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**Study on Homophobia, Transphobia and Discrimination on  
Grounds of Sexual Orientation and Gender Identity**

**Legal Report: Ukraine**

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## **Table of Contents**

<b>A. EXECUTIVE SUMMARY</b>	<b>3</b>
<b>B. FINDINGS</b>	<b>8</b>
B.1. Overall legal framework	8
B.2. Freedom of assembly and association	11
B.3. Hate crime – Criminal law	16
B.4. Family issues	18
B.5. Asylum and refugee issues	22
B.6. Social security, social care and insurance	23
B.7. Education	24
B.8. Employment	27
B.9. Housing	29
B.10. Health care	30
B.11. Intersex Issues	34
B.12. Access to goods and services	35
B.13. Media	36
B.14. Transgender issues	38
B.15. .Miscellaneous	40
B.16. Good practices	43

## A. Executive summary

### *Overall legal framework*

1. Ukraine does not have a comprehensive anti-discrimination law that prohibits discrimination on the grounds of sexual orientation and/or gender identity. Instead, anti-discrimination provisions, none of which explicitly includes sexual orientation or gender identity, are scattered throughout the legal system and are contained, among others, in the Constitution of Ukraine, several Codes and a number of secondary legislative acts. The absence of direct reference to sexual orientation or gender identity in the law allows to assume that gay men, lesbians, bisexual men and women and transgender/transsexual persons are generally protected by the general anti-discrimination norms in the constitutional law; however, with absence of court rulings it is hard to determine how discrimination on the ground of gender identity will be seen and dealt with.
2. Besides, there is no clearly defined and consistent public policy on handling LGB and T issues in Ukraine.
3. In Ukraine no separate anti-discrimination body deals with sexual orientation and/or gender identity. Combating discrimination on multiple grounds, which includes sexual orientation and gender identity, is one of the responsibilities of the Ombudsperson (Уповноважений Верховної Ради України з прав людини/The Representative of Verkhovna Rada of Ukraine in Matters of Human Rights). Nevertheless, the Representative has paid little attention to the problems faced by the LGBT community and on a number of occasions the Office of the Representative proved to be homophobic in dealing with pressing LGBT matters.
4. This situation with the failure of institutional aspect of protecting the rights of LGBT people in Ukraine is made worse by the legally defined inability of public organisations to initiate court cases in their own name and on behalf of victims or participate and intervene in court proceedings as *amicus curiae*.

### *Freedom of assembly and association*

5. Freedom of assembly and association has long been the weaker link in the government's relations with the LGBT community in general and LGBT public organisations in particular. Insufficient, vague and contradictory legal norms and regulations have been the cause of numerous recorded prohibitions of LGBT-related mass public events on the part of local authorities and/or their failure to provide adequate protection to participants in such events.
6. Whilst the law does not set any limitations that may hinder the ability of LGBT people to legalise public organisations for the protection of their rights and interests, there are cases of government interference, especially on the local level. On some occasions local authorities plainly refuse to register LGBT organisations as was the case with "Наш мир" (Our World) in 1999 until international organisations interfered; on others the registration is delayed or postponed for indefinite term (e.g. ИГ «Тематична Галичина» (IG "Thematic Galicia"), 2010) or made conditional upon the presence or absence of reference to sexual orientation and/or gender identity<sup>1</sup> in the organisation's statutory documentation (e.g.

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<sup>1</sup> However, it should be noted that while the wording 'sexual orientation' made registering LGB organisations problematic, there has been no case to prove that the wording 'gender identity' resulted to the same effect.

Обласна громадська організація «Люди Буковини» (Oblast Public Organisation "People of Bukovina"), 2008).

#### *Freedom of expression*

7. Whilst the Constitution of Ukraine guarantees everyone the right to generally unrestricted freedom of expression, for the purposes prescribed in most international legal documents (i.e. national security, preventing disturbances or crime, etc.), LGBT people's rights have been limited on a number of occasions by invoking various provisions of the Protection of Public Morals Act and Art. 301 of the Criminal Code. The latter specifically deals with prohibition of production and dissemination of materials, whose 'obscenity' is defined by acceptability or non-acceptability in the eyes of public morality.

#### *Hate crime - Criminal law*

8. The Ukrainian legal system does not contain explicit prohibition of hate speech in relation to sexual orientation and/or gender identity. The corresponding articles (Art. 161 and 300) of the Criminal Code contain only a limited number of grounds (i.e. race, nationality (ethnicity) and religion) which are protected from incitement of hatred and intolerance.
9. No provision of the Criminal Code can currently be interpreted as protecting LGBT people from hate crimes and/or considering homophobic/transphobic motivation an aggravating factor. Besides, there is a tendency among attorneys to seek reduction in punishment or pardon for their clients under the pretence that their victims were homosexuals and were battered or murdered for their own illegal 'indecent' behaviour (e.g. offering to have sexual intercourse). In one known case the court granted pardon in such a case by ruling that it was a crime of passion.

#### *Family issues*

10. Same-sex marriages or civil registered partnerships are not allowed in Ukraine and there is an academic debate (with the lack of official legal interpretation) whether same-sex couples constitute a family at all. As a result, LGB people are unable to access marriage or family related rights, benefits and privileges.. For instance, LGB people are not allowed to adopt as couples (though technically speaking they can do so individually) or have guardianship over their partners' children. As a couple, they have no access to assisted reproduction and are not subject to family reunification provisions of the law regulating the status of refugees in Ukraine.
11. Transgender persons also experience some further elements of discrimination in the field of family law. If they wish to undergo gender reassignment treatment, transgender people are required to subject themselves to psychiatric treatment in order to receive authorisation for sex change. In addition, the law requires that clinicians must not actively treat the patient if they are not single nor have any children. Furthermore, they are not allowed to adopt children.

#### *Asylum and refugee issues*

12. In theory, Ukrainian refugee law provides protection to LGBT people on the ground of membership of a social group. In practice, however, there have not been many cases of people seeking refuge in Ukraine because of fear of persecution on the grounds of their

sexual orientation and/or gender identity. Therefore, judicial practice is inconsistent and whilst there are cases where such people are granted asylum, there are also cases where people were denied refuge.

#### *Social security, social care and insurance*

13. Neither primary, nor secondary legislation in Ukraine contains provisions that directly discriminate on the grounds of sexual orientation and/or gender identity in the areas of social security and social care. In practice, discrimination on the grounds of sexual orientation and gender identity in this field generally stems from the LGB people's marital and familial status. Whilst lesbians, gay men, and bisexual persons are entitled to their respective social and economic rights as single individuals, they are automatically denied those rights that only families, members thereof, and married couples are entitled to.

#### *Education*

14. Ukrainian law, regulating the area of education, does not contain any provisions that may be interpreted as discriminatory to students and faculty on the grounds of sexual orientation and/or gender identity. On the contrary, it contains generic anti-discrimination clauses with open lists of protected grounds and stipulates that everyone should be able to fully develop his/her abilities, talents and personality. However, the legal system does not recognise such phenomenon as bullying and therefore does not explicitly guarantee any protection and/or compensations in this regard.
15. At the same time, a number of provisions are directed to the protection of children's morality and health, which is interpreted to effectively prevent any discussion of LGBT issues in schools and universities. There are currently no courses on human sexuality and this topic is not raised in the context of any other more general courses on basic life skills. Only university students specialising in medical science and psychology/psychiatry can be educated around these issues, but generally it is done within a medical model.

#### *Employment*

16. The Labour Code of Ukraine does not provide explicit protection from discrimination on the grounds of sexual orientation and gender identity. Although these grounds are hypothetically implied under 'other circumstances' included in the law, practice and official commentary of the Supreme Court of Ukraine, a project of the new Labour Code proves otherwise. Thus, the Supreme Court insisted on the exclusion of sexual orientation from the new Labour Code arguing that it provides additional privileges to sexual minorities, has the potential to disrupt work relations, and contradicts the norms of morality.
17. Labour law in Ukraine also does not have any reference to the special needs of transgender persons and therefore contains no provisions in relation to accommodating these needs.

#### *Housing*

18. The right to a standard of living and housing is guaranteed to everyone in Ukraine. At the same time, none of the anti-discrimination provisions contained in the Civil Code of Ukraine, the Housing Code of Ukraine and other related legislative acts mention sexual discrimination and/or gender identity as protected grounds. This results in discrimination,

which, considering the peculiarity of this field of social relations, goes under the radar of law enforcement and judicial establishments.

19. More visible is discrimination in the context of property succession and related eviction, which commonly results from the inability of same-sex partners to automatically inherit from one another. Ukrainian law does not provide for any protection in this regard.

#### *Health care*

20. Ukrainian law concerning health care, apart from provision that deal with specific health issues pertaining to a certain sex/gender, is gender-neutral. In general, it does not contain any provision that could be interpreted as discriminatory on the grounds of sexual orientation and/or gender identity. Despite this, two studies conducted by “Наш мир” (Our World) in 2005 and 2007 show that respectively 16.6 percent and 13.5 percent of respondents, lesbians, gay men, and bisexual persons, faced discrimination in the field of health care. Study reports show that most commonly occurring violation is disclosure of personal medical information or information about the patients’ sexual orientation (outing). In the 2005 study only 1.2 percent in the entire sample stated that they were denied access to medical services, specifically psychological consultation, because of their sexual orientation. Several trainings for health care doctors aimed at reducing stigmatization and discrimination of homosexual people were administered by AIDS Foundation East-West (AFEW), International HIV/AIDS Alliance in Ukraine, and a number of national and regional LGBT organizations (e.g. «Наш Мир» (Our World) and «Донбасс СоцПроект» (Donbass SocProject) with support from Konnekt Plus within the framework of the project “Network”). However, despite being effective and evaluated positively by participating medical professionals, these endeavours did not have sufficient coverage and sustainability.
21. According to a recent report by “Інсайт” (“Insight”) transgender persons face similar problems with access to health care.<sup>2</sup> Ukrainian legislation does not mention the term ‘transgender/transsexual’ or equivalent terms: it is primarily a medical term in Ukraine. Overall, transgender/transsexual persons are treated as psychiatric patients, and an unduly strict and ‘prohibiting’ procedures are in place for those who would like to undergo gender reassignment procedure. .

#### *Access to goods and services*

22. National LGBT organisation “Наш мир” (Our World) in their 2007 study of homophobia and discrimination on the ground of sexual orientation in Ukraine found that over 22.5 percent of their LGB respondents faced discrimination in access to goods and services. A similar picture is drawn by the 2010 study on transgender people conducted by the Public Organisation “Інсайт” (Insight).<sup>3</sup> Due to the absence of comprehensive anti-discrimination legislation that could expressly prohibit discrimination in this field it usually goes unnoticed and such cases never get to the courts.

#### *Media*

23. Ukrainian law does contain a number of provisions (i.e. prohibition to use the media to incite hatred, violate human honour and dignity, propagate the inferiority of people owing to their membership of a social group, etc.) that may be interpreted as prohibiting, defaming

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<sup>2</sup> Иванченко С., *Ситуация трансгендеров в Украине: Отчёт по исследованию*. Киев: ОО «Інсайт», 2010. This report is currently being translated into English.

<sup>3</sup> Ibid.

and discriminatory depictions of LGBT people and the community. Indeed, most of LGBT-related material is neutral, albeit unprofessional from the point that much information is taken from only one source without running it against alternative sources and very few authors are competent to discuss matters of human sexuality.

24. At the same time materials in the media are subject to scrutiny for conformity with public morals. This is where most prohibitions on LGBT-related materials occur.

#### *Miscellaneous*

25. The relations between the LGBT community and law enforcement agencies such as police have been very problematic. On the one hand, the law obliges the police to protect the rights of people regardless of the membership of a particular social group, which could be interpreted to include sexual orientation and gender identity. Despite this obligation, there has been a number of recorded violations of LGBT people's rights. On the other hand, the police are required to identify people who belong to groups at risk of contracting HIV/AIDS and take them to medical establishments for obligatory examination and, if necessary, treatment.
26. LGBT people are still prohibited from being blood donors in Ukraine.

#### *Good practices*

27. No good practices have been identified.

## B. Findings

### B.1. Overall legal framework

28. Respect for and protection of fundamental human rights and the principle of equality are recorded in Конституція України (The Constitution of Ukraine), adopted on 28 June 1996. The text of the Constitution contains Art. 3, which recognises the human being, and his or her life and health, honour and dignity, inviolability and security, as the highest social value. The article also states that human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State. To affirm and ensure human rights and freedoms is the main duty of the State.
29. In further articles, the Constitution provides for the specific rights and freedoms that citizens of Ukraine, as well as foreigners and stateless persons, are guaranteed. Of utmost important in the context of this study is, however, Art. 24, which reads: "Citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics. [...]".
30. Clearly, it does not include sexual orientation and/or gender identity as explicitly protected grounds. However, since the list of such grounds in this article is open and the legal, especially constitutional texts should in principle be interpreted broadly, sexual orientation and gender identity should be understood as included under the 'other characteristics'. This understanding is purely theoretical, though. Currently, there is no official LGBT-inclusive legal interpretation of this article by either Конституційний Суд України (The Constitutional Court of Ukraine) or Верховний Суд України (The Supreme Court of Ukraine), which leaves the decision on whether sexual orientation and/or gender identity are protected or not at the discretion of individual judges in the individual cases that may arise. Judicial practice in this regard has been inconsistent and, in the case when the Supreme Court of Ukraine issued its opinion about a project of the Labour Code of Ukraine (for a detailed discussion please see the section on employment), even discriminatory. Therefore, concluding with any degree of certainty that sexual orientation and gender identity are covered by the Art. 24 of the Constitution of Ukraine may simply be wishful thinking.
31. The same applies to Art. 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ratified on 17 July 1997) and Protocol 12 (ratified on 27 March 2006), which, according to Art. 9 of the Constitution of Ukraine and Закон України "Про міжнародні договори України" № 1906-15, 29 June 2004 (International Agreements Act No. 1906-15, 29 June 2004), are part of the national law. Since neither the Convention, nor the Protocol contain a direct reference to sexual orientation or gender identity, and provided that any affirmative interpretation by the European Court of Human Rights to that effect will not apply unless made specifically in relation to Ukraine (as per Закон України "Про виконання рішень та застосування практики Європейського суду з прав людини" № 3477-15, 23 February 2006 (Execution of Decisions and Implementation of Practices of the ECHR Act No. 3477-15, 23 February 2006), it is hard to say whether these anti-discrimination provisions will be effectively utilised to ensure protection for LGBT persons.
32. Ukraine does not have a comprehensive anti-discrimination law. Anti-discrimination provisions, similar to that of the Art. 24 of the Constitution of Ukraine, are scattered



throughout the legal system and are contained in a number of other legislative acts, namely Сімейний кодекс України (Family Code of Ukraine), Кодекс законів про працю України (Labour Code of Ukraine), Закон України “Про освіту” (Education Act), and others. None of them include sexual orientation and/or gender identity as protected grounds and some of them, for example, Закон України “Про міліцію” (Police Act), contain a closed list of protected grounds exclusive of sexual orientation and gender identity. Besides, none of the aforementioned legislative acts contains a clear and unambiguous definition of discrimination. The definition is contained only in the Закон України “Про забезпечення рівних прав та можливостей жінок і чоловіків” № 2866-15, 08 September 2005 (Equal Rights and Opportunities for Men and Women Act No. 2866-15, 08 September 2005) and is incomprehensive in that it is limited exclusively to direct discrimination on the ground of sex.

33. Unifying scattered anti-discrimination provisions in the form of a single anti-discrimination legislative act will, thus, allow to: 1) develop a uniform definitional basis, inclusive of unambiguous definitions for direct and indirect discrimination, victimisation, and discriminatory harassment, 2) avoid interpretational inconsistencies and, therefore, ensure effective enforceability of non-discrimination provisions in the courts of law, and 3) ensure equal and consistent application of the law throughout the State.
34. Ukraine does not have an anti-discrimination body that specifically deals with LGBT issues as well as with any other special marginalised group. Instead, there is a single institution of Ombudsperson, regulated by Закон України “Про Уповноваженого Верховної Ради України з прав людини” № 776, 23 December 1997 (The Representative of Verkhovna Rada of Ukraine in Matters of Human Rights Act No. 776, 23 December 1997), that works with multiple discrimination grounds. The Representative (ombudsperson) is a public servant who acts independently of other governmental bodies (Art. 4). His/her duties are outlined in Art. 3 of the Act and include, among others, protection of rights and freedoms, guaranteed by the Constitution of Ukraine, secondary legislative acts and international agreements, ratified by Ukraine; prevention of violations of human rights and freedoms and ensuring that victims receive proper compensation; **prevention of any forms of discrimination**, etc. In order to effectively and efficiently fulfil these duties, the Representative has an extensive range of competencies. These include the right to consult governmental authorities on the matters related to human rights, attend open and closed meetings of the parliament, ministries, various governmental departments, committees and agencies on all levels and other organisations regardless of the form of ownership, request necessary information from them and be granted unrestricted access to secret materials, attend court hearings, etc. (Art. 13). In the context of combating discrimination, also on the grounds of sexual orientation and gender identity, it is important to note the Representative's right to request of Конституційний суд України (The Constitutional Court of Ukraine) official evaluations of secondary legislation for its conformance to the anti-discrimination norms, established in the Constitution, as well as request of the court official interpretations of various legal provisions contained in the Constitution itself (Art. 13, par. 3); conduct investigations and request oral and written explanations from various government agencies and their representatives (Art. 13, par. 8); review individual complaints (Art. 17) and initiate court cases in his/her own name on behalf of persons who, for valid reasons, are incapable of doing so, as well as participate in the court proceedings personally or through his/her representative (Art. 13, par. 10); issue binding decisions in cases of discrimination or other violations of human rights and direct them to respective governmental agencies and private organisations in order to compel them to act accordingly (Art. 13, par. 11; Art.15).
35. Despite having such a broad mandate, not much has been done by the ombudsperson to combat homophobia/transphobia in Ukraine. Moreover, there are also indications of prevailing homonegativism within the ombudsperson's office. For example, extraordinarily revealing was an address of the Ukrainian ombudsperson N. Karpacheva at the

presentation of “The Teachings of the Russian Orthodox Church on Dignity, Liberty and Human Rights” in June 2009. She stated that “we cannot and are not obliged to accept all components of the modern human rights concept unreservedly and without their critical conceptualisation. Taking part in worldwide processes we have no right to lose our millenary spiritual gains. For this purpose international standards in the field of human rights and freedoms must be harmoniously combined with traditional moral, cultural and family values of the Ukrainian people”. Such a statement, in the authors opinion, leaves little hope for LGBT people owing to the long-standing and fairly persistent tradition of invoking such arguments as morality and family values to deny them rights.

36. The letter dated 20 February 2009 from the Head of the Unit for International Co-Operation and International Law of the Office of the Ukrainian ombudsman, Mariia Synenka, to the leadership of the national LGBT organisation “Наш мир” (Our World) draws on similar arguments when discussing prospect for combating discrimination on the ground of sexual orientation and, more specifically, prospects for legalising same-sex civil partnerships:
37. “[...] I would like just to emphasise that according to the Constitution of Ukraine, citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on any grounds. The Constitution also provides that no one shall be subject to interference in his or her personal life. Moreover, Ukraine has abolished a criminal responsibility for a voluntary sexual relationship between same-sex couples.
38. Thus, the Ukrainian legislation forbids any discrimination and guarantees equal protection to all persons under its jurisdiction, those belonging to sexual minorities in particular. [...]
39. The Universal Declaration of Human Rights and the European Convention for Human Rights have significant provisions ensuring respect towards other people's rights, as well as protecting moral values can, to some extent, limit the realisation of human rights in public sphere. Thus, these fundamental international documents have explicitly recognised that a moral responsibility is an integral part of the observance and protection of human rights. It concerns every person irrespective of his/her sexual orientation.
40. The Ukrainian society which is mainly tolerant towards the representatives of sexual minorities, at the same time totally upholds the traditional family values, that is why the falling from these values cannot be considered the norm. It would be more correct to leave the freedom of choice of sexual behaviour in private, instead of advocating non-traditional sexual relations as natural and normal ones, as the majority of people consider such an advocacy as infringement of moral standards, insult of religious beliefs, violation of the right to moral and spiritual development of a person. It is of great importance, otherwise one can provoke a hostile attitude of society, to sexual minorities in this case.
41. Art. 12 of the European Convention for Human Rights provides that men and women of marriageable age have the right to marry and found a family according to the national laws. So, the Convention stipulates that every country in this sensitive field has to take into account the culture, traditions and customs of the people”.
42. In the situation when the ombudsperson is not much involved with protecting the rights of LGBT people, non-governmental organisations have neither legal authority, nor sufficient resources to take upon themselves the role of major ‘advocates’. Their activities, mainly regulated by Закон України “Про об’єднання громадян” № 2460-12, 16 June 1992 (Civil Associations Act No. 2460-12, 16 June 1992), are limited to representation and advocating their legal interests and legal interests of their members in governmental and other public bodies, participation in political activities, organisation of mass public events (i.e. meetings, demonstrations, etc.) and information campaigns, put forward policy proposals before authorities, monitor observation of the principle of equality, etc. (Art. 20). The Ukrainian law

does not provide for involvement of public organisations in court proceedings effectively neglecting their potential as amicus curiae-type consultative bodies. As such, the assistance public organisations can provide to their members is limited to private legal advice, lobbying their interests before the government and in this relation conducting research and doing educational work.

43. From the policy perspective, Ukraine does not have any national policy that is in any way positively concerned with the rights of LGBT people. There is no mention of LGBT people's rights and specific needs in public discussion on family issues, social protection and social care, etc. Fairly revealing in this respect are official letters from different Ministries that came as a reply to an open letter of LGBT organisations to the Ukrainian government, issued in 2007. Here, for instance, Міністерство у справах сім'ї, молоді і спорту (The Ministry of Family, the Youth and Sports) replied that their policies are based on Державна програма підтримки сім'ї на 2006-2010 рр. (2006-2010 State Programme of Family Support), which does not recognise same-sex families and as such does not provide for any social, legal or economic support to them.<sup>4</sup>
44. As another example, Міністерство юстиції України (The Ministry of Justice of Ukraine) recommended in their letter that sexual minorities should be looking for an "alternative to legal means to resolve their problems".<sup>5</sup>
45. The issue of sexual orientation and gender identity is also not included in any of State-approved general human rights education programmes or educational and awareness-raising programmes aimed at developing tolerance toward minorities.
46. In fact, the only policy area in which gay and bisexual men are recognised is in HIV/AIDS prevention programmes (e.g. Загальнодержавна програма забезпечення профілактики ВІЛ-інфекції, лікування, догляду та підтримки ВІЛ-інфікованих та хворих на СНІД на 2009-2013 роки (National Program for HIV prevention, treatment, nursing and support of the HIV positive and AIDS afflicted for the years 2009-2013) made into law No. 1026-17, 19.02.2009). In this context men who have sex with men people are labelled as a 'group at risk' and the policy deals with them accordingly.

## **B.2. Freedom of assembly and association**

### *Freedom of assembly*

47. Ukrainian law regulating the right to freedom of assembly is insufficient, which most often leads to its violation, especially in relation to LGBT people. There is currently no single legislative act that would give legal definition to meetings, demonstrations, manifestations, pickets and distinguish between them, detail rules and procedures for organising and holding peaceful assemblies, and clearly and unambiguously establishing the rights and responsibilities of parties involved. The only legal document that guarantees the right is Конституція України (The Constitution of Ukraine). Art. 39 simply stipulates: "Citizens have the right to assemble peacefully without arms and to hold meetings, rallies, processions and demonstrations, upon notifying in advance the bodies of executive power or bodies of local government. Restrictions on the exercise of this right may be established by a court<sup>6</sup> in accordance with the law and only in the interests of national security and public order, with the purpose of preventing disturbances or crimes, protecting the health of

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4 Лист Міністерства у справах сім'ї, молоді й спорту України № 51/3176, 10 April 2007.

5 Лист Міністерства юстиції України № 21-46-1061, 24 October 2006.

6 Also in Art. 182 of Кодекс адміністративного судочинства України № 2747-4, 06 July 2005 (Code of Administrative Judicial Procedure No.2747-4, 06 July 2005).

the population, or protecting the rights and freedoms of other persons". In addition, Закон України "Про місцеве врядування" № 280, 21 May 1997 (Local governance Act No. 21 May 1997) in Art. 38 and Закон України "Про місцеві державні адміністрації" № 586-14, 09 April 1999 (Local State Administration Act No. 586-14, 09 April 1999) in Art. 25 entrust local government to decide upon holding of meetings, demonstrations, manifestations, etc. and to ensure control and protection of public order.

48. This latter norm, reflected in the secondary legislation, is misleading as much as it contradicts the Constitution. The phrasing 'to decide upon' establishes authorisation-based rather than registration-based principles, set forth in the Constitution. This results in attempts of local governments to prohibit peaceful assemblies whereas only courts may do so. In reality, a more commonplace practice includes local courts prohibiting LGBT-related public events on the tip from local government officials and/or after an 'unofficial' restrictive order was issued by the local authorities.
49. No legislative act or court interpretation contains an explanation of conditions under which fear of potential disturbances and/or crimes can be so well-founded as to result in the prohibition of a peaceful assembly, as well as what 'public health' in the context of the right to freedom of assembly means.
50. On numerous occasions these legal conflicts, homophobia, hostility, danger of violence, and/or the failure of public authorities to provide adequate protection translated into prohibition of LGBT cause-related assemblies and inhibited the LGBT community from exercising the rights to freedom of assembly in Ukraine.
51. The first open participation by members of the LGBT community in a public event took place in 2003, during the second UN sponsored "Race for Life", an HIV/AIDS prevention related event. Organisations "Жіноча мережа" ("Women's Network") and "Наш мир" (Our World) took part so as to attract public attention to the problems of HIV positive LGBT people.
52. Following objections by religious organisations, the city of Kiev authorities prohibited the "Women's Network" from taking a 9-metre rainbow flag on the Race, but allowed them to take an AIDS Memorial Quilt instead. The letter from the authorities read: "usage of big rainbow flag and informational materials with gay symbols can create unpredictable situations and thus can violate the rights of other citizens. This is why we ask you to refrain from your declared actions".<sup>7</sup>
53. During the event religious organisations held a separate demonstration against the involvement of LGBT people. Then skinheads destroyed the stand of "Наш мир" (Our World), and violently attacked its representative. Hostile onlookers shouted abuse. Around 30 men in black shirts confronted a group of approximately 40 LGBT people carrying the Memorial Quilt, and, unhindered by police or organisers, tried to prevent them from participating in the Race, forcing the concealment of the Quilt and other symbols. They failed to stop their participation, but continued to threaten the LGBT participants, who, in the absence of police protection, and in order to avoid possible violence, eventually removed identifying symbols, and dispersed.
54. The difficulties encountered with the 2003 "Race for Life" have had a significant deterring effect on further attempts to exercise the right to freedom of assembly. However, in May 2005, on the occasion of the first International Day against Homophobia in Kiev, LGBT organisations, led by "Наш мир" (Our World), decided to picket the Interregional Academy of Personnel Management following its expulsion of a student on account of his sexual orientation. The City Council prohibited their picket, on the grounds that another

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<sup>7</sup> Лист київської міської адміністрації №005-939, 18 September 2003.

organisation was going to have a public event at the same place and time. However they ignored the prohibition and the picket passed off without significant incident.

55. In May 2008 Миколаївська асоціація геїв, лесбійок та бісексуалів “ЛіГА” (Mykolayiv Association for Gays, Lesbians and Bisexuals “LiGA”) tried to organise an "informational event" aimed at overcoming prejudice and stereotypes. It included placing posters on advertising boards in the city, conducting three brief street actions, and showing a documentary in the organisation's offices. On 16 May the organisers were handed a notification prohibiting the activities. A statement from the local authorities said: "there was an appeal from leaders of several religious denominations [...], representatives of Orthodox, Roman Catholic, Evangelical Christian, Seventh Day Adventist, Eparchy of Christianity, Baptist, Union of Independent Orthodox churches [...] that represent almost 10,000 parishioners demanding that the local authorities prohibit this public event, organised by the representatives of sexual minorities". The prohibition on the event was justified as follows: "Such public events represent a threat to civil order, may result in disturbance of public peace, and of incitement to mass riots and conflicts".<sup>8</sup>
56. On 16 May 2009, during a peaceful public campaign to commemorate the International Day Against Homophobia and Transphobia that was held in the city of Lviv and authorised by the local government, the police were inert and could not fully prevent aggressive attacks against the representatives of LGBT community by a group of extremists. Participants of the event were verbally harassed and thrown eggs at; the situation escalated when several groups of young people approached the participants with iron rods and only then did the police intervene.
57. On 16 May 2009, just like in the previous year, Mykolayiv local authorities prohibited the Association “LiGA” to organise a campaign with outdoor activities to “protect public order and prevent conflicts [that may arise] because of moral and religious sentiments of the townspeople”.<sup>9</sup> Despite the prohibition, members of the organisation held a closed event (photo exhibition). In response, in June the local authorities informed the directorial board of “LiGA” in writing that the organisation had broken the law and issued a warning that in case of re-occurrences of such violations on the part of the organisation, it will be forcefully dissolved.<sup>10</sup>
58. At the same time, there are no reported problems with holding homophobic public events and demonstrations. For instance, the organisation “Любов проти гомосексуалізму” (“Love Against Homosexuality”), legalised on 21 April 2009, has been unrestrictedly organising homophobic manifestations in the centre of Kiev and in other cities of Ukraine since 2007.

#### *Freedom of association*

59. Art. 36 of the Constitution of Ukraine guarantees citizens of Ukraine the right to freedom of association in political parties and public organisations for the exercise and protection of their rights and freedoms and for the satisfaction of their political, economic, social, cultural and other interests. The Constitution also establishes this right may be restricted in the interests of national security, public order, protection of health of the population and protection of rights and freedoms of other people.

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8 Лист Миколаївської міської ради № 5656/05-14-15, 16 May 2008.

9 Лист Виконавчого комітету Миколаївської міської ради № 1170/209/14/24, 06 May 2009. Also there: “(...) we consider it possible to hold the festival indoors only, and oppose the festival being held in open areas (streets, squares, etc.) in Nikolaev”.

10 Лист Миколаївської міської ради № 5314/509-14-15, 15 June 2009.

60. Закон України “Про об’єднання громадян” № 2460-12, 16 June 1992 (Civil Associations Act No. 2460-12, 16 June 1992) in Art. 4 further clarifies that public organisations may not be legalised if their objectives include undermining of constitutional or territorial order of Ukraine and national security of the State; propaganda of war, violence and cruelty, fascism or neofascism; incitement to national or religious hatred; creation of illegal paramilitary forces; and setting restrictions to the exercise of human rights.
61. Thus, the law sets no restrictions that may hinder the ability of LGBT people to create associations to protect their rights and freedoms or satisfy their common interests. In fact, however, there have been multiple violations of the right of LGBT people to association. One of the cases developed around the LGBT organisation “Люди Буковини” (People of Bukovina). On 12 December 2008, Administration of Justice in Chernivtsy oblast registered this public organisation. However, administrative officials made the founders of the organisation delete the wording “sexual orientation” from the Statute agreeing only to the use an absurd “gender orientation”. Thus, one of the statutory missions of the new organisation reads as follows: “to contribute to promoting tolerance toward people with non-traditional gender orientation in the society”.
62. In September 2010 the LGBT initiative group «Тематична Галичина» (“Thematic Galicia”) reported undue and unmotivated delays of the registration process on the part of the local, Ivano-Frankivsk Department of Justice. This resulted in the decision of the aforementioned initiative group to change their name to «Квір-ІФ» (“Queer-IF”), modify its statute to minimize instances of referring to LGBT as the organisation’s target audience, and apply for registration anew, as a new entity.
63. Earlier registered “Наш мир” (date of registration: 30 November 1999) and Lviv LGBT organisation “Тотал” (“Total”) (date of registration: 17 April 2009) in the private interviews with the author also reported having similar problems during the process of registration with respective Departments of Justice: refusal to register, unmotivated delays, or registration conditional on removal of any references to sexual orientation in statutory documentation.
64. In all cases of discrimination refusal to legalise was overcome with the help of non-legal measures, i.e. involving third parties (e.g. international organisations) to put pressure on the authorities, initially registering as a non-LGBT organisations and changing its statutory documents post-registration to adequately reflect organisation’s target audience, etc. None of the conflicts resulted in a court case and therefore there is currently no court ruling that could be referred to in case similar problems arise in the future.
65. Statistics and Case Law
66. There are currently no statistics that would allow to precisely calculate the number of pro- and contra-LGBT public events in Ukraine. Data, presented in Annex 1, were retrieved from the National LGBT Archive, property of the organisation “Гей Форум України” (“Gay Forum of Ukraine”), and is an estimate since it may fail to consider minor events that were organised on a local level and did not receive broad publicity.
67. In relation to the prohibition of outdoor public events by Mykolayiv City Council in 2008, LIGA’s complaint to the Central District Court (submitted on 27 May 2008) was dismissed (effective 19 August 2008) with the following argument: *“From the text of the claim and enclosed materials attached, the organiser of the protest is LiGA, Mykolayiv Association for Gays, Lesbians and Bisexuals, and not O. M Alyokhin (executive director of the organisation and the applicant), therefore the case has been filed by a person without the necessary administrative and procedural capacity”*. Further complaints with the Central District Court with regards to the case (dated 23 October 2008 and 01 July 2009 respectively) were disregarded and the case was neglectfully closed by the local court authorities. Subsequent appeal and complaint to the State Judicial Administration of

Ukraine, Higher Counsel of Justice, the Minister of Justice of Ukraine, to the Chairman of the Supreme Court of Ukraine, and to the Ombudsperson (dated 26 August 2009) also did not result in any positive outcome.

On 28 October 2009 the Central District Court of Mykolayiv refused to accept another appeal from LiGA stating "... as regards the rightness of the mentioned actions, the court determines, organised peaceful actions of citizens are only actions, a right on the conduct of which is not guaranteed either by the Constitution of Ukraine nor other norms of current legislation. So, the Applicant does not have a right to conduct the action, so the prohibition of mentioned action objectively does not violate the rights of applicant". The decision was appealed to Odessa Appeal Administrative Court on 26 November 2009.

### *Freedom of expression*

68. The right to freedom of expression in Ukraine is guaranteed by the Art. 34 of Конституція України (The Constitution of Ukraine), which reads: "Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs. Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice. The exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice". De jure, this constitutional provision equally protects the freedom of expression of LGBT people as that of other citizens of Ukraine.
69. In the context of homophobia/transphobia in Ukraine the only problematic aspect of the article is that it establishes the possibility of restricting freedom of expression for the reason of protecting the health of the population. More precisely, it is not a restrictive reason itself but the absence of a working legal interpretation of what 'health of the population' means in the context of this right - specifically whether it implies only physical health or also mental health and, more importantly, morality of the population - that raises concerns if interpreted broadly. Although so far there have been no court rulings or orders by other governmental agencies that would directly appeal to this article and/or that specific restriction in order to prohibit or anyhow else interfere with activities, undertaken by LGBT organisations, this restriction has been invoked indirectly by Національна експертна комісія із захисту суспільної моралі (National Expert Commission on the Protection of Public Morals) to instigate prohibitions of LGB materials.
70. For instance, on 22 February 2008 the office of the Public Prosecutor in Kiev initiated criminal action against the editorial staff of the "Gay.Ua" newspaper, published by the LGBT organisation "Наш мир" (Our World), on the basis of Article 301.3 of the Criminal Code of Ukraine on distribution of pornography. Such action was initiated at the instigation of the National Expert Commission on the Protection of Public Morals, which in December 2007 had ruled that "Gay.Ua" contains pornographic materials. So far all local courts have rejected the appeals from "Наш мир" (Our World) and the case is still under court review.
71. One should consider several interesting points to see how homophobia plays a major role in this case. First, there is no argument that freedom of expression shall not be prohibited for the sake of protecting public morality, as such was the ruling of ECHR (*Handyside v. The United Kingdom* (1976)). A more important question is what constitutes an affront to public morals when assessing whether materials are erotic or pornographic and how accurate the assessment criteria are. Закон України "Про захист суспільної моралі" №1296-4, 20 November 2003 (Defense of Public Morals Act No. 1296-4, 20 November

2003) does not contain any such criteria on which prohibition may be reasonably justified. As a result, prohibitions and restrictions are applied selectively and partially at the discretion of public officials. As such, no reasonable person can predict whether his/her actions will be violating the law in the part where it protects public morality. In turn, the official commentary to the Criminal Code for the purposes of the aforementioned Art. 301 defines pornographic materials as any graphic, audio or video product that is “unacceptable in the eyes of public morality”. In the author’s opinion such interpretation is too vague and allows for unreasonable restriction of display of alternative manifestations of human sexuality and/or gender identity that public morality views as ‘unacceptable’.

72. Besides, the criteria established by the National Expert Commission are also discriminatory against manifestations of alternative sexuality. Most of the established criteria for eroticism require that an image, graphic or video, should imply “the entire complex of sexual feelings that naturally occur between **reproductive people**”. The concept of a ‘reproductive person’ sets the spirit of these criteria and therefore defines their application. As such, any depiction of sexual feelings that occur between ‘un-reproductive people’, such as sexual minorities, may be interpreted as constituting pornography.
73. The second issue at hand is public accessibility of ‘obscene materials’, which is of particular relevance as per Scherer v. Switzerland (1993). “Gay.Ua” was distributed to a closed list of subscribers in opaque envelopes and neither was accessible nor intended for a wider readership. By contrast, similar in contents erotic magazines targeting heterosexual men received positive resolution from the National Expert Commission and are generally available at newspaper kiosks.
74. *Detailed discussion of the relevant to freedom of expression issue of hate speech can be found in the section on criminal law and hate crimes.*
75. There is presently no conclusive statistical, legal or judicial information regarding number of violations of the right to freedom of expression of LGBT people and range of issued sanctions.

### **B.3. Hate crime – Criminal law**

#### *Hate Speech*

76. The Ukrainian legal system does not provide for any definition of ‘hate speech’ and, correspondingly, general prohibition thereof. Art. 161 par. 1 of Кримінальний кодекс України № 2341-14, 05.04.2001 (The Criminal Code of Ukraine No. 2341-14, 05.04.2001) in the revision of Закон України “Про внесення змін до Кримінального кодексу України щодо відповідальності за злочини з мотивів расової, національної чи релігійної нетерпимості” № 1707-17, 05 November 2009 (The Act Concerning Amendments to the Criminal Code of Ukraine in regards to Crimes Committed on the grounds of Racial, National or Religious Intolerance No. 1707-17, 05 November 2009) only marks as punishable “intentional actions directed at incitement of national, racial or religious hostility or hatred, disparagement of national honour and dignity or insult to religious feelings of citizens [...]”. Thus, the law recognises only an extreme form of hate speech and has a closed list of protected grounds, which do not include sexual orientation or gender identity.
77. The second part of the same paragraph – “[...] as well as direct or indirect limitations on the rights and freedoms or establishing direct or indirect privileges for citizens on the grounds of race, colour of skin, political, religious and other convictions, sex, ethnic and social origin, material status, place of residence, linguistic or **other characteristics**”, which



may implicitly cover sexual orientation and gender identity as protected grounds, is not concerned with hate speech since it does not imply incitement to impose 'direct or indirect limitations', but rather an action of establishing such limitations as per the Commentary to the Criminal Code of Ukraine. According to this interpretation of the provision, the Act defines the "setting of limitations" as an act of direct discrimination against a representative of a protected group and not as hate speech, leaving the latter unprohibited if addressed to groups other than national, racial and/or religious.

78. Besides, assuming that this legal norm does mean prohibition to incitement of discriminatory actions/behaviour against LGBT people, one, in fact, would not be able to invoke it in the court unless 'the instance of hate speech' directly targeted him/her and when the perpetrator was a physical person. This stems from two characteristics of the criminal law of Ukraine: 1) the law does not apply to legal entities (e.g. public or private organisations, mass media, etc.) (Art. 18 of the Criminal Code of Ukraine); 2) the law protects only physical persons and certain social relations (e.g. public order), and never social groups. In the light of these facts the potential application and usefulness of this legal norm is reduced to that of Art. 297 of the Civil Code of Ukraine, which provides for the right of a person to bring court action in order to protect his honour and dignity (e.g. against verbal abuse, libel, slander) and seek remedy for moral damage caused. Whilst civil proceeding indeed may be a valid alternative to challenging expressions of hate speech against a single gay, lesbian, bisexual or transgender person, this conjecture is theoretical as there has been no case law proving its effectiveness.
79. Art. 300 of the Criminal Code of Ukraine, which prohibits importation, production and dissemination of works (both printed and video materials) that popularise violence, racial, national or religious intolerance and discrimination, also does not explicitly mark sexual orientation and gender identity as protected grounds and has never been applied to this end.

#### *Hate Crimes and Violence against LGBT people*

80. No provision in the Criminal Code of Ukraine can currently be interpreted as considering homophobic or transphobic motivation an aggravating factor. The aforementioned Art. 161 of the Code has limited scope and application, and is ambiguous for the purposes of interpreting it as protecting LGBT people from hate crimes. Arts. 115 (Premeditated murder), 122 (Premeditated assault and battery), 127 (Torture) and 129 (Threat of murder) have been amended by Закон України "Про внесення змін до Кримінального кодексу України щодо відповідальності за злочини з мотивів расової, національної чи релігійної нетерпимості" № 1707-17, 05 November 2009 (The Act Concerning Amendments to the Criminal Code of Ukraine in regards to Crimes Committed on the grounds of Racial, National or Religious Intolerance No. 1707-17, 05 November 2009) to cover only racial, national and religious hatred or intolerance as aggravating factors to a crime. Similarly, Art. 67 of the Criminal Code of Ukraine, which provides a list of aggravating factors, in par. 3 covers only crimes committed due to hatred on the grounds of race, nationality or religious belief.
81. There are currently no comprehensive and reliable statistics on the number of crimes committed against LGBT people. Since the system of penal law in Ukraine does not recognise homophobia and transphobia as aggravating factors, courts have a tendency to discard them and sexual orientation of the victim as irrelevant to cases at hand. The rationale behind such a tendency is to a certain extent understandable: for one, in most criminal cases that involve murder and robbery (most common type) it is hard to establish whether sexual orientation/gender identity of the victim was the reason for criminal actions on the part of perpetrator(s) and murder and robbery were a 'by-product' or vice versa, i.e.

victim's sexual orientation or gender identity was unknown to perpetrator(s) and robbery and murder were initial objectives.

82. However, there is another noticeable and unsettling tendency: attorneys appeal for reduction of awarded punishments arguing that it was the victim's sexual orientation and his/her illegal 'indecent' behaviour (e.g. offering to have sexual intercourse) that became the reason why they were battered or murdered by defendant(s), who have 'normal' sexual orientation, in respective cases. Judicial practice in such cases is inconsistent. For instance, in one of such cases, reviewed in 2001 by the Supreme Court of Ukraine, the court ruled that committed murder was in fact a crime of passion and, hence, reduced the punishment from seven to four years of incarceration and pardoned the defendant according to Art. 4 of Закон України "Про амністію" № 1713-3, 11 May 2000 (Amnesty Act No. 1713-3, 11 May 2000). A later but similar case reviewed by the Appellate Court in Chernivtsy on 26 August 2008 refused to consider the fact of the victim's illegal 'indecent' behaviour a mitigating circumstance, therefore refusing to grant reduction in awarded punishment.

#### **B.4. Family issues**

##### *Same-Sex Family and Marriage/Civil Partnership Issues*

83. Neither Сімейний Кодекс України (The Family Code of Ukraine), nor Конституція України (The Constitution of Ukraine) currently recognise the right of same-sex couples to contract a civil marriage. Whilst Art. 23.1 of the Family Code recognises the right of every person who has attained a marriageable age (Art. 22.1 set the age limit at 17 year of age for women and 18 year of age for men) to marry, Art. 51 of the Constitution stipulates that marriage is based on the free consent of a woman and a man, and Art. 24.1 of the Family Code defines 'marriage' as a "family union between a woman and a man [...]".
84. In general, Ukrainian law does not recognise an alternative to civil marriage registration schemes regardless of the sex of the partners involved. For instance, Art. 21.3 of the Family Code reads: "A religious marriage ceremony does not constitute a ground [for the woman and man] to have rights and responsibilities of a married couple, except when such a religious ceremony takes place before the creation or renewal of public civil status act registration authorities".
85. Cohabitation or 'de facto marriage' is recognised only between opposite-sex partners and only in as far as property arrangements are concerned.<sup>11</sup> More specifically, Art. 21.2 of the Family Code of Ukraine reads: "Woman and man's living in a family without being married does not constitute a ground for them to have rights and responsibilities of a married couple".
86. Art. 7.5 of the Family Code states: "A party to family relations may not be privileged or restricted on the grounds of race, colour, sex, political, religious and other opinion, ethnic and social origin, property status, place of residence, language and other grounds". Controversial, however, is the question whether same-sex couples should constitute a family altogether in the Ukrainian legal system. On the one hand, the Ukrainian law defines 'family' as consisting of "persons that live together, have a joint household, mutual rights and responsibilities".<sup>12</sup> This broad definition was reiterated in the decision of the

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11 Сімейний Кодекс України (№2947-14, 10 January 2002), ст. 74 (Family Code of Ukraine (No. 2947-14, 10 January 2002), Art. 74).

12 Сімейний Кодекс України (№2947-14, 10 January 2002), ст. 3.2 (Family Code of Ukraine (No. 2947-14, 10 January 2002), Art. 3.2).

Constitutional Court of Ukraine in 1999, which ruled that a family member is characterised by “[...] kinship or marital relations; continual cohabitation [...] and having a joint household”.<sup>13</sup> On the other hand, according to the Art. 3.4 of the Family Code “a family is founded based on marriage, blood ties, adoption, as well as **on other grounds which are not contrary to the law and morals of the society**”. Although there is no case law to support the claim that a same-sex family in fact contradicts public morals and current law in this field, a number of legal experts (for example, Z. Romovska,<sup>14</sup> M. Diakovych)<sup>15</sup> claim that it does and that same-sex partners cannot be legally considered as constituting a family or having familial relations with one another.

87. Unlike LGB persons, transgender/transsexual persons’ access to the institution of marriage is less problematic unless their committed partner pro- or post-operation is of the same sex. Although Сімейний кодекс України (The Family Code of Ukraine) does not contain any provision that specifically targets transgender persons or is relevant to their situation, it is safe to assume that most of its provisions, especially in the parts dealing with divorce and related rights and obligations, will equally and without discrimination apply to them. For instance, according to Art. 68-71 transgender persons do not cease to enjoy the right to common joint property after the termination of marriage, which, if divisible, should be equally divided between the spouses.
88. However, in relation to marriage and family rights two problematic areas can be discerned. For one, the persons who are willing to undergo a sex change operation must not be in a registered marriage at the time of his/her application and its review by the specialised medical board (*see the section on health care for further discussion*).
89. The other legally problematic section concerns spousal maintenance rights and obligations after the termination of marriage. On the one hand, Arts. 76-82 of the Family Code do not contain provisions that may be interpreted as directly or indirectly discriminating transgender persons. On the other, Art. 83 states that one of the spouses loses his/her right to receive maintenance in the case of his/her illness, which necessitates concealing material support (for example, hormonal treatment and sex change operations) from the other spouse.

#### *LGBT Adoption*

90. The Ukrainian law does not contain explicit prohibitions for child adoption by single LGBT persons. Whilst preference is given to married couples in which both partners consent to adopt a child or couples in whose family a child has been/is brought up (Art. 213), Art. 211.1 of the Family Code of Ukraine allows for a single legally capable person that has attained the full age (21 year of age) to adopt a child that should be, according to Art. 211.2, no less than 15 and no more than 45 years younger than the adopter. The only limitation for single adopters set in the Code is that a single foreign citizen may not adopt a child unless s/he is related to the child by blood (Art. 212.9). This will also apply to foreign couples who are legally married in their respective country of origin but whose marriage is not recognised in Ukraine, for instance same-sex registered partnership or marriage concluded in either of the states legally providing for it.
91. Same-sex couples may not adopt jointly as Art. 211.4 of the Family Code of Ukraine provides that persons who are not married to each other may not adopt the same child and

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13 Рішення Конституційного Суду України № v005p710-99 (03 June 2009) “Про офіційне тлумачення терміна ‘член сім’ї” (Decision of the Constitutional Court of Ukraine No. v005p710-99 (03 June 2009) “On the official interpretation of the term ‘family member’”).

14 Ромовська З.М. Сімейний кодекс України: Науково-практичний коментар. - К.: Видавничий Дім “Ін Юре”, 2003.

15 Дякович М.М. Сімейне право: навч. пос. (для студ. вищ. навч. закл.). - К.: Правова єдність, 2009.

because same-sex partnership is not recognised in any form in Ukraine (ut supra). The Article carries a provision that whenever such persons live together as one family, the court may grant them adoption. However, until the controversy over whether same-sex partners constitute a family or not (ut supra) is resolved, this does not seem to apply to same-sex couples. There is currently no case law in this area.

92. Second parent adoption in same-sex couples is also not provided for in the Ukrainian law for the same reasons as set forth above.
93. Arts. 212.5 and 212.8 of the Family Code of Ukraine set forth a strict limitation to child adoption: "A person may not adopt if s/he [...] is registered to undergo a treatment in a psycho neurologic or narcologic dispensary; [...] suffers from diseases whose list is approved by the Ministry of Health of Ukraine". According to the Порядок обстеження осіб, які потребують зміни (корекції) статевої належності (Rules for medical examination of persons who require a change (correction) of sex) transgender persons are required to be hospitalised in a dispensary for no less than 30 days to undergo a full psychiatric and pathopsychologic examination in order to receive the medical board's consent for the operation. Coupled with the fact that transsexualism is still classified in ICD-10, adopted by the Ministry of Health of Ukraine, as a mental and behavioural disorder, this prohibits transgender persons from adopting children in Ukraine altogether. In addition, having children, according to Наказ Міністерства охорони здоров'я України "Про надання медичної допомоги особам, що потребують зміни (корекції) статевої належності" № 57, 15.03.1996 (Order of the Ministry of Health Care of Ukraine "On providing medical assistance to persons who require change (correction) of sex" No. 57, 15 March 1996), is already a serious contra-indication to changing one's sex, which altogether renders the entire issues of paternity/maternity, either proper or adoptive, for transgender persons utterly problematic.
94. Also, according to Art. 47 of the Code, divorce should in no way affect the right of the transgender person to paternity/maternity and to partake in the upbringing of the child/children that were born during and/or less than 10 months after the marriage. However, there have been no cases illustrative of court rulings with regards to how transgender/transsexual persons should be allowed access to their biological children.

#### *Assisted Reproduction and LGBT*

95. In the field of assisted reproduction and sperm donorship, mainly regulated by Основи законодавства України про охорону здоров'я №2801-12, 19 November 1993 (The Fundamentals of the Ukrainian Law Concerning Health Care No. 2801-12, 19 November 1993) and Наказ Міністерства охорони здоров'я України № 24, 04 February 1997 (Order of the Ministry of Health of Ukraine No. 24, 04 February 1997), there are no provisions that could adversely affect male sperm donors regardless of their sexual orientation or gender identity. However, access to reproductive technologies and surrogacy services is available only to legally married couples (Art. 1.3 of the Order). This is reinforced by the Art. 123 of the Family Code of Ukraine (establishing child's paternity) and Art. 281 of the Civil Code of Ukraine. Therefore, a single gay, lesbian or transgender person or LGB same-sex couples may not be assisted in reproduction or be granted access to surrogacy services.
96. In regard to transsexual persons, the law may be interpreted as such that does not contain prohibition for either pre-operative Male to Female (MtF) persons, whose legally recognised sex/gender is still 'male', or post-operative Female to Male (FtM) persons, whose reassigned sex/gender has already been legally changed to 'male', and their female partner, to whom they are legally married, to access assisted reproduction (fertility treatment and donor insemination) or surrogacy services. This, however, will effectively prevent the MtF transsexual person from receiving permission for access to reassignment

treatment and, correspondingly, legal change of sex/gender in the documents (as per Art. 2 of Наказ Міністерства охорони здоров'я України "Про надання медичної допомоги особам, що потребують зміни (корекції) статевої належності" № 57, 15 March 1996 (Order of the Ministry of Health Care of Ukraine "On providing medical assistance to persons who require change (correction) of sex" No. 57, 15 March 1996).

#### *Family Reunification*

97. In Art. 4 Закон України "Про біженців" № 2557-14, 2001 (The Refugees Act No. 2557-14, 2001) stipulates that members of the family of the person who has been granted a refugee status in Ukraine has the right to enter Ukraine and receive the status of refugee for the purposes of family reunification. Art. 1 of the Act clarified that a member of a refugee's family is his/her husband/wife, children who have not reached the age of 18, incapacitated parents and other persons over whom the refugee has guardianship. LGB couples are, therefore, not subject to family reunification provisions in the Ukrainian legislation. Straight couples, including those where one of the partners is transgender, will not experience this problem. The only caveat for transgender persons in this respect, just like in many others articulated in the report, is that their marital status will negatively affect their opportunity to undergo sex change in Ukraine.
98. This conclusion in the context of family reunification becomes ambiguous when other provisions of the law, which govern recognition of the validity of marriages contracted in foreign jurisdictions, are taken into consideration. In accordance with the Art. 58 par. 1 of Закон України "Про міжнародне приватне право" № 2709-4, 23 June 2005 (The International Private Law Act No. 2708-4, 23 June 2005) marriage between Ukrainian citizens, between Ukrainian and a foreign citizen, Ukrainian citizen and a person without citizenship, contracted outside of Ukraine in accordance with the law of the foreign State, is considered valid in Ukraine under the condition that in regards to the Ukrainian citizen it does not conflict with the requirements set forth in the Family Code of Ukraine (Arts. 24-26). This provision would render same-sex marriage between a Ukrainian citizen and a foreign citizen/person without citizenship, contracted outside of Ukraine, invalid for the purposes of the Ukrainian law.
99. Unlike same-sex marriages between Ukrainian citizens and foreign nationals, marriages between foreign citizens, contracted in a foreign jurisdiction, are recognised valid in Ukraine according to par. 2 of the Art. 58 of the International Private Law Act. Whilst par. 2 of the Art. 58 of the Act does not set any limitations to the recognition of the validity of such marriages in Ukraine, Art. 12 of the Act reads that a norm of the foreign State's law shall not apply in cases when its application leads to results that clearly contradict the legal (public) order of Ukraine. In this view a same-sex marriage between foreigners, contracted according to the law of a foreign State, may not be recognised as valid in Ukraine as it would contradict par. 9 of the Art. 7 of the Family Code of Ukraine, which reads: "Family relations are regulated based on the principles of justice, integrity and reasonability **in accordance with the morals of the society**" (see discussion above). However, the absence of case law does not allow to corroborate the assumptions of this analysis of the legislative norms.
100. Same-sex registered partnerships, civil unions and other forms of registration of same-sex relationships alternative to marriage are not recognised as valid in Ukraine for the reason that such institutions are not recognised in the Ukrainian law altogether.

## B.5. Asylum and refugee issues

101. Rules and regulations concerning the status of refugees in Ukraine are presented in Закон України “Про біженців” № 2557-14, 2001 (The Refugees Act No. 2557-14, 2001). Theoretically, it does not set any limitations in regards to the right of LGBT people who would like to request asylum in Ukraine. For instance, Art. 1 of the Act defines a refugee as “person who is not a citizen of Ukraine and owing to a well-founded fear of being persecuted on account of race, religion, nationality, **membership of a particular social group**, or political opinion, is outside the country of their nationality, and is unable to or, owing to such fear, is unwilling to avail him/herself of the protection of that country, or, having no citizenship and being outside the country of their previous permanent residence, cannot or is not willing to return to it owing to the aforementioned fear”. Although the list of the grounds on which asylum may be requested does not explicitly mention sexual orientation or gender identity, they should fall under the ‘membership of a particular social group’.
102. Art. 3 of the Act further reinforces Ukraine’s commitment to the protection of the right of refugees:
103. “Refugees may not be deported or forcefully returned to countries, in which their life or freedom are threatened owing to their race, religion, nationality, citizenship, **membership of a particular social group**, or political opinion.
104. Refugees may not be deported or forcefully returned to countries, in which they may be put to torture or other treatment or punishments that are cruel, inhumane or degrading, or from which they can be deported or forcefully returned to countries, in which their life or freedom is threatened owing to their race, religion, nationality, citizenship, **membership of a particular social group**, or political opinion”.
105. In addition, none of the conditions on which a person may be denied the refugee status (Art. 10) may be interpreted as in any way limiting the right of LGBT people to seeking asylum.
106. *The issues of family reunification and the rights of family members of LGBT persons are discussed in the section on family issues.*
107. Articles 18 through 22 of the Act enumerate the rights and responsibilities of persons who are seeking asylum and/or who have received an official confirmation of their refugee status in Ukraine. Art. 19 reads: “Persons who have received refugee status in Ukraine [...] enjoy the same rights and liberties, and bear the same responsibilities as citizens of Ukraine [...]”. This is especially important in the context of the right to health care of transgender refugees. Indeed, equality in the right to health care is reiterated in the Art. 2 of Порядок надання медичної допомоги іноземним громадянам, які тимчасово перебувають на території України № 79, 28 January 1997 (Rules and Procedures Concerning Providing Medical Assistance to Foreign Citizens Who Are Temporarily Staying in Ukraine No. 79, 28 January 1997): “Foreigners, who permanently reside on the territory of Ukraine, persons who applied for refugee status, and persons who received refugee status in Ukraine are entitled to the same medical assistance as citizens of Ukraine”. Since there is currently no corroborative case law, this implies that transgender refugees will receive the same treatment, including hormonal therapy, surgery and mental health support, and for that purpose will have to go through the same process as transgender persons who are citizens of Ukraine (for more details see the relevant part of the section on transgender issues).

### *Statistics and Case Law*

108. Statistics on asylum seekers who were persecuted on the grounds of sexual orientation and/or gender identity in their respective countries of origin are not readily available and are not conclusive. Управління міграції (The Department of Immigration Services) does not collect statistical data indicative of claims on the grounds of sexual orientation and/or gender identity. Moreover, according to Art. 11 of the Refugees Act information that is provided by an asylum seeker is confidential. Therefore the Department is not at liberty to reveal any information concerning individual cases of refugee seekers.
109. Vinnytsia Human Rights group in 2006 provided legal expertise to an asylum seeker from Turkmenistan who was fearing incarceration for his sexual orientation. They report a positive outcome on his case and that he received the refugee status in Ukraine.
110. The State Committee on Nationalities and Religious reports that in 2008 a citizen of Azerbaijan was granted the refugee status in Ukraine owing to his sexual orientation. This case is, however, controversial, as different sources point out the asylum seeker should not have been granted the refugee status for he is on the 'wanted' list in Azerbaijan and Russia for committing a number of crimes.
111. Finally, on 10 January 2008, the Kiev circuit administrative court and later (23 April 2009) Kiev administrative appellate court reviewed the case (No. 5/261) of a citizen of Congo who had requested asylum in Ukraine for the fear of persecution due to her sexual orientation, and had been denied the refugee status by The Department of Immigration Services. Kiev circuit administrative court established that the reasons that compelled the asylum seeker to leave her country of origin were of personal nature. The court argued that 'non-traditional' sexual orientation does not constitute the ground for legal persecution in Congo; only the society condemns such relationships. In this light it ruled that there are no valid reasons to satisfy the complaint of the claimant and, thus, grant her refugee status in Ukraine. The appellate court upheld the decision of the lower court.

### **B.6. Social security, social care and insurance**

112. Neither Конституція України (The Constitution of Ukraine), which in the Art. 46 outlines the basic principles of social protection in Ukraine, nor secondary legislation contain provisions that directly discriminate on the grounds of sexual orientation and/or gender identity in the areas of social security and social care. However, discrimination on the grounds of sexual orientation and gender identity in this field is that generally it is discrimination by the proxy of the LGBT people's marital and familial status. As a matter of fact, whilst lesbian, gay and bisexual persons shall be and are entitled to their respective social and economic rights as single individuals, they are automatically denied those right that only families, members thereof, and married couples are entitled to.
113. For instance, Закон України "Про державну допомогу сім'ям з дітьми" № 2334-3, 22 March 2001 (State Aid to Families with Children Act No. 2334-3, 22 March 2001) in Art. 8 stipulates that persons who adopted or received guardianship of an infant during the first two months from the date of the infant's birth are entitled to receive the allowance payable for pregnancy and delivery (maternity benefit). The Act contains no provision that would limit access of gay or lesbian adopters or guardians to such aid and since single gay men or lesbians have a legal right to adopt (*see the section on family issues for detailed discussion*), they are theoretically entitled to the allowance.
114. In a similar fashion, single lesbian mothers or single adoptive LGB parents would be entitled to receive family allowance, guaranteed by the Art. 18 of the same Act. Also, there

is no differentiation on the grounds of sexual orientation and/or gender identity in relation to pension benefits,<sup>16</sup> access to mandatory state health care insurance,<sup>17</sup> state social insurance, unemployment<sup>18</sup> and other benefits, where their primary recipient is a single individual. The same principle applies to single LGBT individuals in regards to access to poverty reduction programmes.

115. At the same time, since same-sex couples cannot contract marriage and their status as a family is indeterminate, and since transgender people cannot be in a marriage even if they chose to and before they undergo sex change treatment (*see the sections on family for detailed discussion*), such social benefits as family benefits (e.g. state aid to low-income families),<sup>19</sup> funeral benefits, and benefits with regards to the loss of principle wage-earner are not available to them.
116. For example, Закон України “Про загальнообов’язкове державне соціальне страхування від нещасного випадку на виробництві та професійного захворювання, які спричинили втрату працездатності” № 1105-14, 23 September 1999 (Mandatory State Social Insurance in Cases of Job-related Accident or Professional Illness that Resulted in Loss of the Ability to Work Act No. 1105-14, 23 September 1999) and Закон України “Про пенсійне забезпечення” № 1788-12, 05 November 1991 (Pension Benefits Act No. 1788-12, 05 November 1991) in Arts. 33 and 37 respectively guarantee members of the family (i.e. wife/husband, children, parents and other dependents) insurance compensations and a pension in the case of death of the principal wage-earner. In as far as the provision goes, same-sex partners would be excluded from such aid as they are not considered one family.
117. Similarly, an LGB person is not entitled to funeral allowances when his/her partner passes away. According to Наказ Міністерства соціального захисту населення України “Про порядок виплати допомоги на поховання” № 148, 29 October 1996 (Order of the Ministry of Social Protection of the Population of Ukraine concerning Rules and Procedures in relation to Funeral Allowances No. 148, 29 October 1996) such allowances shall be provided to members of the family of the deceased. Par. 11 of the Order specifies that family members are husband/wife, their children, parents and other relatives in accordance with Сімейний кодекс України (The Family Code of Ukraine).
118. Currently, there is no statistical or legal information or data confirming cases of deliberate denial of access to social protection and social care services to people on the grounds of their sexual orientation and/or gender identity. Legal analysis, provided in this section, therefore considers hypothetical situations that may happen when the law is applied.

## **B.7. Education**

119. Discrimination on the grounds of sexual orientation and gender identity in the Ukrainian system of education is one of the least studied, both from the legal perspective and with regards to experiences of LGBT students and teachers.

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16 Закон України “Про пенсійне забезпечення” № 1788-12, 05 November 1991 (Pension Benefits Act No. 1788-12, 05 November 1991); Закон України “Про недержавне пенсійне забезпечення” № 1057-4, 09 July 2003 (Private Pension Benefits Act No. 1057-4, 09 July 2003).

17 Закон України “Про страхування” № 85, 07 March 1996 (Insurance Act No. 85, 07 March 1996).

18 Закон України “Про зайнятість населення” № 803-12, 01 March 1991 (Employment Act No. 803-12, 01 March 1991), Закон України “Про загальнообов’язкове державне соціальне страхування на випадок безробіття” № 1533-3, 02 March 2000 (Mandatory State Social Insurance in Case of Unemployment Act No. 1533-3, 02 March 2000).

19 Закон України “Про державну соціальну допомогу малозабезпеченим сім’ям” № 1768-3, 01 June 2000 (State Social Aid to Low-Income Families Act No. 1768-3, 1 June 2000).



120. Art. 3 par. 1 of Закон України “Про освіту” № 1060-12, 23 May 1991 (Education Act No. 1060-12, 23 May 1991) reads: “Citizens of Ukraine shall have the right to free education in all public educational institutions regardless of their gender, race, nationality, social and economic status, type and nature of their activities, world views, membership in political parties, attitude towards religion, religious belief, state of health, place of residence, and **other circumstances**”. Although the text of the article does not specify sexual orientation and/or gender identity as protected grounds, it should still be interpreted as protecting the right of LGBT students to receive education.
121. More interestingly, the Act contains Arts. 6 and 35, which establish the principles of equality of opportunities for each person to be able to fully develop his/her abilities, talents, and personality, especially in the context of secondary education. Coupled with par. 4 of the Art. 8 (“Pupils, students and employees of the area of education may establish in the educational institutions primary centres of public organisation of which they are members”), this may be interpreted, at least theoretically, as allowing for the creation of LGBT youth organisations or a likeness of gay-straight alliances in Ukrainian educational establishments on all levels. Such initiatives, however, are unprecedented and there is a significant likelihood that they will be taken negatively by the educational institution’s management, nothing short of prohibition. To this end the educational institution’s management may invoke Art. 23 of Закон України “On the Protection of Childhood” № 2402, 26 April 2001 (Protection of Childhood Act No. 2402, 26 April 2001) that also provides for the right of the youth to create children’s and youth organisations, albeit on the condition that “they [organisations] do not violate the rights and freedoms of other people, and cause no harm to the children’s [...] morals and health”.
122. Theoretically, Art. 10 of the Protection of Childhood Act protects LGBT students from bullying. In pars. 1 and 2 it stipulates that each child is guaranteed personal immunity and privacy, and protection of dignity: “Maintaining discipline and order in [...] educational institutions should not violate such principles as mutual respect, justice and should exclude degrading treatment of a child. The State protects the child from all forms of physical and psychological violence, insult, negligent and inhumane treatment [...]”. However, bullying in itself is a novel concept in Ukraine. Ехсепт for Наказ Міністерства науки і освіти України “Про вжиття додаткових заходів щодо профілактики та запобігання жорсткому поводженню з дітьми” №844, 25 December 2006 (Order of the Ministry of Education and Science of Ukraine “On additional measures to prevent violence toward children” No. 844, 25 December 2006), which is exploratory in nature and aims to simply raise awareness of the issue rather than prescribe sanctions for bullying, there is currently no law that would expressly prohibit bullying. Schools deal with the issue ad hoc and the sanctions issued are inconsequent.
123. Currently, Ukrainian law does not contain norms prohibiting LGBT people to occupy teaching positions. The norm, contained in Наказ Міністерства освіти і науки України “Про поліпшення виховної роботи (“Order of the Ministry of Education and Science of Ukraine “On the Improvement of Educational Work”), that barred gay men and lesbians from teaching at primary secondary schools, was abolished in 1998.
124. The issue of educational programs dealing with sexuality is one of the most controversial. There is no state-wide regulation that would require or recommend schools to introduce a course on human sexuality into the curriculum. The topic is not covered by any other course that may be suitable for it (for example, course “Fundamental life skills”, which is taught in the majority of schools on a regular basis). In schools that introduced such a course on their own initiative or volunteered to discuss the topic as part of other courses in the curriculum, exclusive focus is on heterosexual relationships in the context of ‘traditional’ families. It is also worth mentioning that teachers are not properly trained to discuss such a topic: there are neither relevant courses in the University curriculum for this particular specialisation (i.e. education and teaching, social pedagogic, etc.), nor are there textbooks

that would provide trainee teachers with up-to-date correct information on the topic. For instance, one publication, written in 2007 specifically for students of higher pedagogical institutions, was titled “Social and pedagogical conditions for preventing sexual deviations among high school students” and put homosexuality in the same category as paedophilia and prostitution.

125. Another similar textbook titled “Developing leadership skills and adherence to the healthy way of life in the military and police officers in Ukraine” was published in 2008. The publication was approved by the Academic Council of the Academy of the Ministry of Internal Affairs and recommended by the Ministry of Education and Science of Ukraine. The publication counts homosexuality among sexual perversions and thus the assumption is that using this textbook in educational and training programmes for military and police personnel will promote stigmatisation of and discrimination against LGBT community on the part of the staff of defence and law enforcement agencies.
126. At the level of higher education establishments, human sexuality - inclusive or exclusive of homosexuality and a variety of possible gender identities - is taught only to medical science and psychology students. For the purposes of this study, the author analysed a number of course syllabi (“Sexology”,<sup>20</sup> “Fundamentals of sexology and sexual pathology”,<sup>21</sup> “Criminal sexology”,<sup>22</sup> and similar courses) only to discover that sexual orientation and transsexualism/transgenderism are studied briefly (i.e. no more than one-two lectures dedicated to the topic) under uniting titles ‘sexual perversions and deviations’ and ‘disorders in gender identity/self-identification’.

#### *Statistics and Case Law*

127. Statistics. The phenomenon of bullying is generally poorly studied in Ukraine. The only study that was conducted in 2006 provided general non-LGBT specific statistical data on the incidents of bullying in a number of schools in the Chernivtsy region of Ukraine.<sup>23</sup>
128. Case law. There is only one case that is related to discrimination on the ground of sexual orientation in education. It is, however, peculiar in the respect that in its final decision the court left out the fact that the claimant was expelled from the university because of his sexual orientation.
129. Vadim Zhylin entered the College of Economy and Law of the Interregional Academy of Personnel Management (IAPM) in 2004. Vadim concealed his homosexual orientation neither from other students, nor from his professors. Moreover, he tried to promote tolerance towards sexual minorities at the University by means of self-published leaflets. However, the University's management objected to his socially active position. The director of the College made the decision to expel him, allegedly because of the lack of a document certifying his completion of secondary education (high school), which he had had to submit to complete his matriculation. Later, during litigation it was proven that in preceding times not a single student had been expelled under such a pretext.

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20 <http://selyukov.zeos.net/sexol.html>

21 <http://209.85.135.132/search?q=cache:->

Yc7igGaanwJ:www.bsmu.edu.ua/files/division/Кафедри/Нервових%2520хвороб,%2520психіатрії%2520та%2520мед.%2520психології/Психіатрія/2009-2010/6.%2520Робочі%2520прогр.%2520довідники%25202009-2010/RP%2520Sex.%25206%2520k.%2520med.psihol.,2009.doc+Сексуальна+орієнтація+в+освіті&cd=29&hl=en&ct=cInk&client=safari, accessed 29 September 2010.

22 [http://library.iapm.edu.ua/metod/2716\\_Zag\\_krum\\_seks.pdf](http://library.iapm.edu.ua/metod/2716_Zag_krum_seks.pdf), accessed 29 September 2010.

23 Addendum to Наказ Міністерства науки і освіти України “Про життя додаткових заходів щодо профілактики та запобігання жорстокому поводженню з дітьми” №844, 25 December 2006 (Order of the Ministry of Science and Education of Ukraine “On additional measures to prevent violence toward children” No. 844, 25 December 2006).

130. In fact, V. Zhylin was expelled because of his sexual orientation. He faced pressure and personal insults on the part of the director and testified that in private conversations he was clearly informed that his sexual orientation was the real reason why he was not liked by the educational institution's management and, therefore, was expelled.
131. On 25 July 2005 Golosiyivskyy District Court of Kyiv established that, owing to wrongful expulsion, moral damage was caused to V. Zhylin, because his right to education was violated, and normal vital communications and relations with people surrounding him were broken. The court obliged the College to pay V. Zhylin financial indemnification. Having taken into consideration the frankly negative and biased attitude towards him on the part of the educational institution's management, the court denied him restoration as a student of the College.
132. It was, however, impossible to prove that V. Zhylin was discriminated on the ground of his sexual orientation, as witnesses, who could have testified on this account, did not come to court hearings under various pretexts.

## **B.8. Employment**

133. Кодекс законів про працю України № 322-08 (Labor Code of Ukraine No. 322-08) currently does not list sexual orientation and/or gender identity as protected grounds under its two non-discrimination articles, namely Art. 2-1 (Equality of labour rights of the citizens of Ukraine) and Art. 22 (Guarantees in execution, change or termination of labour contracts). Presently, Art. 2-1 reads: "Ukraine guarantees equality of labour rights of all citizens regardless of their origins, social and economic status, race, nationality, sex, language, political views, religious beliefs, type of nature of their activities, place of residence and other circumstances". Art. 22. specifies the norm established by the Art. 2-1 by stipulating that groundless refusal of employment is prohibited. The article goes further to explain according to the Constitution of Ukraine (Art. 43, par. 6) that any direct or indirect restriction of right or establishment of direct or indirect privileges in execution, change and termination of labour contract on the same grounds listed under Art. 2-1 is prohibited.
134. As such, the Code does not contain any provisions that explicitly discriminate against LGBT people in access to recruitment, promotion, dismissal, conditions of employment, vocational training and/or remuneration. Similar provisions are contained in law, regulating employment in governmental agencies, - Закон України "Про державну службу" № 3723-12, 16.12.1993 (Civil Service Act No. 3723-12, 16 December 1993). Art. 4 of the Act, for instance, contains a closed list of protected grounds and provides that the citizens of Ukraine have the right to be employed as public servants regardless of their origins, social and economic status, race, nationality, sex, political views, religious belief and place of residence. Although neither sexual orientation, nor gender identity are included in the list, the only qualifications for recruitment, promotion and other employment-related conditions, set forth in the Act, are relevant education and professional training (Arts. 4, 8 and 12).
135. The wording of the aforementioned articles, as is the case with many similar generic non-discrimination norms in Ukrainian legal system, allows to understand sexual orientation and/or gender identity as included under 'other circumstances'. In the area of labour relations such inclusion, however, is predominantly hypothetical and purely declarative as the Ukrainian legal system does not provide for effective mechanisms for proving cases of discrimination and resolving the problem. In the context of homophobia/transphobia in employment two facts should be taken into consideration.
136. First, whilst the aforementioned Art. 22 of the Labour Code of Ukraine prohibits ungrounded refusal of employment, the Code requires that such refusal with a detailed account of reasons should mandatorily be rendered in writing only in two cases: 1) when

pregnant women, women who have children under three years of age or disabled children, and single mothers with children younger than 14 year of age are refused employment (Art. 184); and 2) when persons who were referred by Державна служба зайнятості (State Employment Services) are refused employment (Art. 196). In all other cases written refusal is not obligatory, which leaves the victim of discriminatory treatment without any document that may serve as initial proof of the violation of law before the court.

137. Second, the draft of a new Labour Code of Ukraine, which was submitted to the national parliament, Верховна Рада України (Verkhovna Rada of Ukraine, lit.: Supreme Council of Ukraine) in 2007, contained Art. 4, which included sexual orientation as one of protected grounds: "Equality in labour rights is guaranteed to every citizen regardless of his/her race, colour of skin, political, religious or other convictions, sex, ethnic or social origin, age, health, disability, **sexual orientation**, real or suspected HIV/AIDS positive status, marital and economic status, place of residence, membership of professional or other organisations, linguistic or other characteristics, which are not related to the nature of work or its conditions". However, this article was excluded from the final version, adopted by the Parliament in 2008. It is not known whether the article was excluded on the basis of the Supreme Court of Ukraine's commentary or not, but the commentary read as follows:
138. "Inclusion of protections from discrimination on the ground of sexual orientation in employment is, in our opinion, unreasonable and cannot be justified. First, this [anti-discrimination] article of the Labour Code of Ukraine confuses natural rights and unnatural actions such as, in fact, sexual orientation. Second, use of the term 'sexual orientation' in this clause in our opinion provides the so-called 'sexual minorities' with additional privileges, which leads to the undermining of public morals and contributes to the disruption of employment relations.
139. Today, protection of morality, establishment of universal humanitarian values in society, healthy lifestyle, and improvement of the system of spiritual and moral and ethical education of the youth and children [...] are the priorities of all governmental institutions. In this light, the issue [of including 'sexual orientation' in the law] does not just contradict the State's policy, but also leads to development of artificially created social conflicts and increase in the number of court cases.
140. Besides, public morals are not only protected by Ukrainian law, but also by international law. For instance, Articles 19 and 21 of the International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16 December 1966, stipulate the need to limit one's rights for freedom of expression [...] and freedom of assembly for the purpose of protecting public health and morality.
141. Therefore, the international community has ensured proper legal protection from licentiousness that disguises as human rights".<sup>24</sup>
142. Ukrainian labour law does not currently contain any reference to the special needs of transgender persons. Also, nowhere does it specify that transgender persons may or may not retain their jobs in cases when they decide to undergo hormonal treatment and sex change surgery. Topical in relation to transgender/transsexual person's status in employment is the issue of privacy protection. Privacy of the information on the change of sex/gender and subsequent or preceding name change are guaranteed by the Art. 32 of the Constitution of Ukraine, Arts. 39-1 and 40 of the Fundamentals of the Ukrainian Law Concerning Health Care (The Right of the Patient to Non-Disclosure of Information Related to His/Her Health and Confidentiality of Treatment), Art. 30 of Закон України "Про інформацію" № 2657-12, 02 October 1992 (Information Act No. 2657-12, 02 October 1992) and the Інструкція Міністерства охорони здоров'я України "Про порядок

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<sup>24</sup> Лист Верховного Суду України № 11/13-145, 28 August 2007.

заповнення листа непрацевдатності” №774/438/207-ос/719, 24 November 2006 (Instructions of the Ministry of Health Care of Ukraine concerning rules and procedures for preparation of medical certificates No. 774/438/207-ос/719, 24 November 2006) that specifically prohibits any indication of the patient’s diagnosis and ICD-10 code on medical certificates requested by employers.

143. There are currently no official statistics and relevant case law on discrimination on the grounds of sexual orientation and/or gender identity in employment.

## **B.9. Housing**

144. Art. 47 of Конституція України (The Constitution of Ukraine) guarantees everyone the right to housing. It also reads that no one shall be forcibly deprived of housing other than on the basis of the law pursuant to a court decision. This article together with the Art. 48 - “Everyone has the right to a standard of living sufficient for himself or herself and his or her family that includes adequate nutrition, clothing and housing” - means that the State takes upon itself the obligation to ensure affordable, habitable, accessible and safe housing for everyone. Similar generic provisions are contained in the Civil Code of Ukraine (Arts. 310-311, 379-385) and Житловий кодекс України (The Housing Code of Ukraine) (Art. 1). None of them have any reference to sexual orientation or gender identity and cannot be presumed to provide for discriminatory treatment on these grounds.
145. The aforesaid principle equally applies to land ownership or lease, regulated by Art. 374 of the Civil Code of Ukraine.
146. With regards to the right to housing, discrimination on the grounds of sexual orientation and/or gender identity commonly occurs in the contexts of selling/buying/barter of property and tenancy. Whilst Art. 24 of the Constitution of Ukraine establishes a general principle of non-discrimination, the Civil Code of Ukraine, which regulates selling/buying/barter of property in Arts. 655-716, and tenancy agreements and relations between the landlord and the tenant in Arts. 731-743, does not contain a non-discrimination clause, neither in general, nor specifically apposite to tenancy. This creates the system that sees selling/buying/barter of property and tenancy as de facto and de jure ‘private’, ‘interpersonal’ relations in which the property owner or landlord has the right to select potential buyers and/or tenants according to his/her liking with no regard for the fact that discrimination on the grounds of sexual orientation and/or gender identity, or any other ground for that matter is taking place. Because of this and due to the fact that discrimination in such contexts is usually extremely hard to prove, violations of this sort go under the radars of law enforcement agencies and judicial establishments. Currently there are no statistical data that shows how many cases dealing with the denial of selling/barter or renting to an LGBT person have been brought to court. Likewise, there is no case law to illustrate how actual cases of this type will be dealt with in courts.
147. Another area in which discrimination on the grounds of sexual orientation and/or gender identity commonly occurs is real estate or property succession in general and specifically in the part where it concerns protection from eviction. Unlike discrimination in the context of selling/buying/bartering or renting property, where the underlying reason is homophobic prejudice on the part of persons involved, discrimination in property succession stems from the inability of same-sex couples in Ukraine to legally register their relationships in the form of marriage or civil partnership, and from the lack of LGB-inclusive legal interpretation of the concept of family ([refer to the section on family issues for a more detailed discussion](#)).
148. The point to be considered before discussing the issue of succession is that of common joint property owned by members of one family. Art. 368 par. 3 of the Civil Code of Ukraine and Arts. 60-62 of the Family Code of Ukraine stipulate that property, acquired by the

couple in and during marriage, is in their common joint ownership unless the law or written agreement provide otherwise. Art. 74 of the Family Code of Ukraine guarantees the right to common joint property only to women and men who are cohabiting outside of marriage. In cases where cohabiting same-sex couples are registered as sharing the same residence (according to Art. 6 of Закон України “Про свободу пересування та вільний вибір місця проживання в Україні” №1382-15, 11 December 2003 (Freedom of Movement and Choice of Residence in Ukraine Act No. 1382-15, 11 December 2003)), they still will not acquire the right of common joint ownership of real estate or property as such registration has no effect on ownership and/or other material rights and obligations. Art. 65 of the Housing Code of Ukraine also stipulates that persons other than immediate relatives registered to reside with the owner of a living space (house or apartment) as members of his/her family only acquire equal right with other family members **to use** the living space.

149. Further, par. 4 of Art 368 of the Civil Code of Ukraine reads that property, acquired as a result of combined action or for joint capital of the members of the family, is in their common joint ownership. In the light of the LGB people’s inability to contract marriage or a partnership akin to marriage, disposition of these legal norms excludes LGB people from the right to automatically acquire common joint ownership of property as conjoints or members of one family.
150. The Ukrainian legal system does not contain any protections from eviction, which may result from the inability of same-sex partners to inherit real estate through hereditary succession after one another. In fact, the Civil Code of Ukraine in Arts. 1261-1265 establishes the order of successors, none of who may currently be interpreted as to include the same-sex partner of the deceased. An exception may constitute the forth order of successors who are defined as ‘persons who have lived with the deceased as one family for no less than five consecutive years before his/her death’ (Art. 1264). Again, however, an LGB-inclusive legal interpretation of the term ‘family’ and case law are required to clarify the situation in this respect. If the deceased had no relatives on either ascending or descending line and left no will, the State has the right to take ownership of his real estate. In both cases (i.e. when the deceased did not specify his same-sex partner in the will or did not transfer his real estate to him/her by any other means), the same-sex partner of the deceased may be evicted from the premises by either successors or the State according to Art. 391 of the Civil Code of Ukraine: “Real estate owner has the right to demand elimination of obstacles in the realisation of his right to use and dispose of his/her [real] property”.

#### **B.10. Health care**

151. Ukrainian law concerning health care is, apart from provisions that deal with specific health issues pertaining to a certain sex/gender, gender-neutral. In general, it does not contain any provision that could be interpreted as discriminatory on the grounds of sexual orientation and/or gender identity.
152. The right to accessible, affordable, high-quality health care in Ukraine is guaranteed and protected by the Constitution of Ukraine. Thus, Art. 49 reads: “**Everyone has the right to health protection, medical care and medical insurance.** Health protection is ensured through the State funding of the relevant socio-economic, medical and sanitary, health improvement and prophylactic programmes. The State creates conditions for effective medical services accessible to all citizens. **State and communal health care institutions provide medical care free of charge**”.<sup>25</sup>

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<sup>25</sup> This latter norm is also reflected in the Arts. 18-19 of the Fundamental of Ukrainian Law Concerning Health Care.

153. Furthermore, Art. 4 of Основи законодавства України про охорону здоров'я №2801-12, 19 November 1993 (The Fundamentals of the Ukrainian Law Concerning Health Care No. 2801-12, 19 November 1993) guarantees **observation of rights and freedoms of a person in the field of health care**, humanitarian nature of medical care and priority of universal values over class, national, group or individual interests, **better health care to vulnerable social groups, equality of citizens**, and affordability of health care and other services in the field of medical care. In Arts. 6 and 38 among other things the Act also guarantees qualified medical and sanitary assistance, which includes free choice of an assisting doctor and free choice of methods of treatment.
154. The combined force of these norms and the fact that Ukraine adopted ICD-10, which does not classify homosexuality as a disorder, in 1998 protects LGB people from forced treatment of any kind. However, for the purposes of HIV/AIDS prevention and treatment of STIs men who have sex with men are still seen as constituting a group at risk.<sup>26</sup> Therefore, according to Art. 10 of Закон України “Про міліцію” № 565-12, 20 December 1990 (The Police Act No. 565-12, 20 December 1990), they (MSM) can be forcefully brought in for obligatory examination and treatment at the request of a corresponding medical establishment. Although this legal norm has never been used in practice, it puts undue burden and is discriminatory towards gay and bisexual men and LGBT who engage in sex work. This issue is further discussed in the Miscellaneous section of this report in context of relations between LGBT and law enforcement.
155. A patient's access to his/her own medical records is regulated by the Art. 39 of the Fundamentals of Ukrainian Law Concerning Health Care and Art. 285 of Цивільний кодекс України (Civil Code of Ukraine). S/he, upon reaching the age of eighteen, can have unrestricted access to correct and complete information about the state of his/her health and all relevant medical documents. Besides, the law provides the same right of unrestricted access to the patient's parents and guardians.
156. As for the right of married couples and family members to receive medical information about each other, this aspect is regulated by Arts. 30 of Сімейний кодекс України (Family Code of Ukraine) and Art. 39 of The Fundamentals of the Ukrainian Law Concerning Health Care. As was discussed in the section on family issues, same-sex partners can neither enter into marriage and/or civil registered partnership, nor constitute a family. Therefore, they are not legally considered next of kin and cannot receive information about each other's health, course of treatment, have visitation rights or the right to make medically important decisions on behalf of each other. Although this is not explicitly established by the law, such discriminatory practices are inferred by the proxy of LGB people's family status. In this respect same-sex partners are treated similarly to third parties, revealing medical information to whom is expressly prohibited by Arts. 39-1 and 40 of The Fundamentals of Ukrainian Law Concerning Health Care.

#### *Accessing Gender Reassignment Treatments*

157. With the absence of anti-discrimination norm specifically targeting gender identity or gender expression, transgender/transsexual people only appear in the Ukrainian health care law as 'persons who require medical assistance for the purpose of changing (correcting) sex' and a number of specific Ministry of Health Care orders; the language of other legislative acts makes no reference to transgender/transsexual persons. Art. 51 of Основи законодавства України про охорону здоров'я №2801-12, 19 November 1993 (The Fundamentals of the Ukrainian Law Concerning Health Care No. 2801-12, 19

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<sup>26</sup> Наказ Міністерства охорони здоров'я України “Про удосконалення добровільного консультування і тестування на ВІЛ-інфекцію” № 415, 19 August 2005 (Order of the Ministry of Health Care of Ukraine concerning improving voluntary consultation and testing for HIV infection No. 415, 19 August 2005).

November 1993) reads: "At the request of the patient and in accordance with medical, biological, and socio-psychological criteria, established by the Ministry of Health of Ukraine, s/he can have his/her sex changed (corrected) by the means of medical intervention in accredited health care facilities".

158. Наказ Міністерства охорони здоров'я України "Про надання медичної допомоги особам, що потребують зміни (корекції) статевої належності" № 57, 15 March 1996 (Order of the Ministry of Health Care of Ukraine "On providing medical assistance to persons who require change (correction) of sex" No. 57, 15 March 1996) further details prerequisites and procedures for assisting persons in their desire for sex change operation. Art. 1 of the Order reads that prerequisites for sex change (correction) are a patient's failure of social adaptation and the risk of committing suicide in case of the preservation of the birth sex, both coupled with favourable prognosis for social adaptation in the case of the patient undergoing sex change (correction). It further clarifies that the prerequisites can be established on the conditions that:
- Gender identity disorder can be tracked back to patient's early childhood (3-4 year of age);
  - Permanence of the transformations in sex [gender] self-identification;
  - Continual medical (sexological) observation for no less than one year and availability of all required documentation and medical conclusion in regards to social adaptation;
  - Absence of endogenic processes (requires a minimum of a year-long observation in a psychiatric dispensary);
  - Risk of suicide
  - Absence of homosexual inclinations and psychological disorders that may motivate for change (correction) of sex;
  - Sufficient potential for social adaptation under new conditions in the future (conclusion from a psychologist and a psychiatrist);
  - Sufficient social maturity required for deciding to undergo the change (correction) of sex and ability to make decisions during future social adaptation process;
  - Absence of delinquent behaviour;
159. Sufficient level of manifestation of endocrine, morphologic, neurophysiologic, psychological and physical characteristics of desired sex.
160. Failure to meet even one of the aforementioned prerequisites as well as those set in Art. 2 of the Order (namely: 1) no younger than 25 year of age; 2) presence of children; 3) marriage at the time of the medical board's review of the patient's application for sex change; 4) endogenic disorder, of which transsexualism is a manifestation; 5) homosexuality, transvestism with transformations of the sexual role (when the desire to change sex coincides with the appearance of sexual attraction); 6) presence of other perverse inclinations; 7) serious flaws in the ability for social adaptation (i.e. unemployment, homelessness, etc.); 8) psychological peculiarities that may complicate or render impossible socio-psychological adaptation in the desired sex; 9) adaptation failures that require use of psychoactive drugs for its correction; 10) alcoholism, drug addiction, antisocial behaviour; 11) morphologic peculiarities that may complicate or render impossible adaptation in the desired sex; 12) contraindications to endocrine or surgical correction of sex caused by endocrine or somatic chronic diseases; 13) insufficient mental ability to comprehend possible complications; 14) patient's failure to agree with procedures related to sex change (correction), established by the specialised medical board under the



Ministry of Health Care of Ukraine, may lead to refusal on the part of the specialised medical board to allow for sex change (correction) surgery.

161. The Order contains a number of obviously discriminatory provisions. First, the Civil Code of Ukraine established the age of legal capacity at 18 (Art. 34). Therefore, the age of 25 and above, set as a prerequisite for sex change (correction), clearly conflicts with this norm. In addition, it conflicts with the Art. 49 of the Constitution of Ukraine that establishes the right of every person to health care and medical assistance.
162. Second, the requirements to have no children and not to be married constitute discrimination of transgender persons on the grounds of their social and, more specifically, marital status, and contradict Art. 51 of the Constitution of Ukraine and Art. 5 of the Family Code of Ukraine, which establishes the State's obligation to protect family, children, and parenthood. Moreover, these statuses are not relevant to the person's desire to change (correct) his/her sex and therefore should have no bearing on the decision of the medical board.
163. Third, the Order contains a number of prerequisites that are controversial for the purposes of diagnosing person's transsexualism and allowing for sex change, i.e. homosexuality and transvestism as contraindications, which have no connection to gender identity; sufficient manifestations of endocrine, morphologic and other characteristics of the desired sex, which are impossible to determine precisely; serious flaws in the ability for social adaptation, which may be the result rather than the cause of the person's inability to adapt when their birth sex is not in line with desired sex; etc.
164. Порядок обстеження осіб, які потребують зміни (корекції) статевої належності (Procedures for medical observation of persons who require change (correction) of sex), set forth by the Ministry of Health Care of Ukraine, in Art. 3 stipulates that a transgender person should undergo: 1) complete psychological examination with maximal confirmation of the [patient's] status; 2) differential diagnosis to determine homosexuality, psychological disorder and other perversions; 3) be hospitalised in a psychiatric dispensary for no less than 30 (thirty) days for the purpose of conducting complete psychological and pathopsychologic examination; 4) Endocrinological and somatic examination suited for determining contraindications for endocrine and surgical correction; 5) dynamic supervision for no less than one year and once in three months for the purpose of determining the social adaptability - objective description of [patient's] behaviour at work and at the place of residence to assess antisocial, delinquent behaviour, alcoholism, and drug abuse. In case of positive results of the aforementioned examination process (i.e. when the sexual pathologist in charge decides in favour of sex change (correction) operation) he [the medical doctor] completes required medical documentation for further consideration of the case by the specialised medical board, which has to finalise the decision as to whether the operation should be allowed or not.
165. Art. 12 of the Procedures reads that surgical operation for the purpose of gender reassignment procedure can only be authorised by the specialised medical board and should take place no earlier than one year after successful psychological and social adaptation of the patient, which should be decided by an attending sexual pathologist, psychologist and psychiatrist.

#### *Legal Recognition of the Preferred sex*

166. Par. 5 of the Article 12 (?) states that only after surgical operation can the patient receive a medical certificate of sex change, which serves as a ground for amending the entry in the person's official registry of birth and issuing a new birth certificate. This requirement (i.e. change of the person's gender marker in the birth certificate and registry only after the

gender reassignment surgery) is also reflected in par. 2 of the Art. 51 of the Fundamentals of the Ukrainian Law Concerning Health Care. The changes into the birth certificate and the register are made according to the rules and procedures set forth in the Art. 2.1 of Положення про порядок зміни, доповнення, поновлення та анулювання актових записів цивільного стану № 86/5, 26 September 2002 (Statute concerning rules and procedures of changing, supplementing, renewing and repealing civil status registry entries No. 86/5, 26 September 2002) of the Ministry of Justice of Ukraine. Subsequent changes into the national passport, which also contains a section for the citizen's sex marker, are made on the grounds of changes in the birth certificate according to Arts. 16-17 Положення про паспорт громадянина України № 2503-12, 26 June 1992 (Passport of the Citizen of Ukraine Act No. 2503-12, 26 June 1992).

167. Thus far the analysis shows that the main legal problem of transgender persons in Ukraine is that the law does not recognise their right to have their gender marker changed in the birth registry, birth certificate and passport without invasive reassignment surgery (although there are no legal requirements for the type of surgery sufficient for legal change of sex/gender, conventionally the requirement for MtF has been vaginoplasty and for FtM – bilateral mastectomy). It also does not provide for the possibility to officially start endocrine correction without authorisation for subsequent surgical change (correction) of sex. Under these conditions and given that no temporary documents signifying a person's diagnosis of transsexualism are issued at any time during the transition, the requirement that the gender reassignment surgery should be conducted no earlier than a year after diagnosing the person's transsexualism puts **an undue burden** on transgender persons who have to live and adapt in the society when their physical appearance may no longer be in line with their legal gender after the start of corrective hormonal therapy that precedes surgery.

#### *Medical insurance coverage*

168. There is no legal act explicitly or implicitly specifying whether health insurance should cover cases of sex/gender reassignment. Art. 6 Закон України "Про страхування" № 85, 07.03.1996 (Insurance Act No. 85, 07.03.1996) stipulates that any person can voluntarily enter into an agreement with a private insurance company to receive comprehensive medical coverage (uninterrupted health insurance). At the same time there is no information available on transgender person who enter in such contracts to fund their gender reassignment treatment; nor there is evidence of insurance companies covering such expenses.
169. Besides, Art. 49 of the Constitution of Ukraine, Arts. 6-8 of The Fundamentals of the Ukrainian Law Concerning Health Care, which guarantee accessible, free of charge health care to citizens of Ukraine, and Art. 7 of Закон України "Про страхування" № 85, 07 March 1996 (Insurance Act No. 85, 07 March 1996), which puts medical insurance into the category of mandatory (i.e. State-sponsored), taken together allow to assume that gender reassignment surgeries and preceding treatment are accessible free of charge to transgender persons. However, a representative of the organisation "Інсайт" ("Insight"), the only national organisation that specialises in transgender issues, in personal communication claimed that in fact transgender people have to pay for gender reassignment treatments. According to her information the cost of the surgery ranges from 1,500 to 2,000 US dollars. This is not surprising due to the fact that the system of health care in Ukraine has long been severely underfunded.

#### **B.11. Intersex Issues**

170. There are neither primary nor secondary legal acts (the latter at the level of the Ministry of Health Care of Ukraine) that concern the status and rights of intersex people in Ukraine.

171. *The issues of the reproductive health of lesbians, gay men and transgender persons, specifically access to assisted reproduction and sperm conservation, are discussed in detail in the section on family issues.*

#### *Statistics and Case Law*

172. Two studies conducted by “Наш мир” (Our World) in 2005 and 2007 show that respectively 16.6 percent and 13.5 percent of LGB respondents faced discrimination in the field of health care. Study reports show that most commonly occurring violation is disclosure of personal medical information or information about the patients’ sexual orientation (outing). The studies did not specify whether the respondents’ sexual orientation was recorded in their respective medical data files and disclosed or not. In Ukraine there is no legally established requirement to record patient’s sexual orientation as medically relevant information in his/her data file. Equally, there is no legal prohibition to do so.
173. A recent case, documented by “Наш мир” (Our World) in April 2009, however, provides an account of how such disclosure may happen. N., a closeted gay man, resident of Donetsk region, was hospitalised with an acute inflammation of respiratory tracts. Among other examinations he volunteered to test for HIV infection. Once the result came back positive a nurse, violating Arts. 8, 9 and 12.2 of Закон України “Про запобігання захворюваності на СНІД та соціальний захист населення” №1972-12, 12.12.1991 (Prevention of AIDS Prevalence and Social Protection of the Population Act No. 1972-12, 12.12.1991), called his employer and warned him about N.’s HIV status and his sexual orientation, which resulted in N.’s being discharged from his office. The documented case, unfortunately, does not provide any information on how the nurse learned about N.’s sexual orientation. Presumably, it may have happened during pre-test consultation (as per instructions provided in the Наказ Міністерства озорони здоров’я України “Про удосконалення добровільного консультування і тестування на ВІЛ-інфекція” № 415, 19 August 2005 (Order of the Ministry of Health Care of Ukraine “On Improving Voluntary Consultation and Testing for HIV Infection” No. 415, 19 August 2005) or after the test result returned positive and the tested person was required to provide an account of possible source of virus contraction for medical history.
174. In the 2005 study only 1.2 percent in the entire sample stated that they were denied access to medical services, specifically psychological consultation, because of their sexual orientation.
175. Besides these findings there are no data available on discrimination on the grounds of sexual orientation and/or gender identity in the field of health care. Also, there is currently no case law illustrative of how cases of such discrimination are handled by the courts.

#### **B.12. Access to goods and services**

176. Discrimination on the grounds of sexual orientation and/or gender identity in access to goods and services is for the most part, if not exclusively, subject of surveys among the LGBT population. Due to the absence of comprehensive anti-discrimination legislation that could expressly prohibit discrimination in this field it usually goes unnoticed and such cases never get to the courts.
177. The national LGBT organisation “Наш мир” (Our World), in their 2007 study of homophobia and discrimination on the ground of sexual orientation in Ukraine, found that over 22.5

percent of their respondents faced discrimination in access to goods and services. The report<sup>27</sup> provides a couple of illustrative cases:

178. Case No. 1. For over a year the pub “Liverpool” in the city of Donetsk was the LGBT community’s favourite. However, after an incident in February 2007 that involved a drunken girl, who happened to be a lesbian, the pub’s administration started barring gay men and lesbians access to the establishment. As a result, Donetsk gay men and lesbians had to search for another place for meetings and leisure activities.
179. Case No. 2. Andriy, the organiser of gay parties in the city of Lviv, has to rent space from different pubs and night clubs as he does not have a permanent one for such activities. In March 2006 he arranged to hold a party in a night club and discussed the details with one of the co-owners. Shortly after, when Andriy came to the club to prepare the space for the upcoming event, he ran into the other co-owner, who started insulting Andriy and said that the party is off as he does not want to have ‘faggots’ in his establishment. After that he forced Andriy off the premises. However, Andriy had already disseminated information about the party and did not want it to be cancelled. With the help of the other co-owner he managed to secure the space by paying double the rent. As a result, Andriy sustained serious financial damages.
180. In the context of homophobia/transphobia in access to goods and services and from the legal standpoint of particular interest is a clearly discriminatory clause in Закон України “Про захист суспільної моралі” № №1296-4, 20 November 2003 (Defense of Public Morals Act No. 1296-4, 20 November 2003) - Art. 6, which prohibits publishing announcements and advertisements about intimacy for pay and **deviant forms of intimate relationships** unless they are published in specialised media. After adoption of this law most newspapers and magazines started refusing publishing LGBT-related advertisements and announcements.

### **B.13. Media**

181. The law regulating the media in Ukraine does contain a number of provisions that may be interpreted as prohibiting defamation and discriminatory depiction of LGBT people and community. For instance, Art. 3 of Закон України “Про друковані засоби масової інформації (пресу) в Україні” № 2782-12, 16 November 1992 (The Printed Media (The Press) Act No. 2782-12, 16 November 1992) states that printed media cannot be used to propagate violence and cruelty, incitement of racial, national and religious hatred, and intrusion into the private lives of citizens, violation of their honour and dignity.
182. Whilst it can be said that the aforementioned article of The Printed Media Act ‘sets the tone’, Закон України “Про телебачення і радіомовлення” №3759-12, 21 December 1993 (Television and Radio Broadcasting Act No. 3759-12, 21 December 1993) is more specific and includes prohibition of defamation of social groups, which may be interpreted to include LGBT people. This provision is repeated twice in the Act - Art. 4 par. 7 (“The State shall resort to all available legal measures to prohibit broadcasting companies from systemically, purposefully and groundlessly giving prominence to violence, cruelty and incitement of racial, national and religious intolerance or positive interpretations thereof”) and Art. 6 (“Broadcasting companies shall not be used for groundless display of violence, propaganda of exceptionality, superiority or inferiority of people owing to their religious beliefs, ideology, national or racial origin, physical or economical status, [and] **membership of particular a social group**”).

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27 Українські гомосексуали і суспільство: взаємне проникнення / Центр “Наш світ”. - К.: Атопол, 2007.

183. Указ Президента України “Про створення Державного комітету з інформаційної політики, телебачення та радіомовлення України” № 919, 25 June 2000 (Order of the President of Ukraine “On Creation of the State Committee on Information Policy, Television and Radio Broadcasting of Ukraine” No. 919, 25 June 2000)<sup>28</sup> created a governmental body - The State Television and Radio Broadcasting Committee - for the purpose of monitoring the compliance of printed, audio, and visual media with legal provisions that, among others, include those related to prohibition of discrimination. In accordance with Закон України “Про звернення громадян” № 393, 02 October 1996 (Complaints and Requests Act No. 393, 02 October 1996) citizens may submit complaints to the Committee in regards to various violations on the part of media institutions, which the Committee shall review and take appropriate actions in the order, established by the Положення про Державний комітет телебачення і радіомовлення України (Statute of the Television and Radio Broadcasting Committee of Ukraine) and other relevant legislation. The Committee publishes quarterly reports concerning processing of such complaints. The reports, however, simply contain statistical data followed by a general description of issues brought forth in the complaints. They do not allow to draw any conclusions as to whether any complaints mentioned discrimination against LGBT people in the press or any TV or radio programmes and what actions the Committee took to resolve the issues.
184. Respect of journalistic ethics and/or provisions of the Ethics Code are not explicitly mentioned in The Printed Media Act. Enforcement of adherence to the principles of journalistic ethics is the prerogative of the Journalistic Ethics Commission, which is a corporate professional organisation whose purpose is to resolve conflicts of an ethical and professional nature that arise in the context of media relations with civil society and governmental bodies. The unofficial Code of Journalistic Ethics, drafted by the Commission, contains a provision that reads: “No one shall be discriminated on the grounds of sex, language, race, religions, national origin, membership of a specific social group or political views. References to specific characteristics of a person or a group of people shall be prohibited unless such information is indispensable for the purpose of a publication’s consistency”. The Code further clarifies that in his/her publications or programmes, the journalist shall avoid insulting people over their race, nationality, religion, memberships of a social group, etc. at all costs. Also, the journalist shall avoid any commentaries that may be interpreted as limiting the civil rights of people owing to their race, nationality or any other ground.
185. Unlike with printed media, the Television and Radio Broadcasting Act obliges broadcasting companies to officialise their Editorial Statute that would specify, among other things, “requirements for dissemination of information concerning various social groups (national and sexual minorities, religious groups, hospital patients and the disabled)” (Art. 57). Noteworthy is that in establishing the rules governing dissemination of such information, the Statute shall not violate the non-discrimination principles established in the Act and in other legislation. In addition, par. 5 the Article stipulates that the Editorial Statute warrants creation of an internal editorial board that shall monitor journalists’ compliance with principles, set forth in the Statute.
186. Alongside the aforementioned norms that theoretically protect LGBT people from defamation by the mass media, The Television and Radio Broadcasting Act contains provisions that oblige the mass media to consider the concept of public morals all the way through creating, preparing and disseminating television and radio programmes. Thus, Art. 62 of the Act clearly states that broadcasting organisations and other providers in their activities should fulfil the requirements established by Закон України “Про захист суспільної моралі” №1296-4, 20 November 2003 (Defence of Public Morals Act No. 1296-4, 20 November 2003). This means that “broadcasting companies are prohibited from

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<sup>28</sup> The Committee was renamed into the State Television and Radio Broadcasting Committee of Ukraine by presidential order No. 54, 31 January 2003 and appears under this title in the Television and Radio Broadcasting Act.

announcing and screening programmes that may do physical, intellectual and psychological harm to minors unless such programmes are broadcast between 11 pm and 6 am and on channels with limited access” (Art. 62, par. 2). This provision may and, in fact, has been used to put restrictions on telecasting LGBT-related movies. On 10 February 2008, Sunday, at 22.15 TV channel 1+1 aired the Oscar-winning movie “Brokeback Mountain”. This drew an almost immediate response on the part of Національна експертна комісія із захисту суспільної моралі (National Expert Commission on the Protection of Public Morals), which is a governmental body created to enforce legal norms contained in The Public Morals Act and monitor non-compliance on the part of printed, audio and visual media in this regard. In its decision concerning the movie the Commission stated: “The idea behind the movie ‘Brokeback Mountain’ and the images it displays can do physical, intellectual and psychological harm to people, in particular young people and children, who had been able to watch the movie. Having watched the movie, psychologically and socially immature persons can draw wrong conclusions or even try to take after what they could see and imitate it [such behaviour]”. Based on this conclusion the State Television and Radio Broadcasting Committee of Ukraine issued a restrictive order prohibiting the channel to air the movie at all but night time (11 pm - 6 am). Similarly, in July 2009, based on the negative decision of the National Expert Commission on the Protection of Public Morals, the Ministry of Culture of Ukraine prohibited cinemas from screening Sasha Baron Cohen’s movie “Bruno” altogether.

187. Currently, there is no noticeable public discussion on the role of the mass media in portraying the life of LGBT people in Ukraine and the image of LGBT people that the mass media should convey to counter stereotypes and prejudices towards this social group. Analysis of media pieces on various LGBT topics is conducted by two national LGBT organisations - “Наш мир” (Our World) and Gay Forum - on a regular basis. Their annual reports allow to establish a certain status quo in the approach of the media when dealing with LGBT issues:
188. As a rule, the authors limit themselves to presenting information, obtained from one source, without trying to verify it or compare it to information from other sources;
189. Information is usually presented neutrally with few attempts to give any appraisal. If and when an article contains the author’s opinion, it is usually incompetent (for example, talking about ‘the choice of one’s sexual orientation’);
190. Articles, containing bitter negative attitudes to LGBT, are commonly produced by members of the movement “Любов проти гомосексуалізму” (Love Against Homosexuality). Other homophobic publications usually come from religious groups and are coloured with general xenophobia;
191. From time to time newspapers publish articles about anti-Ukrainian ‘gay mafia’ that aspires to establish a certain unnatural order in the society. Such articles usually bash ‘hidden homosexuals’ in the government and the West that ‘sponsors homosexuality in Ukraine’;
192. Most of the media materials depict homosexuality as a fate of marginal social groups - prisoners and bohemians. LGBT people are portrayed as ‘victims of glamour’ and ‘a new fashion’ (i.e. people who are obsessed with their looks and are out after new experiences).

#### **B.14. Transgender issues**

- With the absence of anti-discrimination norm specifically targeting gender identity or gender expression, transgender people only appear in the Ukrainian health care law

as 'persons who require medical assistance for the purpose of changing (correcting) sex'.

193. Second, the requirements to have no children and not to be married constitute discrimination of transgender persons on the grounds of their social and, more specifically, marital status, and contradict Art. Third, the Order contains a number of prerequisites that are controversial for the purposes of diagnosing person's transsexualism and allowing for sex change, i.e. homosexuality and transvestism as contraindications, which have no connection to gender identity; sufficient manifestations of endocrine, morphologic and other characteristics of the desired sex, which are impossible to determine precisely; serious flaws in the ability for social adaptation, which may be the result rather than the cause of the person's inability to adapt when their birth sex is not in line with desired sex; etc.
194. when the sexual pathologist in charge decides in favour of gender reassignment surgery he [the medical doctor] completes required medical documentation for further consideration of the case by the specialized medical board, which has to finalize the decision as to whether hormone treatment and the operation should be allowed or not.
- 195.
196. Par 5 of the Article states that only after the surgical operation the patient can receive a medical certificate of sex change, which serves as a ground for emending the entry in the person's official registry of birth and issuing a new birth certificate. This requirement (i.e. change of the person's gender marker in the birth certificate and registry only after the gender reassignment surgery) is also reflected in the paragraph on changing names.
197. The Ukrainian law governing the change of name sets no explicit limitations for transgender people, pre-op or post-op. Art.915, 11.07.2007) read a person's name cannot be changed if: 1) the applicant is under investigation, administrative supervision or restrictive court order; 2) the applicant has not been acquitted of a conviction;3) there is an official address from foreign law enforcement agencies concerning an ongoing investigation against the applicant; 4) the applicant has provided incorrect information. The law does not contain any requirements in regard to the gender appropriateness of the name chose by the applicant. Thus far the analysis shows that the main legal problem of transgender persons in Ukraine is that the law does not recognize their right to have their gender marker changed in the in the birth registry, birth certificate and passport without invasive genital (or other) reassignment surgery. It also does not provide for the possibility that endocrine correction can be conducted without surgical change (correction) of sex. Under these conditions the requirement that the gender reassignment surgery should be conducted no earlier than a year after diagnosing the person's transsexuality and issuing to him/her an official approval for gender reassignment treatment puts **an undue burden** on transgender persons who have to live and adapt in the society when their physical appearance may no longer be in line with their legal sex after the start of corrective hormonal therapy that precedes surgery.

#### *Family issues*

198. As mentioned above, the person who is willing to undergo a gender reassignment surgery must not be in a registered marriage at the time of his/her application and its review by the specialized medical board.
199. However, having children, according to Наказ Міністерства охорони здоров'я України "Про надання медичної допомоги особам, що потребують зміни (корекції) статевої належності" № 57, 15.03.1996 (Order of the Ministry of Health Care of Ukraine "On providing medical assistance to persons who require change (correction) of sex" No. 57,

15.03.1996), is already a serious contraindication to changing one's sex, which altogether renders the entire issues of paternity/maternity for transgender persons utterly problematic.

200. The other legally problematic section that remains is that concerning spousal maintenance rights and obligations after the termination of marriage. On the one hand, Arts. 76-82 of the Family Code do not contain provisions that may be interpreted as directly or indirectly discriminating transgender persons. On the other, Art. 83 states that one of the spouses loses his/her right to receive maintenance in case his/her illness, which necessitates material support (e.g. hormonal treatment and sex change operation) were concealed from the other spouse.

## **B.15. .Miscellaneous**

### *LGBT and law enforcement*

201. Закон України "Про міліцію" № 565-12, 20 December 1990 (The Police Act No. 565-12, 20 December 1990) in Art. 5 par. 2 stipulates that the police should respect dignity and protect the rights of the person regardless of his/her "**membership of a particular social group**, material and economic status, racial and national origin, citizenship, age, language, education, religious belief, sex, political and other convictions". Whilst the article does not explicitly mention sexual orientation and/or gender identity as one of the protected grounds, LGBT people should not face discrimination by the police on the grounds that they form a particular social group. In reality, however, national LGBT organisations report numerous violations of the rights of LGBT people. For instance, a recent study conducted by "Наш Мир" (Our World) showed that 61.5 percent of the respondents (gay men and lesbians) have suffered discriminatory treatment, humiliation, psychological pressure, threats, blackmailing and physical violence on the part of police officers. In such cases LGBT people, fearing adverse consequences and further victimisation, are unwilling to report the police's illegal activities to the public prosecutor's office.
202. Another commonly occurring violation in the context of relations of LGBT people with law enforcement is violation of due process, for example, summons without an official notice, refusal to draw up examination records or reports, illegal collection, storage and processing of personal information. The latter, extremely crucial in dealings with LGBT people, is expressly prohibited by Art. 32 of the Constitution of Ukraine and Art. 23 of Закон України "Про інформацію" № 2657-12, 02 October 1992 (Information Act No. 2657-12, 02 October 1992).
203. During the investigation of the criminal case connected with the murder of a gay man, Dmitriy Kandyba, on the night of 10/11 April 2009 officers of the police special forces division "Berkut" held an operation in the popular gay club "Androgin" in Kiev. Club visitors (over 80 persons) were detained and taken to Golosiyivsky District Police Station. Some detainees reported rude and abusive treatment by police officers and also claimed that the officers used force against them. At the police station, the officers illegally (without following required due procedures) took fingerprints and photos of the detained. After this the detainees were forced to sign statements that they did not have any complaints against the police.
204. It is particularly surprising that this raid was held two weeks after the murder. In addition, the police possessed a photo of the suspected murderer. Thus, in the opinion of the Ukrainian LGBT organisations, the goal of the operation in the club "Androgin" was not to identify the murderer but to threaten the LGBT community and collect personal information on the visitors of the gay club.



205. LGBT organisations lodged a collective complaint on such actions to the General Prosecutor's Office and other agencies, subjects to the Ministry of Internal Affairs. Their answer came in a form of a written statement: "actions of Golosievsky rayon Department of Internal Affairs bore no violations". In addition, "Наш мир" (Our World) LGBT organisation suggested raising the issue of the illegal collection of personal information on members of the LGBT community before the Public Board under the Ministry of Internal Affairs. However, members of the Board flatly refused to allow a representative of the LGBT community to a meeting and hear of the issue.
206. A similar incident occurred in Lviv. In February 2009 a gay man was murdered in Lviv. In the course of the investigation the police instituted questioning of a number of homosexual men (according to the information provided by Andriy Lyshchyshyn, director of the Lviv LGBT organisation "Total", more than 300 homosexual men were questioned by the police from February till May 2009) in the Galitsky rayon police station. The witnesses report to have been submitted to psychological pressure and insults; police officers blackmailed those questioned with outing them to their respective employers and resorted to physical violence. Detailed information about each of them, including fingerprints, was collected and about ten men were battered and had to turn to medical assistance. All men were forced to sign written statements about not having any complaints on the actions of the police.
207. In this context it is worth mentioning that the violation of the right to due process is not specific for cases involving LGBT persons; rather, it is a society-wide problem in the Ukraine's system of law enforcement and administration of justice. There are presently no studies in Ukraine that show statistical prevalence of such violations in regards to LGBT persons in contrast to other social groups.

*Issues for people (suspected of) living with HIV*

208. A noteworthy legal loophole in regards to collection and processing of personal information about LGBT people by the police is found in Art. 10 par. 21 of the Police Act. It provides that the police, in accordance with its major tasks, has to identify and inform medical (health care) establishments about persons who belong to groups at risk (of HIV/STI) and, at the official request of the medical establishments and with the sanction of the public prosecutor's office, to bring such persons in for obligatory examinations and treatment.
209. This legal provision clearly conflicts with Arts. 29 and 32 of the Constitution of Ukraine, Art. 6 of Закон України "Про запобігання захворюваності на синдром набутого імунodefіциту (СНІД) та соціальний захист населення" № 1972-12, 12 December 1991 (Prevention of Acquired Immune Deficiency Syndrome (AIDS) and Social Protection of Population Act No. 1972-12, 12 December 1991), which guarantees voluntariness and anonymity in testing for HIV, and establishes undue limitations on LGBT people's rights to freedom and personal inviolability, as well as their right for privacy and non-interference with their personal and family life. Put differently, this legal provision allows police to collect and process sensitive personal data and to limit an LGBT person's freedom without a well-reasoned court decision and when he/she has not committed any crime or offence.
210. Although there is no indication that this provision has ever been used to its full potential, one cannot say that the police and medical institutions are short of willingness to start applying it in case the authorities decide to 'curb' LGBT movement. Interestingly enough, "Наш мир" (Our World) in its 2008 report on the situation of homosexual persons in Ukraine provides reference to a letter of the Head of the Department of Health Care of the city of Mariupol, O. Zhelezniak, in which he claims that medical institutions neither see a problem, nor lack enthusiasm to initiate such actions: "using police forces to identify homosexual persons, who belong to a group at high risk of contracting HIV, is not a

problem and this can be immediately put in action at the initiative of respective health care institutions”.

#### *LGBT and Blood Donation*

211. Technically, LGBT people are prohibited from donating blood in Ukraine. Art. 14 of Закон України “Про донорство крові та її компонентів” № 239, 23 June 1995 (Donation of Blood and Its Components Act No. 239, 23 June 1995) reads: “During medical examination that is conducted before donation of blood or its components such person [i.e. the donor] must notify the respective member of the medical institution’s personnel of [...] any forms of risky behaviour that may result in the donor’s contracting infectious diseases, which are transmitted through blood, and presence of which will result in restricting one’s privileges to become a donor”. Whilst the questionnaire that every potential donor has to fill out before donating blood contains only sexuality non-specific questions and disclaimers (cit.: “I certify that [...] I do not provide sexual services for pay, do not have sexual relations with strangers without a condom, do not frequently change sexual partners [...])”, Перелік захворювань, протипоказань до донорства і форм ризикованої поведінки (List of diseases, contraindications to donorship, and forms of risky behaviour), included in the Наказ Міністерства охорони здоров’я України “Про порядок медичного обстеження донорів крові та (або) її компонентів” № 381, 01 August 2005 (Order of the Ministry of Health Care of Ukraine concerning the rules and procedures of medical examination of donors of blood and/or its components No. 381, 01 August 2005), marks homosexual male practices (par. 1.3) and psychological disorders (par. 1.2.5, applicable to transgender persons) as absolute contraindications to blood donation.
212. As of present, there have been no official attempts to appeal against these provisions.

#### *Change of the name(s) and transgender/transsexual persons*

213. The Ukrainian law governing the change of name sets no explicit limitations for transgender/transsexual people, pre-op or post-op. Art. 295 par. 1 of the Цивільного кодексу України (Civil Code of Ukraine) guarantees the right of any person who has reached the age of 16 (sixteen) to change his/her last name and/or first name to any of his/her liking. Par. 6 of the same Article of the Civil Code of Ukraine together with Art. 11 of Порядок розгляду заяв про зміну імені (прізвища, власного імені, по батькові) фізичної особи № 915, 11 July 2007 (Rules and Procedures Concerning Processing Applications for the Change of Name (Last Name, First Name, Patronymic) of a Physical Person No. 915, 11 July 2007) read a person’s name cannot be changed if: 1) the applicant is under investigation, administrative supervision or restrictive court order; 2) the applicant has not been expunged from previous conviction; 3) there is an official address from foreign law enforcement agencies concerning an ongoing investigation against the applicant; 4) the applicant has provided incorrect information. The law does not contain any requirements in regards to the gender appropriateness of the name chosen by the applicant. There is currently no case law concerning refusal on the part of the authorities to change a male name to a female one or vice versa.
214. However, gender-specific limitations apply to patronymics, which places undue burden on pre-op transgender/transsexual persons. The limitation results in a person having a woman’s name and a patronymic with a masculine ending, which is reflected in the person’s passport and other official documents.

## B.16. Good practices

215. No good practices have been identified. Although current law in Ukraine is for the most part 'sexual orientation/gender identity-blind', there are no legal provisions, legal interpretations or policy practices that could be presented as good practices, directed at combating homophobia and/or transphobia and discrimination on the grounds of sexual orientation and/or gender identity, or providing LGBT people with all rights and necessary protections.

### *Annex 1: Case law*

216. NOTE: Available case law can be accessed via Єдиний державний реєстр судових рішень (Master State Registry for Court Decisions) at <http://www.reyestr.court.gov.ua/>. The Registry contains both conceptual standpoints and actual decisions of courts at various levels in the system (i.e. courts of general jurisdiction, appellate courts). Rulings of Верховний суд України (The Supreme Court of Ukraine) are accessible at <http://www.scourt.gov.ua/>.

### **Section: Asylum and Refugee Issues**

Case title	Congo asylum seeker (case No.: 5/261)
Decision date	10 January 2008
Reference details (type and title of court/body; in original language and English (official translation if possible))	Окружний адміністративний суд міста Києва / Circuit Administrative Court of the city of Kiev
Key facts of the case (max. 500 chars)	The claimant crossed the border of Ukraine illegally and requested asylum fearing persecution on the ground of her sexual orientation in her country of origin, Congo. The Kiev Department of Immigration Services denied her request, which the applicant appealed in the court
Main reasoning/argumentation (max. 500 chars)	The court established that the reasons that made the citizen of Congo leave her country of origin are of a private nature. Congo does not legally persecute persons who belong to sexual minorities; it is only the society that condemns such relations. As such, the claimant could not provide sufficient evidence to substantiate her need for asylum.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Sexual orientation is a private matter and does not constitute the reason for granting

	asylum unless the country of origin legally persecutes on this ground
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant was denied refugee status and asylum in Ukraine

**Section: Education**

Case title	В. Жилін (V. Zhylin) v. ВНЗ “Економіко-правовий технікум” (Economics and Law College)
Decision date	25 July 2005
Reference details (type and title of court/body; in original language and English (official translation if possible))	Голосіївський районний суд міста Києва / Holosiivski Regional Court of the city of Kiev
Key facts of the case (max. 500 chars)	The claimant, with support from the college psychologist, started a campaign for tolerance towards LGBT people at the Economics and Law College. This was received negatively by the college director, which, in a series of private conversations with V. Zhylin, let him know that he was not welcome and that homosexual students had no place in the establishment. Eventually, V. Zhylin was expelled from the college under the pretence that he did not submit all of the documents required for enrolment.
Main reasoning/argumentation (max. 500 chars)	The court established that V. Zhylin should not have been accepted to the College if he had not had all of the required documents in the first place. Expelling him after a period of his enrolment in the capacity of a student for this reason is therefore illegitimate and thus violates the claimants right to education.  With regards to discrimination on the ground of sexual orientation, however, the court concluded that the claimant could not provide sufficient evidence to substantiate his claim.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	LGBT persons may receive compensations when their specific rights are violated, but discrimination on the ground of sexual orientation itself usually is not taken into consideration by the courts.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The claimant was rewarded monetary reparation in the amount of 623 UAH (60.23 EURO) for illegal expulsion payable by the College.

## Annex 2: Statistics

### Freedom of Assembly and Association

	2004	2005	2006	2007	2008	2009
Number of demonstrations in favour of LGBT people/LGBT rights, gay pride parades, etc.	1	1				1
Number of demonstrations against LGBT people/LGBT rights				2	2	6
Number of planned demonstrations/public events organised by LGBT people denied					1	1

### Asylum and Refugee Issues

	2005	2006	2007	2008	2009
Number of persons benefiting from asylum/subsidiary protection due to persecution on the ground of sexual orientation or gender identity		1		1	

### Transgender Issues

	2005	2006	2007	2008	2009
Number of name changes affected due to change of gender/gender identity of the applicant	No data available				
Number of persons who changed their gender/sex in your country under the	12	16 <sup>29</sup>	The specialised	4 <sup>30</sup>	

<sup>29</sup> The 28 people who changed their sex/gender in 2005-2006 also changed their legal sex in their documents.

<sup>30</sup> Four persons were officially authorised by the specialised medical board to undergo hormonal therapy and have a sex change surgery. According to the current legislation surgery will become available to them only in 2010.

applicable legislation (if relevant split between transgender/intersex applicants)			medical board did not convene in these years	
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