

The Universal Periodic Review

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1. Overview of The Situation of The LGBT Persons in Ukraine

In 2016, LIGA has conducted an analysis of situation of LGBT people in Ukraine. It shows recent tendencies, especially after 2013, in relation to LGBT community.

After the previous cycle of the Universal Periodic Review, Ukrainian government has received 15 recommendations from the UN member states regarding sexual orientation or gender identity. Ukraine has not implemented some of the recommendations, namely:

- 1) Enact legislation that explicitly protects LGBT persons from discrimination [...];
- 2) Adopt a comprehensive anti-discrimination law that addresses the worrying trend of incidents based on gender, sexual orientation, [...];
- 3) Apply the Yogyakarta Principles in policy development;
- 4) Step up the efforts to fight against discrimination by [...] amending the anti-discrimination legislation to include explicit references to sexual orientation and gender identity as possible grounds of discrimination;
- 5) Implement the recommendation issued in 2010 by the Committee of Ministers of the Council of Europe on measures to combat discrimination based on sexual orientation or gender identity;
- 6) Consider applying the Yogyakarta Principles on the Application of International Human Rights Law in Relations to Sexual Orientation and Gender Identity as a guide to assist in policy development.

Since 2014, in the Donetsk and the Luhansk regions, any openness to the public about person's belonging to LGBT community can lead to discrimination; provoke violence or other types of aggression.

One of the key social groups in Ukraine have become IDPs - internally displaced persons, i.e. people who are forced to leave the conflict zone in the east or left Crimea. LGBT people are one of the subgroups of IDPs. Unfortunately, there is not official statistical data on LGBT IDPs.

Based on the results of the analysis LIGA held in 2016, the situation for LGBT people in Ukraine could be described as follows¹:

1. Ukrainian government is moving toward improving the rights and freedoms for LGBT people; at the same time, many legal and regulatory provisions that still remain valid in

¹ For the report that is more comprehensive please see the *Country Context Analysis of LGBT People Situation in Ukraine* – http://lgbt.com.ua/doc/Context_Analysis_on_LGBT_EN.pdf

Ukraine show signs of discrimination, direct or indirect, based on sexual orientation and gender identity (SOGI);

2. Same-sex marriages remain illegal;
3. The attitude of civil society towards the LGBT people remains negative in general;
4. The LGBT people continue suffering from hate crimes; moreover, a significant legislative gap is that crime based on SOGI is not considered as a ground when hate crime cases are investigated;
5. Controversies remain regarding the right to freedom of peaceful assembly for the LGBT people with attitudes to various pride events differing from city to city;
6. Transgender people are not recognized in Ukraine as a key population when responding to HIV, and their rights require special protection;
7. The situation of the LGBT people in territories not controlled by the Ukrainian government (Crimea, separate territories of the Donetsk and the Luhansk regions) is much worse than other regions of Ukraine.

2. Hate Crimes and Violence against The LGBT People

Since events of the Revolution of Dignity (late 2013 – early 2014), the LGBT community became more visible and transparent for the general society. For instance, since 2012 more and more organizations hold campaigns and public actions (Kyiv and Odesa prides, Equality Festival in Lviv, Zaporizhia, LIGA's annual Equality and Pride Days since 2009 etc.). Journalists publish more articles and information on the LGBT community.

Additionally, neo-Nazi and nationalist groups, which originated in the Russian Federation, has also organized their movements in Ukraine such as Occupai Pedophilai, which later turned into Modnyi Pryhovor (*Fashion Verdict*). They are luring gay and bisexual men for a date, which does not happen. Instead, the offenders record videos on how they humiliate the victims. One of such cases happened recently (February 2017) and the application of a victim was registered in local police station in Odesa (No. ЖКО 4352).

These factors have influenced the increase of cases of hate crimes and violence targeting the LGBT populations in Ukraine. Many people are scared reporting such cases to the police because it is still being reformed and the level of trust to law enforcement officers is still low. For instances, beneficiaries who come to LIGA's community centers in Mykolaiv, Odesa and Kherson speak about cases of discrimination and violations of their rights. When speaking with the lawyer, they state that they are not motivated to report such cases to police because of mistrust and fear of being exposed to their relatives.

However, there are those who are not afraid to go to LGBT organizations and uncover their affiliation with the LGBT community and report these hate crimes cases. Considering that there is no separate hate crimes legislation in Ukraine and only a few articles of the national Criminal Code mention only race, religion and nationality², such cases are being investigated as

² Example: Art. 161 of the Criminal Code of Ukraine – violation of rights equality of the citizens in relation to their race, nationality, religion, disability and other grounds, which tells about punishment for stirring up hatred and hostility.

hooliganism, for instance³.

Gay, bisexual and trans men often face violence, with trans men reporting to be more exposed. The data of 2015/2016 biological and behavioral research (BBR) indicate that about 20% of GBT persons (out of 4550) interviewed told about being stopped by police in the public places without any apparent reason; about 13% reported having been searched, again without any reason; and about 5% of GBT persons encountered blackmail.

About 5% of GBT persons reported being blackmailed and harassed by homophobic groups, which, in some cases included videotaping and photographing against their will and threatened that videos and photos would be posted on the Internet.

Violence against Transgender People

The 2015/2016 BBR data indicate that 31 interviewed TG persons (27%) reported to have been victims of sexual violence.

In addition, the government did not adopt **the Convention on preventing and combating violence against women and domestic violence**, which Ukraine signed on 07 November 2011, but has not yet ratified it or adopted a similar law. The reason for this could be that the religious organizations and churches of Ukraine are against inclusion of SOGI into the legislation⁴.

Recommendations:

- a) Include sexual orientation and gender identity as a grounds on which people should be protected from hate crimes;
- b) Ratify the Convention on preventing and combating violence against women and domestic violence to prevent violence against women including based on their sexual orientation and gender identity;
- c) Include topics of hate crimes on the grounds of SOGI into educational programs for police officers (including investigators).

3. Equality and Protection from Discrimination

In May 2013, the government has adopted the Law of Ukraine on Principles of Preventing and Combating Discrimination, which was amended and adopted in May 2014. Neither of the adoptions contains sexual orientation and gender identity as the characteristics on which people must be protected from discrimination in case of encountering it.

Despite recommendations contained in the 2000 PACE Recommendation No. 1474 “Situation of lesbians and gays in Council of Europe member states” and the 2010 Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe, none of these provisions presently provides for explicit protection against discrimination on the grounds of sexual orientation and gender identity. Furthermore, the Ukrainian government persists in the opinion that sexual orientation and gender identity do not need a special mention

³ The Examples from the Context Analysis which became known widely in Ukraine: investigation of the Zhovten (October) Cinema fire, murder of gay man in Kharkov and attack on the Equality March during Kyiv Pride in 2015.

⁴ Article in Ukrainian:

http://www.irs.in.ua/index.php?option=com_content&view=article&id=1779%3A1&catid=34%3Aua&Itemid=61&lang=uk

as they are implied in the category “other grounds” in the principal legislation of Ukraine – the Constitution as well as the abovementioned anti-discrimination law.

The results of the Ukrainian public opinion survey “What do Ukrainians Think about the Current Situation” conducted in late 2014 – early 2015 by the Intellectual Perspective foundation show that the Ukrainian population is still quite homophobic. 75% of the interviewed are more or less inclined to believe that homosexuality is bad. Only 3% of survey participants absolutely disagree with this statement and 6% disagree.

According to the results of survey among Ukrainians held by the Centre for Social Expertise by the National Academy of Science of Ukraine and Donbass-SocProject center, 60% of survey participants believe that the society will not recognize homosexuality. At the same time, 53% of Ukrainian citizens are for the equality and prohibition of discrimination of the LGBT people. However, 63% of survey participants are against registered partnership of couples of the same sex and 71% are against adoption of children by such couples

The Internet-based public survey carried out in 2011 among 1721 people showed that 61% of respondents encountered discrimination and violations of their rights due to their sexual orientation or gender identity at least once over the past three years.

The Law of Ukraine on Principles of Preventing and Combatting Discrimination foresees state policy on combatting and preventing discrimination, but there is not actively functioning program of such in Ukraine aimed to promote tolerance towards LGBT people.

Recommendations:

- a) Include sexual orientation and gender identity into the list of characteristics under the article on prohibition of discrimination in the Constitution of Ukraine;
- b) Develop and launch a governmental program to promote tolerance towards LGBT people on the national level.

4. The Right for Registered Union and to Found A Family

The Family Code of Ukraine (art. 21) provides for marriage only between one man and one woman. Same-sex couples are deprived of any form of legal recognition and, thus, deprived of any rights as a family even if they cohabit and *de facto* constitute a family. The Code, while denying same-sex couples family rights, provides unmarried opposite-sex cohabitants with property rights (art. 74). In addition, same-sex couples are not allowed to jointly adopt children (art. 211 of the Code). However, the Constitutional Commission has worked on propositions to amend the articles of the Constitution relating to family. The propositions were not to mention gender of spouses. The amendment has not yet been submitted to the Parliament for voting.

Ukrainian law does not recognize any parental or custodial rights and obligations for a partner in a same-sex couple in relation to the child of the other partner and prohibits second-parent adoption of the child. This amounts to restriction of the rights of the child and an unreasonable interference with private and family life by the government.

Recommendations:

- a) Develop and adopt legislation to establish an officially recognized form of same-sex unions and provide same-sex partners with essential marital rights and obligations.

5. The Right to Freedom of Association and Peaceful Assembly

The experts who worked on the Context Analysis report gathered data on the legal proceedings on the right to freedom of peaceful assembly. There are a few cases that happened in different regions in Ukraine in the last five years, which were reviewed by the courts.

A few cases happened in Mykolaiv back in 2008 and 2009 when the local court prohibited public actions for the International Day against Homophobia (IDAHO) of the LGBT Association 'LIGA'.

1. By the resolution of 23 May, 2013, on Case No. 826/7505/13-a, the Kyiv District Administrative Court sustained the lawsuit filed by Kyiv City State Administration and imposed the restriction on the right of peaceful assembly planned by the Kyiv Pride 2013 International LGBT Forum and Festival. Kyiv Administrative Appellate Court upheld the trial court decision on 24 July 2013. On 26 March 2014, the Superior Administrative Court of Ukraine reversed the lower court decisions and denied the lawsuit filed by Kyiv City State Administration.
2. On 17 March 2016, the Insight NGO officially notified the city of Lviv's mayor about its intent to hold public events on 19 and 20 March 2016. On 19 March 2016, the Lviv District Administrative Court issued the resolution No. 813/916/16 in favor of the Lviv City Council Executive Committee to ban the Insight NGO and other entities from organizing and holding public events in Lviv for this period. Therefore, the Court cancelled all other activities planned as part of the 2016 Equality Festival (panel discussions, video presentations, and a concert) which cannot be classified as peaceful public events from the perspective of provisions set out in Article 39 of the Constitution of Ukraine. Because of the appellate proceeding, Lviv Administrative Appellate Court revoked the court decision of 19 March 2016, but the Lviv City Council Executive Committee filed a cassation and the final decision is still pending.
3. On 5 August 2015, LIGA officially notified the Mykolaiv City Council Executive Committee that it plans to hold a peaceful public event in the form of a bicycle ride. On 4 September 2015, the Mykolaiv District Administrative Court issued the resolution denying lawsuit No. 814/3525/15 filed by the Mykolaiv City Council Executive Committee.
4. On 18 April 2016, representative of the Human Rights Non-Governmental Initiative officially notified the Kherson City Council Executive Committee about the planned public march intended to support the ideas of personal and societal security, human rights and non-discrimination on 17 May 2016. The Kherson City Council Executive Committee filed an administrative lawsuit with Kherson District Administrative Court to restrict the right to peaceful assembly. The Court issued the resolution of 16 May 2016 No. 821/665/16 denying the lawsuit filed by the Kherson City Council Executive Committee.

Recommendations:

- a) The Ukrainian government should guarantee the right to peaceful assembly as well as ensure adequate protection to all groups of people including the LGBT community.