

CRI(2015)25

**ECRI CONCLUSIONS ON THE IMPLEMENTATION
OF THE RECOMMENDATIONS
IN RESPECT OF UKRAINE
SUBJECT TO INTERIM FOLLOW-UP***Adopted on 19 March 2015¹**Published on 9 June 2015*

¹ No account is taken in this analysis of any developments subsequent to 27 January 2015, the date of receipt of the Ukrainian authorities' response to ECRI's request for information about the measures taken to apply the interim follow-up recommendations.

COUNCIL OF EUROPE



ECRI Secretariat
Directorate General II - Democracy
Council of Europe
F-67075 STRASBOURG Cedex
Tel.: +33 (0) 390 21 46 62
Fax: + 33 (0) 388 41 39 87
E-mail: ecri@coe.int
www.coe.int/ecri

FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007¹, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

¹ CM/Del/Dec(2007)986/4.1.

1. *ECRI strongly recommended 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 recommended that the active involvement of civil society in this work be provided for and facilitated.*

According to the information supplied by the Ukrainian authorities, the office of the Parliamentary Commissioner for Human Rights adopted a "strategy for 2014-2017" in November 2013 with a view to structuring its activity in various fields, particularly the promotion of the principles of equality and non-discrimination, inter alia by developing a network with national and international bodies with a strategic role in this context. In June 2014, the Ukrainian Cabinet set up a Council for Inter-Ethnic Cohesion, intended to act as an advisory body to the Ukrainian Cabinet. Also in June 2014, the Ukrainian Cabinet created the post of Government Agent on Ethno-National Policy Issues, whose role is to promote the protection of the rights of national minorities and indigenous populations and the preservation of the cohesion and unity of Ukrainian society. The Government Agent is responsible, inter alia, for submitting proposals to the Council for Inter-Ethnic Cohesion on improving ethno-national policies, on improving the work of governmental bodies and the interaction between them and the Ukrainian Cabinet, and on measures to promote tolerance. Finally, in September 2014, the Ukrainian Cabinet approved by decree the remit of the Ministry of Culture. The Ministry is, in particular, responsible for taking measures to promote tolerance within Ukrainian society and preventing incitement to hatred and to ethnic discrimination.

ECRI notes that the information presented by the authorities concerns both the specialised national body¹ and the body that could be tasked with co-ordinating the Ukrainian authorities' work on combating racism and racial discrimination.

As far as the Parliamentary Commissioner for Human Rights is concerned, ECRI notes that his office has qualified staff with training in issues pertaining to racism and racial discrimination and has organised numerous training sessions on the prevention and combating of discrimination for various groups, including legal experts, judges, representatives of the law enforcement agencies and representatives of NGOs. ECRI has also been informed that some publications have been issued to raise awareness of the anti-discrimination legislation and the relevant good practices. However, because of its status as an independent body, ECRI considers that the Commissioner's office cannot be responsible for co-ordinating government action.

Where the body that could be tasked with co-ordinating the Ukrainian authorities' work on combating racism and racial discrimination is concerned, ECRI notes the co-ordination initiatives undertaken by the Ministry of Culture, but nevertheless understands that those have been confined to supplying information in the cultural and arts spheres. Furthermore, it seems that the Ministry of Culture has produced no reports about the way in which it has carried out this co-ordination. What is more, it seems that no training activity has been organised for Ministry staff on anti-discrimination issues.

¹ An independent authority expressly tasked at national level with combating racism, xenophobia, anti-Semitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination).

As to the Council for inter-ethnic cohesion, ECRI notes that that body – comprising representatives of various ministries, experts, scientists, the Government Agent on Ethno-National Policy Issues and representatives of the various ethnic minorities – is first and foremost a body that facilitates relations between the government and those minorities.

The Ukrainian authorities told ECRI that it is the Government Agent on Ethno-National Policy Issues who should be made responsible for co-ordination of the government's work on combating racism and racial discrimination, but ECRI understands that no such decision has been officially taken. ECRI also draws the Ukrainian authorities' attention to the fact that, were such a decision to be taken, it would have to be made clear that, where the combating of racism and racial discrimination was concerned, the Government Agent's remit was not confined solely to ethnic minorities and indigenous populations, but extended to all vulnerable groups of interest to ECRI.

ECRI acknowledges the various efforts made and initiatives undertaken by the Ukrainian authorities with a view to co-ordinating governmental work on combating racism and racial discrimination and concludes that its recommendation has been partially implemented.

2. *ECRI urged 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 urged 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.*

According to decree No. 405/2011 of the President of the Republic of Ukraine, issued in April 2011 and approving the Regulation on the State Migration Service (SMS), the SMS has become the executive's main body responsible for migration issues, under the supervision of the Ministry of the Interior and the State Committee for Nationalities and Religion. Furthermore, a new law on refugees and persons needing complementary or temporary protection in Ukraine came into force in September 2011. The application of that law was entrusted to the SMS from 2012.

That law introduces protection for persons under threat of the death penalty, torture or inhuman or degrading treatment in their country of origin. For minor children, it improves the already existing provisions on family reunification and the period of validity of refugee documents. According to the Ukrainian authorities, 1,573 applications were made in 2012, 152 of which resulted in positive decisions. In 2013, 1,093 applications resulted in 226 positive decisions, corresponding to a rate of 25%, which is, as the Ukrainian authorities point out, above the European average.

ECRI welcomes the initiatives taken by the Ukrainian authorities and the encouraging results thereof. However, ECRI considers that the placing of the State Migration Service under the supervision of the Ministry of the Interior, mainly concerned with the control of unlawful immigration, cannot provide a guarantee of fair application of the refugee status determination procedure required by its recommendation, as tends to be shown by the fact that, at central level, the team responsible for these matters is also responsible for other duties, such as those connected with the reception of refugees at open centres and the detention of migrants in an unlawful situation at the centres provided for that purpose. ECRI also notes² that not all of the officials whose signature is required to validate decisions on refugee status have received training in the

² See www.refworld.org/docid/51ee97344.html.

applicable legislation, and that the recommendations made by the persons responsible for interviewing asylum seekers are very easily overturned by other officials.

While recognising the significant efforts made by the Ukrainian authorities, ECRI nevertheless concludes that its recommendation has been partially implemented.

3. *ECRI strongly recommended 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.*

The Ukrainian authorities told ECRI that there were, within the Ministry of the Interior, “internal security units” responsible, inter alia, for monitoring compliance with the law by representatives of law enforcement agencies. In this context, those units were required to deal with complaints lodged by citizens. They collected information about the cases submitted to them and sent relevant evidence to the prosecution service or the Security Service of Ukraine. ECRI also hears that reform is currently under way with a view to making those units more independent.

ECRI takes due note of these initiatives, but considers that they are insufficient in the light of its recommendation. Firstly, the remit of those units confers on them the role of monitoring compliance with the law: the protection of human rights and the fight against racism and racial discrimination are not explicitly included. ECRI also considers that the placing of those units under the supervision of a ministry cannot guarantee the independence that such a body must enjoy in order to be able to carry out its duties impartially.

ECRI also understands that legislative procedures are underway for the establishment of a Special Bureau of Investigation (SBI) and the definition of its mandate. ECRI notes that the draft law provides for the independence of the SBI as a body responsible for preventing and combating the most serious forms of crime. Noting that the Committee for the Prevention of Torture and inhuman or degrading treatment or punishment (CPT) has called on the Ukrainian authorities to set up an SBI with the capacity to deal effectively with abuses by law enforcement officials,³ ECRI encourages the authorities to consider empowering this body to receive complaints against police officers.

For these reasons, ECRI concludes that its recommendation has been partially implemented.

³ 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 18 to 24 February 2014, §§ 48-50.

