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against Racism and Intolerance

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# **ECRI REPORT ON UKRAINE**

**(fifth monitoring cycle)**

Adopted on 20 June 2017

Published on 19 September 2017

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 23 March 2017; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's fourth report on Ukraine on 9 December 2011, progress has been made in a number of fields.**

The Law on Prevention and Combating Discrimination was enacted in 2012 and is largely in line with ECRI's General Policy Recommendation No. 7. Provisions prohibiting discrimination on the basis of sexual orientation and gender identity in the workplace were introduced into the Labour Code in 2015. Powers to prevent and combat discrimination have been granted to the Parliamentary Commissioner for Human Rights.

A Contact Point on Hate Crime has been appointed in the National Police in Kyiv and special police officers at the regional level to follow up on hate crime incidents. The police crime report form now includes a checkbox to reflect the victim's perception of hate as a motive. Posters have been produced to encourage reporting of hate crime.

The National Human Rights Strategy was approved in 2015; equality and non-discrimination feature among its six principles.

The Strategy for the Protection and Integration of the Roma Ethnic Minority in Ukraine up to 2020 was adopted in 2013, along with a plan of action. Steps have been taken in employment to inform Roma about job openings, vocational training and starting a business. Plots of land have been allocated to Roma for farming, gardening and construction of housing.

There is a high degree of solidarity towards internally displaced persons (IDPs) in Ukrainian society and most were welcomed with understanding and support. A Comprehensive National Programme for the Support, Social Adaptation and Reintegration of IDPs was adopted in 2015.

**ECRI welcomes these positive developments in Ukraine. However, despite the progress achieved, some issues give rise to concern.**

There is no punishment in the Criminal Code of incitement to hatred motivated by homo/transphobia and the Law on Prevention and Combating Discrimination does not mention the grounds of sexual orientation or gender identity. The specific provisions on racially-motivated hate crime (hate speech and hate-motivated violence) are rarely applied and with a low conviction rate.

Roma are the most frequent targets of racist violence. In 2014 and 2015 there was an increase in serious violence against LGBT persons, in some cases with the use of weapons and explosives. Racist violence committed by police continues to be reported as well as failure by police to intervene to stop racist or homophobic attacks.

The Strategy for the Protection and Integration of the Roma Ethnic Minority in Ukraine up to 2020 has no budget and remains largely unimplemented. Lack of personal identity documents continues to be a problem for many Roma. Roma children experience numerous problems in education, including segregation, lack of access to preschool, high dropout rates and bullying.

Refugees face severe challenges in everyday life and obstacles to local integration. They do not receive social welfare benefits and have no access to social housing or Ukrainian language courses.

IDPs encounter difficulties with residence registration, which hampers access to rights, as well as housing and employment.

**In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.<sup>1</sup>**

Sexual orientation and gender identity should be specifically included as grounds in Article 161(1) and (2) of the Criminal Code as well as in all the aggravated forms of offences and the general provisions on aggravating circumstances under Article 67(1)(3).<sup>\*</sup> Sexual orientation and gender identity should be explicitly included as grounds in the Law on Principles of Prevention and Combating Discrimination in Ukraine.

The Parliamentary Commissioner for Human Rights should be granted investigation powers in order to combat racism and racial discrimination effectively.

A system of collection of statistical data in all areas relating to Roma integration, including a gender dimension, should be established. Court fees should be waived in cases of Roma seeking to prove their identity for the purpose of obtaining personal identification documents.<sup>\*</sup> The authorities should review the situation of racial segregation of Roma in education and adopt an effective strategy to put an end to this practice, as well as facilitate access to preschools. Steps should be taken to stop the bullying of Roma children, with measures addressed to pupils, parents and teachers.

The authorities should conduct a thorough evaluation of the shortcomings of the Strategy for the Protection and Integration of the Roma Ethnic Minority and its Action Plan, paying particular attention to education, housing, employment and obtaining identity documents, and revise and update these accordingly. This should be done in close cooperation with Roma and Roma organisations and sufficient funding should be allocated for them to be effective.

The Action Plan for the Integration of Refugees and Persons in Need of Complementary Protection into Ukrainian Society should be revised and updated, with measures to improve their access to social benefits, housing, education, language learning, and employment services.

The authorities should evaluate and revise the Comprehensive National Programme for Support, Social Adaptation and Reintegration of IDPs, with a particular focus on solving the housing and employment issues, and invest appropriate funding to ensure the integration of IDPs.

A body independent of the police and prosecution authorities should be set up to investigate alleged cases of racially-motivated misconduct by the police.

Measures, such as training of teachers, to promote understanding of and respect for LGBT pupils in schools and to prevent bullying should be implemented.

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<sup>1</sup> As a result of the illegal annexation by the Russian Federation of the Autonomous Republic of Crimea and the city of Sevastopol in 2014 and the ongoing armed conflict in certain areas of the Donetsk and Luhansk regions, ECRI's report does not take into account the situation in these territories which are currently not under the effective control of the Ukrainian authorities to whom the report and its recommendations are addressed.

<sup>\*</sup> This recommendation will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Existence of legislation against racism<sup>1</sup> and racial discrimination<sup>2</sup>

##### - Criminal law

1. The following analysis of the relevant criminal law provisions in Ukraine focuses mainly on the lacunae in relation to the key elements of national legislation against racism and racial discrimination set out in ECRI's General Policy Recommendation (GPR) No. 7.
2. Article 161(1) of the Criminal Code punishes "wilful actions inciting national, racial or religious enmity and hatred, humiliation of national honour and dignity, or insulting citizens' feelings in respect of their religious convictions". The same paragraph then goes on to criminalise additionally "any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens, based on race, colour of skin, political, religious and other convictions, sex, disability, ethnic and social origin, property status, place of residence, linguistic or other characteristics". Article 161(2) punishes more severely all the above actions when accompanied by violence, deception or threats, or committed by an official. ECRI notes that, in accordance with the Action Plan on Implementation of the National Human Rights Strategy,<sup>3</sup> a proposal to decriminalise that part of Article 161 which is related to discrimination has been submitted to the Cabinet of Ministers. ECRI supports this amendment as it considers that discrimination is more appropriately dealt with under civil and administrative law channels, as indicated in its GPR No. 7.
3. As compared to GPR No. 7, § 18 a, b and c, the elements of incitement to discrimination and to violence are missing as well as defamation. Regarding the grounds, ECRI notes that language, citizenship and ethnic origin are not mentioned in relation to the offence of incitement. However, it has been assured that these elements would be covered under the national, racial or religious grounds specifically set out in that part of the article, although there is no case law as evidence to this effect. As concerns public insults, these are only criminalised in relation to religion, and the grounds of race, colour, language, citizenship and national or ethnic origin recommended by ECRI are not covered.
4. There also appear to be no provisions comparable to GPR No. 7 § 18 d punishing the public expression, with a racist aim, of an ideology which claims the superiority of, or which denigrates, a group of persons on grounds of their race, colour, language, religion, citizenship, or national or ethnic origin. Similarly there is no punishment in the Criminal Code of the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes, as recommended in GPR No. 7 § 18 e.<sup>4</sup> ECRI notes in this respect that in 2015, the Law on the condemnation of the communist and national socialist (Nazi) regimes, and prohibition of propaganda of their symbols was enacted. This law criminalises the public denial or justification of the "criminal nature" of the Soviet and Nazi regimes and the production, dissemination and public use of

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<sup>1</sup> According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

<sup>2</sup> According to GPR No. 7 "racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>3</sup> See also § 55 of this report.

<sup>4</sup> Article 436(1) of the Criminal Code punishes the production, distribution and public use of symbols of communism and the National Socialist (Nazi) totalitarian regimes.

communist and Nazi symbols. However, it does not meet the criteria set out in GPR No. 7 § 18 e. This lacuna is of concern, since the Additional Protocol to the Convention on Cybercrime, to which Ukraine is a party, requires states to criminalise denial, gross minimisation, approval or justification of genocide or crimes against humanity when committed through a computer system.<sup>5</sup>

5. Although Article 255 of the Criminal Code punishes the creation of a criminal organisation, and leadership and participation in its activities, and Article 161(3) punishes the acts set out in Article 161(1) and (2) if committed by an organised group of persons, ECRI has not found any provisions criminalising the creation or leadership of a group which promotes racism, support for such a group or participation in its activities, with the intention of contributing to the offences covered by GPR No. 7 § 18 a, b, c, d, e and f, as called for in GRP No. 7 § 18 g.
6. The Criminal Code specifically includes aggravated forms of certain offences, such as murder, physical assault or threat to kill, when these are motivated by racial, national or religious intolerance.<sup>6</sup> In addition, Article 67(1)(3) of the Criminal Code provides for the commission of any other offence based on racial, national or religious enmity and hostility to be considered an aggravating circumstance, in accordance with GPR No. 7 § 21. ECRI is pleased to note that a legislative draft has been submitted to the Cabinet of Ministers concerning amendments to the above provisions to include the grounds of race, colour of skin, religious beliefs, sexual orientation, transsexuality, disability and language. ECRI strongly supports this and encourages the inclusion also of the grounds of citizenship and national or ethnic origin, as per its GPR No. 7.
7. Finally, ECRI notes that there are no provisions setting out legal persons' liability for the above-mentioned offences, contrary to its GPR No. 7 § 22.
8. ECRI recommends amending the Criminal Code to include the following elements: the offences of incitement to discrimination and to violence; defamation; the public expression, with a racist aim, of an ideology which claims the superiority of, or which denigrates, a group of persons; the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes; the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; and legal persons' liability. The grounds of race, colour, language, religion, citizenship, and national or ethnic origin should also be included in all the relevant provisions.

- **Civil and administrative law**

9. In its fourth report, ECRI urged the Ukrainian authorities to adopt comprehensive anti-discrimination legislation covering all fields of life, taking inspiration from its GPR No. 7. ECRI therefore welcomes the enactment, in September 2012, of a Law on Principles of Prevention and Combating Discrimination in Ukraine (hereafter the law). The law, as amended in 2014, is largely in line with ECRI's GPR No. 7. Nevertheless, some gaps exist and are highlighted below with a view to improving the legislative framework for combating racial discrimination.
10. Article 1 of the law defines discrimination according to an open list of grounds: race, skin colour, political, religious or other beliefs, sex, age, disability, ethnic or

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<sup>5</sup> Article 6 of the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Ukraine declared at the time of ratification that it shall require that denial or gross minimisation is committed with the intention to provoke hatred, discrimination or violence against any person or group of persons based on signs of race, colour, national or ethnic origin as well as faith if used as a reason for any of those actions.

<sup>6</sup> Criminal Code Article 115, paragraph 14 (murder), Article 121, paragraph 2 (intended grievous bodily injury), Article 122, paragraph 2 (intended bodily injury of medium gravity), Article 126, paragraph 2 (battery and torture), Article 127, paragraph 2 (torture), Article 129, paragraph 2 (threat to kill).

social origin, nationality, marital status, place of residence, linguistic or other features. This corresponds with ECRI's GPR No. 7.<sup>7</sup>

11. As concerns forms of discrimination, ECRI notes that the law does not specifically mention segregation or discrimination by association, contrary to GPR No. 7 § 6. In addition, there is no mention of the duty of public authorities to ensure that parties to whom they award contracts, loans, grants or other benefits, respect and promote a policy of non-discrimination, as set out in GPR No. 7 § 9.
12. The law does not provide for easily accessible judicial and/or administrative proceedings, including conciliation and fast-track procedures in urgent cases, contrary to GPR No. 7 § 10. Victims of discrimination may, under Article 14 of the law, appeal to the relevant state body, local governments, the Parliamentary Commissioner for Human Rights (see below) or the court. If material or moral damages are sought, civil proceedings must be initiated, which are both lengthy and costly.
13. ECRI notes that there are no provisions in the law governing the sharing of the burden of proof. The authorities indicated that such provisions can be found in Article 60 of the Code of Civil Procedure. However, while these state that each party must prove the circumstances to which s/he refers as the basis of the claim, they do not correspond to ECRI's definition in GPR No. 7 § 11.<sup>8</sup> ECRI considers that provisions on the sharing (or shifting) of the burden of proof are key in discrimination cases and should be clearly set out in the specific anti-discrimination legislation.
14. ECRI has been informed that a draft law "on amendments to certain legislative acts of Ukraine (regarding the harmonisation of legislation on preventing and combating discrimination with EU law)" is currently going through Parliament and will address some of the issues raised above.<sup>9</sup> ECRI considers this a good opportunity to include in anti-discrimination legislation all the missing elements noted by ECRI.
15. ECRI recommends including the following elements in the Law on Principles of Prevention and Combating Discrimination in Ukraine: segregation and discrimination by association; the duty of public authorities to ensure that parties to whom they award contracts, loans, grants or other benefits, respect and promote a policy of non-discrimination; easily accessible judicial and/or administrative proceedings, including conciliation and fast-track procedures in urgent cases; and the sharing (or shifting) of the burden of proof.

- **National specialised bodies**<sup>10</sup>

16. In its fourth report, ECRI strongly recommended that a body specialised in issues pertaining to racism and racial discrimination be either created or identified within existing structures, in accordance with its GPR No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. ECRI is pleased to note, therefore, that powers to prevent and combat discrimination have been granted to the Parliamentary Commissioner for Human Rights under Article 10 of the Law on Principles of Prevention and Combating Discrimination in

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<sup>7</sup> See also the section below on Policies to combat discrimination and intolerance vis-à-vis LGBT.

<sup>8</sup> GPR No. 7 § 11: "The law should provide that, if persons who consider themselves wronged because of a discriminatory act establish before a court or any other competent authority facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no discrimination."

<sup>9</sup> For example, it will provide for a broader list of types of discrimination, including discrimination by association, and empower the Parliamentary Commissioner for Human Rights to issue binding instructions to eliminate infringements in the field of preventing and combating discrimination.

<sup>10</sup> Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

Ukraine. These powers include: exercising control over observance of the principle of non-discrimination in both the public and the private sphere; filing applications on discrimination to court and participating in the judicial proceedings personally or through a representative; examining applications of persons or groups on discrimination issues; making proposals to improve legislation on preventing and combating discrimination and the application and termination of positive actions; and issuing opinions in discrimination cases upon request of the court. Combined with the powers already granted under the Law on the Ukrainian Parliamentary Commissioner for Human Rights, ECRI notes with satisfaction that the competences of this body appear now to be almost fully in line with its GPRs No. 2 and No. 7 § 24. The only missing element is investigation powers.<sup>11</sup>

17. ECRI recommends that the Parliamentary Commissioner for Human Rights is granted investigation powers in order to combat racism and racial discrimination effectively.

## 2. Hate speech<sup>12</sup>

18. As noted above, hate speech is punished under Article 161(1) of the Criminal Code, but only in relation to national, racial or religious hatred. There is no reference in criminal law to incitement to hatred based on sexual orientation or gender identity. ECRI refers to its recommendation in § 114 of this report.

### - Data

19. Data on hate crime, which do not distinguish between hate speech and hate-motivated violence, are collected by the Prosecutor General's Office, the Ministry of Internal Affairs, the State Department on Sentence Execution and the State Statistics Committee. ECRI notes that until very recently such data were not broken down according to the specific hate motive. In 2016, for the first time, the National Police published hate crime data recorded by police in the year 2015. These showed that, out of a total of 157 incidents, 31 were motivated by racism and xenophobia, three by bias against Roma and Sinti, 18 by antisemitism, 94 by bias against Christians and members of other religions, nine by bias against LGBT people, and two by bias against people with disabilities. The majority involved incitement to hatred accompanied by violence (45 in total), damage to property (32) and physical assault (30).<sup>13</sup>

20. ECRI notes that the official figures are lower than data gathered by international organisations and civil society, which reported a total of 213 hate-motivated incidents in 2015.<sup>14</sup> This may indicate that around one quarter of all hate crime is either not reported to the police or not recognised as such by them. Indeed ECRI was informed that hate speech in particular is not always taken seriously by law enforcement officials and that, despite some recent efforts at reform, there is a lack of trust in the police (see § 53).

21. ECRI recommends establishing a mechanism for collecting disaggregated data on hate speech incidents, recording the specific bias motivation, as well as the follow-up given by the justice system, and publishing this data.

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<sup>11</sup> See § 52 of the Explanatory Memorandum to GPR No. 7 which explains the scope and importance of investigation powers.

<sup>12</sup> According to ECRI's GPR No. 15 on combating hate speech, "hate speech" shall mean the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.

<sup>13</sup> OSCE-ODIHR 2016.

<sup>14</sup> OSCE-ODIHR 2016.

- **Hate speech in political and other public discourse**

22. Political discourse in the last three years has been dominated by anti-Russia rhetoric as a result of the illegal annexation by the Russian Federation of the Autonomous Republic of Crimea and the city of Sevastopol and armed conflict in certain areas of the Donetsk and Luhansk regions.<sup>15</sup> The conflict has also heightened religious intolerance and tensions between the different Churches loyal to Kyiv or to Moscow.<sup>16 17</sup> However, reports indicate that there have been few incidents of harassment or abuse of individuals or groups on the basis of their Russian identity in Kyiv or other areas. One report pointed out that Russians and ethnic Ukrainians frequently stated that their relations remained good.<sup>18</sup>
23. On the other hand, the conflict appears to have had a negative effect on vulnerable groups in general. Reports indicate that there has been an increase in racist hate speech and discriminatory statements in public discourse, including by political figures, directed against Roma, asylum seekers and refugees, internally displaced persons (IDPs), foreign students and LGBT persons.<sup>19</sup>
24. As regards Roma, ECRI takes note of a case of hate speech by a public official in August 2016. Following the murder of a nine year old non-Roma girl allegedly by a Roma man, riots broke out in Loshchynivka, near Odesa, along with calls for the eviction of the Roma community from the village. The town's mayor publicly stated that he shared the locals' outrage.<sup>20</sup> The Secretary General of the Council of Europe addressed a letter to the Prime Minister, expressing his concern at the remarks made, and measures taken, by the local authorities, giving the impression that all members of that community were criminals and increasing existing prejudices.<sup>21</sup>
25. Refugees have also been targeted by intolerant public discourse. ECRI was informed that in March 2016, protesters from the local population, as well as some extremist groups, rallied against the opening of a third accommodation centre in Yahotyn, near Kyiv. This was accompanied by a media campaign, claiming, among others, that refugees spread diseases. ECRI notes that the protests effectively prevented the opening of the centre and demonstrate the significant level of xenophobia in certain areas.
26. As regards IDPs, ECRI is pleased to note that few complaints of hate speech at the local level have been reported.<sup>22</sup> However, it seems that while there was initially sympathy for IDPs in 2014, this appears to be waning. ECRI has been informed that it is not uncommon to see discriminatory advertisements for housing or employment, such as "no one from Donetsk should apply". IDPs from Eastern Ukraine are greater targets of intolerance than Crimean Tatar IDPs, and have been accused of supporting separatism.
27. Regarding homophobic hate speech, according to LGBT groups, the main Ukrainian Churches remain the primary source of dissemination of prejudice and intolerance. Its homophobic rhetoric sharply increased in the second half of 2015, following the March of Equality (LGBT Pride) in Kyiv and the adoption of

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<sup>15</sup> This report does not take into account the situation in these territories which are currently not under the effective control of the Ukrainian authorities to whom the present report is addressed.

<sup>16</sup> Digital Journal 2015; Byzantine Tx 2016.

<sup>17</sup> Since the independence of Ukraine there has been rivalry, occasionally becoming open conflict, between the Ukrainian Orthodox Church of the Kyiv Patriarchate, the Ukrainian Orthodox Church of the Moscow Patriarchate and the Ukrainian Autocephalous Orthodox Church.

<sup>18</sup> UN Human Rights Council 2015.

<sup>19</sup> UN CERD 2016.

<sup>20</sup> RFE/RL 2016a.

<sup>21</sup> Council of Europe, Secretary General 2016.

<sup>22</sup> Zaharov 2016.

legislation protecting sexual orientation in the labour market (see also § 117 of this report).<sup>23</sup> Certain politicians, mostly from radical and nationalist parties, also openly express aggressively homophobic views.<sup>24</sup>

- **Extremist groups**

28. In its fourth report, ECRI recommended that the authorities intensify their efforts to monitor, combat, prevent and punish illegal neo-Nazi activities and events. It further recommended that they carry out a specific awareness-raising campaign aimed at dissuading youth from joining neo-Nazi and skinhead groups.
29. According to the head of the State Security Service, there are no radical right organisations registered in Ukraine.<sup>25</sup> ECRI notes, however, that there continue to be extremist organisations which manifest intolerance towards vulnerable groups and incite racial hatred.<sup>26</sup> ECRI has also been informed that some of these groups, or individuals within them, have become involved in military action in the East of the country, thus gaining popularity for their openly ultra-nationalist agenda.
30. ECRI is not aware of an awareness-raising campaign to dissuade youth from joining such groups, but the Ministry of Internal Affairs has stated that it regularly monitors the situation in the youth community, identifies the leaders, active participants and other members of radical organisations and their supporters.<sup>27</sup>

- **Hate speech in the media and on Internet**

31. According to a 2016 report,<sup>28</sup> instances of hate speech in the Ukrainian media are low, especially in view of social tensions caused by the illegal annexation of Crimea and the armed conflict in certain areas of the Donetsk and Luhansk regions, although there have been instances of hate speech about the Donbas population in smaller media or on the blogosphere. The same report states that it is not journalists but members of the Ukrainian Parliament who use hate speech in television shows, “lying, manipulating and offending their opponents freely all for higher political ratings”.<sup>29</sup> The most hate speech occurs in talk shows or interviews aired on channels owned by opposition oligarchs.
32. ECRI notes that LGBT persons are frequent targets of media hate speech. According to a 2014 NGO report on hate speech in the Ukrainian media, out of 424 recorded cases of hate speech, sexual orientation and gender identity ranked second after ethnicity by the number of mentions.<sup>30</sup> Regional media in particular appear to promote the view that LGBT lifestyles contradict Ukrainian and Christian values.<sup>31</sup> Reporting of events such as the Odesa Pride 2015 and the March of Equality in Kyiv were predominantly biased and promoted stereotypes.<sup>32</sup>

- **The authorities’ response**

33. ECRI considers hate speech particularly worrying not only because it is often a first step in the process towards violence but also because of the pernicious

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<sup>23</sup> Nash Mir Center 2016a.

<sup>24</sup> Nash Mir Center 2016a.

<sup>25</sup> Bocheva et al. 2016.

<sup>26</sup> UN CERD 2016.

<sup>27</sup> Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities 2016.

<sup>28</sup> IREX 2016.

<sup>29</sup> IREX 2016.

<sup>30</sup> Nash Mir Center 2016a.

<sup>31</sup> IREX 2016.

<sup>32</sup> Nash Mir Center 2016a.



effects it has psychologically on those who are targeted and on social cohesion in general. Appropriate responses include law enforcement channels (criminal, civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as prevention, self-regulation and counter speech.

34. As concerns criminal law enforcement, ECRI notes that there were 79 prosecutions for hate-motivated offences in 2015, and only three final convictions with sentences imposed. As data covers both incitement to hatred and violence without distinction, it is impossible to ascertain how many involved hate speech. Indeed, according to NGOs, Article 161(1) of the Criminal Code has never been applied. ECRI considers the figures to be very low and regrets the minimal success rate in prosecuting and punishing this type of crime. This could indicate defects such as lack of understanding of hate crime and insufficient training of legal professionals. ECRI has also been informed that it is common during the criminal justice process to downgrade hate crime offences to acts of hooliganism which are easier to prosecute but result in lesser sentences. It regrets that by doing so, the important message that hate crime is more serious and will not be tolerated is lost.
35. Moreover, ECRI regrets that data is not collected on the application of Article 67(1)(3) on aggravating circumstances, along with the specific ground invoked (racial, national or religious hostility). Having such data would help to generate a full picture of racially-motivated hate crime in Ukraine.
36. ECRI recommends that data is collected on the application of Article 67(1)(3) of the Criminal Code on aggravating circumstances and the specific hate ground invoked.
37. ECRI welcomes a number of recent developments which could have a positive effect and help to address some of the issues of under-reporting and lack of recognition of hate crime. These include amendments to the police crime report form which include a checkbox to reflect the victim's perception of hate as a motive;<sup>33</sup> the nomination of a Contact Point on Hate Crime in the National Police in Kyiv and of special police officers at the regional level to follow up on investigations where a hate motive has been indicated by the victim; extensive police training, in particular from the OSCE, on identifying hate crime and using the new crime report form; and the collection of data on hate-motivated incidents targeting LGBT, even though no such ground currently exists in the criminal law, which has improved relations between LGBT groups and the new police.<sup>34</sup> Finally, posters have been produced to encourage reporting of hate crime, featuring images of five distinct vulnerable groups: ethnic minority groups, Muslims, homosexuals, disabled and elderly people. The headline reads: "Being yourself is not a crime – attacking people for who they are, is a crime". ECRI encourages the authorities to display these posters as widely as possible throughout the country.
38. Regarding media and the Internet, ECRI recalls its fourth report recommendations: to ensure that reporting does not contribute to creating an atmosphere of hostility towards vulnerable groups; to encourage the media to pursue training in human rights, in particular on issues related to racism and racial discrimination; and to take specific steps to prevent the Internet from being used to disseminate racist comments and material.
39. The Law on Television and Radio Broadcasting, covering both public and private broadcasting, prohibits, in Article 6, the promotion of the idea of exclusivity,

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<sup>33</sup> Bocheva et al. 2016.

<sup>34</sup> The new National Police of Ukraine (NPU) was set up in November 2015. All police-related functions, except expert services and databases, were moved from the Ministry of Internal Affairs to the direct supervision of the NPU, which is in the process of forming a new structure, including the newly created Patrol Police.

superiority or inferiority of persons on grounds of their religious beliefs, ideology, national or ethnic affiliation, physical or material status or social origin. The National Council of Ukraine on Television and Radio Broadcasting is a constitutional standing independent public authority that enforces the legislation and the only public regulator in the sector of broadcasting. It comprises eight members and has the task, among many others, of imposing sanctions for violations of the law.<sup>35</sup> These include warnings (for first-time violations), fines (inter alia following failure to eliminate the violation after a warning), and initiation of the broadcast license revocation in court (following failure to eliminate the violation after a warning and fine).

40. ECRI is pleased to note that Article 6 has been invoked to punish hate speech on grounds relevant to its mandate. Recently a TV broadcaster was sanctioned for antisemitic hate speech and licence revocation court proceedings are on-going.
41. Regarding training, since 2015 the UNHCR has been carrying out training events to inform the media about their role in building public opinion towards IDPs. A factsheet and leaflet were developed to provide journalists with detailed but concise guidance on the coverage of IDP issues. Moreover, in the summer of 2015, UNHCR, together with the Government and civil society, launched a creative mass media communication campaign to improve tolerance towards IDPs in hosting communities. It included three components: videos, an outdoor poster campaign and the development of a web portal with a list of service providers collecting and delivering aid for IDPs. The campaign was broadcasted by all national TV channels and posters were placed in the eight largest cities in the major reception areas. ECRI commends this important initiative.
42. ECRI recalls that Ukraine ratified the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems in 2006 and it came into force in the country in 2007. It was informed that a cybercrime unit has been set up in the National Police which monitors the Internet. However, according to NGOs, complaints of threats and incitement to hatred online, in particular in social networks, which mostly target Roma and LGBT persons, are usually dismissed or not investigated properly by the police, mainly due to lack of capacity or because they are considered insignificant.
43. ECRI recommends intensifying the work of the cybercrime unit and providing it with appropriate technical and human resources to combat hate speech on the Internet. It also recommends developing guidelines for all police on recognising and dealing with hate speech.
44. Finally, ECRI places great importance on tackling hate speech through confronting and condemning it directly by counter speech that clearly shows its destructive and unacceptable character. It has heard that such counter speech is rare in Ukraine and that the authorities are generally unwilling to stand up for or speak out in favour of any vulnerable groups for fear of a negative reaction from the majority population. However, it welcomes a news report stating that the President made history in 2015 by becoming Ukraine's first head of state to publicly voice support for the constitutional right of every person to participate in the March of Equality while other voices were condemning and trying to ban it.<sup>36</sup> Further, several members of Parliament took part in the march. These have been taken as very positive signs by members of LGBT groups.

### **3. Racist and homo/transphobic violence**

45. Article 161(2) of the Criminal Code punishes incitement to national, racial or religious hatred with violence. Article 178 punishes damage to religious property

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<sup>35</sup> [www.nrada.gov.ua](http://www.nrada.gov.ua).

<sup>36</sup> United Kingdom Home Office 2015.

or places of worship. The Criminal Code also provides for aggravated forms of certain violence offences when motivated by racial, national or religious intolerance and Article 67(1)(3) provides for higher penalties for any other offence on the same grounds (see § 6 above). There is no specific reference in criminal law to offences motivated by homo/transphobia (see § 114 of the report).

46. In its fourth report, ECRI strongly recommended that the authorities intensify their efforts to combat violent racially-motivated offences throughout the country through effective punishment of such offences when they occur. Data on hate crime (hate speech and hate-motivated violence) have been provided in §§ 19-20 and 34 of this report. As already noted, the specific hate speech and violence provisions of the Criminal Code are rarely applied and with a low conviction rate. ECRI recalls the developments mentioned above (see § 37) which might have a positive impact in this context.
47. Roma appear to be the most frequent victims of racist violence. For example, in February 2014, a group of about 15 people attacked four Roma households in Korosten, and in April 2014 a Roma family's house in Cherkasy was set on fire.<sup>37</sup> In August 2016, as reported above, unrest broke out in Loshchynivka and several Roma households were ransacked and burned down by locals. More than 300 people took part in the violence, resulting in property damage but no injuries. Seven Roma families, including 17 children, fled the village following a local council decision on their eviction. ECRI notes that the national authorities have reacted by launching a criminal investigation into the forced eviction and property damage.
48. Jewish organisations consider levels of violence against Jews to be very low in Ukraine.<sup>38</sup> However, one brutal attack on a Jewish doctor was reported in 2015 in Kharkiv, with the assailants shouting "Jew face, get out of town and out of the country". There were 16 incidents of antisemitic vandalism in the first nine months of 2015, slightly more than at the same time in 2014.<sup>39</sup> Graffiti swastikas continued to appear in Kyiv and other cities. Repeated vandalism of the Holocaust memorial at Kyiv's Babi Yar ravine took place with six incidents in 2015. In March 2016, "Kill the Jews" was scrawled on a synagogue in Cherkasy. A wreath laid by an Israeli Cabinet minister for Holocaust victims at Babi Yar was torched.<sup>40</sup> ECRI recalls its GPR No. 9 on the fight against antisemitism and encourages the authorities to implement more actively the measures set out therein.
49. Regarding foreign students,<sup>41</sup> in June 2015, a group of approximately 30 young men wearing balaclavas and armed with knives and sticks attacked foreign students in Kharkiv. The attackers wounded nine students, hospitalising six. According to witnesses the assailants targeted the victims because they "looked like foreigners". Law enforcement officers were present but did not attempt to stop the attackers. Later they detained five persons, charging them with hooliganism, attempted murder and armed assault.<sup>42</sup> The authorities have stated that there is no special concern over the safety of foreign students since such types of hate crime are rare.
50. LGBT organisations have observed a significant increase in serious violence against LGBT persons, events and property, in some cases with the use of weapons and explosives, in the years 2014 and 2015. According to their data,

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<sup>37</sup> European Roma Rights Centre 2014.

<sup>38</sup> Washington Post 2016.

<sup>39</sup> The Jerusalem Post 2014.

<sup>40</sup> Jewish Telegraphic Agency 2016.

<sup>41</sup> According to the State Migration Service, there are some 50 000 foreign students in Ukraine at present.

<sup>42</sup> United States Department of State 2016.

among others there were six murders, 32 assaults and six attacks on events or locations where events were held. During the June 2015 March of Equality in Kyiv, participants and police were attacked with explosives by organised groups of ultra-right nationalists. Five police officers were injured and nine participants were hunted down and attacked. Kyiv's mayor condemned the acts and promised to ensure that the perpetrators were harshly punished.

51. The June 2016 Pride event sparked calls for violence. A spokesman for the Right Sector movement predicted on Facebook that there would be “a bloody mess”. The chair of the Organisation of Ukrainian Nationalists stated that his organisation felt justified in using violence to prevent “perverts” from marching.<sup>43</sup> The police deployed 6 500 officers to prevent clashes.<sup>44</sup>
52. ECRI recalls its fourth report recommendation urging the authorities to intensify their efforts to put a stop to racist or racially discriminatory misconduct by the police by investigating any allegations of misconduct and duly punishing those found guilty. It is therefore concerned that violence committed by police continues to be reported, as well as failure by police to stop violence. There were several reports during the year 2015 that police arbitrarily detained Roma individuals, at times beating or mistreating them.<sup>45</sup> Police have also failed to investigate crimes against the Roma as hate crimes, as found by the European Court of Human Rights in 2012 in *Fedorchenko and Lozenko v. Ukraine*.<sup>46</sup> LGBT groups also documented 18 cases of police failings and abuse in 2015, including the refusal to ensure protection of LGBT persons or intervene during attacks.<sup>47</sup>
53. According to one source, the police in Ukraine have long been one of the country's most corrupt institutions and one of the most widely loathed.<sup>48</sup> Following the Euromaidan demonstrations, reform of the police was put on the agenda and a new national police was created aimed at restoring trust. In the new patrol police, less than 6% of recruits came from the old service. Officers have been deployed to 29 cities where they have gained a reputation for “cheerfulness and honesty”.<sup>49</sup> However, criminal investigations are still the domain of the former police service. ECRI refers to its comments and recommendation in §§ 100-102 of this report.

#### **4. Integration policies**

54. ECRI notes a number of specific integration policies developed in recent years concerning Roma, migrants, refugees and internally displaced persons (IDPs). It examines below, as well as in the section on Topics specific to Ukraine (Integration of IDPs), the situation of these vulnerable groups in light of such policies.
55. However, it is also important to mention the National Human Rights Strategy, approved by Decree of the President on 25 August 2015, and its Action Plan for the period until 2020, approved on 23 November 2015 by Order of the Cabinet of Ministers. These documents represent overarching human rights policies with measures affecting various groups of concern to ECRI and have an impact on integration. ECRI is pleased to note that equality and non-discrimination feature

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<sup>43</sup> Bocheva et al. 2016.

<sup>44</sup> Bocheva et al. 2016.

<sup>45</sup> United States Department of State 2016; Equal Rights Trust 2016.

<sup>46</sup> Application no. 387/03. The case concerned an arson attack by a high-ranking police officer against a Roma household which resulted in the death of five persons, including three children, in breach of Articles 2 and 14 of the European Convention on Human Rights.

<sup>47</sup> Nash Mir Centre 2016.

<sup>48</sup> Yaffa 2016.

<sup>49</sup> Yaffa 2016.

among the six principles of the strategy and that preventing and combating discrimination are among the strategic areas of action.

56. The European Commission, in its Association Implementation Report on Ukraine, commended the active participation of the Parliamentary Commissioner for Human Rights and civil society in the preparation of the strategy and action plan, but noted lack of resources for implementation.<sup>50</sup> Indeed, ECRI notes that the action plan includes expected outcomes, measures to achieve the results, indicators, timeframes and responsible bodies, but no budgetary allocations. The authorities informed ECRI that, according to the monitoring of the Parliamentary Commissioner for Human Rights and civil society, around 21% of the measures set out have been implemented so far.

- **Historical ethnic, religious and linguistic minorities**

57. According to the census of 2001, which was the first (and so far only) census in Ukraine since its independence in 1991, the total population of the country was 48.5 million. The ethnic composition, as set out in the census,<sup>51</sup> was as follows: Ukrainians 77.8%, Russians 17.3%, Belarusians 0.6%, Moldovans 0.5%, Crimean Tatars 0.5%, Bulgarians 0.4%, Hungarians 0.3%, Romanians 0.3%, Poles 0.3%, Jews 0.2%, Greeks 0.2% and others 1.6%. A new census, postponed several times, is now planned for 2020.

58. While there is no specific integration policy for national minorities, the Action Plan of the National Human Rights Strategy contains a section on the protection of the rights of indigenous communities and national minorities. ECRI refers to the Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities and the Report of the Expert Committee of the European Charter for Regional or Minority Languages for further details. In this section, ECRI deals with the most vulnerable group of historical ethnic, religious and linguistic minorities, that of Roma, for whom a specific integration policy exists.

- **Roma**

59. There is a lack of official data on Roma and their situation in Ukraine. According to the 2001 census, there were 47 587 Roma living in Ukraine (0.1% of the total population). Other sources, however, estimate that there are between 120 000 and 400 000 Roma in Ukraine. Explanations for the disparity between official and unofficial figures include that many Roma do not have personal documents and are therefore not registered in the country, the reluctance of Roma to declare their ethnic origin for fear of discrimination, and the incorrect recording of Roma as Romanians.<sup>52</sup> The absence of reliable data makes it difficult to develop and effectively implement policies in all areas and to assess progress.<sup>53</sup>

60. ECRI recommends establishing a system of collection of statistical data in all areas relating to Roma integration, including a gender dimension, while strictly respecting the principles of confidentiality, voluntary self-identification and informed consent.

61. The Strategy for the Protection and Integration of the Roma Ethnic Minority in Ukraine up to 2020 was adopted through a Presidential Decree of 8 April 2013,

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<sup>50</sup> European Commission 2016.

<sup>51</sup> <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/>.

<sup>52</sup> OSCE/ODIHR 2014.

<sup>53</sup> ECRI's GPR No. 1 on combating racism, xenophobia, antisemitism and intolerance recommends collecting, in accordance with European laws, regulations and recommendations on data-protection and protection of privacy, where and when appropriate, data which will assist in assessing and evaluating the situation and experiences of groups which are particularly vulnerable to racism, xenophobia, antisemitism and intolerance.

and its plan of action was approved through an Order of the Cabinet of Ministers of 11 September 2013. The strategy states that the integration of Roma is the major social issue in Ukraine. Its stated purpose is to define a framework for the protection and integration of Roma into society and its main objectives are the legal protection of Roma, ensuring social security and employment, increasing the educational level, health protection, providing housing and meeting the cultural and information needs of Roma. The plan of action contains 56 measures, with responsible bodies and timeframes allocated, but no funding. Overall responsibility for implementation lies with the Ministry of Culture.

62. Regrettably, according to numerous sources that ECRI met in Kyiv and Odesa, the strategy has not been effective and the measures set out in the action plan remain largely unimplemented. Notably the Office of the Parliamentary Commissioner for Human Rights stated (on its website) that the strategy is formal, not constructive and does not meet the ultimate goal of a solution to the problems faced by Roma.<sup>54</sup> While the authorities informed ECRI that close consultations took place with Roma NGOs and that their proposals were reflected in the action plan, representatives of Roma organisations did not consider this to be the case. NGOs have also pointed out that state institutions and agencies involved in implementing the strategy have no funds or capacity for work related to Roma.<sup>55</sup> Indeed, the inter-ministerial working group on implementation, headed by the deputy Prime Minister and comprising central executive bodies, local administrations and Roma NGO leaders, convened for the first time only in November 2016, more than three years after the adoption of the strategy, to prepare an evaluation and amendments to the action plan.
63. ECRI has been informed that responsibility for implementation of the action plan has been handed down to the regional level, which is seen as a positive development by Roma. In 2016, regional Public Councils of the Roma National Minority and the inter-agency working group on implementation in the field of security policies and integration up to 2020 were set up, with two advisors from the Roma community. ECRI also notes that Roma NGOs have been proactive, drafted their own action plans and presented them to the regional authorities. In some cases these have been approved, such as in Cherkasy and Odesa. Reports indicate that these action plans provided impetus for municipalities to allocate funding for solving Roma issues.<sup>56</sup> ECRI commends these initiatives of Roma themselves, as well as the local or regional authorities for accepting that Roma know best how to solve their own difficulties.
64. Public monitoring of the implementation of the action plan in six regions of Ukraine with the greatest density of Roma (Poltava, Cherkasy, Volyn, Transcarpathia, Dnipropetrovsk and Odesa) began in 2014.<sup>57</sup> This confirmed that Roma remain the most socially stigmatised and segregated national minority having the lowest level of trust in the authorities and institutions. Data obtained showed that 31% of Roma children do not go to school and that more than 60% of Roma do not work. The risk of unemployment increases for those with a lower educational level; this vicious circle “dooms the subsequent generations of Roma in Ukraine to exclusion and marginalisation”.<sup>58</sup>
65. ECRI recalls that lack of identity documents, such as birth certificates, internal “passports” or residence registration, has been a long-standing problem for many

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<sup>54</sup> [www.ombudsman.gov.ua](http://www.ombudsman.gov.ua) 2015.

<sup>55</sup> Anti-Discrimination Centre “Memorial” and Kharkiv Human Rights Protection Group 2016.

<sup>56</sup> Council of Europe/European Union Joint Programme ROMED 2016.

<sup>57</sup> Under the Office of the Ombudsman, the Program initiative “Roma of Ukraine” of the International Renaissance Foundation, the European Center for the Protection of the Rights of Roma and 11 non-governmental human rights Roma organisations.

<sup>58</sup> [www.ombudsman.gov.ua](http://www.ombudsman.gov.ua) 2015.

Roma. In its fourth report it recommended the authorities to set up a programme to simplify the acquisition of such documents by Roma and especially Roma children. It notes that the strategy and action plan call for the provision of assistance in obtaining documents identifying a person and proving his/her citizenship, and birth and other civil status certificates for Roma legally residing in Ukraine, as well as the distribution of information on the procedure to obtain identity documents and record-keeping of Roma who receive these documents.

66. In some communities, between 30 and 40% of Roma lack such documents.<sup>59</sup> This can result in children not being able to enrol in school or in further education, obstacles to obtaining work or accessing health care, and inability to vote. ECRI is therefore pleased to note some steps taken to resolve the issue. A data-collection system has been established for monitoring acquisition of documents by Roma. According to this, 2 143 internal identity documents were issued in 2015. Furthermore, it has been informed that simplified procedures are envisaged; a successful pilot project was recently initiated in Odesa, with a view to extending it to the rest of the country, whereby a commission of one person each from the State Migration Service, the Department of Justice and a registered Roma NGO meet every three months to decide on applications. New rules also exist for problematic cases and, as a last resort, court proceedings can still be used to prove identity. ECRI is encouraged to learn from Roma organisations that the problem of documents is being resolved.
67. However, ECRI also notes that the Parliamentary Commissioner for Human Rights indicated that state agents sometimes request additional documents not foreseen in the current regulations.<sup>60</sup> Indeed, Roma confirmed that even those with all the required documents often still have to prove their identity in court. Since court fees are very expensive, and identity documents essential, ECRI considers that positive action measures are justified to compensate for the disadvantage suffered by Roma: court fees should be waived for those whose only remaining option is to go to court to prove their identity.
68. ECRI strongly recommends that court fees are waived in cases of Roma seeking to prove their identity for the purpose of obtaining personal identification documents.
69. As for education, ECRI recalls its fourth report recommendation to increase the school attendance of Roma children, combat segregation and prejudice in the school system and improve the educational outcomes of Roma children, with the appointment of Roma school mediators forming part of these efforts. ECRI notes that increasing the educational level of Roma is one of the commitments of the strategy and its action plan, along with popularising education among Roma, ensuring equal access to all levels of education, increasing the numbers of children aged three to six in preschools, monitoring and ensuring regular attendance, increasing the numbers of Roma children completing general education, and activities to encourage vocational and higher education.
70. Despite these goals, reports continue to indicate a low level of education among the Roma population in Ukraine: 24% have no education at all, 37% have not completed compulsory education and only 1% has higher education; 23% are illiterate and 34% do not speak Ukrainian. Other reports indicate that over 90% of Roma children drop out of school, only completing five or six years of education, and only 6% have completed secondary education or professional training.<sup>61</sup>
71. Many Roma children do not speak Ukrainian and have no access to pre-school education. When they start compulsory school, they are already at a

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<sup>59</sup> Equal Rights Trust 2015.

<sup>60</sup> Equal Right Trust 2015.

<sup>61</sup> Bocheva et al. 2016.

disadvantage. Further, teachers are not trained to deal with children who do not speak Ukrainian or Russian. ECRI therefore welcomes an NGO initiative in Transcarpathia to prepare, for a period of six to nine months, 25 Roma children per year for entry to primary school. This was successful and the children entered school able to speak Ukrainian, read and count. So far, around 100 children have been assisted in this way. In addition, ECRI understands that, as concerns Roma teaching assistants, pilot projects have been set up in Odesa and Transcarpathia in 2015; at present there are eight assistants in three localities. ECRI strongly encourages the continuation and expansion of these efforts.

72. Furthermore, ECRI notes that segregated schools for Roma, often with low academic standards, continue to be a reality in Ukraine.<sup>62</sup> This occurs in particular in Uzhhorod and Odesa due to a combination of high density of Roma in certain areas and a practice of channelling Roma children into certain schools. This is highly detrimental and deprives Roma children of the chance to escape the cycle of poverty resulting from low education levels.
73. ECRI strongly recommends the authorities to review the situation of racial segregation of Roma in education and to adopt an effective strategy to put an end to this practice. In line with this, they should also facilitate access of Roma children to preschools.
74. Despite the fact that the education authorities and school management have provided information and organised activities aimed at combating prejudice against Roma pupils, several reports indicate that stigmatisation, abuse and bullying can be an issue for Roma children at school, from teachers, pupils and parents, and is one of the main reasons why they drop out of school early.<sup>63</sup>
75. ECRI recommends that further steps are taken to stop the bullying of Roma children in schools, with measures addressed to pupils, parents and teachers.
76. Concerning employment, ECRI, in its fourth report, strongly recommended that the authorities intensify their efforts to improve Roma access to employment through adopting positive action measures such as increased access to vocational and in-service training to overcome the existing inequalities in this field. It notes that the action plan sets out the provision of professional orientation activities aimed at motivating Roma to work and entering the labour market, as well as distribution of information about starting a business.
77. However, reports indicate that the Roma in Ukraine face mass unemployment, with more than 60% unemployed. The Parliamentary Commissioner for Human Rights stated that securing employment was the main problem for the Roma minority and that “approximately 49% of Roma named it as their most significant challenge”.<sup>64</sup> The main obstacles to regular employment are lack of personal documents, an insufficient level of education, discrimination from employers and lack of state policies aimed at increasing employment levels among Roma. Most Roma in work are self-employed, selling goods in markets or collecting scrap metal.<sup>65</sup> Reports also indicate that the situation for Roma women is particularly difficult, owing to the vicious circle of a higher rate of illiteracy and the persistence of stereotypes about the role and responsibilities of women in the family, both within the Roma community and in society at large.<sup>66</sup>
78. A 2014 report stated that there were no government programmes in Ukraine aimed at improving the employability and marketable skills of Roma or at

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<sup>62</sup> Equal Right Trust 2016.

<sup>63</sup> Bocheva et al. 2016; Equal Right Trust 2016.

<sup>64</sup> United States Department of State 2016.

<sup>65</sup> OSCE/ODIHR 2014.

<sup>66</sup> OSCE/ODIHR 2014.



strengthening incentives to seek employment.<sup>67</sup> Since then, however, the authorities informed ECRI that units have been set up to help Roma find employment. The State Employment Service undertook activities in 2015 in ten areas of dense Roma population to raise awareness of services and labour legislation, and inform Roma about job openings, obtaining vocational training and starting a business. Further, 241 plots of land were allocated to Roma for farming and gardening in 2015. ECRI welcomes these developments.

79. In its fourth report ECRI recommended the active promotion of employment of Roma in the police, in order to rebuild the trust of Roma in the criminal justice system. It has been informed that the level of confidence in the police remains very low and that there are few Roma employed in the police service. However, it takes note of an interesting development: in each region, one Roma representative has been appointed to work as a liaison between the police and the local Roma communities, which is viewed positively by Roma.
80. As concerns housing, ECRI, in its fourth report, reiterated its recommendation to address the issues facing Roma in accessing adequate housing as a matter of urgency. The strategy and action plan set out the promotion of access to state housing funds and preferential loans for purchasing or constructing dwellings and assignment of land for housing construction and farming. Nevertheless, access to decent housing continues to be one of the most serious problems for Roma. ECRI notes with satisfaction, therefore, that the authorities conducted awareness raising about existing programmes for loans, allocated 382 plots of land to Roma in 2015 for construction of housing, and improved the infrastructure and transport links in several residential settlements.
81. In general, therefore, it is clear that, despite the existence of a specific strategy and action plan, ECRI has not witnessed a significant improvement in the situation of Roma communities and a lot remains to be done. Further, lack of funding is one of the major obstacles.
82. ECRI strongly recommends that the authorities conduct a thorough evaluation of the shortcomings of the Strategy for the Protection and Integration of the Roma Ethnic Minority and its Action Plan and revise and update them accordingly, paying particular attention to education, housing, employment and obtaining identity documents. They should do this in close cooperation with Roma and Roma organisations and allocate sufficient funding for them to be effective.

- **Non-nationals**

- ***Immigrants***

83. The number of immigrants with permanent residence registered by the Ministry of Internal Affairs in 2016 was close to 250 000. The top countries of origin were the Russian Federation, Moldova, Uzbekistan, Belarus, Georgia, Armenia and Azerbaijan.<sup>68</sup>
84. ECRI is aware of two relevant policies: the Action Plan for Integration of Migrants into Ukrainian Society for 2011-2015 and the Action Plan for Implementation of the Concept of Migration Policy of Ukraine of 2011. It notes that the term migrant is broadly used but that refugees and persons in need of complementary protection are clearly the main target groups.<sup>69</sup> Indeed, the State Migration Service informed ECRI that there is no integration policy for immigrants with permanent residence. Under the Law on Foreigners, they have the same rights as Ukrainian nationals, with the exception of voting, being elected and working in public administration.

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<sup>67</sup> OSCE/ODIHR 2014.

<sup>68</sup> International Organisation for Migration (IOM) 2011.

<sup>69</sup> IOM 2015.

85. According to a research report published in 2015, some of the integration provisions in these documents were not fully implemented.<sup>70</sup> Other sources have stated that the programmes were not possible to implement due to lack of financial backing or that many of the measures were implemented by non-governmental or international organisations because government agencies were underfunded.<sup>71</sup> No report on implementation or evaluating results has been produced. Moreover, ECRI notes that the action plans have not been updated to cover the period after 2015, although the State Migration Service has been working for several years on a new migration policy up to 2025.
86. ECRI notes that immigrants face numerous problems in Ukraine. Many have serious difficulties with residence registration, as landlords are often reluctant to register foreigners renting their property, and this hinders access to education, health care and administrative services. The above-mentioned study also indicates that foreigners frequently pay higher rent than Ukrainian nationals and that landlords prefer to rent out their property to Ukrainians. No public housing assistance is available to immigrants.<sup>72</sup>
87. The level of education of immigrants is reported to be fairly high, but only one tenth reported fluency in Ukrainian and less than half in Russian. Over two thirds attended language courses and have certificates, although the current network of facilities that offer Ukrainian language courses is described as inadequate. Further, 80% of immigrants are employed, but only 40% work legally, mostly in trade, services and construction.<sup>73</sup> Over a quarter of the participants in the survey reported experiencing problems accessing health care, mainly because migrants are required to pay for services, including emergency medical assistance. Only about 40% reported having medical insurance cover. Immigrants also suffer from an overall negative attitude towards foreigners<sup>74</sup> and discrimination and xenophobia on the part of public officials have been reported.<sup>75</sup>
88. In view of the fact that Ukraine has a growing immigrant population due to its strategic location between the European Union and the Russian Federation, ECRI considers that steps should be taken to address the concerns raised above.
89. ECRI recommends that an integration policy is designed for the integration of immigrants in Ukraine, focusing on non-discrimination, access to residence registration, Ukrainian language courses, employment and health care. This should be done in consultation with relevant organisations such as the UNHCR.

- **Refugees**

90. According to UNHCR statistics of 1 January 2016, there were a total of 3 273 refugees from 59 countries living in Ukraine, with the largest numbers coming from Afghanistan, Syria and the Russian Federation.<sup>76</sup> There has been a large decline in the number of people seeking asylum in Ukraine from 1 141 in 2015 to only 481 in 2016 (figures from January to September), probably due to the ongoing armed conflict in certain areas of the Donetsk and Luhansk regions and fear of ethnic tensions in the country.
91. Specific integration measures for refugees, set out in the two policies mentioned in the previous section, have now been consolidated in the Action Plan for the

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<sup>70</sup> IOM 2015.

<sup>71</sup> IOM 2015.

<sup>72</sup> IOM 2015.

<sup>73</sup> IOM 2015.

<sup>74</sup> Kaźmierkiewicz 2011.

<sup>75</sup> IOM 2015.

<sup>76</sup> UNHCR 2016a.

Integration of Refugees and Persons in Need of Complementary Protection into Ukrainian Society up to 2020. This was adopted by decree of the Cabinet of Ministers in August 2012. It contains measures in the areas of legislation, language acquisition and education, health care, employment, welfare support, housing, individual programmes for integration and creation of tolerant attitudes toward refugees, among others.

92. According to ECRI's interlocutors, the main achievement so far is the enactment of amendments to the Refugee Law in 2014 bringing it further in line with international standards. No progress has been made in other areas. As a result, while refugees formally enjoy all the same rights as Ukrainian nationals, in practice there are numerous obstacles to local integration. No social welfare benefits are provided (newly-recognised refugees receive a one-time grant of less than one USD from the Government). According to a recent survey, refugees may be provided accommodation in temporary centres, but capacity is insufficient: there are only two government-run centres, located in Odesa and Transcarpathia, with a total capacity of 300 persons.<sup>77</sup> Only one out of eight refugees reported staying in such a centre. There is no government housing scheme for refugees and social housing is not available to them. The Government does not provide courses for learning Ukrainian nor help to access the labour market. Moreover, many employers are reluctant to employ refugees.<sup>78</sup> All steps to provide assistance to refugees, such as language courses and help to find jobs, have been taken notably by the UNHCR.
93. In addition, the on-going economic crisis and increasing resentment among hosting communities, including rising levels of xenophobia and racially-motivated incidents, such as the one in Yahotyn described above (see § 25), all hinder integration.
94. Under such conditions, ECRI is concerned that refugees face severe challenges in different fields of everyday life and have little chance of becoming self-sufficient and integrated. It considers that the existing action plan, which has not been implemented effectively, should be reviewed and updated, and that funding should be allocated to ensure that this very vulnerable group of persons receive the assistance they need to rebuild their lives in Ukraine.
95. ECRI recommends that the Action Plan for the Integration of Refugees and Persons in Need of Complementary Protection into Ukrainian Society is revised and updated, in consultation with the UNHCR and other relevant organisations, as well as refugees themselves. It should cover measures to improve their access to social benefits, housing, education, language learning, and employment services. Sufficient human and financial resources should be allocated to ensure the effective local integration and self-reliance of refugees.

## **II. Topics specific to Ukraine**

### **1. Interim follow-up recommendations of the fourth cycle**

96. In its first interim follow-up recommendation, ECRI strongly recommended that the authorities define the body responsible for co-ordinating work on combating racism and racial discrimination, ensuring that its staff has strong expertise in the field, and that it has adequate human and financial resources; it further recommended facilitating the active involvement of civil society in this work. In its conclusions of 19 March 2015, ECRI noted a number of promising developments, including the following: the Parliamentary Commissioner for Human Rights had adopted, in 2013, a Strategy on Prevention and Combatting Discrimination in Ukraine for 2014-2017; in 2014, the Ukrainian Cabinet set up a Council for Inter-Ethnic Cohesion and created the post of Government Agent on Ethno-National

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<sup>77</sup> IOM 2015.

<sup>78</sup> IOM 2015.

Policy Issues to promote the protection of the rights of national minorities and indigenous populations; and, in September 2014, the Ukrainian Cabinet approved by decree the remit of the Ministry of Culture, giving it the task of promoting tolerance and preventing incitement to hatred and ethnic discrimination. ECRI acknowledged the various efforts made and concluded that its recommendation had been partially implemented.

97. ECRI notes, since then, that the Government Agent on Ethno-National Policy Issues left the post in July 2016 and it has remained vacant, and that the Council for Inter-Ethnic Cohesion is not functional. However, the Ministry of Culture expanded the institutional capacity of the Department for Religions and Nationalities in 2016 by adding two additional divisions dealing with international relations and the protection of national minorities. In addition, systematic work on prevention of discrimination is carried out by the Parliamentary Commissioner for Human Rights (see § 16 above).<sup>79</sup>
98. In its second interim follow-up recommendation, ECRI urged the authorities to ensure that a fair and effective refugee status determination procedure was in place at all times and that the final structure intended to exercise these functions was established as soon as possible. In its conclusions of 19 March 2015, ECRI noted that a new law on refugees and persons in need of complementary or temporary protection in Ukraine had been enacted in 2011 and its application entrusted to the State Migration Service. However, ECRI considered that the placing of the State Migration Service under the supervision of the Ministry of the Interior could not provide a guarantee of fair application of the refugee status determination procedure required by its recommendation. While recognising the significant efforts made by the Ukrainian authorities, ECRI concluded that its recommendation had been partially implemented.
99. Since then, ECRI notes that the State Migration Service continues to be responsible for the application of the refugee law and the processing of asylum applications. According to the UNHCR, despite a number of improvements to the asylum procedure and practice in recent years, such as access to free legal aid at second instance, current refugee status determination procedures are still not in line with minimum standards.<sup>80</sup> For instance, asylum seekers are not provided with interpretation, the time for appeals is unreasonably short, and rejected asylum seekers are not given the reason for rejection. ECRI regrets that asylum seekers do not have access to fair and effective refugee status determination procedures and urges the authorities to improve protection safeguards in the legislation and practice, in line with international and EU standards.
100. In its third interim follow-up recommendation, ECRI strongly recommended the setting up of an independent body empowered to receive complaints against police officers. In its conclusions of 19 March 2015, ECRI noted that internal security units within the Ministry of the Interior were responsible for monitoring compliance with the law by police and dealing with complaints lodged by the public. ECRI considered that the placing of those units under the supervision of a ministry could not guarantee their independence and impartiality, and concluded that its recommendation had been partially implemented. It encouraged the authorities to consider empowering the special bureau of investigation, which was about to be established, to receive complaints against police.
101. ECRI notes that in 2016, the State Bureau of Investigation (SBI) was established by Decree of the Cabinet of Ministers.<sup>81</sup> Its functions are to investigate crimes (with the exception of those related to corruption) committed by senior officials,

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<sup>79</sup> Bocheva et al. 2016.

<sup>80</sup> UNHCR 2016a.

<sup>81</sup> According to the Law on State Bureau of Investigation, enacted on 12 November 2015, which came into force on 1 March 2016.

civil servants, judges and law enforcement officers.<sup>82</sup> While the mandate of the SBI does include offences committed by police, it only applies to certain serious crimes (organised crime and torture or other cruel, inhuman or degrading treatment or punishment).<sup>83</sup> It appears also that a new institution has been created within the Human Rights Administration of the National Police to deal with complaints against police. This is run by civilians and not police personnel, but since it reports directly to the Chief of Police, it cannot be independent and impartial. ECRI therefore considers that its recommendation has still not been fully implemented and remains highly relevant (see §§ 52-53).

102. ECRI strongly reiterates its recommendation that a body independent of the police and prosecution authorities should be set up to investigate alleged cases of racially-motivated misconduct by the police, as set out in its GPR No. 11 on combating racism and racial discrimination in policing.

## **2. Integration of internally displaced persons (IDPs)**

103. Ukraine experienced the largest internal displacement in Europe since the Second World War as a result of the illegal annexation by the Russian Federation of the Autonomous Republic of Crimea and the city of Sevastopol in 2014 and armed conflict in certain areas of the Donetsk and Luhansk regions. At the time of drafting this report, there were an estimated 1.7 million IDPs in so-called mainland Ukraine. Following Russian military interference,<sup>84</sup> the vast majority fled conflict in certain areas of the Donetsk and Luhansk regions, while around 20 000 Crimean Tatars, as well as other persons, fled Crimea. ECRI recognises that people displaced within their own country can be particularly vulnerable to violations of their human rights, in particular racial discrimination, and need specific forms of protection and support.

104. The Cabinet of Ministers adopted a Resolution of 16 December 2015 on the Comprehensive National Programme for Support, Social Adaptation and Reintegration of Citizens of Ukraine Internally Displaced from the Temporarily Occupied Territory of Ukraine and Anti-Terrorist Operation Conduct Area to Other Regions of Ukraine for the period until 2017, as well as a corresponding Action Plan. The Ministry of Social Policy is charged with coordination and implementation. The stated aims of the programme include solving the basic problems of IDPs; reducing social tension among them and in society; promoting social integration and adaptation in their new place of residence; ensuring proper living conditions; ensuring access to rights; and providing social, medical, psychological and material support. As with other integration strategies mentioned above, an inherent weakness is that there is no funding attached. In addition to this programme, ECRI notes that several laws have been enacted to ensure or strengthen the rights of IDPs and address some of the issues mentioned above.

105. Despite efforts made, IDPs encounter numerous difficulties. Problems faced when registering at the new place of residence hamper access to rights, in particular regarding housing, employment, pensions and voting. There are also reports that Crimean Tatars who fled to mainland Ukraine face problems accessing social services and education.<sup>85</sup>

106. Problems with housing and employment remain the most critical. The State Emergency Service of Ukraine recently stated that it had only just started working on the IDP housing issue, and had not set its policy yet.<sup>86</sup> According to data

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<sup>82</sup> Unian 2015.

<sup>83</sup> De Visu Group 2015.

<sup>84</sup> Council of Europe, Committee of Ministers 2014.

<sup>85</sup> UN CERD 2016.

<sup>86</sup> Kyiv Post 2016.

published by Vostok-SOS, only 7% of IDPs live in accommodation provided by the state; another 33% live in homes of relatives and friends and 60% rent housing at their own expense.<sup>87</sup> In May 2016, collective centres for IDPs housed 6 518 people. These centres are usually private dormitories, social housing, hotels, religious facilities, educational facility dormitories or hospitals.<sup>88</sup> The right of IDPs to secure free-of-charge ad interim residence is subject to payment of public utilities which, as ECRI was informed during its visit to a dormitory, is very expensive. Since all funding comes from the local or regional authorities, as well as charities, there are significant differences from area to area in IDP assistance.

107. According to an analysis of the State Employment Centre of November 2015, there were only 126 000 able-bodied persons of working-age (7.8% of all IDPs) requiring employment. Only 3.8% of the total number of IDPs asked for help in employment and the State Employment Centre promoted the employment of just over 17 000 persons. NGOs consider that many have resorted to working in the black market. Requalification services have also been offered and business initiatives for those employing IDPs.
108. ECRI welcomes the high degree of solidarity towards IDPs in Ukrainian society.<sup>89</sup> Most were received in host communities with understanding and support. Furthermore, ECRI commends the active organisation of IDPs themselves in setting up a large number of associations for the protection of their rights. Nevertheless, many feel neglected on account of the lack of progress and improvement in their situation. ECRI considers that further efforts and, in particular, funding are required to ensure the proper integration of IDPs.
109. ECRI recommends that the authorities evaluate and revise the Comprehensive National Programme for Support, Social Adaptation and Reintegration of Citizens of Ukraine Internally Displaced from the Temporarily Occupied Territory of Ukraine and Anti-Terrorist Operation Conduct Area to Other Regions of Ukraine, with a particular focus on solving the housing and employment issues, and invest appropriate funding to ensure the integration of IDPs.

### **3. Policies to combat discrimination and intolerance vis-à-vis LGBT<sup>90</sup>**

#### **- Data**

110. There is no official data on the size of the LGBT population in Ukraine. The Constitution (Article 32) prohibits collection, storage, use and dissemination of data concerning information about personal and family life without the person's consent. ECRI recalls that 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 states that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose.<sup>91</sup> Without such information there can be no solid basis for developing and implementing policies to address intolerance and discrimination of LGBT.
111. ECRI recommends that the authorities undertake research and collect data on LGBT persons in Ukraine as well as on discrimination and intolerance against them.

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<sup>87</sup> Zaharov 2016.

<sup>88</sup> Relief Web 2016.

<sup>89</sup> Zaharov 2016.

<sup>90</sup> For terminology, see the definitions set out in Council of Europe Commissioner for Human Rights 2011.

<sup>91</sup> Ukraine did not reply to the questionnaire on implementation of the recommendation.

- **Legislative issues**

112. ECRI notes that on the Rainbow Europe Map 2016 reflecting European countries' legislation and policies guaranteeing LGBT human rights, Ukraine ranked 44<sup>th</sup> out of 49 countries.<sup>92</sup>
113. There is no punishment of incitement to hatred under Article 161(1) of the Criminal Code or violence under Article 161(2) motivated by homo/transphobia. The second part of Article 161(1) referring to discrimination has an open-ended list of grounds which could, therefore, include sexual orientation and gender identity. Further, there is no reference to the grounds of sexual orientation and gender identity under the aggravated forms of certain offences or the general provisions relating to aggravating circumstances, although the Action Plan on Implementation of the National Human Rights Strategy provides for the inclusion of these motives. ECRI was informed that a working meeting of the central executive authorities and civil society organisations was held in May 2016 and that a draft law including these elements is under discussion.
114. ECRI strongly recommends that sexual orientation and gender identity are specifically included as grounds in Article 161(1) and (2) of the Criminal Code as well as in all the aggravated forms of offences and the general provisions on aggravating circumstances under Article 67(1)(3).
115. As for the Law on Principles of Prevention and Combating Discrimination, while the list of grounds is open, sexual orientation and gender identity are not explicitly cited. Again, the Action Plan on Implementation of the National Human Rights Strategy includes legislative amendments to introduce these elements into the law and, as noted in § 14 above, a draft law to this effect is currently before Parliament.
116. ECRI strongly recommends that the grounds of sexual orientation and gender identity are explicitly included in the Law on Principles of Prevention and Combating Discrimination in Ukraine.
117. In November 2015, provisions prohibiting discrimination on the basis of sexual orientation and gender identity in the workplace were introduced into the Labour Code. NGOs have stated that this was the first significant step towards obtaining effective equality for LGBT people since decriminalisation of voluntary sex between men in 1991, and its importance cannot be overstated.<sup>93</sup>
118. Concerning family law matters, Article 51 of the Constitution specifically defines marriage as a voluntary union between a man and a woman. No legal recognition exists for same-sex marriage or registered same-sex partnerships. However, the Action Plan on Implementation of the National Human Rights Strategy provides for the drafting of a bill creating registered civil partnerships for opposite and same-sex couples. ECRI was informed that an expert group has been set up to consider the issue with a view to adopting the legislation by mid-2017.
119. As regards change of gender on a birth certificate, passport or other identity documents, this can only be done on the basis of a sex-change certificate, issued after gender reassignment surgery. In December 2016, the decree regulating legal gender recognition and access to trans-related health care was repealed, so that transsexualism is no longer classified as a psychiatric (mental and behavioural) disorder. ECRI also notes with interest that under the Action Plan on Implementation of the National Human Rights Strategy, proposals should be put forward to improve medical assistance to persons who need gender reassignment, notably to remove the requirement of surgery and to amend the

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<sup>92</sup> ILGA Europe 2016.

<sup>93</sup> Nash Mir Center 2016a.

rules on civil status records. ECRI encourages the adoption of such measures, in line with current international standards in these matters.

120. With respect to asylum, the Refugee Law does not contain any provisions on asylum applications made on grounds of sexual orientation or gender identity, although it mentions, as a legitimate reason for granting refugee status, fear of persecution for persons belonging to “a certain social group”. However, this notion is not defined and there is no established practice as to whether it applies to LGBT persons. NGOs report that a number of applications for asylum on the basis of sexual orientation were granted but in other cases were denied.<sup>94</sup>

- **Promoting tolerance and combating discrimination**

121. There is a widespread negative societal attitude towards LGBT persons. A 2013 survey in Ukraine showed that two-thirds of people thought homosexuality was a perversion. However, LGBT organisations have noted a small but significant improvement in their situation in the last two years and there is said to be a gradual shift in public opinion.<sup>95</sup> Of particular importance was the fact that the President publicly voiced support in 2016 for the right of all people to participate in a Pride parade (see § 44 above).

122. Discrimination against LGBT persons takes place in almost every area of life. LGBT organisations consider it to be most frequently encountered in employment, education, health care and treatment by law enforcement agencies.<sup>96</sup> As regards the latter, ECRI refers to its comments in § 37 above. LGBT persons rarely resort to legal proceedings if they are subject to discrimination.<sup>97</sup>

123. In a 2011 survey undertaken by an NGO, 34% of the LGBT respondents indicated that they had faced harassment in employment due to their sexual orientation. As regards healthcare, there is evidence of high levels of prejudice towards LGBT patients amongst medical professionals.<sup>98</sup> The most significant problems were prejudiced attitudes and humiliation (reported by 24% of victims), the disclosure of private information on sexual orientation or HIV status (18%), the refusal of medical care (12%) and even attempts to compulsorily “treat” homosexuality (8%). In medical universities, there are still books that define homosexuality as a mental disease or a sexual perversion.<sup>99</sup>

124. Regarding education, about one third of LGBT persons questioned in the above-mentioned survey reported problems, including the biased attitude of teachers. NGOs have stated that where pupils are “outed” at school, the school administration does little or nothing to protect them from homophobic abuse from other pupils and, on occasion, members of staff join in the harassment.<sup>100</sup>

125. ECRI recommends implementing measures, such as training of teachers, to promote understanding of and respect for LGBT pupils in schools and to prevent bullying.

126. ECRI is pleased to note that some LGBT activists in Ukraine have expressed a cautious optimism for the future. In June 2016, a Pride march was held in Kyiv with the participation of around a thousand people. Several thousand police guarded the procession and no problems were reported, unlike in the previous

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<sup>94</sup> Nash Mir Center 2012.

<sup>95</sup> United Kingdom Home Office 2015.

<sup>96</sup> Equal Rights Trust 2015.

<sup>97</sup> Equal Rights Trust 2015.

<sup>98</sup> Equal Rights Trust 2015.

<sup>99</sup> Despite the fact that homosexuality was excluded from the national classification of diseases in 1999, in line with WHO standards.

<sup>100</sup> Equal Rights Trust 2015.



year.<sup>101</sup> There is also an annual LGBT film festival which sells thousands of tickets each year.<sup>102</sup>

127. Finally, ECRI welcomes certain awareness-raising activities to combat homophobia and promote tolerance. In 2015 a project was implemented with the NGOs Gay Alliance in Ukraine and the Ukrainian Helsinki Human Rights Union, involving discussion clubs for young people and students at several universities. The Office of the Parliamentary Commissioner for Human Rights launched an educational campaign on prevention and combating discrimination based on sexual orientation with the support of the Project of the European Union and the Council of Europe on strengthening implementation of European human rights standards in Ukraine.<sup>103</sup> ECRI encourages further nation-wide actions promoting understanding, tolerance and non-discrimination towards LGBT persons, especially in view of the recent and planned changes in criminal and civil law introducing specific elements of sexual orientation and gender identity.

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<sup>101</sup> Hurriyet Daily News 2016.

<sup>102</sup> United Kingdom Home Office 2015.

<sup>103</sup> [www.coe.int/en/web/kyiv/strengthening-the-implementation-of-european-human-rights-standards-in-ukraine](http://www.coe.int/en/web/kyiv/strengthening-the-implementation-of-european-human-rights-standards-in-ukraine).



## **INTERIM FOLLOW-UP RECOMMENDATIONS**

The two specific recommendations for which ECRI requests priority implementation from the authorities of Ukraine are the following:

- ECRI strongly recommends that sexual orientation and gender identity are specifically included as grounds in Article 161(1) and (2) of the Criminal Code as well as in all the aggravated forms of offences and the general provisions on aggravating circumstances under Article 67(1)(3).
- ECRI recommends that court fees are waived in cases of Roma seeking to prove their identity for the purpose of obtaining personal identification documents.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 8) ECRI recommends amending the Criminal Code to include the following elements: the offences of incitement to discrimination and to violence; defamation; the public expression, with a racist aim, of an ideology which claims the superiority of, or which denigrates, a group of persons; the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes; the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; and legal persons' liability. The grounds of race, colour, language, religion, citizenship, and national or ethnic origin should also be included in all the relevant provisions.
2. (§ 15) ECRI recommends including the following elements in the Law on Principles of Prevention and Combating Discrimination in Ukraine: segregation and discrimination by association; the duty of public authorities to ensure that parties to whom they award contracts, loans, grants or other benefits, respect and promote a policy of non-discrimination; easily accessible judicial and/or administrative proceedings, including conciliation and fast-track procedures in urgent cases; and the sharing (or shifting) of the burden of proof.
3. (§ 17) ECRI recommends that the Parliamentary Commissioner for Human Rights is granted investigation powers in order to combat racism and racial discrimination effectively.
4. (§ 21) ECRI recommends establishing a mechanism for collecting disaggregated data on hate speech incidents, recording the specific bias motivation, as well as the follow-up given by the justice system, and publishing this data.
5. (§ 36) ECRI recommends that data is collected on the application of Article 67(1)(3) of the Criminal Code on aggravating circumstances and the specific hate ground invoked.
6. (§ 43) ECRI recommends intensifying the work of the cybercrime unit and providing it with appropriate technical and human resources to combat hate speech on the Internet. It also recommends developing guidelines for all police on recognising and dealing with hate speech.
7. (§ 60) ECRI recommends establishing a system of collection of statistical data in all areas relating to Roma integration, including a gender dimension, while strictly respecting the principles of confidentiality, voluntary self-identification and informed consent.
8. (§ 68) ECRI strongly recommends that court fees are waived in cases of Roma seeking to prove their identity for the purpose of obtaining personal identification documents.
9. (§ 73) ECRI strongly recommends the authorities to review the situation of racial segregation of Roma in education and to adopt an effective strategy to put an end to this practice. In line with this, they should also facilitate access of Roma children to preschools.
10. (§ 75) ECRI recommends that further steps are taken to stop the bullying of Roma children in schools, with measures addressed to pupils, parents and teachers.
11. (§ 82) ECRI strongly recommends that the authorities conduct a thorough evaluation of the shortcomings of the Strategy for the Protection and Integration

of the Roma Ethnic Minority and its Action Plan and revise and update them accordingly, paying particular attention to education, housing, employment and obtaining identity documents. They should do this in close cooperation with Roma and Roma organisations and allocate sufficient funding for them to be effective.

12. (§ 89) ECRI recommends that an integration policy is designed for the integration of immigrants in Ukraine, focusing on non-discrimination, access to residence registration, Ukrainian language courses, employment and health care. This should be done in consultation with relevant organisations such as the UNHCR.
13. (§ 95) ECRI recommends that the Action Plan for the Integration of Refugees and Persons in Need of Complementary Protection into Ukrainian Society is revised and updated, in consultation with the UNHCR and other relevant organisations, as well as refugees themselves. It should cover measures to improve their access to social benefits, housing, education, language learning, and employment services. Sufficient human and financial resources should be allocated to ensure the effective local integration and self-reliance of refugees.
14. (§ 102) ECRI strongly reiterates its recommendation that a body independent of the police and prosecution authorities should be set up to investigate alleged cases of racially-motivated misconduct by the police, as set out in its GPR No. 11 on combating racism and racial discrimination in policing.
15. (§ 109) ECRI recommends that the authorities evaluate and revise the Comprehensive National Programme for Support, Social Adaptation and Reintegration of Citizens of Ukraine Internally Displaced from the Temporarily Occupied Territory of Ukraine and Anti-Terrorist Operation Conduct Area to Other Regions of Ukraine, with a particular focus on solving the housing and employment issues, and invest appropriate funding to ensure the integration of IDPs.
16. (§ 111) ECRI recommends that the authorities undertake research and collect data on LGBT persons in Ukraine as well as on discrimination and intolerance against them.
17. (§ 114) ECRI strongly recommends that sexual orientation and gender identity are specifically included as grounds in Article 161(1) and (2) of the Criminal Code as well as in all the aggravated forms of offences and the general provisions on aggravating circumstances under Article 67(1)(3).
18. (§ 116) ECRI strongly recommends that the grounds of sexual orientation and gender identity are explicitly included in the Law on Principles of Prevention and Combating Discrimination in Ukraine.
19. (§ 125) ECRI recommends implementing measures, such as training of teachers, to promote understanding of and respect for LGBT pupils in schools and to prevent bullying.

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