



**International Organization
for Migration**



**American Bar Association
Rule of Law Initiative**



**The Hebrew Immigration
Aid Society**



**United Nations High
Commissioner for Refugees**

Ukraine's Legal Response to Bias-Motivated Violent Crime

**The Diversity Initiative
Legal Sub-Group**

March, 2008

Executive Summary

Background and Purpose

United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM) have informally coordinated information on harassment and racially motivated crimes against asylum seekers and migrants for a number of years. However due to an unprecedented increase in the number of suspected racially motivated attacks in Ukraine beginning in December 2006, IOM, UNHCR, Amnesty International, American Bar Association-Rule of Law Initiative (ABA-Rule of Law Initiative) and the Hebrew Immigrant Aid Society (HIAS) and other concerned civil society organizations formed a network in April 2007 to begin addressing the issue in a coordinated way.

The coordination group, known as the Diversity Initiative, focuses on three main areas: Legal, Government Relations and Advocacy. Each area became a subgroup chaired voluntarily by civil society organizations. It has close ties with a number of donors as well as support from several government ministries, in particular the Ministry of the Interior.

This White Paper is a product of the Legal Sub-Group of the Diversity Initiative, which focuses on the legal aspect of the fight against xenophobia. This Paper is an analysis of the criminal justice system's response to violent hate crimes.¹ Although there are hate crime laws on the books, they are almost never applied in practice.

This Paper argues that the criminal justice system must do a better job of recognizing, investigating, and successfully prosecuting hate crimes. Its goals are three-fold:

- (1) To bring attention to the recent rise in hate crimes in Ukraine.
- (2) To identify areas for improvement in the areas of legislation and law enforcement.
- (3) To suggest measures to strengthen the legal system's response to hate crimes.

Simply prosecuting more people for hate crimes will not end prejudice and intolerance in Ukraine. However, it will send a strong message to the perpetrators that Ukrainian society and government condemn their actions. It will also send a message to foreigners, and ethnic and religious minorities that Ukraine welcomes them and will protect them from violence.

Key Findings: What is the problem?

¹ This paper will use the term "violent hate crime" to refer to any kind of violent crime where the perpetrator was motivated by animus towards the victim because of the victim's nationality, or membership in a minority racial or religious group, or where the victim perceived such animus. There are other possible definitions or terms we might use, but these seem best to describe the problem we are attempting to address.

- Ø Civil society representatives and International Organizations have noticed a sharp rise in violent hate crimes in the past two years and the beginning of 2008 in particular.
- Ø There is a low level of public awareness that hate crimes are a problem in Ukraine. Government acknowledgement of the problem is inconsistent.
- Ø Existing Ukrainian criminal legislation on hate crimes is rarely implemented. Hate crimes are prosecuted as “hooliganism” rather than under other sections of the Criminal Code that carry harsher penalties and greater societal stigma.
- Ø IOM keeps a centralized incident recording database with input from other civil society organizations, embassy sources and victims of suspected racially motivated incidents. However it is quite likely that this list represents only a small fraction of the actual number of incidents as the vast majority are unreported.
- Ø Victims do not feel comfortable reporting hate crimes because:
 - they fear discrimination or violence from the police,
 - they do not believe their claims will be addressed,
 - they are in the country illegally,
 - they do not know their legal rights,
 - they do not have the language skills to communicate their complaints, and the police do not have adequate translation capabilities.

Status Report: What has the government response been?

The Ministry of Interior convened a consultation with the diplomatic corps in early 2007, developed a Plan of Action in May 2007, and organized in August 2007 a meeting with IOM, UNHCR and Amnesty International to discuss cooperation within the developed Plan of Action. The State Security Service (SBU) in October 2007 established a special unit on counteracting xenophobia and intolerance, while the Ministry of Foreign Affairs has appointed an Ambassador-at-Large for combating racism, xenophobia, and discrimination.

In January 2008, President Viktor Yushchenko made strong statements against xenophobia and encouraged the Verkhovna Rada to strengthen criminal responsibility for anyone stirring ethnic, racial, or religious hostility. On January 11, 2008, a draft law entitled “On Amending Some Ukrainian Legislative Acts (Concerning Toughening Responsibility for Acts of Extremism, Xenophobia, Anti-Semitism, Racial and Religious Intolerance)” was registered with the Verkhovna Rada proposing to extend the administrative and criminal codes to include increased punishment for violations caused by racism or xenophobia. In February 2008, President Yushchenko signed a declaration making this year “Year of Intercultural Dialogue”.

These are all promising developments, but they need to be followed up with concrete actions.

Recommendations: What can be done?

We propose the following recommendations to the Ukrainian government as a starting point for addressing the problem:

Legal

Recommendation: Conduct a comprehensive assessment of judicial and prosecutorial capacity for hate crimes and take measures to strengthen it.

Recommendation: Hold trainings for investigators, prosecutors and judges to build their capacity to identify and effectively use national and international standards against racism and xenophobia and clarify the anti-hate crime legal framework.

Recommendation: Use relevant laws against hate speech and inflammatory articles.

Recommendation: Conduct extensive court monitoring for cases with racial element should be undertaken.

Recommendation: Revise Article 67 of the Criminal Code to make bias motivation a *mandatory* aggravating factor in crime.

Recommendation: Revise Criminal Code to include bias motivation as a factor leading to penalty enhancement for in crimes.

Recommendation: Further research into registration and activities of the skinhead and far right youth groups should be conducted and relevant legal measures taken to curb their activities

Recommendation: Create a specialized interagency government body with the authority to combat racism in line with Europe and Council of Europe guidelines.

Recommendation: Coordinate information on the part of government bodies to ensure consistency and awareness of the full scope of the problem by government officials (especially government spokespersons).

Law Enforcement

Recommendation: Develop a consistent, standardized mechanism for law enforcement agents to report bias motivation in crimes, which does not have an overly restrictive burden of proof.

Recommendation: Train law enforcement agents to recognize and investigate bias motivation in crimes.

Recommendation: Train law enforcement agents to identify hotspots with highest frequency of attacks and develop an intervention strategy for them.

Recommendation: Embed an international observer in one or several law enforcement bodies to monitor enforcement of hate crime laws.

Recommendation: Hold relevant parliamentary hearings and sub committee group monitoring should be held for input into draft laws and draft legislation.

Victim Assistance

Recommendations: Support the development of a comprehensive system of legal assistance and medical care for victims of racially-motivated attacks.

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Introduction: Violent Hate Crime on the Rise

There has been a noticeable upswing in violent hate crimes in Ukraine during the past several years. This trend has been noted by NGOs in Ukraine, international observers, and some offices of the Ukrainian government. These incidents include all forms of physical violence – stabbings, beating, and violent intimidation – up to and including homicide. This issue is a matter of the physical safety – and the life and death – of guests to Ukraine and of Ukrainian citizens, and it must be dealt with immediately.

2008 has been a particularly dangerous year for foreigners, and ethnic and religious minorities. According to statistics kept by the Diversity Initiative, there were over 28 incidents of violent hate crime in January and February. These statistics do not begin to describe the extent of the problem: these incidents are only those that were reported to member NGOs of the Diversity Initiative through their network of personal and professional connections, which is necessarily limited and skewed towards Kyiv. Therefore, the real number of hate crimes in Ukraine in the first months of 2008 is surely much higher.

INCIDENT REPORT: Murder 27.01.08 Kyiv: Shevchenko District

In the evening of Sunday, January 27, 2008, the body of a Congolese teenager was found in the street, in the Shevchenko Region of Kyiv, dead by multiple stab wounds. The 19-year old was an asylum seeker in Ukraine, who had arrived from the Democratic Republic of the Congo in June 2007. He had been officially registered as an asylum seeker by the Kyiv migration service. According to the police, the motive for the killing is unknown.

Several examples of official response to this trend are as follows:

- Ø In March-April of 2007, the Minister of the Interior and the Minister of Education and Science made public statements condemning racial and xenophobic violence.
- Ø On 31 May 2007, the Ministry of the Interior developed a Plan of Action aimed at combating xenophobia until 2009.
- Ø On 24 October 2007, by special order of the President, the SBU set up a special unit on counteracting xenophobia and intolerance.
- Ø On 12 November 2007 SBU held a meeting with SCNR, MFA, MOI, Prosecutor General, NGOs and IOM (on behalf of the diversity initiative network) to discuss Government-NGO coordination on tolerance/xenophobia.
- Ø On 13 November 2007 the Foreign Affairs Ministry introduced the post of special envoy for combating racism, xenophobia, and discrimination. H.E Mr. Oleksandr Horin.

- Ø On 29 November 2007, a meeting took place between Acting Minister of Interior Kornienko a group of Ambassadors and IOM (on behalf of UNHCR) to discuss MOI efforts to deal with xenophobia and hate crimes.
- Ø On 4 December 2007, SBU held a meeting with a number of NGOs and IOM (on behalf of the diversity initiative network) to further discuss Government-civil society coordination on tolerance/xenophobia, it was decided to hold such meetings quarterly.
- Ø In February, 2008, the Ministry of the Interior initiated an inter-agency working group with several other ministries to come share expertise and strategies to fight xenophobia and racism.²
- Ø On 11 March 2008, the State Committee on Nationalities and Religions announced plans to establish an Expert Council on counteracting xenophobia, and racial discrimination and intolerance.

These are important and promising developments, but thus far they have not done much to offer protection to the targets of hate crime. Almost every day there is a report of a new attack.

Although the problem of hate crime is broad and systemic, one of the most basic avenues for confronting it is through the legal system. If hate crimes are not reported, investigated, prosecuted and punished then the government is sending a message to perpetrators that it will turn a blind eye to their activities. Criminal law alone is not the complete answer to violent hate crimes, without it there cannot be an effective government response.

The Ukrainian criminal justice system does very little to protect the victims or to punish the perpetrators of hate crimes. The system fails at every step of the process:

- Victims do not report hate crimes.
- Law enforcement bodies are reluctant to investigate bias motivation in crime.
- Prosecutors do not bring charges under the relevant statutes.

This White Paper attempts to identify some of the most basic problems in the criminal justice scheme in place to deal with violent hate crimes and suggest ways of improving the system.

Section 1: The Law describes the relevant criminal laws pertaining to hate crime as they exist on paper, and how they are used in practice. This section also details Ukraine's legislative obligations under various international agreements, and evaluates how Ukraine's current laws match up to the ideal.

² The group would consist of representatives from the Ministry of Justice, State Committee on Nationalities and Religion, Security Service of Ukraine, Ministry of Foreign Affairs, Ministry of Education and Science, Ministry of Culture and Tourism, State Committee on Television and Radio and other interested Ministries. See the press release (in Ukrainian) at <http://www.mvs.gov.ua/mvs/control/main/uk/publish/article/87614;jsessionid=BE3E3C11E59D97E50924152AE19F8E6D>.

Section 2: Law Enforcement describes the problems in the sphere of law enforcement that lead to few arrests and prosecutions for violent hate crimes.

Section 3: Statistical Deficit puts special emphasis on one of the most basic problems in the system – the lack of statistical data on hate crimes in Ukraine.

Section 4: Conclusions and Recommendations makes several general conclusions on the problems identified in the body of the text, and briefly suggests initiatives that could be taken to correct them.

Several disclaimers are in order.

First, this paper is meant specifically to address the issue of violent hate crime in Ukraine. This paper does not discuss the related issues of *hate speech* and *discrimination*.³ These are also important issues and they should be addressed in any system-wide effort to combat intolerance. This paper focuses on violent hate crime because this is the most current and most dangerous manifestation of intolerance in Ukraine.

Second, this paper is not meant to offer a comprehensive solution to the problem of violent hate crime in Ukraine. Combating intolerance requires much more than drafting laws and improving policing techniques – it requires promoting a society where people respect one another, and hate crimes do not occur in the first place. This means that in addition to reforming government practices and institutions, there must be society-wide outreach and educational efforts. This paper takes a narrow approach and concentrates on the legal aspect of the problem.

1. Legal

Ukrainian laws on hate crime are comparable to many other European countries' laws, and even better than some.⁴ The biggest problem is not with the laws themselves, but the fact that they are not enforced. Police and Prosecutor seem all too eager to avoid the hate crime laws when they can, or to drop the charges later in the trial. There are a few changes that can be made to the law as it exists on the books, but much more importantly, *the laws must be used*. The police must investigate bias motivation in crimes, prosecutors must bring charges under the appropriate laws, and judges must learn how to apply them.

³ Discrimination takes a wide variety of forms from discrimination in hiring practices by employers, to unequal treatment in places of public accommodation, to racial profiling in random document searches on the streets.

⁴ As of the end of 2006, several of the countries of the Organization for Security and Cooperation in Europe (OSCE) had no provisions for penalty enhancement based on bias motivation: Albania, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Lithuania, Luxembourg, Macedonia, Malta, Monaco, Montenegro, the Netherlands, Romania, San Marino, Serbia, Slovenia, Switzerland, and Turkey. Human Rights First, "Hate Crimes: 2007 Survey" (2007).

1.1 *Ukrainian Law*

A. Constitutional

The Ukrainian Constitution contains strong language guaranteeing the individual's right to life and liberty. Although these provisions are of little use to the individual victim of hate crimes, they provide a strong foundation, and a clear mandate, for the Ukrainian government to expand protections for foreigners, and ethnic and religious minorities from bias motivated crime.

The Constitution includes:

Chapter I, Article 3

The human being, his or her life and health, honour and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the essence and orientation of the activities of the State. The State is answerable to the individual for its activity. To affirm and ensure human rights and freedoms is the main duty of the State.

This Article is supplemented by several others in the next section of the Constitution, which guarantee rights to equality, dignity, physical inviolability, and protection from discrimination.⁵

Particularly relevant in the context of xenophobia is **Chapter II, Article 26**, which states that: "*Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine.*"⁶

It is significant that the Constitution grants these strong human rights to all individuals within its borders – to foreigners as well as citizens. Therefore, the Constitution provides a solid foundation for legislation to protect all victims of hate crimes in Ukraine.

Nevertheless, despite the impressive rhetoric of these constitutional articles, in practice they offer no relief for the individual victim of hate crime. Although, in theory an individual could bring a constitutional claim against the government for having failed to enforce his legally protected rights, this almost never happens in practice, and the case would be difficult to prove.

Therefore, the Constitution is most relevant to hate crimes as an ideal to which the government must strive to protect its citizens, and as a basis for further legislation.

⁵ Constitution of Ukraine, Chapter II, Articles 21, 24, 28, and 29.

⁶ Constitution of Ukraine, Chapter II, Article 26.

B. Statutory

Article 67: Circumstances aggravating punishment

The most promising article in the Criminal Code of Ukraine (CCU) for combating violent hate crimes is **Article 67**. This article lists a variety of aggravating factors that a judge may take into account when deciding the punishment for a crime. One of the enumerated factors is “*the commission of an offense based on racial, national or religious enmity and hostility.*”⁷

Using aggravating factor or penalty enhancement laws is a promising way of combating hate crimes through the legal system. Indeed, many European legislatures have preferred to do this rather than to prosecute them as separate offenses.⁸

There are four problems with this article. First, the use of the aggravating factors under Article 67 is only discretionary – a judge may choose to ignore it (provided he/she provides an explanation). The statute reads: “*a court may find [this factor]...not to be aggravating, and should provide the reasons for this decision in its judgment.*”⁹ This factor should be made mandatory. It is equally as serious and dangerous for society as other factors which are not discretionary, such as: the commission of an offense against a minor, an elderly or helpless person; the commission of an offense against a woman who, to the knowledge of the culprit, was pregnant; or the commission of an especially violent offense.

Second, the language of the provision is brief and not very descriptive of what it means for an offense to be “based on racial, national or religious enmity.” Compare, for example, the language from England’s Crime and Disorder Act of 1998:

- (1) An offence is racially aggravated for the purposes [of the Act] if:
 - (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim’s membership (or presumed membership) of a racial group; or
 - (b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.

Third, the provision allows the judge to set the punishment only *up to the maximum defined in the statute*. In other words, this is not a provision that allows a judge to enhance a punishment, but only to set a punishment up to the maximum as it is defined.

⁷ Criminal Code of Ukraine, Article 67(1)(3).

⁸ OSCE/ODIHR, “Combating Hate Crimes in the OSCE Region: An Overview of Statistics, Legislation, and National Initiatives” (June 2005), p. 35. See for example the British Crime and Disorder Act 1998, which allows judges in England to increase the sentence of a crime by up to two years when there is a racial motive involved.

⁹ Criminal Code of Ukraine, Article 67(2).

One possibility for statutory reform is to insert penalty enhancement provisions into the texts of the crime statutes themselves. Most crimes are divided into a Part 1, which defines the crime and sets the standard range of punishment, and a Part 2, which provides for increased punishment when certain factors are present. Currently, bias motivation is not a factor leading to penalty enhancement in any of these statutes. Making bias motivation a cause for penalty enhancement would be a strong signal from the government that it takes hate crimes seriously.

Finally, the biggest problem is that Article 67 is rarely, if ever, used. The Legal Sub-Group of the Diversity Initiative was not able to find any examples of a case where bias was found to be an aggravating factor under Article 67(1)(3).

Article 161: Violation of citizens' equality based on their race, nationality, or religious preferences

The most well-known article in CCU concerning hate crimes is **Article 161**. The legislative protections of this article were expanded with the adoption of the most recent version of the CCU, which entered into force in September 2001.¹⁰ Currently, there are proposals to increase the penalties under this article even further.

Article 161 criminalizes the incitement of hatred, insults or discrimination based on nationality, race or religion. The law provides for the punishment of a fine of up to 50 tax-free minimum incomes, correctional labor for up to two years, or restraint of liberty of up to five years, depending on the seriousness of the crime, whether it was accompanied by violence, and whether it was committed by a group or by a public official.

Article 161 brings some confusion into the criminal law because it seems to apply to cases of violent hate crime (and it is used in that way), when it is primarily a statute directed at hate speech and discrimination. This means that the maximum sentences provided by this article are much lower than they would be under other criminal provisions.

What often happens in practice is that a case is brought under both Article 161 and another article of the CCU (for instance, Article 115, in the case of murder). Because there is confusion about how to apply 161, that charge is eventually dropped at the trial stage.

1.2 INTERNATIONAL LAW

Ukraine has ratified several international conventions and treaties affirming its commitment to protect ethnic minorities, and combat hate-crimes and discrimination. Under these treaties, Ukraine has various legislative responsibilities. As Ukraine strives

¹⁰ http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/ukraine/ukraine_cbc_2.asp#P112_16516

for further integration and cooperation with Europe it will come under further scrutiny from foreign governments, and will come under the rubric of even more international organizations and conventions.

A. United Nations

Ukraine has ratified the 1965 United Nations International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).¹¹ Under Article 4 of this Convention, signatory states promise to declare as an offense punishable by law “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination...acts of violence or incitement to such acts against any race or group of person of another colour or ethnic origin,” and to declare illegal and prohibit organizations that promote and incite racial discrimination. Compliance with the Convention is overseen by the Committee on the Elimination of Racial Discrimination.¹²

B. European Convention on Human Rights

Ukraine is also a signatory to the European Convention on Human Rights, adopted in 1950 by the Council of Europe.¹³ The Convention establishes various legislative responsibilities on its member states, which are embodied in the articles of the Convention and several subsequent Protocols. The body that oversees compliance with the Convention and which produces policy recommendations for the member states is the European Commission against Racism and Intolerance (ECRI).¹⁴

One of the ECRI’s most widely promoted policy guidelines is General Policy Recommendation No. 2: Specialized bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level. This document calls upon member states to “consider carefully the possibility of setting up a specialized body to combat racism, xenophobia, anti-Semitism and intolerance at the national level...which would possess as possible of the following functions and responsibilities...” The policy recommendation then goes on to provide a long list of monitoring, training, information-sharing, victim’s aid, legal, advisory, and other responsibilities that such a body should have.

Ukraine does not have a body that comes close to meeting the requirements of this policy recommendation. The body that is closest to meeting this ECRI guideline is the Parliamentary Commissioner for Human Rights, also known as the Human Rights Ombudsman. However, this office is significantly under-funded, and is seen as being not very effective.¹⁵ Furthermore, the mandate of the Commissioner does not explicitly cover violent hate crimes.¹⁶

¹¹ UN General Assembly Resolution 2106 (XX), 21 December 1965, entered into force 4 January 1969.

¹² Part of the Office of the High Commissioner for Human Rights. See the Committee’s website at: <http://www.unhchr.ch/html/menu2/6/cerd.htm>.

¹³ Ukraine became a member in 1995.

¹⁴ Its homepage can be found at: http://www.coe.int/t/e/human_rights/ecri/.

¹⁵ U.S. Department of State, Country Reports on Human Rights Practices (2006) – Ukraine. Available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78846.htm>.

¹⁶ See the enacting law, from the Ombudsman’s website at <http://www.ombudsman.kiev.ua/zakon-ue.htm>.

2. Law Enforcement

There are several problems in the system of identifying, investigating and prosecuting hate crimes that lead to them going unpunished.

First, hate crimes are often not reported in the first place because victims fear abuse at the hands of the police themselves, or they believe that their claims will come to nothing.

Foreigners and ethnic minorities are regularly subjected to random document checks on the street, which sometimes lead to illegal detentions including threats and sometimes physical violence if the victims do not pay bribes.

In extreme cases, police have failed to stop crimes against ethnic minorities even when they saw them occurring on the street. For example:

INCIDENT REPORT:	Summer 2005	Kyiv
<p>Two youth attacked an Iranian man outside of Kreschatik metro stop. An American woman and another Iranian man that were with the victim tried to get the attention of two policemen standing nearby, but were ignored. The woman and both victims fought back and eventually the attackers ran away. When the victims approached the police after the crime and asked them why they did not help, the police answered that it was just a random attack, so there was nothing they could do and there was no reason to report it.</p>		

Second, even if hate crimes are reported, they are usually not investigated as such from the beginning by the police. Ukrainian police are not trained to identify bias motivation in crimes, nor are they properly trained to investigate it.

Very often crimes that have a potential bias motivation are treated as “hooliganism” by Ukrainian law enforcement authorities. This means either (1) that they are classified and prosecuted as hooliganism under CCU Article 296,¹⁷ or (2) that they are classified under another crime, but with a penalty enhancement for a motivation of hooliganism.¹⁸

It is not true that a crime which is classified as hooliganism (either under Article 296 or as an aggravating factor in another crime) will necessarily have a lighter punishment than

¹⁷ Criminal Code of Ukraine, Article 296(1) describes this crime as “a serious disturbance of the public order based on motives of explicit disrespect to community in a most outrageous or exceptionally cynical manner.”

¹⁸ For example, Criminal Code of Ukraine, Article 115, which sets the punishment for murder provides for a penalty enhancement if the crime was committed “based on hooligan motives.” CCU Article 115(7).

a crime which is classified as having an aggravating factor of bias motivation under Article 67, we think it is important that the law recognize the difference between hate crime and other kinds of crime.

The problem with classifying hate crimes as hooliganism, or not recognizing the bias motivation, is not only that the statute carries a lower penalty, but also that it is a denial to the victim and to society of the particular kind of evil that comes with a hate crime.

As Alexander Vershbow, the U.S. Ambassador to Russia (where the same problem of classifying hate crimes as “hooliganism” occurs) said:

Hooliganism does not adequately capture the message of hate put forth by these criminals. Dismissing them as simply “youthful hooligans” sends a chilling signal to the racists and the xenophobes. It tells them that their views and actions are but a minor offense against the social order, when in fact they undermine the very fabric of Russian society. It also demeans the victims and breeds a cynicism in society that only encourages further racist acts, keeping alive the cycle of violence and hatred.¹⁹

A third problem with law enforcement lies in the institutional procedure and division of authority between different government agencies. According to **Article 112** of the Code of Criminal Procedure of Ukraine, responsibility for investigating crimes that come under Article 161 of the Criminal Code is given to the Prosecutor’s office, whereas responsibility for investigating other crimes, and potential aggravating circumstances (Article 67), belongs to the police. The result is that both departments try to avoid responsibility for investigation by passing the case to the other.

Fourth, prosecutors are reluctant to bring cases under the relevant provisions because there is not much history of using these articles and the cases are difficult to prove. Hate crimes are inherently difficult to identify and prove because they are distinguished not by the act alone, but by the motivation of the perpetrator. If there are no witnesses, written statements, or other evidence of the perpetrator’s mental state, it can be difficult to determine that a crime was committed from a motivation of bias. For prosecutors, whose career advancement is tied to their records of success, it is all too easy too simply avoid such sections of the code rather than risk bringing a case that they may lose.

3. Statistical Deficit

In order to effectively promote a strategy to combat hate crimes, we must have good statistics on the extent and nature of the problem. Among other things, we must know: what kinds of hate crimes are occurring and when; who the victims are and who are the

¹⁹ Alexander Vershbow, U.S. Ambassador to Russia, “Ending Discrimination in Russia” (remarks at the Conference “Ways for Overcoming Xenophobia, Racial Discrimination, and Anti-Semitism in the Multinational Russian Federation”), March 29, 2004, available at <http://www.fsmonitor.com/EC/VershbowSpeechenglish.pdf> (last accessed February 11, 2008).

perpetrators; what kinds of hate crimes get reported and what kind tend not to get reported and why; and how often hate crimes are prosecuted, under which statutes, and whether they are successful.

Ukraine has a pronounced lack of statistics on hate crimes. There are very few consistent or well-publicized statistics collected by government agencies. Nor do the various government bureaus separately responsible for what might be classified as hate crimes – i.e., the Ministry of the Interior, the State Security Service, and the General Prosecutor – coordinate their activities in a meaningful way.²⁰

There is a centralized incident recording database maintained by IOM which a number of NGOs contribute to including Amnesty International, the East European Development Institute, the UN High Commissioner for Refugees, and the Hebrew Immigrant Aid Society.

The statistics are collected by word of mouth then verified through the mass media, embassies, and through reports from law enforcement agencies. The statistics for 2007 for violent crimes with suspected racial motivation include 64 incidents (including 8 murders). If including incidents of vandalism, the list of incidents rises to 105 distinct incidents. The NGOs are mostly based in Kyiv – therefore, their statistics are focused on that city.

The problem with comprehensive statistics is present in all European countries, not only Ukraine. As the European Network against Racism has said: “underreporting and lack of data remain two of the critical impediments to the effectiveness of [hate crime legislation].”²¹ Indeed, the level of hate crimes that a country reports may have little to do with the actual level of the problem. A country that reports a high level of hate crime may simply have better systems in place to identify and categorize hate crimes than a country that does the opposite. Some practices from other European countries in this regard may be found in Annex I.A.²² Despite this, the coordination of governmental and NGO bodies in the area of statistical collection is important and a necessary step to take in order to facilitate analysis of trends and development of intervention plans.

²⁰ There are a few exceptions. The news website “News Liga” reported on 13.03.08 that Ukrainian law enforcement bodies registered over 1,000 crimes against foreigners in 2006-2007, but does not provide more detailed information about these statistics. <http://news.liga.net/news/N0812246.html>.

²¹ “Racism in Europe: ENAR Shadow Report 2005”, European Network Against Racism, p. 28, <http://www.enar-eu.org/en/publication/shadow_reports/europe2005_EN.pdf>.

²² The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) recommends disaggregating hate crime statistics in the following way:

- a) Bias motivation: to determine who the victims of hate crimes are;
- b) Offence type: to assess the gravity of offences and whether they were conducted against people or property;
- c) Official follow-up and outcome: to ensure that the outcome of reported hate crimes, such as prosecutions and sentencing, is clear.

4. Conclusions and Recommendations

4.1 Legal

Recommendation: Conduct a comprehensive assessment of judicial and prosecutorial capacity for hate crimes and take measures to strengthen it.

Recommendation: Hold trainings for investigators, prosecutors and judges to build their capacity to identify and effectively use national and international standards against racism and xenophobia and clarify the anti-hate crime legal framework.

Recommendation: Use relevant laws against hate speech and inflammatory articles.

Recommendation: Conduct extensive court monitoring for cases with racial element should be undertaken.

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Recommendation: Coordinate information on the part of government bodies to ensure consistency and awareness of the full scope of the problem by government officials (especially government spokespersons).

4.2 Law Enforcement

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Recommendation: Train law enforcement agents to recognize and investigate bias motivation in crimes.

Recommendation: Train law enforcement agents to identify hotspots with highest frequency of attacks and develop an intervention strategy for them.

Recommendation: Embed an international observer in one or several law enforcement bodies to monitor enforcement of hate crime laws.

Recommendation: Hold relevant parliamentary hearings and sub committee group monitoring should be held for input into draft laws and draft legislation.

4.3 Victim Assistance

Recommendations: Support the development of a comprehensive system of legal assistance and medical care for victims of racially-motivated attacks.

Annex I.A: Best Practices

Police Recording Practices

RECORDING RACIAL MOTIVATIONS IN CRIMES

- Ø In the **United Kingdom**, racially motivated crimes have been separately recorded by police since 1986. Racial motivation is recorded on a “Racial Incident Form,” which accompanies the case file. The police use a broad definition of racially motivated crime to capture the largest possible number of potentially bias motivated crimes: “A racist incident is any incident which is perceived to be racist by the victim or any other person.”
- Ø In **Finland**, police have been obligated to record racist motivations in crimes since 1997. The racist motivation may be affirmed by the victim or another party, or it may be inferred by the police based on the evidence of the crime. Only a member of a minority group may be the victim of a racist crime in the Finnish categorization system.

CASE STUDY

Finland uses a five-category system to classify racially motivated crimes:

- (1) *Yes*: racist motive is clearly expressed in the crime.
- (2) *Most likely*: racist motive is deduced from the evidence by police.
- (3) *Possibly*: a racist motive is not clear, but is possible to deduce from circumstances.
- (4) *Do not know*: the evidence is insufficient to discern or rule out a racial motive.
- (5) *Not racist*: the crime is definitely not racially-motivated.

Annex I.B: Best Practices

Police Training

- Ø In **Belgium**, training on racist crime and violence is included within broader training for police on discrimination and multiculturalism. Each police officer must complete an 8-hour training module on racist violence. Police are also instructed in the law on racist crime.
- Ø In **Sweden**, in the last few years, all three of the country's police academies have introduced training on discrimination and hate crime, either in special courses or in general training.
- Ø In **Poland**, police have been given special trainings to increase their awareness of issues facing the Roma population. Other trainings on racist crimes are currently being implemented.

BEST PRACTICE: GERMANY

In **Germany**, trainings in racism and extremism are introduced in various ways:

- Ø Trainings in identifying bias motivation in crimes were conducted in conjunction with the introduction of a new crime registration system in 2001.
- Ø Special units were set up to deal with extremist attacks and trainings were conducted within these units.
- Ø The Ministry of the Interior and various police departments have partnered with NGOs to train police officers to deal with the victims of racially-motivated attacks. For example, in Leipzig, the Advice Centre for Victims of Right-wing Extremist Violence conducts trainings in dealing with victims.
- Ø Subjects such as racism and extremism have been included in basic police training and in continuing education courses for police officers.

Annex I.C: Best Practices

Support for Victims

- Ø In **Spain**, police in Catalunya have their own psychologists on staff who specialize in supporting victims of racial violence.
- Ø In **Sweden**, police are instructed to offer victims information on their legal rights, public authorities, or organizations that they may turn to, the avenues for receiving compensation for their injuries, and updates about the status of their cases.

BEST PRACTICE: UNITED KINGDOM

In the **United Kingdom**, the Association of Police Officers advocates that, as part of race relations training, police officers get an understanding of victim support mechanisms for bias motivated incidents, including using the help of interpreters or family.

Several police forces maintain advice hotlines for victims or racially or religiously motivated incidents. For example, the West Midlands Police operate a Racial Incident Helpline in six ethnic minority languages, as well as English, a service which can be used in cases relating to both racially and religiously aggravated crime, crimes against asylum seekers, disabled people, refugees, Roma, or any other vulnerable groups.

In Northern Ireland, a Police Minority Liaison Officer is available in every police district to provide advice, assistance and support to every victim of racial incidents. Telephone and face-to-face interpretation are also available twenty-four hours a day to assist victims.

Annex I.D: Best Practices

Police Engagement with the Public and Civil Society

- Ø In the **United Kingdom**, the police encourage all members of the public to report crimes. Minority groups are especially encouraged to report racially motivated or other hate crimes. The National Inspectorate has encouraged police to “increase community awareness in relation to racially motivated incidents” and also to “reduce the fear associated with this type of incident and to increase the confidence of victims and minority groups in the police response to racially motivated incidents.” In Northern Ireland, following a number of incidents in South Belfast, the police leafleted 29,000 homes, with the assistance of a local newspaper, promoting the reporting of racial incidents, and publicizing resources on hate crimes.
- Ø In the **Netherlands**, the police cooperate with local NGOs on data-gathering on racial violence as part of a project “Monitoring Racism and the Extreme Right.”
- Ø In **Italy**, the police cooperated with NGOs and community associations in preparing a training manual for the police on responding to racist violence.
- Ø In **Ireland**, Ethnic Liaison Officers are appointed to every police station to act as information hubs and to liaise with local ethnic community leaders.

CASE STUDY: FINLAND CONTACT POLICE PROJECT

Finland has an example of a particularly successful cooperation project between police and ethnic minority groups: the Contact Police Project set up in the city of Tampere in 1999. The objectives of the project were to lower the threshold necessary before victims were willing to contact the police by simplifying the lines of communication between ethnic minorities and the police, to offer information on police and the work that the police did to protect ethnic minorities, and to enhance the trust of ethnic groups towards the police.

During the project, all ethnic groups that met a certain population threshold were given the chance to appoint a representative to local police stations. Also, Police were encouraged to develop contacts with Tampere’s government agency dealing with immigrants.

The result of this Project was that minority groups reported that they felt more comfortable contacting the Police with complaints or to report bias-motivated incidents. Representatives of the police reported that they felt more comfortable approaching community leaders when they felt there were issues that could be resolved before they reached the level of crime.