



LGBT issues and the European Integration of Ukraine

International conference, 15-16 March 2016, Kyiv, Ukraine

Information brochure

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Greetings to the respect participants of the international conference

LGBT issues and the European Integration of Ukraine!

For long years Ukraine could not decide on its future, and only the Russian aggression forced our society and authorities to make the final and fateful choice for the integration with modern Europe. As President Poroshenko noted in his speech at the Munich Security Conference 2015, "Europe is associated with certain values for Ukrainians. Today, there is a threat of alternative values that cause isolationism, intolerance, disrespect for human rights, religious fanaticism and homophobia." For the first time since the declaration of Ukraine's independence the Head of our state publicly condemned homophobia and called it a threat to the national security. Such a long disregard of this problem is no mere chance: while in most other spheres of life exists the public consensus on the need for urgent reforms to approach the current European level of development, problems related to actual equality for LGBT people still remain hidden for Ukrainian society as a whole and are mostly ignored by our politicians and government.

Only now Ukrainians are beginning to realize that without resolving these issues the further advance of our country towards the European integration is impossible. Therefore, in our view, it is important and timely to start the open public discussion of practical steps to remedy the situation: combating homophobia widespread in Ukrainian society and its consequences – discrimination, violence and inequality based on sexual orientation or gender identity. Ukraine only set foot on the path that Western Europe has already passed and the new European democracies is going on now. Their experience may and has to become the guiding light that let Ukraine pass this way as quickly as possible.

We can see that the Ukrainian government has made the first steps in this direction, and Ukrainian society is slowly beginning to change the attitude to their fellow citizens – lesbian, gay, bisexual, transgender and intersex people. This conference is designed to help the Ukrainian government and draw attention to the need to address LGBT issues within the process of the European integration of Ukraine. Thus, the objectives of the event are:

1. Raising awareness and informing the Ukrainian authorities and the public on LGBT problems in Ukraine;
2. Informing the Ukrainian authorities and politicians on the modern European standards and trends in this area, as well as on the experience of their reaching in the Western countries;
3. Working out recommendations on implementation of the LGBTI components of the Action Plan for the National Strategy on Human Rights, given the current experience and best practices.

We welcome all participants and hope that this publication and other materials that will be presented at this event will contribute to the solution of the issues discussed.

Conference organiser –
the team of **LGBT Human Rights NASH MIR Center**



Greetings to the international conference on LGBTI issues in Kyiv!

This is an excellent opportunity to highlight the human rights challenges LGBTI people face in Ukraine and in Europe. Human rights are universal and like everyone else, LGBTI people should be able to fully enjoy their human rights.

European and international standards prohibit the use of sexual orientation or gender identity as grounds for restricting access to rights. However, discrimination and violence against LGBTI persons remain a grim reality in Europe. For example, activists have documented 104 killings of trans people in 15 different European countries since 2008. Discrimination of LGBTI persons in employment, education and health care remain widespread. Individuals are not the only targets. Pride events and NGO offices have also been subject to violent attacks.

All Council of Europe member states need to enact LGBTI inclusive equal treatment and hate crime legislation. Killings and attacks against LGBTI persons need to be condemned at the highest political level, they have to be promptly investigated, prosecuted and punished. Police should provide adequate protection. In my recent work on Georgia and Slovakia I urged the authorities to take more vigorous action against homophobic and transphobic hate speech and hate crimes. Legal gender recognition remains a hurdle in many countries. However, new legislation in Denmark, Malta and Ireland shows the way forward.

More efforts are needed to protect the human rights of LGBTI persons in Ukraine. Last year, sexual orientation and gender identity were added as prohibited grounds of discrimination in the Labour Code. This is a good step forward, but there is a need for far more comprehensive protection. There is also an urgent need to reform regulations of gender recognition. I am pleased that the National Action Plan for Human Rights includes measures for improving LGBTI human rights and I urge speedy implementation of those measures.

I wish you all the best in these discussions, which I think, are very important for Ukraine. I remain an ally of the movement for LGBTI equality and will continue to uphold your rights in my work.

Nils Muižnieks, the Council of Europe Commissioner for Human Rights

Keynote speech by
Sophie in 't Veld,
Member of the European Parliament



It is an honour and immense pleasure for me to deliver today's opening speech for the international conference on LHBT issues and the European Integration of Ukraine.

During the Maidan revolution, the Ukrainians made their choice in favour of European values and principles. As Member of the European Parliament, I wholeheartedly welcome closer cooperation between the EU and Ukraine. Because of geopolitical and economic reasons, but above all to jointly promote and protect our shared European values.

I am pleased we are together today, forming an alliance for the promotion and protection of those same shared values. Because they are under pressure. Change is never easy and progress is not always linear.

Fortunately there is a lot of good news. In 22 member states same sex couples can marry or have a civil union, securing their rights. There is a growing body of law and case law protecting against discrimination. The resounding "Yes" to same sex marriage in the Irish referendum, recognition of same-sex unions in Greece, Cyprus and Italy, or the Maltese law on Gender Identity, Gender Expression and Sex Characteristics, show us progress is possible. Since last November, we can add the Ukrainian Labor Code reform to this list, in which discrimination based on sexual orientation and gender identity in the work place is banned. An encouraging step forward. I also welcome the very supportive stance of the Ukrainian political leadership.

However, much more must be done both in the EU and Ukraine, to make further progress and to avoid backsliding. Within the EU discrimination, harassment and violence against LGBTI persons are still widespread, pride marches are being banned or obstructed and conservative governments try to limit the rights of the LGBTI community. That is why the European Commission, guardian of the Treaties, needs to put forward a strong LGBTI action plan to safeguard the rights of all EU citizens.

Ukraine is heading in the right direction, but it is only just three years ago that the Russian-style "anti-gay propaganda" law was under consideration of the Verkhovna Rada. In Slovenia, 20% of the voters used a referendum to scupper a same sex marriage law that had been approved by parliament. In some EU member states constitutional amendments exclude same sex marriage.

But countries that embrace diversity, are more prosperous, free and stable. Diversity benefits everyone. That is why we need to stand shoulder to shoulder for diversity and fundamental rights.

In that spirit, I already casted my postal vote for the Dutch referendum on the EU Ukraine Association Agreement, on 6 April. My party, D66, and I say 'yes' to closer cooperation, 'yes' to a stable democracy, 'yes' to a modern and inclusive Ukrainian society.

Thank you NASH MIR Center and partners for hosting this two-day conference in Kiev. I wish you all a colorful stay and I look forward to meeting you,

Sophie in 't Veld, Member of the European Parliament



Dear participants and organizers of the conference,

Greetings to the International Conference "LGBT issues and European integration of Ukraine"!

The question of finding ways to ensure the freedom from discrimination on any ground is the subject of constant attention of the Ukrainian Parliamentary Commissioner on Human Rights.

Ukrainian society still has a high level of bias towards representatives of the LGBT community that manifests in numerous cases of discrimination, violations of the right to personal immunity, to respect for human dignity, freedom of expression and peaceful assembly, as well as in committing hate crimes motivated by intolerance on grounds of sexual orientation and gender identity.

In this regard, I emphasize the inadmissibility of discrimination on grounds of sexual orientation and gender identity in all areas of public life. All people are free and equal in dignity and rights. The Commissioner on Human Rights stands up for protection of human rights, regardless of what skin colour a person has, what sexual orientation she/he has or what religion she/he practices.

The lack of necessary legal mechanisms prevents from effective struggle against discrimination in Ukrainian society that has been repeatedly emphasized in the annual reports of the Ukrainian Parliamentary Commissioner on Human Rights.

Meanwhile, it is important to highlight the achievements of 2015 – the amendments to the Code of Labour Laws regarding the prohibition of discrimination on grounds of sexual orientation and gender identity in employment as well as inclusion of measures for preventing and combating discrimination, including against LGBT people, in the Action Plan on Implementation of the National Human Rights Strategy until 2020. The Plan was worked out by the Cabinet of Ministers of Ukraine with expert support of representatives of civil society organisations and the Secretariat of the Ukrainian Parliamentary Commissioner on Human Rights.

We are always ready to collaborate with civil society organisations and state bodies in ensuring protection of citizens from discrimination.

Aksana Filipishina, the Representative of the Ukrainian Parliamentary
Commissioner on Human Rights

Greetings to the participants of the conference "LGBT issues and European integration of Ukraine"!

The Revolution of Dignity in November 2013 began as a protest when the then Ukrainian authorities took away our choice. Protesting against their refusal to sign the Association Agreement with the European Union, we did not know how it would end, but we knew that there is no place to retreat.

Looking into the past, I think that it could have happened in another way. But history does not know conditional mood. We still got a chance to build our future. One of the most important things we have learned from that battle – the struggle for dignity obliges.

It obliges to remember that dignity is not the right of those who were on the barricades to make decisions. This is primarily the duty of those who received the power to expand the scope of rights and freedoms of Ukrainian society, each of its members, in such a way that their life will really become a life of dignity.

It puts before our country many urgent tasks to achieve the modern European standards in all spheres of life – too long we left the necessary economic, political and social reforms for the indefinite future, too long we were told that "it is not the proper time." We need urgent modernization of the state.

Two years after Euromaidan showed that the gravity of the past is a very powerful force, that the system, which was built over 20 years, will resist. In fact, the point of no return has not been passed yet. It is difficult to take the first steps on this path, but I believe that progressive forces in the government and society still prevail.

The current parliament should become a locomotive of the "worthy" changes which are to bring Ukraine to modern Europe. The highest value for us is the people, their rights and freedoms. We may be different, but must be equal. Every citizen should have equal dignity. That is why I and Serhii Leshchenko participated in the March of Equality in Kyiv last summer.

I want to remind you that Petro Poroshenko was the only candidate for the President of Ukraine who declared before the elections that discrimination on grounds of sexual orientation and gender identity should be banned in Ukraine in all spheres of life. The position of the President of the state, which won its dignity at the cost of human lives, cannot be otherwise.

As you know, my faction Petro Poroshenko Block consistently adheres to this position, that was exemplified by the adoption of the respective amendment to the Code of Labour Laws in November of last year. This is only the beginning of the legislative changes, there is still a long work to realize all foreseen in the Action Plan to Implement the National Strategy on Human Rights.

I hope that this conference and other events and activities will allow us to change the attitude of our government and the public to the LGBT community which is an integral part of Ukrainian society. Together we can overcome homophobia, discrimination and violence, together we will build a new European Ukraine. For my part, I promise you every possible assistance and solidarity and wish good luck to us all!



Svetlana Zalishchuk, Member of the Verkhovna Rada of Ukraine
Head of the Subcommittee on Euro-Atlantic Cooperation and European Integration
of the Committee on Foreign Affairs of the Verkhovna Rada of Ukraine



In last year's **ILGA-Europe Rainbow Map**, measuring equality for LGBTI people, Ukraine ranked 44 out of 49 European countries. Since then, some positive developments for the community have occurred in Ukraine. Through EU engagement a policy was adopted protecting people from discrimination at the workplace on grounds of sexual orientation. Additional political commitments were made to advance human rights of LGBTI people further by concrete actions such as establishing a civil partnership law; adopting hate-crimes legislation and extending overall anti-discrimination protection on grounds of sexual orientation and gender identity. It seems a now or never for the Ukrainian government to demonstrate its commitment to human rights by progressing these commitments into concrete law proposals and ensuring their swift adoption. This cannot happen without the firm commitment of international institutions to support the government in implementing these laws. Law enforcement staff will need to be trained and awareness raising on LGBTI human right is necessary to ensure that hearts and minds of people are won. As ILGA-Europe endeavours into its twentieth anniversary year, we continue to closely stand by the Ukrainian LGBTI movement in leading political, social and legal change.

Björn van Roozendaal, Programmes Director, ILGA-Europe

ILGA-Europe Rainbow Map is available at <http://www.ilga-europe.org/>



OSCE/ODIHR's Efforts to Counter Hate Crime:

Hate crimes are crimes based on prejudice. They happen everywhere; no society is immune to this violent form of intolerance.

The OSCE's Ministerial Council has repeatedly reaffirmed the threat that hate crimes pose to the security of individuals and to social cohesion, as well as their potential to lead to conflict and violence on a wider scale.

As the OSCE institution focusing on the human dimension of security, ODIHR's support for efforts to address intolerance and foster a climate of peace lies at the core of its mission.

Accordingly, OSCE participating States have given the Office for Democratic Institutions and Human Rights (ODIHR) the task of assisting them in the struggle against hate crime.

ODIHR's mandate comprises:

- Helping participating States to design and draft legislation that effectively addresses hate crimes;
- Building the capacity of justice systems in participating States and of law-enforcement officials, prosecutors and judges that staff them;
- Raising awareness of hate crime among governmental officials, civil society and international organizations; and
- Supporting efforts by civil society to monitor and report hate crimes.

To help insure that participating States can properly recognize, define and confront hate crimes, ODIHR has developed a series of seminars, workshops and capacity-building programs for police, prosecutors, judges and civil society.

Every year, ODIHR also presents consistent and reliable information from participating States, civil society organizations and inter-governmental organizations on hate crimes, notable incidents and policy responses. The ODIHR Hate Crime Report is released on International Tolerance Day, which falls on 16 November. Visit hatecrime.osce.org for more information.

Cristina Finch, Head of ODIHR's Tolerance and Non-Discrimination Department, ODIHR / OSCE

Program of the International conference
LGBT issues and the European Integration of Ukraine

15 March 2016, Tuesday

9:00-9:30	Registration & Welcome coffee
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9:30-11:00 (Part 1) Opening and Keynote remarks

Welcome from organiser, partners and sponsors of the conference

Andrii Kravchuk, LGBT Human Rights NASH MIR Center

Judith Gough, British Ambassador to Ukraine

Keynote opening speech by:

Sophie in 't Veld, Member of European Parliament; vice-president of the Alliance of Liberals and Democrats for Europe (ALDE)

Speakers: **Svitlana Zalishchuk**, Member of Parliament of Ukraine (Petro Poroshenko Bloc); Chairperson of Subcommittee on Euro-Atlantic Cooperation and Euro-integration, Committee on Foreign Affairs

Aksana Filipishina, the Representative of the Ukrainian Ombudsman on the Rights of the Child, Non-discrimination, and Gender Equality

Video-message of Council of Europe Commissioner for Human Rights **Nils Muižnieks**

Serhiy Petukhov, Deputy Minister of Justice of Ukraine on the issues of the European Integration

Tanel Tang, Political Officer, Delegation of the European Union to Ukraine

11:00-11:30	Coffee break
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11:30-13:00 (Part 2) Situation of LGBT people in Ukraine

Presentation: **Situation of LGBT people in Ukraine in 2015**

Andrii Kravchuk, Nash Mir Center

Presentation: **Analysis of the problems faced by LGBTI people in conflict area in Eastern Ukraine: defusion of Russia-sponsored homophobia to the territories, not under control of the Ukrainian government**

Inesa, Expert of anti-discrimination Center *Memorial*, Belgium

Olexandra Romantsova, Center of Civil Liberties, Ukraine

Panel: Representatives of Ukrainian LGBT organisations from the regions will present the current situation – LGBT community, trends, and challenges.

Moderator: **Svyatoslav Sheremet**, Gay Forum of Ukraine, Coalition on Combating Discrimination in Ukraine

Participants: **Olena Shevchenko**, Insight, Kyiv

Yuri Osipov, East-Ukrainian Association Equinox, Donetsk

Oksana Kokoshkina, T-ema, Kyiv

Stas Mishenko, KyivPride and Munich Kyiv Queer, Kyiv

Elena Romanetc, Charitable Foundation Avante, Lviv

13:00-14:00 Lunch

14:00-15:30 (Part 3) LGBTs and society

Presentation: **Human Rights for LGBT and EuroMaidan 2013-2014**

Tamara Martsenyuk, PhD in Sociology, Associate Professor at the Department of Sociology, National University of "Kyiv-Mohyla Academy"

Presentation: **Sociological data on the attitude of Ukrainians towards their LGBT compatriots**

Olexandr Zinchenkov, Nash Mir

Panel: LGBT issues and the church, public education, raising tolerance, pride movement etc. What could be done to decrease social tensions and promote emancipation of LGBT community into wider society.

Moderator: **Maryna Shevtsova**, PhD, Doctoral researcher at Berlin School of Social Sciences, Humboldt University, Berlin

Participants: **Anatoliy Yerema**, TV producer

Serhiy Leschenko, Member of Parliament of Ukraine

Victor Kovrey, representative of the language policy unit of the Department for Religions and Nationalities of the Ministry of Culture of Ukraine

Svitlana Dubyna, Education centre VIS', expert of Coalition on Combating Discrimination in Ukraine

15:30-16:00 Coffee break

16:00-17:30 (Part 4) Situation of LGBTI people in the region: challenges, perspectives and strategies for the protection of rights of LGBTI

Panel discussion

Moderator: **Anastasia Smirnova**, Programmes and Policy Officer, ILGA-Europe

Participants: **Bjorn van Roozendaal**, Programmes Director, European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA- Europe)

Artiom Zavadovsky, Genderdoc-M, Moldova

Anna Iluridze, Identoba, Georgia

Nvard Margaryan, PINK Armenia

Mehmet Akin, SPoD, Turkey

18:00-20:00 Aperitifs and dinner

09:00-11:00 (Part 5) Strategies for the Advocacy of LGBT issues

Presentation: **The LGBT component in the Action Plan to the National Strategy on Human Rights**
Andriy Maymulakhin, Nash Mir Center

Panel: The concrete steps and priorities to realize human rights of LGBT people in the process of the European integration of Ukraine and countries of Eastern Partnership

Moderator: **Andrii Kravchuk**, Nash Mir Center

Participants: **Svyatoslav Sheremet**, Gay Forum of Ukraine, Coalition on Combating Discrimination in Ukraine

Adéla Horáková, lawyer, member of the executive board of PROUD (Czech Republic)

Vladimir Simonko, Lithuanian Gay League

Klaus Jetz, Lesbian and Gay Federation in Germany LSVD

Bogdan Globa, Fulcrum, Ukraine

Jej Perfekcyjność, LGBT Business Forum Foundation, Poland

11:00-11:30	Coffee break
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11:30-13:00 (Part 6) Discrimination and hate crimes

Keynote speech: **The problems of combatting discrimination and hate crimes on grounds of sexual orientation and gender identity in legislation and practices**

Cristina Finch, Head of ODIHR's Tolerance and Non-Discrimination Department, ODIHR / OSCE

Panel: The best European practices and recommendations to the Ukrainian authorities and human rights organisations on protection of LGBTs from manifestations of homophobia

Moderator: **Nigel Warner**, ILGA-Europe Council of Europe adviser, Great Britain

Participants: **Cristina Finch**, Head of ODIHR's Tolerance and Non-Discrimination Department, ODIHR / OSCE

Oksana Pustova, Head of Unit of Principal Investigation Department, National Police of Ukraine

Dmytro Mazurok, Lawyer, the Ukrainian Helsinki Human Rights Union

Artiom Zavadovsky, Genderdoc-M, Moldova

Edwin Baltes, Secretary Pink In Blue Amsterdam, Police Unit Amsterdam, Netherlands

13:00-14:00	Lunch
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14:00-15:30 (Part 7) Registered same-sex partnership

Keynote speech: **A registered partnership law for same-sex couples in Ukraine? European obligations and the United Kingdom's model of civil partnership**

Robert Wintemute, Professor of Human Rights Law at King's College London, Great Britain

Keynote speech: **Same-sex partnership in Ukraine – facts and legal problems**

Andrii Kravchuk, Nash Mir Center

Panel: Prospects on adoption of same-sex partnership legislation in Ukraine in the medium-term.
The European trends

Moderator: **Robert Wintemute**, Professor of Human Rights Law at King's College London (Great Britain)

Participants: **Marina Usmanova**, Inshar, Ukraine
Tamás Dombos, Háttér Society, Hungary
Nigel Warner, ILGA-Europe Council of Europe adviser, Great Britain
Andrii Kravchuk, Nash Mir Center

15:30-16:00	Coffee break
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16:00-16:50 (Part 8) Perspectives of regional cooperation. Recommendations to stakeholders

Panel: Participants from the countries of Eastern Partnership will discuss perspectives of deepening cooperation on the regional level, and will suggest recommendations to partners

Moderator: **Gennady Roshchupkin**, Eurasian Coalition on Male Health

Participants: **Artiom Zavadovsky**, GENDERDOC-M Information Centre, Moldova
Nvard Margaryan, PINK Armenia
Svetlana Zhakarova, Russian LGBT Network
Sven Stabroth, TERGO, Ukraine
Yuri Yoursky, Gay Alliance Ukraine

16:50-17:00 Gratitude and final remarks

Working languages: Ukrainian, Russian and English

Conference venue: Premier Hotel Rus, 4 Hospitalna str., Kyiv

Conference materials are available at Nash Mir's website at: www.gay.org.ua/conference2016/

Situation of LGBT people in Ukraine in 2015

Summary

Overall, the situation of the LGBT community in Ukraine in 2015 may be characterized as having contradictory trends: on the one hand, there was some improvement in the attitude of broad society, a lack of homophobic rhetoric from the churches and leading social and political figures, and support from some new members of the Verkhovna Rada. On the other hand, the level of homophobic aggression by radical nationalist groups has significantly increased, and government agencies tried to avoid any discussion on the problems of LGBT people in Ukraine.

1. Generalized social and political situation

In the **legislative** sphere since the beginning of 2015 occurred continued development and public discussion of important documents which directly touch the problems and interests of LGBT people. But it was only by the end of the year – with extra-large efforts and only through the continuous pressure of civil society and the Western partners of Ukraine – that the first Ukrainian legal act was adopted that directly and explicitly prohibits discrimination on grounds of sexual orientation and gender identity. This was the Law of Ukraine "On Amendments to the Code of Labour Laws of Ukraine Concerning Harmonization of Legislation in the Sphere of Preventing and Combating Discrimination with Law of the European Union". This new law added to Article 21 of the Code a number of protected grounds, including the aforementioned SOGI. It is difficult to overestimate the importance of this breakthrough legislation: it became the first significant step towards obtaining effective equality for LGBT people in Ukraine after the abolition of criminal liability for consent sex between men in 1991, and it was adopted despite fierce resistance from very influential Ukrainian churches.

It should be noted that this amendment was introduced specifically to the current Code of Labour Laws of Ukraine which is largely preserved since Soviet times and in the near future is to be replaced by the new Labour Code. The rest of Ukrainian legal provisions discriminatory to LGBT people have remained unchanged and in force.

All the numerous recommendations of non-governmental and international organizations intended to include LGBT issues in the National Strategy on Human Rights have been ignored both by the Cabinet of Ministers and by the Administration of the President. On November 23 the Ukrainian government adopted the Action Plan to the National Strategy on Human Rights until 2020, however, for some obscure reasons it was published only by the very end of 2015. Civil society took an active part in drafting this document, and almost all proposals of Ukrainian LGBTI and human rights organizations were included in its text – even provisions on researching the problem of intersexuality. In addition, the Action Plan particularly includes:

- working out legislation prohibiting discrimination on grounds of sexual orientation and gender identity (SOGI) in all spheres of life regulated by law;
- working out legislation on registered partnership for same-sex couples;
- working out new rules for change (correction) of sex for transgender persons;
- adding the motive of hatred on grounds of SOGI as an aggravating circumstance in the Criminal Code;
- lifting the ban on adoption of children for transgender persons.

It is worth noting that even full implementation of this document will not mean making all necessary changes in Ukrainian legislation – it will depend on the Parliament – but adoption of this surprisingly progressive document at least shows a radical change of the Ukrainian government's policy, which since Ukraine got independence has consistently tried to ignore all proposals on the rights and interests of Ukrainian LGBT people.

In 2015 transgender persons won three lawsuits against the Ministry of Health of Ukraine concerning the abolition of certain provisions of Order No. 60 from 03.02.2011 which regulates the change of sex designation, but these decisions were challenged by the Ministry of Health on appeal. However, according to information from transgender activists, the ministry has started working on a new document to replace the mentioned Order. Some transgender persons do take part in drafting this document, thus we may hope that it will meet modern approaches and will no longer contain those provisions of the Order which caused criticism related to violation of transgender people's rights and interests.

The Working Group on Human Rights within the Constitutional Commission, which is creating a new draft Constitution of Ukraine, after a long discussion with the participation of professional lawyers and civil society activists, eventually decided not to mention explicitly sexual orientation and gender identity among grounds protected from discrimination in Article 42 "Prohibition of discrimination" of the draft Constitution. The Chairperson of the Working Group, Professor Volodymyr Butkevych, however, promised that this issue would be considered again in the process of reforming the Ukrainian anti-discrimination legislation. In our opinion, a public and a detailed discussion of this problem at this level is already a positive fact by itself, though we cannot agree with the decision not to mention SOGI as protected characteristics, even in the open list. On the other hand, we cannot but welcome a gender-neutral wording of Article 28 "Right to marry" in the draft Constitution of Ukraine produced by the Working Group, which, in principle, allows in the future to extend the scope of this legal institution to same-sex couples.

The state and local authorities, continuing as in recent years, have largely ignored the interests of the LGBT community, although they hardly interfere in the activities of LGBT organizations. In 2015, the Kyiv City State Administration did not seek to ban the Equality March in Kyiv, although the city Mayor and Chairman of the KCSA Vitalii Klychko, like last year, opposed the holding of this event. However, in August 2015, the Executive Committee of the Odesa City Council appealed to the Odesa District Administrative Court to prohibit Odesa Pride 2015 LGBT Festival. Despite the apparent illegality of the plaintiff's demands, the court satisfied them in part, prohibiting holding of the Equality March in Odesa (but refusing to ban the other activities within the festival).

The only public institution that collects information on LGBT rights violations and attempts to provide their protection, remains the Parliamentary Commissioner for Human Rights. The latest annual report of the Commissioner on the situation of human rights in Ukraine contains a section on discrimination on grounds of sexual orientation and gender identity. However, it should be noted that the Commissioner, Ms. Valeriya Lutkovska, shares Ukrainian authorities' general views of the inexpediency of prohibiting discrimination on these grounds in any direct and explicit way in the Ukrainian legislation and government policies.

Representatives of the Ukrainian authorities largely refrained from public statements on LGBT issues – of either a homophobic or a friendly character. A rare exception was the words of President Poroshenko on holding the March of Equality in Kyiv on 6 June 2015: "I treat the March of Equality as a Christian and as a European president. These things may be combined. I will not participate in it, but I see no reason for anyone to prevent it because it is a constitutional right of every Ukrainian citizen [...] I have my own Christian values, on which I was brought up and on which my children are brought up, but I do not share the indignation of some political forces which want to make PR for themselves; in fact, it is not a case for PR." Perhaps, it was the position of the President of Ukraine that made the Kyiv authorities and police ensure the holding of this event.

The law enforcement agencies in 2015 have still tried in every way to ignore homophobic motives during investigation of crimes, even if they are obvious. Also, the Ukrainian police do not want to provide security of public LGBT events from homophobic aggression. The command of the Kyiv Police Department for a long time refused to protect the March of Equality in Kyiv, and only long-term and persistent efforts of NGOs and foreign diplomatic missions made them fulfill their direct duties. Despite sufficient strength and time to develop a protection plan for the event, the police still failed to prevent attacks by organized homophobic groups against its participants, totally ignored protection of participants who were dispersing after the march, and reportedly are investigating the actions of the attackers with extreme negligence. According to

many messages of civic activists, in the last year in several Ukrainian cities, police personnel strength was reinforced with radical Ukrainian nationalists who profess homophobic views and tend rather more to cover up crimes against LGBT people than to help in protecting reputed victims. In August 2015, the police in Kryvyi Rih refused to document the homophobic attack on a closed gay disco; and one of the attackers openly boasted about his acquaintances in the police, whom he, in his words, summoned to halt this activity (for details please see page 4 of this document).

The state does not make any effort properly to investigate these crimes and bring perpetrators to justice. In particular, motives of homophobia and transphobia are not considered by Ukrainian law as aggravating circumstances. Moreover, it seems that **Ukrainian courts** (in those few criminal cases which come to them), tend to regard a homophobic motive rather as mitigating circumstances – at least this is evidenced by the sentences passed in October and November of this year in the case of arson of Zhovten cinema in Kyiv and the case of murder of a gay man in Kharkiv. In both cases, convicted persons received a minimum possible sentence, regardless of the severity of the crimes and their proven homophobic motives.

Ukrainian politicians mainly are still trying to distance themselves from LGBT issues. An openly homophobic and usually aggressive stance is taken only by radical Ukrainian nationalists such as members of Svoboda Party, the Right Sector, and Ihor Mosiichuk, an MP from the Radical Party of Oleh Lyashko. However, among the new young MPs who were elected in the recent (early) elections, appeared some who openly and actively are supporting the protection of LGBT rights. Thus, Serhii Leshchenko MP attended the March of Equality in Kyiv this year. He along with Svitlana Zalishchuk and Mustafa Nayyem MPs (all from the Petro Poroshenko Bloc) worked out and registered in the Verkhovna Rada an amendment to the draft Labor Code that prohibits discrimination, in particular, on grounds of SOGI. Among the experienced politicians, the protection of LGBT people's rights has repeatedly drawn the attention of Hryhorii Nemyrya, the Chairman of the Parliamentary Committee on Human Rights, Deputy Head of Batkivshchyna Party.

The mass media in Ukraine in recent years have demonstrated, in general, understanding and support of the LGBT community's interests; also evident is the increasing professionalism of their coverage of issues relating to LGBTs. The vast majority of materials disseminated on LGBT issues through leading media outlets are balanced, neutral, or positive in character regarding LGBT people.

Ukrainian churches and religious organizations retain their hostile attitude towards LGBT people, but after Euromaidan they have mostly refrained from homophobic statements and appeals. Thus, officials of the Ukrainian Orthodox Church of the Moscow Patriarchate and the UOC-KP this year did neither condemn nor support holding of the March of Equality in Kyiv; representatives of the UGCC just refused to provide their comments on the event. However, the leaders of all major Christian churches in Odesa (UOC (MP), UOC-KP, UGCC, Roman Catholic Church, Protestant denominations) sent an open letter to the Mayor of Odessa with a call to prevent the March of Equality that was filled with openly homophobic statements. After the adoption of the anti-discrimination amendment to the Code of Labor Laws, All-Ukrainian Council of Churches and Religious Organizations, which brings together all the major churches of Ukraine, categorically condemned the bill and asked the President to refrain from signing it.

According to our observations, **Ukrainian society** as a whole last year has shown a marked decrease in homophobic attitudes and a strengthening of neutral or positive attitudes towards the LGBT community. This is argued for, first of all, by the necessity to meet modern European standards in this field and to differ from Russia. Thus, in social networks there were lively discussions around holding the March of Equality in Kyiv -- discussions during which many non-LGBT people expressed their desire to take part in it, whereas this event was actively opposed mainly by people with radical nationalist views. Markedly reduced were the numbers of homophobic comments appealing to religious provisions and "Ukrainian traditions." However, it should be emphasized that this is just a value judgment perceived but not yet supported by data of sociological surveys.

The Ukrainian LGBT community, which in recent years has been becoming more visible, now faces new challenges, foremost of which is the sharp rise in homophobic violence and the reduction of funding of LGBT initiatives by donors, especially in the field of combating HIV / AIDS among men who have sex with men. A very large impact increasing the growing visibility and public interest in LGBT issues was made by holding the March of Equality in Kyiv – and the prohibition of a similar event in Odesa, also by media coverage of issues concerning protection of LGBT rights, gay marriage, etc. in the West.

2. Violence, discrimination and other violations of LGBT people's rights¹

During the time period January through December 2015 Nash Mir Center documented 71 cases of **discrimination, incidents and crimes motivated by homo- and transphobia**. The largest number of cases was recorded in Kyiv (17), Zaporizhzhya (11), Odesa (12), Dnipropetrovsk (8), Zhytomyr (6) and in Kharkiv (5). In addition, in Ivano-Frankivsk, Chernivtsi and Vinnitsa were recorded 2 incidents in each city, and 1 incident in Lviv, Kherson, Cherkasy, Chernihiv and Poltava oblasts and in occupied Luhansk.

Actions motivated by hatred towards LGBT people

In 2014 and 2015 the number of acts of hatred towards LGBT people significantly increased, mostly due to grave crimes, particularly murder, acts causing severe and moderate bodily injuries, and attacks on LGBT events and community centers with the use of weapons and explosives. Gay men again often became victims of robbery. In many big cities youth groups exist that lured through the internet gay men for dating and then "punished" them. Unfortunately, for various reasons the vast majority of victims do not want to stand up for their rights.

The largest public response was caused by the planned attack of several dozen young men on the March of Equality and the protective police forces on June 6, 2015. As a result of the use of explosives by the assailants, about 10 police officers were affected, and 9 marchers suffered from being hunted by the assailants after the demonstration.

Homophobic groups attacked employees and offices of LGBT organizations in Odesa and Kryvyi Rih. In these cities closed venues for gays and lesbians were also attacked. Thus, on July 20 a grenade was detonated under the door of Libertine bar in Odesa, and in late August visitors at a gay party in Kryvyi Rih were beaten by two dozen young men in masks, whose leader, by contrast, did not conceal his face: he was Anton Kravchenko, a leader of Kryvyi Rih "Automaidan" (one of the movements which opposed the regime of former President Yanukovich).

In 2015 at least six murders have occurred motivated by homophobia in Ukraine, and more than dozen gay men received injuries of various severity. The perpetrators arranged acquaintance with gay men in social networks under the guise of being gays themselves and during the date robbed and beat (or killed) their victims. Thus, in January two gay men were murdered in Kharkiv and Kyiv, and in May – another gay man in Zhytomyr.

As in the previous years, the largest number of cases (53) relate to actions motivated by hatred towards LGBT persons. 45 of them may be described as *hate crimes*, and 8 others as *hate incidents*. Six of these cases include manifestations of *hate speech* (Note: italicized terms are used in accordance with the OSCE classification). These cases include the following violations (please see Table 1):

¹ *In this chapter number of documented cases and sum of identified spheres of violation may differ because some cases cover more than one sphere of violation.*

Table 1.

Types of violations	Number
insults, humiliation of human dignity	29
physical violence of varying severity	32
sexual abuse	2
robbery	11
robbery with violence	1
extortion, blackmail	5
unlawful collection, disclosure and threats of disclosure of confidential information	15
murder	6
threats of murder	1
threatening with weapons	1
attacks on LGBT events and venues	6
terrorism	1
damage to LGBT organizations' property	2

Relations with law enforcement agencies

During 2015 Nash Mir recorded 18 cases that show violations of LGBT people's rights by law enforcement personnel. Most police infringed such rights (please see Table 2):

Table 2.

Violated rights (by what actions)	Number
right to liberty and security (violation of procedural rules, physical violence, extortion, abuse of power and authority)	9
freedom from discrimination (insults and humiliation of human dignity)	7
right to respect for private life (illegal gathering of confidential information and its dissemination)	4
right to effective remedy (failure to protect rights, improper performance of functions for protection of rights)	10
torture	1

One of the common types of violations by the police regarding LGBTs was the refusal to protect rights or properly to perform their duties. Thus, during the attack on a gay party in Kryvyi Rih, the police present at the site took no action in order to stop violence against the event's visitors, and according to Gay Alliance Ukraine's website, the leader of the attackers Anton Kravchenko even said that he informed the police about this "operation".

The right to a fair trial was by-passed at least twice. In one case, the Odesa District Administrative Court took a deliberately unlawful decision, prohibiting in August the conduct of all activities within Odesa Pride 2015 Festival. In another case, which occurred in Pryluky (Chernihiv oblast), a gay man accused of distributing pornography (following the police's entrapping provocation) was deprived of a public defender during the investigation and trial that lasted until March 2015.

In **employment** there were recorded four cases of LGBT people's rights violations. In all cases, the victims suffered from a biased attitude by management because of their sexual orientation and were forced to leave their jobs. In one of these cases gay man face long-lasting harassment from his colleagues.

Three cases of discrimination were recorded in **education sphere** – in one case on the part of students, in one case on the part of teachers, in one case on the part of students and teachers. At the beginning of 2015 a case was documented of transphobic harassment in one of the higher education institutions of Dniprodzerzhynsk. First, a transgender student (MtF) for several months was subjected to harassment by her fellow students (for instance, directly in the classroom they set fire to her hair, and the teacher pretended not to notice it). When she complained to the director of the institution, he, knowing about the conflict, said: "You have to change. They do not like such as you. You are just sick." As a result, the victim was forced to change her place of study.

In the **medical sphere** 2 cases were reported related to the insulting of homosexual people by health care workers. In January 2015, the deputy chief physician of the Chernivtsi AIDS Center publicly insulted a gay man because of his homosexual orientation, thus disclosing the patient's personal information.

Three cases of discriminatory attitudes towards LGBT were recorded in **consumption sphere**. It was based on homophobic attitude of the service personnel and owner of the premises towards the LGBT event.

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When using materials it is required to provide a reference to Nash Mir Center as the source.

Full text of the annual report ***The Ice Is Broken. LGBT Situation in Ukraine in 2015*** (in Ukrainian and English) is available on the website of Nash Mir Center at: www.gay.org.ua

Proposal of Council of LGBT Organisations of Ukraine to include the article into the National Strategy on Human Rights

xx. Insuring equal rights for LGBT people

Since the abolition of criminal prosecution for homosexuality (1991), Ukraine has done nothing to overcome the factual and legal inequality of LGBT citizens. The state ignores this problem completely and takes no steps to combat widespread homophobia and transphobia. Ukrainian legislation should be thoroughly reviewed and made entirely free of discriminatory provisions regarding LGBTs; our nation's laws should explicitly prohibit discrimination on the grounds of sexual orientation and gender identity. In support of this core modernizing process, Ukrainian society requires comprehensive integrated information availability and regular instructive exposure to issues relating to LGBT persons and the fight against homophobia / transphobia.

The strategic purpose

Overcoming homophobia and discrimination against LGBTs in all aspects of life.

Expected results

- The elimination of all discriminatory provisions regarding LGBTs from Ukrainian legislation;
- Ukrainian legislation explicitly prohibits discrimination and incitement to hostility and hatred on grounds of sexual orientation and gender identity;
- The introduction of the institution of *registered partnership* – in general terms similar to marriage for couples of any sex (gay or hetero);
- All students in Ukraine receive the latest basic scientifically received knowledge about sexual orientation and gender identity in the process of their formal learning years; this educational knowledge includes tolerance towards LGBT people as fellow citizens;
- Issues of sexual orientation and gender identity are included in the basic courses of 1) higher education and 2) advanced training in specialties that provide educational, pedagogical, psychological, medical, social work and law enforcement.

Action Plan
to implement National strategy on human rights for the period until 2020 (extract concerning LGBTI issues)

Expected result (according to the National Strategy)	Activity to achieve the expected result	Measure of success	Deadline	Responsible for the implementation
Freedom to peaceful assembly and association				
<i>Ensuring the realization of the right to freedom of peaceful assembly and association</i>				
39. To prevent unnecessary and disproportionate restriction on the right to peaceful assembly	5) Adoption and review of departmental regulatory legal acts on protection of peaceful assemblies according to the present-day international standards on peaceful assembly taking into account the specific nature of controversial meetings, in particular, events of the LGBT community	Regulatory legal act is submitted to the Cabinet of Ministers of Ukraine	3rd quarter 2016	Ministry of Interior Ministry of Education and Science State Emergency Service Security Service of Ukraine (upon consent) EU Advisory Mission in Ukraine (upon consent) Non-governmental organizations (upon consent)
Ensuring the right to health care				
<i>Ensuring equal access to the highest health care; prevention, early diagnosis and effective disease treatment</i>				
62. To ensure access to health care for persons diagnosed with intersexuality	1) Establishment of an inter-ministerial working group involving international experts to monitor the situation, to develop and prepare a specialized course on intersexuality; inclusion of the mentioned specialized course in professional development programmes; establishment of a multidisciplinary working group on development and implementation of medical standards (uniform clinical protocols) of health care using evidence-based medicine	Inter-ministerial working group involving international experts is established	1st quarter 2016	Ministry of Health
		Monitoring is conducted	2nd and 3rd quarter 2016	

Expected result (according to the National Strategy)	Activity to achieve the expected result	Measure of success	Deadline	Responsible for the implementation
		Report based on the monitoring results is submitted	4th quarter 2016	
		Training materials for specialized course on intersexuality are worked out	2nd quarter 2016	
		Specialized course on intersexuality is included in professional development programmes	3rd quarter 2016	
		Multidisciplinary working group on development and implementation of medical standards (uniform clinical protocols) of health care using evidence-based medicine is established	3rd quarter 2016	
		Submission of updated clinical directives, standards and uniform clinical protocols of health care for approval by the Ministry of Health and approval of them	1st quarter 2018	
64. To create equal access to high quality health care and social assistance for drug-addicted persons, people living with HIV, tuberculosis patients and people having other socially dangerous diseases	1) Drafting a bill to amend the laws of Ukraine “On Protection of Rights to Inventions and Utility Models”, “On Medicinal Products”, drafting an act to amend Decree of the Cabinet of Ministers of Ukraine No. 877 of 4 December 2013 “On approval of the procedure for the Cabinet of Ministers of Ukraine to issue a permit for the use of a patented invention (utility model) relating to a medicinal product” allowing Ukraine to use in full flexible provisions of the TRIPS Agreement of the World Trade Organisation and to minimize negative impact of so-called TRIPS Plus Provisions to ensure availability of essential medicinal products 2) Development and approval of the Procedure for providing medical care to persons who need sex change (correction), where medical and legal aspects are clearly defined, and the procedure of civil gender change complies with recommendations by the Council of Europe and the UN Human Rights Committee	Appropriate regulatory legal acts are drafted	4th quarter 2015 – 4th quarter 2016	Ministry of Health Ministry of Economic Development and Trade
		Working group involving international experts to monitor the situation in the country and to study international monitoring experience is established Monitoring is conducted Draft text on the Procedure for	2018	Ministry of Health

Expected result (according to the National Strategy)	Activity to achieve the expected result	Measure of success	Deadline	Responsible for the implementation
		<p>providing medical care to persons who need sex change (correction) is prepared and submitted for approval</p> <p>Order of Ministry of Health No. 60 "On the improvement of medical care for persons who need sex change (correction)" of 3 February 2011 is declared null and void.</p>		
<p>Preventing and combating discrimination</p> <p><i>Development of effective system to prevent and combat discrimination</i></p>				
<p>105. To ensure fullness and coherence of legislation on preventing and combating discrimination, to implement relevant and timely positive actions at the national and local levels in regard to prevention and combating discrimination, to ensure effective and timely response of the state to new challenges</p>	<p>1) Development and submission to the Cabinet of Ministers of a bill to amend the law of Ukraine "On Principles of Prevention and Combating Discrimination of Ukraine" regarding:</p> <p>Harmonization of the list of grounds on which discrimination is prohibited with the EU legislation, including non-discrimination on grounds of sexual orientation and gender identity, expanding the list of the forms of discrimination (victimization), regulating the issue of prohibition of multiple discrimination and discrimination by association, clarifying the scope of law</p> <p>Extending provisions, which regulate the determination of special legal relations, which can't be considered discriminative (exceptions)</p>	<p>Bill is submitted to the Cabinet of Ministers</p>	<p>1st quarter 2016</p>	<p>Ministry of Justice Ministry of Social Policy Ukrainian Parliamentary Commissioner for Human Rights (upon consent) Human Rights Committee of the Verkhovna Rada (upon consent)</p>
	<p>3) Development and submission to the Cabinet of Ministers of a bill to amend the Criminal Code of Ukraine regarding:</p> <p>Deletion of the part which criminalizes discrimination (direct or indirect restrictions of the rights or establishment of direct or indirect privileges on grounds) from Article 161 of the Criminal Code of Ukraine along with appropriate amendments to the Code of Administrative Offences of Ukraine and to the Civil Code of Ukraine providing for fines, compensation of losses, etc.</p> <p>Providing punishment for hate crimes under motives of such grounds as race, skin colour, religious beliefs, sexual orientation, transsexuality, disability, language (amendments to para. 3 of Article 67, to part 2 of Articles</p>	<p>Bill is submitted to the Cabinet of Ministers</p>	<p>2nd quarter 2016</p>	<p>Ministry of Interior Ministry of Justice Ministry of Health Ministry of Social Policy Ukrainian Parliamentary Commissioner for Human Rights (upon consent) Human Rights Committee of the Verkhovna Rada (upon consent)</p>

Expected result (according to the National Strategy)	Activity to achieve the expected result	Measure of success	Deadline	Responsible for the implementation
	<p>115, 121, 122, 126, 127, 129, Article 293)</p> <p>Decriminalization of infecting with HIV and other contagious diseases (Articles 130 and 133 of the Criminal Code of Ukraine) and revision of necessity to separate these diseases from other health injuries in the norms of the Criminal Code of Ukraine</p> <p>Harmonization of the conceptual apparatus of the Criminal Code of Ukraine in terms of determining different forms and manifestations of intolerance</p> <p>Unification of the terminology relating to the use of the term "intolerance".</p>			
	<p>4) Framing and approval of the model collective labour agreement providing for direct prohibition of discrimination in the workplace and demanding from all enterprises, establishments and organisations, regardless of the form of ownership, to adopt equality and non-discrimination policies</p> <p>To develop and approve typical equality and non-discrimination policy and to require state authorities, governmental institutions and enterprises to adopt appropriate policies</p>	<p>Respective order is approved</p> <p>Model equality policy is developed</p> <p>Regulation of the Cabinet of Ministers of Ukraine on requirement to adopt non-discrimination policy for state bodies, institutions and enterprises is adopted</p>	December 2016	Ministry of Social Policy
	<p>6) Drafting a bill on legalization of registered civil partnership in Ukraine for opposite-sex and same-sex couples taking into consideration property and non-property rights, in particular to own and inherit property, to support one partner by the other in case of incapacity for work, the constitutional right not to testify against the partner</p>	<p>Bill is submitted to the Cabinet of Ministers of Ukraine</p>	2nd quarter 2017	<p>Cabinet of Ministers of Ukraine</p> <p>Other interested government authorities</p>
	<p>7) Amending Order of the Ministry of Health No. 479 of 20 August 2008 to repeal discriminatory ban for the adoption of children, particularly by HIV-positive people, people with disabilities and transgender people</p>	<p>Order of the Ministry of Health No. 479 of 20 August 2008 is amended</p>	4th quarter 2016	<p>Ministry of Health</p> <p>Ministry of Social Policy</p>
	<p>8) Establishment of a working group involving international experts to work out the draft Procedure to change legal identity documents for the persons with a confirmed clinical diagnosis of transsexuality, and to work out proposals to amend appropriately other regulatory documents</p>	<p>Working group is established</p>	1st quarter 2016	<p>Ministry of Health</p> <p>Ministry of Interior</p> <p>NGO Insight (upon consent)</p>
	<p>9) Working out the Procedure to change legal identity documents for the persons with a confirmed clinical</p>	<p>Respective regulatory legal acts are adopted</p>	2nd quarter 2016	Ministry of Health

Expected result (according to the National Strategy)	Activity to achieve the expected result	Measure of success	Deadline	Responsible for the implementation
	<p>diagnosis of transsexuality, and working out proposals to amend appropriately other regulatory documents</p> <p>Preparing proposals to amend the Order of the Ministry of Health No. 60 "On the improvement of medical care for persons who need sex change (correction)" of 3 February 2011 and Part 2 of the Rules of Making Changes in Civil Status Records, Their Restoration and Annulment approved by the Order of Ministry of Justice No. 96/5 of 12 January 2011</p> <p>10) Improving activity of the expert council on complaints concerning discrimination on ground of gender</p> <p>11) Amending the list of diseases, contraindications to donation and forms of risky behaviour, Annex 3 to the Procedure of Medical Assessment of Donors of Blood and (or) Its Components, approved by Order of the Ministry of Health No. 385 "On infectious safety of donor blood and its components" of 1 August 2005, particularly deleting para. 1.3</p> <p>5) Development of a course on prevention of discrimination for the law enforcement involving international experts and representatives of civil society, and non-discrimination against vulnerable groups by the law enforcement agencies</p> <p>6) Inclusion of the respective course in training programmes, retraining programmes and professional development programmes for the law enforcement staff</p> <p>9) Working out and implementation of standards for social work (for school psychologists and social pedagogues) with teenagers and youth who belong to migrants, refugees, ethnic minorities, internally displaced persons and LGBTs, and to provide them with social and psychological services for social adaptation</p>			<p>Ministry of Internal Affairs Ministry of Justice NGO Insight (upon consent)</p> <p>Ministry of Social Policy Local state administrations</p> <p>Ministry of Health</p> <p>Ministry of Interior</p> <p>Ministry of Education and Science Ministry of Youth and Sports Other interested executive authorities</p>
109. To ensure effective investigation of the crimes on grounds of racial, ethnic, religious and other intolerance, and to bring the perpetrators to justice	1) Approval of a protocol/ instruction on taking an application on a crime with the regard for motive of intolerance stated by the victim	Respective protocol/instruction is approved	3rd quarter 2016	<p>Ministry of Interior Other interested authorities Non-governmental organisations (upon consent)</p>

Expected result (according to the National Strategy)	Activity to achieve the expected result	Measure of success	Deadline	Responsible for the implementation
	2) Working out the course on effective and proper investigation of the crimes on grounds of intolerance, and inclusion of it in training programmes, retraining programmes and professional development programmes for the law enforcement staff	Course is worked out and included in the relevant training programmes	4th quarter 2016	Ministry of Interior Other interested authorities Ukrainian Parliamentary Commissioner for Human Rights (upon consent) Non-governmental organisations (upon consent)
	3) Working out and approval of a joint instruction of the Ministry of Internal Affairs and the Office of the Prosecutor General of Ukraine on investigation of the crimes on ground of intolerance by the law enforcement agencies taking into account the methodology of the OSCE	Joint instruction of the Ministry of Internal Affairs and the Office of the Prosecutor General of Ukraine is approved	4th quarter 2017	Ministry of Interior Other interested authorities Ukrainian Parliamentary Commissioner for Human Rights (upon consent) Non-governmental organisations (upon consent)
	4) Working out and adoption of an order on introduction of specialization (imposition of obligations) of the prosecutors and investigators in each region responsible for controlling investigation of hate crimes	Respective order is adopted	4th quarter 2018	Ministry of Interior Other interested authorities Ukrainian Parliamentary Commissioner for Human Rights (upon consent) Non-governmental organisations (upon consent)

NB: Full text of the Action Plan (in Ukrainian) is published on the website of the Ministry of Justice of Ukraine: <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>

POLICY BRIEF

on discrimination and "hate crimes" on grounds of sexual orientation and gender identity

The exact number of lesbian, gay, bisexual and transgender (LGBT) people in Ukraine is unknown. Biased attitude faced by LGBT people in Ukraine makes most LGBTs hide their sexual orientation and gender identity. As a result, to estimate the number of LGBT persons in Ukraine is extremely difficult. However, estimations of the LGBT people's numbers in other countries suggest that the total number makes up 1,6-6,0% of the population¹ that in Ukraine would amount from 734,000 to 2,754,000 people.

The high levels of bias and lack of a proper legal framework to ensure the protection of rights led to extremely high level of discrimination against individuals based on their sexual orientation or gender identity. The study of the situation of LGBT people and different forms of discrimination they face, conducted by Nash Mir in the spring of 2011, showed that 89% of the respondents, whose homosexual orientation or transgenerness was known to other people, faced discrimination or other violations of human rights at least once during the previous three years.² Negative attitudes towards LGBT people in general felt about 72% of Ukrainians, and only 36% of our compatriots supported equality for LGBTs.³ In employment 34% of homosexuals, whose sexual orientation was known or suspected by those around them, experienced discrimination because of their sexual orientation.⁴

Part 2 of Article 24 of the Constitution of Ukraine states that there may be no privileges or restrictions on grounds of race, skin colour, political, religious and other beliefs, sex, ethnic or social origin, property, residence, language or other characteristics. This article of the Basic Law of Ukraine protects against discrimination on various grounds, some of which may be considered as directly protected (those actually listed in this article), while sexual orientation and gender identity (SOGI) may be attributed to other characteristics. However, currently there are no precedents or official interpretations which would confirm the inclusion of sexual orientation and gender identity in grounds protected by the Constitution.

The Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" prohibits discrimination in all its forms. The list of grounds, on which discrimination is explicitly prohibited, though being open, still contains no mention of SOGI or criteria by which one can determine other grounds protected from discrimination.

To improve the legislation of Ukraine in the sphere of combating discrimination and to bring it in line with the regulations of the European Union, implementation of which is provided by the Association Agreement between Ukraine and the European Union, in 2015 Article 2¹ of the Code of Labour Laws of Ukraine was set forth in the new edition – now any discrimination in employment is prohibited, in particular, on grounds of SOGI. Currently Bill 1658 is preparing for the second reading in the Verkhovna Rada of Ukraine to adopt a new Labour Code of Ukraine, which, unlike the Code in force, currently contains no direct prohibition of discrimination on grounds of sexual orientation and gender identity.

Another issue is the proper response by the police to crimes committed under the motives of homophobia and transphobia. Unfortunately, Ukraine's legislation does not contain concepts such as hate incident and hate crime, but Article 161 of the Criminal Code of Ukraine establishes liability for deliberate actions aimed at inciting national, racial or religious enmity and hatred, humiliation of national honour and dignity or insult of the feelings of citizens because of their religious beliefs, which by their nature are hate crimes. From the contents of the article it appears that the list of protected characteristics is exhaustive, not foreseeing responsibility for hate crimes motivated by SOGI. It is worth mentioning that sexual orientation

¹ Please see, for instance, G.J. Gates, *How many people are lesbian, gay, bisexual, and transgender?*, April 2011, williamsinstitute.law.ucla.edu

² Zinchenkov O. et al., *One Step Forward, Two Steps Back: Situation of LGBT in Ukraine in 2010-2011*, p. 16, gay.org.ua

³ *Ibid.*, pp. 4, 12.

and gender identity also are not included as circumstances aggravating punishment for the crime (Article 67 of the Criminal Code of Ukraine). Moreover, there are numerous instances of interpretation of the motive of open homophobia by the courts as a circumstance mitigating punishment.

Bill 3501 "On Amendments to Certain Legislative Acts of Ukraine (Regarding Harmonization of Legislation on Preventing and Combating Discrimination with the EU Law)" establishes administrative responsibility for violation of legislation on prevention and combating discrimination (Article 188⁴⁸ of the Code of Ukraine on Administrative Offences). However, deadlines for imposing penalties for administrative violations and inconsistency of some provisions of the current legislation may affect feasibility of bringing to administrative responsibility for committing such offenses. This shows that Ukraine has the rather weak legal framework to combat discrimination in general, and discrimination on grounds of sexual orientation or gender identity in particular.

The Cabinet of Ministers of Ukraine by its Instruction 1393-p from 11.23.2015 approved the Action Plan to Implement the National Strategy on Human Rights for the Period until 2020. Paragraph 105 of the said document is aimed at preventing and combating discrimination, ensuring comprehensiveness and consistency of legislation in the sphere of preventing and combating discrimination, implementing of appropriate and timely positive actions at national and local levels on prevention and combating discrimination, effective and timely response. It provides for the explicit prohibition of discrimination on grounds of SOGI in the law "On Principles of Prevention and Combating Discrimination in Ukraine", amendments to the Criminal Code of Ukraine regarding the punishment for crimes committed under motives of intolerance on grounds of SOGI, development of a draft law to legalize registered civil partnerships in Ukraine for opposite-sex and same-sex couples, as well as other legislative measures.

The importance of explicit prohibition of discrimination on grounds of SOGI was repeatedly emphasized both in documents of international and European institutions valid for Ukraine and in the bilateral documents of Ukraine and the European Union. For example, the Council of Europe's experts, who in 2012 assessed the draft law "On Principles of Prevention and Combating Discrimination in Ukraine", noted that "[t]he list of prohibited grounds includes "other attributes", which makes it open-ended. This is quite positive. However, it would be preferable to include an express reference to citizenship, sexual orientation and gender identity."⁵

On 26.09.2000 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1474(2000) "Situation of lesbians and gays in Council of Europe member states." Hereby member states, including Ukraine, was called, among other things, to include sexual orientation to the grounds on which discrimination is prohibited under national law.⁶

On 31.03.2010 the Committee of Ministers of the Council of Europe unanimously adopted Recommendation CM/Rec(2010)5 "On measures to combat discrimination on grounds of sexual orientation or gender identity." This document, being supported by the Ukrainian side, contains in particular the following:⁷

- Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator;
- Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

⁴ Ibid., p. 16.

⁵ C. Åhlund, W. Sorgdrager, *Comments on the draft law On the Principles of Prevention and Combating Discrimination in Ukraine*, 2012, para. 7.

⁶ PACE, *Recommendation 1474(2000)*, 26.09.2000, para. 11.3.a.

⁷ CMCE, *Appendix to Recommendation CM/Rec(2010)5*, 31.03.2010, paras. 1, 2.

Accordingly, we can conclude that there is a need for systematic inclusion of explicitly protected grounds of sexual orientation and gender identity to all legislative acts relating to human rights and freedoms in Ukraine, especially to the basic law that outlining the principles of the state policy on combating discrimination. There is also a need to criminalize deliberate actions aimed at incitement of enmity and hatred, humiliation of human dignity and honour, insult of the feelings of citizens under motives homophobia and transphobia, and to include these motives to the list of aggravating circumstances in the commission of crimes.

Protecting the rights of LGBT people should lie in the legal field, in particular, through improving legislation and adopting best practices on those issues taking into account the Ukrainian realities. This way the government can make society clearly understand that homophobia, as well as all kinds of xenophobia, should be subjected to public censure and considered as morally unacceptable. Avoiding direct mentions of the protected grounds of sexual orientation and gender identity only worsen the human rights situation for LGBT people in Ukraine, as evidenced by long-term monitoring of the respective situation.

Prepared by Ihor Koblikov, Lawyer of LGBT Human Rights Nash Mir Center.

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POLICY BRIEF

on introduction of a registered (civil) partnership for same-sex couples in Ukraine

1. LEGISLATIVE REGULATION

The main document regulating family relations in Ukraine is the Family Code of Ukraine (hereinafter – the FCU). Article 3 entitled "Family" of this Code states that "family is composed of persons who live together, have a joint household, mutual rights and duties" (part 2) and that "the family is founded on the basis of marriage, blood ties, adoption, or on other grounds not prohibited by law and those that do not contradict the morals of the society" (part 4). Thus, theoretically, same-sex partners who live together as a couple, can fall under this definition, however, the presence of a disclaimer about the "grounds that do not contradict the morals of the society", allows arbitrary interpretation and leads to legal uncertainty regarding this provision, because there is no law that would specify what exactly these grounds embrace. There is no practical significance of this definition of the family anyway since the remaining articles of the FCU regulate the relations not between the members of the family in general, but rather between specific family members and close relatives - for example, between parents and children, brothers and sisters, spouses, adoptive parents and the adopted.

Art. 21 of the Family Code of Ukraine defines marriage as "the union of a woman and a man", thus actually making a marriage between people of the same sex impossible. However, the FCU recognizes the actual family relationships even between heterosexual cohabitants who are not married (to each other or to others): Art. 74 "The right to property of a woman and a man who live as one family, but are not married to each other or are not in another other alliance by marriage" envisages that "property acquired by them during the period of living together belongs to them as joint property", as if they were legally married; Art. 91 "The right of a woman and a man who are not married to each other to receive support from each other" equates such permanent family partners to legally married partners on the question of receiving support in case of disability; finally, Art. 211 "Persons who can be adoptive parents" allows them joint adoption of children. However, the FCU does not contain any mentions of same-sex family partners, and Art. 211 expressly provides that "adoptive parents cannot be persons of the same sex" (part 3), thus establishing direct discrimination against same-sex de facto family partners.

The Criminal Procedure Code of Ukraine (the CPCU), which was adopted in 2013, in contrast to the Family Code does not refer to "the morals of the society" when defining "close relatives and family members", among which there is a mention of "persons who live together, have a joint household, mutual rights and obligations, including persons who live together but are not married" (Art. 3, part 1, paragraph 1). In theory, this definition could include same-sex family partners, although, as we know, it has never been tested in practice. The definition of "close relatives and family members" in the CPCU is of great practical importance because it, in particular, allows persons listed in the mentioned article of the Code, to refuse to testify or provide statements against their close persons according to Art. 63 of the Constitution of Ukraine and this definition also applies in all cases involving close relatives and family members in the criminal law.

In any case, it should be noted that absence of concepts like "same-sex family partner" and "same-sex family partnership" in the Ukrainian legislation leads to the situation when any recognition of such relationships requires a decision of a competent authority or an official in each case. Similarly, absence of any form of state registration of same-sex family partnerships requires additional proof of the actual presence of family relationships in all cases involving the recognition of any rights and obligations of such partners.

The Family Code regulates various aspects of family relationships, such as: right of spouses to

maternity/paternity; right to adopt children (by one person or by a couple together); to change names after the marriage; to have common and personal property for spouses; to receive support in case of disability; rights and duties of parents and children towards each and more.

Although numerous references to "family members" and "close relatives" are scattered throughout many Ukrainian laws, a uniform definition of these concepts does not exist in the national legislation. The Constitutional Court of Ukraine in its decision No 5-pn/99, d/d June 03, 1999 made a notion of this fact and stated that "With respect to the notion of a "family member" the Constitutional Court of Ukraine takes into account its objective content differences depending on the area of law. When providing an official interpretation of the term "family member of a military man, militia officer, the personnel of the State Fire Service", the Court applied the analogy of law and found that the first group of family members includes a husband/wife, parents and children, and the second group includes "other persons permanently residing with them and having a joint household".

In addition to the rights and duties that are provided by the Family Code, the Ukrainian legislation has many provisions on the spouses and other family members and close relatives that are enshrined in other laws. It is impossible to provide an exhaustive list of them but one can see that they, among others, relate to areas such as:

- socio-economic issues - such as social assistance for a family, bank loans (including mortgages for young families), pension or compensation after losing a family provider etc.
- intestate succession and compulsory share of inheritance;
- healthcare, such as deciding on important health issues and the right to access a sick close relative;
- employment – for example, the right of a wife/husband of a military man to have vacation at the time convenient for them, the right to have a leave to take care of sick relatives by blood or by marriage, etc.;
- representation of interests and the right to refuse to testify about a close relative in the law enforcement and judiciary authorities;
- simplified procedure for immigration and obtaining citizenship for those who are married to a citizen of Ukraine.

In the absence of any form of legal recognition, same-sex couples are either completely deprived of these rights or face such severe complications when exercising them that such exercise loses any practical value. It should be noted that in late 2015 the Ukrainian government formally acknowledged the existence of this problem and the need for its fast resolution by adopting the Action Plan for the National Strategy on Human Rights, in which clause 105 provides for event #6 - "Development and submission to the Cabinet of Ministers of Ukraine of a Draft Law on legalization of registered civil partnerships for opposite-sex and same-sex couples in Ukraine with taking into account property and non-property rights, including ownership and inheritance of property, support of one partner by the other in the event of disability, a constitutional right not to testify against your partner", with the implementation deadline being the II quarter of 2017.

2. PUBLIC POSITION

Legal institutions like marriage in their essence only legalize the existing social relations; they do not create a new reality but, rather, only reflect it. Despite the absence of legislative recognition of the same-sex families in Ukraine, they are formed and exist simply because gay people feel the need for the family life.

Since, at the moment, there is no feasible actual data either about the number of LGBT people in Ukraine in general, or about the number of families they have created, therefore, we can only rely on rough estimates,

made on the basis of common ideas of the modern science about same-sex relationships in the society. Although the exact percentage of LGBT people in the population is unknown, various scientific studies estimate it at 2-10%.⁸ Taking into account that the population of Ukraine over 14 years old (excluding occupied Crimea) constitutes about 36 million, it is possible to estimate the total number of LGBT adult population of Ukraine varies from 720,000 to 3.6 million people. According to a very rough estimate provided in a research by Nash Mir Center in 2009, the number of same-sex couples in Ukraine can already be 100-200 thousands.⁹

As it has already been noted, the Ukrainian legislation does not regulate the relations of same-sex couples who de facto have all features of stable and lasting family relationships. This means that from the point of view of the law, partners in same-sex families are actually viewed as strangers to each other. They do not have the right to joint ownership of marital property if it was acquired or registered by only one of them. Thus, for example, in the case of a death of the partner, who was registered as the sole owner of the property, the other partner may just be left on the street without anything. All these problems intensified and emerged full blown in connection with the Russian occupation of the Crimea and the anti-terrorist operation (ATO) in the Donbas region. Since they are not regarded as families by the society and the State, same-sex partners are not even eligible to get a joint temporary asylum if they become internally displaced persons (IDPs). Other painful problems include the absence of state aid in the event of the death of a partner (for example, a soldier in the zone of ATO), the absence of opportunity to make vital decisions on behalf of his partner, freely dispose of the joint property, to inherit from him without a will, etc.

Children who are being raised by same-sex family couples are a separate topic. Without mentioning the topic of joint adoption of children, it should be noted that the joint upbringing of children of one of the partners by same-sex partners is common, and in the case of female couples it has become a commonplace. The inability to formalize family relations between the partners and a complete ban on the adoption of children by same-sex persons leads to blatant discrimination against such children by the state. A partner who is not the biological father of the child, is not only deprived of his parental rights and benefits, but also obligations and opportunities related to the child - for example, he cannot receive state aid for the child's upbringing or get a child-care leave if needed. In the case of the death of child's biological mother, if the child was brought up together with her partner, the child is actually deprived of both parents at the same time.

The 2009 research by Nash Mir Center established that about 2/3 of the respondents had same-sex partners,¹⁰ and that approximately half of these couples were living together and had a joint household.¹¹ About 1/10 of the respondents were upbringing children together with a partner (women twice as often as men).¹² In general, approximately 1/6 of the respondents had children, and a little more than a half did not have children, but would have liked to have.¹³ In their life as same-sex couples, the respondents have encountered problems such as:

- inability to get a loan together, or ownership of a property – 17%;
- inability to resolve property disputes when divorcing a partner in a lawful way – 11%;
- absence of the right not to testify against a partner – 10%;
- inability to inherit after the death of a partner – 10%;

⁸ Please see, for instance, G.J. Gates, *How many people are lesbian, gay, bisexual, and transgender?*, April 2011, williamsinstitute.law.ucla.edu

⁹ А.Ю. Маймулахин, М.Г. Касянчук, Е.Б. Лещинский, *Однополое партнерство в Украине: отчет о проведенном исследовании*, 2009, с. 25, gay.org.ua

¹⁰ See above, note 2.

¹¹ *Ibid.*, p. 34.

¹² *Ibid.*, p. 39.

¹³ *Ibid.*, p. 16.

- inability to adopt a partner's child – 8%;
- denial of social assistance to take care of the partner's child in case of a necessity – 8%;
- denial of a house lease – 7%.¹⁴

If there was some form of state registration of same-sex couples in Ukraine, 77% of the respondents would like to formalize their relations,¹⁵ in particular, 83% of those who already have a permanent partner, and 66% of those who do not have.¹⁶ 51% of the respondents believed that it should be allowed for people of the same sex to enter a regular marriage, 38% agreed on the introduction of registered (civil) partnerships for same-sex couples.¹⁷

A high level of homophobia in the Ukrainian society is a separate problem that cannot be resolved by legislative measures. A sociological survey "Youth of Ukraine 2015", conducted by GfK Ukraine in 2015 showed that among the Ukrainian youth aged 14 to 35 years old, 45% would not want to live next door to homosexuals (to compare: 54% would not want to live next to Roma; 33% – next to HIV-positive people, 19% – next to Muslims).¹⁸ Several participants of focus groups, conducted by the Nash Mir Center in 2015, said that they could not afford to openly enter into same-sex partnership due to the fear of a negative reaction from others and possible problems in this regard. In our opinion, the position of the leading churches is the most significant among the factors that have the greatest impact on the preservation of the homophobia in Ukraine, since the churches consistently object to any attempts to recognize and protect LGBT interests on both the legislative, and the socio-political level.¹⁹

3. INTERNATIONAL EXPERIENCE

As of February 2016, twenty one countries in the world had the legislation on customary marriages, which also extended on same-sex couples; in addition, two countries (Malta and Israel) did not allow people of the same sex to enter into the marriage, but would recognize such foreign marriages, formalized abroad under the laws of other countries. Thirty-six countries had legislation providing for the registration of marital relations in a form, alternative to customary marriage (in different jurisdictions it is called differently: the registered partnership, civil union, domestic partnership, life partnership, etc.). In federal and decentralized countries, where family relations are regulated at the local level, there may be a situation where same-sex marriages or partnerships are only registered in certain jurisdictions (and recognized either throughout the country, or only in those jurisdictions). In Europe, same-sex marriages were possible in 13 countries, and same-sex partnerships – in 24 countries. Some countries that in due time introduced the registered partnership, and then allowed same-sex couples to enter into a customary marriage, either automatically converted concluded partnerships into marriages, or simply stopped registering new partnerships, but kept the already registered ones in the same status (Denmark, Norway, Sweden, Iceland); while others have retained both forms of marital status registration – as marriages and partnerships, with the possibility of converting the partnership into a marriage. Typically, in countries that recognize registered same-sex partnerships, but not same-sex marriages, such marriages if carried out abroad are recognized as same-sex partnerships in accordance with the local legislation.

The registered (civil) partnership was originally invented as a form of registration of de facto marital relationships of same-sex couples (Denmark, 1989), who could not conclude a customary marriage, but the

¹⁴ *Ibid.*, p. 53.

¹⁵ *Ibid.*, p. 61.

¹⁶ *Ibid.*, p. 62.

¹⁷ *Ibid.*, p. 67.

¹⁸ І. Волосевич, С. Герасимчук, Т. Костюченко, *Молодь України – 2015*, 2015, с. 8, www.gfk.com

¹⁹ Please see, for instance, Всеукраїнська Рада церков і релігійних організацій, *Декларація ВРЦіРО про негативне ставлення до явища гомосексуалізму та так званих одностатевих шлюбів*, 15.05.2007, vrciro.org.ua

Netherlands in 1998 adopted a law on registered partnerships, that same-sex and heterosexual couples could enter into. It turned out to be in demand by heterosexual couples – within the first three years of its validity about a third of the partnerships were concluded between people of opposite sexes. Over time, several other countries followed the example of the Netherlands by introducing civil unions that were available for both same-sex and opposite-sex couples (e.g. France and Estonia). It is also interesting to note that now a public campaign is unfolding in the UK to support the extension of the scope of the registered partnership (which is only available to homosexual partners) to heterosexual couples (who now can enter into partnerships, as well as into customary marriages), in spite of the great similarity of these two legal institutions in this country.

In 2008 the Parliament of Greece adopted a law on civil unions only for opposite-sex couples (in addition to the customary marriage), which eventually was appealed to the European Court of Human Rights (ECHR) as violating the right to respect for private and family life, and leading to discrimination between opposite-sex and same-sex couples, whilst harming the latter. In 2013, in the judgment *Vallianatos and Others v. Greece*, the ECHR agreed with the arguments of the plaintiffs and decided that the State had violated article 14 ("Prohibition of discrimination") in conjunction with Article 8 ("The right to respect for private and family life") of the European Convention on Human Rights (ECHR). In 2015, the Greek Parliament extended the registered partnership on same-sex couples. In 2015, when considering the case *Oliari and Others v. Italy*, the ECHR emphasized that "same-sex couples, in the same way as heterosexual couples, are capable of entering into a stable and committed relationship, and that they are in a situation, which is very similar to that of an opposite-sex couple when it comes to legal recognition and protection of their relations", and ruled that the refusal of the Italian authorities to introduce any form of the legal recognition of such relationship violates article 8 of the ECHR. In the beginning of 2016 the Italian Parliament started discussions of the draft law on registered partnership for same-sex couples to be adopted the same year.

By analyzing these and other recent cases on same-sex couples, it can be concluded that the case law of the ECHR now believes that the absence of any form of recognition of same-sex couples in the national legislation is a violation of a state's obligations under the European Convention on Human Rights. In such circumstances, a same-sex couple in a member state of the Council of Europe that complains to the ECHR on the inability to legally formalize their marital relationship in a situation where a similar heterosexual couple has such opportunity, has an almost guaranteed chance to win the case and get compensation for the damage caused to them. In 2014, two same-sex couples have filed a lawsuit against Ukraine and are now awaiting consideration of their applications.

The scope of rights and duties offered by the registered partnership varies in different countries, from being almost the same as a customary marriage has (Netherlands, Austria) to a noticeably more limited – mainly in financial and property questions and the status of a family member (France). It is noteworthy that in all countries where registered partnership for same-sex couples significantly limited partnership rights and responsibilities compared to ones in a customary marriage, the relevant legislation gradually was reformed in the direction of approaching the customary marriage by the registered partnership, or the former would become available also for same-sex couples. Comparing the status of registered same-sex partners in different countries, one can conclude that at present the "standard" same-sex partnership significantly differs from the "standard" marriage, mainly in the matters of joint adoption of children and procedures for the conclusion and termination of the partnership/marriage. Civil partners are usually allowed to adopt the biological children of their partners or children who were adopted before the conclusion of a partnership, but often are not allowed to have a joint adoption of children by third parties; with regard to the procedure of concluding and terminating partnerships, it is often more simple when compared to the respective provisions for marriages (in particular, they do not provide for the court's involvement when terminating the partnership). The remaining differences between partnership and marriage vary a lot from country to country and, in general, are not associated with the family law, but

rather with certain rights, which spouses have in other spheres – for example, a simplified procedure for immigration, pension schemes, and so on.

Statistics of conclusion of registered partnerships shows that they make up a few percent of the total number of marriages in a given period of time in a given country, which roughly corresponds to the estimated number of homosexuals in the society – for example, in Ireland the number of registered partnerships (same-sex) was 1.6% in 2013, and in 2014 – 1.8% of the total number of marriages (heterosexual);²⁰ in Finland, the same data amounted to about 1.4% in both years.²¹ Countries in which there is registered partnership for both same- and opposite-sex couples show that it is quite popular among heterosexual partners as well – in particular, in France in 2013 there were 162,698 civil unions (representing 72% of the concluded marriages in the same year), of which heterosexual partnerships amounted to 96%; the same data for 2014 amounts to 173,728 civil unions (77% of the total number of marriages), of which the heterosexual unions also made 96%.²² In the Netherlands, 9445 partnerships (14.6% of the number of marriages) were registered in 2013, of which opposite-sex partnerships made 96%, as in France.²³ It should be noted that the conclusion of registered partnership in the Netherlands entails practically the same legal consequences as a marriage, whereas in France couples, who have entered into "Civil Solidarity Pact", have significantly fewer rights and responsibilities than spouses in an ordinary marriage.

There is no evidence that introduction of the registered (civil) partnership or customary marriage for same-sex couples in any country has caused notable legal or social problems. In turn, the studies conducted in different countries have revealed that the legal and social recognition of the same-sex registered partnership or marriage has a positive effect on the health and general well-being of LGBT people.²⁴

4. CONCLUSIONS AND RECOMMENDATIONS

Summarizing the said above, we can make several conclusions:

- LGBT persons (homosexuals, bisexuals and transgender people) who need to have their de facto family relationships formalized as same-sex family partners constitute a certain share of the population of Ukraine.
- Ukrainian legislation does not provide for any form of legal recognition of such relationships and, instead contains provisions directly discriminating against same-sex family partners, even compared to unmarried opposite-sex family partners.
- International, and particularly European, trends as well as the case law of the European Court of Human Rights, point to the need for legislative regulation of the legal status of same-sex families and resolution of their immediate problems.
- The vast majority of the Ukrainian society has a negative attitude towards LGBT people in general and towards the effective implementation of their human rights, in particular, the right to private and family life. However, a modern democratic state has a duty to take into account, where possible, the interests of all social groups and combat manifestations of intolerance against these vulnerable groups – in particular, homophobia, as stated in many international instruments related to Ukraine.

²⁰ Central Statistics Office, *Marriages and Civil Partnerships 2014*, 31.05.2015, *cso.ie*

²¹ Statistics Finland, *Fall in the number of marriages contracted tapered off*, 21.04.2015, *stat.fi*

²² Institut National d'Etudes Démographiques, *Marriages, divorces, civil unions (PACS)*, 2013, 2014, *ined.fr*

²³ Statistics Netherlands, *Marriages and partnership registrations; key figures*, 11.09.2014, *statline.cbs.nl*

²⁴ Please see, for instance, W.C. Buffie, *Public Health Implications of Same-Sex Marriage*, *American Journal of Public Health*, 2011 June, 101(6), pp. 986–990.

- Ukrainian authorities will recognize this duty, as evidenced by the governmental Action Plan for the National Strategy on Human Rights until 2020. Among other things, it provides for "development and submission to the Cabinet of Ministers of Ukraine of a Draft Law on legalization of registered civil partnerships for opposite-sex and same-sex couples in Ukraine with taking into account property and non-property rights, including ownership and inheritance of property, support of one partner by the other in the event of disability, a constitutional right not to testify against one's partner" by the end of the II quarter of 2017 (clause 105, event #6).
- International experience shows that the legal recognition of same-sex couples does not cause significant social and legal problems on the scale of the whole society and at the same time helps to resolve similar problems of these couples. The expected number of registered same-sex family couples ranges from a few tenths to a few percent of the total number of customary marriages concluded in the same period of time. The registered partnership as an alternative form of recognition of marital relations is also in demand by heterosexual couples who for various reasons do not want to enter into a customary marriage.
- The main differences between a customary marriage and a registered partnership concern a simplified procedure for concluding and terminating the latter, as well as the matters of adoption of children. Registered partners often are not allowed to jointly adopt children of the third persons, but they are allowed to adopt children of their partners that they are upbringing together.

Considering the said above, we recommend the Ukrainian authorities to ensure the adoption of the legislation for the purpose of introduction of the registered (civil) family partnership in Ukraine between two people of either sex, that would be like a customary marriage in general terms, and that would follow the examples of the similar legislation in the developed countries. Legal provisions relating to marital and family rights and responsibilities are found in many laws of Ukraine, therefore, the introduction of registered (civil) family partnership requires a comprehensive reform of the Ukrainian legislation with the aim to take into account the status of a family member/a close relative that registered family partners should get.

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A registered partnership law for same-sex couples in Ukraine? European obligations and the United Kingdom's model of civil partnership

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I. Steps in Eliminating Sexual Orientation Discrimination

- 1787 - Austria was first European country to repeal its death penalty for some consensual same-sex sexual activity; the following countries followed by no later than the indicated dates: France (1791), Belgium and Luxembourg (1792), the Netherlands (1811), Spain (1822), England, Wales, Ireland (1861)

European Union (first 15 member states) plus Norway, Iceland, Russia (year law passed)	equal age of consent to sexual activity (no exceptions)	legis-lation against discrim-ination: employ-ment ²⁵ or services	same-sex couples: register + some rights	same-sex couples: register + equal rights ²⁶	same-sex couples: adoption (child of partner)	same-sex couples: joint adoption (child not related to either partner)	same-sex couples: register + equal rights + same name (marriage)
Netherlands	1971	1991	1997	1997	2000	2000 (2008) ²⁷	2000
Belgium	1985	2003	1998	2003	2006	2006	2003
Spain	1988	1995	1998-03 ²⁸	2005	2005	2005	2005
Norway	1972	1981	1993	1993	2001	2008	2008
Sweden	1978	1987	1994	1994	2002	2002	2009
Iceland	1992	1996	1996	1996	2000	2006	2010
Portugal	2006	2003	2010	2010	2016	2016	2010
Denmark	1976	1987	1989	1989	1999	2010	2012
UK (Eng/Wales)	2000	2003	2004	2004	2002	2002	2013
France	1982	1985	1999	2013	2013 ²⁹	2013	2013
Luxembourg	1992	1997	2004	2014	2014	2014	2014
Finland	1998	1995	2001	2001	2009	2015	2015
Ireland	2006 ³⁰	1993	2010	2010	2015	2015	2015
Austria	2002	2003	2009	2009	2013	2015	-----
Germany	1994	2003	2001	2004(?)	2004	-----	-----
Greece	2015	2003	2015 ³¹	-----	-----	-----	-----
Italy	1889	2003	proposed	proposed	-----	-----	-----
Ukraine	1991?	2015	-----	-----	-----	-----	-----

II. Potential European Obligations for Ukraine

A. Court of Justice of the European Union (CJEU)

1. Directive 2004/38 (on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States)

- Articles 2(2)(a) and 3(2)(b) – do “spouse” and “the partner with whom the Union citizen has a durable relationship, duly attested” apply to a same-sex spouse or partner? – no CJEU case law yet on “spouse” or the obligation to “facilitate entry and residence” for a partner

- Article 2(2)(b) – “the partner with whom the Union citizen – has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered

²⁵ National legislation or, for the public sector, Directive 2000/78/EC (in force 2 Dec. 2003).

²⁶ Perhaps excluding certain parental rights (adoption, medically assisted procreation).

²⁷ International joint adoption.

²⁸ Laws in the *comunidades autónomas* (regions).

²⁹ No access to donor insemination for married lesbian couples, unlike unmarried different-sex couples.

³⁰ Unequal marriage exception removed in 2015.

³¹ See Law No. 3719/2008 ("common life pact") for unmarried different-sex couples; discrim. found in *Vallianatos v. Greece* (Grand Chamber judgment of 7 Nov. 2013). Discrim. removed by Law of 24 Dec. 2015.

partnerships as equivalent to marriage” – Article 2(2)(b) will apply if and when Ukraine passes a registered partnership law, treating registered partnerships as equivalent to marriage for most (but not all) purposes, AND if and when Ukraine accedes to the EU and becomes bound by Directive 2004/38

2. Directive 2000/78 (establishing a general framework for equal treatment in employment and occupation)

- if (i) a member state voluntarily passes a registered partnership law for same-sex couples, and (ii) the law “places persons of the same sex in a situation comparable to that of spouses”, then the same benefits (eg, survivor’s pensions, paid wedding leave) must be provided to the same-sex registered partner of an employee as to the different-sex spouse of an employee

- *Maruko*, Case C-267/06 (CJEU, 1 April 2008) (registered life partnership in Germany)

- *Römer*, Case C-147/08 (CJEU, 10 May 2011) (registered life partnership in Germany)

- *Hay*, Case C-267/12 (CJEU, 12 December 2013) (discrimination against a same-sex registered partner is prohibited even if registered partnership is also open to different-sex couples, as in the case of the *pacte civil de solidarité* in France)

- *Römer*, Case C-147/08, Opinion of Advocate General Jääskinen, 15 July 2010:

76. It is the Member States that must decide whether or not their national legal order allows any form of legal union available to homosexual couples, or whether or not the institution of marriage is only for couples of the opposite sex. ... **[A] situation in which a Member State does not allow any form of legally recognised union available to persons of the same sex may be regarded as practising [direct or indirect?] discrimination on the basis of sexual orientation, because it is possible to derive from the principle of equality, together with the duty to respect the human dignity of homosexuals, an obligation to recognise their right to conduct a stable relationship within a legally recognised commitment.** However, ... this issue, which concerns legislation on marital status, lies outside the sphere of activity of Union law [but not the European Convention on Human Rights].

B. European Court of Human Rights (ECtHR)

1. Access to the rights of unmarried different-sex couples

- same-sex couples must have access to the same rights and duties as unmarried different-sex couples: *Karner v. Austria* (24 July 2003), *Kozak v. Poland* (2 March 2010)

- this principle applies to second-parent adoption (adoption of a child by the same-sex partner of the child’s mother or father): *X & Others v. Austria* (19 February 2013)

- it also applies to any registered partnership law that creates an alternative to marriage for different-sex couples: *Vallianatos & Others v. Greece* (7 November 2013)

- and to residence permits for same-sex partners: *Pajić v. Croatia* (23 February 2016)

2. Access to marriage

- *Schalk & Kopf v. Austria* (24 June 2010)

- 7-0 – same-sex couples enjoy “family life” (para. 94)

- 5-2 – the text of Article 12 does not exclude same-sex couples (para. 61)

- 7-0 – but not yet a Convention obligation to end exclusion from marriage (paras. 61-63)

- 4-3 – not necessary to decide whether there is a positive obligation under Article 14 combined with Article 8 to pass a registered partnership law for same-sex couples, because Austria had passed such a law, which entered into force on 1 January 2010 (para. 103) (dissenting opinion: there was a positive obligation to pass the law before 1 January 2010)

- *Oliari & Others v. Italy* (21 July 2015) - same with regard to access to marriage

3. Access to the rights of spouses

- second-parent adoption may be restricted to different-sex spouses even though same-sex couples are excluded from marriage: *Gas & Dubois v. France* (15 March 2012)

- *Oliari & Others v. Italy* (21 July 2015) - 7-0 - Article 8 requires a "specific legal framework" for same-sex couples (the reasoning of 4 judges seems to apply to all Council of Europe member states, including Ukraine; the reasoning of 3 judges is restricted to Italy)

C. European obligations

1. "European consensus" (consensus in the 47 member states of the Council of Europe)

(a) some kind of **registered partnership law** for same-sex couples (or access to marriage) – **27 countries**, most recently Malta, Croatia, Estonia, Cyprus, Greece, Italy (if bill passed by Senate becomes law)

(c) **second-parent adoption** for a parent's same-sex partner – **17 countries**, most recently Portugal; *X & Others v. Austria* applies at least to Andorra, Bosnia (Federation and Brčko), Croatia, Liechtenstein, Romania and Ukraine

(d) access to **marriage** – **13 countries**, most recently Ireland (see Slovenia referendum)

2. Potential obligations for Ukraine

(a) a positive obligation to pass a registered partnership law for same-sex couples (and to recognise the marriages of same-sex couples contracted outside Ukraine as registered partnerships in Ukraine) – *Oliari & Others v. Italy* (21 July 2015); see the third-party intervention of ILGA-Europe,

http://www.ilga-europe.org/home/how_we_work/litigation/ecthr_litigation/interventions

(b) second-parent adoption for a parent's same-sex partner (because it exists for a parent's unmarried different-sex partner) – *X & Others v. Austria* (19 February 2013)

(c) access to marriage – not yet

(e) access to donor insemination for lesbian couples - already exists in Ukraine?

– if not, *X & Others v. Austria* might apply, depending on how many countries grant access to donor insemination to unmarried different-sex couples but exclude same-sex couples (these countries include France, Italy, Montenegro, and Portugal; Austria was in this category until a judgment of the Constitutional Court ended the discrimination: VfGH 10.12.2013,

http://www.menschenrechte.ac.at/dokumentation/2013/VfGH/VfGH_10_12_2013.pdf)

- *Charron & Merle-Montet v. France*, No. 22612/15, lodged on 7 May 2015

(f) recognition of the genetic father of a child born to a surrogate mother within or outside Ukraine – *Menesson v. France* (26 June 2014) (case concerned a married different-sex couple, but the reasoning also applies to a male-male couple in which one partner is the genetic father)

III. The United Kingdom's Civil Partnership Act 2004

A. Choice of model for a registered partnership law

- under *Oliari & Others v. Italy* (21 July 2015), it can be argued that Article 8 requires Ukraine to pass a registered partnership law for same-sex couples

Level of recognition of same-sex couples	Separate institution for same-sex couples	Institution open to all couples, different-sex or same-sex
(1) Legal marriage		not separate and mostly equal (model A) - Netherlands (2000, in force in 2001) - Belgium (2003) (adoption amendment in 2006) - Spain (2005) - Norway (2008, in force in 2009) - Sweden (2009) - Portugal (2010) (adoption exception until 2016) - Iceland (2010) - Denmark (2012) - France (2013) - UK (England & Wales, 2013, in force in 2014; Scotland, 2014) - Luxembourg (2014, in force in 2015) - Finland (2015, in force in 2017) - Ireland (2015)
(2) Alternative registration system (a) package of rights/duties equal or almost equal to legal marriage	separate but mostly equal (model C) - Austria - Germany (after litigation) - Hungary - Liechtenstein - Switzerland - United Kingdom (civil partnership)	not separate and mostly equal (model B) - Netherlands - Malta
(b) package of rights/duties substantially inferior to legal marriage	separate and clearly unequal (model E) - Czech Republic - Slovenia	not separate but clearly unequal (model D) examples: - Andorra - France (<i>PaCS</i>) - Spain (regional laws)

- assuming that Article 51 of Ukraine's Constitution does not permit model A (but see Brazil and Colombia), I would recommend model B (to expand choice for all couples) or, if there is too much political opposition to including different-sex couples in the registered partnership law, model C

Registrations in the Netherlands in 2013 (data of *Centraal Bureau voor die Statistiek*)

different-sex couples - 87.5% chose marriage and 12.5% chose registered partnership

same-sex couples – 75% chose marriage and 25% chose registered partnership

B. Form of the registered partnership law

It is better to use the transparent subtraction method as in Denmark (the law creating a new alternative registration system extends "all the rights and obligations of married different-sex couples with the following exceptions"), than the opaque enumeration method as in the UK (the law creating a new alternative registration system must contain an extremely long list of rights and obligations; how does one determine whether it provides the same rights and obligations as legal marriage?). The UK's law had 264 sections and 30 schedules (separate provisions for Scotland and Northern Ireland made the Act longer).

Denmark, REGISTERED PARTNERSHIP ACT, No. 372 of 1 June 1989

... The Danish Folketing has passed the following Act which has received the Royal Assent:

1.- Two persons of the same sex may have their partnership registered.

Registration

2.- (1) Part I, sections 12 and 13(1) and clause 1 of section 13(2) of the Danish Marriage (Formation and Dissolution) Act shall apply similarly to the registration of partnerships, cf. subsection 2 of this section.

(2) A partnership may only be registered provided both or one of the parties has his permanent residence in Denmark and is of Danish nationality. [was later amended]

(3) The rules governing the procedure of registration of a partnership, including the examination of the conditions for registration, shall be laid down by the Minister of Justice.

Legal Effects

3.- (1) Subject to the exceptions of section 4, the registration of a partnership shall have the same legal effects as the contracting of marriage.

(2) The provisions of Danish law pertaining to marriage and spouses shall apply similarly to registered partnership and registered partners.

4.- (1) The provisions of the Danish Adoption Act regarding spouses shall not apply to registered partners.

(2) Clause 3 of section 13 and section 15(3) of the Danish Legal Incapacity and Guardianship Act regarding spouses shall not apply to registered partners.

(3) Provisions of Danish law containing special rules pertaining to one of the parties to a marriage determined by the sex of that person shall not apply to registered partners.

(4) Provisions of international treaties shall not apply to registered partnership unless the other contracting parties agree to such application.

Dissolution

5.- (1) Parts 3, 4 and 5 of the Danish Marriage (Formation and Dissolution) Act and Part 42 of the Danish Administration of Justice Act shall apply similarly to the dissolution of a registered partnership, cf. subsections 2 and 3 of this section.

(2) Section 46 of the Danish Marriage (Formation and Dissolution) Act shall not apply to the dissolution of a registered partnership.

(3) Irrespective of section 448 c of the Danish Administration of Justice Act a registered partnership may always be dissolved in this country.

Commencement etc.

6.- This Act shall come into force on October 1, 1989.

7.- This Act shall not apply to the Faroe Islands nor to Greenland but may be made applicable by Royal order to these parts of the country with such modifications as are required

Given at Christiansborg Castle, this seventh day of June, 1989

Under Our Royal Hand and Seal, *MARGRETHE R.*

C. Exceptions for access to certain parental rights?

1. Access to joint and second-parent adoption

United Kingdom (England and Wales only) - Adoption and Children Act 2002 (in force 30 December 2005), <http://www.legislation.gov.uk/ukpga/2002/38/contents>, sections 49-51 and:

section 144(4) In this Act, a couple means —

(a) a married couple, or

(b) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.

- *X & Others v. Austria* (19 February 2013):

141. ... the Court notes that the burden of proof is on the Government ... to show that the protection of the family in the traditional sense and, more specifically, the protection of the child's interests, require the exclusion of same-sex couples from second-parent adoption, which is open to unmarried heterosexual couples.

142. ... the Civil Code contains an absolute ... prohibition on second-parent adoption for same-sex couples. **The Government did not adduce any specific argument, any scientific studies or any other item of evidence to show that a family with two parents of the same sex could in no circumstances adequately provide for a child's needs. On the contrary, they conceded that, in personal terms, same-sex couples could be as suitable or unsuitable as different-sex couples when it came to adopting children.** ...

151. ... the Government have failed to adduce particularly weighty and convincing reasons to show that excluding second parent adoption in a same-sex couple, while allowing that possibility in an unmarried different sex couple, was necessary for the protection of the family in the traditional sense or for the protection of the interests of the child. The distinction is therefore incompatible with the Convention.

2. Extended to civil partners

United Kingdom (England and Wales only) – Civil Partnership Act 2004 (in force 5 December 2005), <http://www.legislation.gov.uk/ukpga/2004/33/contents>:

section 79(12) In section 144(4) [2002 Act] (meaning of “couple”), after paragraph (a) insert — “(aa) two people who are civil partners of each other, or”

3. Access to donor insemination, automatic parenthood (without a second-parent adoption) for mother's female partner, and parental orders for couples for whom a surrogate mother gives birth (usually outside the UK)

United Kingdom - Human Fertilisation and Embryology Act 2008 (in force in 2009 or 2010), <http://www.legislation.gov.uk/ukpga/2008/22/contents>, sections 42-47 (not yet required for mother's female partner: *Boeckel v. Germany*, decision, 7 May 2013), 53-54 (required for the child's genetic father: *Menesson v. France*, 26 June 2014)

United Kingdom – Human Fertilisation and Embryology Act 1990, section 13(5):

- 1990 version - “A woman shall not be provided with treatment services unless account has been taken of the welfare of any child who may be born ... (including **the need of that child for a father**) ...”

- 2008 version (as amended by section 14(2) of the 2008 Act) - “A woman shall not be provided with treatment services unless account has been taken of the welfare of any child who may be born ... (including **the need of that child for supportive parenting**) ...”

D. Including different-sex couples in the registered partnership law?

- the UK chose not to do so in 2004 – after the Marriage (Same Sex Couples) Act 2013 (in force on 13 March 2014; first marriages possible on 29 March 2014), I would argue that the UK must comply with *Vallianatos & Others v. Greece* (7 November 2013) by extending civil partnership to different-sex couples or abolishing civil partnership for same-sex couples – the UK Government's current position is that it refuses to take either step – this makes England and Wales the only place in the world where same-sex couples have two registration options (marriage or civil partnership) and different-sex couples have only one (marriage)

<https://www.gov.uk/government/consultations/consultation-on-the-future-of-civil-partnership-in-england-and-wales> (26 June 2014)

E. Recognising foreign marriages of same-sex couples as registered partnerships?

- United Kingdom – Civil Partnership Act 2004, <http://www.legislation.gov.uk/ukpga/2004/33/contents> (before 2013 amendments)

Section 215 Overseas relationships treated as civil partnerships: the general rule.

(1) Two people are to be treated as having formed a civil partnership as a result of having registered an overseas relationship if, under the relevant law, they —

(a) had capacity to enter into the relationship, and

(b) met all requirements necessary to ensure the formal validity of the relationship.

Schedule 20

A relationship is specified for the purposes of section [212] (meaning of “overseas relationship”) if it is registered in a country or territory given in the first column of the table and fits the description given in relation to that country or territory in the second column —...Belgium – marriage

... Netherlands – marriage ...

- from December 2005 until March 2014, the foreign marriages of same-sex couples were treated as civil partnerships in the UK (they are now treated as marriages, except in Northern Ireland, where same-sex couples do not yet have access to marriage)

POLICY BRIEF

on the situation of transgender persons in Ukraine

At the moment, the main document that regulates sex change issues in Ukraine, is the Order of the Ministry of Healthcare (MOH) No. 60 from February 03, 2011 "On the improvement of medical assistance provision to persons who require gender reassignment." This document retains many rigid and restrictive requirements that remained in place since the Soviet era – for example, the below contraindications to a change (correction) of gender:

- having children under the age of 18 years old;
- homosexuality, transvestism on the background of the transformation of a gender role;
- presence of any sexually perverse trends;
- morphological features, which make it difficult (or impossible) to adapt to the desired gender (hermaphroditism, wrong genitals' development);
- impossibility to carry out the endocrine or surgical change (correction) of gender due to serious physical illness;
- a transgender person's disagreement with the amount of diagnostic and therapeutic measures for gender change, which are recommended by the Commission on sex change (correction).

The "Procedure on examination of persons requiring gender reassignment", approved by the above Order, also imposes unreasonably strict requirements on transgender people who want to change their gender officially, in particular:

- inpatient psychiatric examination in a psychiatric hospital for 30-45 days;
- issuance of a medical certificate on sex change (correction) only after a surgical correction.

Some of these provisions were successfully challenged by transgender persons in Ukrainian courts, but this has not yet led to reforming the rules for gender reassignment in Ukraine, and the Commission on sex change (correction) actually ignores even those court decisions which have come in force. In February 2015, Civic Initiative T-ema along with the mentioned Commission initiated in the Ministry of Health the process of developing the standard of medical care for transgender persons (the Unified clinical protocol of medical care on gender dysphoria). It is intended to eliminate shortcomings and violations of human rights of transgender patients in providing them medical services, but it also requires a radical reform of the rules on gender reassignment in Ukraine, which are currently regulated by above-mentioned Order No. 60, and the actual situation in the healthcare.

The basic law, which allows the procedure of gender reassignment (Law of Ukraine "Fundamentals of Legislation of Ukraine on Healthcare", Article 51), does not contain requirements for the scope and specific forms of medical intervention required to issue a medical certificate on gender reassignment of a transgender person "on the basis of which the further question of appropriate changes in her/his legal status will be decided" and does not confer that right to the Ministry of Health. Two of the above-mentioned judgments specifically concerned illegal demands of the Commission on sex change (correction) regarding the volume of medical intervention required for recognition of gender reassignment, including forced sterilization of the patient.

However, in fact, according to Order No. 60, the official recognition of gender reassignment and respective change of a transgender person's name in personal documents turn out to be impossible without complex, expensive, and sometimes unwanted surgery. As a result, a transsexual person, who does not have desire or resources to undergo that surgery or where such a surgery is contraindicated by her/his state of health, is forced to live with documents which do not meet her/his psychological gender, appearance and

behaviour.

As is observed in a recent study by NGO Insight, "[...] there is a vicious circle: to get a decent job, you must have the relevant documents; to get the documents with sex/gender changed according to your appearance / identity, you must undergo surgery; to get surgery, you have to pay for it money which can be earned only if you have a decent job."³²

But even a transgender person, who had received permission and means for medical procedures, has to live for years with documents indicating her/his previous gender and the respective name because the medical procedures for gender reassignment may take a very long time. All this time these people are forced to get into difficult situations in any case that involves submitting personal documents. In addition, Ukrainian legislation does not oblige all public and private institutions, which issue some personal documents, to re-issue these documents according to the new official gender of a transgender person after the change of gender in the birth certificate and passport that may lead to unwanted disclosure of this person's gender history.

Obviously purely legal problems are such contraindications for gender reassignment as being married and having children under the age of 18. Therefore, transgender people find themselves in desperate and powerless situation simply due to the lack of mechanism to realize their rights provided by law. The Action Plan to Implement the National Strategy on Human Rights for the Period until 2020 in para. 54 provides for "the development and adoption of the Procedure on medical assistance provision to persons who require gender reassignment, which clearly determines medical and legal aspect, and procedure to change the civil gender meets recommendations of the Council of Europe and the UN Human Rights Committee" until the end of 2018.

Article 212 (Part 1, para. 8) of the Family Code of Ukraine prohibits the adoption of children by persons suffering from certain diseases, the list of which is approved by the Ministry of Health. The list is approved by Order of the Ministry of Health No. 479 from 20.08.2008 and, inter alia, includes transsexualism, thus establishing direct discrimination of a candidate adoptive parent on ground of gender identity. Discrimination on ground of gender identity in Ukraine explicitly prohibited only in employment (after adoption of the respective amendment to Article 2¹ of the Code of Labour Laws in November 2015).

The Action Plan on human rights promises to lift the ban on adoption of children by transgender people in the 4th quarter of 2016 – para. 105(7); the other provisions of para. 105 also include working out legislation prohibiting discrimination on ground of gender identity in all fields of public life, providing punishment for crimes committed under the motives of intolerance on ground of transsexuality, working out the Procedure to replace the official documents of persons who clinically diagnosed with transsexualism, etc.

A survey of NGO Insight from 2010³³ found that problems of discrimination based on their gender identity were faced by all, without exception, interviewed Ukrainian transgenders. In addition to the problems of discrimination in employment, education, relations with ordinary citizens and law enforcement similar to those faced by Ukrainian homosexuals, transgender persons also face above-mentioned specific problems concerning official gender reassignment.

Regarding the medical aspect of sex change, a major problem is the lack, and sometimes complete absence, of skilled health professionals in the regions or inadequate level of their training, as well as the high cost of

³² NGO "Insight" Documenting discrimination transgender health care in Ukraine: the procedure "change / correction of sexuality" and access to health care, 2015, p. 50, insight-ukraine.org

³³ NGO "Insight" transhenderov situation in Ukraine, 2010, insight-ukraine.org

medical procedures which a transgender person has to pay. In addition to the fact that medical experts in the regions simply do not have the training needed to solve specific transgender problems, transgender patients often stumble on a blatantly discriminatory, insulting, and sometimes just hostile attitude from those who should, in principle, help them.

Internationally, including Europe, there is no generally accepted level of legal and social standards and requirements in respect of transgender and intersex people, so in these issues we can focus only on the best practices and recommendations of authoritative international organisations. A selection of the relevant documents can be found, for example, in a comparative analysis of sex-change procedures in Ukraine and abroad, which was made out by NGO Insight in 2012.³⁴ Summarizing the official sex-change procedure provided for in the laws of the United Kingdom, Portugal, Spain and Argentina presented in this study, one can highlight the following key points:

- an applicant must be diagnosed with gender dysphoria (gender identity disorder, transsexualism);
- she/he is not required to undergo any surgery or sterilization;
- having children does not matter;
- the procedure to change register records and documents is strictly confidential.

The Action Plan to Implement the National Strategy on Human Rights for the Period until 2020 provides for the development and adoption of legislative and administrative regulations which meet best world practices. Effective implementation of these provisions will help solve most of the problems which transgender people face in Ukraine now. At that, it is critically important to separate the correction of the register records and documents of a transgender person wishing to change officially her/his gender from medical treatment, and to eliminate the other aforementioned shortcomings of the current sex- change procedure.

Prepared by Andrii Kravchuk, Expert of Human Rights LGBT Nash Mir Center, using materials of NGO Insight and NGO Civil Initiative T-ema.

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When using materials it is required to provide a reference to Nash Mir Center as the source.

³⁴ NGO "Insight" analysis procedure "change (correction) sex" in Ukraine and international practice, 2012, insight-ukraine.org

ATTITUDES OF UKRAINIANS TOWARD HOMOSEXUAL PEOPLE

a brief overview of a sociological survey

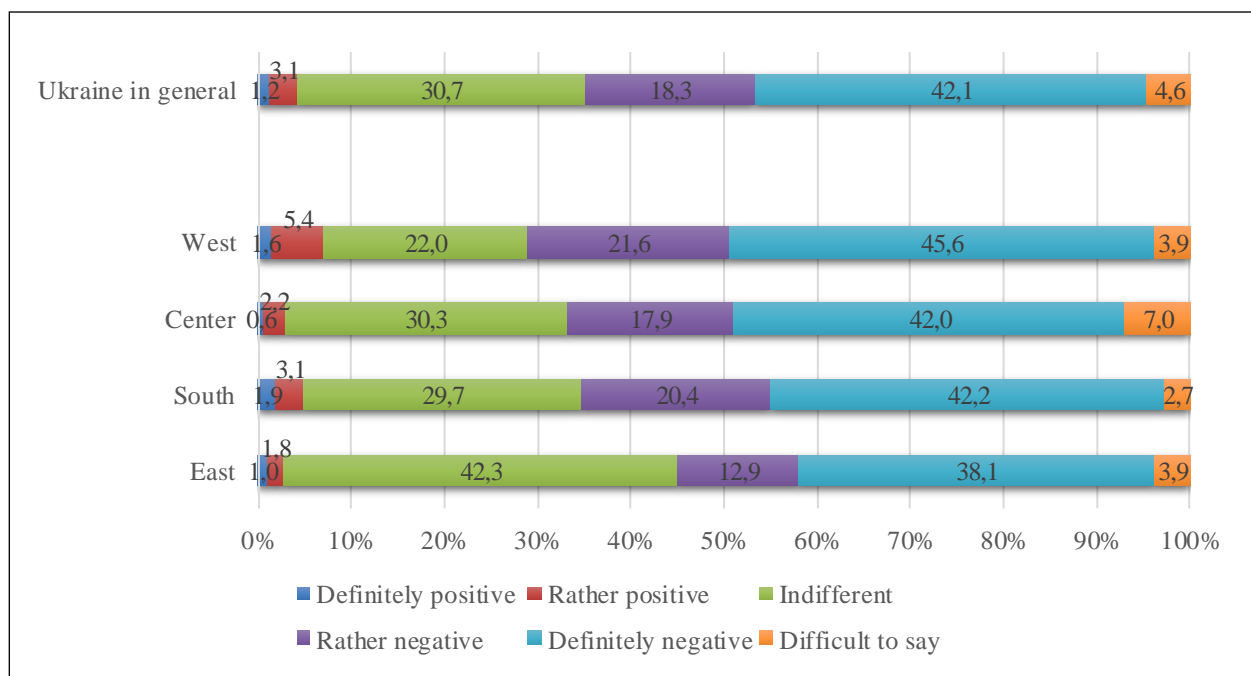
Shortly before the international conference "LGBT Issues and European Integration of Ukraine" the Kyiv International Institute of Sociology, at the request of LGBT Human Rights Nash Mir Center, conducted a nationwide survey to study social and political attitudes of the Ukrainian adults aged 18 and older toward people with homosexual orientation. 2020 interviews were conducted in 110 population centers of Ukraine in February 2016 as part of the survey, which was representative of age, gender identity and social status of the respondents. This paper presents the main results of the study that include the information regarding attitudes of Ukrainians toward homosexual people in general, as well as the views of citizens of Ukraine on socio-economic rights of homosexuals in the Ukrainian society.

Despite the positive trends in Ukraine at the level of local and nationwide legislative debates and initiatives as well as the appearance of the first political force - the President's party "Block of Petro Poroshenko" - that declared and remains consistent in pursuing the policy of protecting equal rights for LGBT citizens, the public mood among the Ukrainian population towards homosexuals remains extremely negative. Thus, the study showed that 60 percent of Ukrainians are either "rather negative" or "definitely negatively" in their perceptions of homosexual people, and 42 percent said that they have a definitely negative attitude toward such people.

Diagram 1

What is your attitude in general toward people with homosexual orientation?

(% out of all the respondents)



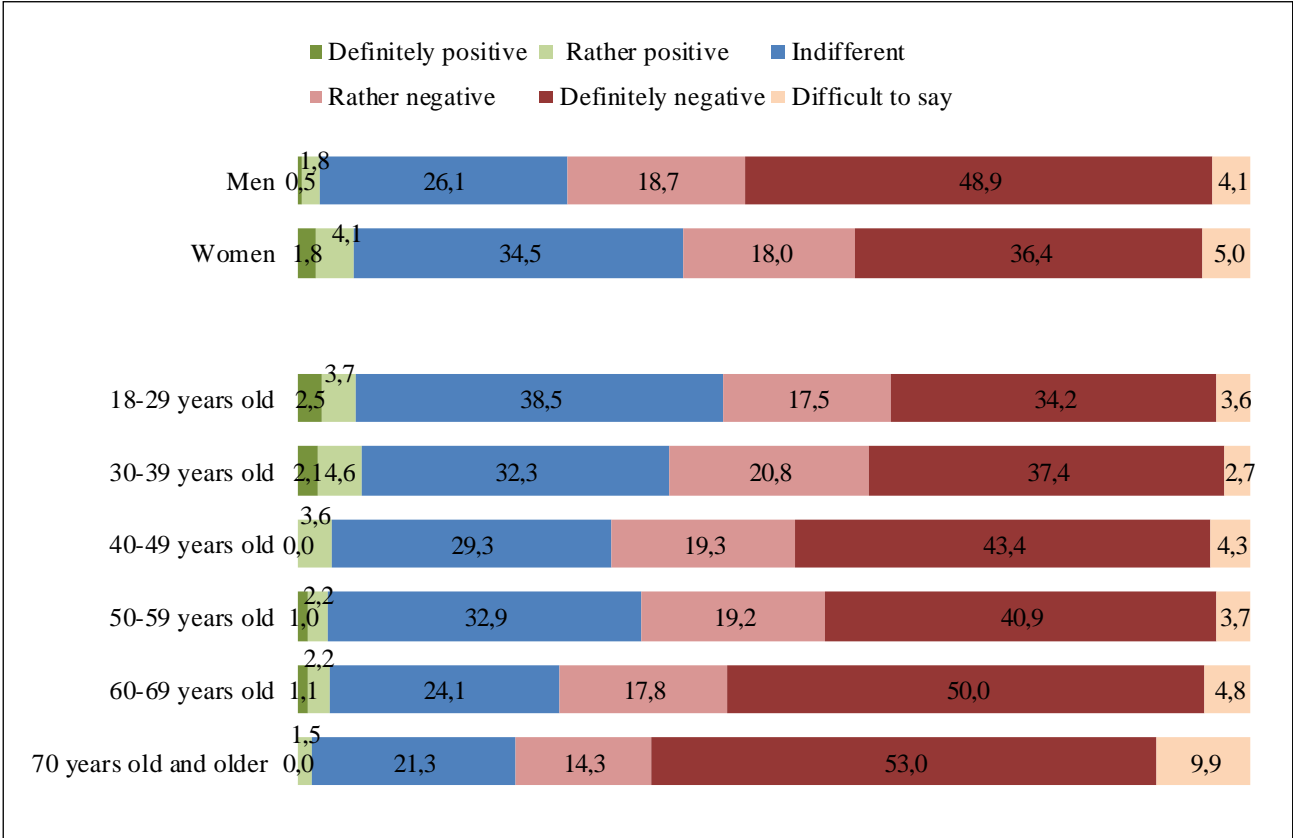
As Diagram 1 shows, only 4.3% of Ukrainians are either definitely positive or rather positive in their attitudes, and 31% said they were indifferent. It can be interesting that the highest percentage of both negative (67,2) and positive (7) attitudes were detected in the Western region, whilst the biggest share of the population in the East – 42.3% - said that they were indifferent about homosexuals.

The survey also shows that men’s attitudes in Ukraine toward people with homosexual orientation tend to be significantly worse - almost 68% of men are definitely negative or rather negative about the issue, compared with 55% among women. At the same time, the young Ukrainians seem to be more tolerant than the older generation - "only" 52% of those under 30 years old and 58% of those under 40 years old indicated their negative attitudes regarding homosexuals, whilst this percentage is already at the level of 67- 68 among people aged up to 70 years old and those who are 70 years old and older (Diagram 2).

Diagram 2

What is your attitude in general toward people with homosexual orientation?

(% of the respondents depending on the gender and age)



A somewhat worse attitude toward the people with homosexual orientation can also be observed among villagers: 67% among them have a negative attitude, compared with 54-58% among city residents.

A higher level of education seems to raise the level of tolerance, but even among those with a higher education, 56% still have a negative attitude; the figure is 72% for the people with a lower secondary and lower level of education. A breakdown by social groups showed that school and university students had the best attitudes to homosexuals ("only" 48% have a negative attitude), whilst the highest level of homophobia is observed among the unemployed (65%), workers (70%) and entrepreneurs (74%).

The next block of questions to respondents concerned the possibility of legislative support of equal rights for homosexual persons. As it turned out, in 2016 only 33.4% of Ukrainians agree that their fellow citizens with homosexual orientation can have the same rights as other citizens of Ukraine. Unfortunately, even though a minor, but still a negative trend is observed among citizens of Ukraine when we look at the data of 2011 (Table 1).

Table 1

“Do you think that homosexual residents of Ukraine should be entitled to the same rights that other citizens of our country have?”

	2002	2007	2011	2016
Yes, all should have equal rights	43 %	34 %	36 %	33,4 %
No, there should be some restrictions	34 %	47 %	49 %	45,2 %
Difficult to answer	24 %	19 %	15 %	21,3 %

A study carried out in 2016 showed that the tendency to support restrictions on the rights of homosexual people is more common among men (50% versus 42% among women). Also, if among people under 39 years 39% believe that the rights must be equal, among persons aged 70 years and older - only 19% think so. Interestingly, among the inhabitants of small towns (up to 20 thousand inhabitants) almost 42% supported equal rights for all citizens, while in large and medium-sized (up to 100 thousand inhabitants) only 33.5% and 36.1% residents, respectively, shared this view.

Among people with the higher education those who advocate for equal rights slightly prevail quantitatively - 37% vs. 34% of those with vocational secondary education and up to 31% of those with the education below the level of the secondary education. However, even among the most educated sections of the population 47% hold the view that certain restrictions should exist. Only the group of school and university students demonstrates the prevalence of those who advocate for equal rights: 49% vs. 36% of those who favor restrictions. Supporters of the restrictions prevail in all other groups of respondents.

However, the data presented below in Table 2 indicates that the issue of granting equal rights to homosexual people is perceived by the respondents rather abstractively, and therefore, shows a bit too optimistic a picture. For instance, in 2016, 33.4 percent of respondents were in favor of equal rights for homosexuals, but only 4.8 percent supported the possibility of introducing the registered (civil) partnership for same-sex couples. For comparison, in 2011, 36 percent of Ukrainians supported equal rights and 19 percent - the idea of the registered (civil) partnership. Thus, over the past five years, the attitude of Ukrainians towards registered (civil) partnership for same-sex couples significantly deteriorated. However, the increase of the number of Ukrainians who are strongly opposed to this idea, is not that significant - 69% vs. 64% in 2011. The remaining respondents said they either did not care (18.5%) or could not answer the question (7.7%).

Table 2

Do you think that homosexual couples should have the right to register their relationship like ordinary married couples do?

(% out of all the respondents)

	2002	2007	2011	2016
Yes, they should have this right	19 %	16 %	19 %	4,8%
No, they shouldn't be granted this right	54 %	63 %	64 %	69%
Difficult to answer	27 %	21 %	17 %	26,5%*

* the 2016 part includes respondents that answered that they either were indifferent or had difficulties with answering the question.

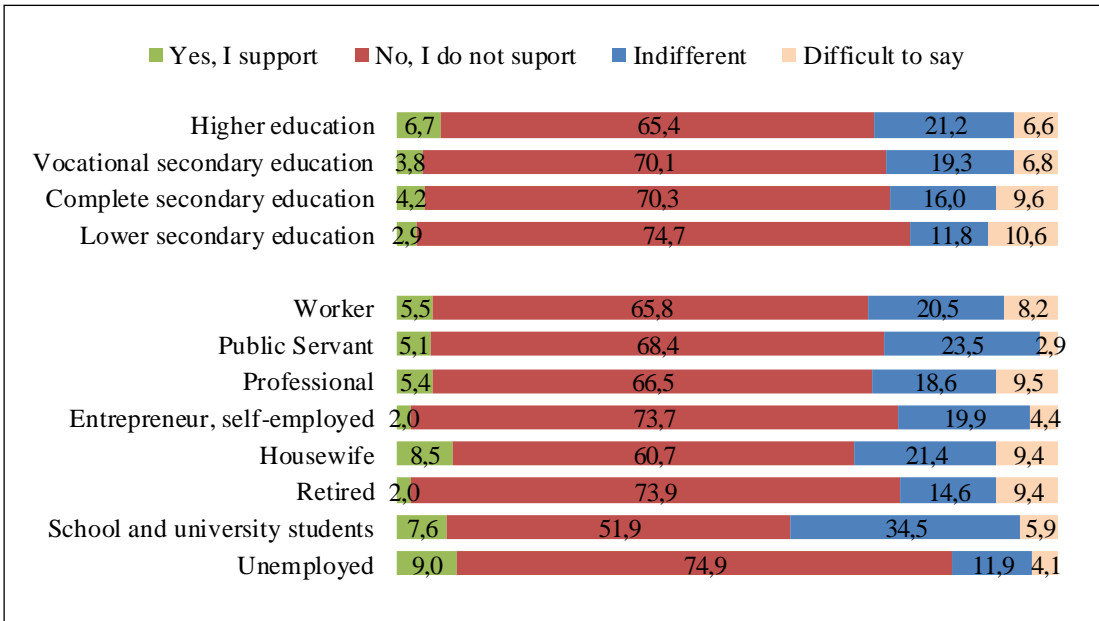
The highest percentage of Ukrainians supporting the idea of registered (civil) partnership falls within the age group of 30-39 years (8.5%), while people older than 60 years favor this suggestion the least (less than 1.5%). Women were slightly more inclined to agree with the introduction of the said partnership (65% of women said they were against it compared with almost 72% of men).

If one analyzes the opinion of respondents depending on the type of their population center, the largest number of the opponents of the registered (civil) partnership for the same-sex couples reside in rural areas (71%), however, there is only a 3% difference with the big cities.

Diagram 3

Do you support or not support introduction of registered (civil) partnership for same-sex couples, which is similar to marriage, but without the right to a joint adoption of children?

(% of the respondents depending on the education and profession)



Finally, as seen from Diagram 3, even among school and university students 52% are against the registered (civil) partnership. However, the total amount of those who support or who are indifferent totals up to 42% in this group and is the highest out of different groups.

Thus, as of February 2016, the negative attitude of Ukrainian citizens toward people with homosexual orientation still prevails, and that significantly increased in the period from 2002 to 2011 with the continuation of the negative trend until the present time. The survey revealed some differences depending on the gender of respondents - men tend to express negative attitudes more often than women do, however, the percentage of men and women who support same-sex registered (civil) partnerships is equally small. One can also speak about the link between education and a likely more positive attitude toward the people with homosexual orientation, but when it comes to concrete measures, such as legalization of same-sex partnerships, the share of educated youth that supports this idea, remains critically low.

**Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states
on measures to combat discrimination on grounds of sexual orientation or gender identity**

*(Adopted by the Committee of Ministers on 31 March 2010
at the 1081st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals 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, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on "Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons";

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such

as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.
4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.
5. Member states should ensure that relevant data are gathered and analysed on the prevalence and

nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and

transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XII. Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

LGBT issues and the European Integration of Ukraine

International conference, 15-16 March 2016, Kyiv, Ukraine

The conference organiser is **LGBT Human Rights NASH MIR Center**. This group is one of the oldest Ukrainian NGOs whose purpose is implementation and protection of the rights and freedoms, and the satisfaction of public, social, cultural, political, economic and other interests, of the Ukrainian LGBT community. For more than 17 years Nash Mir has been engaged in monitoring LGBT rights, providing legal assistance to victims of discrimination and hate crimes based on homo- and transphobia, advocating for equality for the LGBTI community on legislative and political levels, raising awareness about relevant issues, and more.

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