

AMNESTY INTERNATIONAL

QUESTIONS AND ANSWERS

External document

10 July 2008

AI Index: EUR 50/008/2008

Ukraine: What is racial discrimination?

Why is Amnesty International concerned about racial discrimination?

Racial discrimination is an attack on the very notion of universal human rights which should be enjoyed without distinction as to race, sex, language, ethnic origin, nationality or religion.

Under international human rights law, states are obliged to combat discrimination in all its forms.

What is racial discrimination?

Article 1 of the Convention against Racial Discrimination defines racial discrimination as:

“...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Racially motivated crimes are the most insidious manifestation of intolerance and racial discrimination in a society.

Racial discrimination by state bodies may be explicit in the text of a law or an instruction, such as a law banning the use of minority languages, or regulations banning the use of buses by black people. However, it may also be indirect in that it does not explicitly target a certain group, but has the effect of discriminating against them.

What are Ukraine's international obligations to combat racism and racial discrimination?

Ukraine is party to several human rights treaties of particular relevance to race-related discrimination:

- o The International Covenant on Civil and Political Rights (ICCPR);
- o The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
- o The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- o The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- o The Convention on the Elimination of All Forms of Discrimination against Women;
- o The International Convention on the Elimination of All Forms of Racial Discrimination.

Under international human rights law states have an obligation not only to prohibit and eliminate racial discrimination by all appropriate means, but also a positive duty to guarantee the right of everyone, without distinction as to race, colour, descent, or national or ethnic origin, to equality before the law and to the enjoyment or exercise of their civil, political, economic, social and cultural rights.

States are obliged not only to end discrimination by government and public officials, but also to take all appropriate means to prohibit and eliminate racial discrimination by any person, group or organization. This includes protecting people from violence or bodily harm at the hands of private individuals, groups or organizations

What are Ukraine's domestic obligations to combat racism and racial discrimination?

- o Article 24 of the Constitution of Ukraine guarantees citizens the right not to be discriminated against on the basis of "race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics".
- o Article 26 of the Constitution also grants foreigners and stateless persons "who are in Ukraine on legal grounds" the same rights and freedoms as citizens of Ukraine.

What measures is the Ukrainian government taking against racism and racial discrimination?

The Ministry of Internal Affairs, the Prosecutor General's Office and the State Security Services (SBU) have a role to play in investigating racist crimes.

In 2007, the Ministry of Internal Affairs developed a Plan of Action to Combat Racism and Xenophobia and set up a Department for Ethnic Crimes. The plan includes analysis of the legislation to suggest improvements, regular meetings with students to encourage racial and ethnic tolerance, the production of training materials and training on racism and xenophobia for employees of the Ministry, and the setting up of a special subdivision to investigate crimes committed by foreigners as well as a subdivision to combat racism and xenophobia.

One of the priority tasks of the SBU is to protect tolerance and to prevent expressions of xenophobia.

How can people suspected of racist crimes be prosecuted?

Racist Crimes

Article 161 of the Criminal Code refers to "Violation of citizens' equality based on their race, nationality or religious preferences" and criminalizes "deliberate actions whose aim is inciting 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 crime is punishable by a fine, corrective labour of up to two years, or restriction of liberty (open prison) for up to five years. When such an act is accompanied by violence or committed by a group or when the victim dies, it is punishable by a prison sentence of up to five years.

Racist motivation as an aggravating factor

The Criminal Code allows for any crime to be prosecuted with the aggravating circumstance of racial hatred by applying Article 67 of the Criminal Code on aggravating circumstances. Under Article 67 paragraph 1 (3), "the commission of an offence based on racial, national or religious enmity and hostility" is an aggravating circumstance.

How is the Ukrainian government failing its international and domestic obligations?

- o Reluctance by the authorities to admit the existence of racism in Ukraine;
- o Lack of official statistics on the number of reported racist incidents, or the number of convictions for racist crimes;
- o Racist crimes prosecuted as ordinary crimes thus failing to acknowledge their racist nature;
- o Police often ignore reports of racist attacks;
- o Racist attitudes among state employees;
- o Indirect discrimination by state officials through racial profiling including targeted frequent documents checks, fingerprinting and photographing.

What does Amnesty International recommend?

- o Show clear political will to combat racism and xenophobia;

- End impunity for violent racist attacks;
- Combat racism and xenophobia in society;
- End racism and discrimination by state officials;
- Take measures to protect victims of racist attacks and ensure that they get redress and reparations.

END/