for more than a year, and were paying local taxes and were using medical, social and other services provided by local authorities – than people whose registered place of residence was in XXX but who lived elsewhere. Even so, the latter were considered as belonging to the local community in XXX and could vote there, while the applicants did not enjoy of that right.

40. The applicants considered that they belonged to a uniquely disadvantaged and vulnerable group that required the Government to take particular measures in order to ensure their equal participation in local elections. Therefore, they considered that the difference in treatment to which they were subjected had no reasonable and objective justification.

2. *The Government's submissions*

41. The Government maintained that under the law in force, IDPs were not allowed to vote in local elections without changing their registered place of residence. The applicants were thus not treated differently from any other Ukrainian citizen living outside his or her registered place of residence. The Government furthermore noted that the applicants had not complained that they had been treated differently but rather that they should – because of their IDP status – be treated differently from other people living outside their registered place of residence. According to the Government,

IDPs did not constitute a vulnerable group that under the Court's case-law would require special treatment and positive discrimination.

3. *The Court's assessment*

(a) General principles

42. The Court reiterates that whereas Article 14 of the Convention prohibits discrimination in the enjoyment of "the rights and freedoms set forth in [the] Convention", Article 1 of Protocol No. 12 extends the scope of protection to "any right set forth by law". It thus introduces a general prohibition on discrimination (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 53, ECHR 2009).

43. The term "discrimination" used in Article 14 is also used in Article 1 of Protocol No. 12. The Court reiterates that notwithstanding the difference in scope between those provisions, the meaning of this term in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14 (see paragraph 18 of the Explanatory Report to Protocol No. 12). The Court sees no reason to depart from the settled interpretation of "discrimination", as developed in the jurisprudence concerning Article 14 in applying the same term under Article 1 of Protocol No. 12 (ibid., § 55; see also *Zornić v. Bosnia and Herzegovina*, no. 3681/06, § 27, 15 July 2014).

44. In order for an issue of discrimination to arise under Article 14, there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (see, *mutatis mutandis*, *Molla Sali v. Greece* [GC], no. 20452/14, § 133, 19 December 2018, with further references, and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV). The right not to be discriminated against is also violated when States, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different. The prohibition of discrimination will therefore also give rise to positive obligations for the Contracting States to make necessary distinctions between persons or groups whose circumstances are relevantly and significantly different (see, *mutatis mutandis*, *Berkman v. Russia*, no. 46712/15, § 49, 1 December 2020, with further references).

45. Lastly, the Court notes that the responsibility of the State would also be engaged if the discrimination complained of resulted from a failure on the State's part to secure to the applicant under domestic law the rights set forth in the Convention. When examining this question under Article 1 of Protocol No. 12 to the Convention, such a failure on the State's part may concern "any right set forth by law" (*Baralija v. Bosnia and Herzegovina*, no. 30100/18, § 50, 29 October 2019).

(b) Application of those principles to the present case

46. The Court notes that it is not disputed that the applicants had a general right set forth by the Constitution (namely the right to vote), and that they met the general conditions for the exercise of that constitutional right (see paragraph 13 above). It sees no reason to hold otherwise.

47. It is not disputed, either, that the applicants were treated in the same way as any other person residing outside their registered place of residence, in so far as the right to vote in local elections was concerned.

48. The residence requirement for voters in local elections under Ukrainian law does not imply any requisite period of residence, but solely the fact that voters' place of residence within the given constituency has been formally registered. From the relevant decisions of the administrative bodies and the courts it is clear that such an understanding of the domestic law is predominant.

Moreover, as the Supreme Court noted in its review of a decision delivered by the lower-instance courts in respect of a case similar to that of the applicants (see paragraph 18 above), the registered place of residence indicated in a person's passport has been of key significance in the resolution of election disputes concerning the inclusion of such a person in a constituency's list of voters; that is because it serves as confirmation that that person "belongs" to a particular local community and thus to the electoral constituency contained therein.

49. Thus, the domestic law and practice that applied at the material time clearly provided that persons who did not have a registered place of residence and, hence an electoral address, in the constituency where they actually lived were not allowed to participate in local elections, regardless of any other factors or circumstances. Even though the participation of IDPs in local elections was guaranteed by section 8 of the IDP Act, it provided that IDPs could do so "by changing a place of voting without changing the electoral address" (see paragraph 24 above). Thus, this provision was not fully aligned to the relevant legislation on local elections which consistently provided that the mentioned procedure of changing a voting address did not apply to local elections (see paragraphs 15 and 17 above). Therefore, as the Government submitted, in practice IDPs were not treated in this respect any differently from any other group of people who lived outside their registered places of residence and could not participate in local elections at places of their actual residence. However, failure to treat differently persons whose situation is significantly different may amount to discrimination (see, *mutatis mutandis*, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV). Furthermore, the Court has previously accepted that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered to be discriminatory, regardless of whether or not it is specifically aimed at that group, and that discrimination potentially contrary to the Convention may result from a *de facto* situation (see *D.H. and Others*, cited above, § 175).

50. The question is therefore whether the applicants, as IDPs, were in a significantly different situation and therefore required treatment that would put them, *de facto*, on an equal footing with other citizens of Ukraine in respect of the enjoyment of their right to vote in local elections, as guaranteed by the national law.

51. The Court takes note of the arguments presented by the applicants as to (i) why they should be allowed to keep their registered places of residence respectively in Crimea and Donetsk and (ii) the fact that they would risk losing their IDP status in the event that they changed their registered residential addresses (see paragraph 37 above). Indeed, the applicants found themselves in a situation that was clearly different from that faced by other mobile population groups, as they were forced to leave their registered places of residence and no local elections were organised at their places of residence, as those territories were outside of the Government's control (see paragraphs 8 and 38 above). Therefore, despite the provisions of the IDP Act (see paragraph 24 above), the applicants in practice were not entitled to participate in local elections without changing their electoral addresses which were linked exclusively to their registered places of residence at the material time (see paragraph 17 above).

52. The above considerations demonstrate that the applicants, as well as any other IDPs, were in a significantly different situation from citizens living at their registered places and even from other mobile groups of population who could come back to their registered places of residence and vote

in local elections there. It follows that measures to put them on an equal footing with others in order to be able effectively to enjoy a right guaranteed by national law – the right to vote in local elections – were necessary in order to avoid discriminating against them.

53. The Court reiterates that there are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe which it is for each Contracting State to mould into their own democratic vision (see, *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, §.61, ECHR 2005-IX). Therefore, the States are allowed a wide margin of appreciation in this area.

54. The Court notes that the Government made efforts to secure the rights of IDPs by enacting the special IDP Act (see, paragraphs 22 to 24 above), which intended to guarantee, among other things, the right of IDPs to participate in local elections. The IDP Act, however, was not supported at the material time by further amendments to the relevant legislation on local elections, which required that the citizens should "belong" to a local community in order to able to participate in local elections (see paragraph 14 above) and, as a result, the intended guarantee did not materialise. In these circumstances, the requirement of "belonging" to a local community, which was undoubtedly legitimate in principle, could be satisfied in only one way: through the registration of one's place of residence as being located within the local community in question. There was no exception to this rule and no alternative means existed of proving that the person in question was sufficiently integrated into the local community and "belonged" to it. Therefore, the adoption of the IDP Act did not in itself put the applicants on an equal footing as others in the enjoyment of the right to vote in local elections.

55. As a result, even though they had resided in XXX for about a year (or even longer), were payers of local taxes and consumers of local services (see paragraph 39 above) and thus were concerned with the community's day to day problems and had sufficient knowledge of them (see and compare, *Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, § 79, ECHR 2012), they had no possibility to participate in the local affairs of their new communities for the period of their enforced absence from their permanent homes, despite the fact that such participation was deemed to constitute an important element of IDPs' integration (see paragraphs 22 to 25 above).

56. The Court notes that the relevant legislation was later amended to unlink the electoral address from the registered place of residence upon request of a voter, which allowed IDPs to seek inclusion in the voters' list for local elections (see paragraph 28 above). These amendments, however, took place more than four years after the impugned events and cannot affect the Court's conclusions in the present case.

57. In sum, the Court finds that at the material time, by failing to take into consideration their particular different situation, the authorities discriminated against them in the enjoyment of their right to vote in local elections, guaranteed under domestic law.

58. There has accordingly been a violation of Article 1 of Protocol No. 12 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

60. Ms XXX claimed 25,000 euros (EUR) in respect of non-pecuniary damage. The other three applicants asked to be awarded, in respect of non-pecuniary damage, whatever amounts that the Court saw fit.

61. The Government considered that there had been no violation of the Convention and that these claims had therefore to be rejected.

62. The Court considers it equitable to award EUR 4,500 to each of the applicants in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

63. Ms XXX claimed EUR 8,700 for the costs and expenses incurred before the Court. She submitted a time sheet from her representatives.

64. The other three applicants claimed, jointly, 5,083.84 pounds sterling (GBP) as well as EUR 683.06 (the equivalent of GBP 590.17), and 75,750 Ukrainian hryvnias (UAH – the equivalent of GBP 2,041.76), related to their legal representation before the Court. They submitted several time sheets from their lawyers and several invoices for translation expenses.

65. The Government submitted that there was no proof that the amounts claimed had been actually paid to the applicants' representatives. They also doubted the reasonableness of those expenses.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court also points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part (see *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017). In the present case the applicants failed to produce any contract with their representatives or any other documents showing that they had paid or were under a legal obligation to pay the fees charged by their representatives (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017). As regards the part of the claim for translation of various documents, the Court does not consider that the translation of those documents was necessary for its proceedings (see *Allahverdiyev v. Azerbaijan*, no. 49192/08, § 71, 6 March 2014, and *Sakit Zahidov v. Azerbaijan*, no. 51164/07, § 70, 12 November 2015). Therefore, the Court dismisses the claim for costs and expenses.

C. Default interest

67. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. Decides to join the applications;
2. Declares the applications admissible;
3. Holds that there has been a violation of Article 1 of Protocol No. 12 to the Convention;
4. Holds

(a) that the respondent State is to pay to each of the applicants, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 4,500 (four thousand five hundred euros), which is in total EUR 18,000 (eighteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
5. Dismisses, the remainder of the applicants' claim for just satisfaction.
Done in English, and notified in writing on 21 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar
Síofra O'Leary President