

Prepared by Public Organization "Informational-Educational Center "Za Ravnije Prava"

And Public Organization "Insight" OHCHR REGISTRY

(Ukraine)

15 DEC 2009

Action :

CEDAW

Copie :

DO (Encl.)

SHADOW REPORT

DISCRIMINATION AND VIOLENCE AGAINST LESBIAN AND BISEXUAL WOMEN AND TRANSGENDER PEOPLE IN UKRAINE

Submitted for the 45th CEDAW Session

Public Organization "Informational-Educational Center "Za Ravnije Prava" is a non-governmental organization in the South of Ukraine that works to empower Homosexual and Bisexual people and protect their human rights since 2007. IEC "Za Ravnije Prava" provides services for over 400 lesbian and bisexual women (LB) in the South of Ukraine.

Public Organization "Insight" is a non-profit organization based in Kyiv that works since 2007 to improve the quality of life of homosexual, bisexual, transgender and queer (LGBTQ) people in Ukraine by empowering them, providing with services and implementing other informational, social, psychological, medical, cultural, legal and human rights events.

Introduction

With collapse of the totalitarian society and beginning of democratic processes in Ukraine as well as in the neighboring countries it became possible to talk about the issues the existence of which was suppressed and ignored before. However our social consciousness and the state policy are far from the level of the modern democratic country.

Ukraine is a party to such international treaties as International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ukraine is a party of such European treaties as European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Protocol No. 12 to the ECHR concerning the general prohibition of discrimination (2000), and some more.

Nowadays due to the lack of clear rights for LGBT and articles of laws protecting LGBT from any form of discrimination on the grounds of sexual orientation and gender identity there is an issue of frequent violation of freedoms and rights of the given social minority group.

“Za Ravnje Prava” has documented cases of violence toward lesbian and bisexual people, including rapes, beating and psychological pressure, as well as domestic violence. In 2008 “Za Ravnje Prava” together with “LiGA” (LGBT non-governmental organization) under financial support of ILGA-Europe conducted the research among LGB community on human rights violations and discrimination on the grounds of sexual orientation and gender identity.

Insight has been working on empowering and representing transgender people since 2007. In 2009, the organization has undertaken a qualitative research on the situation of transgender people in Ukraine supported by ILGA-Europe and Astraea Lesbian Fund for Justice. The research helped to collect 36 oral stories of transgender people throughout Ukraine telling about their lives as trans-people, including discrimination experiences on the grounds of gender identity.

The status of Lesbian, Bisexual women and Transgender people under specific CEDAW Articles

Discrimination

Article 2 of the CEDAW Convention requires the State Parties to “condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women”. Ukrainian legislation contains several mentions of prohibition of discrimination against women (Constitution of Ukraine, Article 24) but there is no mention of the sexual orientation and/or gender identity in any legislative documents. Penal Code of Ukraine contains several articles that foresee punishment for the crimes committed against women such as Article 152. Rape, Article 153. Violent satisfaction of sexual pleasure in unnatural way and Article 154. Forced sexual intercourse. In Ukraine, there is no hate crime legislation. There is the only article of hate motivated crimes i.e. Article 161 of the Penal Code that foresee punishment for crimes motivated by national, religious or racial discrimination. But in these articles there is no mention that such crimes can be committed on hate basis, in particular, on the grounds of sexual orientation and/or gender identity. There have been no reported cases of rape of lesbian women in the country. In fact, Za Ravnje Prava was addressed by the lesbian women stating that she was raped by her brother-in-law. Equally, violence against transgender people is also not recorded and recognized as gender-based violence. Moreover, homosexual women and transgender people are predominantly afraid to complaint to the police since they often do not get any protection but get mocked at and harassed by police officers who have the ultimate power.

Invisibility

Article 3 of the CEDAW Convention requires the States Parties to “ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”. An L/B/T person without a guaranteed by the national law right to sexuality and gender identity and/or expression experiences significantly more inequality than most other groups of women. Namely, visibility both in the public and in private spheres often leads to various forms of violence (physical, economic, emotional) and infringement of rights against homosexual women and transgender people. In turn, the fear of these sanctions makes LBT people suppress their identities. Thus Za Ravnje Prava has documented the case when the lesbian woman was refused to be tested for syphilis for she disclosed her sexual orientation. The case made the woman to suppress her orientation during the medical examination in the other hospital.

Legislation

In the Fourth periodic report of Ukraine on obligations undertaken regarding CEDAW there is no mention of lesbian, bisexual women and transgender people’s rights which restricts their “exercise and enjoyment of human rights and fundamental freedoms”. Lesbian, bisexual women’s and transgender people’s issues such as non-discrimination, equal possibilities and rights with heterosexual citizens are absent from any state documents which makes this group of women invisible for state programs despite their vulnerable status in the society.

Employment rights

Article 11 of the CEDAW Convention requires States Parties to “take all appropriate measures to eliminate discrimination against women in the field of employment...” With regard to lesbian, bisexual women and transgender people Ukraine fails to comply with the CEDAW requirements. Because of their sexual orientation and/or gender identity many LBT people find themselves working in poorly paid jobs that do not correspond with their qualifications. Ukrainian laws do not include prohibition of employment discrimination on the basis of sexual orientation and/or gender identity/expression. This allows for widely unpunished discrimination of LBT women in receiving payment for their work and in employment in general. Za Ravnje Prava has documented cases of LBT people being fired from their jobs based on these characteristics. Besides, there were cases of employment refusal because of the expressed sexual orientation or gender identity. Insight has documented cases that transgender people were refused employment in numerous instances since their gender expression did not correspond with their passport gender.

In 1995, Ministry of Education adopted the circular letter № 1/9-242 that prohibits homosexual people to work in the field of education because of their sexual orientation. Today the Ministry of Education rejects existence of such letter but in fact lesbian and bisexual women are often fired from their positions in educational institutions once their sexual orientation is disclosed. There are public debates on the issue and the main counter-argument is that homosexual women give bad example for kids and students by “promoting” homosexuality, that causes younger people to become homosexual themselves.

Access to healthcare

Article 12 of the CEDAW Convention requires the State Parties to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning...” In Ukrainian legislation according to the Article 281 of Civil Code, Article 123 of Family Code and Article 48 of Law on Health protection right to artificial insemination is available only for infertile women. Lesbian women being healthy have no right for artificial insemination. Ignorance of the doctors and homophobia are on so high level that make lesbians visit the doctors less often.

Transgender health issues in Ukraine are recognized only in the dimension of transsexuality that is defined as an identity disorder and is cured by a sex reassignment surgery (SRS). This surgery is a mandatory condition for change of the documents. While it forces all transgender people to undergo the surgery in order to change their documents, the commission that gives permissions for the surgery met twice since the end of 2006 while by law it is supposed to meet every quarter. There are also no endocrinologists in the country that can adequately prescribe hormones for transgender people, and thus the latter takes hormones on the basis of what they read on internet or heard from friends.

Attitude of the public authorities

Article 2 point (d) of the CEDAW Convention requires States Parties to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”. It is often that not only issues of lesbian, bisexual women and transgender people are overlooked by public institutions and civil society

activists, but violations of their rights are also promoted in speeches by Ukrainian politicians. For example, answering the question about including words “sexual orientation” in an antidiscrimination article of the draft of Labour Code of Ukraine, a member of the Parliament Committee on Social Policy and Labour Mr. Vasyl Khmara (Party of Regions) said: “Personally I think that gays and lesbians violate all norms of morality. It is the physical failure which one should hide, not expose. On the other hand, what they demand – it is a European norm and probability it will remain in the draft of the Code even though I am against that” (Interview to the newspaper Kommersant-Ukraine, 16.02.07)

RECOMMENDATIONS:

- Adopt national anti-discrimination laws that would include provisions for non-discrimination on the grounds of sexual orientation and gender identity.
- Conduct state awareness raising human rights campaigns in schools and media promoting tolerance and respect for lesbian, gay, bisexual and transgender people.
- Take steps to ensure that state officials abstain from derogatory statements with regard to sexual orientation and gender identity; and create adequate mechanisms to address sex and gender stereotypes in the media and religious institutions (hate speech legislation).
- Ensure that state education programs address gender identity and sexual orientation.
- Develop and take measures to address social norms which contribute to prejudice and violence against LBT people