

Council of Europe contribution for the 14th UPR session regarding Ukraine

Fight against racism and intolerance

European Commission against Racism and Intolerance (ECRI)

On 21 February 2012 the European Commission against Racism and Intolerance (ECRI) published its fourth report on Ukraine (attached below).¹ It was prepared following ECRI's contact visit to Ukraine in April 2011 and takes account of developments up to June 2011.

ECRI's Chair ad interim, François Sant'Angelo, said that, while there have been some improvements, there are still concerns in most areas covered by the Commission's mandate.

Thus, although the Government has drawn up plans of action against xenophobia and racial and ethnic discrimination, the disbanding of the State Committee for Nationalities and Religion has left a vacuum in this connection. The country has no comprehensive anti-discrimination legislation. Moreover, despite the authorities' intention to strengthen the legislation on asylum, the refugee-status determination procedures have been frozen on several occasions.

Admittedly, there are less racist attacks. However, the problem is far from resolved. Hate speech is often left untackled, although the number of antisemitic publications has dropped. The authorities are, of course, aware of the need to deal with neo-Nazi and skinhead football fans. Nevertheless, the Ministry of the Interior has abandoned its efforts to monitor racist incidents and groups systematically. Moreover, the extent of the problem is masked because perpetrators of hate crime tend to be prosecuted as hooligans.

The situation of Crimean Tartars has not improved. Neither has that of Roma, many of whom lack identity documents, despite some municipalities' efforts to promote their social inclusion. Police misconduct against this and other vulnerable groups, such as migrants and asylum-seekers, is also frequently reported.

The report contains findings and recommendations regarding the following issues:

- I. Existence and implementation of legal provisions²
- II. Racist violence³
- III. Racism in public discourse⁴
- IV. Vulnerable/target groups including Roma, Crimean Tatars, Muslims, migrants, refugees, asylum seekers and foreign students⁵
- V. Antisemitism⁶
- VI. Discrimination in various fields including education, employment, housing, health, access to goods and services⁷
- VII. Conduct of law enforcement officials⁸
- VIII. Monitoring racism and racial discrimination⁹
- IX. Education and awareness-raising¹⁰

¹ A summary of the report can be found on pp. 7-10.

² pp. 11-18.

³ pp. 18-20.

⁴ pp. 20-31.

⁵ pp. 23-34.

⁶ pp. 34-36.

⁷ pp. 36-39.

⁸ pp. 39-41.

⁹ p. 41.

X. Overall strategies to combat racism and racial discrimination¹¹

In its report, ECRI has made a number of recommendations, among which the following three require priority implementation and will be revisited in two years' time:¹²

- identify the body that will coordinate the work on combating racism and racial discrimination and ensure that its staff have strong expertise in these fields;
- guarantee at all times fair and effective refugee-status determination procedures and finally settle the issue of who is responsible;
- set up an independent body for receiving complaints about racism and racial discrimination against the police.



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Protection of Minorities

Framework Convention for the Protection of National Minorities

On 30 March 2011 the Committee of Ministers adopted a resolution on the protection of national minorities in Ukraine (attached below). The resolution contains conclusions and recommendations, highlighting positive developments¹³ but also mentioning issues of concern¹⁴. Moreover it mentions a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

In addition to the measures to be taken to implement the detailed recommendations contained in sections I¹⁵ and II¹⁶ of the Advisory Committee's opinion (attached below), the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- improve, as a matter of priority, the legislative framework pertaining to minority issues, in particular in the field of education and media, and bring it in line with relevant international norms, including those relating to the Framework Convention, as recommended in the opinion of the Advisory Committee;¹⁷
- complement, where appropriate, legislative provisions pertaining to discrimination and introduce additional measures to promote full and effective equality;

¹⁰ p. 42

¹¹ p.43.

¹² p. 45.

¹³ Part 1 a) of the resolution.

¹⁴ Part 1 b) of the resolution.

¹⁵ pp. 5-9.

¹⁶ pp. 11-49

¹⁷ Paragraph 65 of the 2nd opinion of the Advisory Committee on Ukraine (CM(2008)116): "Legislative reforms regarding, in particular, the Law on National Minorities and the Law on Languages should be developed in a coherent way, without regressing from the existing level of protection and with full respect for the relevant international standards. In this context, the right balance must be struck between the legitimate aim to promote the use of the state language in various spheres of life and the necessity to provide for the use of minority languages in private and in public, as provided for by the Framework Convention."

- strengthen efforts to improve the social and economic situation of persons belonging to disadvantaged minorities, particularly the Roma and the Crimean Tatars;
- increase the attention with which racially motivated incidents are investigated and the perpetrators prosecuted while stepping up awareness-raising activities among law enforcement officers, prosecutors and judges;
- take effective measures to ensure that policies to promote the use of the state language fully respect the language-related rights of persons belonging to national minorities, as guaranteed by the Framework Convention;
- examine the possibility of resorting to incentive-based measures and voluntary methods to promote the use of the state language in the media and take measures to address difficulties relating to the production and broadcasting of television programmes as well as to the distribution of films in minority languages;
- ensure that initiatives aimed at promoting the Ukrainian language in education do not result in limitations for the right to minority language education and review, in consultation with persons belonging to national minorities, the legal framework pertaining to minority education, including higher education;
- increase efforts to promote equal opportunities for access to education at all levels for persons belonging to national minorities, including by providing adequate response to the needs of national minorities in higher education.
- increase efforts to provide quality textbooks and qualified teachers for minority language education;
- create conditions to facilitate wider participation of persons belonging to national minorities in elected bodies at central and local levels as well as to further improve the functioning of existing consultative bodies;
- take further steps to address the problems faced by the Crimean Tatars in relation to land claims by adopting legal norms relating to property restitution and providing for adequate compensation.

The resolution is largely based on the corresponding Second Opinion of the Advisory Committee on the Framework Convention on Ukraine¹⁸. The concluding remarks, contained in Section III¹⁹, serve as the basis for the Committee of Ministers' Resolution. The Opinion of the Advisory Committee and the comments on the Opinion by the government of Ukraine are attached below.



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The Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its third Opinion on Ukraine in March 2012, but for the time being it is still restricted.

¹⁸ A summary of the report can be found on pp. 1-2.

¹⁹ pp. 40-42.

European Charter for Regional or Minority Languages

On 7 July 2010, the Council of Europe Committee of Ministers made public the first report on the situation of minority languages in the Ukraine. The report drawn up by a committee of independent experts, which monitors the application of the Charter, is attached below. It also includes the Committee of Ministers' Recommendation on the application of the European Charter for Regional or Minority Languages by Ukraine.

The Committee of Experts encouraged the Ukrainian authorities to develop a structured education policy for minority languages and secure the right of minority language speakers to receive education in their languages. This policy should ensure that a sufficient number of adequately trained teachers are available with a proficiency in the minority languages. Moreover, adequate teaching materials for minority-language education need to be provided and Ukraine should also ease the procedural requirements for importing literature in such languages. The Ukrainian authorities were also asked to review the high threshold (majority of the local population) at which minority languages can be used in relation with authorities and public services. For some minority languages, the amount of broadcasting is very low. Ukraine was encouraged to ensure that quotas imposed for broadcast programmes (television and radio) and the requirement to dub, subtitle and postsynchronise all foreign films into Ukrainian are not detrimental to broadcasting radio and television programmes in the minority languages. There is also a need to provide long-term subsidies to the minorities for setting up or running cultural centres.



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Prevention of Torture

On 12 March 2012 the Council of Europe's Committee for the Prevention of Torture (CPT) published preliminary observations on three issues raised during its visit to Ukraine from 29 November to 6 December 2011, and the response of the Government of Ukraine. Both documents are contained in the attachment below. The full report on the visit is not yet published.

The CPT expressed concern over the treatment of persons deprived of their liberty by the police in Ukraine. Visiting police and pre-trial establishments, the CPT delegation received numerous allegations from detained persons (including women and juveniles) that they had been subjected to physical ill-treatment at the time of arrest or during subsequent questioning by police officers. In a number of cases, the ill-treatment alleged was of such a severity that it could be considered to amount to torture.

The CPT delegation examined the health care being provided to certain persons held at the Kyiv SIZO at the time of the visit, including Valeriy Ivashenko, Yuriy Lutsenko and Yulia Tymoshenko. The delegation has in particular expressed concern about the considerable delays observed in arranging specialised medical examinations outside the SIZO. The possible need for additional interventions to be explored in a hospital setting has also been flagged by the delegation.

The CPT delegation called on the authorities to put an immediate end to the practice of handcuffing patients to hospital beds and to respect confidentiality of medical examinations. It also emphasised that the right to inform a close relative or another person of one's custody, the right of access to a lawyer and a doctor should be applied from the very outset of custody.

Material conditions of detention were generally satisfactory in the police establishments visited. The delegation also gained a positive impression of the situation in the units for juveniles at the

Kyiv and Kharkiv pre-trial establishments; however, the conditions of detention were extremely poor in many of the other units of these establishments.



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Council of Europe Commissioner for Human Rights

On 23 February 2012 the Commissioner for Human Rights, Thomas Hammarberg, published a report based on the findings of his visit to Ukraine from 19 to 26 November 2011.²⁰

The report attached below focuses on the following selected human rights issues

- I. Functioning of the judiciary²¹
- II. Issues relating to the independence and impartiality of judges²²
- III. Criminal justice reform and access to justice²³
- IV. Systematic problems in the administration of justice²⁴
- V. Combating impunity²⁵

For each issue the Commissioner provides specific conclusions and recommendations.²⁶

The Commissioner said that “systemic deficiencies in the functioning of the Ukrainian judicial system seriously hinder the enjoyment of human rights. The authorities should take resolute steps to better address these problems”.

The Commissioner recommended simplifying the overall organisation of the judiciary and clarifying fully the respective roles and jurisdiction of different levels in the court system, in particular at the cassation level. Concrete measures are also needed to increase transparency of the judicial system and make it more open to public scrutiny.

The judiciary is still vulnerable to external interference, including of a political nature. “Decisive action is needed on several fronts to remove the factors which render judges vulnerable and weaken their independence. The authorities should carefully look into any allegations of improper political or other influence or interference in the work of judicial institutions and ensure effective remedies.”

The Commissioner calls upon the Ukrainian authorities to establish fair procedures and criteria related to the appointment and dismissal of judges, as well as the application of disciplinary measures. He also recommends changes in the composition of the High Council of Justice, which presently does not correspond to international standards, and the provision of quality on-going training for judges, including on the jurisprudence of the European Court of Human Rights.

²⁰ A summary of the report appears on p. 2.

²¹ Section I, paras. 13-23.

²² Section II, paras. 27-45.

²³ Section III, paras. 52-63.

²⁴ Section IV, paras. 69-85.

²⁵ Section V, paras. 92-99.

²⁶ Paras 24-26, 46-51, 64-68, 86-91 and 100-103.

The imbalance between the defence and the prosecution remains an issue of serious concern. “It is important to ensure that the new Criminal Procedure Code will re-balance the system by providing for increased defence rights. Vigorous efforts are needed to ensure that fair trial guarantees as well as the principle of equality of arms are respected.”

The Commissioner is also concerned by cases of abusive prosecutions, harassment, and other forms of pressure on lawyers, which impair defence rights and prevent lawyers from effectively serving the cause of justice.

He further stresses that “the ongoing reform of the criminal justice system represents a unique opportunity to address a number of structural problems, including excessively lengthy judicial proceedings, non-enforcement of domestic judicial rulings and the abusive use of remand in custody.”

Finally, the Commissioner recommends stronger efforts to end impunity for ill-treatment by law enforcement officials. “The authorities should take urgent measures to prevent cases of ill-treatment by police officers and ensure their accountability for any criminal acts. Democratic oversight of the law-enforcement and security structures should be strengthened, including by ensuring individuals’ access to a fully independent complaint mechanism.”

The comments of the authorities of Ukraine are appended to the report.

Together with the report, the Commissioner made also public a letter addressed to the Prime Minister of the Autonomous Republic of Crimea, Anatolii Mohyliov, in which he recommends concrete measures to better protect the right of ethnic groups living in the Republic, in particular as concerns the preservation of language diversity and equal opportunities in accessing employment, decent housing and social protection. The letter to the Crimean authorities is attached below.



CHR report
Ukraine.pdf



CHR letter
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Social and economic rights

Ukraine ratified the Revised European Social Charter on 21/12/2006 and has accepted 74 of the Revised Charter’s 98 paragraphs.

It has not ratified the Additional Protocol Providing for a System of Collective Complaints.

Cases of non-compliance

Thematic Group 2 “Health, social security and social protection”

► Article 23 - Right of the elderly to social protection

The level of minimum old-age pensions – both contributory and social – are manifestly inadequate.

(Conclusions 2009, p. 31 ‘Conclusion’)

Thematic Group 3 “Labour rights”

► Article 2§7 - Right to just conditions of work - Night work

There is no provision in the legislation for a compulsory medical examination for persons about to take up night work.

(Conclusions 2010 p. 9 'Conclusion')

▶ Article 4§4 - Right to a fair remuneration - Reasonable notice of termination of employment
Two months notice is insufficient for workers with ten or more years' service.
(Conclusions 2010 p. 11 'Conclusion')

▶ Article 4§5 - Right to a fair remuneration - Limits to deduction from wages
Deductions from wages are not reasonable and may deprive workers and their dependents of their very means of subsistence.
(Conclusions 2010 p. 12 'Conclusion')

▶ Article 6§4 - Right to bargain collectively - Collective action
All civil servants are denied the right to strike.
(Conclusions 2010 p. 22 'Conclusion')

Thematic Group 4 "Children, families, migrants"

▶ Article 7§1 - Right of children and young persons to protection - Prohibition of employment under the age of 15
The definition of light work is not sufficiently precise because there is no definition of the types of work which may be considered light or a list of those which are not.
(Conclusions 2011 p. 4 'Conclusion')

▶ Article 7§10 - Right of children and young persons to protection - Special protection against physical and moral dangers

- all children under 18 are not effectively protected against child prostitution;
- all children under 18 are not effectively protected against child pornography;
- simple possession or production of child pornography is not a criminal offence;
- measures taken to address the problem of street children are insufficient and disproportionate in the circumstances.

(Conclusions 2011 p. 14 'Conclusion')

▶ Article 16 - Right of the family to social, legal and economic protection
Measures implemented to address the problem of domestic violence have not been sufficient.
(Conclusions 2011 p. 20 'Conclusion')

▶ Article 31§1 - Right to housing - Adequate housing

- it has not been established that the right to adequate housing is effectively guaranteed;
- insufficient measures were taken by public authorities to improve the substandard housing conditions of many Roma and Crimean Tatars.

(Conclusions 2011 p. 31 'Conclusion')

▶ Article 31§2 - Right to housing - Reduction of homelessness
Right to shelter is not guaranteed to persons unlawfully present in Ukraine, including children, for as long as they are in its jurisdiction.
(Conclusions 2011 p. 35 'Conclusion')

Please see attached below the Conclusions regarding the Ukraine from 2009, 2010 and 2011 as well as the fact sheet.



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Ukraine2010_en.pdf



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Action against Trafficking in Human Beings and Preventing and Combating Violence against Women and Domestic Violence

Ukraine has ratified the Council of Europe Convention on Action against Trafficking in Human Beings. The country will be evaluated by the Group of Experts on Action against Trafficking in Human Beings (GRETA) in 2013.

Ukraine has signed but not yet ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. For this reason, it not yet concerned by the monitoring procedure to be carried out by a Group of experts on action against violence against women and domestic violence (GREVIO) once the convention enters into force.

European Commission for Democracy through Law (Venice Commission)

The Venice Commission adopted between 2010 and 2011 a number of opinions on draft laws and on the constitutional situation in Ukraine, namely as regards the judiciary, elections, state languages and fundamental rights (in particular on freedom of peaceful assembly and on the right to a fair trial). The complete list of the opinions adopted in 2010 and 2011, with hyperlinks to the texts of the opinions, appears below.



Ukraine and the
Venice Commission in