

Statement by the Social Action Center NGO (Ukraine) regarding state response to hate crimes

HDIM, 15 September 2017, Warsaw

The Social Action Centre NGO would like to comment on Ukraine's response to hate crimes, as well as its actions to implement recommendations provided in the OSCE Ministerial Decision 9/09, as well as Ministerial Decision 10/07 and relevant national commitments concerning comprehensive response to hate crimes.

Protection from discrimination and bias violence serves as a safeguard for ensuring that everyone is able to exercise his/her rights freely and without fear. In order to achieve that, several crucial steps ought to be taken by the State, including adequate response to hate crime and hate speech, and coordinated efforts to build dialogue and trust with communities at risk. Most importantly, in times when xenophobia and violence are manifested, the State must be the first to respond and send a clear message that all steps necessary will be taken to address the issue. Needless to say, any manifestation of hatred or spreading of xenophobic ideas by the state bodies and persons acting in official capacity is unacceptable.

The SAC would like to recognize positive developments in this field, namely establishment of the National Point of Contact on Combating Hate Crimes in Ukraine and publication of official monitoring results by the National Police. We would like to commend the monitoring bodies for collecting data on a number of protected characteristics, including those not specifically mentioned in the open list under article 161 of the Criminal Code of Ukraine such as SOGI¹.

However, we note with regret alarming displays of both **lack of timely and effective response to hate crimes**, as well as outright **dissemination of hate speech by the police** authorities.

This year only, there have been violent attacks against Roma communities in several regions², attacks on participants of Pride March organized by KyivPride³, threats against

¹ National Police of Ukraine, <https://www.npu.gov.ua/uk/publish/article/1830725>

² Ukrainian authorities must stand against evictions, anti-Roma violence, address interethnic tensions and restore respect for rule of law, https://www.coe.int/en/web/kyiv/news-event/press-releases/-/asset_publisher/0RpFg6nffNLd/content/ukrainian-authorities-must-stand-against-evictions-anti-roma-violence-address-interethnic-tensions-and-rest-ore-respect-for-rule-of-law

³ KyivPride organizers praise police efforts, but report 10 people injured in attacks after march,

events concerning LGBT issues⁴, including public events and book presentations as well as more “usual” for Ukraine physical attacks on persons and vandalism towards religious property⁵. These crimes require comprehensive response, including diligent investigation and, importantly, ensuring that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership as mentioned in Decision 9/09. As of this date, the only condemnation and concerns expressed come from the Ukrainian Parliamentary Commissioner for Human Rights, and none coming from National Police.

First, effective and diligent investigation of hate crime requires appropriate, ***specific, and tailored legislation on the national level***. Action Plan for implementation of the National Human Rights Strategy⁶ which imposed obligations on the national authorities to take action to prevent and combat hate crimes, includes an obligation to develop and submit to the Cabinet of Ministers a draft law amending the Criminal Code of Ukraine, namely including penalty for offences motivated by bias against such characteristics as race, skin color, religious belief, sexual orientation, transsexuality, disability, language (amendments to article 67(3), part two of articles 115, 121, 122, 126, 127, 129 and 293). According to information from LGBT Human Rights Center Nash Mir⁷, the responsible body - Ministry of Interior - has recently informed them that they consider the measures unnecessary, as only amendments to the article on aggravating circumstances would suffice. Instead, they expect that the Action Plan is amended. However, recent response received by Nash Mir from the Cabinet of Ministers has included no changes to the content of the plan (only the date of implementation) , therefore, these obligation ought to be implemented despite the fact that the Ministry of Interior would like to alter this requirement.

We would like to emphasize that the list of bias grounds in articles 115, 121 and 127 of the Criminal Code of Ukraine is exhaustive, i.e. it includes only religious, ethnic, and racial prejudice and leaves other types of hate crime outside the scope of investigation and adequate qualification. There is no penalty for hate crimes that did not cause grave bodily harm. In practice, virtually all these crimes are qualified as hooliganism without any consideration of the motive. It sends a signal to the victims that these matters do not constitute an important social issue.

<http://en.interfax.com.ua/news/general/429869.html>

⁴ Violence Erupts in Lviv as Ukrainian Equality Festival is Cancelled, <http://www.humanrightsfirst.org/press-release/violence-erupts-lviv-ukrainian-equality-festival-cancelled>

⁵ Antisemitism in Ukraine, 2016, <http://eajc.org/page34/news56193.html>

⁶ <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/natsionalna-strategiya-u-sferi-prav-lyudini/>

⁷ <http://gay.org.ua/>

Implementation of other components of the Action Plan concerning preventing and combating discrimination, raising awareness and creating a culture of respect for diversity (for instance, through education and training for state officials, legal professionals, social workers etc.) is necessary both for preventing hate crime and for addressing underlying prejudice.

Second, despite increased monitoring efforts, ***investigation of hate crime in Ukraine remains ineffective***. There is a need to ensure effective investigation of crimes and establish an effective dialogue that would include communities and CSOs for the purposes of reporting on the results.

The problem with investigation of hate crimes in Ukraine is that in most cases they are qualified as hooliganism manifested in the form of vandalism, assault, minor bodily injuries etc. Moreover, vandalism is also qualified as hooliganism or damage to property despite there being specific articles in the Criminal Code (e.g. articles 178, 179, 297, and 298). The motive of bias against religious groups is discarded even when the targets are Holocaust memorials, synagogues, mosques, and other religious buildings and memorials. Analysis of available court decisions shows that, in 2012-2016, article 161 was used in 7 court decisions (including one decision cancelled afterwards).

Problems in investigation also include the ineffectiveness of investigators' actions, refusals to accept a crime report, delaying procedural actions etc. As a result, there is no proper investigation of hate crimes, which leads to impunity or lesser punishment for perpetrators, as well as less incentives to report these crimes. We urge the state authorities ***to take steps to ensure effective investigation of all hate crimes***. It is necessary both to ensure that victims of these crimes have effective access to justice, as well as to encourage victims to report hate crimes.

Third, in August, the National Police has launched a special operation entitled "Operation Migrant" targeting specifically citizens of other countries and stateless persons. The operation included arbitrary inspections of places of residence and employment targeting migrant workers for possible violations that have no relation to the person's background. Operation reports are filled with hate speech and statements intended to instigate hostility against people from other countries or stateless persons. We would like to recall that Decision 10/07 specifically calls on States to protect migrants legally residing in host countries and persons belonging to national minorities, stateless persons and refugees from racism, xenophobia, discrimination and violent acts of intolerance. Dissemination of hate speech with formulations such as "ethnic criminality"⁸, "illegal migrants"⁹ not only

⁸ National Police, Cherkasy region, <https://ch.npu.gov.ua/uk/publish/article/238588>

does not ensure protection of migrants and stateless persons, but serves to incite xenophobia, especially coming from official sources of the Ministry of Interior. This practice is unacceptable and should be condemned by the leadership of the law enforcement bodies, nor can it recur in the future.

Accordingly, the **Social Action Centre** has a number of **recommendations for the State** and urges member-states to continue monitoring Ukraine's progress in implementation of the following:

1. To ensure implementation of the Action Plan for implementation of the National Human Rights Strategy 2020, namely introducing amendments to the Criminal Code to include characteristics sexual orientation and gender identity among others.
2. To ensure a comprehensive and coordinated approach towards promoting tolerance and non-discrimination principles, including effective implementation of components related to preventing and combating discrimination of the Action Plan for implementation of the National Human Rights Strategy 2020.
3. To ensure coherence between the Protocol on receiving a crime report of the National Police and the Unified registry of pre-trial investigations, as well as establish a mechanism for publishing the results of investigation in these cases.
4. To improve cooperation with civil society organizations in relation to reporting, investigation and prevention of hate crimes., provide victims with effective access to justice and to encourage them to report hate crimes.
5. To develop and ensure effective conduct of comprehensive professional training for law-enforcement, prosecution and judicial officials dealing with hate crimes.
6. Promptly investigate hate crimes and ensure that the motives of those convicted of hate crimes are acknowledged and publicly condemned by the relevant authorities and by the political leadership of Ukraine.
7. To ensure that all manifestations of hate crime are recognized and condemned by the state authorities, to prevent any displays of intolerance by the law enforcement bodies.

⁹ Website of the National Police of Ukraine, <https://www.npu.gov.ua/uk/publish/article/2181673>