

Summary

Hate Crime in the Ukraine

Victim groups and counselling programs of
civil society actors

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Introduction

Current developments in the Ukraine

In the 1990s and on until the middle of the first decade of the 21st century, the Ukraine was generally considered to be a tolerant country open to ethnic minorities, one that, unlike other East European transition countries, had long been spared racism and xenophobia. In 2006 however, the Ukrainian and international public was shocked by the murder of two Africans living in the Ukraine. In 2007 and 2008, there were ten more murders of persons from Africa and the wider Middle East, with racist motivations suspected in each case. Since Ukraine does not yet have systematic governmental or non-governmental monitoring of xenophobic and racist crimes, observers assume that these murders represent only the tip of the iceberg of racist attacks. The cases alarmed Ukrainian human rights defenders and international institutions and the Ukrainian and international press began to take note of the phenomenon of rightwing extremist violence, its causes and the victim groups concerned. Ukrainian politicians, too, reacted to the events, quickly creating a series of governmental working groups intended to combat radical rightwing violence. Independent monitoring reports suggest that the number of violent rightwing extremist crimes fell considerably in 2009. Observers and human rights defenders identify the clear and swift reaction of the Ukrainian authorities, the Ukrainian civil society and international institutions as one of the reasons behind this positive trend. However, the period of observation is certainly too short and the data currently available too sketchy to admit the conclusion that sustainable improvement in the situation has been achieved.

Aims of the Research

In the autumn of 2009, European Exchange Berlin, with financial support from Foundation EVZ [Stiftung Erinnerung, Verantwortung und Zukunft], conducted a study on the topic of "hate crime in the Ukraine". Foundation EVZ is interested in acknowledging the suffering of victims of hate crime in the countries of Central and East Europe and improving their legal position. In that context, the Foundation is convinced that a careful examination of the possibilities of establishing new and improving existing counselling opportunities for victims is necessary.

The aim of the research was to find answers to the following questions: what counselling programs currently exist and which non-governmental, governmental or international actors are already actively combating hate crime? What level of access do victims of hate crime and those representing their interests have to public opinion and what type of support and training is needed by those non-governmental actors that are working against hate crime.

A reference point for this research was provided by the experiences within the German-Polish research project "Monitoring of hate crimes and victims assistance in Poland and Germany", the

findings of which were published in a study also funded by the Foundation EVZ¹ and which should be taken into account in the development of options for action for the trans-national struggle against hate crime.

Terminology

“Hate crime” is a term used to describe crimes in which the victim of the criminal offence was targeted solely or chiefly upon the criterion of belonging to a specific social group and in which the crime was aimed primarily against the targeted group as a whole. As do many international organizations, this study, like the German-Polish comparative study referred to above, applies the following definition of hate crime, which was formulated by the Office for Democratic Institutions and Human Rights (ODHIR):

- A) Any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership with a group as defined in part B)
- B) A group may be based upon a characteristic common to its members such as real or perceived race, national or ethnic origin, language, color, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor.²

Hate crime can be viewed as an extreme form of discrimination. However, while discrimination refers to unequal treatment, in the sense of treating certain persons less favourably on the basis of their affiliation with a religious, ethnic or sexual minority³, hate crime goes far beyond the phenomenon of discriminatory or unequal treatment, because it actively infringes upon the rights, the physical integrity and ultimately the identity of the victim. “Hate crimes are designed to intimidate the victim and the victim’s community on the basis of their personal characteristics. Such crimes send a message to the victim that they are not welcome, they have the effect of denying the victim’s right to full participation in society. They also send a message to members of the community sharing the characteristic that they also do not belong, and could equally be a target. Hate crimes, therefore, can damage the fabric of society and fragment communities.”⁴

The use of the term “hate speech” follows the definition of Amnesty International, which states that “hate speech” comprises any statement or activity that incites nationalist, racist or religious hatred and calls, directly or indirectly, for violence, exclusion and intolerance.⁵ Derogatory terms and statements about a people, a nation or a religious, linguistic or other social group count as hate speech. In the German-speaking world, the term “Volksverhetzung”⁶ is in widespread use in the area of criminal law.

¹ Grell et al.: Monitoring Hate Crimes and Victim Assistance in Poland and Germany.

² OSCE – ODIHR: Challenges and Responses to Hate-Motivated Incidents in the OSCE Region for the Period January-June 2006, S.7.

³ Article 2 of the EU’s Anti-Discrimination Directive 2000/43/EC

⁴ OSCE – ODIHR: Hate Crime Laws, p. 17.

⁵ Amnesty International Ukraine: Mova vorozhnechi.

⁶ Volksverhetzung: “incitement to hatred and violence against segments of the population (or minority groups) or publishing insults against them (in such a manner as to endanger the peace or to expose them to scorn or contempt)”, Dietl/Lorenz: Wörterbuch für Recht Wirtschaft und Politik, 1999. –*trans.*

Methods

Since the problem of hate crime is relatively new to the Ukraine, no organization that focuses solely on the prevention of hate crime or the counselling of hate crime victims currently exists. Those organizations that do offer such counselling do so alongside other programs and in some cases not within the framework of clearly demarcated projects. The research of European Exchange in July 2009 revealed that 180 organizations in the Ukraine either have already developed programs addressing hate crime or are active in fields that would seem to call for their development. In August 2009 European Exchange wrote to those 180 organizations, requesting them to fill in a questionnaire intended to elicit information about the questions outlined above. Of those, 34 organizations returned the questionnaire, i.e. a response of just under 20%. Representatives of 13 of those organizations were then interviewed in face-to-face sessions lasting one to two hours in September and October. Another 14 organizations, though they did not take part in the survey, were identified later on in the course of the research as actors and agreed to participate in an interview about their assessment of and activities relating to hate crime. We categorized the organizations surveyed into the following groups:

- human rights organizations,
- organizations representing the interests of migrants and “new minorities”,
- associations of historical minorities and
- LGBT (Lesbian-Gay-Bisexual-Transgender) organizations.

That division is based on the historical and social situation of the Ukraine and is similar to those adopted by Ukrainian experts.

For the most part, the interviews were held on the premises of the organizations surveyed in Kiev, Kharkiv, Cherkasy, Chernihiv and Vinnytsya. The representatives of the organizations from Mykolayiv, Luhansk, and Simferopol were interviewed during a “United against Racism” conference held in Kiev in October of 2009. In addition, interviews with representatives of international institutions, the Ukrainian Interior Ministry and the Ukrainian security service, the SBU (Sluzhba Bezpeky Ukrainy), were held in October 2009.

The study itself consists of three sections. The first section outlines the legal and institutional framework for combating hate crime. The second section contains a description of perpetrator groups, victim groups and the perception of xenophobia and racism within Ukrainian society. The third and central section of the study describes the civil society actors that are actively working against hate crime and on behalf of hate crime victims. This abstract summarizes the central recommendations for combating hate crime in the Ukraine broken down by fields of activity, introducing each field with a brief description of the relevant problem. The following fields are addressed:

- monitoring,
- victim counselling and victim support,

- educational offerings for central actors,
- interest representation and legislative initiatives and
- raising awareness in society.

The recommendations for action were derived from the suggestions collected from the organizations surveyed.

Problem descriptions and recommendations for action

a) Monitoring

There is no comprehensive state monitoring of hate crimes in Ukraine to date. As a result, both international and Ukrainian institutions rely on data collected by NGOs. The chief problem associated with this non-governmental monitoring is its lack of completeness. That incompleteness can be traced to certain circumstances that have characterized the situation in the Ukraine: a scarcity of methodological skills, the difficulty of gaining access to individual groups of victims and the absence of official hate crime data for comparison. According to the NGOs surveyed, willingness on the part of hate crime victims to file complaints is also low, due to the inadequate language skills on the part of many victims, a lack of translation services and, frequently, a lack of clarity concerning the legal status of the victims themselves (in the case of immigrants and refugees). It is also often the case that individual victims or whole groups of victims, such as the Roma, have lost trust in the Ukrainian law-enforcement bodies due to bad experiences with those bodies (above all, involving extortion). The LGBT community has also proved very reserved with regard to reporting hate crime offences, a circumstance that the organizations surveyed attributed to a lack of trust both in law-enforcement and in the NGOs themselves. As a result, there is very little public awareness of cases of hate crimes against refugees with irregular status, Roma or LGBT, although according to the organizations surveyed, such crimes do indeed occur. This incompleteness with respect to the registration of xenophobic motives behind criminal acts in the context of police investigations and judicial decisions further complicates the attempt to form an accurate view of the actual situation. Another problem for Ukrainian-wide monitoring is the attitude of some regional NGOs, which in many cases shy back from reporting in depth about the situation in their regions due to feelings of local pride.

Since the absence of national, comprehensive monitoring represents a considerable obstacle to the development of action programs targeting hate crime, a major portion of the organizations surveyed see a particularly urgent need for action in that area. The objective should be the reporting and systematic registration of every case of hate crime. That, according to the organizations surveyed, would require the formation of a national network of NGOs and/or stronger networking among regional organizations engaged in human rights monitoring. Some organizations advocate the establishment of an independent monitoring centre or of a human rights centre whose activities include hate crime monitoring. The organizations believe that in addition to the information about hate crime offences, national monitoring should encompass the associated judicial decisions, in order to permit an

assessment of the effectiveness of the judicial system. They see an urgent need for training programs for the relevant staff in non-governmental institutions in the areas of data collection and processing for the professionalization of their work. It was suggested that the regional ministerial assistants be integrated into NGO monitoring activities and that NGOs and the Militsiya should cooperate directly in the area of hate crime monitoring in order to create a closer link to state structures. There is also a need to train Militsiya officers in hate crime registration.

Recommendations for action:

- Training for staff of NGOs on the methodology of hate crime monitoring (inclusion of international expertise)
- Support of networking and facilitation of data exchange and data comparison among the non-governmental monitoring centres that currently exist in Ukraine
- Training for Militsiya members in the investigation of hate crimes and the associated reporting (in cooperation with the OSCE)
- Support for cooperation between members of the Militsiya and NGOs in registration of hate crime cases
- Introduction of monitoring of judicial rulings on hate crime cases
- Strengthening of existing monitoring of hate speech
- Establishment of an independent media complaint centre

b) Victim counselling and support

At present, there are only a very few programs run by Ukrainian NGOs that offer counselling or support to hate crime victims. Although many victims of hate crimes are members of new minorities (immigrants, students and refugees from Asia, Africa or the Middle East), the degree of organization within these groups is remarkably low. Established human-rights organizations and associations of historical minorities, which can rely to a certain extent on trained staff and good contacts with state structures and networks, often have only limited knowledge about the specific characteristics of the groups of victims of hate crimes and no access to them. Lack of language skills among the members of some victim groups and among the staff of state and non-governmental institutions further hinders cooperation and the provision of assistance.

Another problem is associated with the fact that many hate crime victims are unfamiliar with the special options for investigating cases of hate crime that are provided for in Ukrainian legislation (Article 161 and Article 67 of the Ukrainian Penal Code) and are unable to enforce their rights vis-à-vis the law enforcement authorities. The victims themselves often lack the self-confidence and courage to free themselves from passivity and take an active stand on behalf of their rights. The social marginalization and lack of inter-group solidarity among the various victim groups, who themselves, like the society at large, are influenced by prejudice and stereotypes (“The majority of human rights defenders are homophobic” - “racist prejudices among LGBT”) contribute to making the creation of cross-group solidarity and cooperation more difficult.

In order to offer adequate victim support, the organizations active in this area are in need of special training for their staff. This refers both to psychological and legal training of NGO personnel. Victim

support should range from psychological and social assistance in emergency shelters and rehabilitation centres to telephone hotlines on through to legal assistance in filing criminal charges and representation in court. It appears that developing target-group-specific assistance for the various groups of hate crime victims is of importance. There is a need for informational events and materials to bring such programs to the attention of the target groups, informing members of those groups about their legal options, existing programs and the possibilities of defending themselves. Events of this type could also help to build trust. Support for sociological and psychological research and cultural and intercultural activities would help to strengthen the self-awareness and group identity of victim groups. The integration of foreign students could be promoted through student clubs or initiatives for foreign students and migrants that could organize events protesting xenophobia at universities and schools. Integration-oriented programs such as language courses and job placement services could contribute to activating potential victim groups. Team-building processes among the different victim groups should be supported in order to overcome prejudices and stereotypes among the victim groups themselves.

Recommendations for action:

- Capacity building for immigrant and new minority organizations through the transfer of experience from established Ukrainian human rights organizations and through the development of international networks
- Professionalization of existing counselling programs for hate crime victims offered by organizations of immigrants and new minorities and at established Ukrainian human rights organizations through staff training (psychological and legal counselling)
- Development of informational offerings for groups of potential victims explaining their legal rights and informing about existing assistance programs
- Encouraging the development of positive self-images among minority groups through sociological and psychological research and publications and through cultural and intercultural activities
- Integration of foreign students into university life through student clubs and initiatives (mentoring programs)
- Integration programs for members of minority groups in local communities (language courses and job placement assistance) and promotion of related initiatives started by such groups

c) Educational programs for central actors

Since hate crime is a relatively young phenomenon in Ukraine, there are as yet only a few specific educational offerings for central actors and those are not yet well established. There are important steps in combating and preventing hate crime and for victim assistance that cannot be taken because the staff of the relevant – state and non-state – institutions do not have the necessary methodological skills. The organizations surveyed identified a need for several types of educational offerings; those not mentioned in the sections on a) monitoring, d) interest representation and legislative initiatives and e) public awareness raising are listed here, arranged according to group of actors.

Law-enforcement authorities:

- Informational and educational programs for lower-ranking Militsiya officers on the subject of minority rights – including programs in cooperation with international institutions (OSCE) and Ukrainian human rights organizations
- Training for members of law-enforcement authorities on conducting investigations in cases where hate crime motives are suspected
- Introduction of a code of behaviour for Militsiya activities in a multi-ethnic society
- Raising the proportion of representatives of ethnic minorities and multilingual officers in the Militsiya

Journalists:

- Training in journalistic ethics and issues associated with inter-ethnic aspects in reporting

Physicians:

- Improvement of the medical care provided to immigrants and refugees

Teachers and employees at non-school educational institutions:

- Training in methods for developing participative forms of learning, developing social competence and critical thinking
- Training on the backgrounds of immigration and the social situation of minority groups, including representatives of minority organizations as instructors
- Training in critical approaches to history, including on controversial topics such as the Holocaust, Holodomor, and World War II history

d) Interest representation and legal initiatives

The establishment of the governmental working groups on combating xenophobia – and the participation of NGOs in them – represents an important initial step in the representation of the interests of victim groups in the political process. In general, the activities of the Diversity Initiative representing the interests of victim groups in the political decision-making process are seen in a very positive light. However, the influence of civil societal structures on the responsible authorities is still very slight; lack of cooperation among existing committees in the past and the frequent personnel changes within the authorities have considerably complicated the implementation of the resolutions adopted by the committees. Representation of the interests of victim groups in the legislative process has also made only sluggish progress due to the frequent disruption that characterizes the legislative process in Ukraine. The LGBT community faces the additional problem of having representatives of the Church and citizens initiatives lobbying against them on a massive scale. Many Ukrainian human rights organizations and international organizations have deplored the lack of an anti-discrimination law for several years. Those organizations actively working for the representation of victim groups' interests and legislative initiatives on their behalf do not have enough staff workers who are familiar with the institutional, administrative and judicial contexts that affect lobbying success.

NGO representatives and representatives of minority organizations should be integrated to a greater degree into the work of state authorities and the relevant working groups and committees. The authorities should be subjected to public control with respect to the implementation of resolutions adopted by the working groups. To professionalize their activities, the NGOs active in this area need appropriate office structures and specialist personnel with access to the relevant networks and committees as well as qualified lawyers. Many of the organizations surveyed would like legal support from experts from EU countries in order to lend greater weight to their legislative initiatives.

Recommendations for action:

- Adoption of an anti-discrimination law
- International exchange of experience in the drafting of and lobbying for legislative initiatives
- Development of lobbying capacities at NGOs that speak out for the rights of victim groups
- Establishment of a public control over the implementation of working plans for combating hate crime

e) Raising public awareness

The opening of the Ukrainian post-Soviet society to global migration movements in the context of a transformation of the economic system poses considerable challenges to the country's ability to adapt socially and culturally. At the same time, the cultural elites, the shapers of the country's public discourse, must consider and promote an ongoing process of national identity-building, through which the country has to define its place in the history of Europe as a whole and develop interpretation models for the complex and sometimes ambivalent experiences of the 20th century. The discussion of this issue, which is essential for the future of the Ukraine, has considerable impact on the self-awareness and the attitude towards what is "foreign" in present-day Ukrainian society. The level of tolerance in the Ukrainian population is currently comparable to that seen in other Eastern European societies in transition and is substantially higher than that found in the Russian Federation. However, there is cause for concern in the increase in hostile attitudes towards representatives of new minorities and in considerable resentment directed against the LGBT community, including among those holding political offices.

The need for action to develop a society that is open to ethnic, sexual and religious minorities is first and foremost associated with overcoming fear of the unfamiliar. In the last two years, state and non-state action alliances have become active in that context, launching campaigns for tolerance and organizing anti-racism demonstrations and intercultural festivals. The organizations surveyed recommended holding large-scale events of that kind, not only in view of the 2012 European Football Championships. Organizations that work with children and young people would profit from educational training and participation in forums promoting the international exchange of experience. Innovative methods, such as role-playing, interviews with contemporary witnesses, and media work should be brought into school and non-school educational activities to a greater degree. The development and

support of discussion clubs, human-rights film festivals and summer camps teaching tolerance should continue. The same goes for the production of instructional materials, books, posters and other media. Cultural events held by minority organizations could be expanded, making them accessible to a broader public. Political and international support should be given to the causes of LGBT organizations, which in the past have repeatedly been prevented from exercising their right of assembly. Intercultural activities and, with them, opportunities for contact among representatives of minorities and the majority population could be strengthened.

Recommendations for action

- Support for tolerance campaigns that impact the public, not only with an eye to the 2012 European Football Championships
- Support for tolerance projects for children and young people that use innovative (participative) methods
- Strengthening the right of free assembly of LGBT organizations
- Promoting intercultural activities involving representatives of ethnic minorities and the majority population