Ukraine: Proposed laws discriminate against LGBTI people and violate children’s rights

Amnesty International and Human Rights Watch have today written to the Chair of the Ukrainian parliament, Volodymyr Litvin, to call on parliament to reject two draft laws which would directly contravene Ukraine’s obligations under European and international human rights treaties to protect the right to non-discrimination, including on the ground of sexual orientation, to equality before the law, and to freedom of expression, association and peaceful assembly.

Draft Law No.10290 proposes measures to protect the rights of children, to ensure the “healthy moral, spiritual and psychological development of children, to promote the idea that a family consists of a union between a man and a woman”, and “to overcome the demographic crisis”. It bans the “promotion” of homosexuality, and provides an exhaustive list of activities that are defined as promotion, including: meetings, parades, actions, pickets, demonstrations and other mass gatherings aimed at disseminating positive information about homosexuality. The law supposes that such information may adversely affect the physical and mental health of children. The law also bans any educational activities on homosexuality, or, presumably, the lives of lesbian, gay, bisexual and transgender individuals, and it bans any messages, articles or appeals in the mass media.

Draft Law No. 8711 proposes to ban any production or publication of products promoting homosexuality, the use of media, TV or radio broadcasting for homosexuality “promotion”, the printing or distribution publications “promoting” homosexuality, the import, production or distribution of creative writings, cinematography or video materials “promoting” homosexuality. If adopted, the laws will introduce fines or prison sentences of up to five years.

DISCRIMINATION

If enacted, this legislation would have the effect of discriminating against lesbian, gay and bisexual individuals in their exercise of several human rights, including the rights to freedom of expression, association and assembly. Article 2 of the International Covenant on Civil and Political Rights (ICCPR) and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) require states parties to ensure that everybody can enjoy the rights and freedoms set forth in those treaties “without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status,” as Article 14 of the ECHR puts it. Moreover, the proposed legislation would contravene article 26 of the ICCPR, which provides for equality before the law and equal protection of the law, as well as Protocol 12 to the ECHR, ratified by Ukraine in 2006, which encompasses a general prohibition of discrimination in respect of all legal rights.

Although discrimination on the grounds of sexual orientation is not specifically mentioned in the non-discrimination provisions of the ICCPR and the ECHR, the European Court of Human Rights has interpreted the list of prohibited grounds included in Article 14 of the ECHR as covering sexual orientation.
FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

All persons enjoy the rights to freedom of expression, association, and peaceful assembly, as provided in Articles 19, 21 and 22 of the ICCPR and articles 10 and 11 of the ECHR. The right to freedom of expression includes freedom to hold opinions and to receive and impart information and ideas of all kinds without interference by a public authority and regardless of frontiers.

Any restriction on these rights should be demonstrably proportionate and necessary to achieve a legitimate aim such as the protection of public safety, order, health or morals or the fundamental rights of the others. The European Court of Human Rights and the Human Rights Committee have clarified that the right to freedom of expression guarantees the expression of ideas or thoughts which might offend, shock or disturb some sections of the population (see Handyside v. United Kingdom, judgment of 7 December 1976; Ross v. Canada, Communication No. 736/97).

The restrictions that would be imposed on these rights by these two laws is not necessary to achieve the principal stated purpose of the proposed legislation - to protect children. Nor are these restrictions proportionate, particularly when they are balanced against the right to freedom from discrimination. The other stated purposes of these proposals - to promote particular definitions of “family,” “to overcome the demographic crisis” - also fail the tests of necessity and proportionality.

Instead, by banning all forms of public activity that are "aimed at disseminating positive information about homosexuality which may adversely affect the physical and mental health of children" this legislation would limit the rights of lesbian, gay, bisexual, and transgender individuals to freedom of expression, association and peaceful assembly. By restricting the publication and dissemination of materials related to sexual orientation and gender identity, this bill would severely restrict access to information about health, support networks or social activities for countless young people.

RIGHTS OF THE CHILD

The draft Laws aim at “protecting the rights of children”. Article 3 of the Convention on the Rights of the Child clarifies that children's best interest shall be a primary consideration in all actions concerning them. This principle is intertwined with the right of children to express views in all matters concerning them (article 12).

The Committee on the Rights of the Child has clarified in its General Comment No. 12 that the respect of the best interest of the child cannot be ensured if children are not given the opportunity to express their views in all matters concerning them.

The draft laws appear to be the outcome of stereotypical views on homosexuality rather than the result of a thorough process aimed at seeking the views of children and ensuring their best interest.

The draft laws assume that protecting children from information relating to homosexuality is conducive to the attainment of their healthy morals, spiritual and psychological development. However, having information about homosexuality is not per se detrimental to children, and the principle of best interests of the child does not require that children be shielded from such information. In fact the European Court of Human Rights has affirmed in numerous decisions that the desire to “protect” children from information about homosexuality is not justified by the principle of best interests of the child; instead, such measures are discriminatory.

Moreover, children as well as adults have the right to seek, receive and impart information and ideas of all kinds. This right is enjoyed by everyone, as provided in Article 19 of the ICCPR. This right is also explicitly guaranteed under Article 13 of the Convention on the Rights of the Child, to which Ukraine is a State-party. The Committee on the Rights of the Child has interpreted this to include information about sexuality and sexual behaviour. The Committee has also held that the non-discrimination provision of the Convention on the Rights of the Child includes sexual orientation.

CONCLUSION

If it is to live up to European and international human rights standards, the Ukrainian government must strive to create a society in which diversity is viewed not as a threat, but as a source of enrichment for society as a whole. Therefore, Amnesty International urges the members of the Verkhovna Rada to reject the adoption of Draft Law No. 10290 and Draft Law No. 8711 on the grounds that these laws would restrict the rights of children to seek, receive and impart information and ideas of all kinds and result in discriminatory treatment of lesbian, gay, bisexual and transgender people including by violating their right to freedom of expression, association and peaceful assembly, and to equality before the law.

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AMNESTY INTERNATIONAL
PRESS RELEASE

20 May 2012

Ukraine: First-ever Kyiv pride cancelled in face of ultra-right threat

The Ukrainian authorities should take action to protect the rights of LGBT people and ensure they are able to exercise their human rights without fear of attacks, Amnesty International said today after the first ever pride parade had to be cancelled on Sunday.

Police advised pride organizers to abandon the march just 30 minutes before it was due to start. They claimed 500 ultra-right football hooligans were en route to the rally point with the intention of preventing the march from going ahead.

Two activists were beaten up and tear gassed by a dozen youths in central Kyiv after those already gathered for the march were evacuated with police escort.

“It has been clear from the start that the Kyiv police department did not want this march to go ahead. Their reluctance to commit to the event and to put adequate security measures in place to protect demonstrators left organizers fearing for their safety,” said Max Tucker, Ukraine campaigner at Amnesty International.

A senior Kyiv police official had previously told pride organizers that he was not prepared to put his officers in harm’s way for the Lesbian, Gay and Bisexual and Transgender (LGBT) community.

“The Kyiv authorities and police must work harder to ensure next year pride participants can feel confident they will be protected,” said Max Tucker.

The organization also expressed its deep concern about support expressed on Wednesday by a parliamentary committee for a bill restricting the distribution of and access to information “promoting homosexuality”.

The bill would amend several laws including the law on protection of public morals, the law on print media, the law on television and radio broadcasting, the law on publishing and the Criminal Code.

The provisions, if adopted by the Ukrainian Parliament, would directly discriminate against Lesbian, Gay and Bisexual individuals in the exercise of their right to freedom of expression.

“Passing this bill would fly in the face of Ukraine’s international obligations to protect the right to freedom of expression and prohibit discrimination.”

Amnesty International calls on the Ukrainian parliament to reject the bill and to ensure that Ukraine protects, respects and fulfills the rights of Lesbian, Gay and Bisexual individuals without any discrimination.

For more information or to arrange an interview, please contact Max Tucker on: +380 67 294 1421.
AMNESTY INTERNATIONAL

News release

14 May 2012

Ukraine: Authorities must start to implement police criminality law ahead of Euro 2012

A new law which paves the way for independent investigations into allegations of police violence in Ukraine must be enforced in order to curb widespread police criminality in the country ahead of Euro 2012, Amnesty International said.

Ukrainian prosecutors currently work alongside police officers to solve ordinary crimes, and frequently refuse to initiate criminal proceedings against their colleagues,

But the new Criminal Procedure Code allows for a new investigative body to look into crimes by officials. The code does not make clear exactly what this body will look like, but the provision allows for the creation of an investigative body that is genuinely independent.

“While we welcome the introduction of new safeguards against police torture and ill-treatment, some aspects of the law will not come into force for another five years” said Max Tucker, Amnesty International’s campaigner on Ukraine.

“As things stand, fans visiting Euro 2012 are under threat from a criminal police force. Moving quickly to set up an independent body to investigate officers’ crimes now would be a wake up call to a force accustomed to getting away with illegal behaviour.”

In a related development, a Kiev court on Monday ordered a new investigation into the death of Ihor Indilo, a student killed by a blow to the head while in police custody two years ago.

CCTV footage showed Officer Sergei Prihodko dragging Indilo unconscious into a cell and abandoning him there until he was discovered dead seven hours later.

The following morning Indilo’s parents were told that he had choked to death but when they saw his body they noticed numerous bruises. An autopsy revealed he had died of a head injury and found blood in his stomach, which may have been caused by a blow to the abdomen.

In January this year the two police officers who arrested, interrogated and abandoned him unconscious in a cell walked free after an investigation by the local prosecutor’s office absolved them of responsibility for his death.

Indilo’s case is just one of many documented by Amnesty International which highlight the inadequacy of a system that uses local prosecutors to investigate crimes by police.

“The fact that it has taken two years of intense media coverage and a court decision just to get this investigation opened shows how deeply flawed the current system is”, said Tucker.

“Without an institution that will hold officers accountable Ukrainian police will continue to beat and torture as they please. And in all the cases the media doesn’t hear about, they will get away with it.”
The organization also reiterated an offer made in October last year to work with the government on the design of a new investigative body.

"We have considerable experience working with governments across the globe on designing effective police complaints mechanisms. We would be more than happy to share that knowledge with the Ukrainian authorities." Tucker said.
AMNESTY INTERNATIONAL
PRESS RELEASE

30 April 2012

Ukraine must stop police criminality or Euro 2012 fans risk abuse

The Ukrainian police needs urgent reform ahead of the Euro 2012 football competition, Amnesty International said in the wake of the robbery and severe beating of two men by six officers in Lviv on 21 April.

Lviv will host three matches featuring Germany, Portugal and Denmark during the competition.

With only 38 days to go until Euro 2012 kicks off, Amnesty International wants the Ukrainian government to send a clear message that rights abuses will no longer be tolerated, by publicly committing to the creation of an independent body to investigate complaints against the police.

“The Ukrainian government must take action now to stop widespread police criminality,” said John Dalhuisen, Director for Europe and Central Asia at Amnesty International.

“Failure to do so will encourage them to continue acting as a law unto themselves and put Euro 2012 fans in danger from a force that is out of control.”

Ihor Savchyshyn and Andrei Semenyuk were arrested following a disagreement in a bar and CCTV footage shows the men being robbed by six officers of $2,075.

The police also subjected the men to a brutal assault in which they were punched, kicked, sprayed with tear gas and then handcuffed. The pair were then repeatedly struck with batons as they lay in restraints on the floor.

They were taken to Sykhivskiy police station at 6am and kept in custody without medical care or access to a lawyer for 12 hours before being released and taken by ambulance to a nearby hospital as neither man was able to walk. They were given no explanation for their detention.

Local prosecutors refused to open a criminal case against the officers until the victims’ lawyer gave an interview to a local television channel. Five of the policemen were arrested on 25 April. The other officer admitted himself to hospital the same day, claiming that he had been injured by the two men four days earlier.

“This case is yet another example of how the current system allows criminal behaviour by police officers to go unchecked in Ukraine - the authorities only took action when the media became involved,” said Dalhuisen.

“The country desperately needs a new and robust system for investigating crimes by police.”

In a briefing released today on human rights violations in Ukraine, Ukraine: Euro 2012 jeopardised by criminal police force, Amnesty International documents numerous other cases in Euro 2012 host cities in which police have tortured people in an attempt to extort money, extract a confession, or simply because of the victims’ sexuality or ethnic origin.

“Our government claims to be striving towards European human rights standards, but officials live on a different level and ignore human rights. They think they can do what they like with people,” said Andriy Golod, the lawyer representing Ihor Savchyshyn and Andrei Semenyuk.

During the 2012 UEFA European Football Championship between 8 June and 1 July, 11 matches will be played in four Ukrainian cities, and tens of thousands of football fans will be visiting the country.
See also:
Briefing: Ukraine: EURO 2012 jeopardised by criminal police force
Video: Police Criminality Endemic in Ukraine
Amnesty International’s Ukraine country page
Report: ‘No Evidence of a Crime’: Paying the price for police impunity in Ukraine

See also AI Press Releases and Urgent Actions concerning detained asylum-seekers:

Ukraine: Further information: Detained asylum-seekers stop hunger strike
22 Feb 2012 Urgent Action EUR 50/002/2012

Ukraine must protect detained asylum-seekers attacked by security forces
31 Jan 2012 Press Release

Ukraine: Asylum-seekers detained and ill-treated
31 Jan 2012 Urgent Action EUR 50/001/2012

Amnesty International | Ukraine must release Somali asylum-seekers
19 Jan 2012 Press Release