

# ECRI

European Commission against Racism and Intolerance  
Commission européenne contre le racisme et l'intolérance

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## European Commission against Racism and Intolerance

### SECOND REPORT ON UKRAINE

Adopted on 14 December 2001

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## **Foreword**

*The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.*

*One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.*

*At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on Ukraine is dated 19 June 1998 (published in March 1999). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.*

*An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.*

*The contact visit to Ukraine took place on 15-18 October 2001. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the Ukrainian national authorities for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence.*

*Furthermore, ECRI would like to thank all the representatives of non-governmental and inter-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.*

***The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 14 December 2001 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.***

### ***Executive summary***

Ukraine has taken some positive steps over recent years which are relevant to combating racism and intolerance. These include steps aimed at improving the situation of persons formerly deported by the Soviet regime returning to Ukraine, notably in the field of acquisition of Ukrainian citizenship, the adoption of a new law on refugees, as well as the recent establishment of a State Committee for Nationalities and Migration, which takes part in the development and implementation of State policy in the field of relations between different ethnic groups in Ukraine. The adoption of a new Criminal Code with additional provisions in the field of combating racism and the increasing activity of the Office of the Human Rights Ombudsman are also noteworthy.

Problems of racism, direct and indirect discrimination, intolerance or disadvantage persist, however, and concern particularly members of different groups such as formerly deported persons, Roma/Gypsies, immigrants with or without legal status, asylum-seekers and refugees. Members of such groups experience difficulties in various areas of life, including relations with the police. In the following report, ECRI also notes the sometimes insufficient implementation of the criminal law provisions in the areas covered by its remit and the absence of comprehensive civil and administrative anti-discrimination statutory provisions covering discrimination in different fields of life, including provision for a fully effective specialised body.

**In the following report, ECRI recommends to the Ukrainian authorities that further action be taken to combat racism, discrimination intolerance and disadvantage in a number of areas. These recommendations cover, inter alia: the need to improve the situation of the formerly deported population in different fields, including representation in public life, resettlement and land allocation and employment; the need to address the situation of the Roma/Gypsy communities of Ukraine, including their disadvantaged position in various fields of life, their relations with the police, and instances of discrimination and prejudice targeting them; the need to address manifestations of discriminatory behaviour on the part of the police; the need to fine-tune criminal law provisions in the areas covered by ECRI's remit and to ensure their thorough implementation; the need to adopt a body of comprehensive civil and administrative anti-discrimination provisions covering discrimination in different fields of life; and the need to raise awareness of issues relating to racism and discrimination among both the State authorities and the general public.**

## SECTION I: OVERVIEW OF THE SITUATION

### A. International Legal Instruments

1. Ukraine has ratified a number of international legal instruments relevant in the field of combating racism and intolerance. ECRI welcomes the signature by Ukraine of the Additional Protocol N°12 to the European Convention on Human Rights, which extends the scope of application of Article 14 of the Convention and contains a non-exhaustive list of grounds of discrimination. ECRI has been informed that the preparatory work for ratification of this instrument is underway and encourages the Ukrainian authorities to complete this process and ratify the Protocol as soon as possible.
2. In its first report, ECRI recommended that Ukraine ratify the European Charter for Regional or Minority Languages. ECRI notes that a ratification law of this instrument adopted by the Ukrainian Parliament in December 1999 was subsequently declared unconstitutional by the Constitutional Court on procedural grounds. ECRI understands that a new ratification law is currently before the Parliament and encourages the Ukrainian authorities to complete the ratification process as rapidly as possible.
3. Ukraine signed the Revised European Social Charter in May 1999. ECRI understands that ratification of this instrument is currently being studied and encourages the Ukrainian authorities to ensure that the Revised European Social Charter is ratified as soon as feasible. ECRI furthermore encourages the authorities to consider ratification of the European Convention on the Legal Status of Migrant Workers.
4. The Ukrainian authorities have stated that the adoption, in January 2001, of the new Citizenship Law<sup>1</sup>, has brought Ukrainian legislation in line with the European Convention on Nationality. ECRI encourages the Ukrainian authorities to sign and ratify this instrument rapidly. ECRI furthermore encourages the Ukrainian authorities to sign and ratify the Convention for the Participation of Foreigners in Public Life at Local Level.
5. ECRI welcomes the ratification by Ukraine of the UN Convention relating to the Status of Refugees and its 1967 Protocol.
6. ECRI welcomes that Ukraine has accepted Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, which allows individual communications to be considered by the Committee for the Elimination of Racial Discrimination (CERD). ECRI encourages the Ukrainian authorities to ensure that the general public is well informed of the possibility of submitting such communications to the CERD.

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<sup>1</sup>

*See below, Constitutional provisions and other basic provisions – Citizenship legislation*

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**B. Constitutional provisions and other basic provisions**

7. Article 24 of the Constitution of Ukraine stipulates that all citizens are equal before the law, and that there shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics. In ECRI's view, however, the principle of equality before the law and the principle of non-discrimination on the mentioned grounds should be guaranteed to all individuals and not just to citizens.
8. Article 37 of the Constitution prohibits the establishment and the activities of organisations (including political parties) whose programme, goals or actions are directed towards, *inter alia*, incitement to inter-ethnic, racial or religious hatred. This Article stipulates that the prohibition of the activity of associations of citizens is exercised only through a judicial procedure.

**- Citizenship legislation**

9. ECRI will address in Section II of this report the general situation of the population formerly deported by the Soviet regime. In this section, ECRI addresses some issues pertaining to acquisition of citizenship which are of particular relevance for the formerly deported population of Ukraine.
10. As already noted in ECRI's first report, Ukraine granted citizenship to all persons residing in Ukraine on 13 November 1991. Thousands of formerly deported returnees who arrived in Ukraine after that date could not benefit from automatic citizenship. However, as already noted by ECRI in its first report, in 1997, amendments to the citizenship legislation were introduced which provided for a simplified procedure for granting Ukrainian citizenship by affiliation to formerly deported persons and their first and second-degree descendants, on condition that they did not possess the citizenship of any other state. The deadline for acquisition of Ukrainian citizenship by affiliation was 31 December 1999, although those who did not submit an application by that date could still apply for Ukrainian citizenship through naturalisation with simplified requirements. While these amendments were welcome as an important step in the right direction which effectively reduced the risk of statelessness for returnees already in Ukraine, it did not guard against interim statelessness for new arrivals. In addition, the compulsory requirement of relinquishing any other citizenship remained in force. In order to address this aspect, an agreement facilitating relinquishment of Uzbek citizenship was concluded in 1998 between Ukraine and Uzbekistan -- the country from which most formerly deported persons come. As a result of this agreement and the 1997 amendments, most formerly deported repatriates were able to obtain Ukrainian citizenship. However, some 20,000 formerly deported persons, mainly coming from countries with which similar agreements are not yet in place, are currently still living in Ukraine without Ukrainian citizenship. ECRI is pleased to note that the new citizenship law of January 2001 allows these persons to apply for Ukrainian citizenship through naturalisation without previously renouncing foreign citizenship. ECRI encourages the authorities to monitor the application of these provisions and to ensure that the formerly deported population is adequately informed about this new possibility.

- **Language law**

11. ECRI understands that a law on the use of language is currently being discussed by the Ukrainian Parliament. Although ECRI is not aware of the details of this law, it notes statements made at the highest political level which seem to favour an approach whereby the restoration of Ukrainian as the official language is pursued by way of promoting the use of this language in different fields and not by way of prohibiting the use of other languages. ECRI hopes that this approach will be reflected in domestic legislation and practice. ECRI stresses that this is particularly important in the light of the significant proportion of non-Ukrainian mother tongue persons in Ukraine, and especially in order to avoid feelings of resentment and tensions in Ukrainian society. ECRI furthermore stresses that the scope of any regulation of the use of language should be limited to relations with State institutions and to instances where there is a legitimate public interest.
12. There have been reports that in some cases personal names and surnames have been changed according to the Ukrainian language tradition and spelling. ECRI encourages the Ukrainian authorities to ensure that the relevant international standards are applied in practice in this area.

- **Legislation on national minorities**

13. Article 11 of the Constitution of Ukraine stipulates that the State shall facilitate “the consolidation and development” of the Ukrainian nation and “the development” of other indigenous people and national minorities. The 1991 Declaration on the Rights of the Nationalities of Ukraine guarantees all peoples, nationalities and individual citizens living on the territory of Ukraine the same political, economic, social and cultural rights.
14. These principles are reflected and further elaborated in the 1992 Law on National Minorities<sup>2</sup>. ECRI understands that the Ukrainian authorities are currently considering amending this law. ECRI is pleased to learn that such amendments would include the extension of the guarantee of equal rights to all persons -- and not just to Ukrainian citizens -- who are members of national minorities. ECRI has furthermore been informed by the Ukrainian authorities that current discussions also cover the extension of the scope of Article 18 of the Law. This article, which currently prohibits direct and indirect discrimination on the basis of nationality, could be extended to cover discrimination on the basis of race as well as actions intended to incite to inter-ethnic, racial or religious strife. ECRI encourages all efforts by the Ukrainian authorities to ensure that domestic legislation offer adequate protection against racial discrimination and incitement to racial hatred, although it notes that similar provisions already exist in other legislation in force<sup>3</sup>. ECRI also notes that the debate on the reform of the Law on National Minorities also concerns the participation of members of national minorities in public life. ECRI notes that, currently, Article 9 of the Law stipulates that members of national minorities enjoy the right, correspondingly, to be elected or to be appointed to, *inter alia*, any post of organs of legislative, executive and judicial power, local and regional self-government. ECRI encourages the Ukrainian authorities to ensure

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<sup>2</sup> Article 1 of the 1992 Law on National Minorities guarantees “all citizens” – irrespective of their national origin – the same political, economic, social and cultural rights and freedoms and supports their self-identity and national self-affirmation. Article 8 of the same law guarantees national minorities the right to national-cultural autonomy.

<sup>3</sup> See below, Criminal law provisions and Civil and administrative law provisions.



that any amendments to the legislation in this area do not limit or diminish the participation of members of national minorities in public life and to work, instead, to ensure that such participation is effective.

15. A new State Committee for Nationalities and Migration has been established in September 2001<sup>4</sup>. Since 2000, a Council of representatives of associations of national minorities also exists within the framework of the Presidential Administration. Its primary task is to advise on legislation relevant for national minorities. ECRI encourages the Ukrainian authorities to ensure thorough consultation of this body throughout all stages of the decision-making processes as well as in the follow-up and evaluation phases. It has been suggested that the Council could be given the task of financing cultural projects for national minorities. ECRI encourages the Ukrainian authorities to consider this proposal. ECRI also notes that, for the first time in 2001, the Ministry of Culture and the Ministry of Education have established special budget lines for national minorities.

### C. Criminal law provisions

16. The main criminal law provision in the field of combating racism and intolerance is Article 161 of the new Criminal Code, which entered into force in September 2001. This Article punishes: wilful actions inciting national, racial or religious enmity and hatred; humiliation of national honour and dignity, or the insult of citizens' feelings in respect of their religious convictions; and any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based, *inter alia*, on "race", colour of skin, political, religious and other convictions, ethnic and social origin, linguistic or other characteristics. All these prohibited acts carry heavier penalties if they involve violence or threat of violence or fraud or if they are committed by a public official. The penalties are further increased if they are committed by a group of persons or if the prohibited acts have caused loss of life or other grave consequences. ECRI considers that the protection from all the types of illegal behaviour penalised by Article 161 should extend to all persons and not just be limited to citizens, and believes that this should be clearly reflected in the text of the law. Moreover, protection of a person's dignity and feelings could extend to grounds other than just nationality and religion and encompass grounds such as "race", colour, ethnic origin, and language.
17. ECRI is pleased to note that, unlike the criminal code previously in force, the new Criminal Code provides in its Article 67 that racial, national or religious enmity and hostility are specific aggravating circumstances for the purposes of imposing a punishment. ECRI notes, nevertheless, that racial, national or religious enmity and hostility have not been included in the list of circumstances which the judge is bound to consider as aggravating. However, when finding such motivation not to be aggravating, the judge has to provide the reasons for this decision in the judgment.
18. In conformity with Article 37 of the Constitution of Ukraine<sup>5</sup> Article 4 of the Law "On the associations of citizens" prohibits the establishment and activities of organisations whose goal is, *inter alia*, to stir national or religious intolerance.

<sup>4</sup> See below, *Specialised bodies and other institutions*

<sup>5</sup> See above, *Constitutional provisions and other basic provisions*

The termination of the association and its activities may be only carried out on the basis of a court decision at the request of an appropriate legal body or a prosecutor.

19. Although the new Criminal Code entered into force only recently, the provisions of current Article 161 were already contained in the previous Criminal Code. However, ECRI notes that prosecutions on the basis of these provisions are extremely rare. ECRI believes that this situation does not reflect the real position in the country and notes that discrimination, as well as instances of incitement to hatred and humiliating or denigrating expressions sometimes take place in Ukraine. ECRI encourages the Ukrainian authorities to provide further training, and to look for assistance from the Council of Europe and other organisations, on the subject of discrimination and racism, including racist expressions, to all actors involved in the criminal justice system, from the police to the prosecuting authorities and the judges, and to further raise their awareness of the need to actively counter manifestations of such phenomena. In parallel, ways should be considered to encourage victims of such acts to come forward.

#### **D. Civil and Administrative Law Provisions**

20. The principle of non-discrimination is reproduced in a general fashion in some civil and administrative laws in force in Ukraine in different fields<sup>6</sup>. However, there are no comprehensive civil and administrative anti-discrimination provisions covering discrimination in different fields of life such as employment, education, housing, access to public and social services and public places and contractual relations between individuals, and providing for effective mechanisms of enforcement and redress. ECRI recommends that the Ukrainian authorities consider the adoption of such a body of legislation. As will be discussed below<sup>7</sup>, ECRI stresses the fundamental role that a specialised body responsible for combating racism and intolerance could play in supervising the implementation of such anti-discrimination legislation. ECRI furthermore believes that the debate around the adoption of such legislation would stimulate research covering the phenomena of direct and indirect discrimination and discrimination in the private sphere as well as the extent to which these may be present in Ukraine, as there appears to be a lack of awareness of these issues in society in general.

#### **E. Specialised bodies and other institutions**

21. As already noted by ECRI in its first report, any person who believes that his/her human rights have been violated can file an application with the Authorised Representative of the Supreme Rada of Ukraine on Human Rights (hereafter, Human Rights Ombudsman). The Human Rights Ombudsman has the power to investigate such complaints and to make recommendations to the public authorities to address any problems found. Most complaints filed by formerly deported persons and their descendants and by foreigners have concerned the domain of citizenship or the issue of legalisation of their status. Members of ethnic minorities have also filed complaints. In three such complaints referring to allegedly unlawful behaviour of law enforcement officials, the racist motivation was invoked but not found by the investigating authorities.

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<sup>6</sup> See, for instance, below, *Employment*

<sup>7</sup> *Specialised bodies and other institutions*

One case involving ill-treatment by the police of a member of the Roma/Gypsy community resulted in recommendations to the police and received considerable public attention.

22. ECRI welcomes the role played by the Human Rights Ombudsman in the fight against racial and ethnic discrimination and racism and encourages the Ukrainian authorities to ensure that the Office of the Human Rights Ombudsman has the necessary human and financial means to carry out its tasks. ECRI understands that there are plans to establish a special representative of the Human Rights Ombudsman with competence to deal with questions of relevance to national minorities and discrimination. In this context, ECRI draws the attention of the Ukrainian authorities to its general policy recommendation N° 2 on “Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level”, where ECRI recommends the establishment of such bodies either in the form of organs with exclusive responsibility for these questions or in the form of a section of a body with a wider human rights mandate. The establishment of such a body should be considered in the context of the possible adoption of a comprehensive framework of anti-discrimination legislation, as suggested above<sup>8</sup>, and the functions to be entrusted to this body could include, *inter alia*, supervision of the implementation of such legislation and assistance in providing an effective means of redress for individual grievances.
23. Until recently, the main central body of executive power for the implementation of the state policy on nationalities and migration was the Ministry of Justice, which included a Department for Nationalities and Migration. In September 2001, a State Committee for Nationalities and Migration was established. The Committee, which depends directly from the Cabinet of Ministers, takes part in the development and implementation of the state policy in the field of relations between different ethnic groups in Ukraine. The Committee also drafts relevant legislation and carries out analyses of the social, economic, and cultural life and the demographic situation of national minorities.

#### **F. School education to combat racism and intolerance**

24. In 1997 Human Rights teaching was introduced in school curricula. Civic education is also part of the national curriculum. The Ukrainian authorities have stated that the necessary textbooks and trained teachers are currently available and that these courses are obligatory within the school curriculum of law studies. However, ECRI encourages the Ukrainian authorities to include human rights education within the core curriculum of all students.

#### **G. Reception and status of non-citizens**

##### **- Asylum seekers and refugees**

25. The numbers of persons seeking asylum in Ukraine are still relatively limited, but on the rise. From January to September 2001, for instance, approximately 1,200 applications were received. Over the same period, approximately 500

<sup>8</sup> *Civil and administrative law provisions*

asylum seekers were granted refugee status. Of the approximately 3,600 recognised refugees in Ukraine, more than half come from Afghanistan, while other groups include persons from the Chechen Republic in the Russian Federation, and from countries in Africa and the Middle East.

26. In June 2001, a new Law on Refugees was adopted, which brings Ukraine in line with the UN Convention relating to the Status of Refugees and addresses most of the shortcomings of the previous asylum regime. Refugee status will now be granted for the whole period during which circumstances in the country of origin warrant that the person in question be considered as a refugee, instead of the previous three months. Internal refugee certificates will be valid for one year and will be subject to extension. According to the new law, asylum seekers and refugees are granted fundamental rights under equal conditions as nationals, including the right to work, to medical assistance and to primary and secondary education. The indiscriminate use of the third country rule, whereby many rejected asylum-seekers find themselves in an irregular situation in the country, has also been addressed: during the appeals procedure, the asylum seeker will be considered legally present in the country and those rejected on the basis of the safe third country rule or lack of documentation will be able to re-apply for refugee status. Special procedures for unaccompanied minors and family reunification have also been introduced. ECRI welcomes these developments. ECRI furthermore notes that the new citizenship legislation allows refugees who have resided in Ukraine for three years to apply for naturalisation<sup>9</sup>.
27. ECRI notes that some problems remain, notably in the area of availability of reception centres – only one such centre exists with a capacity of 50 places. Refugees also encounter difficulties in obtaining from their countries of origin the documents and certificates which are required by Ukrainian legislation for different purposes, such as marriage or naturalisation. ECRI encourages the Ukrainian authorities to address these areas. As mentioned in other parts of this report, refugees and asylum seekers, together with other visible minorities, are furthermore disproportionately subject to checks in the streets and at their places of residence<sup>10</sup>.

## **H. Access to education**

28. Article 53 of the Constitution stipulates that citizens who belong to national minorities are guaranteed, in accordance with the law, the right to receive education in their native language or to study their native language in State and communal educational establishments and through national cultural societies. Article 25 of the 1989 Language Law, which is still in force insofar as in conformity with the 1996 Constitution, provides that a free choice of the language of learning is an integral right of citizens. In this respect, the Ukrainian authorities have stated that parents have a right to request the setting up of a class in a certain language when the parents of at least eight children so request.
29. Currently, around 15% of all schools in Ukraine are non-Ukrainian language schools, the vast majority of which are Russian-language schools. In terms of number of students, however, these schools represent over 30% of the whole

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<sup>9</sup> See *Constitutional provisions and other basic provisions – Citizenship legislation*

<sup>10</sup> See below, *Vulnerable groups – Immigrants, asylum seekers and refugees, and Conduct of law enforcement officials*

school population of Ukraine. Students attending Russian-language schools comprise ethnic Russians and non-ethnic Russians, including many Ukrainian children. The number of Russian-language schools and of students attending them has been steadily decreasing since Ukrainian independence. For example, 50% of the whole student population of Ukraine studied in Russian-language schools in 1991. On the other hand, the number of the other minority-language schools has reportedly increased.

30. Some representatives of the Russian community of Ukraine have voiced serious concern at the decrease in education in the Russian-language in schools in Ukraine. They recognise that such decrease partly reflects the increased propensity of parents to send their children to Ukrainian-language schools, in order to ensure better opportunities for further education and employment. However, they also charge that the decrease in education in the Russian-language in schools goes beyond the reduction in demand on the part of parents and that, for instance, schools are even being closed against the wishes of parents. The Ukrainian authorities note, on the other hand, that the number of students studying in Russian-language schools still exceeds the number of Russian mother-tongue children. The Ukrainian authorities further report that, according to the 1989 census, around 22% of the population of Ukraine considered itself ethnic Russian and that, as mentioned above, over 30% of students in Ukraine currently study in Russian language schools.
31. ECRI encourages the Ukrainian authorities to fully respect the principle of free parental choice as regards the language of education. In this respect, it considers that the Ukrainian authorities should maintain such principle in the new Language Law which is currently being discussed<sup>11</sup>. Furthermore, the Ukrainian authorities are encouraged to raise awareness among the parents of school children concerning their right to request the setting up of a class in a certain language. In this respect, the establishment of a transparent complaints system at the local level with the possibility of appeal at the central level is also recommended.
32. As concerns school access for children of immigrants, asylum seekers and refugees, according to the law, Ukrainian schools must accept children whose parents can provide documentation of the child's full name and birth date, and do not require proof of residency from parents. In theory, children of immigrants without legal status are therefore also guaranteed the right to primary and secondary education. ECRI encourages the Ukrainian authorities to monitor the practical application of this principle. ECRI furthermore encourages the Ukrainian authorities at the central and local level to take an active role in the area of teaching Ukrainian to non-Ukrainian mother-tongue children and in meeting the challenges posed by cultural pluralism in schools, since, as emphasised below<sup>12</sup>, it has so far rested with individual schools and associations to address such areas, with varying degree of success.

## I. Employment

<sup>11</sup> See above, *Constitutional provisions and other basic provisions – Language Law*

<sup>12</sup> *Vulnerable groups – Immigrants, asylum seekers and refugees*

33. The constitutional principle of non-discrimination is reflected in different provisions contained in primary labour legislation, such as the labour code and the legislation on remuneration. However, ECRI has not been made aware of any cases where such provisions have been used. ECRI nevertheless considers that in Ukraine, as in most other European countries, there are groups whose members are vulnerable to discrimination on the labour market, although their limited access to the labour market may also be due, in some cases, to other factors such as insufficient levels of education or poor command of the official language. These groups include Roma/Gypsies, formerly deported persons, immigrants, asylum seekers and refugees. ECRI encourages the Ukrainian authorities to promote research into the phenomenon of direct and indirect discrimination and stresses that employment should be one of the areas covered by the body of comprehensive civil and administrative anti-discrimination provisions suggested above<sup>13</sup>.
34. ECRI encourages the Ukrainian authorities to monitor the unemployment situation of the different minority groups in Ukrainian society in order to have a basis to take any necessary remedial action. ECRI notes efforts in this field as concerns the formerly deported population and considers that efforts could also be made as concerns other minority groups.

#### **J. Vulnerable groups**

***This section covers certain minority groups which may be particularly vulnerable to problems of racism, discrimination and intolerance in the country in question. It is not intended to provide an exhaustive overview of the situation of all minority groups in the country, nor to imply that groups not mentioned face no problems of racism and discrimination.***

**- Formerly deported persons**

35. ECRI deals with the situation of this part of the Ukrainian population in Section II below.

**- Roma/Gypsies**

36. ECRI deals with the situation of this part of the Ukrainian population in Section II below.

**- Immigrants, asylum seekers and refugees**

37. Although precise figures are not available, there are several tens of thousands of persons, the overwhelming majority of whom are foreigners, who came to Ukraine either as students and workers before the collapse of the Soviet Union, or as asylum seekers and refugees from conflict areas in the CIS and other parts of the world, or else as immigrants without legal status. These persons are mainly concentrated in Kiev.
38. Although the situation varies according to each of these categories of persons, immigrants, asylum seekers and refugees are reported to face difficulties in

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<sup>13</sup> Civil and administrative law provisions

different areas. These persons are disproportionately subject to checks and searches by the law enforcement authorities in the streets and at their places of residence, and have in some cases been victims of physical and verbal abuse on the part of members of the majority population. More generally, many of these persons are reported not to feel secure in their everyday lives and to feel at risk of discriminatory or racist behaviour. The situation has reportedly worsened since the events of 11 September 2001.

39. ECRI reiterates in this context the recommendations made in other parts of this report, notably as concerns the application of the existing criminal law provisions and the behaviour of law enforcement officials. More generally, however, ECRI stresses the need for a higher level of awareness on the part of public authorities both at the national and at the local level of the issues raised by the phenomenon of immigration in the country and its quickening pace. In this respect, ECRI notes that, so far, the challenge of integrating and meeting many of the needs of this part of the population of Ukraine has largely rested upon the grassroot level of social organisation, including schools, neighbourhoods and non-governmental organisations and associations.

#### **K. Antisemitism**

40. Antisemitic articles have appeared in non-mainstream press and tracts have continued to be published and distributed by extremist groups. Although in some cases the authorities have taken action to counter or prevent such occurrences – for instance the Procuracy has warned certain publishers against publishing antisemitic material – in other cases the criminal law provisions against hate speech have not been applied. ECRI encourages the Ukrainian authorities to ensure that such provisions are applied to all instances of hate speech, including instances of an antisemitic nature. Other antisemitic incidents continue to occur, although they are reported to have decreased and to have been concentrated particularly in the Western regions of the country. The number of publications denouncing antisemitism is reported to have increased and politicians and opinion leaders have increasingly taken stands against antisemitism. In spite of these improvements, ECRI encourages the Ukrainian authorities to continue to keep the situation as concerns antisemitism closely under review.

## **L. Monitoring the situation in the country**

41. There appears to be a lack of reliable data concerning the situation of the various groups in society across a number of fields of social and economic life, and concerning the incidence of discrimination. The Ukrainian authorities have stated that ethnic background is not taken into account when collecting data in different areas of life, such as education, employment, relations with the police etc. The Ukrainian authorities also stated that monitoring of the situation of national minorities and relevant data collection are regularly performed by the regional divisions of the State Department of Nationalities and Migration ECRI considers, however, that an improvement of the system of data collection and monitoring would be desirable in order to evaluate the evolving situation of minority groups in Ukraine and to uncover and remedy any problems, including differences related to direct or indirect discrimination. In this respect, ECRI notes that the Ukrainian authorities are currently carrying out a population census.

## **M. Conduct of law enforcement officials**

42. Although the Ukrainian authorities have stated that they are not aware of any particular minority group in Ukrainian society being disproportionately affected by the activities of law enforcement officers, ECRI notes reports that some minority groups are in practice subject to more frequent checks and unwarranted searches in the streets and at their places of residence, and that they are exposed at a higher risk of ill-treatment and abuse on the part of law enforcement officers. Such groups include Roma/Gypsies, persons from the Caucasus as well as non-traditional immigrants or asylum seekers and refugees from Africa, or central and eastern Asia.
43. ECRI is concerned that the institutional response to alleged instances of illegal behaviour on the part of law enforcement officials is often inadequate. Internal mechanisms are in place to deal with such allegations -- complaints can be investigated by the police unit concerned, the police inspection or the department of internal security. ECRI notes that complaints against unlawful, including discriminatory, behaviour of the police may be filed with the Ombudsman's Office and before the courts. However, ECRI recommends the creation of an independent mechanism, separate from the police structures, for investigating allegations of police misbehaviour.
44. ECRI notes that Human Rights training is provided at the Police Academy. ECRI nevertheless encourages the Ukrainian authorities to further strengthen their efforts as concerns provision of initial and ongoing training of the police in human rights and anti-discrimination standards.



## N. Media

45. Instances of hate speech and of dissemination of spurious generalisations and stereotypes have sometimes occurred in the printed media in Ukraine. ECRI encourages the Ukrainian authorities to closely monitor the situation and to ensure the application of the provisions prohibiting racist expression<sup>14</sup>. It also encourages the media profession in Ukraine to adopt and implement codes of self-regulation, notably on reporting, with a view to ensuring due respect for the dignity of all persons and protection from racially discriminatory or stigmatising portrayal. ECRI notes that such initiatives could also be considered in the framework of existing co-operation programmes between Ukraine and the Council of Europe in the field of media.

## SECTION II: ISSUES OF PARTICULAR CONCERN

In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Ukraine, ECRI would like to draw attention to the situation in Crimea and the situation of Roma/Gypsies.

## O. Situation in Crimea

46. The population of the Autonomous Republic of Crimea (2,100,000 persons)<sup>15</sup> is composed mainly of ethnic Russians (approximately 65%) Ukrainians (23 %) and Crimean Tatars (12%), although other smaller ethnic groups are also present. The Tatar population of Crimea is composed of persons who, since 1989, have returned to this region from different former Soviet Republics -- mostly Uzbekistan -- to which they had been deported by the Soviet regime in 1944. Although formerly deported persons from Crimea include members of other ethnic communities (including Bulgarians and Greeks), Crimean Tatars constitute the overwhelming majority of this group of persons. Returnees include persons formerly deported as well as their descendants.
47. Since formerly deported persons and their descendants began to return to Crimea, the Ukrainian authorities have taken steps to facilitate such process. Such steps have included resettlement programmes, which did not, however, yield the expected results, largely due to lack of sufficient funds, and also initiatives in the field of citizenship and in other areas of socio-economic life. ECRI welcomes the fact that the Ukrainian authorities are aware of the problems faced by the formerly deported population and that legislation and policies aimed at solving such problems have been and are being elaborated. In this respect, ECRI has already noted above the situation as concerns formerly deported persons' acquisition of Ukrainian citizenship<sup>16</sup>. ECRI also understands that legislation specifically aimed at addressing the situation of the formerly deported population is currently being discussed. ECRI furthermore notes that public programmes in different fields, such as employment, sometimes focus

<sup>14</sup> In addition to the general provisions contained in the Criminal Code (see Criminal law provisions, above), Article 3 of the Law on the press contains provisions against incitement to racial, national or religious strife.

<sup>15</sup> The total population of Ukraine is estimated at approximately 50,000,000 persons

<sup>16</sup> See Constitutional provisions and other basic provisions – Citizenship legislation

specific attention on formerly deported persons or, more generally, the population of the Autonomous Republic of Crimea. ECRI notes, however, that much remains to be done to ensure that the formerly deported population enjoys in practice the same rights as the rest of the population of Crimea and Ukraine as a whole. In this respect, as suggested below, ECRI encourages the Ukrainian authorities to take further action in a number of areas, and, noting the current difficult economic situation faced by Ukraine, to look for international assistance as necessary.

48. Representation of Crimean Tatars in public life is one of the areas for improvement identified by ECRI. Although, at the national level Crimean Tatars currently have two representatives in the Ukrainian Parliament - one elected under the majority system and the other under the proportional system - there are on the other hand practically no Crimean Tatars among the members of the Crimean Parliament. This situation is linked with the electoral majority system in force since 1998 for elections in Crimea. As a result of this system, Crimean Tatars experience difficulties electing their representatives to the Crimean Parliament, as they constitute a minority, albeit significant, throughout the different regions of the Crimean peninsula. ECRI understands that ways to improve Crimean Tatars' representation at the local level are currently the subject of public debate and that this is an area addressed in the draft legislation on formerly deported persons mentioned above. ECRI encourages the Ukrainian authorities to speed up the work in this respect. ECRI also notes that, although some improvements have recently been registered, Crimean Tatars are still significantly under-represented in the local public administration. ECRI notes statements made at the highest political level in support of improving representation of Crimean Tatars in the local public administration, and hopes that this will be reflected in a swift development of policies and initiatives in this area.
49. The situation as regards settlement of the formerly deported population is also of concern to ECRI. The vast majority of this population lives in compact settlements in rural areas and in the peripheries of the cities. Lack of basic infrastructure, such as water, electricity, gas, roads, and sewage systems makes life in such settlements particularly difficult. Although ECRI is aware of the current financial constraints, it encourages the Ukrainian government to provide these settlements with adequate living conditions. In addition, ECRI considers, more generally, that an approach should be taken favouring settlement of formerly deported persons among the rest of the population of Crimea to avoid the risk of ghettoisation and to favour mutual integration of the different communities. ECRI also notes that, by limiting the right to land plots to former Soviet collective farm workers, the Ukrainian legislation on privatisation of land excludes in practice most formerly deported persons from being allocated land plots in Crimea. ECRI notes that this situation is currently the subject of public debate and invites the Ukrainian authorities to address this problem as a matter of priority and to ensure that formerly deported persons can participate in the process of land allocation.
50. Employment is another area which ECRI believes should be addressed as a matter of priority. The Ukrainian authorities have stated that the official unemployment rate in Crimea stands below the national average and that the formerly deported population represents approximately 10% of the total unemployed population of Crimea. However, ECRI notes reports according to which unemployment concerns at least half of the formerly deported population. Furthermore, many of those who have jobs are employed in menial occupations which do not correspond to the level of their training or professional experience. Certain professions in the public sector, such as the law enforcement and

security services, are also reported to be particularly difficult for formerly deported people to access. As mentioned above, special attention is being devoted by the Ukrainian authorities to the employment situation of the formerly deported population and to the situation in Crimea generally. For example, the Ministry of Labour has a special budget line to finance projects aimed at improving the situation of the formerly deported population. National employment programmes are moreover entirely financed by this Ministry in Crimea. However, ECRI encourages the authorities to strengthen their efforts in this field.

51. The formerly deported population is also adversely affected by the so-called *propiska* system, which, although formally abolished, continues to exist in bylaws and administrative or other practice. This system requires all residents to have their places of residence registered with the Ministry of Interior and any absence from the place of residence beyond a certain length of time to be reported at local police stations. There are reports that some formerly deported persons encounter difficulties in obtaining *propiska* and that this situation impacts negatively on their chances to find employment and exposes them to an increased risk of harassment by the police. ECRI notes that the Ukrainian authorities have stated in different occasions their intention to abolish the *propiska* system. ECRI urges the Ukrainian authorities to carry out such plans and to ensure that regulations and administrative and other practice are changed accordingly.
52. As concerns education, apart from seven Crimean Tatar-language schools and four Ukrainian language schools, all schools in Crimea are Russian-language schools. Support for education in the Crimean Tatar language is not unanimous within the Crimean Tatar population, particularly because of the disadvantage this is considered to confer on pupils as they pursue higher education and seek better-paid jobs. As mentioned above, parents have a right to request the setting up of a class in a certain language when the parents of at least eight children so request<sup>17</sup>. ECRI encourages the Ukrainian authorities to ensure that this principle is respected in Crimea. ECRI notes with interest that, in addition to the Crimean Tatar-language schools, public funding has made possible the establishment of a Crimean Tatar library and a Crimean Tatar theatre, as well as the creation of a Crimean Tatar faculty at the Simferopol National University. As concerns media, ECRI notes that, while some newspapers exist in languages other than Russian, notably Crimean Tatar and Ukrainian, there are no State-funded newspapers in languages other than Russian. ECRI encourages the Ukrainian authorities to remedy this situation.
53. Prejudice against formerly deported persons and instances of stigmatisation of these persons, for instance as Nazi collaborators, are reported to be still present within society and to sometimes surface in press articles. ECRI encourages the Ukrainian authorities to monitor the situation in this respect and to take any appropriate corrective action. It furthermore encourages the Ukrainian authorities to put in place awareness-raising measures aimed at countering prejudice among the Crimean population and at facilitating integration and mutual understanding of the different communities living in Crimea.

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Access to education

54. ECRI encourages the Ukrainian authorities to ensure that all legal and policy initiatives addressing the situation of the formerly deported population of Crimea are taken in close consultation with the representatives of the communities concerned. In this respect, ECRI notes that alongside the Council of representatives of associations of national minorities, which brings together representatives of all national minorities of Ukraine<sup>18</sup>, there exists within the Presidential administration a Council of Crimean Tatars with advisory functions.

#### **P. Situation of the Roma/Gypsy communities**

55. According to the official data, based on the 1989 census, the Roma/Gypsy population of Ukraine numbers around 48,000 persons. Some non-governmental organisations, however, estimate numbers to be over five times higher. The Roma/Gypsy population is scattered throughout the territory of Ukraine, with particularly high numbers in the Transcarpathian region, Crimea and the area around Odessa.
56. As is the case in some European countries, the Roma/Gypsy population of Ukraine is faced with situations of severe socio-economic disadvantage, but also with manifestations of prejudice, discrimination and violence on the part of the majority population and sometimes on the part of the authorities, particularly law enforcement officials. ECRI expresses concern at this situation and considers that policies are urgently needed to address the position of the Roma/Gypsy communities in Ukraine in order to ensure that the members of these communities enjoy in practice the same rights as the rest of the population of Ukraine. ECRI believes that the first necessary step towards developing an appropriate response to the problems faced by the Roma/Gypsy population of Ukraine is the recognition on the part of the authorities that such problems exist and that they need to be addressed. In this respect, ECRI expresses concern at what seems to be a widespread lack of awareness of such problems on the part of the authorities at the central level. At the local level, awareness of these problems appears to be higher, although, partly due to lack of resources, such awareness has not always been reflected in concrete actions. ECRI draws the attention of the Ukrainian authorities to its general policy recommendation N°3 on combating racism against Roma/Gypsies, which proposes a range of legislative and policy measures governments can take. ECRI invites the Ukrainian authorities to distribute this recommendation widely among local administrations in areas where Roma/Gypsies live and to promote its implementation, both at central and at regional level.
57. ECRI notes that initiatives taken at local level have generally been limited to the field of education. Education is, indeed, one of the areas in which ECRI believes governmental action is particularly urgently needed, given the far-reaching long-term consequences that inadequate levels of education entail in terms of equal participation in society. Roma/Gypsy children do not always attend school regularly, and they are extremely under-represented at non-compulsory levels of education. In line with its general policy recommendation N°3, ECRI considers that priority should be given to initiatives aimed at ensuring Roma/Gypsy children's participation in education at all levels, starting from kindergarten education. Such initiatives should be developed in close consultation and collaboration with representatives of the communities concerned, and may include awareness raising initiatives among the Roma/Gypsy families of their rights in the field of education as well as initiatives

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*See Constitutional provisions and other basic provisions – Legislation on national minorities*

encouraging the participation of Roma/Gypsy parents in educational decisions affecting their children. Such initiatives may also include the establishment of Roma/Gypsy mediators which would accompany and assist participation of Roma/Gypsy children in schools. ECRI notes that four Roma/Gypsy schools with education carried out in Romany language exist in Transcarpathia. In general, however, ECRI encourages the Ukrainian authorities to favour an approach whereby Roma/Gypsy children mingle with majority children in schools.

58. Another priority area for action identified by ECRI is the behaviour of the law enforcement officials *vis-à-vis* members of the Roma/Gypsy communities. In this respect, ECRI notes with concern frequent reports of excessive use of force, ill-treatment, verbal abuse and destruction of property by law enforcement personnel. Discriminatory practices are also reported to be widespread and include arbitrary checks, unwarranted searches, confiscation of documents and, as noted in ECRI's first report, discriminatory enforcement of crime prevention policies targeting persons with criminal records. ECRI urges that action be taken to address manifestations of unlawful behaviour on the part of law enforcement officials generally, including through a more effective institutional response to such manifestations and through training and awareness raising measures<sup>19</sup>. In addition, noting reports that the response of the police to crimes committed by the general population against Roma/Gypsies is often inadequate, ECRI recommends that the Ukrainian authorities take measures to ensure that the police react promptly and effectively to all crimes, including those committed against Roma/Gypsies and, in line with its recommendations formulated above, to ensure that the racist element of such offences is duly taken into account<sup>20</sup>.
59. As is the case in some other European countries, the majority of Roma/Gypsies are also reported to be unemployed. Although this situation is often connected with low standards of education, societal prejudice and discrimination also play a role. Moreover, many Roma/Gypsies live in slums and camps, where sanitary conditions are often extremely poor to the point where the health of those living in such slums and camps is adversely affected. For instance, there are reports that infant mortality and infectious diseases amongst Roma/Gypsy children is higher than average. ECRI encourages the Ukrainian authorities to devote the necessary attention and resources to address these problems.
60. As concerns public attitudes towards Roma/Gypsies, ECRI notes that some opinion polls have identified Roma/Gypsies as the ethnic groups towards which intolerance on the part of the general public is the highest. Articles containing false generalisations and stereotypes concerning this part of the population of Ukraine have also appeared in the press. ECRI emphasises the need to favour the creation of opportunities for the mutual integration of the Roma/Gypsy and non-Roma/Gypsy communities in Ukraine in order to encourage mutual knowledge and reduce prejudice. ECRI also reiterates its encouragement to the media profession to establish and observe codes of self-regulation, notably on reporting<sup>21</sup>. ECRI furthermore stresses once more the need to ensure the

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<sup>19</sup> See *Conduct of law enforcement officials*

<sup>20</sup> See *Criminal law provisions*

<sup>21</sup> See *Media*

effective application of the criminal law provisions prohibiting racist expression<sup>22</sup>.

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