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Meeting: 1514th meeting (December 2024) (DH)

Communications from NGOs (Insight (28/10/2024) and Gender Stream (30/10/2024)) concerning the case of Maymulakhin and Markiv v. Ukraine (Application No. 75135/14) and reply from the authorities (31/10/2024).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1514^e réunion (décembre 2024) (DH)

Communications d'ONG (Insight (28/10/2024) et Gender Stream (30/10/2024)) relatives à l'affaire Maymulakhin et Markiv c. Ukraine (requête n° 75135/14) et réponse des autorités (31/10/2024) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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DGI

28 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Rule 9 communication to the Committee of Ministers

Introduction

Insight NGO has examined the [Action Plan](#) presented by the Ukrainian Government to comply with the European Court of Human Rights judgment in Maymulakhin and Markiv v. Ukraine. As our organization works in the interest of LGBTIQ people in Ukraine, our focus here is on general measures proposed by the government to prevent violations similar to this case in the future.

We welcome the very attempt of our government to make a comprehensive view of the current situation of LGBTIQ people in Ukraine and present the measures to improve the protection of their human rights. However, we see at the same time that some statements of this plan are inaccurate and incomplete, and the measures proposed have their drawbacks and are insufficient to provide assured achievement of the declared goals.

We have detailed our feedback below on the various issues following the same structure on Action Plan.

Feedback on the Current Situation of LGBTIQ Persons in Ukraine

1. In the overview of the current situation in Ukraine on p. 2, it is stated with reference to the European Commission report that "The number of reported discrimination against minorities, including against LGBTIQ persons ... has strongly decreased". Below, it is also stated that "The trend towards a decrease in the number of attacks and hate crimes against LGBTIQ persons continues (- 44% since 2020)".

These statements put out of context could create a misleading impression that the situation is improving by itself, even without specific measures. Not denying completely the fact that some improvement is really taking place, we also need to point out some important details.

- Acts of discrimination and hate crimes against LGBTIQ persons always were and still are greatly underreported. This has complex reasons. One is that LGBTIQ persons themselves are often not willing to report because of the fear of being outed, and because they don't believe it could really help them in their situation. Another is because the Ukrainian [anti-discrimination](#) and [hate crime](#) legislation doesn't include SOGI grounds explicitly. This means acts on these grounds are often not investigated and punished properly: the police sometimes refuse to register cases at all or classify them as "hooliganism", which often results in quite symbolic small penalties for perpetrators. For the same reason, such violations are not explicitly included in the governmental statistics. At the same time, data on such cases gathered by CSOs are fragmented because of their limited resources.

- The [prohibition of discrimination](#) in the Code of the Labour Laws on the grounds of SOGI, introduced by the Ukrainian Parliament in 2015, could have some impact on decreasing discrimination in this sphere, but it should not be overestimated. As this kind of discrimination is often implicit, e.g. employers are not



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clearly indicating SOGI as the reason why they are firing or refusing to hire a person, there are many cases hard to prove. This means the law needs additional measures to improve its implementation.

- Since the beginning of the Russian full-scale invasion of Ukraine in 2022, we [noticed a decrease](#) in so-called organized homophobia, i.e. the activity of mostly far-right groups against LGBTIQ persons and organizations, including hate-motivated attacks. There were different reasons behind this: decreased public activity of LGBTIQ organizations too (public actions such as pride marches were restricted due to martial law); moving their focus to other activities primarily related to the war; losing some funding for anti-LGBT activities. However, if we look at general homophobic hate crimes, Insight [doesn't see a noticeable change](#) in their numbers. LGBT Human Rights Center NASH SVIT, which stands behind data on the decrease of hate crimes since 2020, indicated their increase [again in 2024](#), connecting it also with public reactivation of both LGBTIQ organizations/activists and their homophobic antagonists. To sum up this point, changes in the number of hate crimes look rather situational and temporary than a kind of stable tendency.

- While the territorial integrity of Ukraine is not restored as the Russian invasion continues, we should keep in mind that data on Ukraine are usually relevant only to the territory under state control. The situation in the uncontrolled territories occupied by Russia according to [numerous sources](#) is much worse due to both high levels of homophobia and generally bad attitude toward Ukrainians among Russian occupiers. The only way to improve the situation there could be the deoccupation.

- Last but not least: we should not forget that the absence of state regulations for the registration of same-sex relationships in a similar way as for different-sex couples remains discriminatory by itself.

Taking all the above into account, we should not be overjoyed by any numbers indicating a decrease in the discrimination or hate crimes against LGBTIQ persons in Ukraine but still should consider it as an important issue that requires complex solutions.

Commentary on Other Legislative Proposals

2. On p.3, Chapter 7 "Human Capital" of the governmental Plan for the Ukraine Facility is mentioned, particularly citing that this plan "will help ensure protection of the most vulnerable groups".

"Minorities" are italicized there among other listed groups, supposedly meaning they should include LGBTIQ persons too. From our point of view, however, this is rather a drawback of the Plan that LGBTIQ people are not listed there explicitly, as this leaves space for various interpretations, which would not necessarily be inclusive of LGBTIQ+ persons.



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3. On p.5, Law No. 3515-IX is mentioned, which allows non-married partners to receive a one-time financial aid in the event of the death of the partner in some cases. The Plan emphasizes that this is “to safeguard the rights of military personnel and their families, including same-sex partners”. While we agree with the importance of this law in the current circumstances, we need to remind that other rights remain unregulated for such partners, particularly decisions on burial and inheritance. And taking a way where there would be a separate law for any such regulation doesn’t look like a good strategic approach, instead of implementation of a comprehensive legislation that would cover many aspects of same-sex families' rights in a similar way as it is in marriage.

Commentary on the Content of Draft Law 9103

4. The next pages of the Plan are actually dedicated to such proposed legislation as [Draft Law No. 9103](#) “On Institute of Registered Partnerships”, introduced in the parliament on 13 March 2023 by MP Inna Sovsun. This document, when it becomes law, would establish registered partnerships as “a voluntary family union of two adults, of the same or different sex, registered in compliance with the procedure established by this law, based on mutual respect, mutual understanding, mutual support, mutual rights and duties”. Some provisions of this draft law are mentioned, including:

- Registered partners are considered close relatives to each other.
- Property acquired by registered partners during their time in the registered partnership belongs to them as joint co-ownership, unless otherwise specified in their agreement.
- The provisions of the Family Code of Ukraine and other regulatory acts regarding the rights of joint co-ownership of spouses apply to registered partnerships with a joint co-ownership regime.
- There is a possibility of registering a partnership in the absence of one person or outside the State civil status registry (for example, when a person is a military serviceman).
- There is social protection of partners in case of the disappearance or death of one of them, including the resolution of the issue of inheritance.

Generally, Draft Law No. 9103 is presented as a solution “to provide a legal framework allowing same-sex couples to be granted adequate recognition and protection of their relationship”. While we definitely welcome such a solution, we need to stress here that the draft law is not the law yet, as to become a law, it needs to be adopted by the Ukrainian Parliament first. Currently, this doesn’t look like something that will happen without fail.

Note of the Political Challenges in Adopting Draft Law 9103



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The Plan lists several Committees of the Verkhovna Rada already supported Draft Law No. 9103, and this could make an impression that the process is safely moving forward. However, the fate of the draft law mostly depends on the decision of the profile committee, which could recommend adopting or declining it (i.e. to bring it to the parliamentary session hall for voting or not). In this case, this is the Committee on Legal Policy, and as of yet, it has not officially decided yet. However, according to [the records](#) of the meeting of the committee, some of its members are actively opposing the draft law with openly homophobic positions, or masking them behind arguments that the draft law could cause a “social disturbance”. As Inna Sovsun [has noted](#), this committee is one of the most conservative in the Verkhovna Rada. It tries to align its decisions with the Ukrainian Council of Churches and Religious Organizations (UCCRO) – the association known for its consistent opposition to any initiatives aimed at improving the legal situation of LGBTIQ persons in Ukraine (in March 2023, they made a [statement](#) calling the Verkhovna Rada to reject this particular draft law). Now the strategy of the Committee seems to be quiet avoiding any decisions on the draft law, which leads to the endless delaying of the process. In the worst case, if members of the committee feel more support from the anti-LGBTIQ side, they could vote against the draft law, so it won’t reach the parliamentary session hall at all. This means, that if the government really supports Draft Law No. 9103, just waiting is not enough – more active measures need to be taken to convince MPs, including those not supportive, that its adoption is highly important.

In addition to the above, there are also voices among politicians, e.g. the Chairman of the Verkhovna Rada [Ruslan Stefanchuk](#), that sound friendlier but put their accent on the fact that as the Draft Law No. 9103 is not perfect, it is not the best solution for the problem. Therefore, they think it would be better not to hurry with it, but try to work out a better legal mechanism. This needs to be explained too.

- There is no full perfection, and something always could be better. Full marriage equality is definitely better than registered partnerships. Registered partnerships as an integral part of the Family Code are better than those regulated by a separate law. However, we should take the situational context into account. Marriage equality requires changing the Constitution, which not only needs much more political support compared to the adoption of the draft law but also is impossible during martial law. The development of any other integral legislation also requires much time.

- While the war is not over, we need a solution as soon as possible. There are many LGBTIQ people in the military service: the [LGBT military community](#), built around their organization, has more than 300 persons, while the general number based on estimates could be five digits. Some of them are at the frontline right now, and in the case of injury or death, their partners often have no legal rights in this regard, or their rights are significantly less as compared to those of close relatives. This includes rights related to property, inheritance, visiting a partner in a hospital, decisions in medical emergencies and on burial. Thus, legal regulation of their relationships is of urgent importance.



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- The rhetoric of “imperfection” could be easily used by political actors who prefer to hide their homophobic views under more moderate attitudes to continue delaying the legislative processes. On the other hand, it would be potentially possible to improve an “imperfect” law already in force with further amendments, when needed.

Thus, the position of Insight is that Draft Law No. 9103 should be adopted to introduce registered partnerships in Ukraine, and all legitimate measures need to be taken for this to happen sooner.

Commentary on Draft Law 5488

5. On pp. 8–9, the Plan presents Draft Law No. 5488 “On Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine Regarding the Combating Discrimination Manifestations” as a solution to the problem of hate crimes and hate speech on the grounds of SOGI. The importance of such a law is explained in section 1 here, as hate crimes remain the problem Ukrainian LGBTIQ persons face.

It is also mentioned that this draft law was included in the agenda of the 11th session of the Verkhovna Rada on 6 February 2024. However, the 11th session has ended by now, and Draft Law No. 5488 was not considered during it. It reappeared in the [agenda of the 12th session](#) started in September. As can be seen from this situation, the only fact of the presence of the draft law in the agenda does not guarantee its consideration, let alone its successful approval. We also need to remind that Draft Law No. 5488 was introduced in 2021, so generally, there are more than 3 years now that it is awaiting for consideration. Thus, actions are needed to be taken to speed up these processes.

Input on the Change in Attitudes towards LGBTIQ People in Ukraine

6. The section starting on p.12 is dedicated to change in attitudes towards LGBTIQ people in Ukraine. We agree with the general statement that “the level of support of Ukrainian society in the issues of full equality of LGBT people and the introduction of the institution of a registered civil partnership for same-sex couples has increased significantly in recent years”. This actually correlates with Insight’s observations in our [2023 publication](#). However, we also noted the trend of polarization, when there is a majority more or less neutral to LGBTIQ people and smaller but active social groups of allies and opponents. Polarization could coexist with the general improvement in attitudes because opponents while decreasing in numbers, could become more active, visible, and/or aggressive at the same time. The reasons why we rather see polarization in Ukraine are based on the following observations.

- Some actors in Ukraine consistently use homophobia as part of their ideology and/or political position. They include far-right groups, churches, and some politicians. Far-right groups are usually focused on direct actions of threatening and attacking LGBTIQ activists, organizations, and their events. Churches are putting their accent on moral aspects as they see them, considering being LGBTIQ a “sin” and



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“perversion” from a religious perspective. Politicians are trying to increase their electoral ratings by appealing to the homophobic part of society, blocking legislative initiatives aimed at the protection of LGBTIQ people’s rights, and initiating anti-LGBTIQ bills. These agents, however, should not be considered separately. They all act under the umbrella of [“traditional \[family\] values” ideology](#), which they claim to protect, actually meaning pathologization and persecution of SOGIESC diversity. Far-right groups are often affiliated with political parties (e.g. Right Sector, Svoboda) and demonstrate religious views. Also, while such groups could act more directly and radically, some politicians prefer moderate rhetoric like “LGBTIQ issues are not on time” and religious leaders say that LGBTIQ is something that traditionally is not inherent in Ukraine, and they are avoiding condemning anti-LGBTIQ violent acts. This could be seen as a kind of symbiosis that has existed for many years in Ukraine.

- It is clearly seen that anti-LGBTIQ activity explained above is correlated with public LGBTIQ activity, often emerging as a response to it. It was already indicated in section 1 in the context of homophobic hate crimes, which decreased in 2022 with the beginning of the full-scale war and increased again later but could be seen from a wider angle. Thus, when Inna Sovsun introduced Draft Law No. 9103 and that was broadly covered by the media, UCCRO made a statement against it soon after, and some public figures already known for their anti-LGBTIQ positions did the same. When the LGBT military community became more visible, there were threats and defamations against its members as well as [attempts to deny](#) the very existence of LGBTIQ persons in the Ukrainian Armed Forces, mostly from the side of far-right and conservative groups and persons. And when the Equality March was announced again in Kyiv in 2024, far-right groups [organized their alternative action](#) on the same day and threatened participants of the march, so the police insisted on finishing it sooner than it was planned.

- Despite the general increase in LGBTIQ-supporting attitudes, the camp of ideological opponents remains steady at its core. Some politicians, like the leader of the Batkivshchyna party Yulia Tymoshenko and MP Heorhiy Mazurashu, continue to use anti-LGBTIQ rhetoric in their campaigns. At the moment, there are still 2 homophobic draft laws, namely [No. 6325](#) and [No. 6327](#), waiting for consideration in the Verkhovna Rada – and while chances for their adoption are low indeed, we can’t just ignore them being there. Finally, the fact that draft laws No. 5488 and 9103 are continuously postponed could be seen as a part of the same tendency that the homophobic wing is still strong enough. And while that remains the case, there are also their followers on the streets as a [direct threat](#) to LGBTIQ people or anyone perceived as such.

To sum up, we would say that despite the increase in LGBTIQ supportive attitudes could be seen as an ongoing trend, it has not reached the level where it would marginalize homophobic attitudes enough, so their impact on the overall situation in Ukraine would be minimized. This means the situation remains quite uncertain, only emphasizing the need for political measures to ensure the protection of the human rights of LGBTIQ people in Ukraine as soon as possible.



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Input on Freedom of Association

7. On p.11, it is stated regarding mass public LGBTIQ events in Ukraine that since 2013, “the authorities granted authorisation for organization of such events, and the police ensures proper conduct of them”. In addition, it is mentioned on p.17 that “the police take all necessary measures aimed at preventing violations of law and order during the Equality Marchs and other peaceful gatherings organised by the LGBTIQ community”. First, we need to underline that according to Ukrainian legislation, people don’t need authorization from authorities to conduct public events, just notifying them is enough, so the first part of the statement is excessive. However, when it comes to LGBTIQ-related public events, ensuring the safety of them is essential for proper conduct. And we can’t agree with the rest of the statements, as unfortunately, there were examples of not enough measures taken by the police to ensure such safety and prevent violations. See this in more detail below.

- The first [pride march in Kyiv in 2013](#) only went safe because it was held at a secret closed location, with only a small group of participants invited there. In 2014, the march was planned again but [finally canceled](#) by organizers, mainly because the city police weren’t ready to provide security. In 2015, the location of the march was kept secret again, limiting the number of potential participants. Even despite that, opponents from far-right groups became aware of the location and [attacked the march](#), resulting in about 20 people (participants as well as police officers) being injured, and some participants needed to hide in near urban areas to avoid being beaten by the attackers. Since 2016, Equality Marches in Kyiv have been open for free participation, and at the same time, unprecedented measures were taken by the police to ensure safety, including locking the area of the march route, checking participants at the entry, and providing special metro trains for leaving the area after the end. Overall number of police officers involved in these measures was comparable to the number of pride participants. Still, every year after the march, far-right groups engaged in so-called safari, trying to chase and attack pride participants in the city, which regularly ended up with some incidents and injuries.

- It is important to recall that public LGBTIQ events can’t be reduced to just annual pride marches in Kyiv. There are various kinds of events all over Ukraine, and the tendency is that when it comes to smaller or regional events, authorities and the police could be less cooperative than at the Equality March. One example is Trans March 2018 in Kyiv organized by Insight. When threats from far-right radicals emerged, the police convinced organizers to change the location of the march first, and after that didn’t help and far-right groups [attacked participants anyway](#), the police forced organizers to stop the event instead of stopping the attackers. In 2016, when Insight held the Equality Festival in Lviv, it was [threatened and then blocked](#) by a group of radicals, and the only thing the police managed to do was to help participants evacuate; city authorities instead of clearly condemning the violence called



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what happened “a provocation”. There are more examples from the cities of Chernivtsi, Zaporizhzhia, Kharkiv, etc. where local authorities or the police were not really cooperative, refused to agree on some locations for the event, or did not provide enough protection.

- We could explain that difference in cooperativeness by the fact that Equality Marches are getting much more media coverage, they are usually attended by some members of parliament, diplomats, international guests, and celebrities. These factors seem to play a more important role in the willingness of the authorities to provide proper security measures than just the need to uphold the right to freedom of assembly, especially when it comes to LGBTIQ people. Yet Equality March 2024, as mentioned in section 6, also could not be held fully as planned, as the police preferred to shorten it instead of taking additional security measures.

With these details, the whole picture looks much less bright, and it reminds us again that homophobia in Ukraine is far from defeated. Thus, we would like to highlight not only the importance of the Draft Law No. 5488 to be adopted but also the need for educational programs on LGBTIQ equality topics aimed at the governmental service in general and particularly the police.

Feedback on Provision of Training for State Authorities on LGBTIQ Matters

8. On pp.12–16, there is actually a list of trainings, seminars, etc. for state authorities including police officers on topics related to LGBTIQ and human rights in the general context of aligning Ukrainian legislation and practices with European standards. It is also mentioned on p.17 that since March 2024, there has been a new educational standard for the profession of the police officer and that typical educational plans for professional development of all categories of police officers now include a set of human rights-related topics. Generally welcoming this as a tendency, we also would like to note the following:

- Increase in specialized training is good by itself, but it can't be a replacement for state-level curricula that would include the same topics. Any training could be accessible only to a limited audience, and, when not mandatory, is usually attended by people already more aware of LGBTIQ issues and with more friendly attitudes, while more homophobic ones would prefer to ignore them. This could play its part in increasing polarization (discussed in detail in section 6) in state structures including the police. Thus, mandatory education based on the curricula that include LGBTIQ equality issues for police officers and other state representatives is needed.

- We need to keep in mind that when something includes human rights topics, that doesn't necessarily mean an inclusion of LGBTIQ or SOGIESC issues too. And if these issues are not present in the educational plans explicitly, there is no guarantee they would actually be raised during the study. At



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least recently, there were [no state educational programs](#) with LGBTIQ-related materials included. Additional measures need to be taken to monitor and ensure that these issues won't be left behind.

Conclusion and Recommendations

In conclusion, the government states among other things regarding the law on registered civil partnerships: "The adoption of the related law is only a matter of time". From our side, such a statement looks weak and not what we expect. "A matter of time" usually means that something would happen independently of doing anything for that purpose or not, thus taking away much of the responsibility for the need to be more proactive. However, as seen from the above, nothing can still be guaranteed without a proactive approach. Also, it can't be clearly seen what "time" actually it would be. Regarding the protection of same-sex couples, we would say that this is already a matter of time for almost a decade, as in 2015, there was the first [governmental Action Plan](#) on the National Human Rights Strategy that included the task of developing and considering a bill on civil partnerships in Ukraine (and a bill on hate crimes as well). Therefore, to not wait for another decade, strong measures need to be taken, including:

- Ensure that Draft Law No. 9103 will be recommended for consideration and positively considered by the Verkhovna Rada as soon as possible.
- Ensure that Draft Law No. 5488 will be positively considered by the Verkhovna Rada as soon as possible.
- Provide that any governmental documents generally referring to minorities or vulnerable social groups would include LGBTIQ people among other groups explicitly, as well as any protection grounds for social groups would include SOGIESC explicitly.
- Provide that state educational programs including curricula for police officers and other state representatives would include LGBTIQ issues explicitly.
- Take all possible measures to strengthen Ukraine, including in the military aspect, to make possible sooner deoccupation of the Ukrainian territories controlled by Russia and bringing them back into the Ukrainian legal field, so the rights of LGBTIQ people there would be protected as in the rest of the country.

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Kyiv, Ukraine, 15 October, 2024

COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by Gender Stream NGO

[THE CASE OF MAYMULAKHIN AND MARKIV V. UKRAINE \(Application No. 75135/14\)](#)

INTRODUCTORY PARAGRAPH – Description of the case and of the organization(s)

The case of Maymulakhin and Markiv v. Ukraine (hereinafter the “Maymulakhin and Markiv v. Ukraine case” and/or the “Case”) concerns the violation of the applicants' right to family life due to the failure to fulfill a positive obligation to ensure that their same-sex relationships are duly recognized and protected by law (violation of Article 14 of the Convention combined with Article 8).

The judgment of the Case dated 1 June 2023, which became final on 1 September 2023. The Case is under enhanced supervision.

The European Court of Human Rights (hereinafter the “ECtHR” and/or the “Court”) concludes that the difference in treatment in the present case, which consisted in the unjustifiable denial to the applicants as a same-sex couple of any form of legal recognition and protection as compared with different-sex couples, amounts to discrimination against the applicants on the grounds of their sexual orientation. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 8.

This letter is submitted under “Rule 9.”

Gender Stream is a feminist non-governmental organization dedicated to human rights advocacy, particularly for vulnerable groups, including women and the LGBTIQ+. We are committed to combating hate crimes based on, inter alia, sexual orientation and gender identity. A key initiative of our organization is the promotion of [the Draft Law No. 5488 “On Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine on Combating Discrimination”](#) (hereinafter the “Draft Law No. 5488”), which aims to enhance accountability for hate crimes related to sexual orientation and gender identity and establish mechanisms for their investigation—mechanisms that currently do not exist in Ukraine.

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Our team also provides expert legal support to victims of hate crimes and has successfully achieved the first court ruling in Ukraine recognizing a transphobic hate crime¹ (court proceedings No. 416/7912/23, Judgment of the Halytsky District Court of the city of Lviv dated 31 October, 2023²).

We collaborate with national and international partners, including security sectors, government institutions, the Parliament, European Union institutions, international human rights organizations, media, and businesses, to address the challenges faced by marginalized communities, especially women and the LGBTIQ+. Notably, we maintain a partnership with law enforcement, including a Memorandum of Cooperation with the Inspectorate General and Human Rights Department of the National Police of Ukraine³, and are developing partnerships with Ukraine's Ministry of Internal Affairs. Our goal is to ensure that people facing discrimination or hate crimes based on sexual orientation and gender identity receive appropriate support from the state, which is obliged to provide equal rights for all.

Given this background, we are confident in our ability to provide the Department with valuable information regarding the status of execution of the Court's judgment in the Maymulakhin and Markiv v. Ukraine case.

RECOMMENDATIONS

1. **Demand Comprehensive Awareness Campaigns:** Recommend that the Government launch targeted awareness campaigns to educate decision-makers about LGBTIQ+ rights and the importance of addressing hate crimes and adopting the Draft Law No. 5488.
2. **Establish Data Collection Mechanisms:** Stress the need for the Government to implement systematic monitoring of hate crimes based on sexual orientation and gender identity, to ensure accurate data collection.
3. **Propose Anti-Discrimination Training:** Recommend mandatory training for law enforcement and judicial authorities on the LGBTIQ+ issues and hate crimes to enhance their understanding and responsiveness.
4. **Highlight Educational Reforms:** Call for the inclusion of LGBTIQ+ rights and anti-discrimination education in school curricula at all levels to foster a more inclusive society.
5. **Ensure Equal Access to Legal Aid:** Recommend the Government to initiate immediate amendments to guarantee access to free secondary legal aid for all victims of hate crimes, including those targeted for their sexual orientation or gender identity.

EXECUTIVE SUMMARY

The Maymulakhin and Markiv v. Ukraine case illustrates that discrimination is pervasive, taking many forms, including the failure to ensure legal recognition and protection of same-sex relationships. This absence of legal recognition has significant repercussions, impacting same-sex partners in numerous ways: a) restricted access to essential benefits such as pension and other social entitlements, b) unequal treatment regarding inheritance, tenancy and other material rights, c) limited financial security, d) exclusion from the right to adopt children and take them under guardianship, e) obstacles in obtaining residence

1

<https://genderstream.org/novyny/peremoha-u-sudi-oholosheno-vyrok-u-spravi-pro-zlochyn-na-grunti-nenavysti/>

2

<https://reyestr.court.gov.ua/Review/114549159>

3

<https://genderstream.org/en/news/gender-stream-and-the-department-of-main-inspection-and-human-rights-compliance-have-signed-a-memorandum-of-cooperation/>

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permits for family reunification, (f) exclusion from critical consent-based decisions in life-saving medical situations, i.e. lack of the right to visit a partner in the intensive care or rights related to the disappearance or death of a partner, including no right to bury one's partner.

Another no less significant and still unresolved issue of discrimination against the people on the grounds of their sexual orientation are also manifested in Ukraine in the absence of legal mechanisms to protect individuals from hate crimes based on sexual orientation, but also on their gender identity. With this in mind, in light of the need to recognise and protect of the same-sex relationships in Ukraine by establishing of the same-sex marriage and/or civil partnerships in Ukraine, we wish to highlight the urgent issue of the need to establish the legal mechanisms how to protect people from different forms of discrimination and hate crimes based on their sexual orientation and gender identity. Still there is no legislation in Ukraine protecting people from such crimes, making them vulnerable and unprotected by state.

We are aware that the Ukrainian government has submitted two Action Plans ([the first - from 28 February, 2024](#), [the second - from 1 October, 2024](#)) regarding the execution of the Maymulakhin and Markiv case judgment, briefly and generally noting the situation with lack of legislation addressing hate crimes and hate speech based on sexual orientation and gender identity and that in 2021 the Government submitted the Draft Law No. 5488 aiming to resolve this issue, but it was not adopted by the Parliament yet.

However, we find the Government's Action Plans in this part not comprehensive and, rather, declarative leaving affected individuals without protection from the state while the necessary legislation remains absent. Therefore, we would like to recommend the following steps be taken.

1. The need to raise awareness among decision-makers about the importance to protect the LGBTIQ+ rights.

Although the Government submitted the Draft Law No. 5488 to Parliament in 2021, it has not been considered or adopted by members of Parliament for three years. This is partly due to the 'unpopularity' of this issue among decision-makers, conservative views and public opinions regarding the LGBTIQ+, and a lack of awareness regarding the importance of ensuring equal rights for all citizens of Ukraine. That's why there is a need to raise awareness among decision-makers, including members of Parliament, about the importance of protection of the LGBTIQ+ rights, and engage in public communications with those responsible for implementing reforms in the areas of human rights protection. This includes emphasizing the necessity of providing protection mechanisms against hate crimes to individuals of different sexual orientations and gender identities, particularly through the adoption of the Draft Law No. 5488.

2. The need to implement the mandatory monitoring of hate crimes, including those based on sexual orientation and gender identity, as well as the collection and dissemination of statistical data to the public.

Individuals with different sexual orientation and/or gender identity remain among the most vulnerable groups in Ukrainian society, primarily due to the lack of a legal framework and protective mechanisms against hate crimes. Daily, these individuals face significant challenges, and there is an undeniable increase in hate crimes, driven by perpetrators who justify their actions based on societal norms. If society fails to effectively penalize and condemn hate crimes, potential offenders may feel emboldened to continue their actions, contributing to the rising incidence of such crimes in Ukraine. The ongoing war, resulting

from Russian aggression, further exacerbates this situation. However, reliable data on hate crimes remains elusive due to the absence of systematic monitoring and statistical activities by relevant state authorities. While human rights organizations track incidents of discrimination and hate crimes, the figures they provide cannot be considered precise. The true extent of these crimes remains unknown, as most known cases are derived from social networks and media reports. Additionally, victims often hesitate to report to law enforcement due to widespread homophobia and transphobia among police personnel and the actual ineffectiveness of law enforcement in addressing these cases.

In order to expand and strengthen the implementation of anti-discrimination policies at the state level, as well as to combat and prevent hate crimes—including ensuring the effectiveness of their investigation—it is necessary to establish mandatory monitoring of such crimes by authorized government bodies, along with the provision of open and transparent statistics on hate crimes based on sexual orientation and gender identity. This should include official public disclosure and free access for an unlimited number of individuals. To date, Ukraine has not taken such measures, leading to a silence about the existence of hate crimes based on these characteristics, contributing to an increase in their prevalence, and resulting in a lack of understanding of the appropriate and necessary actions that should be taken by those who directly or indirectly combat such violence (including representatives of civil society organizations).

3. The need to ensure mandatory educational programs on the LGBTIQ+ rights and hate crimes prevention at all levels

- A. The Government must provide training programs for entities directly or indirectly involved in combating and preventing discrimination and hate crimes—such as law enforcement agencies (the National Police of Ukraine, the Ministry of Internal Affairs of Ukraine, the Office of Prosecutor General of Ukraine), courts, the Ukrainian Parliament Commissioner for Human Rights, and other state and local authorities obligated by Ukrainian law to address and prevent discrimination, as well as specialists representing individuals (including in court) facing discrimination and hate crimes (lawyers, attorneys, and providers of free legal aid, but not exclusively). This training should include, but not be limited to: raising awareness about sexual orientation and gender identity and the unacceptability of discrimination based on these characteristics during the performance of professional duties; understanding and identifying hate crimes based on sexual orientation and gender identity; procedures for their investigation; evidence collection; the application of victim-centered approaches; and the specifics of handling these cases in court, ensuring respect for the private and family life of victims, ensuring their safety, and preventing discrimination, stigmatization, and re-traumatization. We would like to emphasize that the Ministry of Internal Affairs of Ukraine has not undertaken any measures regarding the aforementioned issues, despite being the primary authority within the system of central executive bodies in Ukraine responsible for shaping state policy in the areas of protecting human rights and freedoms, safeguarding the interests of society and the state, combating crime, maintaining public safety and order, and providing police services. Therefore, we stress the importance of this Ministry initiating and ensuring the implementation of policies for the protection of LGBTIQ+ rights, including training, but not limited to it, for their application at other related levels and areas.
- B. Additionally, the Government must include issues regarding non-discrimination, inclusion and the LGBTIQ+ rights in educational programs at all levels of education. Although the Government has approved [the Gender Equality Implementation Strategy in Education until 2030 and the operational action plan for 2022-2024](#), these government documents do not mention sexual orientation and gender identity as key

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers. Including these characteristics for which discrimination and hate crimes occur. components in educational programs will significantly contribute to raising awareness among citizens, building an inclusive society, and reducing the incidence of discrimination and hate crimes by mitigating the risks of their occurrence.

- 4. Ensure access to free secondary legal aid for victims of hate crimes based on sexual orientation and gender identity, on par with other victims. Providing free secondary legal aid is a social-legal program of the Ukraine's Government that creates equal opportunities for certain categories of people to access justice and guarantees them effective legal assistance (consultation, preparation of procedural documents, representation in court), funded by the State Budget of Ukraine.**

Free secondary legal aid includes the following types of legal services:

- **Defense**
- **Representation of the interests of eligible individuals in courts, other state bodies, and local governments**
- **Preparation of procedural documents**

The system for providing free legal aid consists of a network of 535 access points to legal services: 23 regional centers, 84 local centers (providing free secondary legal aid), and 428 legal aid bureaus across all regions of Ukraine.

However, despite the prevalence of hate crimes, particularly against the LGBTIQ+, victims in vulnerable positions do not receive state legal assistance. They suffer not only from the crime itself but also during the investigative and judicial processes, as they do not receive legal support and protection from the state, which promises equality before the law and protection against discrimination for all citizens.

In this regard, the Cabinet of Ministers of Ukraine has submitted to the Parliament [the Draft Law No. 11456 "On Amendments to the Law of Ukraine "On Free Legal Aid" to Expand the List of Persons entitled to Free Secondary Legal Aid"](#) (hereinafter - the "Draft Law No. 11456"), which seeks to expand the list of individuals eligible for free secondary legal aid starting July 31, 2024. According to the explanatory note, this document aims to include victims of hate crimes in the list of individuals entitled to free secondary legal aid⁴.

The Draft Law No. 11456 proposes granting such assistance to victims of hate crimes based on the following criteria: race, skin color, political, religious, and other beliefs, sex, disability, ethnic and social origin, economic status or place of residence, language.

However, as we can see, the Draft Law No. 11456 does not align with the principles of equality and enhanced state anti-discrimination policy proclaimed by the Ukraine's Government, as it does not consider hate crimes based on sexual orientation and gender identity. Adopting the Draft Law No. 11456 by the Parliament would further discriminate against the LGBTIQ+, as victims in this category would still lack access to professional legal assistance within the free secondary legal aid system. This could unjustly enshrine inequality at a legislative level if timely measures are not taken.

Although the explanatory note to the Draft Law No. 11456 states that it was created to fulfill recommendations from the European Commission in light of Ukraine's progress within the

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<https://www.coe.int/en/web/kyiv/-/advancing-on-the-european-path-by-consolidating-the-legal-framework-on-equality>

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2023 European Union enlargement package. It does not adequately reflect anti-discrimination principles in human rights protection.

To prevent potential violations and discrimination against the LGBTIQ+ victims in cases of hate crimes, it is essential to include members of the LGBTIQ+ among those eligible for free secondary legal aid in the current version of Draft Law No. 11456. The Draft Law No. 11456 should align with the Draft Law No. 5488, which defines hate crimes and includes all possible victim categories based on a comprehensive list of discrimination characteristics, including sexual orientation and gender identity.

To conclude, Ukraine faces challenges in investigating hate crimes, especially against the LGBTIQ+, where the motive is often intolerance towards sexual orientation and/or gender identity. Without the necessary amendments and additions, the Draft Law No. 11456 will continue to leave LGBTIQ+ individuals invisible and unrecognized as equals in society, thereby leaving them unprotected from unlawful behavior.

CONCLUSIONS

Gender Stream believes that while Ukrainian society awaits the adoption of the Draft Law No. 5488, the Government must urgently implement measures (mentioned in the recommendations by us above) to provide individuals with different sexual orientations and gender identities with accessible and effective protections. This is essential to safeguard their rights against hate crimes until comprehensive legislation is in place.

The Maymulakhin and Markiv v. Ukraine Case highlights critical deficiencies in Ukraine's legal framework regarding the protection of the LGBTIQ+ rights. The failure to enact comprehensive legislation leaves vulnerable individuals unprotected and exacerbates discrimination. By implementing the above recommendations, the Ukrainian Government can fulfill its obligations under the European Convention on Human Rights and ensure equal protection for all citizens, fostering a society that respects and upholds the rights of its most marginalized people.

In conclusion, we trust that the information presented in this letter will contribute to the execution process regarding the Case. We are also ready to offer our continued support to the Department and the Government in the implementation of the judgment of the Case.

Yours Sincerely,

Olha Poliakova,

Executive Director

Gender Stream NGO



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DGI

31 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Mr Pavlo Pushkar

**Head of Division
Department for the Execution of judgments
of the European Court of Human Rights
Directorate of Human Rights
Directorate General Human Rights and
Rule of Law
Council of Europe**

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Application no. 75135/14
Maymulakhin and Markiv v. Ukraine

Dear Mr Pushkar,

As to the execution of the Court's judgment in the case of *Maymulakhin and Markiv v. Ukraine* the Government would like to address some issues in response to the communication from non-governmental organizations "Insight" and "Gender Stream" and as per Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements ("the communication").

First of all, the Government would like to express its gratitude to the aforementioned organizations for proactive attention to the issues of legislative consolidation of the right to recognition of same-sex relationships. The activities of non-governmental organizations in this area are important for a better understanding of the problems of LGBTQ+ people and, as a result, elevated



СЕД АСКОД
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Підписувач Сокоренко Маргарита Степанівна
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Дійсний з 09.10.2024 11:53:07 по 09.10.2025 11:53:07

effectiveness of the process of bringing Ukrainian legislation into compliance with the standards of the Council of Europe.

The Government assures that the Agent before the European Court of Human Rights (the “Agent”), within the scope of coordinating the execution of judgments of the European Court of Human Rights (the “Court”), communicates with all the stakeholders that can contribute to the solution of problematic issues identified by the Court in its judgment of *Maymulakhin and Markiv v. Ukraine*. Among others, the Agent addressed the committees of the Verkhovna Rada of Ukraine, reporting on the enhanced importance of consolidation of any form of legal recognition of same-sex couples. Furthermore, the Agent is actively involved to the ongoing process of EU accession, meetings within which are also used as a platform for disseminating information about the need to ensure the recognition of same-sex relationships and calling for more active actions in this regard.

The Government is aware of the importance and essentiality of conducting awareness-raising and educational activities aimed at efficiently addressing the issues faced by the LGBTQ+ community. As reported in the Action Plan¹ submitted by the Government to the Committee of Ministers on 01 October 2024 (the “Action Plan”), Ukraine is actively holding trainings, round tables, study visits for stakeholders to equip participants with the necessary knowledge to combat discrimination in Ukraine, including on the basis of sexual orientation. Improving the qualifications of representatives from relevant government bodies remains one of the priority components for ensuring the rights of representatives of the LGBTQ+ community, and therefore the Government will continue to work in this direction and, in particular, develop cooperation with international partners to conduct effective educational events.

Regarding the Draft Law “On Institute of Registered Partnerships”² (the “Draft Law No. 9103”), its considerations by the relevant committees of the Verkhovna Rada of Ukraine continues. As indicated in the Action Plan, based on the results of the consideration of the Draft Law No. 9103, the Committee on Youth and Sports, the Committee on Digital Transformation, the Committee on Social Policy and the Protection of Veterans’ Rights, the Committee on Public Health, Medical Assistance and Medical Insurance and the Committee on Ukraine’s Integration into the European Union submitted their conclusions. Nevertheless, some of them provided specific comments and highlighted the shortcomings of the provisions of the Draft Law No. 9103.

The Committee on Ukraine’s Integration into the European Union noted, in particular, that according to the part 4 of Article 19 of the Draft Law No.9103, registered partners acquire the status of a family member of the first degree of consanguinity in relation to each other, regardless of whether they actually live together and run a joint household, which contradicts the part 1 of Article 3 of the Family Code of Ukraine, according to which a family consists of persons who live together, are connected by common life, have mutual rights and obligations. Also, among other shortcomings, this Committee noted that the Draft Law No. 9103 does not include the status, rights and obligations of a registered partner, who is not a father or mother, on raising children of his registered partner. Accordingly, legal uncertainty will be created in the relationship between the child and the registered partner, who is not the father or mother, if such partners live together³.

¹ [https://hudoc.exec.coe.int/?i=DH-DD\(2024\)1102E](https://hudoc.exec.coe.int/?i=DH-DD(2024)1102E)

² <https://itd.rada.gov.ua/billInfo/Bills/Card/41497>

³ <https://itd.rada.gov.ua/2f2c104e-fb68-41a6-b65c-77e5356903b2>

The Committee on Digital Transformation also provided comments indicating, *inter alia*, that the provisions of the Draft Law No. 9103 do not determine the methods of submitting an application for state registration of a registered partnership, as well as an application for annulment of a deed record of an invalid registered partnership or termination of a registered partnership⁴.

The Committee on Social Policy and the Protection of Veterans' Rights noted that implementation of the provisions of the Draft Law No. 9103 will require additional allocations from the State Budget of Ukraine and will affect the expenditure part of the budget of the Pension Fund of Ukraine. At the same time, the Draft Law No. 9103 was submitted in violation of the requirements of the part 1 of Article 27 of the Budget Code of Ukraine, according to which the drafter must provide financial and economic calculations and justifications for the need for budget funds necessary for the implementation of the draft law, as well as proposals for amendments to the legislative acts of Ukraine regarding reduction of budget expenditures and/or sources of additional budget revenues to achieve budget balance⁵.

As part of its conclusion, the Committee on Public Health, Medical Assistance and Medical Insurance supplemented it with the position of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine⁶ (the "Commissioner"). Notably, attention was drawn to the inconsistency of the proposed amendments to the part 4 of Article 294 of the Code of Civil Procedure of Ukraine (the "CCP") and the part 2 of Article 28 of the Draft Law No. 9103 regarding the participants in the proceedings on the termination of the registered partnership in court. In addition, it was indicated that the parts 2 and 3 of Article 28 of the Draft Law No. 9103 are procedural norms, and therefore should be contained exclusively in the CCP. The Commissioner also expressed the doubt on the need for additional regulation of the prohibition of sexual coercion by means of physical or mental violence by the Draft Law No. 9103, because the Criminal Code of Ukraine and Code of Ukraine on Administrative Offenses already provide prosecution for such acts.

Also, the Committee on Public Health, Medical Assistance and Medical Insurance attached proposals of the Ministry of Health of Ukraine⁷, which, among other things, indicate the need to define the term "registered partners" for the purposes of the Draft Law No. 9103, as well as to exclude the provisions on assigning non-specific duties to the heads of health care institutions. The Draft Law No. 9103 provides for the introduction of amendments to the part 3 of Article 293 of the CCP regarding the granting of the right to a registered partnership from the age of 16 by the court. At the same time the Draft Law No. 9103 clearly states that a registered partnership can be entered into by two adults (in accordance with part 1 of Article 34 of the Civil Code of Ukraine a person is considered as adult at the age of 18).

Thus, the Committees of the Verkhovna Rada of Ukraine emphasize the need to take into account their recommendations and comments. At the same time, the Committee of the Verkhovna Rada of Ukraine on Legal Policy, which is designated as the main Committee, continues work on the analysis of the text of the Draft Law No. 9103.

⁴ <https://itd.rada.gov.ua/BILLINFO/Bills/pubFile/1777183>

⁵ <https://itd.rada.gov.ua/BILLINFO/Bills/pubFile/1818787>

⁶ <https://itd.rada.gov.ua/60d6182c-b64f-41be-b3fd-abbceca20ecd>

⁷ <https://itd.rada.gov.ua/1581a596-877b-4873-ae96-df793699517f>

As to the Draft Law “On Amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine Regarding the Combating Discrimination Manifestations”⁸ (the “Draft Law No. 5488”), it is worth noting that it was included in the agenda of the twelfth session of the Verkhovna Rada of Ukraine by resolution of the Verkhovna Rada of Ukraine No. 3939-IX of 03 September 2024⁹. At the same time, the issue of adopting the Draft Law No. 5488 remains relevant and is often discussed by stakeholders. Platforms for such conversations are also organized in cooperation with international partners, in particular, projects of the Office of the Council of Europe in Ukraine. On 21 October 2024, the Forum “Combating discrimination and hate crimes: European standards for the protection of human rights” was held, one of the main purposes of which was the deliberation of the Draft Law No. 5488. MPs took part in one of the panel discussions during the event and other participants could ask them questions and highlight the importance of adopting of the specified Draft Law. The Forum was attended by representatives of public organizations, in particular, those engaged in the protection of the LGBTQ+ community, as well as state authorities and international experts.

The Government also would like to emphasize that, in accordance with Article 9 of the Constitution of Ukraine¹⁰, state power in Ukraine is exercised on the basis of its division into legislative, executive and judicial. Article 75 of the Constitution of Ukraine declares that the only body of legislative power in Ukraine is the parliament – Verkhovna Rada of Ukraine. Thus, the Government of Ukraine, representing the executive branch of government, cannot interfere with the work of the Verkhovna Rada.

Nevertheless, the Government persist in making efforts to ensure the fulfilment of its obligations assumed as a result of the ratification of the Convention, in particular regarding the right to respect for private and family life and the prohibition of discrimination. In this regard, the recommendations and comments of the NGO “Insight” and “Gender Stream” will be taken into account and considered in further work. The Government will also continue to inform the Committee of Ministers of the Council of Europe about the measures taken to implement the judgment in the case of *Maymulakhin and Markiv v. Ukraine*, as well as any developments in the area of recognition of same-sex relationships.

Yours sincerely,

Marharyta SOKORENKO
Agent before
the European Court of Human Rights

⁸ https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71891

⁹ <https://zakon.rada.gov.ua/laws/show/3939-IX>

¹⁰ <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>