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**Only in English**

**Written submission of the Ukrainian Helsinki Human Rights Union  
for the OSCE Human Dimension Implementation Meeting**

***Working session 14: Tolerance and non-discrimination***

**UKRAINE: Racism, xenophobic attitudes and anti-Semitism<sup>1</sup>**

According to Article 24 of the Ukrainian Constitution citizens have equal constitutional rights and freedoms and are equal before the law. At the beginning of 2006 Ukraine ratified Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms which establishes a total ban on any form of discrimination.

Article 161 of the Criminal Code envisages “for deliberate actions aimed at inciting ethnic, racial or religious enmity... punishment in the form of a fine of up to 50 times the minimum wage, or corrective work for two years, or limitation of liberty for 5 years, with deprivation of the right to hold certain posts for 3 years, or without this.

From time to time, in cases which receive a lot of public attention, criminal proceedings are initiated under this Article, mainly where there is pressure either from the public or from State Deputies. However it is virtually impossible to get anybody actually convicted of this crime. The crime must involve direct intent to stir up ethnic (or other) enmity in the country or in a specific region, to denigrate the honour and dignity of representatives of a particular group. What this effectively means is that in court the author of the provocative article must state that he or she intended to stir up ethnic hostility. Furthermore, as a general rule, admission of guilt by the accused cannot be the sole proof in a criminal case. That is, there needs to be something added, for example, a note in the accused person’s own handwriting with content like: “Chief, your task has been carried out, and a massacre provoked in the “Cotton Club”. It is thus clear that such criminal proceedings have no chance of success.

Article 18 of the Law of Ukraine “On Printed Mass Communication Media (the Press) in Ukraine” allows for the suspension of publication of printed media outlets by the court in cases where Article 3 § 1 of the law is infringed, for example, “for inciting ethnic, racial or religious enmity” (however among lawyers there is no agreement as to whether “suspension of an issue of the printed media outlet” denotes the suspension of the publication as a whole, or just a ban on the release of one specific issue of it).

This option has on occasion worked. In December 1995, on the petition of the Ministry for Press and Information, an issue of the newspaper “Oppositiya” [“Opposition”] was stopped. Exactly five years later, the newspaper “Dzherzeltsya” [“Source”] met the same fate as a result of a claim lodged by the Association of National Cultural Organizations of Ukraine. The State Committee for Nationality and Migration Affairs has on a number of occasions demanded that the courts suspend issues of “Idealist”, “Personnel” and “Personnel Plus”.

However any such case will sooner or later reach the Supreme Court of Ukraine. The latter, in rulings on “Dzherzeltsya” and “Oppositiya” back in 2003 stated: “the absence at the time of the court’s review of the case of a conviction for committing criminally punishable actions as a result of using the printed media outlet render the court unable to make a decision to suspend this outlet”. This means that it is impossible to obtain compensation for such publications since this would need to be based on a court ruling regarding a related criminal case. As we have pointed out, the criminal law is effectively impossible to apply.

Ukraine therefore lacks national instruments to defend rights violated through anti-Semitism, xenophobia, or inflammatory publications advocating different forms of discrimination.

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Ukraine is not a country where outbursts of racism, chauvinism, xenophobic attitudes and anti-Semitism are a widespread or disturbing phenomenon, however such incidents are become ever more frequent.

Discrimination against religious communities is fairly widespread. Examples of intolerance, incitement to religious enmity, as well as the procedure for allocating sites for places of worship clearly demonstrate different treatment of religious organizations depending on their particular denomination. Such discrimination is prohibited by legislation. In 2005 there was a certain increase both in cases involving religious intolerance, and in examples demonstrating an improvement in relations between different denominations in the country.

On the one hand an increase could be observed in the number of inter-denominational conflicts with the reason in the majority of cases being the lack of clear regulation as regards property issues. One can also mention those cases of religious intolerance which had a church – canonical, ideological worldview or ethnic - religious nature. These would include lack of understanding between the different Orthodox Churches, between Orthodox and Catholic Churches and Orthodox – Muslim conflict, as well as confrontation at the level of “traditional – non-traditional” denominations, and also anti-Semitism. One must also mention cases where religious intolerance was fuelled at a public level in the mass media, in education or in the activities of certain organizations. On occasions such religious intolerance was manifested in acts of vandalism. Vandalism is one of the most widespread examples of extreme expression of religious intolerance and bigotry in society.

The state in turn often simply distances itself from any attempt to resolve the issue. Nor are law enforcement agencies able to ensure personal safety and protect the property of non-mainstream religious organizations. Despite numerous incidents, in 2005 not one person was punished for inciting religious enmity or for extreme expressions of intolerance manifested in damage to religious structures or places of worship. However criminal charges were laid against 479 individuals for desecration of graves (Article 297 of the Ukrainian Criminal Code).

One of the main sources of religious intolerance could be found in the relations between different Orthodox Churches, primarily between the Ukrainian Orthodox Churches of the Moscow Patriarchate (UOC MP) and of the Kyiv Patriarchate (UOC KP).

Assaults on foreign nationals (especially Eastern and African countries) are on the increase in Ukraine. Quite often such assaults are carried out by groups of youngsters all wearing the same military uniform.

In 2005 there were not a lot of publications detected in the press which demonstrated religious intolerance. Most of those which appeared were articles with anti-Semitic content.

The Interregional Academy of Personnel Management [MAUP], Ukraine’s biggest private higher education institution, is worth mention, not only because it has dozens of branches in various regions of the country, teaching tens of thousands of students. MAUP is known for its books and periodicals (Personnel journal, Personnel Plus newspaper, For Independent Ukraine (Za Vilnu Ukrainu) and the Ukrainian Newspaper (Ukrainska Gazeta).

From spring 2002 MAUP and its president Georgy Schokin personally unleashed an aggressive propaganda campaign against Zionism and the state of Israel, which is ongoing and has become the most notorious anti-Semitic campaigns in the history of post-Soviet Ukraine. MAUP's propaganda combines elements of a new “post-Soviet anti-Semitism” and traditional ultra-nationalist anti-Semitism. Authors of MAUP publications rail against Zionism which they equate with Nazism and portray it as a threat to humanity. Meanwhile, arguments "exposing" Zionism are taken from the arsenal of the most unbridled anti-Semites. Anti-Jewish publications can be found in every edition of "Personnel" and other MAUP periodicals. The Academy publishes a whole series of brochures (Library of the Personnel Journal) chiefly aimed at “exposing the Jewish conspiracy”.

MAUP’s journal “Personnel” and newspaper “Personnel plus” are positively teeming with anti-Semitic and xenophobic publications. “The mark of an Orthodox Hasid or Orthodox Jew, as well as of many other Jews, is absolute hatred of non-Jews” (“Personnel”, 2002, No. 5). “Ukrainians nobly and hospitably granted the Jewish minority equal rights. Instead of being grateful, in the host’s house, the guest behaves arrogantly, aggressively and won’t get off the host’s back” (“Personnel plus”, № 1, 2004). Recently, the Head of IAPM has even used the pages of his publication to “expose” Viktor Yushchenko’s links with mysterious “Zionist circles”.