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European Commission Against Racism and Intolerance

First report on Ukraine

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

To date, four series of ECRI's country-specific reports have been made public, in September 1997, in March 1998, in June 1998 and in January 1999 respectively². A fifth series of country-

¹ The report prepared by the Swiss Institute (ref: CRI (98) 80), covering relevant legislation in member States of the Council of Europe is available on the web site www.ecri.coe.int and, in hard copy, from ECRI's Secretariat.

² The first four series comprise reports on Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, the Russian Federation, San Marino, Slovakia, Slovenia, Spain, Switzerland and the United Kingdom.

specific reports was transmitted to the governments of the countries concerned in January 1999, and is thus now being made public³.

The following report contains ECRI's analysis and proposals concerning Ukraine.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This fifth series of reports, for which the procedure was completed by January 1999, will be followed during 1999 by the reports on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

As from 1999, ECRI has begun a follow-up procedure to its country reports, examining what action governments may have taken on the proposals they contained, up-dating their contents generally and focusing on specific issues of concern in greater depth. Some 10 countries will be addressed annually in this way, over the period 1999-2002.

³ Reports on Austria, Latvia, Romania and Ukraine.

REPORT ON UKRAINE⁴

Introduction

Ukraine declared its independence from the former Soviet Union in 1991. In common with several other Central and Eastern European States, Ukraine is undergoing a delicate period of transition. The separation from the former Soviet Union took place in a peaceful manner. The country is however confronted with a serious economic crisis, rendered even more sharp by the switch to liberal economic policies and the increase in corruption and organised crime. These can be identified as the main problems faced by Ukraine, and by many other countries in a similar situation, at present. Furthermore, Ukraine also faces the challenge of providing for the revival and development of the Ukrainian ethnic identity without infringement of the rights of minority groups. Such difficulties create tensions within the population, where non-citizens⁵ or certain minority groups could be used as a scapegoat for the economic crisis.

The 1992 Law on National Minorities played an important role in preventing ethnic strife and intolerance by allowing individual citizens to use their respective national languages in conducting personal business and by allowing minority groups to establish their own schools.

As a new democratic state, Ukraine is still in a process of transition and adaptation to internationally recognised human rights standards. The Ukrainian Constitution is new, adopted on 28 June 1996, and many laws are also new or being amended. Such a transition takes time, but it is important that the problem of racism and intolerance is borne in mind from the beginning of the process of establishing and monitoring the implementation of a new body of law.

Some of the key areas identified by ECRI as meriting particular attention include:

- the development of a comprehensive body of legislation specifically to combat all forms of racism and intolerance;
- the importance of monitoring and evaluating legal and other measures which have only recently been established and the need to ensure that such measures are effectively implemented in practice;
- monitoring the special autonomous status of the Crimea and the resettlement of the Tatar returnees to that region;
- the need to take preventive measures and/or prosecute in respect of the activities of Ukrainian ultranationalist groups and newspapers publishing anti-Semitic diatribes and material which might foster interethnic hatred;
- the need for awareness raising campaigns that inform the public about the problem of racism, and the legal consequences of and remedies against racist or discriminatory acts.

⁴ Note: Any development subsequent to 19 June 1998 is not covered by the following analysis and is not taken into account in the conclusions and proposals

⁵ Ukrainian legislation does not use the term "non-citizens" but rather "foreigners" or "stateless persons".

I LEGAL ASPECTS⁶

A. International legal instruments

1. According to Article 9 of the Constitution of Ukraine, international treaties which are ratified by the Supreme Rada (Parliament), form part of Ukraine's national legislation.
2. Ukraine has so far ratified the following relevant international legal instruments: the UN International Covenant on Civil and Political Rights; the European Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the UN Convention on the Elimination of all Forms of Racial Discrimination; the Convention of the International Labour Organisation concerning Discrimination in Respect of Employment and Occupation and the UNESCO Convention against Discrimination in Education, the Framework Convention for the Protection of National Minorities. Ukraine has been a member of the Council of Europe since November 1995.
3. Ukraine has signed but not yet ratified the European Social Charter and the European Charter for Regional or Minority Languages. The Ukrainian Government has indicated its intention to proceed with such ratification within a short period. ECRI feels this step should be taken as quickly as possible.

B. Constitutional provisions

4. A new Constitution was adopted by the Supreme Rada on 28 June 1996. Many of the provisions regarding human rights are inspired by the European Convention on Human Rights.
5. Ukraine is a unitary State, which consists of twenty-four provinces and the Autonomous Republic of the Crimea (where 70% of the population is Russian). The Ukrainian Constitution gives to the Crimea autonomous status and the right to promulgate its own Constitution. It also establishes the specific powers vested in the Crimean Government rather than the national government. Nonetheless, the Crimean Constitution must not contravene the Ukrainian Constitution. The autonomous Republic can adopt only normative regulations that comply not only with the Constitution of Ukraine but also with the law of Ukraine. This hierarchy of the legal systems could restrict the scope of the constitutional guarantee of Crimean autonomy.
6. The Constitution, in its Article 24, stipulates that citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions on the grounds of race, colour of skin, political, religious and other beliefs, status, place of residence, linguistic or other characteristics. The Ukrainian constitution and other legislation provide for freedom of religious, political and other beliefs. In Ukraine, the legalisation of the activities of religious communities is carried out by regional authorities of the State executive power rather than by the judicial authorities. It would appear to ECRI that legislation regarding the registration of religious communities leaves some room for arbitrary decisions by local governments which are responsible for registering local religious communities. ECRI notes that draft amendments and

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A full overview of the legislation existing in Ukraine in the field of combating racism and intolerance is provided in the publication CRI (98) 80 prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography).

modifications to the current legislation on freedom of conscience and religious organisation have been proposed.

Article 26 provides that "Foreigners and stateless persons who are in Ukraine on a legal basis enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine".

7. The Constitution contains provisions concerning discrimination, especially as regards the development of national minorities (Art. 11) and equality before the law (Art 24). It does not, however, contain specific provisions concerning racism and intolerance. ECRI feels that appropriate steps should be taken to introduce provisions concerning racism and intolerance into the Constitution.

C. Criminal law provisions

8. The main provision in the field of combating racism and intolerance is Article 66 of the Criminal Code, concerning infringement of the equality of citizens on national, racial or religious grounds. This Article criminalizes deliberate acts aimed at instigating national, racial or religious hostility or hatred, degrading national honour and dignity of a person or insulting citizens' feelings in connection with their religious convictions, as well as acts aimed at the explicit or implicit restriction of rights or the creation of direct or indirect privileges for citizens depending on their race, nationality or attitude to religion.
9. Discrimination in public life, such as refusal to provide goods and services, discrimination in employment or in housing falls under the provision of Article 66 of the Criminal Code. The article sets out various criminal acts that specifically include discrimination in conjunction with a person's national or racial descent (i.e. refusal to employ or dismissal, refusal to admit into higher education establishments, restriction of social rights and creation of direct and indirect privileges based on a person's race, nationality or religion).
10. The draft of the new Criminal Code has been submitted to the Parliament. The draft contains the same provisions as the current Criminal Code (Article 66), i. e. infringement of the right to equality on racial, national, or religious grounds. Moreover, there is a provision in the Draft under which Genocide, i.e. an act knowingly committed with a view to destroying in whole or in part a national, ethnic, racial or religious group by killing members of any of such groups or inflicting on them serious bodily harm, inflicting on the group conditions of life calculated to lead to its physical destruction in whole or in part, lower birth-rate or prevention of birth in such group or forcefully transferring children from one group to another, is punishable (Article 413).
11. There is no jurisprudence available so far, partly due to the recent nature of the legislation in force, and partly to the fact that very few prosecutions are undertaken by the authorities. Police and Prosecutors should be encouraged to pursue these crimes as a matter of course, especially since the Ukrainian ultranationalist groups are increasing their activity; the implementation of the law and respect for constitutional principles in this area should therefore be carefully monitored.

D. Civil and administrative law

- ***Legislation concerning national minorities***

12. There are three important laws regarding nationalities, minorities and language. The 1991 Declaration on the Rights of the Nationalities of Ukraine guarantees all peoples, nationalities and individual citizens of Ukraine the same political, economic, social and cultural rights. The 1992 Law on National Minorities allows individual citizens to use their respective national languages in conducting personal business and allows minority groups to establish their own schools. However, according to the Constitution (Article 10), Ukrainian remains the only State language. Finally, the 1989 Language Law prohibits discrimination based on linguistic grounds.
13. The Law on National Minorities guarantees national minorities rights to cultural and national autonomy. Furthermore, Article 11 of the Constitution states that the State promotes the consolidation and development of the country's national minorities. Since the relevant legislation is quite new, the exact implementation of such provisions is not yet clear, although there seems to be quite wide provision of mother tongue education for the various groups. There have however been some reports of various groups suggesting that the situation is not satisfactory: for example, some ethnic Russians, the majority group in eastern Ukraine, have complained about the increased use of Ukrainian in schools and in the media, while in the Crimea, the Ukrainian and Tatar groups complain of discrimination by the Russian majority, and request that Ukrainian and the Crimean Tatar language be given equal treatment to the Russian language. In the Odessa region, the Romanian-Moldovan minorities have complained that they face difficulties in using their language in schools and in the written press. ECRI feels that monitoring of the situation and particularly the implementation of legislation concerning the rights of national minorities will be necessary to prevent any tensions from developing.

- ***Provisions against discrimination***

14. There are no specific laws concerning discriminations in public life such as the refusal to provide goods and services and discrimination in employment or housing. Since Ukraine is currently changing and adapting the legislation inherited from the Soviet Union, ECRI feels that this would seem an appropriate time to consider enacting a comprehensive anti-discrimination law covering these fields: inspiration might be drawn from legislation already existing in several European States.

- ***Citizenship law***

15. People born in Ukraine and living in Ukraine at the time of independence are considered citizens. Dual citizenship is not recognised. In 1997, the Ukrainian parliament passed an amendment granting Ukrainian citizenship to all citizens of the former Soviet Union who had been permanent residents in Ukraine since the country gained independence in 1991. The amended law also facilitates acquisition of citizenship for persons of Ukrainian origin and their descendants, including 70,000 Crimean Tatars, who returned to Crimea from their deportation under Stalin. However, potential citizens must produce official documents from their countries of residence confirming that they are no longer citizens of that country. As most Tatars come from Uzbekistan, agreements between Ukraine and the Republic of Uzbekistan are in place to simplify the procedure to renounce Uzbek citizenship. ECRI notes that, without Ukrainian citizenship, Crimean Tatars have no access to numerous benefits which would allow them to be reintegrated into their homeland.

E. Specialised bodies

16. Every person has the right to appeal, for the protection of his/her rights, to the Authorised Representative of the Supreme Rada of Ukraine on Human Rights, who acts as ombudsman.
17. In July 1993 the Ministry on Nationalities and Migration was created: in 1996 this was renamed the State Committee of Ukraine on Nationalities and Migration. This State Committee is a central body of executive power, which is responsible for implementation of the State policy in the sphere of inter-ethnic relations, rights of national minorities and the Ukrainian diaspora, migration relations, development and functioning of the Ukrainian language as State language and languages of national minorities throughout the country. There is also the State Committee of Ukraine on Religions which is responsible for elaborating and implementing State policy.
18. It is difficult to evaluate the efficiency of these bodies, which are still very new. Their work has therefore to be encouraged and carefully monitored. ECRI would moreover suggest the creation of a specialised body along the lines laid out in ECRI's general recommendation No. 2. ECRI also hopes that the bodies mentioned above will be allocated sufficient human and financial resources to perform their task.

II POLICY ASPECTS

F. Reception and status of non-citizens

- *Immigration*

19. Ukraine has accepted many returnees, Ukrainians from other former Soviet Republics and Crimean Tatars who had been exiled to Central Asia and who are mostly citizens of countries of Central Asia. The Government supported them and helped them to resettle, although problems still remain which should be addressed. On the other hand, the number of asylum seekers is rather low, but there is a high number of immigrants from the Caucasian area, many of whom are escaping armed or inter-ethnic conflict in Azerbaidjan, Georgia, Armenia or Chechnia.
20. Ukraine does not yet possess any legislation concerning immigration. Since it is likely that the number of immigrants will rise in coming years, consideration should be given to developing rules and policies concerning immigration and the integration of immigrants, to prevent problems from developing in the future.

G. Education and training

- *Police training and education*

21. There have been several reports of torture and ill-treatment in police custody and inhumane prison conditions over the past years in Ukraine, and in particular frequent harassment by the authorities of young dark-skinned men from the Caucasus. This is apparently based on the stereotype that these people are involved in criminal activity. Any reports of ill-treatment should be rigorously examined and perpetrators punished.
22. It is important that law enforcement officials receive appropriate training in human rights law and the treatment of ethnic minorities and non-citizens. Special attention is

drawn to the Council of Europe's study and guidelines on "Police training concerning migrants and ethnic relations".

- **School education**

23. According to the Government⁷, teaching is conducted in the language of minority groups in 15% of Ukrainian schools. Teachers of language and literature of the national minority languages are trained in 15 universities throughout the country.
24. Although some positive developments have been noted, some ethnic Russians have claimed that their children are disadvantaged when taking academic entrance examinations since all applicants are required to take a Ukrainian language test. While it is understood that Ukrainian is the only official language of the State, and that knowledge of this language is therefore important for all Ukrainian citizens, it is felt that more flexibility might be possible, for example, in the provision of higher education in languages other than Ukrainian. In this respect, it is noted that the government states that universities, libraries, theatres etc functioning in the languages of national minorities have been or are to be created and will be assisted financially. ECRI encourages such steps.

H. Statistics

25. It is noted that the statistics supplied by the Ukrainian government do not include all groups living in Ukraine, for example, the Ruthenians or the Roma/Gypsy population. ECRI wonders whether gaps exist in the information about the different groups living in Ukraine which should be filled.
26. ECRI hopes that statistics about racist and discriminatory acts will be developed in order to collect reliable data on these issues. This could for example be undertaken by the Special Interdepartmental Committee or the Ombudsman.
27. Official bodies should be requested to provide detailed information of cases of complaints of racial discrimination brought before the court and on remedies made available to victims of racism and xenophobia.

I. Media

28. The ultra-nationalist press frequently publishes anti-Jewish and anti-Russian diatribes. Anti-Jewish topics have also occasionally appeared in the mainstream press. It seems that the authorities have often failed to prosecute those responsible for such acts. A Special Interdepartmental Committee has recently been created to tackle this issue; it has legal powers. It is hoped that the Committee will take action whenever it is needed. Furthermore, the media profession itself could be encouraged to adopt a code of conduct. Attention is drawn to recent Council of Europe initiatives on the role of the media in combating racism and intolerance.
29. Some deterioration in the provision of material in minority languages has been reported recently: papers which previously included sections in minority languages are apparently no longer doing so. Furthermore, it is not always possible to obtain a newspaper in various minority languages. For example, in the Odessa region, where there is a minority group of Moldovan-Romanian origin (about 200 000 people) there are no longer any

⁷ cf Reply to the questionnaire sent by ECRI to the Ukrainian authorities

newspapers in this language (the remaining two have recently been closed). In addition, it is not possible to obtain newspapers in the Moldovan-Romanian language from Moldova or Romania. This situation should be reversed and appropriate steps taken to encourage the provision of materials in minority languages. The authorities should ensure that the publication of newspapers in minority languages is supported.

J. Awareness raising

30. Given that public opinion sometimes appears to be rather negative towards certain groups, especially the Roma/Gypsy community, ECRI feels that particular attention should be devoted to raising public awareness about these groups in a positive sense. This could involve circulating information about the different minority groups present within the country and the contribution made by different cultures to society as a whole. In this respect, politicians and other public figures have an important role to play in shaping public opinion.

K. Other areas

- ***Free movement within the country***

31. There are still some restrictions on free movement within Ukraine from area to area, since a residence permit (propiska) is required to move to a different area, the granting of which depends on the availability of housing etc. Despite some progress in this field, those who have for some reason lost their residence permit or not been granted one are still deprived of access to a number of constitutionally-guaranteed rights. For example, they can receive medical care in state-run hospitals only in the location where they are registered. It is felt that such restrictions, which appear to date from the Soviet era, should be removed.

- **Attitudes towards Roma/Gypsies**

32. Among the national minorities of Ukraine, there are about 48,000 Roma/Gypsies⁸. In 1990, Roma/Gypsies in Transcarpathia created three communities – the Uzhgorod regional (oblast) and Uzhgorod city society with a branch in Mukachevo. The leader of the regional society is the deputy of the regional council. The activities of the communities focus on improving the educational level of young people as well as on employment, social and cultural issues. These organisations have relations with the Gypsy Parliament in Hungary and Gypsy organisations of other European countries. However, there are some reports on the systematic ill-treatment of Roma/Gypsies by both regular and special police in Transcarpathia. A so-called " prophylactic" policy aimed at crime prevention has been devised. Roma/Gypsies are the sole targets of this policy. The first element of this policy involves Roma/Gypsies with criminal records. All Roma/Gypsies who have been in prison in the last three years are kept on a special list for observation and monitoring. Secondly, all over Transcarpathia, Roma/Gypsies in general and especially young men living in Roma/Gypsy communities, have recently been subjected to forced registration and fingerprinting, often following collective arrests. Thirdly, monitoring raids are carried out on whole communities for a variety of purposes: searching for suspects, checking propiskas (residence permits), or simple intimidation. Finally, ghettoisation is promoted. ECRI feels that the situation of Roma/Gypsies should be radically improved and an end put to all discriminatory practices of the type described above.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Ukrainian authorities on 10 October 1996.

11 million ethnic Russians, 400 000 Belorussians, 500 000 Jews, 300 000 Moldavians, 250 000 Crimean Tatars, 230 000 Bulgarians, 220 000 Poles, 164 000 Hungarians, 135 000 Romanians, 100 000 Greeks, 40 000 Germans, 8 000 Slovaks.

Population: 50,5 million (1January 1998). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)

⁸ Figures provided by the Ukrainian authorities

BIBLIOGRAPHY

This bibliography lists the main sources consulted during the examination of the situation in Ukraine: it does not cover all the various sources of information (media, contacts within the country, national NGOs etc.) which were utilised.

1. Reply supplied to the ECRI questionnaire by the Ukrainian authorities.
2. CERD/C/SR.958, Examination of Ukraine's 11th and 12th periodic reports, 1993.
3. CERD/C/226/Add.3: Twelfth periodic reports of States parties due in 1992, Ukraine.
4. Report on the application by Ukraine for membership of the Council of Europe, Parliamentary Assembly, FDOC7370.
5. Addendum to the report on the application by Ukraine for membership of the Council of Europe, Parliamentary Assembly, Doc. 7370 Addendum.
6. Opinion on the application by Ukraine for membership of the Council of Europe, Parliamentary Assembly, ADOC7398.
7. Statement by the delegation of Ukraine to the Sixth Conference of European Ministers responsible for migration affairs, Warsaw, June 1996.
8. Annual Report, Amnesty International, London, 1996.
9. Documents by Amnesty International concerning the situation in Ukraine.
10. US State Department Country Reports on Human Rights Practices for 1995, Washington, 1996.
11. Antisemitism world report 1996, Institute for Jewish Policy Research and American Jewish Committee, New York, London, 1996.
12. The New Russian Diaspora, Vladimir Shlapentokh, Munir Sendich and Emil Payin ed., London, 1994.
13. A political portrait of Ukraine, Interethnic relations & national tolerance in the countries of Central and Eastern Europe, Democratic Initiatives, Kiev, 1995.
14. Ukraine Human Development Report 1995, UNDP, Kiev, 1995.
15. OSCE Implementation Meeting on Human Dimension Issues Warsaw, 1997 Report by the International Helsinki Federation for Human Rights.