



**ECRI REPORT  
ON UKRAINE**  
**(fourth monitoring cycle)**

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are 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-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking 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, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (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 report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 23 June 2011 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.**



## SUMMARY

**Since the publication of ECRI's third report on Ukraine on 12 February 2008, progress has been made in a number of fields covered by that report.**

Increased penalties have been introduced in the Criminal Code for hate-motivated offences, and racist motivation is expressly mentioned as an aggravating circumstance for certain offences against the life or health of a person. It is also now prohibited to import, produce, store and disseminate products inciting to racial, national and religious intolerance and discrimination.

An Inter-Agency Working Group to combat xenophobia and ethnic and racial intolerance, which brought together a broad range of relevant actors, was set up in 2008 under the Cabinet of Ministers to tackle these issues in an integrated way. It adopted a Plan of Action to Combat Xenophobia and Racial and Ethnic Discrimination in Ukrainian Society for 2008-2009, and a similar plan for 2010-2012. In recent years, until its disbanding in 2010, the State Committee for Nationalities and Religion had begun to play an increasing role in developing, coordinating and overseeing action against racism and xenophobia in Ukraine, including coordinating the work of the above Working Group. Until its dissolution in 2010, the Human Rights Monitoring Department in the Ministry of the Interior had also been working towards introducing uniform monitoring of racist incidents and monitoring the activities of neo-Nazi and skinhead groups.

The number of racist attacks against foreign students appears to have diminished in recent years. There is also growing awareness of the need to deal with the presence of neo-Nazi and skinhead groups around football. As part of the preparations for the Euro 2012 football tournament, the Ministry of Education, Youth and Sports is working on a number of preventive measures, aimed mostly at youth.

In 2009 nine national television channels signed a charter to regulate broadcasting, which includes provisions against incitement to hatred. The national union of journalists of Ukraine has drawn up a code of professional conduct and set up a commission on journalists' ethics.

Some local authorities have set up programmes to promote the social inclusion of Roma, and a programme was launched in 2010 to introduce Roma health mediators in five regions of Ukraine. Some consultative meetings of public authorities with representatives of Roma organisations take place in regions with a high concentration of Roma and some Roma representatives were elected in these regions in the local elections of October 2010.

The Government has drawn up a bill on refugees and persons in need of complementary or temporary protection, which would, amongst others, reportedly introduce in Ukrainian law the notions of complementary and temporary protection, provide clearer grounds for the rejection of refugee status and expressly prohibit discrimination against asylum seekers as well as refoulement and forcible return. Two new open temporary accommodation centres have been built for registered asylum seekers whose claims have not been rejected and the authorities have taken some steps to improve access to health care for detained migrants.

The number of antisemitic publications in Ukraine has dropped markedly since 2007. The authorities have taken steps to promote awareness and ensure remembrance of victims of the Holocaust and to improve the teaching of Jewish history in schools.

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

Some provisions relevant to the fight against racism still only cover “citizens” and not all persons under Ukrainian jurisdiction. There are also consistent reports that the Ukrainian authorities tend to prosecute racist offences as ordinary offences or reclassify them as “hooliganism”. Although allegations of racial discrimination in daily life exist in Ukraine, there are no comprehensive civil and administrative anti-discrimination provisions covering the different fields of daily life, nor are there any such provisions on providing for effective mechanisms of enforcement and redress.

Following the disbanding of the State Committee for Nationalities and Religion in December 2010, the Committee’s specific functions with respect to combating racism and racial discrimination do not appear to have been transferred to other institutions and there appears to be a vacuum at present in the responsibilities for leading this work. Progress that was being made towards tackling racism in an integrated and strategic manner risks being lost, with efforts becoming increasingly scattered and ineffective.

Racist attacks continue to occur and individuals continue to be targeted on the basis of their skin colour and to fear for their physical safety in public. Informal neo-Nazi groups are increasingly present, especially in major industrial cities with football teams, and Ukraine is also chosen by extreme right-wing and neo-Nazi groups for holding concerts.

Some political parties and candidates engage in xenophobic, antisemitic or anti-Tatar rhetoric. There are websites that constantly publish antisemitic, racist and xenophobic material; virulent hate speech against Roma has also been reported on Internet forums. Journalists and the media reportedly do little to combat racism, xenophobia and racial discrimination. Overall, tolerance towards Jews, Russians and Roma appears to have significantly declined in Ukraine since 2000 and prejudices are also reflected in daily life against other groups, who experience problems in accessing goods and services.

Many Roma do not dispose of basic identity documents. This seriously affects their access to social rights as well as the right to vote. The situation of Roma in the field of housing, education and access to employment does not appear to have improved. Hate speech, negative stereotypes and prejudice against Roma are still widespread and government policies themselves at times appear also to ignore the situation of marginalisation and discrimination faced by Roma.

The overall situation of Crimean Tatars also seems not to have improved since the publication of ECRI’s third report and local politicians also reportedly tend to ignore or deny the specific problems faced by this group. Attacks against Muslim cemeteries continue to occur, notably in Crimea, and misconceptions about and prejudice against Muslims persist.

A significant interruption in the processing of asylum applications from mid-2009 to mid-2010 left asylum seekers in a protracted situation of precariousness. Following the disbanding of the SCNR, refugee status determination procedures are again reported to be frozen in practice. Corruption of officials and access to interpretation and legal advice also remain of concern. Overcrowding and unsanitary conditions continue to be reported in migration detention centres; unaccompanied children face difficulties in applying for asylum and accessing adequate accommodation as well as school, and attempts to extradite asylum seekers have been reported, even following the entry into force of amendments to the Code of Criminal Procedure in June 2010.



Prejudice and discrimination remain rife in private sector employment, affecting in particular Roma, asylum seekers and refugees and Crimean Tatars. These groups are also most vulnerable as regards health status and health care.

There are reports of frequent misconduct by police officers in their contacts with persons belonging to vulnerable groups, especially Roma. Roma continue to experience arbitrary arrests and detention as well as fingerprinting, extortion, threats and beatings at the hands of the police. Migrants and asylum seekers, including children, also risk abusive treatment and arbitrary detention. Racial profiling is practised, shaking the confidence of national/ethnic minorities in the police. At the same time, there is no independent police complaints mechanism.

Overall statistical data broken down according to national/ethnic origin is still only gathered in the context of the population census, and beyond these overall figures, little or no data is gathered regarding the access to social rights of groups coming within ECRI's mandate.

**In this report, ECRI requests that the Ukrainian authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.**

ECRI makes a number of recommendations aimed at strengthening the constitutional and criminal provisions in force against racism and racial discrimination. It recommends that racist incidents and offences be consistently reported and recorded in the criminal justice system and that steps be taken to improve the prosecution of such offences. It also urges the Ukrainian authorities to adopt comprehensive anti-discrimination legislation covering all fields of life.

ECRI strongly recommends that the Ukrainian authorities define as soon as possible the body that will in future be responsible for co-ordinating the authorities' work on combating racism and racial discrimination and ensure that its staff have strong expertise in the anti-discrimination field, that the institution reflects this approach clearly and that it has adequate human and financial resources to carry out its functions effectively. ECRI further recommends that the active involvement of civil society in this work be provided for and facilitated.\*

ECRI strongly recommends that the authorities intensify their efforts both to punish and prevent violent, racially motivated offences, including through training the relevant actors of the criminal justice system. It recommends that the authorities intensify their efforts to monitor the activities of neo-Nazi and skinhead groups and to combat racism in football. ECRI also recommends taking a series of measures to combat racism, antisemitism and xenophobia in public discourse.

ECRI recommends that the authorities set up a programme to simplify the acquisition of identity documents by Roma and that they take a series of measures to improve the situation of Roma in all fields of daily life. It strongly recommends that they take an integrated approach in this regard.

ECRI recommends that the authorities engage in genuine dialogue with Crimean Tatars regarding issues related to their status in Ukraine with a view to improving their position in Ukrainian society and regarding their demands as formerly deported persons.

ECRI urges the Ukrainian authorities to ensure that a fair and effective refugee status determination procedure is in place at all times and that the final structure intended to exercise these functions is established as soon as possible. It urges the authorities to

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\* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

ensure that in the meantime, the transitional situation created by the dissolution of the State Committee for Nationalities and Religion does not again create a gap in asylum processing procedures.\*

ECRI makes a series of recommendations aimed at ensuring that asylum seekers and refugees are not extradited in breach of Article 3 ECHR, that asylum seekers have access to fair asylum status determination procedures and housing, and that adequate living conditions and health care are provided in migrant detention centres.

ECRI makes a series of recommendations aimed at strengthening the fight against discrimination in the fields of education, employment, housing and health. It also recommends that the authorities take steps to improve ethnic data collection, with due regard to the principles of confidentiality, informed consent and voluntary self-identification.

ECRI strongly recommends that the authorities step up their efforts to ensure that all law enforcement officials receive initial and on-going training on human rights in general and issues pertaining to racism and racial discrimination in particular.

ECRI strongly recommends that an independent body empowered to receive complaints against police officers be established; it refers to its General Policy Recommendation No. 11, which contains a number of specific guidelines in this respect.\*

ECRI recommends that the authorities take a firm stand against racism, racial discrimination, antisemitism, xenophobia and intolerance, that they run campaigns to raise the public awareness of these issues, and that they step up their efforts to combat racism and racial discrimination through the school educational programme.

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\* The recommendations in this paragraph 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. Existence and Application of Legal Provisions

#### International legal instruments

1. Ukraine is a party to Protocol No. 12 to the European Convention on Human Rights (General prohibition of discrimination) and to a number of other international instruments relevant to the fight against racism and racial discrimination. In its third report, ECRI recommended that Ukraine sign and ratify the Convention for the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
2. Ukraine has not signed or ratified either of these instruments; it has indicated that ratifying the Convention for the Participation of Foreigners in Public Life at Local Level would require amendments to the Constitution. ECRI underlines that this instrument may make an important contribution to the fight against racism and related forms of intolerance, by helping to eliminate obstacles to the full participation of all persons in the society to which they belong. It also emphasises that ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families may be seen as a part of the process of ensuring that the rights of all migrant workers and members of their families are fully respected.
3. ECRI again recommends that Ukraine sign and ratify the Convention for the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

#### Constitutional provisions and other fundamental provisions

- *Constitution*

4. As noted in ECRI's previous reports, Article 24 of the Constitution provides that citizens have equal constitutional rights and freedoms and are equal before the law; this article also enshrines the principle of non-discrimination on the grounds of race<sup>1</sup>, colour of skin, religious and other beliefs as well as ethnic and linguistic characteristics. While the Ukrainian authorities have indicated that the term "citizens" is used as a generic term that includes foreigners and stateless persons, ECRI noted in its third report that any ambiguity created by the term "citizens" should be eliminated, and recommended that the authorities include in the Constitution the right to equality and non-discrimination for all persons under Ukrainian jurisdiction and not just for citizens. There has however been no change in the situation since ECRI's third report.
5. ECRI again recommends that the Ukrainian authorities include in the Constitution the right to equality and non-discrimination for all persons under Ukrainian jurisdiction and not just for citizens. It encourages them in this regard to draw their inspiration from ECRI's General Policy Recommendation No. 7 on National legislation to combat racism and racial discrimination.

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<sup>1</sup> Since all human beings belong to the same species, ECRI rejects theories based on the existence of different "races". However, ECRI understands that this term is used in order to ensure that those persons who are generally and erroneously perceived as belonging to "another race" are not excluded from the protection provided for by the Constitution and legislation.

- *Legislation on national/ethnic minorities*

6. The possibility of amending or revising the 1992 Law on National Minorities has been being mooted in Ukraine for a number of years. At the time of drafting of ECRI's third report, draft amendments had not reached the Parliamentary Committee in charge of examining them. ECRI recommended that the Ukrainian authorities adopt a new law on national minorities as soon as possible to protect the rights of members of this group and afford them equality in all areas. It indicated that this law should contain provisions prohibiting direct and indirect racial discrimination.
7. ECRI notes that the need to bring the legislation governing national minorities into line with relevant international norms, such as the Framework Convention for the Protection of National Minorities, has been widely acknowledged in Ukraine for some time, as the legislation is considered outdated and contains certain flaws and inconsistencies that need to be remedied.<sup>2</sup> Prior to its dissolution in December 2010,<sup>3</sup> the State Committee for Nationalities and Religion was reported to have been developing some draft amendments to the 1992 Law and to have circulated these to other government departments. However, the status of these amendments is at present unclear and in practice there has still been no change.
8. ECRI again recommends that the Ukrainian authorities revise the legislation with respect to national/ethnic minorities as soon as possible to protect effectively the rights of persons belonging to national/ethnic minorities and afford them equality in all areas. It reiterates in this regard that the legislation should contain provisions prohibiting direct and indirect racial discrimination.

- *Language law*

9. In its third report, ECRI recommended that the Ukrainian authorities ensure that new legislation on language which takes full account of Ukraine's linguistic diversity be adopted. It recommended that representatives of minority groups, NGOs and civil society be involved in all stages of this process and that their points of view be taken into consideration as much as possible.
10. ECRI notes that there has been no change in the legislation in force in this field since its third report. Accordingly, language policy in Ukraine is still based on the 1989 Law on Languages and the 1992 Law on National Minorities, which have been criticised for lack of clarity and coherence<sup>4</sup> as well as for failing to reflect adequately the standards set down by the European Charter for Regional or Minority Languages.
11. In 2010 two draft laws on languages were forwarded to the Ukrainian Cabinet of Ministers. One, drawn up by the Ministry of Culture and analysed with approval by the Ministry of Justice, was returned to the Ministry of Culture by the Cabinet. The other, drawn up by a group of members of parliament, was submitted to the Parliament by the Cabinet of Ministers on 7 September 2010. The latter draft was

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<sup>2</sup> See *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Ukraine, adopted on 30 May 2008, ACFC/OP/II(2008)004*; see also *Committee of Ministers, Resolution CM/ResCMN(2011)8 on the implementation of the Framework Convention for the Protection of National Minorities by Ukraine*.

<sup>3</sup> See further below, *Anti-discrimination bodies and other institutions*.

<sup>4</sup> *Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Ukraine, ECRML (2010)6, 7 July 2010, p. 12.*

also examined by the Venice Commission, which expressed a number of reservations about its contents.<sup>5</sup>

12. Neither of these drafts was on the agenda of the Ukrainian Parliament at the time of drafting the present report and it is beyond the scope of this report to enter into a detailed analysis of either of the drafts. ECRI wishes to stress, however, that language questions are particularly sensitive in Ukraine, due to the overall ethnic and linguistic composition of the population<sup>6</sup> as well as the country's history. In these circumstances ECRI underlines the particular importance of ensuring that the provisions in force in this field are clear, that they are fully in conformity with the principle of non-discrimination and that the drafting process of any amendments to the existing provisions allows for broad consultation and participation. All of these elements are fundamental to ensuring that all persons in the jurisdiction of Ukraine can have full confidence in the legislation governing the use of minority languages and in its proper application in practice.
13. ECRI recommends that the Ukrainian authorities ensure that legislation on language that takes full account of Ukraine's linguistic diversity is adopted and that it duly reflects the principle of non-discrimination. ECRI urges the authorities to ensure that the drafting process allows for broad consultation and participation, in order to ensure that the concerns of groups affected by the law are duly taken into account and to promote tolerance and mutual understanding.

### **Criminal law provisions against racism and racial discrimination<sup>7</sup>**

#### *Contents*

14. Article 161 of the Criminal Code prohibits wilful actions inciting national, racial or religious enmity and hatred, humiliation of national honour and dignity and insulting citizens' feelings with respect to their religious convictions, as well as the direct or indirect restriction of rights, or the granting of direct or indirect privileges to citizens based on a series of grounds including race, colour, religious convictions, ethnic origin and language. In its third report, ECRI recommended that the scope of this article be specifically extended to include all persons under Ukrainian jurisdiction, rather than "citizens". ECRI also recommended that the protection of a person's dignity be extended to include the grounds of race, colour, ethnic origin and language and that NGOs and representatives of ethnic minority groups as well as of refugees and asylum seekers be consulted on any amendments to the current legislation with regard to racially motivated crimes.
15. On 19 March 2009, the Ukrainian Parliament adopted an amendment to Article 297 of the Criminal Code, increasing the maximum sentence for various acts of desecration of graves. Repeat offences and offences committed by organised groups or based on "hooligan" motives are now punishable with imprisonment from three to five years.
16. In November 2009, the Ukrainian Parliament adopted a series of amendments to the Criminal Code pertaining to racial discrimination and incitement to racial hatred. Racist motivation (including on the grounds of national or religious

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<sup>5</sup> *European Commission for Democracy Through Law (Venice Commission), Opinion on the Draft Law on Languages in Ukraine, adopted at its 86<sup>th</sup> plenary meeting (Venice, 25-26 March 2011), CDL-AD(2011)008.*

<sup>6</sup> *For figures showing the ethnic and linguistic composition of the population of Ukraine, see Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Ukraine, ECRML (2010)6, 7 July 2010, p. 5.*

<sup>7</sup> *In line with the definitions set out in ECRI's General Recommendation No. 7 on national legislation to combat racism and racial discrimination, all references to these phenomena include grounds such as "race", colour, language, religion, nationality or national or ethnic origin.*

intolerance) is now expressly listed as an aggravating circumstance for the purposes of sentencing in several articles of the Criminal Code concerning offences against the life or health of a person:<sup>8</sup> thus, for example, the minimum sentence for premeditated killing on grounds of racial, ethnic or religious hatred has been increased from seven to ten years' imprisonment. These specific provisions coexist with the general provision of Article 67(1)(3) of the Criminal Code that qualifies racist motivation as an aggravating circumstance.<sup>9</sup> At the same time, Article 161 of the Criminal Code was amended, increasing from five to eight years the maximum sentence that can be imposed on a person having incited national, racial or religious hatred or condoned the direct or indirect restriction of rights of others on, inter alia, grounds of race, colour, religious convictions and language. However, this article has not been amended to include all persons under Ukrainian jurisdiction, but still refers to "citizens".

17. Article 300 of the Criminal Code was also amended in November 2009. Initially aimed solely at curbing the importation, production, storage and dissemination of items propagating the "cult of violence" and cruelty, it now also prohibits the same acts with respect to products inciting to racial, national and religious intolerance and discrimination. The term "discrimination" – introduced into the Criminal Code by these amendments – is however not defined in the Code.
18. ECRI notes with interest the increased penalties introduced in Articles 161 and 297 of the Criminal Code for hate-motivated offences, as well as the express mention of racist motivation as an aggravating circumstance for a number of specific offences against the life or health of a person. It also welcomes the prohibition on importing, producing, storing and disseminating products inciting to racial, national and religious intolerance and discrimination. It notes with regret, however, that Article 161 of the Criminal Code still refers to "citizens" and has not been amended to include all persons under Ukrainian jurisdiction.
19. ECRI again recommends that the scope of Article 161 of the Criminal Code be specifically extended to include crimes committed against all persons under Ukrainian jurisdiction, rather than "citizens". ECRI also recommends that the protection of a person's dignity under this article be extended to include the grounds of race, colour, ethnic origin and language and that NGOs and representatives of ethnic minority groups as well as of refugees and asylum seekers be consulted on any amendments to the current legislation with regard to racially motivated crimes.
20. ECRI, moreover, invites the Ukrainian authorities to examine their criminal legislation against ECRI's General Policy Recommendation No. 7 national legislation to combat racism and racial discrimination, which, inter alia, encourages member States to criminalise a wide range of offences related to hate speech as well as the creation of, leadership of, support for or participation in the activities of a group that promotes racism.

- *Application*

21. In its third report, ECRI noted that the courts had seldom applied Article 161 of the Criminal Code, as it requires proof of wilful action on the part of the perpetrator, which is difficult. ECRI accordingly urged the Ukrainian authorities to amend this article to facilitate the prosecution of anyone who incites racial hatred.

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<sup>8</sup> See Articles 115 (murder), 121 (intentional grievous bodily harm), 122 (intentional bodily harm), 126 (battery or torture causing physical pain but no bodily injury), 127 (torture), 129 (threat to kill).

<sup>9</sup> Article 67(4) of the Criminal Code prevents a court from taking an aggravating circumstance into account twice when imposing a punishment.

It also recommended that the Ukrainian authorities continue to apply Article 297 of the Criminal Code wherever necessary.

22. ECRI notes that reliable, up-to-date statistics on the number of prosecutions brought and convictions handed down on the basis of the relevant articles of the Criminal Code are not readily available. According to information provided by the Ukrainian authorities, 12 judgments were handed down in the period from 2006 to 2009 under Article 161 of the Criminal Code. In the same period, four judgments were handed down under Article 178 of the Code (damage to religious buildings or places of worship) and nine under Article 179 (desecration or destruction of sacred sites). No information appears to be available regarding the application of the other relevant articles of the Criminal Code and, while it has been reported that the Human Rights Monitoring Department of the Ministry of the Interior had recently started a process of harmonising data, this department has been abolished and it appears that no systematic monitoring of such offences is currently being carried out. ECRI notes with regret that the number of prosecutions and convictions is in any case significantly lower than the number of racist incidents reported.<sup>10</sup>
23. ECRI is particularly concerned at consistent reports that the Ukrainian authorities tend to prosecute racist offences as ordinary offences or reclassify them as “hooliganism”. Several sources emphasise that a significant factor pushing the authorities to avoid classifying offences as racist is the target set for prosecutors of a 100% success rate in achieving convictions in cases brought to trial. ECRI recognises that there is an interest in setting high standards in prosecuting offences, both to avoid exposing individuals to vexatious proceedings and to ensure that the courts are not burdened with cases that clearly have no chance of success. However, it wishes to stress that a target that is set so high as to discourage prosecutors from ever taking the risk of losing a case may be counterproductive: criminal law provisions that are never applied will lose not only their capacity to ensure that individual offenders are duly punished in specific cases but also their general dissuasive effect. This would be highly regrettable in the case of racist offences. ECRI emphasises in this context that the racist element of racist offences may be difficult to prove and requires the gathering of evidence specifically linked to the racist motivation at stake. This makes it all the more important that realistic targets be set for successful prosecutions in such cases.
24. ECRI recommends that the Ukrainian authorities ensure that racist incidents<sup>11</sup> and offences are consistently reported and recorded in the criminal justice system. It strongly recommends that to this end, they introduce a uniform definition of racist incidents and apply this consistently throughout the criminal justice system, in order to ensure that cases can be effectively tracked.
25. ECRI urges the Ukrainian authorities to reassess the decision-making process used by prosecutors in deciding whether to prosecute an offence as an ordinary or a racist offence. It strongly recommends that they train all the relevant actors in the criminal justice system and equip them with tools to assist them in effectively gathering evidence of racist motivation from the outset of an investigation into an alleged racist incident, in order to ensure that racist offences are not needlessly reclassified as ordinary offences.

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<sup>10</sup> See below, *Racist Violence, dealing with some categories of racist offences*.

<sup>11</sup> In line with ECRI's General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing, a broad definition of racist incidents should apply and should include any incident which is perceived to be racist by the victim or any other person.

26. In its third report, ECRI recommended that the judiciary receive training on issues pertaining to antisemitism, racism and xenophobia. ECRI is not aware of any specific training provided in these fields since its third report to the judges working in the criminal justice system. It refers to its recommendations above and below<sup>12</sup> regarding the need to provide adequate training in this respect.

### **Civil law provisions against racial discrimination**

27. In its third report, ECRI strongly recommended that the Ukrainian authorities adopt a comprehensive body of anti-discrimination laws in all fields of life and that they draw their inspiration from the relevant parts of ECRI's General Policy Recommendation No. 7.
28. ECRI notes with regret that despite a variety of initiatives over the years, comprehensive anti-discrimination legislation has not yet been adopted in Ukraine. The authorities have referred to a draft framework law drawn up by the Ministry of Justice, the contents of which have not been examined by ECRI; however, it appears that this draft has not yet been included on the agenda of the Parliament. The only relevant provision in force thus still appears to be Article 26 of the Civil Code, which provides that all individuals are equal in ability to have civil rights and obligations. There are no comprehensive civil and administrative anti-discrimination provisions covering different fields of life such as: employment; education; housing; access to public and social services as well as public places; and contractual relations between individuals. Nor are there any such provisions on providing for effective mechanisms of enforcement and redress. ECRI is particularly struck by the fact that none of its interlocutors were able to point to any legal texts already in force – other than the general principle of equality laid down in Article 24 of the Constitution – that might be of any assistance to an individual who considered that he or she had been a victim of racial discrimination. According to information provided to ECRI, one case was opened on 4 March 2011 in Odessa District Court concerning the refusal, on racially discriminatory grounds, to employ the plaintiff. However, it is not clear what legal provisions were invoked and the outcome of the case was unknown at the time of drafting.
29. ECRI notes that allegations of racial discrimination in daily life exist in Ukraine, for example as regards access to housing, health and goods and services.<sup>13</sup> It emphasises that it is essential that national legislation provide effective mechanisms of redress for victims of discrimination in all forms of daily life. It notes with interest that some civil society organisations are working on draft anti-discrimination legislation and may be in a position to provide highly useful input in this field. It notes, however, that to proceed to enactment, any such legislation will also need to be championed by the authorities themselves.
30. ECRI urges the Ukrainian authorities to adopt comprehensive anti-discrimination legislation covering all fields of life. It again recommends that they draw their inspiration from the relevant parts of ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and in particular from its chapter III on civil and administrative law.

### **Anti-discrimination bodies and other institutions**

- *State Committee for Nationalities and Religion*

31. In its third report, ECRI recommended that the Ukrainian authorities ensure that the work commenced by the State Committee for Nationalities and Religion to

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<sup>12</sup> See below, *Racist Violence*.

<sup>13</sup> See further below, *Discrimination in Various Fields and Vulnerable/Target Groups*.



combat racially motivated crimes was carried out in conjunction with other Ministries and bodies, including the Ministry of Justice, the Ministry of Interior and the Ombudsman and recommended that the authorities involve ethnic minority representatives, NGOs and the civil society sector more actively in this work. ECRI also recommended that the State Committee for Nationalities and Religion receive sufficient human and financial resources to carry out its tasks.

32. ECRI notes that in recent years the State Committee for Nationalities and Religion (SCNR) had begun to play an increasing role in developing, coordinating and overseeing action against racism and xenophobia in Ukraine. It was in particular co-ordinating the work of the Inter-Agency Working Group to combat xenophobia and ethnic and racial intolerance, which brought together representatives of a variety of institutions including the Ministry of the Interior, the Presidential Administration and the Parliament as well as representatives of civil society, with the aim of strengthening efforts to combat racism and xenophobia.
33. ECRI notes that the State Committee for Nationalities and Religion was disbanded, as part of wide-ranging administrative reforms introduced by Presidential Decree No. 1085/2010 of 9 December 2010 on the optimisation of the system of central bodies of executive power. Some of the Committee's functions have been transferred to other bodies: thus, the Committee's responsibilities with respect to migrants and asylum seekers have been transferred to the new State Migration Service (under the Ministry of the Interior)<sup>14</sup> and the Ministry of Culture will deal in future with issues of national/ethnic minorities and religion. However, the Committee's specific functions with respect to combating racism and racial discrimination, notably as regards the Inter-Agency Working Group to combat xenophobia and ethnic and racial intolerance, do not appear to have been transferred to other institutions. This is regrettable as a co-ordinated approach in this field, combining the efforts of the various actors involved in different aspects of the fight against racism and racial discrimination, is the best way to achieve tangible results. Moreover, promoting the culture of national/ethnic minorities is not sufficient in itself to achieve success in the fight against discrimination: while having the opportunity both to express one's own culture and to gain a greater understanding of others' cultures may serve to promote openness and tolerance amongst persons of different backgrounds, distinct tools and expertise are nonetheless needed to eliminate discrimination.
34. No final decision appeared to have been taken at the time of drafting as to which public body would in future take on the role of co-ordinating the Ukrainian authorities' efforts to combat racism, xenophobia, antisemitism and racial discrimination, although it appeared likely that this role would be attributed to the Ministry of Culture. ECRI stresses that regardless of the body to which these competencies are finally transferred, their transfer is needed and must be accompanied by adequate resources to allow these functions to be carried out effectively. ECRI also emphasises the importance of ensuring not only that adequate human and financial resources are allocated to this body but that its institutional structure reflect a clear anti-discrimination approach and that its staff have strong expertise in this field.
35. ECRI strongly recommends that the Ukrainian authorities define as soon as possible the body that will in future be responsible for co-ordinating the authorities' work on combating racism and racial discrimination and ensure that its staff have strong expertise in the anti-discrimination field, that the institution reflects this approach clearly and that it has adequate human and financial resources to carry out its functions effectively. ECRI further recommends that the active involvement of civil society in this work be provided for and facilitated.

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<sup>14</sup> See further below, *Vulnerable/Target Groups – Migrants, Asylum seekers and Refugees*.

- *Parliamentary Commissioner for Human Rights (Ombudsman)*
36. In its third report, ECRI recommended that the Ukrainian authorities specifically extend the Ombudsman's tasks to include issues pertaining to racism and racial discrimination and that the Ombudsman's office be provided with sufficient human and financial resources to that end. ECRI also strongly recommended that a body specialised in these issues be created.
37. ECRI notes with interest that since then, a staff member of the Ombudsman's office has been appointed to deal specifically with issues related to racism and xenophobia. The office reportedly receives around one hundred complaints each year concerning allegations of violations of the rights of persons belonging to national/ethnic minorities (for example concerning the language of school examinations) or committed on racially discriminatory grounds. The Ombudsman's office also conducts its own monitoring of racist incidents.<sup>15</sup> Some sources consider, however, that the institution could play a stronger and more visible role in combating racism and racial discrimination. The Ombudsman's office has also indicated that its funding is significantly below the level needed to carry out its tasks effectively.
38. ECRI welcomes the efforts made by the Ombudsman's office to consolidate its role in combating racism, xenophobia and related phenomena. However, it remains the case that there is no body in Ukraine that is clearly and specifically entrusted with combating racism, racial discrimination, xenophobia, antisemitism and intolerance. Moreover, the Ombudsman's role in this field is by definition limited as the institution is competent only to deal with administrative disputes, and not private disputes.
39. ECRI again recommends that the Ombudsman's office be provided with sufficient human and financial resources to carry out its existing tasks with respect to the fight against racism, racial discrimination and related phenomena.
40. ECRI strongly recommends that a body specialised in issues pertaining to racism and racial discrimination be either created or identified within existing structures, in accordance with the basic principles set out in ECRI's General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

## **II. Racist Violence**

41. In its third report, ECRI urged the authorities to ensure that urgent measures to combat racially motivated offences were taken throughout the country and that training be provided to everyone working in the criminal justice system on the relevant national and international legal standards relating to racist offences.<sup>16</sup>
42. As described extensively in ECRI's third report, a worrying rise in racist incidents was observed in Ukraine from around mid-2006. This trend continued until at least mid-2008 and included a number of murders. According to data collected by one non-governmental organisation, 88 violent racist attacks against persons and 6 murders with racist motivation were committed in 2007; in 2008 there were 89 such attacks and 4 such murders; in 2009, 47 violent racist attacks against persons were committed and in 2010, there were 30 such attacks. No racist murders were recorded in either of these years. However, a spate of racist attacks in Kyiv in spring 2011 again gave rise to serious concern.

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<sup>15</sup> See below, *Racist Violence, on some categories of racist offences*.

<sup>16</sup> *Racist offences involving an element of violence against a person or persons or property are examined in this chapter. Racist expression is examined below, under Racism in Public Discourse.*

43. While incidents of desecration of cemeteries have continued to be reported in Ukraine,<sup>17</sup> most racist incidents reported to the authorities or – more often – to civil society consist of physical attacks committed against foreign students, migrants, refugees, asylum seekers, Roma and other persons of non-Slavic appearance, including Africans, Central and South-East Asians and persons from the Middle East or the Caucasus. Such attacks clearly target people based on their appearance and most commonly occur in Kyiv and other major urban centres where there is a significant number of foreign students or migrants. Violent racist attacks are often committed by groups of skinhead youths, who are not necessarily members of structured right-wing organisations but may belong to a skinhead subculture. Such attacks are frequently severe, resulting in serious wounding by beating, knifing or shooting. Some observers also indicate that racist attacks tend to increase during electoral periods, when the political climate is less stable.
44. ECRI welcomes the authorities' indication that, as part of regional action plans to combat racism and xenophobia, units on the reporting and investigation of criminal offences committed against foreigners have been established in eight regions of Ukraine. However, further efforts are still needed to build on this positive step. Civil society organisations continue to underline that, unless an attack resulted in serious wounding or death, victims of racist attacks tend not to approach the police to report the offence, either because they lack confidence in the effectiveness of the police and the judiciary or for fear of being harassed by the police themselves.<sup>18</sup> In some cases victims have reported receiving no assistance from the police, although police officers were within sight of the attack. Civil society activists moreover observe that the apparent reduction in the number of racist attacks noted in 2009 and 2010 may be at least partially attributable to a change in behaviour of the groups most frequently targeted, who have begun organising themselves to ensure that their members no longer go alone to certain areas where they consider they are most at risk (in particular around a number of central metro stations in Kyiv).
45. ECRI remains concerned by the phenomenon of racist violence in Ukraine. It stresses that no one should be prevented from moving freely within Ukraine due to fears for their physical safety and that a clear message needs to be sent to society that all individuals are equal and that it is unacceptable to target persons because of their skin colour or national or ethnic origin.<sup>19</sup> Concerted action by the authorities is needed both to identify and combat the specific causes of racist violence in Ukraine and to ensure that any incidents that do occur are effectively investigated and prosecuted, and their perpetrators duly punished. ECRI regrets that the disbanding in December 2010 of the State Committee for Nationalities and Religion (which was inter alia co-ordinating the work of the Inter-Agency Working Group to combat xenophobia and ethnic and racial intolerance) appears to have created a vacuum in the responsibilities for leading this work. At the same time, as mentioned above, the Human Rights Monitoring Department in the Ministry of the Interior was scrapped;<sup>20</sup> this is regrettable as the department had been working towards introducing uniform monitoring of racist incidents and had also reportedly been doing good work monitoring the activities of neo-Nazi and

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<sup>17</sup> See below, *Vulnerable/Target Groups – Crimean Tatars*; see also below, *Antisemitism*.

<sup>18</sup> See further below, *Conduct of Law Enforcement Officials*.

<sup>19</sup> On the latter point, see further below, *Overall Programmes to Combat Racism and Xenophobia*.

<sup>20</sup> See above, *Existence and Application of Legal Provisions – Criminal law provisions against racism and racial discrimination*.

skinhead groups;<sup>21</sup> again it is unclear which government department will take over these functions in future.

46. ECRI strongly recommends that the authorities intensify their efforts to combat violent racially motivated offences throughout the country through effective punishment of such offences when they occur. In this context it recommends that training be provided to everyone working in the criminal justice system – police officers, prosecutors and judges – on the criminal law provisions to combat racism, so as to guarantee their proper implementation. It also recommends that lawyers be offered the possibility of undergoing training on this subject.
47. ECRI also recommends that the Ukrainian authorities step up their efforts aimed at preventing racist violence, inter alia through measures targeting neo-Nazi and skinhead groups,<sup>22</sup> and by clarifying the leading responsibility within government for addressing these issues.

### III. Racism in Public Discourse

#### Racism in political discourse

48. In its third report, ECRI drew the authorities' attention to the principles contained in the Charter of European Political Parties for a Non-Racist Society and in its Declaration on the use of racist, antisemitic and xenophobic elements in political discourse. It also strongly recommended that the Ukrainian authorities take measures to reduce tensions between different communities living in the Crimea and actively to promote peaceful coexistence amongst them.
49. ECRI is concerned by reports that some candidates and political parties engaged in xenophobic and antisemitic rhetoric<sup>23</sup> during the presidential election campaign period in late 2009 and early 2010, as well as during the campaign for local elections in 2010. One political advertisement – which, although it was apparently not used officially by the candidate, nonetheless circulated on social networking sites in 2010 – showed an elderly Ukrainian woman entering a church to pray and reacting with horror at the sight of a Black man wearing black Orthodox robes, accompanied by the slogan “We shall defend Orthodoxy”. Another political party organised a series of marches to coincide with the entry into force of the readmission agreement between Ukraine and the European Union, collecting a number of formal and informal nationalist groups under a single umbrella and promoting a nationalistic and xenophobic agenda. An increase was also observed during electoral periods in the number of public rallies, demonstrations and campaigns against migration and foreigners, using slogans such as “Ukraine for Ukrainians”, with migrants being portrayed by some parties and radical groups as a threat to the nation and the labour market or as bearers of exotic diseases. During a severe outbreak of seasonal influenza combined with H1N1 in November 2009, some local and provincial authorities moreover actively encouraged the local population to report to the police all encounters with foreigners from South East Asia and the Middle East.
50. ECRI also notes with concern reports that local Crimean authorities resort to anti-Tatar discourse for electoral purposes. It is moreover concerned that high-ranking politicians, including government ministers, have reportedly engaged in markedly intolerant discourse against Crimean Tatars, suggesting for example that their deportation under Stalin was justified or that Crimean Tatars are a legitimate

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<sup>21</sup> On these and on the work of other ministries with regard to them, see further below, *Racism in Public Discourse – Neo-Nazis, skinheads and racism in sport*.

<sup>22</sup> See further below, *Racism in Public Discourse – Neo-Nazis, skinheads and racism in sport*.

<sup>23</sup> See further below, *Antisemitism*.

target of anger of the local population. Some observers consider that the level of anti-Tatar sentiment and hate speech amongst the general population has increased following the anti-Tatar statements of high-ranking politicians, which have gone unpunished. An attempt by Crimean Tatar representatives to bring charges against the Minister of the Interior for incitement to hatred against Crimean Tatars under Article 161 of the Criminal Code failed, reportedly because the Prosecutor's office considered it could not prosecute the Minister.

51. ECRI strongly recommends that the authorities refrain from engaging in racist and xenophobic discourse and again draws their attention to the principles contained in the Charter of European Political Parties for a Non-Racist Society and in its Declaration on the use of racist, antisemitic and xenophobic elements in political discourse.
52. ECRI recommends that the authorities ensure that politicians who infringe the prohibition on incitement to hatred are duly prosecuted and punished.
53. ECRI again recommends that the authorities take measures to reduce tensions between different communities living in the Crimea and actively to promote peaceful coexistence amongst them. Such measures should include refraining from any actions that may stir up tensions and the active promotion of tolerance and mutual understanding between the majority population and Crimean Tatars.

## Media

54. In its third report, ECRI encouraged the authorities to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any ethnic minority group or against asylum seekers, refugees and immigrants. It also recommended that an independent press complaints body be established and that the authorities encourage any initiatives taken by the media to pursue initial and on-going training in human rights, racism and racial discrimination.
55. ECRI notes that the law expressly provides that the media cannot be used to incite racial, national, ethnic or religious hatred.<sup>24</sup> Thus, if the media incite racial hatred, the publisher or broadcaster will receive an official warning; if the offence is repeated, a newspaper or magazine may be closed by court order and a television or radio station may lose its licence. ECRI is not aware of any such sanctions having been imposed in recent years, however – although it has received reports that media reporting at times fuels interethnic tensions, notably in Crimea.
56. In 2009 nine national television channels signed a (non-binding) charter to regulate broadcasting. Article 5 of this charter proscribes inter alia the popularisation of xenophobia, "Ukrainophobia" and antisemitism, racism and the incitement of interregional, ethnic or religious conflict. ECRI has also been informed that the national union of journalists of Ukraine has drawn up a code of professional conduct and set up a commission on journalists' ethics. These initiatives are welcome, but do not appear to have had a significant impact as yet on the approach of the media to reporting on issues concerning minority groups. Roma in particular are still often stereotyped by the media as criminals. Civil society organisations stress that there is still little awareness among journalists and the media of the role they could play to combat racism, xenophobia and racial discrimination.

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<sup>24</sup> See in particular Article 46 of the Law on Information, Article 3(5) of the Law on the Written Press and Article 4(7) of the Law on Radio and Television.

57. ECRI again recommends that the Ukrainian authorities impress on the media, without encroaching on their independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of minority groups and the need for the media to play a proactive role in countering such an atmosphere through an approach that fosters mutual understanding rather than heightening divisions.
58. ECRI reiterates its recommendation that the authorities encourage any initiatives taken by the media to pursue initial and on-going training in human rights in general and on issues related to racism and racial discrimination in particular.

### **Climate of opinion and Internet**

59. While the authorities emphasise that Ukrainian society, in all its diversity, is tolerant and harmonious, persons belonging to groups that fall within ECRI's mandate report that prejudice is nonetheless present. Studies conducted by the Institute of Sociology of the National Academy of Sciences of Ukraine over more than a decade moreover tend to show that tolerance towards Jews, Russians and Roma has significantly declined in Ukraine since 2000. Some analysts suggest that resentment against foreigners is based on the perception that the latter are coming to Ukraine to "steal" jobs and houses from Ukrainians; such perceptions may be particularly strong in the current economic climate. Prejudices are also reflected in daily life: Africans report, for example, that others avoid sitting next to them on public transport and that shopkeepers tend to treat them as suspicious; Roma report that some private business owners simply refuse them service. ECRI refers to its recommendations elsewhere in this report on awareness-raising and educational measures that should be taken by the Ukrainian authorities to combat racism, racial discrimination, xenophobia, antisemitism and intolerance.
60. Racist prejudices, xenophobia and antisemitism also find expression on the Internet. Some websites are reported constantly to publish antisemitic, racist and xenophobic material; virulent hate speech against Roma has also been reported on Internet forums, including forums hosted by local government bodies. Web content, including Internet-based newspapers, is moreover not regulated by media law.
61. ECRI recommends that the Ukrainian authorities take specific steps to prevent the Internet from being used to disseminate racist, xenophobic or antisemitic comments and material. It draws their attention to its General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet, which refers to a series of measures that the authorities could take in this respect, and emphasises in particular in the present Ukrainian context the need for the authorities to increase their vigilance in this respect and to prosecute persons responsible for publishing and disseminating racist material via the Internet.

### **Neo-Nazis, skinheads and racism in sport**

62. In its third report, ECRI strongly recommended that the authorities recognise and monitor the increasing presence of skinhead and neo-Nazi groups in Ukraine. As noted above, violent racist attacks are often committed by groups of skinheads.<sup>25</sup> Neo-Nazi groups (which are not formally registered) are reportedly present in most major industrial cities.<sup>26</sup> As a visa-free zone not only for EU citizens but also for Russians, Ukraine is also chosen by extreme right-wing and neo-Nazi groups

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<sup>25</sup> See above, *Racist Violence*.

<sup>26</sup> In particular if they have a large football club; see further below.

for organising concerts, which serve at the same time as a space for exchanging extreme right-wing ideas and messages. While such events could theoretically be challenged through the courts, this is rarely done; ECRI has been informed that the police prevented one concert in 2010, but without a court order.

63. In the field of sports, and particular football, the authorities have observed that neo-Nazis and other skinhead groups are increasingly present in Ukraine. They deploy Nazi symbols and banners and make Nazi shouts and gestures during football matches, often directed at players or supporters with dark skin. In a review carried out over 18 months, the Football Federation counted 66 such incidents. There is growing awareness of the need to deal with this issue, due to the Euro 2012 football tournament to be held in Poland and Ukraine and the present fears of visible minorities in Ukraine for their physical safety. Against this background, ECRI notes with interest that as part of the preparations for the Euro 2012 football tournament, the Ministry of Education, Youth and Sports is working on a number of preventive measures. These are aimed mostly at youth, who are considered most vulnerable to extreme right-wing ideologies. The Ministry is also working with Football Supporters Europe to design measures to avoid violence and disturbances during the Euro 2012 tournament. Alongside these steps, a handbook to assist law enforcement officials in identifying neo-Nazi and racist symbols used by football fans is also being drawn up.
64. ECRI recommends that the authorities intensify their efforts to monitor the activities of neo-Nazi and skinhead groups in Ukraine. It strongly recommends that they step up their efforts to combat such activities, both in terms of education and prevention and using legal channels to prevent and punish illegal neo-Nazi activities and events.
65. ECRI strongly encourages the authorities to pursue and intensify their efforts to combat racism in football. It recommends that they continue to encourage the national football association and football clubs to develop a code of conduct that would address, inter alia, the issue of fans' racism. Moreover, the authorities should step up their efforts to raise awareness about the dangers of racism in sport. ECRI draws the authorities' attention to its General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport, which proposes a number of measures that the authorities can take to this end.

#### **IV. Vulnerable/Target Groups**

##### **Roma**

66. In its third report, ECRI noted that whereas according to the 2001 census, there were approximately 47 000 Roma in Ukraine, Roma organisations considered that a more accurate estimation would be approximately 400 000 persons. ECRI recommended that the Ukrainian authorities work in cooperation with Roma organisations to establish the reasons for the disparity between the estimated number of Roma by Roma organisations and the results of the 2001 census.
67. Two main explanations have been advanced for the above disparity: first and most commonly, Roma's own reluctance to declare their ethnic origin, for fear that they will become targets of discrimination; and second, the incorrect recording as Romanians of persons who chose not to declare their ethnic origin as "Gypsy" but as "Roma". ECRI notes that Roma organisations emphasise that fear of self-identification as Roma will not be overcome before the next census in 2012<sup>27</sup> unless awareness-raising is carried out directly within Roma communities,

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<sup>27</sup> See below, *Monitoring of Racism and Racial Discrimination*.

through face-to-face discussions between members of these communities and Roma NGOs that they trust. It also notes the negative consequences for all the members of a vulnerable group where the number of declared members of the group is significantly lower than their actual number, not least because it means that estimates of the resources needed to address any problems they face will fall consistently short of the mark.

68. ECRI recommends that the Ukrainian authorities assist the efforts of Roma NGOs to carry out awareness-raising within Roma communities in the lead-up to the next census – in particular through the provision of financial and logistical support to these efforts – on the importance of self-identification as Roma and on the guarantees in place to ensure that such declarations are made only on a voluntary basis and in full confidentiality.
69. ECRI also recommends that the Ukrainian authorities fully train all census counters regarding the collection of ethnic data, in particular so as to ensure that they provide full and clear information as to the use that may be made of such data and that they correctly record the information received.
70. It is reported that many Roma do not dispose of basic documents such as a birth certificate or identity card.<sup>28</sup> Roma representatives report that it can be extremely difficult to obtain such papers, particularly in cases where a long period of time has elapsed since a person was last registered, and all the more so if their last registered place of residence was in Russia or Belarus under the former Soviet regime. There appears to be no government programme in place at present to assist Roma in obtaining identity documents. Yet without a birth certificate, a child cannot enrol in school and without an identity card a person older than sixteen cannot enrol in a high school or lawfully obtain work; the lack of identity documents also affects access to health care and means it is impossible to exercise the right to vote. Roma children whose parents lack identity papers are especially penalised in this context and may even be deprived of rights to which they are entitled under international law, such as the right to an education.<sup>29</sup>
71. ECRI strongly recommends that the authorities set up a programme to simplify the acquisition of identity documents by Roma and especially Roma children.
72. In its third report, ECRI recommended that the authorities take measures to combat stereotypes against Roma by carrying out awareness-raising programmes to that end, with the involvement of Roma organisations. It further recommended that the media be encouraged to carry out responsible reporting with regard to issues pertaining to Roma and that measures be taken to encourage members of the Roma community to continue entering journalism.
73. ECRI notes with concern that hate speech, negative stereotypes and prejudice against Roma are still widespread. Where favourable images of Roma exist, these often consist in portraying Roma as gifted artists – and, by implication, confining them to this role. Overtly negative stereotypes and prejudices are, however, frequent. Some bars and restaurants refuse to serve Roma, anti-Roma graffiti is sprayed in public places (and occasionally left there by the authorities until Roma paint over it themselves) and hostile messages inviting Ukrainians to kick Roma out of Ukraine or into the Chernobyl exclusion zone are posted on Internet forums. Roma representatives report that the number and intensity of such messages has significantly increased since August 2010, when high-

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<sup>28</sup> The term “identity card” is used here to refer to documents that Ukrainians generally refer to as a “passport”. This document is not valid for international travel but is an internal document recording *inter alia* the official registration of the place of residence of a person in Ukraine.

<sup>29</sup> Article 28 of the Convention on the Rights of the Child.



ranking French officials made political statements and the French Government took action stigmatising Roma migrants, which were widely reported by the media in Ukraine, with little critical commentary. This adverse climate of opinion is moreover sustained by negative media reporting, which both fuels and feeds on stereotypes, perpetuating in particular the image of Roma as criminals.<sup>30</sup> Government policies appear also at times to ignore the situation of marginalisation and discrimination faced by Roma and to be based on the notion that Roma are solely responsible for the difficulties they face in daily life.

74. ECRI strongly recommends that the authorities step up their efforts to combat stereotypes and prejudices against Roma. It again recommends that they carry out specific awareness-raising programmes, with the active involvement of Roma organisations, portraying a positive image of Roma and giving a voice to Roma role-models and success stories in all fields of life.

75. ECRI reiterates its recommendation that the media be encouraged to carry out responsible reporting on issues pertaining to Roma and that measures – such as the creation of a bursary or scholarship – be taken to encourage members of the Roma community to enter journalism.

76. As noted elsewhere in this report,<sup>31</sup> Roma continue to face significant disadvantages and discrimination in all fields of daily life, including education, employment, housing and health care. In its third report, ECRI strongly recommended that the authorities examine the correlation between the difficulties faced by Roma in these fields and take an integrated approach to these problems through an overall programme dealing with Roma issues and fully involving Roma. It further recommended that the Ukrainian authorities consider joining the Decade of Roma Inclusion 2005-2015. ECRI notes with interest that some local authorities, notably in Zakarpattia and Odessa (where a significant number of Roma live), have set up some programmes to promote the social inclusion of Roma. Ukraine has however not joined the Decade of Roma Inclusion and ECRI is unaware of any national programme currently in place to tackle through an integrated approach the overall situation of disadvantage faced by Roma, although it understands that the authorities recently presented four national projects for Roma integration to the Hungarian Presidency of the European Union. ECRI stresses the importance of taking an integrated approach to take account of – and combat effectively – the interplay between the different forms of discrimination that affect Roma.

77. ECRI again strongly recommends that the Ukrainian authorities take an integrated approach to the difficulties faced by Roma in all fields of daily life, including education, employment, housing and health, through an overall programme dealing with Roma issues. This programme should also take full account of the interplay between these issues. ECRI strongly recommends that Roma organisations be closely involved in designing, implementing and evaluating such a programme.

78. In its third report, ECRI recommended that the Ukrainian authorities develop institutional arrangements to promote an active role and participation of Roma communities in the decision-making process, through national, regional and local consultative mechanisms, with priority placed on the idea of partnership on an equal footing.

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<sup>30</sup> See also above, *Racism in Public Discourse – Racism in political discourse, Media and Climate of opinion and Internet*.

<sup>31</sup> See below, *Discrimination in Various Fields*.

79. ECRI has made a recommendation above concerning the involvement of Roma organisations in designing, implementing and evaluating programmes that are intended to have a direct effect on them. Other fora are also relevant, however. ECRI notes that some consultative meetings of public authorities with representatives of Roma organisations take place on the local level in regions with a high concentration of Roma. ECRI welcomes such initiatives and hopes that they have provided a genuine opportunity for Roma to influence the decision-making process on issues concerning them at local level. At national level, the dissolution of the former State Committee for Nationalities and Religion has however removed a body whose work could contribute to resolving problems faced by national/ethnic minorities, including Roma, above and beyond the preservation of their identity and culture.
80. Concerning the political participation of Roma more generally, the lack of identity documents impedes many Roma in the exercise of their right to vote. ECRI refers to its recommendations made above in this respect. It notes with interest that some Roma representatives were nevertheless elected to local councils at the local elections of October 2010, in regions with a high concentration of Roma.
81. ECRI recommends that the authorities strengthen their efforts to develop standing institutional arrangements to promote an active role and participation of Roma communities in governmental decision-making processes, not only through local consultative mechanisms but also at regional and national level. Such arrangements should ensure that Roma are systematically able to participate in decision-making processes at these levels that will have a direct impact on their rights.
82. In its third report, ECRI recommended that the authorities ensure that a channel of communication remained open between Roma organisations and all relevant actors in the criminal justice system in order to address the problems faced by members of the Roma community in their relationship with the police and other law enforcement officers.
83. As noted elsewhere in this report, Roma are one of the groups most affected by instances of police misconduct in Ukraine; ECRI refers to its specific recommendations regarding the need to investigate and punish such misconduct.<sup>32</sup> ECRI notes with regret that Roma have little confidence in the police and that, to the extent that any estimations are available in this field, it appears that very few Roma are employed in the criminal justice system, whether amongst the police force, the prosecutor's office or the judiciary; those that are employed by these authorities moreover often hide their ethnic origin.
84. ECRI refers in this context to its General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing, and in particular to its Part IV: As concerns relations between the police and members of minority groups, which proposes a series of measures that the authorities can take with a view to improving these relations.
85. ECRI recommends that the Ukrainian authorities take specific measures to rebuild the trust of Roma in the criminal justice system, in particular through establishing frameworks for dialogue and co-operation between the police and members of the Roma community. It further recommends that the authorities actively promote the employment of Roma in the police force through programmes designed to facilitate their access to such jobs and support them in remaining.

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<sup>32</sup> See below, *Conduct of Law Enforcement Officials*.

## Crimean Tatars

86. In its third report, ECRI recommended that the authorities take measures to address the discrimination suffered by Crimean Tatars in all areas of life, including in access to employment, housing and land. It also urged the authorities to ensure that urgent measures to combat racially motivated offences were taken throughout the country, including in Crimea.
87. ECRI notes that the present situation of economic and social disadvantage experienced by Crimean Tatars stems in large part from their history of deportation under Stalin. As a result of this deportation they lost their land and homes, which were situated - for the most part- on the southeast coast. When Crimean Tatars were authorised to return, their property had been redistributed to others. Most of them have had to settle in the steppe region, where the infrastructure is poor. Few settlements have paved roads, there are problems with transport and communication and sewerage networks are not always in place. Representatives of Crimean Tatars also indicate that the land allocated to them is of inferior quality, prompting some to squat land. While non-Tatar citizens of Crimea are also reported to occupy land unlawfully, Crimean Tatars are reportedly more likely to be pursued by law enforcement bodies for such acts.
88. ECRI has been informed of various attempts to assist Crimean Tatars to overcome their present difficulties. Thus, the 1996 Constitution of Ukraine – thanks in part to pressure exercised by Crimean Tatar organisations at the time of its adoption – makes several references to indigenous peoples. It provides inter alia that the State promotes the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine (Article 11); that the rights of indigenous peoples and national minorities are determined exclusively by the laws of Ukraine (Article 92(1)(3)) and that local administrations ensure, within their territory and in places of compact residence of indigenous peoples and national minorities, the implementation of programmes for their national and cultural development (Article 119(3)). However, the Constitution neither defines indigenous peoples nor enumerates any rights to which they are entitled. The 1992 Law on National Minorities does not contain any express provisions on Crimean Tatars. Furthermore, in the absence of a kin-state, they do not have access to the advantages available to minorities that are able to receive the assistance of associations in their kin-state in accordance with Article 15 of that Law; nor can they benefit from the specific provisions in favour of undertaking teaching and cultural studies abroad contemplated by its Article 7. Against this background – in which the constitutional possibility for recognition as an indigenous people has not been given effect and in which Crimean Tatars are inevitably in a less favourable position than other national/ethnic minorities covered by the 1992 Law on National Minorities – in 2010, civil society representatives prepared and forwarded to the highest levels of government their own proposal for a Draft Law on the Status of the Crimean Tatar People in Ukraine under which Crimean Tatars would be recognised as an indigenous people of Ukraine. As yet, however, there has been little official reaction to this text.
89. Moreover, a draft Law on the Restoration of Rights of Persons Deported on Ethnic Grounds was submitted to Parliament on 24 February 2010 but little progress appears to have been made towards the enactment of such a law.
90. ECRI welcomes the fact that the Ukrainian authorities have allocated considerable funds to assisting resettlement over the last two decades and that approximately two hundred thousand deported persons have been able to return to Crimea in that period. Nonetheless, ECRI underlines that the issues raised regarding both the possibility of recognition of Crimean Tatars as indigenous

peoples and the restoration of rights of deported persons are complex. So far the concerns raised and proposals made in recent years by Crimean Tatars do not seem to have been addressed in a transparent way by the authorities. Yet they demand careful reflection and open debate in Ukrainian society.

91. ECRI recommends that the authorities engage in genuine dialogue with Crimean Tatars regarding issues related to their status in Ukraine with a view to improving their position in Ukrainian society and regarding their demands as formerly deported persons.
92. The resettlement issue aside, the overall situation of Crimean Tatars appears not to have improved since the publication of ECRI's third report. While the authorities have stated that no data broken down by ethnicity are collected across specific fields of daily life, they have also indicated that overall, 15% of persons elected to office in the Crimean Parliament and city and village councils are Crimean Tatars; this appears to compare favourably with the results of the most recent population census, carried out in 2001, according to which Crimean Tatars comprise 12.1% of the population of Crimea. In the field of employment, however, research indicates that the average unemployment rate of Crimean Tatars is more than twice the overall rate in Crimea; Crimean Tatars are also reported to be significantly underrepresented in the judiciary, the police and the civil service. This is confirmed by figures cited by the authorities, according to which 8.5% of public servants employed by Crimean ministries and national committees are Crimean Tatars, and 7.6% of the total workforce of district state administrations and executive bodies are from among the deported peoples. A high proportion of Crimean Tatar families are moreover reported not to have enough money for basic food supply. At the same time, it has been reported to ECRI that only one in ten Crimean Tatar children has access to education in their mother tongue. Access to health care is also reportedly made difficult in many cases by long distances to be covered to reach medical care.
93. ECRI refers to its recommendations made elsewhere in the present report regarding the collection of ethnic data and measures that need to be taken to eliminate racial discrimination in the field of employment.
94. As noted elsewhere in this report,<sup>33</sup> anti-Tatar sentiment remains an issue in Ukraine and appears to have increased in recent years as politicians' rhetoric has given it a semblance of respectability. Local politicians' tendency to ignore or deny the specific problems faced by Crimean Tatars also pushes the latter to seek their own solutions and voice their identity more strongly. The end result is a risk of radicalisation rather than resolution of the issues, to the detriment of Crimean society as a whole and Tatars in particular as targets of prejudice.
95. ECRI observes that there is a need for the authorities actively to combat prejudice against Crimean Tatars while working to raise the majority population's awareness and understanding of the problems they face.
96. ECRI recommends that the authorities carry out detailed research into the situation of Crimean Tatars across all fields of life to identify the specific problems they are confronted with.

## **Muslims**

97. Most, but not all, Muslims in Ukraine are Crimean Tatars living in Crimea. In the religious sphere, Muslims in Ukraine indicate that there is generally a very low level of knowledge about or understanding of Muslims amongst the general population and that there is some tendency amongst the latter to conflate

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<sup>33</sup> See above, *Racism in Public Discourse – Political discourse*.

Muslims with terrorists, especially when terrorist attacks in other countries are reported. School textbooks are reported to portray Muslims in a negative light, which perpetuates misconceptions and prejudice. Attacks against Muslim cemeteries continue to occur, in particular in Crimea.

98. While the authorities have referred to initiatives taken in 2009 to coordinate the interaction of Muslim communities with the authorities through the establishment of the Council of Representatives of Spiritual Directorates and Centres of Muslims of Ukraine, under the auspices of the State Committee for Nationalities and Religion, it seems that only three of the five Muslim religious associations that operate in Ukraine participate in this Council, and Muslims indicate that their voice is rarely heard. ECRI is moreover concerned that, as presented by the authorities, the objectives of countering manifestations of radicalism in the Muslim religious environment and eliminating the danger of confrontation between the Muslim and Christian communities in Ukraine – which were also amongst the aims pursued in setting up the Council – appear to be placed on an equal footing with that of coordinating dialogue with the authorities. ECRI has some doubts as to the chances of success in fostering dialogue that this Council may have when its very creation is based on an image of Muslims as sources of radicalism and confrontation. It stresses the importance of avoiding negative stereotyping the effect of which is to make Muslims appear as a threat.
99. As regards access to land and places of worship, the return of previously nationalised land plots and religious buildings remains of concern for Muslims in Ukraine. In terms of new constructions, much rides on the attitudes of the local authorities concerned. In Simferopol, Muslims have met with difficulties in constructing a mosque; ECRI understands that in early 2011, the Simferopol City Council finally approved a decision to allow the construction of mosque on a plot of land granted for this purpose in 2004. However, other factors also come into play: Muslims in Kyiv have complained that despite burial space having been allocated to Muslims by the municipal authorities, burials of Christians have occurred there, leaving insufficient burial space for Muslims.
100. ECRI draws the attention of the authorities to its General Policy Recommendation No. 5 on Combating discrimination and intolerance against Muslims, which proposes a number of measures that the authorities can take to combat prejudice against Muslims, to investigate and punish anti-Muslim offences, and to ensure that adequate provision is made for the exercise of their religious rights.

### **Migrants, refugees and asylum seekers**

101. In its third report, ECRI strongly recommended that the Ukrainian authorities pass the two draft laws then pending concerning refugees, foreigners and stateless persons as soon as possible.
102. To date, no new law has been enacted<sup>34</sup>. Procedures governing applications for asylum are thus still governed by the 2001 Law on Refugees. However, ECRI notes with interest that the Government has submitted to Parliament a bill, drawn up by the Ministry of Justice, on refugees and persons in need of complementary or temporary protection. According to the authorities, this text would introduce in Ukrainian law the notions of complementary and temporary protection, which were previously lacking. It would also provide clearer and narrower grounds for the rejection of refugee status, regulate the suspension and revocation of temporary protection and govern the legal status of refugees and beneficiaries of

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<sup>34</sup> *It should be recalled that the following analysis of ECRI is based on the situation up to the date of adoption of ECRI's draft report on 23 June 2011. The new Law on Refugees and Persons in Need of Additional or Temporary Protection, enacted on 8 July 2011, falls outside the scope of the reporting period for this report and could not be analysed by ECRI.*

complementary and temporary protection in Ukraine. It would provide for a single document to be issued to asylum seekers certifying that they are lawfully present in Ukraine, which would be valid at all stages of proceedings including appeals and would also serve as a valid document for access to social rights. The bill would expressly prohibit discrimination against asylum seekers as well as refoulement and forcible return to a country where the person concerned is at risk; it would also regulate both the provision of interpretation at all stages of proceedings and access to a lawyer.

103. The Ministry of Justice has indicated that it is also drafting another bill, amending the Law on the Status of Foreigners and Stateless Persons. According to the information provided by the authorities, this bill would simplify the entry and exit procedures applicable to foreigners, would provide for stateless persons to benefit from the full scope of rights afforded to other persons lawfully present in Ukraine and would again lay down the principle of non refoulement.
104. ECRI welcomes these developments and hopes that the enactment of these bills will ensure that Ukrainian legislation is fully in line with international standards in the field of asylum, migration and stateless persons. It notes that some concerns have been expressed concerning the moment at which individuals would be considered to be entitled to the rights specified in these bills and underlines that such rights – including the application of the principle of non refoulement and all procedural rights – must be guaranteed from the moment at which a person comes within Ukraine's jurisdiction and throughout the period in which they remain.
105. ECRI encourages the Ukrainian authorities to enact as soon as possible the draft legislation currently pending, on the one hand concerning refugees and persons in need of complementary or temporary protection and, on the other, amending the Law on the Status of Foreigners and Stateless Persons. It recommends that the United Nations High Commissioner for Refugees (UNHCR) and NGOs working with asylum seekers and refugees be closely involved in this process.
106. ECRI is concerned by a number of serious problems regarding access to fair refugee status determination procedures in Ukraine. There are reports that State Border Guards Service officials frequently fail to forward applications from detained asylum seekers to the Regional Migration Service, which conducts initial asylum interviews; in consequence, some asylum seekers are denied access to asylum procedures altogether. Others are forced to bribe corrupt officials to file their asylum applications.
107. Significant interruptions in government processing of asylum applications have also had a negative impact. From mid-2009 until mid-2010, as a result of incomplete restructuring of government departments, there was no authority in Ukraine competent to grant asylum; asylum claims reportedly continued to be rejected at the preliminary stage on the grounds that they were inadmissible or manifestly unfounded, but processing on the merits of claims that passed these tests simply ceased as no body had the competence to examine them. Processing did not resume until August 2010, when the relevant competence was returned to the SCNR; in the meantime, asylum seekers were left in a protracted situation of precariousness and a backlog of claims had built up. The situation again became unclear only a few months later, when the SCNR was dissolved in December 2010. ECRI has been given to understand that the responsibility for processing asylum applications will ultimately be handed over to the new State Migration Service under the aegis of the Ministry of the Interior and that until this is established, the SCNR is to continue exercising the relevant functions; however, it has received reports that in practice, refugee status determination procedures have again been frozen.

108. ECRI urges the Ukrainian authorities to ensure that a fair and effective refugee status determination procedure is in place at all times and that the final structure intended to exercise these functions is established as soon as possible. It urges the authorities to ensure that in the meantime, the transitional situation created by the dissolution of the State Committee for Nationalities and Religion does not again create a gap in asylum processing procedures.
109. ECRI urges the Ukrainian authorities to take immediate steps to identify and eliminate corruption in its border services, so as to ensure that no one is wrongly deprived of access to asylum procedures.<sup>35</sup>
110. In its third report, ECRI recommended that asylum seekers be provided with free translation and interpretation services when submitting their claim and that they receive legal assistance. Serious concerns remain regarding the provision currently made in practice for these services: ECRI has received reports that interpreters are often unqualified or unavailable – particularly in the border regions – and that asylum seekers sometimes have to bribe migration officials in order to obtain an interpreter in the first place. ECRI notes that to some extent, issues in this field may be resolved by the enactment of legislation which expressly lays down that these services are to be provided at all relevant stages of proceedings. However, it remains vital that adequate provision be made in practice to ensure that asylum seekers fully enjoy their rights to translation, interpretation and legal assistance – all of which are essential to ensuring that asylum procedures are applied in full conformity with international law.
111. ECRI recommends that the Ukrainian authorities ensure that asylum seekers have genuine access to appropriate legal support, translation and interpretation throughout the asylum procedure.
112. In its third report, ECRI urged the Ukrainian authorities to investigate the situation in migration detention centres around the country and take measures to bring the conditions of detention in those centres up to international norms and ensure that persons held therein fully enjoy their rights. ECRI also recommended that the Ukrainian authorities increase the number of reception centres for asylum seekers as soon as possible, in particular in areas where the largest number of asylum claims are filed. It recommended that the UNHCR and relevant NGOs be given unfettered access to reception and detention centres.
113. At the time of ECRI's third report there was one temporary accommodation centre in Odessa, intended for up to 200 persons. In a welcome development, since then, further temporary accommodation has been built in Zakarpattia, for up to 130 persons, and primarily intended to house families. The total capacity of these centres – which are open accommodation centres and are intended for registered asylum seekers whose claims have not been rejected – now stands, therefore, at 330 people. ECRI notes, however, that this is much lower than the number of asylum seekers physically present in Ukraine, which stood at 2 059 persons whose cases were pending at end 2009.<sup>36</sup> ECRI welcomes the indication that a further centre is being reconstructed in Kyiv and will provide temporary housing for up to 250 asylum-seekers and refugees. As the authorities have acknowledged, however, this will not be enough to resolve the remaining issues regarding the provision of adequate accommodation to asylum-seekers and refugees in Ukraine.
114. ECRI recommends that the Ukrainian authorities pursue and strengthen their efforts to provide accommodation for asylum seekers, in order to ensure that no

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<sup>35</sup> *In this respect, see also below, Conduct of Law Enforcement Officials.*

<sup>36</sup> *UNHCR Statistical Yearbook 2009, Annex, Table 1.*

asylum seekers are left without adequate accommodation during the processing of their claim.

115. As regards migration detention centres,<sup>37</sup> conditions have reportedly improved to some extent in recent years. However, overcrowding and unsanitary conditions continue to be reported. Problems (which may vary between detention centres) include limited access to showers and toilets; poor drinking water; inadequate access to recreation, open spaces and fresh air; inadequate diet. It is also reported that male and female detainees, and adults and children, are not always appropriately separated.<sup>38</sup> There are also allegations of serious ill treatment inflicted against persons detained in the various migration detention centres; these allegations are examined further below.<sup>39</sup>

116. ECRI recommends that the Ukrainian authorities step up their efforts to provide adequate living conditions in all types of migration detention centres in Ukraine. In view of the particular vulnerability of migrants in detention, it again recommends that the UNHCR and NGOs be given unfettered access to all types of migration detention centres.

117. ECRI moreover notes with concern that although the total period of any administrative detention must by law not exceed six months, nothing in the law prevents the authorities from re-arresting a migrant immediately after release from a migration detention centre and holding him or her for another six months. This appears to be in conflict with the case-law of the European Court of Human Rights, according to which, where no new grounds for detention exist, renewing detention beyond the period provided for by law is in breach of Article 5 § 1 ECHR.

118. ECRI recommends that the Ukrainian authorities take immediate steps to amend the law to ensure that persons held in migration detention centres cannot be re-detained unless there are new grounds for their detention.

119. ECRI notes that the State Employment Service of Ukraine provides some advice to refugees about their entitlement to social services and social assistance and access to work. It also notes with interest that Ukraine is participating in a two-year regional project, co-financed by the EU and UNHCR, on the local integration of refugees in Belarus, Moldova and Ukraine. ECRI stresses the importance of ensuring that refugees are able to participate fully in society at the earliest possible stage and emphasises that facilitating their access to stable employment can contribute substantially to the integration process.

- *Unaccompanied minors*

120. ECRI notes with concern certain specific difficulties faced by unaccompanied children in Ukraine. The authorities in some regions reportedly refuse to appoint a legal representative, without whom an unaccompanied child cannot file an asylum claim. In the absence of adequate age assessment guidelines, some

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<sup>37</sup> There are three types of migration detention centres in Ukraine: 1) 73 Specially Equipped Premises, with a combined capacity of 350 detainees, run by the State Border Guard Service at border posts and intended to hold only a small number of persons, for not more than three days each; 2) ten Temporary Holding Facilities, with a combined capacity of 250 detainees, also run by the State Border Guard Service and intended to hold persons for not more than three days each; 3) two operational Migrant Accommodation Centres, with a combined capacity of 330 people, run by the Ministry of the Interior and designed to hold persons for not more than six months where they have breached administrative laws with respect to immigration or are in custody pending deportation.

<sup>38</sup> See *inter alia* Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 10 December 2007, CPT/Inf (2009) 15, §§21 ff.

<sup>39</sup> See below, *Conduct of Law Enforcement Officials*.



officials ignore children's declarations as to their age and register them as adults, meaning on the one hand that they can apply directly for asylum, but on the other, that they may be detained for long periods, with adults, or left to fend themselves to find accommodation and that they are denied the enjoyment of rights to which they may be entitled under the Convention on the Rights of the Child. Those who are duly registered as unaccompanied minors are reported to meet administrative obstacles in accessing State-run accommodation, even when places are available. It is also reported that unaccompanied minors rarely attend school or language classes and that many have little choice but to find work, if they can, to scrape by. ECRI wishes to express its concern at these reports, which tend to indicate that the situation of unaccompanied child asylum seekers in Ukraine falls significantly short of international standards.<sup>40</sup>

121. ECRI recommends that the Ukrainian authorities take immediate steps to identify and remedy all gaps in the protection afforded to unaccompanied child asylum seekers in Ukraine, in order to ensure that the latter fully enjoy all the rights to which they are entitled under international law.

- *Refoulement and forcible return of migrants and asylum seekers to places where they are at risk*

122. ECRI is concerned that there appears to be a real risk of refoulement in extradition cases, notably to Russia (in the case of Chechens) and Uzbekistan. There are documented cases of refoulement in which the extradition of persons with recognised refugee status, or, more often, of persons whose asylum claims were still pending, was ordered to the country from which they had fled.

123. ECRI notes that amendments to the Code of Criminal Procedure came into force on 17 June 2010, as part of measures taken to implement a series of judgments of the European Court of Human Rights concerning violations of the right to liberty and security guaranteed by Article 5 ECHR.<sup>41</sup> These lay down specific rules and procedures regarding arrest and detention with a view to extradition, as well as appeal procedures against such apprehension or arrest and for the consideration of such appeals by domestic courts. However, it is not clear to what extent the new provisions ensure compliance by the relevant authorities with the requirements of Articles 3 and 13 ECHR in the context of extradition procedures, in particular as regards the assessment of conditions in the country requesting extradition and this issue was still pending before the Committee of Ministers of the Council of Europe at the time of drafting.<sup>42</sup> ECRI is concerned at reports that there have been a number of attempts to extradite asylum seekers even following the entry into force of the amendments to the Code of Criminal Procedure.

124. ECRI strongly recommends that the Ukrainian authorities do not extradite asylum seekers or refugees to countries where there is a real risk that they will be subjected, in the event of their extradition, to ill-treatment in breach of Article 3 of the European Convention on Human Rights.

### Foreign students

125. In its third report, ECRI strongly recommended that, in addition to taking measures to investigate racially motivated attacks against foreign students and punish the culprits, the Ukrainian authorities ensure that university authorities

<sup>40</sup> See notably UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, Geneva, February 1997.

<sup>41</sup> See notably *Soldatenko v. Ukraine*, application no. 2440/07, judgment of 23 October 2008, final on 23 January 2009.

<sup>42</sup> Committee of Ministers of the Council of Europe, *Ministers' Deputies, Annotated Agenda, 1092 meeting (DH)*, 14-15 September 2010, CM/Del/OJ/DH(2010)1092 Section 4.2 Public, 29 September 2010.

take appropriate measures, to provide the latter with a safe environment by, *inter alia*, organising adequate on-campus security and involving these students in any measures taken to improve their security both on and off campus.

126. The authorities have indicated that the number of foreign students in Ukraine has increased since ECRI's last report, and now stands at approximately 48 000, most of whom live in large cities such as Kyiv, Odessa and Kharkiv. The largest numbers of foreign students come from China and Tajikistan; the authorities point out that there are students from all 54 countries in Africa. They also emphasise that foreign students have been coming to Ukraine since the Second World War and are not a novelty in Ukrainian university towns. In the view of the Ministry of Education, any incidents of racism or intolerance against foreign students are isolated. It has however issued a recommendation to all universities to engage in awareness-raising and prevention activities against racism.
127. ECRI notes with interest that the number of racist attacks against foreign students appears to have diminished in recent years. Following the killing of an African student close to a hostel in 2006, noted with concern by ECRI in its third report,<sup>43</sup> as well as other attacks not of all which were reported by the victims to the police, plain clothes police reportedly monitored the situation more closely. Representatives of the African community also advised African students not to go around alone. Both of these elements may have contributed to the lower number of attacks in recent years.
128. However, as described elsewhere in this report, racist attacks nonetheless continue to occur and foreign students and other persons who do not appear to be of Slavic origin continue to be targeted on the basis of their skin colour and to fear for their physical safety in public. ECRI refers in this context to its recommendations made elsewhere in this report concerning the need to combat racist violence generally and to take measures to improve the reporting of such incidents.<sup>44</sup> It also notes that the continued practice of housing foreign students in separate buildings or on separate floors from Ukrainian students, does little to facilitate integration or to promote understanding between Ukrainians and foreign students, and heightens the latter's sense that they are an easy target.
129. ECRI emphasises that – while the apparent drop in such attacks in recent years is welcome – the number or importance of racist attacks against foreign students should not be minimised. The situation of foreign students in Ukraine still needs to be monitored closely and the impact of measures taken so far should be evaluated in consultation with these students, and with the aim of identifying any additional measures necessary to provide foreign students with a safe environment on campus.
130. ECRI recommends that the authorities take specific measures to promote the integration of foreign students in Ukraine. To this end, they should encourage universities to foster opportunities for foreign students to improve their grasp of the Ukrainian language and to mingle with Ukrainian students and Ukrainian society more generally.

## V. Antisemitism

131. In its third report, ECRI urged the Ukrainian authorities to combat all antisemitic activities, by ensuring that the legislation in force is adequate and effectively applied,<sup>45</sup> that law enforcement bodies duly recognise the antisemitic nature of

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<sup>43</sup> See ECRI's third report, § 62.

<sup>44</sup> See above, *Racist Violence*.

<sup>45</sup> On these points, see above, *Existence and Application of Legal Provisions – Criminal law provisions*.

the relevant acts and treat them as such; that antisemitic violence and incidents are monitored in a consistent manner; and that awareness-raising measures are taken, aimed in particular at young people.

132. ECRI is pleased to note that since its third report, the main source of antisemitic publications in Ukraine,<sup>46</sup> an educational institution reportedly responsible for having produced up to 90% of such publications in recent years, has ceased its activities. The number of antisemitic publications in Ukraine thus dropped from around 540 in 2007 to 46 in 2009. Although it seems that major newspapers do not tend to print antisemitic articles, there are reports that antisemitic publications are still produced and disseminated in Ukraine, and Jewish groups indicate that antisemitic material is constantly published on websites. ECRI draws the authorities' attention to the need to monitor and punish wherever appropriate antisemitic discourse on the Internet, and refers to its recommendations made elsewhere in this report on racism on the Internet. It notes with interest in this context that proceedings were brought in late 2009 against a radical organisation that was alleged to have published antisemitic articles in its newspaper and on its web site. Four books were also banned in 2009, including "Mein Kampf", for inciting xenophobia and ethnic hatred or insulting Jewish and other nations on national grounds.
133. The use by some politicians of antisemitic rhetoric is of concern. One candidate in the 2010 presidential elections "accused" another candidate of being Jewish – a statement subsequently taken up by other politicians as a means to discredit the second candidate in the eyes of the public. Similar stratagems have also been used against other presidential candidates in the past and some politicians at local level have also sought to make political mileage out of antisemitic rhetoric. ECRI condemns such rhetoric and notes that it is doubly damaging: not only do those who engage in it seek to play on latent antisemitism amongst the general population in order to gain votes,<sup>47</sup> but they also tend to reinforce antisemitic views amongst those who listen, by suggesting that such views are valid. ECRI welcomes the indication that in both of the most recent cases, the authorities have launched investigations under the relevant criminal legislation. The outcome of these investigations is however not yet known.
134. Antisemitic incidents and offences, including the desecration of Jewish cemeteries and acts of graffiti or vandalism against Jewish schools, monuments and associations, continue to be reported throughout Ukraine. In a number of these cases, the response of the authorities was sluggish and in at least one case involving the painting of swastikas on Jewish property, the police treated the offence as simple hooliganism.
135. ECRI notes with interest that since its third report, the Ukrainian authorities have taken steps to promote awareness and ensure remembrance of victims of the Holocaust. Efforts to ensure that Jewish history in Ukraine is taught in schools as part of Ukrainian history are reportedly starting to bear fruit and a series of events is planned to mark the 70<sup>th</sup> anniversary in 2011 of Babiy Yar, where tens of thousands of Jews were killed during the Holocaust.
136. ECRI refers to its recommendations made elsewhere in the present report regarding the need to ensure that effective criminal legislation is in place against racist, xenophobic and antisemitic offences and that such offences are duly investigated, prosecuted and punished. It stresses in this context the importance

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<sup>46</sup> See §§ 94 and 95 of ECRI's third report.

<sup>47</sup> This calculation would appear to be wrong, however: the first presidential candidate referred to above received only 0.12% of the vote in the presidential elections.

of recognising the specific nature of acts of antisemitic violence and vandalism and ensuring that this aspect of an offence is taken into account from the outset.

137. ECRI encourages the authorities to pursue their efforts to bring to justice persons, including politicians, who engage in antisemitic discourse in public and via the broadcast, print and electronic media.

## **VI. Discrimination in Various Fields**

### **Education**

138. ECRI notes that the groups that appear to be most affected in Ukraine by discrimination in the field of education are Roma and unaccompanied asylum-seeking children.

139. In its third report, ECRI recommended that the Ukrainian authorities take measures, with the involvement of all concerned actors, to improve Roma access to education by, amongst others, appointing Roma school mediators. While the authorities have referred to some efforts made at local levels in regions where the highest proportions of Roma live, such as Zakarpattia and Odessa, these efforts appear to be scattered rather than based on concerted government action and to rely largely on individual teachers' goodwill.

140. ECRI notes with regret that the situation of Roma in the field of education does not appear to have improved in recent years. Roma continue to experience high drop-out rates from school, segregation (in separate classrooms or separate sitting arrangements within mixed classrooms and sometimes in separate schools altogether), as well as ethnic bullying when they attend mixed schools. Roma illiteracy rates reportedly remain high; few Roma attend pre-school and the proportion of Roma – especially Roma girls – that complete secondary education or tertiary education appears to be significantly lower than that of the overall population. Poverty remains a significant barrier to education for Roma children. ECRI is concerned that there appears to be some tendency to attribute the low school attendance rate of Roma children essentially to parental neglect; this is to the detriment of addressing the underlying causes of poverty amongst Roma and of working together with Roma communities to find ways to increase the participation of Roma children in school and boost their educational outcomes.

141. ECRI strongly recommends that the authorities work closely with Roma organisations to design a concrete plan of action to improve the situation of Roma in the field of education, to identify successful strategies in this field, to share best practices throughout the country and to evaluate and adjust as necessary the outcomes of measures taken. This plan of action should in particular serve to increase the school attendance of Roma children, combat segregation and prejudice in the school system and improve the educational outcomes of Roma children. ECRI again recommends that the appointment of Roma school mediators form part of these efforts.

142. ECRI again draws attention to the difficulties experienced by unaccompanied asylum-seeking children in gaining access to education and refers in this context to its recommendation made elsewhere in this report regarding the need to ensure that unaccompanied minors fully enjoy their rights.<sup>48</sup>

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<sup>48</sup> See above, *Vulnerable/Target Groups – Migrants, asylum seekers and refugees – Unaccompanied minors*.

## Employment

143. In its third report, ECRI encouraged the Ukrainian authorities to collect data to assess the extent of the discrimination suffered by Roma in the employment sector, to continue taking measures to improve Roma access to employment and to implement positive measures such as vocational and adult on-the-job training.
144. No official statistics exist on the current rate of unemployment of Roma but Roma NGOs estimate that only 38% of Roma are in work. This compares with an overall unemployment rate in Ukraine, according to the authorities, of less than 9%. The authorities have emphasised that in accordance with the Constitution and the Labour Code, all citizens have equal rights to work regardless of their ethnic origin and are treated equally when they approach government-run employment centres or seek vocational training. They attribute Roma unemployment to a variety of causes including lack of identity documents,<sup>49</sup> the low level of education of Roma,<sup>50</sup> unrealistic expectations of Roma about the type of employment for which they are qualified and a lack of desire to work.
145. ECRI notes that few Roma appear to be employed in the public sector; Roma who do find work in this sector tend to conceal their ethnic origin for fear that they will be refused employment or promotion. Roma representatives also report that prejudices remain rife in the private sector: Roma tend to be the first to lose their jobs in difficult times or to be blamed if something goes wrong. For this reason most Roma follow the path of self-employment, often carrying out itinerant work such as selling in markets or collecting scrap metal in order to earn a living. Even here, however, they remain vulnerable to administrative measures which may deprive them of access to centrally situated markets.
146. ECRI strongly recommends that the authorities intensify their efforts to improve Roma access to employment through, *inter alia*, adopting positive action measures such as increased access to vocational and in-service training to overcome the existing inequalities in this field.
147. Other vulnerable groups in Ukraine, in particular asylum seekers and refugees, as well as Crimean Tatars, also face discrimination in the field of employment due at least in part to prejudice on the part of employers. In its third report, ECRI urged the Ukrainian authorities to take measures to improve asylum seekers' and refugees' access to employment by, *inter alia*, ensuring that they are provided with free language lessons and vocational training and by raising employers' awareness of anti-discrimination provisions. ECRI notes that although refugees and asylum seekers are entitled to work under the legislation currently in force, they continue to face direct discrimination by employers, based on skin colour or on national or ethnic origin and to be hampered by a lack of the necessary language skills. ECRI is unaware of any specific measures taken by the authorities to overcome these barriers.
148. As mentioned earlier in this report, Crimean Tatars also experience a disproportionately high rate of unemployment. This could in part be connected to the fact that many Crimean Tatar settlements have been established in rural areas with poor infrastructure, lacking transport and communication facilities.<sup>51</sup> However, Crimean Tatars also complain of direct discrimination against them, mainly by ethnic Russian officials, in the field of employment.

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<sup>49</sup> See above, *Vulnerable/Target Groups – Roma*.

<sup>50</sup> See above, *Discrimination in Various Fields – Education*.

<sup>51</sup> See above, *Vulnerable/Target Groups – Crimean Tatars*.

149. ECRI again recommends that the authorities run a targeted campaign to raise both public and private employers' awareness of the prohibition on discrimination in the field of employment and to combat stereotypes prevailing against certain groups. It recommends that these measures be accompanied by positive action to promote diversity in the workplace in both the public and private sectors.

150. ECRI observes that despite numerous accounts of discrimination against national/ethnic minorities in the field of employment, there appear to be few or no cases in which anti-discrimination provisions have been applied in this field. It refers to its recommendations made elsewhere in this report regarding the need to strengthen anti-discrimination legislation in Ukraine.<sup>52</sup>

## Housing

151. The situation of Crimean Tatars as regards access to adequate housing is examined elsewhere in this report.<sup>53</sup>

152. In its third report, ECRI recommended that the Ukrainian authorities take urgent measures to address the issues facing Roma in accessing adequate housing. ECRI notes with concern that while the living conditions of Roma may vary from region to region, they remain in many cases extremely bad. Roma settlements are often isolated and their infrastructure underdeveloped; many Roma homes do not have access to running water or electricity. They are often leaky and poorly insulated, exposing Roma to serious health problems. Moreover, many Roma do not possess the necessary registration documents for their homes, leaving them vulnerable to eviction and homelessness. Local authorities are frequently reported to be little disposed to assist in resolving these problems and it does not appear that any significant progress has been made in this field since ECRI's third report.

153. ECRI reiterates its recommendation that the Ukrainian authorities address the issues facing Roma in accessing adequate housing as a matter of urgency. Measures are needed to facilitate the registering of Roma housing, to improve the infrastructure in and around Roma settlements and to assist in improving the quality of Roma housing.

## Health

154. In the field of health, the most vulnerable groups in Ukraine appear to be Roma and detained migrants.

155. In its third report, ECRI recommended that the Ukrainian authorities take urgent measures to address the issues facing Roma in accessing adequate health care. ECRI remains deeply concerned by the health status of Roma, whose poverty and frequently inadequate living conditions negatively affect their health. A high proportion of Roma are reported to suffer from malnutrition and respiratory diseases, in particular tuberculosis. They are also detrimentally affected by difficulties in accessing health care, by a low level of awareness regarding preventive health measures, by the lack of identity documents, by lack of financial means to pay doctors and cover the costs of medicine and, in some cases, by doctors' reluctance to treat them.

156. ECRI notes with interest that a programme was launched in 2010 to introduce Roma health mediators in five regions of Ukraine. While the number of such mediators is at present still low and it is too soon to be able to analyse their

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<sup>52</sup> See above, *Existence and Application of Legal Provisions – Civil law provisions against racial discrimination*.

<sup>53</sup> See above, *Vulnerable/Target Groups – Crimean Tatars*.

impact in practice, ECRI notes that the broader aim is to identify and disseminate successful models for tackling the health issues affecting Roma in Ukraine. In the meantime, some initiatives have also been taken at local level to improve the access of Roma to health screening devices. The authorities have also stated that a bill has been drafted according to which both public and private hospitals would be required to provide primary (emergency) health care free of charge; at the time of writing this bill had however not been enacted by Parliament.

157. ECRI strongly encourages the Ukraine authorities to pursue and intensify their efforts to improve the health status of Roma as well as their access to health care, including but not limited to the appointment of Roma health mediators. It stresses that additional positive action measures appear necessary to overcome the full range of disadvantages experienced by Roma in this field, as detailed above.

158. ECRI is concerned at reports that persons housed in migration detention centres, particularly those run by the State Border Guard Service (which are situated at border points and intended for short periods of detention, but often used in practice for longer periods), suffer from high rates of illnesses such as influenza, scabies, diabetes and respiratory diseases such as tuberculosis, and from inadequate sanitary conditions in these centres. The authorities have taken steps to ensure that detained migrants have access to a medical check-up once a month and to treatment in a public hospital where necessary. ECRI acknowledges these efforts. However, it is concerned at reports that these centres suffer generally from a lack of equipment and staff, combined with insufficient access of detainees to secondary and psychiatric or psychological care.

159. ECRI recommends that the Ukrainian authorities step up their efforts to improve the health situation of detained migrants so as to ensure that they receive rapid and adequate health care where needed.

### **Access to goods and services**

160. ECRI refers to the concerns expressed and recommendations made elsewhere in this report regarding prejudice displayed by providers of goods and services towards Roma – whom they sometimes refuse to serve altogether – as well as towards migrants, asylum seekers and refugees, particularly on the basis of skin colour.<sup>54</sup>

## **VII. Conduct of Law Enforcement Officials**

161. In its third report, ECRI urged the Ukrainian authorities to investigate any allegations of police misconduct and harassment towards persons coming within ECRI's mandate, in particular asylum seekers, refugees, foreign students and members of the Roma community, and to ensure that any law enforcement officials found guilty of such conduct were punished. ECRI further recommended that an independent body empowered to receive complaints against police officers be established and that they receive initial and on-going training on human rights in general and issues pertaining to refugees and asylum seekers as well as racism and racial discrimination in particular.

162. ECRI is deeply concerned by reports of frequent misconduct by police officers in their contacts with persons belonging to vulnerable groups. ECRI has received particularly serious allegations of abuses by police with respect to Roma. Arbitrary arrests, systematic taking of fingerprints and photographing are still practised and may even have increased since ECRI's previous reports; some

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<sup>54</sup> See above, *Racism in Public Discourse – Climate of opinion and Internet*.

NGOs consider that these actions are part of deliberate efforts by police to build up a database of the Roma living in a given locality. There are also accounts of the police calling on non-Roma citizens to alert the police whenever Roma appear in their locality and of police searching Roma homes without warrants and planting evidence in order to extort bribes or increase their success rate in criminal investigations. There are reports that Roma have been detained incommunicado, without a court order and/or under trumped-up charges, that they have been threatened or badly beaten to extort a confession and that they have been detained on administrative charges such as insulting police officers if they failed to succumb to the pressure. Some sources suggest that police corruption and serious abuses are not only directed at Roma but also affect the broader population; however, most are clear that Roma are the main victims of such misconduct as they are perceived by the police as having little education or knowledge of their rights and, therefore, as easy targets. Representatives of civil society who attempt to report allegations of police misconduct often face reluctance to investigate or denial of the reported events by officials.

163. Migrants and asylum seekers, including children, in particular those apprehended by Ukrainian border guards and police close to the borders with Slovakia and Hungary, risk abusive treatment and arbitrary detention. Beatings, death threats and food deprivation have been reported and some migrants have reported being tortured with electric shocks by Ukrainian officials, in particular while in the custody of the State Border Guard Service. Such ill treatment reportedly happens with impunity and despite Ukrainian officials' denials of its existence. Inadequacies have also been noted in the investigation of such allegations.<sup>55</sup>

164. ECRI urges the authorities to intensify their efforts to put a stop to racist or racially discriminatory misconduct by the police. It again urges them to investigate any allegations of misconduct by police and other law enforcement officials towards persons coming within ECRI's mandate – in particular members of the Roma community, asylum seekers, refugees and migrants – and to ensure that any law enforcement officials found guilty of such conduct are duly punished.

165. Racial profiling also occurs. Individuals are targeted for identity checks in public places such as markets and railway stations, notably on the basis of their skin colour or their “non-Slavic” appearance. While the authorities emphasise that such cases are rare, this is not the perception of persons belonging to the groups concerned, who report that they are regularly harassed by the police. Such practices shake the confidence of ethnic minorities and non-nationals in the police, who are perceived by these vulnerable groups as a threat rather than as the guarantors of their rights. As noted elsewhere in this report, this contributes to significant under-reporting of racist attacks against persons coming within ECRI's mandate, meaning that justice is not done in individual cases and creating a sense of impunity for the perpetrators. ECRI notes with interest that the authorities have been implementing joint activities with international partners since 2009 to review the relevant legal framework in place and provide training to law enforcement officers on combating racism and xenophobia; it stresses the importance of following up on these activities by enacting any legislative changes identified as necessary. It also emphasises that more vigorous efforts are needed to combat racial profiling, first because it directly discriminates against the persons concerned and second because its consequence is to expose members of minority groups to a greater risk of racist attacks. ECRI draws the authorities' attention in this regard to its General Policy Recommendation No. 11 on

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<sup>55</sup> See *inter alia* Human Rights Watch, *Buffeted in the Borderland*, December 2010; *Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 10 December 2007*, CPT/Inf (2009) 15.



combating racism and racial discrimination in policing, Part I of which proposes a number of measures that the authorities can take to put a stop to racial profiling.

166. ECRI strongly recommends that, as part of their efforts to prevent racist or racially discriminatory misconduct by law enforcement officials, the authorities step up their efforts to ensure that all law enforcement officials receive initial and on-going training on human rights in general and issues pertaining to racism and racial discrimination in particular, including the need to refrain from racial profiling.

167. Complaints of police misconduct in Ukraine may be lodged with the police, a court or a prosecutor; minor disciplinary offences will be investigated by the officer's superior and alleged criminal offences by a prosecutor. There is no independent police complaints mechanism. ECRI refers in this context to paragraph 10 of its General Policy Recommendation No. 11 and to the relevant parts of the accompanying explanatory memorandum, which explain the importance of ensuring that complaints of racist or discriminatory misconduct by the police are investigated by an independent mechanism.

168. ECRI strongly recommends that an independent body empowered to receive complaints against police officers be established; it refers to its General Policy Recommendation No. 11, which contains a number of specific guidelines in this respect.

#### **VIII. Monitoring Racism and Racial Discrimination**

169. In its third report, ECRI recommended that the Ukrainian authorities establish and implement a system of "ethnic data" collection to assess and redress any racial discrimination that may exist in the country, in compliance with the principle of full consent and the anonymity and dignity of the people involved, and in accordance with all relevant national laws as well as European and international regulations and recommendations on data protection and the protection of privacy.

170. There has been no change in the situation since ECRI's third report: overall statistical data broken down according to national/ethnic origin is still only gathered in the context of the population census. Moreover, the reliability of the data broken down according to national/ethnic origin that was gathered in the most recent population census, conducted in 2001, is contested by some groups<sup>56</sup> and the next census – originally planned for 2011 – has been postponed until 2012. Beyond these overall figures, little or no data is gathered regarding the access to social rights of groups coming within ECRI's mandate. This makes it particularly difficult to identify clearly specific problems faced by any given group and to design effective programmes or strategies to overcome them. ECRI observes that a complete system of data collection in this field should include the collection of data broken down according to national or ethnic origin, religion, language and nationality.

171. ECRI again recommends that the Ukrainian authorities identify ways of measuring the current situation of vulnerable groups in different fields of life. It emphasises in this regard that the collection of data concerning people's national or ethnic origin, religion, language and nationality must be carried out in accordance with all relevant national laws as well as European and international regulations and recommendations on data protection and the protection of privacy, and with due regard to the principles of confidentiality, informed consent and voluntary self-identification of persons as belonging to a particular group.

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<sup>56</sup> See above, *Vulnerable/Target Groups – Roma*.

## IX. Education and Awareness-Raising

172. In its third report, ECRI recommended that the Ukrainian authorities carry out awareness-raising campaigns, including campaigns specifically targeting youth, about the dangers of racism, antisemitism and xenophobia and about the contribution to Ukrainian society from minority groups. It recommended that the authorities encourage and actively support any measures taken in this regard and that all relevant sectors of society be fully involved in any such initiatives. It also recommended that issues pertaining to combating racism and racial discrimination be included in the human rights courses delivered to school pupils.
173. The authorities have indicated that a number of cultural and educational activities have been conducted at both national and local level to raise awareness about the languages and cultures of national/ethnic minorities in Ukraine. Despite these activities, it does not appear from the information available to ECRI that the authorities have organised large-scale awareness-raising campaigns aimed at the general public about the dangers of racism, antisemitism and xenophobia, although a number of round tables have been held on these issues in recent years. ECRI regrets that there has not been a more concerted effort to raise awareness about these phenomena as they are certainly present in Ukrainian society and members of groups coming within ECRI's mandate express the fear that they will be the object of attacks based on their skin colour or national or ethnic origin.<sup>57</sup>
174. ECRI recommends that the authorities take firm measures to send a clear message to society that racism, racial discrimination, antisemitism, xenophobia and intolerance are unacceptable. It again recommends that the authorities run campaigns to raise the awareness of the general public as to these issues, to fight prejudice, break down stereotypes and promote openness and tolerance.
175. In addition, ECRI recommends that the authorities carry out a specific awareness-raising campaign aimed at dissuading youth from joining neo-Nazi and skinhead groups.
176. As regards the inclusion of issues pertaining to combating racism and racial discrimination in the human rights courses delivered to schoolchildren, ECRI notes that human rights elements are incorporated in a number of (mostly optional) courses at various levels in the school system, although there is little indication as to the extent to which equality and the prohibition on discrimination on grounds such as "race", colour, language, religion, nationality or national or ethnic origin are covered. Moreover, civil society indicates that teaching materials for such classes are lacking and that some groups in society oppose the teaching of tolerance in schools as a too open approach to diversity is seen as a threat to traditional values.
177. ECRI recommends that the Ukrainian authorities step up their efforts to combat racism and racial discrimination through the educational programme delivered in schools, in particular by ensuring that human rights education is an integral part of the school curriculum at all levels and across all disciplines, and by designing and making available to teachers materials that promote critical thinking among pupils and equip them with the necessary skills to become aware of and react to stereotypes or intolerant elements contained in other materials that they use.

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<sup>57</sup> See above, *Racist Violence, Racism in Public Discourse and Antisemitism*.

## **X. Overall Strategies to Combat Racism and Racial Discrimination**

178. In early 2008 an Inter-Agency Working Group was set up under the Cabinet of Ministers to combat xenophobia and racial intolerance in an integrated way. It comprised experts from executive bodies, researchers and representatives of civil society and was tasked with developing systemic approaches to preventing and combating the phenomena of ethnic intolerance and prejudice, xenophobia and antisemitism. This Working Group subsequently adopted a Plan of Action to Combat Xenophobia and Racial and Ethnic Discrimination in Ukrainian Society for the 2008-2009 period, followed by a similar plan for 2010-2012.<sup>58</sup> It also reportedly organised several consultative meetings between local/regional authorities and representatives of civil society as well as some awareness-raising projects. ECRI notes with interest that the work of this group was appreciated by civil society, not least because the group brought together a broad range of relevant actors and existed for the sole purpose of fighting racism. ECRI regrets that since the disbanding of the SCNR – which was effectively co-ordinating the work of this group – it appears that this function has not been transferred to another agency. The risk is that the momentum that was starting to build and progress that was beginning to be made through the Inter-Agency Working Group towards combining forces to tackle racism in an integrated and strategic manner will be lost and that efforts in this field will become increasingly scattered and ineffective.
179. ECRI refers to its recommendation made earlier in this report<sup>59</sup> that the Ukrainian authorities designate rapidly the body responsible for co-ordinating the authorities' work on combating racism and racial discrimination, and ensure that it has the necessary resources and expertise to fulfil this role. ECRI underlines once again that adopting a systematic, integrated approach is the best way to achieve tangible results in the fight against racism and racial discrimination.

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<sup>58</sup> *The latter is reproduced in full in English at pp. 79-81 of Ukraine's Nineteenth to Twenty-First Periodical Reports to CERD.*

<sup>59</sup> *See above, Anti-discrimination bodies and other institutions.*



## INTERIM FOLLOW-UP RECOMMENDATIONS

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

- ECRI strongly recommends that the Ukrainian authorities define as soon as possible the body that will in future be responsible for co-ordinating the authorities' work on combating racism and racial discrimination and ensure that its staff have strong expertise in the anti-discrimination field, that the institution reflects this approach clearly and that it has adequate human and financial resources to carry out its functions effectively. ECRI further recommends that the active involvement of civil society in this work be provided for and facilitated.
- ECRI urges the Ukrainian authorities to ensure that a fair and effective refugee status determination procedure is in place at all times and that the final structure intended to exercise these functions is established as soon as possible. It urges the authorities to ensure that in the meantime, the transitional situation created by the dissolution of the State Committee for Nationalities and Religion does not again create a gap in asylum processing procedures.
- ECRI strongly recommends that an independent body empowered to receive complaints against police officers be established; it refers to its General Policy Recommendation No. 11, which contains a number of specific guidelines in this respect.

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



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