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Racism and xenophobia in Ukraine

Of concern is an increase in hate crimes. The number of racially-motivated murders and physical attacks has risen significantly in recent years. At present there are no effective steps towards overcoming the problems of discrimination, racism and xenophobia.

Up till 2005 the level of xenophobia in Ukraine was relatively low and did not exceed that in other post-totalitarian countries. It was lower than in other Central and East European countries – Bulgaria, Romania, Poland, Hungary, the Czech Republic, Slovakia and the Baltic Republics and considerably lower than in Russia. However in 2005 various informal groups of young people aimed at violence based on racism and national enmity, including “skinheads”, became more active. These militant and aggressive young people who often use Nazi symbols, attacked people who didn’t look Slavonic, for example, people from Asia, Africa, the Middle East, the Caucasus and so forth. Their violence was directed against foreign students, asylum seekers, refugees, immigrants, businesspeople and tourists. Some employees of embassies and UN representative offices, as well as members of their families, were also victims. The US and French embassies put warnings on their sites about such violence.¹

According to information from the Congress of National Communities of Ukraine [CNCU], these attacks began in October 2006 and their number has been rising rapidly. In 2006 CNCU monitoring recorded 16 attacks, two resulting in the death of the victim; in 2007 there were already approximately 90 victims, with five of them killed; while in the first three months of 2008 45 people suffered such attacks with 2 fatalities.² CNCU experts believe that this is only the tip of the iceberg since only those cases which came to public notice with a pronounced racist nature are recorded. In response to an information request from the Kharkiv Human Rights Protection Group, the Ministry of Internal Affairs [MIA] informed that from January to April 2008, 160 crimes were committed against foreign nationals, this including 7 murders. 91 cases were solved, including 6 of the murders. According to the Deputy Minister of Internal Affairs Mykhailo Verbensky, two murders had been racially motivated. During this period the MIA recorded 33 crimes involving threats against the life or health of people from Asia or Africa of which 28 were solved. The President of

¹ European Commission against Racism and Intolerance: Third Report on Ukraine, Strasbourg: CRI(2008)4, 2008, п.117.

² Viacheslav Likhachev, Xenophobia in Ukraine. Material from monitoring, 2007-2008, Kyiv

the African Centre in Ukraine Charles A. St. Jeboia maintains that more than one thousand people suffered during this period, mainly people from Africa, India, China, Pakistan and Iran.³

In Ukraine the most active and aggressive are considered to be the far-right groups from the so-called “White Power – Skinhead Spectrum”, the Ukrainian branch of the worldwide extremist network “Blood and Honour”, and the militarized neo-Nazi sect “World Church of the Creator Ruthenia”, WCOTC). They are united by an ideology of racism and nationalism based on establishing their superiority over other races and nationalities. The most numerous groups of skinheads were seen in Kyiv, Dnipropetrovsk, Zaporizhya, Lviv, Sevastopol, Chernihiv and the Crimea. Whereas in Russia there are tens of thousands within the skinhead movement, according to preliminary figures from the Ministry of Internal Affairs (MIA), in Ukraine there are presently no less than 500 skinheads aged from 14 to 27, in groups of between 20 and 50 people without clear structure or organization.⁴

It was in 2005 that closed festivals of neo-Nazi groups from Ukraine and Russia became regular events in Lviv and Kharkiv. They are organized unofficially by the Ukrainian National Labour Party with overtly racist songs. The organization “Patriot of Ukraine” which in 2007 held a series of torch marches in Kyiv and Kharkiv, using xenophobic and racist slogans, regularly organizes so-called military “training” for its activists at abandoned industrial sites, in forest camps and tourist bases. There are no less than 30 permanent websites of a neo-Nazi or nationalist nature (Radical Ukrainian Nationalism, the real patriots’ site, Nachtigal, Blood & Honour Ukraine and others.⁵

At the same time, MIA statistics show a clear trend upwards in the number of crimes against foreigners. Over the last five years the number of offences where foreign nationals suffered has doubled – from 604 in 2002 to 1178 in 2007. The large majority of crimes were committed against citizens of CIS countries (63.5%), with the number against nationals of other countries therefore 36.4%. The greatest friction is seen in the Crimea, Kyiv and the Odessa, Donetsk, Lviv and Kharkiv regions⁶. Clearly these statistics do not present the total picture of hate crimes. Not all crimes committed with respect to foreign nationals are linked to the person’s nationality, and the statistics also do not include crimes against Ukrainian citizens from different ethnic groups.

The rise in racially-motivated crime forced the authorities to react. In November 2007 the Ministry of Foreign Affairs introduced the position of Special Ambassador on Combating Racism, Xenophobia and Discrimination. The Special Ambassador’s tasks are to work on preventing inter-ethnic and inter-faith conflict and coordinating measures and action in this area with other ministries and departments. A separate section has been created in the Security Service [SBU] on identifying and preventing action aimed at inciting ethnic or national enmity. The MIA drew up an “MIA Action Plan on countering racism for the period up till 2009”.⁷ Since the beginning of 2008 special criminal investigation units for fighting racially-motivated violent crimes have been functioning in Kyiv, Odessa, Lviv and Luhansk. The first court sentences under Article 161 of the Criminal Code (violation of equality on the basis of race, ethnic origin or attitude to religion). Whereas up till 2007 only one person had been convicted under that article (the organizer of a pogrom in a Kyiv Synagogue after a football match in April 2002), in the first four months of 2008 four sentences were handed down under this article for assaults on foreigners.

On the other hand there is no information about the scale of application of Article 67 § 1.3 of the Criminal Code which envisages as an aggravating circumstance “committing a crime on the basis of racial, national or religious enmity or discord.”

Overall from 2005-2007 only seven criminal investigations were initiated under Article 161. One of the reasons is that the victims of racist attacks do not report such attacks as they don’t expect to

³<http://www.rbc.ua/rus/newsline/2008/04/02/340999.shtml>; <http://www.ridnews.com/content/view/809/77/>

⁴ Oleh Martynenko: Racism and xenophobia in Ukraine: new challenges in human rights protection <http://www.khpg.org.ua/en/index.php?id=1212543971>

⁵ ibid

⁶ ibid

⁷ <http://www.mvs.gov.ua/mvs/control/main/uk/publish/article/83652>.

receive real protection. Another is the unsuccessful, in our view, wording of the crime which in many cases seriously complicates proving guilt. Article 161 punishes for “deliberate actions aimed at inciting ethnic, racial or religious enmity and hatred, at denigrating a person’s ethnic honour and dignity or causing offence with regard to religious beliefs, as well as direct or indirect restrictions of rights or imposition of direct or indirect privileges on the basis of race, skin colour, political, religious or other convictions, gender, ethnic or social origin, property, place of residence, or on the basis of language or other grounds”.

It is firstly extremely difficult to prove intent to commit these acts, especially when dealing with publications of a xenophobic nature. In the second place, one cannot use this article to prosecute in cases which unfortunately arise quite frequently when the denigration or insult to ethnic honour and dignity is not against a specific person, but against an ethnic group or people as a whole. Criminologists are divided with respect to the possibility of applying Article 161 in such cases. For example, one theoretical-practical commentary to the Criminal Code states that “in committing a crime offending the feelings of an individual in connection with his nationality or religious convictions, the culprit plans in this way to denigrate the nation as a whole. Therefore the manifestation of only personal animosity to a representative of another nation (race) – the reluctance to establish close relations, accept the rites of worship of another religion and become friendly – does not establish the elements of the crime foreseen in Article 161.”⁸ In another commentary we read an opposite view: “denigration of ethnic honour and dignity of citizens takes place if there is deliberate offence to a specific individual in connection with their belonging to one or other nation.”⁹

In our view, it is not possible to apply Article 161 to an ethnic group or nation since the article refers to “deliberate actions aimed at... denigrating ethnic honour and dignity, or causing offence” specifically to individual citizens. Furthermore, the very title is about citizens, and the article is in Section V of the Special Part of the Criminal Code “Crimes against the electoral, labour and other personal human rights and civil liberties”. The present version of the Code does not allow at all for attacks on the honour and dignity of ethnic groups, races, peoples and ethnic groups. Articles therefore need to be added to the Code with the corresponding elements of crimes, not forgetting however the need for proportionality with respect to intrusion into freedom of expression.

The fact that foreign nationals are not sure that complaints about unlawful actions against them will be thoroughly examined and recognized is linked with discriminatory attitudes towards them by law enforcement officers. There is, for example, the problem of ethnic profiling, when police officers check identification papers of foreigners and Ukrainian citizens with a non-Slavonic appearance. This is what a Kharkiv resident, Viacheslav Manukian, wrote in a statement to the Kharkiv Human Rights Protection Group:

I am compelled to turn to you over the fact that for a long time the Kharkiv police have been flagrantly violating my human and civil rights as set down in the Constitution, laws, as well as in international legal documents on human rights.

I am regularly stopped for no reason by police officers in city streets and particularly in the metro. Since there are no grounds, reasons or causes for systematically “checking my identity”, I have every justification for assuming that this behaviour is linked to my ethnic origin and my appearance. Such checks occur every month, sometimes twice or even three times a month. They have not once ended in anything but a formal excuse that some measures were being carried out. In response to one of my complaints I was told directly in writing that I had been stopped because my characteristic appearance elicits the need in police officers to check the “legality of my being on Ukrainian territory and my citizenship”. Despite my numerous complaints at this racist behaviour by the police, I continue to be stopped in the metro and on the street.

⁸ Theoretical-practical commentary to the Criminal Code. – 4th edition, revised and supplemented // Y.V. Aleksandrov, P.P. Andrushko, V.I. Antipov and others. Kyiv: ACK, 2005, p. 300.

⁹ Theoretical-practical commentary to the Ukrainian Criminal Code. In three volumes. Volume 2: Special Part (Articles 109-254) / P.P. Andrushko, T.M. Arsenyuk, O.F. Bantyshev and others – K.: Forum, 2005, p. 164.

Such checks based on nothing but racial prejudice and possibly on illegal orders and instructions are, as far as I have observed, inflicted specifically on people of “foreign appearance”, although the Ukrainian nation includes people of all nationalities.

I would ask you to pay attention to the practice of ethnic profiling – unlawful checking of documents and stopping people based solely on ethnic grounds.

Mr Manukian filed a civil law suit against the law enforcement agencies in the Kharkiv District Administrative Court. At first instance level the claim was rejected. The appeal proceedings are continuing.

Foreign nationals have also contacted KHPG by telephone complaining that the police regularly demand money, “gifts”, etc, from them. These complaints have been anonymous since the victims refused to make the necessary official statements for fear of reprisals. KHPG carried out an anonymous questionnaire among foreign students studying in Kharkiv, the results of which were staggering. Out of 68 people asked, only two had never been stopped by police officers, and 49 had been detained even when they had documents with them. 34 foreign students said that they had only freed themselves from the “close attention” of the police officers by paying money (different amounts were named, from 20 UAH to 60 dollars), buying beer or coffer, “giving them” certain items, etc. That means that 50% of the respondents attested to police officers having behaved in a corrupt fashion towards them. These are shocking figures which the law enforcement agencies should certainly think about and take appropriate measures to stop such shameful practice.

It is typical that the vast majority of those surveyed had not even approached any authorities for help since they believed that they wouldn’t get any. And they have all grounds for thinking so since in the case of the 20 students who did complain about being unlawfully detained to their embassy, to the dean of their institute or to the police indeed received no assistance.¹⁰

If discrimination against the Roma, immigrants from the Caucuses, Asia and Africa increased significantly in 2007, anti-Semitism actually decreased, and this was despite the political crisis and parliamentary elections which have always marked rises in anti-Semitism. It should be noted that there were also attempts by some political technologists during the September early elections to play the anti-Semitism card, using Jewish roots in attempts to discredit some leaders in the election campaign, for example, Yulia Tymoshenko and Yury Lutsenko. However circulation of several pieces of anti-Semitic material did not influence the electorate’s choice. And the single political force which took part in the elections with a xenophobic principle of ethnic proportional representation in its programme, the all-Ukrainian association “Svoboda” received 0.75% of the overall number of votes cast.

The reasons for the decrease in public demonstrations of anti-Semitism in 2007 are, in our view, linked with the gradual reduction in the anti-Semitic activities of the Inter-regional Academy of Personnel Management (MAUP). This gives grounds for describing the character of public manifestations of anti-Semitism in Ukraine as artificial.

Over recent years MAUP was the single prominent centre for the publication of anti-Semitic material. Whereas in 2006 676 anti-Semitic publications were recorded, in 2007 the figure was 542 with the drop become sharper: 183 publications in the first quarter; 137 in the second; 147 in the third (the period of the election campaign) and 75 in the fourth. This reduction continued through the first months of 2007. One has the impression that criticism of MAUP by Ukrainian society and the government (activation of opposition to anti-Semitism by the government became more noticeable from autumn 2007), attempts by the Ministry of Education to strip MAUP of its licence, the closing of several branches have forced MAUP to stem their campaign of anti-Semitism.

It should also be noted that the rise in the index of social distance according to the Bogardus scale which has since 1994 been carried out each year by the Academy of Sciences’ Institute of Sociology affected Jews to a much lower degree than members of other ethnic minorities and

¹⁰ Georgy Kobzar: “Many people think that this is normal” <http://www.khpg.org/index.php?id=1215648060>

groups living in Ukraine. In relation to Jews this index rose from 3.63 in 1994 to 4.6 in 2007. The level of social distance of Ukrainians with regard to Jews is lower than that towards Romanians, Hungarians, Poles and members of other European communities, not to mention the traditional “leaders” – Roma, people from Africa, Asia and the Caucuses. We should also point out that the increase in racially-motivated violence observed against people from Africa, Asia and the Caucuses did not affect Jews.

As before, the most discriminated against ethnic minority remains the Roma. “The programme for the social and spiritual revival of Roma, created in 2002 and completed in 2006, has remained virtually unimplemented, in particular because of inadequate financing (100 thousand UAH). This programme envisaged opening special classes for Roma children in kindergartens and elementary grades so that the children could catch up with other children. However many of the aims have not been achieved. According to Roma organizations, only 68% of Roma people are literate and only 2% have higher education. The main reason for this is poverty and the lack of effective programmes aimed at changing stereotypes about Roma people. Parents of other children don’t want their children to study together with Roma children, particularly because tuberculosis is much more widespread among Roma than among other ethnic communities. A lot of Roma do not have access to running water, electricity, roads, means of transport and communication, and one in ten Roma is living in unsanitary conditions. One half the Roma are able to eat each day. Through lack of money access to medical care is considerably worse than for representatives of other communities. Unemployment remains a major problem. According to Roma organizations on 38% of Roma people are working, and only 28% work fulltime. The gravity and link between the problems faced by Roma in areas such as education, employment, housing and healthcare require in-depth research and a concerted effort by all relevant governmental bodies in cooperation with Roma organisations in order to adequately resolve them.”¹¹

Recommendations

1. Draw up and pass a basic anti-discrimination law which should contain all necessary definitions, a list of prohibited grounds for discrimination, as well as mechanisms for protecting against such discrimination. It should also increase the State’s responsibility for combating discrimination and introduce a special anti-discrimination body.
2. Prepare a Draft law on amendments to the Law «On national minorities in Ukraine», and undertake an expert analysis of the Draft to ensure its compliance with OSCE, Council of Europe and European Union standards.
3. Draw up a Draft law on amendments to the Law on languages and review the Law on ratification of the European Charter on regional languages and language minorities.
4. Prepare Draft laws «On national-cultural autonomy», on amendments to the Civil Code and other laws, as well as special programmes aimed at developing the principle of non-discrimination, and allow special quotas for discriminated ethnic groups (the Roma, Crimean Tatars, Karaims, Krymchaks, etc.).
5. Prepare a special electoral law for the Autonomous Republic of the Crimea.
6. Carry out an inventory of land in the Crimea to help resolve the problem of land allocations to representatives of formerly deported peoples.
7. Provide better definition of the elements of the crime under Article 161 of the Criminal Code; introduce norms stipulating civil and administrative liability for actions directed at discriminating against individuals and groups of society.
8. Broaden the force of anti-discrimination norms to cover foreign nationals legally abiding in Ukraine
9. Improve the procedure for the gathering of information by the law enforcement agencies and the courts regarding hate crimes. This includes statistics on the use of Article 67 § 1.3 of the Criminal Code.

¹¹ European Commission against Racism and Intolerance: Third Report on Ukraine, Strasbourg: CRI(2008)4, 2008, 65-83.

10. The MIA should carry out generalization of investigative operations and other action on prevention and investigation of crime in order to eliminate discrimination on the basis of ethnic origin or other factors.

11. Develop a policy of zero tolerance for manifestations of racism and xenophobia, including drawing up and implementing educational and cultural campaigns aimed at building tolerance towards people of other nationalities.