

## NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

### UKRAINE, Situation as of 1 December 2006

#### General Overview

*Preliminary Note: this table is accompanied by an explanatory note*

COUNTRY: UKRAINE	Constitutional provisions	Specific legislation	Criminal Law	Civil and Administrative Law	Other jurisdictions
Norms concerning discrimination in general	Yes.	No.	Yes.	Yes.	Resolution No. 636 on Measures to Solve the Political, Legal, Socio-Economic and Ethnic Problems in the Autonomous Republic of the Crimea, adopted by the Cabinet of Ministers on 11 August 1995. President's Decree N° 518/99 of 18.05.1999 on creation of the Council of representatives of Crimean Tatars Regulation of the Cabinet of

					Ministers N°618 of 16.05.2000 adopting the Programme of settling and housing of formerly deported Crimean Tatars and persons of other nationalities, returned to the Autonomous Republic of Crimea
<b>Norms concerning racism</b>	No.	No.	Yes.	Yes.	No.
<b>Relevant jurisprudence</b>	No.	No.	No.	No.	No.

## EXPLANATORY NOTE

### UKRAINE / GENERAL OVERVIEW

The Ukraine is a sovereign and independent, democratic and social state based on the rule of law. The new Constitution of the Ukraine was adopted on 28 June 1996 at the Fifth Session of the Supreme Rada.

The Ukraine will continue to be a unitary state, consisting of provinces (oblasts) and the Autonomous Republic of the Crimea. The autonomy of the Crimea is firmly established in the new Constitution, replete with a list of the specific powers devolved to the Crimean government. Nonetheless, the Crimean Constitution must not contravene the Ukrainian Constitution.

International treaties currently in force, as ratified by the Supreme Rada of the Ukraine, form part of the Ukraine's national legislation. The conclusion of international treaties which contravene the Constitution of the Ukraine is possible only following the introduction of requisite changes to that Constitution.

The Ukraine has ratified, among other international documents, both International Covenants on Human Rights (and has made the Declaration foreseen by Art. 41 of the International Covenant on Civil and Political Rights), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of all Forms of Racial Discrimination (and has made

the Declaration foreseen by Art. 14), the Convention on the Elimination of all Forms of Discrimination against Women, the UNESCO Convention against Discrimination in Education, the ILO Convention no. 111 concerning Discrimination in respect of Employment and Occupation, Framework Convention for the Protection of National Minorities. Furthermore, Ukraine signed and ratified the Protocol No.12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (in force starting 01.07.2006) and the European Charter for Regional or Minority Languages (in force starting 01.01.2006). The European Convention on the Legal Status of Migrant Workers, the European Convention on Nationality have been signed and are awaiting ratification. Nevertheless, despite ECRI's recommendations, no measures were taken to participate in the European Social Charter or the Convention on the participation of Foreigners in Public Life on Local Level.

According to Art. 55 of the Constitution, every person has the right, after exhausting all national means of legal protection, to appeal, for the protection of his rights and freedoms, to relevant international court institutions or to relevant organs of international organisations to which the Ukraine is a party or participant.

The Preamble to the Constitution stipulates that specified essential rights shall be consistently respected, including in agreements reached between nationalities in so far as these deal with the implementation of human rights.

### **Constitutional law: Ukraine**

*Preliminary Note: this table is accompanied by an explanatory note*

<b>Constitutional provisions</b>	<b>Scope</b>	<b>Relevant jurisprudence</b>	<b>Remarks</b>
Art. 10 (Official language in Ukraine is Ukrainian)	Free development, use and protection of Russian and other languages of national minorities are guaranteed in Ukraine.	Decision of the Constitutional Court of Ukraine No. 10 from 14 December 1999 <a href="http://www.ccu.gov.ua/pls/wccu/P000?lang=0">http://www.ccu.gov.ua/pls/wccu/P000?lang=0</a>	This decision was given on the scope of application of the Ukrainian language in society. Indirectly it concerns the scope of the use of other languages in society.
Art. 11 (Development of National Minorities)	The State shall facilitate the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture,		

	<p>as well the development of the ethnic, cultural, linguistic and religious attributes of all indigenous peoples and national minorities of the Ukraine.</p>		
<p>Art. 24 (Equality)</p>	<p>Citizens have equal Constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based upon race, colour of skin, political, religious or other beliefs, sex, ethnic and social origin, wealth, place of residence, or on the basis of language or other characteristics.</p>		
<p>Art. 37 (Political Activity)</p>	<p>The creation and the activities of political parties and public organisations, the programme objectives or actions of which are directed towards the abolition of the independence of the Ukraine, changes in the constitutional order through violence, abuse of the sovereignty and territorial integrity of the State, undermining its security, the unlawful seizure of state power, war propaganda, violence, incitement of inter-ethnic, racial or religious hatred, infringement of human rights and freedoms, or threats to the public health, are prohibited.</p>		

Art. 55 (Equality before the Law)	The rights and freedoms of individuals and citizens are to be protected by the courts.		
Art. 68 (Obedience to the Law)	Every person is obligated to strictly comply with the Constitution and laws of the Ukraine and is obliged not to infringe the rights and freedoms, honour and dignity of other persons. Ignorance of the law does not exempt anyone from legal liability.		

## **EXPLANATORY NOTE**

### **UKRAINE / CONSTITUTIONAL LAW**

Under the new Constitution of the Ukraine (adopted on 28 June 1996), the President is the Head of State, while the Prime Minister heads the government. The parliament remains a unicameral body to be elected every four years. The Crimea is granted autonomous status and the right to promulgate its own constitution. It establishes Ukrainian as the sole official language of the country.

The new Constitution has 161 articles divided into 14 chapters. Approximately one third of the text concerns the rights and duties of individuals and citizens. Much of the terminology in these provisions is taken from the various European human rights conventions.

According to the new Constitution (Art. 55) the rights and freedoms of individuals and citizens are protected by the courts. Every person is guaranteed the right to challenge before the courts the decisions, actions, or omissions of organs of state authority, organs of local self-government, officials and civil servants. Every person has the right to appeal, for the protection of his rights, to the Authorised Representative of the Supreme Rada of the Ukraine on Human Rights (human rights ombudsman). Every person has the right, after exhausting all national means of legal protection, to appeal, for the protection of his rights and freedoms, to relevant international court institutions or to relevant organs of international organisations to which the Ukraine is a party or participant. Every person has the right to protect his rights and freedoms from violation and illegal infringement by any means not prohibited by law.

### **Criminal Law: Ukraine**

*Preliminary Note: this table is accompanied by an explanatory note*

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Infringement to citizens' rights equality, on account of race, nationality, or religion	New Criminal Code (N°2341-III of 05.04.2001) Art. 161	<p>*Deliberate acts instigating national, racial or religious hatred or discord, denigrating the national honour and dignity or self-respect of a person on the basis of their religious beliefs, as well as acts aimed at the explicit or implicit restriction of civic rights or at creating direct or indirect privileges for citizens on the basis of their race, skin colour, political, religious, and other convictions, position, ethnic or social origin, material well-being, place of residence, language and other criteria.</p> <p>*The same acts committed with violence, by deception or threat, or by a public official.</p>	<p>Minimum fine of fifty monthly revenues, or community service for of two years maximum or limitation of freedom for up to five years, with or without deprivation of the right to occupy certain positions or exercise certain activities for three years.</p> <p>Community service for the term of two years, or imprisonment for five years.</p>		

		<p>*Any of the acts mentioned in the first or second paragraph of this Article, if committed by a group of persons or if such acts have caused loss of life or other grave consequences.</p>	<p>Imprisonment for between two and five years.</p>
Genocide	Art. 442.1	<p>An act intentionally committed for the purposes of the full or partial destruction of any nationality, ethnic, racial, or religious group by means of the deprivation of life of members of such group or inflicting grave bodily injuries on them, creation for the group of living conditions counting on their full or partial destruction, reduction of child-birth or prevention thereof in such group, or by means of the forcible</p>	<p>Up to fifteen years' imprisonment, or life sentence.</p>

	transfer of children from one group to another.	
Art.442.2.	Public incitement to genocide, and likewise the manufacture of materials with incitement to genocide, for the purpose of the dissemination thereof, or the dissemination of such materials.	Arrest for a term of up to six months, or deprivation of liberty for a term of up to five years.

## EXPLANATORY NOTE

### UKRAINE / CRIMINAL LAW

There is no evidence of serious ethnic tension in the Ukraine, with the exception of two areas. In some parts of the western Ukraine, the small Russian minority and Jewish groups credibly accuse some local Ukrainian ultra nationalists of fostering ethnic hatred and printing anti-Semitic tracts. They also charge local authorities in the western Ukraine with having failed to take action against those who foment ethnic hatred. The Crimean Government, pleading insufficient funding, has refused requests from the Tatar community to assist them in re-establishing their cultural heritage through Tatar-language publications and educational institutions. However, the central Government is working on these issues.

Even if there are only isolated cases of ethnic discrimination in the Ukraine, the Government has not, according to the reports of human rights activists, always taken steps to effectively enforce prohibitions of discrimination on the basis of race, sex, and other grounds. Anti-Semitic incidents continue to occur. The Lviv newspaper *For a Free Ukraine* routinely published anti-Semitic diatribes but has not been prosecuted under the law forbidding incitement to inter-ethnic hatred. Anti-Semitic articles continue to appear in some local newspapers, especially in the western Ukraine and Kharkiv. Prosecutions for discrimination are unheard of. Human rights experts also note that the authorities frequently harass dark-skinned young men, based on a stereotyped view of people from the Caucasus as being involved in criminal activity<sup>1</sup>.

Separate statistics on prosecutions for discrimination are not available. The low official incidence of reported discrimination cases is mirrored by the lack of media attention to the subject and the low priority placed on the issue.



With Adoption by the Supreme Rada of New Criminal Code that entered into force upon 1 September 2001, acts of genocide were also recognized as criminal offence in addition to incitement to racial and ethnic enmity existing already in the former Code.

### Civil and Administrative Law: Ukraine

*Preliminary Note: this table is accompanied by an explanatory note*

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Declaration on the Rights of the Nationalities of the Ukraine (1991), Art. 1	The State guarantees all peoples, nationalities and citizens living on its territory the same political, economic, social and cultural rights.			
Law on the National Minorities of the Ukraine (1992), Arts. 1 & 18	The State guarantees all citizens, regardless of their national origin, the same political, social, economic and cultural rights and freedoms and supports their self-identity and national self-affirmation (Art. 1). Every direct or indirect limitation of rights and freedoms of citizens based on national grounds will be punished as a breach of the law (Art. 18).			

Law on the Legal Status of Foreigners, Art. 2	Persons having the citizenship of foreign states and stateless persons are equal before the laws of the Ukraine irrespective of origin, social or property status, race, national identity or other circumstances.		
Language Law (1989), Art. 8	Limitations or extensions of individual rights based on linguistic grounds and linguistic discrimination are prohibited.		
Law on Television and Radio Broadcasting 1994. Art.2	Broadcasting organizations do not have the right to lead a war of propaganda, coercion and cruelty, incitement to national, racial or religious enmity or other information humiliating of human honour and dignity	Licence for broadcasting granted to the organization can be withdrawn and the organization can be fined by the National Council on broadcasting, (Art. 5).	
Law on Education 1991 Art.3.1	Citizens of Ukraine shall have the right to unpaid education in any state educational institution independently of sex, race,		

	<p>nationality, social and property status, character and kind of occupation, convictions, belonging to political party, religion, state of health, place of residence, and other circumstances.</p>			
<p>Print Media Law (16.11.1992 N°2782-XII, up-dated version of 09.06.2004)</p>		<p>The Court ceases issue of the edition. (Art. 18)</p>	<p>Decision of the Schevchenkovskij district court of Kiev closing very popular newspaper “Silski visti” for violation of the Art.3, in concreto incitement of national enmity. 28.1.2004. Decision is not in yet force (4.2.2004). <a href="http://www.zerkalonedeli.com/ie/show/479/45426/">http://www.zerkalonedeli.com/ie/show/479/45426/</a></p>	<p>First court’s decision to close a newspaper for violation of the Law on printed Mass Media.</p>
<p>Art. 3</p>	<p>Print media may not be used for instigating national, racial or religious hatred</p>			
<p>Art. 4</p>	<p>The right of national Minorities to receive and impart information and ideas in their language</p>			
<p>Citizenship Law (N° 2235-III of 18.01.2001)</p>	<p>Recognition of the right of the citizen of Ukraine to change his</p>			

	<p>citizenship;  Recognition of impossibility to terminate the citizenship automatically ;  Respect of the principle of equality of citizens before the Law, irrespective of grounds, procedure and moment of obtaining of Ukrainian citizenship.</p>			
<p>Refugees Law (N°2557-III of 21.06.2001) Art. 3</p>	<p>A refugee may not be deported to a country where his life or freedom would be put in danger because of his race, religion, nationality, citizenship, belonging to a social group, political convictions.</p>			
<p>Citizens' Associations Law (N°2651-III of 11.07.2001) Art. 4</p>	<p>Any associated activity directed at propaganda of fascism and neo-fascism, incitement of national and religious discord, limitation of human rights is prohibited.</p>			
<p>Family Code adopted on 10.01.2002 Art.7.5</p>	<p>A participant of family relations cannot have privileges or</p>			

	<p>restrictions with regard to indicia of race, colour of skin, sex, political, religious, and other convictions, ethnic and social origin, property status, place of residence, language or other indicia.</p>			
<p>Civil Procedure Code ( N°1618-IV of 18.03.2004) Art. 5</p>	<p>The Court shall respect the honour and dignity of all litigation participants and shall administer justice on the basis of their equality before the Law and before the Court, irrespective to their race, skin colour, political, religious and other convictions, position, ethnic or social origin, material situation, place of residence, language and other criteria.</p>			
<p>Civil Procedure Code ( N°1618-IV of 18.03.2004) Art.7 § 2</p>	<p>Litigants not having sufficient command of the State's official language, have the right to make declarations,</p>			

	<p>give explanations, and plead in court using their native tongue or any other language that they know, by means of an interpreter.</p>			
<p>Civil Procedure Code ( N°1618-IV of 18.03.2004) Art. 410</p>	<p>Foreign persons enjoy equal procedural rights with Ukrainian physical and legal persons, with the exceptions established by the Constitution, the laws of Ukraine and the international treaties binding for Ukraine.</p>			
<p>Code of Laws on Labour (up-dated and consolidated version of 05 January 2006 ) Art. 2-1</p>	<p>Ukraine guarantees the equality of labour rights of all citizens, irrespective to their origin, social and material situation, race, nationality, language, position, political convictions, and religious beliefs, kind of activity or occupation, place of residence or other circumstances.</p>			

<p>Freedom of Movement and Free Choice of Place of Residence Law (N°1382-IV of 11.12.2003) Art. 2</p>	<p>Freedom of movement and free choice of place of residence are guaranteed to all Ukrainian citizens and foreigners legally residing on the territory of Ukraine. Registration of the place of residence or sojourn may not be considered as a condition of realization or a ground of limitation of rights and freedoms established by the Constitution, the Laws or the international treaties of Ukraine.</p>			
<p>Freedom of Conscience and Religious Organisation Law (N°987-XII, up-dated consolidated version of 11.12.2003.) Art. 4</p>	<p>Citizens of Ukraine are equal before the Law and have equal rights in economic, political, social and cultural spheres of life, regardless of their attitude to religion. There may be no mention of a citizen's religion in the official documents. Any explicit or implicit</p>			

	<p>limitation of rights, creation of explicit or implicit privileges for citizens on account of their attitude to religion, as well as incitement of religious hatred and discord, denigration of one's self-respect entail responsibility established by Law.</p>			
<p>Resolution No. 636 adopted by the Cabinet of Ministers on 11 August 1995</p>	<p>Measures to Solve the Political, Legal, Socio-Economic and Ethnic Problems in the Autonomous Republic of the Crimea.</p>			
<p>Framework Legislation on Cultural Issues (2117-XII, up-dated consolidated version of 01.01.2006) Art. 3</p>	<p>The development of culture of national minorities is declared a priority for governmental culture policy</p>			
<p>Framework Legislation on Cultural Issues (2117-XII, up-dated consolidated version of 01.01.2006) Art. 4 § 2</p>	<p>The State guarantees equal rights and equal possibilities for the use of minority languages.</p>			
<p>Framework Legislation on Cultural</p>	<p>The State shall create the conditions for</p>			



Issues (2117-XII, up-dated consolidated version of 01.01.2006) Art. 8	<p>developing the culture of all national minorities, and promoting their integration in the global process of creating cultural values.</p> <p>All persons irrespective of their nationality have the right to preserve, develop and promote their culture, language, traditions, customs and rites.</p>
Framework Legislation on Cultural Issues (2117-XII, up-dated consolidated version of 01.01.2006) Art. 11	<p>All citizens shall respect the culture, language, traditions, customs and rites of the national minorities living in Ukraine.</p>

**EXPLANATORY NOTE**

**UKRAINE / CIVIL AND ADMINISTRATIVE LAW**

The 1991 Law on National Minorities played an instrumental role in preventing ethnic strife, by allowing individual citizens to use their respective national languages in conducting personal business and by allowing minority groups to establish their own schools. Russian speakers, who predominate in the eastern Ukraine, have complained about the increased use of Ukrainian in schools and in the media. They have claimed that their children are disadvantaged when taking academic entrance examinations since all applicants are required to take a Ukrainian-language test. Many regional councils in the eastern Ukraine have conferred "official" status on the Russian language, although Ukrainian remains the sole state language according to national legislation.

Despite the fact of apparent relief of ethnic tensions relating to formerly deported Crimean Tatars, the legal status of this ethnic group and its culture and mother tongue is not definitely fixed. There is no noticeable attempts on the part of the Ukrainian Government to accelerate the process of introducing of some legal measures requested by the Autonomous republic of Crimea. For instance, the draft of Law relating to the status of the indigenous people of Crimean Tatars prepared by the Cabinet of Ministers has not been adopted. Neither has the project of Law on the restitution of the rights of persons subjected to forced deportation on the basis of their nationality. These parliamentary bills have been “stuck” in Supreme Rada for more than ten years now.

In the same manner, the much awaited modification of Language Law 1989 enhancing the status of minority languages has not yet been adopted.

As for the Law on the National Minorities of the Ukraine (1992), no modification is envisaged to enlarge the scope of application of this law to non-citizens. In fact, Article 18 of the Law prohibits direct or indirect limitation or extension “of citizens’ rights” (*sic*) on the basis of their nationality. The implementation of this text in its literal meaning may cause discriminating treatment of non-citizens. The danger engendered by the ambiguity of the law is acute, bearing in mind the reported difficulties to obtain Ukrainian citizenship by formerly deported ethnic groups. This text, as all the other legal provisions verbally limiting their personal scope of action to citizens, should to be read in the light of Article 26 of the Ukrainian Constitution stating that foreigners and stateless persons legally living or residing in Ukraine enjoy equal rights and freedoms and bear equal responsibilities as Ukrainian citizens, with the exceptions established by the Constitution, the Laws Ukraine and international treaties.