

LGBT Human Rights
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Hate Crimes and Incidents in Ukraine

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1. INTRODUCTION

This publication deals with the problem of hate crimes and incidents in Ukraine – the kind of crimes especially dangerous for society, which are caused by prejudice towards certain fundamental human attributes such as "race", ethnicity, religious or other beliefs, sexual orientation, gender identity and more. The number of reports evidencing the committing of such crimes in our country has significantly increased in recent years, and apparent trends threaten a further aggravation of this problem. Investigation and prosecution of hate crimes, however, encounter the inadequacy of an existing outdated national legislation and the established practices of police activity in this area.

By using the data obtained within the last three years (2015-2018), in this edition we shall outline the overall picture of the spread of hate crimes and incidents as well as hate speech, to distinguish actual grounds on which these kinds of offences in Ukraine are observed, to identify groups most vulnerable to hate crimes, and those most likely to commit these crimes. We also analyse the existing legislation and law enforcement practices in this field, and indicate their disadvantages and possible ways to remedy the situation. The course to achieving the European integration declared by our country implies steadfast promotion of tolerance and combating hate crimes and incidents in Ukrainian society – the integration that has long been a standard in the modern free world.

We review the situations in the occupied territories (Crimea, the southern part of the Donbas) only partially and incidentally – first, due to the lack of reliable information on the prevalence of hate crimes on certain grounds in these territories; and second, because the Ukrainian state does not have any effective levers to influence these situations and is not responsible for the actions of the occupation authorities.

The author of this publication is Andrii Kravchuk, an expert on staff at LGBT Human Rights Nash Mir Center, however significant contributions have also been made by the entire team and members of the Center's monitoring network. We hope that our work will be useful to anyone interested in the problems of hate crimes and extremist movements in Ukraine – law enforcement officers, scholars, civil society activists, and politicians. In its drafting, we used both publicly available sources – first of all, information available in the media and reports of the National Police of Ukraine – and evidence data in cases of hate speech, hate crimes and incidents that we purposefully collected in the course of our social and professional activities.

2. GENERAL INFORMATION ON HATE CRIMES AND INCIDENTS

In fact, the concepts of hate crime and those related to it, as well as an understanding of the need to combat offences of this kind appeared in Ukraine through the activities of the Organisation for Security and Cooperation in Europe (OSCE) and its specialized body — the Office for Democratic Institutions and Human Rights (ODIHR). Only recently have these issues attracted the particular attention of the Council of Europe. But the OSCE / ODIHR still remains the leading organisation that develops, coordinates and promotes our standing resolute against hate crimes in our part of the world.

According to the definition proposed by the OSCE, "Hate crimes are criminal acts motivated by bias or prejudice towards particular groups of people."¹ Hence, a hate crime is an ordinary criminal offence but committed because of prejudice against a particular group of people united by some common characteristics (and not against some specific or, conversely, any random person). "The perpetrator of a hate crime selects the victim based on the victim's *membership or perceived membership* of a particular group [...] *Prejudice or bias* can be broadly defined as preconceived negative opinions, intolerance or hatred directed at a particular group. The group must share a common characteristic that is immutable or fundamental, such as "race", ethnicity, language, religion, nationality, sexual orientation, or other characteristic."²

Hate incidents are the actions caused prejudice to certain groups of people that do not constitute a criminal offense³ (for example, the administrative offenses).

It is important to understand that a hate crime should be considered a crime in itself, even without the motivation of bias – such as a murder, bodily injury, robbery, damage to property etc. Thus, strictly speaking, *incitement to hatred* and *hate speech* are not hate crimes or incidents because they do not exist in isolation from the bias motive. Also *discrimination* is not considered as a hate crime (although, conversely, hate crimes may be regarded as an extreme form of discrimination). As OSCE's publications explain, "Acts of discrimination lack the essential element of an act constituting a crime. Discrimination issues are dealt with under civil law, even if the penalty is a criminal sanction."⁴ However, since all these acts/events have the same nature, motivation and direction, are often combined with hate crimes and promote their commission, they are usually considered jointly: in the same way, we will also incidentally mention them in this publication, while yet focussing on hate crimes and incidents in the strict sense of these terms.

Although the term hate crime includes the notion of hate, it is paradoxically absent even in the definition of the term. The main characteristic of a hate crime is not the emotions experienced by the offender but the motive of bias toward a particular group of people united by some common feature. This feature may be real or only supposed – what is decisive is that the attacker associates the object of the crime with this supposed feature of otherness. He or she views the victim as not a specific person but as a representative of a particular group. The terminology related to hate crimes in a particular legislation may vary: for example, the current Criminal Code of Ukraine uses such a formulation as committing crime "on ground of racial, national or religious enmity or discord" and "under motives of racial, national, or religious intolerance." The Action Plan in the sphere of human rights (item 105, action 3) provides for "ensuring punishment for crimes committed under motives of intolerance" on a number of grounds, "harmonization of the conceptual apparatus of the Criminal Code of Ukraine in qualification of various forms and manifestations of intolerance" and the unification of terminology using the term "intolerance" – hence, it is planned that hate crimes in the Ukrainian criminal law will be formulated as those related to the motives of intolerance on certain grounds.

The reason for the allocation of hate crimes as a separate category of offences is their special danger, therefore their more serious consequences for their victims and society as a whole. A study by American psychologists found that victims of hate crimes feel more negative emotions than victim of ordinary crimes.⁵ Ignoring motives of bias to particular group signs of a person (in investigating and punishing such crimes) maintains in the victim a feeling of helplessness and insecurity, and fear of repeated offences, as because the

¹ OSCE / ODIHR, *Preventing and responding to hate crimes. A resource guide for NGOs in the OSCE region*, 2009, p. 15, osce.org.

² Ibid.

³ Ibid., p. 16.

⁴ Ibid., p. 17

⁵ Please see note 1, p. 18.

victim realizes that her / his characteristic, which provoked a hate crime, is still in place, and the biased attitude towards people with this characteristic is not exposed to public condemnation. Similar arguments lead to a negative impact of hate crimes on the community to which the victim belongs and which is characterized by this feature: none of its members can feel secure. The public danger of hate crimes lies in the very introduction of contention into society, the opposition of one social group to the others, and the marginalization and victimization of these groups.

International legislation on hate crimes in general (not specific to a certain characteristic) is currently almost absent, so each country independently chooses a list of protected characteristics – that is, those that are mentioned in the relevant national legislation. Very rarely a list of protected characteristics is open (that is, in theory, it could include any ground). Virtually all legislations of the OSCE member states, which in some way criminalize hate crimes (particularly, the Criminal Code of Ukraine), mention grounds of "race" and nationality (ethnicity) as well as religious beliefs. Less common are grounds of disability, gender, sexual orientation, language, age, political or ideological beliefs, etc. Legislators compile a list of protected characteristics, basing these on historical experience and the current socio-political situation in their country; therefore, they may also feature certain rare or even unique characteristics that are relevant to this particular society.

Legislation to combat hate crimes in various countries may take different forms. Occasionally, hate crimes are classified as a separate offence different from similar offences unrelated to the motives of bias – for instance, Article 196(2) of the Criminal Code of the Czech Republic provides penalties for "violence against a group of population or an individual, or threats to kill, harm the health or cause serious damage because of their political views, nationality, race, religion or lack of faith." The Criminal Code of Ukraine (CCU) contains no such articles. If hate crimes are formally distinguished in criminal law at all, they most often appear in it as qualified crimes – that is, the ordinary crimes committed under aggravating circumstances expressly provided for in the relevant articles of the Criminal Code. The CCU contains a number of articles in which the second part provides for the punishment for committing certain crimes under motives of racial, national or religious intolerance – for instance, Article 121 "Intentional grievous bodily harm." Finally, hate crimes may not be mentioned in legislation explicitly, but be punished as crimes committed under common circumstances that aggravate any crime, including motives of bias on certain grounds – a possibility provided for in paragraph 3 of Part 1 of Article 67 "Circumstances aggravating punishment."

There are two alternative approaches to the definition of hate crime motivation: the *hostility model* and the *discriminatory selection model*. In the first case, investigators must prove that the offender acted under the motive of hatred (enmity and so forth) towards a protected characteristic. This formulation provides for proving the presence of the offender's certain personal negative feelings towards a protected characteristic, that in practice can be quite difficult and does not allow to qualify as hate crimes those cases where the offenders acted on the basis of not their personal but common public prejudices. These deficiencies are absent in the discriminatory selection model which provides for proving only that the offender selected the victim because of one or some of her / his protected characteristics. The Ukrainian legislation against hate crimes is based largely on the hostility model, using terms such as *hatred*, *discord* and *intolerance*; however, paragraph 3 of Part 1 of Article 67 involves as an aggravating circumstance committing a crime, in particular, "on ground of gender" that clearly refers to the discriminatory selection model.

Whatever model is used in the hate crimes legislation, from a practical point of view very important is the issue of evidences sufficient to prove the bias motive. In most cases, the perpetrators themselves declare their bias towards the victim as representatives of a particular social group – by shouting, displaying typical images, slogans, drawings, etc. Evidences of this kind are the most significant and compelling, but there are also some additional signs that may indicate the likely nature and so reinforce qualification of an offence as a hate crime. First, one should take into account the victim's membership (real or assumed by the offender) in a group against which society has staunch bias, especially if the victim is a well-known representative of this group. Besides the personality of the victim, the place of incident may be significant if it is associated with the life of the group – for example, the premises or surroundings of an NGO office, a specialized club, a religious institution or cult building, the site of holding some event for such a group, a place of common high-density residence of its members, a place where similar incidents or hate crimes were previously observed, etc. One should also analyse the personality of the suspect in committing a crime – his / her membership in

certain organisations or groups known for their xenophobic views, the presence of symbols of those organisations, if the suspect was previously observed in similar incidents and so on.

Hate crimes

Criminal acts motivated **by bias or prejudice** towards particular groups of people. **A hate crime has to be a criminal offence even without the motive of prejudice** (e.g. murder or robbery).

Hate incidents

Acts caused by **biased attitude** towards particular groups of people which do not constitute a criminal offence.



Discrimination

is not a hate crime, although hate crimes can be seen as an extreme form of discrimination.

Incitement to hatred and hate speech

are not hate crimes, but lead to them and often occur along with them.

Figure 1. *The definitions of the terms related to hate crimes proposed by the OSCE.*

Like discrimination, hate crimes can also be aimed not at the actual carrier of a protected characteristic (or a person who is perceived by the criminal as having this feature) but at other persons associated with carriers of protected characteristics – their relatives, supporters, those who provide them with certain services, etc. In some cases, the motivation of the perpetrators may be mixed: along with motives of bias against a certain category of persons, the offender is guided by considerations of receiving material benefit or moral satisfaction from the humiliation of others. Even if local laws do not allow such incidents to be qualified as hate crimes or incidents, or public prosecution does not want to complicate the trial by proving bias motive in the actions of the offender, such crimes still should be classified, investigated and go into statistical information as hate crimes. The same also applies to hate crimes on grounds which are currently not included in national legislation, even though they cannot be qualified and punished as hate crimes in a trial. Without continuous monitoring and collecting information on such cases, it is impossible to create an objective picture of their spread in society and to develop appropriate policies for their prevention and response.

3. THE LEGAL FRAMEWORK AND PRACTICES TO COMBAT HATE CRIMES IN UKRAINE

3.1. The international law

Unlike the area of combating discrimination, international standards on hate crimes are very poorly developed and presented with documents of an almost exclusively declarative or recommendatory nature. However, since hate crimes may be regarded as an extreme form of discrimination, in some cases the international law on discrimination can be used also for the prevention and combating of such crimes. Direct references to hate crimes in these documents are very rare; in fact, there is some practical value perhaps in the wording of Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, which declares "an offence punishable by law [...] all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin."

Judgments of the European Court of Human Rights, which is the source of law in the Ukrainian legislation, impose on the member states of the European Convention on Human Rights – in particular, on Ukraine – the obligation to investigate possible racist motives in crimes.⁶

In fact, only the aforementioned documents contain direct international obligations of our country in the sphere of combating hate crimes, and these commitments have only a framework character: to criminalize hate crimes motivated by racist motives (which in this case also include related grounds of ethnic (national) origin and affiliation) and to identify and take into account these motives within the investigations of crimes.

3.2. The Ukrainian law and practice

Articles 24 and 37 of the Constitution of Ukraine may be considered as a certain legal basis for combating hate crimes. The first one declares equal rights for all citizens of Ukraine and the prohibition of discrimination ("privileges or restrictions") on the open list of grounds ("on grounds of race, skin colour, political, religious and other beliefs, gender, ethnic or social origin, property status, place of residence, language, or other characteristics"). The second prohibits "The formation and operation of political parties and public organisations whose program goals or actions are aimed at [...] the incitement of ethnic, racial or religious hatred, attacks on human rights and freedoms."

As noted in Section 2 of this publication, the specific penalties for hate crimes are contained in the Criminal Code of Ukraine. Parts two of Articles 115 "Murder", 121 "Intended grievous bodily harm", 122 "Intended moderate bodily harm", 126 "Beating and torments", 127 "Tortures", and 129 "Threats of murder" provide enhanced penalties for committing the corresponding offences "under motives of race, national or religious intolerance" – thus, they criminalize hate crimes, but only on three, so to speak, "standard" grounds.

Paragraph 3 of Part 1 of CCU Article 67 "Aggravating circumstances" recognizes as such circumstances "committing crime on basis of racial, national or religious enmity or discord, or on basis of sex." This allows to consider such an act as a hate crime and to assign enhanced penalties for any crime (other than those provided for in the above-mentioned articles of the Criminal Code) committed under motives of bias to the same three standard characteristics of "race", nationality (ethnicity) and religious beliefs, as well as characteristic of sex (i.e. gender). Part 4 of this article stipulates that qualified offences (i.e. committed under the aggravated circumstances specified within the relevant articles of the Criminal Code – such as the above-mentioned Parts 2 of Articles 115, 121, 122, 126, 127 and 129) do not fall under its provisions. At the same time, Part 2 of Article 67 states that "the court has the right, depending on the nature of the crime, not to recognize any of the circumstances specified in Part 1 of this article, except the circumstances specified in paragraphs 2, 6, 6-1, 7, 9, 10, 12 as such that aggravates the punishment, giving reasons for its decision in the sentence." Thus, even proving the motive of bias on the four grounds listed above does not guarantee that the perpetrator of such an offence will be punished more severely, as for committing a hate crime. According to the Central Investigation Department of the NPU, in 2016 "the investigative units of central offices of the National Police of Ukraine introduced to the Unified Register of Pre-trial Investigations information about 76 crimes committed on ground of hatred", with the largest number of criminal

⁶ European Court of Human Rights, *Judgement in the case of Nachova and Others v. Bulgaria*, 2005, paras. 160-168; *Judgement in the case of Šečić v. Croatia*, 2007, para. 66, echr.coe.int.

proceedings (50) started under Article 161 "Violation of citizens' equality based on their race, nationality, religion, disability, and other grounds". Among the other investigated hate crimes, 12 proceedings have been started under Article 179 "Illegal retention, desecration or destruction of religious sacred objects", 8 – under Article 180 "Obstruction to religious ceremonies", and 4 – under Article 178 "Endangerment to religious constructions or cult buildings".⁷

Also, in 2016 the police investigated 68 facts of unlawful actions, in which it additionally considered the version on the possible motive of violation of citizens' equality based on their race, ethnicity and so on. Among them, 18 cases were qualified as hooliganism, 12 – as causing minor bodily injuries, 8 – as intended destruction or damage to property, 4 – as robbery, 3 – as murder, 3 – as causing intended moderate bodily injuries, and also one attempted murder. Specific grounds of bias motives in these offences included religious beliefs (30 cases), sexual orientation or gender identity of the victims (11 cases), anti-Semitism (9 cases) and racism (8 cases).⁸

As you can see, the vast majority of crimes, in which the police see motives of bias, are qualified under Article 161. However, this article refers not to hate crimes in the strict sense of the term but to inciting hatred and discrimination. Hate crimes per se – that is, common crimes that occur under motives of bias on certain grounds but that would be crimes even without the presence of such motives – are documented and investigated much more rarely. Moreover, very few of them are qualified hate crimes (Parts 2 of Articles 115, 121, 122, 126, 127 and 129), in which cases the court is obliged to consider the motive of intolerance as aggravating the punishment. In most cases, there are only common aggravating circumstances in accordance with paragraph 3 of Part 1 of Article 67 which the court may ignore.

Very problematic is one's using the current Ukrainian legislation in the case of hate crimes committed under motives of bias on grounds other than those appearing in the above listed relevant articles of the Criminal Code ("race", nationality/ethnicity, religion, gender). Although the National Police of Ukraine in 2016 started to collect and publish information about cases of hate crimes on other grounds, the legal qualification of them as hate crimes is almost impossible due to the absence of relevant provisions in the Criminal Code.

In such cases the only possible applicable "peg" in the Ukrainian legislation is Article 161 "Violation of citizens' equality based on their race, nationality, religion, disability, and other grounds" that provides for the punishment for incitement of national, racial or religious hatred (closed list of grounds) as well as discrimination – "direct or indirect restriction of rights or direct or indirect establishment of privileges on grounds of race, skin colour, political, religious and other beliefs, sex, disability, ethnic or social origin, property status, place of residence, language or other characteristics" (open list of grounds). Considering that hate crimes may be regarded as an extreme form of discrimination, investigators, courts and, very rarely, prosecutors can conduct investigation of motives of bias (intolerance) on grounds, which are explicitly protected from discrimination in Article 161 as well as on other grounds that the wording of this provision allows.

In view of the above-mentioned decisions of the ECHR and recommendations of international organisations, the Ukrainian police and courts sometimes try to investigate bias motivation in such hate crimes, but it extremely rarely happens under the initiative of the police and judiciary themselves – usually, it requires persistent efforts by the victims or human rights activists who help them. As an example, we can mention the investigation of the beating of two young gay men in Kyiv Hidropark in summer 2017. To protect the rights of the attack's victims Nash Mir Center hired a lawyer who along with the Center's experts were involved in the investigation of the case and subsequent trial. During the investigation of the case, the investigators obviously did not want to consider possible homophobic motives of the crime or to qualify it properly. Only after lodging a complaint to the investigative judge was the corresponding decision taken and the relevant information was introduced into the Unified Register of Pre-trial Investigations, whereby a criminal proceedings was commenced under Article 161 of the CCU. The investigator, who was assigned to conduct the investigation under said article in a separate proceeding, took no steps to verify the information present (at least, neither victims nor their lawyer was informed of such steps). Repeated complaints of the

⁷ Національна поліція України, У 2016 році Нацполіція розпочала 76 проваджень за вчинення злочинів на ґрунті нетерпимості, 01.02.2017, old.npu.gov.ua.

⁸ Ibid.

victims' lawyer about the inaction of the investigator to his leadership and the local Prosecutor's Office remained without proper replies.



Hate crimes in the Criminal Code of Ukraine

Para 3 of Part 1 of Article 67 “Aggravating circumstances” can be used for all non-qualified hate crimes on grounds of **race, nationality, religion, and sex (gender)**.

Parts 2 of Articles 115 "Murder", 121 "Intended grievous bodily harm", 122 "Intended moderate bodily harm", 126 "Beating and torments", 127 "Tortures", and 129 "Threats of murder" provide enhanced penalties for committing the corresponding offences "under motives of race, national or religious intolerance."

Article 161 “Violation of citizens' equality based on their race, nationality, religion, disability, and other grounds” provides for penalty for **incitement to national, racial, or religious enmity** (a closed list of grounds) as well as for **discrimination on open list of grounds**.

Figure 2. The Ukrainian legislation that is used to punish for hate crimes.

In general, when citizens make appeals to register the crime provided for in Article 161 of the Criminal Code of Ukraine, law enforcement officers quite often refuse to initiate a pre-trial investigation in order to reduce the statistical number of the criminal offenses actually registered. In such cases, citizens are forced to appeal to a court which may oblige the police to initiate a pre-trial investigation.

Among other things, the situation with hate crimes had to be improved with several government programs that had been approved by the Ukrainian government in previous years. But almost all of them happened to be quite formal and ineffective programmes – such as the Action Plan on Combating Xenophobia and Racial and Ethnic Discrimination in Ukrainian Society for 2010-2012 (2010) as well as the National Action Plan to

Implement the Strategy on Protection and Integration into Ukrainian Society of the Roma National Minority for the Period until 2020 (2013). In our opinion, the most promising in this array of programs is the Action Plan to Implement the National Strategy on Human Rights for the Period until 2020, which was adopted in November 2015 and contains a number of provisions that directly affect hate crimes. First of all, this is Action 3 of Item 105:

developing and submitting to the Cabinet of Ministers of Ukraine a bill to amend the Criminal Code of Ukraine regarding:

deletion of the part that criminalizes discrimination (direct or indirect restrictions of the rights or establishment of direct or indirect privileges on grounds) from Article 161 of the Criminal Code of Ukraine along with appropriate amendments to the Code of Administrative Offences of Ukraine and to the Civil Code of Ukraine providing for fines, compensation of losses, etc.

providing punishment for crimes committed under motives of intolerance on such grounds as race, skin colour, religious beliefs, sexual orientation, transsexuality, disability, language (amendments to Paragraph 3 of Article 67, Parts 2 of Articles 115, 121, 122, 126, 127, 129, Article 293)

providing penalties for crimes committed on the grounds of intolerance on grounds such as race, color, religious beliefs, sexual orientation, transsexual, disability, language (amendments to paragraph 3 of Article 67, the second paragraph of articles 115, 121, 122, 126, 127, 129, Article 293)

[...]

harmonization of the conceptual apparatus of the Criminal Code of Ukraine in terms of determining different forms and manifestations of intolerance

unification of the terminology relating to the use of the term "intolerance".

It should be noted that the Action Plan is a government document and sets targets within the powers of the Ukrainian government – so it provides not adopting relevant legislation, which depends solely on the decisions of the Ukrainian Parliament, but only its drafting and submission to the Cabinet of Ministers of Ukraine which then may introduce them to the Parliament. At the time of this publication (September 2018) only the provisions on drafting legislation to decriminalize discrimination was partially implemented: a group of MPs introduced in the Verkhovna Rada relevant Bill 3501, which was discussed and approved in the first reading on 16 February 2016. However, this provision does not apply directly to hate crimes, and it is noteworthy that it was done not by the Ukrainian government, as is envisaged in the Action Plan, but by a group of MPs. The Ukrainian government is clearly trying to keep itself aloof from implementation of its own Action Plan, shifting the responsibility for this onto other people. The term of implementation of Action 3, Item 105, of the Action Plan ended in the 2nd quarter of 2016, however, even two years later the Ukrainian Ministry of Internal Affairs (MIA) did not develop nor introduce to the Cabinet of Ministers the respective amendments to the Criminal Code on crimes under motives of intolerance.

However, noteworthy are some positive developments from the Ukrainian authorities in this area: thus, as to implement Action 1, Item 109, of the Action Plan ("approval of the protocol / instructions on taking application of committed criminal offence considering motive of intolerance indicated by the victim"), the *Protocol on taking application of the criminal offence committed or being prepared* has been added with Paragraph 5, where the applicant may specify the circumstances of the criminal offence that may indicate the motives of intolerance. A police officer filling out the protocol must ask the applicant about the existence of such circumstances. The Chief Investigation Department (CID) of the MIA started in 2016 to collect information on cases of alleged hate crimes under motives other than the three mentioned in the Criminal Code (i.e. racial, national/ethnic or religious intolerance) not waiting for the reform of the criminal legislation.

Finally, according to Action 2 of Item 109 of the Action Plan ("development and inclusion of a course on effective and proper investigation of crimes on ground of intolerance in the programs of training, retraining, advanced training of law enforcement officers"), in 2016 specialists of the Lviv State University of Internal Affairs together with officers of the CID developed guidelines on investigation of hate crimes that are intended for "heads of departments of the preliminary investigation, investigators, officers of operative units,

specialists as well as students and researchers of law higher schools."⁹ Overall, the document combines general recommendations of the OSCE / ODIHR on hate crimes with the practical experience of investigating such crimes in Ukraine.

Nash Mir Center has already analysed in detail these recommendations in another publication,¹⁰ so here we just repeat this already existing analysis:

In general, we can only welcome the emergence of at least any such guidelines for police officers encountering crimes motivated by prejudice and intolerance, but the mentioned publication contains a number of significant drawbacks. First, although it explains that "an investigator at the initial stage of investigation should find out with which kind of xenophobia he will work" and then lists the following manifestations (racism, ethnophobia, religious intolerance, language antipathy, sexism, intolerance on grounds of age or health, homophobia), in fact throughout the text it refers only to investigation of crimes committed under motives of intolerance on grounds of race, national (ethnic) origin and religious beliefs. The guidelines contain no mention of crimes committed under motives of intolerance on other grounds. Annex 3 to these guidelines, which contains a list of expert institutions in the field of investigation of hate crimes, begins with the National Expert Commission of Ukraine on Protection of Public Morals, which was abolished in 2015, a year before the publication of the guidelines. Appendix 5 contains, in particular, the "symbols of racist, neo-Nazi, extremist and other organisations in various countries" – Poland, Italy, Russia, Croatia, Romania, Germany, Spain, Greece – yet the text of the guidelines nowhere mentions Ukrainian organisations and groups of this kind.

In addition, some practical recommendations to investigators raise serious doubts – for example, on the legal qualification of violent crimes motivated by intolerance at the initial stage of pre-trial investigation. The authors of the recommendations, on the one hand, believe that this qualification is possible only after "the establishment of a criminal suspect, because the motive for the crime is an element of mens rea that is virtually impossible to prove without the suspect / accused," thus, "when investigating crimes of this category, the primary criminal legal qualification of a criminal offense always would be qualification of it as a crime against the life and health of an individual without any qualifying characteristics or with other qualifying characteristics which are evident at the time of including information in the Register." On the other hand, they warn that "in no way may be allowed reluctance to include relevant information in the Unified Register of Pre-trial Investigations [URPI] about committing a crime on grounds of racial, ethnic or religious intolerance." Thus, the motive of intolerance is not so unobvious for all that, but in any case investigators are recommended to leave it outside the URPI [that happens in practice in the vast majority of cases]. It should be noted that publications of the OSCE / ODIHR provide a number of objective signs / indicators which give reason to believe that the motive of prejudice is present, even without the identification of persons of concrete offenders. Thus, in order to be a truly effective tool in the investigation of hate crimes, the mentioned publication clearly requires, at the least, a substantial revision.

⁹ Бурлака В.В., Крюков О.О., Корнієнко А.В. та ін., *Злочини, вчинені на ґрунті нетерпимості: особливості розслідування: методичні рекомендації*, Львів: ЛьвДУВС: ГСУ НП України, 2016.

¹⁰ Nash Mir Center, *The Face of Hatred. Crimes and incidents motivated by homophobia and transphobia in Ukraine in 2014-2017. The second edition, corrected and enlarged*, 2018, pp. 51-52, gay.org.ua.

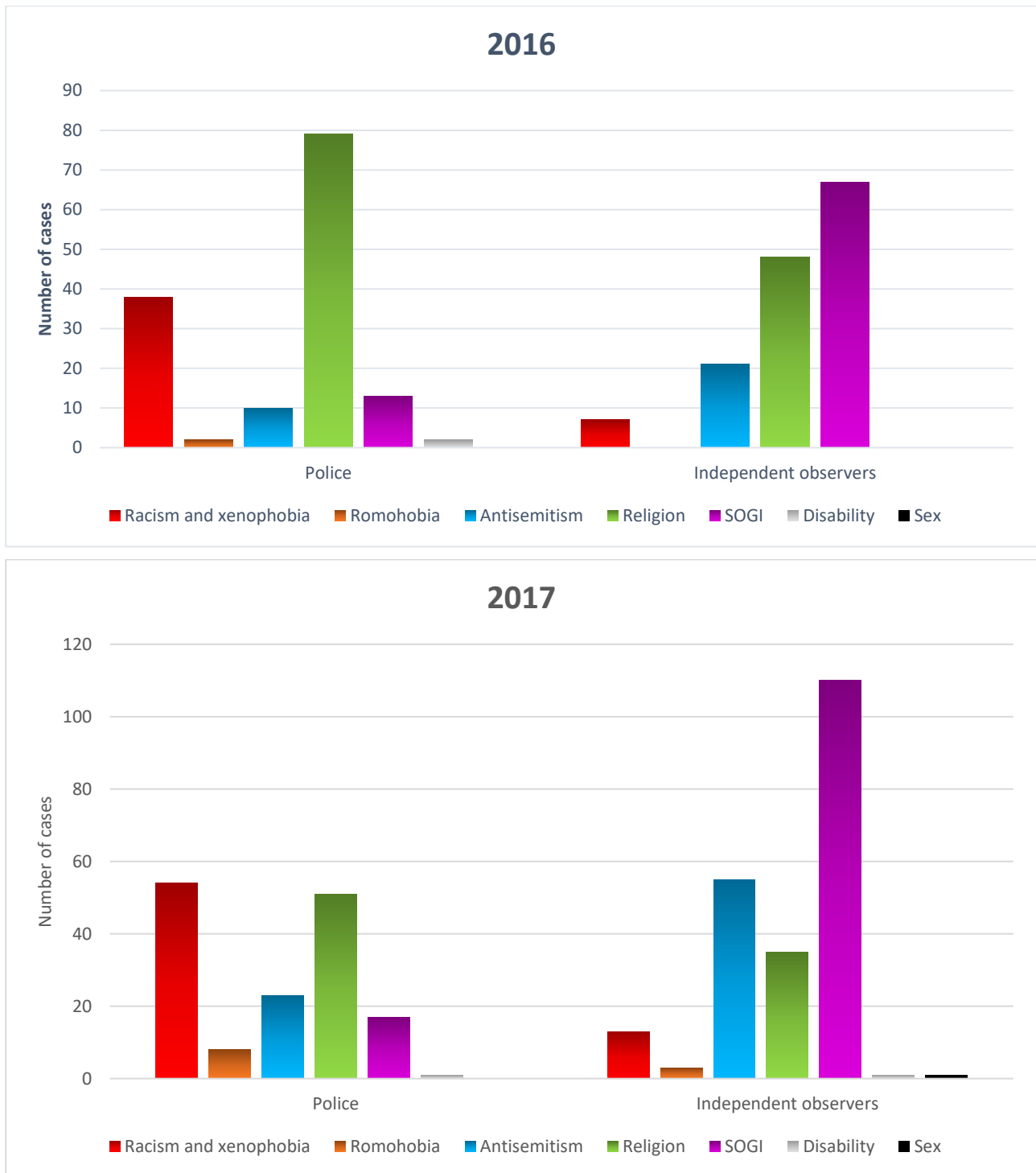


Figure 3. The number of hate crimes / incidents on various grounds that were reported to the OSCE by the National Police of Ukraine and independent observers in 2016-2017.

4. OCCURRENCE OF HATE CRIMES AND INCIDENTS IN UKRAINE

4.1. Hate crimes and incidents on grounds of sexual orientation and gender identity

Although sexual orientation and gender identity are independent from each other as characteristics of a human person, in the public mind they are usually considered collectively as a sign of belonging either to the cisgender heterosexual majority or to the minority consisting of all non-heterosexual and transgender people (this minority often is called the *LGBT community*). Thus, for practical reasons, we consider these characteristics together, calling them in short *SOGI*. Fear or dislike of the manifestations of homosexuality is called *homophobia*, and of the manifestations of transgenerness – *transphobia*, but, because in most cases we deal with a combination of these phobias, throughout this publication we use the term "homophobia" implying its broad meaning which also includes transphobia.

As in other countries, the exact number of lesbian, gay, bisexual and transgender persons (LGBT) in Ukraine is unknown. High levels of stigma faced by LGBT people in Ukraine mean that most of them hide their sexual orientation and gender identity from the public – owing to which estimation of the number of LGBT in Ukraine is extremely difficult. According to scientific estimates of the proportion of LGBT people in society, it is assumed that their total number is somewhere between 1% and 10% of the population that in today's Ukraine makes up between several hundred thousands to several millions.

The influence of orthodox Christian views on manifestations of homosexuality and transgenerness led to the fact that they were condemned in traditional Ukrainian society, so such manifestations were carefully hidden from prying eyes. The struggle against religion during the Soviet era has not changed the situation in this area: with Stalin's coming to power, homophobia became a part of the official Soviet ideology and gay sex between men was criminalized. Things began to change only with the beginning of Gorbachev's "Perestroika" and the collapse of the USSR. One of the first laws of the independent Ukraine was the abolition of criminal penalties for voluntary "sodomy" (Article 122 of the Criminal Code of the Ukrainian SSR). The current attitude of Ukrainian society to LGBT people was formed based on the Soviet views, though after the collapse of the orthodox communist ideology they were questioned in general. However, the place of the Communist Party as an ostensible moral authority in Ukrainian society was quickly taken by the conservative Christian churches which immediately began to promote the so-called "traditional values" that certainly include homophobia. For example, the head of the Ukrainian Greek Catholic Church (UGCC) Major Archbishop Svyatoslav in 2013 compared the "sin of homosexuality" to homicide.¹¹ The declaration "On the negative attitude to the phenomenon of homosexuality and attempts to legalize so-called same-sex marriages (to register same-sex partnerships)" (2007) became the basic document of the All-Ukrainian Council of Churches and Religious Organisations relating to LGBT issues. Almost all of the many public demonstrations and appeals against the introduction of anti-discrimination measures and in support of banning "propaganda of homosexuality" took place under religious slogans or were associated with the activities of religious organisations.

Church attitudes relatively quickly worsened the already largely negative attitude of Ukrainian society towards LGBTs. For example, the assertion that LGBT people should have the same rights as other citizens of Ukraine was supported by: in 2002 – 43% of the respondents, in 2007 – 34%, in 2011 – 36%¹² in 2016 – 33%.¹³ According to an opinion survey "Ukrainian society and the European values" conducted in 2017 by the Gorshenin Institute in cooperation with the Friedrich Ebert Foundation in Ukraine and Belarus, 39.3% of the respondents were not willing to accept "sexual minorities" in any capacity, and only 27.4% agreed to accept them as compatriots.¹⁴ Also, according to the poll of GfK Ukraine, homosexuals were in fourth position among those whom Ukrainians did not want to see among their neighbours – so believed 47% of the respondents (74% did not want to see drug addicts among their neighbours, 63% – alcoholics, and 51% – the Roma

¹¹ Католицький Оглядач, Блаженніший Святослав: гріх гомосексуалізму прирівнюється до людиновбивства, 22.05.2013, catholicnews.org.ua.

¹² Зінченко О. та ін., *Крок вперед, два назад: Становище ЛГБТ в Україні в 2010–2011 рр.*, 2011, с. 39, gay.org.ua

¹³ Київський міжнародний інститут соціології, *Ставлення до людей гомосексуальної орієнтації: лютий 2016 р.*, 2016, gay.org.ua.

¹⁴ Інститут Горшеніна, Фонд імені Фрідріха Еберта, *Українське суспільство та європейські цінності. Звіт за результатами соціологічного дослідження*, 2017, с. 13, gorshenin.ua.

people).¹⁵ Similar results were also obtained for young Ukrainians: sociological survey "Youth of Ukraine – 2015" conducted by GfK Ukraine in 2015 showed that, among the Ukrainian youth aged 14 to 35, 45% would not want to live next door to homosexuals (for comparison, 54% did not want to live nearby the Roma, 33% – HIV-positive persons, 19% – Muslims).¹⁶ The survey conducted in 2017 by New Europe Center and the Friedrich Ebert Foundation in conjunction with GfK Ukraine among young Ukrainians aged 14 to 29 showed that 40% of the respondents were not willing at all to see homosexuals among their neighbours.¹⁷

After the abolition of penalties for voluntary sex between men in late 1991, for a long time no changes occurred in the Ukrainian legislation concerning LGBT issues. Expanding interpretation of international conventions on protection against discrimination upon grounds of SOGI and the relevant decisions of the European Court of Human Rights had no direct impact on government policy in this area. Only under the influence and demands of the EU did the Ukrainian authorities eventually adopt the law "On Principles of Prevention and Combating Discrimination in Ukraine" (2012), including explicit prohibition of discrimination on grounds of SOGI in Article 21 of the Code of Labour Laws (2015), and adopt the Action Plan of Implementation of the National Strategy on Human Rights for the Period until 2020 (2015). The latter document was first to plan a reform of the Criminal Code of Ukraine (CCU) concerning criminalization of hate crimes on SOGI grounds (Item 105, Action 2): "development and submission to the Cabinet of Ministers of Ukraine a draft law on amendments to the Criminal Code of Ukraine [...] providing penalties for crimes committed under motives of intolerance on grounds such as race, skin colour, religious beliefs, sexual orientation, transsexuality, disability, language (amendments to Paragraph 3 of Article 67, the second parts of Articles 115, 121, 122, 126, 127, 129, Article 293)" with the deadline in the 2nd quarter of 2016, the main body responsible for its execution – the Ministry of Internal Affairs of Ukraine. However, the Interior Ministry (and, more precisely, the Chief Investigation Department which was appointed as an executor of this provision by the MIA) has failed to implement this provision of the Action Plan within the specified period -- instead trying to change its wording. However, at the time of drafting this report, no changes to this provision of the Action Plan have been introduced whatsoever.

Thus, the current Ukrainian legislation contains only a ban on discrimination on SOGI grounds – explicit in Article 21 of the Code of Labour Laws, and implicit (i.e. that arises from the interpretation) in Article 6 of the law "On Principles of Prevention and Combating Discrimination in Ukraine". One can also assume that Article 24 of the Constitution of Ukraine implicitly prohibits discrimination on SOGI grounds ("There may be no privileges or restrictions on grounds of race, colour, political, religious and other beliefs, sex, ethnic or social origin, property status, place of residence, on linguistic or other characteristics"). The only section of the CCU providing for the punishment for discrimination is Article 161 "Violation of citizens' equality based on their race, nationality, religion, disability, and other grounds", but the Action Plan provides that discrimination should be decriminalized and instead will be punished according to the Code of Ukraine on Administrative Offences. The relevant Bill 3501 has already passed the first reading in the Parliament. Since the list of grounds protected from discrimination in Article 161 is open, it allows the use of it in case of discrimination on SOGI grounds, but currently we do not know about such actual precedents – however, this article is used rarely in general and even more rarely to punish for discrimination.

Article 161 at the same time punishes also for deliberate actions aimed at inciting enmity and hatred, but only national, racial or religious – thus, hate speech on grounds of SOGI in Ukraine is not prosecuted. Only after the victory of the Revolution of Dignity, along with the beginning of real reforms in line with European integration, did the level of homophobic rhetoric in society significantly reduce, and Ukrainian public figures and government officials begin to publicly support equality and protection for LGBT people, though even now hate speech against LGBT people is the rule rather than the exception.

All articles of the Criminal Code providing for increased penalties in case of hate crimes also mention only racial, national or religious intolerance (Article 67 additionally includes gender). Thus, current Ukrainian legislation does not consider crimes motivated by intolerance on SOGI grounds as hate crimes and does not

¹⁵ GfK for Pact Inc., *Опитування громадської думки щодо громадянського залучення*, 2017, розділ D9, dif.org.ua.

¹⁶ Волосевич І., Герасимчук С., Костюченко Т., *Молодь України – 2015*, 2015, с. 8, www.gfk.com.

¹⁷ Фонд ім. Фрідріха Еберта, *Результати загальнонаціонального опитування "Українське покоління Z: цінності та орієнтири"*, 2017, с. 131, neweurope.org.ua.

provide increased penalties for their commission. However, as mentioned in section 3.2 above, the Chief Investigation Department (CID) of the National police of Ukraine started in 2016 to collect information on cases of hate crimes for other reasons than the three mentioned in the Criminal Code (i.e., racial, religious, or national / ethnic intolerance) without waiting for the reform of the criminal law. Also, in 2016 specialists of the Lviv State University of Internal Affairs together with officers of the CID worked out the above-mentioned methodological recommendations for the investigation of hate crimes that, among the manifestations of xenophobia leading to the commission of such crimes, mention homophobia.¹⁸ Thus, now the Ukrainian police recognizes crimes committed under motives of intolerance on grounds of SOGI as hate crimes and understands the need for their proper investigation despite the current legal framework still being insufficient for this task.

In fact, hate crimes and incidents on grounds of SOGI occur solely on the basis of homophobia / transphobia. No such actions were documented against representatives of the heterosexual cisgender majority during all the years of observation.

The available official statistics of hate crimes and incidents on SOGI grounds is very scarce and certainly does not reflect the real situation in this field. Thus, the above-mentioned information of Ukraine's National Contact Point for Hate Crimes contains data only for 2015 and mentions only one case of violation of Article 161 on ground of sexual orientation and 8 cases of offences under other articles of the Criminal Code with likely motives of intolerance on this ground.¹⁹ Another state structure that gathers information about possible cases of hate crimes on grounds of SOGI is the Secretariat of the Parliamentary Commissioner for Human Rights. The annual report of the Ukrainian ombudsman on the situation regarding observation of human rights and freedoms in Ukraine for 2017 states that "In 2017 the Ombudsman carried out 27 proceedings based on information about violation of human rights and the principle of non-discrimination on grounds of sexual orientation and gender identity, of which: 8 proceedings – on proper providing the right to peaceful assembly, 9 – on hate incidents, 7 – on cases of incitement to discrimination, and only 3 – on equal access to services and realization of the right to work without discrimination."²⁰

Instead, Nash Mir Center in 2017 documented 226 cases of crimes and incidents motivated by homophobia / transphobia, discrimination and other violations of LGBT rights in Ukraine (20 cases occurred in 2016, and the rest occurred in 2017). Actions motivated by homophobia and hate speech on the part of persons not vested with official authority were observed in 172 cases, 99 of which can be described as hate crimes, and 71 – as hate incidents. In 7 cases manifestations of hate speech were recorded.

The following types of violations were noted (please see Table 1):

Table 1. The number of different types of LGBT rights violations in 2017.

Types of violations	Number
insults, humiliation of human dignity, threats	134
physical violence of varying severity	92
homophobia / transphobia in the family	27
illegal collection, disclosure (or threat of disclosure) of confidential information	25
extortion and blackmail	22
robbery	15
brigandage	7
damage to property	7
homophobic inscriptions / appeals	6
obstruction to peaceful actions	6
threat by weapon and its application	3

¹⁸ Please see note 9.

¹⁹ Please see note 7.

²⁰ Секретаріат Уповноваженого Верховної Ради України з прав людини, *Щорічна доповідь про стан дотримання та захисту прав і свобод людини і громадянина в Україні*, 2018, с. 526, ombudsman.gov.ua.

fraud	2
attacks on LGBT centres or actions	2
sexual violence	1
kidnapping	1
torture or inhuman treatment	1

(Note: some cases concurrently include several violations, so the total number of violations exceeds the number of cases.)

Most of the actions on ground of homophobia in 2017 can be divided into several main groups:

- Attacks of right-wing radical or other homophobic groups on LGBT events, community centres or activities, as well as on individual LGBT activists.
- Crimes of a lucrative nature when perpetrators specifically seek LGBT victims although they may not have personal prejudices against this group, but are hoping that homosexual and transgender people are easy prey.
- Actions motivated by common homophobia / transphobia, when traditional social prejudices cause manifestations of aggression toward ordinary homosexual or transgender people. These acts can be observed occurring from neighbours, acquaintances or strangers who just thought that some person's appearance or behaviour did not meet certain "traditional" standards.

In 26 cases abuses by the police were reported. As in previous years, the main violation by the police remains their inadequate response to appeals for protection from LGBT persons. Inadequacies consist in: the refusal of the police to accept applications about the offence or to include in them essential evidences of the victims, or homophobic / transphobic motive of the offenders, attempts to bring the investigation of offences containing signs of hate crimes down to mere "handy" hooliganism or infliction of injuries etc., delaying investigations and closing proceedings because of alleged inability to establish the persons of the offenders, and derogatory and discriminatory attitudes of law enforcement officers towards LGBT people.

The vast majority of hate crimes and incidents' victims do not seek help from the law enforcement agencies. Among the main reasons for such behaviour, victims most frequently mention their reluctance to disclose their sexual orientation / gender identity to people who are not LGBT, fear for the consequences of such disclosure, distrust of the police and the lack of confidence in the effectiveness of the law enforcement agencies. All these are confirmed by the collected evidences. For instance, in 2014 10 people received help by the police, and 18 did not; in 2015 – respectively, 7 to 28; in 2016 – 6 to 18. The attitude of many of the respondents to the police may be characterized by the comment of one of them to the question "Did you try to protect the rights violated as a result of the incident?": "How can I seek help from the police when only homophobes and exterminators work there?"

Very rarely are criminal proceedings on hate crimes against LGBTs brought to the court, and they almost never are investigated as hate crimes rather than as ordinary offences. An overview of judgments (sentences, decisions) in criminal proceedings that in any form mentioned the characteristic of sexual orientation (gender identity or expression were never mentioned), according to the Unified State Register of Judgments showed that most of these decisions were taken concerning crimes against life and health (murder, bodily injuries of varying severity), most often committed on "ground of personal hostile relations connected with non-traditional sexual orientation" or under lucrative motives. The victims were exclusively homosexual or bisexual men.

In general, the following trends were observed:

- Most crimes were categorized as grave and especially grave (punishment for which provides for imprisonment for up to 10 years, and over 10 years and life imprisonment, respectively).
- Most crimes were committed with particular, unjustified cruelty towards the victim (for instance, a large number of stab wounds, attempts to commit demonstrative execution, dismemberment of the corpse).

- The standard defence tactics were allegations that the defendant's actions were caused by illegal encroachment of the (gay) victim upon his health, sexual freedom and integrity. At that, such actions allegedly committed by the victim, in the defence's view have resulted in hot bloodedness that significantly affects the nature of the crime. However, the courts were critical toward this position of the defence, usually objectively assessing the real motives of the crime. Only in one case did the court of appeal change the qualification of the crime from murder (Part 1 of Article 115 of the Criminal Code of Ukraine) to manslaughter committed in a state of strong emotional excitement (Article 116 of the Criminal Code).
- Quite often was a situation when criminals chose the victim exactly on the ground of sexual orientation, believing that the victim would not turn to law enforcement recourse – for instance, through being ashamed of his/her sexual orientation.
- Most cases included aggregate offences, namely, crimes against life and health combined with crimes against property.

In recent years the number of cases sharply increased of violent obstacles to the peaceful assembly of the LGBT community or of any events associated with LGBT people – as well as attacks on such gatherings and events. Attacked in particular in 2017-2018 were participants of the Equality Marches in Kyiv and Odesa, the Equality Festival in Zaporizhzhya, the actions for the World Day Against Homophobia in Kharkiv and Kherson, and various workshops and meetings on LGBT issues in many cities of Ukraine. In cases where such actions are agreed on beforehand with the local police departments, the constabulary are largely able to prevent the commission of physical injury to event participants, but those very events turn out to be disrupted anyway. Blocking and attacks by homophobic groups have been quite demonstrative – made upon events aimed at preventing hate crimes motivated by homophobia, such as round tables including police participation and the local LGBT communities in Uzhhorod and Vinnytsya, organised by Nash Mir Center in early 2017. In such cases the organisers and participants of these attacks often remain unidentified despite dozens of witnesses and police officers being present at the scene who record everything that happens with photos and video. While investigating criminal proceedings, the police ignore the obvious homophobic motives of the attackers, in most cases qualifying their actions as simple hooliganism. When opponents of LGBT events refrain from physical violence, limiting themselves just to blocking and other obstacles to the holding of LGBT events, police officers usually do not fix any violations at all and instead state that they have no legal grounds for restricting such homophobic actions, although the Criminal Code contains Articles 293 "Group violation of public order" and 170 "Preventing legal activities of trade unions, political parties, public organisations", the contents of which exactly corresponds to such a situation. To our knowledge, neither the police nor the Public Prosecutor's Office has ever brought an accusation under these articles in cases of evident interference in holding of LGBT events.

It should be noted that similar problems are also typical for the investigation of hate crimes on other grounds, especially for those which, like SOGI, are not expressly mentioned in the Criminal Code.

Even in those cases when attackers at LGBT events, organisations, and individual activists hide their faces behind masks, nonetheless they do not hide their affiliation with certain groups. In almost all cases the groups prove to be right-wing nationalist, racist and neo-Nazi organisations and other informal groups, among which figure Svoboda Party, Civil Corps Azov, the National Corps, the Voluntary Movement OUN of Mykola Kokhanivskyi, the Brotherhood of Dmytro Korchytskyi, the Right Sector, the Tradition and Order, Sokil (Falcon), Misanthropic Division, C14, Freikorps, Katechon and others. Because most attacks involved representatives of several such organisations, and their leaders and ordinary members often "wander" from one group to another, we can conclude that there exist a common radical right-wing ideological movement, a common pool of aggressive opponents of liberal democracy in Ukraine that just uses different names. Their struggle against their LGBT co-citizens is necessarily accompanied by similar actions against other traditional targets of hatred: "racial" and ethnic minorities, refugees and asylum seekers, people who share the left-wing and / or liberal political views, and more.

Another specific category of hate crimes against LGBT people are attacks on individual homosexual or bisexual men and transgender persons who are specifically sought out by the attackers through the Internet, masquerading as looking for a partner for sex or communication – in social networks, dating websites or



Figure 4. Typical examples of hate crimes against LGBTs: at the top – an attack on an action to the International Day Against Homophobia and Transphobia, Kharkiv, 17.05.2018; below – a group of people detained on suspicion of armed assault on a gay man on Khreshchatyk, Kyiv, 06.09.2018.

through specialized applications for smartphones. In such cases, offenders may be guided by motives of their own homophobia (when their main purpose is to inflict harm to victims) as well as public prejudices against

LGBT (when their main goal is to get some personal benefit, but the victim is chosen as a convenient "prey"). In addition to individual criminals who use such methods of "work", there exist extensive criminal networks, groups engaged in a targeted "hunt" for gay men. Most of them have come from Russia, where they first emerged, evolved, and then extended their activity into the territory of Ukraine. In particular, these groups are *Modnyi Prigovor* (*Fashion Verdict*, named after the popular Russian TV show), and *Okkupai-pedofilyai* founded by the notorious Russian neo-Nazi Maksim Martsinkevich nicknamed *Tesak* (*Slasher*). In 2013 he made a kind of "tour" through major cities of Ukraine where he met with his supporters and conducted workshops on abuse and public humiliation of homosexuals. He described the activities of his movement as: "It's a show. I don't try to jail a person, I try to completely break the life of a person."²¹ The movement *Naslediye* (*Heritage*) in Zaporizhzhya acts independently of their Russian associates yet under the same principles. Its representatives allege that they struggle with paedophilia, and according to the numerous testimonies of victims and the media, have fairly close relationships with the local police who turn a blind eye to their crimes. The similar group *White Lions* from Kropyvnytskyi included two executives of penitentiary institutions (the organisers of the group) and members of a soccer fan club.²²

The marked increase in hate crimes and incidents on SOGI grounds in Ukraine corresponds to the increase in the visibility of LGBT people for the general public. The global trends and the situation in the Ukrainian LGBT community known to us leave no doubt that LGBT visibility and public activity will only increase in the near future. Thus, without changing the attitude of Ukrainian society towards LGBTs and reforming the legislation and the law enforcement agencies' activity on protection of LGBT people's legitimate rights, the problem of hate crimes on SOGI grounds in Ukraine will only deepen.

An online poll of the Ukrainian gay community conducted by Nash Mir in August and September of 2016 found 15 cases of hate crimes or incidents against LGBT people that occurred in the occupied territory of Ukraine for the past three years. They are not fundamentally different from the problems that LGBT people face in the territory controlled by the Ukrainian government – the main difference is the lack of any effective ways to protect the rights of victims of violence and discrimination under circumstances of the Russian occupation.

²¹ Lenta.ru, *Я в тюрьму не хочу опять*, 18.09.2012, lenta.ru.

²² Українська правда, *Банда "Білі леви", в складі якої були правоохоронці, тероризувала Кропивницький*, 28.02.2017, pravda.com.ua.

4.2. Hate crimes and incidents on ground of nationality / ethnicity

Nationality is one of three grounds (along with "race" and religious beliefs) that are traditionally recognized as protected from hate crimes in the Criminal Code of Ukraine (paragraph 3 of Part 1 of Article 67, paragraph 2 of articles 110, 115, 121, 122, 126, 127, and 129). Also, the Constitution of Ukraine prohibits discrimination based on ethnic origin (Article 24). The Criminal Code of Ukraine considers as crimes such discrimination, incitement of national hatred, and humiliation of national honour and dignity (Article 161) as well as the importation, manufacture or distribution of works that promote intolerance and discrimination (Article 300).

First of all, we should note peculiarities in the use of the terms "nation", "nationality" and those derived from them in the Ukrainian legislation. The Preamble of the Constitution of Ukraine defines the concept of "the Ukrainian people" as "citizens of Ukraine of all nationalities" and it separates the term "the Ukrainian nation" from the concept of "the Ukrainian people" – thus, we can see that in the Constitution of Ukraine the term "nation" means ethnic nation, and "nationality" means ethnicity. These terms are also used in this sense in other Ukrainian laws. However, in international law, which is effective for Ukraine, the terms "nation" and "nationality" have a broader meaning, including, respectively, the concept of political (civic) nation and belonging to it. Thus, although most cases of hate crimes, discrimination, incitement of hatred, and hate speech on a national ground in Ukraine actually refer to the motives of bias towards ethnicity or ethnic origin of their victims (e.g., ethnic Poles), they should also include those cases where victims are selected because of their association with certain countries (e.g., Polish citizens).

Ukraine is a quite typical European nation state – that is, one that in the past appeared as a form of self-determination and self-organisation of a certain ethnic nation. According to the last population census (2001), ethnic Ukrainians comprised 77.8% of the population, Russians – 17.3%, Belarusians – 0.6%, the remaining ethnic minorities did not exceed 0.5% each of the total population. The only region in Ukraine where Ukrainians did not comprise the absolute majority of the population was Crimea (including Sebastopol) – there Ukrainians comprised only about a quarter of the population, and the vast majority were Russians. Russians also comprise quite a large part of the population in other regions of Ukraine, except for the West, and in all major cities. Areas densely populated by other significant ethnic minorities are Crimea (Crimean Tatars), Odesa oblast (Bulgarians, Moldovans), Transcarpathia (Hungarians), and Chernivtsi oblast (Romanians, Moldovans).

Of course, the data of the last census are very outdated: the process of development of Ukrainian statehood and the Russian aggression have significantly changed the ethnic map of Ukraine. Thus, according to a study conducted in 2017 by the Gorshenin Institute in cooperation with the Friedrich Ebert Foundation in Ukraine and Belarus: in all regions of Ukraine, except the occupied territories, 92.6% of the respondents identified themselves as Ukrainians, and only 5.5% – as Russians.²³

The same study also revealed a rather high level of ethnic tolerance in Ukrainian society: only 1.3% of respondents were not willing to accept a person of other nationalities in any capacity while the relative majority (23.6%) were willing to accept such a person as a close friend.²⁴ However, attitudes towards specific ethnic groups may significantly differ from the declared general tolerance: for example, in a survey of GfK Ukraine of 2017, 51% of the respondents did not want to see the Roma among their neighbours.²⁵ Similar results were obtained in a study by GfK Ukraine among Ukrainian young people aged 14-35: although only 10% of the respondents did not want to live next to immigrants or foreign workers, 51% were against a neighbourhood with the Roma.²⁶

Kyiv International Institute of Sociology in 2015²⁷ and 2018²⁸ conducted surveys on the level of prejudices that inhabitants of Ukraine have towards different nationalities. In general, this level can be estimated by the

²³ Please see note 14, p. 7.

²⁴ Ibid., p. 13.

²⁵ Please see note 15.

²⁶ Please see note 16, p. 73.

²⁷ Forbes Україна, *Мігранту на замітку: Як українці сприймають представників інших національностей*, 05.11.2015, forbes.net.ua.

²⁸ Київський міжнародний інститут соціології, *Міжетнічні упередження в Україні*, 04.10.2018, kiis.com.ua.

percentage of respondents who chose the option "would not let them in Ukraine"; and the change in this indicator over three years shows a situational trend. Thus, these data were obtained (please see Table 2):

Table 2. Percentage of respondents who do not wish to let into Ukraine representatives of certain national / ethnic groups, the percentage of the total.

The national (ethnic) identity	2015	2018
Americans	6.70	7.96
Belarusians	1.23	2.57
Jews	5.39	12.60
Canadians	2.28	5.24
Africans	14.36	20.47
German	2.86	6.03
Poles	2.08	5.30
Russians	17.34	15.50
Romanians	5.26	11.81
French	1.69	3.98
Roma	32.79	40.67
Crimean Tatars	4.75	8.82
Arabs	---	22.77
Chinese	---	14.63

It is noticeable that during the last three years the level of xenophobia in Ukraine significantly increased – in particular, towards Jews and Romanians xenophobia rose at a twofold level. Also clear is that much higher levels of xenophobia is observed against representatives of the "racial" groups other than the Ukrainian, such as Africans, Arabs, and Chinese. Thus, for these three years we have been dealing with prejudices on grounds of "race" rather than with those of nationality. The leading group attracting negative bias is expectedly the Roma. Further, such a high percentage of negative attitude towards Russians certainly is not traditional for Ukrainian society and can be explained by the military invasion of Ukraine by Russia, which continues to this day.

The quarter-century history of independent Ukraine has not been marked by large-scale ethnic conflicts. In the past, they occurred repeatedly – thus, the first half of the XX century was marked by Jewish pogroms which were followed by the Holocaust and then mass emigration of the Jewish population, and ethnic cleansing against the Poles in Volyn deepened in effect by the post-war eviction of most Poles in Poland. Stalin's regime also deported the vast majority of the Crimean ethnic minorities, especially the Crimean Tatars, who began returning to their historical homeland only at the very end of the Soviet Union era. The return of the Crimean Tatars was accompanied by numerous conflicts that arose between them and the local authorities, and sometimes with organisations pretending to represent interests of the predominantly Russian-Ukrainian ("Slavonic") Crimean population. However, the occupation and annexation of Crimea by Russia in 2014 brought the region out of the control of Ukrainian authorities and deprived them of their ability to affect somehow the current situation within it, in particular in the sphere of hate crimes and incidents.

Ukrainian state institutions record a relatively small number of manifestations of xenophobia: accordingly in 2017 the Parliamentary Commissioner for Human Rights received 37 complaints of discrimination on grounds of race or ethnic / national origin; additionally, on the basis of the media, social networks and other sources for information monitoring, she also started 16 proceedings based on the facts of alleged hate crimes, and 14 proceedings on hate speech on the aforementioned grounds.²⁹ The National Police of Ukraine reported that in 2015 they opened 24 proceedings on grounds of nationality / ethnicity, and 4 – on ground of anti-Semitism under Article 161 of the CCU. However, this article punishes not for hate crimes in the strict sense of the term, but for discrimination or incitement to hatred. Probable motives of national intolerance were

²⁹ Please see note 20, p. 532.

observed in 3, and anti-Semitism – in 15 criminal proceedings under other articles of the Criminal Code.³⁰ In 2016, the National Police reported the possible reasons of national intolerance in 7 instances, anti-Semitism – in 9, and Romophobia – in 2 criminal proceedings – all under articles of the Criminal Code other than 161.³¹

According to the OSCE's data, in 2017 the National Police documented 54 cases of offences based on xenophobia and racism. Independent observers (non-governmental and international organisations) have provided information for the OSCE about 13 cases of actions on grounds of racism and xenophobia (including 9 violent attacks on people), 4 – on ground of Romophobia (including 2 attacks), and 21 – on ground of anti-Semitism (of which 20 consisted in the damage to property) in Ukraine in 2017. In 2016 the corresponding information included 7 cases of actions on grounds of racism and xenophobia (including 5 violent attacks on people) and 21 – on ground of anti-Semitism (of which 17 were cases of damage to property).³²

As we can see, the official statistics and non-governmental organisations' data often mention manifestations of xenophobia and racism together, which makes it impossible to separate hate crimes and incidents on the national ground from the racist ones; at the same time, manifestations of xenophobia against the Roma and Jews are mentioned separately from the other ethnic / national groups. In general, data reflect the real situation: firstly, the attitudes towards the Roma and Jews in Ukrainian society are obviously most biased when compared with the other "traditional" ethnic minorities; and secondly, the rest of the xenophobic manifestations relate mainly to the ethnic minorities stated to be "non-traditional" for Ukrainian society, which often differ from the general public by their appearance (skin colour, facial features, etc.) – that in practice is embedded in the unscientific concept of "race."

Roma

By numerous estimates, Ukrainian society has the most negative attitude on national / ethnic ground towards the Roma (until recently they were also, including officially, called *tsygany* (*Gypsies*), but now this name is seen as undesirable or even offensive and gradually it has fallen out of Ukrainian usage). It should be noted that a similar situation is observed in all Eastern European countries neighbouring Ukraine – both in terms of public attitudes towards the Roma and about the problems they face. According to the last population census of 2001, about 47,600 Roma lived in Ukraine, representing approximately 0.1% of the population, but according to unofficial estimates their number exceeded these numbers several times – from 120 to 400 thousand persons).³³

Also typical of many Roma communities are the lack of permanent jobs, chronic poverty, poor housing, poor education and healthcare etc. – a whole complex of interrelated problems. The Roma often live in rather isolated communities and almost everywhere have a negative reputation among the local population and law enforcement. All this leads to a very high level of discrimination and hate crimes against this ethnic minority in Ukraine.³⁴

As noted above, the Ukrainian official statistics mentions just a few cases of hate crimes and incidents against the Roma. However, numerous publications in the media, the data of international, human rights, and Roma organisations argue that such a relatively small number of crimes reported characterizes the absence of regular monitoring of these cases (even by non-governmental organisations) and the shortcomings of the Ukrainian law enforcement activities – rather than truly describing the real situation. In particular, the Coalition of Ukrainian Roma NGOs "Strategy 2020" reports that "since 2016, according to statements by members of the Roma community, 7 criminal investigations were started under Article 161 of the Criminal Code of Ukraine, but no case, which today is investigated by the National Police of Ukraine, has been

³⁰ Please see note 7.

³¹ Головне слідче управління Національної поліції України, *У Нацполіції створено контактний пункт від України з питань злочинів, учинених на ґрунті ненависті*, 26.02.2016, old.npu.gov.ua..

³² OSCE / ODIHR Hate Crime Reporting, Ukraine, hatecrime.osce.org.

³³ European Commission, *An EU Framework for National Roma Integration Strategies up to 2020*, 2011, c. 18, ec.europa.eu.

³⁴ To learn more about the problems of the Roma in Ukraine please see, e.g., The Equal Rights Trust, *In the Crosscurrents: Addressing Discrimination and Inequality in Ukraine*, 2015, Chapter 2.5.1, equalrightstrust.org.

presented for trial, and the Prosecutor's Office is trying to illegally close such cases and to provide other qualifications for the crimes."³⁵

The majority of reported cases of hate crimes against the Roma are characterized by extreme cruelty and scale – this suggests that incidents of a smaller scale being passed by for attention altogether. Thus, the European Commission against Racism and Intolerance in its report on Ukraine from 2017 noted: "Roma appear to be the most frequent victims of racist violence. For example, in February 2014, a group of about 15 people attacked four Roma households in Korosten, and in April 2014 a Roma family's house in Cherkasy was set on fire. In August 2016 [...] unrest broke out in Loshchynivka and several Roma households were ransacked and burned down by locals. More than 300 people took part in the violence, resulting in property damage but no injuries. Seven Roma families, including 17 children, fled the village following a local council decision on their eviction."³⁶ In 2018 the United Nations in Ukraine said that "The past month saw three arson attacks on Roma settlements in western Ukraine, Lviv and Ternopil, and in the capital, Kyiv. The attacks resulted in the forced evictions of the Roma communities. The National Police has initiated investigations under hooliganism charges (in one case with firearms). In a separate case, on 24 May, a lawyer for a Roma community was beaten and faced death threats. He represents victims of an earlier attack on a Roma settlement in 2017, when one Roma man was killed and many beaten. To date, no one has been held accountable for this killing and violence. [...] The lack of accountability in violent attacks against minorities and evictions of Roma in previous years has fuelled impunity."³⁷

There are ample evidences of biased and discriminatory attitude of the Ukrainian law enforcement agencies to the Roma³⁸ – this leads to the fact that victims do not trust them, do not believe in the effectiveness of appealing to them for help, and finally just do not report cases of hate crimes and incidents motivated by Romophobia; these negative attitudes significantly lower public statistics on such crimes.

According to information available from open sources, among the crimes allegedly committed on ground of Romophobia, the qualification as a crime on the basis of intolerance (Article 161 of the Criminal Code of Ukraine) was applied only to the incident on Lysa Hora in Kyiv (April 21, 2018). In other cases (but not all of them: criminal proceedings were not started "due to the absence of *corpus delicti*" in cases of an attack on a settlement on April 10, 2017, July 22, 2017, and May 9, 2018), criminal proceedings were investigated under article 296 of the Criminal Code of Ukraine – as hooliganism. In the case of June 23, 2018, there was also a qualification under Article 115 of the Criminal Code of Ukraine ("Intentional murder"). At the same time, it is important to note that the reaction of law enforcement agencies is often passive, not oriented to achieve results and fast, effective investigation. Thus, a criminal proceeding on the incident on Lysa Hora in Kyiv was started only 5 days after the incident, because a video, on which the attack was recorded, appeared over social networks. Hitherto the police had denied the existence of the crime. In earlier incidents, such as in Loshchynivka, criminal proceedings are regularly closed due to the "impossibility of establishing the persons involved" or subject to delays that cause the lawyers representing the interests of the victims regularly to appeal to judges with complaints about the actions of investigators and prosecutors.

In the absence of reliable statistics on hate crimes and incidents we are able to create only a qualitative picture of the situation in this area. One can see that until recently crimes on ground of Romophobia occurred mostly spontaneously and in a disorganised manner, but in the last few years there appeared some groups that persecute the Roma purposefully. They all belong to the radical far-right nationalist organisations – the very ones that have been noticed in similar attacks on the LGBT community, feminist and leftist movements, issuing racist and xenophobic propaganda and more. In particular, the suspects in the aforementioned attacks on the Roma camps were these: in Kyiv – members of the C14 organisation, in Lviv – an informal grouping "Sober and Angry Young People" (wearing clothing exhibiting the symbols of the ultra-right organisation Misanthropic Division), in Ternopil – the Right Sector. A typical phenomenon is often when the same attackers (in additional incidents that involve their participation) often refer to themselves as

³⁵ Міжнародний фонд "Відродження", *Занепокоєння фонду "Відродження" щодо появи антиромських спільнот*, 29.01.2018, irf.ua.

³⁶ European Commission against Racism and Intolerance, *ECRI Report on Ukraine (fifth monitoring cycle)*, 2017, para. 47, coe.int.

³⁷ Представництво ООН в Україні, *Україна: ООН закликає Уряд ефективно розслідувати всі напади на представників меншин*, 01.06.2018, un.org.ua.

³⁸ Please see note 34, Chapter 2.5.1.

participants and wear the symbols of other organisations or informal groups. At the same time, ostensibly a very different far-right organisation will immediately stand up for their protection. Apparently, we are dealing not just with some independent groups but instead with the larger general far-right movement, whose members actually constitute a community with common goals, objectives and methods of activities. In fact, some members of the movement did not even hide that the Roma are one of their intended victims.³⁹

The *Strategy of Protection and Integration into Ukrainian Society of the Roma Minority for the Period until 2020* adopted back in 2013 had to comprehensively improve the situation of the Roma community, but, under the testimony of numerous human rights and Roma activists, this public policy simply does not work. For instance, the President of the All-Ukrainian Union of NGOs "Congress of the Roma of Ukraine" Petro Hryhorichenko stated: "Without the funding, this Roma strategy becomes just a declaration. The previous programme of 2003-2006 had also not received any funds from the budget. Such programmes and strategies without a budget are just a manipulation and demonstration of some activity."⁴⁰

Jews

Ukraine has a long history of anti-Semitism manifestations – however, this is like almost any country where a noticeable number of Jews resides. In the past, until the first half of the XX century inclusive, there were terrible cases of mass pogroms and ethnic cleansing, the memory of which still persists both in Ukrainian and Jewish public consciousness. After the Second World War, the situation fundamentally changed: on the one hand, there existed the official recognition and unequivocal condemnation of the Holocaust, on the other, the mass extermination of Jews during the German occupation and their post-war mass emigration to Israel and Western countries sharply reduced the proportion of Jews in the population of Ukraine. As of 2001 about 103,500 Jews lived in Ukraine, representing approximately 0.2% of the population (for comparison, in 1939 Jews accounted for 4.95% of the Ukrainian SSR population).

The sociological studies of the Ukrainian society's attitude to Jews show a fairly high level of tolerance. Thus, according to the Pew Research Center, the level of anti-Semitism in Ukraine turned out to be the lowest among the countries of Central and Eastern parts of Europe – only 5% of the Ukrainian respondents were unwilling to accept Jews as citizens of their country (in the other surveyed countries, this proportion ranged from 7% in Serbia and Bulgaria to 32% in Armenia).⁴¹ This coincides with the aforementioned data obtained by the Kyiv International Institute of Sociology in 2015.⁴²

Many national and international Jewish organisations actively work in Ukraine, and anti-Semitic incidents attract considerable attention of the press and human rights defenders, so we can assume that the available data on anti-Semitic incidents correspond to the real situation in the field. In 2017 the National Police recorded only 1, and independent observers – 4 cases of physical assault on a person under motives of anti-Semitism.⁴³ The vast majority of the documented cases consisted in damage to property, desecration of graves, and hate speech.

It should be noted that anti-Semitic actions may be qualified as motivated by bias not only on national but also on religious ground – very often they consist in attacks on synagogues and faithful Jews. However, in practice, in Ukraine professing Judaism equals belonging to the Jewish community, so we consider these cases as crimes and incidents on ground of nationality / ethnicity.

Two years ago, the Ambassador of Israel in Ukraine Eliab Byelotserkovski stated that anti-Semitism manifestations in Ukraine have a hooligan, but not a systemic, nature, and noted that the Ukrainian government firmly opposes such manifestations.⁴⁴ Meanwhile, Minister of Diaspora of Israel Naftali Bennett

³⁹ Вголос, *У Львові створили спільноту боротьби із ромами*, 26.01.2018, vgołos.com.ua.

⁴⁰ Шинкаренко О., *Чому Україна не захищає права ромів?*, Центр інформації про права людини, 19.09.2017, humanrights.org.ua.

⁴¹ Masci D., *Most Poles accept Jews as fellow citizens and neighbors, but a minority do not*, Pew Research Center, 28.03.2018, pewresearch.org.

⁴² Please see note 27.

⁴³ Please see note 32.

⁴⁴ УНІАН, *Прояви антисемітизму в Україні мають хуліганський, а не системний характер – посол*, 19.01.2016, unian.ua.



Figure 5. Typical examples of hate crimes / incidents on ground of nationality: at the top – an anti-Semitic inscription on the fence of a synagogue, Odesa, 26.12.2017; below – a burned Roma camp near Lviv, 09.05.2018.

in 2017 declared a doubling in the number of the reported anti-Semitic incidents in Ukraine. This statement, however, has caused surprise and criticism from Jewish activists in Ukraine who monitor anti-Semitism manifestations. In particular, Vyacheslav Likhachev, a well-known researcher of far-right movements and the Head of the Group for Monitoring of the National Minorities Rights in Ukraine, noted: "If you compare the

actual figures of 2016 and 2017, collected by the Group for Monitoring of the National Minorities Rights, the situation looks quite different. Yes, the number of anti-Semitic vandalism acts indeed increased, but only slightly, from 19 to 24. However, in 2017 there were no cases of violence motivated by anti-Semitism, and in 2016 just one such incident took place. Where did these findings come from in the report? In my opinion, those who prepared the report just summarized all "incidents", which became known to them, regardless of the nature. To the real cases of vandalism were added, for example, cries during a rally."⁴⁵ Co-president of the Association of Jewish Organisations and Communities of Ukraine Josef Zissels in 2017 also agreed with such an assessment of the situation: "There is also hate speech. It is not as important as the first manifestation – direct violence, but also reported. I will show our monitoring, and we see that the peak of anti-Semitic incidents as well as hate speech was in Ukraine in 2006-2008. [...] But it is the fact that after 2008 manifestations of anti-Semitic incidents in Ukraine in general began to reduce. And if then we counted, for example, 700 publications per year or more than 10 hate attacks, only one attack was recorded last year and 19, if I am not mistaken, cases of vandalism."⁴⁶

Thus, incidents and hate crimes motivated by anti-Semitism in Ukraine are not very common and consisted mostly in damage to property. In such actions, along with the spread of hostility and hate language against Jews, representatives of ultra nationalist groups have been often noticed. For instance, in Odesa on May 2, 2018, during the "March of Ukrainian Order", Tetyana Soykina, the Head of the Right Sector regional organisation, called to cleanse Ukraine of the Jews: "We believe that we set the real Ukrainian order, and Ukraine will belong to Ukrainians, not to Jews and the oligarchy". The video with this statement was published on the official Facebook page of the National Corps – Odesa, thus confirming the close relationship between the Ukrainian ultra-right organisations.⁴⁷

Other nationalities

We have no evidence of hate crimes on ethnic ground in the territory of Ukraine controlled by the government against representatives of other "traditional" minorities – Russians, Belarusians, Poles, Moldovans, Crimean Tatars, Bulgarians, and others. Meanwhile, acts of vandalism are observed against Polish and Hungarian national symbols, memorials, cemeteries on the territory of Ukraine, the number of which grows during times of exacerbation of interstate relations between Ukraine and the countries concerned.⁴⁸

Although the Russian aggression against Ukraine led to a marked increase in anti-Russian sentiments in society, they are directed rather against the Russian state and its population than against ethnic Russians. Isolated incidents against citizens of Russia (as well as of Belarus and other countries of the former Soviet Union) in all known cases were caused by their declared pro-Russian position (e.g., in the form of symbols – "St. George Ribbon" etc.) rather than very their very citizenship.

The rest of the known cases of possible hate crimes and incidents on ethnic ground were directed against individuals of mainly non-European origin whose appearance – facial features, skin colour – significantly differed from the usual for Ukrainian society. They include both visitors to Ukraine and recent immigrants from Asia and Africa as well as representatives of the peoples of the former USSR, especially of Asian and Caucasian origin. In our opinion, the reason for biased attitude against these people is actually these very features, but not their belonging to specific ethnic groups or nations. Exactly this difference in appearance is the basis for non-scientific division of humanity into "races", and because the Ukrainian law recognizes hate crimes on ground of racial hatred, motivated by racial intolerance etc., we believe it to be logical to consider such crimes as motivated by the bias on ground of "race" that is the topic of the next chapter of this publication.

⁴⁵ Штогрін І., *Ізраїльський звіт. Чи справді в Україні вдвічі зріс антисемітизм?*, Радіо Свобода, 27.01.2018, radiosvoboda.org.

⁴⁶ Realist, *Історії дисидента: Йосиф Зісельс про те як живуть сучасні українські євреї*, 17.12.2017, realist.online.

⁴⁷ Центр інформації про права людини, *В Одесі "Правий сектор" закликав очистити Україну від євреїв*, 04.05.2018, humanrights.org.ua.

⁴⁸ According to the information received from Vyacheslav Likhachev, an expert of the Congress of National Communities of Ukraine, at least seven cases of anti-Polish vandalism, mainly in Lviv and the oblast, and three cases of anti-Hungarian vandalism in Transcarpathia happened in 2017.

4.3. Hate crimes and incidents on ground of "race" (skin colour)

The concept of "race" in relation to certain groups of humanity appeared in European science in the late XVIII century and quickly became popular among the general public. The division of humanity into races was based on the obvious signs of the appearance typical for such groups. The most common theory was the existence of three (Caucasoid, Mongoloid and Negroid) or four (adding Americanoid) races. Often they were also called by skin colour: White, Yellow, Black, and Red races. Based on uneven economic and social development of nations which attributed to these "races", racist theories were developed about the alleged congenital hereditary abilities and limitations of people of different "races" and the existence of a racial hierarchy. These theories were refuted because of genetic researches in the XX century which, among other things, found that the very popular major division of humanity into "races" is unscientific: these "races" cannot be clearly delimited, and they are composed of people who, though having common looks, are very much different in their genetic characteristics. So while the concept of race is still used in science, widespread public understanding of the division of humanity into races has nothing in common with this scientific concept. However, this division firmly took root in the public consciousness and led to the emergence of racial identities; further, the problem of racism became the social reality.

Therefore, we have to use the usual terminology for action motivated by bias on ground of "race", although in this case it is purely arbitrary and unscientific. The struggle against racism led to the appearance of the concept of hate crime, and the International Convention on the Elimination of All Forms of Racial Discrimination (1965) became the first document of international law in the sphere of counteraction to hate crimes.

Ukrainian legislation contains the open prohibition of discrimination on ground of race (Article 24 of the Constitution, Article 161 of the Criminal Code of Ukraine), incitement to racial hatred (Article 161 of the CCU), increased penalties for crimes committed on the basis of racial hatred or racial intolerance (Part 1 of Article 67, Parts 2 of Articles 110, 115, 121, 122, 126, 127, and 129 of the CCU), as well as the importation, manufacture or distribution of works that promote racial intolerance and discrimination (Article 300).

At the end of the previous section of this publication we set out the arguments why hate crimes against people from Asian and African countries, including representatives of the peoples of the former USSR, particularly of the Caucasian origin, should be considered as being motivated by bias on the basis of "race" rather than of nationality / ethnicity. This is supported already by the fact that these people in the mass consciousness of Ukrainians are combined into certain groups, such as "persons of Caucasian origin", "Asians", "Black-skinned", etc. – thus, in fact, they are grouped in the very above-mentioned unscientific "races". For example, attackers are guided not by the belonging of their victims to a specific people – say, Armenians, Azeris, Ossetians – but precisely by their appearance typical for Caucasia region. This significantly differs from the cases of bias against a particular ethnic group / nation, such as Russians, Roma or Jews. Although, in general, it has not essential character: usually, particularly in the police and human rights statistics, hate crimes on grounds both of "race" and nationality / ethnicity are joined together as crimes motivated by racism and xenophobia (while crimes motivated by anti-Semitism are often considered separately). In international law one can find such a protected characteristic as "skin colour". The Ukrainian legislation mentions it in Article 161 of the Criminal Code, and in accordance with the Action Plan on Human Rights it had also to be included in Paragraph 3 of Part 1 of Article 67, Parts 2 of Articles 115, 121, 122, 126, 127, 129, and Article 293 of this code. This characteristic, of course, is more definite than the non-scientific concept of "race," but in fact equates to it, so hate crimes on ground of skin colour are at the same time those ones on ground of race.

According to a study by the Gorshenin Institute of 2017, only 3.3 % of the respondents were not ready to accept a person of a different race in any capacity (namely, as a family member, close friend, neighbour, colleague, citizen of Ukraine or foreign tourist) that indicates a rather low level of racial bias in Ukrainian society.⁴⁹ A survey by GfK Ukraine of 2017 showed that 10% of the respondents did not want to see a person of another race as their neighbour.⁵⁰ It should be noted that Ukrainian society is rather homogeneous from

⁴⁹ Please see note 14, p. 13.

⁵⁰ Please see note 15.

the "racial" point of view: the appearances of almost all nations, which have been living long in Ukraine, are typical for the population of Eastern and Southern Europe, and only new immigrants and foreign visitors originating from Asia, Africa and Latin America substantially differ from the general public in this regard. Their presence in Ukraine is still very little in number, and they are noticeable only in big cities. A big part of these people are comprised of foreign students, mainly from Asian and African countries – in particular, in the first half of 2018 more than 25 thousand persons received official invitations to study in Ukraine, most often they were citizens of countries such as Morocco, India, Nigeria, Turkmenistan, Egypt, Ghana, Algeria, Pakistan, China, and Turkey.⁵¹

The National Police of Ukraine reported that in 2016 they started a total of 50 proceedings under Article 161 of the Criminal Code – however, it is unknown how many of them featured the ground of race. Although this article punishes not hate crimes in the strict sense of the term, but the spread of hatred and discrimination, in law enforcement practice exactly it is very often applied exactly in such cases. As for other articles of the Criminal Code, which punish exactly for hate crimes, in 8 cases were reported supposed motives of intolerance on grounds of race or skin colour.⁵²

Since the declaration of Ukraine's independence only two large-scale conflicts between a local population and non-European immigrants (namely, the Armenian community) were reported in neighbouring Marhanets (2009)⁵³ and Nikopol (2011)⁵⁴. In both cases, the conflict began with fighting in a cafe featuring local Armenians, in the course of which local dwellers of Ukrainian origin were killed. Armenians, like other Caucasian peoples, have been living in Ukraine for a very long time, in fact having become national minorities considered traditional by Ukrainian society.

As for new immigrants and foreign visitors, cases of racism-motivated attacks upon foreign students and other people with atypical Ukrainian appearance sometimes happen in big cities. Thus, according to the data of independent observers published by the OSCE in 2017, there were reported a total of 13 cases of actions based on racism and xenophobia, of which 9 were violent attacks, particularly against the Sudanese, Syrians, Somalis, an Iraqi.⁵⁵ The network of NGOs Diversity Initiative in the first ten months of 2015 recorded 10 cases of violence probably of a racist nature, in which 17 people were injured, including 13 foreigners from countries such as Nigeria, Jordan, Afghanistan, Syria, Ghana, and Democratic Republic of Congo.⁵⁶ According to Yana Salakhova, a representative of this network, in 2016 they recorded 8 cases of violent acts in which 13 people suffered. Among them, seven foreigners from countries such as Nigeria, Somalia, Israel, and Guinea suffered on ground of racism.

A typical example of such action is the attack by a large group of young men on three black students from a university in Lutsk, citizens of Namibia and Algeria, which occurred on August 3, 2017. The attackers severely beat one of the victims, and quickly fled the scene.⁵⁷ Later, the police arrested one of the suspects in the attack, who turned out to be a fighter athlete, probably a member of the informal group "Varta porjadku" (*Guards of Order*).⁵⁸ It is typical that the police started a criminal proceeding only under Part 2 of Article 296 of the Criminal Code ("Hooliganism") and refused to introduce possible racist motives of the crime into the materials of the case, even though they were evident from the testimonies of the victims. A similar incident occurred on April 28, 2107, in Ivano-Frankivsk: about ten unknown young men suddenly attacked a dark-skinned foreigner, beat him with the use of tear gas, and quickly fled from the place of incident.⁵⁹

⁵¹ Цензор.нет, *Понад 25 тисяч іноземних студентів офіційно навчаються в Україні*, - МОН, 31.07.2018, censor.net.ua.

⁵² Please see note 7.

⁵³ Завгородня І., *Той самий Марганець*, Тиждень, 9.03.2010, tyzhden.ua.

⁵⁴ Deutsche Welle, *Нікополь посилено патрулюють після кривавих новорічних подій*, 11.01.2011, dw.com.

⁵⁵ Please see note 32.

⁵⁶ Центр інформації про права людини, *В цьому році 17 людей постраждали від расистських нападів*, 09.11.2015, humanrights.org.ua.

⁵⁷ Центр інформації про права людини, *У Луцьку затримали чоловіка, якого підозрюють у побитті студентів з Африки*, 16.08.2017, humanrights.org.ua.

⁵⁸ Район.Луцьк, *Затриманий за побиття африканця – чемпіон України з бойового самбо і рукопашного бою*, 16.08.2017, lutsk.rayon.in.ua.

⁵⁹ Курс, *В Івано-Франківську група з десятка молодиків побила іноземця – потерпілий у лікарні*, 28.04.2017, kurs.if.ua.

Independent American researcher Michelle Goldhaber describes the life of African students in Lviv this way: "People stare and often tell jokes about them, or pull their kids away so they won't be near them. In worse cases, they are physically attacked and assaulted. Often people say hateful and derogatory things to them about being black. [...] Also, almost all the Africans I spoke with, male and female, say how they have individual Ukrainian friends or have had individual encounters that have been phenomenal – people who are caring and understand their predicament and will help them in any way. Africans understand that on an individual level, many Ukrainians, male and female, treat them like normal human beings. But unfortunately, on the level of society-at-large, things are much less inclusive and safe."⁶⁰

The style of such attacks and appearance of the attackers fully coincide with those typical for attacks on LGBT people, the Roma, feminists, and leftist activists from the Ukrainian far-right groupings – a style which also has been repeatedly seen in racist and xenophobic rhetoric. All this indicates that probably the same people and organisations are behind all these crimes.

One of the slogans of far-right movement in Ukraine is "the fight against illegal immigration" – for instance, it is provided for in Paragraph 18 of the National Manifesto adopted jointly by the parties Svoboda, the National Corps, and the Right Sector.⁶¹ By estimation of the Interior Ministry, this problem, indeed, is becoming increasingly important for our country.⁶² Now, most migrants of undetermined status use Ukraine only as a transit country on their way to the EU. However, taking into account the international experience, it is obvious that a steady decline in the population of Ukraine cannot but lead to a rapid increase in the number of immigrants in our country in the near future. Global warming will also predictably lead to a large number of climate refugees. Almost all these immigrants and refugees will belong to minorities from Asia and Africa, still considered unconventional origins by the Ukrainian public. It is obvious that the problem of hate crimes on "racial" ground in our country in the future will become increasingly urgent. Under these conditions, the Ukrainian authorities need to work in an advanced proactive manner and pay special attention to the use of the Western countries' experience in combating xenophobia and its consequences.

⁶⁰ Бондаренко А., *Африканські студенти у Львові: інтерв'ю з дослідницею Мішель Голдхабер*, Варіанти, 21.08.2015, varianty.lviv.ua.

⁶¹ Новое время, *Свобода, Правий сектор та Національний корпус підписали документ про об'єднання*, 16.03.2017, nv.ua.

⁶² ТСН, *У МВС б'ють на сполох через критичний рівень нелегальних мігрантів в Україні, що загрожує нацбезпеці*, 15.08.2018, tsn.ua.

4.4. Hate crimes and incidents on grounds of political or ideological beliefs, membership in certain political parties, movements and organisations

According to Article 15 of the Constitution of Ukraine, "social life in Ukraine is based on the principles of political, economic and ideological diversity." With the exception of the Soviet totalitarian regime, Ukrainians always demonstrated a variety of political and ideological beliefs. It should be noted that since gaining state independence, no political force could get unconditional control over the Parliament, nor any one ideology become common over all. First, the basic ideological struggle was waged between the Communist Party, on the one hand, and the national liberation movement on the other, but quite soon the communist ideology lost its popularity and eventually gained a marginal character in Ukrainian society. It is interesting that along with the communist ideology, all distinctly leftist movements and parties in Ukraine also suffered apparent decline, and today no clearly left-wing forces exist in Ukrainian politics. The majority of the leading Ukrainian political parties and movements either actually are right-conservative (Christian democratic etc.) or at least describe themselves such as those.

After the Russian invasion into Ukraine the demarcation between the conventionally national democratic and pro-Soviet camps finally changed with the confrontation between pro-Ukrainian and pro-Russian forces. Although during the Revolution of Dignity and at the beginning of the war with Russia all nationally-oriented forces united in resisting the corrupt regime of Yanukovich and Russian aggression, pretty soon after its victory a delimitation began inside the "national democratic" camp when radical right-wing nationalist organisations started to oppose the course towards European integration (that is, the Ukrainian state and society's approaching to the standards of modern Europe, followed by the further prospect of membership in the European Union, that became the officially announced state policy of Ukraine). Thus, currently there exists a great variety of political and ideological beliefs in Ukrainian society where dominate is the desire to integrate into modern Europe, however under condition of maintaining uncertain "traditional values". But also present are significant proportions of isolationist and pro-Russian views. Regarding the relatively pro-European political movements, they are characterised by ideological uncertainty and a personally managed character – their supporters cannot clearly articulate their ideology or they have divergent opinions on this issue, or prefer being rather guided by a leader figure. The ideology of the "separate path" of Ukraine, isolationism, is usually combined with nationalist (right-wing conservative and right-wing radical) political views.

A survey conducted by the Kyiv International Institute of Sociology in April 2018 showed that 45.9% of the respondents wanted Ukraine's accession to the EU, 8.9% – to the Customs Union (i.e. integration with Russia), 31.6% believed that Ukraine should not focus on joining any of these unions, and 12.9% could not decide on the matter. None of the political parties received even 10% of support in this poll. Parties of obviously conventionally pro-Russian and "left-wing conservative" (pro-Soviet) orientation – the Opposition Bloc and For Life – together gained 11% of support. Among the right-wing radical ultra-nationalist parties, noticeable support was enjoyed only by Svoboda (*Freedom*) Party, but even for it only 1.4% of the respondents were ready to vote. The overwhelming majority of the respondents either did not determine whom they were ready to vote for (23.1%) or supported one of the parties of supposedly moderate national-democratic orientation (Batkivshchyna (*Motherland*), the Civic Position, the Radical Party, Petro Poroshenko Bloc, Samopomich (*Self-help*), etc.).⁶³

According to a study conducted by the Rating Sociological Group in November 2016, almost a half (48%) of the respondents supported banning the communist ideology in Ukraine, 36% were against, and compared with the previous two years the number of ban supporters has not changed. Among the supporters of radical nationalist views this ban was supported by more than 80%, while among supporters of "left-wing conservative" parties For Life and the Opposition Bloc 70% opposed such a ban. A third of the respondents supported banning the nationalist ideology in Ukraine, 40% were against it. During the two previous years the number of supporters for banning the nationalist ideology dropped from 40% to 35%.⁶⁴

⁶³ Київський міжнародний інститут соціології, *Суспільно-політичні настрої жителів України: квітень 2018 року*, 07.05.2018, kiis.com.ua.

⁶⁴ Соціологічна група "Рейтинг", *Ставлення до окремих історичних постатей та процесу декомунізації в Україні*, 17.11.2016, ratinggroup.ua.

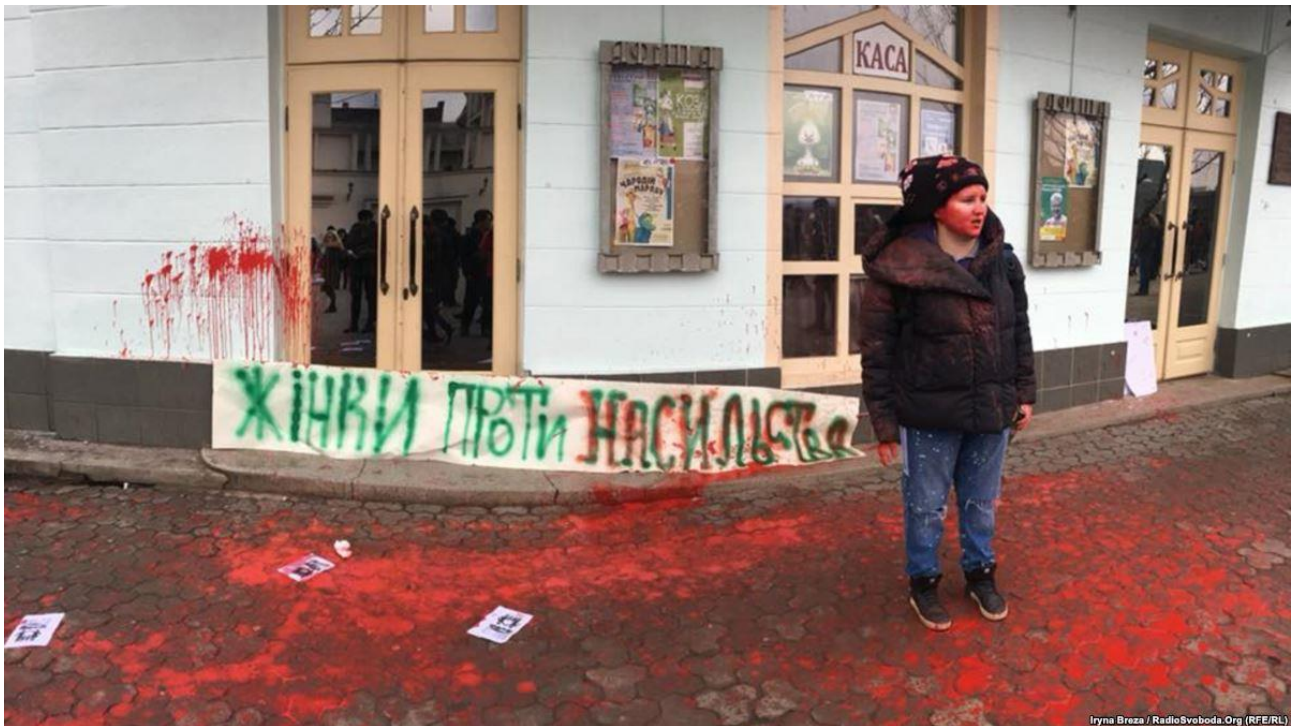


Figure 6. At the top: a typical example of hate crimes / incidents on ground of ideological beliefs – a participant of a women's rights action doused with red paint, Uzhhorod, 08.03.2018; below: the march of ultra-right-wing nationalists who disrupted the aforementioned action on women's rights, Uzhhorod, March 17, 2018.

Ukrainian legislation – as in most OSCE countries however – does not recognize hate crimes motivated by political or ideological views or belonging to certain organisations. Meanwhile, Article 161 of the CCU prohibits discrimination ("direct or indirect restriction of rights or setting direct or indirect privileges") on ground of "political [...] and other beliefs" that corresponds to Article 24 of the Constitution of Ukraine. Article

34 of the Constitution of Ukraine guarantees "the right to freedom of thought and speech, free expression of views and beliefs"; Article 36 – "the right to freedom of association in political parties and public organisations"; Article 39 – the right to peaceful assembly, nonetheless "restrictions on the realization of this right may be established by a court in accordance with the law and only in the interests of national security and public order – with the purpose to prevent disturbances or crimes, to protect public health or to protect the rights and freedoms of other people."

Hate crimes in Ukraine motivated by political or ideological views or one's belonging to certain organisations typically combine with violation of the right to peaceful assembly – they rather rarely occur against individuals and are usually directed against peaceful assemblies that have certain political or ideological colourings. It should be noted that because no one collects any statistics on such crimes, it follows that we can only focus on the media coverage, social networks' contents and reports from human rights organisations. Earlier sometimes there could be found reports on such crimes by pro-Russian organisations (mostly on the attacks by various "Orthodox Cossacks") but after the beginning of the Russian invasion these cases virtually ceased, and now offenders are almost always isolated individuals or, even more often, organized groups of a radical nationalist nature.

It should be noted that all these groups, and often also particular offenders, appear in similar crimes motivated by intolerance on grounds of sexual orientation and gender identity – thus, it makes no sense to list their names again as they are given in the relevant section of this publication. Aggressive radical nationalists (as well as right-wing conservative religious circles), in their own words, generally consider such notions as sexual orientation, gender, gender identity and similar as ideological, arrogate them to some leftist ideology,⁶⁵ and equate open LGBT life with the "promotion of homosexuality" – thus, in many cases, hate crimes on SOGI grounds may be regarded as motivated by intolerance to (often imaginary) political and ideological views of LGBT people or those who support them. However, we describe such crimes and incidents in the section devoted to acts of hatred on grounds of SOGI.

One of the ideologies aggressively attacked by radical nationalists is feminism. As in the case of actions to protect the rights of LGBTs, radical nationalists in recent years have tried to disrupt any event dedicated to protection of women's rights, such as the demonstration on March 8 – the International Women's Day. Thus, a series of attacks by radical nationalists happened on March 8, 2018, on the women's marches in Kyiv and Uzhhorod,⁶⁶ on an exhibition visitor and a participant of the march in Lviv.⁶⁷ The attacks by right-wing radicals on participants of the march for women's rights in Uzhhorod continued even after March 8.⁶⁸ A similar attack on a feminist march also took place in Kyiv in 2017.⁶⁹ The attackers beat their victims, poured a "brilliant green" on them, crushed their posters, tore clothing, etc. On December 22, 2018, in Kyiv presumably right-wing radical students attacked the Gender Club at the National Pedagogical Drahomanov University. The attackers sprayed pepper gas on participants of the meeting and hit its organiser. The administration of the university did not react to this incident, despite appeals of the victims.⁷⁰

In addition, right-wing nationalists repeatedly attacked such events as the Hemp March in Kyiv (an event of apparently liberal or even libertarian direction in support of legalization of soft drugs),⁷¹ anarchist marches⁷² etc.

⁶⁵ Please see, e.g., Національний Корпус Полтава, *Активісти Національного Корпусу проти пропаганди ідеології ЛГБТ*, 31.03.2018, facebook.com/nationalcorps.poltava.

⁶⁶ Центр інформації про права людини, *У Києві та Ужгороді ультраправі напали на жіночі марші до 8 березня*, 08.03.2018, humanrights.org.ua.

⁶⁷ Феміністична майстерня, *Напади 8 березня: наша точка зору*, 10.03.2018, femwork.org.

⁶⁸ Громадське телебачення, *В Ужгороді продовжують нападати на учасників маршу 8 березня – активістка*, 13.03.2018, hromadske.ua.

⁶⁹ Центр інформації про права людини, *Наймасштабніший марш 8 березня: кількох побили – нападників забрали у відділок*, 08.03.2018, humanrights.org.ua.

⁷⁰ Гендер в деталях, *Напад на Гендерний клуб у Києві*, 18.01.2018, genderindetail.org.ua.

⁷¹ Цензор.НЕТ, *У столиці націоналісти напали на учасників "Конопляного маршу". Кілька людей затримали*, 29.10.2016, censor.net.

⁷² УНІАН, *На анархістів у Києві напали "автономні націоналісти"*, 01.05.2015, unian.ua.

Also radical right-wing nationalists systematically committed attacks with the use of physical force, and often weapons, at rallies or any other events which they consider as being associated with communist and / or pro-Russian views. Such acts became especially prevalent after the beginning of Russian aggression against Ukraine. For example, in July 2017 activists of nationalist organisations in Kyiv beat protesters against renaming Vatutin Avenue to Shukhevych Avenue.⁷³ Typical for all the above-mentioned cases is that the police are very reluctant to interfere in clear violation of the public order, detaining only the most aggressive assailants (if anyone at all), who then are charged a maximum of ordinary hooliganism and rarely are brought to justice. Convinced of their impunity, perpetrators repeatedly resort to illegal actions, and then they are caught again and released again.⁷⁴

Nevertheless, occasionally the opposite situation is observed: attacks by people, who obviously share pro-Russian and pro-Soviet views, on people and actions which they associate with nationalist and patriotic (towards independent Ukraine) views. Prior to and during the first weeks of Russian aggression such incidents were quite noticeable in major cities in the south and east of Ukraine, and occasionally developed into open conflicts that led to numerous casualties. It is worth mentioning at the very least the famous events in Odesa in May 2014. Now, such cases have an isolated character and are usually directed against individuals, not events – such as the attack by a woman in 2016 on an Anti-terroristic operation veteran in Dnipro city⁷⁵ and the group attack on an ATO veteran in Kyiv in 2018.⁷⁶ In such cases, the police and the Security Service act quickly and decisively, and the attackers are thoroughly sought for and brought to justice.

The situation in the occupied territories is characterized in that the *de facto* local authorities and so-called "law enforcement officers" openly encourage hate crimes motivated by pro-Ukrainian political beliefs, and in many cases themselves resort to them. Wide publicity was given, for example, to the story of Irina Dovhan who was publicly subjected to brutal torture and humiliation in Donetsk in summer 2014 by Russian militants and some local residents.⁷⁷ In September 2016, the pro-Ukrainian activist Ihor Movenko was severely beaten in Sevastopol by an unknown man, who called himself a Russian police officer, because of an Azov regiment's symbols that was pasted on Ihor's bike. The occupation "law enforcement agencies" ignored the complaints of the victim; instead he was convicted by "Gagarin District Court of Sevastopol" and charged a fine for "the distribution of Nazi symbols." On December 16 the same year he was detained by the Russian Federal Security Service officers who, according to the victim, also beat him. In May 2018 the same "court" sentenced Ihor Movenko, accused of extremism, to two years in prison.⁷⁸ Also, cases of alleged enforced disappearances of pro-Ukrainian and Crimean Tatar activists were noted in the occupied territories – in particular, under various estimations, there were from 9 to 15 of those for the first four years of occupation of the Crimea.⁷⁹

⁷³ Цензор.НЕТ, *Націоналісти побили учасників акції проти перейменування проспекту Ватутіна на проспект Шухевича в Києві*, 16.06.2017, censor.net.

⁷⁴ Please see, e.g., TCH, *Серед нападників на секс-лекторій у Києві упізнали хлопця Віти Завірухи, якого судили за розстріл даївців*, 13.07.2017, tsn.ua.

⁷⁵ Радіо Свобода, *Поліція Дніпра порушила кримінальне провадження через побиття військового у театрі*, 24.10.2016, radiosvoboda.org.

⁷⁶ Українська правда, *У Києві напали на колишнього захисника ДАП*, 02.05.2018, pravda.com.ua.

⁷⁷ Радіо Свобода, *Ірина Довгань про катування в Донецьку: "Ви не уявляєте, як це страшно"*, 31.08.2014, radiosvoboda.org.

⁷⁸ Радіо Свобода, *Активіста Мовенка засудили до 2 років ув'язнення в анексованому Криму*, 07.05.2018, radiosvoboda.org.

⁷⁹ Радіо Свобода, *Зниклі в Криму: що з'ясували автори альтернативного розслідування*, 31.05.2018, radiosvoboda.org

4.5. Hate crimes and incidents on grounds of religious beliefs or affiliation with certain religious groups and organisations

In March 2017 the Razumkov Centre with support from the Konrad Adenauer Foundation in Ukraine conducted a regular study of the religion situation and trends in Ukrainian society in all regions of Ukraine except the Crimea and occupied regions of Donetsk and Luhansk oblasts. 67% of the respondents called themselves believers, 12% were undecided between belief and unbelief, 8% were indifferent to issues of faith, 6% could not decide on these issues, and only 7% identified themselves as atheists or non-believers.⁸⁰ Most believers (68.2%) identified themselves as Orthodox Christians, among which 39% were supporters of the Ukrainian Orthodox Church – Kyiv Patriarchate (abbreviated – the UOC-KP) and 17% – of the Ukrainian Orthodox Church (Moscow Patriarchate) (abbreviated – the UOC (MP)). 7.8% identified themselves as Greek Catholics, 7% – "just Christians", 1.3% – Judaism followers, 1% – Roman Catholics, 0.8% – Protestants, 0.2% – Muslims.⁸¹ As Judaism followers in Ukraine are almost exclusively ethnic Jews, the acts on the ground of intolerance to Judaism are considered by us as anti-Semitism, which is highlighted in the section on hate crimes and incidents motivated by ethnic / national affiliation.

Ukraine has a long history of conflicts and persecutions based on religion or belonging to certain denominations; however, the modern Ukrainian nation was formed in recent times when religious issues did not play a prominent role. During the Soviet era, society was intensively implanted with communist atheism, imposing conditions in which the state actually had a monopoly on violence and discrimination in religious issues, as indeed in the other areas of public life. The decision of the central Soviet government effectively eliminated in 1946 one of the largest Ukrainian confessions – the Greek Orthodox Church, whose property was confiscated or handed over to the use of the Russian Orthodox Church (abbreviated – the ROC) laying the foundation for future religious conflicts in western Ukraine. After the declaration of state independence and the establishment of effective freedom of conscience, religion in the public consciousness quickly began to take the place of the communist ideology, and churches themselves took the place of the Communist Party as leading social institutions uniting society. At the same time new religious teachings and organisations began a rapid expansion in Ukraine, especially neo-Protestants (Baptists, Adventists, Pentecostals, etc.) as well as Jehovah's Witnesses. The most popular in the country, the Orthodox Church, has experienced several schisms. Thus were formed the two powerful Ukrainian Orthodox Churches of Moscow and Kyiv Patriarchates as well as the Ukrainian Autocephalous Orthodox Church (abbreviated – the UAOC) that is much smaller in its spread and influence. In the west of the country the Ukrainian Greek Catholic Church (abbreviated – the UGCC) has revived as well as the Greek Catholic Diocese of Mukachevo in Transcarpathia that is not a part of the first but is directly subordinated to the Vatican. All these churches immediately began to compete for believers and temples, and that in the early days of independence led to numerous conflicts which, though considerably subsided, have still not stopped up to today.

Public opinion polls show a fairly high level of religious tolerance in Ukrainian society. Thus, according to a survey by the Gorshenin Institute in 2017, only 2.3% of the respondents were not ready to accept people of other faiths in any status.⁸² According to a poll of GfK Ukraine, only 8% of the respondents would not like to see people of other religions as their neighbours.⁸³ According to a sociological poll by GfK Ukraine from 2015, among Ukrainian youth aged 14 to 35 19% would not want to live nearby Muslims.⁸⁴

Article 24 of the Constitution of Ukraine prohibits discrimination based on religious beliefs ("There may be no privileges or restrictions on grounds of [...] religious and other beliefs") and Article 35 proclaims the freedom of conscience. The Criminal Code of Ukraine contains a number of articles which aggravate punishment in the case of committing crimes motivated by religious intolerance (in various formulations), namely, Paragraph 3 of Part 1 of Article 67 (General aggravating circumstances), Parts 2 of Articles 110, 115, 121 122, 126, 127, 129 – thus, in fact such crimes are recognized as hate crimes in Ukrainian legislation. Article 161 prohibits both discrimination and incitement to hatred as well as insulting the feelings of citizens

⁸⁰ Центр Разумкова, *Релігія і церква в українському суспільстві: соціологічне дослідження* // Церква, суспільство, держава у протистоянні викликам і загрозам сьогодення (інформаційні матеріали), 2017, с. 23, razumkov.org.ua.

⁸¹ Ibid., pp. 24, 31.

⁸² Please see note 14, p. 13.

⁸³ Please see note 15.

⁸⁴ Please see note 16, p. 8.

because of their religious beliefs. Article 300 of the Criminal Code prohibits the import, production or distribution of works promoting religious intolerance and discrimination.

The statistics on hate crimes and incidents motivated by intolerance based on religious beliefs are very limited and also include many conflicts of a purely property and / or administrative nature, when two religious communities cannot share religious buildings with each other. In some cases, the classification of crimes, which occur within the conflicts of this kind, as hate crimes or incidents is very controversial, given that the actual religious beliefs of their participants are often identical, and the real reason for the conflict is the problems concerning the right of ownership or use of real estate.

According to the report of the Ukrainian Ombudsman on the situation of human rights and freedoms in Ukraine for 2017, the Ombudsman carried out 105 proceedings concerning issues of freedom of conscience and religion, of which 28 related to religious conflicts between Orthodox Christians, 20 – to violations of the right to freedom of conscience and religion of Jehovah's Witnesses by officials of state and local authorities, 2 – to the right to peaceful assemblies of religious organisations, 2 – to violations of the right to freedom of conscience in education, and the rest – to incitement of religious hatred and other issues.⁸⁵

As mentioned above, the information of the National Contact Point of Ukraine for Hate Crimes contains data only for 2015, according to which the Unified Register of Pre-trial Investigations during this period listed information on 15 committed crimes under Article 161 ("Violation of citizens' equality based on their race, nationality, religion, disability, and other grounds") for a category of religion, and another 48 crimes under other articles of the Criminal Code where motives of intolerance for the same category were suspected – that is, in fact, hate crimes in a narrow interpretation of the term.⁸⁶

The most obvious and well-documented are hate crimes and incidents against Jehovah's Witnesses. A large number of such cases is likely related to the peculiarities of the Jehovah's Witnesses faith, which requires from them active missionary work, attempting to familiarize others with their beliefs and convert ever more strangers to it. In practice, this consists in attempts to spread missionary literature and oral agitation or proselytizing by Jehovah's Witnesses on the streets to passers-by, and by directly visiting apartments and houses. This often causes irritation to the people to whom they turn with their questions and suggestions, although Jehovah's Witnesses do their outreach work in the most polite manner. Also the public raises concerns and condemnation towards the lifestyle of Jehovah's Witnesses who tend to become isolated in their communities and engage in unusual behaviour rules: rejection of any cooperation with the state, military service, traditional celebrations and national holidays, blood transfusions, and more. All this gives rise to distrust of them and contributes to their isolation and stigmatization in the eyes of wider society.

The annual report of the Ombudsman for 2016 informs citizens that "According to the information provided by the religious organisation "Jehovah's Witnesses", for the period from January to September 2016 there were recorded 10 cases of physical violence against members of the specified religious organisation and 12 cases of acts of vandalism against religious buildings of the Jehovah's Witnesses – Kingdom Halls. Meanwhile, as in previous years, were noted inadequate responses by the police to offences motivated by religious intolerance on ground of religious beliefs. These crimes are not reported properly, and the motive of a socially dangerous act possibly having been committed is not considered in these crimes' descriptive qualifications.

In particular, according to members of the specified religious organisation in Shpola city [Cherkassy oblast], in 2016 there were committed 6 separate acts of vandalism to the local religious building "Kingdom Hall of Jehovah's Witnesses" resulting in the building suffering significant damage.

By all reports the Commissioner sent appeals to the National Police departments that emphasized the need for full and thorough investigation into these incidents, considering the motive of intolerance. However, only for one of these episodes were data introduced into the Unified Register of Pre-trial investigation and a pre-trial investigation was started. Further, these illegal actions were qualified only as hooliganism."⁸⁷

⁸⁵ Please see note 20, p. 540.

⁸⁶ Please see note 32.

⁸⁷ Секретаріат Уповноваженого Верховної Ради України з прав людини, *Щорічна доповідь про стан дотримання та захисту прав і свобод людини і громадянина в Україні*, 2017, р. 102, ombudsman.gov.ua.

In 2017 the Ukrainian ombudsman noted and stated "the consistently high number of manifestation of prejudice against them in all spheres of public relations. Thus, the proceedings of the Commissioner concerned both cases of restrictions by the authorities upon the right of the Jehovah's Witnesses to carrying out religious activities, and incidents of religiously motivated physical violence against them, and cases of vandalism against their places of worship." Also "the problem of the police inadequately carrying out pre-trial investigations of criminal offences committed on the base of intolerance on ground of religious beliefs" has not gone away.⁸⁸

However, even this unfavourable situation of the Jehovah's Witnesses in the territory of Ukraine controlled by its government cannot be compared with the scale of the oppressions and crimes against the Jehovah's Witnesses in the occupied territory of Ukraine – the Crimea and particular regions of Luhansk and Donetsk oblasts. On July 18, 2017, the Russian Supreme Court finally recognized the organisation "the Administrative Centre of Jehovah's Witnesses" as extremist and banned its activities, particularly in the Crimea annexed by Russia. All 18 religious organisations of the Jehovah's Witnesses in the Crimea were removed from the register, and their property confiscated. On June 9, 2017, the military registration and enlistment office of Bakhchisarai District of the Russian occupation administration of Crimea demanded of a Jehovah's Witness, who requested to enter the alternative civilian service because of his religious beliefs, first to convert to another religious confession, otherwise threatening him with prosecution for belonging to a prohibited organization.⁸⁹ Following the example of the Russian authorities, the occupation administration of the particular regions of Luhansk and Donetsk oblasts also launched a campaign of persecutions of the Jehovah's Witnesses. According to the members of this church, in 2014 in these areas Jehovah's Witnesses were subjected to abductions and tortures, and buildings and other property of their church were seized.⁹⁰ In the occupied regions of Donetsk oblast the activities of the Jehovah's Witnesses' organisations are *de facto* banned, and the occupation authorities of the particular regions of Luhansk oblast banned their activities officially.⁹¹

After declaration of Ukraine's independence, the Ukrainian Orthodox Church (Moscow Patriarchate) became an autonomous part of the Russian Orthodox Church in Ukraine, which in 1946 forcibly incorporated the Ukrainian Greek Catholic Church and the Mukachevo Greek Catholic Diocese of the Roman Catholic Church. The process of reviving activities of the Greek Catholic Church in Ukraine and creation of new national Orthodox churches – the UOC of the Kyiv Patriarchate and the Ukrainian Autocephalous Orthodox Church – led to numerous conflicts over ownership or use of the ROC property that intensive lasted the first decade of Ukraine's independence, and still has not ceased in places. As, for instance, commented in the report of the Parliamentary Commissioner for Human Rights of 2017, "For the third year in a row, conflicts have arisen mainly in the territories of the Rivne and Ternopil oblasts between the Orthodox believers on changing the confessional subordination of their religious communities."⁹²

Such conflicts, usually without proper religious colouring, however, have led to a significant deterioration in relations between the supporters of these churches. These supporters do not always belong to one of the parties, but can support a particular church for reasons of a political nature, because national-oriented Ukrainians often perceive the church of the Moscow Patriarchate to be a structure of an unfriendly foreign country and the result of the "Russian conquest of Ukraine, while sympathizers of the USSR and Russia perceive a Ukrainian national church with hostility. The beginning of the Russian aggression against Ukraine, which coincided with the election of very conservative and pro-Russian Metropolitan Onuphrius as the head of the UOC (MP), significantly worsened public sentiments towards the faithful of the church. This had led to a new wave of transitions of parishes from the Moscow Patriarchate to the UOC-KP that has again aggravated the inter-confessional confrontation between these churches.

A standard situation within such conflicts has long been discrimination by local authorities in favour of the local dominant church – the UOC (MP) in the east and south, the UOC-KP or the UGCC in the west of the

⁸⁸ Please see note 20, pp. 542, 543.

⁸⁹ Свидетели Иеговы в России, *Военкомат требует от призывников письменного отречения от веры*, 16.06.2017, jw-russia.org.

⁹⁰ Свидетели Иеговы, *В восточных регионах Украины попирается свобода вероисповедания*, 13.12.2017, jw.org.

⁹¹ Сегодня, В "ЛНР" запретили "Свидетелей Иеговы", 06.02.2018, segodnya.ua.

⁹² Please see note 20, p. 540.



Figure 7. Typical examples of probable hate crimes / incidents on ground of religious beliefs: at the top – the inscriptions left by the picketers at the UOC (MP) church in Lviv, 28.01.2018; below – the burning of a looted religious building of Jehovah's Witnesses in occupied Luhansk, 30.05.2018.

country. The worsening public attitude to the UOC (MP) caused it to now attract most of the discrimination, violence and hate speech aimed at the institutions and faithful of this church, even in those regions (excluding the occupied territories) where it used to be traditionally popular. The situation in the occupied territories is

exactly the opposite: almost all churches and religious organisations are subjected to discrimination and manifestations of hostility, except for the structures of the ROC.

Hate crimes and incidents associated with such conflicts on religious grounds include insults, intimidation, threats by weapons, causing bodily injuries, property damage and so on. Reliable statistics on the subject are absent, but as illustrations we can mention reports on the damaging and burning of UOC (MP)'s religious buildings in Chernihiv oblast⁹³ and Kyiv city⁹⁴; beating of the people who protested against the actions of a local UOC (MP) priest nearby a church of the Moscow Patriarchate in Zaporizhzhya⁹⁵; the fights between priests of Kyiv and Moscow Patriarchates in villages Povcha of Rivne oblast⁹⁶ and Kynakhivtsi of Ternopil oblast⁹⁷ and so on. All parties to such conflicts have their "support groups" which serve to further intimidation and attacks on the adversary and consist of believers of the respective churches as well as persons related to them. In the case of the UOC-KP, UAOC and UGCC, such groups often are organisations of radical Ukrainian nationalists;⁹⁸ in the case of the UOC (MP), previously they often were various "Orthodox Cossacks" who currently act openly only in the occupied territory.⁹⁹

Recently, clerics of the UOC (MP) were repeatedly accused of inciting inter-religious hatred and discrimination because of their refusals to conduct religious rites for believers of the UOC-KP. In particular, much publicity was focused in January 2018 on a case in Zaporizhzhya in which a UOC (MP) priest refused to conduct the funeral of a deceased boy because the latter was baptized in the UOC-KP. The Prosecutor's Office even announced the launch of an official investigation on suspicion that the case was violating Article 161.¹⁰⁰ However, in our opinion, such a qualification in cases such as this one is mistaken: for each church independently adopts rules reflecting its attitude towards other churches and religions, therefore the State's intervention in these matters is a flagrant violation of freedom of conscience and religion. This view that we hold was also supported by the All-Ukrainian Council of Churches and Religious Organisations, which includes all the major confessions of Ukraine, particularly the UOC-KP: "The Council believes that the issues of conducting worship, religious rites and ceremonies by religious staff, clergy, mentors or preachers are regulated by internal guidelines of the relevant religions, denominations and religious organisations, and may not be made subject to the application of Article 161 of the Criminal Code of Ukraine."¹⁰¹

In the occupied territory of Ukraine the situation with hate crimes on religious grounds in general remains extremely grave. Since the beginning of the Russian invasion into Ukraine, the occupying forces have launched open persecution of believers of all religions except the Orthodox of the Moscow Patriarchate. In the Crimea, the main victims of oppression and crimes are primarily Muslims (almost exclusively Crimean Tatars) as well as the Orthodox of the Kyiv Patriarchate. In the occupied areas of Luhansk and Donetsk oblasts there are very noticeable discrimination incidents and hate crimes against Protestants, who in these regions are more common than in the rest of Ukraine. In particular, wide publicity was given to the brutal murder of four Protestant Christians in 2014 by Russian militants in Slovyansk city (Donetsk oblast) – two deacons and two children of the pastor of a local Pentecostal church.¹⁰²

⁹³ Чернігівська і Новгород-Сіверська єпархія УПЦ, *Темные дела на светлой седмице: надругательство над храмом*, 15.04.2018, orthodox.com.ua.

⁹⁴ Київська митрополія УПЦ, *Невідомими скоєно наругу над столичним храмом Преображення Господнього*, 10.03.2018, mitropolia.kiev.ua.

⁹⁵ Деро.Запоріжжя, *У Запоріжжі "православні тітушки" побили людей, що прийшли до храму УПЦ МП з іграшками*, 06.01.2018, zp.dero.ua.

⁹⁶ People IN, *Священик УПЦ МП жорстоко побив священика УПЦ КП*, 30.08.2017, people.in.ua.

⁹⁷ Галас, *Релігійний конфлікт на Тернопільщині: побилися священики УПЦ КП з УПЦ МП*, 16.05.2017, galas.te.ua

⁹⁸ Please see, e.g., *Спілка православних журналістів, У Миколаєві націоналісти побили вірян УПЦ*, 07.09.2017, spzh.news.

⁹⁹ Please see, e.g., УНІАН, *Стали відомі подробиці нападу на церкву в Криму: "казаци" виламали двері й побили прихожан*, 01.06.2014, unian.ua.

¹⁰⁰ УНІАН, *Правоохоронці взялися за священників УПЦ МП, які відмовилися відспівувати дитину у Запоріжжі*, 11.01.2018, unian.ua.

¹⁰¹ Всеукраїнська Рада Церков і релігійних організацій, *Заява ВРЦіРО щодо недопустимості порушення принципу автономності релігійних організацій*, 03.07.2018, vrciro.org.ua.

¹⁰² Поліція Донеччини, *Поліцейські встановили бойовиків, які розстріляли в 2014 році у Слов'янську чотирьох мирних жителів*, 31.01.2018, police.dn.ua.

4.6. Hate crimes and incidents on other grounds

As already mentioned above, there is no certain international standard for the list of grounds that figure in hate crimes criminalized in national legislations. Although almost all OSCE states, including Ukraine, separately single out crimes motivated by bias to "race", national (ethnic) affiliation, and religious beliefs, the rest of the protected characteristics vary greatly from country to country. Their specific listing is defined by legislators and governments for reasons of practical and / or political expediency. Unlike the list of grounds protected from discrimination, such a list for hate crimes is rarely open (i.e., theoretically, it includes any ground). Article 67 of the Criminal Code of Ukraine provides for the possibility (but not the obligation) of a court to enhance penalties for crimes motivated by gender. Action 3 of Item 105 of the Action Plan on Human Rights includes "ensuring punishment for crimes committed under motives of intolerance on grounds such as race, skin colour, religious beliefs, sexual orientation, transsexuality, disability, language" – that is, adding sexual orientation, transsexuality (which in this case equals to gender identity), disability, and language to the already existing list of the protected grounds. The unscientific ground of "race", which is present in the Ukrainian and international law, obviously, may be specified, in particular, as skin colour, so adding the latter into the list of the protected characteristics actually changes nothing. So, we should assess the situation on hate crimes in Ukraine according to the characteristics which have not yet been addressed in this publication but are present in the current legislation (gender) or proposed for inclusion (disability and language). Also worthy of attention is whether there are cases in Ukraine of notable incidents of hate crimes on other grounds that are not present in the current legislation or the Action Plan.

Frankly speaking, given the Ukrainian realities it is hard to imagine a hate crime or incident motivated by bias (intolerance) towards such characteristics as gender or disability. Discrimination on these grounds in Ukraine is very common, but public opinion and current national traditions strongly condemn apparent intolerance towards groups of population that are disadvantaged on these grounds – women and people with disabilities, that by itself already prevents committing crimes on such basis. In contemporary Ukraine we do not know any case of apparent hate crimes or incidents (in the strict sense of these terms) of these kinds. It is unclear why the ground of sex (gender) was included, and disability – proposed for inclusion, in the Criminal Code as particularly protected from crimes motivated by intolerance towards them. Probably, this was done solely to emphasize existing public condemnation of crimes theoretically possible to stem from such motives, but not for the purpose of the practical struggle against them. Although it may be noted that certain manifestations of intolerance against women and people with disabilities in Ukraine undoubtedly occur, they generally fall under the definition of discrimination, which is not a main topic of this research and is well documented in other publications.¹⁰³

HIV status

Public opinion in Ukraine, however, is still undecided in its attitude to such a vulnerable group as people with HIV-positive status. Promoting an intelligent and tolerant attitude towards them, conducted by both state and non-governmental organisations, certainly has a positive effect. But irrational fear of the possibility of being infected and widespread prejudices against groups at high-risk for HIV infection contribute to maintaining stigmatization of HIV+ persons in Ukrainian society. Although their rights and the prohibition of discrimination based on HIV status are guaranteed by the law "On combating the spread of diseases caused by the human immunodeficiency virus (HIV) and legal and social protection of people living with HIV" and other laws of Ukraine, in practice HIV-positive people and their relatives face not only discrimination but also manifestations of hate speech and, at least, incidents of hatred (bullying) against them.

The Criminal Code (Article 132) provides for penalties for the disclosure of the patient's HIV status by medical personnel, but does not consider the motives of bias (intolerance) to HIV-positive persons as aggravating in the commission of crimes. No statistics on hate incidents and crimes under these motives is collected, but the media reported, for example, on the following recent incidents: "12-year-old Tanya was beaten when they learned that she was HIV-positive. Her mother sued, but this had no impact – the perpetrators were not

¹⁰³ Please see note 34, Chapters 2.1, 2.3.

punished. She was even faced with a counterclaim;"¹⁰⁴ "the neighbours broke our windows and smashed the car when they learned that we have HIV... It was terrible, and we eventually left."¹⁰⁵

Status of internally displaced persons

The Russian invasion of Ukraine led to a large number of forced migrants from the occupied territories who are officially called "internally displaced persons", IDPs. According to the official data, by April 2018 in Ukraine there were more than 1.5 million IDPs, mostly from the occupied parts of Donetsk and Luhansk oblasts. Most IDPs lived in the unoccupied part of Donbass, and also in Kharkiv and Kyiv.¹⁰⁶

At their new place of residence internally displaced persons face many social and economic problems, including obvious manifestations of prejudice towards them by local residents. First of all, it is discrimination in hiring and renting housing is noted, for example, in a report of the National System of Monitoring the Situation of Internally Displaced Persons.¹⁰⁷ Cases of other acts motivated by bias to IDPs are rare – in particular, the mentioned report stated that "Only 2% of the key informants reported they knew cases of tensions between IDPs and the host community, and 1% marked tensions between IDPs and combatants who returned from the conflict zone."¹⁰⁸ We could not find any indisputable example of hate crime in Ukraine motivated by bias to IDPs.

Language

Data on the language distribution among the inhabitants of Ukraine received during the last census (2001) is definitely obsolete – especially given the consequences of the Russian aggression. A poll by the Razumkov Centre conducted in March 2017 showed that 68% of the respondents considered Ukrainian as their native language, 14% – Russian, 17% – both languages, and only 0.7% – other languages. At home, 56% of the respondents used predominantly or exclusively Ukrainian, 23% – Russian, 21% – roughly equally both these languages, and only 0.4% – some other language.¹⁰⁹

"The language issue", despite its constant raising in Ukrainian politics, has always been of secondary importance in the eyes of wider society. Thus, a survey by the Kyiv International Institute of Sociology from 2017 revealed that only 1.2% of respondents were most concerned about the status of the Russian language in Ukraine.¹¹⁰ However, socio-political processes in Ukraine constantly draw attention to the problems in this sphere and related cases of biased attitude on ground of language.

Well known are the problems of the Ukrainian-speaking population of our country related to the lack of information in Ukrainian language, and the lack of its knowledge or refusal to use it by officials and servicing staff – however, cases of this kind mostly do not fall under the definitions of hate crimes or incidents. The National Police of Ukraine reported about investigating only two cases of alleged violation of Article 161 on ground of language in 2015,¹¹¹ but this article deals with incitement of hatred and discrimination, not with hate crimes in the strict sense of the term. We could find no other information from the NPU about crimes based on bias to any language.

Meanwhile, monitoring of the media and social networks shows that in practice such probable cases still occur. Wide publicity was given, for instance, for such recent stories as denial of service and beating of a women customer, a widow of an ATO participant, because of her Ukrainian language, in Dnipro city in March 2017,¹¹² a conflict between a group of border guards in Mariupol with the guard of a cafe after the first requested the menu in Ukrainian language,¹¹³ beating of a buyer at a store in Pryluky of Chernihiv oblast, who

¹⁰⁴ Вичерпно, "Таким як ти дитина не потрібна!" А що обереш ти: толерантність чи дискримінацію ВІЛ-інфікованих?, 23.03.2017, vycherpno.cz.ua.

¹⁰⁵ Длябога Ю., ВІЛ – не вирок, 01.12.2013, Львівський портал, portal.lviv.ua.

¹⁰⁶ Слово і діло, Динаміка міграції в Україні: де живе найбільше переселенців, 11.05.2018, slovoidilo.ua.

¹⁰⁷ Міжнародна організація з міграції, Звіт Національної системи моніторингу ситуації з внутрішньо переміщеними особами, вересень 2017, с. 27-28, iom.org.ua.

¹⁰⁸ Ibid., p. 28.

¹⁰⁹ Центр Разумкова, Основні засади та шляхи формування спільної ідентичності громадян України, 2017, с. 6, razumkov.org.ua.

¹¹⁰ Київський міжнародний інститут соціології, Які проблеми турбують українців, 22.06.2017, kiis.com.ua.

¹¹¹ Please see note 31.

¹¹² ТСН, У Дніпрі багатодітну вдову кіборга побили в магазині за українську мову, 27.03.2017, tsn.ua.

¹¹³ Znaj.ua, Щелепа за мову: що відомо про жорстоке побиття українських прикордонників, 20.06.2018, znaj.ua.

asked to serve him in Ukrainian language.¹¹⁴ It is noteworthy that all of the cases occurred in the sphere of trade and services, where the use of Ukrainian language must be ensured.

However, cases of alleged hate crimes and incidents on ground of language relate not only to the state language of Ukraine. In particular, the press reported that unidentified youths in Lviv beat a man who just walked down the street, talking on the phone in Polish. According to the victim, they expressed (in Russian) claims precisely towards the language that he spoke on the phone: "I will not repeat their arguments why Polish is bad. But the words, with which they completed their affair, I cite: 'Never chat anymore.' I was beaten in Lviv because I "chatted" in Polish. This I did not expect."¹¹⁵ Again in Lviv, in February 2017, there happened a fight between a group of local residents and tourists from Belarus, one of the reasons for which was probably that tourists spoke with the attackers in Russian.¹¹⁶

It is important to emphasize that without professional investigation of these cases we may not argue that they really have to be qualified as hate crimes on ground of language, yet the presence of certain characteristics of such crimes in these cases just has to be a reason for such an investigation – but that obviously does not happen.

Social status

A recent article in an edition of *Livyi bereh (Left Bank)* attracted attention to such a phenomenon as crimes against homeless people. It contains evidences of committing at least seven attacks on homeless people in Ukraine over the past three years (including one case in occupied Sevastopol).¹¹⁷ In all cases, it was about physical violence against the homeless: beatings, arson, murder. The available information contains no evidences of committing these crimes on the basis of personal hostile relationships or because of a lucrative impulse. On the contrary, in some cases it is stressed (apparently from testimonies of participants or eyewitnesses) that the crime was committed out of boredom, for amusement.¹¹⁸

There are no accurate statistics on the number of homeless people in Ukraine. According to Oksana Sulima, Head of the Department for Elderly People and Social Services to the Ministry of Social Policy, in 2016 there were at least 16 thousand of those, and some sociological surveys estimated the total number of the homeless in Ukraine in the 100 thousand range.¹¹⁹ Currently, the only (very doubtful) legal possibility for qualifying offences against homeless people as hate crimes is the use of article 161 of the Criminal Code, which prohibits, in particular, discrimination based on "property status, place of residence [...] or other characteristics."

From the descriptions of crimes against homeless people, it follows that criminals often view them as defenceless prey that meet their desire for violence; and the victims also cause the criminals disgust with their way of life and appearance. It seems that the characteristic which defines criminals' choice of homeless people as victims consists not in the actual absence of victims having permanent residences – in some cases, homeless people may even have a home which they have left for some reason – but precisely in their way of life and appearance so unpleasant to the general public. In this regard, in our opinion, the motivation for the alleged hate crimes in such cases should be formulated more broadly – as a bias (intolerance) against the social status of the victims.

In our opinion, it is also necessary to carry out a professional investigation of the mentioned cases and legal expertise in order to finally find out the legal qualification of such crimes – whether they should be considered as hate crimes on ground of social status and consequently this characteristic be added to the relevant articles of the Criminal Code of Ukraine.

¹¹⁴ Вголос, *Розбили лице до крові: на Чернігівщині за українську мову жорстоко побили активіста*, 18.01.2018, vgoles.com.ua.

¹¹⁵ Лавришин Ю., *Українського історика побили у Львові за телефонну розмову польською мовою*, Zaxid.net, 05.02.2017, zaxid.net.

¹¹⁶ Центр інформації про права людини, *У Львові націоналістично налаштовані українці побили білорусів за російську мову*, 23.02.2017, humanrights.org.ua.

¹¹⁷ Макар О., *Випили пиво, вбили бездомного: чому історії про підлітків насправді про кожного з нас*, LB.ua, 06.11.2018, lb.ua.

¹¹⁸ Павлоград.dp.ua, *В Павлограді все троє людей, избитих студентами, скончались*, 01.11.2018, павлоград.dp.ua.

¹¹⁹ Укрінформ, *Мінсоцполітики нарахувало 16 тисяч безхатків. Активісти – вдесятеро більше*, 21.01.2016, ukrinform.ua.

The presence of hate crimes in Ukraine

	In legislation	In practice
"race"	✓	✓
nationality	✓	✓
religion	✓	✓
sex (gender)	✓	
disability	✓	
sexual orientation		✓
gender identity		✓
political or religious beliefs		✓
HIV status		?
language		?
social status		?

Figure 8. The bias motives of hate crimes mentioned in the law and found in practice in Ukraine.

5. CONCLUSIONS AND RECOMMENDATIONS

Ukrainian legislation, which is applied in practice to punish hate crimes, in fact consists of eight articles of the Criminal Code of Ukraine: Paragraph 3 of Part 1 of Article 67, Parts 2 of Articles 115, 121, 122, 126, 127, 129, and Article 161. Article 67 sets increased penalties for hate crimes "on basis of racial, national or religious enmity or discord, or on basis of sex" if the punishment for such crimes is not provided for in other articles of the Criminal Code – yet the court may do not take into account the reasons of bias on the above-mentioned basis, therefore in fact the court may consider such offenses as ordinary crimes. Articles 115, 121, 122, 126, 127, and 129 providing enhanced penalties for hate crimes "under motives of racial, national or religious intolerance" – thus, the crimes do not fall under the scope of Paragraph 3 of Part 1 of Article 67.

Finally, Article 161 provides penalties for "Deliberate acts aimed at incitement of national, racial or religious enmity and hatred, humiliation of national honour and dignity, or insulting the feelings of citizens because of their religious beliefs", as well as discrimination ("direct or indirect restriction of the rights or setting of direct or indirect privileges of citizens") by an open list of grounds. Thus, Article 161 does not punish for hate crimes in the strict sense of the term, as a hate crime must be a crime even without the motive of bias (hatred, enmity, etc.). However, this very article is often used in practice for qualification, investigation, and punishment for crimes committed under motives of bias towards a specific characteristic. Moreover, because the list of protected characteristics in the other aforementioned articles of the CCU is closed and includes only three or four grounds, only Article 161 provides at least some legal basis for the prosecution of hate crimes on the other grounds. Amid the obvious deterioration of the situation with hate crimes in Ukraine in recent years, a delay in the implementation of this provision of the Action Plan is totally unacceptable.

Though widespread, the practice of using Article 161 in the cases of crimes motivated by bias (intolerance) towards some characteristics – which clearly do not focus on "direct or indirect restriction of the rights or setting of direct or indirect privileges of citizens" or "incitement of national, racial or religious enmity and hatred, humiliation of national honour and dignity, or insulting the feelings of citizens because of their religious beliefs" – is in practice a clear violation of the letter of law. In addition, according to the Action Plan on Human Rights (Paragraph 105, Action 3), Article 161 shall lose a part regarding discrimination. The corresponding Bill 3501 has already passed the first reading in the Parliament. After its final approval, any legal basis for the investigation of crimes motivated by bias on grounds other than "race", nationality / ethnicity, religious beliefs, or sex as hate crimes in the Ukrainian legislation will disappear. This shortcoming had to be corrected by implementation of another part of the same Action 3, Paragraph 105, of the Action Plan – "providing punishment for crimes committed under motives of intolerance on such grounds as race, skin colour, religious beliefs, sexual orientation, transsexuality, disability, language (amendments to Paragraph 3 of Article 67, Parts 2 of Articles 115, 121, 122, 126, 127, 129, Article 293." However, at the time of drafting this report (autumn 2018) two years had already passed after the scheduled deadline of this item's implementation (2nd quarter of 2016), but the Interior Ministry of Ukraine has not presented a relevant bill to the Cabinet of Ministries, not to mention its consideration in the Parliament.

The wording of the specified provision of the Action Plan, which speaks of "reasons of intolerance" and unification of terminology using the term "tolerance" in the Criminal Code of Ukraine, looks quite questionable to us. As mentioned in this publication, hate crimes are crimes based on bias to certain characteristics, so the most successful variant of their persecution is the model of discriminatory selection, which does not provide for proving the presence of the offender's personal feelings towards the victim because he or she has such a characteristic, while the term "intolerance" actually means that to qualify a crime as a hate crime the investigation has to prove the personal intolerance of the offender on this ground – the so-called "hostility model." Since Ukrainian legislation, namely Paragraph 3 of Part 1 of Article 67, combines both models ("on the basis of racial, national, religious hostility or discord" – the hostility model; "or on the basis of gender" – the model of discriminatory selection), it would be desirable to unify all articles of the CCU on the basis of the second model. This unification would greatly facilitate the work of investigators and prosecutors, who would not have to prove the personal intolerance of the offender, but only that his/her choice of the victim was not accidental but was based on the presence of a certain victim's characteristic.

As already mentioned, in accordance with Part 2 of Article 67 of the CCU, "the court has the right, depending on the nature of the offense, not to recognize any of the circumstances specified in Part 1 of this article,

except the circumstances specified in paragraphs 2, 6, 6-1, 7, 9, 10, 12, as such that aggravate a punishment, giving the reasons for its decision in the sentence" – thus, in fact, the court may ignore the signs of hate crime indicated in paragraph 3 of Part 1. Apparently, this option to ignore in effect weakens the legal basis to combat hate crimes, therefore paragraph 3 of Part 1 of Article 67 of the Criminal Code of Ukraine should be added to the above-mentioned list of paragraphs which the court has no right to ignore.

The list of features directly protected from hate crimes in national law should match up with the real situation in a concrete society. Analysis of available information on cases of hate crimes on various grounds, which are observed in Ukraine in practice, demonstrates that very urgent is the issue of the criminalization of hate crimes on grounds such as sexual orientation and gender identity, and also those crimes based on political or ideological views. Not so often, but still occurring are hate crimes on grounds of language, HIV status, and social status, hence it is also reasonable to add them to the respective list in the Criminal Code of Ukraine – however, more detailed study of the issue is needed and professional discussion about details. The rest of the protected characteristics either are already mentioned in the criminal law or are not relevant to modern Ukraine.

Hate crimes, however, are also inextricably linked with such actions as discrimination and incitement to hatred. While discrimination in Ukraine is prohibited under an open list of characteristics (that is, in theory, on any ground, if the court decides so), inciting enmity and hatred (Article 161 of the CCU) as well as the making and distribution of works that promote intolerance (Article 300 of the CCU) relate only to grounds of "race", nationality / ethnicity, and religious beliefs. In our opinion, the list of characteristics protected from incitement to hostility and hatred as well as propaganda of intolerance should be expanded respectively commensurate with the expansion of the list of characteristics protected from hate crimes. However, inasmuch as the existing socio-political situation obviously does not allow inclusion in the first list grounds of political or ideological beliefs – in practice it will be impossible to clearly separate free political and ideological discussion from incitement of hatred on these grounds. Nevertheless, this does not prevent the criminalization of hate crimes on this ground. Highly questionable is the presence in Article 161 of penalties for insulting the feelings of citizens because of their religious beliefs. As the practice of using similar provisions in the Russian legislation demonstrates, it did not meet the principle of legal certainty because the insult of feelings of an individual is a subjective notion that depends entirely on the views of the person and cannot be determined objectively.

An urgent reform is also required in the law enforcement practice of documenting and investigating hate crimes and incidents. The existing skills of police officers and prosecutors, as well as teaching materials in this area, are obviously not enough, and those present are not consistent with the international standards. It is possible and necessary to use to the full extent the international experience in combating hate crimes as well as assistance in this sphere by foreign partners of our country. The apparent presence of the general ultra-right radical movement, whose members commit probably the vast majority of hate crimes in Ukraine, requires the special attention of law enforcement agencies against its illegal activities as a manifestation of organised crime. In our opinion, this matter even touches upon national security issues.

The obvious tendencies in the socio-economic development of Ukraine and the world indicate prospects for a worsening situation of hate crimes on grounds such as sexual orientation and gender identity, as well as nationality / ethnicity or "race". This problem cannot be solved without systematic actions on promotion in Ukrainian society – particularly among law enforcement officers – a tolerant and respectful attitude towards all people, including vulnerable minorities.

LGBT Human Rights Nash Mir Center is a Ukrainian public organisation which aims to implement and protect the rights and freedoms, meet the public, social, cultural, political, economic and other interests of the Ukrainian LGBT community. Our activities are aimed at both the LGBT community and Ukrainian society as a whole. Now we focus our efforts on:

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