

UKRAINE

A REPORT BY THE EUROPEAN ROMA RIGHTS CENTRE



Country Profile

2011-2012

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

Table of Contents

| | | |
|----------|--|-----------|
| 1 | About the Country Profile | 5 |
| 2 | Introduction and Background Data | 7 |
| | 2.1 Socio-Economic Data | 8 |
| 3 | Summary of (Crosscutting) Laws, Policies and Structures | 11 |
| | 3.1 Prohibition Against Racial and Ethnic Discrimination | 11 |
| | 3.2 Governmental Policies on Roma Inclusion | 13 |
| | 3.3 Other Minority Related Bodies and Organisations | 14 |
| 4 | Key Issues by Theme | 15 |
| | 4.1 Lack of Personal Documents | 15 |
| | 4.1.1 Background and ERRC Activities | 15 |
| | 4.2 Housing and Inadequate Living Conditions | 16 |
| | 4.2.1 Legal Framework | 16 |
| | 4.2.2 Background and ERRC Activities | 16 |
| | 4.3 Violence Against Roma | 17 |
| | 4.3.1 Legal and Policy Framework | 17 |
| | 4.3.2 Background and ERRC Activities | 17 |
| | 4.4 Access to Education | 19 |
| | 4.4.1 Legal and Policy Framework | 19 |
| | 4.4.2 Background and ERRC Activities | 20 |
| | Annex 1: Human Rights Treaty Ratification and Reservation Table | 23 |

1 About the Country Profile

The Ukraine country profile focuses on lack of personal documents, housing, violence and education as key areas for work for the ERRC.

The information is correct as of April 2013.

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2 Introduction and Background Data

The population of Ukraine is about 45,453,000, of whom 47,587 are Roma, according to the most recent official census date in 2001.¹ However, unofficial estimates suggest that the number of Roma in Ukraine is between 120,000 and 400,000.²

Roma live dispersed all over Ukraine, however population density varies throughout the country. The largest concentrations live in the following regions (oblasts): Odessa, Poltava, Cherkassy, Donetsk, Dnepropetrovsk, Kharkiv, Chernovtsy and Transcarpathia. In certain areas in Transcarpathia in western Ukraine, Roma officially represent as much as 3% of the population.

Roma in Ukraine are divided into several sub-groups, related to characteristics such as the region they live in, main language spoken, profession of ancestors, time when ancestors became sedentary, or religion,³ Roma sub-groups in Ukraine include Russka Roma and Servi Roma who settled in Ukraine in the 17th Century, and the Vlachi Roma who migrated in the mid-18th Century. Groups which migrated in the 19th and 20th Centuries include Kalderara and Lovari Roma, who it is believed migrated from Romania. There are also smaller groups such as Plashchuni and Ursari Roma from Moldavia, and Ungrika Roma, found mainly in Hungarian-speaking areas of Western Ukraine.⁴ Current ERRC activities in Odessa Region have shown that there is a wide diversity even within a concentrated region, including many Moldovan Roma, and Roma from Georgia who came to Ukraine to escape violent conflict in Georgia in the early 1990s.

Nationwide, comprehensive data on the socio-economic situation of the Roma in Ukraine does not exist. Nationwide statistics are in general based on the census results; however, the majority of Roma do not disclose their identity in census-taking which creates a serious obstacle for the production of reliable data.

Ukrainian authorities have been urged to establish and implement a system of ethnic data collection to assess and redress any racial discrimination that may exist in the country. This should be in full compliance with all relevant national laws as well as European and international regulations and recommendations on data protection and the protection of privacy, as stated in ECRI's General Policy Recommendation No.1 on combating racism, xenophobia, anti-Semitism and intolerance. However, no such policy has been implemented and there is no reliable data, thus it is difficult to quantify the discrimination which Roma face.

1 State Statistics Committee of Ukraine, All-Ukrainian Population Census, available at: <http://2001.ukrcensus.gov.ua/eng/>.

2 European Commission, *An EU Framework for National Roma Integration Strategies up to 2020*, Brussels, 2011, available at: http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf.

3 Almost all Roma groups in Ukraine are sedentary. There are only a few semi-nomadic groups living in the Western part of Ukraine.

4 European Roma Rights Centre, *Proceedings Discontinued. The Inertia of Roma Rights Change in Ukraine*, December 2006, p 17.

Currently, Ukraine and the European Union closely cooperate within the European Union Neighbourhood Policy, which allows the EU to offer political, economic and administrative support to the Ukrainian authorities.⁵ In 2010, the EU, in cooperation with the Council of Europe (CoE), supported the Ukrainian government in several areas including building capacity to work with Roma towards integration; empowering Romani women; and improving access to healthcare through the introduction of Roma health mediators.⁶ In 2013, a Decree of the President On the Strategy on the Protection and Integration of Roma in Ukraine up to 2020 was published.⁷ The Decree calls for the development of an Action Plan to complement the Strategy within six months of the President signing the Strategy.

In its Third Report on the Implementation of the Framework Convention for the Protection of National Minorities (2009), the Ukrainian government outlined the policies it has undertaken to improve the overall living conditions of the Roma in the country.⁸ The authorities reported that they are in constant discussions with Roma representatives to identify the needs of the community and that they have worked to provide equal access to education. However, the government admitted that Roma still face serious problems with regard to education, employment, health and housing, and everyday discrimination. Further, the government stated that they cannot tackle these issues properly because they lack resources and capacity.⁹

A fundamental problem is that many Roma lack documents, which deprives them of the right to access essential services provided by the state. ERRRC field research has shown that Romani children in Odessa oblast have problems accessing education due to the lack of documents.¹⁰

2.1 Socio-Economic Data

Roma in Ukraine face everyday discrimination and social exclusion. Available data indicates that many Romani communities in Ukraine live in conditions of extreme poverty, often in segregated settlements with little or no access to basic social services such as the education system, health system and other essential services. In general, within the communities there prevails a low level of formal education (in particular among women), high level of unemployment, deplorable living conditions and bad health status.

5 European Union, External Action, Ukraine, available at: http://eeas.europa.eu/ukraine/index_en.htm.

6 European Union, *European Instrument for Democracy and Human Rights, Improving living conditions and integration of Roma*, 2010, available at: http://www.eidhr.eu/files/dmfile/eidhr-campaign-factsheet-14_en.pdf.

7 Government of Ukraine, *Схвалено Стратецію захисту та інтеграції ромів в українське суспільство до 2020 року*, available at: http://www.kmu.gov.ua/control/publish/article?art_id=246034108.

8 Council of Europe, *Third Report Submitted by Ukraine Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities*, Strasbourg, 2009, available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Ukraine_en.pdf.

9 Council of Europe, *Third Report Submitted by Ukraine Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities*, Strasbourg, 2009, available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Ukraine_en.pdf.

10 ERRRC Field research, Odessa region, June – August 2011.

Housing: In the locations where the ERRC conducted research, Roma in Ukraine face serious obstacles in accessing adequate housing. Roma often live in substandard conditions in physically-isolated ghettos, without basic infrastructure and access to public transportation or utilities such as electricity, water and sanitation. Those living in informal settlements or lacking registration or ownership documents for their homes face the potential threat of eviction.

Employment: According to ERRC research in Odessa oblast, unemployment is a serious problem, especially for the Roma community.¹¹ Ukrainian Roma frequently cannot find work due to both the difficult economic situation and outright racial discrimination.

Health: ERRC research in 2011 confirmed that due to the lack of personal documents, many Roma do not have access to medical services. Many Roma communities live in extreme poverty; overcrowded housing conditions, the absence of clean running water and sanitation, and inadequate nutrition make Roma more vulnerable to disease. The health status of Roma is worse than the status of comparable segments of the non-Roma population. Health problems, including heart trouble, stress and infectious diseases such as TB, seem to be relatively widespread among Roma.¹²

Education: Romani children continue to face problems accessing education in Ukraine, as previous ERRC research found.¹³ Some schools refuse to enrol Roma children because of documentation issues. If they are enrolled there is a strong possibility that they will attend a Roma-only school, or a class in which the curriculum is different from regular mainstream schools.

11 ERRC Field research, Odessa region, June – August 2011.

12 See Chiricli 2007-2008 study in Cherkassy, Donetsk, Koncovo, Odessa, and Kirovograd, as well as reports of the Transcarpathia Regional Health Department of the Ministry of Health. Written Comments of the ERRC concerning Ukraine for UN Committee on the Elimination of Racial Discrimination 2006. ERRC Country report on Ukraine Proceedings Discontinued. The Inertia of Roma Rights Change in Ukraine December 2006. WHO Ministerium Forum: “All against Tuberculosis». Strategy on the Development of the Proposal of Ukraine to the Global Fund to Fight AIDS, Tuberculosis and Malaria Round 8: Component “Tuberculosis, approved in April 2008. Resolution of the Launching seminar on Roma Health mediators, Kyiv 2008. IRF Roma programme report.

13 European Roma Rights Centre, *Romani Children face problems in accessing quality education in Ukraine*, August 2008, available at: <http://www.errc.org/article/romani-children-face-problems-in-accessing-quality-education-in-ukraine/2977>.

3 Summary of (Crosscutting) Laws, Policies and Structures

The Ukrainian Constitution contains provisions directly applicable to national minorities in Ukraine. Article 10 of the Constitution guarantees free use of national minorities' languages. Article 11 guarantees that the state promotes the consolidation and development of the Ukrainian nation, as well as the ethnic, cultural, linguistic and religious identity of all national minorities. However, the Law of Ukraine on the Development and Use of Languages in Ukraine¹⁴ and the Law on National Minorities in Ukraine also raise questions as to their practical applicability and relevance for the Roma minority in Ukraine, as both of them clearly refer only to citizens. ERRC research clearly shows that Roma minority in Ukraine has problems with personal documents and access to them, thus their citizenship is questionable and the rights enumerated in the laws are difficult to realise in practice.

In 2012, Ukraine adopted a new Law on Languages in Ukraine.¹⁵ Certain languages were given a status of national minority language (Article 7 para 2 of the Law), however the Romani language has not been given such a status. This has certain negative implications, as alongside national languages categorisation another new definition has been introduced into the Law, which is the regional language concept. According to Article 7 of the Law, a language automatically becomes regional when it is spoken by 10% of the population of the region (apart from state language). Moreover regional authorities can pass a decision for the relevant language to become a regional language even if it's spoken by less than 10% of the region's population. A regional language, according to Article 7 para 1 of the Law, has the same status as the state language (Ukrainian) in regions where it has been recognised. Given that there is no official data on the Roma population in different regions of Ukraine, and the prevalence of the Romani language in some regions of Ukraine it is hardly surprising that the Romani language has not been recognised as a language of a national minority.

Ukraine ratified the European Charter for Regional and Minority Languages, however, without including Romani language. Following protests from Romani organisations, the Government indicated that it might include Romani during the adoption of a new ratification instrument of the Charter.

3.1 Prohibition Against Racial and Ethnic Discrimination

The Constitution of Ukraine contains a general provision banning discrimination. Article 21 states that all people are free and equal in their dignity and rights. Article 24 contains

14 The Law of Ukraine on the Development and Use of Languages in Ukraine, available at: <http://www.usefoundation.org/view/628->.

15 See The Law of Ukraine on the Development and Use of Languages in Ukraine, available at: <http://www.usefoundation.org/view/628>.

a somewhat problematic provision as it covers only “citizens”. It stipulates: “citizens have equal constitutional rights and freedoms and are equal before the law”.¹⁶ It has been pointed out by many international organisations that the principles of equality before the law and of non-discrimination on the grounds mentioned in Article 24 of the Constitution, namely race, colour of skin, religious and other beliefs as well as ethnic and linguistic characteristics, should be guaranteed to all individuals and not just citizens. Any ambiguity created by the term “citizens” might be eliminated by clearly stating that the right to equality and non-discrimination shall be enjoyed by all persons under Ukrainian jurisdiction.¹⁷ However, the provision remains unchanged and the principle of equality strictly extends only to Ukrainian citizens. This creates a serious problem, as many Roma do not possess personal documents or passports and thus might not be regarded as citizens under Article 24 of the Ukrainian Constitution.

The Constitution can be directly invoked in court in all cases including in those relating to discrimination. Article 17 of the Law on the Execution of Judgments and Application of the case law of the European Court of Human Rights provides that the courts can refer to the European Convention on Human Rights as well as to jurisprudence of the Court. Despite this useful mechanism, European standards are very rarely referenced in court, due to the lack of knowledge about international human rights law among legal practitioners, including judges.

The Law on National Minorities does not offer adequate protection against racial discrimination and incitement to racial hatred. The Law does not contain provisions prohibiting direct or indirect racial discrimination. It does not provide clear definition or contain clear criteria as to which groups can be considered to be national minorities. Although it enumerates certain rights and freedoms for national minorities in Ukraine, such as the right to primary or pre-school education in the national minority language, the law does not define the mechanisms through which these rights and freedoms are to be implemented.

A general anti-discrimination clause is to be found in the Ukrainian Civil Code in Article 26, which includes a provision, stating: “all people are equal in their ability to have civil rights and freedoms”.¹⁸

On 28 September 2012 Ukraine adopted a law on the principles of preventing and combating discrimination.¹⁹ The European Commission considered the adoption of the law on countering discrimination as a “step in the right direction” but explicitly underlined that the law “lacks clear

16 Constitution of Ukraine, available at: <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

17 See ECRI Third Report on Ukraine adopted on 29 June 2007.

18 Civil Code of Ukraine, Article 26, available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=181865.

19 List of critical issues by ERRC for Consideration by the UN Human Rights Committee at its 106th session. (15 October to 2 November 2012) report available at: <http://www.errc.org/cms/upload/file/ukraine-submission-hrc-5-october-2012.pdf>.

and complete definitions, broader scope including an explicit reference to sexual orientation and institutional provisions to ensure its effectiveness”.²⁰ It similarly noted that the Ukrainian legislation lacks comprehensive provisions regarding the rights of disabled persons and that Roma, among other groups, face different forms of discrimination and, occasionally, acts of violence.²¹

3.2 Governmental Policies on Roma Inclusion

In Ukraine there existed since 2003 a “Programme on Social and Spiritual Revival of Roma in Ukraine until 2006” (in another translation: “Program of State Support for Social and Mental Renaissance for Ukrainian Roma for Period until Year 2006”). This programme has been poorly implemented due to the fact that at the central-level financial resources were never made available; only some regions of Ukraine implemented individual activities following this State Programme. In 2012, Ukraine was in the process of developing a “Strategy on the Protection and Integration of Roma in Ukraine up to 2020”.²²

On 8 April 2013, the President signed and approved a national strategy on Roma.²³ The Cabinet of Ministers has six months to adopt an action plan. The Strategy is a positive step towards improving the situation of Roma in Ukraine and represents an opportunity for cooperation between the Ukrainian government and national Roma organisations. However, the Strategy as it stands now lacks clear mechanisms of implementation and monitoring and needs to take into account both an evidence-based and a rights-based approach, and underlying problems with discrimination as one of the main reasons behind social exclusion. Lack of documents has yet to be recognised by the Ukrainian authorities as one of the main obstacles for the Romani population in Ukraine to enjoy basic human rights. Lack of data disaggregated by ethnicity presents another obstacle to an efficient and successful implementation of any action plan that should be adopted by Ukrainian Government in the near future.

In the area of education, the Strategy should include a commitment to fully inclusive and desegregated education as a fundamental principle, and should ensure that all Roma children have access to good-quality education, and are not subject to discrimination or segregation. In terms of health care, the strategy needs to ensure access of Roma to both medical care systems and health insurance schemes as well as to address health inequalities faced by Roma in Ukraine. With regard to housing, it should provide for concrete steps to formalise registration

20 European Commission, Implementation of the European Neighbourhood Policy in Ukraine, Progress in 2012 and recommendations for action, Accompanying the document Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Neighbourhood Policy: Working towards a Stronger Partnership, Brussels, 20.3.2013, SWD(2013) 84 final, report available at: http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_progress_report_ukraine_en.pdf.

21 *Ibid.*

22 The Council of Ministers approved the Strategy in February 2013.

23 Ukraine, Decree No. 201/2013 from 8 of April 2013, available at: <http://interfax.com.ua/news/general/148535.html>.

of settlements or individual houses, and remove administrative and other obstacles which prevent Roma from acquiring the necessary documentation to guarantee security of tenure. In the field of employment it is essential to acknowledge that many Roma face difficulties in finding employment due to discrimination from employers, and to include measures that combat discrimination as well as provide the introduction of policies aimed at increasing the number of employed Roma. Specific attention to the situation of Romani women needs to be given by introducing gender based measures as a cross-cutting issue.

3.3 Other Minority Related Bodies and Organisations

According to the New Law on Minorities (Article 5), executive bodies appointed by local and regional deputies' councils should realise state policy in relation to national minorities. In some cases (where necessary) local bodies can establish permanent councils on national minorities. However, at the moment there is no executive body entrusted with specific responsibilities on national minorities and the protection of their rights.

There is no longer an independent body responsible for dealing with national minorities in Ukraine. On 9 December 2010, the President of Ukraine signed a decree dissolving the State Committee for National Minorities and Religions and transferred its responsibilities to the Ministry of Culture, reducing it to the status of a department.²⁴

The Office of the Human Rights Ombudsman is not specifically tasked with covering issues pertaining to racism and racial discrimination. However, the Ombudsman initiated a monitoring programme examining the status of national minorities, which noted that Roma suffer the most from violation of their rights.²⁵ The Ombudsman's office has indicated that members of the Romani community have filed complaints about widespread forcible fingerprinting of Roma carried out by law enforcement authorities.

In 2009 there were 88 Roma NGOs registered in Ukraine working at the national and international level, mainly to preserve the local culture, language and traditions.²⁶ However, civil society is not well developed. Lack of support from the Ukrainian government is also an obstacle for Roma NGOs. Currently, Ukraine is not a party to the Roma Decade, although there are ongoing discussions on the necessity of joining the Decade.

24 Decree of the President of Ukraine No. 1085/2010, *On optimization of the central executive bodies*, available at: <http://iom.org.ua/en/legislation/migration-related-legislation/on-optimization-of-the-central-executive-bodies.html>.

25 European Ombudsman Institute, *Special Report of the Ukrainian Parliament Commissioner for Human Rights*, available at: <http://www.eoi.at/d/Menschenrechte/Ukraine/SPECIAL%20REPORT%20OF%20THE%20UKRAINIAN%20PARLIAMENT%20COMMISSIONER%20FOR%20HUMAN%20RIGHTS.pdf>.

26 Council of Europe, *Third Report Submitted by Ukraine Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities*, Strasbourg, 2009, available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Ukraine_en.pdf.

4 Key Issues by Theme

The following section highlights some of the key topics in Ukraine that the ERRC is working on.

4.1 Lack of Personal Documents

4.1.1 BACKGROUND AND ERRC ACTIVITIES

Research and monitoring undertaken in Odessa region by the ERRC found that there are several areas where the Roma minority suffers from discrimination. Research was carried out between June and November 2011 in seven settlements in Odessa oblast.²⁷ According to ERRC research there are 3,500-4,000 Roma people in these settlements. The research found that the Roma minority in Odessa oblast often have significant problems accessing good-quality education, housing, health care and employment. Obstacles in each of these areas are aggravated because they lack identification documents.

The problem of identification papers clearly requires the most immediate intervention and resolution. The lack of personal documents creates serious impediments for the Roma minority to access their basic human rights, such as education, housing, health care and employment. This issue can be traced back to several causes. Some individuals were late to exchange documents following the collapse of the Soviet Union; some did not have documents during Soviet times and now cannot prove their birthplace, length of Ukrainian residence, etc. to obtain personal documents; and others lack registration of their place of residence, which is a prerequisite for obtaining a passport.²⁸

Research carried out by Chiricli, the ERRC's partner in Ukraine, found the same problems with personal documents and land/housing documents in Donetsk, Lviv, Kiev and Zakarpate oblast. During the project on social mediators in Ukraine, it became obvious that problems with health and accessing healthcare very often stemmed from the fact that Roma do not have personal documents and are thus precluded from realising their basic human rights.²⁹

In 2012 the ERRC began a community-based paralegal project in Odessa region. The project trains people from Roma communities in the processes for acquiring personal documents. The reasons for lack of personal documents are varied and complex. For some, there are

27 Settlements where interviews have been conducted are Bolshevik settlement, Izmail, Shevchenko settlement, Korsuntsi settlement, Lubashovka, Kiliya, Krasnoselka (all in Odessa oblast).

28 Information has been provided by the respondents during interviews carried out by the ERRC monitor during June-November 2011 in Odessa oblast.

29 Starting from April 2010, with the help of the Open Society Institute and the Council of Europe, this project initially aimed at resolving the problem of poor health status and access to healthcare of Roma population in Ukraine.

bureaucratic and administrative obstacles, while for others a low level of literacy or a lack of knowledge on how to get personal documents act as barriers. Community-based paralegals carry out research on the lack of personal documents in their communities, and are working directly with people from their communities, assisting them to acquire personal documents.

4.2 Housing and Inadequate Living Conditions

4.2.1 LEGAL FRAMEWORK

According to the Constitution of Ukraine (Article 47 para 1), everyone in Ukraine has the right to housing. According to para 2 of the same Article, citizens of Ukraine who are socially vulnerable and require social protection have the right to social housing. The Housing Code of Ukraine³⁰ in its Articles 31-46 states that citizens of Ukraine have the right to obtain social housing and lays down criteria for people to be recognised as needing improvement in their housing conditions, and mechanisms and processes to obtain housing. This provision creates problems for the Roma minority as it applies only to citizens, and given that many Roma lack personal documents, they cannot realise their right to social housing in practice.

4.2.2 BACKGROUND AND ERRC ACTIVITIES

Research by the ERRC has shown that there are two main areas of concern in the sphere of housing for the Roma minority. The first set of problems stem from the fact that many Roma do not possess legal titles for the land and houses, thus leaving them at high risk of being evicted as illegal occupants. Moreover, the lack of legal titles for land and houses (lack of registration) creates an obstacle for Roma to obtain personal documents, since it is not possible to obtain a passport without proof of a registered place of residence in Ukraine.

In some cases where Roma built their houses on the land which belongs to the state, it is very difficult to legalise these buildings retrospectively. The process is very expensive and complicated, requiring collection of many documents, proofs and certificates, especially when coupled with sometimes discriminatory attitudes of the officials. Without legal titles to one's house, it is impossible to register one's place of residence as, according to the Rules on the list of documents necessary to register place of residence (No. 985 from 28.07.2004), proof of legal title is necessary in order to obtain registration of the place of residence (be it proof of ownership or lease agreement). Lease agreements also constitute a problem, as to conclude an official lease agreement it is necessary to have a passport or other official personal document, which many Roma lack. According to the Law on the Freedom of Movement and Freedom to choose Place of Residence (Law No. 1382-IV from 11.12.2003) in order to go through an official procedure of registration it is necessary have a passport. Foreigners and stateless people need to present permission for temporary or permanent stay on the territory of Ukraine; most of the Roma lack these personal documents and this creates an administrative deadlock.

30 Housing Code of Ukraine, available at: <http://zakon4.rada.gov.ua/laws/show/5464-10>.

The second set of problems relate to inadequate living conditions. Most of the houses that were visited by the ERRRC lack basic amenities, such as heating, water and gas, while some of the settlements are situated close to garbage dumps.³¹ Such poor living conditions negatively impact the health of the Romani residents. Medical services are either unavailable to Roma because of lack of personal documents, or unaffordable due to the high cost of prescription medicines. Often the only medical care available is emergency care.

4.3 Violence Against Roma

4.3.1 LEGAL AND POLICY FRAMEWORK

Article 161 of the Criminal Code provides for criminal responsibility for deliberate actions which aim to incite ethnic, racial or religious animosity, as well as hatred aimed at humiliating the national honour and dignity of a person or offending citizens' feelings based on their religious views. This provision has seldom been included in convictions, as it requires proof of deliberate action on the part of the perpetrator, which is difficult to establish. Furthermore, Article 161 again refers only to citizens.

The protection afforded to a person's dignity and feelings has not been extended to include the grounds of race, colour, ethnic origin and language. Article 115 paragraph 14 of the Criminal Procedure Code of Ukraine also has a reference to racial/ethnic hatred, and includes racial hatred as being an aggravated circumstance. It is also very rarely invoked in the courts.

4.3.2 BACKGROUND AND ERRRC ACTIVITIES

Violence against Roma remains a serious problem in Ukraine. The ERRRC, through its Ukrainian monitor, has documented several attacks on Roma, including incidents involving state actors.

Incidents of Police mistreatment of Roma

During September and October 2011, law enforcement officials targeted Romani residents with identity checks, including fingerprinting and verification of documents in Lviv. Romani individuals have reportedly been subject to specific measures to collect personal, identifying information, in the absence of any allegation of involvement in criminal activities. Police have reportedly made enquiries on Roma in the process of regular checks of public places, taking measures to check the identity documents of any Romani person found. Some of those Romani individuals who were subject to checks were also taken to the police stations, where they were fingerprinted, photographed and some were beaten up.³²

31 Information obtained through the interviews conducted by the ERRRC monitor through June-November 2011.

32 ERRRC, Ukrainian Police Must Stop Targeting Roma, 20 October 2011, available at: <http://www.errc.org/article/ukrainian-police-must-stop-targeting-roma/3937>.

A violent police raid took place on a Roma settlement in Uzgorod on 11 January 2012. A special assignment unit within the Ukrainian Ministry of Interior, Berkut, burst into the Radvanka settlement in the early morning, according to media reports and testimonies from local residents. The law enforcement officials used tear gas and beat residents with rubber batons. The raid on the settlement had been planned and carried out as part of an ongoing operation to target places that could be centres of organised criminal activity. The law enforcement officials violated domestic law in using batons and tear gas on women, children, older people and people with disabilities in the community. The officials extended reasonable suspicion of individuals, who may have been implicated in criminal activities, to the whole community. This raises serious questions as to the impartiality and legality of the action.³³

Incidents of violence by non-state actors against Roma

In November 2010 in Makeevka, Donetsk oblast, two brothers attacked a Romani woman with a screwdriver. She later died from these wounds. At the pre-trial stage, the men claimed that they did it to “clean the nation” from people who sell drugs. When the perpetrators saw the Romani woman next to the local hospital they assumed she was selling drugs and killed her. The ERRC litigated the case and in July 2012 the court of the second instance found the perpetrators guilty of premeditated murder with racial hatred as an aggravating circumstance.

On 31 May 2012, a Romani settlement in Kiev was burned to the ground by unknown perpetrators. The settlement was home to about 70 people. Residents of the settlement reported that during the attack they were ordered by their assailants to “disappear from Kiev”, and the perpetrators also threatened to shoot the residents. Many Romani individuals lost valuable personal documents, including passports. Sources quoted in the media have claimed that law enforcement officers were ordered to “sweep” the settlement, i.e. get rid of it. A police spokesperson said that they were continuing to investigate reports of police involvement in the incident.³⁴

European Court of Human Rights on discrimination against Roma in Ukraine murders

In September 2012, the European Court of Human Rights (ECtHR) delivered a judgment finding discrimination in the case of Fedorchenko and Lozenko v Ukraine. Five Romani people, including children who were three, six and 15 years old, died after a violent arson attack, which took place on 28 October 2001 in the Kremenchug region of Ukraine. Three men deliberately set a family home on fire, breaking into the house to spray it with flammable liquid. They then barred the door of the house from outside and fled. The severely flawed investigation by the Ukrainian authorities into the incident did not result in any effective outcomes, and nobody was prosecuted for the death of these five people.

33 ERRC, Ukrainian Authorities Must Investigate Violent Police Raid Against Roma, 25 January 2012, available at: <http://www.errc.org/article/ukrainian-authorities-must-investigate-violent-police-raid-against-roma/3961>.

34 ERRC, Slovakia and Ukraine Must Investigate Attacks against Roma, 25 June 2012, available at: <http://www.errc.org/article/slovakia-and-ukraine-must-investigate-attacks-against-roma/4011>.

The ERRC represented Mr Fedorchenko and Ms Lozenko (the parents and grandparents of the arson victims) in an application to the ECtHR in 2002, claiming that among those responsible for the arson attack was a senior police officer and that the whole incident had not been properly investigated. The applicants also claimed that both the attack and the subsequent failure to investigate were linked to widespread discrimination against Roma in Ukraine. Ten years after this case was filed, the ECtHR found that Ukraine had failed to meet the procedural requirements of Article 2 of the European Convention on Human Rights (right to life) by failing to conduct an effective investigation into the deaths and in doing so also violated breached Article 14 (right to be free from discrimination).³⁵

4.4 Access to Education

4.4.1 LEGAL AND POLICY FRAMEWORK

The Law on Education³⁶ sets basic standards as to primary and secondary education in Ukraine. It proclaims that every citizen of Ukraine has a right to education, and the state guarantees education free of charge irrespective of race, nationality, gender, place of residence, etc. social and material status, etc. (Article 3 of the Law). According to Article 7 of the Law the language of education shall be regulated in accordance with Article 20 of the Law on Languages in Ukraine (see above). Article 20 of the Law guarantees education in the regional language or in the language of national minorities. Para 2 of Article 20 states that there shall be pre-school and school facilities that provide children with the opportunity to study in the language of their choice. However, both laws (Law on Education and Law on Languages) are missing exact implementation mechanisms for these provisions. In the absence of such structures it is difficult to imagine how state authorities can implement these regulations in practice.

The Law on Education apparently contradicts Article 53 of the Constitution which states that everyone (and not only to citizens as it is stated in the Law on education in Article 3 para. 1) on the territory of Ukraine has the right to education and that state guarantees national minorities the right to have education in their own language. The new Law on Languages has already listed national minorities in Ukraine, and the Roma minority is not among them, so it is difficult to imagine now how Roma minority can claim education in their own language. It should be noted that the education policy in Ukraine does not contain any measures specifically dealing with the education problems of Roma.³⁷

35 ERRC, European Court of Human Rights Rules on Discrimination Against Roma in Ukraine Murders, 21 September 2012, available at: <http://www.errc.org/article/european-court-of-human-rights-rules-on-discrimination-against-roma-in-ukraine-murders/4054>.

36 The Law on Education, available at: <http://zakon0.rada.gov.ua/laws/show/1060-12>.

37 The European Roma Rights Centre (ERRC) and Chiricli, Parallel report to the UN Human Rights Council, April 2012, report available at: <http://www.errc.org/cms/upload/file/ukraine-un-upr-submission-23-april-2012.pdf>.

4.4.2 BACKGROUND AND ERRC ACTIVITIES

There are many obstacles to good-quality education for Romani children in Ukraine. Research conducted by ERRC from June to December 2011 in Odessa oblast indicated that many Romani children do not attend school. In some cases, this is due to a lack of personal documents. This practice is illegal, since everyone has the right to free education, according to the Law on Education and the Constitution. In other cases, Romani children are placed in segregated schools or sent to special schools for children with mental disabilities, in the absence of a proper assessment procedure.³⁸ The distance and cost of education are also obstacles.

In the village of Korsuntsi, Odessa oblast, according to Romani parents interviewed by ERRC only 30% of the 40 Romani children (12 children) of school age are attending school. The majority are not attending school either because of a lack of documents, or because of serious financial constraints (most of the Roma live in extreme poverty)³⁹. In the city of Izmail (Odessa oblast) in the special school for mentally handicapped children (School no. 5) Romani children constitute 33% of the total number of pupils (80 pupils), according to the director of the school.⁴⁰ Once children are placed in special schools, there is no further testing on an ongoing basis to reassess the pupils, thus there is no record of any improvement or opportunity to integrate back into mainstream schooling.

Most of the Romani children in Izmail city (according to the interviewed children and their parents) cannot read, write or speak in Ukrainian, and often only understand Romani language when they start school. Due to language barriers and the fact that language testing is carried out in a second language, Romani children are very likely to be admitted to special schools, even though they don't require special education. Often, one of the primary reasons for this is a lack of knowledge of Ukrainian.⁴¹ Instruction in Romani language, however, is only available in "Sunday schools", but not in the general pre-primary, primary and secondary schools, though in addition to Ukrainian and Russian it is possible to study eleven further languages.⁴²

The ERRC previously addressed the Ukrainian Minister of Education and Science on the subject of segregated schooling, and ERRC field research shows that this problem persists.⁴³ In the village of Nerubaiskoe (Odessa oblast) there is a segregated school where only Romani children

38 There is a segregated school in Odessa oblast, school No. 5 and special school populated predominantly by the Roma children in Izmail, Odessa Oblast (according to the research).

39 Interviews conducted by ERRC monitor in August 2011.

40 Interview conducted by ERRC monitor with the director of school No. 5 on 21-22 June 2011. According to the City of Izmail website, Roma constitute less than 5% of the total population. See: <http://izmail-city.org/about-izmail>.

41 Information provided by parents in interviews conducted by ERRC through June-July 2011.

42 See Schmidt, Carmen: *Minderheitenschutz im östlichen Europa*. Kapitel "Ukraine", Köln 2005. Available at: www.gesis.org/Information/SowiNet/sowiPlus/NachbarnEU/Gesellschaft/Minderheiten.htm.

43 For previous research see ERRC, *Romani Children Face Problems in Accessing Quality Education in Ukraine*, 18 August 2008, available at: <http://errc.org/cikk.php?cikk=2977>.

are studying. One of the teachers noted that “There are only Romani children studying in our school, around 100. We have four classes in the school, where children from seven up until 15 are studying, where they study a curriculum, not different from mainstream schools. Romani children have problems studying in mainstream schools, because they create conflicts and also non-Romani parents don’t want Romani children in the same class as their children.”⁴⁴

44 Interview with the teacher at school in the village Nerubaiskoe conducted by the ERRC monitor in Ukraine on 5 October 2011.

Annex 1

Human Rights Treaty Ratification and Reservation Table

| Treaty | Accession/ Ratification Date | Objections and Reservations |
|---|------------------------------------|--|
| UN Conventions | | |
| International Covenant on the Elimination of All Forms of Racial Discrimination (CERD) (1966) | 7 March 1969 | Declaration: 17 January 1984 The Ukrainian Soviet Socialist Republic states that the provision in article 17, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination whereby a number of States are deprived of the opportunity to become Parties to the Convention is of a discriminatory nature, and hold that, in accordance with the principle of the sovereign equality of States, the Convention should be open to participation by all interested States without discrimination or restriction of any kind. |
| International Covenant on Economic, Civil and Cultural Rights (1966) | 12 Nov 1973 (r) | Declaration made upon signature and confirmed upon ratification: The Ukrainian Soviet Socialist Republic declares that the provisions of paragraph 1 of article 26 of the International Covenant on Economic, Social and Cultural Rights and of paragraph 1 of article 48 of the International Covenant on Civil and Political Rights, under which a number of States cannot become parties to these Covenants, are of a discriminatory nature and considers that the Covenants, in accordance with the principle of sovereign equality of States, should be open for participation by all States concerned without any discrimination or limitation. |
| International Covenant on Civil and Political Rights (1966) | 12 Nov 1973 (r) | Declaration made upon signature and confirmed upon ratification: The Ukrainian Soviet Socialist Republic declares that the provisions of paragraph 1 of article 26 of the International Covenant on Economic, Social and Cultural Rights and of paragraph 1 of article 48 of the International Covenant on Civil and Political Rights, under which a number of States cannot become parties to these Covenants, are of a discriminatory nature and considers that the Covenants, in accordance with the principle of sovereign equality of States, should be open for participation by all States concerned without any discrimination or limitation. 28 July 1992 In accordance with article 41 of the International Covenant on Civil and Political Rights, Ukraine recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that any State Party claims that another State Party is not fulfilling its obligations under the Covenant. |

ANNEX 1: HUMAN RIGHTS TREATY RATIFICATION AND RESERVATION TABLE

| | | |
|---|------------------|--|
| Optional Protocol to the ICCPR (1966) | 25 Jul 1991 (a) | |
| Optional Protocol to IC-CPR: Abolishment of the Death Penalty (1989) | 25 July 2007 (a) | |
| Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (1968) | 19 Jun 1969 (r) | Declaration: The Ukrainian Soviet Socialist Republic declares that the provisions of articles V and VII of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which prevent certain States from signing the Convention or acceding to it, are contrary to the principle of the sovereign equality of States. |
| Convention on the Elimination of All Forms of Discrimination Against Women (1979) | 12 Mar 1981 (r) | |
| Optional Protocol to CEDAW (1999) | 26 Sep 2003 (r) | |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) | 24 Feb 1987 (r) | |
| Optional Protocol to CAT (2002) | 19 Sep 2006 (r) | |
| Convention on the Rights of the Child (1989) | 28 Aug 1991 (r) | |
| Optional Protocol CRC: Involvement of Children in Armed Conflict (2000) | 11 Jul 2005 (r) | Declaration: Ukraine confirms its obligations taken under Article 38 of the Convention on the Rights of the Child in case of the armed conflicts which concern children and, referring to paragraph 2 of Article 3 of the Optional Protocol, declares hereby that the minimum age for the voluntary (on a contractual basis) joining into its national armed forces is 19 years. Ukraine, in accordance with the provisions of its national legislation, guarantees its adherence to the exclusive principle of voluntarism in the process of recruitment of citizens into its armed forces on a contractual basis, without any manifestation of violence and enforcement. |
| Optional Protocol CRC: the Sale of Children, Child Prostitution and Child Pornography (2000) | 3 Jul 2003 (r) | |
| Convention on the Rights of Persons with Disabilities (2006) | 4 Feb 2010 (r) | |

| COE Conventions | | |
|---|-------------|--|
| Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) | 11 Sep 1997 | |
| Protocol 12 to ECHR on general prohibition of discrimination | 27 Mar 2006 | |
| European Social Charter (revised) ⁴⁵ | 21 Dec 2006 | Ukraine has not ratified the Additional Protocol providing for a system of collective complaints |
| European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment | 5 May 1997 | |
| Framework Convention for the Protection of National Minorities | 26 Jan 1998 | |
| Council of Europe Convention on Action against Trafficking in Human Beings | 29 Nov 2010 | |
| Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse | 27 Aug 2012 | |
| European Charter for Regional or Minority Languages | 19 Sep 2005 | |

45 The table of accepted provisions is available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ProvisionTableRevMarch2013_en.pdf.

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

