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Ukraine – special report

Country Report for use in refugee claims based on persecution of gay youth

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UKRAINE: Assessment of Country Condition for a Gay Youth

1. In general, what are the country conditions for a young (under 18) gay male in the Ukraine? Is there any difference in the conditions in rural v. urban settings?

Kiev appears to be the safest and most accepting place for gays in the Ukraine. There is a visible gay community (including gay night clubs), as well as several very active Gay rights organizations.

Rural areas are more traditional and more conservative, and are less open to gay rights and homosexual lifestyles.

- **Advocacy Organizations and Support**

<http://www.adae.org.ua/en/campaign-ua.php>

Organization running a campaign for Ukrainian youth – to promote and protect diversity, human rights, provide a forum for youth issues (including Gay/Lesbian issues).

<http://english.gay.ru/news/rainbow/2001/09/24-10572.htm>

2001. A press release complaining that The Community Center for lesbian and gay people in Lugansk was forced to close down after continual harassment by the landlord. The press release expresses concern that the anti-gay landlord is now running for Parliament, though as he is not named, it is not possible to follow up and find out if he was elected.

- **General Attitudes towards Gays in Ukraine**

<http://english.gay.ru/travellers/ukraine/>

Excerpt from a Travel Advisory website for Gay Russians, describing the attitude towards gays in the Ukraine:

“Public attitudes towards homosexuals are generally tolerant in Kiev and Kharkov, but the rural localities, especially in the Western Ukraine (Zapadenschina), are extremely conservative, religious and, consecutively, homophobic. However, Ukrainian gays remain active - for as long as three years they have been publishing a gay magazine *Odin Iz Nas* (One of Us) on a regular basis.”

“Ukraine: Treatment of homosexuals in Kiev; availability of state protection for homosexuals in Kiev” (February 2006) Research Directorate, Immigration and Refugee Board of Canada, Ottawa

<http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=449947>

Gays living in Kiev report that they are quite comfortable and have a variety of resources and organizations that offer support for issues related specifically to the gay community. Nash Mir conducted a study in 2005 on "discrimination [against] Ukrainian citizens on the basis of sexual orientation," which included the completion of 330 questionnaires and 575 interviews of members of the gay, lesbian, bisexual and transgender communities throughout Ukraine (ibid. 2005, 23). Approximately 70 per cent of all respondents were homosexuals (ibid., 31). One of Nash Mir's conclusions was that "[i]n general ...

Ukrainians display rude and prejudiced behaviour towards others on the basis of sexual orientation" (ibid., 96). Furthermore, such behaviour occurred mainly at "the level of interpersonal interactions" (ibid., 40) and was encountered primarily in relations with, in descending order of frequency, family members, passers-by, friends, colleagues and police officials (ibid., 41). Nash Mir also found that nearly 60 per cent of all homosexual respondents had experienced prejudice or discrimination on the basis of sexual orientation (ibid., 31). In Kiev, where 11 per cent of all respondents resided (ibid. 2005, 25), this prejudice or discrimination against homosexuals was manifested in being asked to leave a restaurant (ibid., 81), being groundlessly evicted from place of residence (ibid., 76), being refused service (ibid., 77) and being physically assaulted (ibid., 72).

2. Who are the possible agents of persecution for young gay males in Ukraine?

Based on research, it seems that the institutional problems are government inaction in response to both complaints of discrimination and to requests for more equal treatment (anti-discrimination laws, civil unions).

The strong police presence in the Ukraine has resulted in police monitoring of gay citizens and gay nightclubs. The largest institutional threats to queer people appears to stem from police.

- Government/Political Treatment of Gay Rights Issues

["Ukraine: Treatment of homosexuals in Kiev; availability of state protection for homosexuals in Kiev" \(February 2006\) Research Directorate, Immigration and Refugee Board of Canada, Ottawa](http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=449947)
<http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=449947>

In response to instances of discrimination, there are both public and private avenues for seeking recourse. However, the ability of these options to rectify the situation is limited because there are not currently any policies protecting gays from discrimination.

According to Nash Mir, a prominent Ukrainian gay rights group, "[e]ffective mechanisms ... within Ukraine for the protection [of] 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 [gays, lesbians, bisexuals and transgender people], even if they try to take action, any attempt to stand up for their rights is unsuccessful (ibid. 2005, 44)."

Homosexuals may file reports of violations against them with the national ombudsman (ILGA 2 Feb. 2006). However, according to ILGA, since approximately 2000, the gay and lesbian communities in Ukraine have submitted a number of complaints to the ombudsman, but the office has failed to take action on them (ibid.). Nash Mir stated, though, that since 2003, the issues of homosexuals in Ukraine have been included in the annual report of the ombudsman to the Ukrainian parliament (Nash Mir 26 Jan. 2006). Based on Nash Mir's study, of those who sought restitution, approximately 20 per cent applied to the police, 10 per cent applied to the establishment or enterprise that had violated their rights, 11 per cent filed a lawsuit or a complaint, almost 10 per cent

appealed to "social organizations" and 27 per cent employed "other methods," including physical violence, persuasion and avoidance (ibid. 2005, 42-43).

www.ilga-europe.org/europe/guide/country_by_country/ukraine/nikolaev_local_authorities_ban_action_commemorating_international_day_against_homophobia

In May 2008, a protest or rally in Nikolaev (a Ukrainian city) to be held in honor of International Day Against Homophobia was not allowed to take place. It was banned by Ukrainian authorities for concerns about inciting violence and unrest. Reasons to ban it did not specifically mention anything relating to homosexuality.

www.ilga-europe.org/europe/guide/country_by_country/ukraine/action_of_resistance_to_homophobia_in_ukraine

However, in October 2007, LG organizations were able to peacefully stage a counter-protest to an anti-gay church event in Kiev, Ukraine. The LG organizations reported that local television stations provided them favorable coverage.

http://www.ilga-europe.org/europe/guide/country_by_country/ukraine/ukrainian_lgbt_claim_same_sex_partnership_law

Open letter sent to Ukrainian govt asking for Civil Unions and anti-discrimination measures to protect against discrimination on the basis of sexual orientation. Also, provided an estimate of approx. 1 million LG people living in the Ukraine. Have not found any evidence that the Ukrainian govt has chosen to respond to these requests.

- Police and Law Enforcement

“Ukraine: Treatment of homosexuals in Kiev; availability of state protection for homosexuals in Kiev” (February 2006) Research Directorate, Immigration and Refugee Board of Canada, Ottawa <http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=449947>

In its 2005 study, Nash Mir found that “[o]ne of the areas where the out [gay lesbian bisexual transgender] 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 (Nash Mir 2005, 35).”

The most typical violations by police involve violations of procedure during interrogation, being held or interrogated and harassed because of their sexual orientation, and allegations of torture.

Several sources have said that the police maintain files on people believed to be homosexual, because authorities consider homosexuals “socially dangerous” and linked to problems such as drugs and prostitution. There have been multiple complaints of people being detained and interrogated by police based on their sexual orientation (but often linked to an instance or type of criminal activity).

3. Are there laws of general application in Ukraine that criminalize any aspect of gay life?

http://www.gay.org.ua/publication/gay_ukraine_2007-e.pdf

- this is an excellent, thorough report on information about and on issues involving the homosexual community in Ukraine, published by the gay rights organization Nash Mir
- legal situation
 - no prosecution of homosexual relations under Criminal Code since 1991 (78)
 - no official recognition of same-sex unions, either as marriage or civil union; homosexual couples do not enjoy same legal privileges as heterosexual couples (78, 84)
 - “Regarding antidiscrimination articles in Constitution of Ukraine (Art. 24), Code of Laws about Labour (Art. 2-1), Criminal Code (Art. 161): the list of the bases of prohibition of unequal treatment of citizens and discrimination do not contain the concept "sexual orientation". However, all these articles have in fact an open list of bases within the category "and other backgrounds". Such a category's presence means that theoretically discrimination on the basis of sexual orientation also is forbidden by the legislation. Contained in the draft of the new Labour Code of Ukraine, which in future should replace Code of Laws about Labour of Ukrainian Soviet Republic, in the list of antidiscrimination grounds in the labour sphere, the words "sexual orientation" have been included. However, experience has shown in the last few years that during considerations of the bill some political forces would like to delete "sexual orientation" from the Code.” (78)
 - “Noteworthy too is the obviously discriminatory position of Art. 6 of the Law of Ukraine "About protection of public morality": it says that "*placing of personals about intimate meetings for remuneration and deviant forms of intimate relations not in specialised mass media is forbidden*". After an adoption of this law in 2003 the printing outlets which previously placed personals from gays and lesbians — have ceased publication” (82)
 - homosexuals' rights are routinely violated in many spheres, as this report shows; there is general mistrust of law enforcement bodies and of the judicial system by the homosexual community (79-84)

4. Is there objective evidence to support that child abuse as related to sexual orientation would form the basis for a well founded fear of persecution?

Child Abuse

a) *Kosmachuk v Canada* [2003] R.P.D.D. No 581 - Denied

"The panel notes that the documentary evidence does indicate that the sexual abuse of children is perhaps the one area of domestic life into which the police and the authorities are likely to intrude." If the claimant did experience the alleged child abuse, such crimes are punishable by the criminal law of Ukraine.

Domestic Abuse

b) *N.M.I. (Re)* [2007] R.P.D.D. No. 70 - Denied

Claim denied for a woman alleging domestic abuse, *inter alia* because state protection is available. In recent years, both the state and private organisations have made efforts to address the problem of domestic violence. There are now both direct state efforts and effective grassroots organisations working to assist victims of domestic abuse.

Sexual Orientation

In all of the IRB cases I found that were more recent than 2001, the claimants were not deemed credible, so the question of whether homosexuals face a well-founded fear of persecution in the Ukraine was not addressed (*Khrystych v. Canada* [2004] R.P.D.D. No. 339 ; *Kravchenko v. Canada* [2004] R.P.D.D. No. 384; *Yakovenko v. Canada* [2004] R.P.D.D. No. 267; *Q.K.T. (Re)* [2003] R.P.D.D. No. 390 ; *M.B.H. (Re)* [2002] C.R.D.D. No. 299). The Federal Court set aside several of these decisions, but did so without addressing the question of country conditions in Ukraine.

I also found a handful of recent (2003-2008) immigration tribunal cases from Australia and the UK on WorldLII, which dismissed refugee claims of Ukrainian homosexuals on grounds that, despite negative public attitudes, the situation of homosexuals was much improved, especially in large cities.

c) *Q.K.K. (Re)* [2001] C.R.D.D. No. 250 - Granted

Claim granted for a lesbian couple *from Russia*. The panel quotes from a 1999 Country Report indicating that homosexuals in Russia face attacks because of their sexual orientation, and do not report crimes to the police because they expect "at best indifference or at worst harrassment."

d) *Q.D.D. (Re)* [2001] C.R.D.D. No. 11 - Denied

Claim denied for a lesbian couple *from Russia*. Although homosexuals in Russia faced persecution up to 1999, homosexuality is now flourishing in Russia. There are now many organisations dedicated to defending homosexuals' human rights and legal status. UNHCR states that it is not aware of recent cases of persecution, and that cases of persecution of homosexuals receive some protection by Russian authorities, though not always.

e) *J.O.S. (Re)* [1999] C.R.D.D. No. 254 - Granted

Claim granted for a homosexual claimant. The claimant has a well-founded fear of persecution. "The documentary evidence indicates that homosexuality in Ukraine was decriminalized only in 1991. The attitude of society continues to be hostile. Homosexuality is still considered a mental illness in Ukraine in the Official Psychiatric Diagnostic Manual. Societal discrimination exists on a very large scale according to the documentary evidence. Gays cannot register as partners, obtain spousal support or adopt children. Society is homophobic and the negative perceptions of gays are prevalent. According to the documentary evidence, most gays in Ukraine remain closeted and are frightened of coming out. They usually do not go to the police if they have problems because of their sexual orientation because they fear being threatened by the police."

f) *G.U.S. (Re)* [1996] C.R.D.D. No 239 - Granted

Claim granted for a homosexual claimant. The claimant has a well founded fear of persecution due to his sexual orientation. Homosexuals in the Ukraine face discrimination and persecution from the population, and are targeted by law enforcement officials. The police, the Ministry of Justice, and other law enforcement officials in Ukraine and Russia maintain surveillance on homosexuals. "Local police in the Ukraine do not intervene on behalf of homosexuals who are threatened or targeted by anti-gay or paramilitary groups or members of organized crime or mafia-like groups."

g) *I.J.S. (Re)* [1996] C.R.D.D. No. 324 - Denied

Claim denied for a homosexual claimant. The claimant's fear of persecution is not well-founded. Although public attitudes towards homosexuals remain hostile, the problems homosexuals face do not amount to persecution. The situation in Russia is somewhat analogous, but more severe. For instance, "[t]here is little evidence that the police in Ukraine engage in abusive conduct towards homosexuals, as has been reported with respect to Russia."

- Application for judicial review dismissed, *Dolinovsky v. Canada* [1999] F.C.J. No. 1784

5. Is state protection in the Ukraine available for persons who fear persecution because of their sexual orientation? Specifically for victims of domestic child abuse?

a) Amnesty International. "Ukraine: Official Persecution of Gay and Lesbian Centre *Nash Mir* (Our World)." 1999.

<<http://www.amnesty.org/en/library/asset/EUR50/006/1999/en/dom-EUR500061999en.html>>

→ Report describes Nash Mir's attempt to obtain official recognition as a public organization. The organization had all of the relevant and necessary documents, but it was believed that they were having difficulties obtaining the recognition on account of the sexual orientation of their members.

b) Hammerberg, Thomas. "Report by the Commissioner for Human Rights on his visit to Ukraine." Council of Europe. 26 September 2007.

http://www.ecoi.net/file_upload/470_1191931588_commdh-2007-15-e.pdf

→ Para. 167 deals with sexual abuse. "Child pornography is a problem in the Ukraine." "Sexual violence against children is only criminalized when the victims are under the age of 16." "...no monitoring systems to keep track of the sexual abuses that take place."

→ Paras. 173-176 deal with LGBT. "Discrimination is present in those spheres that are most important for a normal standard of living, and especially in relation to employment and salary, medical services and social protection. Homosexuals who are employed often experience discrimination in the workplace. At the same time, the most frequent instances of discrimination they experience relate to unequal rights to medical and social services." "Violations of the rights of gay people are most often carried out by law enforcement agents."

c) Nash Mir. "The Situation of Gays and Lesbians in Ukraine."

<<http://www.gay.org.ua/publication/millennium/millennium.htm>>

→ clear and detailed report on the life of LGBT in Ukraine. "We know of just one case in which the police helped protect a gay man. We know of lots of cases when police were not willing to intervene or when they treated homosexuals in an unlawful way, permitting illegal methods of work and unlawfully collecting information about homosexuals."

d) Pink News. "Ukrainian Gay Paper Faces Criminal Charges." 21 March 2008.

<<http://www.pinknews.co.uk/news/articles/2005-7265.html>>

→ Article detailing how the Kiev's public prosecutor is targeting a well-regarded gay newspaper, "Gay.Ua," that has been sold and distributed since 2003. The charges are laid under laws banning the distribution of pornography, while newspaper kiosks across the city openly sell explicit erotic heterosexual magazines.

e) UNHCR. "Ukraine: The situation of homosexuals; availability of support groups and state protection." (last updated: 26/11/08). (accessed: 26/11/08).

<<http://www.unhcr.org/refworld/docid/492ac7c82d.html>>

→ Well-researched and thorough report on the lack of state protection for homosexuals in Ukraine, and general discrimination that exists in the society. Homosexuality has been legal in Ukraine since 1991, and all citizens are guaranteed equal rights and freedoms under Ukraine's Constitution, but there is no specific legislation in place to address discrimination based on sexual orientation. Report includes statistics and quotations from government officials.