

SHADOW REPORT on situation of lesbian, bisexual women, trans people and intersex people in Ukraine.

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1. Introduction

The LGBTI women's movement has an important role in overseeing and monitoring how Ukraine deals with women's rights and gender equality, as well as assessing what measures are required. For this reason the women's movement produces a shadow report in response to the government's report in order to cover the situation for LGBTI women in Ukraine in the various areas of society. It is important that the civil society reveals the reality of women's lives in relation to obligations taken by Ukraine. The CEDAW Committee itself requests such shadow reporting.

LGBTQI organization Insight is a non-governmental organization established in Kyiv in 2008, working on protection and promotion of LGBTI communities' rights and freedoms in Ukraine. Insight provides legal and psychological counselling to its communities; organizes cultural and educational events to promote visibility of lesbians, bisexual women, trans people and intersex people and raise awareness about diversity and non-discrimination; carries out strategic litigation; conducts monitoring of cases of discrimination based on gender identity and sexual orientation and violations of human rights. Since 2014, Insight has opened a shelter for LGBTQI persons, who are internally displaced due to the military conflict in the Eastern Ukraine and/or face difficult life circumstances and homelessness. Insight supports and cooperates closely with a number of LGBTQI initiatives in other regions of Ukraine. Organization has also prepared and published a number of human rights monitoring reports in cooperation with international human rights and LGBTQI organizations and networks.

2. Executive summary

This shadow report is based on work of Insight public organization describing the situation of lesbians, bisexual women, trans people and intersex people (LBTI) in Ukraine. There is no state monitoring of rights violations of LGBTI people, and human rights reports often rely on anecdotal evidence and small-scale monitoring by civil society organizations. The report includes information about institutionalized discrimination of LGBTI communities such as hate speech by governmental officials, current intrusive and discriminatory procedure for legal recognition of trans people and intersex people, and restrictions of freedom of movement. It also includes information on everyday rights violations that LGBTI people face both from state and non-state institutions such as law enforcement agencies, medical and educational institutions, banks, civil registries, and employers.

Stigma and discrimination against LGBTI already present in the Ukrainian society is further reinforced and perpetuated by discriminatory legislative initiatives and policies of the Ukrainian Parliament and governmental bodies. Trans people are especially vulnerable to discrimination, harassment and violence due to the difficulty of obtaining IDs that reflect their gender identity and are frequently forced to waive their parental, marital and reproductive rights by the current state procedure of legal gender recognition.

3. Key terms

LBTI is abbreviation used to denote lesbians, bisexual women, trans people and intersex people.

Lesbians are women who experience emotional, romantic or sexual attraction to other women.

Bisexual women are women who experience emotional, romantic or sexual attraction to people of different genders.

Trans people are people whose sex assigned to them at birth does not reflect, or not fully reflects their gender identity. For the purpose of this report, trans women and men as well as non-binary trans people are included. Trans women were assigned male sex at birth but live and identify as women. Trans men were assigned female sex at birth but live and identify as men. Non-binary trans people were assigned male or female sex at birth but identify as neither women nor men.

Intersex people are born with or develop physical, hormonal or genetic sex characteristics that do not fit the typical definitions of male or female.

Legal gender recognition is a state procedure that gives official recognition to a trans person's gender identity for their legal gender on their ID to match it, which is essential to be able to live a life of dignity and respect.

4. General overview

Ukrainian legislation meets majority of recommendations of CEDAW. It offers general guarantees for all citizens on equal treatment, regardless of gender. However, these laws rarely go beyond a simple declaration of equality.

Reality seems to be more problematic for LGBTI women. Existing laws are rarely implemented or rendered as mandatory. There is a major disbelief in the justice system in the need of resolving problems that affect LGBTI women, such as gender discrimination, because the patriarchal nature of Ukrainian society continues to determine women role in the community. Although there are many areas where inequality between men and women is expressed, the most evident are politics and family. Unfortunately measures taken by the Ukrainian state against discrimination and other obstacles that LGBTI women face are only minimal.

Constitution, along with other fundamental parts of Ukrainian legislation, such as Criminal Code, Civil Code, Labour Code and Family Code, were approved after ratification of the Convention and other international and European instruments, so they reflect the better part of important principles of human rights, such as equality and non-discrimination. Law on equal rights for men and women adopted in 2005 is the latest of these laws which intends to guarantee equality not just formally before the law, but also equal opportunities for women and men.

Nevertheless, these laws are not followed by clear mechanisms and procedures that would help citizens protect their rights, and articles that should enable execution of these laws are still deficient or incomplete. Despite this, some laws needed to be adopted, such as the law against domestic and sexual violence, based on Istanbul Convention.

While men and women are considered equal in the eyes of the law, in reality women are discriminated against all fields of activities. Even in cases where equality legally declared there are no mechanisms to support its implementation or they are ineffective; there are no records on how these laws are implemented. In such situation, LGBTI women are usually the most vulnerable group due to a lack of legal visibility, absence of non-discrimination provisions and stigma.

Although consensual same-sex relations between adults have been decriminalized in Ukraine since 1991, the level of state supported homophobia and transphobia has been on the increase in the recent years.

The Ukrainian state does not provide legal protections for trans people, intersex people, lesbians and bisexual women; whereas a number of existing legislative acts and policies explicitly violate

rights and freedoms of LGBTI communities in Ukraine. Members of Parliament and state officials at highest level engage in homophobic and transphobic hate speech, often under the guise of supporting “traditional family values”. Homophobic and transphobic violence is not monitored by the state; it is vastly underreported and in most cases does not receive proper investigation or prosecution. The current procedure for legal gender recognition for trans people requires forced sterilization, long-term psychiatric assessment, and does not provide safeguards from abuse and corruption on the part of the governmental officials.

Lack of anti-discrimination legislation causes rights violations of LGBTI people in education, employment, health care, freedom of movement, and virtually any other sphere of social and political life.

5. Issues for LGBTI persons:

a. Discrimination of LGBT persons (*arts. 1 and 2 of the Convention*)

The Current Situation:

For quite a long time before Ukraine entered VLAP¹, authorities managed to ignore the issue of discrimination and the need to address it with persistent success. Thus discrimination or rather unequal treatment had been forbidden only by the Constitution and few mentions in specific laws. Ukraine had obligations to improve its legislation further under international treaties it signed and according to the recommendations received within periodic reviews.

In May 2014 the Parliament voted amendments to anti-discrimination law², which provided changes in definitions, added new forms of discrimination and intensified the role of the national equality body, as well as established the shift of the burden of proof. The Coalition for Combating Discrimination in Ukraine (CCDU)³ gave the following assessment to the amendments: “They provide necessary clarity in definitions and well establish affirmative actions, ensure the shift of the burden of proof and enrich the role of the national equality body. What is still missing within the AD Law is an explicit prohibition of discrimination on the grounds of sexual orientation and gender identity. Next step is to establish administrative responsibility for discrimination and implementation of national policy on prevention and combating discrimination”.

Besides these developments, few more laws were also added to the system of protection against discrimination in Ukraine: 2013 amendments to the law “On advertising”⁴ and to the law “On employment of the population”⁵, both prohibiting discrimination in job advertising. Despite the fact that both establish liability for discrimination in job advertising, there is still no mechanism of control over such advertisements as well as no procedure for administrative punishment, and it doesn’t provide any protection based on sexual orientation and/or gender identity.

Adopted in 2014 «anti-discrimination law» doesn’t provide protection from discrimination for LGBT people. The list of protected grounds doesn’t have sexual orientation or gender identity

¹ https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia_en

² <http://zakon3.rada.gov.ua/laws/show/5207-17>

³ <http://www.antidi.org.ua/en/>

⁴ <http://zakon5.rada.gov.ua/laws/show/270/96-%D0%B2%D1%80>

⁵ <http://zakon3.rada.gov.ua/laws/show/5067-17>

explicitly mentioned. Among other 13 grounds there is also definition of “and other grounds”, which should be considered as protection for LGBT people as well as other vulnerable groups.

In November 2015, the Parliament managed to vote for inclusion of the sexual orientation and gender identity to the list of protected grounds into the Labour Code⁶. This happened just before Ukraine had to send next periodic report to the EC. Historical from one point of view voting in the Parliament was marked by homophobic discussion in the Parliament itself and in society in general⁷. Two more important things to mention: struggling to vote the amendment to the Labour Code, the Parliament broke its own procedure, which caused appeal from MPs to recognise the decision illegal. Second, these amendments were introduced into the old version of the Labour Code; currently the Parliament is working on new Labour Code⁸ which does not contain sexual orientation and gender identity among the list of protected grounds.

The antidiscrimination amendment in the Labour Code still has poor implementation because of absence of clear mechanisms of bringing to account, so employment remains one of the most discriminative spheres for trans people. The most recent 2016 study of socioeconomic transgender situation in post-Soviet region including Ukraine⁹ shows 73% of trans people had problems in employment and 37% experienced blackmail, physical violence, threats, bullying at workplace because of their gender identity or gender expression.

There are also documented cases of discrimination of trans people on the grounds of gender identity actually in all the spheres of everyday life: education (not using preferred name and pronoun), banking (problems with getting and using personalized credit cards), travelling (refusal of getting on the train, rude inspection when crossing the border at the airport), housing (recurring refusals to rent a flat) etc¹⁰.

Recommendations:

1. Amend the existing anti-discrimination law by adding sexual orientation and gender identity as protected grounds from discrimination in all spheres of life.
2. Establish administrative fines for acts of discrimination.

b. Violence and hate crimes towards LGBTI women (arts. 1, 2 and 5 of the Convention; GR # 12)

The Current Situation:

There is no mentioning of sexual orientation or/and gender identity in law “On equal opportunities for women and men”¹¹, which limits lesbian, bisexual women and trans women from exercising their rights. In situation when social stigma is extremely high towards LGBTI women, we need to ensure legal mechanism to protect them as one of the most vulnerable groups.

⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57008

⁷ <http://www.unian.ua/politics/1179471-nardepi-provalili-golosuvannya-schodo-zaboroni-diskriminatsiji-na-roboti.html>

⁸ <http://zakon5.rada.gov.ua/laws/show/322-08/page>

⁹ <http://adaman-t.org.ua/en/2016/11/current-socioeconomic-situation-of-transgender-and-queer-individuals-in-post-soviet-union-region/>

¹⁰ http://insight-ukraine.org/wp-content/uploads/2016/03/broshura_transgender_eng_OK_FULLL.pdf

¹¹ <http://zakon3.rada.gov.ua/laws/show/2866-15>

There are no specific laws on hate crimes in Ukrainian legislation. The only article in Criminal Code of Ukraine, which could be used in such cases – 161 “Violation of citizens' equality based on their race, nationality or religion”¹². This list of grounds is closed, so there is no legal possibility to use it for protection or investigation of hate crimes based on sexual orientation or/and gender identity.

LBT women are the most vulnerable group when it comes to hate crimes due to their belonging to LGBT group and women at the same time. Trans people usually don't report to the police on hate crimes due to problems with registration of their cases, based on mismatch of their legal documents and physical appearance. Also police officers are often highly homophobic and transphobic themselves, however situation slowly improves after reform of the national police started in 2015¹³.

Recommendations:

1. Amend existing law “On equal opportunities for women and men” by adding sexual orientation and gender identity as protected grounds.
2. Amend legislation on hate crimes by including sexual orientation and gender identity in the list of protected grounds.
3. Provide clear mechanisms for proper investigation of hate crimes by establishing special unit in national police on investigation and prevention of hate crimes.

c. Gender-based violence (*arts. 1, 2 and 5 of the Convention; GR # 12*)

The Current Situation:

In December 2016, Ukraine finally decided to ratify The Council of Europe Convention on preventing and combating violence against women and domestic violence based on the understanding that violence against women is a form of gender-based violence that is committed against women because they are women. It is the obligation of the state to fully address it in all its forms and to take measures to prevent violence against women, protect its victims and prosecute the perpetrators. Failure to do so would make it the responsibility of the state. The convention leaves no doubt: there is no real equality between women and men if women experience gender-based violence on a large-scale and state agencies and institutions turn a blind eye.

After reviewing the text of the Convention Ukrainian Parliament decided to remove from the text terms „gender“ and „sexual orientation“, seeing them as a propaganda of homosexuality in Ukraine. Unfortunately this action was supported by majority of members and Committees in the Parliament. This makes convention and the law¹⁴ based on it ineffective as protection mechanism against gender-based violence. It also makes impossible for LBT women to protect themselves from violence, based on sexual orientation and/or gender identity.

Women who are subjected to men's violence are victims of crime and have the legal right to protection and support, which is ultimately the responsibility of the municipality. Access to funding for women's shelters varies among municipalities and some are unable to offer shelter. The CEDAW Committee has urged Ukraine on a number of occasions to set aside sufficient funds for women's shelters. Specific shortcomings have been revealed in regard to protection for women with

¹² http://kodeksy.com.ua/kriminal_nij_kodeks_ukraini/statja-161.htm

¹³ http://insight-ukraine.org/wp-content/uploads/2017/01/guide_discrimination.pdf

¹⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60306

special needs, like those who identified as LGBTI. Existing shelters for women in Ukraine doesn't include LGBTI women as a target group and there is no organisations which permanently offer shelter for this group. Furthermore, there is a lack of treatment and knowledge of violence against women who belong to lesbian, bisexual women, trans and intersex people, notably among social service, healthcare workers and the police. Women belonging to LGBTI minorities are often met with prejudice in attitudes and comments when contacting authorities and the legal system.

Persistent initiatives are required to ensure that LGBTI women receive the same protection and support as other women who are subjected to men's violence. Municipalities must take responsibility for ensuring that information about shelters reaches all women, and that such accommodation is accessible irrespectively of sexual orientation and/or gender identity.

Recommendations:

1. Include terms "gender" and "sexual orientation" in the Ukrainian law on ratification The Council of Europe Convention on preventing and combating violence against women and domestic violence.
2. Establish LGBTI inclusive shelters for women subjected to violence.
3. Provide trainings for social workers and police to increase their awareness of LGBTI women as a group vulnerable to violence.

d. Situation with intersex people in Ukraine (*arts. 1, 5, 10 and 12 of the Convention*)

The Current Situation:

Intersex people are not protected by Ukrainian legislation and there is no specific regulation of prohibition of discrimination in terms of intersex status, legal gender recognition and health issues.

Ukrainian doctors who see an intersex child usually offer to perform a genital surgery to make it easier to determine sex of a child. In the majority of cases, babies in Ukraine that are born with "underdeveloped genitalia" undergo such normalizing surgeries. Of course, parents are informed about the surgeries, but doctors usually explain it in the way that it will make future life easier for both parents and child. Parents do not usually aware that it is possible for their child to live the way they were born and to decide what sex to be later on, at a more conscious age, and after being better informed about the biological variations of the body. So doctors push parents into "assigning" sex of a child, when they were born.

For those who acknowledged their intersex status in puberty, there is no procedure of legal gender recognition if legal sex assigned at birth doesn't match their gender identity. Until the end of 2016, intersex people couldn't use legal gender recognition procedure for transgender people, because "hermaphroditism" considered a contraindication to get permission for "sex change (correction)" needed for legal gender recognition. Only after recent trans health care reform this contraindication was removed¹⁵.

In terms of health care and services in Ukraine, there are no doctors who know how to help and to treat intersex people. There are no specific education courses or trainings on intersex issues.

Recommendations:

¹⁵ <http://zakon0.rada.gov.ua/laws/show/z1589-16>

1. Prohibit normalizing surgeries on intersex babies.
2. Establish simple and transparent procedure of legal gender recognition for intersex people.
3. Establish special educational programs for doctors on intersex issues.

e. Internally displaced LGBTI people (*arts. 1, 2, 4, 11, 12 and 13 of the Convention*)

The Current Situation:

In July 2014, Insight public organization established a Shelter program¹⁶ for LGBTI people who escaped from conflict zones. Since July 2014 we had 53 persons who went through Shelter program, received help in housing, food, medical and legal assistance, and support in socialization in new region¹⁷. In terms of general support for IDPs who belong to most vulnerable groups, such as LGBTI women, Ukraine did nothing, pretending those groups and their specific problems doesn't exist.

All LGBTI women who went through our program of support and adaptation faced gender-based violence and discrimination, especially in general shelters and places for internally displaced persons. LB women were subjected to gender-based violence, such as rape, sexual abuse, psychological abuse, sexism, lesbophobia, sexual harassment, based on their belonging to lesbians or bisexual group. Trans people suffered from denial of official registration at new place, based on mismatch between their physical appearance and legal sex in document, transphobic abuses, hate crimes and sexual violence. Those who tried to find a flat to rent faced triple stigma and discrimination based on gender (single women), sexual orientation and/or gender identity (lesbian, trans) and their status of internally displaced persons. The state did nothing on special protection for the most marginalized groups in conflict zones.

Recommendation:

1. Provide special measures on protection and integration of LGBTI internally displaced persons.

f. Reproductive and adoption rights for LGBTI women (*art. 16 of the Convention*)

The Current Situation:

There is a direct prohibition in Ukrainian legislation on access to adoption for transgender people, based on diagnosis "transsexualism"¹⁸. It limits equal right of all citizens to have a family and to exercise their parental rights. There is also a norm in Ukrainian legislation which prohibits trans people from using reproductive technologies such as freezing their biological material (ovuls, sperm) for further usage¹⁹.

Lesbian and bisexual women, who have families with children, are often subjected to discrimination and abuses, especially when it comes to protection of their family and private life from the State side. Ukraine doesn't recognize any forms of unions for LGBTI families and second parent adoption.

¹⁶ <http://insight-ukraine.org/lgbt-shelter/>

¹⁷ <https://76crimes.com/2014/06/21/amid-ukraine-conflict-a-new-lgbt-refugee-safe-house/>

¹⁸ <http://zakon5.rada.gov.ua/laws/show/z1022-08>

¹⁹ <http://zakon3.rada.gov.ua/laws/show/z0224-05>

In cases when biological mother died or denied of her parental rights, second partner don't have any legal rights for adoption.

Recommendations:

1. Remove all discriminative norms from Ukrainian legislation that prohibit access to reproductive rights and/or adoption rights for LGBTI women.
2. Adopt a legislation providing general partnership for all citizens regardless of any characteristics, including sexual orientation and/or gender identity, with equal parental rights.

g. Legal gender recognition for trans people (*arts. 1, 5, 10 and 12 of the Convention*)

The Current Situation:

2016 was a year when long-awaited reform of Ukrainian health care system for trans people had come into reality. While the unified clinical protocol by Ministry of Health²⁰ which came in place for infamous Order No. 60²¹ has some improvements, like termination of the centralized Commission on “sex change” which had been the state instance for years giving permissions for gender reassignment surgery and legal gender recognition, cancellation of the requirement of compulsory psychiatric hospitalization for 30 to 45 days, no more requirements of not being married or not having children under 18 to be legally recognized, it is still far from full compliance with non-discrimination and human rights principles.

Legal gender recognition in the new clinical protocol is still linked to a psychiatric assessment for such diagnoses as “gender dysphoria” and “transsexualism”. According to the text of the protocol an assessment should be done on outpatient basis, but there is still a possibility of hospitalization for 2 weeks or more without clearly defined criteria for it. Another problem is that assessment should be as long as 2 years at least.

Despite of what Ukrainian trans activists expected, irreversible medical intervention, namely surgery (actually sterilization) remains prerequisite for legal gender recognition. At the same time, there is a requirement of “12 months of continuous HRT²² if necessary ... and at least 12 continuous months of living in gender role, which coincides with gender identity” before surgery.

There is also a provision for surgeons “to make sure that the chosen procedure is appropriate for patient”, meaning they would be a kind of gatekeepers.

Though it is stated in general provisions of the protocol that medical interventions should be to the extent which patient finds sufficient to themselves, psychotherapy and hormonal replacement therapy declared as a required treatment in more detailed chapters. There is also another formulation that “patients should feel constant gender dysphoria in order to be eligible for hormone therapy” which puts in question if life-long HRT will be available for trans people who don't feel dysphoria anymore.

²⁰

http://www.dec.gov.ua/mtd/dodatki/2016_972%20GenDysfor/2016_972_YKPMD_GenDysfor.doc

²¹ <http://zakon0.rada.gov.ua/laws/show/z0239-11>

²² hormone replacement therapy

The chapter on psychotherapeutic care for children has unacceptable provision that could be understood as a recommendation for conversion therapy. There is also requirement for parent consent for medical interventions in age 14 to 18, despite that Ukrainian legislation allows to choose doctor and treatment freely in age over 14²³. And in age under 14 child's opinion according to the protocol is not taken into account at all.

In general, text of the new clinical protocol is full of outdated and pathologizing terminology which could not be considered appropriate from the human rights point of view. Also Ukrainian legal gender recognition procedure doesn't meet needs of non-binary people who may identify other than man or woman.

Recommendations:

1. Establish legal gender recognition procedure which is simply administrative and not dependent on any medical diagnoses or interventions.
2. Base health care model on informed consent when trans people could decide what medical interventions and to what extent to undergo without any requirements.
3. Directly prohibit hospitalization in psychiatric institutions in relation to trans status.
4. Remove from clinical protocols compulsory terms and waiting times for any procedures.
5. Improve access to trans related procedures for children and adolescents.
6. Consider implementation of gender marker options in IDs other than male and female to be suitable for non-binary trans people.

6. List of recommendations to Ukraine:

1. Amend the existing anti-discrimination law by adding sexual orientation and gender identity as protected grounds from discrimination in all spheres of life.
 2. Establish administrative fines for acts of discrimination.
 3. Amend existing law "On equal opportunities for women and men" by adding sexual orientation and gender identity as protected grounds.
 4. Amend legislation on hate crimes by including sexual orientation and gender identity in the list of protected grounds.
 5. Provide clear mechanisms for proper investigation of hate crimes by establishing special unit in national police on investigation and prevention of hate crimes.
 6. Include terms "gender" and "sexual orientation" in the Ukrainian law on ratification The Council of Europe Convention on preventing and combating violence against women and domestic violence.
 7. Establish LGBTI inclusive shelters for women subjected to violence.
 8. Provide trainings for social workers and police to increase their awareness of LGBTI women as a group vulnerable to violence,
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9. Prohibit normalizing surgeries on intersex babies.
10. Establish simple and transparent procedure of legal gender recognition for intersex people.
11. Establish special educational programs for doctors on intersex issues
12. Provide special measures on protection and integration of LGBTI internally displaced persons
13. Remove all discriminative norms from Ukrainian legislation that prohibit access to reproductive rights and/or adoption rights for LGBTI women.
14. Adopt a legislation providing general partnership for all citizens regardless of any characteristics, including sexual orientation and/or gender identity, with equal parental rights.
15. Establish legal gender recognition procedure which is simply administrative and not dependent on any medical diagnoses or interventions.
16. Base health care model on informed consent when trans people could decide what medical interventions and to what extent to undergo without any requirements.
17. Directly prohibit hospitalization in psychiatric institutions in relation to trans status.
18. Remove from clinical protocols compulsory terms and waiting times for any procedures.
19. Improve access to trans related procedures for children and adolescents.
20. Consider implementation of gender marker options in IDs other than male and female to be suitable for non-binary trans people.