To the UN Human Right Committee for consideration at 127th session

**List of issues in connection with the consideration of the eighth periodic report of Ukraine**

**Submitted by LGBT Human Rights Nash Mir Center**

Telephone/fax: +380 44 2963424

Address: P.O. Box 173, Kyiv, 02100, Ukraine

E-mail: coordinator@gay.org.ua

Website: gay.org.ua

Contact person: Mr. Andriy Maymulakhin, Coordinator of Nash Mir Center

Prepared by Andrii Kravchuk, Advocacy Expert of Nash Mir Center

E-mail: antidi@gay.org.ua

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1. This report is prepared by LGBT Human Rights Nash Mir Center (Kyiv, Ukraine). The document describes the current situation with ensuring and observation of human rights of LGBT people in Ukraine provided for in the International Covenant on Civil and Political Rights.

2. Since 2014 the Ukrainian Government has achieved a significant success in ensuring the political and civil rights of LGBT persons in the country. The main legal achievements in this field are introduction of explicit prohibition of discrimination on grounds of sexual orientation and gender identity (hereafter SOGI) in the Code of Labour Laws (2015) and abolition of most abusive or disproportionate requirements for legal recognition of a gender reassignment (2016). Since 2015, the local authorities began to ensure holding of public LGBT events, and the police – to protect their participants from homo/transphobic aggression.

In 2015, President Poroshenko approved the National Human Rights Strategy till 2020, and the Ukrainian government adopted the Action Plan to implement the Strategy (hereafter the Action Plan). The Action Plan has included almost all proposals of Ukrainian LGBT organizations that cover most basic legal and political needs of LGBT persons in Ukraine. However, its implementation by the government constantly faces a lack of the political will. Of its most important LGBTI components, only the mentioned provision on changes to the procedure of gender reassignment may be considered as effectively implemented to date.

# **List of issues**

**Article 21**

3. Since 2015, the police has provided mostly effective protection of the Equality Marches (Kyiv, Odesa, Kryvyi Rih, Kharkiv) from homo/transphobic attacks by their aggressive opponents. However, it often ignore attacks on lesser events as well as LGBT organizations and individual activists. The cases of violence and attacks against LGBT activists, organizations and their supporters are still at large in Ukraine: in 2019, Nash Mir Center documented 11 cases of such incidents. Incidents, when opponents of an LGBT event block its holding while the police summoned to the place of the incident just passively observe their illegal actions, happen even more often: 13 documented cases in 2019.[[1]](#footnote-1) Investigations of such incidents by the police are conducted very ineffectively; the perpetrators very rarely are charged and brought to responsibility.

4. **Nash Mir Center recommends the Committee to request how the State party plans to ensure the right to peaceful assembly for LGBT organizations and activists, and in particular to effectively protect them from aggression and blocking by far-right nationalist groupings.**

**Article 23**

5. Article 2 of the Family Code of Ukraine states that "Family consists of persons who live together, are connected by common life, have mutual rights and responsibilities" (Para. 2), "Family is created on the basis of marriage, consanguinity, adoption, as well as on other grounds not prohibited by law and not contrary to the moral principles of society." Jurisprudence in Ukraine includes court decisions that recognize family relations between persons of the same sex living together who are not natural relatives. Thus, same-sex partners theoretically constitute the family and are recognized as family members under Ukrainian law.

6. However, Ukrainian legislation does not provide concrete rights and does not lay concrete obligations on family members in general, only to particular relatives (e.g., spouse, parent, child, brother etc.). Since Ukraine does not provide for any form of legal recognition of same-sex family relations, and same-sex partners are never mentioned explicitly in Ukrainian law, in fact they have no family rights and bear no family responsibilities.

7. At the same time, according to the Family Code of Ukraine, even unmarried opposite-sex family partners have some spousal rights: Article 74 reads that if a man and a woman live together as a family not being officially married, the property they acquired in such cohabitation is owned by them as common joint property; Article 91 provides for the right to maintenance by an opposite-sex partner in case if the other partner becomes incapable to work; Article 211 prohibits joint adoption of a child by persons of the same sex, but permits adoption by two cohabitating persons of different sexes. At least Articles 74 and 91 constitute evident discrimination of same-sex family partners comparing with opposite-sex partners.

8. In addition to the rights and duties provided by the Family Code, the Ukrainian legislation includes many provisions on spouses and other family members and close relatives which are enshrined in other laws. It is impossible to provide an exhaustive list of them; in particular, they include: social assistance for a family, joint bank loans (including mortgages for young families), pension or compensation after losing the family supporter; intestate succession and compulsory share of inheritance; deciding on important health issues and the right to access a sick close relative; the right of a wife/husband of a military officer to have vacation at the time convenient for them, the right to have a leave to take care of sick relatives; representation of interests and the right to refuse to testify about a close relative in the law enforcement and judiciary authorities; a simplified procedure for immigration and obtaining citizenship for those married to a citizen of Ukraine; etc.

In the absence of any form of legal recognition, same-sex couples are either completely deprived of these rights or face so serious complications when exercising them that the relevant legal provisions loses any practical value.

9. The Action Plan includes a provision on "drafting a bill on legalization of registered civil partnership in Ukraine for opposite-sex and same-sex couples taking into consideration property and non-property rights, in particular to own and inherit property, to support one partner by the other in case of incapacity for work, the constitutional right not to testify against the partner" by the 2nd quarter of 2017 (Action 6, Para. 105).

However, to date the Ukrainian government has taken no steps to implement this provision of the Action Plan. In its reports on the implementation of the Action Plan, the Ministry of Justice only informs that the ministry received numerous appeals from local councils and religious organizations about inadmissibility and cessation of implementation of this provision.

10. **Nash Mir Center recommends the Committee to request how the State party plans to eliminate legal discrimination and to ensure the family rights of same-sex couples.**

**Article 26**

11. In Para. 8 of Concluding observations on the seventh periodic report of Ukraine (CCPR/C/UKR/CO/7),

*the Committee is concerned that sexual orientation and gender identity are not explicitly included in the non-exhaustive list of grounds of protection in the anti-discrimination law […] The State party should explicitly list sexual orientation and gender identity among the prohibited grounds for discrimination […]*

The Ukrainian Government has repeatedly ignored this recommendation that was made not only by the Committee but also by other international organizations, particularly by experts of the European Commission against Racism and Intolerance.[[2]](#footnote-2) Though the Government included in the Action Plan a provision on amending the Law of Ukraine "On principles of prevention and combating discrimination in Ukraine" to bring the list of grounds on which discrimination is prohibited, including the prohibition of discrimination on grounds of sexual orientation and gender identity etc., into the line with the provisions of the EU legislation (Action 1, Para. 105), it has not been implemented yet. In its official replies, the Ministry of Justice informed that they did not plan to introduce in the parliament a bill that would explicitly include grounds of SOGI in the list of characteristics prohibited from discrimination in the general anti-discrimination legislation.

12. The Ukrainian Government in its Eighth periodic report (CCPR/C/UKR/8) claims that

*4. In accordance with the Constitution of Ukraine, there shall be no privileges or restrictions based on race, skin colour, political, religious, and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics.*

*[…]*

*7. Article 161 of the Criminal Code of Ukraine establishes responsibility for violation of citizens’ equality based on race; colour of skin; political, religious and other convictions; sex; ethnic and social origin; property status; place of residence; and linguistic or other characteristics.*

However, without explicit mentioning in the law or a relevant decision of the Constitutional Court on official interpretation of the constitutional provision, no characteristic may be regarded as protected from discrimination by default.

13. Draft law 0931 of 29.08.2019 “On amendments to certain laws of Ukraine (regarding harmonization of legislation in the field of preventing and counteracting discrimination with the law of the European Union)”, which is mentioned in Para. 6 of CCPR/C/UKR/8 under its previous number 3501, also does not include explicitly grounds of SOGI in the list of protected characteristics. Currently, discrimination on grounds of SOGI in Ukraine is explicitly prohibited only in employment (since 2015, Article 21 of the Code of Labour Laws).

Thus, in absence of mentioning characteristics of SOGI in Article 24 of the Constitution, the general anti-discrimination legislation, or a decision of the Constitutional Court, these characteristics may not be considered as legally protected from discrimination in any spheres of life regulated by law. Deliberate repeated neglect of this issue by the Ukrainian government makes society and the courts suppose that discrimination on grounds of SOGI may be permitted and justified in certain circumstances.

14. According to the data collected by the monitoring network of Nash Mir Center, discrimination on SOGI grounds in Ukraine is widespread in many spheres of life. For instance, in 2019, 22 such cases were documented in the sphere of education, 21 – in providing goods and services.[[3]](#footnote-3)

15. **Nash Mir Center recommends the Committee to request whether the State party plans to explicitly include sexual orientation and gender identity as protected grounds in the Law of Ukraine "On principles of prevention and combating discrimination in Ukraine".**

16. In Para. 10 of CCPR/C/UKR/CO/7,

*The Committee is concerned at reports of discrimination, hate speech and acts of violence directed at lesbian, gay, bisexual and transgender (LGBT) persons and violation of their rights to freedom of expression and assembly. […] The State party should therefore state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, or hate speech, discrimination or violence against persons because of their sexual orientation or gender identity. The State party should provide effective protection to LGBT persons and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim’s sexual orientation or gender identity. It should also take all necessary measures to guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT persons and defenders of their rights.*

The Ukrainian Government in CCPR/C/UKR/8 replies that

*13. In 2012 three criminal cases committed on the basis of racial, national, religious violence and hatred were investigated. In 2015–2017, the number of criminal cases opened in this category increased to 229. Of these, 11 were sent to the court as indictments. In 2018, 154 cases of alleged crimes committed on the basis of hatred are currently in progress, covering alleged crimes committed in previous years. Since 2015, five convictions have been made.*

*[…]*

*15. The Kyiv Pride equality march, initiated by Ukrainian Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) activists, has been held in Ukraine every year since 2012. Seven criminal cases have been initiated on the basis of suspected offences committed in 2017: one of these is pending before court and three are at the stage of pre-trial investigation.*

17. Motives of intolerance on grounds of SOGI are not mentioned in the Criminal Code of Ukraine (CCU) as aggravating circumstances in committing a crime. Thus, such motives are absolutely disregarded during investigation of crimes and sentencing of perpetrators. Extremely rarely, and usually under repeated complaints of the victims or human right defenders, the police started investigations of crimes allegedly motivated by homo/transphobia under Article 161 of the CCU. However, since this Article only deals with racial, national or religious hatred as well as with discrimination on any ground, it cannot be legally used for investigation and trial of other crimes. All initiated investigations of crimes allegedly motivated by homo/transphobia under this article have been closed without bringing accusations to perpetrators.

18. Meanwhile, crimes motivated by intolerance on SOGI grounds are among the most widespread forms of hate crimes in Ukraine according to the data reported both the police and independent observers. Thus, in 2018 the National Police of Ukraine reported to the OSCE about 9 hate crimes on SOGI grounds while independent observers reported about 105 such incidents.[[4]](#footnote-4)

19. The Action Plan includes Action 3 of Para. 105 which provides for, in particular, till the 2nd quarter of 2016

*developing and submitting to the Cabinet of Ministers of Ukraine a bill to amend the Criminal Code of Ukraine regarding:*

*[…]*

*providing punishment for crimes committed under motives of intolerance on such grounds as race, skin colour, religious beliefs, sexual orientation, transsexuality, disability, language (amendments to Paragraph 3 of Article 67, Parts 2 of Articles 115, 121, 122, 126, 127, 129, Article 293)*

20. In April 2020, members of parliament from the ruling party Sluha narodu (Servant of the People) introduced in the Verkhovna Rada three alternative bills that provide for implementation of this provision, namely draft laws 3316, 3316-2 and 3316-3. These legislative proposals have not yet been considered by the relevant parliamentary committee and submitted to the consideration on a plenary session of the parliament. Nash Mir Center is concerned by a rather quite active and coordinated campaign of conservative religious circles, including some other members of parliament from Sluha narodu, against these bills which does not face any visible reaction and counteraction from the Ukrainian government. In the absence of distinct and active support of these bills by the Ukrainian President, the government, and the leadership of the ruling party, the proposal would be most likely rejected by the parliament.

13. **Nash Mir Center recommends the Committee to request whether the State party plans to effectively advocate adoption of one of the mentioned bills (3316, 3316-2, 3316-3) by the Verkhovna Rada.**

1. Nash Mir Center, *Old problems, new prospects. LGBT situation in Ukraine in 2019*, 2020, p. 34, <https://gay.org.ua/en/blog/2020/01/30/old-problems-new-prospects-lgbt-situation-in-ukraine-in-2019/> [↑](#footnote-ref-1)
2. C. Åhlund, W. Sorgdrager, *Comments on the draft law On the Principles of Prevention and Combating Discrimination in Ukraine*, 2012, para. 7. [↑](#footnote-ref-2)
3. Please see note 1. p. 40, 42. [↑](#footnote-ref-3)
4. <https://hatecrime.osce.org/ukraine?year=2018> [↑](#footnote-ref-4)