BRIEF OVERVIEW:
HUMAN RIGHTS FOR LGBT CITIZENS IN UKRAINE.
FULCRUM —

is the national LGBT organization that cares about the fate of lesbian, gay, bisexual, transgender people (LGBT), so it works to create a comfortable and safe environment in a tolerant society focusing on issues of health and psycho-social support, combating discrimination, creating safe zones in various spheres of LGBT people’s life. In the above-mentioned areas we cooperate with a number of civil servants, politicians, community leaders, government and non-government organizations, enterprises and institutions.
The fake “Pride March” was held on Bessarabska Square in Kyiv.

The Verkhovna Rada voted for amendments to legislative acts of Ukraine on the anti-discrimination without including prohibition of discrimination based on sexual orientation.

The Equality March was cancelled due to the failure to ensure the safety of its participants by the Ministry of the Internal Affairs.

The director of the Center of Visual Culture V. Cherepanin was attacked and beaten because of his educational lectures on homosexuality.

during the LGBT film “Summer Nights” the Zhovten cinema was set on fire by homophobic persons.

The State Registration Service denied IA "National LGBT-portal" state registration as media citing the immorality of the agency.

Decree of the Cabinet of Ministers № 847 "On the implementation of the Association Agreement between Ukraine and the EU" provides the introduction of instruments of prohibition and combating discrimination based on sexual orientation in the work area.

Order of the Cabinet of Ministers of Ukraine № 1118 provides "a high level of tolerance for vulnerable groups including people with non-traditional sexual orientation …".

The draft of the new Labor Code of Ukraine including discrimination on grounds of sexual orientation in the workplace was promulgated for public discussion.
Despite Euromaidan’s victory and revolution for European Integration of Ukraine, the situation with the rights of LGBT people is extremely difficult. In fact, more than a year passed after Euromaidan, the necessary changes in the respect for fundamental human rights standards has not started implementing in Ukraine. Due to lots of criteria, there was a significant regression and deterioration.

Despite the dynamic setback in the human rights sphere, the activities and the voice of human rights LGBT organizations have become more prominent. The government still is not ready to fulfill EU standards regarding the prohibition of discrimination on grounds of sexual orientation and to work out effective mechanisms of not only response, but also prevention of such crimes. However, the parliament and politicians become more open to dialogue with LGBT organizations, and the prohibition of discrimination on grounds of sexual orientation is widely debated in the several parliamentary committees and government agencies. Specifically, November 12, 2014, the Ministry of Social Affairs promulgated the draft of the Labour Code (will be submitted as a government bill) for public comments. Article 6 of the bill contains prohibition of discrimination in employment including on grounds of sexual orientation.

Actually, the authorities of Ukraine (both the legislative and executive) have no strategy and/or vision of human rights for LGBT and non-discrimination based on sexual orientation and gender identity. Various government agencies independently of each other determine their own positions on this issue in view of the personal position of the head which results in a significant gap in the positions of the various institutions. Some institutions are actively in contact and cooperation with the LGBT community on LGBT issues, other government agencies show homophobic stance.

Militarization of the society, mobilization and focus on military actions led to the cult of masculinity in the society and a greater disdain for "non-standard" men.

Weak law enforcement, sabotage and unwillingness to investigate hate crimes;

Increase in number of violent acts through activation of various right-wing groups who feel their impunity in the present inefficient judicial system.

The rising popularity of groups that pursue homosexual men with the purpose of physical violence.
2014 became a year of disappointment and discouragement for the LGBT community because Euromaidan and Revolution of Dignity were a hope for the European prospect of development of democratic rights and freedoms.

November 25, 2013 FULCRUM called for support of peaceful protests demanding to sign the Association Agreement and return Ukraine into the European family.

LGBT actively participated in the events at Euromaidan and advocated European values. However, in the early events in Kiev, the LGBT community had decided not to march under distinct LGBT slogans and rainbow banners and join the general democratic demands under the banners of Ukraine and Europe to avoid provocations and prevent the split of Maidan. At the beginning of the revolution, it was clear that Maidan is quite a heterogeneous environment, and many groups and movements advocating the European choice of Ukraine were very aggressive toward LGBT.

The pro-Russian movements, including Ukrainski vybir (its founder is Victor Medvechuk) tried to use the LGBT theme with the purpose of splitting Euromaidan.

January 11, 2014 a fake (theatrical) gay pride was organized at Euromaidan. About 60-80 hired actors in bright clothes were dancing on the Bessarabska square trying to discredit Euromaidan and the LGBT community. Owing to the timely reaction and efficient teamwork of FULCRUM and LGBT activists out of initiative group "Stop 8711", the likely public consequences could have been prevented, and most of the TV channels showed the story as a provocation.

It should be noted as the second attempt to discredit the LGBT community at Euromaidan. The first attempt took place on November 24, 2013, when about 50 hired homeless people were given with rainbow flags and told to march from the railway station to the boulevard named after Shevchenko, and join in the columns of Euromaidan.

By these theatrical "gay pride", the provocateurs attempted to transfer the debate on Euromaidan into the mainstream of "LGBT rights" because it was clear that a significant number of people who came to Maidan supporting EU integration rather than human rights of LGBT people.

January 14, 2014 FULCRUM organized the action near the office of Ukrainski vybir where Executive Director Bogdan Globa tried to grant the representatives of NGO the Certificate "For the development of the LGBT community of Ukraine" in an attempt to show that the efforts made by the organization to discredit the LGBT community just led to its strengthening. Thus LGBT activists marked the contribution of Ukrainski vybir to draw attention to the real problems of LGBT and, in particular, the campaign "Agreement with the EU = same sex marriages".

It should be noted that the use of LGBT theme in the Ukrainian society to discredit certain persons or ideas is organized and systematic. In our opinion, security forces of Russia deliberately provoke and use these steps to discredit the European vector of Ukraine and certain politicians. Not long ago, we obtained the documentary evidence – MP H. Moskal promulgated the plan of the former SSU (where Russian instructors worked) to discredit Euromaidan where the "gay pride" was also mentioned.

Pride March of 2014 was canceled due to disability of the authorities to secure the protection of the event. In particular, Kyiv major Vitali Klychko refused to support the march and told reporters, "I consider at the moment, when the military actions are carrying on and a large quantity of people is dying, conducting entertaining events doesn’t correspond to the current situation."

His argument could be considered reasonable if the next day Kyiv City Council had not organized the mass entertainment festival of embroidery in the city. In fact, the ban on "entertainment" during the war was selective and concerned only the pride-march for human rights for LGBT people.

In fact, the government refused to protect the LGBT march reasoning by its irrelevance to the situation in the country, but it held the other public entertainment.

May 31, 2014 the State Registration Service denied the news agency National LGBT portal state registration as the media citing the immorality of the agency. In June, the State Registration Service filed documents with the Commission of morality in order to ban the National LGBT portal (lgbt.org.ua). November 25, 2014 according to the plaintiff of AUCO FULCRUM (founder of IA National LGBT portal), the District Administrative Court of Kyiv opened proceedings № 826 / 18 158/14 – FULCRUM against the State Registration Service on the basis of discrimination based on sexual orientation while registering the information agency.

We have significant difficulties with human rights for LGBT people in the following areas:

- **Right to fair trial** – the Ukrainian legislation does not still contain articles which provide prosecutors to impose penalties for hate crimes and directly prohibit discrimination on grounds of sexual orientation and gender identity.

- **Freedom of peaceful assembly, the right to peaceful protest** – usually a local / state government refuses to provide protection for the events.

- **Right to privacy security** – typical situations when law enforcement officers extort bribes from gays for not disclosing their sexual orientation while gays are unable to complain because the same law enforcement agencies, by law, would consider their plaintiffs.

- **Right to self-realization** – be openly-gay, lesbian, bisexual or transgender person in Ukraine is life-threatening, homosexual orientation is highly stigmatized by the Ukrainian society and subjected to ridicule. Politicians and community leaders often call for physical violence or moral harassment of LGBT people trying to form an opinion in the civil society that LGBT people are immoral and sick community. Under these conditions, most LGBT people especially in regions can not realize as personalities, hate crimes are not punished and impunity leads to new crimes.
2014 was a year of rapid number increase of hate crimes to the LGBT community. During the year in Ukraine the number of neo-Nazi online groups that carry out attacks against LGBT (more on gay) and arrange a "safari" for homosexual people doubled. If in 2013 the following official groups amounted for about 35, at the end of 2014 we recorded 74 groups. These groups should be noted to act in a completely open and transparent manner; they record their attacks on LGBT on videos, spread them through social networks and discussed the details and impressions in comments. Each of these groups has its own separate page in the social networks (Vkontakte) and some groups have full pages on the Internet. In large cities (Kyiv, Kharkiv, Odesa) may be several groups that compete with each other by the number of victims.

In 2014 the transformation of these movements occurred. If movements "Okupi pedofilia" which focused on the fight against pedophiles previously dominated, in 2014 they got ‘rebranded’: They changed their name into "Modny pryhyvor" and began to focus directly on the "punishment" of LGBT and migrants (representatives of minorities).

Law enforcement agencies having all the necessary evidence for criminal proceedings don't investigate these crimes. In 2014 FULCRUM addressed the General Directorate of Internal Affairs of Ukraine in Kiev with the related plaintiffs on investigating crime of groups "Modny pryhyvor" three times. Police opened and closed after a while proceedings in connection with the "improbability to identify victims of the attacks".

The complexity of the investigation of these crimes is that they are related to the need for the victim to open up his homosexual orientation. In this case, the victim is not guaranteed that it will not be subjected to ridicule or persecution by law enforcement agencies, and the Ukrainian legislation does not contain a specific article on hate crimes (this type of crime can be investigated as hooliganism).

As before, numerous attacks on gay clubs were recorded. In particular, in Kiev 5 armed attacks against gay club "Pomada" were performed, 2 attacks – against a gay club "Andy Bar" which later was closed.

In the autumn of 2014 after the annexation of the Crimea in Simferopol the gay «Q-bar» was closed due to the requirement of police of the Russian Federation regarding the impossibility of existence of such institution in the Crimea.

October 29, 2014 during the show of LGBT film "Summer Nights" (Les nuits d’été) the Zhovten cinema was set on fire. The show was a part of the LGBT program "Sunny Bunny" that had been held annually in Kiev for 12 years and is a part of the international Film Festival "Youth". Every year during the LGBT program pickets or other actions of different LGBT opponents used to be held, but for the first time, the protest was held in such a harsh violent form. After having been set up, the fire completely burned down the cinema, fortunately, casualties were managed to avoid and all the spectators were able to evacuate. As part of the investigation, two radical activists were found who confessed to the crime and their homophobic motive.

The rightwing politicians, such as: a MP, member of the Radical Party Andrew Mosiychuk and Deputy Head of Kyiv Regional Council, Yuri Noevy and neo-Nazi group "Revansh" evidently approved of this action as a manifestation of the struggle against the "gay propaganda".

During 2014, 32 homosexuals appealed to FULCRUM who suffered hate crimes; they were given professional legal and psychological counseling, 8 people turned to law enforcement agencies with plaintiffs about the crimes. Most gays seeking the advice of the organization refused to contact the police for fear of being subjected to ridicule by law enforcement officials.
We also recorded 112 hate crimes that were filmed by the activists of "Modny pryhovor" and posted on the Internet (on the pages of their social groups). Fulcrum regarding 4 these facts applied the crime to law enforcement authorities; we received a response about one case.

Currently, to be openly LGBT representative in Ukraine is dangerous to life and health. If a citizen of Ukraine has opened her/his homosexual orientation (including accidently), he/she jeopardizes his/her life. FULCRUM is constantly fixing appeals from citizens of persecution, harassment and threats of physical violence. At least two hate murders were recorded.

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We draw attention to the unresolved situation with the prohibition of discrimination on grounds of sexual orientation and gender identity. Although the basic law prohibiting discrimination was adopted in 2012, lawmakers didn’t endow it with an effective mechanism of response and anti-discrimination. Most of the regulations are general and declarative, and in one form or another duplicate the Constitution of Ukraine and a number of international laws.

Discrimination against homosexual people at work remains an acute problem. There are spheres where being LGBT (or associated with LGBT), one will never get a job: for example, the public education sector.

Often the initiative of dismissal on grounds of sexual orientation may come not from management of institutions and other entities but from students, colleagues, and parents. In particular, in 2014 a group of students tried to initiate dismissal of a lecturer on Cultural Studies, Kyiv-Mohylianska Academy, head of the Visual Culture Center V. Cherepanin because of his educational lectures about homosexuality and accused him of promoting tolerance. September 24, 2014 near the University the lecturer was attacked and beaten (see "Hate Crimes").

The procedure of protection against discrimination based on sexual orientation is still not regulated by law. In particular, if in case of illegal dismissal of employees there is a procedure to restore their rights through the courts, in case a person is discriminated against in employment – the law does not specify the appropriate procedure to restore the rights of this person.

List of grounds on which discrimination is prohibited in the basic law "On Prevention and Combating Discrimination in Ukraine" № 5207-VI dated September 6, 2012 does not include sexual orientation and gender identity.

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We still have the complicated situation with civil rights of same-sex couples. Because of lack of legislative regulation, homosexual couples are deprived of a number of rights and freedoms including the right to medical care after a partner. In particular, Article 43 of the Law of Ukraine "Fundamentals of Legislation of Ukraine on Health Care" № 2801-XII of 19.11.1992 defines the right to consent to medical intervention for only a legal representative of the patient. But the status of a legal representative is denied to a partner in accordance with the current legislation of Ukraine.

The other urgent matter is connected with the obligatory sterilization procedure required by the Commission on sex changes (corrections) when a person wants to change / correct his/her sex. Also, according to the "Procedure of examination of persons in need of sex change (correction)" approved by the Ministry of Health of Ukraine № 60 of 03.02.2011, the person must undergo a psychiatric examination in closed session in a psychiatric hospital from 30 to 45 days.
May 13, 2014 the Cabinet has submitted to the parliament a package of amendments to the law "On Prevention and Combating Discrimination in Ukraine", and despite the fact that a number of committees of the Parliament recommended to take into account the need to ban discrimination based on sexual orientation, the government refused and filed a package of changes to the law without this ban. The government explained the refusal by the reluctance of the Ukrainian society to cope with these legislative innovations. Ukraine and Spain signed the agreement "on settlement and regulation of labor migration between the two countries" under which Ukraine already has commitments to ban discrimination based on sexual orientation for citizens of Spain operating in Ukraine (the agreement ratified by the Parliament of Ukraine on 01.12.2010).

Nevertheless, the action plan on visa liberalization with the countries of Schengen Agreement requires introduction of a comprehensive antidiscrimination legislation. Within the monitoring visits on the visa liberalization plan implementation, the experts from the European Commission noted that to appropriately comply with this requirement, it is necessary to clearly consolidate prohibiting discrimination based on sexual orientation and gender identity in the existing legislation.

39 Annex of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, consists of 4 Directives of the Council of European Union which suggest direct norms of banning discrimination on grounds of sexual orientation.

September 17, 2014 the Cabinet of Ministers adopted decree № 847 "On the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand," in which paragraph 409 requires development, adoption and implementation of legal acts to implement the provisions of the Council's Directive 2000/78 / EC of 27 November 2000 establishing a general system of equal treatment in employment and occupation. In particular, Directive 2000/78 / EC of 27 November 2000 provides for the introduction of instruments prohibiting and combating discrimination based on sexual orientation in the work area. The Cabinet imposed development of appropriate measures on the Ministry of Social Affairs.

October 22, 2014 the Cabinet approved Order № 1118 "Development Strategy of the Bodies of Internal Affairs of Ukraine" which shall provide: Requirements for new police include "expected high level of tolerance for vulnerable groups that require additional attention and protection of their rights. These groups, in particular, include persons with non-traditional sexual orientation ... "

November 12, 2014 the Ministry of Social Affairs promulgated a draft of the new Labor Code of Ukraine for public feedback in which Article 6 contains prohibition of discrimination in the workplace based on sexual orientation.
Concerning the current state of the rights and freedoms of LGBT citizens of Ukraine, we consider it necessary to take the following measures:

**Law enforcement:**
- to immediately initiate an investigation of criminal gangs’ activities "Modny pryhovor", "Nazhdak" and others engaged in the hunt for gay people; to conduct independent investigations and ensure punishment of those responsible for their crimes

**The Ministry of Health:**
- to review order № 60 of 03.02.2011 "On improvement of medical care to persons in need of sex change (sex correction) " and to adjust the order in line with European standards on human rights (including abolishing mandatory sterilization of persons in need of change (correction) of sex)

**Legislative branch to:**
- initiate prohibition of discrimination on grounds of sexual orientation and gender identity in employment (including to fulfill obligations under the Association Agreement between Ukraine and the EU)
- initiate the provisions that would establish responsibility for hate crimes including on the basis of sexual orientation, gender identity and association with these characteristics to be included into the Criminal Code of Ukraine

**Cabinet of Ministers of Ukraine:**
- to form and adopt a uniform policy of state government bodies (at all levels and regional structures) toward the LGBT community, in particular the prohibition of discrimination in public service and taking into account the commitment of Ukraine on the implementation of European norms and human rights standards.

- consider legislative regulation of civil equality for same-sex couples (especially in terms of attendance and making important medical decisions in hospitals, legacy transfer to a partner, etc.)