**LGBT situation in Ukraine in January – July 2017**

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***In 2017 the position of the Ukrainian LGBT community and the attitude of Ukrainian society and the state towards LGBT issues does not demonstrate any fundamental changes in comparison to the previous year. The central government continues declaring equal rights for LGBT people, while being in no hurry to fulfil its obligations under the Action Plan on Human Rights. The police force, in general, provides rather reliable protection measures against LGBT homophobic aggression under a prior agreement, but reluctantly and inefficiently investigates hate crimes against LGBT people. Ukrainian society is gradually becoming more aware of the real problems and demands of their LGBT compatriots, and more tolerant to manifestations of homosexuality and transgender identity. Right-wing radical nationalist forces and the churches remain the main adversaries of LGBT people, but while the former do not weaken (and rather, on the contrary, increase their homophobic activity and rhetoric) the latter are trying to avoid evident "hate speech" and direct calls for discrimination against LGBTs.***

**1. Generalized social and political situation**

**Legislation**

Since the beginning of 2017, Ukrainian legislation regarding LGBT rights and interests has not changed. Discrimination on grounds of sexual orientation and gender identity (SOGI) is still explicitly prohibited only in employment, and the Family Code and secondary legislation keep their set provisions openly discriminating against LGBT people. The motives of homophobia and transphobia are not considered as aggravating circumstances in the commission of crimes.

Since the end of 2016, realization of the LGBTI components of the Action Plan to Implement the National Strategy on Human Rights for the Period until 2020 has been nearly halted. Inter alia, the following of its items remain unfulfilled, the implementation period of which expired in 2016 – the first half of 2017:

* Para. 60 Measure 8 and identical Para. 62 Measure 1 (working out the medical standards to treat intersex persons);
* Para. 105 Measure 1 (regarding introduction of sexual orientation and gender identity (hereinafter abbreviated as "SOGI") as protected grounds in the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine") – the Ministry of Justice plainly refuses to do it;
* Para. 105 Measure 3 (amending the Criminal Code to criminalize offenses on motives of intolerance, particularly on grounds of SOGI, and to decriminalize contagion by HIV and other infectious diseases) – the Ministry of Interior does not want to implement this provision of the Action Plan in its current form, and is waiting for approval of amendments to the Action Plan that would allow it not to implement the current form;
* Para. 105 Measure 6 (development and submission to the Cabinet of Ministers of Ukraine a draft law to legalize registered civil partnerships for both opposite-sex and same-sex couples in Ukraine) – the Ministry of Justice and the Ministry of Social Policy each shift the duty to draft this bill upon the other Ministry;
* Para. 7 105 Measure (lifting the ban on adoption of children, particularly by transgender and HIV-positive people) – to our knowledge, the Ministry of Health has developed a corresponding draft order, but it received a negative feedback assessment during a public discussion before a conservative religious audience, and a draft order has not been approved;
* Para. 109 Measure 2 (development and inclusion of a course on effective and proper investigation of hate crimes in the training of law enforcement officers).

The above list is not exhaustive; we mention only the most important (in our view) and still unimplemented LGBTI components of the Action Plan. In an informal conversation, representatives of the Ukrainian government told us that these items currently lack a "political will" behind them – that is, direct approving instructions from the Administration of the President or leadership of the Cabinet of Ministers.

Also, because of the resistance of churches and religious organizations, ratification of the Istanbul Convention (on prevention of violence against women and domestic violence) was stopped. A common demand of the major Ukrainian churches is avoiding the use of the concepts of "sexual orientation", "gender" and their derivatives, in the Ukrainian legislation in general; and many Ukrainian MPs are ready to fulfil any wishes of the All-Ukrainian Council of Churches and Religious Organizations.

However, despite the opposition of churches and their parliamentary lobbyists, the current version of the anti-discrimination article of the draft Labour Code of Ukraine remains without changes that provide a clear prohibition on discrimination in employment on grounds of SOGI. It should also be noted that in late 2016 the Cabinet of Ministers submitted to the Verkhovna Rada Bill 5511, which provides for the introduction of SOGI as specific grounds protected from discrimination in Article 11 of the Law "On Employment". Further, it adds sexual orientation to the list of grounds prohibited in advertisements on employment (Article 241 of the law "On Advertising"). However, against the background of the current problems with already planned legislative initiatives to protect LGBT human rights, the adoption of this bill in its current state seems unlikely.

**The state and local authorities**

Official representatives of the Ukrainian government in 2017 mentioned LGBT people rarely and rather indirectly, but, in general, showed a positive or at least neutral attitude to protection of their rights. Vice-Prime Minister for European Integration Ivanna Klympush-Tsyntsadze, like last year, strongly supported the Equality March in Kyiv and overcoming negative stereotypes about LGBT people in Ukrainian society. Worth mentioning is the interview of Andriy Mahera, Deputy Head of the Central Election Committee, given to Mir’s internet edition, who, inter alia, said: "For example, the issue of LGBT rights – it causes resistance in society, thus a politician thinks so: ‘They may call me somebody like this – so I would not raise the issue But human rights – either they exist or they don’t. Here is the question of principle. There are no exceptions.’" Also Anastasia Deyeva, Deputy Interior Minister for European Integration, clearly stated in support of equal rights for LGBT people in her Facebook comment: "For me, all citizens of Ukraine, including representatives of LGBT and people with disabilities, are absolutely equal and enjoy equal rights. This is the key to a strong and healthy society!" She also gave a detailed interview to LGBT magazine PRIDE Ukraine.

Very important was the statement of the President of Ukraine Petro Poroshenko on the efforts of religious and conservative MPs to remove an explicit prohibition of discrimination on SOGI grounds from the new draft Labour Code, which was disseminated by his spokesman Svyatoslav Tseholko: "The President will not allow revision of Ukraine's commitments we have implemented for the visa-free regime. The President considers erroneous and even provocative the decision of the parliamentary committee to withdraw the so-called anti-discrimination norms from the new draft Labour Code. Petro Poroshenko assured our partners through diplomatic channels that this position of the Committee will find support neither in the Verkhovna Rada nor especially from the President. Ukraine fulfilled, fulfils and will fulfil all its obligations." There is no doubt that such a consistent and firm position of the head of state led to the rejection of this amendment at the sitting of the relevant parliamentary committee.

However, a campaign of the public movement “Vsi razom!" (All Together!) – a new project of well-known homophobic journalist and activist Ruslan Kukharchuk – has been recently spread through local councils across Ukraine, on adopting appeals to the leadership of Ukraine to ban "propaganda of homosexuality" and to keep LGBT-discriminating provisions in Ukrainian legislation. Currently, such statements (with almost identical texts, based on the resolution of the festival "All Together – for a Family!" signed by five hundred of the event’s participants) have been adopted by Rivne, Ternopil, and Poltava oblast councils, as well as by Ostroh, Kamyanets-Podilskyi, and Fastiv city councils.

Also noteworthy are some positive trends by local authorities to build a modern democratic society in Ukraine: for example, a statement appearing on the official Facebook page of Uzhhorod City Council strongly condemned the attack of right-wing groups on participants of an action in support of women's rights and for the ratification of the Istanbul Convention. Chernivtsi Mayor Oleksii Kaspruk, who already condemned a similar attack on an LGBT event in the city, this year welcomed the participants of the round table on combating hate crimes against LGBT and stressed the importance of this work for the city community. In 2017, the number of local authorities’ applications to courts to limit public LGBT events has decreased significantly: even Odesa City Council, which in recent years consistently tried to ban mass public LGBT events in the city, this year did not do so. Meanwhile, Konotop Mayor Artem Semenihin and the City Council still tried to ban the Equality March in their town, but the court rejected their claim (it should be noted that in fact this march was not planned and was not performed).

As in recent years, the office of the Ukrainian Parliamentary Commissioner on Human Rights was the most active public institution in monitoring violations and protecting the rights of the Ukrainian LGBT community.

**Law enforcement agencies and the judiciary**

In 2017 cooperation between the National Police of Ukraine and the LGBT movement has been continuing and expanding – in particular, representatives of the patrol police, the Chief Investigation Department, and the Department on Human Rights participated in events organized by Nash Mir Center and other LGBT organizations in various regions of Ukraine. The main issues discussed at these meetings were combating hate crimes stemming from motives of homo- and transphobia, providing security at public LGBT events, and tolerant and professional treatment of LGBT persons by police officers.

This year there were no attempts by the local police to withdraw from protecting public LGBT activities and no recommendations of theirs to local governments simply to ban such events, as always happened in previous years. As in 2016, the Kyiv police very professionally and efficiently provided protection to the Equality March from homophobic aggression; protection of this event in Odesa was also quite adequate. However, despite a quite sufficient number of police officers on the sites, the police failed to prevent attacks of very aggressively homophobic youth groups on small LGBT actions in Kherson and Kharkiv, which as a result were all completely thwarted. Generally, inaction or too passive reaction to the harshly aggressive behaviour of LGBT events’ opponents remains quite typical of the Ukrainian police, who in such cases only try to protect the victims of the attack from the aggressors, but hesitate to put an end to the obvious violation of public order and to the civil rights of an action’s participants.

The practice of investigating hate crimes based on homo- or transphobia remains very unsatisfactory. Investigators still try in any way to ignore the homophobic motivation of criminals, and often even permitted themselves openly homophobic and unprofessional behaviour towards LGBT victims of crime. In part, the reluctance of investigators and prosecutors properly to classify and investigate such crimes is explained by imperfections in the Ukrainian legislation, which does not consider homophobic motives to be an aggravating circumstance in the commission of crimes. This deficiency ostensibly had to be corrected according to the Action Plan to Implement the National Strategy on Human Rights, but, as already noted, the Ministry of Interior consistently opposes the respective amendments to the Criminal Code provided for in this Action Plan. Despite the fact that the deadline for implementing this provision (Para. 105 Measure 3) expired in the previous year, the Ministry of Interior has not yet developed the required draft law, and instead is waiting for a decision of the Cabinet of Ministers that would change the wording of this paragraph of the Action Plan.

Ukrainian courts in 2017, as far as we know, did not take obviously unlawful decisions to ban LGBT public actions, as often happened before. In the only known case, when the local authorities tried to ban the Equality March in Konotop because of their alleged inability to ensure its effective protection by the police, the court rejected the plaintiff’s demands.

**Politics**

While in the previous year many Ukrainian politicians and political parties spoke about LGBT issues, especially in relation to the Equality March in Kyiv, this year their interest in such matters was significantly less noticeable. An illustration of this lessening of attention may be the fact that Kyiv Equality March 2016 was attended by seven Ukrainian MPs, while this year – only by Svitlana Zalishchuk.

Traditionally, much attention and aggressive hostility to LGBT events was demonstrated by the right-wing nationalist politicians and political groups, including Svoboda, the Right Sector, Sokil ("Falcon"), Bratstvo ("Brotherhood") and others. Unlike the other political forces, in recent years the right-wing and the like only strengthened their homophobic rhetoric and aggressiveness throughout the country: it seems the fight against LGBT people is becoming one of the main directions of the right’s socio-political activity in general. This year the radical nationalist groups tried again to disrupt all public LGBT events, and also began selective harassment of public figures who openly support LGBT people. Thus, in August they disrupted presentation of the book "A Shooting Calendar" by Olena Herasymyuk on political repression in the Soviet Ukraine at the Bandershtat festival in Lutsk, just because the author declared her support to the Equality March in Kyiv. On the other hand, some street names in Kyiv were officially changed, modernized to reflect the democratizing post-Soviet era, including the name of the street where Nash Mir’s premises are located.

Non-aggressive political opposition to LGBTs is represented by the conservative forces that are willing to lobby the interests of churches and religious organizations: MPs from the Opposition Bloc, Popular Front and others. The particular activity should be noted of Pavlo Unhuryan MP, who is the very active and main lobbyist for church interests and the author of the vast majority of homophobic legislative initiatives in the current convocation of the Ukrainian parliament. Such initiatives usually are supported by a large number of representatives of almost all factions of Parliament. Unless the party leadership clearly express their position otherwise, among those who are willing to vote for homophobic laws and demonstrate corresponding rhetoric, one can see even many members of the ruling coalition of the Petro Poroshenko Bloc and Popular Front. Typical is the case of the PPB Sumy organization spokesperson Olha Panfilova: after she went to picket in support of Kyiv Equality March, she was called to account by Marina Nahorna, the Head of the PPB Sumy territorial organization Secretariat. Nahorna in a very rude manner told her that this act of hers disgraced the party and for that she would be dismissed. Then Olha Panfilova left her post herself, not wanting to work in such an organization. It should be noted, however, that when Maxim Savrasov MP, the head of the PPB Secretariat, learned from the press and the Internet about these events, he publicly condemned the behaviour of the Sumy organization leadership, brought an official apology to Olha Panfilova, and stressed that his party "has always defended human rights and strongly condemns any form of discrimination."

The positive trend from non-aggressive homophobic social and political forces is this: in the past couple of years they moved from making calls and attempts to ban public LGBT action to holding their own, so to speak, counter-actions that have a peaceful and non-confrontational nature. The above-mentioned public movement "All Together!" specializes in festivals, marches and other activities in support of the "traditional Ukrainian family". Such actions, under the active support and participation of the clergy of various denominations, were held this year in a few cities of Ukraine – particularly, in Kyiv and Odesa – as some kind of planned opposition to the Equality Marches. The slogan of "supporting the traditional family", however, has already been adopted also by right-wing radical groups: particularly, in July about twenty young people under the banners of neo-Nazi Social-National Assembly of Ukraine marched through the centre of Mykolayiv chanting "The traditional family – Great Ukraine!" and "One race, one nation, one motherland – this is Ukraine!"

**Churches and religious organizations**

With the exception of the UOC (MP), in 2017 the central leadership of the Ukrainian churches have refrained from active discussions of LGBT issues, limiting themselves to calls to support "the traditional family" and protests against the introduction of the terms "sexual orientation" and "gender" into the Ukrainian legislation. Only Metropolitan Onuphrius, the head of the Ukrainian Orthodox Church of Moscow Patriarchate, addressed the Kyiv city authorities not to allow the Equality March in the capital. The rest of the heads of Ukraine’s major religious organizations in their opposition to the March relied on prayer and God's help rather than upon administrative instruments – as, for instance, the Council of Evangelical Protestant Churches of Ukraine that took the respective decision noted above, on June 14.

Equality March in Odesa, however, was traditionally preceded by a press conference of local clergymen of various denominations, where they as always appealed to the city authorities to ban the festival Odesa Pride 2017, which includes the March as one part. In past years, the Odesa City Council always tried to fulfil such a ban demand, but this year it ignored the clergy’s appeal, who had to satisfy themselves only with the organization of an alternative march for "the traditional family."

The general mood of the Ukrainian churches’ leadership and many religious activists towards the current state policy on LGBT issues was voiced by noted religious scholar Yurii Chernomorets in his Facebook comment: "When this government was the opposition, they gave a guarantee to the All-Ukrainian Council of Churches and Religious Organizations (representing 95% of believers) that here would be as in Poland, in Hungary – we would go to the EU, but at that would have priority for the preservation of family, welfare of children, would not take the western culture of total relativism, with all its ideological broad interpretations of human rights. Yes, politicians merely swindled the Ukrainian churches."

**General public**

The contradictory modern Ukrainian attitude towards LGBT issues is well illustrated by the results of a survey among residents of Kyiv that was conducted by the Research and Communication Centre «Active Group» in April 2017: 38% of respondents agreed or rather agreed to allow, and 57% wanted or rather wanted to ban a "gay parade" in the capital; at the same time, restrictions on freedom of assembly in Ukraine were supported by only about 26% of the respondents.

The monitoring of the press and social networks on the Internet shows that LGBT themes in Ukraine are gradually becoming a routine part of the public discourse, with ever more people becoming aware of the real problems faced by LGBT people in their lives and the need to address them. Events around colouring the Friendship of Peoples Arch in rainbow hues during Eurovision 2017 in Kyiv clearly demonstrated that LGBT symbols cause significantly less irritation in the vast majority of socially active Ukrainians than ridiculous attempts to combat them. On the eve of the Eurovision contest, Nash Mir Center placed a dozen billboards in a few Kyiv districts to support the introduction of same-sex partnerships in Ukraine. In our opinion, it is very significant that for a month while these large and visible posters towered without any protection over quite busy highways, only one of them was despoiled, and the Kyiv authorities have received no complaints about their public placement. Obviously, LGBT issues are not causing noticeable strong feelings in the vast majority of Ukrainian society members.

**LGBT community**

This year maintained the trend of a rapid increase in the activity and visibility of the Ukrainian LGBT community, a trend which already had become obvious last year. After the very successful previous Equality March in Kyiv, the number of participants doubled at this year's march – up to 2.5-4 thousand people showed up, according to various estimates. Similarly, the Odesa Equality March this year also saw in total about twice the number of participants (around 100) than attended the previous one (50-70). Nash Mir Center and other active LGBT organizations face ever increasing requests and proposals from the LGBT community throughout Ukraine to participate in their activities. The main obstacle to the expansion of LGBT activism is only a lack of commensurate covering funds for maintenance of the necessary increased infrastructure and permanent paid new staff members.

A significant problem, however, is still a high level of aggression by the right-wing nationalist groups. They, as already mentioned, in recent years moved to adopting the tactics of constant intimidation and obstruction of LGBT organizations and individual activists. All visible public actions as well as many closed LGBT events in 2017 were accompanied by threats and attacks from groups of this kind, and the police in such cases did not always respond smartly, adequately, and professionally.

The Kyiv Equality March revealed a new problem that apparently reflects the growth and complexity of the Ukrainian LGBT movement: the beginning of a political and ideological differentiation within it. While the majority of the march’s participants shared the display of liberal-democratic and patriotic slogans, nonetheless a small number of demonstrators marched under slogans rather typical of the radical left and anarchists. Though remaining an integral part of Ukrainian society, the national LGBT community started to demonstrate a diversity of ideological preferences and approaches to solving their problems; this evolution generally corresponds to the like processes which are taking place now in our country.

**2. Violence, discrimination and other violations of LGBT people's rights**[[1]](#footnote-1)

From January to July 2017 Nash Mir documented 117 cases of incidents and crimes motivated by homophobia and transphobia, discrimination, and other violations of LGBT rights.

The distribution of the documented cases by region was as follows (please see Table 1):

*Table 1*

|  |  |
| --- | --- |
| Kyiv and oblast | 31 |
| Kharkiv | 19 |
| Dnipro and oblast | 13 |
| Zaporizhzhya and oblast | 9 |
| Odesa | 8 |
| Lviv and oblast | 6 |
| Zhytomyr and oblast | 5 |
| Kherson | 5 |
| Cherkassy | 4 |
| Donetsk oblast (portion under Ukrainian control) | 3 |
| Sumy and oblast | 3 |
| Poltava and oblast | 2 |
| AR Crimea (under Russian occupation) | 1 |
| Vinnytsya | 1 |
| Lutsk | 1 |
| Donetsk oblast (under Russian occupation) | 1 |
| Ivano-Frankivsk oblast | 1 |
| Luhansk oblast (portion under Ukrainian control) | 1 |
| Mykolayiv | 1 |
| Rivne | 1 |
| Chernihiv oblast | 1 |
| **TOTAL** | 117 |

**Acts of hate towards LGBTs**

As in the previous years, the largest number of cases (97) relates to acts motivated by homophobia or transphobia. 59 of them may be described as hate crimes[[2]](#footnote-2), and the other 33 – as hate incidents. 6 cases include manifestations of hate speech. The cases listed below enumerate the following offences (please see Table 2):

*Table 2*

|  |  |
| --- | --- |
| **Types of violations** | **Number** |
| insults, threats (including with arms), humiliations of human dignity | 71 |
| physical violence of varying severity | 51 |
| extortion, blackmail | 15 |
| homophobia in the family | 15 |
| illegal collection and disclosure of confidential information | 13 |
| robbery | 10 |
| damage to property | 5 |
| obstruction of peaceful assembly | 4 |
| torture and inhuman treatment | 1 |
| sexual abuse and harassment | 1 |
| attacks on LGBT events and organizations | 1 |
| brigandage | 1 |
| kidnapping | 1 |

A large proportion of these cases is accompanied by physical violence of varying severity as well as by threats and humiliation of human dignity. Also notable are actions of homophobic groups – from the far right, who mainly attack LGBT events, to organized groups that declare the fight against paedophilia but are actually engaged in harassment and extortion of money from homosexuals, using the fact that the latter do not always appeal to the police, and the police do not want to bring criminals to justice.

Unlike 2016, this year the Equality March in Kyiv entailed significantly more reports of attacks on its members and participants, which have occurred after the end of the event, beyond the area controlled by the police – thus, the outlying reputed attackers were purposefully traced.

**The relations with law enforcement agencies**

In the seven months of 2017 were documented 17 cases on violations towards LGBT people by police (please see Table 3).

*Table 3*

|  |  |
| --- | --- |
| **Violated rights (by what actions)** | **Number** |
| the right to an effective remedy (failure to protect the rights, inadequate performance of functions to protect the rights, assistance to criminals) | 10 |
| the right to liberty and security (violation of procedural rules, physical violence, extortion, abuse of power and official authority) | 4 |
| the freedom from discrimination (insults and humiliation of human dignity in relation to sexual orientation or gender identity) | 4 |
| the right to respect for private life (illegal gathering of confidential information and its release) | 4 |

As in 2016, one of the common types of violations by the law enforcement agencies towards LGBTs is the denial to protect rights and improper performance of professional duties. Such cases are, in our opinion, caused primarily by the homophobia of the police officers retained from the old militia corps, and by the lack of explicit references to SOGI as protected characteristics in the criminal law of Ukraine.

In March of this year, a police patrol in Kyiv detained a gang of robbers who attacked a gay couple and caused them serious injuries. However, operational staff of the Dniprovskyi District Station, who came to the hospital to interview the victims, resorted to homophobic insults in the presence of outsiders, thereby violating the right of the victims to privacy. An investigator of the same police station refused to take into account the homophobic motives that guided the attackers, according to the victim’s lawyer. After Nash Mir Center communicated with the leadership of the Chief Investigation Department of the National Police, the case was passed on to an investigator of the Chief Police Department in Kyiv for a comprehensive investigation into homophobic motive for the crime. But the investigator also did not want to consider the case fully, despite not only the victims’ testimonies, but also multiple evidence of the very offenders and police officers who arrested them. All the necessary procedural steps of the victim couple’s lawyer, which were aimed at making the investigator investigate thoroughly, led to nothing, and the case was passed on to the court under the nominative article "Robbery."

Violation of **the right to a fair trial** was registered at the hearing about taking a baby away of its lesbian mother, under a suit brought by her former husband in Krasnopilskyi District Court of Sumy oblast in winter 2017. As the audio recording of the sessions evidences, the judge was biased against the mother because of her sexual orientation, and but for the intervention of Nash Mir Center’s lawyer, the case likely would have been resolved in favour of the plaintiff. However, the arguments given by the lawyer persuaded the judge to leave the child with the mother, and the marriage to be dissolved.

In **employment** were recorded 11 cases of discrimination on SOGI grounds (please see Table 4).

*Table 4*

|  |  |
| --- | --- |
| **Types of violations** | **Number** |
| harassment from colleagues | 4 |
| unlawful refusal to hire | 3 |
| insults, humiliation of human dignity | 3 |
| unlawful dismissal | 2 |
| physical violence of varying severity | 2 |
| inaction by the administration  | 1 |
| coercion to leave the job "at will" | 1 |
| sexual harassment by the chief | 1 |

One dramatic case in this field happened to a transgender woman who was dismissed as a conductor in Trolleybus & Tramway Depot 2 in Kharkiv because of her appearance. In addition, she repeatedly received rejections during her subsequent attempts to find a job at various places, which employment rejections very negatively affected her financial situation.

In **education** were registered 6 cases of discrimination which consisted in insults, humiliation of human dignity (4), physical violence of varying severity (2), harassment from peers (4), and invasion of privacy (1).

In **the medical field** was recorded one case wherein the rights of the patient were violated because of his sexual orientation (Odesa): a minor-age teenager was forced to submit to a "cure of homosexuality" by a psychologist, including the use of chemicals, under the demand of his parents.

In **provision of goods and services**, the discriminatory treatment of LGBT people was observed in 2 cases and consisted in homophobic treatment by the service personnel and lessors of premises for LGBT events.

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1. Here the number of documented violations of LGBT people's rights may exceed the number of cases because in some cases more than one type of rights were infringed. [↑](#footnote-ref-1)
2. Italicized terms are used in accordance with the OSCE classification. [↑](#footnote-ref-2)