



LEGISLATIVE ANALYSIS RELATED TO SOGI AND HIV IN UKRAINE

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Publication prepared by: Oksana Guz, Irina Fedorovich, Yuri Yoursky.

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Editing and translation: Hanna Oliynyk and Marcus Oda.

Design: Anastasiia Danylevska.



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ACRONYMS AND ABBREVIATIONS

EECA Eastern Europe and Central Asia

HC Hate crimes

HIV Human immunodeficiency virus

LGBT Lesbian, gay, bisexual and trans people

MSM Men who have sex with men

NGO Non-governmental organization

PLHIV People living with HIV

SOGI Sexual orientation and gender identity

Trans Describes a person who identifies as transgender, non-binary, or otherwise gender non-conforming, including but not limited to transgender, genderqueer, gender-mutable, agender, third gender, bigender

WHO World Health Organization



The aim of this comparative country analysis is to identify legal barriers and issues in areas where the necessary legislation already exists, but does not fully ensure the implementation of rights and freedoms for gay men, other MSM and trans people. In order to carry out this analysis, ECOM developed a methodology and questionnaire, which our local partners helped us to fill out. The analysis of legal practice took into account both judicial practice and government statistics, as well as reports of activists, information and statistics of organizations involved in documenting cases of violations and protecting human rights, press reports, and reports of non-governmental organizations to international bodies.

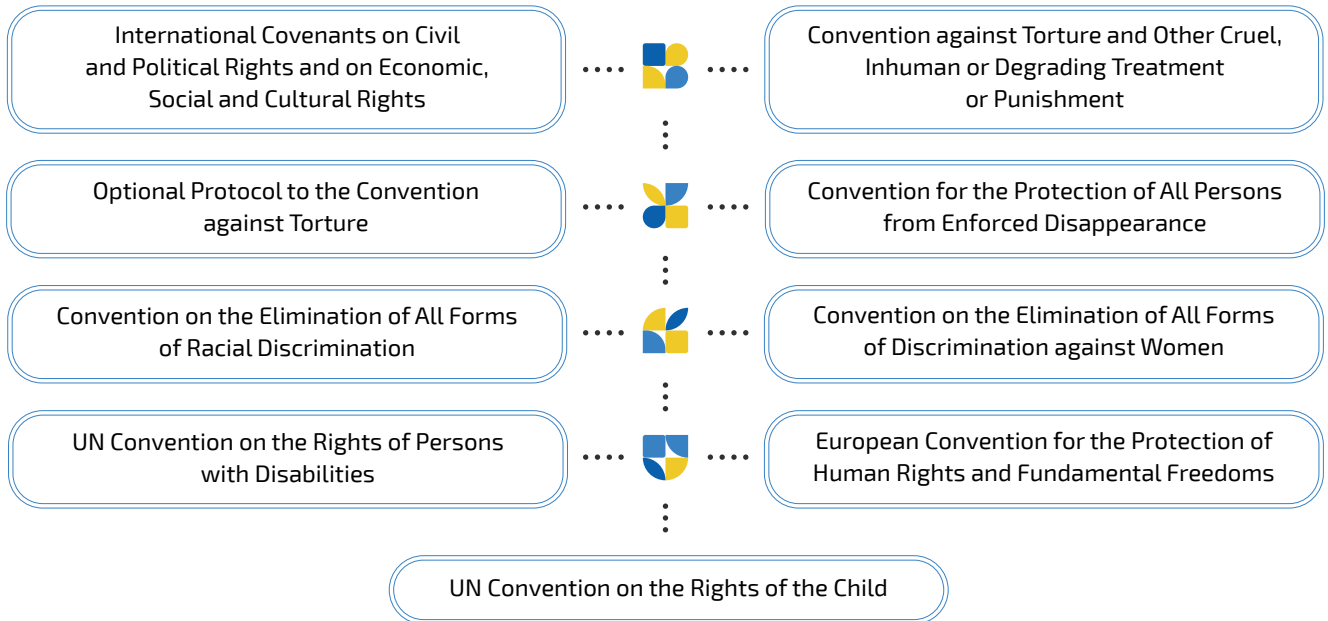
Two dimensions of legislation and law enforcement practice were reviewed. The first is their compliance with international standards of human rights and freedoms. The second is the actual ability of community members to receive protection and realize the rights and freedoms guaranteed under international obligations and national law. A situation where a law exists in a particular country, but a part of the population cannot avail themselves of its protection, indicates that barriers exist in the legal environment.

As part of this analysis, extracts from and references to regulatory legal acts were provided in order to provide information on current legislation. Unfortunately, these are not always correctly formulated and do not always comply with international standards of terminology. In this case, the original formulations are presented to objectively reflect the existing legal framework and the formal terminology adopted in the country regarding the issues under study. All citations from regulatory legal acts are in italics and have references provided.

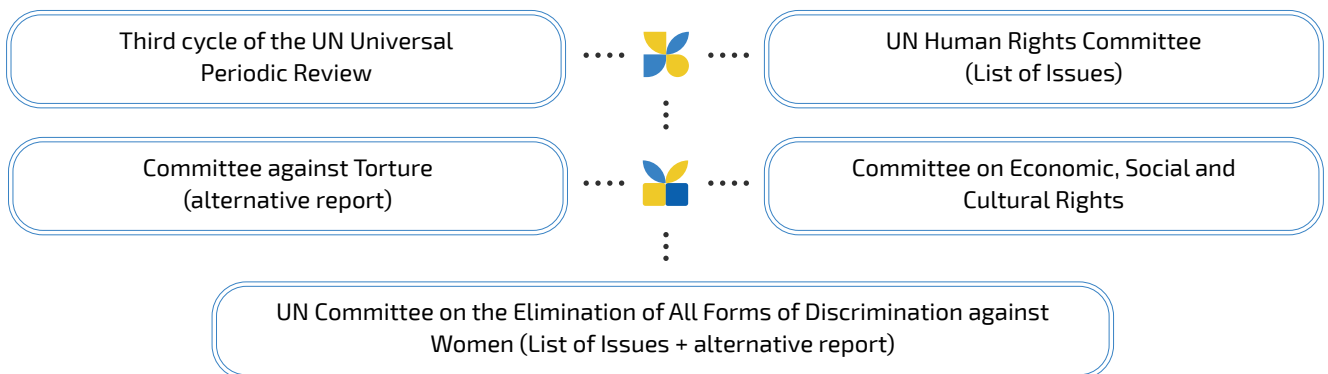
The information presented in this document can be useful for non-governmental organizations, community activists, and government representatives when planning advocacy processes and promoting the rights of PLHIV, gay men and other MSM, and trans people, addressing and eliminating barriers that prevent their access to healthcare services, and for protecting their rights and freedoms.



INTERNATIONAL HUMAN RIGHTS STANDARDS RATIFIED BY THE COUNTRY









CIVIL SOCIETY IN UKRAINE USES ALTERNATIVE REPORTING MECHANISMS TO UN BODIES





AT THE NATIONAL LEVEL, INTERNATIONAL HUMAN RIGHTS STANDARDS HAVE BEEN TRANSLATED INTO THE FOLLOWING LAWS

LEGISLATION	YES	NO
 PROTECTION FROM DISCRIMINATION		
Provision on the prohibition of discrimination in the Constitution,	✓	
separate law defining and prohibiting discrimination	✓	
including based on SOGI		✗
Law on the prohibition of domestic violence,	✓	
including based on SOGI		✗
Provision on hate crimes in the Criminal Code	✓	
 RIGHT TO HEALTH		
Separate law on the rights of people living with HIV	✓	
Provision on the prohibition of discrimination (unequal treatment) in the field of health in relation to PLHIV	✓	
Provision on the prohibition of discrimination in the field of education based on HIV+ status	✓	
Prohibitions on immigration or entry into the country for PLHIV		✗
Criminal liability for intentional	✓	
and/or unintentional transmission of HIV		✗
Prohibition on blood donation by MSM		✗
special screening procedures for MSM donors		✗
 RIGHT TO HEALTH FOR TRANS PEOPLE		
Legislatively enshrined procedure for legal gender recognition	✓	
Mandatory psychological and psychiatric examination	✓	
Required surgical procedures for legal gender recognition		✗
Adopted medical protocol for trans people in accordance with ICD-10	✓	
Permission to use international medical protocols for doctors treating trans people	✓	
Normatively enshrined list of contraindications for legal gender recognition (adulthood)	✓	

LEGISLATION	YES	NO
 RIGHT TO PRIVATE AND FAMILY LIFE		
Recognition of same-sex partnerships at the legislative level		✗
Recognition by courts of unregistered cohabitation of same-sex couples as a legal marriage		✗
Criminalization of voluntary homosexual relations		✗
Possibility for trans people to enter into a heterosexual marriage following legal gender recognition	✓	
Adoption by same-sex couples		✗
Adoption by single LGBT people	✓	
Adoption by trans people following legal gender recognition	✓	
Adoption by PLHIV	✓	
Age of consent for voluntary heterosexual and homosexual relations (same)	✓	
 RIGHT TO FREEDOM OF SPEECH AND PEACEFUL ASSEMBLY		
Legislation governing peaceful assemblies		✗
Mandatory authorization from local authorities for holding a peaceful assembly		✗
Prohibition on peaceful assemblies for LGBT people		✗
Penalties for holding a peaceful assembly without the consent of the authorities		✗
Law «on the prohibition of gay propaganda»		✗
Attempts to introduce bills limiting the freedom of speech of LGBT people, including bills «on the prohibition of gay propaganda»	✓	
 FREEDOM OF ASSOCIATION AND FUNDING OF NGOS		
Opportunity for NGOs to receive funding from national and/or local budgets	✓	
Actual working mechanisms for the distribution of public funds to NGOs working in the social sector, excluding health, for example in the fields of education, culture, sport, youth, social protection	✓	
Actual working mechanisms for the distribution of public funds to NGOs working in the field of health	✓	
Mandatory authorization procedure for registration of a public organization	✓	
Registration of an LGBT public organization	✓	
Possibility of obtaining donor support from international organizations and foundations	✓	



INTRODUCTION

Modern Ukraine is an independent, unitary, constitutional and democratic state, striving for close partnership with the European Union, which requires the country to revise, among other things, its legislative framework in order to meet minimum standards for the protection of human rights. At the same time, Ukrainian society remains quite traditional and religious, and discussion of the rights of minorities causes great resistance from the majority. Sociological survey data over the past 3-5 years shows a very slow improvement in public perception of LGBT+ people, but it is still too early to talk about acceptance of and respect for diversity in Ukrainian society.

Ukraine is a former Soviet republic with a parliamentary-presidential form of government and a large population compared to other former republics (about 43.7 million people, including the occupied Crimea). Ukraine has an ongoing military conflict in the Donetsk and Lugansk regions of its territory, and a large number of internally displaced persons (IDPs). Part of its territory, the Crimean Peninsula, is occupied by the Russian Federation. There is almost no data on the situation of LGBT+ people in the occupied territories not controlled by the state of Ukraine. At the beginning of the occupation and military conflict in 2014-2015, there was an outflow of IDPs from these territories, including LGBT+ people. Over the years, openly LGBT+ people have also appeared among the soldiers in the joint forces operation (JFO) zone¹, which has generated a lot of discussion in society and is one of the factors increasing the visibility of LGBT+ people.

According to the annual rating «Freedom in the World 2021: Democracy under Siege» by Freedom House², Ukraine scored 60 out of a possible 100 points (2 points less than last year). The authors of the rating assess the observance of the right to equal participation in political life with respect to women, ethnic minorities and LGBT+ people at 3 out of 4 points, noting both the low percentage of women in power and the unwillingness (impossibility) of the open participation of LGBT+ people in political processes. The degree of observance of the principles of the rule of law and the independence of the judiciary is also rated low, however, there are no issues in the country regarding the ability to register NGOs and conduct public activities. Despite the existence of the Law «On the Principles of Preventing and Combating Discrimination in Ukraine», researchers note a high level of discrimination and frequent complaints of discrimination from LGBT+ people, which rarely lead to appeals to law enforcement agencies or court complaints³.

The country has not yet ratified the Istanbul Convention, with researchers and activists citing the active position of local religious leaders and institutions as one reason for the lack of ratification based on the denial of the need for the Convention because of the words «sexual orientation», «gender identity», and «gender» contained therein⁴.

¹ More at: <https://www.dw.com/en/lgbtq-troops-and-vets-go-to-war-with-homophobia-in-ukraine/a-58059054> and <https://www.reuters.com/article/us-ukraine-lgbt-rights-feature-trfn-idUSKBN20B0P9>

² Report for 2020 available at: <https://freedomhouse.org/country/ukraine/freedom-world/2021>

³ For example, see the report of the LGBT Human Rights Center «Our World», «Unprotected characteristics» in Ukrainian <https://gay.org.ua/blog/2021/07/23/nezakhyshcheni-oznaky/>

⁴ More details in Ukrainian at: <https://www.ukrinform.ua/rubric-politics/3035854-comu-ukraina-tagne-zi-stambulskou-konvenciu.html>

Meanwhile, there is a high level of complaints of domestic violence in the country⁵, a low rate of registration of such complaints by law enforcement agencies⁶, ineffective investigations⁷ and a lack of support programs for victims. LGBT+ people are not a target group for existing programs and can only receive support through specialized LGBT+ service organizations. There is no separate shelter for LGBT+ victims of domestic violence⁸.

According to Rainbow Europe⁹, Ukraine ranks 39th among the 49 member states of the Council of Europe. Among Ukraine's shortcomings, the rating notes the absence of a prohibition on discrimination based on sexual orientation and gender identity (SOGI) in anti-discrimination legislation, the ineffective investigation of hate crimes (HC), inequality with regard to the social and economic rights of LGBT+ people, as well as the failure to implement the objectives of the National Strategy on human rights aimed at improving the situation regarding the rights of LGBT+ people.

Ukraine has signed and ratified the required minimum of international documents in the field of human rights and **is a party to the following international documents**¹⁰:

- International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Optional Protocol to the Convention against Torture;
- Convention against Enforced Disappearances;
- UN Convention on the Rights of the Child;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women;
- UN Convention on the Rights of Persons with Disabilities;
- European Convention for the Protection of Human Rights and Fundamental Freedoms.

The country has recognized individual complaint mechanisms for the following UN instruments:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Optional Protocol to the Covenant on Civil and Political Rights;
- International Convention for the Protection of All Persons from Enforced Disappearance;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women;
- UN Convention on the Rights of Persons with Disabilities.

⁵ For example, in Ukrainian: <https://hromadske.ua/posts/v-ukrayini-zafiksuvali-ponad-200-tisyach-zvernen-pro-domashnye-nasilstvo-u-2020-roci>

⁶ Open data: total number of cases in the Unified Register of Pre-Trial Investigations for 2020 under Article 126-1 «Domestic Violence»: 2,213 cases, of which a notification about being suspected of committing a crime was served in 1,877 cases. There are no open statistics on appeals to the police, and there are also no statistics on the number of appeals from LGBT people

⁷ For example, the judgment of the ECtHR in the case of Levchuk v. Ukraine, available in English at: https://ips.ligazakon.net/document/ES068375?utm_source=jurliga.ligazakon.net&utm_medium=news&utm_content=jl01&ga=2.146028724.1295785954.1627893754-545732690.1627627222

⁸ Such a shelter for LGBT+ people in difficult life situations existed thanks to the initiative of the NGO «Insight» in 2014-2018 and was in great demand

⁹ More at: <https://www.ilga-europe.org/sites/default/files/2021/ukraine.pdf>

¹⁰ List at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=8&Lang=EN

However, in practice these mechanisms are used extremely rarely, individual complaints are mainly submitted to the European Court of Human Rights (ECtHR) under the Convention for the Protection of Human Rights and Fundamental Freedoms.

According to the statistics of the ECtHR, Ukraine is in third place in terms of the number of complaints filed. Its citizens very actively use the mechanism for protecting human rights under the Convention for the Protection of Human Rights and Fundamental Freedoms. Ukrainians primarily submit complaints under Articles 3, 5 and 6, but in recent years, the number of complaints under Article 14 and Protocol 12 regarding discrimination issues has also increased. At least 5 complaints regarding violations of the right to be free from discrimination in relation to LGBT+ people are currently at the communication stage. A number of previous complaints, for which the ECtHR found Ukraine guilty of violating Article 14 of the Convention, among other things, concerned violations of the obligation to investigate hate crimes¹¹, which remains a pressing issue for LGBT+ people as well.



PARTICULAR PROBLEMATIC ASPECTS OF LEGISLATION AND LAW ENFORCEMENT PRACTICE

In 2012, Ukraine was the first among the countries of the ECEA region to adopt a law prohibiting discrimination¹² as part of its compliance with one of the conditions of the Action Plan for the liberalization of the visa regime with the EU. The law was largely modeled on the minimum requirements of the EU Equality Directives¹³, however, neither the first nor the second version of the law¹⁴ included SOGI in the list of protected characteristics. In 2014, the High Specialized Court of Ukraine for Civil and Criminal Cases issued an explanation «On properly ensuring the equality of labor rights of citizens when considering disputes arising in the field of labor relations»¹⁵, where it explained in detail the principle of application by the courts of the «other grounds» construct contained in the law, and also emphasized that the list of grounds protected under the «other grounds» construct includes sexual orientation and gender identity. Later, in 2015, during the next reporting period to the European Union, Ukraine made minimal changes to the Labor Code and expanded the list of protected characteristics in the Code by adding SOGI. To date, this is the only mention of SOGI in legislation. In all other regulatory documents, SOGI is considered to be included as part of the «other grounds» construct when the list of characteristics is open-ended. This causes difficulties in law enforcement practice. Ukrainian courts do not know how to analyze the grounds for discrimination, and take a rather formal approach in general to the analysis of arguments in cases when applicants complain of discrimination¹⁶.

On the other hand, for suppliers of goods and services, and in many respects for employers, the principle of non-discrimination itself is not understood and remains and its implementation remains optional (in their opinion) due to the lack of a state monitoring mechanism.

¹¹ Perpetrated against Roma and Jehovah's Witnesses

¹² The Law «On the principles of preventing and combating discrimination in Ukraine» is available in Ukrainian at: <https://zakon.rada.gov.ua/laws/show/5207-17#Text>

¹³ More in Russian at: https://echr.coe.int/Documents/Handbook_non_discr_iaw_RUS.pdf

¹⁴ Minor changes were made to the law in 2014 after a series of criticisms from the Council of Europe and the European Union.

¹⁵ Full text in Ukrainian available at: <https://zakon.rada.gov.ua/laws/show/v-644740-14#Text>

¹⁶ See a more detailed analysis of court decisions in cases of discrimination in 2019 in Ukrainian: https://issuu.com/socialactioncentre/docs/discrimination_report_final_final

Members of the LGBT+ community also believe that the lack of a direct mention of SOGI in the main anti-discrimination law deprives them of protection from discrimination on an equal basis with other groups. There are very few complaints of discrimination on the basis of SOGI submitted to the Ombudsman¹⁷ and/or the courts (in comparison to the number of complaints based on other protected characteristics).



LACK OF OTHER LEGAL BARRIERS FOR LGBT+ PEOPLE AND PLHIV

The Criminal Code of Ukraine establishes liability only for the intentional transmission of HIV. However, there are few such cases, and practitioners note that it is extremely difficult to prove intent in such cases. In general, such cases stem from complaints related to private accusations, which often end with the victims themselves withdrawing their statements due to the fear of having their HIV status disclosed.

Since 2015, there has been no ban on entry into the country¹⁸ of HIV-positive migrants¹⁹, although universities accepting foreign students include a question about HIV status in their applications.

In February 2021, the Order of the Ministry of Health «On the procedure for medical examination of blood donors and blood components»²⁰ was updated, in which, the paragraph «Criteria for the exclusion of donors of whole blood and blood components» has a subparagraph 12 «**Sexual behavior. Persons engaging in risky sexual behavior that may lead to contracting serious infectious diseases that can be transmitted through blood**». However, unlike the previous version of the Order, which included Appendix 3 and a clear indication that forms of risky behavior include homosexual relationships, the new version does not have such a clarification. Thus, there is no limit on blood donation for gay men and other MSM.

The Order of the Ministry of Health on the approval of the protocol for prescribing antiretroviral therapy (ART) of 2010²¹ reads: «**ART should be prescribed for all patients who require it for medical reasons, and who have expressed a desire to be treated, without restricting access to treatment for injecting drug users (hereinafter referred to as IDUs), including those receiving opioid substitution therapy (hereinafter referred to as OST); commercial sex workers; men who have sex with men (hereinafter referred to as MSM); prisoners and other socially vulnerable groups of the population, as well as patients with co-infections: viral hepatitis/HIV, tuberculosis/HIV. The decision to initiate ART should not depend on political or social factors**»²². The same should apply to immigrants registered with the AIDS Center.

¹⁷ See, for example, the annual reports of the Ombudsman in Ukrainian: <https://ombudsman.gov.ua/ua/page/secretariat/docs/presentations/>

¹⁸ Such a ban existed until 2015, while [this order](#) removed this characteristic from the list.

¹⁹ More in a UNAIDS report: https://www.unaids.org/sites/default/files/media_asset/hiv-related-travel-restrictions-explainer_en.pdf

²⁰ Available in Ukrainian: <https://zakon.rada.gov.ua/laws/show/z0896-05/ed20210406#Text>

²¹ Available in Ukrainian: <https://zakon.rada.gov.ua/rada/show/v0551282-10#Text>

²² Id., Article 1 «General Provisions»



RIGHT TO PRIVATE AND FAMILY LIFE

There is no procedure for registering same-sex relationships in the country. The development of a bill on same-sex partnerships was provided for in the Action Plan for the National Human Rights Strategy for 2015-2020 (an initiative of the President of Ukraine). However, when assessing the implementation of this Plan in relation to the paragraph on the development of a bill on same-sex partnerships, the Ministry of Justice, which is responsible for the state's implementation of this paragraph, publicly stated that it could not fulfill this paragraph, because it was «*the wrong time for this and the population of Ukraine not ready*». Such rhetoric drew criticism from human rights and LGBT+ organizations, but no further developments followed, and no bills on same-sex unions or partnerships were submitted to Parliament²³. In Ukraine, same-sex couples are not able to share joint custody of children, nor can unmarried persons adopt a child.



LEGAL BARRIERS FOR TRANS PEOPLE

The legal gender recognition procedure in Ukraine is rather ambiguous both from a legal and medical point of view.

In 2016, a medical protocol was developed and put into effect²⁴, which determined the scope of medical interventions and the procedure for issuing the medical certificate required to change the gender marker in documents. This protocol significantly simplified and made less punitive the procedure for gender confirmation in Ukraine, which existed previously. The protocol does not require mandatory surgical interventions, but a number of its paragraphs contain inaccuracies that could be eliminated. However, the revision of this document planned in 2019 did not take place.

Trans people can change their gender marker in official documents, provided that they submit a medical certificate of the established form²⁵ to the civil registration authorities, which is issued after they have undergone certain medical procedures²⁶ to resolve the issue «on the relevant changes in their legal status».

Once a medical certificate is obtained, changes to birth records for trans people are usually not a problem, although there are cases where civil registration authorities refuse to make such changes. In such cases, trans people are able to successfully appeal the refusal through the courts and receive an appropriate decision²⁷.

²³ More details in Ukrainian <https://www.prostir.ua/?news=lehalizatsiya-v-ukrajini-zarejestrovanoho-tsyvilnoho-partnerstva-scho-novoho> and <https://www.dw.com/uk/ekspert-pro-homoseksualni-partnerstva-v-ukraini-tse-potribno-desiat-kam-tysiach-par/a-56288859>

²⁴ Unified clinical protocol for primary, secondary (specialized) and tertiary (highly specialized) medical care «Gender dysphoria» https://www.dec.gov.ua/wp-content/uploads/2019/11/2016_972_ykpm_d_gendysfor.pdf

²⁵ Order of the Ministry of Health of Ukraine of 05.10.2016 N 1041 <https://zakon.rada.gov.ua/laws/show/z1589-16#Text>

²⁶ Law of Ukraine «Fundamentals of Ukrainian legislation on the protection of health», Article 51 <https://zakon.rada.gov.ua/laws/show/2801-12#n394>

²⁷ Judgment of 09.06.2020 in case No. 400/1098/20 (in Ukrainian) <https://reyestr.court.gov.ua/Review/89717486>

Despite the fact that in Ukraine, there are no restrictions on gender reassignment for trans people who are in a registered marriage, there are difficulties with making changes to the marriage certificate. In the case of such requests, civil registration authorities refuse applicants, referring to the rules²⁸ that regulate their activities, and by arguing that gender reassignment is not a basis for making such changes. In such cases, appeals against the refusal via judicial authorities are unsuccessful²⁹.



INVESTIGATION OF HATE CRIMES

There is no definition of the term «hate crime» in Ukrainian legislation, although there are a number of norms that provide for liability for crimes committed based on prejudice on various grounds.

The list of aggravating circumstances contains a number of protected characteristics such as age, gender, state of health, race, religion and nationality³⁰, at the same time, sexual orientation and gender identity are not included. Considering that this list is closed, it is impossible to apply this rule in cases of hate crimes committed against LGBT+ people.

The only article that provides for the qualification of acts as hate crimes contains a fairly wide and open-ended list of protected grounds: «**race, skin color, political, religious and other beliefs, gender, disability, ethnic and social origin, property status, place of residence, linguistic or other characteristics**». At the same time, the absence of grounds such as SOGI complicates the investigation of such cases and distorts the actual statistics.

For example, «in 2018, victims contacted the police only in 61 cases out of a total of 365 documented cases of violations of LGBT+ rights; in 2019 — 64 times out of 331 cases; 2020 — 70 out of 186»³¹.

In 2021, a draft law was submitted to the Parliament of Ukraine³², establishing tougher penalties for manifestations of discrimination, which also involves the expansion of protected grounds and the inclusion of SOGI. As of August 2021, this bill has not been considered during sessions of the Parliament.

²⁸ Rules for amending civil status records, their reinstatement, and cancellation <https://zakon.rada.gov.ua/laws/show/z0055-11#Text>

²⁹ Judgments of 04/08/2021 and 05/18/2021 in case No. 640/14549/19 (in Ukrainian) <https://reyestr.court.gov.ua/Review/96111490> <https://reyestr.court.gov.ua/Review/96977481>

³⁰ Criminal Code of Ukraine, article 67 (in Ukrainian) <https://zakon.rada.gov.ua/laws/show/2341-14#n328>

³¹ More in the report of the LGBT Human Rights Center «Our World», «Unprotected characteristics» in Ukrainian <https://gay.org.ua/blog/2021/07/23/nezakhyscheni-oznaky/>

³² Draft Law on Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine regarding the fight against manifestations of discrimination N5488 of 13.05.2021 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71891



PEACEFUL ASSEMBLY AND FREEDOM OF ASSOCIATION

Ukraine guarantees the right of citizens «*to assemble peacefully, without weapons, to hold meetings, rallies, campaigns and demonstrations, about which the executive authorities or local governments shall be notified in advance*», and the restriction of such a right can only be established by the court «*in accordance with the law and only in the interests of national security and public order – for the purpose of preventing disorder or crime, for the protection of public health or for the protection of the rights and freedoms of others*»³³. At the same time, there are no separate laws on freedom of assembly that define the rules for protecting public law and order in Ukraine, and the procedure for holding such events is in itself a notification procedure.

Recently, LGBT+ representatives have had more opportunities to express their position during peaceful assemblies, but such events do not take place peacefully and are attacked by radical opponents. In some cases, the police are powerless to maintain public order, which leads to attacks on protesters and their further persecution³⁴.

It should also be noted that local governments have stopped applying for injunctions to prohibit peaceful assemblies by LGBT+ representatives, but a different practice has emerged. In some regions of Ukraine, local governments submitted for consideration decisions to prohibit any type of peaceful assembly planned to be held in defense of the rights of the LGBT+ community³⁵, and some supported petitions to ban such actions³⁶.



STATISTICAL DATA

As in other countries of the region, there are no estimates of the number of LGBT+ people in Ukraine, but official statistics on PLHIV includes data on gay men and other MSM³⁷. The country has official statistics on the number of HC and/or complaints of discrimination: this data is collected by the Ombudsman³⁸ and the Prosecutor General³⁹. In addition, the data collected by NGOs shows that victims are not always willing to report violations to the authorities, because they fear re-victimization and do not consider government agencies to be effective. The number of cases recorded by NGOs differs from official statistics by several times⁴⁰.

³³ Constitution of Ukraine, Article 39 <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#n4288>

³⁴ <https://suspilne.media/59164-suticki-na-odesa-prajd-2020-versii-lgbt-spilnoti-protivnikiv-ta-policii/>

³⁵ Rivne City Council Decision Draft http://rivnerada.gov.ua/PublicServicesAPI/api/file-attachment/download-file/6813/true?fbclid=IwAR0MeRVkn6gAKzV2C17T5gCuQJUALjYMF_Scct8yMX1DeINubK7t52N90m0

³⁶ https://zaxid.net/u_chernivtsyah_deputati_miskradi_pidtrimali_petitsiyu_pro_zaboronu_aktisyu_lgbt_n1492070

³⁷ Data for 2020 of the Center for Public Health of the Ministry of Health in Ukrainian: https://phc.org.ua/sites/default/files/users/user90/HIV_in_UA_51_2020.pdf

³⁸ Data from the Ombudsman is available in the annual reports in Ukrainian: <https://ombudsman.gov.ua/ua/page/secretariat/docs/presentations/>

³⁹ Data of the Prosecutor General of Ukraine for 2020, which does not have data on LGBT+ people who are victims of hate crimes: https://www.gp.gov.ua/ua/stat_n_st?_m=fslib&t=fsfile&c=download&file_id=210855

⁴⁰ More in the report of the LGBT Human Rights Center «Our World», «Unprotected characteristics» in Ukrainian <https://gay.org.ua/blog/2021/07/23/nezakhyshcheni-oznaky/>

bodies and invites special rapporteurs to visit. Public organizations also actively use alternative reports as an international advocacy tool, however, the speed of implementation of the received recommendations, as well as the attention of the government to the observance of the rights of LGBT+ people, remain extremely low. An assessment of the implementation⁴¹ of the Action Plan for the National Human Rights Strategy, which was developed based on the recommendations of the 1st and 2nd cycles of the Universal Periodic Review (UPR) for 2015-2020 showed almost no implementation of the set of objectives related to the elimination of discrimination towards all groups, including LGBT+ people.

In 2019, the UN Independent Expert on Sexual Orientation and Gender Identity visited Ukraine. After the visit, he published a report⁴², containing a number of recommendations to improve respect for the rights of LGBT+ people, among which he highlighted the need to attract political attention to issues related to respect for the rights of LGBT+ people, the importance of work on public opinion, and the negative impact of the church on public discussion. The independent expert recommends that the Ukrainian authorities take a strong stance in favor of equality based on sexual orientation and gender identity.

Among numerous recommendations to the government of Ukraine, the UN independent expert draws attention to the importance of collecting disaggregated data on LGBT+ people, the need to reform and make more detailed anti-discrimination legislation, and to include SOGI in it, and to issues related to the observance of the right to health, primarily in relation to trans people, emphasizing: «**The process to change name and gender markers on identification documents of trans persons should be based on self-determination of the applicant and be a simple administrative process exempt from requirements such as medical, psychological or other certifications that could be unreasonable or pathologizing**»⁴³.

⁴¹ More details in Ukrainian: <http://hro.org.ua/index.php?r=9#result>

⁴² Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/103/67/PDF/G2010367.pdf?OpenElement>

⁴³ Quote, id.



RECOMMENDATIONS



FOR THE GOVERNMENT

- 1 Amend the Law on Protection against Discrimination to include protected characteristics, such as sexual orientation and gender identity.
- 2 Introduce criminal liability for crimes motivated by homophobia.
- 3 Collect and publish statistical data on the number of complaints about human rights violations, disaggregated for LGBT+ people, including statistics on the number of complaints about domestic violence and discrimination.



FOR CIVIL SOCIETY

- 1 Collect disaggregated data on the number of complaints of discrimination, including HC, based on various grounds, including SOGI; publish this data together with information on what actions the government is taking to punish such human rights violations and to prevent such violations in the future.

