

Country Visit: Ukraine
Report of the Personal Representatives of the OSCE Chair-in-Office
on Tolerance and Non-Discrimination Issues
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Article 161

The Ukrainian criminal code includes provisions to address hate crimes. In particular, Article 161 provides for enhanced punishment where crimes can be demonstrated to be motivated by ethnic or religious hatred. However, in order to be imposed the prosecutor must demonstrate that there was a premeditated intent to commit the hate crime. This is a very high bar to cross, and as a result very few cases are prosecuted. Ministry of Interior officials report that until a suspect is apprehended, questioned and the motivation for the crime ascertained, it is not even possible to classify the incident as a hate crime. There have been so far unsuccessful efforts to amend this law in Parliament and thereby bring it into conformity with similar hate crime provisions elsewhere in Europe. Authorities report to us that there are efforts currently underway to rewrite much of the civil and criminal code laws—including Article 161—which are a legacy of the Soviet constitution. An additional restriction of the law is that it applies only to crimes against Ukrainian citizens. Hate crimes directed at foreigners—who might naturally be more frequent targets—are the responsibility of the Ministry of Internal Affairs.

As if to underscore the overall problem, we were told that so far in 2011 there has been only one case where Article 161 was applied and where it led to a court prosecution and conviction.

Muslims in Ukraine

A primary focus of concern is the situation facing Crimean Tartars. Its roots are historical in nature, with the forced deportation of over a million Tartars beginning in the late 19th century. Various accounts estimate between 38 and 46 percent of the population died in these genocidal expulsions. While the Ukrainian government has facilitated their return to their native area, they face many problems. High real estate costs make it difficult for them to find adequate housing. They are significantly underrepresented in public sector employment. They maintain that regional authorities promote a “Christianization” policy, which translates into schools, hospitals and other social institutions providing churches but no mosques. Schools

promote the celebration of Christian holidays. Halal food is unavailable even in schools with a majority of Muslim students. Some Crimean Cossack groups have erected “worship crosses” in predominately Muslim areas, which naturally leads to tensions. Anti-Tartar expressions can be found on the Internet and painted on city walls.

Muslim leaders believe that the majority of the Ukrainian population is tolerant. However, they are concerned that the media portrays negative images of Muslims and ties them to Islamic extremism. According to their monitoring, 30 percent of all press articles can be classified as negative, with 26 percent as positive and 40 percent as neutral. They note that few in Ukraine realize that Muslim settlements can be dated to the 7th and 8th centuries and they consider themselves as a part of the local population.

A View from the Jewish Community

Anti-Semitic publications are easily found in bookstores in Kyiv and elsewhere. Anti-Semitic and racist websites, such as All Ukrainian Forum, are a regular source of hate speech. Government responses to these problems are considered inadequate. In response to formal requests by the Jewish Community, police state they lack the computer technology necessary to deal with hate on the Internet. While the Ministry of Interior has a department focused on the press and media, it has not been able to deter the presence of anti-Semitic published material.

Although the community does not believe there are numerous violent incidents of anti-Semitism in Ukraine, it maintains that the government is seriously deficient in its reporting. It noted that in 2010 there were only three such cases that were officially designated as hate crimes. They believe that authorities are far too quick to label these events as “hooliganism”—a view that is echoed by other minority communities.

The Jewish Community is troubled by the inability of Ukrainians to recognize the Ukrainian role in the Holocaust, something that they consider to be a form of “Holocaust denial.” This has in turn led to a number of educational initiatives, but they believe much more should be done.

A site of special focus in Ukraine is the town of Uman, which annually draws thousands of Chasidic pilgrims primarily from Israel. As there have been violent incidents in the past, Ukrainian authorities now work with police from Israel to help insure the safety of the visitors. Despite the fact that local authorities appreciate the economic benefits that these visitors bring, some nationalist forces from outside see the presence of these Chasidim as a useful tool in fomenting group hatred. In particular, the nationalist party Svoboda has honed its own anti-Semitic agenda by organizing marches in Uman when the foreign pilgrims are present. During this past year authorities denied the party permission to march, but the demonstration took place nonetheless. Community representatives are nervous that the party’s popularity is increasing to the point where it may secure enough votes to enter the national parliament.

Echoing what was said at other meetings, they also explain the new procedural difficulties that are present as a result of last year's administrative reform. Until then there was a special government committee on religious and minority affairs, which—even if it was not always effective—provided a single, central address to discuss problems. Its mandate has now been transferred and divided between departments in the Ministries of Culture and Interior. They explained (and we also experienced in our own official meetings) that it is not always easy to know who is really responsible for what.

Civil Society

Key human rights organizations established a network known as the Diversity Initiative in 2007 in order to address concerns in a coordinated way, and it now includes the participation of over 65 organizations. There are three main areas of focus—working with the government to promote intercultural dialogue, analyzing legislation and promoting good legal practices to address discrimination and biased motivated crimes, and advocacy efforts to engage the broader population.

One problem of note is the presence in Ukraine of immigrants and asylum seekers from over forty countries. According to NGO representatives only a small percentage of asylum seekers (10 percent) are granted refugee status despite their belief that many more should warrant it. The presence of immigrants has led to a growing xenophobia in society, inflammatory language in public discourse and racially motivated attacks, some with lethal results.

A national survey revealed that fifteen percent of the population personally experienced ethnic discrimination. However, there does not appear to be any systematic process or clearly targeted groups in this discrimination. Expressions of racism in football games are also growing, which is a particularly alarming phenomenon as Ukraine looks forward to co-host with Poland the European Football Championships in 2012.

NGOs also report that most hate motivated crimes are not reported. The reasons for this, they say, will vary. Some victims are fearful of negative consequences in reporting while others believe the police are ineffective in responding to these reports. One civil society initiative seeks to publicize cases and offer assistance to victims in pressing their claims. Advocates say that the current investigative process carried out by police officials regularly ignores any examination of the motives for these crimes. Lacking such evidence in turn makes it difficult for the public prosecutor to classify a case as being hate motivated. They reported that a small unit in the Ministry of Internal Affairs responsible for investigating crimes by or against foreigners also worked on hate crimes. But this group along with a department on human rights monitoring were dismantled as part of an administrative reform process.

Ministry of Culture

As noted, with the Presidential decision to impose administrative reorganization and allocation of resources, the work of the now disbanded Committee for Ethnic Minorities has been divided among several ministries. Responsibility for religious issues and the needs of national minorities rest with the Ministry of Culture, and thus they have a role in addressing the problems of xenophobia and discrimination. The Ministry has plans to establish a special department focused on religious issues. In the meantime it also plays host to a council of ethnic minorities, which among other activities engages in a public awareness campaign and supports the publication of six newspapers in the languages of national minorities.

The Ministry has formed a council of academic experts which assists in the development of ministry programs. Ministry officials say they are able to receive petitions from individuals and organizations, can review the content of publications that may contain hate language, and will offer opinions on criminal cases. However, by its own admission the Ministry reports to having not a single petition of an officially classified hate crime. By way of example, the monitoring data of 2010 identified only three cases of anti-Semitism in the entire country, and all were ultimately classified as “hooliganism.”

More than a few questions raised during this meeting were left unanswered, pending the completion of a concept paper on national minorities currently underway.

Ministry of Justice

Officials reported that the Ministry is now developing an anti-discrimination strategy, which should alleviate some of the problems with the existing law. Article 22 of the Constitution is written quite broadly and taken together with other laws prohibits discrimination of nearly any sort. The problem is that the law is applied only selectively; hence the need for a new approach.

Collection of data, a key commitment of OSCE Participating States, has also been lacking. Here, too, officials report that once the new strategy has been drafted they anticipate the collection of data following established best practices by other OSCE members. However, in the meantime the Ministry looks at problems of discrimination largely on an ad hoc basis.

Discussion of Roma Issues

Ministry of Justice officials reacted harshly to concerns of Roma as presented by the OSCE Personal Representatives after a meeting with several Roma NGOs. If they were facing discrimination in shops and public accommodations, they said they should familiarize themselves with the law. At the same time they suggested that shopkeepers’ fears that they were intent on stealing were well-founded. Their “nomadic way of life and illegal camps” are well-known according to these officials, and they accused Roma leaders of bringing their complaints to international observers rather than to local authorities

Ministry of Interior and State Security

The current process of administrative review also limited the discussion with these officials. They reported that the criminal codes will be comprehensively reviewed and amended, including Article 161, discussed above.

The Ministry had earlier worked with ODIHR in the development of a Memorandum that would provide participation in police training for Ukrainian officers. According to ODIHR the draft text was virtually finished, but Ukrainian authorities did not sign it. Ministry officials reported to us that the new text now received from ODIHR differs substantially from the earlier draft, and that is the reason for the lack of progress in this area.

Officials were also dismissive of Roma concerns, reporting that they were “creating problems for themselves” with their involvement in criminal activities and the drug trade. More encouraging was the attitude about two other complaints of Roma NGOs: passports and birth certificates, at times difficult to obtain for Roma, and faulty statistics which underestimate the number of Roma in Ukraine. These problems, we were assured, have been recognized and are actively being addressed by authorities.

One particular problem, the authorities claimed, is to identify representative Roma partners for a dialogue. There are, according to officials, too many competing Roma NGOs and some represent the point of view of a tiny minority of intellectuals rather than of the larger Roma community.

With regard to Crimean Tartars, our interlocutors maintained that the root of the problem was the unresolved issue of property restitution, which would have to be addressed at a high level.

Parliamentary Committee on Human Rights

Parliament is waiting for new government proposals in the review and amendment of the criminal code. The Parliament has on several occasions in the past considered changes in Article 161, but—despite support from this Committee—rejected them. Leaders today believe that changes initiated by the government will fare better.

We are told that fears in the Jewish community of the growth of the nationalist Svoboda Party have merit. They say the “solution” in this case rests in raising the threshold for participation in the Parliament from three to five percent.

Office of the Ombudsman

Although the Ombudsman has a broad mandate, the office maintains that combating racism and xenophobia is a priority. The office will receive complaints in writing, via a 24 hour hot line, or in person. However, we are told that complaints regarding racism represent only 0.01 percent. Further, it is reported that not a single complaint of anti-Semitism was received in the last three years. With regard to the question of Roma treatment and similar lack of petitions,

they report that they try to “preempt” complaints. By way of explanation they say they maintain awareness of these groups’ concerns by subscribing to Jewish and Roma newspapers.

Ministry of Education

Ministry officials report that their work is carried out under European and other international standards and is held in high regard by, among others, the High Commissioner on National Minorities. School curricula include fundamental documents on human rights. History courses also cover the Holocaust. There is no separate religious studies class in Ukrainian schools, but knowledge of Christianity and other religions is integrated in other subjects. Optional courses include Christian ethics and (in the Crimea area) the basics of Muslim ethics. Ukraine does make use of ODIHR prepared materials on combating anti-Semitism, although the NGO that has developed the materials with ODIHR reports that resources are needed in order to print more copies of the study guides.

Recommendations

There are essential difficulties in offering coherent and comprehensive recommendations since the former centralized committee dealing with these issues has been disbanded and new mechanisms have yet to be put in place. Considering that Ukraine will assume the Chairmanship of the OSCE in 2013, it should make every effort to finalize and adopt the appropriate measures to address these concerns in the coming year.

- It is evident that proper monitoring and data collection of hate-motivated crimes are seriously deficient and must be reviewed and revised.
- This has been hampered by the very restrictive definition of hate motivated crimes in the current criminal code. A new and more appropriate definition must be adopted as part of the current legal revisions now being devised, and the government can find examples from other states’ legal codes.
- Police and prosecutors should receive proper training to recognize hate crimes. To this end the government should conclude discussions and sign an agreement with ODIHR for such training.
- The growing problem of hate on the Internet is a serious matter in many countries, and Ukraine is no exception where it is a particular source for spreading anti-Semitism and also for fomenting negative views of Muslims. Police and other authorities should be provided with the necessary equipment and training to monitor this hatred, to respond to complaints and to respond effectively.
- The special difficulties facing the Roma population have been identified as priority of OSCE Participating States. Yet, some Ukrainian officials seem to be callous and dismissive of these problems and inclined to “blame the victims.” This must be addressed.

- While the Office of the Ombudsman has established a respected national profile, it appears to fall short as a vehicle for receiving and addressing complaints of racism, anti-Semitism and intolerance. It should review its current procedures for publicizing its willingness to receive these complaints and its methods of dealing with them once they are received.
- Ukraine has the benefit of spirited and effective civil society organizations committed to addressing the problems of intolerance. As the country undertakes a significant comprehensive review of how it must deal with these problems, it should engage and involve these groups in the process.

List of participants in meetings with the Personal Representatives

Meetings with representatives of civil society

- Zola Kondur (Roma Women Fund “Chirikli”)
- Valentina Zolotorenko (Roma’ Kiev Community)
- Darya Alekseeva (ERRC Budapest)
- Elena Fudor (Cherkassy Roma NGO)
- Dr. Ismail Kady (ALRAID All-Ukrainian Association of Social Organizations, President)
- Suzana Isliamova (Women Social Organization MARYAM, Vice-Chairman)
- Ali Mohammad Taha (ALRAID, Crimean Branch Chairman)
- Said Ismagilov (Religious Administration of Muslims of Ukraine UMMA, Mufti, Shariah issues expert)
- Wael Al-Alami (“Together with Law” Human Rights Organization, Vice President)
- Hryhoriy Hryshko (ALRAID Information Analytic Center, journalist)
- Olha Fryndak (ALRAID, Manager)
- Oleg Guzik (ALRAID, Head of Information Desk)
- Bassil Mareei (ALRAID, Deputy President)
- Ilyas Gimadullin (Religious Administration of Muslims of Ukraine UMMA, Deputy Chairman)
- Muslim Dervishev (Crimea Youth Organization “Emel”, Chairman)
- Seyran Arifov (ALRAID, Deputy Chairman of Crimean Branch)
- Eugeniy Glushenko (Muslim Religious Community “Milost” in Kharkov, Deputy Chairman)
- Adam Zeitullaev (Muslim Religious Community of Odessa, Deputy Chairman)
- Rustam Husnutdinov (Muslim Religious Community “Duslyk”, Chairman, Imam)
- Dr. Oleg Martynenko (Association of Ukrainian monitors on Human Rights conduct in Law Enforcement, Head of Board)
- Vadim Pivovarov (Kharkov Human Rights Protection Group, Executive Director).
- Irina Fedorovych (“Social Action” Center – “No Borders”, Project Coordinator)
- Alena Bondarenko (“Social Action” Center – “No Borders”, Project Assistant)
- Eduard Dolinsky (Ukrainian Jewish Committee)
- Arkadiy Monastyrsky (Jewish Foundation of Ukraine, Chair of the Board)
- Dr. Anatoliy Podolskyi (Ukrainian Center for Holocaust Studies, Director)

Meeting with the “Diversity Initiative” Network

- George Ebong (Nigerian Community Kiev)
- Olena Rodionenko (American Bar Association, Rule of Law Initiative)
- Igor Kotzar (Kiev Evreisky)
- Eleonora Croisman (Ukrainian Independent Council of Jewish Women)
- Aleksandr Tokarev (Center for protection of Jewish civil rights, Director)
- Aleksandr Naiman (Antifascist Committee of Ukraine)
- Aleksey Shestakovskij (Social discrimination, Manager)

International Organizations

- Dmitriy Pletchko (UNHCR)
- Helene Fors (IOM Mission in Ukraine, Deputy Chief)
- Mark Hanbury (IOM Mission in Ukraine)
- Andrei Daneliuk (IOM Mission in Ukraine)

Ministry of Culture

- Olga Darybogova (Ministry of Culture, International Relations Department Director)
- Ilya Levitas (President of Jewish Council in Ukraine)
- Lubov Zubko (Ministry of Culture, Head of Division)
- Vladimir Lubchik (Ministry of Culture, State-Confessional Relations Department Director)
- Elena Gerednichenko (Ministry of Culture, Press Secretary)

Ministry of Justice

- Irina Chipenko (Deputy Head of Directorate of Constitutional, Administrative and Social Legislation, Head of Department of Constitutional and Administrative Legislation)
- Sergei Yuriev (Head of Division on Human Rights)
- Mykola Klyzhka (Division of Law Drafting on Issues of Constitutional Legislation and State Building, Chief Specialist)
- Lidiya Zhykovina (Head of Division on Humanitarian Legislation)

Ministry of Foreign Affairs

- Amb. Serhiy Borovyk (Ministry of Foreign Affairs, Ambassador-at-Large)
- Volodymyr Yatsenkivskiy (Ministry of Foreign Affairs, Director of the Department for Culture and Humanitarian Cooperation)
- Anna Gdanskaya (Ministry of Foreign Affairs)

Ministry of Interior and State Security Service

- Mykola Kalashnyk (Security Service of Ukraine, Directorate for the Protection of National Statehood, Deputy Director)
- Volodymyr Hryniak (Ministry of Internal Affairs, Deputy Head of the Directorate of the Protection of Civil Order)
- Andrei Bogdan (Ministry of Internal Affairs, Main Officer of the Criminal Investigation Department)
- Vadim Yarmenko (Ministry of Internal Affairs, Unit of Human Rights Monitoring within Law Enforcement, Chief Specialist)

Ministry of Education and Science, Youth and Sport

- Andrei Bozhkov (Head of the Department of International Cooperation)
- E. Eftushenko (Department of secondary and preschool education, Chief Specialist)
- S.Hrapatiy (Department of higher education, Head of unit)

Verkhovna Rada Committee on Human Rights, National Minorities and Interethnic Relations

- Eduard Pavlenko (Chairman of the Subcommittee on Human Rights)
- Aleksandr Bytcko (Expert of the Subcommittee)

Parliament Commissioner for Human Rights (Ombudsman Office)

- Volodymyr Yatsenko (Parliament Commissioner for Human Rights)
- Tatyana Pilinenko (Parliament Commissioner Office, Adviser)
- Dmitriy Podoyma (International Law Unit, Officer)
- Anton Kolesnikov (Analytical Unit, Chief Consultant)
- Sergey Trusov (International Law Unit, Chief Officer)

OSCE/ODIHR

- Rosita Soryta (Adviser Chairmanship Support)
- Timur Sultangozhin (Associate Program Officer, TND)