

# **Gay Rights are Human Rights**

Report about discrimination  
on the grounds of sexual orientation in Ukraine

2005, Kyiv, Ukraine

ISBN

### Gay Rights Are Human Rights

This report contains the information regarding discrimination of gays, lesbians, bisexuals and transgender people (GLBT) in Ukraine. The results of the survey of GLBT-community members, typical examples of discrimination on the grounds of sexual orientation, analysis of legal issues, public opinion research etc are published in the report.

The book would be of use for Human Rights and other non-governmental organizations, lawyers, sociologists, public servants and journalists.

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**Nash Mir expresses sincere gratitude** to activists, volunteers and experts who took part in preparation of the report.

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## Preface

Nash Mir (Our World) Gay and Lesbian Center is pleased to present the results of the overall work of our personnel, activists and volunteers of the center, and participating experts.

During the period from October 2004 to October 2005, Nash Mir completed the project “Monitoring, reporting and protection of the rights of the gay, lesbian, bisexual and transgender (GLBT) community in Ukraine.” Activities within the scope of the program were financed by the European Commission.

Nash Mir studies the situation of the protection of the rights of homosexuals in Ukraine on an ongoing basis. However, this is the first full-scale, focussed and planned research project in Ukraine on the rights of a minority group and its relation to its social environment.

The general aim of the project is the implementation of the rights of people of homosexual orientation in Ukraine. The specific aims of the project are:

1. Monitoring the observance of the human rights of GLBT people,
2. Providing legal protection from discrimination,
3. Strengthening the advocacy abilities of the GLBT community.

The human rights observance monitoring was one of the fundamental components of the project, the material from which was used as the basis for the planning and adjustment of the implementation of the other components.

The project took place over the period of twelve months in ten large cities in Ukraine: Kyiv, Dnepropetrovsk, Donetsk, Zaporizhzhaiya, Kryvyi Rig, Lugansk, Lviv, Odessa, Simferopol, Kharkiv and their respective provinces. However, some components of the study (surveys and research of public opinion) encompassed almost the entire country.

This publication presents the results of the first component of the project – the monitoring of the observance of the human rights of homosexuals in Ukraine. Twenty-eight volunteers participated in a mandatory two-day training session on the gathering of information from members of the GLBT community.

Independent sociologists and lawyers were involved in the analysis

of the information and the preparation of the report. The national surveys of public opinion were commissioned by Nash Mir and conducted by the research firm TNS Ukraine.

Both homosexuals and heterosexuals carried out the information-gathering activities within the framework of the project, to ensure the objectivity of the information gathered and the subsequent conclusions drawn on its basis.

This study is being published in three languages: Ukrainian, Russian and English, in order to be accessible to public officials, the public at large, all parties interested in Ukraine and post-Soviet countries, as well as national and international organizations.

This publication contains information about the overall situation regarding discrimination in Ukraine, as well as specific instances related to discrimination on the basis of sexual orientation. It includes analytical notes from the sociological research on the target group and its social environment, as well as representative and typical examples of discrimination towards, and prejudices about, homosexuals.

Nash Mir would like to express sincere thanks to the European Commission for the financial support which made this project possible, as well as to all of those people who helped with the information collection for, and the preparation of this publication.

This research will be used in the development of legislation, in particular that legislation which falls within the sphere of prohibiting all types of discrimination. The results of the monitoring may be of interest to legal experts, sociologists, public servants and journalists.

### **Monitoring of the State of the Observation of the Rights of the GLBT community in Ukraine: Basic approaches, methodology and tools**

Taking into account that, in Ukraine, there exists absolutely no statistical or other official data relating to the number of people with non-traditional sexual orientations, their socio-demographic structure, or the state of the observation of their rights and legal interests, it was decided by the activists and participating experts of Nash Mir (Our World) Gay and Lesbian Center to conduct integrated monitoring of the state of the observation of the rights of the Ukrainian GLBT community through the use of available sociological and other tools, within the framework of the program «Monitoring and protection of the rights of GLBT people in Ukraine».

The basic approach underlying the research is the collection of first-hand information from the target group (members of the GLBT community) and from other external sources.

#### **The main parameters of the project are:**

1. The study of the opinions of the external social environment (survey of a wide cross-section of the population concerning the socio-demographic status on which discrimination does/may occur, its existing forms and manifestations, and preventative measures that can be taken to discourage discrimination);
2. The study of the opinions and status of the target group (survey of members of the GLBT community concerning their personal experience in the sphere of their social interactions where discrimination is most often encountered, forms and manifestations of discrimination on the basis of sexual orientation, experience concerning the protection/rectification of violations of rights, etc.);
3. The study of the existing legal framework concerning the protection/violation of the rights of people with non-traditional sexual orientation who experience discrimination on this basis.

In particular the study of the opinion of people in different environments and research on the existing legal framework concerning the guarantee and protection of the rights of people with non-traditional sexual orientation consisted of an integrated approach which was chosen for the execution of the monitoring of the state of the observation of the rights of the GLBT community in Ukraine.

For the collection of first-hand information and the designation of the main focus within the framework of the suggested approach, the following activities were initially carried out:

1) expert survey (with the participation of legal experts, specialists in gender studies, practising attorneys, etc.);

2) in-depth interviews with members of the GBLT community (first and foremost with activists from Nash Mir and other gay and lesbian organizations in Ukraine);

3) focus-group research (with the participation of homosexually-oriented people permanently living in various types of population centres across different regions of Ukraine, having various social status, and education and income levels);

4) content analysis of periodicals and documentation (including the study of specialized publications, independent publications in the mass media, official correspondence of gay and lesbian organizations with central agencies of executive power and with agencies of local and regional government, etc.)

5) fast-track analysis of the existing legal framework (review of the condition of current Ukrainian legislation relating to the protection of human rights, first and foremost in the sphere of public interaction, where questions concerning the target group arose most often).

In the second step, after the gathering of first-hand information, and in order to designate the boundaries of the research and the selection of the most relevant tools, the following were formulated:

- hypothesis of the monitoring research;
- basic questions of the monitoring research.

### Research Hypothesis

In Ukraine the violation of human rights/discrimination on the

basis of sexual orientation is quite pronounced.

The level of discrimination is directly related to the level of «outness» of GLBT people.

The overwhelming majority of disputes (which stem from violations of human rights on the basis of sexual orientation) occur in the spheres of workplace relations, social security, property rights, and interactions with state structures and local and regional governments.

The level of prevalence of the violation of human rights on the basis of sexual orientation depends on the type of the population centre (the larger the population centre, the less prevalent and pronounced the discrimination) and region (there being a drastic discrepancy in the level of discrimination from west to east, explained by more conservative and traditional outlook of the population in western Ukraine).

### Basic Research Questions

1. Does there exist in Ukraine the violation of human rights/discrimination based on sexual orientation?

2. How widespread is the practice of the violation of human rights/discrimination based on sexual orientation?

3. How does sexual orientation rank among other socio-demographic indicators leading to violations of human rights/discrimination in Ukraine?

4. What overall relation does Ukrainian society have to the question of the necessity of protection/rectification of the violation of human rights based on sexual orientation?

5. In which spheres of social interaction do instances of the violation of human rights/discrimination based on sexual orientation occur most often?

6. In which forms do GLBT people most often encounter violations of rights/discrimination?

7. Who is most often the perpetrator of human rights violations/discrimination against GLBT people in Ukraine?

To verify the hypothesis and obtain answers to the research

question within the framework of the preliminarily designated parameters, the following methods and tools were selected:

The public opinion survey and survey of the target groups were conducted over the period from January to February, 2005.

The public opinion survey (mass cross-sectional survey) was commissioned from the firm TNS Ukraine by Nash Mir. The survey of the target group (questionnaire) was conducted through the use of contact information of the members of Ukraine's GLBT community contained in Nash Mir's database, and by means of structured interviews using the questionnaire specially prepared for interviewers within the framework of the program. The collection of typical examples of human rights violations/discrimination of GLBT people in Ukraine was conducted during the survey of members of the target group by means of unstructured interviews with people who had experienced

*Table 1. Methods and tools of the research*

<b>Block</b>	<b>Method</b>	<b>Tools</b>
Study of public opinion	Mass cross-sectional survey	Questionnaires
Study of the opinion of the target group	1. Survey of members of the target group 2. Collection of typical examples of discrimination (cases)	- Questionnaires - Focus-group research - Structured interviews - Unstructured in-depth interviews - Content analysis
Study of the existing legal framework	Analysis of existing legislation	Analysis of the texts of concrete normative-legal

discrimination and rights violations.

Some of the names of population centres and names of participants found within the research have been substituted or are represented with the first letter of the name only.

The monitoring and other activities in the framework of the «Monitoring and protection of the rights of GLBT people in Ukraine» program were carried out by participants and specialists of both homosexual and heterosexual orientation.

### Social picture of discrimination in Ukraine: The state of discrimination on the basis of sexual orientation

This material presents the results of an opinion poll of Ukrainian inhabitants conducted by the company TNS Ukraine, that took place over the period of January-February, 2005. During the poll, respondents were questioned about their own personal experiences of discrimination based on socio-demographic indicators which may be the cause of discrimination in Ukraine, as well as related possible methods of prevention of discrimination in Ukrainian society. In all, 1200 respondents took part in the poll, ranging in age from 16 to 75 years old, and located in population centers of all types. The research selection segment was representative of people from all parts of Ukraine, as well as gender and age. The margin of error in selection segment is  $\pm 3\%$ .

#### Indicators leading to discrimination

Discrimination against a person based on various socio-demographic indicators is a great problem for any society which possesses liberal ideas regarding equal rights and opportunities for all its citizens. Great attention is devoted to the questions of defining the indicators and means of discrimination, and the ways of overcoming it. The Constitution of Ukraine declares equal rights and opportunities for all citizens, but how closely does the reality of public life in Ukraine relate to the declaration in the Constitution? This poll of Ukrainian inhabitants was aimed at finding the answers to these questions.

*The majority of respondents, when asked about first-hand experience or the experience of friends who had come into contact with these or other manifestations of discrimination, towards whom there were related incidents when a person, through their affiliation with a certain socio-demographic group, or their state of health, found difficulty in:*

- receiving a certain service (consumer, administrative, social or medical);
- defending his/her rights;
- furthering career growth;

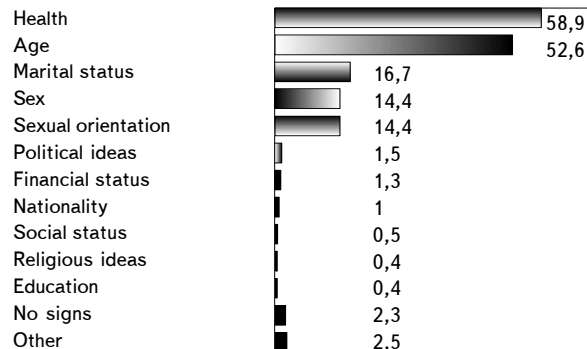
- receiving salary entitlements;
- receiving education.

*A mere 9.6% of respondent Ukrainian citizens said that neither they personally, nor their friends had experienced discrimination, the other 90.4% replying that they had experienced one or more instances of discrimination.*

In these findings, *the greatest prevalence of discrimination was based on state of health and age*, indicated as a factor by more than half of respondents. All other socio-demographic indicators which could have potentially been the basis of discrimination were indicated by a significantly lower number of respondents (see Diagram 1).

*Only 2.5% of respondents denied that in today's Ukraine there exist such socio-demographic factors on which a person may experience any manifestation of discrimination against oneself*, that is that a portion of respondents consider that neither sex, age, sexual orientation or any other characteristics may form the

*Diagram 1. Based on your own experience or experience of your friends, which social indicators do you believe may be used as grounds for discrimination? (%)*



basis for the violation of human rights. (see *Diagram 1*)

It is worth noting that *nationality and religious beliefs were mentioned by practically none of the respondents as a possible basis for discrimination (accordingly 1.0% and 0.5%)*. It is also interesting that only 1.3% of respondents indicated material/financial standing as a potential basis for discrimination or violation of rights. This can be explained by the fact that for many, financial standing is a derivative of age and state of health, as in Ukraine today, similar to many post-Soviet countries, the situation regarding economic stratification and obvious economic injustices of different age groups has become more complicated. In comparison with countries with developed economies, where youth are the primary victims of the lack of material goods, and have less opportunity to find permanent employment, in countries of the former «Soviet camp», above all it is the elderly who find themselves, as it happens, in a financial predicament that does not provide them with the opportunity to support a high, and often even an average, standard of living.

*14.4% of Ukrainians polled indicated that sexual orientation could be a potential cause of discrimination*. This is the exact same amount of respondents who indicated that *sex can form the basis for possible discrimination*. A larger number, *16.7% of respondents, considered marital status as potential grounds for discrimination*. Thus it is possible to conclude that gender attributes, or attributes related to gender roles, are significant less often than age (state of health being directly related to age), in the opinion of Ukrainians, in forming the basis of discrimination in various real-life situations. Nevertheless, it is attributes based on gender, compared with all other indicators, that are the second most mentioned and significant.

It is interesting to note that *the opinions of men and women as to which socio-demographic indicators could be used as the grounds for discrimination in Ukraine coincide for the most part*: none of the major discrepancies in evaluation of groups by sex could be determined. *This also affects the evaluation of sexual orientation as an indicator leading to «discrimination»*, which was indicated by practically identical portions of women and men (14.5% and 14.3% respectively).

However, there are important age differences in the perception

of discrimination. *With an increase in age, people more rarely point to «gender» indicators (sex, marital status, sexual orientation) as a basis for discrimination, and more often to age and state of health*.

Conversely, young people more often than the elderly, indicated sexual orientation as a potential source for discrimination. In age groups under 35, 21-22% of respondents indicated it, at the same time as among the elderly it was much less:

16-25 years - 21.0%

26-35 years - 21.9%

36-45 years - 12.8%

46-55 years - 14.8%

56-65 years - 9.3%

66-75 years - 3.7%

There is also a *significant difference in the indication of sexual orientation as possible grounds for discrimination varying with the educational levels of the respondents*. It was indicated as follows:

people with post-secondary education - 18.6%

people with secondary education - 14.3%

people with primary or incomplete secondary education - 7.6%

It should be noted, however, that among respondents with primary or incomplete secondary education, more than half were people over the age of 65, while the group with secondary or post-secondary education were more evenly representative of various age groups.

It may be concluded that *young and well-educated people more often consider sexual orientation as an indicator on which discrimination may be based*. This can be explained primarily by the fact that sexual activity holds more interest and is more discussed among young people, therefore young people may be more informed not only from their own sexual experiences, but the experiences of others. Moreover, more educated people are more familiar with the term «discrimination» and the socio-political debate surrounding the protection of equal rights and opportunities for all people.

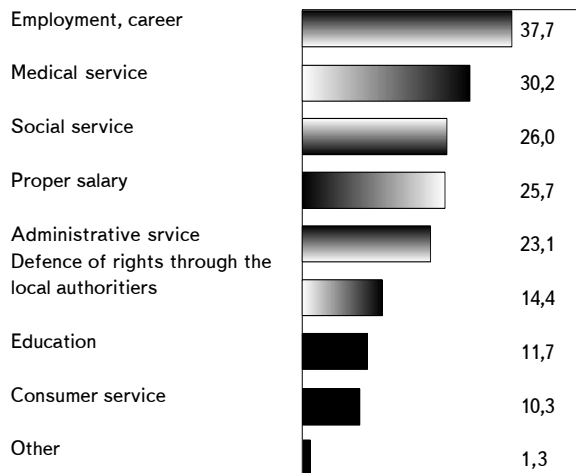
### Evidence of discrimination

The poll also posed questions about how discrimination may be expressed and which difficulties people displaying different socio-demographic peculiarities may come across in defending their rights.

Respondents named *the violation of rights in the process of seeking or being dismissed from employment, as well as in career advancement most often (37,7%)*. In second place respondents indicated *access to medical services (30,2%)* (see Diagram 2).

Violations of the right to social services, to adequate and equal

**Diagram 2.** Can you say that, by the above-mentioned social indicators, you or someone you know had difficulty in exercising any of the following rights? (%)



(compared with other employees) salary, and to administrative services were mentioned by almost the same number of respondents (23% and 26%), while violation of the right to defend oneself through local government bodies was mentioned by a slightly lower number of respondents (14,4%). Only slightly less problematic, taking into account the possibility of discrimination, were access to educational services (11,7%) and consumer services (10,3%).

According to the results of the poll the **factors that influence the assessment of discrimination indicators are age, education and financial status**, though at the same time there is *no essential difference in assessment of discrimination indicators according to sex or marital status of the respondents*.

For example, elderly people, people with low educational levels and low incomes pointed out discrimination in the spheres of social and medical services more often than younger and well-educated people with stable incomes.

There is still the opposite tendency in assessment of discrimination in the sphere of employment, career and salary. Young and middle-aged people in particular (46-55 years old) indicated instances of discrimination in this sphere more often than elderly people. Respondents from the group with post-secondary education and high incomes indicated the possibility for discrimination in employment seeking.

Thus, by analyzing the poll results it's possible to say that, in today's Ukraine, *discrimination is present in those spheres that are most important for a normal standard of living and especially in relation to:*

1. employment and salary;
2. medical services;
3. social protection.

People who are employed come across discrimination more often in the sphere of employment, while at the same time elderly people evidence inequality of rights to medical and social services as the most frequent instances of discrimination.

Among respondents who indicated sexual orientation as grounds for discrimination, *the sphere of employment was named as the most problematic in the realization of rights in that 45,1% of respondents in this group pointed out problems of obtaining or*

**Table 2.** Which rights are most difficult to implement (according to those respondents who named sexual orientation as grounds for discrimination)?

	%
Seeking of /dismissal from employment, career advancement	45,1
Proper salary	30,6
Administrative services	25,4
Social services	22,5
Medical services	22,5
Defence of rights through the local authorities	22,0
Educational services	19,1
Consumer /everyday services	14,5

dismissal from employment and in career advancement, and 30,6% of respondents of this group pointed out possible difficulties in receiving a proper salary (see table 2).

Quite a large percentage of respondents (19,1%) who consider sexual orientation as one of the most widespread grounds for discrimination, named education as a sphere where rights were violated (average index among all respondents is 11,7%).

It is also important that this group most often indicated difficulties in defending rights in dealing with government bodies – 22.0% (as opposed to 14.4% among all respondents), therefore it can be said that law enforcement bodies often display “special” relations to people with non-traditional sexual orientation and may be the source of further problems.

It's necessary to mention that respondents in the group who named sexual orientation among indicators which could lead to discrimination also named other socio-demographic indicators. More

than half of the respondents in this group additionally indicated state of health and another third indicated age. Therefore it becomes difficult to connect this group's answers about violation of rights as discrimination with sexual orientation as grounds for discrimination. But it is apparent that this group of respondents sees the connection between discrimination in Ukrainian society with biological and psychological indicators, as well as on physical well-being. And that the most widespread instances of discrimination based on these indicators are the violation of rights in the spheres of employment seeking, career issues, salary and educational services.

Of interest is the fact that a fewer respondents in this group (22,5%) named the violation of rights in the medical sphere than among all respondents as a whole (30,2%). That means that medical service is not a main sphere of discrimination towards people of non-traditional sexual orientation.

#### Methods of overcoming discrimination

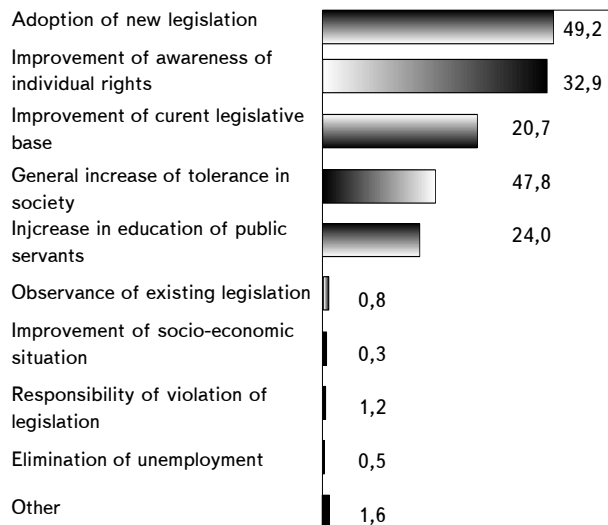
The majority of Ukrainian respondents think that *specific measures should be taken to overcome discrimination*, most importantly the following:

- implementation of new legislation (49,2%);
- improvement of the state of awareness of citizens in the sphere of protection of individual rights (47,8%);
- improvement of the current legislative base (32,9%)

Almost a quarter of respondents think that it is necessary to increase the level of tolerance in society, and every fifth respondent believes it is necessary to provide special training for public servants (see Diagram 3).

General improvement of the socio-economic situation in the country, and tackling unemployment are considered to be effective ways of overcoming discrimination by only a few respondents (0,8% and 0,3% of respondents correspondently), which may witness the fact that *Ukrainians see the reasons for discrimination not in the lack of particular economic or material benefits that are available to most citizens, but in the failure to understand defining characteristics of a person, in intolerance and in social stereotyping.*

**Diagram 3.** Which activities should be undertaken to improve the state of discrimination against citizens? (%)



Neither do respondents put much faith in the present legislative base as a measure for overcoming discrimination: 1,2% of respondents mentioned strengthening the existing legislative base and 0,5% of respondents mentioned responsibility for violation of legislation as a possible means of overcoming discrimination.

There is no difference between the point of view of men and women regarding possible ways of resolving the problems of *defense of rights of every person* irrespective of age, sex, sexual orientation or other socio-demographic indicators, therefore *overcoming discrimination within Ukrainian society necessitates the introduction of changes and the safeguarding of existing, or amendments and*

discrimination. However, there are particular differences in responses by age. Elderly people more often name the adoption of a new legislative base as a necessary measure to overcome discrimination. At the same time, younger and more educated people are more inclined to believe in the improvement of present legislation as a measure to overcome discrimination.

Measures directed at changes in social conscience, namely the increase in the level of tolerance in society and the improvement of the state of awareness of citizens concerning the protection of their rights, are mentioned mostly by people with a high level of education.

Amongst those who indicated sexual orientation as possible grounds for discrimination, answers to the questions concerning measures to fight discrimination were not essentially different from the responses of the rest of the respondents (see table 4), except on two positions. In this group, *most often indicated was the necessity for an increase in citizens' level of knowledge of their rights and means to defend them (53.2%); and indicated more than one and a half times more often was the necessity for a general increase in the level of tolerance of society (37.0% compared to 24.0% among all respondents).* (see Table 3)

**Table 3.** Which activities should be undertaken to improve the state of prevention of discrimination against citizens?

	%
Adoption of new legislation	46,8
Improvement of curent legislative base	34,7
Injcrease in education of public servants, special trainings	27,7
Improvement of awareness of individual rights and their protection	53,2
General increase of tolerance in society	37,0
Improvement of socio-economic situation	1,2
Elimination of unemployment	2,3
Observance of existing legislation	1,2
Responsibility of violation of legislation	2,3

Thus, *from the point of view of respondents, the legislative base of Ukraine is not the only mechanism that provides for the defense of rights of every person* irrespective of age, sex, sexual orientation or other socio-demographic indicators, therefore *overcoming discrimination within Ukrainian society necessitates the introduction of changes and the safeguarding of existing, or amendments and passing of new, regulatory legal acts. As important as the advancement of instruction for public servants, as a specific social group whose decisions affect the fate of many citizens, is the increase in awareness of rights and of tolerance among the rest of the population*

### **Discrimination of Ukrainian citizens on the basis of sexual orientation: Survey of members of the GLBT-community**

Within the framework of the project “Monitoring, reporting and advocating human rights of gay, lesbian, bisexual and transgendered (GLBT) people in Ukraine” from January - March, 2005 “Our World” Gay and Lesbian Center conducted research on “Discrimination of Ukrainian citizens on the basis of sexual orientation”. The objective of this research was to clarify how typical is discrimination on the basis of sexual orientation and rude, prejudiced behaviour towards homosexuals in Ukraine. Discrimination is taken to mean unfair or unequal attitudes towards a person because of any characteristic of his/her personality: in this case, sexual orientation. The basic objectives of the research were:

1. To clarify to what extent discrimination on the basis of sexual orientation is prevalent in Ukrainian society.
2. To determine additional factors influencing the prevalence of discrimination towards people with non-traditional sexual orientation.
3. To determine the most typical displays of discrimination in different spheres of activity.
4. To ascertain the prevalence of rude, prejudiced behaviour towards people with homosexual orientation.

Research was carried out using two methods of surveying: mail-out questionnaires, and face-to-face surveys with participation of specially trained interviewers. About 1700 questionnaires were distributed by mail to members of the target group from the “Our World» contact database. Of these, 330 questionnaires (19,4%) were completed and returned. Interview were conducted with 575 respondents in different regions of Ukraine. Because of the necessarily access to members of the research target group, selection of respondents was made by the “snowball” method designated: one respondent provided contact information for another member of GLBT community for participation, and so on. The sexual orientation of respondents was the sole criterion of selection; other demographic

parameters were not taken into account.

Concurrently, research was managed to cover different groups of homosexual citizens of Ukraine of different sexes, ages, regions, places of residence, and social statuses. At final count, 901 questionnaires were used for analysis. In some completed questionnaires not all questions were answered, therefore the overall number of answers for certain questions is sometimes less than the total number of questions in the questionnaire.

### 1. Socio-demographic characteristics of respondents

In most cases (76,4 %) respondents were men. The gender of the respondent was unspecified on 57 questionnaires. Women answered 156 questionnaires, comprising 17,3 % of the total.

The age of respondents varied from 16 to 67 years, with an average age of 31 for men and 26 for women. About 60% of respondents were young people under 30 years of age, respondents in the age group of 30 to 37 make up 20%, and 20% of respondents are over 37 years of age, half of them being under 45. For women, 95% of respondents were under the age of 39, whereas 95% of men were under the age of 46.

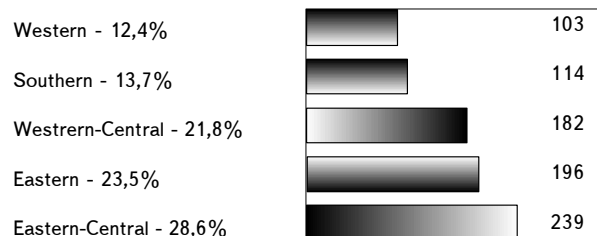
Men and women who took part in the survey represent various professions. The largest groups were: service industry (18,4%), students (17,2%), skilled workers (15,6%), and also higher skilled workers (e.g., paramedics) – 14,3%. Representatives of other kinds of professional work were among respondents. For example, the following: military personnel, church staff, law enforcement officers, sports professionals, professionals in the arts, but in total these make up only 5,3% of the overall number of respondents.

All regions of Ukraine were represented in the research (see *Diagram 4*).

Western and Southern regions are less represented in the research due to more complicated access to the target group in these regions of Ukraine.

Settlement structure of representatives is as follows (see *Table 4*).

*Diagram 4. Distribution of respondents in Ukraine, by region*



The small number of respondents found living in rural areas is consistent with both the inaccessibility of this part of the research target group, and with the tendency of people with homosexual orientation to live in larger cities.

The majority of respondents were people with vocational training or post-secondary education. Only 2,1 % of respondents did not obtain secondary education, and 19,1% of respondents did not obtain higher education. More than 20,4% of respondents received average vocational or technical training. A considerable number (38,6 %) have obtained higher education, and in quite a few cases respondents specified that they had more than one post-secondary

*Table 4. Distribution of respondents, by place of residence (settlement structure)*

	Number	%
Kyiv (Capital)	95	11,0
Provincial centers	502	58,0
District centers	148	17,1
Small cities	68	7,9
Rural areas	53	6,1
Total	866	100,0

education degree, diploma, certificate or license. An especially interesting comparison emerges if one compares these results to official statistics published on Ukraine, according to which, the proportion of those who received post-secondary education is almost three times less.

Such a large proportion of people with higher education means, most likely, both that members of the research target group consider more educated stratum of the society as the most tolerant one and aspire to become a part of it and that people with higher education more willingly participate in these kinds of researches.

## 2. Interrelation between «outness», gender, and other characteristics of members of the GLBT community, and members suffering discrimination

As the research has shown, cases of discrimination on the basis of sexual orientation are significantly widespread in Ukrainian society. 54,4 % of respondents answered yes to the question «Have you experienced prejudiced or were you exposed to discrimination on the basis of your sexual orientation during the last 4 years?».

Discrimination on the basis of sexual orientation (unlike, for instance, racial discrimination) has the feature of directly depending on the «outness» of a person: the extent to which he/she does not hide his/her sexual orientation. To discriminate against a person on the basis of his/her sexual orientation, and to act in a prejudiced way on this basis, it is necessary to know about their orientation, or to assume their orientation to be non-standard. However, situations occur when the sexual orientation of a person becomes known to as third party against his/her will.

However that may be, during research it was important to discover to what extent the research target group is out within their environments. The most common situation was where their orientation was known to a small circle of people. Responding to the question «Who knows about your sexual orientation? 38,2 % answered, that *several bisexual or homosexual friends know about his/her sexual orientation*, and *more than 27,8 %* have specified

that *only relatives or close friends know*. Only less than 4% of respondents hid their orientation from everyone. On the other hand, in 28,8 % of respondents are out to a large circle of people.

It was possible to track precise correlation between «outness» of the respondent and the extent to which he/she is the subject of discrimination. Among those who *are out to everyone, 76,3 %* have recognized that they have been discriminated against in one or another sphere of their life. As the level of respondents' «outness» decreased, so did the instances of discrimination against them, so that *13 % of completely closeted respondents had experienced discrimination*.

Thus, the less people know about the sexual orientation of the respondent, the less he/she is subject to discrimination (see. Table 5)

Before discussing the difference in the way men and the women feel discrimination, it is worth noting that research has shown a large

*Table 5. Distribution of respondents who did / did not experience discrimination, by level of «outness»*

	<b>Yes, I have experienced discrimination</b>	<b>No, I have not experienced discrimination</b>
I don't hide my orientation from anyone	76,3%	23,7%
A wide circle of friends and acquaintances know	76,8%	23,2%
Only close friends and some family members know	56,7%	43,3%
Only a small circle of homo- and bisexual friends know	37,8%	62,2%
No one knows	13,0%	87,0%
Other	78,6%	21,4%
Total:	54,4%	45,6%

degree of “outness” of women. The proportion of GLBT **women** who are open **only to a narrow circle of homo- and bisexual people, comprises 28%**. The proportion of men who are open **only to a narrow homo- and bisexual people**, is one and a half times greater at **41 %** (see Table 6).

**Table 6.** *Distribution of respondents of various degrees of «outness», by gender*

	Out to everyone	Out to a wide circle of friends	Out to close friends & family	Out to small circle of homo/ bisexuals	Out to nobody
Men	10,1%	17,6%	27,4%	41,0%	3,9%
Women	13,3%	23,3%	32,7%	28,0%	2,7%
Total	10,7%	18,6%	28,4%	38,6%	3,7%

At the same time, men from the research target group more often indicated that they were exposed to discrimination or experienced prejudice, **57,3 %** among men. In turn, **46,1 % of women answered that they were exposed to discrimination on the basis of their sexual orientation**. Hence, it can be stated quite accurately that women from the research target group are less subject to discrimination in Ukraine, though its level remains high.

Another factor affecting the experience of discrimination is **age**. Respondents were divided by age into the categories:

- 1) up to and including 27 years old;
- 2) between 28 and 40 (inclusive);
- 3) over 40 years old.

The first group comprises young people whose sexual orientation and corresponding lifestyle have been formed in post-independence Ukraine, after criminal prosecution for homosexual relations between men was rescinded. The second group is transitional. The third one is comprised of men and women who were homosexuals before the early 1990s.

Responses indicate that people of advanced age less often declare that they feel discriminated against. If **59,5 %** of young GLBTs responded that they **met discrimination** on the basis of their sexual orientation, then people of advanced age (second group) feel **discriminated against** slightly less, at **53,5 %**. Among those who are more senior than 40 years, the majority answer that they that did not feel discriminated against. To the question **I have experienced discrimination** in this group, **43,8 %** of these respondents answered yes, whereas **56,2 %** answered **no**.

However, it is necessary to take into account that the degree of “outness” of respondents also depends on their age. Among youth (under 27 years) GLBTs are more equally distributed among different groups of “outness”, whereas as age increases, the proportion of more closeted GLBTs increases – **34,8 % among youth, 39,5 % among 28-40 year-olds, and 49,6 % among those who are over 41 years old (allowing only a small circle of GLBT to know about their sexual orientation)**. (see Table 7).

Thus it can be stated with some degree of certainty that members of the target group of different ages are subject to discrimination and prejudiced approximately equally.

Of interest is the attempt to track the prevalence of discrimination on the basis of sexual orientation as a correlative of each region

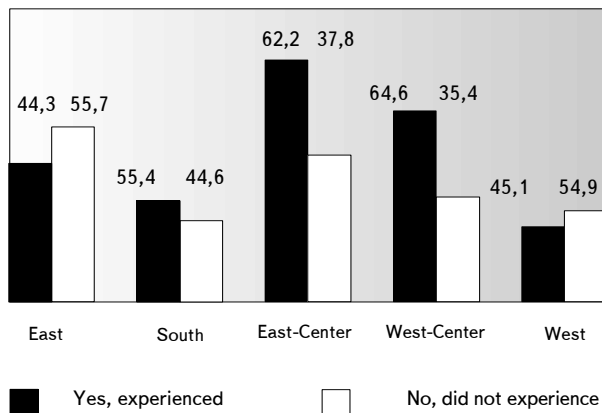
**Table 7.** *Distribution of respondents of various degree of «outness», by age*

	Out to everyone	Out to a wide circle of friends	Out to close friends & family	Out to small circle of homo/ bisexuals	Out to nobody
Under 27	13,4%	21,7%	26,7%	34,8%	3,3%
28-40	8,5%	17,2%	32,0%	39,5%	2,8%
41 & over	6,5%	13,8%	22,8%	49,6%	7,3%
Total	10,6%	18,9%	28,1%	38,7%	3,7%

where respondents reside. (see *Diagram 5*).

So, the closer to a “Nash Mir Center” homosexuals live, the more they are discriminated against. However no serious conclusions can be drawn from this, inasmuch as during research it was not possible to achieve uniform distribution of sampling from the regions. For example, in the east, there were more women than in the southern. There were 30 questionnaires received from female respondents three eastern regions, while only 14 were received in three Southern regions and the Crimea. This disproportionate response certainly influences the results. The degree of “outness” of target group in different regions also differs. So while in the Lugansk area there are 27.8 % (average value for total sample) respondents who are open to everyone, or to their wide circle of friends, while in the Ivano-Frankivsk area there are zero out of 7 respondents. Taking into account these factors, it can be stated quite accurately at least that discrimination on the grounds of sexual orientation is less spread in the East of Ukraine.

**Diagram 5.** Proportion of respondents who did / did not experience discrimination, by region of residence (%)



The final pattern that can be parsed from the research data is the positive correlation of the scale of discrimination of a person who identifies as homosexual or bisexual.

Most respondents (70.1%) have defined themselves as homosexuals. Bisexuals comprise 28.2% of respondents. Only 14 respondents identified themselves as transsexual; because there isn't sufficient data, no patterns can be determined for this group. On the question of whether they experienced discrimination, bisexuals answered “yes” in **43.3 % of cases. Homosexuals** more often noted that they experienced discrimination — **59.5 % of the overall number of homosexuals and transsexuals**. The probable reason for this situation is the lower visibility of bisexuals. In view of their bisexuality, they have sexual contacts with a “correct” sex, are married, and they give fewer occasions for suspicion that there is “something wrong” with their sexual orientation.

Moreover, bisexuals are less out in their environments. For comparison, 5.2% of bisexuals and 12.1% of homosexuals are open to everyone. Among those who are out to a wide circle of friend are 12.7% of bisexuals and 21% of homosexuals.

The fact that **the proportion of bisexuals among female respondents is larger than among men (35.9% and 26.3% respectively)** is also of interest. Obviously, it has also influenced the finding that women appeared the group less discriminated as per the research results.

Regarding other socio-demographic characteristics of the research target group, such as profession, education, income levels, and some other characteristics, the research has not revealed statistically significant patterns. Whether the absence is actual, or connected with imperfect sampling, remains undetermined. Thus, it is obvious that to resolve this, additional in-depth studies are necessary.

### 3. Discrimination against GLBT in various spheres

The respondents who answered that they experienced discrimination on the basis of sexual orientation (490 people, or 54.3% of the total sample), were asked to answer qualifying questions

for analysis of the kinds of rights violations the target group members experienced in various social spheres.

### Privacy and information rights

The research shows that in the sphere of privacy and information rights, violations of rights on the basis of sexual orientation occur rather frequently. Overall, **42.8% of all respondents reported at least one violation of their rights in the sphere of information confidentiality and privacy.**

Also, **nearly a quarter of respondents (23.4%) recognized that information on their sexual orientation was disclosed without their consent.** An additional 18.7% of respondents were threatened with disclosure of such information. 8.5% of all respondents were refused the right to speak openly about their same-sex partner.

More specific cases of rights violation occur less often. 4.6% of respondents recognized that they were refused the distribution of information (articles, advertisement) concerning the theme of sexual orientation. It is apparent that a very small proportion of the respondents experience such a need in their interactions. A further 2.6% of respondents were refused a subscription to a printed edition with thematic content.

The mass media is a special topic. 28.2% of all respondents have declared that in mass media they came across untrue information which was misleading about the true situation of people with non-traditional sexual orientation.

Examining the situation in the mass media on the whole, respondents rated the suggested options as follows:

“Messages balanced and truthful” – generally disagree, average rating 3.9 (1 = completely disagree, 10 = completely agree).

“Messages of negative or untrue contents prevail” – basically agree, average rating 6.1.

“The information in mass media has sufficient coverage of the theme of non-traditional sexual orientation” – basically disagree, average rating 2.5.

“The versatile information on the subject of non-traditional sexual

orientation is enough for representatives of gay community” – disagree, an average rating 2.8.

Thus, most respondents consider that coverage of the theme of people with non-traditional sexual orientation in the Ukrainian mass media is still far from reality.

### Labor relations

First, it must be mentioned that in this section the questions were not answered by all respondents. Responses are only from those who have been employed or have tried to gain employment during the last few years (417 persons in total).

Most of these (78.2%) indicated that they faced certain violations of their rights, discrimination, and/or prejudice in the workplace. Different kinds of violations are presented as a table (see Table 6). The percent of employed who faced discrimination is presented in the left column. The right column shows the proportion of out employees in each case. As a whole, 51.8% of those employed declared that they were out to their colleagues.

Thus, the most typical violations are hindrances to promotion (12.9%); and prejudice or strained relationships (compared with other workers) towards persons with non-traditional orientation (21.1%). The more that information on an employee's orientation is openly known, the larger the probability of discrimination against and violations of rights of that employee. In view of these responses, it is clear why there are seldom cases of employment being refused on the basis of a prospective employee's sexual orientation. During the interview process of a candidate for a position, there is a low probability that information about the prospective employee's sexual orientation is publicly known.

The information on interpersonal relations among colleagues is quite important. 35 % of those employed (of those almost 80% of the 35% have made public their orientation) have recognized that their colleagues subjected them to moral pressure. 19 people (including 3 women) declared that they had experienced sexual harassment. 20 people in this group (including 4 women) acknowledged that physical

**Table 8.** *Violations of rights and discrimination in the workplace*

Violation of rights	% with total number of employed	% of employees who are out to their colleagues
Refused employment	3,1%	76,9%
Dismissed from employment	9,6%	85,0%
Hindrance to career advancement (promotion)	12,9%	87,0%
Lower salary	4,8%	80,0%
Experienced bias relative to other employees	21,1%	95,5%
No violations	21,8%	78,0%

violence was used. 4 men were raped by colleagues.

It is clear that such displays of rude, prejudiced behaviour in the workplace are most probably perpetrated by those with whom a person is in closest contact, that is colleagues of equal position, as proved by the research. In answering a question concerning from whom they experienced prejudice, 35.7% of employed respondents indicated colleagues, 16.1% indicated superiors, and 1.9% indicated subordinates.

Addressing additional factors influencing discrimination in the workforce, research has revealed a curious fact: the most vulnerable group therein were people who had completed post-secondary education. Bearing in mind that the percentage of such people in the overall sample is 38.6%. The total percentage of people with post-secondary education who were dismissed from their jobs was 53.5%, those who gave up their positions was 50%, and those who experienced prejudice was 43.2%.

It is reasonable to assume that people with post-secondary education are more aware of their rights, and consequently feel the

violation of their rights more keenly. Or it may be the case that educated people work in fields where their homosexual orientation more inadmissible and to a greater extent than, for example, for a factory worker or restaurant server.

With the latter categories of workers, however, all is not simple either. Data show that of the 23.9% responding employees who experienced prejudice because of their orientation, 18.7% were employed in the service industry. Among average and higher skilled workers in the services sector, 19.7% indicated that they had experienced prejudice because of their orientation. But 4 (57.1%) out of 7 professionals in the arts declared their concern about prejudice.

### Interaction with law enforcement

One of the areas where out GLBT society most frequently encounters discrimination is with law enforcement agencies.

Of 283 respondents who recognized they had encounters with law enforcement over the past few years, 61.5% noted some violation of their rights. It needs to be remembered that it is entirely unnecessary for law enforcement agencies and courts to know, refer to, or manipulate anyone on the basis of their sexual orientation. Only 6 % (17 persons) responded that they were aware that staff of law enforcement agencies knew about their orientation, but that in spite of this knowledge their rights were in no way violated. That is in contrast with the treatment of others, whose orientation was known and whose rights were violated.

Also, it is meaningful to present the results of questions about violations in this sphere in the form of a table (see Table 7). One column shows a percentage proportion of violations of the rights of the research target group by the overall number of those who had encounters within this sphere, while the other column shows the percentage among those who are 'out'. In this instance those designated under 'out' are those who acknowledge that they either do not hide their orientation from anyone, or that their orientation is known to a wide circle of friends and acquaintances..

The most typical violations are violations of procedure during interrogation (34.3%), the drawing up of lists of other people of homosexual orientation (19.1% - among out homosexuals 26.4%). In regards to other malicious violations of human rights, such as the use of torture during interrogation, the percentage, at 11.3% (32 people, including 2 women), is not insignificant.

**Table 9.** *Violations of rights and discrimination in dealing with law enforcement agencies*

TYPE OF VIOLATION	% of target group having had encounters with law enforcement	% of those same who are 'out'
Refusal to operational defense in order to redress a violation of rights	18,4%	16,5%
Violation of procedure during interrogation (illegal search or arrest)	34,3%	43,8%
Refusal to open an investigation into a violation of rights	8,8%	11,6%
Coercion to list other homosexuals	19,1%	26,4%
Use of physical pressure (torture) to obtain information	11,3%	14,9%
Refusal by the administration to prosecute the perpetrator of the violation	12,0%	9,9%
Complaint about violation left unconsidered	11,3%	12,4%
Officers of the court (judges, prosecutors) acted in a prejudiced manner	4,2%	3,3%
Violation of court procedure	1,4%	0%

Furthermore, respondents have noted that in interactions with law enforcement officers they were subject to moral pressure (55.8%), sexual harassment (8.1%, including 2 women), physical violence (19.1%), and sexual violence (2.5% or 7 people, all men).

41 respondents indicated that over the past few years they had been imprisoned. Among these, 5 were subject to moral pressure because of their orientation, 7 to sexual harassment, 3 to physical violence, and 3 to sexual violence.

### Education

Only 324 respondents answered that over the past few years pursued studies. Of these, 27.7% were educationally or otherwise discriminated against, while 61.4% were not been discriminated against, as nobody in their educational institution knew about their orientation. Only 10.8% indicated that, although their orientation was known, they were not subject to discrimination or prejudice.

Among concrete kinds of discrimination in this sphere, respondents most often named understating knowledge-level estimations in comparison with other students of equal knowledge. 35 respondents (10.8%) mentioned such violations. 14 persons (including 4 girls) were suspended from educational institutions because of their orientation.

When speaking about interpersonal exchanges in places of study, the situation is much worse. 35.2% mentioned having been subject to moral pressure, humiliation, and insults at their place of study. Concerning sexual harassments perpetrated by others in places of study, 22 people (including 2 girls) noted complaints, and, as regards to physical violence, 23 persons noted complaints; 5 young men were raped.

### Military service

Only 90 respondents indicated that over the past few years they have served or still serve in the ranks of the armed forces. It must be taken into account that the questionnaire is restricted to the past 4

years only. Also, GLBT people now serving in the army, for all practical purposes, did not participate in this research project.

15 people (16.7%) responded that they were called upon for compulsorily for military service, despite their state of health or other objective reasons. An appeal to be disqualified for military service, on the grounds of their orientation, was refused to three draftees. Promotion to the next higher rank was refused to 7 people whose orientation was known. 4 persons serving in the military were compulsorily transferred to the Reserve Corps.

Almost half (43 persons, of whom 16 were out) of the 90 respondents serving in army answered that they did not encounter cases of violations and discrimination because of sexual orientation in this sphere.

As for interpersonal interaction within organizational units, 13 persons (14.4%) mentioned that they were subject to moral pressure, and/or suffered humiliation and insults from colleagues because of their sexual orientation. 11 were exposed to sexual harassment, 8 to physical violence, and 6 male army personnel were raped.

### Family relationships and cohabitation

As show in the research, the basic source of violations of rights in the sphere of family relationships and cohabitations is that the legal issue of same-sex cohabitation is not in any way addressed by law.

In particular, these violations of the rights of same-sex partners were mentioned:

- 23 respondents (including 2 women) responded that they were refused protection of joint property rights as one partner of a homosexual pair;
- 16 respondents (all men) reported being refused eligibility for financial credit arrangements to be entered into jointly with their homosexual partner;
- 10 respondents (all men) were deprived of the right to adopt children;
- 8 respondents reported being refused the right to inheritance;

- 2 respondents (both women) were refused sick-leave for the purpose of caring for a partner's child. In other words, the above respondents were deprived of rights that are usually extended to married couples.

It must be taken into account that not all respondents lived in a same-sex partnership. Also, those who did live in a same-sex union were not always informed of the rights that marital status confers, and accordingly they did not benefit from those rights.

### Other social spheres

According to the research results in several social spheres, discrimination and prejudice towards persons of non-standard orientation are less widespread. Above all, this finding can be linked to the fact that in these spheres a person's sexual orientation cannot be determined with complete certainty.

Thus, *in the sphere of health services 16.6%* of those mentioning interaction in this sphere (416 respondents) over the past few years indicated that they experienced discrimination. Violations of confidentiality in relation to the disclosure of private medical information are most typical in this sphere. 21 respondents indicated that information on their health was disclosed to a third party, and 35 indicated that the disclosure involved other personal information (possibly concerning their sexual orientation). 14 respondents mentioned that they were refused psychological aid in connection with their orientation.

Only 22, 5% from a total of 431 respondents who indicated that they had dealings with the service industry, mentioned that they had encountered prejudice in this sphere. During the survey, "dealing with the service industry" was meant as something more than simply being a buyer in the shop or at the marketplace. Speaking about certain violations, 41 respondents reported being denied services in public catering establishments, holiday establishments, and elsewhere. 37 were refused the renting of accommodation.

In the **sphere of social rights** 48 (14.0%), out of 343 respondents who indicated that they had dealings in this sphere,

complained of prejudice from representatives of government agencies.

A total of 169 respondents indicated that prejudice had occurred in the **sphere of business/trade activity**. 17 persons (10.0%) indicated that said that inspection agencies gave the respondent's enterprise, or him/her as the businessperson, increased surveillance in comparison with others.

Other less characteristic violations of rights were also mentioned in this sphere.

**Interpersonal interactions**

The results indicate that the most common instances of discrimination, prejudice or rude attitudes towards people with non-traditional orientation, according to respondents, occur at the level of interpersonal interactions.

With regard to those instances which involved the workplace, place of study, army units or encounters with law enforcement agencies, rude treatment of members of the research target group indicates trends only within those divisions.

But such violations occur in interpersonal interactions with private individuals, in daily routine, in everyday life: within a subject's family, with neighbors, friends and acquaintances, or with passers-by on the street. Respondents were also asked about these instances.

Survey results revealed that in communication with private individuals GLBTs are quite often subject to moral pressure, humiliation or insults. 360 respondents (40% of the total), including 55 women, reported such encounters. It is important to note the significant finding that in these cases the percentage of out people is 43.6, out meaning respondents who do not hide their orientation from a wide circle of people or not at all. It must be noted for comparison that the proportion of such people in the overall sample is 29.3%.

54 persons (including 12 women) were exposed to sexual harassment perpetrated by private individuals. This is 6% of the proportion of total respondents.

Private individuals applied physical violence to 82 respondents

(including 7 women), or 9.1% of all respondents.

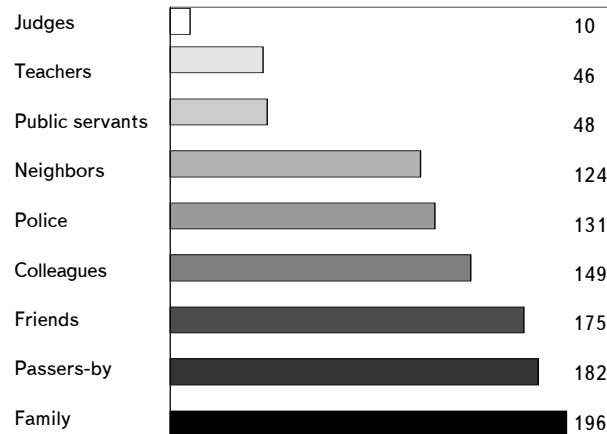
13 men and one woman suffered sexual violence at the hands of private individuals.

Who was the source of prejudice at the interpersonal level? Diagram 6 presents individuals by groups the offenders and perpetrators of prejudice towards members of the target group.

As shown by the survey results, statistical probability justifies and requires a future and precise law addressing sexual orientation covering GLBT citizens, whose ability to live openly in a given sphere depends upon their finding out for themselves the degree of rude, prejudiced behaviour in the environment.

**21.7% of all respondents (196 people)** noted that prejudice against them took place **on the part of close relatives and family members**. **13.8% (124)** expressed that they experienced

*Diagram 6. Offenders and perpetrators of prejudice towards GLBT at an interpersonal level (in the opinion of respondents)*



prejudice from *neighbors*. And **19.4% of respondents** mentioned *friends (current and former) as instigators*.

Another curious fact emerges from respondents' answers, that *strangers on the street* also frequently behave offensively towards homosexual persons. This was mentioned by **20.1% (one fifth)** of respondents. Obviously this correlates with members of the research target group frequently being less inclined to hide their orientation in front of strangers than in front of their relatives or, for instance, their neighbors.

#### 4. Protection of rights of GLBT in cases of rights violations

Research results show that every second person among those whose rights had been violated (a total of 248 people), tried to rectify the situation. **Half (49.4%) of those respondents in cases of rights violations took no action**. An analysis was done on whether pursuing action is dependant on the subject's level of education. It was found that out of 248 persons who tried to protect their rights, 96 persons (38.7%) had completed post-secondary education. This finding almost exactly coincides with the proportion of people with post-secondary education in the total sample (38.6%).

In the analysis of how research target group representatives tried to defend their rights, the following results were found: **Almost half (48.0%) of those who tried to defend their rights noted that they informed the violators of the fact that their rights had been violated**. Every fifth person (**20.6%**) *applied to the police for defense*. 10.9% applied to the administration of the enterprise or establishment whose employee had violated their rights. 10.5% filed a suit or complain, among which the overwhelming majority were people with post-secondary education (61.5%). And only 9.3% (including 43.5% of those with post-secondary education) appealed to social organizations for defense of rights. It is obvious that not everyone is aware of the existence of such organizations or the services they offer.

A significant number **of respondents (26.8%) indicated that they applied other methods to rectify a violation of their**

*rights*. Among them was frequently mentioned «independently took physically violent action». The instances eliciting physical violence occurred, moreover, over perceived violations of rights in interpersonal communication. Others methods referred to are: attempts at explanation, persuasion, and frequent attempts to avoid or ignore violations. Again these were, and in this case more probably, indicating violations which arose in interpersonal communication with other people. It is more difficult to ignore victimization or illegal methods of interrogation by the police.

Many respondents answered that they felt there was no point in taking action, or that they did not know to whom to appeal for the rectification of the situation.

What were the results of such attempts to take action to protect rights? Regarding whether it was possible for respondents to defend their rights in case of violations, **more than a third (35.9%) answered that they were unsuccessful at defending their rights, despite appealing to the relevant persons or establishments**. Interestingly, 42.7% of those with unsuccessful cases possessed post-secondary education. This percentage represents a slightly higher proportion than within the total number of total respondents. This finding is most likely connected with the increasing complexity commensurate with violations against the rights of people with according to the increase in educational levels.

**More than a third (36.6%) asserting their rights were able to do so independently**, without the help of other persons or establishments. An additional 8.1% of the respondents could defend their rights because they were correspondingly referred to the appropriate bodies or establishments.

The rest chose other ways of achieving results in upholding their rights. Sometimes they used a combination of the aforementioned methods; sometimes their rights were only partially upheld; sometimes persuasion was helpful, or else avoidance of communication with heterosexuals or removal of oneself from one's family.

Thus, research results indicate that there is an acute problem surrounding the protection of the rights of members of the GLBT community. Half of those who encountered violations of their rights

simply did not attempt to defend them. This happens for a variety of reasons: sometimes because the members of the target group believes that action is pointless, has little faith in government bodies, or sometimes because they do not know where to seek help. Half of those who tried to protect their rights sought protection independently at the interpersonal level.

Effective mechanisms exist within Ukraine for the protection the rights of people with non-traditional sexual orientation are virtually non-existent, and, as a result, in more than a third of the cases of discrimination against GLBTs, even if they try to take action, any attempt to stand up for their rights is unsuccessful. One respondent noted that “in modern Ukrainian society defense of rights is impossible, therefore it is necessary to change the attitudes of citizens towards people with non-traditional sexual orientation on the level of morality.”

## 5. Brief overview of research results

### Orientation

More than half the respondents, 70.1%, identified themselves as homosexuals. Bisexuals comprise 28.2% of respondents. 1.7% of respondents identified themselves as transsexuals.

### GLBT «outness»

38.2% of respondents indicated that their orientation is known only to a few bi- and homosexual friends, and another 27.8% indicated that only family and close friends know. By the same token, 29.3% indicated that they do not hide their orientation from anyone, or that their orientation is known to a wide circle of friends and acquaintances.

### Discrimination against GLBT

The majority, 54.3% of respondents indicated that they had experienced discrimination, and correspondingly 45.7% have not.

### Discrimination against GLBT by orientation

To the question on whether or not they had experienced

discrimination, bisexuals answered “yes” in 43.3% of cases, while the rate among homosexuals and transsexuals was 59.9%. Bisexuals feel less discriminated against.

### Discrimination against GLBT by sex

57.3% of men indicated that they had experienced discrimination, compared with 46.1% of women.

### GLBT «outness» by sex

The proportion of GLBT women whose orientation is known only to a small circle of people of bi- and homosexual orientation is 28%. The proportion of men in this category is one and a half times greater, at 41%.

### Discrimination against GLBT by age

GLBT under 27 years of age indicated in 59.5% of cases that they had experienced discrimination on the basis of their sexual orientation. People between 28 and 40 years of age feel discriminated against slightly less, in 53.5% of cases. Among those over 40 years of age, the majority (56.2%) answered that they had not experienced discrimination.

### GLBT «outness» by age

Among youth (under 27 years of age) GLBT distributed more evenly among different levels of “outness”. As age increases so does the proportion of closeted GLBT: 34.8% of youth (under 27 years of age), 39.5% of those between 28-40 years old, and 49.6% of people over 41 have admitted their sexual orientation only to a close circle of GLBT.

### Discrimination against GLBT by various groups

Basically, people with non-traditional sexual orientation experience discrimination and prejudice in interpersonal interactions on the part of relatives, friends, colleagues, neighbours, and strangers on the street, in addition to discrimination on the part of law enforcement officers and through mass media (in the form of inaccurate information

and distortion of facts concerning people with non-traditional sexual orientation).

### **Spheres where GLBT experience discrimination**

The basic spheres of discrimination against members of the GLBT community are: the workplace, the sphere of privacy and information, interaction with law enforcement agencies, as well as in interpersonal interaction.

### **Protection of the rights of GLBT**

In the instances where the rights of GLBT were violated, only half of the members of the GLBT community attempted to seek some form of rectification, and only half of those instances met with success.

## **Features of Laws Relating to the Protection of Rights and Freedoms of Members of the GLBT Community in Ukraine**

In order to conduct an analysis of existing Ukrainian legislation from the point of view of the guarantee of the observance of the rights of members of the GLBT community in Ukraine, first and foremost it is necessary to determine the basic spheres of social interaction in which the problem of the actualization of rights might arise (or to have information on the existence of the manifestation of discrimination).

The basis of the research hypothesis in related spheres can be classified under the following:

- 1) recognition of legal status;
- 2) participation in information exchange;
- 3) access to public service and civic duty;
- 4) access to entrepreneurial activity and property rights;
- 5) the provision of and access to social assistance;
- 6) protection from discrimination in family relations;
- 7) protection from discrimination in the labor relations;
- 8) protection from discrimination in everyday services;
- 9) protection from the misuse of laws and access to due

process.

### **Recognition of Legal Status**

For the establishment in existing Ukrainian legislation of the legal standing of a person of non-traditional sexual orientation (herein “non-traditional sexual orientation” will be used as a technical term, not distinguishing the specific characteristics of those it is used to describe, but including people of both homosexual and bisexual orientation, as well as individuals who identify as transgendered), it first must be taken into account that currently there is not a single piece of Ukrainian legislation which defines or conceptualizes “sexual orientation”, nor is there any concept of “homosexual”, “bisexual”, “transgendered person” or “transsexual”, etc.

Nevertheless, it can be confirmed that the definition of guarantees relating to the rights and freedoms of individuals who may be assumed to belong to the GLBT community do exist. Article 24 of the Ukrainian Constitution states that “Citizens have equal constitutional rights and freedoms and are equal before the law, and may not be exempted or excluded there from on the basis of their race, skin colour, political, religious or other affiliations, sex, ethnic or class background, social standing, place of residence, the language they speak or on any other grounds.”<sup>1</sup> So far as concerns the list of characteristics on which discrimination (constituted as exemption or exclusion) is forbidden, it is theoretically possible to add “sexual orientation.”

Caution must be taken when referring to sexual orientation in the sense of legislative regulation, that what is meant is not so much the sexual behaviour of a particular individual, but the possibility of the actualization of their rights and freedoms for themselves and for others like them. In the majority of cases, problems occur because of the sexual behaviour of a certain individual (who may or may not have had any actual sexual contact), and because of:

- 1) the existence of specific needs and requirements of an individual who belongs to the GLBT community;
- 2) the lack of equal terms in comparison with other citizens for the full enjoyment of rights and freedoms, as well as the fulfillment of responsibilities of citizens who belong to the GLBT community.

Taking into consideration that an individual belonging to the GLBT community endowed with the same set of rights and freedoms as all other citizens, it is appropriate to recall Article 3 of the Ukrainian Constitution in which it is stated that “An individual’s life and well-being, dignity and honor, immunity and security are considered, in Ukraine, of the highest social value. The rights and freedoms of individuals, and the guarantee of those rights are maintained and directed by the activity of the state. The state is responsible for the individual for its actions. The maintenance and protection of the rights and freedoms of the individual are the main duties of the state.”<sup>1</sup>

To clarify the question of the level of recognition of a separate legal status for individuals of non-traditional sexual orientation in

existing Ukrainian legislation, besides the establishment of general access to and mechanisms of legal regulation, besides general constitutional guarantees, the most appropriate method is the separate consideration of each group of rights of individuals and of citizens with regards to its respective sphere of social interaction.

### Participation in Information Exchange

The participation of an individual in information exchange may arise in relation to (at least) two fundamental concerns:

- 1) the maintenance of confidentiality of information relating to an individual and their private (i.e. family and intimate) life;
- 2) the right to disseminate (including through informational reporting) and have access to information which is of interest to the individual regardless of the ultimate use of said information.

In accordance with Article 32 of the Ukrainian Constitution, “No one may experience interference in their private or family life, except in instances allowed for in the Constitution. The gathering, retention, use and disclosure of information on an individual without their consent is prohibited, except as allowed for by law and in the interests of national security and prosperity, and the rights of the individual.”<sup>1</sup>

Conversely, Article 34 of the Ukrainian Constitution provides that “Every individual has the right under the law to freedom of thought and speech, to freedom of expression of their opinions and beliefs. Every individual has the right to freely gather, retain, use and disclose information verbally, in written form or any other form as they so choose.”<sup>1</sup>

These constitutional provisions are developed in various existing acts in force. Thus, according to Part 4 of Article 23 of The Ukrainian Law “On information”, “The gathering of information on an individual without their previous consent is prohibited, except in cases provided by law.” Corresponding with Part 2 of the same Article, “By definition, information on an individual (personal information) is any information relating to nationality, education, marital status, religion, state of health, as well as date and place of birth.” Article 31 of the same asserts that “The access to information on an individual by a third

party is prohibited, even if gathered according to existing laws by state agencies, organizations, and authorized persons.” Additionally, the same Article stipulates the right of an individual to access information gathered on themselves.<sup>2</sup>

Arguments for the provisions in the Ukrainian Law “On information” are more widely interpreted by the Constitutional Court of Ukraine. Thus, in the Decision of the Constitutional Court of Ukraine of the 30<sup>th</sup> of October 1997 in the case of K. G. Ustimenko, it was noted that Part 4 of Article 23 of The Ukrainian Law “On information” must be recalled as stating that “not only the gathering, but the retention, use and dissemination of confidential information on an individual without their previous consent is prohibited, except as allowed for by law.” In the same decision, it is pointed out that “confidential information pertains in particular to information on an individual (their education, marital status, religion, state of health, date and place of birth, property status and other personal information).”<sup>3</sup> This interpretation substantially widens the range of information on an individual and their private life which it is prohibited to gather, retain or disclose.

Pertaining to the privacy of personal and intimate life of an individual (in this instance, who belongs to the GLBT community in Ukraine), Article 10 of the Ukrainian Code of Civil Procedure<sup>4</sup> and Article 20 of the Ukrainian Code of Criminal Procedure<sup>5</sup> stipulate the possibility of closed court hearings that in one way or another bear upon the intimate life of an individual who is taking part in the proceedings.

According to Article 46 of The Ukrainian Law “On information,” information concerning patient confidentiality is also protected from disclosure. This stipulation is reflected in the Ukrainian legislative principles on public health care. In particular, Article 40 of the aforementioned document points out that “health care professionals, and other individuals whose fulfilment of professional or official duties are related there to, learning of an illness from a medical examination and its results, or of the intimate or private family life of an individual, do not have the right to disclose said information, except as outlined in statutes governing specific cases.”<sup>2</sup>

With the same aim, Article 286 of the Ukrainian Civil Code stipulates that:

- an individual has the right to privacy regarding the state of their health, matters relating to their use of medical services, diagnosis, as well as information obtained during medical examination;
- it is prohibited to require the disclosure of information on diagnosis and treatment of an individual at a place of employment or an educational institution;
- an individual is not at liberty to disclose any of the aforementioned information that they may learn in the course of fulfilling their official duties or from other sources.<sup>6</sup>

Finally, there must be an examination of existing legislation relating to administrative and legal responsibilities as regards the disclosure of confidential information about an individual and their private life. Thus, Article 186-3 of the Ukrainian Code on administrative offences outlines administrative responsibilities regarding disorderly conduct in the use of any known confidential information for the purposes of extortion of public officials as well as on an ordinary citizens.<sup>7</sup> The existing Ukrainian Criminal Code contains an entire range of articles which in some way touch on this problem. Nonetheless, the most important among them is Article 182 that stipulates a penalty for “the unlawful gathering, retention, use and disclosure of confidential information of an individual without their consent, and the dissemination of said information in public address or publications for public consumption, or in the mass media.”

Article 145 of the Ukrainian Criminal Code establishes responsibility for unlawful disclosure of information protected by patient confidentiality, “i.e. the intentional disclosure of such confidential information which became known through the fulfillment of professional or official duties.”<sup>8</sup>

Taking into account all the above stated positions relating to the confidentiality of information on an individual and their personal life contained within existing legislation, it is possible to conclude that currently in Ukraine, at least, at the legislative level for the most part there exist the necessary conditions for the enjoyment and protection of information-related rights and freedoms of individuals belonging

to the GLBT community. However, in practice, as per the results of the survey of members of the GLBT community, the information sphere is specifically one in which rights are most often violated. This is not solely in relation to the disclosure of information on individuals' private and intimate lives. The violation of the right to access desired information (in particular thematic print periodicals) is quite prevalent, as is the restriction on the placement of personal ads, or announcements of various events, etc. One of the oft violated rights of individuals of homosexual orientation and individuals identifying as transgendered is the gathering of information on them by the employees of law enforcement agencies which, for the most part, occur without the knowledge of said individuals. These questions in particular currently need to be fully addressed at the legislative level.

### Access to Public Service and Civic Duty

On examining the question of access to public service and civic duty by members of the GLBT community, attention must be paid to (at least) two basic concerns:

- 1) access to public service and service in municipal self-administrative bodies;
- 2) access to military service and the possibility of advancement of rank within the Ukrainian Armed Forces.

Article 38 of the Ukrainian Constitution maintains that: "Any citizen has the right to take part in the administration of the affairs of state. ... Citizens have the equal right to take part in public service as well as service in municipal self-administrative bodies."<sup>11</sup>

These guarantees are advanced in Article 4 of the Ukrainian Law "On public service"<sup>9</sup> and Article 5 of the Ukrainian Law "On service in municipal self-administrative bodies"<sup>10</sup>, which assume that Ukrainian citizens have the right to serve in government and municipal self-administrative bodies regardless of their background, social and class standing, race or national affiliation, sex, political or religious convictions, or place of residence, as long as they have received the required level of educational and professional training and have

participated in the established practice of competitive selection for a position.

Following the aforementioned citations from the Ukrainian Constitution and pieces of existing legislation, it can be stated that, in Ukraine, there is to be no restriction relating to entry into public service or service in municipal self-administrative bodies, except which arise from the level of educational or professional training required to fulfil a position. Nevertheless, despite the cited articles of Ukrainian Law, as well as generally within the texts of these documents and their wider, in compared with the Constitution, construction of "equality under the law," there is no regulation that touches upon the protection of the rights of citizens from any manifestation of discrimination against them, including on the basis of sexual orientation.

Article 65 of the Ukrainian Constitution states that "The defense of the nation, its sovereignty and territorial integrity... are duties of the citizens of Ukraine. Citizens must fulfil their military service according to the law."<sup>11</sup>

When referring to the Ukrainian Laws "On the Ukrainian Armed Forces"<sup>11</sup>, "On general military duties and military service"<sup>12</sup>, and "On alternative (non-military) service"<sup>13</sup>, there can be found no restriction to a citizen's fulfillment of military service based on any socio-demographic factor, which may also include sexual orientation. Nonetheless, as found in the survey of members of the Ukrainian GLBT community, there are significantly prevalent violations of individual rights (among them the hindrance of advancement in rank, offence against dignity and honor, and even sexual assault) of individuals of non-traditional sexual orientation serving in the armed forces.

Accordingly, as in the case of public service and service in municipal self-administrative bodies, existing Ukrainian legislation relating to military service does not put forward any norms on the protection or restitution of violated rights of citizens who are in active service (be it compulsory or contractual). This does not only affect instances of discrimination based on sexual orientation, but also on the basis of other socio-demographic characteristics, in particular: state of well-being, economic background, nationality, etc.

A recommendation specific to the Ukrainian GLBT community might be the enactment of legislation related to alternative (non-military) service, inasmuch as such an opportunity would allow give many individuals the chance to avoid a great deal of psychological torment, humiliation and victimization which stem from their participation in military service. However, an examination of the Ukrainian Law “On alternative (non-military) service” reveals that, in relation to other cited laws, there is a very narrow list of grounds on which a citizen may be granted the provisional right to participate in mandatory service outside of the Ukrainian Armed Forces. Based on Article 2 of the above law, the right to alternative (non-military) service may only be exercised by citizens who belong to legally recognized religious organizations whose beliefs do not allow for the use of weapons or for service in the armed forces.<sup>13</sup> The addition to the list of persons with non-traditional sexual orientation and other psychological or physiological characteristics would accommodate a solution to the multitude of problems related to freedom of self-expression, as well as providing the opportunity to avoid the manifold displays of discrimination and other violations of human rights.

### **Access to Entrepreneurial Activity and Property Rights**

Neither the Ukrainian Constitution nor any piece of existing legislation establishes any specific guarantees, privileges or restrictions relating to entrepreneurial activity for any separate category of Ukrainian citizen or group, except for the disabled (which relates primarily to their distinction as a separate group because of their social vulnerability).

Article 42 of the Ukrainian Constitution stipulates that “Each individual has the right to pursue legal entrepreneurship which is not prohibited by law.”<sup>1</sup> This provision is the basis on which legislative principles establish the freedom to pursue entrepreneurial activities in Ukraine. As a whole, existing legislation in Ukraine does not, directly or implicitly, place any restrictions based on any socio-demographic factors (including sexual orientation) in relation to the

realization of entrepreneurial activity. In practice, there exists the violation of the rights of individuals belonging to the GLBT community and pursuing entrepreneurial activity, in relation to, above all, prejudice from government officials and officials of municipal self-administrative bodies. Based on survey data of members of the GLBT community in Ukraine, the conclusion may be drawn that most often these violations concern questions of trade licenses, provision of special-purpose licenses and agreements, participation in various government and municipal tenders, etc.

Despite Article 41 of the Ukrainian Constitution, which stipulates that “No one may be illegally deprived of the right to own property [and that] the right to private property is inviolable,”<sup>1</sup> there are numerous cases where individuals belonging to the GLBT community, as a result of the illegal actions of other individuals, are deprived of their right to own property of some form or another. This may be due to the actions of employees of law enforcement agencies (the deprivation of personal property, extortion or seizure of assets), employers and their representatives (withholding of salary or bonuses and other incentives, violation of intellectual property) among others. The majority of legalities that in one way or another touch upon the above examples, will be further addressed in subsequent sections.

### **Provision of and Access to Social Assistance**

With reference to social protection and access to social services by individuals of non-traditional sexual orientation, (at least) the following basic rights of Ukrainian citizens must be taken into account:

- 1) the right to social protection, social services and welfare services from the state and employers;
- 2) the right to access to education (above all to post-secondary education);
- 3) the right to public health care, medical assistance and medical services.

Article 46 of the Ukrainian Constitution specifies that: “Citizens have the right to social protection, including the right to welfare services in the case of their complete, partial or temporary loss of

employment, loss of employed provider, unemployment due to circumstances beyond their control, as well as due to age and other circumstances set out in law.”<sup>1</sup>

The guarantees set out in the Ukrainian Constitution extend to individuals belonging to the GLBT community just as to all other Ukrainian citizens, and legislation in this case does not stipulate any additional benefits for or restrictions against any particular social group. A similar approach, which is completely justified, can be observed in other pieces of existing legislation based on the corresponding provisions in the Ukrainian Constitution. Nevertheless, problems arise relating to the enjoyment of the right to social assistance and corresponding social welfare from the government or employers to members of the GLBT community in relation to the rights of individuals and citizens. These concern, for example, the right to education and public health care, as well as the right to a family and to employment, which will be examined later on. However, the most serious problems relating to the practice in the application of existing legislation relating to social assistance and welfare arise with regard to same-sex couples.

The lack of legal recognition of the rights of same-sex couples leads to the inability to access benefits and social assistance which are provided by the government or employers to citizens and employees who have a traditional family. In particular the question concerns leave on the basis of illness of family members, subsidized vacation at recreational centers and health resorts, life and health insurance policies for family members, work-related discounts on goods and services, etc.

Article 53 of the Ukrainian Constitution provides for access to state-funded post-secondary education at state and public educational institutions on a competitive basis, as well as the granting of state-provided stipends, and student benefits.<sup>1</sup> The aforementioned provisions of the Ukrainian Constitution are further developed in the Ukrainian Law “On post-secondary education.” Article 4 of this law provides for and outlines in detail the rights of citizens to post-secondary education, while Article 54 thereof sets out the rights of individuals studying at post-secondary institutions.<sup>14</sup> Nevertheless,

neither these nor any other articles in the Ukrainian Law “On post-secondary education” contain any provision oriented towards the prevention of or protection from discrimination on the basis of any socio-demographic factor.

In practice there is a lack of any legally constituted norms in specific legislation to deal with the numerous instances of the violation of rights of members of the GLBT community currently studying in post-secondary educational institutions in Ukraine, which most often take the form of lowering of grades, moral pressure, or the illegal dismissal from said institutions.

As outlined in Article 59 of the Ukrainian Constitution, “Everyone has the right to public health care, medical aid and medical insurance,” and “the state will provide conditions for effective and publicly accessible medical services.” In state and public health institutions public health care and medical aid are provided without cost.<sup>1</sup> More specific provisions are contained in Article 284 of the Ukrainian Civil Code, according to which “individuals have the right to necessary medical aid.”<sup>6</sup> The aforementioned provisions under the Ukrainian Constitution and the Ukrainian Civil Code are more fully developed in Ukrainian Legislative Principles on Public Health Care.<sup>15</sup> Thus, in Article 4 of said document can be found a list of fundamental principles of public health care in Ukraine, among which the following must be taken into account:

- the observation of the rights and freedoms of individuals and citizens in the sphere of public health care in accordance with their guarantee by the state;
- the humanitarian aspect of the guarantee of the primary rights of the value of all humankind above the specific interest of any group or individual in the provision of medical aid or any other service in the sphere of public health;
- the equality before the law of every citizen to the unhindered access to medical aid or any other service in the sphere of public health;
- the orientation towards modern medical and health standards, the association of traditional medicine and the achievement of worldly experience in the sphere of public health care and medical care.

Everyone has the right to health care which includes: qualified medical care (including the freedom to choose a doctor and public health service institution) the legal protection from any form of illegal discrimination related to physical well-being, and compensation for damage caused to one's health. Corresponding guarantees are contained within Article 6 of the Ukrainian Legislative Principles on Public Health Care.<sup>15</sup> The guarantees of patient confidentiality have already been referred to above.

In general, much can be found in existing Ukrainian legislation that provides for complete guarantees relating to the protection of the rights of citizens in the sphere of public health care and medical services, including individuals belonging to the GLBT community, however, the majority of these guarantees remain general statements, and do not have practical mechanisms by which they are enforced.

### **Protection from Discrimination in Family Relations**

In the sphere of family relations, the regulation of most important questions pertaining to individuals belonging to the GLBT community are:

- 1) freedom from interference in one's personal life;
- 2) the maintenance of privacy in personal correspondence;
- 3) the recognition of the rights of individuals living together or sharing a household.

As shown in the results of the survey of members of the Ukrainian GLBT community relating to the prevalence of the violation of their rights, one of the most vulnerable spheres in this respect are interpersonal interactions, including within the family.

Article 31 of the Ukrainian Constitution stipulates that "Every individual is guaranteed the right to private correspondence, telephone conversations, telegraph and other correspondence." In Part 1 of Article 32 of the same, it is stated that: "No one may experience interference in their private family life, except in instances provided by the Constitution of Ukraine."<sup>1</sup>

Unfortunately it is these very laws, that provide for the essence of privacy and the inviolability of an individual's private life, that are

most often violated. There are widespread cases of parents attempting to prevent "homosexuality" or other "non-traditional" inclinations of their children, by restricting them from associating with their friends, reading their correspondence, interfering in other aspects of their private lives, and, at length, depriving them of support and care. There is a significant prevalence of the practice of close relatives, upon learning of their close one's (even if the latter are of the age of majority and completely self-supporting) "non-traditionality" of cutting off completely any interaction with them. Undoubtedly these instances are very difficult to regulate on a legislative level, but at the same time, that being the case, it becomes all the more essential to provide for material property rights for individuals of non-traditional sexual orientation, as well as rights to custody and care, inheritance etc. (as well as the enforcement of such rights). Nonetheless it is these very aspects of family relations that are least regulated in existing legislation.

Other vital areas on which there are numerous instances of discrimination are the recognition of rights for same-sex partners who are living together or sharing a household. It is in these cases that property rights and the interests of these individuals need to be defined. The most important question in this instance is that of the recognition of these partners as being members of a single family.

Article 3 of the Ukrainian Family Code states that "A family consists of individuals who are living together, sharing a household, have mutual rights and responsibilities."<sup>16</sup> These provisions are maintained in the Ukrainian Law "On domestic violence", which states that "by family member is meant those individuals who are living together, maintaining a single household and sharing mutual concerns characteristic of members of a family."<sup>17</sup>

Consequently, it may be concluded that the spirit of the law regulating same-sex partners in the case of co-habitation, compared with other members of a family (including blood relations), are allowed the identical range of rights which stem there from, specifically relating to the use and disposition of communal property, inheritance, etc.

However, in practice, the sphere of family relations experiences significant violations of the rights of individuals of homosexual orientation and individuals identifying as transgendered. One partner

may violate the rights of the other with regards to communal property and their portion thereof, rights to inheritance, rights to child care, etc. The same is true for the right to adoption, as stated in Chapter 18 of the Family Code “On adoption” which does not delimit any restrictions based on the sexual orientation of the adopter. Neither are there any such provisions in Chapter 19 of the Ukrainian Family Code, which regulates legal requirements pertaining to custody and care.<sup>16</sup>

Same-sex partners are excluded by law from social life in that they are completely excluded as unprotected legal entities under the law. There is a lack of the possibility to represent the interests of one’s partner in relation to personal property, finances, medical and other needs; there is the lack of the possibility to adopt and care for children, as well as to take advantage of corresponding benefits and social guarantees; there is a lack of mechanisms in place to protect property and other rights and the interests of either party in the case of the severing of relations, etc.

It is specifically these questions, and not the legal recognition of same-sex or other “non-traditional” marriages, that are of highest regulatory priority at the legislative level and consequently the guarantee of the protection and enjoyment of personal, property and social rights of individuals belonging to the GLBT community in Ukraine, in the sphere of legal family relations.

### **Protection from Discrimination in the Labor Relations**

Article 43 of the Ukrainian Constitution states that “Every individual has the right to employment including the right to earn a living from the employment that they have freely chosen or to which they have freely agreed. The state will provide the conditions for the fulfillment of citizens’ right to employment by guaranteeing the opportunity to choose a profession and line of work...”<sup>17</sup>

The above constitutional provisions are further developed in the Code of Laws on Labour through the guarantee of the equality of citizens in labor relations. Thus, in Article 21 of the Code, “Equality of Ukrainian citizens in labor rights” it is stated that: “Ukraine will

provide for the equality of labour rights of all citizens irregardless of their background, social or class status, race or nationality, sex, the language they speak, their political affiliation, religious beliefs, career or character of work, place of residence and other circumstances.”<sup>18</sup> Despite the provisions outlined in the general parts of the existing Code of Labor Laws guaranteeing the prevention of any form of discrimination, in practice it still remains a mere statement.

In support of this, a specific part of the Labor Code must be examined, that is, Article 22 which contains a definitive list of causes of discrimination, all of which are prohibited as grounds for changes in or termination of a contract, and among which sexual orientation is, of course, not found.<sup>17</sup> Still, in practice it is specifically the independent modification of the conditions or breach of contract of employment with employees who belong to the GLBT community that is the most prevalent violation of their rights in the sphere of labor relations (that is, if the information about their sexuality has become known to colleagues, or employers and their representatives). In addition to the violations of the rights of individuals belonging to the GLBT community there exists also the refusal to hire and the termination of contract based on these grounds.

Other prevalent violations of the rights of individuals of non-traditional sexual orientation in the sphere of labor relations, as shown in the survey are: the lowering of salary in comparison with other employees who fulfil the same or similar function; the change in or worsening of working conditions; the hindrance to career advancement; the restriction of bonuses or other incentives and benefits etc.

The prevention of these violations could be achieved by the addition to existing legislation of general provisions prohibiting discrimination on the basis of sexual orientation in the sphere of labor relations, as well as the implementation of the responsibility of employers and their representatives for discrimination against employees on those grounds.

### **Protection from Discrimination in Everyday Services**

Article 42 of the Ukrainian Constitution stipulates that “The

state protects the right of consumers by implementing controls on the quality and safety of goods and all types of services, allowing for the existence of the activity of consumer organizations.” In addition to this provision, Article 41 also states that “In the fulfilment of their needs, individuals may use objects of law of state and public property according to law.”<sup>1</sup>

In the development of these constitutional provisions, Article 3 of the Ukrainian Law “On the protection of the rights of consumers” stipulates state protection of the rights of consumers who are in the territory of Ukraine at the time of the acquisition, commission or use of goods (and services) for their daily needs. Likewise, the law stipulates responsibility for damage inflicted by the goods (and services) of inadequate quality, and the right to appeal to a court of law in the case of the violation of rights.<sup>19</sup>

Despite the presence in Ukraine of specific legislation which explicitly stipulates the rights of consumers in the process of acquisition of goods, as well as in the commission and receipt of services, for the most part they are very abstract and do not satisfactorily regulate interactions which concern the consumption of services. According to the results of the survey of members of the GLBT community, among the most prevalent manifestations of discrimination in this sphere are the following: the refusal to perform services, the independent premature breach of an agreement on an assignment of a certain type of service or the refusal of its granting, prejudice from employees in the sphere of everyday services, the granting or completion of services of unsatisfactory quality and so on.

### **Protection from the Misuse of Law and Access to Due Process**

Article 55 of the Ukrainian Constitution provides for a wide range of guarantees relating to the protection and restitution of the rights and freedoms of individuals which have been violated or restricted on account of illegal action on the part of official persons of state agencies and municipal self-administrative bodies, officials and officers

of institutions, enterprises and organizations of all forms of ownership. In particular, this article provides for:

- the rights and freedoms of individuals to be upheld in a court of law;
- the right of every individual to appeal a court decision, action or inaction of a state agency or municipal self-governing body and their officials and officers;
- the right of every individual to apply for the protection of their rights to the Plenipotentiary of the Supreme Court of Ukraine on the rights of the individual;
- the right of every individual to seek, after having exhausted all national means of protection, to apply for the protection of their rights and freedoms to the corresponding international court or body to which Ukraine is a signatory;
- the right of every individual to use every legal method to protect their rights and freedoms from violation and illegal infringement.<sup>1</sup>

These provisions of the Ukrainian Constitution are universal (i.e. available to every citizen of Ukraine and any other individuals who are legally residing in the country, regardless of their sexual orientation) and are developed further in other existing legislation. Above all this concerns the Ukrainian Criminal Code, which establishes criminal responsibility for the violation of the equality of citizens.

It would seem that the expansion of the abovementioned Article 24 of the Constitution of Ukraine within the provisions of Article 161 of the Criminal Code on the “violation of the equality of citizens on the basis of their race, nationality and religious beliefs,” which lead to “the direct or circumstantial restriction of rights or privileges of citizens on the basis of race, skin color, political or religious convictions and other convictions, sex, ethnic and social background, economic situation, place of residence, language spoken, or any other basis”<sup>8</sup> must satisfy the conditions for the restitution of the legal standing of the individual, including those who belong to the Ukrainian GLBT community. Nevertheless, even in current practice there exists animosity, rancour, the abasement of individual honor and dignity, as well as the practice of humiliation and persecution of individuals on the basis of race, nationality and religious affiliation. Consequently,

the practical fulfilment of the indicated provisions of the Constitution and the Ukrainian Criminal Code in reality are by far not put into practice in the restitution and protection of the rights and freedoms of members of the GLBT community.

Additionally, appeals by individuals of homosexual orientation or individuals identifying as transgendered to law enforcement agencies and courts for the protection or restitution of their rights often go ignored, or are on occasion the basis for victimization and even persecution of the individuals appealing for help. Nevertheless, such violations of the rights of members of the GLBT community are mostly preconditioned by general intolerance within society, not with problems or deficiencies in corresponding existing legislation.

### Basic Assertions

- None of the existing pieces of Ukrainian legislation sets out an understanding of “sexual orientation”.
- In relation to sexual orientation within legislative regulation, it is not meant the sexual behaviour of an individual, but the opportunity for members of the GLBT community to enjoy their rights and freedoms.
- Individuals belonging to the GLBT community are subject to the same set of rights and freedoms as all other individuals.
- Every individual has the inviolable right to privacy of their personal and family life.
- Every individual is guaranteed the right to freedom of speech and freedom of expression of their beliefs and opinions.
- The collection, retention, use and disclosure of confidential information of an individual without their consent is prohibited.
- Every individual has the right to patient confidentiality.
- Administrative and criminal responsibility for the disclosure of confidential information on an individual and their private life already exists within current legislation.
- On the level of legislation it is necessary to have explicit reference to the enjoyment and protection of information rights and freedoms of members of the GLBT community.

- Despite corresponding legal regulations, in practice, predominantly in the information sphere, there still exist violations of members of the GLBT community.
- There is no basis for any restriction relating to public service or service in municipal self-administrative bodies which arise from any other requirements other than those of required level of educational or professional training.
- There is no basis for any restriction relating to the fulfilment of military service by any citizen because of any socio-demographic factor whatsoever.
- There are no norms in existing legislation directed towards the protection or restitution of the violated rights of citizens who are in active military service.
- Existing legislation does not outline any specific guarantees, benefits or restrictions relating to engaging in entrepreneurial activity of any specific category of individuals or groups.
- There is no instance when a member of the GLBT community, as a result of the illegal actions of another individual, may be deprived of their right to personal property.
- The regulations of the Ukrainian Constitution on social guarantees apply equally to members of the GLBT community as they do to all other citizens of Ukraine.
- Serious problems arise from the statutory application of existing legislation in relation to social protection and care in regard to same-sex couples.
- No single piece of existing legislation relating to education cites any case with respect to prevention of or protection from discrimination on the basis of any socio-demographic factors.
- There is a wide range of guarantees for the protection of the rights of citizens in the sphere of public health care, however, the majority of those are general statements.
- One of the most significant spheres from the point of view of the violation of the rights of the GLBT community is interpersonal interactions.
- The practice of close relatives, upon learning of the “non-traditionality” of close ones, to renounce fully and completely all

contact with them is widespread.

- A substantial matter on which are based numerous discussions is the recognition of same-sex partners who are living together and sharing a household.

- Same-sex partnerships are legally excluded from social life and are completely unprotected under the law.

- Despite the presence in the existing Code of Labor Laws, guarantees relating to the prevention of any manifestation of discrimination are merely statements and do not exist in practice.

- The independent modification of conditions or breach of contract with employees is the most prevalent violation of rights among members of the GLBT community in the sphere of labor relations.

- Current practice on the actualization of guarantees provided for by the Ukrainian Constitution or the administration of responsibility according to the Ukrainian Criminal Code does not bear witness to the intended improvement of the situation of the protection of the rights and freedoms of members of the GLBT community.

### **Conclusions**

In this manner, having examined the parameters on which the review of the legal relations of individual groups in which in one way or another there exists the violation of human rights on the basis of sexual orientation, the conclusion may be drawn that there are insufficient procedures within existing Ukrainian legislation for the protection or the restitution of violated rights of members of the GLBT community (see Table 1). The causes there of are above all from the following factors:

- 1) Neither the Ukrainian Constitution nor any pieces of existing legislation define the legal status of individuals who are members of the GLBT community. Because of this, those individuals lack the real opportunities to fulfil their specific needs and demands, and because of the lack of the full opportunity to enjoy their rights and freedoms, they are also hindered from fulfilling their responsibilities to the state.

- 2) Existing Ukrainian legislation lacks the direct prohibition of

discrimination on the basis of sexual orientation, which in turn gives rise to the lack of existing mechanisms of pre-trial and court protection and restitution of the rights of homosexuals, bisexuals and transsexuals.

- 3) Because of the lack of specific legislation guaranteeing the rights of individuals of non-traditional sexual orientation (homosexual and bisexual) and individuals identifying as transgendered, alongside the noted intolerance of Ukrainian society, there exists in practice in Ukraine numerous violations of property, social, as well as consumer rights of citizens and individuals belonging to the GLBT community.

- 4) The lack in Ukrainian society of the recognition of psychological and physiological features among the GLBT community results in the formulation of "discriminatory traditions" in Ukrainian legislation, particularly in legislation in the areas of: family and labor relations, social protection and social welfare. In practice this appears in the violation of the rights of same-sex couples in mutual care, mutual care of children, social protection and aid provided by the state, inheritance, etc.

- 5) The lack in the Ukrainian Constitution and existing legislation of provisions which set forth the equality of all citizens regardless of different socio-demographic characteristics by which they may be distinguished, of the delimitation of legal responsibility for the violation of the principles contained therein, results in the impunity of individuals who are guilty of discrimination and other violations of human rights.

Consequently, against the lack in Ukraine of clearly defined legislative regulation of the question related to the prevention of discrimination, in particular specific anti-discrimination laws with itemized regulation and definitive lists of socio-demographic bases on which any direct or indirect manifestation of discrimination may occur (including on the basis of sexual orientation), as well as the lack of legislation stipulating sanctions and effectual procedures for the prosecution of those guilty of violating the rights of the individual, are as good as completely denying protection to individuals of bi- and homosexual orientation as well as individuals identifying as transgendered in the face of homophobically prejudiced sections of Ukrainian society. Inasmuch, such ambiguous legislation leaves itself open to the justification of discrimination on any other basis.

## Sources

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16. Ukrainian Family Code of 10.01.2002 No. 2947-III
17. Ukrainian Law «On domestic violence» of 15.11.2001, No. 2789-III
18. Code of Labor Laws of 10.12.1971, No. 322-VIII
19. Ukrainian Law «On the protection of the rights of consumers» of 12.05.1991, No. 1023-XII

*On pages 69-70 Table 10. Correspondence of law regulation to the existing practice and international standards.*

Guarantee/right	Regulation exists	Corresponds in existing practice	Corresponds to international standards
to equality before the law	+/-	-/+	-/+
to protection of honor and dignity	-/+	-	-
to self-realization and individual liberties	-/+	-/+	-
to freedom of speech, association and gathering	+/-	-/+	-
to participate in government	+/-	-/+	-
to participate in political life	+/-	-	-
to information	+/-	-/+	+/-
to access to information	-/+	-	-
to privacy	+/-	-/+	-/+
to public service/service in municipal self-administrative bodies	+/-	-/+	-
to service in law enforcement agencies to military service	+/-	-/+	-
to advancement in rank	-/+	-	-
to pursue entrepreneurial activity	+/-	-	-
to family inheritance	+	+/-	+/-
to the inviolability of personal property			
to a private life	-/+	-	-
to parenthood and adoption			
to employment	+/-	-/+	-/+
to adequate compensation for work	+/-	-	-/+
to professional growth and career advancement	-/+	-	-

Guarantee/right	Regulation exists	Corresponds in existing practice	Corresponds to international standards
to equal interactions free from discrimination	+/-	+/-	+/-
to protection of consumer rights	-/+	-	-
to participation in cultural life	+/-	-/+	-/+
to the use of cultural and scientific accomplishments	+/-	-/+	-/+
to health care services and medical aid	+/-	-/+	-/+
to education		-/+	-/+
to obtaining social services	+/-	-/+	-/+
to social welfare guaranteed by the state	+/- -/+	-/+	-
to appeal to competent law enforcement agencies	-/+	-	-
to the protection and restitution of abused rights	+/-	-	-/+
to appeal to a court and	+/-	-	-
to receive court protection for abused rights	+/-	+/-	+/-

- + - corresponds absolutely
- - does not correspond
- +/- - rather corresponds, than not corresponds
- /+ - rather not corresponds, than corresponds

### Typical Examples of Violations

*1) This case demonstrates the widespread violation of the right to employment and remuneration there for. It also alludes to the violation of the rights of consumers*

During the summer of 2004, 25 year-old L. found work as a cook/waitress at a bar in the city of Lugansk. After a while, hoping to enjoy themselves and to get good service because of their friend L., her friends began to frequent the bar. Some of them had the appearance (a somewhat masculine style of clothing) and mannerisms from which it could be assumed that they were people of non-traditional sexual orientation. Nevertheless, the girls did not break any rules of correct conduct, did not distract L. from her work, and always paid for their orders (which usually added up to quite large sums). The manager of the bar, R., who began to suspect L. of being of a non-traditional sexual orientation, repeatedly and rudely chased away her friends. To this end, he employed not only verbal abuse, but also physical force (pushing the girls off the premises). R. consistently found fault with L., with her work, and with her appearance (although the appearance of the girls fell within the 'unisex' style that was quite widespread in the city among girls both of traditional and homosexual orientation).

At the end of July, L. was asked to leave her position voluntarily. As she was fired, with wages outstanding, L. was not paid the balance of her wages. The motivation behind her being let go was that the manager "did not want the reputation of his establishment to suffer."

\* \* \*

*2) This situation is an example of the violation of physical well-being and personal property. As well, this situation involves loss of dignity and the ignoring of the right to the restoration of violated rights.*

One morning in September 2004, at about 5:00 am, individual S. and his friend K., living in the city of Kyiv, were returning home from

the gay club “Sovok”. As public transit was not yet running, they flagged down a car not far from the club to return to one of their homes.

On the way, the driver asked if it was all right if they stopped by his place to drop off some things before taking them to their destination. After they had agreed, the driver stopped in the courtyard of an apartment complex, got out of the car, went into one of the complexes, and after a few minutes returned accompanied by three teenagers.

The driver and the young men who had accompanied him pulled the passengers out of the car by force. When S. and K. were outside of the vehicle, the driver and the teenagers proceeded to beat them while at the same time hurling verbal abuse at them. After having beaten the two individuals, the assailants took from them their mobile phones, S.’s debit card (which had money on it), as well as their jackets and running shoes, after which the driver and the assailants took off in the car in an unknown direction.

In order to protect their rights as victims, individuals S. and K. informed the police of the incident by phone and called the police to the place of the incident. Upon arriving at the scene of the crime and listening to the circumstances of the events, police officers took the victims to the local department of internal affairs for Kyiv. There, in turn, S. and K. were also ridiculed for their sexual orientation, suffering offence and humiliation, and then locked in a holding cell until “circumstances were clarified”. At the end of the working day, the employees of the local department got in touch with the father of individual K., whom they called down “for a talk”. When the father of individual K. arrived at the police station, the employees informed him where his son had been the previous night, and about his sexual orientation.

After the incident, at about 8:00 pm, the father and son together with individual S. were allowed to leave, without any statement being taken on the robbery or the beatings on the basis of non-traditional sexual orientation. The employees of the station explained that this particular case had been “suspended”, and that there was no further point for investigation. Since the individuals S. and K. had been held

in a cell for approximately 14 hours to taunting about their sexual orientation, they were beyond wishing to further explain their situation to the police, and accepted the explanations that were given them.

\* \* \*

***3) This case demonstrates the violation of the right to privacy, as well as the right to employment.***

In the summer of 2003, individual B., who was an employee at a large international firm that provided wholesale supply of industrial goods in Ukraine, was selected for promotion on the basis of his performance. The position would be to head a new branch of the firm in Cherkass (until this point he had been head trainer). In order to secure the promotion, the company management had only one stipulation: that B. get married (the company’s internal rule was that such a position could only be held by a married employee).

On account of his homosexuality, B. refused to fulfill this requirement, and informed the management. Upon B.’s refusal, on of the senior managers gave him the choice to either get married or to “run around the city with a catalogue selling the company’s products from now on.” B. was given a week to arrive at a final decision, during which two other employees were proposed as suitable candidates for marriage.

A few days after the conversation with the company manager, one of B.’s coworkers saw him kissing a man in a café. The co-worker told B.’s other colleagues. As a result of the fact being made known about the workplace, B.’s colleagues started to put moral pressure on him to persuade him to get married. Individual B. continued to refuse to marry and under the circumstances, was forced to hand in his resignation.

Individual B. was left with no avenues by which to lodge a complaint on the argument that “this is a private firm, and if someone doesn’t like it, they don’t have to work here.”

\* \* \*

***4) This situation serves to illustrate the violation of the right to education, as well as the right to privacy.***

In October-November 2001, fourth-year student at the Lugansk Taras Shevshchenko Teacher's University Yuri K. noticed a distinct change in attitude towards him on the part of N., his physics teacher. This came out most clearly by N.'s lowering of K.'s grade. Through exaggerated attention and faultfinding, the teacher showed her dissatisfaction with the student. Before long it became known that one of the first-year students had informed N. of her student's sexual orientation.

As the winter session (January-February 2002) approached, N. informed K. multiple times that he would not pass any of his exams. In keeping to her word, N. refused to let K. write the exam for her class.

When the dean of the faculty, where Yuri K. was studying, became involved and it had to be explained why K. was refused the sitting of his exam, the teacher stated that "people of perverse sexual orientation should not be teachers."

As a result, K. was suspended from the university at the end of February 2002 for academic failure.

\* \* \*

***5) This case demonstrates the violation of the rights of consumers, as well as the violation of personal dignity and the right to privacy.***

In the summer of 2002, 18 year-old B. bought a ticket for the train from Odessa to Belgorod Dnestrovsky, and together with his boyfriend O. hurried to the platform in order to make the train.

Before boarding the train, B. kissed his boyfriend goodbye. The conductor, who was smoking outside the wagon at the time, saw this. As the train set off, and B. was in his seat, the conductor came to him to check his ticket, after which she started to curse and yell insults about people with non-traditional sexual orientation to insult B.

Not satisfied with merely insulting him, the conductor started to question B. about his private life: when he first had same-sex relations, about details of homosexual intercourse, whether his parents and

friends knew about his orientation, how they reacted to it, etc.

When he refused to answer, the conductor began to threaten to throw B. off the train because he had no ticket (after she had checked B.'s ticket, she did not return it to him).

Only after other passengers had grown tired of the unfounded harassment and became involved in the argument did it end.

\* \* \*

***6) This situation illustrates the widespread violation of the right to employment. It also shows the violation of the right to privacy.***

Individual L. is a transsexual living in Poltava. In 2001, L. found work as a bartender in a billiards club where there was such a vacancy. Of the 65 applicants for the position, L. was among the final three chosen.

After a few successful months on the job as bartender, it was proposed that L. attend a specialized training course, soon thereafter taking place in Kyiv, to upgrade her skills. A day before her departure, her manager received an anonymous phone call informing him of L.'s non-traditional sexual orientation.

On that same day, L. was called in by her manager. During their conversation, L.'s manager asked her if she had "really changed her sex from male to female?" Perplexed and wanting to keep her position, L. denied it. Further into the conversation, L.'s manager informed her that she "can no longer work at his establishment," because she was "abnormal," and he "didn't need that kind of publicity." L. was asked to hand in her letter of resignation. The manager was not able to give a satisfactory answer to questions from regular clients as to why L., one of his best bartenders, was no longer working at the club. After her dismissal from the club, L. was unable to find work for a long time.

Referring to her "hopeless situation", L. did not take her case of the violation of her rights, which she held to be "on the basis of her non-traditional sexual orientation", to court.

\* \* \*

**7) This case serves as an example of the violation of the rights of consumers (renting of accommodation), as well as the violation of human dignity and the inviolability of private property (in this case, money).**

In 2003, 25 year-old B. came to the oblast centre, Kyiv, in order to find work. Because of his financial situation, B. decided to rent a room and share an apartment with a landlady.

B. paid his rent on time, was well behaved, and co-existed peacefully with his neighbours. This situation continued until the landlady's son returned home from his army service.

Because of his lack of money returning from the army, the son asked B. to loan him a rather large sum of money. A few days later, as it happened on B.'s birthday, the landlady asked that he leave the house. When he asked her why he was being asked to leave on such short notice, the landlady answered that it was because he, B., was gay and she "didn't want to and cannot live with him under the same roof." After all, she said, they ate in the same kitchen, used the same bathroom, and everyone could catch AIDS or "other venereal diseases." When B. started to ask how they had found out about his orientation, he found out that the son, looking for money, decided to check B.'s bags, and found among his things a copy of the magazine "One of us" (a gay publication).

When B. asked for the son to return the loan, and the landlady to return the advance on the room, he was refused. The landlady explained that B.'s behaviour was such that the money only partly compensated for her and her husband's moral suffering, and threatened to call the police and B.'s workplace to tell his colleagues about the private life of her former tenant.

Today, individual B. is still living in Kyiv. Because of his former situation, he is renting a separate apartment on his own, and has changed his place of work. After the incident of his groundless eviction from his former apartment, he is not convinced that he would have any success defending his rights in light of existing legislation.

\* \* \*

**8) The case illustrates the violation of the rights of consumers.**

In the fall of 2004, 19 year-old D. and 20 year-old N. went to a hair salon in Kyiv. When they started to discuss what kind of haircut to get, how to colour their hair, etc., the hair stylist suspected, from their conversation, that they were gay. D. and N. decided not to take issue with the accusations of the stylists. Nevertheless, when it was their turn to have their hair done, the stylist said that she was not going to serve "gays" and that she didn't like when boys coloured their hair, used hair gel, etc.

After more accusations from the stylist, the clients decided to leave the hair salon without having received any service.

The next day, D. returned to the salon to make a complaint against the stylist who had been working there the day before. His was given the mobile number of the salon manager, who apologized and promised to speak with her employees.

\* \* \*

**9) This situation demonstrates the widespread violation of the right to employment, as well as the right to privacy.**

At the beginning of 2002, E. was working as a supervisor in a commercial complex in Lugansk (retail, catering). E. became friends with his colleague S., who came to work in the summer. In a moment of candidness, E. let her know of his homosexuality. S. reacted to the information calmly.

Approximately three weeks after their conversation, the firm began to consider layoffs. The most likely candidate to be laid-off was S., who had less work experience, and had been with the group for the shortest period of time. When S. became aware of her situation, she went to the manager and informed him of E.'s sexual orientation.

As a result of S.'s conversation with the manager, E. was let go on the basis of "cutbacks". Upon his dismissal, the manager told E. that he "would see to it" that he would not find any other work in Lugansk. After repeated attempts to get different jobs, E. was forced to leave his hometown. Although the reason for refusing to hire him was never made explicit, it was apparent that other businesses had

heard of his reputation.

\* \* \*

***10) This is a case of the violation of the right to physical well-being (against physical force and sexual harassment) and the freedom of mobility. This case also serves as an example of the abuse of power by law enforcement agencies.***

K. works in show business. His friend Yu. is his producer. Neither of them hide their sexual orientation from others.

In May of 2002, K. and Yu. decided to go to Southern Ukraine on holiday. On the way, they passed through the city of Kagarlik, hoping to have a look around. Instead, they were held without cause by local law enforcement on “suspicion of murder” (despite the fact that they did not even know about the murders, and were not in Kagarlik when the murders took place). According to the investigator, “they resembled the murderers.”

As the inquiry progressed, physical force was used on the suspects to “obtain confessions.” Likewise, according to K. and Yu., they experienced “multiple instances of sexual harassment on the part of the investigators.”

Additionally, immediately after the arrest of the suspects, the national newspaper “Fakti” published an article which announced that the same individuals, K. and Yu. had been killed in a train accident in the Crimean Republic, which of course was untrue. Journalists from the Kyiv-based investigative television program “The Black Square,” reading the information published in “Fakti”, started their own investigation. Inquiring into the article, they found that the editors did not have any notes on the source of the information relating to the deaths of K. and Yu. They also found out from the law enforcement agencies in the Crimean Republic that there was no record of any such train accident.

Thanks to the efforts of the journalists at “The Black Square,” the location of K. and Yu., who had already been held in detention for 12 days, was determined. As a result, they were released and all charges against them were dropped.

K. and Yu. issued a complaint against the employees of the law enforcement agency for their illegal detention to the Kagarlik public prosecutor. After reviewing the complain, the prosecutor promised to dismiss the investigators from their posts provided that the accusation of “sexual harassment” was removed, so as to not “damage the reputation of the agency.” Accordingly, K. and Yu. removed the charge of sexual harassment, and the prosecutor dismissed the investigators.

\* \* \*

***11) This situation serves as an example of the violation of freedom of expression and the right to privacy.***

O. is an 18 year-old student living with her parents in Dnipropetrovsk. O.’s circle of friends consists primarily of people of homosexual orientation. Her parents were aware of this, and had never raised any objections.

Nevertheless, on the night of the 6-7th of January, 2005, after O. returned home from a party, her parents remonstrated her, and questioned her about her sexual orientation. Not giving in, she denied the accusation, insisting that it was her own business, and that they did not have the right to interfere in her personal life. Later O. found out that her parents had been looking through her things and found publications geared towards homosexuals: magazines, books, brochures, etc.

Her parents’ actions had followed information from neighbours that they had seen O. outside kissing with one of her girlfriends. Her parents had been suspicious of their daughter’s orientation, and the information from the neighbours confirmed it.

Within her family, O. became ostracized: her parents refused to speak with her and refused her spending money. This lasted for a week. Her parents did not take the lead in making peace. Under the circumstances, O. was forced to leave her parents home and take up residency in a dormitory.

\* \* \*

***12) This case demonstrates the violation of the right to***

*employment as well as the violation of the right to privacy.*

A., born in 1973, began work in 2001 as a dance instructor in the choreographic section of the community centre of the city of P.. A. enjoyed his work and had never had any complaints from either his students or their parents.

Somehow the mother of one of the dance students learned of A.'s sexual orientation from an unknown source, and decided to "have a word" with him about his "homosexuality." During the conversation with the student's mother, A. was subjected to many baseless accusations and insults directed at him. According to A., he "never sexually harassed any of his students," and his "conduct and external appearance were consistent with generally accepted standards in the field of education and the arts." Not satisfied merely with her conversation with the instructor, the mother wrote a letter to the executive committee of the centre, containing false accusations about the poor quality of instruction and making serious allegations about A.'s sexual orientation.

After receiving the letter of complain, the executive called A. to see them, and recommended that he resign. Under pressure from his superiors, A. was forced to leave his position. Subsequently, all opportunities to apply for work in governmental and municipal arts in P. were closed to A.

\* \* \*

*13) This situation serves as an example of the violation of the right to self-identity as well as the violation of the right to physical well-being (against the threat of physical force).*

In December of 2002, 23 year-old K. found work in the bakery of a supermarket in Lugansk.

K.'s lack of physical strength, and his somewhat affected mannerisms were noted by his male coworkers, who ridiculed and bullied him. K. was repeatedly questioned about his sexual orientation and about details of his personal life.

One day, while K. was working in the supermarket storeroom, his male coworkers surrounded him, and one of them put a knife to

his stomach. They later explained that they were "testing his masculinity."

After not passing the test, in the eyes of his coworkers, their behaviour towards him worsened: insults towards K. became more frequent, and he was beaten several times (consequently breaking his nose and cutting his lips).

In light of the circumstances, K. was forced to quit his job in the summer of 2003.

\* \* \*

*14) This case serves as an example of the violation of consumer rights.*

In the middle of March, 2002, two friends, A. (a 27 year-old employed at commercial business) and S. (a 20 year-old journalist) decided to go to a restaurant in Kyiv after work in order to wind down after the work day.

After they had made their orders and the waiter had brought their meals, the manager of the establishment announced to A. and S. that at the request of his important patrons, they were being asked to leave. The reasons given were that the other guests "did not want to be in the same restaurant as 'gays'", and that the establishment was only for the enjoyment of "normal people," not for "street rabble" and "perverts". One of the 'important patrons' (bearing an MP badge on his lapel) came to their table after the manager, insisting that "gays get out of this restaurant and in the future never show themselves again in this place." S. attempted to retort the "respected guest" and assert his rights to patronise the restaurant, in response to which the manager called security which escorted the "undesired guests" out of the establishment.

\* \* \*

*15) In this case, a law enforcement officer committed sexual assault. It also shows abuse of power and restriction of movement.*

In June of 2000, 16 year-old S. was returning home late at night.

It could be discerned because of the style of his clothing, his mannerisms, the way that he walked, etc., that he was of non-traditional sexual orientation. At that time, S. was a student at a grammar school in the city of Cherkass, and did not hide his orientation from others.

On his way home, a police officer stopped him without reason and without presenting himself, and asked to see his papers, which S. did not refuse. On his part, S. asked to see the officer's identification in return, which elicited the rude response that he "did not want to get to associate with gays" and told him to accompany him to the local station.

On the way there, regardless of his position as an officer of the law, the officer sexually harassed S. On an unlit stretch of railroad track, not far from the train station where a freight train was stopped, the officer used physical force to rape S., after which he let him return home.

On account of the official position of his assailant, S. felt that he had nowhere to turn for the protection of his rights or for other help, for fear of being persecuted by law enforcement agencies.

\* \* \*

***16) In this case, the inviolability of personal property and the right to physical well-being (against physical force) were both violated, as well as the restoration of violated rights.***

In 1995, S., the former sexual partner of 25 year-old R. borrowed a significant sum of money from one of his friends, which was not and has not been returned to this day. At that time, S. was employed at an agency of internal affairs of the city of K.

After some time, in 2000, a group of aggressive men forced entry into R.'s home. Among them, R. recognised a police officer and former colleague of S. Threatening R. with a pistol and the use of physical force, they insulted the sexual orientation of R. and his then partner V., who was also present. Besides humiliation and insults, the group inflicted some bodily harm and stole all the valuable goods they could find in his house. The perpetrators mentioned S.'s debt, but the victims were not aware of the aforementioned debt.

As a result, R. and V. filed charges with the internal affairs agency of the city of K., and the case was passed to the corresponding regional branch of internal affairs. During the process of investigation into the case, investigators repeatedly questioned both R. and V., as well as S. During questioning, investigators repeatedly alluded to the complainants' sexual orientation, all of which was recorded as evidence in the case file.

After approximately a month and a half from the filing of the charges, a statement was issued by the agency of internal affairs. It was noted that the circumstances on which the charges were based were only partially true, but that as a result, the police officer which R. had recognised among the assailants was being investigated internally. No apology was issued to the victims in the statement, nor were R.'s stolen items returned to him, and the case was closed.

After the insults, humiliation and multiple inquiries by the police which produced almost no results, R. and his partner V. decided not to pursue the restoration of their rights any further.

\* \* \*

***17) The case serves as an example of the violation of the right to employment, as well as the right to privacy.***

A history teacher at a Kharkov grammar school, K. started working at the end of August, 1998, immediately after having received his teaching certificate. In addition to his teaching duties, the administration asked him to be responsible for one of the grade five classes, and on his own initiative, K. formed a history and journalism club for grade 9-11 students. For a long time, K. was considered a good, responsible teacher, who was very able to relate to students. K.'s relationship with the school administration and his colleagues changed drastically in October 2001, right after his sexual orientation became known.

One day, one of the students at the school was telling a friend during break that when he was walking around downtown, he saw two young men walk out of a club. According to the student, they parted from each other by "embracing and kissing each other on the lips". The students had recognised his teacher as one of the men.

The information soon became a “hot topic” and the subject of ridiculing the teacher among students. One student related the story to her mother, who also worked in the school as the Ukrainian language and literature teacher. She, in turn, told the vice-principal and other teachers, and in time word reached the principal of the school.

Very soon thereafter, the principal called an unofficial meeting of some teachers on the question (related to K. by one of his colleagues who is a friend): how to “prevent a scandal and complications with parents.” As a result of the meeting, it was decided that K. would be relieved of his teaching duties, and that his extracurricular clubs would be shut down, and that after a while K. himself would ask to transfer to another school.

Approximately a month and a half after the ‘meeting’, K. was called on to speak with the principal, where she informed him that the teachers and the rest of the staff were aware of his “moral habits”. The principal said that “she would not allow K. to teach anymore,” and that she “did not want this infection to spread among the children of the school for which she was responsible.” Also, that if he “wished to teach anywhere else, that he should immediately retire.” Otherwise, “she would make public the information among the parents of the students and note it in his teaching record.” Additionally, if K. did not comply, she promised that she would accuse him of “molesting the children.” K. decided that the best way out of the situation was to hand in his resignation.

After his resignation from the school, in order to avoid a repeat of the situation, K. changed professions and went to work as a reporter at a local newspaper in Kharkiv.

\* \* \*

***18) This situation shows the violation of the right to education and employment, as well as the right to privacy.***

Over the period from 1997-1999, D. was an attending psychotherapist under the supervision of professor A. at the Kharkiv Medical Academy.

In June of 1998, D. was planning to write his Ph.D. dissertation under the supervision of professor A. During his residency, and after its completion and his obtaining the position of sub-faculty assistant,

D.’s colleagues and supervisors constantly noted that dissertation work “required constant expenses, which would be taken care of by ‘advocacy’ on the part of the scientific advisor.”

Before March of 2001, D. found ways to avoid such “offerings”, and moreover, his dissertation, which had been completed on time and at the expense of much effort, and was ready to be sent to the Board of Academics for review.

However, professor A. delayed her review of the material in every way possible, arguing that it was up to his discretion (all files of the dissertation, as well as other work and personal files, were kept on the faculty computer. However, reviewing the dissertation without D.’s knowledge, professor A. also opened, read and printed some personal files kept by D. on the question of homosexuality, as well as D.’s personal electronic correspondence.

After this, professor A. called D. to his office, where he showed D. his own letters, and threatened to “disseminate the information through the Academy,” as well as threatening not to extend D.’s contract unless the latter paid him \$1,000 USD. D. categorically refused to submit to blackmail, telling A. that he was “conducting himself dishonestly and using his official status for financial gain.”

Soon thereafter, as professor A. had promised, information about D.’s sexual orientation was made public among the faculty staff, and became the basis for ridicule and prejudice against D. by his colleagues.

From March to June 2001, professor A. tried to portray D. as an unorganized and irresponsible worker who did not fulfil his responsibilities, and discussed D.’s “immorality” with faculty coworkers, clinic doctors and representatives of the Academy’s administration (the chancellor, department heads, academic secretaries, and others). The content of these conversations was related to D. by participants who met with him personally, or by third parties. Moreover, in a private discussion, A. told D. that he “won’t be able to get himself out of this situation alone, and will never find a career or work anywhere else in light of his reputation.” If it so happened that D. did leave the faculty to start a career, A. would “personally let the truth be known” to his employers. D. found it impossible to

continue working with the faculty and asked the administration to cancel his contract. He also applied for the annulment of the topic of his dissertation.

\* \* \*

**19) *This situation demonstrates the violation of consumer rights.***

31 year-old A. and 24 year-old D. have been a couple for the last six years. As of October 2002, they decided to move in together.

Having leased numerous apartments, they finally found one that suited them, and signed an agreement for a two-room apartment with the owner. They did not inform the owner of their orientation at that time.

The terms of payment, residence and upkeep of the apartment were agreed to. One of the terms of agreement was that rent would be collected once a month at a time convenient for the owner.

They had been living in the apartment for 8 months, fulfilling all the terms of the agreement, and never having received any reprimands from the owner. When coming for the rent, the owner was in the habit of coming unannounced, and gaining access to the apartment with his own keys. His last visit was on a Sunday at 7:00 am, and, as usual, he opened the door with his own keys. The couple was at that time still asleep, and did not hear him enter. Looking into their room, he saw that they were sleeping unclothed in the same bed. The owner of the apartment started to yell that he would “not tolerate this sort of lawlessness in his apartment” and that he “did not want anything to do with perverts.” His verbal abuse was explicit and vulgar. He told the couple unconditionally that they “had until that evening to get their things and get out.” D. and A. were forced to leave the apartment without having any place to stay for the following few days.

\* \* \*

**20) *This situation serves as an example of the infringement upon the freedom of association.***

On December 27th, 1998 in the city of Lugansk a meeting of Nas Mir (Our World) Gay and Lesbian Center was held. In January of 1999, the founders of the organization applied for registration with the necessary documents to the Lugansk regional judicial department. When the revision period for registration was up, no decision had yet been reached. Two months later, when the applicants again inquired as to the status of their application, they were informed by the head of the legal department of federal registration that their papers had been sent to legal experts at the Ministry of Justice, with the explanation that it was being reviewed at the federal level because of “the complexity of the issue and the lack of competent legal experts at the local level.” In a written enquiry to the Ministry No. 1/12-311 of 02.03.1999 regarding the registration of Nash Mir was the request to “give an opinion on the legality of the existence of citizens with non-traditional sexual orientation.”

In the letter from the Ukrainian Ministry of Justice and in the explanations from the regional department on the inability to register the Centre it was argued that the function of the centre contradicted article 3 of Ukrainian Law “On the association of citizens”.

The goal of “assisting in the improvement of the social-psychological situation of people of homosexual orientation and the simultaneous reduction of the social pressure of this group of people in Ukrainian society” supposedly contradicted the law that stated that “a public organization is a group of individuals for the maintenance and protection of its legal, social, economic, creative, age-related, national-cultural, sporting and other interests.”

The fact that the objectives of the centre did not reflect the general interests of the members of the centre was the official reason for the refusal of its registration as a social organization.

It was soon apparent that the contradiction of the Charter of Ukrainian Law was merely the official excuse to refuse registration. The head of the justice department had commented in the newspaper “Sehodnya” “...how can we recognise them at the federal level as a legal body? There is no legal basis [on which to refuse the application] when in Ukraine such orientation is not outlawed, but there are also no precedents... If I register them then, if you’ll excuse the expression,

the wankers will come and then others... And what about morality?" According to the head of justice, they consulted with the departments of culture, public health, with sex pathologists and all the same did not receive an unequivocal answer.

The personal beliefs of the public officials at the Lugansk regional department of justice and their prejudice towards homosexuals lead to their drawing out of the review of the application and the search for a formal basis on which to refused the registration of Nash Mir. The position of the local officials were upheld by the Ministry of Justice

The founders of the Centre took the regional department to court. The primary hearings showed that the prospects were doubtful, so the Centre took a different route to protect its legal interests. The founders found support among prominent international organizations, International Amnesty, the Renaissance Fund, ILGA Europe, all of who brought the situation to the attention of the international community. The Centre received almost no support from Ukrainian legal protection organizations.

On behalf of the support campaign for Nash Mir, the organizations sent dozens of letters to the Ministry and Regional Department of Justice appealing for the registration of the organization.

Under pressure from the campaign participants, the Lugansk regional department of justice was compelled to acknowledge and register Nash Mir (Our World) Gay and Lesbian Center.

\* \* \*

***21) This situation serves as an example of the violation of the right to employment, as well as the right to privacy and patient confidentiality.***

38 year-old I. found work at a private medical clinic in August of 1998. On of the conditions for the position stipulated the requirement of a diploma in su-dzhok therapy after an intensive course given in Moscow, which I. agreed to pursue, the entirety of which (the two-month course for \$800, transportation, food and accommodation) would be at the expense of I.

Almost from the outset, I. was considered among the best doctors

in the clinic. He had the longest waiting list in the clinic, and did not refuse treatment to pensioners or the disadvantaged, and his competence was noted on numerous occasions both by his colleagues and patients (which was evidenced by the great number of grateful entries in the 'complaints and suggestion' book).

At Christmastime, Professor K. of the post-graduate faculty of sexology and sex pathology of the Kharkiv Medical Academy visited the head doctor of the clinic. During a dinner with all the staff of the clinic, K. stated that he recognised I. and asked aloud if he hadn't treated him.

In truth, in the mid-80s, after I. had graduated from the medical institute and came to Kharkiv from the city of Pyatagorsk to "cure himself of his homosexuality." He had heard from a professor in his institute that professor K. in Kharkiv specialized in curing "that". Over the course of ten months, I. followed a course of medicinal (hormone replacement and tranquilizers) and non-medicinal therapy (physiological and psychotherapy). The treatment did not produce the desired results. Upon parting with his patient, professor K. gave him some practical medical advice and shared information about where it was possible to "find like-minded people" in Kharkiv.

I. therefore, without giving himself away, had to admit that indeed he did know the professor. The clinic's head doctor Ts., being familiar with professor K.'s work, questioned him further about their acquaintance.

The professor, being somewhat inebriated, 'delves into his recollections' and started to recall quite detailed circumstances of their 'meetings'. After the dinner, doctor Ts. called I. into his office where he began to reproach him for hiding this information when applying for work at the clinic, and explained that "such a was of life not only discredits the clinic's reputation, but his (Dr. Ts.'s) own reputation."

Doctor Ts. recommended that I. resign, which I. refused to do. The head doctor threatened his colleague that "he will not get away with this, and that he will regret not having resigned willingly."

After their discussion, the registry secretaries were verbally ordered not to record the patients being seen by I. As I. was working

on commission for services provided to patients (up to 25% of the amount generated), I. stopped receiving a salary. After two months his savings ran out, and he went to speak with doctor Ts., who claimed that I. had “stopped generating a profit, had become redundant and was just taking up office space.” The head doctor also made it known that the situation was not going to change.

Under the circumstances, I. was forced to resign from the clinic.

\* \* \*

***22) This situation demonstrates the violation of the right to education, as well as freedom of expression.***

As a result of an interview in, June 2004, 18 year-old V. began paid studies at the Institutional Vocational College of the Interregional Academy of Human Resources (MAUP) in Kyiv. The administration of the college signed a contract with V., issued him a student card and accepted him for study from September 1st.

From the outset of the school year, V. did not hide his sexual orientation from his classmates or teachers. He associated easily with his colleagues and did not cause trouble.

Upon learning that there were other students of non-traditional sexual orientation at the college, the majority of whom hid their sexual orientation, V. decided to launch a campaign for the tolerance of homosexuals. He independently prepared and handed out leaflets that called for the greater openness of homosexuals and tolerance of them on behalf of other students. Also printed on the leaflets was the telephone number of the college psychologist, who rendered consultations and other psychological assistance to students at the institute (including homosexuals) free of charge.

Upon learning of the contents of the leaflets being distributed by V., the newly appointed president of the college, B., called to his office not only V. himself, but the college psychologist, the superintendent of the first year students, V.'s classmates and other students at the college who were “suspected of being of non-traditional sexual orientation.” During his conversation with the college psychologist, the president accused her of not informing the administration of the sexual orientation of students who had come to

see her, and demanded that she present information on other homosexual students. When she refused, citing professional ethics she was asked to “hand in her letter of resignation.”

Over the course of the president’s conversations with V. and the college psychologist, she tried to convince him to leave the institution, which the student categorically refused. Nevertheless, the college administration was soon instructed to dismiss V. on the basis that he “submitted an incomplete set of documents to the admissions office.” V.’s dismissal coincided with the exact date for which his studies had been paid in advance. The dismissal also produced another victim – the judicial clerk of the admissions office, who was also asked to “hand in her letter of resignation.”

In December of 2004, V. filed a suit against the college in one of Kyiv’s local courts requesting his reinstatement as a student. Over the course of the hearings, the college insisted that the reason for V.’s dismissal was that his application was not submitted in complete, completely ignoring the fact of discrimination against him based on his sexual orientation.

Nash Mir (Our World) Gay and Lesbian Center provided V. with legal aid. In due course, the requests in the claim was changed to compensation for psychological damages sustained during and after his dismissal from the college. At the fifth hearing, V.’s claims had been partly compensated. The court recognised the dismissal as illegal and obliged the college to compensate V.

\* \* \*

***23) This situation is an example of the violation of the rights of consumers on the basis of discrimination against people of non-traditional orientation.***

In September of 2004, A., an inhabitant of the city of Lugansk, made an oral agreement with the manager of the bar E. (and with his son, a joint owner), in one of the historical residential areas of the city, to hold ‘gay evenings’ at the bar. A. took on the responsibility to advertise the evenings among the gay and lesbian population of Lugansk. It was agreed that there would be a cover charge for these evenings, which would be collected by the employees of the bar, and

that A. would receive a percentage of whatever money was brought in.

Bar E. is located in a sparsely populated area, and, especially on weekdays (the evenings were scheduled for Fridays) there was low attendance. Because of A.'s initiative, attendance began to increase sharply. Employees of the bar, whose income depended directly on the bar's revenues, were very happy with the change in circumstances. Additionally, according to them, the atmosphere in the bar on the 'gay evenings' was much more orderly than when it was open to the "general public".

Regardless of the positive changes brought about at bar E. on behalf of A.'s efforts, after three "gay evenings", the manager of the establishment spoke with A. by telephone to ask for a meeting to "talk things over." During the conversation, the manager informed her that "evenings for gays and lesbians would no longer be held at his establishment." His explanation was that "information about the evenings had spread through the city, and he was worried that it would damage his personal reputation."

\* \* \*

***24) This situation demonstrates the violation of consumer rights.***

In December 2004, two women, 30 year-old N., a seamstress, and 24 year-old O., a teacher, went to a private dental clinic for the extraction of O.'s tooth.

The doctor agreed, though not very willingly, to N.'s request to be present during her friend's procedure. When O. was given the anaesthetic injection, she began to cry from the pain and apprehension of the required preparations for the operation.

N. tried to calm her friend in every way possible, calming her vocally and by kissing her hand. The doctor was surprised by such behaviour, and started to become suspicious of their relation to one another. When they told him that they were a couple, he asked them without resort to strong language, to leave the clinic "without making a scene."

The women left the office without paying for the incomplete

operation, without having suffered physical harm. Nevertheless, they were surprised and insulted at the prejudice against them on the basis of their personal life.

\* \* \*

***25) This situation demonstrates restriction of the freedom of mobility as well as the use of force and violation of human dignity.***

L. is a transsexual who changed his sex from male to female. Having received new identification papers, L. is a permanent resident of the city of Poltava.

In 2001, L. had been dating a man who was later accused of the robbery of a private apartment in the city. Even before this information became known, L. had not seen the man nor heard from him for quite a long time. Nevertheless, as a close link to the suspect, L. came under "scrutiny from the police." As a consequence, one day a law enforcement officer came to her place of residence and took her away to the department of internal affairs.

When the police asked her where her former boyfriend was hiding, L. replied that she did not know. This answer was considered insufficient, and they started to threaten L. with physical and sexual force, making fun of her physiological characteristics.

Because of L.'s refusal to confirm their baseless suspicions, the police officers finally decided to lock her in a holding cell for two days. L. was also informed that after the police officers "took holiday their" and then went out "drinking and partying," that she would again be subject to interrogation.

L.'s mother M., who had also come to the police station, objected to the actions of the police officers and tried to defend and protect her daughter's rights. When M., hearing L.'s protests at the police officer who was forcefully moving her to the cell, tried to go to her daughter, she was physically restrained from doing so. In the ensuing struggle, M. accidentally hit the officer restraining her in the face. To the witnesses (prostitutes also being detained at the station) who were later called upon to verify the story, it had appeared as though M. had attacked the officer, and M. was also detained in a cell.

Two days later, L. and her mother were taken to court, M. to be fined for assault, and L. to await a decision on her situation. L. asked to speak with the judge in private, who agreed. After hearing L.'s testimony, the judge rejected the police officers' claims, and informed them that L. and her mother were to be released and taken home. Afterwards, L. was no longer called upon by the police in this matter.

Even having suffered such a negative experience, L. did not make a complaint against the officers.

\* \* \*

***26) This situation shows the violation of the right to information.***

In November of 2003, I., a resident of the city Kryvyi Rig, went to a post office in the city centre, wishing to take out a subscription to the magazine "One of Us" (a publication registered under the heading of "Male aesthetics journal", but read in the majority by people of homosexual orientation).

Looking through the catalogue of publications, I. found that the journal's information had been blacked out with a ballpoint pen. Going to another post office, and the rest of the branches in the city, he found the same thing. Surprised, I. supposed that subscriptions to the magazine were no longer being taken.

Phoning a friend in Kyiv, I. learned that nothing like that was taking place there, and that subscriptions to the journal were still being accepted as usual.

I. could not determine on whose part such actions had been taken to prevent subscription to the magazine in Kryvyi Rig.

\* \* \*

***27) This situation shows abuse of power, as well as the violation of the right to privacy (collection of information on people of non-traditional sexual orientation).***

In June of 2002 in Dnipopetrovsk, one of the co-owners of the popular bar K. was murdered. Rumour spread quickly that the victim

was a homosexual, and the pursuit of representatives of his possible circle of contacts began among people of non-traditional sexual orientation.

Z., who became the object of the pursuit of the investigation carried out by the city body for internal affairs, related that at the beginning he was "asked by telephone to come to the police station, but when he didn't show up, that he was called upon at home." He delivered a subpoena, which was left on his door, and which did not contain the case file number, on which his surname was misspelled, and in which he was identified as an "expert".

The interrogation was conducted on the basis of "good cop/bad cop". In one room of the station, police subjected him to psychological pressure by humiliation, insults and threats, for instance "we'll throw you in the slammer where the convicts will rape you." Afterwards, he was brought to a different room where "good cop" investigators told him that it was essential that he be of material assistance. Consequently, under the demands of the officers, Z. paid them 1000 hryvnia (\$200 USD). Z. believes that other homosexuals brought in for questioning suffered the same treatment.

Z.'s fingerprints and photos were taken. According to him, he saw "a large photo album in which were pasted rows of photos of gays." Others who had been called in for questioning estimated that the album contained no less than 700 photos of members of the homosexual community in Dnipropetrovsk. When Z. asked why the police had collected this information, he was told that they also had a similar one on "drug addicts," and that when a crime takes place in the city, it is easier for them to immediately "find" the culprits from the corresponding milieu.

## Conclusions and recommendations

In general, it can be stated that Ukrainians display rude and prejudiced behaviour towards others on the basis of sexual orientation. This is evidenced by the research of the Center for Gays and Lesbians "Our World" which took place at the beginning of 2005 among people of bi- and homosexual orientation, as well as the results of the national survey conducted by the company TNS-Ukraine in January and February 2005.

This survey of Ukrainian inhabitants presented an opportunity to place discrimination based on sexual orientation among other bases for discrimination among the country's citizens. The research on the circumstances of people with non-traditional sexual orientation allowed for the elucidation of other factors that influence the prevalence of discrimination against them, and for the elucidation of the most characteristic manifestations of discrimination and unequal treatment in various spheres. It was also important to find out what forms of action were taken by Ukrainian citizens of homosexual and bisexual orientation to rectify violations of their rights. Significant effort was made to uncover concrete examples and records of discrimination.

During the survey, 90.4% of Ukrainian citizens noted that they or someone they knew had experienced discrimination on some basis. State of health and age were indicated most often (58.9% and 52.6% respectively). Sexual orientation was indicated by 14.4% of Ukrainians. In view of this fact, among young people (under 35 years of age), already more than 21% of respondents indicated that discrimination may occur because of sexual orientation. When it is considered that by the estimation of a number of different specialists that the proportion of people with bi- or homosexual orientation is between 1 and 10% of the population, the figures reveal the seriousness of the situation. The same can be said of discrimination on the basis of sex and marital status. Both instances were indicated by 14.4% of the population.

An important factor related to the question of discrimination and unequal treatment of people on the aforementioned bases is that homosexuals and especially bisexuals are outwardly difficult to

distinguish from other people. With an eye to the fact that for discrimination and unequal treatment to take place, it is necessary that a person made known his or her sexual orientation those around them, or that his or her orientation was in one way or another made known. Therefore, in the majority of cases of the violation of rights of bi- and homosexuals acquaintances are not aware unless they are involved first-hand in the conflict. For example in the instance where the director (owner) of a business finds out about the sexual orientation of his/her employees which leads to their subsequent dismissal, often coworkers are not completely aware of the reasons for the dismissal.

As supported by the research, among people of homosexual and bisexual orientation, most often subject to discrimination and unequal treatment are those who do not hide their orientation from others, as well as those whose orientation is known to a wide circle of friends and acquaintances. More than 76% of those indicated that discrimination and unequal treatment was a fact. However, even the complete non-disclosure of information about orientation from those around them does not guarantee that the violation of rights will not occur, in the same way that someone's orientation can become known against their will. Additionally, sometimes discrimination or rude behaviour is perpetrated simply on the suspicion that something is 'not right' with someone's orientation. Thus 13% of those whose orientation was no known to those around them were nevertheless discrimination against.

Referring to concrete manifestations of discrimination, prejudice, or rude treatment of people of bi- or homosexual orientation, then it appears that there are four distinct aspects of the problem:

### 1. Violation of the rights of people with non-traditional orientation in specific legal spheres

Situations of specific violations of the rights of people of bi- and homosexual orientations in the spheres of labour relations, education, involvement with law enforcement agencies, the services industry, health services and the like, are being taken into account.

As the research shows, the basic spheres in which discrimination against members of the GLBT community occurs are: the sphere of labour relations, the sphere of privacy and information rights, the sphere of dealing with law enforcement agencies. The essence of these violations are, roughly speaking, the same as most instances of discrimination on other bases (age, sex, nationality, etc.), and therefore also needs to be regulated by the same or similar legislation. It must be mentioned that despite the Constitution of Ukraine's direct prohibiting of discrimination with or without any basis and the punishment for that type of action is set out in the Criminal Code, there is still no legislation that outlines any distinct formulation of what constitutes discrimination, nor any mechanisms for the rectification of violated rights.

### ***2. Undefined legal status of same-sex couples living together***

Ukraine has no legislation regulating either opposite- or same-sex cohabitation (common law unions). People living together have material and other obligations towards each other, but this has no legal consequences. Within the framework of existing legislation it is possible to provide for some aspects of cohabitation, for example, joint ownership of property. But all the same, same-sex couples (as with opposite-sex couples living in an unregistered marriage) are hindered by law in comparison with people living within a marriage.

### ***3. Sphere of interpersonal interaction***

As shown by the research of the environment of bi- and homosexual people, the sphere of interpersonal interaction is precisely the area where the majority of cases of prejudice and rude behaviour occur. The cases occur as much in close groups, the workplace units, educational groups, army units, as in encounters with law enforcement agencies (most frequently mentioned in encounters with law enforcement officers) and in everyday life, in the family, with neighbours, with strangers on the street. The particular character of

these spheres is that occurrences within them can be regulated by legislation, significantly in public settings in society, and the nurturing therein of tolerant attitudes towards "otherness".

### ***4. Mass media***

During the research, a large number of members of the GLBT community indicated the subjective, distorted representation of people of non-traditional orientation in mass media publications. The particular characteristic of this sphere is that editorial policy varies from publication to publication and can never be influenced from outside. Additionally, it is not always clear who has the right to file a libel suit if the question refers to a certain person, let alone to, for instance, all gays and lesbians.

In this instance, solutions to the problem of the violation of rights in any given instance will naturally be varied. But first of all one more fact, drawn from the research conducted among people of non-traditional orientation, should be mentioned. In instances of violations of rights, only half of the members of the GLBT community take any action to rectify a violation, and only about one half of those instances are successful in the framework of existing means of protection from discrimination.

Moreover, it is important to note that citizens of Ukraine indicate that there are methods of overcoming discrimination. The majority of Ukrainians questioned consider it important to carry out specific activities to deal with the existence of discrimination in society, specifically: adoption of new legislation (49.2%), improvement of awareness in the area of protection of individual rights (47.8%), updating of current legislation (32.9%). Almost a quarter of respondents believe that it is necessary to improve the general level of tolerance in society (24.0%), and special training for public servants is considered necessary by every one in five respondents.

Based on the above, to prevent of negative situations arising from the widespread discrimination based on sexual orientation, the following recommendations can be made:

1. Amendments to special legislation in which are indicated the

bases for various types of discrimination and prejudice on any basis, the establishment of mechanisms for the protection of rights and the rectification of violated rights.

It is possible for there to be various approaches to the formulation of such legislation. A new universal law could be created, taking into account all possible bases for discrimination. It is possible to create multiple different laws. Mechanisms for the defense of rights and the fight against discrimination could comprise part of the law of the status of retired individuals, people with limited physical capabilities, or national minorities. For the violation of rights on the basis of sex, marital status, or sexual orientation, a separate law could be adopted dealing with gender bias.

2. Amendments to legislation regulating opposite-sex and same-sex cohabitation. It is understood that Ukrainian society is not yet ready to undertake the discussion of full-fledged same-sex marriage.

3. The development and implementation of training programs for public servants regarding tolerance of different groups of the population, particularly towards members of sexual minorities. The most relevant departments for these programs would be the Ministries of Foreign Affairs, Education and Defense.

4. The development and implementation of programs designed to raise awareness in society of individual rights and mechanisms for the protection of rights.

5. The development and implementation for state media of training programs for tolerance towards minorities, including sexual minorities.

6. Implementation of legislation on mass media allowing for social organizations representing different groups in society to challenge in court mass media publications presenting false or distorted information about said groups.

People of bi- and homosexual orientation, and transgendered persons are as much citizens as the rest of the population. Therefore the government has a duty to put into force means of protection of their rights.

## Glossary

The basic terms with which this research operates are defined in this glossary. The terminology relating to different aspects of sexual orientation is not well developed in Ukraine. Researchers of gender problems, psychology, sexology, sociology and other social sciences operate using different, frequently inconsistent and indistinct terms. As a rule, these terms are specific to one corresponding area of scientific knowledge, but there is no unified and universal terminology.

Some words can be used to define the same concept simultaneously, or, on the contrary, one term can function to describe different concepts within different sources. Interpretation of terms, as a rule, depends on the type of publication, the personal beliefs of the authors, public stereotypes and biases. The fact that Ukrainian terminology is not well developed is the reason for its ineffectual adoption or inaccurate translation from foreign languages.

On the other hand, attempts to give scientific definitions to groups of people on the basis of their sexual preferences quite often result in the drawing of general conclusions based on representatives of these groups. Such categorizations of people can result in the designation of their identity and the ascription of certain stereotypical attributes on the basis of their belonging to one or another group.

Information on a person's sexual behavior does not allow one to judge in full his/her psychological or physical characteristics, masculinity or femininity, peculiarities childhood development or any other attributes which distinguish a person of homosexual orientation from a person who shows a preference for exclusively heterosexual behavior.

At the same time, the application of precise terminology is necessary when the question is about, for example, prejudiced attitudes towards people on the basis of certain attributes connected to sexuality.

Inasmuch as discrimination against citizens of Ukraine on the basis of their sexual orientation is the object of this research, the subjective attitude, which is not always connected to well-known terminology, of Ukrainians towards homosexuals is of particular import. In the context of this research, social constructs, biases, prejudices and stereotypes are much more important than the identity and self-

esteem of homosexuals. That is why it is necessary to remember that any term, in addition to the definition given here, carries connotative meanings as well in the semantic code designed by the society and public opinion. Avoiding estimations, objectivity and universality were the criteria for the definitions of basic terms in this glossary. The criteria on which basic terms were chosen for this research were their lack of ascribed value, their objectivity and their universality.

### **Sexual orientation**

Orientation of an individual's sexual attraction to a person of a certain sex, one of the components of sexuality. Sexual orientation may or may not be reflected in the individual's sexual behavior.

### **Homosexuality**

Homosexuality is the orientation of sexual behavior and the emotional sphere of the individual towards persons of his/her own sex.

The term homosexuality is out-of-date and connected with a negative stereotype, used mainly to describe men and has no exact definition.

Taking into account a modern level of knowledge of human sexuality, the term «homosexuality» cannot be called definitive. In contemporary models a set of various factors, including behavior, preferences, self-identification, lifestyle, frequency of sexual contacts with different partners, and change of sexual preferences during one's lifetime is taken into account.

In the context of this research, however, the perception of the individual by his/her environment is most important. The individual can be discriminated against on the basis of sexual orientation without respect to the factors listed above (behavior, preferences, self-identification, lifestyle). In order to experience prejudice from others, it is enough to consider oneself homosexual.

### **Heterosexuality**

Heterosexuality is the orientation of sexual behaviors and the emotional sphere of the individual towards persons of the opposite sex.

### **Homosexual person**

A person who is emotionally and sexually attracted to members of the same sex.

### **Heterosexual person**

A person who is emotionally and sexually attracted to members of the opposite sex.

### **Bisexual person**

A person who is emotionally and sexually attracted to members of both sexes.

The term is used both for the description of sexual identity, and for the description of sexual behavior.

### **Transgendered person**

A transgendered person is someone whose *gender identity* is opposite to their biological sex.

A person who self-identifies with a gender identity other than the one that was ascribed to the biological sex of one's birth; or a person who views one's gender as more fluid than the strictly male or female gender distinction between sexes allows.

### **Transsexual person, transsexual**

A person who has changed his/her biological sex with the help of medical procedures. *See: transgendered person.*

### **Gay**

Term designating a person with strongly distinguishable same-gender *sexual orientation* and *sexual identity*. Predominantly used concerning men.

### **Lesbian**

The term used for the designation of women with strongly distinguishable same-gender sexual orientation and sexual identity.

**Sexual identity, sexual self-identification**

Internal concept of a person about his/her belonging or not belonging to a certain group of persons with precisely outlined sexual attributes, both in relation to sexual, and emotional, behavior and preferences.

The sexual identity of an individual does not always depend on his/her sexual practices (behavior). Men and women who identify as heterosexuals can have sexual contact with persons of their same sex, while not acknowledging themselves as homosexual or bisexual.

In the research of questions concerning AIDS, the following terms, connoting only the sexual behavior of the person in question, are applied: MSM and WSW (respectively, men having sex with men, and women having sex with women).

**Discrimination**

Violations of human rights, specific attitudes towards an individual, directly or indirectly connected with certain of his/her attributes. In the context of this research sexual orientation is considered as such an attribute.

**Gender identity**

Gender identity is the characteristic of a person (individual) from the point of view of his/her belonging to a male or a female group. Thus the person's self-identification is most important.

**Hypothesis of research**

The research hypothesis is the underlying scientific assumption brought to the research; the preliminary estimation of a situation or the condition of the social group that is the object of study.

The hypothesis helps to formulate research directions and the basic issues of the research monitoring.

**Official statistics**

Information published in periodical statistical reports by government statistical bureaus.

**Social Environment**

The social environment consists of the people, not included in the target group, who are the object of research.

**Monitoring**

Monitoring is the planned and systematic observation of a certain segment of the social reality, realized according to designated outlines and directed towards the implementation of positive changes to this reality.

**Public information**

Public information – the information published in the mass media or documents of state organs, as well as the information released by officials of state authorities.

**Typical examples of violations**

Typical examples of violations are the most widespread instances of human rights violations based on certain individual or social attributes.

**Bias; prejudice**

Bias is the perception of a person through a prism of concepts (stereotypes) designed by a society regarding certain social groups, based on exaggeration of the attributes of some members of these groups and the transferring of said attributes to all other members of that group.

Prejudice, in everyday understanding, can be defined as an imperception or hostile attitude towards a person belonging to the group, only because he/she belongs to this group and, correspondingly, is assumed to personally possess the characteristics attributed to said group.

**Target group**

A target group is a group of persons characterized by common attributes (individual or social) or similar problems, and is the object of research or a beneficiary of a designated service.

### Information about Nash Mir

Nash Mir Gay and Lesbian Center (Lugansk and Kyiv, Ukraine) was founded in 1997 as a private initiative in the form of a small informational and educational magazine of the same name. A small group of enthusiasts gradually formed around the magazine, forming a non-profit organization at the end of 1998. The founders of the organization set out the following goals:

- the protection of human rights and freedoms of homosexuals and the improvement of their legal protection at the state level. The fight against discrimination on the basis of sexual orientation;
- the improvement of relations between society and homosexuality and homosexuals. An end to homophobia in the public consciousness;
- the nurturing of self-awareness among gays and lesbians as equal and full-fledged members of society.

It turned out that, in Ukraine, there “wasn’t a problem with homosexuality” as long as it went unseen. At first, local judiciary officials simply did not know what to do with the organization. In an interview with a leading newspaper, one official asked “How can we recognise [the organization] on an official level, as a legal entity? There is no legal framework, except that this sort of orientation isn’t illegal, but neither is a challenge to it... If I register them, what next, if you’ll excuse the expression, but then we’ll have the wankers coming, and everyone else... And what about morality?” And under this pretense the Center was denied official registration.

But the organization did not back down against such blatant discrimination. Nash Mir was registered at the end of 1999, but this success was possible only as the result of a determined battle of the members of the organization for their legal rights, with the support of Amnesty International and the International “Renaissance” Foundation. The attention from the Council of Europe on the rights of people of homosexual orientation in EU member states was also useful.

The work of the organization can be broken down into three main categories. These are information, human rights-focused activities, and support of the gay community in Ukraine through activism.

Over the past few years, Nash Mir has been involved in a large number of significant projects:

- A unique study of the condition of gays and lesbians in Ukraine out of which was published the “Golubaya kniga” (“Gay Book”).
  - Two international conferences in Kyiv (in 2000 and 2001).
  - A project on the prevention of the spread of HIV among the gay community and the youth population (2001-2002), which included the wide circulation of a booklet called “NO AIDS”, dozens of training sessions, and other awareness activities.
  - The independent project on “The struggle against discrimination on the basis of sexual orientation in Ukraine” in 2002, which produced the publication of a book entitled “The A-Z of Human Rights - And Not Just for Gays” with the aim of promoting rights-awareness within the gay community.
  - Within the framework of the same project, the formulation of a set of legislative recommendations with the ultimate goal of allowing Ukrainian gays and lesbians the enjoyment of the same rights as their heterosexual counterparts, resulting in the publication of a brochure entitled “Different But Equal”.
  - A two-year project (2003-2005), in cooperation with the Dutch organization SOS, on the “Strengthening of the GLBT community in Ukraine”, thanks to which Nash Mir developed into a professional, national organization. The central office is located in Kyiv, with activists representing the organization in various regions of Ukraine.
  - Participation in the study “Monitoring of the behaviour of men having sex with men as a component of second generation epidemic surveillance” (2004), responsible for the field-study.
  - The project on the “Monitoring of protection of the rights of the community of gays, lesbians, bisexuals and transgendered (GLBT) in Ukraine” (2004-2005), which produced this publication.
- In addition, in the years since its incorporation, the organization has used different methods and avenues to achieve its mandate:
- Conducting seminars in Lugansk, Kyiv and other cities.
  - Providing accurate information on the lifestyles of gays in Ukraine and around the world, and the legal progress on this front abroad. The publication of newsletters and the distribution of press-

releases on important events were employed to this end.

- With the help of the organization and its members, dozens of objective articles about GLBT life in Ukraine were published in regional and national publications, and numerous television programs were aired.

- Since 2003, the publication of the national monthly “Gay.Ua”, with a readership primarily of gays and lesbians in Ukraine.

- Running two websites: [www.gay.org](http://www.gay.org) (containing information and news on a wide range of problems related to GLBT life) and [www.gay.aids.ua](http://www.gay.aids.ua) (devoted to the prevention of the spread of HIV, and the health of the GLBT community).

- Providing support for members of the gay community in Ukraine whose rights have been violated. Thus, with the moral support and legal aid of the Center, a court decision was made in favour of the plaintiff in the case of a student who was expelled from the Economics and Law College at Interregional Academy of Personnel Management (IAPM) because of his sexual orientation.

- The widespread availability of provision from the Center of confidential psychological support by professional consultants over the phone or by mail, as well as support groups and cultural activities organized by Nash Mir.

- Presenting recommendations to Ukrainian state officials at various levels and lobbying for the interests of the GLBT community.

In the spring of 2002 at the request of Nash Mir, a nationwide survey was conducted, in which only 42% of Ukrainians recognized that the rights of homosexuals are equal to the rights of others. The organization still has a lot of work ahead of it.

We would like to express our thanks to the foundations and individuals who have supported our work in the struggle against discrimination on the basis of sexual orientation in Ukraine.