



Deputy Prime-Minister for European and Euro-Atlantic Integration of Ukraine, *Olha Stefanishyna*
Minister of Internal Affairs of Ukraine, *Arsen Avakov*
Mayor of Mykolaiv, *Syenkevych Oleksandr*
Head of the Main Department of the National Police of Ukraine in the Mykolaiv Oblast, *Shaikhat Serhii*

Brussels, 5 February 2021

Subject: Concerns over the continuous attacks faced by LGBTI organisation LIGA and the lack of effective investigation, prosecution and sanction of perpetrators of hate crimes with bias motivation

Dear Ministers,

Dear Mayor,

Dear Head of the Main Department of the National Police in Mykolaiv Oblast,

As Members of the LGBTI Intergroup in the European Parliament, we write to you with concern over the inadequate response to recent hate crimes against Ukrainian LGBTI citizens and civil society organisations. We believe that the lack of a swift response has created an atmosphere of impunity by perpetrators that cannot but embolden hate groups to commit more attacks.

Civil society organisation 'LIGA' and their members have made us aware of the continuous threats they have faced.¹ On the 18 of January 2021, LIGA received an email containing death threats. The organisation filed a complaint to open a criminal investigation at the department of the National Police in Mykolaiv.

This case follows an earlier one wherein, on the 28th of December 2020, LIGA received a similar anonymous email threatening to bomb and shoot the people residing at LIGA's address in Mykolaiv. This led to the evacuation of the concerned building as a copy of the email was also sent to the National Police department in Mykolaiv. No explosive devices were found. A criminal case was opened under Article 259 of the Criminal Code of Ukraine, which deals with the "*knowingly false reporting of a threat to the safety of citizens, destruction or impairment of property*" and the investigation is currently being handled by the Central Department of the National Police in Mykolaiv and the Cyber Police. The Police did not however recognise a clear bias motivation of this criminal offence, namely its homophobic and/or transphobic nature.

In both cases, the local authorities failed to start a criminal investigation under Article 161 (1) & (2) of the Ukrainian Criminal Code, which deals with "*violations of the equality of citizens*".²

¹ LGBT Association LIGA, Facebook (21 January 2021), accessible at <https://www.facebook.com/Association.LiGA/posts/3906516292705637> (accessed on 27 January 2021).

² Criminal Code of the Republic of Ukraine (1 September 2001), accessible at https://sherloc.unodc.org/cld/uploads/res/document/ukr/2001/criminal-code-of-the-republic-of-ukraine-en.html/Ukraine_Criminal_Code_as_of_2010_EN.pdf.

The recent incidents were not the first hate crimes directed at LIGA. In August 2020, the far-right group ‘Tradition and Order’ attempted attacks towards the organisation.³ In 2017, LGBTI people were attacked during demonstrations.⁴ LIGA had already at the time filed complaints, yet they were not properly investigated by local police.

As members of the European Parliament, we must praise the work of law enforcement bodies in Ukraine such as police forces, which we are aware have worked towards the effective protection of protesters at Pride marches. We appreciate the leadership and political will that has played a role in national Prides in Ukraine, which ultimately contributes to the positive national image of Ukraine as a country invested in equality. We have addressed a letter to authorities before on this topic⁵ and were pleased to hear that our call was heard by authorities and that sufficient police protection was offered to Pride demonstrators in Kharkiv and Zaporizhia. Yet, we find it necessary to raise the issue of the ineffective police investigations which have led the activists and staff at LIGA to increasingly fear for their safety in the lack of an impartial and effective criminal investigation, prosecution and sanction of the perpetrators of the attacks they have faced. This extends to LGBTI citizens in Ukraine, which do not expect prosecution to seriously target the motivation of potential hate crimes.

Accordingly, we must recall the human rights obligations of Ukrainian authorities following the bilateral agreements between Ukraine and the European Union. The 1994 Partnership and Cooperation Agreement “*underlines the importance of democratic values, respect for human rights*”,⁶ and this has been reconfirmed in Article 14 of the 2014 Association Agreement between Ukraine and the European Union: “*Respect for human rights and fundamental freedoms will guide all cooperation on justice, freedom and security*”.⁷

During the February Plenary session of the European Parliament, MEPs will vote on a report on the implementation of the EU Association Agreement with Ukraine. The tabled text for vote “*condemn[s] violent attacks and hate crimes against LGBTI persons and calls on the Ukrainian law enforcement authorities to effectively investigate these attacks*”. Equally, it “*regrets the fact that Article 161 of the Criminal Code still does not provide for the punishment of incitement to hatred or violence on grounds of sexual orientation or gender identity, and that these grounds are neither referenced as aggravating forms of offences nor included in the general provisions on aggravating circumstances under Article 67(1)(3)*” and “*recalls ECRI’s recommendations and calls on Ukraine to amend the Criminal Code accordingly*”.⁸

Therefore, we take this opportunity to urge local authorities to provide the desired legal protection to LGBTI people, knowing that such a protection can only be truly forthcoming with a reform of the Ukrainian Criminal Code, as recommended by the European Commission Against Racism and Intolerance (ECRI). In addition to the bilateral obligations of Ukraine and as a result of Ukraine’s membership of the Council of Europe,

³ LGBT Association LIGA, Facebook (25 August 2020), accessible at <https://www.facebook.com/watch/?v=1402833359919562> (accessed on 27 January 2021),

⁴ ILGA-Europe (2017), *Annual Review 2017*, accessible at <https://www.ilga-europe.org/annualreview/2017>.

⁵ LGBTI Intergroup (11 September 2020), “*MEPs ask the Ukrainian government and police leadership to ensure the protection of LGBTI demonstrators in upcoming Prides in Kharkiv and Zaporizhia*”, accessible at <http://lgbti-ep.eu/2020/09/11/meps-ask-the-ukrainian-government-and-police-leadership-to-ensure-the-protection-of-lgbti-demonstrators-in-upcoming-prides-in-kharkiv-and-zaporizhia/>.

⁶ European Commission (1994), *Partnership and Cooperation Agreement between EU and Ukraine* (14 June 1994), accessible at https://ec.europa.eu/commission/presscorner/detail/en/MEMO_94_38.

⁷ European Commission (2014), *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part* (29 May 2014), accessible at https://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf.

⁸ European Parliament (17 November 2020), *Report on the implementation of the EU Association Agreement with Ukraine*, accessible at https://www.europarl.europa.eu/doceo/document/A-9-2020-0219_EN.html.

we urge the national authorities to fully implement the Recommendation by the Committee of Ministers of the Council of Europe on combatting discrimination on the grounds of sexual orientation and gender identity, which stipulates that “Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator [...]”⁹

We look forward to your response and appreciate in advance your consideration of these issues, which are of the utmost importance for a flourishing civil society space where the fight for equality is protected, and for the effective protection of LGBTI citizens and activists against instances of hate crime.

Yours sincerely,

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⁹ Council of Europe (31 March 2010), *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, accessible at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a.