



American Bar Association Rule of Law Initiative (ABA ROLI)
Kharkiv City Public Organization «Institute of Applied Humanitarian Research»

**ASSESSMENT OF MONITORING AND REPORTING (PUBLIC
BODIES) ON ISSUES OF RACISM AND XENOPHOBIA IN UKRAINE AND
RECOMMENDATIONS FOR ITS IMPROVEMENT**

2012

Despite the fact that in recent years responsibility for the hate crimes was increased in Ukraine and racist motivation is directly mentioned as aggravating circumstance in the commission of certain crimes against life or health (changes are made to the Criminal Code of Ukraine), despite the relatively well-developed legal framework aimed at preventing discrimination in society, the cases of xenophobia and racism in the country to date, and therefore the relevant offenses are not isolated. In the opinion of some human rights activists there is an increase in Ukraine of hate crimes and hate speech by officials¹. It is believed that the number of hate crimes started to grow headlong in Ukraine from October 2006 and it has become rampant in the middle of 2008. This circumstance forced the state to take various measures², through which the upper layer of these crimes was removed, the number of hate crimes began to decline in 2009-2011, that is confirmed by state statistics and monitoring of non-governmental organizations. However, it is obvious that the problem of racism and xenophobia is still urgent and acute for Ukraine.

According to the results of research conducted by Institute of Applied Humanitarian Research to persons, who consider themselves victims of xenophobia and racism, most of the victims are from Africa, Central and Southeast Asia, Middle East and Caucasus, as well as people with non-typical for the Ukrainian community appearance. A certain number of these persons, who belong to vulnerable groups, do not have Ukrainian citizenship. According to reports on attacks, criminals choose their victims on the base of their phenotypes, according to which they may be "illegal migrants" or "foreigners" from less developed countries - that is "potential illegal migrants." However, cases that are rarely recorded by law-enforcement agencies represent only the tip of the iceberg, while, in fact, incidents that can be evaluated as xenophobic and racist happen more often. There are a lot of reasons for the latent character and unrepresentativeness of statistics. Among them can be designated passiveness of victims of such crimes, who are by reason of fear of future persecution and distrust in law-enforcement agencies (absence of expectations to get a real

¹ The number of hate crimes is growing in Ukraine/ Human rights in Ukraine. Informational website of the Kharkiv Human Protection Group. – [Electronic Resource].- Access mode: <http://www.khpg.org/index.php?id=1336918650>

² Human rights in the activity of Ukrainian police. - Kyiv-Kharkiv, Human Rights, 2009. – p. 118-119.

protection) do not report the offense, as well as behavior of most law-enforcement agencies, which often show disdain for such crimes and reluctance to admit their racist or discriminatory nature.

Assessing the situation of hate crimes, the government and government organizations typically rest solely upon statistics of law-enforcement agencies and police, which is reduced only to calculation of the number of high-profile attacks on foreigners and the number of criminal cases initiated by the profile article 161 of the Criminal Code of Ukraine.

Non-governmental organizations have different criteria and methods of problems research unlike government structures and law-enforcement agencies, and, in the conditions of current deficit of the necessary information, they evaluate situation by examining public opinion, taking into account the results of surveys of residents of Ukraine and representatives of vulnerable groups, and by monitoring mass media. Undoubtedly, this method combined with the simultaneous analysis of numbers of official statistics gives a possibility to more objective and unfolded judgment of status of xenophobia and racism in the country³. According to Yevhen Zakharov, Ukraine still has no official statistics, which would provide an opportunity to objectively assess the general level of xenophobia as well as prevalence of hate crimes caused by it. It should also be noted that current statistical indicators should be viewed as an indicator that the law-enforcement system of Ukraine is simply not ready to prevent "hate crimes" by legal methods⁴.

Monitoring of activity of law-enforcement agencies (police, court) has been carried out by Institute of Applied Humanitarian Research in two regions of Ukraine (Donetsk and Kharkiv) and in the Autonomous Republic from December of 2011 till June 2012 by making the inquiries to General Administration of Ministry of Internal Affairs of Ukraine in these regions; by analysis of statistical and other data, which is placed on official sites of agencies, and by the study of information from persons, who are potential victims of xenophobia and racism, and information from public

³ Besides, unlike the law-enforcement agencies, non-governmental organizations are governed by international law with a wider interpretation of the concepts of "xenophobia", "discrimination", etc.

⁴ Hate crimes in Ukraine. – Kharkiv: Human rights, 2012, p. - 12

organizations, which aim is to ensure the rights of persons, who may be classified as vulnerable.

Inquiries for information were made under the Law of Ukraine "On Access to Public Information" and under the Decree of President of Ukraine of 05.05.11 № 547 "The issue of assuring the access to public information by executive bodies," on the bases of which the Cabinet of Ministers of Ukraine adopted the resolution of 25.05.11 № 583 «Issues of execution of the Law of Ukraine "On Access to Public Information" in the Secretariat of Cabinet of Ministers of Ukraine, central and local executive bodies," by which a model form to request information and exemplary order of compilation, and submission of inquiries for information is adopted. Reply to inquiries has been received quickly in majority cases.

Information from inquiries, as a rule, corresponded with the official information and reports, which law-enforcement agencies in accordance with the law are obliged to promulgate. Therefore, numbers of offenses committed on the basis of intolerance are extremely low and do not reflect the real state of affairs. It should be noted that Public Prosecutor's Office in regions regularly promulgate information, including information about protection of personal rights (in general) (statistical reporting "on the operation of the Prosecutor") and information about the crimes, in which prosecutors were involved (statistical reporting "on the work of pre-trial investigation").

Analysis of the prosecutors work in three regions of Ukraine shows that in Kharkiv and Donetsk regions materials of cases under article 161 of Criminal Code of Ukraine were not considered by the prosecution during the first half of 2012. One case in Crimea, in which the investigation was completed by the prosecution against a person under article 161 of Criminal Code of Ukraine, was sent to the court.

In the field of human rights only one case is considered in Kharkiv region that belongs to a group of "Xenophobia, migration, refugees" with adoption of measures, regulations and views. However, a statistical report is not clear whether this case involved issues of xenophobia.

In the Donetsk region and the Autonomous Republic of Crimea the data for this group of prosecution response are absent.

Regarding the given information, we note that on February 29 Attorney General of Ukraine distributed a press release titled "Attorney General's Office of Ukraine strengthened human rights activity of public prosecution in sphere of combating racial and religious intolerance, xenophobia." The text of the official message suggests that the Administration of Attorney General's Office of Ukraine "by appropriate letter obligated prosecutors of the Autonomous Republic of Crimea, regions, Kyiv and Sevastopol to intensify efforts in combating racial and religious intolerance, xenophobia." Particularly is stressed the necessity to ensure respect of the rights of foreigners, to prevent incitement of national, racial and religious enmity and hatred during the current year in Ukraine while holding the UEFA Euro 2012.

However, the press release of Attorney General's Office of Ukraine begins with strange for applications, designed to highlight the increasing "human rights work," information on the number of "illegal migrants", deported from the country in 2011. Moreover, press release contains report on number of criminal cases instituted and sent to the court in "compliance with the laws on migration and refugees, combating xenophobia" (on the whole - 9 criminal cases). Thus, it is absolutely impossible to understand from the text of the press release, how many criminal cases were initiated in the framework of "human rights" activity of offices of public prosecutor in combating xenophobia.

Monitoring of activity of bodies of internal affairs considering crimes motivated by intolerance also shows that, despite the facts of illegal action against those, who belong to the so-called vulnerable groups, reported in the press, quantity of cases of this kind, in which investigation is completed, is insignificant. It is known, three years ago, February 6, 2009 Attorney General's Office of Ukraine and Ministry of Internal Affairs of Ukraine issued a joint instruction № 11/128 "on accounting of crimes committed on the basis of racial, national or religious intolerance, and the results of their investigation," which allowed to introduce a statistical measure as for such violations of law. Monitoring facilitates the need of bodies of internal affairs to make statistical reports on Form 1-RD (392) "On crimes on the basis of racial, national or religious intolerance." In our opinion, despite rather comprehensive list of cases included in named form, it would be reasonable to place a column concerning cases of applying of

point 3 part 1 of an article 67 of the Criminal Code of Ukraine, which provides as aggravating circumstances "commission of a crime on the basis of racial, national or religious enmity or discord."

The response of law-enforcement agencies (bodies of internal affairs as well as public prosecutor's office) on hate crimes shows their reluctance to assess display of racism as such and to investigate biased attitude properly.

It can be given as an illustration a notification on the website of the Donetsk Regional State Administration "On realization in the second quarter of 2012 tasks, specified by the Plan of measures to combat xenophobia, racial and ethnic discrimination in Ukrainian society for 2010-2012 in the Donetsk region," which indicates that there have not been registered any crimes against foreigners on the grounds of ethnic and racial intolerance, and cases of xenophobia in 2012 (as of June 2012) in the Donetsk region⁵.

The same situation is in Kharkiv region and Crimea region according to Kharkiv General Administration of Ministry of Internal Affairs of Ukraine and Crimea General Administration of Ministry of Internal Affairs of Ukraine.

In terms of possibility of monitoring of courts in sphere of combating crimes committed on the basis of intolerance it can be positively assessed the provision with statistics on the official web portal of the Judiciary in Ukraine considering cases under an article 161 of the Criminal Code of Ukraine "Information on the status of hearing of criminal cases under an article 161 of the Criminal Code of Ukraine in 2006 - the first half of 2012." But, in general, the number of cases, which are being heard under this article in Ukraine, is three (3) (pending cases). On one of the cases in the Crimea (under part 2 of an article 161 of Criminal Code of Ukraine) concerning the head of the Coordination Council of Russian Taurida and Sevastopol - Vladimir Tyurin, a decision is expected to be rendered soon.

As for other cases, particularly those in which in the capacity of qualificatory elements of the motive racial, religious, ethnic intolerance are used and those, to which

⁵ Official website of Donetsk Regional State Administration. – Access mode: <http://donoda.gov.ua/main/ua/publication/content/10932.htm>

point 3 part 1 of an article 67 of the Criminal Code of Ukraine is applied - information is not available.

Thus, treatment and reaction of law-enforcement agencies to hate crimes show their reluctance to assess display of racism as such, and to investigate biased attitude properly, and also to promulgate information about their activities in mentioned sphere.

Among the disadvantages, on which human rights organizations draw attention, while carrying out analysis of activity and reporting of law-enforcement agencies concerning their work against crimes committed on grounds of intolerance, are that the law-enforcement agencies, for some reason, consider only the number of cases of committing physical violence towards "aliens", not giving and not providing proper assessment of other components of aggressive xenophobia and hate crimes - the facts of desecration of graves and religious structures, "war of monuments", deliberate damage to property of members of certain groups, etc. Meanwhile, victims of "hate crimes" in Ukraine are not only foreigners, and even not only persons with "non-European" appearance, but also citizens of Ukraine, including Ukrainians by ethnicity⁶. Law-enforcement officers, as a rule, do not want to notice other manifestations of xenophobia and discrimination, when there is not a skin color, an eye shape and other features of appearance, but a language (sometimes state language), the views or a residence are the cause for the oppression of the rights, expressions of hostility and aggression.

As it was stated, point 3 part 1 of an article 67 of the Criminal Code of Ukraine, which qualifies commission of the crime on racial, national or religious enmity or discord, as the aggravating fact was not used during 2011-2012. Amendments to several articles of the Criminal Code of Ukraine regarding the establishment of "hate motive" as qualifying circumstance did not change the situation for the better. Registering relevant crimes, Ministry of Internal Affairs of Ukraine is in no hurry to see the motives of religious, ethnic or racial hatred. Therefore, it is fundamentally incorrect to use as indicator the spread of xenophobia and hate crimes in the state practice of recognition

⁶ Hate crimes in Ukraine. – Kharkiv: Human rights, 2012, p. - 13

by law-enforcement agencies of the quantity of cases, opened only under an article 161 of the Criminal Code of Ukraine. Indeed, as researches carried out by non-governmental organizations have shown, the named article is called by experts with some irony as "ghost article", as it exists in the Criminal Code of Ukraine, but its practical application is so modest that, in general, there are doubts about the appropriateness of an existence of this article, at least in the form, in which it is defined now. The police traditionally respond to questions from human rights organizations about the causes of limited use of an article 161 of the Criminal Code of Ukraine: "This is the competence of the public prosecutor's office." The latter, in turn, complain on courts, which reluctantly qualify an offense as such as committed on grounds of hate. Courts refer to the difficulties of proof of motive and intent of the offender⁷, that is, in our opinion, the result of an unsuccessful formulation of *corpus delicti* (formal elements of a crime), which in many cases, seriously hampers a conviction.

In some way one can concur with this position. But one can hardly justify this passive position of law-enforcement system that does not use other possible leverage in the situation - for example, point 3 of part 1 of an article 67 of the Criminal Code of Ukraine, which qualifies the crime on the basis of racial, national or religious enmity or discord as the aggravating circumstance. Application of the requirements of an article 67 of the Criminal Code of Ukraine does not require to transfer a criminal case from police to public prosecutor's office and, with obviousness of motives of hostility, enables an investigator additionally to qualify any criminal act under the Criminal Code - from hooliganism and infliction of a bodily harm to the destruction of property, desecration of religious places or graves. However, this practice is not common in the bodies of internal affairs, which on the one hand mitigates punishment for criminals, on the other - reduces the statistical data on the actual number of hate crimes⁸. Thus, registering crimes against foreign citizens and persons, who may be referred to the so-called vulnerable groups, bodies of internal affairs are reluctant to see in them the crimes motivated by religious or racial hatred. The same applies to the application of the

⁷ Hate crimes in Ukraine. – Kharkiv: Human rights, 2012, p. - 14

⁸ Hate crimes in Ukraine. – Kharkiv: Human rights, 2012, p. - 14

articles 115, 121, 122, 126, 127, 129, 300, in which "hate motive" is established as a qualifying circumstance.

According to reports and analysis of law-enforcement officers, application of these articles is quite difficult in practice, primarily through the underdeveloped mechanism of obtainment of expert opinion on the presence in actions or expressions of certain forms of hatred, humiliation, insults of national honor and dignity, intentions to cause an ethnic hatred.

However, investigators and prosecutors avoid qualifying "hate crimes" despite recent expert development of scholars of the Institute of State and Law of National Academy of Sciences of Ukraine, Institute of Political and Ethno-national Studies of National Academy of Sciences of Ukraine and other organizations. Crimes committed on the basis of hate are classified as hooliganism usually for representativeness of low level of xenophobia in the country.

To evaluate the monitoring of activity of public authorities one should also pay attention to national events both institutional and practical to counteraction against violations on the grounds of hate.

It is known that in 2008 the Cabinet of Ministers has created the Interagency Working Group on overcoming of xenophobia and ethnic, and racial intolerance, chaired by the State Committee on Nationalities and Religions. An Interagency Working Group held 17 meetings in 2009. The group stopped its actual activity in 2010, because during the year there were no meetings. In 2011, through state reform and liquidation of the State Committee on Nationalities and Religions as institutions, Interagency Working Group de facto stopped its activity. Early in 2012 the Ministry of Culture was given authorities of the group in part of combating xenophobia and racism. For the present the Ministry didn't suggest any initiative. This means that for the coordination of state agencies, including law-enforcement agencies in sphere of combating xenophobia, racism and other forms of intolerance, it should be created a special state body that would ensure the implementation of government programs aimed at prevention and combat with intolerance in society and state.

Some hopes were relied on bodies of internal affairs in connection with the adoption of Ministry of Interior of Ukraine Plan on Action against racism until 2009

(31.05.2007), and then Plan of Ministry of Interior of Ukraine on combating racism and xenophobia in the period to 2012 (approved by Resolution of the Ministry of Interior of Ukraine of Ukraine № 94 of 18.02.2010). However, most points Plan of Ministry of Interior of Ukraine on combating racism and xenophobia in the period to 2012, which performance is expected in 2010, remained unfulfilled. This testifies the real attitude of Ministry of Interior of Ukraine to the problems of xenophobia, racism and ethnic discrimination in the state.

Among others, a militia department openly ignored the implementation of such important activities as:

- creation up to 01.06.2010 in the blocks of the central criminal militia of the Central Office of Ministry of Interior of Ukraine, Regional Administrations of Ministry of Interior of Ukraine, General Regional Administrations of Ministry of Interior in the Autonomous Republic of Crimea, Kyiv and Sevastopol, on the railways of individual departments (divisions, groups) against crimes on racial, ethnic and religious grounds;-

- introduction as an advisor to the Minister for Ethnic Minorities (volunteer) in order to adequately assess the situation and timely response to criminal threats that arise in field of national relations;

- publication of the results of the Ministry in combating racism and xenophobia, including statistics on:

- a) the number of completed cases investigating the offenses under Part 2 of Art. Art. 115, 121, 122, 126, 127, 129, 300 of the Criminal Code of Ukraine;

- b) the number of applications and complaints received on the facts of xenophobia and racism, including applications in order of Art. 97 of the Criminal Procedure Code of Ukraine;

- c) the number of complaints against the actions of representatives of militia connected with xenophobia and racism, and the results of their review;

- initiation of parliamentary and public hearings, round tables, scientific conferences on combating xenophobia, racial and ethnic discrimination in Ukrainian society;

- carrying out measures to prevent cases of arbitrary indication in the messages or information of Ministry of Interior of Ukraine, Regional Administrations of Ministry

of Interior of Ukraine, General Regional Administrations of Ministry of Interior ethnic of origin of offenders, criminals and persons suspected of committing a crime (racial, ethnic profiling);

- providing a permanent placement of regulations, statistical and technical information concerning the activities of police in the prevention of racism on the departmental websites of Ministry of Interior of Ukraine, Regional Administrations of Ministry of Interior of Ukraine, General Regional Administrations of Ministry of Interior ;

- introduction of departmental forms of separate statistical records of applications and complaints received on the facts of xenophobia and racism, including the actions of policemen related to xenophobia and racism;

- providing monitoring the status of observance of the rights of foreigners, ethnic and religious minorities in the Ministry of the Interior;

- participation in the improvement of legislation that regulates the anti-xenophobia, racial and ethnic discrimination;

- continued cooperation and collaboration with interested non-governmental and public organizations to prevent any manifestations of xenophobia, ethnic and racial intolerance, joint monitoring of observance of rights of foreigners and ethnic minorities by the representatives of militia.

Unfortunately, the information about observance of human rights in general and about combating intolerance in militia itself (in the actions of militia officers) is also insignificant. The information on the work of created in January 2008 Office of Human Rights Monitoring in the Ministry of the Interior, which is a structural unit of the Minister of Interior of Ukraine is not brought to the public. The aim of the Office is developing a system of internal control over the observance of human rights in accordance with international standards in law enforcement bodies.

Similarly, it is lack of information about the measures in combating intolerance among the workers of the Interior, which should be held by the Advisor of the Minister of Internal Affairs on human rights and gender issues (2004). This post was introduced to coordinate the initiatives of bodies of Ministry of Interior of Ukraine to ensure strict observance of human rights by militia and liaising with other government agencies and

associations on this issue. Among the primary responsibilities of Advisor of the Minister of Interior on human rights and gender issues is to examine the real state of things in human rights observance in the state and implementation of policies of gender equality, as well as preparing an analytical reports on these questions for the Ministry of Interior.

Among the disadvantages that characterize the overall activity of the state bodies in the field of combating xenophobia and racism is an imperfect mechanism of interaction between law enforcement agencies with central and local executive bodies, the Council of Ministers of the Autonomous Republic of Crimea on questions of development of specific measures of improvement hate crimes prevention and implementation of programs that already exist in this area.

The performed Monitoring of law enforcement bodies for offenses committed on hate ground and reporting of these activities, indicating the need for creation of new approaches to solving problems in combating such offenses.

Resolving of the problems existing in this area should be comprehensive in nature and could be possible in case of taking on the state level measures of improvement of prevention of offenses on hate ground and improving of the legal culture of the population.

RECOMMENDATIONS

1. To consider on the board meetings, coordination and interagency councils, round tables the situation on prevention and combating crimes committed on the basis of intolerance. Such events are recommended to be held once in six months. It is recommended to involve in these events – Attorney General's Office of Ukraine, Department of Law-Enforcement work on prevention and combating corruption, the Ministry of Internal Affairs, Security Service of Ukraine. To inform the citizens through mass media (including messages on the official websites of these public bodies) on the outcome of these meetings and about adopted decisions that will give a possibility to improve the mechanism of interaction and operational management decision by public

bodies and law-enforcement agencies in combating xenophobia and racism in society respectively in sphere of combating with crimes committed on grounds of intolerance.

2. To involve to participation in board meetings of law-enforcement agencies of heads of city, regional state administrations and deputies of regional, local councils that will give a possibility to improve cooperation between public bodies and law-enforcement agencies in combating xenophobia and racism.

3. To place on the web sites of regional, city state administrations and law-enforcement agencies at least once in six months the information on the implementation of programs aimed at prevention of xenophobia and racism and combat against crimes committed on the grounds of intolerance. To raise public awareness about the measures taken by the authorities in combating xenophobia and racism, it is recommended to involve regional administration of press and information, department of justice in creation of the messages posted on websites, in addition to the appropriate law-enforcement agencies.

4. To increase public service announcements, television programs aimed at the formation of legal consciousness of citizens to prevent xenophobia, racial and ethnic discrimination, violence among youth and children, information about the legal basis for preventing and combating crimes committed on the grounds of intolerance and to prevent the use in media of "hate speech" as well as to inform citizens about types of assistance to persons that belong to so-called vulnerable groups. To involve to the implementation of such activities the Department of Family, Youth and Sport Affairs, of Advertising, Department of Press and Information, General Administration of Ministry of Internal Affairs of Ukraine. This will enable the growth of legal culture, a formation of a negative attitude to the offenses and crimes committed on the ground of intolerance.

5. In order to prevent violations of rights of persons that belong to so-called vulnerable groups it is recommended to administrations in Law-Enforcement Agencies, Department of Law Enforcement work to prevent and combat corruption, General Administration of Ministry of Internal Affairs of Ukraine in regions, Security Service of Ukraine, Attorney General's Office of Ukraine, Department of Justice to conduct detailed analysis of status and terms of considerations of appeals of violation of their

rights and freedoms and legal adjudication of such complaints, of information that comes to "hot line" to administrations. To inform the community through the media about the results of analysis and by posting an information on the official sites of the above-mentioned bodies.

6. In order to respond promptly to reports of misconduct of police officers concerning the violation of rights and lawful interests of citizens, to place in the media, on billboards information about the helpline of General Administration of Ministry of Internal Affairs of Ukraine.

7. For prevention of display of xenophobia and racism in law-enforcement agencies (especially in police), it is recommended to create in its structure an independent body, authorized to receive complaints about police officers, whose actions contain signs of intolerant attitude.

8. To recommend to continue special registration by police of crimes with racist, xenophobic motives and distribute (at least 1 per quarter) on the official sites of General Administration of Ministry of Internal Affairs of Ukraine of statistical information on Form 1-RD (392), provided by Attorney General's Office of Ukraine and Ministry of Internal Affairs of Ukraine joint instruction № 11/128 "on accounting of crimes committed on the basis of racial, national or religious intolerance, and the results of their investigation," Besides, it is necessary to spread statistical reports on cases of application of part 3 of an article 67 of the Criminal Code of Ukraine.

9. To develop a special form that is attached to the materials of relevant case (for example, "The form of notification about racist (xenophobic) incident." To do this, it is recommended to cover the greatest possible number of possible cases of crimes that could be committed with racist motives, it is necessary to put into practice a broad definition of such crimes, thus to recognize that "racist incident means any incident, which is regarded as racist by a victim or by any other person."

10. It is recommended to Bodies of Internal Affairs to interact with representatives of the media to brighten up the problems of racism and xenophobia spread in Ukrainian society, the measures taken by bodies of internal affairs to overcome this phenomenon in society.

11. To include an international observer in one or more law-enforcement agencies to monitor an application of legislation in sphere of hate crimes.
12. To continue to conduct training for investigators, prosecutors and judges in order to increase their awareness of the provisions of national and international legislation that exists in sphere of combating against hate crimes, and to clarify the provisions of this legislation.
13. To continue further investigation and accounting of skinheads and ultra-right organizations to take direction and to take necessary legal measures to restrict their activities. To bring district inspectors to these activities.
14. It is recommended to Ministry of Internal Affairs of Ukraine to develop a consistent standardized mechanism for certification by law-enforcement officers of facts of prejudice as reasons for a crime that is not too high in requirements for a proof.
15. To train law-enforcement officers to form skills to identify places with the highest frequency of attacks and to develop a strategy for resistance.
16. To continue the cooperation between law-enforcement agencies (General Administration of Ministry of Internal Affairs of Ukraine, Ministry of Internal Affairs of Ukraine, Attorney General's Office of Ukraine, Security Service of Ukraine) and local non-governmental organizations to collect an information on cases of racist violence.
17. To ensure non-discrimination on racial and other grounds by public officers: to review management procedures and their implementation, admitted in law-enforcement agencies, considering examination of the documents to ensure that it is carried out in a nondiscriminatory manner. To conduct investigation and prosecution of all cases of extortion by police officers, who use the lack of relevant documents of some people.
18. To implement a system that provides a thorough, timely, transparent and independent investigation of complaints of discrimination by law-enforcement agencies and other officials, and to inform the community about this system.
19. In order of coordination the efforts of state agencies, including law enforcement in combating xenophobia, racism and other forms of intolerance, to create

special state body that would ensure the implementation of government programs aimed at preventing and combating intolerance in society and the state.

20. To disseminate in the media information about the results of the work of the Department of Human rights monitoring in the activities of the Interior Office of the Minister of Internal Affairs, of the Advisor to Minister of Internal Affairs on human rights and gender issues and of public councils on issues of providing of human rights in the Interior Ministry (MIA).

As for the general recommendations on the prospect of preventing offenses on the basis of certain belongings (ethnic, national, religious, gender, language, etc.), they remain unchanged for several years and related to legislation as well as specific mechanisms for implementing the legal provisions on control, particularly, including public.

First of all, there is still a need for improvement of anti-discrimination legislation, which is the basis of prevention of crimes, including racial and xenophobic nature.

The principle of equality before the law is enshrined in general form in different branches of the laws, in regulations, particularly in civil and administrative law. But these regulations do not contain anti-discrimination provisions that make it impossible to discriminate person in various spheres of public life such as employment, education, medical care, housing, access to public and social services, contractual relations between individuals, individuals and legal persons etc. and do not introduced an effective mechanisms and do not provide responsibilities of state bodies for failure in protection against discrimination and compensation for damages. Thus, Civil Code does not contain the term "discrimination". Code of Civil Procedure declares consideration and decision of cases on the basis of equality before the law regardless of race, nationality, religion, education, language (Article 6). Article 248 of the Code of Administrative Offences declared consideration of cases on the basis of equality before the law regardless of race, color, political or religious beliefs, and ethnic origin. Article 7 of the Family Code provides that family members may not have privileges or restrictions based on race, color, sex, political or religious beliefs, ethnic origin, language or other characteristics. The same general provisions included in the Labour Code (Article 2-1), the Law "On education" (Article 3), the Law "On General

Secondary Education" (Article 6), the Law "On the pre-school education" (Article 9) and other laws. However, these provisions are not well developed and remain solid declarations. For example, the Law "On labor" does not include any provision for equality before the law. No regulation, other than the law on equal opportunities for women and men, does not define and does not distinguish between direct and indirect discrimination. Therefore, a comprehensive anti-discrimination legislation, which will include a clear definition of discrimination, its interpretation and identification of standards, to determine such basic concepts as "discrimination", "direct discrimination", "indirect discrimination", "positive anti-discriminatory measures," "victimization", "persecution" and so on, should be developed. The lack of clear and precise qualification of certain actions as discrimination gives rise to irresponsibility: discrimination in Ukraine, including ethnic, national, and linguistic and on other affiliations, is not almost punished (and this situation, in turn, stimulates further growth of hate crimes). The vast majority of regulations contain general phrase, "Those guilty of violating the law, bear civil, administrative or criminal liability under the legislation of Ukraine." But civil and administrative liability for discrimination in the law is not defined. With regard to criminal liability, it applies only to individuals. If administrative responsibility will be implemented, it will also apply to individuals only. Thus, representatives of vulnerable groups virtually are not protected from discriminatory actions by entities.

As it was mentioned the Article 161 of Criminal Code of Ukraine should be also changed. First, its action should be extended to all individuals, not only to citizens of Ukraine. Second, protection of honor and dignity is to include additional grounds other than nationality and religion – such as race, color, ethnicity and language.

Thirdly, Article 161 of Criminal Code does not define clearly racist and xenophobic nature of the action as crimes. Fourth, it is very difficult to prove the intent to perform these actions, especially when we are talking about publishing in xenophobic nature. Fifth, under this Article it is impossible to bring to justice for publications which contain the information where we can see offense or humiliation of national honor and dignity of not a specific person (individual), but the ethnic group or nation as a whole.

It is necessary to use much more often the paragraph 3 of Part 1 of Article 67 of the Criminal Code of Ukraine, which heightens liability and affect the size and kind of

punishment. It is also possible to expand the content of this sign and to put this provision as follows: "the crime for reasons of discrimination, racial, national, ethnic or religious hatred."

It is also necessary to expand the range of offenses for the commission on ground of discrimination which provides criminal liability. In accordance to Art.4 of International Convention on the Elimination of All Forms of Racial Discrimination states shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law. Art.20 of International Covenant on Civil and Political Rights recognizes as a crime "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". Therefore, to ensure compliance of legislation of Ukraine with international agreements the appropriate offenses in the Criminal Code of Ukraine must be provided.

It is also necessary to reform administrative law to combat an offense committed on hate ground, including specific xenophobic acts or omissions of officials of state and local government officials and legal entities.

It is reasonable to establish administrative responsibility for:

- Public calls to discrimination against individuals or groups or hate crimes;
- Dissemination of information that has to hate crimes;
- Preparation and distribution of publications that contain calls to hate crimes;
- Preparation and dissemination of advertising, which includes calls for hate crimes;
- Minor damage to property committed for reasons of racial, ethnic, national or religious hatred;
- Minor hooliganism committed for reasons of racial, ethnic, national or religious hatred.

The proposed list is not exhaustive and can be supplemented by responsibility for others actions. Sanctions should provide penalties of 10 to 100 untaxed minimum incomes of citizens with an increase in the case of the same offense within a year or community work.

The protocols on such administrative offenses can be provided by militia, public authorities exercising control functions on prevention of hate crimes, and the imposition of penalties should be in court. It is also important to amend Article 35 of the Code of Administrative Offences, which defines the circumstances aggravating responsibility for administrative violations. In particular, an additional circumstance as follows: "the offense for reasons of race, nationality, ethnic or religious hatred".