



# Proceedings Discontinued

*The Inertia of Roma Rights  
Change in Ukraine*

COUNTRY REPORTS SERIES NO. 16

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**A REPORT BY THE EUROPEAN ROMA RIGHTS CENTRE**



*European Roma Rights Centre*

**PROCEEDINGS  
DISCONTINUED**

*The Inertia of Roma Rights  
Change in Ukraine*

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*“You Gypsies, your place is in tabor (settlement) not in the city. Go and live there. You are not human beings. Go away.” Public Official, Uzhgorod, Ukraine.*

## **EXECUTIVE SUMMARY**

The ERRC has undertaken extensive research, policy, law and training work in Ukraine due to the very serious issues Roma face in Ukraine. The ERRC published a comprehensive Country Report on the situation of Ukraine in 1997.<sup>1</sup> It followed up this report with a 2001 publication updating developments since the 1997 report.<sup>2</sup> Since 2003, with the support of the European Commission and the Swedish International Development Cooperation Agency (SIDA), the ERRC has been involved in a very large three-year human rights research, training and advocacy project in Ukraine, involving a number of local Romani organisations. This documentation toward and publication of this report is a component of this project.

Roma in Ukraine are extremely vulnerable to infringements of fundamental human rights. A number of very serious instances of violent human rights abuse have taken place in Ukraine in recent years. In these cases, without exception, justice has not been done or seen to be done. In addition, systematic issues, such as widespread racial discrimination in a number of sectoral fields and the exclusion of Roma from personal and other documents, remain entirely unaddressed by government action to date.

Matters documented in detail by the European Roma Rights Centre (ERRC) and partner organisations in recent years include: (i) violence, including racially motivated violence and extreme forms of violence by state and non-state actors; (ii) racial targeting, racial profiling and racial discrimination in criminal justice matters, including the systematic data-basing of Roma by the police in Ukraine; (iii) racial

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<sup>1</sup> European Roma Rights Centre, *The Misery of Law: The Rights of Roma in the Transcarpathian Region of Ukraine*, Country Reports Series, No. 4, April 1997.

<sup>2</sup> European Roma Rights Centre, *Focus: Roma Rights in Ukraine: Published Materials 1997-2001*, June 2001.

discrimination in social and economic areas, including housing, health care, education, employment and social services; (iv) widespread lack of personal and other documents, effectively denying Roma the right to a legal personality, thwarting access to basic services, and hindering even basic civil and political participation; and (v) a vacuum of justice where human rights violations of Roma are at issue.

Current Ukrainian laws are not sufficient to adequately protect against or punish acts of racial discrimination. At present, there is no effective, comprehensive anti-discrimination law in Ukraine to make the ban on discrimination effective. Furthermore, even in areas where some legal provisions and mechanisms do exist, government authorities and the judicial system continue to be unable to utilize them to bring about meaningful change for Roma in Ukraine. The absence of any comprehensive anti-discrimination law in Ukraine makes it virtually impossible for victims of discrimination in Ukraine to use legal means to secure justice where instances of racial discrimination have taken place.

This report aims to provide a summary of ERRC documentation in a number of areas of relevance to international human rights law.

## 1. INTRODUCTION

It is notoriously difficult to determine the accuracy of demographic statistics of Roma populations in virtually all countries of Europe and the CIS. A 1989 census of the (former) Soviet Union recorded 47,915 Roma living in Ukraine, out of a total population of approximately 52,000,000. Roma thus constituted roughly 0.09% of the total population of Ukraine in 1989.<sup>3</sup> In 2001, the State Statistics Committee carried out Ukraine's first census since the Communist period, and found that in 12 years the Romani population had stayed roughly stable at 47,587, out of a total population of Ukraine of approximately 47,000,000.<sup>4</sup> Population density varies throughout the country, but the largest concentrations of Roma, according to the 2001 census, live in the regions of Zakarpatia (14,004), Donetsk (4,106), Dnepropetrovsk (4,067), Odessa (4,035), Kharkov (2,325), Luhans'k (2,284), and the Crimean Autonomous Province (1,896). In certain areas, such as Zakarpatia in the west, Roma officially represent as much as 3% of the population. A number of studies, however, suggest that the actual number may in fact be much higher. According to O.O. Danilkin-Stcherbitskiy of the National Academy of Sciences of Ukraine, the figure is closer to 200,000,<sup>5</sup> while some Roma organizations partnered with ERRC suggest it is even higher, approaching 300,000.

Regardless of the relatively small size of the Ukrainian Roma population, opinion polls conducted by the US State Department in 2005 in Ukraine showed that "social intolerance is greater toward Roma than toward any other ethnic group."<sup>6</sup> According to a recent survey by the Kyiv-based non-governmental organisation Tolerance, carried out in September and October 2006, 65% of Ukrainians surveyed stated that they "would not like to have Roma as fellow citizens of Ukraine", while 40% actively sought to see Roma expelled from Ukraine.<sup>7</sup>

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<sup>3</sup> State Statistics Committee of Ukraine, *All-Ukrainian Population Census 2001*: [http://www.ukrcensus.gov.ua/g/d5\\_other.gif](http://www.ukrcensus.gov.ua/g/d5_other.gif).

<sup>4</sup> State Statistics Committee of Ukraine, *All-Ukrainian Population Census 2001*: [http://www.ukrcensus.gov.ua/eng/results/nationality\\_population/nationality\\_1/s/](http://www.ukrcensus.gov.ua/eng/results/nationality_population/nationality_1/s/).

<sup>5</sup> Quoted in Ukrainian Institute for Social Studies, "Analysis of Real Problems," p. 7.

<sup>6</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, *Country Report on Human Rights Practices 2005: Ukraine*, <http://www.state.gov/g/drl/rls/hrrpt/2005/61682.htm>.

<sup>7</sup> International Centre "Tolerance", "The Level of Tolerance in Ukraine", Kyiv, 16 November 2006.

Anti-Romani sentiment is actively promoted in Ukraine by a number of agencies, including government and via the state public education system. From a very early age, children in Ukraine are taught that it is appropriate to adopt suspicious and unfavourable attitudes towards Roma. Children are encouraged to distinguish between people based on differences in cultural practices and physical features, and learn that it is appropriate to associate those traits with fear, danger and distrust. Above and beyond widespread folk stereotypes of Roma, frequently taught to children by their parents, such as them being drug traffickers, thieves and criminals in general, workshy, dirty, unhealthy, and immoral, such views are at times officially promoted. For example, the Ukrainian government recently told the UN Committee on the Elimination of Racial Discrimination (CERD) that:

In many cases, we face outrageous facts of non-observation by the Roma of the basic rules of conduct, violations of community life's laws... People do not know their rights, and, what is more surprising, even do not try to know them... It is not a singular case when parents in Romani families do not consider it necessary for their children to go through the medical check-ups, the observance of a calendar of vaccinations, etc. Also, these parents do not aspire to provide their children with education, even with an elementary one.<sup>8</sup>

The Government has also disseminated anti-Romani opinions in the school system, for the benefit of young children. For example, on page 81 of *Osnovy Zdorovya* ("Basic Health"), a 4<sup>th</sup> grade textbook recommended by the Ministry of Science and published in 2004, children around the age of 10 are taught what to do when "strangers" appear outside the door of their home. The picture accompanying the text reveals a white Ukrainian boy peering through the eyepiece in the door at a darker-skinned young girl who has her hands up pleading for something. Meanwhile, a large, menacing woman dressed in stereotypical 'Gypsy' clothing (headscarf, hoop earrings and flower-print dress) lurks in the shadows around the corner outside of the vision of the Ukrainian child. The text gives the following advice to children:

Do not open the door to unfamiliar people. Look at the child. What should the boy do? Why do you think so? If you see a woman or a child you do not know, don't panic, call your neighbours, grandparents or your parents at work. Ask them for advice before opening the door. Call the police and

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<sup>8</sup> Eighteenth Periodic Report of States Parties Due in 2004: Ukraine, CERD/C/UKR/18, para. 87.

speak loudly so that the people outside the door can hear you. If you have no phone, call for help from your neighbours out your window.<sup>9</sup>

Print and electronic media contribute to and reinforce anti-Romani racist stereotypes by associating Romani people with crime, drugs and general, unspecified “dangers”. Media in Ukraine publish material inciting racial discrimination, causing direct harms to minorities including Roma, and fostering pernicious stereotypes among the population at large. Journalists regularly warn the public of Roma and of the various dangers that they are associated with, often advising their readers to avoid, be wary of, or avoid outright any contact with Roma. Some recent examples follow.

On April 13, 2006, the newspaper *Dosie 02*, printed an article by Ekaterina Shebalina that called on readers to view all Roma with suspicion as potential criminals and to inform police whenever they see one on the street. The article was entitled, “After Presenting Themselves as Employees of a Pension Fund, the Criminals Took Away Three Thousand Hryvnas from the Elderly”. *Dosie 02* is published by the directorate of Ukrainian Ministry of Internal Affairs in Poltava region. This article quotes police officer Vyacheslav Perepelitza, of the Criminal Investigation Division of the Reshitilovsky district police department, as saying that it is possible that the criminals may have been Romani. He is further quoted as stating:

The police officer in charge of the investigation also admitted that such cases are not a rare occurrence. Gypsies often visit houses under different pretences: to buy nuts, to drink water, swaddle the baby, fortune-telling, selling, money changing, etc. Most often, they obtain the money by fortune-telling [...] and there was one occasion last year, where the circumstances warranted an opening of criminal investigation. In that particular case, Gypsies robbed the family of 6 thousands hryvnas and 700 dollars.

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<sup>9</sup> Pavlechko, L. P. ed., *Osnovy Zdorovya* (“Basic Health”), (Donetsk: Novaya Pechati, 2004) p. 81. This text was brought to the attention of ERRC by Aleksandr Mischiariakov, President of Amaro Deves. The UN CERD recently expressed concern about publications of this sort containing “historically inaccurate information about minorities.” In August 2006 in its 69<sup>th</sup> Session, the CERD recommended to the Ukrainian government that “further promote the publication of textbooks for schoolchildren in minority languages, including the languages of Roma and Crimean Tatars, and to ensure that all ethnically discriminatory content is eliminated from existing textbooks.” See UN CERD, *Draft Concluding Observations of the Committee on the Elimination of Racial Discrimination – UKRAINE*, CERD/C/UKR/CO/18, August 2006, para 16.

They entered the house allegedly to swaddle their baby. While one old Gypsy woman fussed about the child, another one entered the house and took away all the money...

Gypsies look out for their victims by speaking to the neighbors of a prospective victim. As soon as they find pensioners living alone, they immediately do their "black" deal. Therefore, we are warning the population of a region: when Gypsies appear in a village, you should necessarily call the district department of police. In response to your appeal the investigative group or local policemen will get there immediately. They will take specified persons to custody, bring them to the district department, take their photos and finger-prints, will write their passport data and will place this information into records.

On March 24, 2006, *Selskiy Chas*, a Kiev-based newspaper established by the Ministry of Agriculture, ran an article entitled, "Beware of Drug Trafficking" that explicitly drew links between the Romani ethnicity and drug dealing. The article, entitled "The Gypsy Factor", was based on a statistical analysis provided to the journalist by the Counter-Narcotics Unit of the Ministry of Internal Affairs. The article states:

A colourful chapter in illegal drug trafficking is Gypsy drug-crimes. The proof of this lies in the control, supervision and operative measures taken by the law enforcement authorities for the identification and neutralization of drug dealers of Roma nationality. According to the Counter-Narcotics Unit, Gypsies usually involve drug users in their criminal activities and pay them with drugs. Usually, these people who work with Roma have no social networks and are dependant on these drug dealers. This is why they are often also exploited as domestic labourers in addition to dealing drugs. When these people are arrested, they usually take responsibility and admit their guilt and do not betray their bosses. It is common that Romani women are the ones who sell the drugs. When they are arrested they are often given a suspended sentence because Article 79 of the Criminal Code states that pregnant women or women who have children under 7 years of age cannot be punished with more than a suspended sentence... It almost looks as if this article [of the Criminal Code] was created especially for Romani women because that gives them the freedom to deal drugs without fear of being sentenced. You hardly find any Romani women without children or

who are not pregnant... Usually the judges do not sentence these women with prison terms.

On April 27, 2005, *Your Chance*, a newspaper from the northern city of Sumy, Sumy region, published an article by Maxim Novikov entitled “Magyars in Sumy” that focused on a group of Roma who had arrived and settled in tents just outside the Sumy town limits. In his analysis, Novikov writes that “everybody knows what the Roma do,” apparently suggesting that Roma are involved solely in criminal activity and never or rarely undertake gainful activity. According to Novikov, such camps appear next to Sumy every year and that the main occupation of their inhabitants is fortune-telling, begging and fraud or trickery and that these Roma–nomads increase the level of crime within the city. He warns his readers to be cautious, sarcastically stating that “wherever these [people] move, we want to warn you: rest assured, they are looking for ‘work’.”

On October 6, 2004, *Levoberezhnaya* a local newspaper in the town of Zolotonosha, Cherkassy region, published an article entitled, “Militia warns: attention – burglary”. The article advised people not to engage in conversations with any Roma whom they did not know personally. Earlier that year, on June 16, 2004, the same newspaper published an article titled, “Roma Invasions with Mournful Stories”, that advised the majority population not to let Roma into their homes, give them water, or show them the way if they ask for directions. This was followed a week later on June 22 with an article warned readers about Roma who “produce false vodka”. The newspaper is not known to have published such advice about any other ethnic groups.

The ERRC is unaware of any instances in which any persons have been held formally or even informally accountable for published statements of this kind. The ERRC is similarly unaware of any occasion upon which a government official condemned such statements as degrading of persons or of the commonweal.





## **2. HISTORY OF ROMA IN UKRAINE**

The Romani peoples are, as a result primarily of linguistic evidence linking the Romani language to modern Hindi, known to be descended from persons who left India most likely around 1000 years ago. It is unclear exactly when Roma first entered the lands of today's Ukraine. It is known that different sub-groups with different linguistic and cultural traditions arrived at different times, coming from various regions. Because of this it is difficult to speak of "one" Romani community living in Ukraine with one history and a single set of traditions. Some sources say Roma first entered as early as the 16th century from Poland, Hungary, Wallachia and Moldavia. The 17th century saw a third migration of Roma who were fleeing intense persecution in Germany and Poland and who settled throughout Ukraine, Belarus, Russia and the Baltics. These "Russka Roma" were followed by "Servi Roma", who settled in Ukraine, Southern Russia, the Volga region and Kazakhstan. A second migration of "Vlachi" Roma entered from Wallachia and Moldavia in the mid-18th Century and settled in Ukraine and Southern Russia. Roma did not begin to settle in the Crimea until the mid- to late-18th Century.<sup>10</sup> The latest migration came in the late 19th and early 20th Centuries with the arrival of the "Kalderara" and "Lovari" Roma, migrating initially from Romania. Other smaller groups included the "Plashchuni" and "Ursari" Roma arriving from Moldavia, and the "Ungrika" Roma from traditionally Hungarian-speaking areas in the western part of today's Ukraine. By the end of the 19th Century and into the 20th Century, thus, several groups of Roma with different histories, cultural traditions, and speaking different languages or dialects were living in Ukraine, some as nomads, others fully settled.<sup>11</sup>

The history of the official life and civil status of the various groups of the Roma population in Ukraine is a complex story of different governments struggling to 'fit' Roma into the social fabric as they envisioned it. Following the demise of the Polish-Lithuanian Commonwealth in the 18th Century and up until the 20th, the lands of today's Ukraine lay primarily under the control of the Austrian, Russian and Ottoman empires. Each were

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<sup>10</sup> Naulko, V.I., "The Present Ethnic Composition of the Population of the Ukrainian SSR." *Soviet Sociology*, Vol. 3, No. 1 (Summer 1964), p. 20.

<sup>11</sup> Marushiakova, Elena and Veselin Popov. "Ethnic identities and economic strategies of the Gypsies in the countries of the former USSR." In *Mitteilungen des SFB "Differenz und Integration."* 4/1: *Nomaden und Sesshafte – Fragen, Methoden, Ergebnisse.* Halle-Wittenberg: Orientwissenschaftliches Zentrum der Martin-Luther-Universität, 9, 2003, S. 289-310.

enormous, highly heterogeneous territories, comprised of vast populations of many different cultural and ethnic backgrounds with political power fully centralized in the hands of the ruling emperors or sultans. The absolute centralization of power meant that as far as rulers were concerned, the rich diversity of ethnic groups and historical traditions of the empires' composite peoples, including the Roma, were relatively irrelevant when it came to governance and social development.<sup>12</sup> One's cultural background was a political or legal concern only insofar as it presented challenges to the state's vision and control of society. Prior to the emergence of the modern administrative state, although viewed with contempt by society and seen as being both outsiders and inferior to common people, Romani communities, particularly nomadic groups, existed relatively autonomously.<sup>13</sup>

This began to change with the modernizing reforms of Russian Empress Catherine II in the mid-18<sup>th</sup> Century. The emergence of the modern administrative state encouraged visionary rulers to systematically and forcefully include Roma into the rational, administrative ordering of the empire. Broad social reforms gave the region a centralized, rational bureaucratic framework with increasingly intrusive forms of political, social and economic organization that were intended to affect every single subject of the empire.<sup>14</sup> In an effort to rationalize imperial society, Roma, who lacked any official status were assigned one as "state peasants", which was both a reflection of their prevailing role in society as well of the state's interest in them. "State peasant" was an administrative social and taxation category that was not necessarily attached to land and that permitted freedom of movement, but which also allowed for the state to freely conscript their labour for a variety of auxiliary tasks.<sup>15</sup>

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<sup>12</sup> Subtelny, Orest, *Ukraine: A History*, (Toronto: University of Toronto Press, 1994), pp. 202-3. This was the case for the Russian empire up until the 1917 Revolution. For the Habsburg Empire, however, the advent of national movements would become increasingly significant and problematic in the 19<sup>th</sup> Century. Although the Ukrainian national consciousness took great strides in Galicia in western Ukraine after the revolutions of 1848, by the turn of the 20<sup>th</sup> Century the region was still highly agrarian and underdeveloped and politically disempowered.

<sup>13</sup> Barannikov, A. P., *The Ukrainian and South Russian Gypsy Dialects* (Leningrad: Academy of Sciences of the USSR, 1934), p. 8.

<sup>14</sup> Subtelny, p. 219.

<sup>15</sup> Isabel de Madrigada writes the following about Catherine's social reforms: "Catherine was neither a liberal nor a democrat, and certainly not an egalitarian. She believed in the kind of social structure that existed nearly everywhere in Europe throughout her reign, according to which each individual

One consequence of this top-down rationalization of society was the increasing official intolerance of the nomadic way of life of some Roma groups in the empire, mainly because it made the collection of taxes difficult. The state under Catherine II, became the first of several to pass numerous decrees to compel nomadic Romani communities to register their places of residence and to assign specific tax duties and regulations to them. Demands for conscripts and labour during the Crimean War (1853-56) brought a new impetus for registering Roma, and for the first time Roma were given the same military obligations as other subjects in the Empire.<sup>16</sup> Orest Subtelny characterizes the Russian imperial administration of the time as “[c]orrupt, inefficient, and spread over vast territories, its bureaucrats could not or would not fulfill all the instructions that poured forth from the capital. For every martinet there was usually an official who, out of kindness or for the sake of bribes, ignored minor offences or softened prescribed sentences.”<sup>17</sup>

The revolution in 1917 initially held out some measure of potential for Roma. During the furious first decade of early revolutionary furor and civil war, the fledgling Bolshevik government gave official recognition to many national groups and cultures in a bid to gather support to their cause. Official Soviet ideology promoted the friendship of nations within the Soviet federation as a means of overcoming racial and national hostilities between the many composite national and ethnic groups within the Union. In 1925 the Soviet government officially recognized Roma as a nationality within the Soviet Union. For the first time an All-Russian Union of Gypsies (USTs) was created in 1925, while concurrently one saw the development of a Romani grammar and Cyrillic alphabet Romani-language publications, the establishment of Romany cultural and educational institutions, and even the formation of all-Roma co-operatives and collective farms.<sup>18</sup>

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person belonged in law to a specific social group or ‘estate’ and enjoyed the rights and performed the duties attached to that estate... In the eighteenth century people initially belonged by law to the class they were born into, however rich or poor they might be. . . in her efforts to modernize Russian administration and to draw upon the social classes to cooperate in the reforms outlined in the Statue of Local Administration in 1775, she attempted to organize and give corporate form to the various social estates and to codify the laws setting out their rights and duties” De Madariaga, Isabel, *Catherine the Great: A Short History*, (New Haven: Yale University Press, 1990) pp. 118-120.

<sup>16</sup> In Crowe, David M., *A History of the Gypsies of Eastern Europe*, (New York: St. Martin’s Press, 1996), p. 161.

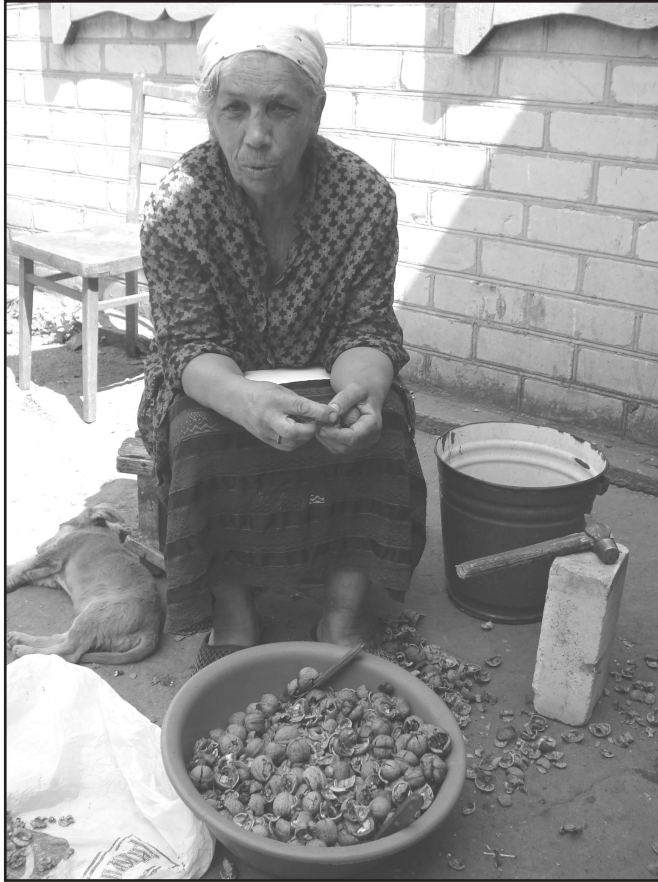
<sup>17</sup> Subtelny, p. 204.

<sup>18</sup> Some of which continue today, albeit in slightly different forms. Take, for example, the Romani primary school in Odessa, originally founded in the 1930s as part of a state-driven project to awaken



The house of the 15-member Chukalenko family, August 2006, Novomoskovsk. There was no running water or electricity in the house. They had been living there for four years. The house essentially was a sleeping area for everybody. Cooking occurred outside in an open fire pit in front of an abandoned/destroyed house. Water was taken from a well, but it was not clean and barely potabl if at all. None of the girls attended school. The family could not afford to buy decent clothes or shoes for them. Ms Chukalenko: “Somehow we manage, day by day, but the winters are really terrible”

PHOTO: MICHAEL LEACH/ERRC



Ms Paulina Miroshnichenko's house has no gas, no water (but there is a well), but she is officially connected to the municipal electric grid. Her main source of income is her pension (30 hryvnas a month). She earns supplementary money by shelling walnuts and selling them.

PHOTO: MICHAEL LEACH/ERRC

As with prior administrations, the mobile lifestyles of nomadic Roma groups were antithetical to socialist plans of development. This was made evident in 1926 when the new state passed a decree to encourage nomadic Roma to settle. Based on the belief that the economic underdevelopment of the Roma was linked to their nomadic traditions, the October 1 decree entitled, “On Measures for Aiding the Transition of Nomadic Gypsies to a Working and Settled Way of Life,” together with the promotion of Roma educational and cultural activities, was intended to bring Roma out of poverty by having them adopt productive lifestyles that required their permanent settlement.<sup>19</sup> According to one estimate, only 5,000 of the official Roma population of 61,299 in the Soviet Union had settled by the start of 1928. This prompted a new state decree “On the Allotment of Land to the Gypsies for the Transition to a Working and Settled Way of Life,” that was slightly more specific on the state’s intentions towards nomadic Roma, but that was equally as unsuccessful.

In the early 1930s, however, the Soviet state’s methods of social control became more forceful and wide-ranging. With the rise of Joseph Stalin to power in 1927, political and bureaucratic power was consolidated, strongly centralized and more dramatic and intrusive designs by the state to collectivize agriculture and to develop Soviet heavy industry became possible to an unprecedented extent. This increased centralization of power signaled a return to the hegemonic perspective of state-governed society reminiscent of, yet very distinct from, imperial governments in the past. The promotion of exclusive national identity was seen as un-patriotic, and state undertook great efforts to “draw together” the Union’s diverse population and create a unitary “socialist people.”<sup>20</sup> Like all other Soviet citizens, Roma were compelled to contribute to the massive socio-economic project of “building Communism”. The all-Roma collective farms that had been created in the 1920s were disbanded and their members dispersed among other collective farms.<sup>21</sup> Romani schools were mostly shut down and state support for Romani-language publications was greatly reduced.

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and empower a cultural minority, but which now plays an active role in segregating Romany children away from mainstream education and into substandard streams.

<sup>19</sup> Crowe, pp. 174-175.

<sup>20</sup> See Martin, Terry, *The Affirmative Action Empire: Nations and Nationalisms in the Soviet Union, 1923-1939*, (Ithaca NY: Cornell University Press, 2001).

<sup>21</sup> Crowe, David, Nadezhda Demeter and Alaina Lemon, “Gypsies,” in Friedrich, Paul and Norma Diamond eds. *Encyclopedia of World Cultures*, vol. 6., (Boston: GK Hall & Co., 1993), pp. 145-148.

With the outbreak of the Second World War and the German invasion in 1941, Roma shared in the suffering and misery of all civilians of in Soviet Ukraine. Their ethnicity, however, would single them out along with the Jews for uniquely murderous treatment at the hands of the German occupation forces. A report from August 25, 1942 by the Chiefs of the Army Field Police, gives some indication of these concerns and a preparedness to employ extreme measures, saying that in the occupied lands,

[t]he appearance of Gypsy bands is a major threat to the pacification of the territory as their members are roaming the country as beggars and render many services to the partisans, providing them with supplies, etc. If only part of these Gypsies who are suspected or convinced of being partisan supporters were punished, the attitude of the remainder would be even more hostile towards the German forces and support the partisans even more than before. It is necessary to exterminate these bands ruthlessly.<sup>22</sup>

This suggestion was closely followed by a strict anti-partisan directive on November 11, 1942 that declared that any partisan or “anyone who harbored, fed, concealed, or otherwise aided partisans [were] to be executed.”<sup>23</sup> For leading Nazi officials, whether Roma represented a social threat (disease, for example) or a military/security threat (such as spying), the solution should be the same.<sup>24</sup> *Einsatzgruppe C*, the Ukrainian-based unit

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<sup>22</sup> Quoted in Crowe, p. 183.

<sup>23</sup> “Directive for Anti-Partisan Warfare in the East,” November 11, 1942.

<sup>24</sup> Kenrick, Donald, *In the Shadow of the Swastika: The Gypsies During the Second World War*, (Hertfordshire: University of Hertfordshire Press, 1999), p. 133. In October 1948, at the Nuremberg Trials following the war, Otto Ohlendorf, former head of *Einsatzgruppe D* testified that the task of his mobile death squads was to “to keep the rear of the troops free by killing Jews, Gypsies, Communist Party officials, active Communists and all persons who could endanger security”. In the mind of Ohlendorf the link between race and criminality was intrinsic and clear: “There was no difference between gypsies and Jews. At the time the same order existed for the Jews. I added the explanation that it is known from European history that the Jews actually during all wars carried out espionage service on both sides...But the difference [with the gypsies] is here that these populations, for example, the German population, or the American population have permanent homes, whereas gypsies being unsettled as people without permanent homes are more prepared to change their residence for a more favorable economic situation, which another place might promise them. I believe that a German, for example, is very unsuited for espionage.” The mobility of the nomadic Roma made them particularly vulnerable to suspicion for espionage: “they were not sedentary people and were intrinsically willing... to change their standpoint.” Ohlendorf later stated that Roma children “had to be killed, along

of the German death squads primarily tasked with cleansing the occupied territories of Jews and socially undesirable groups, regularly reported executing entire Roma bands. Unlike *Einsatzgruppen A, B* and *C*, who did not systematically look for Roma as they did Jews, *Einsatzgruppe D*, operating in Crimea, made a more conscious effort to empty the peninsula entirely of both Roma and Jews.<sup>25</sup>

Following World War II, several policies were pursued to bring Roma more fully into Soviet society. In general, these policies were based on a three-pronged approach to settle, educate and integrate Roma, along with other “backward” nationalities and ethnic groups into the industrial labour pool and modern society. Compact Romani communities were dispersed and resettled. The 1956 decree “On Reconciling Vagrant Gypsies to Labor,” officially outlawed Roma “nomadism” and, significantly, was one of the few Soviet laws that defined a crime on the basis of a cultural practice. The new law was unevenly enforced, however, and many Roma continued their nomadic ways, particularly in the outer-lying regions of the Union such as Siberia and Central Asia where there was seasonal work as livestock traders, drovers, farm workers, and street merchants. For much of the interior, including Ukraine, however, this was not the case.

According to census data, by the end of the 1970s, over 70% of Roma throughout the Union had by then settled in urban areas, with the remainder living in rural communities.<sup>26</sup> One of the few traditional professions that continued to hold currency in the new society was music, which has since remained an important and externally recognized component of Roma culture. Other professions that at one time were traditionally associated with Romani ways of life, however, have disappeared, exchanged over time for work as unskilled industrial labourers.

Alaina Lemon notes, “... Soviets ... did rely, in both daily life and in the execution of policy, on external signs (physical or not) to infer internal, biological or inherited essences and to explain behavior, culture, and social position... However firmly the Soviet

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with their parents, as the killing was not intended to be a temporary solution, but was to lead to a permanent solution. As children of parents who had been killed they represented no less a danger for the Germans than the parents themselves.” For excerpts of Ohlendorf’s testimony, see “The *Einsatzgruppen* Case” Military Tribunal II Case No.9, *The United States of America vs. Otto Ohlendorf et al.*, Vol. VII, pp. 286-287: <http://www.ess.uwe.ac.uk/genocide/Einsatz3.htm>.

<sup>25</sup> Kenrick, pp. 136-139.

<sup>26</sup> Crowe, pp. 189-192.



state declared itself against racism, it purged neither racial discrimination nor racial categories.”<sup>27</sup> When, after 1989 and independence in 1991, ideological restrictions were lifted on public and official categorizations of ethnic groups along essentialist explanations of behaviour and character and racialized terminology and worldviews began to surface in mainstream public discourses. This coincided with severe economic and political distress in the early 1990s and provided mainstream society with a ready vocabulary to racialize explanations for anxieties about social disorder evident around them.

Although Communist efforts to integrate the Roma were ultimately unsuccessful, at the very least the social and economic stability and employment opportunities of the time did more to integrate Roma with mainstream society than any other time. Since 1989, however, many Roma in Ukraine have once again been forced to eke out a harsh existence on the margins of society, but this time without the traditional occupational base of their ancestors to support them. Independence and the transition to democratic politics and market-based economics brought great turmoil throughout the country with massive workplace closures and employee layoffs. The demands of the new market-based economy found the remaining Soviet industrial sector to be hopelessly inefficient and the adjustment to the new economic logic was painful. Unskilled industrial labourers, whose ranks were filled by many Roma, almost immediately felt the effects of the economic transition as they were the first to be laid off with practically no programs or resources available to support them or others afterwards. The impact on Romani communities throughout Ukraine has been devastating. For the majority of Roma in Ukraine, the main sources of income changed from wages earned under state employment in the 1980s to a combination of social assistance (especially per-child benefits), pensions, and cash payments for itinerant work such as trading, scrap metal recycling, or unskilled physical labour into the 1990s and many slipped below the official poverty line. In a labour market that increasingly prizes specialized, trained labour, and given the obsolescence and loss of traditional occupations over the past few generations, the forces of social and economic transition have left many Roma with access only to work opportunities where little or no specific training or education is required, most often undesirable physical labour. In a number of communities in Ukraine, trading non-perishable consumer goods in marketplaces has become one of the few chances that some Roma have managed to avoid desperate poverty by earning a relatively decent living with only basic educational skills.

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<sup>27</sup> Lemon, Alaina, *Between Two Fires: Gypsy Performance and Romani Memory from Pushkin to Post-socialism*, (Durham: Duke University Press, 2000) p. 63-64.

The swift and jarring political and economic changes that characterized the 1990s were turbulent and difficult for just about many in Ukraine. Official policies and socio-ideological goals of egalitarianism, assimilation and integration were replaced by a difficult period of economic transition that encouraged competition and self-reliance but also brought with it perceptions of unfairness, and, therefore, higher levels of intolerance. The high degree of uncertainty and anxiety brought by the changes encouraged many citizens from dominant ethnic groups to seek out scapegoats for their frustrations and incidents of open violence committed against marginal and suspect minorities such as Jews, Caucasians and Roma became increasingly common. Prevailing racial and cultural stereotypes were often infused with suspicions of illegal profiting at the expense of the struggling majority population, and association with crime, particularly organized crime and drug trafficking.<sup>28</sup> In the 1990s, reports of violence against Roma became increasingly common and widespread, either at the hands of officials or of the general population.<sup>29</sup>

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<sup>28</sup> Kalinin, Valdemar and Christina Kalinina, “The Baltics, Belarus, Ukraine and Moldova: Life in the Former USSR” in Guy, Will ed., *Between Past and Future, The Roma of Eastern and Central Europe*, (Herefordshire: Herefordshire University Press, 2001), pp. 244-45.

<sup>29</sup> *Ibid.* p. 247.

### **3. HUMAN RIGHTS AND ROMA IN UKRAINE**

Ukraine is party to most if not all major international human rights treaties.<sup>30</sup> Article 9(1) of the Constitution of Ukraine declares that all international treaties are in force and binding. Similarly, the 1991 Act on the Prosecutor declares that the task of the Prosecutor's offices in Ukraine is to protect citizens' rights and freedoms as guaranteed by Ukrainian laws and international treaties.<sup>31</sup> The 2004 International Treaties Act declares that rules established by international treaties will prevail in the event of any conflict with domestic law.<sup>32</sup> However it is reportedly extremely rare that the obligations included in such treaties are ever invoked or otherwise involved in legal procedures.<sup>33</sup>

Ukraine's human rights record has been a source of great domestic and international concern. In 2000, Nina Karpachova, the newly instated Ukrainian Parliament Commissioner for Human Rights (Ombudsman) in her first bi-annual report stated:

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<sup>30</sup> One exception is that Ukraine has signed but not yet ratified the Revised European Social Charter.

<sup>31</sup> Article 4, Act on the Prosecutor, November 5, 1991 #1789-XII.

<sup>32</sup> This is specifically laid out in Article 19(2), Ukrainian International Treaties Act of June 29, 2004, #1906-IV.

<sup>33</sup> According to a 2004-2005 study that interviewed 653 judges (a sample of 10% of all judges in Ukraine), researchers found that although 70% of the judges believed that international human rights standards were a part of Ukrainian legislation, and 60% felt that they were part of court practices, very few were familiar with the texts themselves and even fewer actually applied them in practice. For example, only 55.6% of the judges were aware of the existence of the International Covenant on Civil and Political Rights, 16.6% were familiar with its main provisions, but only 2.2% claimed to apply it in practice in the courtroom. The figures were even smaller with the International Covenant on Economic, Social and Cultural Rights (41.2% aware of its existence, but only 5.5% familiar with it, and only 1.1% actually making use of it). While 46% of the judges were aware of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), but only 7.8% said that they were at all familiar with its provisions. This survey was conducted during a series of workshops conducted by the International Legal Council *Legiteam* and the Kharkiv Center for Women's Studies in 2004-2005. See International Legal Council Legiteam, "Alternative Report on Implementation of International Covenant on Civil and Political Rights in Ukraine," 2006, pp. 8-9. See <http://www.ohchr.org/english/bodies/hrc/docs/ngos/alternativereport.pdf>.

Despite democratic legislation in the sphere of human rights available in Ukraine, under the conditions of social and economic crisis, decline of a general level of culture and moral in Ukraine, effective mechanisms to protect human rights are non-existent, which leads to massive and regular violations of human rights and freedoms, and sometimes makes their realization impossible. The situation is worsened due to poverty, which is a violation of human rights as well.<sup>34</sup>

Although there are some indications that the overall human rights situation in Ukraine may have improved or be on the verge of improving since the political changes of 2004-2005, the same cannot be said for the human rights situation of Roma in Ukraine. The US State Department has noted, among other things, an increase in the accountability of police officers and gradual efforts to improve prison conditions, as well as improved media freedoms, increased protection of the right to free assembly, less state control over religious institutions and a decrease in government harassment of human rights groups.<sup>35</sup> True as these may be, there is little evidence that any of these improvements have had much impact yet on reducing discrimination and social stigmatisation of vulnerable ethnic or national groups such as Roma. Current legal protections against racial discrimination are ineffective and few and it has proved difficult to mobilise the political engagement and resources needed to bring about progressive changes to Ukrainian legislation and policy.

In recent years, however, some Government officials have taken a greater interest in the issue. In September 2003, the Cabinet approved a three-year national project entitled the “Program for the Social and Cultural Renewal of the Roma Population of Ukraine”, which was focused largely on preserving the ethnic identity of Roma and facilitating their integration into Ukrainian society. Furthermore, the Parliament’s Committee on Human Rights, National Minorities and Interethnic Relations, chaired by Mr Hennadiy Udovenko, a former foreign minister, held its first official hearing on the situation of the Roma in Ukraine on April 12, 2005. At the local level, however, the situation has shown little, if any, recent improvement. In the words of one

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<sup>34</sup> Nina Karpachova, *State Observance and Protection of Human Rights in Ukraine – First Annual Report of the State Commissioner for Human Rights*, (Kyiv, 2000), [http://www.ombudsman.kiev.ua/de1\\_zm.htm](http://www.ombudsman.kiev.ua/de1_zm.htm).

<sup>35</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, *Country Report on Human Rights Practices 2005 – Ukraine*, <http://www.state.gov/g/drl/rls/hrrpt/2005/61682.htm>.

Romani activist interviewed by the ERRC, “We live in the 21<sup>st</sup> Century: Women are abused in the street... infant mortality is high... illiteracy is high... Roma are abused, tortured and humiliated by state and non-state actors and forced to take the blame for crimes they don’t commit... the situation is bad in Ukraine.”<sup>36</sup>

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<sup>36</sup> Information provided by ERRC partner Zhuzhana Duduchava in an interview on May 23, 2006.



#### **4. FAILURE TO GIVE EFFECT TO THE INTERNATIONAL LAW BAN ON RACIAL DISCRIMINATION**

Current Ukrainian laws are not sufficient to adequately protect against or punish acts of racial discrimination. This vacuum of law has been repeatedly noted by international observers. These have voiced concerns with over the lack of any comprehensive anti-discrimination legislation, procedural problems, and a lack of access by victims to redress and remedies. The ERRC first noted these concerns in its 1997 Country Report on Ukraine.<sup>37</sup> In 1999, the US State Department observed that the judiciary and the Government were unable to properly enforce the equality provisions in the Constitution.<sup>38</sup> In 2001, the United Nations Committee on the Elimination of Racial Discrimination (CERD) examined Ukraine's legislative framework and made the following recommendation to the government after finding the existing legal protections and remedies against racial discrimination to be inadequate:

The Committee is concerned that national legislation does not contain sufficient provisions prohibiting discrimination on the grounds of race or ethnic or national origin in conformity with the requirements of the Convention. The Committee recommends that the State party take all appropriate legislative measures to ensure that the provisions of the Convention are fully reflected in domestic law. The Committee emphasizes the importance of adequately prohibiting and penalizing acts of racial segregation and discrimination whether they are committed by individuals or associations.<sup>39</sup>

In subsequent review of Ukraine's compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in August 2006, commenting on a now-defunct bill at that time before Ukrainian Parliament, the CERD told the Ukrainian government:

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<sup>37</sup> European Roma Rights Centre, *The Misery of Law: The Rights of Roma in the Transcarpathian Region of Ukraine*, Country Reports Series, No. 4, April 1997, pp. 73-78.

<sup>38</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, *Country Report on Human Rights Practices 1999: Ukraine*, <http://www.state.gov/g/drl/rls/hrrpt/1999/367.htm>.

<sup>39</sup> Office of the High Commissioner for Human Rights, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ukraine*, 16/08/2001, A/56/18, § 369.

The Committee notes with concern that the draft Anti-Discrimination Bill covers direct but not indirect discrimination. It recalls that the definition of discrimination in article 1 of the Convention covers any unjustified distinction which has either the purpose or the effect of impairing particular rights and freedoms. (Art. 1 (1))... The Committee recommends that the State party proceed with the adoption of a comprehensive Anti-Discrimination Bill which also covers indirect discrimination, in accordance with article 1 of the Convention.<sup>40</sup>

Although the Constitution and the Criminal Code include certain provisions that condemn the infringement of principles of equality, there is no effective, comprehensive anti-discrimination legislation to make the ban on discrimination effective, and there are particular lacunae as concerns the ban on racial discrimination.<sup>41</sup> The absence of adequate provisions in civil or administrative law, or in related regulations, to expressly prohibit non-criminal acts of racial or ethnic discrimination acts effectively enables and promotes harms of this kind. In practice there are few or no procedural mechanisms in place for a victim of racial discrimination to lodge an effective complaint, nor are there many legal opportunities for Roma or others to seek redress for grievances related to discrimination, in particular the extreme harm of racial discrimination.

Legal protections against racial/ethnic discrimination in Ukrainian law for the most part are confined to the Constitution and the Criminal Code. Certain provisions are included in other areas of law, such as the Labour Code. These are entirely inadequate as a transposition of the international law *acquis* in this area, and in a number if not all areas, individuals do not enjoy domestic law protections consistent with the commitments undertaken by the Ukrainian state.

Article 24 of the Ukrainian Constitution states that citizens have equal constitutional rights and freedoms and are equal before the law. Claims of superiority or the imposition of restrictions based on race, ethnicity, skin colour, political, religious and other beliefs, gender, social status, wealth, place of residence, language, or other characteristics are unlawful. There is little substantial jurisprudence on discrimination

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<sup>40</sup> “Concluding observations of the Committee on the Elimination of Racial Discrimination: Ukraine”, CERD/C/UKR/CO/18 August 2006, para. 7.

<sup>41</sup> The Ukrainian legislature has adopted a framework law banning discrimination on grounds of sex (“Equal Opportunity Law”), adopted by the Supreme Council on 8 September 2005.



to guide lawmakers and/or legal practitioners. The closest that the courts have come to a definition of ‘discrimination’ came with a Constitutional Court ruling on July 7, 2004 where ‘discrimination’ was interpreted as the establishment of certain unjustified, ungrounded and unfair differences in legal status contrary to the provisions of the Constitution.<sup>42</sup> The protections and rights in the Constitution are primarily declaratory, and would need a) to be supplemented by statutory legislation to clearly define discrimination in accordance with international and European standards;<sup>43</sup> b) to set out what unlawful activities fall within its scope; c) to specify what redress and remedy are available for victims of it; d) to identify responsible instances to which one might present a complaint of discrimination; and e) to detail procedural matters.

At present, the primary locus of the ban on racial/ethnic discrimination as it exists in the Ukrainian law, above and beyond the declaratory provisions of the Constitution, is the Ukrainian Criminal Code. Article 161 of the Criminal Code sets out that it is an offence to violate the principle of equality on the basis of race, nationality or

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<sup>42</sup> #14-PII/2004. See Legiteam, p. 24.

<sup>43</sup> The European Union has adopted a number of legal measures which have significantly expanded the scope of anti-discrimination law in Europe, notably the following Directives: Directive 2000/43/EC “Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin” (hereafter “Race Equality Directive”; Directive 2000/78/EC “Establishing a general framework for equal treatment in employment and occupation; and Directive 2002/73/EC “On the implementation of the principle of equal treatment for men and women as regards access to employment vocational training and promotion, and working conditions”, as well as a range of other gender discrimination-related law. The Race Equality Directive bans and defines precisely no fewer than five distinct types of act: (i) direct discrimination; (ii) indirect discrimination; (iii) harassment (on racial grounds); (iv) victimization (following a complaint of racial discrimination); and (v) instructions to discriminate.

Ukraine is not a European Union Member State and is therefore not bound by European Union law. However the Union has made full transposition of the EU *acquis communautaire* a requirement of candidate countries for European Union membership. Ukraine is not yet an EU candidate countries, but its leadership has on a number of occasions evinced a desire that it become one, and that it harmonise its laws and policies with those of Europe. To note only one example, On February 23, 2005, in a speech before the European Parliament, President Yushchenko declared that, “My country today has embarked upon a path of new reforms... For us in Ukraine, our objective... is that [Ukraine] be shaped by the new standards and new values adopted in accordance with European standards and values. European integration is the only true path open to Ukraine... We have chosen our strategic and political path in that direction.” (President Viktor Yushchenko, February 23, 2005, Strasbourg, France: <http://www.europarl.europa.eu/omk/sipade3?L=EN&PUBREF=//EP//TEXT+CRE+20050223+ITEM008+DOC+XML+V0//EN&LEVEL=3&NAV=X>).



Ms Lydia Ivanova Kalashenko of Novomoskovsk lives with her grandchildren. Her husband died almost two years ago. He had a factory job that earned the family some money. In the autumn 2005, the house fell apart and they temporarily moved to her son's house, but Ms Kalashenko told the ERRC that they now sleep in the broken house on the floor, her and her grandchildren. The government recently cut off her electricity and gas, and the only water they have is from a well which is not clean. She supports herself and the children by begging in town. When asked why she does not move somewhere else, she said this was her home and "besides, where should we go? The only money the five of us have is what I get from begging. We have no choice."

PHOTO: MICHAEL LEACH/ERRC

religious beliefs.<sup>44</sup> Article 67 identifies racial, national or religious enmity and hostility as specific aggravating circumstances. These provisions, however, are not effective as protective measures because (i) they set a number of thresholds too high to ensure that victims of discrimination can secure due remedy; (ii) in practice few, if any, victims of discrimination have ever managed to rely on these criminal law provisions to secure justice when they have been harmed by discrimination; (iii) as well as for other reasons.

Concerning incitement to racial discrimination, the UN CERD, commenting in August 2006 on Ukraine's compliance with the ICERD, noted:

While noting that incitement to racial discrimination is punishable under Articles 66, 67 and 161 of the Criminal Code, as well as under Articles 46 and 47 of the Law on Information and Article 3 of the Print Media (Press) Act, the Committee is concerned about the absence of any prosecutions under Article 161 of the Criminal Code which only applies to cases where intent can be proven and only if the victim of such discrimination is a citizen. (Arts. 4 (a) and 6)... The Committee urges the State party to consider a relaxation of the strict requirement of willful conduct set out in Article 161 of the Criminal Code in order to facilitate successful prosecutions under that Article. The Committee also requests the State party to consider extending the application of Article 161 of the Criminal Code to cases where the victim of discrimination is not a citizen. It urges the State party to ensure the effective implementation of all legal provisions aimed at eliminating racial discrimination, and to provide in its next report updated information concerning the application by the Ukrainian courts of criminal law provisions punishing acts of racial discrimination, in particular Articles 66 and 161 of the Criminal Code. Such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any compensation or other remedies provided to victims of such acts.<sup>45</sup>

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<sup>44</sup> The Criminal Code of Ukraine, Article 161. 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.

<sup>45</sup> "Concluding observations of the Committee on the Elimination of Racial Discrimination: Ukraine", CERD/C/UKR/CO/18 August 2006, para. 9.

Other deficiencies in the current Ukrainian criminal law ban on discrimination, some of which indeed extend to any criminal law ban on discrimination, due to the nature of criminal law, have recently been described as follows:

The Criminal Code establishes responsibility for violating the principle of equality on the basis of race, nationality or religious beliefs (Art. 161). However, this article is barely effective for three reasons:

- **Intent has to be proved.** The liability written into Art. 161 of the Criminal Code can be applied only if there is intent in actions that violate the principle of equality. Yet the particular nature of such offences makes it nearly impossible to prove intent.
- **Responsibility can be determined only for unlawful actions against Ukrainian nationals.** Similar actions against individuals who are not Ukrainian nationals or who cannot confirm their citizenship are not seen as an offence.
- **Only a narrow base of offences related to discrimination is covered by this Article.** Many offences against members of minorities that should be treated as crimes according to international conventions are not included in Ukraine's Criminal Code".<sup>46</sup>

Certain other provisions of law against discrimination exist in related areas, such as the declaratory provisions in the Labour Code.<sup>47</sup> Procedural elements for rendering actionable this guarantee, however, are missing. Also, the Labour Code does not address any matters outside the field of work and several related issues, and thus would not secure most of the areas in required for securing the ban on racial/ethnic discrimination in full. Finally, the Labour Code protections are evidently ineffective, due to the fact of massive systemic exclusion of Roma from work.

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<sup>46</sup> Now-defunct "Bill on Protection against Racial, National and Ethnic Discrimination", Kyiv: International Center for Policy Studies, submitted to Ukrainian Parliament in 2005, p.33. The bill was not adopted prior to general elections in 2006 and would need to be resubmitted in order to be considered by the new Parliament, but was in any case too flawed to be recommended as a basis for any future anti-discrimination law.

<sup>47</sup> The Labour Code of Ukraine, Article 2-1 states that "Ukraine shall secure the equality of the labour rights of all citizens, regardless of their descent, social and material status, race, ethnicity, sex, tongue, political views, faith, character or nature of occupation, place of residence or other circumstances."

Victims of discrimination may address complaints to the Ukrainian Commissioner for Human Rights, who in turn can then present them to the Constitutional Court or other authorities. The effectiveness of this as a remedy is seriously in doubt, however. With virtually no means of making binding recommendations, no enforcement powers of its own, and operating with a very limited budget, this office has little capacity to do more than act as a reporting body.

The absence of comprehensive anti-discrimination legislation to supplement the existing inadequate criminal law ban with civil and administrative bans, procedures and remedies is the key feature of the current inadequate transposition of the principles of international bans on racial discrimination into domestic law in Ukraine. There are no comprehensive civil and administrative anti-discrimination provisions covering racial discrimination in areas such as education, housing, access to public and social services and contractual relations between individuals and/or other entities, nor are there any effective mechanisms of enforcement and redress. Currently, there is a marked absence of any legislative means by which public or private offending parties might be held accountable for acts of racial discrimination that fall outside the ambit of the Criminal Code, including a broad range of areas banned under international human rights treaties. Furthermore, Ukrainian legislation does not clearly account for the fact that entities other than individuals, such as businesses, institutions, and, most importantly, the public sector, are also capable of committing acts of racial discrimination. It is unclear what penalties might be applied to such offenders. Administrative and criminal responsibility under Ukrainian laws in general address fault by private individuals and therefore cannot effectively be applied to legal entities as a whole.

Beyond these gaps and weaknesses in law, ERRC documentation in a number of areas of Ukraine indicates that in different regions of Ukraine, law enforcement officials and members of the judiciary are of various and divergent opinion as to the possibility to apply anti-discrimination law. Thus, the overwhelming majority of the law enforcement officers and judges in Zaporizhzhia region (85.7 percent) were persuaded that discrimination is not a viable legal term. In Kherson region and the Autonomous Republic of Crimea, however, 100 percent of those surveyed believe that the concept of “ethnic discrimination” can be applied in legal practice. The opinions of the law enforcement officers and the judiciary of Kirovograd region was split in almost equal halves, with respondents stating that it was “impossible to use the notion of ‘ethnic discrimination’ in legal practice” or similar (57.1 percent of respondents), while 42.9

percent of respondents stated that it was possible to apply, in a legal context, the anti-discrimination norm.<sup>48</sup>

Finally, victims of racial discrimination in Ukraine must overcome numerous other obstacles to protect their violated rights in court. Government-sponsored legal aid is generally not available to victims of discrimination. There is no body within the Ukrainian government whose mandate it is to provide assistance and support to victims from minority groups while their cases are under review by the courts. There is no guaranteed access to low-cost or free legal aid for impoverished representatives of minorities or other destitute individuals or groups,<sup>49</sup> thus making legal remedies financially inaccessible for many Roma. Court costs, lawyer fees and taxes make the pursuit of justice a highly luxurious endeavour for most. Furthermore, the complicated, unduly long and in many cases hostile nature of legal proceedings can also conspire to thwart justice in such cases. All of these provide strong disincentives for Roma to pursue legal redress for racial discrimination harms.

The Ukrainian government is urged, as a matter of the highest priority, to ensure that Parliament swiftly adopts a comprehensive anti-discrimination law in conformity with international law and related standards.

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<sup>48</sup> The survey at issue took place in the period July-September 2006, and was carried out in the Zaporizhie, Kirovograd, Ternopil and Kherson regions, as well as in the Autonomous Republic of Crimea. The Ukraine-based organisation Legiteam acted as implementing partner for the survey.

<sup>49</sup> Indeed, the only individuals who can count on free legal aid are those who are involved in criminal proceedings and who do not speak the language of the courts.

## **5. HUMAN RIGHTS CONCERNS WITH RESPECT TO THE TREATMENT OF ROMA IN THE CRIMINAL JUSTICE SYSTEM**

Abuses of power by law enforcement officials have been extensively documented and have comprised one of the leading human rights concerns in Ukraine since its independence in 1991.<sup>50</sup> Urging the Ukrainian government to take a more “structural approach” to this problem, Human Rights Watch reported in 2005 that “torture and ill-treatment continues to be a significant problem in police detention and... has resulted in permanent physical damage to many victims, and in the most severe cases, resulted in death. In the vast majority of cases, the perpetrators of torture are not investigated nor prosecuted for their crimes.”<sup>51</sup> Roma are particularly vulnerable to abuse because policing strategies and practices are often based on stereotypes that associate them with criminality.<sup>52</sup>

Bias on the part of police and prosecutorial authorities denies Roma access to equality and justice before the law in several ways. At one extreme, Romani communities are significantly more policed than others. Disproportionately greater adverse contact with

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<sup>50</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Ukrainian Government on the visit to Ukraine, CPT/Inf (2004) 34, p. 13.

<sup>51</sup> Human Rights Watch, *2005 World Report*, p. 442. <http://hrw.org/english/docs/2005/01/13/ukrain9884.htm>.

<sup>52</sup> The UN CERD recently expressed its concern about allegations of police abuse of Roma, including arbitrary arrests and searches and pre-trial abuse based on racially motivated presumptions of guilt, and of persons belonging to other minorities, asylum seekers and non-citizens of different ethnic origin.” It recommended that the Ukrainian government “The Committee urges the State party to further intensify its human rights training for the police and to facilitate the reporting of cases of police abuse of Roma and other persons of different ethnic origin, effectively investigate complaints and bring those found guilty of such acts to justice, provide adequate protection and compensation to victims, and include in its next report detailed information on the number and nature of cases brought, convictions obtained and sentences imposed, and the protection and remedies provided to victims of such acts. In this regard, it refers the State party to General Recommendations No. 27 on discrimination against Roma (CERD General Recommendation No.27: *Discrimination against Roma* (2000), at paras. 12-14) and No. 30 on discrimination against non-citizens (CERD General Recommendation No.30: *Discrimination against Non-Citizens* (2004), at paras. 18-24). See UN CERD, *Draft Concluding Observations of the Committee on the Elimination of Racial Discrimination – UKRAINE*, CERD/C/UKR/CO/18, August 2006, para 12.

the police on a regular basis greatly increases Romani vulnerability to extra-judicial punishment (often physical) with no little or proof of wrongdoing. Roma are often sentenced for crimes solely on the basis of confessions extracted by force, via cruel and degrading treatment by public officials. At the other extreme, there is abundant persuasive evidence that in cases where Roma are the victims of violence or other crimes, they are not provided equal consideration when it comes to police and/or prosecutorial decisions to investigate. Ways are often found to prevent police resources from being allocated to such cases, either by closing cases prematurely or by ignoring complaints outright.

One indicator of the extent of this problem can be seen in the unwillingness of police officials to act on complaints concerning race-based and/or other abuses, including violent abuses. Another is the high rate of withdrawals of such complaints. In the course of a three-year project currently ongoing by the ERRC and partners in Ukraine, with European Commission and Swedish government support, most persons reporting abuses have not been willing to bring complaints to the police. Of the approximately 50 persons who have undertaken police complaints with the assistance of the ERRC and partners, over half have subsequently withdrawn them.

## **5.1 Compilation of Race-Based Identity Databases**

Police investigatory practices blatantly target Roma, and subject entire communities to rigorous intrusive supervision, apparently entirely or primarily on the basis of racial profiling. The ERRC knows of no other country in the region where police have made as concerted an effort as those in Ukraine to compile detailed identity databases including fingerprinting and photographic records of as many people as possible from one particular ethnic group. Such forced documentation of members of an ethnic community where there is no reasonable suspicion of criminal activity attributable to the individual concerned on the basis of compelling evidence is a flagrant violation of international norms.<sup>53</sup>

Mandatory fingerprinting of Roma is a police practice that is common throughout Ukraine. The ERRC is not aware of any other ethnic or social group targeted in such

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<sup>53</sup> Including but not necessarily limited to ICERD Article 5(a) and 5(b); International Covenant on Civil and Political Rights (ICCPR), Article 9(1); European Convention on Human Rights and Fundamental Freedoms (ECHR), Article 5(1)(c).



a comprehensive manner. According to Romani Yag, on January 20, 2005, at approximately 6:00 AM, police officers, accompanied by members of the “Berkut” special police force wearing masks and carrying rubber and wooden truncheons, broke into the homes of nearly every Romani family in the Radvanka and Telman Street Romani neighbourhoods in Uzhgorod, Zakarpatia region, to round up the men and take their fingerprints. Police officers reportedly forcefully broke into the homes and upon entering ordered all teenage boys and adult men, including the elderly and ill to dress themselves and get on a waiting bus. When challenged by one of the Romani men who asked for an explanation, one of the police officers replied, “If you fail to get dressed before I count to three, you will get what you deserve for not complying.” The officer then beat the man when he did not move quickly enough. When another man demanded to know the reason for the raid, one of the officers said that, “This raid is for ‘processing’ Gypsies”. Approximately forty Romani men were taken to the Uzhgorod City Police Station and were beaten by officers with truncheons as they entered the building. Once inside, the Romani men were finger- and hand-printed with some officers reportedly even examining their mouths and teeth. On January 20, Romani Yag visited the chief of the Uzhgorod City Police Station and wrote a letter expressing its concern to the head of Zakarpatia regional police. On February 17, 2005, Romani Yag received a letter from the head of the regional police, notifying Romani Yag that an internal investigation found all actions of the police in the raid on January 20 to have been lawful.<sup>54</sup>

This event is not isolated or unique to Uzhgorod. Police in other Ukrainian localities and regions use similar practices. Between March and April 2005, Romani people, regardless of age and gender, were detained on a mass scale throughout Chernihiv region and forcibly taken to police stations and fingerprinted. In April 2006, in one town in Sumy region, the police conducted warrant-less mass searches of almost every home in a local Romani community. Many Roma were arrested without reason or explanation. The police took fingerprints, photo and video records of all of those arrested. All of the homes targeted and all of the people arrested were Roma.<sup>55</sup> In 2004, in response to a crime involving an elderly Roma person, marketplaces in Novomoskovsk were scoured by police and all elderly Roma people, present were

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<sup>54</sup> Case information provided by Romani Yag. For more details on this case, please see <http://www.errc.org/cikk.php?cikk=2203&archiv=1>.

<sup>55</sup> Information provided ERRC partner Union of Roma Culture, based in Sumy.

detained and sent to the nearby stations.<sup>56</sup> There, they were fingerprinted and photographed and held for many hours until a witness to the crime arrived and said that none of them was the one responsible. The police never gave any explanation as to what the crime in question was, why fingerprints and photo records had to be compiled for each before they were cleared of suspicion by the eye-witness, nor why every single Roma man and woman of a particular age, regardless of profession be they merchants, buyers and even the homeless had become targets of suspicion for the police operation.

International observers have noted this practice repeatedly. The ERRC first described it in its 1997 Country Report on Ukraine, interviewing police officers in Uzhgorod who confirmed the practice, defending it as a “prophylactic” measure to combat crime. Roma were targeted as potential criminals, one police officer argued, therefore the measures were a response to a social problem, not a racial one.<sup>57</sup> It appears that such thinking continues to guide police tactics almost a decade later. Other international bodies have reported on the issue. In 1999 and 2002, for instance, the European Commission Against Racism and Intolerance expressed concern with Ukrainian police’s race-based policing tactics.<sup>58</sup> Collective round-ups for documentation purposes together with the mass searches of Romani communities described below not only violate international norms against explicit racist policing, but even the most basic rights to respect for one’s private life.<sup>59</sup>

## 5.2 Mass Searches

The widely held stereotype in Ukraine that Roma are associated with drug trafficking has often been the cause for arbitrary mass searches of Romani neighbourhoods by police authorities. Romani communities are regularly subjected to mass searches,

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<sup>56</sup> ERRC interview with Ms Lyubova Fedorovna Babenko on July 28, 2006, Novomoskovsk, Dnipropetrovsk region.

<sup>57</sup> European Roma Right Centre, *The Misery of Law: The Rights of Roma in the Transcarpathian Region of Ukraine*, Country Report Series No. 4, April 1997, pp. 26-28.

<sup>58</sup> ECRI, *Report on Ukraine*, CRI (99) 10, 13 March, 1999, p. 15; Second Report on Ukraine, CRI (2002) 23, 23 July, 2002, § 58.

<sup>59</sup> ICCPR, Article 17(1) and 17(2); ECHR, Article 8.

carried out without proper warrants and/or in otherwise procedurally suspect circumstances, when police, acting on scant information, have no suspects or leads that would otherwise make such mass seizures unnecessary. The Ukrainian Constitution does not effectively protect citizens from such searches. Article 30 declares that unwarranted intrusions into homes or the confiscation of property without the substantiated court orders are unlawful, but that this protection may be overridden by authorities in “urgent cases related to the preservation of human life and property or to the direct pursuit of persons suspected of committing a crime.” Police are thus relatively free to conduct racially motivated or race-influenced mass searches under a veneer of legality, and on many documented occasions police authorities have in fact violently raided Romani homes and communities on these pretexts. For example, on March 8, 2004, Ukrainian officials undertook a violent raid in a Romani community in Chernihiv region, ostensibly to uncover narcotic substances. There was no indication that the police were looking for specific individuals in connection with the suspected drugs, but they rather targeted the entire community as suspect.<sup>60</sup> Often, police conduct searches with no explanation, such as on October 19, 2005, when a group of policemen forced their way into the home of Vasilij Lakatosh. Without identifying themselves and with no warrants or explanation, the police gathered the family together, sent them outside onto the street while they searched the house, verbally abusing and threatening them at the same time. Finding nothing, they left shortly thereafter.<sup>61</sup>

Police have also evidently used such searches as a mode of intimidating human rights defenders. For example, on June 19, 2006, the ERRC sent a letter to the Ukrainian Prime Minister, urging action after police arbitrarily searched in detail around 9AM on June 13 the house of Mr Volodimir Bambula of the Zolotonosha-based NGO Ame Roma, one of the partner organisations in the ongoing project involving the ERRC and Ukrainian partners noted above. Eight officers reportedly took part in the search, while a

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<sup>60</sup> Case information provided by Mr Aleksandr Movchan, legal counsel for Romani Yag.

<sup>61</sup> Case information provided by the family’s lawyer, Mr Aleksandr Movchan. On behalf of his client, Mr Movchan submitted a complaint to the regional office of the Ministry of Internal Affairs. In their written response of April 10, 2006 to the complaint, the police refused to initiate any investigation against the perpetrators and provided supporting statistics about crimes committed by Roma, stating that almost every second Roma is a potential criminal. In further communication of July 10, 2006, the Regional Department of the Ministry of Internal Affairs stated that investigation was complete, and that unspecified disciplinary action had been taken against the police officers concerned. The ERRC is currently discussing possibilities for further legal action in the case.

further unknown number remained outside in the street. Police evidently objected to Mr Bambula's human rights activities. The pretext for the search was a killing in the town, for which there is reportedly no evidence indicating Mr Bambula's involvement.

### **5.3 Physical Abuse / Torture**

In 2000, Ukraine's first parliament-appointed Commissioner for Human Rights published her first report and was blunt in her assessment of the Ukraine's human rights record regarding torture and prisoner abuse. Stating that the majority of appeals to her office by citizens concerned offences committed by state authorities, she added that,

The analysis of the appeals to the Commissioner for Human Rights proves that the largest number of violation of rights through torture occurs during the detention of people and investigation. Citizens, NGOs and the mass media communicate such facts to the Commissioner almost every day... Although there are constitutional rules on the inviolability of the person and respective provisions are contained in the Criminal Code and the Code of Criminal Procedure, the mechanism of their exercise is ineffective... A joint study by the Commissioner and public prosecution bodies on compliance with citizens' constitutional rights and freedoms by employees of the Ministry of Internal Affairs showed that in the overwhelming majority of regions physical violence and degrading treatment of citizens are practiced by the militia on point duty, by precinct inspectors, highway patrol militia and employees of criminal investigation departments.<sup>62</sup>

In 2005, five years into her mandate, the Commissioner reported that torture and ill-treatment in police detention continued to be widespread. Her office received 1,518 complaints about torture and ill-treatment at the hands of the police in 2003 alone while the Ministry of Internal Affairs reportedly received 32,296 complaints about police mistreatment in 2002 and 2003.<sup>63</sup>

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<sup>62</sup> Nina Karpachova, *State Observance and Protection of Human Rights in Ukraine – First Annual Report of the State Commissioner for Human Rights*, (Kyiv, 2000), [http://www.ombudsman.kiev.ua/de1\\_zm.htm](http://www.ombudsman.kiev.ua/de1_zm.htm).

<sup>63</sup> Amnesty International, *Ukraine: Time for Action: Torture and Ill-Treatment in Police Detention*, EUR 50/004/2005, <http://web.amnesty.org/library/index/engeur500042005>.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Ukraine in 1998, 2000 and 2002 and found that little had changed over the years. In its 2002 report it observed that,

In light of the information at its disposal, the CPT can only reach the same conclusion as it had in 1998 and 2000, namely that persons deprived of their liberty by the Militia run a significant risk of being physically ill-treated at the time of their apprehension and/or while in the custody of the Militia (particularly when being questioned), and that on occasion resort may be had to severe ill-treatment/torture.<sup>64</sup>

Since the elections and change in Presidential administration in 2004-05, the government appears to be willing to acknowledge that this problem exists and to pay more attention to it than its predecessor. It is too early to know how much of a positive impact high-level intentions will have for Roma in the future. What is clear, though, is that Roma continue to be subjected to these abuses. Generalised intense anti-Romani sentiment prevailing also in the police services, as well as the absence of effective institutional protections, has exacerbated this problem by giving police a *carte blanche* to undertake violent physical abuse. A non-exhaustive list of recently-documented cases of extreme abuse of Roma by police officials follows:

On April 30, 2006, the body of a teenage girl was found in a house near a construction site in Dniprodzherzhinsk, Ukraine. She had been raped and had suffered massive, fatal head injuries sometime in the evening the night before. 18-year old S.M.,<sup>65</sup> a young Romani man, was arrested later the same afternoon by local police. Within days, the police declared that S.M. had openly confessed to both the rape and the murder and had signed a document to that effect. S.M. was then charged with the crimes and sent to a preliminary detention center.

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<sup>64</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), p. 18, § 20. The CPT has yet to release its report on its 2005 visit.

<sup>65</sup> In some instances in this report, the name of victims, witnesses or others has been withheld, either at the request of the person concerned, or because the ERRC has taken an independent decision not to reveal the identity of the person concerned, pursuant to evaluations of all relevant material available, as well as the circumstances at issue. The ERRC is prepared to release names if the interests of justice so require.

Vatra, a Romani organisation based in Novomoskovsk learned of the case and hired a lawyer, Mr Vassily Pozdniakov, to look into the issue approximately a month after the murder. After meeting with S.M., Mr Pozdniakov informed Vatra that he was certain that S.M. was innocent and that his basic human rights had been seriously violated during his time in police custody. S.M. reportedly told Mr Pozdniakov that he had known the victim personally and had introduced her to the person who later that evening had raped and murdered her, an older man with a previous criminal record. Shortly after meeting the girl, the other man told S.M. to leave so that he could speak to the girl alone. A few minutes after leaving, S.M. heard the girl scream and rushed back to see the man raping her. He tried to intervene, but was then beaten by the older man with a brick, who then threatened to “kill his entire family” if he ever told anybody anything about the episode. The man then reportedly grabbed the girl and threw her out of the building, where she fell five floors to her death.

S.M., who is illiterate, reportedly told Mr Pozdniakov that the police arrested him the very next day and beat him severely, suffocated him with plastic bags, stabbed his hands repeatedly with a pen, and forced him to confess to the crimes. He believes that the other man paid the police approximately USD 5,000 to leave him alone, and that police then arrested S.M. as a viable suspect. After being charged, S.M. stated that he was beaten further by his cell-mates in the preliminary detention center. When Mr Pozdniakov first met S.M., he learned that since the time of his arrest, he had suffered a broken jaw, a broken hip, damaged eardrums, cracked ribs and approximately 35 wounds on his hands as a result of having been stabbed by a pen. Mr Pozdniakov immediately arranged to have S.M. transferred to an isolation cell for his own protection, where, as of July 25, 2006, he had been held ever since.

The district prosecutor, in an interview with the ERRC, stated that he believed S.M. committed both the rape and the murder, that he was lying about the alleged police abuse and the forced confession, and that his injuries were all self-inflicted.<sup>66</sup> He said that according to S.M.’s cellmates, S.M. had injured himself in hopes of being transferred to a hospital from which he might be able to later escape. The prosecutor said that the signed confession was genuine and that it was unbelievable that anybody “under any circumstances” would ever admit to a major crime they had never committed. According to the police, the older man with S.M. the night of

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<sup>66</sup> ERRC interview with district prosecutor for Dniprodzherzhinsk, Dnipropetrovsk Region, on July 25, 2006.

the crime was not being sought because he had “disappeared” and that it would be “impossible” to find him.

The ERRC has since learned that the prosecutor’s office has dropped the rape charge after Mr Pozdniakov successfully challenged the validity of evidence held against S.M. The murder charge was still in effect, however, as of July 25, 2006. The first hearing was set for November 2, 2006 but was subsequently postponed to November 22, 2006, i.e. after this report went to press. The ERRC also learned that the parents of S.M. had recently been given permission to visit their son in detention for the first time since his arrest in April 2006.

Summaries of other recent cases follow:

- In January 2006, P.S., a teenage Romani youth, was detained by two policemen while walking on the street in his town in Odessa region. The police identified themselves, took him into custody and escorted him to the local police station. Once there, the police performed an identity check on him, searched him and then asked him to identify others. Shortly after this, police officers drove him approximately 20 km outside of city and abandoned him on the side of the road, forcing him to walk back to town on his own in minus 20 degree weather. P.S. decided to not pursue legal action against the authorities.<sup>67</sup>
- In April 2005, Mr I.P. was taken into custody suspected of having stolen a horse in his village in Poltava region. The woman who brought the theft to the attention of the police specifically said that Mr I.P. could not have been the thief as he had arranged her purchase of the horse in the first place and was well known to her. Nevertheless, the regional court immediately ordered that he be taken into guarded custody. Although the horse was located two days after the arrest in another village, Mr I.P. was held in custody for 14 days, during which time he was beaten repeatedly and taunted with derogatory remarks and threats such as, “You Gypsies – I will exterminate all of you!” Mr I.P. was allowed no contact with his relatives and was not told of the reasons for his detention. Mr I.P. was eventually released after a sustained effort on the part of his

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<sup>67</sup> Case information provided by Aleksandr Movchan, legal counsel for Romani Yag and the ERRC.

family, neighbours and a Romani human rights NGO. Mr I.P. chose not to file a complaint for moral and material damages in order to avoid retaliatory attack.<sup>68</sup>

- In December 2004, Y.Z., a 12-year-old Romani boy, was assaulted and beaten by a police officer in his town in Poltava region after having allegedly pulled a non-Romani girl's hair earlier in the day. At approximately one o'clock in the morning, Police Major Y.P. of the municipal police station burst into the house where he was staying, struck him twice in the face before kicking him in the head and body until he had been knocked down. A relative who stepped in to protect the boy was punched twice. The police officer then used a knife to slash the tires of two bicycles found in the yard of the house. Y.Z. sustained a concussion, numerous abrasions and bruises from the attack and was treated at the city Hospital's children's traumatic in-patient department for sixteen days following the attack. A forensic medical examination taken on January 13, 2005, revealed that the boy had received physical injuries that were certain to cause long-term health disorders. Criminal proceedings only commenced in February 2005 after an application was filed with the Prosecutor-General of Ukraine. Attempts to launch criminal proceedings at the local level were made impossible by regional prosecutors' extreme delays and reluctance to investigate. Once the claim was filed with the Prosecutor-General however, criminal proceedings began immediately and the policeman in question was transferred to another district. The case went to trial on October 6, 2005.<sup>69</sup> Those procedures are currently open. As this report went to press, next hearing was scheduled for November 27, 2006.
- During one night in April 2003, several uniformed police officers forcibly entered the house of Mr V.N., a 32-year old Romani man, in Chernihiv region. Providing no warrant nor explanation, the police dragged Mr V.N. out of his home and threw him into a waiting police car. His wife and relatives later learned that he had been sent a police station in another town where he was detained for the next two nights. While in custody he was severely beaten by police officers (whom he later was

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<sup>68</sup> Case information provided by I.P.'s lawyer, Mr Vadym Akimenko, provided by the ERRC.

<sup>69</sup> Case information from Mr Vitalij Pedorych, lawyer for the claimant provided by the ERRC.



able to identify by name) who unsuccessfully tried to force him to sign a confession to a crime of which he had no prior knowledge. In addition to the beating, these police officers repeatedly used plastic bags to suffocate Mr V.N., causing him to faint several times during the ordeal. Mr V.N. was eventually released, but had to be immediately hospitalized because of the injuries he had sustained while in custody. He remained in the care of the local city hospital for three weeks, having suffered closed cranial trauma and a cerebral concussion. Mr V.N. filed several complaints with the regional prosecutor, who eventually launched a criminal investigation into the matter. On May 5, 2003, however, once the case was sent to court, the prosecutor's office of Sumy region requested that the case be closed and the case was dismissed.<sup>70</sup>

Some cases have resulted in the death of victims. According to the testimony of Mr Jurij Fedorchenko, at approximately 7:30 AM on October 28, 2002, while leaving his house while the rest of the family was sleeping, he was confronted by three men, including Police Major Ivanov of the Kryukov area Police Department. The three men shoved Federchenko inside, sprinkled a flammable liquid throughout the house, and set it on fire. They then fled, barring the door from outside. Shortly afterwards, there was a large explosion, blowing both the door and Fedorchenko outside. The attack was in alleged retaliation for failing to pay a bribe to the police. Five members of the Fedorchenko family were admitted to hospital in Malaya Kahnivka, suffering from extensive burns and smoke inhalation. Zukhra Fedorchenko suffered burns to 65 percent of her body and died two days later. 6-year-old Snezhana Fedorchenko died 40 minutes after arrival and 3-year-old Misha Fedorchenko died the next day. Two other family members – 25-year-old Vladimir Fedorchenko, Zukhra's husband, and their 6-year-old son Jura – were found dead in the house. Zukhra's brother, 15-year-old Takhar, suffered burns to 70 percent of his body, and 50-year-old Jurij Fedorchenko suffered burns to 18 percent of his body, but both survived. In the weeks following the incident, both prosecutorial officials and the media reportedly denied any police involvement in the arson. Local counsel filed several complaints with the prosecution authorities asking them to investigate Major Ivanov's involvement in the arson attack. Despite frequent appeals from the lawyer and Fedorchenko's identification of Major Ivanov in a line-up, the Ukrainian prosecuting authorities failed to take any concrete steps to further investigate or charge Major Ivanov. On June 30, 2003,

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<sup>70</sup> Case information from Mr V.N.'s lawyer, provided by the ERRC, Ms Maria Ivanova.



Takhar Fedorchenko, one surviving member of the Fedorchenko family, five of whom died in an October 2001 arson attack in the village of Malaya Kakhovka, Poltava province, central Ukraine.

PHOTO: ERRC



The Fedorchenko home, following firebombing in October 2001. The case is currently pending at the European Court of Human Rights.

PHOTO: ERRC

the ERRC filed an application with the European Court of Human Rights, where the complaint is currently pending.

#### **5.4 Presumption of Guilt**

Often the pre-trial abuse of Romani suspects during detention is based on race-based presumptions of their guilt. Between 2003 and 2006, the ERRC and its partners have documented a number of cases of physical abuse of detained Romani suspects where law enforcement officers, without evidence, prematurely decided upon the guilt of the suspect and then searched for evidence to support that conclusion. In the absence of direct or conclusive evidence, police officers have often exerted physical and psychological pressure to force suspects to sign confessions to incriminate themselves. The frequent use of racist language when dealing with Romani suspects is a further indication that racial bias is an active part of the police's investigative procedures. In some localities, standard methods for investigating certain categories of crime, such as petty theft, involve detaining a random assortment of Romani males and holding them, often physically abusing them in the process, until one confesses. Examples of racially discriminatory and/or otherwise abusive detention practices by Ukrainian authorities where Roma are concerned follow:

In August 2005, at about 6 PM, two Romani men, P.A. and his cousin M.N., were detained by police in their hometown in Poltava region. P.A. later revealed that he was arrested after his non-Romani girlfriend complained to her friend, a police officer, that he had sold one of her gold rings to settle a debt without her consent. She was encouraged to file a report, which she did, whereupon the same police officer, together with another police officer, searched for and eventually arrested P.A. and M.N. According to the parents of P.A. as well as according to the testimony of a few neighbours who observed the arrest, the two Romani men were forcibly pulled out of their car, handcuffed, pushed forcibly into the police car, and taken to the district police station. No explanation or reason for the arrest was given. At the police station, the two men were placed in separate rooms. M.N. was released later that evening while P.A. was taken for interrogation. This consisted of severe beatings with truncheons, suffocation using a gas mask, and demands that he confess to having stolen money and a mobile phone. Passing in and out of consciousness and unable to stand the pain, P.A. eventually agreed to sign the confession. Later that evening, he was taken to another police station in another town, where the police chief and the judge

in charge of his case immediately called for an ambulance upon seeing the extent of his injuries. The woman who filed the complaint said that she never accused him of stealing money or a mobile phone, only of selling her ring. These original charges were dropped the day following P.A.'s arrest, once his parents paid off his debt to the woman in question. Several days following the arrest, one of the two police officers reportedly approached P.A.'s father and threatened to close a local business employing Roma if any local newspaper wrote about the incident. Regional prosecutors proved to be extremely reluctant to investigate and pursue a criminal investigation against the police officers in question. The investigation was opened and closed prematurely twice until December 2005 when the Prosecutor-General of Ukraine ordered that the case be re-opened and investigated for the third time.<sup>71</sup> The case is currently pending before the Kremenchug city court.

In another case, Mr S.N., a Romani man from the Zakarpatia region, solicited the assistance of a Romani NGO after being wrongfully accused of a theft in May 2005. Two non-Romani men approached him and proposed trading his motorcycle for a cheaper motorcycle and some scrap metal. Mr S.N. agreed, and asked for the whereabouts of this scrap metal. He was informed that the scrap metal was an old industrial engine located in the courtyard of an old farm, and that it had been pre-arranged with the owners of the farm to remove it. The two men subsequently delivered the engine to S.N.'s home. Shortly thereafter, several policemen arrived and conducted a search of S.N.'s property, suspecting him of possessing what he then learned was a stolen engine. Upon finding the engine, the police filed a report, confiscated the engine and immediately commenced criminal proceedings against S.N., despite his pleas of innocence. The records of his police interrogation erroneously declare that S.N. had an attorney present. The records were apparently signed by somebody else.<sup>72</sup>

On February 23, 2005, Mr V.M. and his relative Mr G.P. were stopped by two police officers in plain clothes while riding in a farm cart, ordered to get into a waiting car and were then driven to the local police station. Once there, they were locked in a cell and not allowed to speak to each other. At one point, two persons entered the cell, one of them with bruises on his face, who pointed at V.M., and stated that he was

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<sup>71</sup> Case information from Mr Vadim Akimenko, Mr P. A.'s lawyer, provided by the ERRC.

<sup>72</sup> Case information from Mr S.N.'s lawyer, provided by the ERRC and Romani Yag, Mr Aleksandr Movchan.

the one who had beaten him and stolen money from him. V.M. denied the allegation, saying that it was the first time he had ever seen this man, but the police ignored his pleas and once releasing his relative, the policemen began to beat him. V.M., being handcuffed at the time, had little chance to protect himself. He was later hung from a metal pipe and the beaten all over his legs and feet. During this time, the policemen repeatedly cursed V.M., saying things such as, “You are a Gypsy” and “You are lying to us. We will kill you and nobody will help you.” They then demanded that he confess to robbing the complainant. Unable to endure the pain of his injuries, V.M. agreed to do so and he signed some papers that were put before him, despite being illiterate and having no knowledge of what was written on them. He was subsequently released. V.M.’s attorney has since filed a criminal complaint with the regional prosecutor’s office and the case is still pending.<sup>73</sup>

In addition to the absence of effective protection from abuses by authorities generally in Ukraine, Roma are particularly vulnerable to such abuses due to their extreme exclusion, as well as because of the stigma associated with the Romani identity, as well as the absence of Roma from positions of influence. Roma are particularly vulnerable to often violent policing practices because of prevalent stereotypes of criminality and drug trafficking that are widely-held by law enforcement officials. Such stereotyping results in very widespread racial profiling practices by the police where ethnicity is used as substantive criteria to place particular groups under immediate and universal suspicion.

## **5.5 Failure to Investigate Complaints**

When Roma are victims of crimes, they are commonly denied protection by police and judicial authorities. When confronted with Roma complainants who are seeking protection or redress, the police often choose to either not believe them or simply not expend resources in investigating them.

On November 5, 2004, at 8:30 in the morning in the market of the village of Zolotonikovo, Mr R.L. struck a Romani woman, Ms R.S., with an automobile. R.S. suffered an internal compound fracture to her right foot as a result. Witnesses to the

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<sup>73</sup> Case information from Mr V.M.’s lawyer, provided by the ERRC and Romani Yag, Mr Aleksandr Movchan.

accident called for an ambulance and she was taken to hospital where she was given a full examination and treated. The following day the doctors informed the police about the accident. An official police report calling for the arrest of the perpetrator was not filed until a full ten days after the incident. The delay in the case was directly linked to the fact that R.S.'s Romani ethnicity apparently encouraged officials to downplay the seriousness of the incident. One investigator working on the case reportedly remarked to the victim, "that [the broken leg] will heal fast, Gypsies are used to it". It was only after R.S.'s attorney sent a letter to the regional prosecutor demanding that action be taken, that documents were delivered to the court's medical experts to determine the extent and nature of the victim's injuries. The location of the incident was later investigated without contacting the victim. The case has been delayed as the accused has since been called up for military service.<sup>74</sup>

In another case, at around 16:00 in January 2004, 15-year-old V.R. lost control while driving his mother's Volkswagen Passat in the town of Zolotonosha and hit two female Romani pedestrians, Ms K.R. and Ms V.T. Ms K.R. died at the scene of the accident and Ms V.T. was rushed to the hospital with multiple bone fractures. A month later, on February 16, a criminal case was started against V.R., with V.T. and the family of K.R. suing for both material and punitive damages. After a preliminary investigation by the regional prosecutor, the chief of police closed the case in July 2004, citing a lack of evidence. The case was reopened shortly thereafter, when a formal complaint was sent to the regional prosecutor, arguing that the case had been unlawfully and prematurely closed due to the Romani ethnicity of the victims and noting the fact that the officials in charge of the case were apparently friends with the parents of the driver. A further letter of complaint was sent to the Minister of Internal Affairs, after which regional prosecutors met with the lawyers for V.T. and the family of K.R., assuring them that the case would be handled properly. An appeal and two official complaints have been filed with the Ministry of Internal Affairs.<sup>75</sup> Thus far, no answers to those complaints have been received.

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<sup>74</sup> Case summary based on information from ERRC partner Ame Roma as well as information provided by Ms R.S.'s attorney, Mr Vladimir Bakaj.

<sup>75</sup> Case information from Mr Vladimir Bakaj, legal counsel for ERRC partner Ame Roma, a Zolotonosha-based Roma NGO who is representing Ms V.T. The ERRC has provided material and expert support in the case.

## **5.6 Police Inaction in the Face of Mob Violence**

Instances of community violence against Roma have taken place in a number of communities in Ukraine in recent years.<sup>76</sup> Such attacks can take the form of random violence against individual homes or pogrom-like assaults against entire communities. The purposes behind such violence are manifold, be they to terrorize, to force a move out of a neighbourhood, or vigilante acts of vengeance for crimes associated with Roma. When such mass crimes occur, police rarely interfere to prevent perpetrators from carrying out these violent attacks. This lack of protection creates an environment in which people are free to violate fundamental human rights and do so with impunity. Through its partners as well as independently, the ERRC has documented a number of cases where police officers not only were present at the time of violent mob attacks, but that their blatant disinterest in interfering incited assailants to cause even greater damage.

According to ERRC research, from January 10, 2004 until January 2, 2005, Ms Olena Stefanko's family was the subject of systemic attacks of violence by non-Romani inhabitants of the village of Komjaty in Zakarpatia region. On August 10, 2004 around 8:00 PM several people attacked the Stefanko family home and broke the eardrum of Ms Stefanko's son. Calls made to the police by the family were ignored. The second attack occurred in the evening of November 21, 2004. The attackers severely damaged the house, including the fence and the electrical system leaving the family with no electricity until it was fixed at their own cost. On January 2, 2005, at about 12:00 PM. Ms Stefanko was in her house with three of her children when six persons broke down her gate while verbally assaulting and threatening to kill Ms Stefanko and her children. The attackers also threatened to rape the females of the family. A shot was fired but none of the members of the family were injured. On January 3, 2005 Ms Stefanko submitted a written application to Vynogradiv police reporting the incident. Two days later on January 5, however, the family was informed that Police Junior V. Kovbasko refused to begin a criminal investigation. With the assistance of the ERRC a lawyer has been appointed to represent Ms Stefanko in action against police treatment of the family as well as the police's failure to initiate criminal proceedings. On April 4, 2006, the General Prosecutor of Ukraine notified the complainants that he had

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<sup>76</sup> Cases noted in this report include only those occurring since 2000. A number of cases of massive community violence, taking place in the 1990s remain to date entirely without judicial remedy. Further information on these cases is available by contacting the offices of the ERRC.



instructed the regional prosecutor to initiate criminal proceedings in the case. On June 28, 2006, the Regional Directorate of the Ministry of Internal Affairs named a prime suspect in those proceedings. The case is currently pending.<sup>77</sup>

In September 2002, at around one o'clock in the morning, a fight broke out between a number of ethnic Ukrainian and Romani youths in the village of Petrovka in the Odessa region, near a local café. During the fight, two Romani men severely beat a 17-year-old Ukrainian boy, who later died from his injuries. The two men were held criminally liable for the death and are now serving time in prison. The funeral of the victim incited a group of local residents to take measures to expel the Romani residents of the village. Intimidated by the threats and violence from their neighbours, and with their utilities cut off by the local representative of state utilities, the 19 Romani families residing in the village fled their homes and the village. The local police authorities, fully aware of the situation, did nothing to prevent the violence, and in some cases assisted in the expulsion of the families from the village. After the Romani families had fled, their homes were robbed and set on fire. Several days later, when a few of those who fled returned to the village, they were advised by the local authorities to move away to a different region. The families who fled their homes currently have no permanent residences and no documents, which means that nobody in the community can access state healthcare, no children can attend primary school, and none of the elderly can receive their pensions. With the assistance of Ame Roma, a Romani NGO and ERRC partner, applications were collected from 19 victims of the attack and sent to the regional prosecutor's office requesting that a criminal investigation be initiated. Initially, the prosecutor only opened investigation into the crime of "hooliganism", rather than a more serious offence. As of November 2006, all criminal proceedings had been stopped in the absence of an identified perpetrator or perpetrators. The ERRC and local counsel are appealing decisions in the matter. Civil complaints have also been filed on behalf of 19 individuals. Those complaints are currently pending. To date, there has been no justice in the case.<sup>78</sup>

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<sup>77</sup> Case information from Mr Aleksandr Movchan, Ms Stefanko's lawyer, provided by the ERRC and Romani Yag. For more details on the case, see [http://www.errc.org/Archivum\\_index.php](http://www.errc.org/Archivum_index.php).

<sup>78</sup> Case information provided by ERRC partner Ame Roma, and Mr Yuriy Yaschuk, attorney for the 19 claimants.

## **5.7 Extortion**

Anti-Romani sentiment in Ukraine, stereotypes about Romani criminality and the absence of viable legal remedies or other forms of protection, leave Roma defenceless in the face of law enforcement officials who try to extort money or services from them. Extortion often comes in the form of threats of bringing criminal charges, incarceration and/or physical violence if victims do not pay cash to secure release. Some recent examples of various extortion practices follow:

On May 19, 2006, around 12 noon, a Romani man, Mr Y.R. was arrested by three police officers (two in uniform, one plainclothes) in the centre of the town of Rakhiv, Zakarpatia region, and driven to a police station in an unmarked car. Mr Y.R. was given no explanation on what charges he was being arrested, and was forced to abandon his open car in the middle of the city. En route to the station, he repeatedly demanded an explanation from the arresting officers until one of them replied, “You dirty Gypsy, are you going teach us how to drive?” Once at the police station, Mr Y.R. asked the police to let him go saying that he had not committed any crimes. In response, four police officers began to beat him violently on his head, feet, chest, stomach and feet for about 20 minutes. He was searched and the policemen confiscated the equivalent of 3,000 USD in cash that they found on his person. Observing one of the policemen placing the money in his own pocket, Mr Y.R. demanded that his money be returned, at which point the policemen began to beat him again. The money reportedly belonged to Mr Y.R.’s mother who had just sold her apartment, and at the time of the arrest he had been on his way to buy materials with which to laminate the floor. When his mother and brother went to the police station to find him, they saw Mr Y.R.’s condition and immediately submitted a complaint to the Rakhiv district prosecutor, Mr Konar. Shortly thereafter, Mr Y.R. was ordered to come to the prosecutor’s office for a medical expert examination to determine the gravity of the injuries he received while in custody. The expert concluded was that Y.R. received ‘light’ injuries to his face, chest and right shoulder and the investigation into the complaint was dropped. On May 22, Mr Y.R.’s lawyer submitted a further complaint, this time to the Zakarpatia region prosecutor. On May 30, Mr Y.R. was informed that he had been found guilty of an infringement of Article 185 of the Ukrainian Code of Administrative Offences. The police arrest report claimed that the arrest had taken place earlier than had been the case and did not have Mr Y.R.’s signature. On June 2, the regional prosecutor ordered the Rakhiv district prosecutor to investigate

the complaint and report to the regional prosecutor. Mr Y.R. approached Romani Yag for legal assistance. Currently, both the alleged offence and the complaint of police abuse are under investigation.<sup>79</sup>

In October 2004, a group of seven Roma people sought legal assistance from a local legal aid centre in the Zhytomyr region after various police officers from the “Illegal Drug Trafficking” unit of the municipal police department systematically and repeatedly harassed them from July to October 2004. The most serious instance came when drugs were planted in the car of Y.Z., which then led to the arrest of his nephew and K.A., one of the seven complainants. Threatened with physical violence and criminal charges for drug possession, the two men submitted to the demands of the arresting police officers and paid them the equivalent of 1,500 USD. In return, they were released from custody.<sup>80</sup>

According to testimony provided by Mr Petro Sandulenko, Mr Josip Sandulenko and Mr Vladimir Markovskij to the Korosten-based Romani organisation Romano Kham, on July 9, 2004, four military officers on July 9 stopped Mr Sandulenko and Mr Markovskij, who were on their way to weigh their seven horses at the outskirts of the village of Ivanika, Zhytomyr region, prior to selling them. The officers impounded the vehicle holding the horses on suspicion that the horses were stolen and drove them to the District Police Station despite protests by Mr Sandulenko and Mr Markovskij that they legally owned the horses. Mr Sandulenko, Mr Markovskij and Mr Markovskij’s 27-year-old son Ruslan brought ownership papers for the horses to the District Police Department later that day. The police refused to listen and instead detained the men for twenty-four hours without charge or even an explanation. The following day, while still in custody, police officers informed Mr Markovskij and Mr Sandulenko that a woman had filed a complaint that two of her horses had been stolen. After being released from custody, Mr Markovskij reportedly returned to the District Police Station with the person from whom he had bought the horses to corroborate his and Mr Sandulenko’s claims. On July 11, officers reportedly demanded that Mr Sandulenko to pay 7,000 Ukrainian hryvnya (approximately 1200 Euro) for

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<sup>79</sup> Case information provided by Mr Aleksandr Movchan, legal counsel for Romani Yag. The ERRC has provided funding to cover the legal costs of the case.

<sup>80</sup> Case information provided by Mr Aleksandr Movchan, legal counsel for Romani Yag and attorney for one of the seven victims, the only one to step forward to make a formal complaint. The ERRC has provided funding to cover the legal costs of the case.

the return of the horses. The men managed to gather 4,000 Ukrainian hryvnya (approximately 650 Euro), which they paid as a “voluntary contribution” to the police department. When Mr Markovskij then went to pick up the horses officers demanded he make an additional “voluntarily contribution” of 350 hryvnya (approximately 60 Euro) to a senior officer at the station. Only on July 12 were the horses finally returned to Mr Sandulenko and Mr Markovskij after three days of no food or water. The ERRC and Romani Yag, together with lawyer Aleksandr Movchan, are pursuing legal action against the officers involved in the case.<sup>81</sup>

Finally, the police have been known to delegate policing responsibilities to the communities themselves by threatening to prosecute innocent persons in the community unless it collectively finds and turns in a suspect. The extreme degree of racist stigmatization of Roma in Ukraine, together with a police force that takes for granted its own immunity for racist and other abusive practices, make Romani people particularly vulnerable to abuse at the hands of law enforcement officials. This comes in the form of forced bribes, property ransoms, or simple outright robbery. In many cases, the amounts demanded by police from Roma individuals are exorbitant, forcing them to pool cash from friends and families to pay.

## **5.8 Summary: Police and Roma in Ukraine**

During research undertaken in the period July-September 2006, law enforcement officials and members of the judiciary in Kirovograd and Ternopil regions admitted having stereotypes as to Roma. Among others these stereotypes were: “Gypsies are perceived as thieves, criminals, individuals that cannot help breaking the law”; “Gypsies are inclined to steal and defraud”; “From childhood, Gypsies steal, commit other petty offences – this is their flesh and blood”; “Gypsies are associated with drug dealing”; “Gypsies have strong inclination to vagrancy, begging, drug-related crime”. In other monitored Ukrainian regions, respondents denied being prejudiced against Roma.

ERRC research also indicated that law enforcement officials and members of the judiciary in Zaporizhie and Ternopil regions, are not familiar with a single of such fundamental international law treaties on human rights. In the course of the survey, legal

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<sup>81</sup> Case information provided by Mr Sandulenko’s attorney, Mr Aleksandr Movchan and Romano Kham. For more information see: <http://www.errc.org/cikk.php?cikk=2202&archiv=1>.

officers showed an extremely low awareness of the status of the international treaties (both on human rights and in general) which Ukraine has recognised as binding. Officials of the district Ministry of Interior Departments in Zaporizhie region told the ERRRC that they believe that these treaties apply to foreign nationals only, and do not apply to Ukrainian citizens.<sup>82</sup> Law enforcement officials and members of the judiciary in the Autonomous Republic of Crimea and Kirovograd region demonstrated some knowledge of such international treaties on human rights, naming the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

In August 2006, the United Nations Committee on the Elimination of Racial Discrimination (CERD) told the Ukrainian government: “The Committee is concerned about allegations of police abuse of Roma, including arbitrary arrests and searches and pre-trial abuse based on racially motivated presumptions of guilt, and of persons belonging to other minorities, asylum seekers and non-citizens of different ethnic origin.” The CERD urged the government of Ukraine: “to further intensify its human rights training for the police and to facilitate the reporting of cases of police abuse of Roma and other persons of different ethnic origin, effectively investigate complaints and bring those found guilty of such acts to justice, provide adequate protection and compensation to victims, and include in its next report detailed information on the number and nature of cases brought, convictions obtained and sentences imposed, and the protection and remedies provided to victims of such acts.”<sup>83</sup>

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<sup>82</sup> The survey was undertaken in August 2006.

<sup>83</sup> “Concluding observations of the Committee on the Elimination of Racial Discrimination: Ukraine”, CERD/C/UKR/CO/18 August 2006, para. 12.



## **6. VIOLENCE BY NON-STATE ACTORS**

The combination of (i) an inadequate legislative framework, (ii) impunity for perpetrators, (iii) an inactive administrative and governing sector tolerant of expressions of racial hatred, (iv) a public promoting racist discourse, and (v) police officials demonstratively involved in human rights abuse of Roma, creates an open space for citizens to abuse others with almost complete impunity. Some examples of extreme acts of racially motivated violence undertaken in Ukraine against Roma in recent years follow here:

On April 29, 2006, around 7 PM, Mr A.K. a Romani man, was attacked while walking to his home in Uzhgorod, Zakarpatia region. Not far from his house, a group of around six people approached him and demanded that he give them money and any other valuables he had. Mr A.K. refused and was then attacked by the group, who beat him with metal rods and poles. He attempted to escape, but his attackers caught and beat him further in front of his house, shouting, “You dirty Gypsy, if you don’t pay us money we’ll destroy all of you.” Ms S.F. hearing Mr A.K.’s cries, arrived at the scene to help and was herself attacked by one of the group who smashed a glass bottle over her head and knocked her unconscious. Soon, more people began to rush to intervene, at which point the attackers stopped and fled in a black car. Many children from the community witnessed the attack, including Mr A.K.’s children. Mr A.K.’s lawyer filed a complaint with the police, but this proceedings were suspended, according to communication of June 30, 2006.<sup>84</sup> Mr A.K. is also pursuing a civil claim for damages, which was pending at the time this report went to press.

In another case, according to the Uzhgorod-based Romani organization Romani Yag, just before 9:00 PM on October 8, 2004, a taxi driver with the company Citi Taxi physically assaulted Ms Tereza Latsko, 78-year-old Romani woman from Uzhgorod. On the evening in question, Ms Latsko ordered a taxi to drive her to her brother’s house in the neighboring village of Storozhnitsa. On the way to Storozhnitsa, the driver asked Ms Latsko if she had money to pay for the trip. Ms Latsko reportedly responded that she would get money from her brother to pay upon arrival at his house. The driver began to swear at Ms Latsko and she told him to stop.

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<sup>84</sup> Case information provided by Mr A.K.’s attorney, Aleksandr Movchan, Romani Yag, Uzhgorod.

The driver then punched Ms Latsko in the face, knocking out one of her teeth. He stopped the car, pulled Ms Latsko out of the vehicle, kicked her hard and then drove off, leaving her lying next to the road. Ms Latsko reportedly walked home and went to the hospital in an ambulance the following day. Following the incident, a complaint was filed by a lawyer on behalf of Ms Latsko with the prosecutor's office in Uzhgorod. The prosecutor's office redirected the complaint to the local police office for investigation of the alleged abuse. The police office sent a letter to Romani Yag in mid-January 2005 rejecting prosecution on any criminal or civil grounds. On February 24, 2005, Ms Latsko's lawyer filed a criminal complaint on her behalf to the Uzhgorod city court, but Ms Latsko ultimately agreed to a friendly settlement and the complaint was withdrawn.<sup>85</sup>

According to ERRC partner Romani Yag, at around 7:00 AM on August 16, 2004, two ethnic Ukrainian men, Mr V. and Mr I. beat and set on fire Mr Yaroslav Shugar, a 20-year-old Ukrainian Romani man, in Uzhgorod, Zakarpattia region. He had spent the morning washing the neighbours' three cars for payment, but once he finished he was accused by them of having stolen hemp plants from their yard. The two neighbours then began to punch and kick and beat Mr Shugar with a canister, tying his hands behind his back, and pouring paint thinner over his head. The solvent began to burn Mr Shugar's eyes so the men cut the rope with which they had tied his hands together and Mr Shugar proceeded to wash the solvent from his eyes. At this time, Mr V. put a lighter to the liquid on him and set him on fire. Mr Shugar managed to extinguish the flame with his shirt and ran away. At the regional hospital, he was treated for first, second and third degree burns to his face and neck. Mr Shugar did not initially file a complaint with the police for fear of a revenge attack, however, on August 31, 2004, Mr Vasyl Didychyn, an attorney with Romani Yag, sent a request to the Ministry of Internal Affairs, demanding that an investigation be opened and action be taken against the perpetrators. On September 1, 2004, Mr Shugar was called in to testify before the Uzhgorod Police Department and underwent a forensic medical examination. However, Mr Shugar subsequently requested that the case be dropped, for reasons he declined to specify.<sup>86</sup>

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<sup>85</sup> Case information provided by Romani Yag and Ms Latsko's attorney Mr Vasiliy Dydichin. For a reason unknown to ERRC, Ms Latsko subsequently dropped the case. For further details, please see <http://www.errc.org/cikk.php?cikk=2200&archiv=1>.

<sup>86</sup> Case information provided by ERRC partner Romani Yag and Mr Vasyl Didychyn. ERRC has provided funding help cover the legal costs of this case.



On August 10, 2004, riot police in Krasnoyilsk, Chernivtsi Region, had to be deployed to protect a Roma camp from mass vigilante violence at the hands of local residents who were seeking revenge on the alleged killers of an eight-year-old girl.<sup>87</sup>

Police throughout Ukraine have failed to protect Roma from extreme forms of violence, including pogroms. When such acts have taken place, police and prosecutorial and judicial authorities have failed to provide due remedy to victims. These failures are long-standing. In 2002, after noting the inadequacy of police response to crimes against Romani people, the Council of Europe's European Commission Against Racism and Intolerance (ECRI) urged the Ukrainian government to take measures to ensure that the police react promptly and effectively to all crimes, including those committed against Roma/Gypsies and... to ensure that the racist element of such offences is duly taken into account.<sup>88</sup> There is little indication that these and related recommendations have been effectively acted upon. The ERRC knows of no instance where any perpetrators of terrorising violence against a Roma person have ever been adequately prosecuted.

The Government in fact appears intent on denying that any such issues exist. For example, it recently presented the United Nations Human Rights Committee with untrue information in this regard: "No reports or complaints regarding discrimination or persecution of members of ethnic minorities have been received by either the Ukrainian procurator general's office or the State Committee for Ethnic Minorities and Migration."<sup>89</sup> Indeed, in the last decade, the ERRC has repeatedly sent letters to the Ukrainian general prosecutor's office, although the extreme inadequacy of responses proceeding from this instance, as well as the fact that appealing to this authority has never, in our experience, led to any satisfactory resolution of any human rights issue, have at times caused the ERRC to consider abandoning the practice.

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<sup>87</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, *Country Report on Human Rights Practices 2005: Ukraine*, <http://www.state.gov/g/drl/rls/hrrpt/2005/61682.htm>.

<sup>88</sup> ECRI, *Second Report*, § 58.

<sup>89</sup> United Nations Human Rights Committee, "CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT, Sixth Periodic Report: Ukraine", CCPR/C/UKR/6, 11 April 2006, Para. 356.

