

THE FACE OF HATRED

Crimes and incidents motivated by homophobia
and transphobia in Ukraine in 2014-2017



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1. METHODOLOGY OF COLLECTING INFORMATION

The high level of public homophobia in Ukraine, which is confirmed by all opinion polls to date, stems from the fact that most LGBTs (lesbian, gay, bisexual, transgender, and intersex persons) in the country have a rather closed way of life, concealing problems relating to their sexual orientation or gender identity from the broader public, and often even from those in their immediate environment. Such an attitude complicates access to this part of the population and the collecting of reliable information about their lives. Evidence findings used in this report were obtained from two main sources: through the monitoring network of Nash Mir Center and the online survey of popular dating sites for gay men. It should be noted at the outset that the data obtained in this way are not statistically significant and have only an illustrative character, demonstrating the existence of problems and outlining areas in which they occur, but not revealing their true prevalence. The data describe the situation qualitatively yet do not provide its precise quantitative assessment-values – for, unfortunately, Ukraine still lacks a statistically significant study of homophobic / transphobic violence and discrimination, and the social self-protectiveness of Ukrainian LGBT people makes such outright research studies too complicated to attempt. Nash Mir Center nevertheless takes every opportunity to explore current situations, and this is the work approach that has built up our long-term experience and has gained us credibility within the Ukrainian LGBT community.

The monitoring network of Nash Mir consists of activists who reside and gather information on violations of LGBT rights in almost all regions of Ukraine. They seek out such cases through personal encounters, the local press, their social activities and elsewhere. Each detected case is documented in set form according to the standards of the OSCE / ODIHR, and if there arise doubts about its authenticity, is verified in detail later to the degree possible. All names and contact information of victims and / or informants are kept in the archive of Nash Mir under terms of strict confidentiality in accordance with the

standards of the OSCE / ODIHR and the laws of Ukraine. Nash Mir Center constantly cares about the professional development of its monitors, and regularly organizes workshops where they learn correct techniques and share experiences. We try as much as possible to expand our monitoring network, cooperating with other public organizations and engaging individual activists encountered through our other activities. In particular, in 2015-2016 Nash Mir Center implemented a joint project with NGO Gay Alliance Ukraine on monitoring violations of LGBT rights, the results of which were included in the total array of monitoring data produced.

Among its other activities, Nash Mir Center is also engaged in providing legal assistance to the LGBT community. We offer initial legal assistance to each person affected by violation of her/his rights, and in case of need we are prepared to find a qualified lawyer for further proceedings in law enforcement and the courts. In addition, we also conduct trainings and publish materials to increase the general legal awareness of LGBTs in Ukraine and to encourage them to protect their rights. In July and August 2016 activists of Nash Mir held five training sessions and focus groups on hate crimes motivated by homophobia / transphobia – in Kharkiv, Dnipro, Lviv, Odesa, and Kyiv. Information received from participants of these events was also used in the preparation of this report as comments and testimonies of Ukrainian LGBT community members about the problems they face in their everyday lives.

Most documented cases of LGBT human rights violations in Ukraine that are analyzed in this report were collected via an online survey conducted in September 2016 among Ukrainian users of the most popular gay dating websites in the country: *bluesystem.org* and *qguys.ru*. We undertook a similar study in 2013 (that time only among users of website *qguys.ru*).¹ For two weeks all users of those websites, who indicated their residence as being in Ukraine, while visiting that site saw our proposal to participate in collecting

¹ Nash Mir Center, *Hate crimes against LGBT persons in Ukraine over 2012-2013. English summary of the report*, 2013, gay.org.ua.

information on violations of LGBT rights. For this purpose, they were asked to fill in a web-form developed by us that was generally similar to the forms we use throughout our monitoring network. Also, information about the survey was circulated by the most popular LGBT social network groups: Facebook and VKontakte. In the preamble to the survey the participants were given an explanation of the terminology used, so that they would understand clearly the difference between crimes / incidents as well as discrimination on grounds of sexual orientation or gender identity (hereinafter abbreviated as SOGI) – as distinct from other problems which they might encounter:

Crimes and incidents motivated by homophobia or transphobia are any offenses which have the biased attitude to a person on grounds of sexual orientation or gender identity as the motive of committing a crime, from abuse and threats to causing bodily injury.

Discrimination is the unequal treatment of a person on any ground that produces negative consequences for her/him. Hate crimes may be regarded as an extreme form of discrimination.

2. ANALYSIS OF THE ONLINE SURVEY DATA

During the two weeks time that was given to fill in questionnaires, this opportunity was used by 410 persons. 19 filled-in questionnaires had serious errors which precluded the correlation in constructing multidimensional relations, so they were removed from the total array. Three questionnaires had minor technical errors which did not affect the constructing of relations. Also, 31 questionnaire responses were clarified. The final array gathered for processing the survey's results comprised 391 questionnaires. The poll covered the whole territory of Ukraine, including the territories temporarily beyond governmental control.

Demographic and social indicators

The answers Included in the analysis revealed that hate crimes / incidents were encountered thus:

- 2014 – 109 men, 14 women;
- 2015 – 142 men, 9 women, 1 person of another gender;
- 2016 – 104 men, 10 women, 2 persons of another gender.

The vast majority of respondents were men – this is indicative primarily of the fact that popular Ukrainian online resources for the meeting and socializing of homo/bisexual women are few, and those existing do not permit sorting out their Ukrainian users. Respondents could indicate their gender as male, female or "other". The category "other gender" also included lack of response to this item of the questionnaire.

By occupation the respondents were divided as follows (please see Figure 1):

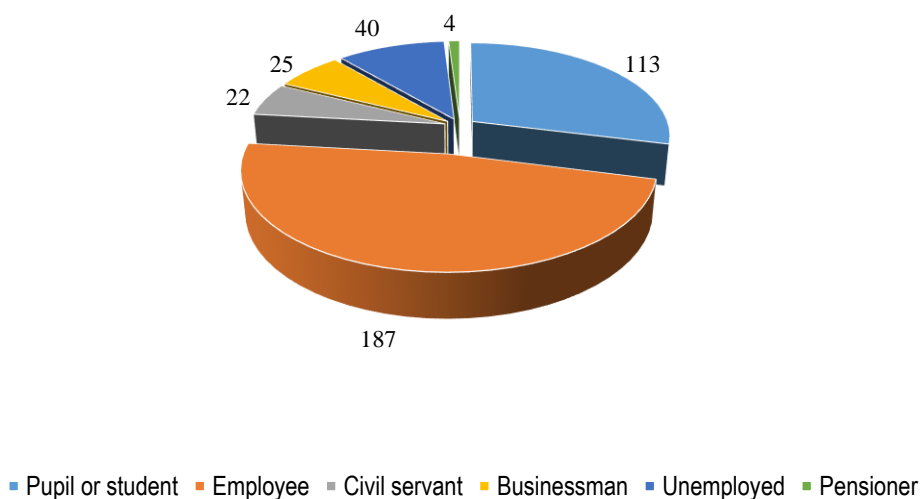


Figure 1. Distribution of the respondents by occupation.

The majority of respondents for the entire study period were represented by employees, as well as pupils and students (in total – 77%).

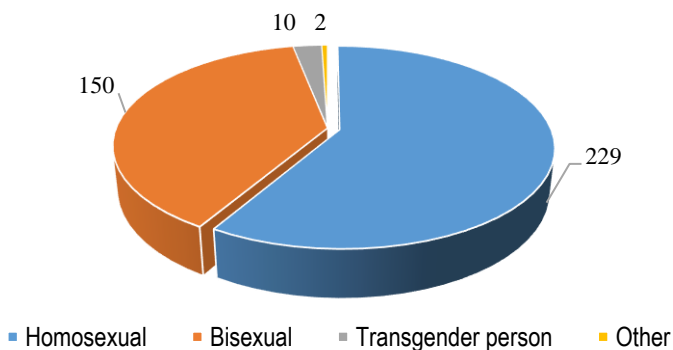
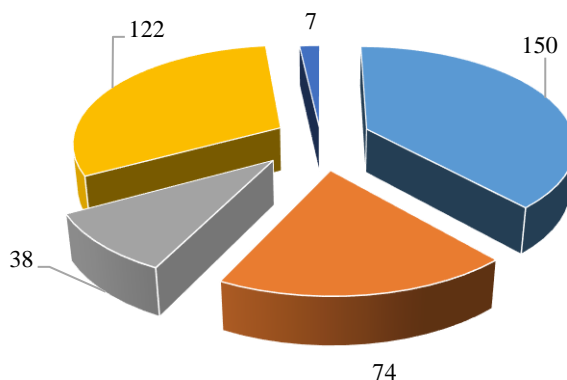


Figure 2. Distribution of the respondents by sexual orientation / gender identity.

The distribution by sexual orientation and / or gender identity is shown in Figure 2. The category "other" includes in this chart the answer "straight" and no answers.

Answers to the question "With whom do you live and maintain a household?" were as follows (please see Figure 3):



■ Single ■ With same-sex partner ■ With different-sex partner ■ With parents or relatives ■ Other

Figure 3. Distribution of respondents regarding the persons with whom they reside.

Most respondents proved to be single; the second largest category was those who live with parents or relatives. Third place in number were those who live with a same-sex partner; numbers nearly doubled for those living with opposite-sex partner. The last and least numerous group included people living with friends, acquaintances, and a group of men.

Regarding the degree of integration of the respondents with the LGBT community, the corresponding distribution is as follows (please see Figure 4):

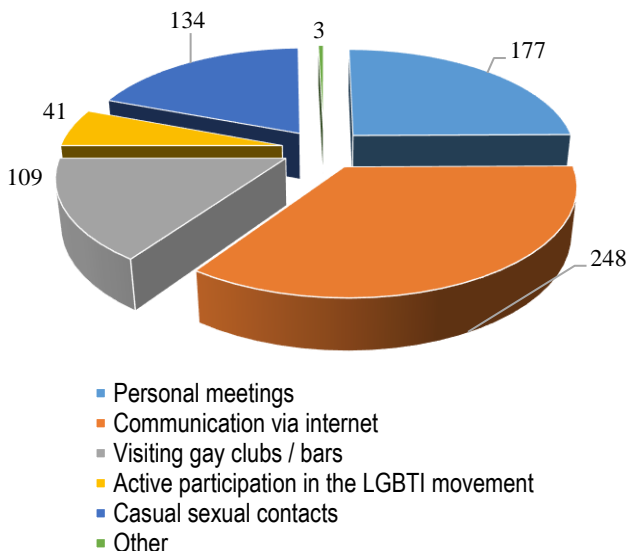


Figure 4. Distribution of respondents regarding their relations with the LGBT community.

Thus, as shown in Figure 4, the largest number of respondents make contact with other LGBTs through the internet. Second place frequency is contact through personal meetings, i.e. meetings in parks, homes etc. In third place are relationships limiting themselves to sexual contacts. Fourth place by popularity is held by visiting gay clubs / bars. It should be noted that specialized venues for homosexuals in Ukraine are very few. Most of them are located in big cities and regional centers. Thus, among the 109 people who visited gay clubs / bars, 79 persons were living in regional centers, 22 persons in cities with a population over 100,000, 6 persons in cities with a population below 100,000, and only 2 persons in towns and villages. A small number of respondents are actively involved in the LGBT movement. One gay teenager indicated that he expects to join the LGBT community (obviously after coming of age), 2 persons answered that they live in a registered same-sex partnership (apparently legalized abroad or in a foreign diplomatic institution).

Crimes and incidents of homophobic / transphobic motives

Most questions in the online survey concerned detection of crime and incidents that occurred during the period since 2014 to September of 2016 (inclusive). The distribution of the number of cases, listed by region and size of settlements where victims lived, is shown in Table 1.

Table 1. The distribution of cases that occurred to respondents, for years shown, with the regions of Ukraine and the residence of the victims.

Regions	2014				2015				2016 (first nine months)				Total
	A	B	C	D	A	B	C	D	A	B	C	D	
Total (in years)	123				152				116				
Vinnitsya oblast	2	-	-	-	4	1	-	-	3	-	-	1	11
Volyn oblast	-	-	-	-	3	-	-	1	1	-	-	-	5
Dnipropetrovsk oblast	8	7	-	-	12	5	1	2	8	3	-	2	48
Donetsk oblast (controlled by Ukraine)	2	5	1	-	5	7	1	1	-	3	5	-	29
Zhytomyr oblast	-	1	1	-	3	-	-	-	-	-	-	-	5
Zakarpatska oblast	-	-	-	-	-	-	-	-	1	1	-	1	3
Zaporizhzhya oblast	4	2	-	-	3	1	1	-	5	2	2	2	22
Ivano-Frankivsk oblast	2	1	-	1	2	1	-	-	3	-	-	-	10
Kyiv oblast	-	1	-	1	-	1	4	-	-	2	3	-	12
Kirovohrad oblast	1	-	2	1	-	-	-	-	1	1	-	-	6
Luhansk oblast (controlled by Ukraine)	1	1	-	1	-	2	1	1	1	2	-	1	11
Lviv oblast	1	-	2	-	1	2	1	2	5	-	-	-	14
Kyiv city	28	-	-	-	40	-	-	-	16	-	-	-	84
Mykolaiv oblast	-	-	-	-	1	2	-	1	-	1	-	-	5
Odesa oblast	7	2	-	-	8	2	-	-	5	4	-	1	29
Poltava oblast	1	2	-	-	1	-	-	-	-	-	-	-	4
Rivne oblast	-	-	-	-	2	1	-	-	1	-	-	-	4
Sumy oblast	2	-	-	-	1	-	-	-	2	-	-	-	5
Ternopil oblast	1	-	-	1	-	-	-	-	-	-	-	-	2
Kharkiv oblast	7	3	1	-	6	2	-	-	10	1	1	-	31
Kherson oblast	2	-	-	2	-	-	-	-	1	1	-	-	6
Khmelnytskyi oblast	1	1	-	-	2	-	-	-	2	-	-	-	6

Regions	2014				2015				2016 (first nine months)				Total
	A	B	C	D	A	B	C	D	A	B	C	D	
Cherkasy oblast	-	1	1	2	2	-	-	2	-	1	-	-	9
Chernivtsi oblast	2	-	-	-	2	-	1	-	2	1	-	-	8
Chernihiv oblast	-	-	-	1	-	-	-	-	1	2	-	-	4
Territory currently not under the control of Ukraine (Crimea, some regions of Donetsk and Luhansk oblasts)	4	-	2	-	3	2	2	-	3	-	1	-	15
Total (by the place of residence)	76	27	10	10	101	29	12	10	71	25	12	8	

Table 1 marked in capital letters: A – oblast center; B – city with a population of over 100 thousand; C – city of below 100 thousand; D – town or rural area

The largest number of cases was recorded as expected in the country's biggest city – Kyiv; the peak number of incidents took place in 2015, reaching 40 cases. The largest numbers of cases of LGBT human rights violations also correlate with the most populous regions in the East and the South of the country: Dnipropetrovsk (48), Kharkiv (31), Odesa (29), Donetsk (29), and Zaporizhzhya (22). In other regions, the number of documented cases does not exceed 20 in each region for the entire period described.

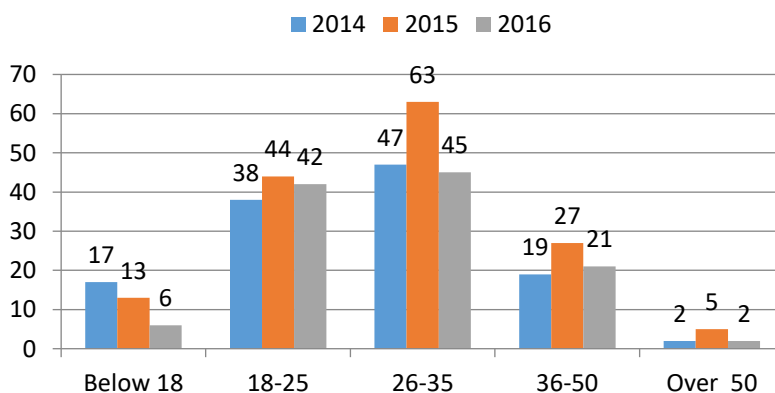


Figure 5. The distribution of the victims by age groups.

Figure 5 above shows how the statistics developed in regard to LGBTs suffering crimes and incidents by age groups. Evidently, the number of hate crimes and incidents against LGBT minors tends to decrease, albeit due to the small sample it cannot be stated with certainty. The distribution of these cases is given in Table 2.

Table 2. The number of cases that have occurred with young LGBT persons, listed by types of violations and years.

Type of violation	2014	2015	2016 (first nine months)
Physical violence without the use of weapons	4	3	2
Injuries by weapons	1	-	-
Rape or other sexual violence	-	1	-
Damage to property	3	-	1
Robbery	4	2	-
Threats with weapons	3	1	-
Insults or verbal threats	15	8	6
Extortion of money or other property	4	1	-
Disclosure or threat of disclosure of confidential information	7	2	2
Discrimination (refusal of employment, services, housing rental, etc.)	2	1	1

To generalize about the types of violations of LGBT rights in Table 2: the number of violations characterized by moral pressure being exerted on LGBT people who are minors (namely threats with weapons, insults or verbal threats, extortion of money or other property, disclosure or threat of disclosure of confidential information, denial of employment, services, housing rental, etc.) is

as anticipated higher than the number of violations characterized by physical impact.

Additional evidence favoring a conclusion that the crimes and incidents occurred precisely on the basis of sexual orientation and / or gender identity, is that the number of cases of extortion and robberies is low when compared with other types of violations. Thus, in 2014 were registered 17 cases of hate crimes and incidents against LGBT minors but including only 4 cases of robbery or extortion; in 2015 within a total of 13 cases – respectively, were only 2; and in 2016 within a total of 6 cases there were no robbery or extortion cases.

As for the older age groups, the overall situation is characterized by a marked increase in homo/transphobic crimes and incidents in 2015 (please see Figure 5, Table 3).

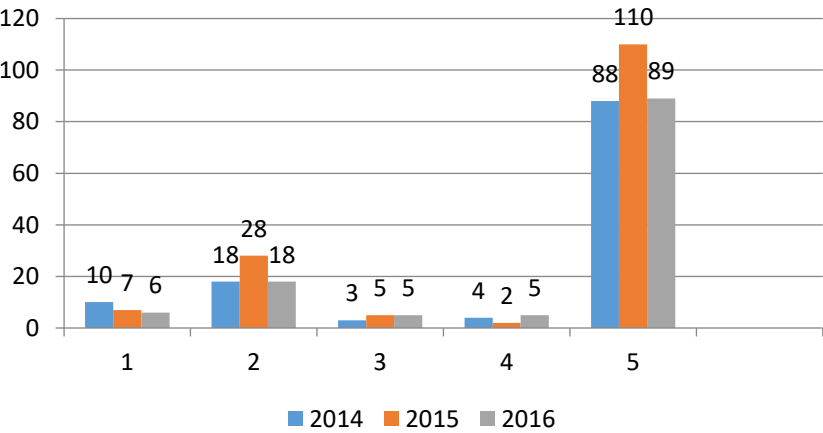
Table 3. The number of cases that occurred in LGBT older age groups, by the types of violations and years.

Type of abuse	2014	2015	2016 (first nine months)
Physical violence without the use of weapons	27	49	27
Injuries by weapons	1	1	2
Rape or other sexual violence	9	9	4
Damage to property	14	9	14
Robbery	16	15	12
Threats with weapons	9	9	12
Insults or verbal threats	65	80	80
Extortion of money or other property	26	25	25
Disclosure or threat of disclosure of confidential information	34	34	38

Discrimination (refusal of employment, services, housing rental, etc.)	8	19	15
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As was for juvenile victims (Table 2), the moral damage suffered by LGBT adults from offenders dominated the statistical picture, however also noteworthy were many cases of serious criminal offenses (robberies, rapes, injuries by firearms, unarmed physical violence sans the use of weapons, etc.).

Figure 6 clearly shows, as the figures bespeak, that affected persons rarely applied for help.



- 1 - Appealed to the police or other government agencies and received help.
- 2 - Appealed to the police or other government agencies but got no help.
- 3 - Appealed to non-governmental organizations (LGBT, human rights) and received help.
- 4 - Appealed to non-governmental organizations (LGBT, human rights) but got no help.
- 5 - Did not appeal anywhere.

Figure 6. The dynamics of victims' complaints to various agencies for help by years and addressees.

Victims rarely appealed to public associations that protect the rights of LGBT people, and in about half the cases they did not get help from them. This may be connected both with LGBTs' ignorance about the presence in their region of non-governmental organizations (NGOs, which can provide such assistance), and with a certain distrust of them. Appeals to the police were more numerous, but the effectiveness of those appeals turned out to be even lower than in the case of assistance from NGOs: in 2014 10 persons received assistance, 18 – did not get any; in 2015 – respectively, 7 to 28; in 2016 – 6 to 18. The attitude of many of the respondents to the police may be characterized by a comment of one of them who answered the question "Did you try to protect the rights violated as a result of the incident?" with: "How can I apply for help to the police when only homophobes and extortionists work there?"

Information on specific LGBT rights violators appeared interesting in regard to respondents' answers about their personal social circle or groups. Thus, over the period under inquiry the statistics acquired developed as follows (please see also Figure 7):

The greatest number of responses received were in the category "unknown person". Over the years, the percentage in this category was: 2014 – 31%; 2015 – 29%; 2016 – 27%. Overall during the period there occurred 152 of those cases.

The consequences for victims during the focal period were:

- Psychological trauma – 107 answers;
- Injury – 47 answers;
- Damage to property – 37 answers;
- No consequences – 33 answers;
- Other – 1 answer ("The damage, of course, took place – both moral and physical. However, I did not allow it to grow into the 'rank' of an injury").

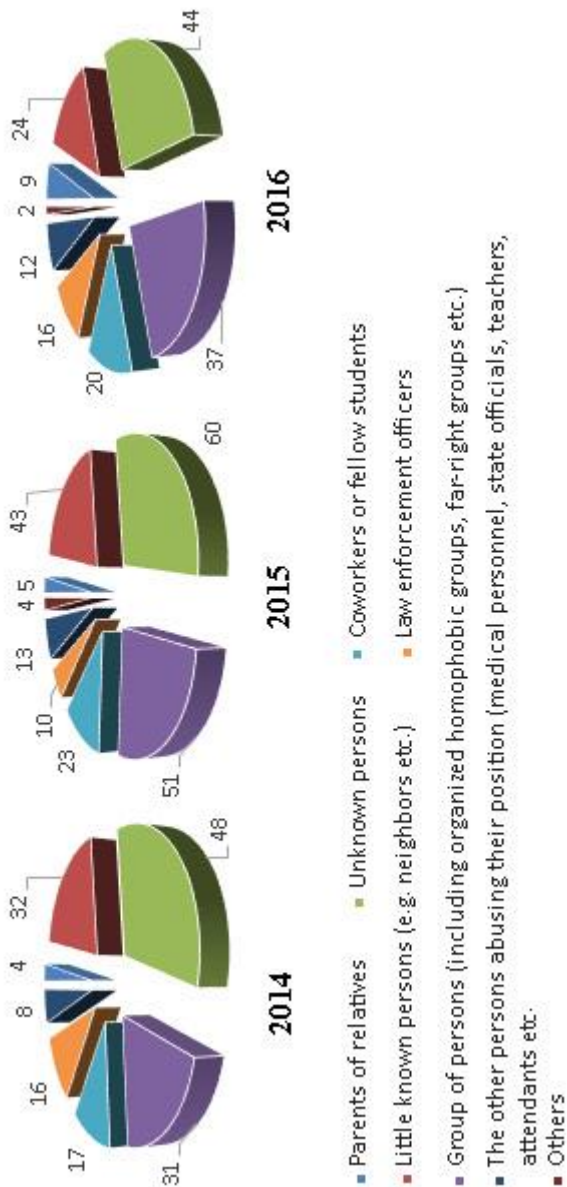


Figure 7. Persons who were LGBT rights violators.

Also a significant percentage fell into two categories, regardless of the year the incident was committed – one was "Little known persons (e.g. neighbors)" and the other was "Group of persons (including organized homophobic groups, far-right groups etc.)": in 2014 – 21 and 20%, respectively; in 2015 – 21 and 24%; in 2016 – 15 and 23%. During the entire period were noted 99 cases of LGBT human rights violations from unfamiliar people, and 119 – from organized groups. Accordingly we can see that organized homophobic groups are becoming an ever more visible threat to Ukrainian LGBT people.

LGBT victims suffered these types of consequences from a group of persons during the time period under study:

- Psychological trauma – 98 answers;
- Injury – 67 answers;
- Damage to property – 47 answers;
- Without consequences – 5 answers;
- Other – 2 answers, including:
 - 1) Robbery;
 - 2) Theft of a camera, watch, backpack, and beating.

Regarding LGBT rights violations by the police, the situation in the first 9 months of 2016 (16 cases) deteriorated compared to 2015 (10 cases) and already at end of third quarter reached the level for all of 2014 (16 cases). The distribution of the types of violations by the police for the entire study period (42 cases) is as follows:

- Verbal insults or threats – 26 cases;
- The threat of weapons – 8 cases;
- Physical violence without the use of weapons – 11 cases;
- Injury by weapon – none observed;
- Rape or other sexual violence – 2 cases;
- Robbery – 5 cases;
- Extortion of money or other property – 19 cases;
- Damage to property – 8 cases;
- Disclosure or threat of disclosure of confidential information – 21 cases;
- Discrimination – 6 cases;

- Other – 2 cases, including:

1) One case of verbal abuse or threats occurred in 2015, in the category of an unemployed person aged 16-35, in the Desnyanskyi District Police Department of Kyiv city. This person reported that upon his writing an application to the police regarding three of its officers, the head officer tore this application up and turned the victim out of the office.

2) One case occurred in Kharkiv in 2016 with a person aged 26-35, a worker. The victim noted that law enforcement officers insulted him, extorted his money or other tangible assets, and threatened to disclose confidential information about his sexual orientation. He explained that the police make appointments with gay men via the internet, provoke them into dating with teenagers, and then begin to threaten the set-up victim with criminal prosecution for corruption of minors. Also in crowded places where gays usually meet, they pretend to seek sexual partners, and then extort money.

The consequences for victims of law enforcement officers' actions over the period were:

- Psychological trauma – 36 answers;

- Damage to health – 15 answers;

- Damage to property – 12 answers;

- No consequences – 3 answers;

- Other – 4 answers, including:

1) They threatened to imprison me, so I had to pay a bribe;

2) I had to sell my laptop;

3) Material damage;

4) Debts.

Some violations also were perpetrated by civil servants, teachers, medical staff, and other service personnel. Thus, 33 criminal cases occurred over the period, including:

- Verbal insults or threats – 23 cases;

- Threats with weapon – 3 cases;

- Physical violence without the use of weapons – 5 cases;

- Injury by weapon – 1 case;

- Rape or other sexual violence – 5 cases;
- Robbery – 2 cases;
- Extortion of money or other property – 4 cases;
- Damage to property – 8 cases;
- Disclosure or threat of disclosure of confidential information – 19 cases;
- Discrimination (denial of employment, services, housing rental, etc.) – 17 cases;
- Other – 1 case which consisted of the administration of unnecessary psychopharmacological prescription drugs with heavy side effects.

The consequences for the victims of this category of offenses over the period were:

- Psychological trauma - 28 answers;
- Damage to health – 12 answers;
- Damage to property – 8 answers;
- No consequences – 5 answers;
- Other – 3 answers, including:
 - 1) Two people lost their jobs;
 - 2) One person pointed out that no consequences occurred, but only because of his/her caution.

A number of violations were by colleagues at work or fellow students. In 2014 were indicated 17 persons, in 2015 – 23 persons, and in 2016 – 20 persons. The total for the study period comprised 60 like documented cases, including:

- Verbal insults or threats – 48 cases;
- Threats with weapon - 2 cases;
- Physical violence without the use of weapons – 12 cases;
- Injury by weapon – 1 case;
- Rape or other sexual violence – 1 case;
- Robbery – 3 cases;
- Extortion of money or other property – 7 cases;
- Damage to property – 6 cases;
- Disclosure or threat of disclosure of confidential information – 31 cases;

- Discrimination (denial of employment, services, rental housing, etc.)
- 18 cases;
- Other – 1 case consisting of the forced abandonment of residence.

The consequences for the victims in this category of offenders over the period were:

- Psychological trauma – 45 answers;
- Damage to health – 13 answers;
- Damage to property – 6 answers;
- No consequences - 12 answers;
- Other - 4 answers, including:
 - 1) Three people lost their jobs;
 - 2) One person left the studies.

Violence in the family includes answers attesting crimes were done by parents or relatives. In 2014 this was indicated by 4 respondents; in 2015 – 5, and in 2016 – 9 respondents. It should be noted that LGBT persons, who mentioned homophobic incidents with relatives or parents in the study period (18 cases total), had the following degree of openness regarding their sexual orientation:

- 4 persons "never hide her/his homosexuality"
- 4 persons "are open only to other LGBT people";
- 5 persons "do not hide their homosexuality but feel no need to talk about it"; and
- 5 persons "hide from the majority but some persons in their heterosexual environment know."

Among those affected over the entire study period and who appealed to the police and got help, was just one person aged 18-25, who in 2014 belonged to the category of "pupil or student". The other victims of domestic violence did not appeal anywhere.

The consequences for those affected over the period were:

- Psychological trauma – 16 answers;
- Damage to health – 6 answers;
- Damage to property - 1 answer;
- No consequences - 2 answers;
- Other – 2 answers, including:

- 1) I had to leave educational institution;
- 2) One person pointed out no consequences ensued, but because of only his/her caution.

Most respondents believe that crimes and incidents were related to their sexual orientation and / or gender identity, basing this assertion on the content of verbal abuse suffered (346 cases of 391 for the whole study period). Likewise, in 47 cases the respondents believed that crimes and incidents were related to their sexual orientation and / or gender identity, basing this assertion on the inscriptions relevant to their victimization. 45 cases took place near gay clubs; this association with dedicated venues could well indicate the homophobic nature of the incidents. Other reasons contributing to the determination of the offenders' motives as homophobic were: a meeting set up by the police through a gay website showing false personal information; placing a particular video on social networks, spreading confidential information, and more.

3. ANALYSIS OF THE MONITORING NETWORK DATA

Nash Mir Center in 2017 documented 226 cases of actions on the grounds of homophobia / transphobia, discrimination, as well as other violations of LGBT rights in Ukraine. This number is significantly higher than the similar figures for previous years due to the significant expansion of the monitoring network of the Center. 20 cases concern events that took place in 2016, the rest (206 cases) occurred in 2017.

Table 4. The regional distribution of cases documented in 2017

Region	Number of cases
Kyiv and oblast	57
Kharkiv and oblast	34
Dnipro and oblast	26
Odesa	22
Zaporizhzhya and oblast	13
Zhytomyr and oblast	12
Lviv and oblast	9
Donetsk oblast (controlled by Ukraine)	8
Cherkasy and oblast	8
Kherson	5
Vinnytsya	4
Rivne and oblast	4
Sumy and oblast	4
Poltava and oblast	3
AR Crimea (occupied by Russia)	2
Donetsk oblast (occupied by Russia)	2
Uzhhorod	2
Ivano-Frankivsk occupied by Russia	2
Luhansk oblast (controlled by Ukraine)	2
Ternopil	2
Chernivtsi	2
Luts'k	1
Mykolayiv	1

Chernihiv oblast	1
Total	226

Actions motivated by homophobia / transphobia and hate speech on the part of persons without official authority were noted in 172 cases. 99 of them (13 in 2016, and 86 in 2017) can be described as *hate crimes*, and 71 (1 in 2016 and 70 in 2017) – as *hate incidents*. In 7 cases, manifestations of *hate speech* were recorded. (The italicized terms are used in accordance with the ODIHR / OSCE classification.)

The following types of violations were recorded (please see Table 5, the total number of violations exceeds the number of cases because one case may include several different types of violations):

Table 5. Distribution of documented cases of violations of LGBT rights in Ukraine for the first 9 months of 2016, showing the types of violations.

Types of violations	Number of cases
Insults, humiliations of human dignity, threats	134
Physical violence of varying severity	92
Homophobia / transphobia in the family	27
Illegal collection, disclosure or threat of disclosure of confidential information	25
Extortion and blackmail	22
Robbery	15
Brigandage	7
Damage to property	7
Hindrance to peaceful actions	6
Threats by and use of weapons	3
Fraud	6
Attacks on LGBT establishments or actions	2
Sexual violence	1

In 26 cases the offenders were police officers. Most often police officers violate the following rights (please see Table 6):

Table 6. Violations of LGBT rights in Ukraine by law enforcement employees in 2017.

Types of violations	Number
Effective legal remedies (improper performance of functions for protection of rights, refusal to protect rights)	18
Discrimination (insults, humiliations of human dignity, threats, biased attitude)	8
Respect for privacy (illegal collection, disclosure or threat of disclosure of confidential information)	4
Freedom and personal integrity (extortion of bribes, violation of procedural norms, offenses, humiliation of human dignity, threats, excess of power and official authority)	4
Hate speech (homophobic inscriptions / calls)	1

The data on cases of LGBT rights violations for 2014-2016 can be found in the annual reports of Nash Mir on the situation of LGBT people in Ukraine.²

During the period of 2014-2016 Nash Mir Centre provided 102 consultations on legal issues related to SOGI. In 37 cases, consultations concerned documented cases. Most who applied for legal assistance were interested in writing application statements to the police citing the facts of an offense motivated by homophobia or transphobia, and in how to protect their rights in cases of hate crimes and incidents. In 2017 Nash Mir Center provided more than 70 such consultations.

² Nash Mir Center, *From Despair to Hope. LGBT situation in Ukraine in 2014, 2015*; Nash Mir Center, *The Ice Is Broken. LGBT situation in Ukraine in 2015, 2016*; Nash Mir Center, *A New Beginning. LGBTI situation in Ukraine in 2016, 2017*, gay.org.ua.

4. EXAMPLES OF HATE CRIMES AND INCIDENTS

From the monitoring network's data base we have selected several dozen of the most characteristic and / or glaring examples of crimes and incidents motivated by homophobia or transphobia that occurred in the period from 2014 to 2016 inclusively. In this chapter we for the most part present examples of cases that we documented during 2016 (although the described events could occur during the entire study period of 2014-2016). We reported examples of earlier incidents in our publication on hate crimes for the previous years.³ While we strive to fact-check the reported testimonies, we cannot guarantee their absolute truth. The cases are reported here in the way they are described in the preserved testimonies given us by the victims or witnesses or recorded from their own words by our monitors. We translated the obtained information and made minimal grammatical and length-shortening adjustments. The location and year of each incident is indicated in parentheses after the case number.

Case 515 (Kyiv, 2014)

Zhovten cinema was burned on the evening of October 29, 2014, in Kyiv. During the demonstration of a movie on LGBT topics within the Molodist International Film Festival, two young men threw bottles containing an incendiary mix into a room containing about a hundred spectators. As a result of this crime, the building was seriously damaged, leading to the temporary closing of the film theater. Fortunately, people were evacuated in time from the blazing building.

Within one day the police arrested two individuals who reputedly committed the arson. According to an adviser to Interior Minister Anton Gerashchenko, the detainees revealed the motives of their action this way: "They wanted to commit a hooligan act at a film screening on LGBT issues, conducted within the Molodist International Film Festival, in order to thwart this particular show and

³ Please see note 1.

thus to demonstrate their contempt for the LGBT community in general. The suspects swear that they just wanted to disrupt the screening of a film on LGBT issues and could not have imagined that their actions would lead to fire and destruction of the cinema."



Figure 8. The arson of Zhovten cinema in Kyiv (Case 515).



Figure 9. The screening hall of Zhovten cinema after the arson.

This was the first homophobic incident in Ukraine which endangered the lives and health of so many (several dozen) people and caused such a great material damage loss (about 2.5 million US dollars). On

May 10, 2015, Holosiivskyi District Court of Kyiv city adopted its decision in the Case 752/1463/15-к, sentencing the perpetrators to 2 and 3 years in prison. However, the Court freed them from punishment in the form of imprisonment, putting them on probation for a period of 2 years (meaning that the adjudged will remain at liberty if they commit no new crimes and follow the supervision rules of criminal executive inspection for the next 2 years). Despite the defendants' admitting to the homophobic motive of their crime, the investigation and the court completely ignored this fact, and accordingly accused and sentenced them only for ordinary hooliganism.



Figure 10. A police officer seriously wounded in the attack at the Equality March (Case 543).

Case 543 (Kyiv, 2015)

On June 6, 2015, several dozen youths attacked participants of the Equality March and the police who guarded them. As a result of the use of explosives by the attackers, about 10 police officers suffered trauma, and during a "hunt" by the attackers for the March participants after the demonstration's end, another 9 demonstrating

persons suffered. The police arrested 25 attackers at the scene, but later they were released.

On April 8, 2016, Obolonskyi District Court of Kyiv city made a decision in Case 756/16243/15-к. The investigation and the court accused four attackers of committing ordinary hooliganism, completely ignoring the obvious homophobic motive of the attack. The court recognized the defendants' "sincere repentance" in committing a crime as a fact that mitigated the sentence (although the only thing they grieved over, apparently, was that the attackers' victims turned out to be law enforcement officers and not marchers). One of the defendants, Danylo Dashevskyi, expressly stated in the court: "My actions were not aimed at causing injuries to police officers. We tried to disrupt the event and the spread and propaganda of sexual minorities' actions who actually [...] were involved in the spread and propaganda of perversions."



Figure 11. The attack on the police officers during the Equality March in Kyiv (Case 543).

The prosecutor and the accused signed an agreement on recognition of guilt, which was approved by the court and led to the conviction

of the accused and to 3 years in prison each. Simultaneously, the court freed them from imprisonment as punishment, but set them a probation period of 2 years.

Case 550 (Odesa, 2015)

On July 20, 2015, about 4 am, at the address 60 Ryshelyevska Str. in the city centre, an explosion occurred at the entrance to club *Libertin* which was known in Odesa as a place where LGBT people gathered and relaxed. At the site of the explosion the police found grenade RGD-5 fragments. The explosion caused damage to the club entrance and injured a club manager (an injury to his leg by explosion debris) who at that time was in the club. A few hours before the explosion, the inscription "Family values first. The Right Sector" appeared on the asphalt nearby the club.



Figure 12. The entrance to club Libertin in Odesa after the explosion of a grenade (case 550).

Three months later, on 2 November, 2015, a police station on duty received information from [emergency telephone] service "102" that at 10 Bolharska Str. in Odesa an unknown man was threatening with a grenade. The police arrested the offender who was carrying an RGD-5 grenade and a package of cannabis. During the interrogation, the detainee confessed that on July 19, 2015, he received a package of the drug and two RGD-5 grenades from a man named Serhii whom he met in the market *Privoz* and who proposed to him that they carry out attacks, as stated in the court sentence, "from motives of obvious disrespect for persons of non-traditional sexual orientation." After the criminals threw a grenade into the entrance of club *Libertin* on July 20, a few minutes after committing the first crime they threw another grenade at the entrance to the basement that once housed club *Tema*, which also used to be a meeting place for LGBT people in Odesa, at the address 6 Pushkinska Str.

On January 16, 2018, Malinovskiy District Court of Odesa sentenced the detained offender to imprisonment for 5 years, at the same time freeing him from punishment on probation for 3 years (Case 522/521/18916/15-к).

Case 610 (Vinnytsya, 2015)

Andrii met a guy named Max in V Kontakte; they met in person the next day about 3 p.m. on the quay by Roshen fountain. Walking, they were approached by 3 other young guys who, surrounding Andrii, began calling him "fag", offending him, shooting at the camera, and hitting on his head. After making a video of Andrii confessing that he is gay, the violators threatened to show the video to his parents, family and in the school. They demanded 5 thousand hryvnias for their silence. Andrii gathered the money and brought it to them on Wednesday. The meeting turned out to be with another guy, who called himself Serhii. He said that Andrii had to bring another 5,000 hryvnias or make other gay guys acquainted with them (and the violators would blackmail them the same way). Andrii did not know what to do – he had no more money, and did not want to expose other gays. So the next day the boy victim decided to commit suicide

by swallowing pills. He was saved by his college teacher, who decided to visit him in the hostel and called an ambulance. Andrii's life was saved. In desperation, he told everything to the teacher, and she – to the director of the school. They insisted that the student write an application to the police. The next day they went to the police station. The police accepted the application and gave Andrii an assignment for him to get documentation of the blows suffered. The police did not contribute to an informed investigation of the violations and Andrii decided to leave the school. After making his own investigation, Andrii concluded that the offenders were minors from Modnyi Prigovor ("Fashion Sentence", a homophobic group) because he found their actual pages in V Kontakte.

Case 638 (Mariupol, 2015)

A few police officers, posing as gay men looking for dates, suggested meeting the victim via social networks. While meeting they illegally detained the victim, and took him to the district police department where they extorted money amounting to 8,000 UAH – or they would report him at work, and to his parents and neighbours about the meeting. The victim was forced to pay this amount.

Case 654 (Odesa, 2015)

"One guy appointed a meeting, brought me to his home; in some time a few men entered the apartment calling themselves *Modnyi Prigovor* ["Fashion Sentence", a homophobic group]. They demanded money lest they tell anything to [my] family and friends, and threatened to beat me and showed me videos as they beat other guys... After this case [I] had to give money to the attackers; after that they demanded more... The fear of further meeting with anyone... No action was committed because the attackers said that they have the police officers among them and it's pointless to apply anywhere."

Case 702 (Ivano-Frankivsk oblast, 2015)

Oleksandr worked in a private hotel as an administrator for 6 months. For the duration of this time there were no complaints about his work – quite the contrary, he was given bonuses for his work, and he did advertising about the hotel on the internet that attracted more

visitors. Forgetting to close properly his page on the social network (Facebook) on his own laptop, he left it at his workplace. The owner of the hotel took and used Oleksandr's laptop. Whether this was done on purpose or by accident is not known, but the owner entered Oleksandr's page and read his private correspondence which was very outspoken. He then immediately fired Oleksandr and said that he needed no "faggots" in the hotel, even if they were there only to wash the toilets. Upon discharge, Oleksandr did not receive his salary for the last month. It turned out that on the hotel's records he was not formally employed. He also received threats that unless he returned home to Ivano-Frankivsk, everybody in the resort town would learn about his orientation, and he would never find a good job again even at home.

Case 873 (Cherkasy, 2017)

For a few days (January 20-21, 2017) Oleksandr in Cherkasy was pursued by two strangers (aged 18-19) of far-right political convictions. Several times the offenders threatened the victim with physical harm and demanded 200 hryvnias while insulting him with homophobic remarks. Several times the victim managed to call the police which did not bring any results because the offenders behaved defiantly even with the police and continued to pursue the victim further. The victim filed a crime report application to the Central Police Department of Cherkasy.

Case 911 (Lviv, 2017)

On January 3, 2017, in Lviv, the victim met through social networks a guy who pretended to be a member of the LGBT community. Arriving at the meeting site, the victim faced four strangers in balaklavas who surrounded him and kicked him in the stomach while shouting homophobic remarks and threatened that "if they caught him again, he would regret to be born." The victim did not appeal to the police.

Case 915 (Nizhyn, Chernihiv oblast, 2017)

A gay man aged 21 from Nizhyn city of Chernihiv oblast met through the internet with a guy; they liked each other and wanted to continue their acquaintance. On March 1, 2017, they chose the basement of

the victim's house for an intimate meeting. The next day the victim was approached by his 28-year-old neighbour who said that he wanted to show him something interesting. He showed a video on the mobile phone on which was clearly visible the victim and that he had sex with a guy. The neighbour explained that he purposely followed the victim and his boyfriend that day and made a video specifically to blackmail. For his silence the neighbour demanded 2,000 hryvnias from the victim otherwise he would spread the video among relatives and neighbours of the victim. The victim did not seek the help of the police because he was afraid of disclosing his orientation to his relatives and the public.

Case 917 (Odesa, 2017)

On April 1, 2017, in Odesa, the victim aged 30 came to meet a boy whom he met through the internet. The meeting was held in the apartment of a new friend. After their brief communication, two other unidentified men in masks came from another room, beat the victim, then shot on video his confession about his job and position, what his financial saving are, that he is married, etc. After that, these guys took away his mobile phone, money and keys to the car, which was then stolen. The victim applied regarding the crime to the police. They opened two criminal proceedings under Articles 289 and 187 of the Criminal Code. According to the victim, the police began to mock him and behave improperly when they learned that the incident happened under homophobic motives.

Case 921 (Mariupol, 2017)

On April 22, 2017, in Mariupol, a small action took place against advertising in which people are shown as a product or object to use. Protesters walked by Prospect Mira holding posters that showed examples of such advertising. Activists urged a halt to using this method for goods promotion.

Near the Central supermarket, some young people of sporting appearance attacked the protesters while tearing the posters, screaming, shouting obscene homophobic expressions and trying to attack the protesters. They also stated that they opposed LGBT

people and same-sex marriages. The attackers behaved aggressively and tried to chase the protesters.⁴



Figure 13. A homophobic attack on a rally in Mariupol (Case 921).

Case 924 (Zhytomyr oblast, 2017)

On May 1, 2017, Natalia (aged 35) rested on a lake in Zhytomyr oblast with her partner Halyna (aged 37). After that they returned to their rented apartment. A large company of people relaxed in the common courtyard. One of the men asked the victim "Where's your man?", and she replied that she had no man and was a lesbian. The man attacked the victim with the words "Those like you do not have to live, I'll kill you and bury."

The police crew accepted a call only on the third try. On arrival, learning the cause of the incident and taking Natalia testimony, the police behaved improperly, mocking her. They also strongly pressed the victim and advanced assumptions like "[the victims] drank alcohol, a lot of" while not allowing the victim to describe the actual circumstances of the incident. Then the victim went to document the

⁴ Новости Донбасса, *В Мариуполе радикалы напали на участников акции против насилия*, 22.04.2017, novosti.dn.ua.

injuries and give evidence to the investigator. Under pressure, she signed a document on refusing to testify. The police did not arrest the assailant and did not even invite him to the police station. The next day, the victims returned and insisted on making a statement about the crime. Eventually, the police opened a criminal proceeding.

Case 926 (Zaporizhzhya, 2017)

On May 6, 2017, activists of Charity Foundation *Gender Z* together with partner organizations held in Zaporizhzhya an annual Rainbow Flashmob under the motto "Equality of Diversity". The action lasted for 20 minutes on Heroes Square (in front of the Zaporizhzhya Oblast State Administration). The event went quietly, without provocations. Only after the end of the flashmob did a group of five young men catch up with its participants at the entrance to the building where the office of Gender Z is situated. The strangers, who were aggressive, started to insult activists. After foul language of a homophobic nature, they began to use their fists. First the strangers gave a slap to a girl, then they repeatedly beat and kicked a boy and kicked another participant. The incident was recorded on a surveillance camera.

The press secretary of the police told reporters who asked about details of the incident: "It does not concern the flashmob at all! There was a group of young men, a girl and a few boys. They started talking with another company. They do not have any relation to the flashmob – just people on the street. And then a conflict between them took place: the girl told something to someone in the other company, guys stood up for her defence, and they just pushed each other. There are even no injuries. Somebody from a nearby house saw this and called the police. As a result, one company did not go to the [police] station at all, and the girl with a guy were brought to the district station. But the girl said that she would not lodge a complaint and declared that she accepts a certain amount of guilt because she provoked the situation a little bit." The police press service also said that neither the girl nor the boy declared their belonging to the

flashmob or to the organization [Gender Z], and that the case would not be included into the Unified Register of Pre-trial Investigations.

Meanwhile, journalists saw directly that the police were summoned exactly by the event's organizers. The information on the crime (Part 1, Article 125 of the Criminal Code) was eventually included into the URPI.⁵



Figure 14. The attack on police guarding an action on the IDAHOT in Kharkiv (Case 935).

Case 935 (Kharkov, 2017)

On May 17, 2017, in Kharkiv, an action was planned for the International Day against Homophobia and Transphobia. The action did not start because it was disrupted by a group of about 100 aggressive men who were armed and shouted homophobic insults and incitements to violence. The assailants sprayed a gas into the face of one of the action's female participants, broke the heads of

⁵ Пороги, Нацполіція заперечує причетність побиття активістів до "Райдужного флешмобу" у Запоріжжі, 06.05.2017, porogy.zp.ua.

two police officers, spat at the action's participants, burned a flag of the LGBT community, and blocked police cars. The police, who ensured public order at the event, were forced to evacuate the action's participants. The victims filed a statement of crime under Part 1, Article 345 of the Criminal Code.⁶

Case 948 (Dnipro, 2017)

On June 10, 2017, at 00:13 am, the victim was resting with three friends in his home. At this time someone simultaneously broke with stones a few windows (kitchen, living room, bedroom) in his house / apartment. One of the guests was hit by a stone in his head that resulted in an injured ear. The police were called and went to search for offenders but no one was detained. The same evening, someone again threw a stone in the victim's window that flew within a few inches from his head.

About a year ago, the victim already was an object of harassment and physical violence attempts by local hooligans who tried to physically injure the victim's transgender female friend and who stressed the fact that "gays meet" in his house. The victim filed an application with the Sobornyi District Police Department in Dnipro city.

Case 950 (Kyiv, 2017)

An hour after the Equality March, Oleksander travelled by bus in Podilskyi district of Kyiv. When he left the bus and went about 50 meters from the bus stop, an unknown man ran up to him and, while saying "Well, how's the Equality March?", threw the victim to the ground and for a minute beat him together with another unknown man. The victim suffered physical injuries of various severity: injured on his rugged chin and finger. The incident was filed with the police.

Case 951 (Kyiv, 2017)

On June 19, 2017, about 10 pm, Stas (aged 24) came out of the house to go to a grocery store. Nearby his home he noticed two suspicious unknown young men and tried to get around them, but they ran up

⁶ Зеркало недели, *В Харькове радикалы напали на акцию ЛГБТ-сообщества*, 17.05.2017, zn.ua.

to the victim and sprayed tear gas into his face – with the words "Happy Pride to you!", and then disappeared from the place of the incident. The day before, the victim had participated in the Equality March 2017 as a security volunteer. The victims filed an application about the crime with the Podilske Police Department in Kyiv. The police started a criminal investigation which then was handed over to the Shevchenkivske Department.

Case 954 (Kyiv, 2017)

On June 19, 2017, about afternoon, Halyna (aged 27) and Mykhailo (aged 30) at the end of the Equality March travelled by metro to Petrivka station where they changed to another train destined towards the city centre. At this time, three suspicious men sat in the car with them. The victims wanted to emerge at Kontraktova Ploshcha station, but the three unidentified had emerged beforehand, so they went on to Poshtova Ploshcha station. When they came out at Poshtova Ploshcha, they noticed a group of other guys spying on them (finally, the victims realized that the previous pursuers had passed on to this new group information about their appearance). Halyna and Mykhailo took refuge in a cafe, waited there for about an hour, and called a taxi. When the taxi drove up, the victims left the cafe and went a couple of meters when they were immediately attacked. First, two assailants started beating Mykhailo while the third attacked Halyna, took her by the throat and began to strangle, beat, and tear her shirt. Then he was joined by a fourth assaulter who began to sprinkle pepper spray directly into her eyes. The men who attacked the victims were not those who pursued them in the metro. According to Halyna, the attackers obviously knew whom they attacked because the victims were dressed quite ordinarily and without LGBT symbols. The incident was filed with the police.

Case 956 (Kyiv, 2017)

On June 1, 2017, Oleksandr was walking with a female friend by Khreshchatyk (the most popular street in downtown Kyiv). When they ascended by Prorizna street, they noticed that they were

followed by three unknown young men (aged about 20) in clothes with nationalist symbols. When the unknown men approached the victims, they began to question why Oleksandr painted his nails, why this hairstyle, why such a bag, why such an appearance, why he looks "like a girl". They asked whether he was not gay. Oleksandr did not respond, but suddenly one of the unknown men began to beat him in the ribs, legs and face, breaking his nose till it bled blood. The beating lasted about two minutes, then one of the unknowns said "Enough," and the attackers moved on. When applying to the police, the investigator asked several times the victim whether he would buy him two bottles of whiskey "Jack Daniels".

Case 1014 (Kremenchuk, Poltava oblast, 2017)

In early June 2017, while resting on the "wild beach", where Kremenchuk's LGBT community traditionally rest, a few unknown men approached the victim and his friends. They showed "some certificate" (supposedly of the Security Service of Ukraine). All the friends scattered, and the unknown attackers beat the victim and broke his jaw in two places. The victim was very frightened and also was afraid of disclosure at his work, so he did not appeal to the police.

Case 1049 (Kyiv, 2017)

On November 23, 2017, 15-year-old Yevhen was waiting for public transport at a transport stop in Kyiv when he was approached by three aggressive guys who attended his university in a different year. They started to insult him with homophobic statements, and to throw plastic cups. Soon one of them began to choke Yevhen, and the others hit his face with their fists while shouting calls to beat him up because of his homosexual orientation. It lasted about 10 minutes, after which the victim was released. He has not contacted the police because he fears disclosure of his sexual orientation, particularly before his parents.

Case 1053 (Dnipro, 2017)

On August 1, 2017, Valerii (aged 32), nearby his home in Dnipro city, met a group of unfamiliar boys. They started to insult him with

offensive remarks of a homophobic character, and said that they had seen him with a guy. Then one of them took out a pistol, put it to the victim's temple and said to go to the courtyard. There they hit the victim on the head and started kicking him, so that he fainted and only later regained consciousness. The victim filed a crime report with Soborne Police Department in Dnipro city.

Case 1085 (Kyiv, 2017)

After participating in KyivPride 2017, Inessa (aged 40) faced offensive homophobic insults and threats from her stepfather that lasted a long time. On October 28, 2017, at 1:20 pm, during a conflict initiated by the stepfather, he caused a number of injuries to the victim. The victim received severe psychological shock and multiple physical injuries of varying severity. For a long time the victim could not go out of her apartment for fear, on the one hand, and her face mutilated by beating, on the other. The incident was reported to the police, and a criminal proceeding was initiated.

5. OPINIONS OF THE LGBT COMMUNITY ON HOMOPHOBIC VIOLENCE AND DISCRIMINATION IN UKRAINE

In order to enhance legal awareness and to encourage the protection of their rights, activists of Nash Mir held in 2016 a series of training sessions and focus group researches on hate crimes among local LGBT communities in Kharkiv, Dnipro, Lviv, Odesa and Kyiv. We provide below the most informative and typical, in our view, opinions and testimonies of participants of these events, responding about the problems associated with homo / transphobic violence and discrimination that they face in their everyday lives. The direct words of focus groups' participants are shown in quotation marks.

The focus groups' participants were asked a number of questions which garnered replies, and of particular note were the following answers:

Have you been a victim of hate crimes motivated by homo- / transphobia?

Do you know cases of hate crimes / incidents in your city?

All focus groups turned out to contain victims of hate crimes motivated by homophobia or transphobia. The participants of all groups were aware of other similar cases in their cities. We do not cite their stories about such incidents, inasmuch as they are included in the total dataset of the monitoring network.

How effective was investigation of hate crimes committed in your city by the law enforcement agencies?

Kharkiv: Most participants argued that the investigation of such cases is a very difficult matter and faces very high resistance from the law enforcement agencies.

Odesa: "No results." "The issue of qualification is being decided, as is establishment of any homophobic motive as a main motive of the crime. Investigators and prosecutors strongly resist such a turn of affairs, arguing that the mentioned motive is not there."

Kyiv: "In our city [Sumy] was "queer Andryushka"; he dressed all in women clothing but still wore a huge red beard. Two years ago he was murdered on ground of hatred towards LGBT people, but the case is still not investigated." "Last year, the police worked very quickly in one case: they came to the victim and by the use of physical force forced him to take back a statement about the crime." "In those incidents / crimes where applications were submitted to the police, investigations are not carried out; that has a frankly negative impact on the attitude of the victims to this issue."

Do you know about the activities of organized hate groups in your region?

Kharkiv: "Okupay-pedofilyay (although they are not so active now), Modnyi Prigovor ["Fashion sentence"], Sokil ["Falcon"], the Right Sector, ultras, groups working on the same principle but not identifying themselves in any way." Everybody also noted the growing number of small groups of guys (about 3 persons) whose main activity consists of extortion and robbery of gay men using dating through social networks.

Dnipro: Most members know of organized hate groups that conduct their activity through social networks. In Zaporizhzhya they are White Terror and Modnyi Prigovor, and they operate not through official channels, but through active youth. One respondent from Kyiv also mentioned the group Buratino.

Lviv: "The Right Sector, Azov, Bili Khorvaty ["White Croats"], Ukrop, Sokil, Svoboda." "Christian churches." "Aidar, Vovky ["Wolves"]."

Odesa: "[I have] seen how the youth from Modnyi Prigovor beat a gay man in the present Green Theater." "Okupay-pedofilyay, Modnyi Prigovor." "The Right Sector, Samooborona ["Self-defense"]." "Football ultras from Molodaya Nenvist ["Young Hatred"] and Soborka."

Kyiv: "Some groups identifying themselves either with The Right Sector or Azov corps". "The Right Sector, Aidar, Azov, Modnyi Prigovor." "Besides the groups said earlier, I know of a few groups in

Vkontakte with Nazi symbols (for instance, Misanthropic Division)."
 "Aidar, Azov, the Right Sector, Modnyi Prigovor, Okupay-pedofilyay, Tryzub ["Trident"], Svoboda."

Do you know cases of crime / hate incidents by the police?

Kharkiv: "This winter there was a fight in our gay club. They called the police. The patrol force arrived quickly, behaved very calmly and tolerantly, even though we were after the show and on heels." "The militia [the previous law enforcement agency that had remained since Soviet times, but is now replaced by the new police] "figured out" a beach was gay on the river, and for a very long time were engaged in extortion under various pretexts. Many people there were in trouble. When the police appeared, trouble stopped."

Dnipro: "Yes, we know: homophobia, unfriendly attitude, refusal to perform their direct functions." "My acquaintance was literally beaten by a police officer to whom he turned for help, after he was beaten in the street by homophobes."

Lviv: Such cases are unknown.

Odesa: "When submitting an application, a police officer cracked jokes; we were kept in the police station together with the people who assaulted us. When we indicated that we are gay, a police officer noted: "So, maybe they even tried to rape you fags?"

Kyiv: Such cases are unknown.

How do you consider, whether criminal responsibility for hate crimes has to be more severe?

Kharkiv: "No, it does not. If we want and demand equal treatment for ourselves, then we should not ask for stricter punishment for crimes. Since it would distinguish us from the majority." "Yes, sure, it will create the preconditions to ensure that their number decreases." "This should be a lesson for everyone, so [I] agree." "Yes, but it should apply not only to LGBT people but to all vulnerable groups." Most of the participants called for strengthening the responsibility for hate crimes.

Dnipro: All participants felt that the responsibility for hate crimes should be definitely stricter than in cases of ordinary crimes.

Lviv: "Committing a hate crime on grounds of SOGI has to be an aggravating circumstance, along with the commission of a hate crime based on race, nationality or religious beliefs." "Yes, we in Ukraine must adopt an analog of the American Matthew Shepard amendment. It can cause a considerable public response. Since gays are usually beaten to the very end." "Yes, because these crimes bear a message to society. Impunity creates a ground for new crimes against LGBT people, contributes to their spread." "There should be an additional penalty in the form of educational training." The majority of respondents answered the question positively.

Odesa: "Yes, provided high-quality 're-education of the criminal'." "Strict to the maximum, that they do not want to do so." "No, as this way LGBT people would attract extra attention." Opinions of the audience were divided.

Kyiv: "Yes, because the violence inflicted during the commission of crimes has a more cruel character." "This must be a qualifying feature when determining punishment." "We need to fix the clear legal concept of hatred, particularly referring to the Universal Declaration of Human Rights." "Yes, a [hate] crime committed not because of the personal hatred to a person but through her/his membership in a particular group." "Yes, without accepting all-human values, there cannot be further development." "Yes, since it's a manifestation of xenophobia." "Yes, any discriminated group needs more serious protection."

Would you turn for help if you were sure that your case would be investigated?

Kharkiv: Most participants would appeal to the police in any case. One participant said that he feared disclosure of his personal life.

Dnipro: All participants responded positively.

Lviv: All participants responded positively.

Odesa: The views of the participants were divided. Most would turn to the police in any case. Some feared vengeance and disclosure of their personal lives. "It is necessary to appeal with such applications, no matter whether the case is investigated or not, because your every request is already a step towards overcoming criminality. Each undeclared fact occasions hidden statistics that in our country are very significant, especially concerning LGBT".

Kyiv: All participants responded positively.

Do you know the facts about hate speech towards LGBT? From whose side?

Kharkiv: The church, politicians, the city mayor and his team, representatives of the local media.

Dnipro: Most participants knew of cases of hate speech, some faced such incidents regularly. One participant mentioned the police officers who provided security at a queer party at KyivPride. According to him, they were indignant: "Why should we protect these queers here?"

Lviv: "Politicians, religious leaders, at all levels, in fact." "Christian churches". "Church leaders". "Colleagues, neighbors." "The church, the interior minister." "Artem Skoropadskyi, Dmytro Korchynskyi, Illya Kyva, the leader of Svoboda in Dnipro Ihor Tokovenko, a Svoboda member in Lviv Vasyl Moldovan, the chaplain of the Ukrainian Greek Catholic Church in Lviv, Sadovyi, the secretary of the Lviv City Council" [activists of far-right nationalist organizations and the city management].

Odesa: Most participants knew cases of hate speech, some faced such incidents regularly. "Teachers in Odesa Academy of Law." "Svoboda [political party]." "Kyva, Arsenii Yatsenyuk, Orthodox churches, Artem Skoropadskyi" [conservative and nationalist politicians].

Kyiv: "In the region – one hundred percent of representatives of government agencies, prosecutors, police." Identified were

representatives of the church, police, public activists, civil servants, former militia, some members of LGBT organizations, Love Against Homosexuality (a religious and homophobic group).

6. NASH MIR CENTER ACTIVITIES IN SETTING UP MUTUAL UNDERSTANDING AND COOPERATION TO COMBAT HATE CRIMES

During 2017 Nash Mir's team in cooperation with other organizations and individual LGBT activists held seven round tables in various regions of Ukraine aimed at strengthening dialogue between civil society, local authorities and the National Police in terms of prevention of discrimination and hate crimes. These events took place in Chernivtsi, Dnipro, Kharkiv, Zhytomyr, Zaporizhzhya, Odesa, and Kherson. After each of these events, its organizers met with the local LGBT community to discuss issues relevant to their particular region.

Each meeting had its own distinctiveness, depending on the cultural and political realities of the region. In particular, the meeting in Chernivtsi, held on May 24, was visited by Mayor Oleksii Kaspruk who pointed out that Chernivtsi positioned itself as a pro-European and tolerant city, because since ancient times different nationalities, ethnic groups, and religious denominations have peacefully coexisted there.

A distinctive feature of the meeting in Dnipro on June 25 was that, in addition to the invited members of the police and local authorities, the gathering was visited by authoritative members of the local Jewish community, representatives of local libraries and cultural centres, and the event was held in the main Jewish centre of the city. In addition to the usual discussion of anti-discrimination legislation and statistics on hate crimes in the region, the topic of solidarity of the LGBT community with the Jewish community and other members of vulnerable groups was touched upon in order to overcome discrimination jointly.

The round table held on 18 September in Kharkiv raised for discussion two high-profile cases of discrimination and hate crimes against LGBT people in the region: murder of a 26-year-old gay man in 2015, when the court ignored the motive of hatred in committing crime; and the disrupted action to the International Day against Homophobia and

Transphobia on May 17, 2017. Lawyers present at the meeting, who deal with these cases, reported disappointing results after their attempts to achieve recognition of these offenses as hate crimes. Also, the event was attended by a human rights activist dealing with the rights of people with disabilities, and representatives of local feminist organizations that helped make the event truly inclusive.

Zhytomyr round table on combating hate crimes and discrimination, held on 6 October, was marked by its orientation on interaction with wider society, youth, and the education sector. Patrol Police representatives shared their experiences of educational and prevention activities within local schools to prevent violations and crimes. The police told those present that among teenagers training to combat bullying in school is the most popular training. In particular, such instruction draws attention to bullying stemming from another's sexual orientation or gender identity. For her part, however, a representative of Zhytomyr Regional Association of Social Workers shared her disappointing experience of training on tolerance: it was found that not only teachers but also psychologists and social workers cannot speak freely on the topic of sex in general, let alone on sexual orientation and gender identity issues.

Meeting in Zaporizhzhya with representatives of local authorities, human rights activists, the police, and all involved in ensuring adequate protection of human rights -- has become extremely relevant. This relevancy is the outcome of an attempt by right-wing radical groups to disrupt the Equality Festival, and attacks on the LGBT centre of Charitable Foundation Gender Z after the "Rainbow Flashmob" on the International Day against Homophobia / Transphobia. Such a round table was held on December 6 with the participation of local LGBT activists' mothers united within Parental Initiative Tergo. Stories from mothers about how their children repeatedly suffered from violence and abuses because of their sexual orientation, moved everyone present.

It is important to note the immediate practical consequences of our meetings on establishment of cooperation between the local LGBT

communities and the National Police: thus, within a few days LGBT activists of Zaporizhzhya decided to conduct a regular human rights flashmob and appealed for help (in protecting against possible aggression by enemies of the LGBT movement) to the Main Police Department in Zaporizhzhya oblast -- consequently resulting in a high level of safety at the event. A few weeks onward the situation repeated with a new rally where the result was the same: a high level of professionalism and understanding between organizers and the police, who removed the threat to the event and confirmed the effectiveness of the round table.

Another meeting was held at a round table in Odesa on December 8. This event was the first having an interregional character because the assistance of LGBT Association LIGA, which was a partner in organizing the event, ensured the presence of investigators, civil society, and human rights defenders not only from Odesa but also from Mykolayiv. The presence of investigation department representatives of both regions allowed those present objectively to discuss existing problems around effective investigation of hate crimes in southern Ukraine. Unfortunately, representatives of the local authorities of these regions ignored the meeting.

The last round table in 2017 on combating discrimination and hate crimes took place in Kherson on December 18. The main idea of the meeting was formulated by the regional Coordinator on public relations of the Parliamentary Commissioner on Human Rights in Kherson, Oksana Tropina: "Educating society on maximum tolerance towards vulnerable groups will reduce the degree of tension in society, and the very concept of discrimination will become clear to everyone. Thanks to the constructive dialogue we can reach agreement, so we need to establish joint cooperation and work out effective measures in combating hate crimes."

Thus, the conducted meetings in the regions altogether demonstrated the willingness of both local communities and the National Police, and sometimes local authorities, to cooperate in addressing the problem of hate crimes. However, communication

with representatives of various structures within the National Police showed that fundamental changes in this area are possible only under a fundamental reform of the current legislation and policy of the Interior Ministry on human rights protection. Currently, the police have no satisfactory legal basis nor the knowledge, skills and guidance for combating hate crimes in general, and particularly for those motivated by intolerance on grounds of homophobia / transphobia. A major obstacle is also the sustained ignoring of this problem by the Office of Public Prosecutor.

7. REVIEW OF THE CURRENT LEGISLATION AND JUDICIAL PRACTICE, CONCLUSIONS, PLANNED REFORMS

The Criminal Code of Ukraine contains a number of articles (namely, 67, 115, 121, 122, 126, 127, 129, 293) providing for more severe punishment for crimes committed under motives of racial, ethnic or religious intolerance, and Article 161, which establishes criminal responsibility for incitement of national, racial or religious enmity and hatred, as well as for discrimination on the open list of grounds. Thus, despite the fact that currently the very concept of "hate crime" in the Ukrainian legislation is absent, in fact this category of crimes is recognized but only on the three aforementioned grounds. If such a crime were committed, in particular, under homophobic or transphobic motives, the current Ukrainian legislation does not provide for it a heavier penalty and, therefore, does not recognize it as a hate crime.

In the opinion of Ukrainian human rights organizations, this situation is unacceptable, so they have long been trying to convince lawmakers to expand the list of motives of intolerance, which aggravate in severity penalties for committing such crimes – in particular by adding intolerance on grounds of sexual orientation and gender identity. Meanwhile, they also support the decriminalization of discrimination, which, in their view, should be seen not as a criminal but as an administrative offense, and should entail less strict liability. Eventually, the Ukrainian government agreed with the proposals of civil society. Adopted in 2015 the Action Plan to Implement the National Strategy on Human Rights for the Period until 2020 contains provisions (paragraph 105, measure 3) about the "removal from the disposition of Article 161 of the Criminal Code of Ukraine the part concerning criminal liability for discrimination (direct or indirect restriction of rights or direct or indirect privileges on various grounds) – along with the amendments made to the Code of Ukraine on Administrative Offences and the Civil Code of Ukraine, providing for fines, damages, etc."

The same paragraph provides for "ensuring punishment for crimes committed under motives of intolerance on grounds such as race, skin color, religious beliefs, sexual orientation, transsexuality, disability, language (amendments to paragraph 3 of Article 67, the second paragraph of Articles 115, 121, 122, 126, 127, 129, Article 293). "

As regards Article 161, a group of members of Ukraine's parliament registered Bill 3501 which was adopted at first reading on 16.02.2016. This bill, in particular, removes responsibility for discrimination from Article 161 while adding to the Code of Ukraine on Administrative Offences Article 188⁴⁹ "Violation of legislation on preventing and combating discrimination." Unfortunately, this bill does not add sexual orientation and gender identity to the list of grounds on which discrimination is explicitly prohibited (contrary to that envisaged in the Action Plan and recommendations of the Council of Europe's experts) – thus the prohibition of discrimination on SOGI grounds remains only implicit ("or other characteristics") and that, in practice, is not sufficient to combat effectively discrimination on these grounds.

Quite unexpectedly, the Chief Investigation Department of the Ministry of Interior in 2016 began to collect information on cases of hate crimes for motives different from those three mentioned in the Criminal Code (i.e. racial, religious or national / ethnic intolerance) without its waiting for the reform of criminal law.

Also in 2016 specialists of Lviv State University of Internal Affairs, together with employees of the Chief Investigation Department, developed guidelines on investigation of hate crimes that are designed for "heads of departments of the preliminary investigation, investigators, employees of operational units, experts as well as for students and scholars of legal schools." Overall, the recommendations combine recommendations of the OSCE / ODIHR regarding hate crimes with the findings of the so far scant practice of investigating these crimes in Ukraine.

In general, we can only welcome the emergence of at least any such guidelines for police officers encountering crimes motivated by prejudice and intolerance, but the mentioned publication contains a number of significant drawbacks. First, although it explains that "an investigator at the initial stage of investigation should find out with which kind of xenophobia he will work" and then lists the following manifestations (racism, ethnophobia, religious intolerance, language antipathy, sexism, intolerance on grounds of age or health, homophobia), – in fact throughout the text it refers only to investigation of crimes committed under motives of intolerance on grounds of race, national (ethnic) origin and religious beliefs. The guidelines contain no mention of crimes committed under motives of intolerance on other grounds. Annex 3 to these guidelines, which contains a list of expert institutions in the field of investigation of hate crimes, begins with the National Expert Commission of Ukraine on Protection of Public Morals, which was abolished in 2015, a year before the publication of the guidelines. Appendix 5 contains, in particular, the "symbols of racist, neo-Nazi, extremist and other organizations in various countries" – Poland, Italy, Russia, Croatia, Romania, Germany, Spain, Greece – yet the text of the guidelines nowhere mentions Ukrainian organizations and groups of this kind.

In addition, some practical recommendations to investigators raise serious doubts – for example, on the legal qualification of violent crimes motivated by intolerance at the initial stage of pre-trial investigation. The authors of the recommendations, on the one hand, believe that this qualification is possible only after "the establishment of a criminal suspect, because the motive for the crime is an element of *mens rea* that is virtually impossible to prove without the suspect / accused," thus, "when investigating crimes of this category, the primary criminal legal qualification of a criminal offense always will be qualification of it as a crime against the life and health of an individual without any qualifying characteristics or with other qualifying characteristics which are evident at the time of including information in the Register." On the other hand, they warn that "in no way may be allowed reluctance to include relevant information in

the Unified Register of Pre-trial Investigations about committing crime on grounds of racial, ethnic or religious intolerance." Thus, the motive of intolerance is still not so unobvious, but in any case investigators are recommended to leave it outside the URPI. It should be noted that publications of the OSCE / ODIHR provide a number of objective signs / indicators which give reason to believe that the motive of prejudice is present, even without the identification of persons of specific offenders. Thus, in order to be a truly effective tool in the investigation of "hate crimes," the above LSUIA/CID publication clearly requires broader consultations with stakeholders, and at the least, a substantial improvement regarding national or religious intolerance so the motive of intolerance is still not so obscure, but in any case investigators recommend leaving it outside YERDR. It should be noted that the publications of the OSCE / ODIHR provide a number of objective signs / indicators that give reason to believe that the motive bias occurred, without specific identification of persons as offenders. Thus, in order to be a truly effective tool in the investigation of hate crimes, the mentioned publication obviously requires, at least, a substantial revision.

Comparing the results of the investigation of crimes and incidents motivated by homo / transphobia for the period of 2014-2016 with the results of a similar previous study for the period 2012-2013⁷, Nash Mir can see that the situation of violence and discrimination against LGBT people in Ukraine over the past three years did not evidence any signs of improvement. As evident from Table 8, in 2013 among all types of LGBT human rights violations sharply increased their share of such violations as insults / humiliations and threats of disclosure or disclosure of confidential information, as well as physical violence. We attribute this to the fact that some informal Russian homophobic groups (first of all, Okkupai-pedofilyai) at this time extended their activities into the territory of Ukraine. The leader of this movement, Russian neo-Nazi Maksim Martsinkevich nicknamed Tesak ("Slasher"), held in 2013 a kind of "tour" through

⁷ Please see note 1.

major cities of Ukraine. There on tour he met with his supporters and conducted workshops on abuse and public humiliation of homosexuals, who were enticed via the internet allegedly on a date.⁸ Against the background of the Russian aggression, in 2014 the number of such cases slightly decreased, but we can see that in 2015-2016 informal homophobic groupings again intensified their activity. All participants of the focus groups conducted by Nash Mir in 2016 complained about this. The Russian-import Okkupai-pedofilyai now meets Modnyi Prigovor of the same origin. In Zaporizhzhya operates the similar group Naslediye ("Heritage") which specializes in provoking gay men to have sex with minors, expecting that the victim, who could break the Criminal Code, will not complain to the police about the violator's action. Unfortunately, the police, knowing about illegal activities of the group, still turn a blind eye to it.⁹

While the above-mentioned groups are engaged only in bullying and extortion of single gay men, such organizations as the Right Sector, Aidar, Azov, Svoboda etc., mentioned in focus groups, do not even hide that they stand behind organized attacks on LGBT events and venues – in particular, attacks on the Equality March in Kyiv, the Equality Festival in Kyiv, Lviv, Odesa, community centers in Odesa, Kryvyi Rih and others. It is clear that such activities involve not all members of those political movements and veterans or volunteers of the respective military forces; however, it is also clear that the leadership of these structures not only does not dissociate themselves from manifestations of homophobic aggression, but rather openly supports and encourages it. All these groupings, without exception, existing in Ukraine, which have been noticed in their planned attacks on LGBT events and venues, profess ultra-right wing and racist ideology. They consider their homophobic activity as the struggle for the future of the Ukrainian nation and the "white

⁸ Please see, for instance, Nash Mir Center, *Report on Hate Crimes against LGBT Persons in Ukraine in 2013, 2014*, gay.org.ua.

⁹ Please see, for instance, the video of TV5, *They among Us*, 30.09.2016, youtube.com.

race" that only emphasizes the fundamental similarity and equal social significance of crimes under motives of national or racial hatred, which are actually recognized by Ukrainian law as hate crimes, and crimes motivated by homophobia or transphobia.

An unacceptably high level of homophobia and transphobia expressions among law enforcement officers, demonstrated by the results of our monitoring, leads to the fact that Ukrainian LGBT people do not trust such officers and do not see opportunities to protect their rights with their help. This results in the impunity status of LGBT rights abusers as well as to an underestimation of the prevalence of crime and incidents under homo / transphobic motives – already low due to the fact that the victims of such crimes are simply afraid or find it nonsensical to inform the law enforcement agencies of their own enforcement staff peers. It should be noted that the reputation of the newly formed patrol police among the Ukrainian LGBT community is much better than for the rest of the MIA's structures. The number of complaints about patrol police work has noticeably diminished, and gratitude for their help indeed has significantly increased compared to the situation observed before the reforms. Similarly should be noted the readiness of the National Police leadership to work with LGBTs and human rights organizations in developing and implementing policies of tolerance, prevention of discrimination and protection of vulnerable minorities.

However, it should be noted that the structures of law enforcement are altogether an integral part of Ukrainian society, and therefore cannot but in general share its characteristic views. Addressing the Ukrainian LGBT community's problems requires overcoming their prime source cause: homophobic prejudice that holds dominance in Ukrainian society. For example, a recent poll conducted by the Kyiv International Institute of Sociology at the request of Nash Mir, showed that 60% of the Ukrainian public perceive rather negatively or definitely negatively people of homosexual orientation, including 42% who responded with a definitely negative attitude to such

people.¹⁰ This result underlines the need for broad educational campaigns, inclusion of sexual orientation and gender identity issues in school curricula, and for programs of training and professional development for teaching staff, lawyers and law enforcement officers.

The overview of the judgments (sentences, decisions) in criminal proceedings mentioned in the Unified State Register of Court Rulings showed that the majority of decisions were taken in respect of crimes against life and health (murder, bodily injuries of varying severity), most often committed on the "ground of personal hostile relations connected with non-traditional sexual orientation" or under lucratively inclined motives. The victims are solely gay men.

Viewed overall, here are the general trends observed:

- 1) most crimes are classified as grave and especially grave (punishment for which provides for imprisonment up to 10 years, and more than 10 years or life imprisonment, respectively);
- 2) the majority of crimes were committed with extreme, unjustified cruelty to the victim (for example, a large number of stab wounds, attempts to commit a demonstrative execution, dismemberment of the corpse);
- 3) a standard practice of defendant / defender is to choose a defense tactics which provides that the actions of the defendant were caused by the (gay) victim's illegal encroachment on his health and sexual freedom and integrity. At that, such actions allegedly committed by the victim, in terms of the defendant have resulted in a state of affect that has significant influence on the qualification of the crime. However, the courts are critical of this position of the

¹⁰ Київський міжнародний інститут соціології, *Ставлення до людей гомосексуальної орієнтації: лютий 2016 р.*, 2016, gay.org.ua, in Ukrainian.

defense, generally, objectively assessing the real motives of the crime. Only in one case did the court of appeal change the qualification of a crime from murder (part 1 of Article 115 of the Criminal Code of Ukraine) to murder committed in a state of extreme emotion (Article 116 of the Criminal Code);

- 4) quite often is the situation when criminals choose their victim on the basis of sexual orientation, believing that the victim will not turn to law enforcement – because, for instance, of being ashamed of his/her sexual orientation;
- 5) most cases involve a set of crimes, namely crimes against life and health in connection with crimes against property.

The Ministry of Interior of Ukraine stated in its letter that it finds it necessary to introduce in paragraph 3 of part 1 of Article 67 of the Criminal Code of Ukraine (CCU) "Circumstances aggravating punishment" amendments which would "create a more effective prevention and combating discrimination system by creating a norm based upon the 'enmity model.'" The Interior Ministry also points out that "changing dispositions of certain articles of the Criminal Code [that is changes to the second parts of Articles 115, 121, 122, 126, 127, 129, and Article 293 envisaged in the Action Plan (para. 105, measure 3)] by adding another qualifying feature of 'commission for motives of intolerance' is inappropriate."¹¹

Given the position of the Ministry, it is worth paying attention to the provisions of the Criminal Code of Ukraine and the relevant jurisprudence regarding the imposition of punishment by the courts. Imposing penalties, courts in each case have to comply with the requirements of the criminal law and must take into account the severity of the offense, the identity of the perpetrator and the circumstances mitigating or aggravating punishment (Decision of the Supreme Court of Ukraine "On the practice on imposition of criminal

¹¹ Ministry of Interior of Ukraine, Department for Formation of Policies on the Minister-Controlled Governmental Agencies and Monitoring, *Letter 14/223i, 233i of 15.07.2016*, 2016, the archives of Nash Mir Center.

punishment by courts" No. 7 of October 24, 2003). The circumstances aggravating punishment are provided for under Article 67 of the Criminal Code. One of these circumstances is commission of the crime on ground of racial, national or religious enmity or discord (paragraph 3 of Article 67 of CCU). Listed in part 1 of Article 67 of the Criminal Code, the list of circumstances aggravating punishment is exhaustive, so the court has no right to refer to other circumstances as aggravating and to take them into account in sentencing, unless they are explicitly mentioned in this Article. Thus, the aggravating circumstances – particularly, the motives of intolerance on grounds of SOGI – should be enshrined in paragraph 1 of Article 67 of the Criminal Code.

The Plenum of the Supreme Court in the above-mentioned decision emphasizes that, pursuant to paragraph 2 of Article 67 of the Criminal Code, the court, having established the presence of aggravating circumstances stated in paragraphs 2, 6, 7, 9, 10, 12 of part 1 of this Article, is obliged to mention them in its judgment and take them into account in sentencing (please note with attention that above-mentioned paragraph 3 is absent from this list). According to part 2 of Article 67 of the Criminal Code, the court may, depending on the nature of the offense, not recognize any of these circumstances mentioned in part 1 of this article, except the circumstances specified in paragraphs 2, 6, 7, 9, 10, 12, as aggravating, providing the reasons for its decision in the judgement. Therefore, even if amendments to paragraph 3 of part 1 of Article 67 should expand the existing list of motives of bias / intolerance, the court in each case will have the right not to consider those circumstances when assigning punishment as aggravating. Thus, the effective application of Article 67 in cases of crimes motivated by homophobia or transphobia will be impossible without amendments not only to part 1 but also to part 2 of Article 67 of the Criminal Code – for example, unless it will be provided as follows:

2. The court may, depending on the nature of the offense, not recognize any of the circumstances

mentioned in part 1 of this Article, except the circumstances specified in paragraphs 2, 3, 6, 7, 9, 10, 12, as such that aggravate punishment, when providing the reasons for its decision in the judgement.

Part 1 of Article 11 of the Criminal Code says that crime is "provided for in this Code a socially dangerous act (action or inaction) performed by the subject of a crime." Public danger consists in that the act / omission either causes damage to relations protected by law, or involves the real possibility of causing such damage. This feature of crime is one of the criteria relevant to classifying offenses. Thus, the degree of public danger (gravity) defines:

- 1) a general crime – contains the basic elements of a crime and contains no mitigating or aggravating (qualifying) circumstances (for instance, murder, i.e. intentional illegal infliction of death to another person);
- 2) a crime with mitigating circumstances – characterized by circumstances which greatly reduce the social danger and punishment for this type of crime (e.g. murder committed in a state of extreme emotion);
- 3) a crime with aggravating circumstances, i.e. those aggravating and influencing qualification of the crime (such as murder for motives of racial, national or religious intolerance);
- 4) a crime with particularly aggravating (particularly qualifying) circumstances, that is providing special public danger because of the crime (e.g. theft committed on large scale or by an organized group).

The content of the social danger of the crime as one of its features, and its impact on the classification of crimes according to their severity, are essential in the context of the delimitation of hate crimes from other crimes. This is explained in that the damage caused by hate crimes to society as a whole may be significantly higher compared with the damage from crimes caused without prejudices.

The very serious consequences (i.e. higher public danger, gravity) are a key reason why hate crimes are classified as crimes of the relevant type with aggravating circumstances.

Currently homophobia and transphobia, widespread in society, are considered by many Ukrainians as some kind of "traditional values" that incite their desire to protect them in any way, and that instigate criminals to use them for their own purposes. Gays look like convenient victims for blackmail and robbery who will not want to apply to the police for protection, fearing publicity. The homophobic beliefs of the criminals are often used in the courts as arguments which are to mitigate the extent of their guilt. Thus, in Case 337/6787/15-к, which was considered on 06.02.2016 in the Court of Appeal of Zaporizhzhya oblast, the defense of the persons accused of robbery and extortion made an appeal citing the fact that "the indictment does not make clear at all that the guys wanted in an unusual way to establish justice in society, to punish those relating to sexual minorities, that PERSON_4 had no intent to take possession of another person's property, but had only a desire to teach a lesson." In our view, the situation when homophobic or transphobic motives of crimes are not considered by law as socially dangerous only contributes to maintaining a high level of hate crimes against LGBT people.

Therefore, in our opinion, the position of the Interior Ministry to limit amendments in the Criminal Code to extension of the list of circumstances that aggravate punishment, is one-sided and leads to leveling the value and nature of hate crimes as those having a much higher level of public danger compared to "ordinary" crimes. It is not enough to punish severely crimes committed for motives of hatred on certain grounds – the law has to treat them as a separate class of crimes, emphasizing their particular public danger.

In addition, under part 1 of Article 65 of the Criminal Code, the court shall appoint punishment "within the limits set in the relevant article (a part of the article) of the Special Part of this Code" – that is, unless an article provides increased punishment for a hate crime, the

punishment for this crime may not exceed the maximum penalties for an "ordinary" crime. If to consider consistently the motive of hatred on certain grounds only as circumstances aggravating punishment but not affecting the qualification of a crime, it will lead to sanctions provided for committing hate crimes being significantly lighter than those provided for the commission of qualified crimes.

Finally, it should be noted that, of course, deliberate actions aimed at inciting enmity and hatred, humiliation of honor and dignity or causing offense on certain grounds, as provided in Article 161, are also hate crimes. For some reason this article was not mentioned in the Action Plan among those which are to impose "punishment for crimes committed for motives of intolerance on grounds such as race, skin color, religious beliefs, sexual orientation, transsexuality, disability, language", but it is clear that appropriate changes should be made to this article as well.

8. RECOMMENDATIONS

The Action Plan to Implement the National Strategy on Human Rights for the Period until 2020 contains provisions aimed at addressing most of the aforementioned legal and political issues, without which it is impossible to overcome homophobia and social problems caused by it. The task of the Ukrainian authorities, civil society and our foreign partners consists in achieving its strict and timely implementation. In particular, LGBT components of the Action Plan include:

- paragraph 39, measure 5; deadline – III quarter of 2016: adoption and revision of governmental normative acts on the protection of peaceful assemblies in accordance with modern international standards in the field of peaceful assemblies, taking into account the specifics of controversial gatherings, including events of the LGBT community;
- paragraph 105, measure 1; deadline – I quarter of 2016: development and submission to the Cabinet of Ministers of Ukraine of a draft law on amendments to the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine" on [...] complying with the provisions of the EU's legal acts the list of grounds on which discrimination is prohibited, including prohibition of discrimination on grounds of sexual orientation and gender identity;
- paragraph 105, measure 3; deadline – II quarter of 2016: development and submission to the Cabinet of Ministers of Ukraine of a draft law on amendments to the Criminal Code of Ukraine on [...] removal from the disposition of Article 161 of the Criminal Code of Ukraine the part concerning criminal liability for discrimination (direct or indirect restriction of rights or setting indirect or direct benefits on grounds) – along with the amendments made to the Code of Ukraine on Administrative Offences and the Civil Code of Ukraine, providing for fines, damages etc.; the provision of penalties

for crimes committed under motives of intolerance on grounds such as race, skin color, religious beliefs, sexual orientation, transsexuality, disability, language (amendments to paragraph 3 of Article 67, the second parts of Articles 115, 121, 122, 126, 127, 129, Article 293);

- paragraph 106, measure 2; deadline – II quarter of 2016: development and placing of posters for victims of hate crimes in the police and ambulance stations;
- paragraph 107, measures 5 and 6; deadline – since the first quarter of 2016: development, involving international experts and civil society representatives, of a training course for law enforcement officials to prevent discrimination and to keep law enforcement officers from effecting discrimination towards vulnerable groups; introducing the respective course in training, retraining and advanced training of law enforcement officers;
- paragraph 109, measure 1; deadline – III quarter of 2016: approval of a protocol / instructions on accepting application about a criminal offense taking into account the motive of intolerance mentioned by the victim;
- paragraph 109, measure 2; deadline – IV quarter of 2016: development and inclusion of a course on effective and proper investigation of hate crimes in training, retraining and advanced training programs of law enforcement officers;
- paragraph 109, measure 3; deadline – IV quarter of 2017: development and adoption of joint guidelines of the MIA and Prosecutor General of Ukraine to investigate hate crimes by law enforcement bodies with regard to the methodology of the OSCE;
- paragraph 109, measure 4; deadline – IV quarter of 2018: development and adoption of the order on introduction of specialization (imposing duties) for prosecutors and

investigators responsible for monitoring the investigation of hate crimes in each region.

At the time of drafting this report (February 2018) we can state that only partial fulfillment of some above-mentioned provisions are realized. Fundamental changes to the Criminal Code, which should ensure criminalization of hate crimes motivated by homophobia / transphobia provided in the measure 3, paragraph 105 of the Action Plan for the second quarter of 2016, have not been developed and submitted to the Cabinet of Ministers. Moreover, the position of the MIA on this issue is tantamount to revision of this provision of the Action Plan and narrowing of the planned changes. We cannot accept such a proposal and we believe that the planned changes have to be made to all mentioned articles of the Criminal Code (paragraph 3 of Article 67, parts 2 of Articles 115, 121, 122, 126, 127, 129, Article 293) as well as to Article 161. The exact mechanism for the implementation of these changes is a subject of discussion, but they certainly must meet the following criteria:

- the penalties for crimes motivated by intolerance on grounds of race, skin color, national or ethnic origin, language, religion, sexual orientation, gender identity should be higher than for offenses without aggravating circumstances;
- the grounds of race, skin color, national or ethnic origin, language, religion, sexual orientation, gender identity must be explicitly specified in the text of the Criminal Code as aggravating penalties for crimes committed under motives of intolerance on certain grounds;
- the court should be obliged to consider the motive for commission of crimes listed above as a circumstance aggravating the penalty;
- deliberate actions aimed at incitement of enmity and hatred, insult of the feelings of citizens, humiliation of honor and dignity of citizens on grounds listed above must be criminalized.

9. LGBT HUMAN RIGHTS NASH MIR CENTER

LGBT Human Rights Nash Mir Center is a Ukrainian public organization which aims to implement and protect the rights and freedoms, meet public, social, cultural, political, economic and other interests of the Ukrainian LGBT community. Our history dates back to the mid-1990s, when a small group of enthusiasts from the East Ukrainian city of Luhansk decided that it was a time for those public activities. The official registration of Nash Mir Center took place in 1999.

Our activities are aimed at both the LGBT community and Ukrainian society as a whole. Now we focus our efforts on:

- Monitoring LGBT rights violations.
- Legal aid and counseling to victims of discrimination and hate crimes on grounds of sexual orientation or gender identity.
- Legal education of the LGBT community.
- Joint action with other organizations to protect the equal rights for LGBT people on the legislative and political levels.
- Strategic litigation.
- Support for local initiative groups in their activities of providing social and psychological support for LGBT people, mobilization of the LGBT community at the local level.