



ONE STEP FORWARD, TWO STEPS BACK

Situation of LGBT in Ukraine in 2010 - 2011



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CONTENT

Introduction.

I. OVERVIEW: Situation of LGBT people in Ukraine.

II. LGBT people and the State.

- a) Unification of Ukrainian law and the European legal norms.
- b) Homophobic legislative propositions.
- c) Ukrainian LGBT people through the eyes of international experts.
- d) Law enforcement.
- e) Ombudsman.
- f) Local governments.

III. LGBT people and the mainstream society.

- a) Public opinion about homosexuals in Ukraine.
- b) Church.

IV. Results of the monitoring of human rights violation in relation to LGBT persons.

- a) Results from the sociological study.
- b) Case studies.

V. Annexes

- a) Discrimination and violence against lesbian and bisexual women and transgender people in Ukraine (shadow report).
- b) Letter of the Council of LGBT organizations of Ukraine regarding human rights on LGBT people in Ukraine in the context of EU-Ukraine Association Agreement.
- c) Letter of European Parliament's Intergroup on LGBT Rights concerning draft law affecting freedom of expression in Ukraine.
- d) Submission by the International Lesbian and Gay Association (European Region) on the 4th National Report by Ukraine on the implementation of the revised European Social Charter. Article 1.2: Prohibition of discrimination in employment on the grounds of sexual orientation and gender identity.
- e) About NASH MIR.

This brochure is English summary of the report **"ONE STEP FORWARD, TWO STEPS BACK. Situation of LGBT in Ukraine in 2010-2011"**.

The brochure contains various information reflecting the social, legal and political position of sexual minority citizens in modern Ukraine. Included are data determined by a sociological poll; speeches by state, political and public figures; the results of our monitoring the observance of LGBT rights.

Full report is available at: <http://www.gay.org.ua/publications/report2011-r.pdf> (Ukrainian)
<http://www.gay.org.ua/publications/report2011-r.pdf> (Russian)

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Introduction

Twenty years ago, Ukraine was the first among post-Soviet countries to decriminalise consensual sexual relations among adult men. Concurrently, the World Health Organisation removed homosexuality from the list of mental diseases.

Decriminalisation having occurred, it seemed – did it not – that Ukrainian homosexuals could exercise their need to live without fear, to feel free in their changing country? But two decades have passed, and the situation has *not* changed. Some evidence exists that conditions have become even worse. Society has become more homophobic, authorities pretend no problem exists, and homophobia nearly acquired formal support at the state level.

A key phrase of the leader of the October 1917 Revolution – not randomly chosen – is appropriately the title of this publication. No other words could better reflect the current situation of gays and lesbians in Ukraine nor the situation regarding the democratic aspirations of citizens in our country as a whole. By this famous phrase Lenin gave a precise definition for every timid, indecisive policy, and the position of those who constantly waver. Twenty years ago our country took a first step towards democracy, today it has taken two steps in the opposite direction toward totalitarianism.

Frankly considered, for Ukrainian LGBT people the situation has never been very favourable. Only once, with Orange Movement representatives in power and declaring democratic values, could we hope that sooner or later our situation would improve as well. However, the national course of Orange influence petered out long before the government changed. Today's Ukrainian LGBT movement enthusiasts must thoroughly document violations against themselves and knock on every governmental and mass-media door – to voice their concerns resoundingly!

OVERVIEW: Situation of LGBT people in Ukraine

1. When Ukraine was part of the former Soviet Union, there existed criminal prosecution concerning sexual acts between adult men punishable by up to one year in prison or exile for a term of up to three years. Sexual contact between women officially was not prosecuted, but lesbian women faced forced mental health treatment because of their sexual orientation as well.
2. Although gay sex was decriminalized in Ukraine on December 12, 1991, at present, homosexual citizens do not have the same rights under the law as their heterosexual fellow citizens, because they are not protected from discrimination or hate motivated crimes based on sexual orientation under any law that is on the books. This sends the clear message that Ukrainian authorities do not consider LGBT rights to be an important issue and that they do not want to take steps to improve protections against discrimination or combat hate motivated crimes stemming from sexual orientation.
3. Moreover, the attitudes that justify laws supporting the persecution of homosexuals continue to predominate Ukrainian society. Indeed, various surveys indicate that Ukrainians have negative attitudes towards gays and lesbians and, based on my experience and observation, the situation has substantially worsened in recent years:
 - In March 2011 at the request of Nash Mir, the TNS Ukraine sociological company conducted a national poll of the Ukrainian population on their attitudes towards granting equal rights to Ukrainian homosexuals. Similar polls were taken in 2002 and 2007. A comparison of the results shows an increased polarisation of negative attitudes towards the GLBT community. Over the past ten years, the number of people who reject granting equal rights to homosexual citizens has *increased* from 34 % to 49 %. The number of people who think that homosexual citizens should not have the right to register their relations as a conventional couple, has *increased* from 54 % to 64 %. The number of people who think that homosexual citizens have no right to raise children, has *increased* from 49 % to 69 %.
 - 65% of the residents of Kyiv, Ukraine's capitol and largest city, considered homosexuality a perversion or a mental disease when polled in 2010¹; and
 - 72% of Ukrainians in 2010 have negative attitudes towards sexual minorities.²
4. In these social conditions, LGBT people often face physical violence, sexual assaults, hate motivated crimes, and discrimination on the basis of sexual orientation. In spring 2011, Nash Mir Centre carried out a survey of Ukrainian LGBT people in which 1721 respondents participated. 61 % of the respondents stated that for the past three years they at least once experienced violations of their rights or discrimination on the grounds of their sexual orientation or gender identity. This indicator data amounted to 89 % among those respondents whose sexual orientation was known or inferred by other people. The most common problems LGBT persons face are hate motivated crimes, discrimination on the part of police and in the work place.

For example, in April 2010, a gay man was severely beaten by police officers in the hall of the city police department in the presence of a dozen witnesses for simply requesting that

¹ Conducted by the Socis Sociological Center, September 2010.

² Conducted by the Gorshenin Institute, December, 2010.

the policemen observe the proper procedures for placing him in detention. He was subsequently forced to abandon his attempt to defend his rights because he and his mother were subjected to threats by police officers. He was also forced to sign a document attesting that he had no complaints against the police. In October 2009, militants from a nationalist organization physically assaulted and insulted participants at a gay poetry presentation. Seven months after a Ukrainian LGBT organization filed a complaint with the police, the police claimed no crime was committed and refused to bring a criminal case against the assailants.

5. We also aware of many cases of the police impeding the constitutional rights of LGBT individuals. For example, it is very common for police officers to improperly detain LGBT people when they have done nothing wrong, and then unlawfully collect and file their personal information, such as telephone numbers, addresses, photos and fingerprints. Then, when some crime occurs in the community, the police consult their files of identified homosexuals, which act as a ready list of "suspects" to target. It is well-known in Ukraine that the police keep files on homosexuals and drug users for this purpose.
6. During recent years, several attempts were made to organize peaceful demonstrations by LGBT groups, but those attempts were either banned by local authorities or attacked by radical groups like nationalists or skin heads. The police usually did not protect LGBT people or investigate such attacks. For example, on November 20, 2010, a non-governmental organization organized events to observe the International Transgender Day of Remembrance. At a movie screening event, about ten men in masks broke into the hall and sprayed tear gas. Several people were injured. The police arrived but did not file a complaint or launch an investigation. The police's attitude about incidents in the gay community is that if no one is dead, they do not do anything. On December 11, 2010, a few groups, including one LGBT organization, organized a demonstration related to Ukraine's social policies on LGBT rights, among other topics. At the end of the event, a group of young men calling themselves "Christian youths", possibly related to the neo-Nazi political party that had threatened to counter-protest, attacked some of the protest participants and screamed homophobic slogans.
7. Ukrainian politicians prefer to keep silent about LGBT issues in public. When the public does hear something, usually they hear anti-gay messages. For example, the former Chairman of the Committee on Human Rights of the Ukrainian Parliament, Mr. Leonid Grach, stated publicly that "homosexuality is an anomaly, which is caused by the amorality and the depravity of man" and "[m]e and my colleagues in the Parliament have to protect the society from infringement upon morality, to prevent penetration into consciousness and souls of people of any age the idea that the state is on the side of people who sow debauchery, promote dissoluteness, sexual permissiveness, bringing abomination of corruption of morals into society."³ In the opinion of Mr. Grach, "the state must protect the society from evil, from violence, including such evil as homosexuality, lesbianism and such."⁴ Despite calls from Nash Mir to state and political leaders, no actions were taken to reprimand Mr. Grach for these homophobic statements. This is not surprising since gay bashing and discrimination, both by private and governmental persons, is the norm across Ukraine.

³ Tony Grew, "Ukrainian gays face fight with Parliament," *Pink News*, February 13, 2007, available at <http://www.pinknews.co.uk/news/articles/2005-3700.html>.

⁴ *Id.*

8. On 20 June 2011 six Ukrainian MPs, covering all the main political parties⁵ tabled a draft law entitled "On amendments to some legislative acts (to protect the right of children to a safe information environment)".

The Explanatory Note accompanying the draft law gives the rationale for the proposal as follows:

"The draft law is designed to strengthen protection from homosexual propaganda in Ukraine and establish the legal framework for the prosecution of violations of the laws which protect public order and morality in Ukrainian society.

The spread of homosexuality is a threat to national security, as it leads to an epidemic of HIV / AIDS, destroys the institution of the family and can cause a demographic crisis."

The draft law seeks to achieve this objective through amendments to five laws addressing three distinct areas, protection of public morals, regulation of the media/publishing, and the criminal code. In each case this is done through simply adding either the promotion of homosexuality or the production/distribution of products which promote homosexuality to the list of prohibited activities in the legislation.

The criminal code carries penalties ranging from a fine to 5 years' imprisonment for the breaching the relevant provision. The other laws on public morality and regulating the media/publishing make provision for various forms of sanction against the entity concerned, or refer to the possibility of administrative or criminal sanctions under other legislation.

9. Over the past few years, the church, including the official Orthodox church and the Catholic church, has become even more anti-gay and vocal about its prejudices. Church officials in Ukraine make public statements condemning gays, and religious organizations collect signatures from people to petition the introduction of criminal punishment for homosexuality. A common view in the church is that Ukrainians cannot accept European human rights values such as protecting the human rights of gays and lesbians because Ukraine has a traditional lifestyle which does not include embracing gays and lesbians.
10. Given the persecution of homosexuals that has predominated Ukrainian culture for decades, most homosexual men and women in Ukraine distrust authorities and the government. Therefore, as a rule, LGBT people do not speak out about violations of their rights, because they are afraid to be open about their sexual orientation as their self-admission can lead to homophobic reactions and even more violence against them.
11. The latest 2009 bio-behavioral study of MSM in Ukraine showed that prevalence of HIV infection in this group averages 8.6%, and in some regions (i.e. Lviv, Odessa and Donetsk oblasts) it reaches up to 20%.

"The MSM subgroup is not taken care of by any ministry, it exists outside the legal framework. The state's attention to this group is very limited. The fact that some law enforcement and health service officers take the behaviour of MSM as deviant causes biased, discriminatory treatment and, in turn, puts a barrier to prevention programs among MSM." was admitted in the "National Report on the Implementation of the Declaration of Commitment on HIV/AIDS in 2008-2009" – Ministry of Health of Ukraine, 2010.

⁵ They represent the following parties/blocks: Communist party, "Our Ukraine People's Self-Defense" block, Yulia Tymoshenko block, Party of Regions, "Reforms for the Future" block.

LGBT people and the State

Ukrainian law and state policies toward LGBT people have not changed drastically over the last two years. As previously, Ukraine has been pursuing a policy of double standards in the domestic and international arenas. While supporting Western initiatives aimed at combating homophobia and discrimination of LGBT persons on the international level (without taking any notable part in their development, though), the state virtually ignores completely these problems on the national level.

Unification of Ukrainian law and the European legal norms

In spring 2010 and summer 2011 the representatives of Ukraine supported a number of international instruments with regard to prohibition of discrimination on the grounds of sexual orientation and gender identity (SOGI).

However, support is much easier said than done. Thus, on January 12, 2011, President Viktor Yanukovich signed the Decree "On the Plan of Actions for the fulfillment of commitments that stem from Ukraine's membership in the Council of Europe (CoE)". On the next day, in his speech at the meeting of the Presidential Commission on Strengthening Democracy and the Rule of Law, he placed emphasis on the urgent need for Ukraine to fulfill all of its obligations. Unfortunately, despite the fact that Ukraine has to comply with the aforementioned Resolution of the Committee of Ministers of the CE and Recommendations of the Parliamentary Assembly of the CoE (PACE) concerning SOGI, the Chair of the Presidential Commission, Serhiy Holovaty, failed in fact to answer one direct question: how do Ukrainian authorities plan to implement these recommendations?

During the milestone of Ukraine's 20th year of independence, its state authorities have finally decided that they need to combat discrimination. Of course, this decision was not voluntary; rather, it was made with a view toward nominally aligning with the requirements of EU conditionality, set forth in the EU-Ukraine Action Plan on Visa Liberalisation of June 09, 2010, and the National Plan of Actions subsequently adopted in April 2011. To this end the Ministry of Justice of Ukraine submitted a draft of the Strategy to combat discrimination in Ukraine for a public debate. Unfortunately, the draft of this declaratory document, like other similar anti-discrimination provisions in the Ukrainian legislation, does not provide for an explicit mention of SOGI as protected grounds and implies that "other grounds" cover them. The Association of public organizations "Council of LGBT Organizations in Ukraine" forwarded its amendments to the Strategy to the Ministry; however, the latter declined them arguing that SOGI is included under "other grounds". That is, their argument maintains: given that as early as in the year 2000 PACE in its Resolution No. 1474(2000) urged state-members to explicitly include SOGI as protected grounds into relative provisions of national legislations (par. 11, subpar. "iii", point "a"). We do not feel this properly places SOGI within the context of operative Ukrainian law.

Verkhovna Rada (Parliament) of Ukraine is expected to read the draft of the Labor Code of Ukraine (Reg. No. 1108) for the second time during the active session of 2012. Inasmuch as the field of employment relations continues to be fraught with discrimination potential and thus remains one of the most problematic for the Ukrainian LGBT community (see Chapter 3 for further discussion), Ukrainian LGBT organizations have persisted in trying to persuade the legislator to include SOGI in the list of protected grounds for all the years that the draft law has been under consideration in the Parliament. Their attempts ostensibly ended in an initial failure as MPs refused to support the initiative, finding it unreasonable. Only Ivan Kyrylenko, leader of the Yulia Tymoshenko Bloc faction, gave his agreement to submit our proposition during the second reading.

Homophobic legislative propositions

Ukraine's expressed support for PACE's anti-discrimination initiatives that concern SOGI did not preclude several MPs, who represent all main political forces in the Parliament, from submitting in 2011 a series of legislative drafts, some of which have *already been adopted*, that violate the rights of gay, lesbian, bisexual and transgender persons. Standing up for "high moral standards" has become the latest notion among politicians, and publicly asserting one's homophobia has been a good confirmation thereof.

Two events in 2011 entailed tilting at windmills through mislabeling occurrences a threat to "public morals": the birth of a child by a surrogate mother for a Belgian gay couple, and the ratification of the European Convention on the Adoption of Children. Both events received broad coverage in mass-media – along with morbid interest and a response lacking common sense on the part of a number of Ukrainian MPs. What besides "tilting at windmills" could characterize this statement made by the member of Our Ukraine - People's Self-Defense Bloc Volodymyr Stretovych: "The sin of Sodom will send birth rate plummeting; yes, it is very likely that human kind will gradually die out. I see it as a threat."?

His colleague from the same faction Yekateryna Lukianova, inspired by the aforementioned events, went further and submitted to the Parliament not one but two legislative drafts. One draft received a negative evaluation from the expert parliamentary committee and was returned as requiring improvement. The other, providing for amendments to the current legislation to introduce a stricter definition of "spouses" as exclusively "one man and one woman," *has been adopted* by the Verkhovna Rada (Parliament) of Ukraine. In the evaluation of the draft the expert parliamentary committee even made a reference to international law and concluded that "Article 19 of the UN Convention on the Rights of the Child establishes an obligation for all the states that have ratified the Convention to take measures necessary to protect the child from all forms of violence including sexual abuse by parents or any other person that looks after the child."

Thus, by misinterpreting legal norms the experts groundlessly accused the same-sex family of an *a priori* inclination to exert "all forms of violence including sexual abuse of the child". If such were truly and invariably the circumstances, the eleven European states that do allow for adoption of children by same-sex couples, by an irrational stretch of the imagination, could be seen as in violation of the Convention, for putting the child at a predictably high risk of violence.

The problems discussed above for the most part concern foreign gay couples who may plan to adopt a child in Ukraine or contract for services of a surrogate mother. Ukrainian same-sex couples presently are and will be in the nearest future deprived of such possibilities. For them, just as for single LGBTs, another threat is more topical and relevant: in summer 2011 a legislative draft prohibiting the *soi-disant* "propaganda of homosexuality" was submitted to the Verkhovna Rada (Parliament) of Ukraine. The bill stipulates various charges, including criminal ones (imprisonment for a period of from 3 to 5 years), for any non-negative reference to homosexuality in the public discourse, foremost in mass-media; it criminalizes as well the "cult of homosexuality" equating it to the cults of violence. "Homosexuality", according to the bill's explanatory note, is one of the main factors that leads to the destruction of family as a social institute and to aggravation of the demographic situation in the country. Should this insupportable, skewed bill be adopted, such fundamental principles of a democratic and constitutional state as freedom to collect and disseminate information and freedom from discrimination will be patently under threat in Ukraine. In our view, such developments are dangerously likely because of late the Ukrainian authorities have been copying some domestic policies of its northern neighbor, Russia, where several federal sectoral sub-districts have already adopted similar laws.

Ukrainian LGBT people through the eyes of international experts

In the evaluation prepared and published by the International LGBT Association ILGA-Europe in 2011 on the eve of May 17, the International Day Against Homophobia, Ukraine was ranked lowest on the scale assessing laws and administrative practices which protect from violation the rights of LGBT people in the countries of Europe.

On June 22, 2011, CoE Commissioner for Human Rights Thomas Hammamberg launched a report titled "Discrimination on the grounds of sexual orientation and gender identity in Europe". Ukraine is mentioned several times in the report, specifically as one of nine CoE member states (of 47 in total) that have neither sectoral, nor general laws that protect against discrimination on the grounds of SOGI.

Besides, Ukraine is one of seven states that do not grant asylum to refugees fleeing from discrimination on the grounds of sexual orientation.

Ukraine is also one of twelve CoE member states that banned gay prides or created administrative obstacles to the organization thereof.

Ukraine, along with Armenia, Azerbaijan, Russia and Turkey, is a state that still limits the freedom of association, a fundamental human right, and obstructs registration of LGBT organizations.

Law enforcement

More positively, in July 2011 two state agencies, the State Department of Statistics and the Ministry of Domestic Affairs (MDA), informed the public that Form No. 7, whereby the State Department of Statistics obliged law enforcement agencies to register and report on the number of homosexual males as belonging to the group with high risk of contracting HIV, had been cancelled in 2008. Although this discriminatory and unconstitutional Form No. 7 had usually been taken lightly by law enforcement, today the Ukrainian LGBT community undoubtedly celebrates the fact that at least one small formal implementation of Ukraine as a "police state" has ceased to exist.

However, what is of present concern to LGBT organizations is not simply this one discontinued bureaucratic norm. Many of us have information that the MDA have been keeping illegal registers of homosexuals containing private information, fingerprints, and photos – all collected through violations of established procedural norms.

In their letter of April 04, 2011, the Ministry of Domestic Affairs stated, in response to an inquiry from Nash Mir, that "the information concerning the sexual orientation of citizens is not collected or used by the Ministry except in cases provided for by the law". A similar response was given to another LGBT organization The Gay Forum of Ukraine in July 2011. In other words, we who queried are being asked to believe and accept that the many evidences of such actual MDA activities, coming not only from non-governmental organizations but also from state research institutions, are in fact "insinuations" made to discredit the "honorable" enforcement of the law.

The Ministry's position on the issue has not changed over the years. Unfortunately, both law enforcement's non-transparency of actions and lack of public accountability – together with the unwillingness on the part of LGBT persons, who fell victims to illegal collection of private information, to defend their rights – result in our virtual impossibility of rebutting such self-protective MDA replies. Nevertheless much evidence exists that such databases are in fact

organized by anti-human-trafficking units in virtually every big city of Ukraine. In 2009, after the incident in the Kyiv gay club Androgyn, (which involved mass illegal detention, collection of fingerprints and photographing of the club's customers), existence of such practices was confirmed by the head of Kyiv police PR Department Viktor Polishchuk in his interview televised by TV-channel STB.

Indeed, how can one prove that violations took place, when what goes on with detainees in the police station stays "unwitnessed" inside the police station – and the burden of collecting evidence is upon the victim? Also, even legal advisers have difficulties getting to see and advise their clients detained in police stations. Furthermore, before being released the detainees are forced willy-nilly to sign statements declaring an absence of complaints regarding police officers' actions. These obligatory statements in effect later preclude them from complaining. As things stand, at present the collecting of necessary evidence of police abuse is virtually an impossible, Kafkaesque task.

Given the general lack of supervision over the work of the police in our country, which in many cases is in direct violation of the law, the unwillingness of victimized LGBT persons to defend their rights publicly seems understandably prudent of them – if not yet up to the level we strive for and expect.

In April 2011 the International HIV/AIDS Alliance in Ukraine circulated a jointly considered statement describing a new wave of state-sanctioned repressions against non-governmental organizations in Ukraine. Under orders from the Presidential Administration the General Prosecutor's Office of Ukraine initiated mass inspections of non-governmental organizations' activities. During these inspections, leaders of targeted organizations were threatened and documentation was confiscated. The inspections resulted in the closing of a number of social programs administered by the non-governmental sector.

"A decade-long development of democratic institutions in Ukraine has been curtailed by KGB methods and a "witch hunt" for non-governmental organizations following fabricated charges. Today it's no longer just abstract accusations of the Soros Foundation but constant raids by law enforcement and controlling units," to quote Andriy Klepikov, Executive Director of the International Charitable Foundation "International HIV/AIDS Alliance in Ukraine".

Among those groups first to be crushed by state steamroller repression tactics were LGBT organizations funded in part by the Alliance. Namely, in April 2011 the Prosecutor's Office of the city of Cherkassy conducted an unwarranted inspection of the organization Gay Alliance Cherkassy.

Ombudsman

In light of the Ukrainian Ombud office's complete negligence regarding remedying violations of human rights that take place against LGBT persons, LGBT activists prepared and sent to Nadezhda Karpacheva, the Verkhovna Rada (Parliament) of Ukraine Commissioner for Human Rights (Ombud), a translation of the special address by the UN High Commissioner for Human Rights Navanethem Pillay. In his address Commissioner Pillay urged the decriminalization of homosexuality in all countries around the globe and the elimination of discrimination and violence toward LGBT persons.

In his commentary Svyatoslav Sheremet, leader of The Gay Forum of Ukraine remarked in this regard: "We are forwarding a translation of this address [...] hopeful and certain that the words of the High Commissioner will become guidelines for our Commissioner on Human Rights, who, alas, neglects in her practice the rights of LGBT persons knowing that they are regularly violated in Ukraine and that these violations go unpunished."

"[...] What is there to say when the Ombud's annual report on the situation with human rights and fundamental freedoms in Ukraine contains no information on LGBT whatsoever?! This legal disproportion in the practice of human rights protection looks appalling to the international community. It is high time Ms. Karpacheva stops ignoring LGBT and make amends," he concludes.

Local governments

Local elections in Ukraine in 2010, just as in other electoral campaigns, were not free from the use of "dirty" political techniques. On October 7, World Wide Web viewers saw a video where Oleh Lyashko – then an average young man and now an MP - tells the public prosecutor a detailed story of his homosexual encounters. The Yulia Tymoshenko Bloc, of which he was a member, later expelled him. So Web viewers witnessed that members of the Ukrainian political elite themselves are not exempt from the politics of silence and homophobia, which is being implemented in Ukraine not without the elite's active contribution.

Another poster child example of the use of homophobic PR techniques is Hennadiy Zubenko who represented the Yatsenyuk's party "Front for Change" and ran for mayor's post in the city of Zhytomyr during the same elections. Under the guise of an LGBT organization, Mr. Zubenko's political opponents strategically circulated leaflets in *his* support in the city. Predictably, this had a negative effect on their opponent's campaign. In response, Mr. Zubenko's supporters made every effort to clear their candidate of the allegations of homosexuality and, instead of targeting their opponents, inadvertently or even perhaps on purpose slung tons of mud at gays and lesbians. We cite the above examples to raise everyone's political consciousness.

Another unsettling tendency is the growth of church influence within the political arena in violation of the principle of separation of religion and state. With the absence of any state-articulated stance on LGBT issues, the policy vacuum allows individual politicians and public servants on national, regional and local levels to base their decisions and take actions on matters concerning LGBT people founded on their personal convictions. Their subjective notions very loosely correlate with their declared political views and resonate very strongly with their religious ones, sometimes disguised as "moral" or "spiritual".

LGBT people and the mainstream society

Public opinion about homosexuals in Ukraine

At the request of Nash Mir Center the sociological company “TNS Ukraine” conducted three surveys (March 2002, March 2007, and March 2011) to study public opinion on homosexuals in Ukraine. Not only did these surveys produce data from which to enumerate the current state of matters, but also data from which to deduce some general tendencies.

“In your opinion, should the citizens of Ukraine who have a homosexual orientation, have the same rights as other citizens?”

| | 2002 | 2007 | 2011 |
|---|------|------|------|
| Yes, everybody should have equal rights | 43% | 34% | 36% |
| No, there should be some restrictions | 34% | 47% | 49% |
| I don't know | 24% | 19% | 15% |

As one could see from the first table, homophobic attitudes in the Ukrainian society significantly intensified between 2002 and 2007; in 2007 they stalled at about the same, albeit negative level.

Discussion of abstract ideas pertaining to human rights without their proper detailing, may produce a distorted image. The next two questions concerning two most controversial issues, i.e. same-sex marriages and adoption of children by same-sex couples, showed the true level of tolerance.

“Do you think same-sex couples should have the right to register their relationships in the manner similar to that of heterosexual spouses?”

| | 2002 | 2007 | 2011 |
|---|------|------|------|
| Yes, they should have this right | 19% | 16% | 19% |
| No, they cannot be granted such a right | 54% | 63% | 64% |
| I don't know | 27% | 21% | 17% |

The number of respondents who acknowledge the right of same-sex couples to officially register their relationships has not changed over 10 years – it remains one-fifth. At the same time we observe a steady decrease in the number of those who had no opinion. By inference, the opinionless join the group of those who oppose this aspect of civil equality. Similar tendencies can be observed in responses to the question about the right of same-sex couples to adoption of children.

“Do you think homosexual citizens should have the right to bring up children?”

| | 2002 | 2007 | 2011 |
|--------------|------|------|------|
| Yes | 22% | 17% | 17% |
| No | 49% | 60% | 69% |
| I don't know | 29% | 23% | 14% |

Thus, responses to the last two question show that the percentage of Ukrainians who do not harbor negative attitudes to gay men and lesbians ranges from 17-19%.

The analysis of the data also yields a strong correlation between the respondent's level of education and his/her perception of LGBT persons as having equal rights. The more educated the person is, the more likely he/she is to agree with the statement that “everybody should have equal rights”.

The 2011 survey included one additional question - “Do you personally know someone with homosexual orientation (a gay man or a lesbian)?”

Only 6% of the respondents answered affirmatively.

Juxtaposing answers of those respondents who have a personal acquaintance who is homosexual with answers of those who do not produced the result where the first group was more likely to support the idea of equal rights for homosexual citizens of Ukraine.

| | Respondent personally acquainted with a homosexual person | Respondent personally not acquainted with a homosexual person |
|--|---|---|
| Yes, everyone should have equal rights | 57% | 34% |
| No, there should be some restrictions | 39% | 51% |
| I don't know | 4% | 15% |

Thus, the data allows us to discern the two factors that positively affect the level of public support for the principle of full civil equality for homosexual citizens, i.e. personal acquaintance with an openly gay man or a lesbian woman and the level of education.

The level of homophobia increased in the Ukrainian society from 2002 to 2007. This happened due to a decrease in the numbers of people who supported the idea of equal rights for homosexual persons and of people who did not have a strong opinion about the matter. The situation stalled at a certain, albeit negative, level, in 2007 (the full text of the research is accessible at <http://gay.org.ua/publications/poll2011.pdf>)

Church

On June 10, 2010, Christian denominations of Ukraine made public yet another Declaration "On the negative stance on the sin of homosexuality, its propaganda in the society and attempts to legalize the so called same-sex marriages". Considering the great influence that Christian religion has in Ukraine the hate speech toward homosexual persons that permeates the entire document is most troubling. For instance, one reads: "The society does not have a right to turn a blind eye on the propaganda of homosexuality arguing that it is a 'private matter' of those who are susceptible to this sin. [...] the society by turning a blind eye on this sin thus endorses it and, from a secular standpoint, is doomed to extinction because of fall in birth rates; from the spiritual standpoint it will answer before God..." Further on, one reads: "we strongly object to treating homosexual lifestyle and conduct as natural, [...] listing homosexuality together with human rights, popularizing it as a norm of sexual life..."

"The Ukrainian Byzantine-rite Catholic Church will never change its negative attitude toward homosexuality as such since it is a perverted style of sexual life". Such was the opinion that the new leader of the Byzantine-rite Catholic Church of Ukraine, His Beatitude Svyatoslav (Shevchuk) voiced in the interview for the *Ukrains'ka Pravda* (The Truth of Ukraine) newspaper. According to him, such a lifestyle "contradicts the God's plan for a man and the one who pursues it will never comprehend the true meaning of sexual relations".

On February 8, 2011 the Razumkov Center published the results of a public opinion survey, conducted in November 2010, where the percentage of Ukrainians who consider themselves to be religious totaled 71% (in contrast to the 10-year old figure of 58%). However, this survey also showed the percentage of those who truly believe: only 15.7% of Ukrainian chose religiosity as a life value. Such factual results substantially allow one to stipulate that the majority of Ukrainians are not sufficiently religious to approve of any radical actions against marginalized groups in the society, e.g. LGBT citizens.

Unlike the slowly modernizing state bureaucracy, common Ukrainian society as such has been showing signs of adopting more negative attitudes about LGBT persons in recent years. Several reasons explain this.

First, The LGBT community's openness in Ukraine has increasingly manifested (first and foremost through the mass-media sphere). Likewise rising is the frequency of public debates on related topics.

Second, Ukrainians simply are now faced with having to make up their minds on issues that formerly did not usually affect their daily lives, but through the media are brought to their attention in today's world. The observed increase in the level of homophobia is a response to the now visible issue of others' real sexual identity: a core aspect of fellow citizens that has long been hidden and is, therefore, poorly understood but increasingly impossible to ignore. Overall, the aforementioned media and visibility processes can be characterized as mixed and contradictory because they combine absolutely opposing views and ambiguous tendencies – as matters nonetheless are taken in hand and addressed publicly.

Obviously, homosexuality is still seen as exotic and alien to mainstream national culture and history. An ability to tolerate sexual identity differences is highly dependent on a citizen's own view of modern Western culture in general. Therefore toleration notably varies, surveys prove, with an apparent prevalence of negative attitudes. Attitudes can be seen as a function of how

closely and well an individual respondent understands the lifestyle values of Western societies; in Ukraine, social discussions and decisions about how to present and accord oneself stemming from non-straight set core needs are still for the most part under the radar.

On the other hand churches and church-affiliated organizations give a rather consistent response to the issues concerning homosexuality; they completely ignore modern tendencies in their Western counterparts. We can observe that stonewalling to maintain the status quo is characteristic of churches in former socialistic and developing countries, when they are contrasted to their co-religionists in faith from the West, more developed according to its own capitalistic/consumerism value system.

Results of the monitoring of human rights violation in relation to LGBT persons

Results from the sociological study

In spring 2011 Nash Mir Center conducted an online survey among LGBT persons. A total of 1721 individual responded, of whom 82% were male, 18% female; and 2% of the m/f Total indicated being transgender.

61% of respondents confirmed that they have had their rights violated or have been discriminated against on the grounds of their sexual orientation or gender identity at least once in the last three years. Those whose sexual orientation was known to or guessed by people from their surroundings, were 89%.

Encounters with law enforcement

30% of respondents reported having had encounters with law enforcement bodies and that the latter knew about their sexual orientation. In 77% of these cases the respondents' rights were violated on the grounds of sexual orientation. The most common situations were:

- Biased attitude, verbal insults and psychological pressure - 39%
- Search of personal belongings with violation of procedural norms - 38%
- Blackmail and threats to disclose information about sexual orientation of the detainee (e.g. in order to extort money from the victim) - 24%
- Illegal collection and storing of confidential information (taking fingerprints, photographing, copying telephone numbers from the mobile phone) - 21%

Employment

53% of those who have been employed in the last three years reported that their colleagues knew or guessed about their non-heterosexuality. Among them 34% were harassed on the grounds of their sexual orientation.

Most common were cases of forced resignation, also due to hostile environment at work - 26%. In 36% of cases people were denied employment or sacked and in 21% of cases the respondents were denied protection from harassment on the part of coworkers by their superiors.

Education

Among those 29% of respondents, whose non-heterosexual orientation was known or surmised at their respective educational institutions, nearly a third (31%) reported being harassed.

Relations with close and situational surroundings, hate incidents

Unlike occasional encounters with law enforcement agents and contacts occurring within a set time-schedule with superiors – relations with close other people like relatives or friends, and with strangers in situational surroundings are daily. Social interactions determine a person's sense of physical and mental well-being through everyday interactive contacts with others. Within this context most violations with grave consequences take place.

Hence, 41% of respondents were harassed by people in their close or situational surroundings. Most often respondents reported insults (58%), disregard and debasement (32%), and threat of physical violence (24%). In 13% of cases respondents were physically attacked.

In 18% of cases the perpetrators were relatives who made attempts at turning the respondent out of the house or, on the contrary, limited the respondent's freedom of movement.

Social sphere

15% of respondents complained of prejudiced attitude and harassment on the grounds of their sexual orientation in this sphere, as well as in the sphere of goods and services. According to their responses, most frequent types of rights violations included:

- Refusal to sell or provide goods or services - one third of respondents;
- Refusal to let an apartment or early eviction - 28%;
- Harassment by public officials (apart from law enforcement) - 23%.

Sphere of information and communication

35% of respondents reported rights violation in the sphere of information and communication: more than half of the respondents complained about offensive materials publicized in mass media, and over a quarter reported threats to disclose or facts of disclosure of information about their sexual orientation.

Medical sphere

9% of respondents reported seeking medical assistance in the last three years and being harassed by the staff when their sexual orientation was known. Most frequently reported instances included biased attitude, verbal insults, disclosure of confidential information about sexual orientation or HIV status, and refusal to provide medical assistance.

Case studies

In the year 2010-11 two hundred and twenty cases of human rights violation against LGBT persons in Ukraine were documented. The situation has not changed appreciatively from previous years; most frequently violations occur:

- In interpersonal relations - 83 cases;
- During encounters with law enforcement personnel - 69 cases;
- In employment - 27 cases.

Interpersonal relations

Overall, there are 83 documented cases of actions against LGBT persons in which homophobia constituted the main motif. The cases cover hate crimes and incidents as well as instances of hate speech.

Seven cases concerned public statements inciting to hatred and violence against LGBTs. In 6 cases victims were raped, in 3 cases by a group of persons. Eighteen cases provide a record of homophobic abuse by relative(s) and close friends of victims, including such extreme cases as being ordered to be turned out of the house.

Unlike other crimes or illegal actions that are not discriminatory, hate crimes or incidents always have more grave consequences not only for the victim, but also for the community of which the victim is a member, and for the society at large. Fear is instilled in the victim that the incident may recur at any moment. For the LGBT community hate crimes or incidents are a clear sign that no-one is safe from such actions, especially if law enforcement does not pay due attention to investigation and prosecution of perpetrators. The society, where such incidents occur and are not condemned, will see and perceive them as acceptable.

In most of the cases victims, trying to avoid publicity and purge it from memory, did not notify law enforcement. In a number of cases complaints were indeed lodged with the police, but the victims concealed the discriminatory nature of incidents fearing adverse reactions from law enforcement officers who are often unsympathetic with LGBTs. Only in a handful of cases did the victims receive any all-out assistance from the law enforcement staff, that provided indications that the staff may have been aware of the true police attitudinal-motifs behind the incidents. However, this concerns only the cases where complainants were common persons. In two cases that involved attacks by right-wing radical gangs during public events organized by LGBT organizations, the police refused to initiate criminal proceedings pursuant to submitted complaints or they ceased investigation.

Case 1

Every year on November 20th the world commemorates transgender victims of violence. On this day in 2010 the public LGBT organization Insight organized a series of public events. One event was the screening of a movie in the Center for Modern Arts, situated on the campus of the National University "Kyiv-Mohyla Academy", Kyiv. During the event around 10 masked people attempted to break into the auditorium. Several Insight activists, who were guarding the door, put up resistance. Two of them sustained physical injury. The attackers also tried to spray tear gas inside the auditorium, but when they realized that they had lost the element of surprise, they quickly withdrew.

Allegedly responsible for the attack are fighters of the right-wing ultra-radical organization Natsyonalny Soyuz (National Union), whose web page (currently taken down) on the next day featured a note reading that the attack was made by the "unidentified patriots who looked like activists of the National Union".

The police from Podilskyi district station (Kyiv), who were called to the crime scene, were reluctant to collect complaints from the victims. Later the police refused to initiate criminal proceedings arguing that there were no witnesses who would have seen the faces of the attackers; there was one person who did, though. The complaint on the actions of the police, lodged by Insight to the public prosecutor's office and the court, is still under review. However, both the prosecutor's office and the court satisfied the claimant's request and returned the case for further investigation by the same Podolskyi district police station.

Case 2

On February 20, 2011 in Makeyivka in the Donetsk oblast a presentation by an earlier registered public organization for LGBT Christians St. Cornelius the Centurion Center took place. The

presentation was attended by about 25 people. At some point several teenagers in camouflage and masks broke into the room and, popping firecrackers, began shouting homophobic slogans: "Death to faggots," "The youth is against homosexuals," and, for some reason, "Glory to Ukraine!" Having noticed that the representatives of television and the press were present at the event they got embarrassed and quickly retreated.

The criminal proceedings, initiated by the Central police station in Makeyivka, were stayed because of inability to identify the attackers. However, according to Roman Zuyev, head of St. Cornelius the Centurion Center, the police were given sufficient information to at least identify the person who brought the attackers to the event. In Mr. Zuyev's opinion that person could be one of the journalists who attended the presentation.

Case 3

In summer 2011, Sergei met a guy online and arranged for a meeting on the outskirts of Luhansk. Apparently, Sergei was not disturbed by the meeting happening in a place that was not public, in the evening, and by the guy's not being in fact the person whose photo was on a dating web site. Together they headed for a farms area where they met four more "new friends". The guys started insulting Sergei for his sexual orientation and threatening him. As soon as he tried to escape, he was stopped and brutally beaten. The results on his person: knocked-out front teeth, a broken rib, a dislocated arm and two weeks in a hospital. In addition, the guys took all of his valuables.

According to Andrey, a gay activist from Luhansk, during the same summertime and in the same manner a few more gay men fell victims to the brutality of homophobes.

Following the incident Sergei submitted a written statement to the police. But a week later, a police officer, apparently being unable to catch the criminals, visited Sergei in the hospital and forced him to annul the complaint.

Case 4

In July 2011, an inscription appeared on the wall near the entrance to a building in a city in the Poltavs'ka oblast, home to Nikolay. The inscription read: "Kill the gays who live here!". Later, a similar inscription was made on the front door of Nikolay's apartment.

Two weeks later, at 10 pm the doorbell rang and Nikolay opened the door. Then he was beaten up by his neighbors (Andrei and Yuri) right in the anteroom of his own apartment. While beating him up, the attackers were shouting obscenities and insulting Nikolay for his sexual orientation. As a result he was hospitalized and diagnosed with closed head injury.

Nikolay submitted a written complaint, but the local police refused to initiate criminal proceedings arguing that they had no conclusive evidence, witnesses, or a conclusion from a forensic medical examination. The police's refusal disclaimer was argued for by them despite the fact that the victim provided phone numbers of witnesses, and most importantly, was admitted to the hospital right after the incident occurred. Also, the investigating authorities made many mistakes in the process of collecting evidentiary data about the incident.

At the moment the case is under review by the city prosecutor's office as Nikolay turned there to seek justice. At the time when this report was in preparation, criminal proceedings were initiated against the reputed perpetrators, Andrei and Yuri, who are charged with inflicting injuries of moderate severity.

Encounters with law enforcement.

Traditionally, violations on the part of law enforcement far outnumber LGBT persons' human rights violations occurring in other spheres and from other public officials. In two years sixty-nine (of 220) cases have been reported. The police violated such fundamental human rights as the right to liberty and personal safety, the right to be free of torture, the right to access to effective legal remedies, the right to respect for private life, the right to be free from all forms of discrimination, and the right to private property.

Case 5 (prohibition of torture and inhuman or degrading treatment)

In April 2010, Igor B. was severely beaten by the police in front of dozens of witnesses right in the lobby of the Ministry of Domestic Affairs' Central Administration in Donetsk – solely for requesting that police officers comply with established procedural norms for detention. Later he was forced to abandon the idea of through due process defending his rights, as he and his mother had been threatened by police officers. Also, he was forced to sign a document stating that he had no complaints about the actions of the police.

Case 6 (right to liberty and personal safety, prohibition of torture and inhuman or degrading treatment, right to private property)

In October 2009, 18-year-old Sergei was arrested in a gay cruising area (*pleshka*) of Kiev by two police officers dressed in civvies. According to his testimony, the police officers were drunk. Without charging him with any crime they handcuffed and took him to the police station, where they insulted and humiliated him because of his sexual orientation, beat him and took away his mobile phone after inquiring who in the phone's address book was homosexual and rich. They poured brandy into his mouth to loosen his tongue. Sergei was taken to the station without any obligatory record being placed in the register to confirm his detention, and no protocol was drafted. When the two officers wanted to lock him up in a cell for the night the officer on duty refused to allow it without due record. Then he was returned to the office where he had been before and left there handcuffed to a radiator. Sergei spent about 12 hours in a semi-recumbent posture without being able to go to the bathroom or drink water. He was released on the next day but his mobile phone was not returned.

Case 7 (right to liberty and personal safety, right to respect for private life)

In July 2011 Oleh from Vynnytsia met a guy on a dating web site. To meet in a more intimate setting he rented an apartment. At some point, Oleh's new friend left the apartment and returned in the company of two police officers dressed in uniform. The three of them began humiliating and insulting Oleh because of his sexual orientation and threatened to inform his wife and seniors at work about his "escapades" – earlier, the new friend had inquired about Oleh's life – if he did not bring them 1000 UAH money. Stressed out and very much afraid that the threats would be put into practice, Oleh did what was demanded of him.

Employment

Twenty-seven cases (of a total 220) of rights violations in the field of employment have been documented. The contained violations at issue can be divided into two types:

- Direct discrimination concerning hierarchical relations between the employer and the employee. Almost all types of these relations are subject to labor laws as reflected in the Labor Code of Ukraine (hiring and dismissing employees, salaries, promotions, etc.). In particular, Art. 2-1 of this normative act proclaims that the principle of prohibition of

discrimination on any grounds, by definition including SOGI, should be respected in the field of employment;

- Harassment or discriminatory actions on the part of colleagues at work (i.e. horizontal relations) that include offensive jokes, psychological pressure, and other actions aimed at creating unfavorable working conditions. Such discriminatory actions are similar in nature to those occurring in interpersonal relations, despite the fact that they occur in the workplace.

Discrimination in the workplace is difficult to prove. It is unlikely that the employer will publicly admit to having dismissed the employee because the latter is a gay man or a lesbian. Such matters are usually discussed in private, without witnesses. The official reason for dismissal would be quite different, for example, if it involved downsizing or failure to satisfy the requirements of the position. Also, given the peculiarity of Ukrainian labor relations, where many are employed unofficially or receive their salary in envelopes, the employer does not even need to invent a reason: summarily in a blink of an eye people may get cast out without their last paycheck just because their superior is a homophobe.

An overwhelming majority of those who were subjected to discrimination on the grounds of sexual orientation in the workplace took no action to defend their rights, deciding it was best to resign without fanfare, of their own accord, to be able later to get employed elsewhere.

In the entire case pool there is only one documented case (Summer 2010) in which the dismissed employee successfully proved in a court of law that his sexual orientation was the true reason for dismissal; he was reinstated in his rights. This was only possible thanks to the exceptional homophobia of his employer who even during the trial was not afraid to say so openly.

There are four cases where the information about the person's sexual orientation was disclosed to others by his/her superior or coworkers, which caused worse treatment on the part of their family or at a new workplace. Such cases are especially characteristic of smaller towns.

Case 8

At one point the sexual orientation of Maxim, an employee of the executive office in Odessa, became known to his colleagues and soon to his superior. Subsequently, the colleagues' attitude to Maxim turned hostile and disdainful, and his superior was even more straightforward: "Such people as you should not be working here! Do yourself a favor, quit!", he said. In December 2010, Maxim made the decision to resign because, as he said, he did not want to push it.

Case 9

In summer 2011 Yevhen, an employee at a car wash in the city of Donetsk, confided his homosexuality to one of his female colleagues. She then informed the entire staff, whose attitude to Yevhen changed to daily taunts and insults. He had to suffer harassment and abuse for another month as it was hard to find another job that would be as well-paid. However, after his colleagues resorted to threatening him with disclosing his sexual orientation to his parents, he resigned. The owner of the car wash, who was also aware of the causes of conflict, refused to pay Yevhen his salary for the last month. Yevhen decided not to complain as he was employed unofficially.

Thus, we can conclude that one of the factors that presupposes a large number of employment-related violations is lack of clear anti-discrimination legal norms and concrete mechanisms for their implementation.

Annexes



Prepared by Public Organization “Informational-Educational Center “Za Ravnije Prava”

And Public Organization “Insight”

(Ukraine)

SHADOW REPORT

DISCRIMINATION AND VIOLENCE AGAINST LESBIAN AND BISEXUAL WOMEN AND TRANSGENDER PEOPLE IN UKRAINE

Submitted for the 45thCEDAW Session

Public Organization “Informational-Educational Center “Za Ravnije Prava” is a non-governmental organization in the South of Ukraine that works to empower Homosexual and Bisexual people and protect their human rights since 2007. IEC “Za Ravnije Prava” provides services for over 400 lesbian and bisexual women (LB) in the South of Ukraine.

Public Organization “Insight” is a non-profit organization based in Kyiv that works since 2007 to improve the quality of life of homosexual, bisexual, transgender and queer (LGBTQ) people in Ukraine by empowering them, providing with services and implementing other informational, social, psychological, medical, cultural, legal and human rights events.

Introduction

With collapse of the totalitarian society and beginning of democratic processes in Ukraine as well as in the neighboring countries it became possible to talk about the issues the existence of which was suppressed and ignored before. However our social consciousness and the state policy are far from the level of the modern democratic country.

Ukraine is a party to such international treaties as International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ukraine is a party of such European treaties as European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Protocol No. 12 to the ECHR concerning the general prohibition of discrimination (2000), and some more.

Nowadays due to the lack of clear rights for LGBT and articles of laws protecting LGBT from any form of discrimination on the grounds of sexual orientation and gender identity there is an issue of frequent violation of freedoms and rights of the given social minority group.

“Za Ravnie Prava” has documented cases of violence toward lesbian and bisexual people, including rapes, beating and psychological pressure, as well as domestic violence. In 2008 “Za Ravnie Prava” together with “LiGA” (LGBT non-governmental organization) under financial support of ILGA-Europe conducted the research among LGB community on human rights violations and discrimination on the grounds of sexual orientation and gender identity.

Insight has been working on empowering and representing transgender people since 2007. In 2009, the organization has undertaken a qualitative research on the situation of transgender people in Ukraine supported by ILGA-Europe and Astraea Lesbian Fund for Justice. The research helped to collect 36 oral stories of transgender people throughout Ukraine telling about their lives as trans-people, including discrimination experiences on the grounds of gender identity.

The status of Lesbian, Bisexual women and Transgender people under specific CEDAW Articles

Discrimination

Article 2 of the CEDAW Convention requires the State Parties to “condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women”. Ukrainian legislation contains several mentions of prohibition of discrimination against women (Constitution of Ukraine, Article 24) but there is no mention of the sexual orientation and/or gender identity in any legislative documents. Penal Code of Ukraine contains several articles that foresee punishment for the crimes committed against women such as Article 152. Rape, Article 153. Violent satisfaction of sexual pleasure in unnatural way and Article 154. Forced sexual intercourse. In Ukraine, there is no hate crime legislation. There is the only article of hate motivated crimes i.e. Article 161 of the Penal Code that foresee punishment for crimes motivated by national, religious or racial discrimination. But in these articles there is no mention that such crimes can be committed on hate basis, in particular, on the grounds of sexual orientation and/or gender identity. There have been no reported cases of rape of lesbian women in the country. In fact, Za Ravnje Prava was addressed by the lesbian women stating that she was raped by her brother-in-law. Equally, violence against transgender people is also not recorded and recognized as gender-based violence. Moreover, homosexual women and transgender people are predominantly afraid to complaint to the police since they often do not get any protection but get mocked at and harassed by police officers who have the ultimate power.

Invisibility

Article 3 of the CEDAW Convention requires the States Parties to “ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”. An L/B/T person without a guaranteed by the national law right to sexuality and gender identity and/or expression experiences significantly more inequality than most other groups of women. Namely, visibility both in the public and in private spheres often leads to various forms of violence (physical, economic, emotional) and infringement of rights against homosexual women and transgender people. In turn, the fear of these sanctions makes LBT people suppress their identities. Thus Za Ravnje Prava has documented the case when the lesbian woman was refused to be tested for syphilis for she disclosed her sexual orientation. The case made the woman to suppress her orientation during the medical examination in the other hospital.

Legislation

In the Fourth periodic report of Ukraine on obligations undertaken regarding CEDAW there is no mention of lesbian, bisexual women and transgender people’s rights which restricts their “exercise and enjoyment of human rights and fundamental freedoms”. Lesbian, bisexual women’s and transgender people’s issues such as non-discrimination, equal possibilities and rights with heterosexual citizens are absent from any state documents which makes this group of women invisible for state programs despite their vulnerable status in the society.

Employment rights

Article 11 of the CEDAW Convention requires States Parties to “take all appropriate measures to eliminate discrimination against women in the field of employment...” With regard to lesbian, bisexual women and transgender people Ukraine fails to comply with the CEDAW requirements. Because of their sexual orientation and/or gender identity many LBT people find themselves working in poorly paid jobs that do not correspond with their qualifications. Ukrainian laws do not include prohibition of employment discrimination on the basis of sexual orientation and/or gender identity/expression. This allows for widely unpunished discrimination of LBT women in receiving payment for their work and in employment in general. Za Ravnje Prava has documented cases of LBT people being fired from their jobs based on these characteristics. Besides, there were cases of employment refusal because of the expressed sexual orientation or gender identity. Insight has documented cases that transgender people were refused employment in numerous instances since their gender expression did not correspond with their passport gender.

In 1995, Ministry of Education adopted the circular letter № 1/9-242 that prohibits homosexual people to work in the field of education because of their sexual orientation. Today the Ministry of Education rejects existence of such letter but in fact lesbian and bisexual women are often fired from their positions in educational institutions once their sexual orientation is disclosed. There are public debates on the issue and the main counter-argument is that homosexual women give bad example for kids and students by “promoting” homosexuality, that causes younger people to become homosexual themselves.

Access to healthcare

Article 12 of the CEDAW Convention requires the State Parties to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning...” In Ukrainian legislation according to the Article 281 of Civil Code, Article 123 of Family Code and Article 48 of Law on Health protection right to artificial insemination is available only for infertile women. Lesbian women being healthy have no right for artificial insemination. Ignorance of the doctors and homophobia are on so high level that make lesbians visit the doctors less often.

Transgender health issues in Ukraine are recognized only in the dimension of transsexuality that is defined as an identity disorder and is cured by a sex reassignment surgery (SRS). This surgery is a mandatory condition for change of the documents. While it forces all transgender people to undergo the surgery in order to change their documents, the commission that gives permissions for the surgery met twice since the end of 2006 while by law it is supposed to meet every quarter. There are also no endocrinologists in the country that can adequately prescribe hormones for transgender people, and thus the latter takes hormones on the basis of what they read on internet or heard from friends.

Attitude of the public authorities

Article 2 point (d) of the CEDAW Convention requires States Parties to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”. It is often that not only issues of lesbian, bisexual women and transgender people are overlooked by public institutions and civil society activists, but violations of their rights are also promoted in speeches by Ukrainian politicians. For example, answering the question about including words “sexual orientation” in an antidiscrimination article of the draft of Labour Code of Ukraine, a member of the Parliament Committee on Social Policy and Labour Mr. Vasyl Khmara (Party of Regions) said: “Personally I

think that gays and lesbians violate all norms of morality. It is the physical failure which one should hide, not expose. On the other hand, what they demand – it is a European norm and probability it will remain in the draft of the Code even though I am against that” (Interview to the newspaper Kommersant-Ukraine, 16.02.07)

RECOMMENDATIONS:

- Adopt national anti-discrimination laws that would include provisions for non-discrimination on the grounds of sexual orientation and gender identity.
- Conduct state awareness raising human rights campaigns in schools and media promoting tolerance and respect for lesbian, gay, bisexual and transgender people.
- Take steps to ensure that state officials abstain from derogatory statements with regard to sexual orientation and gender identity; and create adequate mechanisms to address sex and gender stereotypes in the media and religious institutions (hate speech legislation).
- Ensure that state education programs address gender identity and sexual orientation.
- Develop and take measures to address social norms which contribute to prejudice and violence against LBT people

ALL - UKRAINIAN UNION
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01-08/11-P

**On human rights on LGBT¹ people in
Ukraine in the context of EU-Ukraine
Association Agreement**

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DEAR MR. PAVLO!

We welcome your efforts with regard to bringing Ukraine closer to the European Union, and we consider your initiative to address Ukrainian NGOs with a question on their position about EU-Ukraine Association Agreement very timely.

Council of LGBT-Organizations of Ukraine is a national association that unites 19 organizations active in the country. One of the Council's goals is to advocate rights, interests and needs of LGBT people at international level.

Let us express our view on the questions asked in your letter.

In our opinion, **internal situation in Ukraine should influence the negotiation process on EU-Ukraine Association Agreement**. In the first place, this is true for human rights situation in the country. A number of Ukrainian and international human rights organizations and media have expressed their concerns regarding these issues. For instance, according to 2011 report of international human rights organization Freedom House, Ukraine's status declined from Free to Partly Free based on political rights and civil liberties rating. In 2011, in our opinion, the situation has worsened.

LGBT rights in Ukraine make no exception. According to our monitoring results, in recent years the LGBT situation in Ukraine has worsened by many indicators. More details can be found in reports on LGBT people in Ukraine prepared by such organizations as Our World Regional Informational and Human Rights Center for Gays and Lesbians², Insight NGO³, All-Ukrainian Public Organization "Gay Forum of Ukraine".

Ukrainian state authorities have never paid sufficient attention to violations of LGBT rights and hate crimes against such social group as LGBT people. For instance, for less than a year, nationalist radical groups in Ukraine committed two attacks on LGBT events organized by local NGOs (Kyiv, November 2010; and Donetsk, February 2011). Ministry of Interior has not organized due

¹ LGBT — lesbian, gay, bisexual and transgender.

² See <http://gay.org.ua/annualreports>.

³ See http://insight-ukraine.org.ua/media/TRP_report.pdf.

investigation of any of these attacks. Besides, annually, our organizations document tens of illegal acts against LGBT people committed on the ground of hatred.

EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement has a paragraph that directly deals with LGBT rights in Ukraine:

(c.) *Ensuring respect for the rights of persons belonging to minorities*

- *exchanging best practices on measures to protect minorities from discrimination and exclusion in accordance with European and international standards, with the objective of developing a modern legal framework. Developing close cooperation between the authorities and representatives of minority groups;*
- *cooperate on measures to combat the growth in intolerance and the incidence of hate crimes (whether due to racism, xenophobia, anti-semitism or **homophobia**).*

Based on the guiding principles of the EU-Ukraine Association Agenda, we believe that during the EU-Ukraine Association Agreement negotiations it is important to draw attention of the Ukrainian delegation to the necessity to observe human rights in the country in general and LGBT rights, in particular.

With regard to LGBT people, we would like to emphasize the particularly highlight the following issues:

1. On June 20, 2011, a group of Ukrainian MPs registered a homophobic draft law 8711 “On introducing changes to certain state acts (regarding protection of children’s rights in the safe information sphere)”⁴. Should this law be adopted, it will criminalize “propaganda and cult of homosexuality” in media, film, literature and art. In fact, the law would prohibit providing information about LGBT and homosexuality as well as could deny citizens access to public information according to their interests. In the opinion of Ukrainian human rights defenders and LGBT activists, this legislative initiative is incompatible with the right to free development of his or her personality (Article 23), right to freedom from discrimination (Article 24), right to freedom of speech (Article 34), right to freely collect, store, use and disseminate information (Article 34) guaranteed by the Constitution of Ukraine. We emphasize that this homophobic initiative must not be adopted as it would endanger Ukraine’s path toward integration into Europe.
2. On August 19, 2011, Ukrainian Ministry of Justice presented a draft of the Presidential Decree “On Strategy to Fight Discrimination in Ukraine”⁵ for public discussion. This draft was developed to implement point 42 of the national Action Plan to implement Visa Liberalization Action Plan between EU and Ukraine, approved by the Order of the President # 949 as of April 22, 2011. Despite the fact that European Union has many times emphasized the necessity to fight discrimination on the ground of sexual orientation in Ukraine, the list of prohibited grounds in the section “General provisions...” of this Strategy does not include ‘sexual orientation’. However, **it is impossible to improve human rights situation for LGBT people without explicitly indicating sexual orientation and gender identity among the prohibited grounds**. Thus, we emphasize the necessity for Ukraine to explicitly mention sexual orientation and gender identity in **all** national legal acts that deal with human rights and liberties.

⁴ Information about the draft law, its text and other related documents can be found at the Parliament website: http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=40734.

⁵ All materials can be found at the website of the Ukrainian Ministry of Justice: <http://www.minjust.gov.ua/0/36397>.

3. One of the guiding documents in Europe to work on LGBT equality is 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 identity⁶. We ask to draw attention of the Ukrainian side to the necessity to urgently and practically implement provisions of this document.

Additionally we inform you:

- a) lesbian, gay, bisexual and transgender (LGBT) community in Ukraine estimates to 800,000 to 1,200 mln of the Ukrainian population⁷;
- b) de-facto same-sex partnerships in Ukraine estimate to 100,000 to 200,000 couples⁸;
- c) according to national research reports, 77 % of Ukrainian homosexual and bisexual citizens wish to have official registration with their same-sex partners⁹.

In summary, we recommend you to consider the words of the President of Ukraine Viktor Yanukovich to participants of a special session of the Ukrainian Parliament on occasion of 60th anniversary of Convention on Human Rights and Fundamental Freedoms that took place on October 22, 2010: *“I believe that both the Parliament and the Cabinet must complete the unification of national legislation with the European human rights protection standards as soon as possible.[...]We must convince the world of the seriousness and irreversibility of our intentions with real actions.”*¹⁰.

We hope that the signed Association Agreement will become an effective tool for due and just pressure on Ukrainian authorities in order to stimulate them to observe human rights. We believe that postponing signing the Agreement might have serious negative consequences for further European integration of Ukraine and human rights situation inside the country.

Sincerely,

Andriy Maimulakhin,
Co-Chair of the Council,
Head of the Committee on Human Rights

⁶ Official text in English is published at CoE website:

<https://wcd.coe.int/ViewDoc.jsp?id=1606669&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

⁷ Minutes of the Permanent Referent Group on LGBT Community and MSM-service Projects in Ukraine as of February 18, 2010. # 14, p. 17. — Archive of PRG-Ukraine.

⁸ Maimulakhin A. Y., Kasyanchuk M. G., Leschynskiy E. B. Same-Sex Partnership in Ukraine: Research Report / Our World Regional Informational and Human Rights Center for Gays and Lesbians, Donbass-SocProject Public Organization. — Donetsk/Kyiv, “Atopol”, 2009. — P. 22. — Download at: http://gay.org.ua/publications/same_sex_partnership.pdf.

⁹ Ibidem, c. 51.

¹⁰ President's address on occasion of 60th anniversary of Convention on Human Rights and Fundamental Freedoms/ Official website of the President of Ukraine Viktor Yanukovich. — 22.10.2010, 14:35. — Download at: <http://www.president.gov.ua/news/18569.html>.

Member of the European Parliament

Hon. Lytvyn Volodymyr MP
Chairman
Verkhovna Rada of Ukraine / Верховна Рада України
вул. М. Грушевського, 5
Київ, 01008
Ukraine

Concerns: Draft law affecting freedom of expression in Ukraine

Reference: 20111024/BS

Strasbourg, 24th October 2011

Dear Mr Chairman, Dear Colleague,

We understand the Verkhovna Rada of Ukraine is about to examine a Bill 'on introduction of changes to certain legislative acts of Ukraine regarding the protection of children's rights in the safe information sphere'. The text was submitted privately by six Members of Parliament, and should be examined during Parliament's current session.

We wish to express our sincere concern that the proposed amendments will breach several of Ukraine's obligations under binding international human rights law. The European Parliament has already expressed its disagreement with similar laws in Lithuania, which it regards as antithetical to universal fundamental rights.

As we understand, the proposals would make it illegal to 'promote homosexuality' in all printed media, publicly available information, and broadcast media. The changes would also make the 'promotion of homosexuality' a criminal offence, punishable by a fine of up to 300 times the legal minimum income, and imprisonment of up to five years.

Ukraine is a party to both the European Convention on Human Rights and the International Covenant on Civil and Political Rights. These binding treaties (articles 10 and 19 respectively), as well as their authoritative interpretation, make clear that the freedom to receive and impart information cannot be limited specifically in relation to sexual orientation—including under the ambit of public order.

Furthermore, the Council of Europe's Committee of Ministers which Ukraine currently chairs unanimously adopted a Recommendation to Member States 'on measures to combat discrimination on grounds of sexual orientation or gender identity' (CM/Rec(2010)5). The Recommendation approved by Ukraine asks Member States to "take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression [...], for example on grounds of public health, public morality and public order" (§ 16). The Committee of Ministers will review Member States' implementation of the text in 2013.

Furthermore, Council of Europe Commissioner for Human Rights Thomas Hammarberg insisted in his June 2011 report that "any discriminatory provision criminalising the dissemination and diffusion of factual information concerning sexual orientation and

The European Parliament's Intergroup on LGBT Rights

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gender identity should be abolished" (*Discrimination on grounds of sexual orientation and gender identity in Europe*, p. 13).

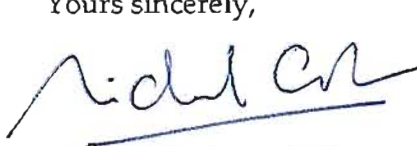
Finally, the 'promotion of homosexuality' is a misleading concept. It wrongly attempts to scare policy- and lawmakers into trying to prevent a presumed recruitment of young people or adults to homosexuality, yet no such recruitment has ever taken place, nor would it be possible. Furthermore, proposed amendments to the Law on Publishing and the Criminal Code assimilate homosexuality to 'the cult of violence' or 'cruelty'. This misleadingly portrays homosexuality as inherently reprehensible, and needlessly criminalises disseminating information that is necessary, useful and relevant to lesbian, gay, bisexual and transgender (LGBT) people.

In their explanatory note, the authors of the Bill assert the amended laws will "eliminate social conflicts in Ukraine and implement the strategy of protecting the national security of Ukraine." On the contrary, the proposals will encourage blackmail, expression of hatred against LGBT people, and homophobic violence. As experience has shown in Lithuania, such amendments do not lead to any effective change in public security or social conflicts; instead, they fuel intolerance and contribute to a deteriorating public order.

Therefore, we respectfully call on you to uphold Ukraine's commitment to human rights for all citizens, without discrimination. We trust these concerns will be received openly, and look forward to reading your response.

On behalf of the European Parliament's Intergroup on LGBT Rights,

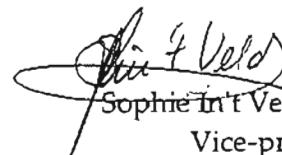
Yours sincerely,



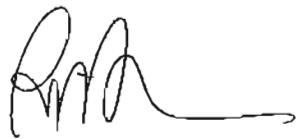
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Mr Štefan Füle
Member of the European Commission
Ms Siiri Oviir & Ms Vilija Blinkevičiūtė MEPs
Vice-Chairs, EU-Ukraine Parliamentary Cooperation Committee

European Social Charter

Submission by the International Lesbian and Gay Association (European Region) on the 4th National Report by Ukraine on the implementation of the revised European Social Charter

Article 1.2: Prohibition of discrimination in employment on the grounds of sexual orientation and gender identity

Contents

| | | |
|---|--|----|
| 1 | Executive Summary | 2 |
| 2 | Principal sources of data used in this submission..... | 3 |
| 3 | The general situation of lesbian, gay, bisexual and transgender (LGBT) people in Ukraine..... | 3 |
| 4 | Council of Europe standards on sexual orientation and gender identity discrimination in employment..... | 7 |
| 5 | The obligations of Contracting Parties under Article 1.2 of the Revised European Social Charter | 9 |
| 6 | The situation regarding sexual orientation discrimination in employment in Ukraine..... | 10 |
| 7 | The situation regarding gender identity discrimination in employment in Ukraine..... | 12 |
| 8 | Areas of non-conformity with the provisions of the Social Charter | 12 |
| 9 | Finding of non-conformity with regard to sexual orientation and gender identity discrimination | 14 |
| | Appendix I - Accounts of employment discrimination experienced by transgender persons documented in the Situation of Transgender Persons in Ukraine – Research Report – Kiev – 2010..... | 15 |
| | Appendix II – Commentary of the Supreme Court’s Legal Department on the proposed anti-discrimination article of the draft Labor Code (2007) | 17 |

The European Social Charter

Submission by the International Lesbian and Gay Association (European Region) on the 4th National Report by Ukraine on the implementation of the revised European Social Charter¹

Article 1.2: Prohibition of discrimination in employment on the grounds of sexual orientation and gender identity

1 Executive Summary

Opinion polls show that hostility to LGBT people in Ukraine is high, and apparently has increased significantly in the last decade. Basic rights such as freedom of assembly can be subject to interference by the authorities. The Ukrainian Parliament is currently considering the introduction of legislation which would – if enforced – severely curtail the LGBT community's freedom of expression and possibility to advocate for their rights. Hate crimes and hate motivated incidents are a concern, as is the behaviour of the police in some instances towards LGBT people. There is no legislation providing protection from discrimination, and no national policy that is in any way positively concerned with the rights of LGBT people.

Against this background of widespread hostility to the rights of lesbian, gay, bisexual and transgender (LGBT) people in Ukraine, full and effective protection from employment discrimination on the grounds of sexual orientation and gender identity is essential. However, when a new Labor code was under consideration in 2007, the proposal to include a non-discrimination article with sexual orientation as one of the prohibited grounds met with a hostile commentary by the Supreme Court's Legal Department and was dropped.

The Supreme Court Legal Department's commentary used language which was demeaning to LGBT people, and indeed, can be construed as a more or less direct incitement to discrimination. According to the Supreme Court, the proposal

- confused "natural rights and unnatural actions such as, in fact, sexual orientation",
- provided ""sexual minorities" with additional privileges which leads to the undermining of public morals and contributes to the disruption employment relations", and
- would lead "to development of artificially created social conflicts".

Moreover, international law permitted restrictions for the purpose of protecting public health and morality, allowing "proper legal protection from licentiousness that disguises as human rights."

¹ This version of the Submission has been revised to include the text of the commentary of the Legal Department of the Supreme Court on the proposed anti-discrimination article of the draft Labor Code - see Appendix II

Council of Europe standards in relation to discrimination on grounds of sexual orientation and gender identity have been much clarified in recent years. The Recommendation of the Committee of Ministers on combating discrimination on grounds of sexual orientation or gender identity discrimination, adopted in 2010, is clear about the obligation of member states to take positive action to combat such discrimination. The Court, the Parliamentary Assembly, and the Commissioner for Human Rights, have all in their different ways underlined the requirement for such measures.

The European Committee on Social Rights ("the Committee") has itself stated that under Article 1 (2) of the revised Social Charter legislation should prohibit discrimination in employment on grounds of sexual orientation. Given the greater knowledge now available regarding the seriousness of gender identity discrimination, it would be a further positive evolution if the Committee were to adopt a similar statement in relation to this ground.

In view of the absence of any effective measures in Ukraine to provide protection from employment discrimination on grounds of sexual orientation or gender identity, and of the situation in which the Supreme Court's Legal Department has even incited to discrimination, we urge that the Committee make a finding of non-conformity in relation to Ukraine's obligations under Article 1.2.

2 Principal sources of data used in this submission

In June 2011 the Council of Europe Commissioner for Human Rights published a report entitled "Discrimination on grounds of sexual orientation and gender identity in Europe". The full-length edition, the so-called "Background Document"² ("the Human Rights Commissioner's Report"), and two associated reports commissioned by the Office of the Human Rights Commissioner specifically addressing the situation in Ukraine, respectively, the "Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity – Legal Report: Ukraine"³ ("the Legal Report"), and the similarly titled "Sociological Report: Ukraine"⁴ ("the Sociological Report") are the sources of the majority of data used in this submission.

3 The general situation of lesbian, gay, bisexual and transgender (LGBT) people in Ukraine

3.1 Public opinion

Recent opinion polls suggest a high degree of hostility towards LGBT people in Ukraine. In a September 2010 survey of Kiev residents, 65% considered homosexuality to be a perversion or mental disease.⁵ In a survey of students in March, 2010 74.7% of those polled consider homosexual relations inadmissible,⁶ while in a telephone poll in December 2010

² Available at: http://www.coe.int/t/Commissioner/Source/LGBT/BackgroundDocument2011_en.pdf

³ see: http://www.coe.int/t/Commissioner/Source/LGBT/UkraineLegal_E.pdf

⁴ see: http://www.coe.int/t/Commissioner/Source/LGBT/UkraineSociological_E.pdf

⁵ Survey of the *Socis* sociological center – (<http://www.vsenovosti.in.ua/news/095469>)

⁶ 'A family in Odessa students' eyes' survey of the *Gorshenin Institute*, (<http://www.prochurch.info/index.php/news/more/16764>)

72% of respondents indicated a negative attitude towards sexual minorities.⁷ These figures show a marked deterioration from earlier surveys – In a March 2007 poll of 1200 people 46.7% of respondents favoured limitations on the rights of homosexual citizens, itself an increase from the 33.8% holding that view in a March 2002 survey.⁸

The Sociological Report notes that: "The general attitudes towards LGBT persons in Ukraine are reported to be strongly negative. This negativity is often explained by the fact that being a homosexual is against Ukrainian moral standards and principles and therefore completely unacceptable. The church is also playing an important role, as the Ukrainian society is very religious and the views and opinions of the different churches are influential for a large segment of the population."⁹

The Sociological Report illustrates the attitude of the main religious organisations to LGBT people in a statement addressed to Parliament by the All-Ukrainian Council of Churches and Religious Organisations:

"The experience of countries which register same-sex marriages or partnerships shows that the process of liberalising public morals by the state **ends in the abyss. Where prostitution and drug addiction, same-sex marriages and euthanasia are legalised, there is already a question of legalising paedophilia... Already in the near future, extinction threatens the native populations** of these countries. We do not want Ukraine to go this way."¹⁰

It goes on to note that, "in January 2010 the same Council issued an official request to the Ukrainian president, Prime-minister, Minister of Foreign Affairs, the Head of the Supreme Court, the Head of the permanent Ukrainian delegation at PACE and other officials, asking them to be against the proposal of legalisation of same-sex partnerships in Europe "not only at the current session of PACE, but also in the future, during voting for respective draft resolutions." In the end of this open letter the Council underlines that "such a position (...) will indicate the high moral standards in our country and **will protect the future of Ukraine from the self-will of dissipation, immorality, and destruction of the institution of family.**"¹¹ (Emphasis added)

Regarding transgender persons, the Sociological Report notes that a "high level of ignorance of transgender related issues is reported, but when visible, the general view on transgender community is also mostly negative."¹² It notes a failure by transgender persons to claim their rights, attributing this to the fact that "being a transgender person in Ukraine is associated with so many negative experiences, negative stereotypes, misunderstanding and exclusion, that many transgender persons simply do not want to expose themselves as transgender "more than absolute necessary". Another reason for lack of participation in public actions and events among transgender persons "is reported to be the fear of aggressive confrontations and repressions."¹³

⁷ Gorshenin Institute, December, 2010, - 'Morals in Ukraine' telephone poll - <http://www.unian.net/ukr/news/news-413171.html>

⁸ *Ukrainian Homosexuals & Society: a reciprocation* – Nash Mir (Our World) Gay and Lesbian Centre -- 2007 -- Page 65

⁹ op. cit., paragraph 1

¹⁰ op. cit., paragraph 26

¹¹ op. cit., paragraph 27

¹² op. cit., paragraph 31

¹³ op. cit., paragraph 53

3.2 Effects of discriminatory attitudes on the LGBT community

The only significant survey of discrimination on the ground of sexual orientation ("The 2005 discrimination survey") was undertaken between January and March 2005, covering some 901 respondents from across Ukraine.¹⁴ This revealed that a high proportion of respondents tried to minimise discrimination by concealing their sexual orientation: 70.7% reported concealing their sexual orientation either completely, or from all but close family and friends. Only 10.7% of respondents were "out to everyone", with a further 18.6% "out to a wide circle of friends".

Taking account of the extent of concealment, the level of discrimination or other prejudiced behaviour reported was very high: overall, 54.4% had experienced discrimination on the basis of their sexual orientation in the previous four years, with 40% experiencing non-violent harassment, 9.1% reporting physical violence, and 6% sexual harassment. The biggest single source of such behaviour was family members (21.7%), closely followed by passers-by (20.1%), friends (current and former) (19.4%) and colleagues (16.5%).

Those who were open about their sexual orientation experienced the highest levels of discrimination -- approximately three-quarters of those in the "out to everyone" and "out to a wide circle of friends" categories.

While this survey information is now somewhat dated, the apparent increase in recent years in hostility towards LGBT people identified by the opinion poll data set out above suggests that levels of discrimination are likely to remain a serious and perhaps even growing concern.

3.3 Freedom of assembly

The Legal Report notes that "On numerous occasions legal conflicts, homophobia, hostility, danger of violence, and/or the failure of public authorities to provide adequate protection translated into prohibition of LGBT cause-related assemblies and inhibited the LGBT community from exercising the rights to freedom of assembly in Ukraine."¹⁵

3.4 Freedom of expression

During 2011 concerns over the exercise of freedom of expression by the LGBT community intensified, with the introduction into the Ukrainian Parliament of a bill "designed to strengthen protection from homosexual propaganda". It would introduce amendments prohibiting "promotion of homosexuality" in four separate laws regulating public morals and the print, broadcasting and publishing media, and also in the criminal code, with penalties for infringing the latter ranging from a fine to five years' imprisonment. On 8 February 2012 the bill took a step towards implementation, when it was debated by two Parliamentary Committees.¹⁶

3.5 Hate crime and hate motivated incidents

¹⁴ Published in: *Gay Rights are Human Rights -- Report about discrimination on the grounds of sexual orientation in Ukraine -- 2005*

¹⁵ op. cit., paragraph 50

¹⁶ ILGA-Europe briefing for PACE Rapporteurs on Ukraine – October 2011; Media release by Insight NGO dated 9 February 2012

55.8% of the 2005 Discrimination Survey respondents reported themselves subjected to verbal harassment, 8.1% to sexual harassment, 19.1% to physical violence, and 2.5% to sexual violence.

The Sociological Report expresses concern: "Hate crime and hate speech are very serious matters. At the moment in Ukraine, the only organizations documenting hate speech and hate crime incidents are the LGBT NGOs and in most cases, they are not able to convince the victims to initiate cases on grounds of physical and verbal attacks. The efforts to conduct awareness raising on these issues are reported to be very challenging as well. In the meantime the hate speech and hate crime incidents have a huge impact on LGBT persons' well being and psychological health and need to be taken seriously by the police enforcement bodies, families and friends of the victims and the society as a whole."¹⁷

Despite these concerns, the Legal Report notes that "No provision of the Criminal Code can currently be interpreted as protecting LGBT people from hate crimes and/or considering homophobic/transphobic motivation an aggravating factor."¹⁸

3.6 Police behaviour towards LGBT people

The Legal Report comments that "national LGBT organisations report numerous violations of the rights of LGBT people. For instance, a recent study conducted by "Наш Мир" (Our World) showed that 61.5 per cent of the respondents (gay men and lesbians) have suffered discriminatory treatment, humiliation, psychological pressure, threats, blackmailing and physical violence on the part of police officers. In such cases LGBT people, fearing adverse consequences and further victimisation, are unwilling to report the police's illegal activities to the public prosecutor's office."¹⁹

The Legal Report also draws attention to cases where the police have carried out mass arrests of people in gay clubs (in one case 80, in another more than 300), allegedly behaving abusively, using force, psychological pressure and illegally taking fingerprints and photographs. In one of these cases a collective complaint to the Ministry of Internal Affairs by LGBT organisations met with the response that there had been "no violations".²⁰

In an interview with the authors of the Sociological Report, the Ministry of Interior explained that the police force "very often reflects the general attitudes and values of the population, which is why the level of homophobia, transphobia and non-acceptance of LGBT persons is high among police officers themselves".²¹

3.7 Legislation providing protection from discrimination

Ukraine has no legislation specifically prohibiting discrimination on the grounds of sexual orientation or gender identity.²²

So far as anti-discrimination bodies are concerned, the Ombudsman has, according to the Legal Report, "paid little attention to the problems faced by the LGBT community and on a

¹⁷ op. cit., paragraph 88

¹⁸ op. cit., paragraph 9

¹⁹ op. cit., paragraph 201

²⁰ op. cit. paragraphs 203 – 206

²¹ op. cit. paragraph 74

²² the Legal Report – paragraphs 1 & 28 – 33

number of occasions the Office of the Representative proved to be homophobic in dealing with pressing LGBT matters.” In 2009, the Ukrainian ombudsperson N. Karpacheva stated that “we cannot and are not obliged to accept all components of the modern human rights concept unreservedly and without their critical conceptualisation. Taking part in worldwide processes we have no right to lose our millenary spiritual gains. For this purpose international standards in the field of human rights and freedoms must be harmoniously combined with traditional moral, cultural and family values of the Ukrainian people”.²³

3.8 Good practices

The Legal Report notes that "Ukraine does not have any national policy that is in any way positively concerned with the rights of LGBT people"²⁴, and adds that "No good practices have been identified. there are no legal provisions, legal interpretations or policy practices that could be presented as good practices, directed at combating homophobia and/or transphobia and discrimination on the grounds of sexual orientation and/or gender identity, or providing LGBT people with all rights and necessary protections."²⁵

4 Council of Europe standards on sexual orientation and gender identity discrimination in employment

4.1 The Committee of Ministers

In March 2010 the Committee of Ministers adopted a comprehensive Recommendation on combating sexual orientation or gender identity discrimination.²⁶ Paragraph 2 recommends that member states:

“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;”

The appendix to the Recommendation sets out principles and measures which member states should follow in implementing the relevant legislation, policies and practices. Paragraph 29 specifically addresses employment:

“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.”

²³ op. cit., paragraphs 34 – 38

²⁴ op. cit., paragraph 43

²⁵ op. cit., paragraph 215

²⁶ 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*)

Paragraph 30 of the appendix to the Recommendation goes on to address concerns relating to transgender persons:

"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."

The relevant section of the Recommendation's Explanatory Memorandum provides the following additional information:

"Discrimination in employment and occupation is a particular concern for transgender persons, who are hard hit by unemployment and social exclusion. The number of transgender persons made redundant, particularly during a gender reassignment procedure, who leave their jobs to avoid any forms of harassment or who decide against gender reassignment for the same reasons is also very high. Member states should therefore ensure that measures designed to combat discrimination in employment also apply to gender identity issues, take care to avoid unnecessary disclosure of a transgender person's gender background or previous name, both in recruitment procedures and during working life, and develop programmes focusing specifically on employment opportunities for transgender persons."²⁷

4.2 European Convention on Human Rights

With regard to sexual orientation, the Human Rights Commissioner's Report explains that:

"While the right to work is not directly protected in the European Convention on Human Rights, in the case of *Smith & Grady v. the United Kingdom*, and in the case of *Lustig-Prean & Beckett v. the United Kingdom*, the Court recognised that the dismissal from the army of gay and lesbian personnel based solely on their sexual orientation had been unlawful and had violated Article 8 of the Convention...."

The Court has not addressed discrimination on the basis of gender identity in the context of employment. However, in a recent judgment the Court made it clear that transsexualism is a ground which falls within the scope of Article 14.²⁸

4.3 Parliamentary Assembly

In its Resolution 1728 (2010) on Discrimination on the basis of sexual orientation and gender identity, the Parliamentary Assembly called on member states to:

"adopt and implement anti-discrimination legislation which includes sexual orientation and gender identity among the prohibited grounds for discrimination, as well as sanctions for infringements;"²⁹

²⁷ Committee of Ministers Recommendation – Explanatory Memorandum – page 17

²⁸ In *P.V. v. Spain* (appl. 35159/09, judgment 30 November 2010), the Court indicated that allowing a parent's gender reassignment as such to negatively influence that parent's visitation rights after divorce would amount to discrimination on grounds of transsexualism with regard to family life – in breach of articles 8 and 14 of the Convention.

²⁹ *op. cit.*, paragraph 16.5

4.4 Council of Europe Commissioner for Human Rights

The Human Rights Commissioner's Report recommends that member states

"Enact comprehensive national legislation on non-discrimination and include sexual orientation and gender identity among the prohibited grounds of discrimination".³⁰

It also specifically recommends that states take measures to protect the rights of transgender persons in the labour market:

"Respect the right of transgender persons to access the labour market by guaranteeing the respect of their privacy concerning the disclosure of personally sensitive data related to their gender identity and by promoting measures aimed at ending the exclusion and discrimination of transgender persons in the workplace."³¹

The Human Rights Commissioner's report notes that some 38 member states regard sexual orientation as a prohibited ground of discrimination.³²

Regarding gender identity, the picture is, as the Human Rights Commissioner's report points out, more complex:

"Nine member states (Albania, Croatia, Czech Republic, Germany, Hungary, Montenegro, Serbia, Sweden and the United Kingdom) have included gender identity specifically in non-discrimination legislation. At least 11 member states treat discrimination on grounds of gender identity or gender reassignment as a form of sex or gender discrimination in comprehensive non-discrimination legislation (Andorra, Austria, Belgium, Denmark, Finland, France, Ireland, Netherlands, Norway, Slovakia and Switzerland), while one member state (Sweden) has chosen multiple formulations to describe the applicable grounds. However, there are significant differences as to the legal scope of these terms and the different laws, even though, as an effect of the Gender Recast Directive, EU member states should recognise discrimination in the field of employment with regard to gender reassignment of the person."³³

Thus, if obligations under EU law are taken into account, some 33 Council of Europe member states protect, or have an obligation to protect, transgender persons from discrimination in employment either on the grounds of their gender identity, or gender reassignment.

5 The obligations of Contracting Parties under Article 1.2 of the Revised European Social Charter

Under Article 1.2 Contracting Parties undertake "to protect effectively the right of the worker to earn his living in an occupation freely entered upon".

Under Article E of the Charter, Contracting Parties undertake that the enjoyment of the rights set forth in the Charter "shall be secured without discrimination on any ground such

³⁰ op. cit., page 11

³¹ op. cit., page 15

³² op. cit., page 166

³³ op. cit., page 167

as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status”.

The Committee has stated that it “considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion”.³⁴

Moreover, it has determined that the discriminated acts and provisions prohibited by this provision are ones that may occur in connection with recruitment or with employment conditions in general (in particular, remuneration, training, promotion, transfer and dismissal or other detrimental action).³⁵

Although there is no case law under the European Social Charter in relation to employment discrimination on the grounds of gender identity, the serious and widespread nature of such discrimination, and the existing Council of Europe standards in this regard, leave no doubt that such discrimination should fall within the Article E ground of “other status”.

6 The situation regarding sexual orientation discrimination in employment in Ukraine

The only systematic information available on sexual orientation discrimination in employment is that provided by the 2005 Discrimination Survey. Of the 417 respondents in that survey who had been employed or had tried to find employment in the 4 years preceding the survey, 78.2% reported discrimination and/or prejudiced behaviour in the workplace. 21.1% experienced bias relative to other employees, and 12.9% hindrance in promotion, while 35% reported being subjected to verbal harassment by colleagues. 19 individuals reported experiencing sexual harassment, 20 reported physical violence, and four (males) reported being raped.³⁶

Employment discrimination cases continue to be reported to NGOs working for the LGBT community. One organisation, “Nash Mir” (“Our World”) of Kiev reported documenting 27 such cases in a 12 month period in 2010/2011, covering both employer/employee relations (hiring, dismissal, salaries, promotions) and harassment by fellow employees.³⁷ Their report notes:

"Discrimination in the workplace is difficult to prove. It is unlikely that the employer will publicly admit to having dismissed the employee because the latter is a gay man or a lesbian. Such matters are usually discussed in private, without witnesses. The official reason for dismissal would be quite different, for example, if it involved downsizing or failure to satisfy the requirements of the position. Also, given the peculiarity of Ukrainian labor relations, where many are employed unofficially or receive their salary in envelopes, the employer does not even need to invent a reason: summarily in a blink of an eye people may get cast out without their last paycheck just because their superior is a homophobe."

Their report also comments on the failure of victims of discrimination to seek redress: "An overwhelming majority of those who were subjected to discrimination on the grounds of

³⁴ Conclusions 2006 Albania

³⁵ Conclusions XVI-1 – Austria, p. 25

³⁶ op. cit., page 33

³⁷ “One Step Forward, Two Steps Back - Situation of LGBT in Ukraine in 2010-2011” – page 21

sexual orientation in the workplace took no action to defend their rights, deciding it was best to resign without fanfare, of their own accord, to be able later to get employed elsewhere. In the entire case pool there is only one documented case (Summer 2010) in which the dismissed employee successfully proved in a court of law that his sexual orientation was the true reason for dismissal; he was reinstated in his rights. This was only possible thanks to the exceptional homophobia of his employer who even during the trial was not afraid to say so openly."

The following are examples of employment discrimination cases documented in recent years:

- "At one point the sexual orientation of Maxim, an employee of the executive office in Odessa, became known to his colleagues and soon to his superior. Subsequently, the colleagues' attitude to Maxim turned hostile and disdainful, and his superior was even more straightforward: "Such people as you should not be working here! Do yourself a favor, quit!" he said. In December 2010, Maxim made the decision to resign because, as he said, he did not want to push it."³⁸
- "In summer 2011 Yevhen, an employee at a car wash in the city of Donetsk, confided his homosexuality to one of his female colleagues. She then informed the entire staff, whose attitude to Yevhen changed to daily taunts and insults. He had to suffer harassment and abuse for another month as it was hard to find another job that would be as well-paid. However, after his colleagues resorted to threatening him with disclosing his sexual orientation to his parents, he resigned. The owner of the car wash, who was also aware of the causes of conflict, refused to pay Yevhen his salary for the last month. Yevhen decided not to complain as he was employed unofficially."³⁹
- In April 2009 a closeted gay man from the Donetsk region was hospitalised with an acute inflammation of respiratory tracts. Following discovery of his sexual orientation, and of his HIV-positive status, a nurse passed on this information to his employer, resulting in his discharge from his job.⁴⁰
- In April 2008 a gay club was raided by the police. Immediately after this incident, one of those taken into custody during the raid was called into his employer's office and informed that the police had sent a request for his personal characteristics. This request contained detailed information on where and how he was arrested. Shortly afterwards he was forced to leave his job.⁴¹

A case cited in the Legal Report further highlights the vulnerability of LGB people to exposure of their sexual orientation in the workplace. In an incident where more than 300 homosexual men were questioned by the police, officers are reported to have blackmailed some of those questioned by threatening to "out" them to their employer.⁴²

³⁸ ibid page 21

³⁹ ibid page 21

⁴⁰ The Legal Report – paragraph 173

⁴¹ The Sociological Report – paragraph 15

⁴² op. cit. paragraph 206; this case also referred to in the section above on "Police behaviour towards LGBT people"

The Legal Report also provides evidence of institutionally supported homophobia in the police force, leaving little doubt of the discrimination that LGBT people serving in the force would face if their sexual orientation or gender identity became known:

"Another similar textbook titled "Developing leadership skills and adherence to the healthy way of life in the military and police officers in Ukraine" was published in 2008. The publication was approved by the Academic Council of the Academy of the Ministry of Internal Affairs and recommended by the Ministry of Education and Science of Ukraine. The publication counts homosexuality among sexual perversions and thus the assumption is that using this textbook in educational and training programmes for military and police personnel will promote stigmatisation of and discrimination against LGBT community on the part of the staff of defence and law enforcement agencies."⁴³

7 The situation regarding gender identity discrimination in employment in Ukraine

In 2010 the first report on the situation of transgender persons in Ukraine was published. This was based on in-depth interviews with 37 transgender persons. The report included descriptions of the experiences of employment discrimination by individual interviewees, which are set out in Appendix I. They highlight 5 distinct areas of concern:

(i) overt discrimination in the recruitment process, with individuals initially being accepted for a job, but then rejected as soon as their transgender status becomes apparent.

(ii) dismissal after a period of work, at the insistence of a transphobic superior.

(iii) the acute difficulties faced by transgender people in accessing employment where their official documents do not match their appearance.

(iv) harassment by colleagues or superiors on account of their gender identity.

(v) exploitation by employers, taking advantage of their vulnerable situation.

8 Areas of non-conformity with the provisions of the Social Charter

The 4th National Report by Ukraine makes no reference to Ukraine's obligations in relation to non-discrimination on the grounds of sexual orientation or gender identity.

The Legal Report notes that the Labour Code of Ukraine does not provide explicit protection from discrimination on the grounds of sexual orientation and gender identity. It adds that, although these grounds are in theory covered under the category 'other circumstances' included in the law, such protection is largely hypothetical. The report's author bases this statement both on the absence of effective mechanisms for proving cases of discrimination, and on an official commentary of the Legal Department of the Supreme Court of Ukraine on the non-discrimination article of the (then, in 2007) proposed Labour Code which included

⁴³ op. cit. paragraph 125

sexual orientation as one of the protected grounds. The Supreme Court Legal Department's commentary read as follows:

“Inclusion of protections from discrimination on the ground of sexual orientation in employment is, in our opinion, unreasonable and cannot be justified. First, this [antidiscrimination] article of the Labour Code of Ukraine confuses natural rights and **unnatural actions such as, in fact, sexual orientation**. Second, use of the term ‘sexual orientation’ in this clause in our opinion **provides the so-called ‘sexual minorities’ with additional privileges**, which leads to the **undermining of public morals and contributes to the disruption of employment relations**.”

Today, protection of morality, establishment of universal humanitarian values in society, healthy lifestyle, and improvement of the system of spiritual and moral and ethical education of the youth and children [...] are the priorities of all governmental institutions. In this light, the issue [of including ‘sexual orientation’ in the law] does not just contradict the State’s policy, but also leads to development of **artificially created social conflicts** and increase in the number of court cases.

Besides, public morals are not only protected by Ukrainian law, but also by international law. For instance, Articles 19 and 21 of the International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16 December 1966, stipulate the need to limit one’s rights for freedom of expression [...] and freedom of assembly for the purpose of protecting public health and morality.

Therefore, the international community has ensured proper legal protection **from licentiousness that disguises as human rights**”.⁴⁴ (Emphasis added)

The non-discrimination article was excluded from the final version of the legislation adopted by the Parliament in 2008, although the Legal Report comments that it is not known whether this article was excluded on the basis of the Supreme Court's commentary or not.⁴⁵

The Supreme Court Legal Department's hostile and derogatory advice in relation to the inclusion of sexual orientation in the non-discrimination article goes far beyond neutral legal advice. Not only does it oppose providing employment protection for lesbian, gay and bisexual persons, it encourages the conclusion that discrimination against such persons is justified.

In this context, we would draw attention to the words of the Committee in the case of *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia* - ⁴⁷. Although the context is different, it is perhaps even more disturbing when officials of a Supreme Court adopt such a position.

⁴⁴ op. cit. paragraphs 135 – 141. A copy of the Supreme Court's Legal Department commentary is attached at Appendix II. It was sent to an organisation which campaigns against the rights of LGBT people, "Love against Homosexuality". The LGBT organisation Nash Mir advises that the Legal Department of the Supreme Court later confirmed to them that the commentary was their official position.

⁴⁵ op. cit., paragraph 133.

⁴⁶ It should be noted that, according to the Legal Report, the Labor Code as finally adopted has other provisions which provide protection from discrimination (Article 2 – 1, equality of labour rights of the citizens of Ukraine) and Article 22 (Guarantees in execution, change or termination of labour contracts). Neither however makes any specific reference to sexual orientation or gender identity.

⁴⁷ European Social Charter Complaint No. 45/2007, decision of 30 March 2009, paras. 60-61.

"However, the Committee does find that certain specific elements of the educational material used in the ordinary curriculum are manifestly biased, discriminatory and demeaning, notably in how persons of non-heterosexual orientation are described and depicted..... These statements stigmatize homosexuals and are based upon negative, distorted, reprehensible and degrading stereotypes about the sexual behaviour of all homosexuals....."

It is hardly surprising that, as was noted above, LGBT victims of employment discrimination are reluctant to challenge such discrimination in the courts. Nor is it surprising that officials of the State Department for Monitoring of Honouring of National Legislation on Labour in Ukraine were able to say to the author of the Sociological Report that "that although the scope of work of the Department is quite extensive, no cases of discrimination on grounds of sexual orientation and gender identity has been documented by it."⁴⁸

With regard to gender identity, the Legal Report notes that the "Labour law in Ukraine also does not have any reference to the special needs of transgender persons and therefore contains no provisions in relation to accommodating these needs."⁴⁹

9 Finding of non-conformity with regard to sexual orientation and gender identity discrimination

In our opinion Ukraine's legislation and practices on employment are clearly not in conformity with the provisions of the Social Charter in relation to its obligations under article 1 (2) in relation to discrimination on grounds of sexual orientation and gender identity. Indeed, it is not just a matter of omission, but, in the case of the Supreme Court Legal Department's commentary, actual incitement to discriminate. We urge the Committee to return a finding of non-conformity and to recommend introduction of comprehensive anti-discrimination measures on these grounds.

5 March 2012

⁴⁸ op. cit., paragraph 113

⁴⁹ op. cit., paragraph 142

Appendix I - Accounts of employment discrimination experienced by transgender persons documented in the Situation of Transgender Persons in Ukraine – Research Report – Kiev – 2010

"Before I changed my documents I was extremely scared. I purposefully was looking for a job where I would not need not show my documents even though I realized that in this case I would not have any social protection" (V., 22, Kharkiv obl.).

"There were situations that I would pass three interview stages and at the stage of signing a job contract I would say that I had this peculiarity, and after this the employer would refuse me placement arguing that my documents would not go through the security service or bringing up another reason. And it was not a single case" (S., 23, Kyiv obl.).

"I cannot also get a normal job as my appearance is totally male and my documents indicate the female gender. (S., 23, Kyiv obl.). I passed an interview, nobody asked for my documents. They talked to me like to a are are: specialist. Three times I was offered a job when the competition was quite high. Then I left my previous workplace. And then with the documents I would come and say: "Dear colleagues, there is one thing, I am transsexual." I did not see anything difficult or special in introducing such a person as I was to the staff. They turned me down. Once, a famous company "Olymp" told me that they would hire me; at that time I was a bank employee. I checked with them several times, having said that I was transsexual and my documents were in the process of change. They told me it did not matter and everything was OK. After I left my previous workplace and came to that company on the next day they told me: "We are sorry but we cannot take you" " (V., 23, Kyiv obl.).

"They would throw me out of the job exactly because of this. I started working at the shopping mall. The senior salesperson responsible for personnel selection was away. I was hired by a senior cashier officer. She told me: "We need a shop assistant, I take you." The woman took me because I could work. I worked there for a week. Then this senior salesperson came and said: "Get out of here." I asked: "Why?" He answered: "I don't need a boy-girl working for me." I did not suit him " (S., 24, Odessa obl.).

"For example, while I am selling - this is one thing. People come and ask: "Lady, please show this, turn that on." "Yes, please, how much does it cost?" The pressure started after. When a van came, for instance, and the goods had to be unloaded. And among the goods were refrigerators and gas ovens. My boss said: "Let's go unload." I said: "No, I will not." "I took you, he said, as you are not fully a girl." I asked: "And who am I? A fag, or what? Who do you take me for?" "I don't know who you are, he said. But until you have a penis in your pants do unload the van otherwise I will sack you" " (V., 35, Mykolaiv obl.).

"The Director at first... well, he learned the truth from me on the very first day to avoid any misunderstandings. "Well, he said, no problems here. The only thing I care for is that the person would sit and work. This is it. I do not care. I can put even a Kolobok [A protagonist made of bread in a Russian fairy tale], if he works, then it's all right." But these were simply words. In fact they wore me out. They promised I would get the probation period salary for one, maximum for two months. The salary was 600 hryvnas , two years ago. Five months in a row I received 600 hryvnas. And then already at the end of the fifth month I said: "Andrei, as I remember, we had agreed. How can one survive with this money at all?" "It is easier to fire

you, he said. Your work performance is poor.” ...He probably took advantage of the situation, I mean: “Where would you go, dear? Who else will need you?”” (V., 35, Mykolaiv obl.).

*“For example, a company needs an electronic engineer, with computer skills, technical English, ability to work with the station. I came and asked what they needed. They said. I told them: “I have this and that work experience, I have a university degree.” He said: “Give me your documents.” I said: “You see, here is the situation. I am a transsexual, I still have documents of a man.” He said: “Wait, so you are a man?” I said: “Do I look like a man?” He said: “No. I understand: **there is a man, there is a woman, and there is a fag such as you are.**” Straightforward like this. “Fags never worked for me, do not work, and will never work” (V., 35, Mykolaiv obl.).*

“At one job I had a conflict with my co-worker who said that his friends would stop talking to him if they learned he was working with me. Applying to another job I already came not as I [but according to my passport gender] in order to avoid problems. Again, the colleagues would rather tolerate gay people but not trans...” (I., 33, Kyiv obl.).*

**Appendix II – Commentary of the Supreme Court’s Legal Department
on the proposed anti-discrimination article of the draft Labor Code
(2007)**



ВЕРХОВНИЙ СУД УКРАЇНИ

01024, м.Київ-24, вул. П.Орлика, 4

28 серпня 2007 року № 11/13-145

**Регіональний інформаційний
і правозахисний Центр
для геїв і лесбійок
“Наш світ”**

а/с 173, м. Київ, 02100

Ваше звернення, що надійшло до Верховного Суду України 21 серпня 2007 року, розглянуто.

Повідомляємо, що лист від 11 травня 2007 року № 11/13-91 за підписом заступника керівника апарату – начальника правового управління Верховного Суду України Хавронюка М.І. відображає позицію правового управління Верховного Суду України.

Додаток: копія листа на 2 арк.

**Заступник керівника апарату –
начальник правового управління
Верховного Суду України**

М.І. Хавронюк

Appendix II Continued – Commentary of the Supreme Court’s Legal Department on the proposed anti-discrimination article of the draft Labor Code (2007)



ВЕРХОВНИЙ СУД УКРАЇНИ

01024, м.Київ-24, вул.П.Орлика, 4

11 травня 2007 року № 11/13-91

**Громадський рух людей з майбутнім
“Любов проти гомосексуалізму”**

а/с № 625, м. Київ-23, 01023

Ваше звернення, що надійшло до Верховного Суду України 28 квітня 2007 року, розглянуто.

З приводу висловленої у ньому пропозиції стосовно розгляду Верховним Судом України підготовленого Громадським рухом людей з майбутнім “Любов проти гомосексуалізму” правового аналізу питання протиправності положень частини першої статті 4 проекту Трудового кодексу України (реєстр. № 0913 від 25 травня 2006 року) в частині встановлення нової форми дискримінації, а саме за ознакою сексуальної орієнтації, повідомляємо таке.

Правове обґрунтування недоцільності включення до переліку обмежень дискримінації у сфері праці і заборони за ознакою сексуальної орієнтації, на наш погляд, є аргументованим і доцільним.

По-перше, у зазначеній статті проекту Трудового кодексу України змішані природні права з неприродними проявами, саме до яких і відноситься нетрадиційна сексуальна орієнтація.

По-друге, використання терміну “сексуальна орієнтація” у запропонованій проектом нормі надає, на нашу думку, додаткові привілеї так званим “сексуальним меншинам”, що зумовлює підрив моральних засад суспільства та сприяє руйнації трудових взаємовідносин.

Appendix II Continued – Commentary of the Supreme Court's Legal Department on the proposed anti-discrimination article of the draft Labor Code (2007)

На сучасному етапі одним із пріоритетних напрямів діяльності всіх інститутів влади є захист моральності, утвердження в суспільстві загальнолюдських гуманістичних цінностей, здорового способу життя, докорінне вдосконалення системи духовного, морально-етичного виховання перш за все молоді та дітей (Указ Президента України „Про невідкладні додаткові заходи щодо зміцнення моральності у суспільстві та утвердження здорового способу життя” від 15 березня 2002 року № 258/2002). Зважаючи на це, порушена у зверненні проблема є не просто протилежною державній політиці, а і спрямована на штучне створення соціальних конфліктів і зростання кількості судових справ.

Крім того, суспільна мораль захищається не тільки чинним законодавством України, а й нормами міжнародного права. Так, положеннями статей 19 та 21 Міжнародного пакту про громадянські і політичні права, прийнятого 16 грудня 1966 року Генеральною Асамблеєю ООН, закріплена необхідність обмежувати права людини на вільне вираження (поширення) своїх поглядів та проведення мирних зборів з метою охорони здоров'я і моральності населення. Таким чином, міжнародне співтовариство передбачило адекватні правові заходи, спрямовані проти розпущеності, яка маскується під виглядом прав людини.

Заступник керівника Апарату-
начальник правового управління
Верховного Суду України



М.І. Хавронюк

About NASH MIR



OUR HISTORY

“Nash Mir” (Our World) Gay and Lesbian Centre was established in Luhansk in Southeastern Ukraine in 1997 as a grassroots group. By our initiative we took upon ourselves the responsibility for educating Ukrainian society about homosexuality, toppling recurrent stereotypes and prejudices against gays and lesbians, consolidating lesbian and gay community, and for advocating our rights.

This is the situation in Ukraine we discovered: there “wasn't a problem with homosexuality” as long as it went unseen. At first, local judiciary officials simply did not know what to do with our organization! Interviewed by a national newspaper, one official said, *“How can we recognize them [the organization] on an official level, as a juridical person? There is no legal basis, though this sort of orientation isn't forbidden, but neither are precedents... If I register them, excuse me, wankers will come, and someone else... And what about morality?”* Using far-fetched grounds they refused our registration.

Certainly we did not let ourselves be humbled by such obvious discrimination. Nash Mir was indeed registered at the end of 1999. But successful registration was made possible only as the result of a determined battle by the members of the organization for their legal rights, and the steadfast attention to this issue on the part of some international human rights organizations.

OUR GOALS

- Protection of human rights and freedoms for lesbians, gays, bisexuals and transgender (LGBT) people in Ukraine. Increasing the legal protection of LGBT people in Ukraine by fighting against discrimination based on sexual orientation.
- Improving Ukrainian society's attitudes towards homosexuality by challenging homophobia in the mass media.
- Supporting LGBT people and their self-consciousness and pride as equal and valuable members of Ukrainian society.

OUR CURRENT ACTIVITIES

Our projects are aimed at Ukrainian gay and lesbian community and society in general. At present we focus our activities on the following:

- Monitoring violations of LGBT rights.
- Initial legal help and counseling for victims of discrimination and hate crimes based on sexual orientation.
- Legal education of LGBT community.
- Joint actions with other organizations to advocate for full LGBT rights on the legislative and political levels.
- Supporting grassroots groups in their work of providing social and psychological services to LGBT, HIV/AIDS prevention among MSM, mobilization of the community on local level.
- Organizing seminars and conferences.
- Public relations.

Nash Mir is a founding member of the Council of LGBT Organizations of Ukraine (at present 18 NGOs are members). At the most recent general meeting of the Council at the end of May 2011, Andriy Maymulakhin, Coordinator of Nash Mir, was elected as Chairperson of the Committee on Human Rights and Advocacy, Co-chair of the Council.

Organization's brochure in English – Please see <http://www.gay.org.ua/english>



**ДЕНЬ 17.05.11
МОВЧАННЯ**

