



I G L H R C

International Gay and Lesbian Human Rights Commission  
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His Excellency, Victor Yuschenko, President of Ukraine  
His Excellency, Olexandr Medvedko, Procurator General of Ukraine  
His Excellency, Yuriy Lutsenko, Minister of Interior  
Her Excellency, Nina Karpacheva, Ombudswoman of Ukraine

March 20, 2008

Your Excellencies,

We are writing to alert you to a case of violation of freedom of expression and discrimination against the lesbian, gay, bisexual, and transgender (LGBT) community, and to ask that the government of Ukraine drop the criminal charges against the staff of Nash Mir Center in Kyiv.

On February 22, 2008 the office of the Public Prosecutor in Kyiv initiated criminal action against the editorial staff of the newspaper *gay.ua* at Nash Mir Center, on the basis of Art. 301 part 3 of the Criminal Code of Ukraine on distribution of pornography. Previously, in December 2007, the National Expert Commission of Ukraine on protection of public morality had ruled that *gay.ua* is pornographic; local courts refused to admit appeals requested by Nash Mir. We have also learned that *gay.ua*, a newspaper by and for the LGBT community, is neither accessible nor intended for a wider readership. In contrast, explicit erotic magazines targeted at heterosexual men are available at newspaper kiosks and the editorial staff of these magazines is not prosecuted for distribution of pornography.

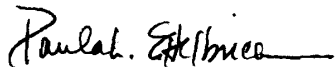
These facts should be regarded not through the prism of morality, but through that of equality and human rights. The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity (Principle 19) highlight the freedom to seek, receive, and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium. The government should ensure that notions such as public morality are not employed to restrict in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities.

The criminal action initiated against the staff of the Nash Mir Center is discriminatory because it targets only the publisher of LGBT news and information, selectively

employing the notion of public morality. The criminal action stands in contrast to the human rights commitments of Ukraine and to the country's opening towards the principles upheld in the rest of Europe, where governments increasingly take action to protect the LGBT community from discrimination.

May we also recall that the jurisprudence of the European Court of Human Rights is clearly indicating that the actions of the Public Prosecutor are in breach of the European Convention for Human Rights and Fundamental Freedoms, to which Ukraine is a signatory. In its decision in *Scherer vs. Switzerland* (14 January 1993), the Court has stated that, "it is of particular relevance whether or not the obscene material at issue was displayed to the general public." The newspaper of Nash Mir is not meant for general distribution, and is only posted in sealed envelopes to a closed list of subscribers. In the Court's opinion, the cases of distribution of 'obscene' or 'explicit' materials does not concern the protection of morals of adult persons in a society in general, as long as "no adult was confronted unintentionally or against his will with the film. Where this is so, there must be particularly compelling reasons justifying the interference at issue." In the case of *Muller vs. Switzerland* (25 May 1988) the Court has clearly stated that article 10 of the European Convention "is applicable not only to 'information' or 'ideas' that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any section of the population."

We call upon the government of Ukraine to drop the criminal actions initiated against the Nash Mir Center and to respect and protect the human rights of all citizens, regardless of sexual orientation and gender identity.



Paula Ettlbrick  
Executive Director  
IGLHRC



Patricia Prendiville  
Executive Director  
ILGA-Europe

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IGLHRC works to secure the full enjoyment of the human rights of all people and communities subject to discrimination or abuse on the basis of sexual orientation or expression, gender identity or expression, and/or HIV status. A US-based nonprofit, nongovernmental organization, IGLHRC effects this mission through advocacy, documentation, coalition building, public education, and technical assistance.

ILGA-Europe is the European Region of the International Lesbian and Gay Association, a nongovernmental umbrella organization which represents over 220 member organizations at the European level. ILGA-Europe works towards a world in which the human rights of all people are respected and everyone can live in equality and free from discrimination on the grounds of sexual orientation, gender identity or expression.