



UNPROTECTED GROUNDS

Report on the study's results of the effectiveness of legal protection against crimes based on sexual orientation and gender identity intolerance in the context of Ukrainian legislation and law enforcement practice

Unprotected grounds. Report on the study's results of the effectiveness of legal protection against crimes based on sexual orientation and gender identity intolerance in the context of Ukrainian legislation and law enforcement practice. ©LGBT Human Rights Nash Mir Center, 2021

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PROJECT DESCRIPTION AND METHODOLOGY

The project “Protecting LGBT People from Hate Crimes in Ukraine: Recommendations Based on Experience & Advocacy” is implemented by Nash Mir Center with funding and support from the Council of Europe. The project aims to assess the effectiveness of legal protection of LGBT people in Ukraine from hate crimes within the context of the current legislation and law enforcement practices, as well as to identify specific problems at different stages of victims' interaction with law enforcement agencies.

“Hate crimes” in the narrow sense of the term, proposed by OSCE experts, are any criminal offences based on bias towards any characteristic (race, nationality, language, sexual orientation, etc.), which, however, are offences even without motives of prejudice. This is the essence of this type of crime, still, the specific terminology in this area differs in the legislations of different countries, and the Ukrainian law mentions the motives of intolerance on certain grounds. Incitement to hatred and discrimination on specific grounds do not exist without motives of prejudice (intolerance), so, strictly speaking, they are not hate crimes. However, they can also be characterized as crimes motivated by prejudice or intolerance. Finally, less serious offences that do not constitute a criminal offence may be called hate incidents.

Although this division is vital for the legal classification of offences, in practice, any violation of human rights under motives of bias (intolerance) on certain grounds equally negatively affect their victims and society as a whole, and the exact legal classification of a committed offence is carried out only during its investigation. Thus, we did not resort to the legal analysis of offences with the probable motives of intolerance — this is a task of the investigation, which in many cases documented by us has not yet been completed. For this study, we collected and analysed all cases where victims of offences on the grounds of sexual orientation or gender identity (from now on abbreviated as SOGI) sought help from the police from early 2018 to May 2021 inclusive.

The collection of information for this analysis was conducted from March to April 2021 through a study of cases documented by the monitoring network of Nash Mir Center. We also collected additional information by posting ads on our organisation's online resources and in Ukrainian LGBT groups in social networks, but this proved ineffective and added only a small amount of data for analysis.

We also sent information requests to the National Police of Ukraine and conducted interviews with lawyers of hate crimes victims regarding the state of investigation of certain cases. Two hundred ten cases were identified and investigated, which included various interactions with the police in responding to crimes and incidents based on homophobia and transphobia in Ukraine (excluding the occupied territories) during 2018-2021. We have included typical examples from the studied cases in the text of the report to illustrate the most common situations. The numbering of cases corresponds to the general monitoring database of Nash Mir Center.

ANALYSIS OF THE OBTAINED DATA

It should be noted that victims of hate crimes and other violations of rights on SOGI grounds in Ukraine generally rarely try to protect their violated rights and turn to law enforcement for this purpose: according to our data, in 2018, victims appealed to the police only in 61 cases among a total of 365 documented cases of LGBT rights violations; in 2019 — in 64 out of 331 cases; in 2020 — in 70 out of 186. Various reasons may explain this: fear of disclosing confidential information, distrust of law enforcement, the insignificance of the violations, etc.

We were interested in what happens when victims of hate crimes or other violations of rights on SOGI grounds decide, in one way or another, to report the offence to law enforcement agencies and seek its investigation. It was not always possible to obtain detailed information on incidents from victims or their representatives, so in the absence of evidence to the contrary, we considered that the victims had received adequate treatment and assistance from the police. **Thus, our study describes the situation only qualitatively and outlines the minimum possible level of identified problems.**

Stage 1 — Calling the police to the scene of events

Of 210 cases analysed by us, in 136 victims called the police to the scene or police officers were already present there. Of these, in 37 cases (27%), police's inaction, its unprofessional behaviour, refusal to protect victims were reported.

The police did not respond and did not detain any of the attackers. And then, the police pushed the participants of the LGBT action quite hard to the entrance to the metro and said, "That's all, the action is over." (Case 1385 — physical violence, obstruction to peaceful action, 2018, Kyiv)

The police did not secure the event and demanded that both sides of the conflict leave the premises. (Case 1277 — obstruction to public organisation's activity, 2018, Kyiv)

About an hour or so later, the police still visited us — we managed to call them on the third or fourth attempt. (Case 1642 — obstruction to public organisation's activity, 2019, Kryvyi Rih)

The police did not fully respond to the attacks, accusing the organisers of a peaceful LGBT rally of provocation. (Case 1727 — physical violence, obstruction to peaceful action, 2019, Zhytomyr)

According to the victims, police officers were standing nearby, but they did not react to the situation. (Case 1894 — physical violence, 2019, Kyiv)

The police (they were nearby) did not detain the offenders, no explanations were given. Victims' application was not accepted. (Case 1903 — physical violence, 2019, Kharkiv)

The police refused to accept the application. (Case 1931 — obstruction to public organisation's activity, 2019, Odesa)

The police did not show a willingness to assess risks, work out scenarios and respond promptly to developments that could have prevented situations in which LGBT peaceful protesters were left unaccompanied by the police and attacked. The actions of the police were not coordinated. They were mainly reduced to passive observation and the creation of a physical barrier between a small part of the Odesa Pride participants and the attackers. (Case 1944 — physical violence, obstruction to peaceful action, 2019, Odesa)

The victim turned to the police, who were at the scene. Instead of helping, the police accused her of provoking the attackers. (Case 1975 — insults, threats, physical violence, 2019, Kyiv)

The victim, Oleksandr, waited for an hour until the police arrived. At that time, the attackers pushed him, beat him on the lips and filmed him. Eventually, two police officers came to the call of the guy. The victim was taken out of the store and asked to indicate whether he recognized any of the attackers. Finally, he did it. While the police went to talk to the young men, Oleksandr continued to be insulted, pushed and beaten in the presence of law enforcement officers. At one point, the offenders sprayed tear gas in his eyes. Patrol police officers were also injured in the incident. Later, several more police officers arrived at the scene. The victim was put in a patrol car and taken to the police station. (Case 1994 — physical violence, 2020, Kyiv)

Thus, systemic problems have been identified in more than a quarter of cases when the police were called or already present at a crime scene motivated by homo/transphobia. A widespread practice is the police's inaction while blocking and physically assaulting LGBT organisations and events by their aggressive opponents. It should be noted that in recent years, radical opponents of the LGBT movement have been purposefully monitoring and trying to disrupt any LGBT rallies through physical violence. The law enforcement are well aware of this practice and the radical groups involved in such attacks. In some cases — such as the Equality Marches in Kyiv and Zaporizhzhya — it is clear that the police were preparing for such developments and ensured generally adequate protection.

Thus, all the more unjustified are the much more common cases when the police remains a passive observer of the illegal actions of LGBT opponents, at best, deterring attackers from inflicting severe bodily harm to their victims, as was the case at Odesa Pride in the summer 2020 and regularly happens in Kharkiv. Except for unquestionably gross violence, the police do not see violations of the law in the actions of persons who physically obstruct LGBT actions — in particular, Articles 170 “Obstruction of lawful activities of trade unions, political parties, public organisations” and 293 “Group violation of the public order” of the Criminal Code of Ukraine (from now on abbreviated as CCU).

It should be noted that, among the investigated cases, we did not record any reports of discriminatory homo/transphobic behaviour by the patrol police and law enforcement officers who protected LGBT events.

Stage 2 — Filing an application on the commitment of an offence

If the police were not present at the offence scene, to initiate its investigation, victims or any other person who became aware of it should contact law enforcement and report the incident, usually to the local police department. We have documented such appeals in 116 cases — just slightly less often than calling the police to the scene.

The police can start a pre-trial investigation of an incident when they receive information about it in any way. Still it is mainly done after filing an application on the commitment of offence — to a patrol officer, at a police station, or by mail. Article 214 of the Criminal Procedure Code of Ukraine (from now on abbreviated as CPCU) obliges the investigator or prosecutor to make an entry in the Unified Register of Pre-trial Investigations (from now on abbreviated as URPI) within 24 hours from the time when they received the application or became aware of the crime, and provide the applicant with an extract from the register within a day after making an entry in the URPI. Refusal to accept and register an application or notification of a criminal offence is not allowed. The police are obliged to investigate and verify the information — if they establish the absence of an offence, then the proceeding will be closed.

However, in practice, the police may not register an application on offence or register it simply as a citizens' appeal that does not automatically trigger a pre-trial investigation. In this case, according to Article 303 of the CPCU, the inaction of law enforcement officers may be appealed to an investigative judge within ten days from the date of the decision, action, or inaction.

Among the cases we investigated, applications on the commitment of offence were filed in 147 cases — in 116 cases when appealing to the police station, and in another 31 cases directly at the crime scene to the called police officers. In 13 of them (that is 9%), the applicants faced problems that mainly consisted of the police's refusal to accept the application.

The victim, accompanied by an activist of Nash Mir Center's monitoring network, went to file an application on the commitment of offence to the Svyatoshyn District Department of the National Police of Kyiv City (at his place of residence). Still, the department refused to accept his application and denied him to be accompanied by the activist. All this happened in a rude, disrespectful manner. Eventually, the victim and the monitor filed an application with the Pechersk District Department. (Case 1241, physical violence, 2018, Kyiv)

At first, they did not want to accept the application and call an ambulance. (Case 1206, physical violence, 2018, Odesa)

The patrol police refused to accept the application. (Case 1768, physical violence, 2019, Kharkiv)

The police did not want to accept the application and even denied that they came on call until they were shown a video from a surveillance camera. (Case 1917, obstruction to public organisation's activity, 2020, Mykolaiv)

The Protocol of Acceptance of Application on a Criminal Offence contains Paragraph 5, according to which the applicant may specify probable motives of intolerance at the commission of an offence. Victims or other persons who report a hate crime are not always aware of this item's existence or wish to state such motives,

but in 5 cases out of 147 (that is 3.4%), the applicants encountered problems when they wanted to use this option.

The police refused to record the motive of hatred in the protocol. (Case 1207, physical violence, 2018, Dnipro)

The police did not want to accept the application with a discriminatory motive. (Case 1790, insults, discrimination, 2019, Odesa)

The police refused to indicate the motive of intolerance. (Case 1736, physical violence, 2019, Odesa)

The victim stated, but the police did not insert [the motive of intolerance]. (Case 1875, physical violence, robbery, extortion, 2020, Odesa)

It is noteworthy that the majority of reports of refusal to indicate possible motives of intolerance in an application on a crime fall on Odesa, and that such a violation is one of the most common problems in filing such an application to the police (5 cases out of 13 when applicants encountered problems while filing applications on offence). Another common problem is the reluctance of police officers to accept such an application at all. However, victims and witnesses of hate crimes against LGBT people reported that, in most cases, police officers eventually agreed to document the offence in one way or another.

Stage 3 — Pre-trial investigation

As already noted, according to the law, within 24 hours after law enforcement agencies received information about the possible commission of a criminal offence, an appropriate entry must be made in the Unified Register of Pre-trial Investigations. The current legislation (Article 214 of the CPCU) does not provide grounds for refusing to enter data on a possible offence into the URPI, and entering such data means the automatic start of a pre-trial investigation. However, of the analysed 210 cases, when the law enforcement was informed about the commitment of a possible hate crime under motives of homo/transphobia, in 80 cases (that is 38%), it was reported that the police did not enter the information provided into the URPI or even refused to do so.

The analysis of publicly available information shows that such a practice is generally widespread for the Ukrainian police and public prosecutors, despite its absolute legal baselessness. Moreover, even investigative judges who hear complaints about procedural decisions, actions or omissions of investigators and prosecutors do not always follow the letter of the law and oblige law enforcement officers to initiate a pre-trial investigation after receiving information about a possible crime.

As stated by the Supreme Specialised Court of Ukraine for Criminal and Civil Cases, “The most complex and ambiguous issue, which characterises the state of judicial practice in the analysed category of complaints, is the legal assessment of the application or notification on the validity of the information contained in them, indicating the commitment of a criminal offence. There are at least two approaches to this issue in investigative and judicial practice: the first provides for the so-called automatic entry of information on a criminal offence if such information is set out in an application or notification of a criminal offence. This approach does not assess the corresponding application or notification on the subject of whether the stated information gives grounds to state certain signs of the *corpus delicti*. In turn, the second approach does not provide for the automatic entry of data set out in any applications or notifications — only those are entered which identified as such that, in the opinion of the subject who enters them, may indeed indicate the commitment of a criminal offence.”¹ Four years have passed since then, but the situation has not changed. A common reason for not entering or refusing to record a possible offence in the URPI is the subjective assessment of the provided information by the police whether it contains signs of a criminal offence,

¹ Вищий спеціалізований суд України з розгляду цивільних і кримінальних справ, № 9-49/0/4-17, Узагальнення “Про практику розгляду скарг на рішення, дії чи бездіяльність органів досудового розслідування чи прокурора під час досудового розслідування”, 12.01.2017, ips.ligazakon.net.

However, under current criminal procedure law, such an assessment can only be made after a pre-trial investigation.

The next problematic issue is the preliminary qualification of the committed crime and investigating possible motives of intolerance on the grounds of sexual orientation or gender identity. The current Criminal Code of Ukraine does not consider motives of intolerance on these grounds as circumstances that affect the qualification of a crime or punishment for its commission. Thus, investigators always consider crimes with homo/transphobic motives not as hate crimes but as ordinary crimes without motives of intolerance. In case of harm to the health of the victims, investigators qualify the actions of the attackers under the relevant articles of the Criminal Code (for instance, Article 125 “Intentional minor bodily injury”). Attacks on LGBT activities and organisations are usually qualified as Article 296 of the Criminal Code “Hooliganism;” at the same time, the police avoid investigations under Articles 170 “Obstruction of lawful activities of trade unions, political parties, public organisations” and 293 “Group violation of public order.”

Although numerous recommendations from various international and human rights organisations, as well as judgments of the European Court of Human Rights, require careful investigation of possible motives of intolerance in committing crimes, within the Ukrainian law, it has legal effect only if a specific ground of intolerance is mentioned in the Criminal Code of Ukraine: race, nationality, religious beliefs (Parts 2 of Articles 115 “Intentional homicide,” 121 “Intentional grievous bodily injury, 122 “Intentional moderate bodily injury,” 126 “Battery and torture,” 127 “Torture” and 129 “Threat of murder,” Paragraph 3 of Part 1 of Article 67 “Aggravating circumstances”), and also sex (Paragraph 3 of Part 1 of Article 67). Not surprisingly, investigators mostly try to lighten their work and do not conduct a thorough investigation of offenders’ homo/transphobic motivation, because it does not make practical sense anyway.

Currently, the only “peg” in the Criminal Code of Ukraine, which allows taking into account the motives of intolerance on the grounds of sexual orientation or gender identity, is the application of Article 161 “Violation of equality of citizens depending on their race, nationality, religion on other grounds.” It provides for punishment for “inciting national, racial or religious enmity and hatred, for humiliating national honour and dignity, or for insulting the feelings of citizens in connection with their religious beliefs” that do not relate to SOGI grounds.

At the same time, it also punishes for “direct or indirect restriction of the rights or establishment of direct or indirect privileges of citizens on the grounds of race, skin colour, political, religious and other beliefs, sex, disability, ethnic and social origin, property status, place of residence, language or on other grounds” — that criminalizes discrimination on an open list of grounds. Since any crime, in principle, violates certain rights of its victims, due to this wording, in theory, it is possible to apply Article 161 to punish crimes motivated by intolerance on any grounds, including SOGI.

It should be noted at once that Article 161 is very rarely, if ever, used to punish discrimination. It is used mainly in cases of obvious incitement to hatred on the grounds of race, nationality, and religion. However, regarding sexual orientation and gender identity, it is possible to appeal only to the part of Article 161 that deals with discrimination. Among the analysed cases, we found 7 cases of starting pre-trial investigation under this article: in 4 cases, the police or public prosecutors opened criminal proceedings voluntarily, and in 3 — only by decision of the investigative judge, after the victims appealed their inaction or refusal. Thus, only in 3.3% of investigations of hate crimes on SOGI grounds did the police create a legal basis for considering the motives of intolerance in these crimes.

However, among the 210 incidents analysed, we failed to find even a single case in which such investigations would lead to charging suspects under Article 161 of the Criminal Code. Similarly, we have not encountered such cases during the entire period since the current Criminal Code came into force. When applying Article 161 to investigate hate crimes on SOGI grounds, the pre-trial investigations under this article were permanently closed without an indictment — prosecutors never initiated, and courts, accordingly, never considered cases of such kind.

The investigation was opened under Part 4 of Article 296 (Hooliganism) and Part 1 of Article 161 of the Criminal Code. Indictment — under Part 4 of Article 296, Part 2 of Article 186 (Robbery) of the Criminal Code. (Case 1306, physical violence, stab wound, 2018, Kyiv)

Preliminary qualification: Articles 161, 296, 170 (Obstruction of lawful activities of trade unions, political parties, public organisations) of the Criminal Code. Yet, the case went to court only under Article 125 (Intentional minor bodily injury). (Case 1173, physical violence, obstruction of peaceful action, 2018, Uzhhorod)

The public prosecutor's office opened a criminal case under Article 161, but the case was closed for lack of corpus delicti. No investigative actions were carried out. (Case 1691, calls for discrimination, hate speech, 2019, Sumy)

All possible articles were entered, but many of them through the investigative judge, and even this way, not from the first try, particularly Article 161. (Case 1872, physical violence, torture, rape, robbery, violation of the sanctity of the home, 2020, Zhytomyr)

CONCLUSIONS AND RECOMMENDATIONS

Summarizing the results of the study, we can state that victims of crimes and incidents committed under motives of intolerance on the grounds of sexual orientation or gender identity face significant practical and legal problems when applying to law enforcement agencies (police and the Office of Public Prosecutor) for protection of their rights. Such problems occur at every stage of the process, from calling the police to the crime scene to submitting an indictment against the suspects to the court.

Often, the interaction of victims of hate crimes on SOGI grounds with law enforcement officers begins with calling the police at the crime scene or a preliminary request for protection from a possible attack (mainly in the case of conducting an action on LGBT topics). Our study found that 27% of victims, who had contacted the police for physical protection or called them to the incident scene, faced problems in such situations. The most common problem is the inaction of the police, who, for the most part, passively monitor the actions of the attackers, protecting the victims of the attack only from too excessive physical violence but not trying to stop other unlawful behaviour of the aggressors.

It should be noted that the Ukrainian police are well aware of the widespread practice of attacks on LGBT events and their blocking by right-wing radical groups. In recent years, the organisers of such events have also well understood these dangers and therefore almost always inform the police about their holding and ask to ensure their protection from possible actions of aggressive LGBT opponents. The police, however, are not always ready to quickly respond to the obvious intentions of the aggressors. When protecting public mass LGBT rallies, in some cases, as during the Equality March 2020 in Zaporizhzhya, law enforcement officers act decisively and effectively, while in others, as during a public rally within Odesa Pride 2020, they look confused and unprepared to prevent and stop aggression. As a rule, the actions of the police are ineffective when they are called to stop physical intervention in the activity of LGBT organisations or conduct of non-public LGBT actions — most complaints of this kind were documented in such cities as Kharkiv, Mykolaiv, and Odesa.

We can explain such inconsistent police behaviour in different regions of Ukraine and concerning various types of LGBT activities by nothing else than the policies of the local police command. With a clear awareness of possible problems, the police have every opportunity to prevent them and effectively counteract well-known attackers, which requires only appropriate instructions and guidance from the command. This is not limited to the LGBT issues: right-wing radical groups throughout Ukraine have long and successfully practised aggressive attacks and the physical blocking of any peaceful actions they are hostile to.

The situation in this area can be improved by adoption and control over the observance of the official policy of the National Police and the Ministry of Internal Affairs on ensuring against unlawful interference in the conduct of public actions and activities of public organisations.

When filing an application on the commitment of an offence, we recorded problems in 9% of cases, the main of which is that the police refuse to accept such an application. Another common practice is to accept a statement of victims or witnesses of the offence not as an application on its commitment but as an appeal of citizens. In both cases, the police avoid entering information about the offence in the Unified Register of Pre-trial Investigations and beginning its investigation.

In 3.3% of cases, when victims applied to the police with an application on the commitment of an offence, the police did not want to include probable motives of intolerance on the grounds of sexual orientation or gender identity in these applications. This is a relatively small percentage of violations at this stage of protecting victims' rights. Still, it should be noted that the applicants are rarely aware, and the police rarely remind them of the option to indicate such motives in the application.

In our opinion, the problems in documentation and initiation of the investigation of crimes motivated by intolerance on SOGI grounds are not legal, and their solution does not require the adoption of amendments to the legislation. As noted by the European Commission against Racism and Intolerance (from now on abbreviated as ECRI), “In cases of violence against LGBTI persons, the authorities should ensure that the possible existence of a bias motivation should be made an integral part of investigations from their very beginning, particularly by providing clear instructions to police services [...] The police and prosecution services should also adopt binding guidelines on the recording and investigation of such offences.”²

As our study has shown, the main problems in law enforcement response to hate crimes and incidents based on sexual orientation and gender identity begin at the stage of pre-trial investigation. In 38% of cases, the police or public prosecutors, even after accepting an application on the commitment of an offence, either directly refused to enter information about a possible crime in the Unified Register of Pre-Trial Investigations or did not do it — that is, did not even start an investigation of the incident since it starts automatically exactly after entering information into the URPI.

The analysis of the practice of investigative judges, who consider complaints on the actions and inaction of police investigators and public prosecutors at the pre-trial stage, shows that the Ukrainian judicial and law enforcement systems lack a common interpretation of the current legislation in this area. Although since 2012, the Criminal Procedure Code of Ukraine does not provide for any prior verification of the received information for the fact of the offence and its qualification — it has to be established during the initiated investigation — in practice, law enforcement officers often act as used to do before, according to the CPCU of 1961.

This practice could be ended by adopting respective instructions to investigators and public prosecutors by the Prosecutor's General Office and official clarifications by the Supreme Court to investigative judges.

Finally, the most problematic issue is the correct qualification and investigation of crimes motivated by intolerance on the grounds of sexual orientation and gender identity. The current Ukrainian legislation does not consider such motives as aggravating circumstances that affect the severity of the crime and punishment for it. Thus, even if investigators are ready and can investigate them thoroughly, it will bring no legal effect. Articles of the Criminal Code 161 “Violation of equality of citizens depending on their race, nationality, religion, disability, and other grounds” and 300 “Import, production, or distribution of works promoting the cult of violence and cruelty, racial, national or religious intolerance and discrimination” prohibit incitement to hatred solely on the grounds of “race,” nationality, and religious beliefs — thus, under Ukrainian law incitement to hatred on SOGI grounds is not considered a crime at all.

Article 161 of the CCU also criminalizes “direct or indirect restriction of the rights or establishment of direct or indirect privileges of citizens” under an open list of characteristics. Therefore, theoretically, it may be used to investigate the suspects' homo/transphobic motives. The law enforcement practice shows that the investigation of crimes against LGBT persons under this article occurs extremely rarely, and mostly not at the initiative of the investigators, but according to the decision of the investigative judge after a complaint by the victims or their lawyers. In all known cases such investigations were closed without bringing a charge, apparently because Article 161 provided for punishment solely for discrimination, but not for other crimes motivated by intolerance on SOGI grounds that occur in practice. We could not find any appeals to the police about discrimination on SOGI grounds (although this does not mean that such discrimination does not exist). It should be noted that the Verkhovna Rada is preparing to consider in the second reading Bill 0931, which completely removes the part of Article 161 of the Criminal Code regarding penalties for discrimination. If approved, it will cease to be a crime and become an administrative offence that will permanently remove

² Secretariat of ECRI, *Factsheet on LGBTI issues*, 01.03.2021, para. 35, www.coe.int.

from the Criminal Code of Ukraine the only available “peg” which allows taking into account homo/transphobic motives of the suspects.

Thus, the current Ukrainian legislation is not suitable for the correct classification and investigation of crimes motivated by intolerance on the grounds of sexual orientation and gender identity. We failed to find even a single case where such motives were adequately investigated and influenced the court's sentence. In 2020, the European Commission against Racism and Intolerance published conclusions on the implementation of two priority recommendations provided to Ukraine in 2017, which, in particular, notes the following:

In its report on Ukraine (fifth monitoring cycle) published on 19 September 2017, ECRI strongly recommended that sexual orientation and gender identity are specifically included as grounds in Article 161(1) and (2) of the Criminal Code as well as in all the aggravated forms of offences and the general provisions on aggravating circumstances under Article 67(1)(3).

[...]

Amendments to the Criminal Code entered into force on 31 October 2019. However, ECRI notes that no modifications were made to either paragraph of Article 161. As concerns Article 67, the only amendment was the inclusion of the ground of “sexual belonging” (статевої приналежності). Thus, the circumstances aggravating punishment now include committing crimes on the basis of racial, national or religious enmity or discord or on the grounds of sexual belonging. This covers only the aspect of gender and does not extend to sexual orientation or gender identity. While the inclusion of gender is a welcome development, it does not respond to ECRI’s recommendation.

ECRI concludes that its recommendation has not been implemented.³

It is obvious that the problems of correct qualification and investigation of crimes motivated by intolerance on the grounds of sexual orientation and gender identity in Ukraine cannot be solved without making long-planned and developed amendments to the Criminal Code. Recently, the Cabinet of Ministers of Ukraine finally submitted to the Verkhovna Rada the relevant Bill 5488 developed by the Main Investigation Department of the National Police of Ukraine. It fully implements Action 3 of Paragraph 108 of the Action Plan for the Implementation of the National Strategy for Human Rights until 2020, particularly regarding the provision of punishment for crimes committed under motives of intolerance on such grounds as sexual orientation and gender identity.

Its adoption would solve all the above-mentioned legal problems regarding the correct qualification and investigation of such crimes. However, judging by many years of legislative experience in ensuring the rights of LGBT people in Ukraine, the adoption of any proposals aimed at improving the situation in this area inevitably provokes fierce opposition from churches and the church lobby which is very influential in Ukraine. As practice shows, overcoming their influence on the legislature is possible only with persistent advocacy efforts by the Ukrainian government, the Office of the President, and the leadership of parliamentary pro-European political forces — first of all, the ruling party Servant of the People.

³ European Commission against Racism and Intolerance, *ECRI Conclusions on the Implementation of the Recommendations in Respect of Ukraine Subject to Interim Follow-up*, 02.06.2020, www.coe.int.