



*Food for thought paper*

## **Tolerance and Non-Discrimination: Current Situation and Ukraine's Perspective**

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### **The OSCE Human Dimension Implementation Meeting**

**Warsaw, 26 September 2016**

#### ***Working session 11: Tolerance and non-discrimination, including prevention and responses to hate crimes in the OSCE area and combating racism, xenophobia and discrimination, also focusing on intolerance on religious grounds***

The latest years turned out to be challenging for the OSCE participating States concerning their obligations on preventing intolerance and discrimination. Terrorist attacks at the backdrop of the refugee crisis and flows of migrants are widely exploited in the intolerant discourse of the irresponsible politicians flirting with the frustrated electorate. Radical and populist parties, movements and politicians advocating intolerant and discriminative slogans have grown in popularity, posing threat to the achievements in combating racism, xenophobia and discrimination.

Situation in the post-Soviet space has also deteriorated. In addition to the existing protracted conflicts, where the application of the international documents on prevention and responses to hate crimes is problematic, the Russia-Ukraine conflict resulted in creation of the new "grey" zones in the OSCE area, namely the illegally annexed Autonomous Republic of Crimea and the occupied territories in the Donetsk and Luhansk regions. The de-facto authorities in these regions obstruct the international monitoring of the situation with human rights. Contrary to its international commitments, Russia prevents the OSCE representatives, including the OSCE High Commissioner on National Minorities, from access to the Crimea.

The data, gathered by the non-governmental organizations and human rights activists, as well as the testimonies of witnesses and victims of repressions indicate that hate crimes, discrimination and intolerance towards the Crimean Tatar and Ukrainian-speaking communities, Muslims and Christians outside the jurisdiction of the Moscow Patriarchate have become a part of the everyday life in the Crimea and Donbas. The education in the Crimean Tatar and Ukrainian languages has been severely curtailed; many institutions promoting Crimean Tatar and Ukrainian culture have been closed down. In April 2016, the Crimean Tatars' Mejlis was banned by the de-facto authorities in the Crimea, being unfoundedly declared as an extremist organization. Those who support Ukraine's territorial integrity are suffering from intimidations, repressions, mental and physical violence, often being accused of fabricated charges. In August 2016, Ilmi Umerov, Deputy Head of the Crimean Tatars' Mejlis, became the victim of the "punitive psychiatry" – the resumed Soviet practice that had been used in the USSR against the dissidents.

Military conflicts, especially those which have been provoked by the hate-speeches propaganda, enhance the threat of rise in intolerance in the affected societies. In this regard, it is worth noting that the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Project Co-ordinator in Ukraine (PCU), together with Ukrainian civil society actors and public authorities have done considerable work to implement commitments on preventing and countering hate crimes, including those set in the OSCE Ministerial Council's Decision No.9/09 of 2009, including through strengthening legislation, building the capacity of actors in criminal justice systems, assisting civil society and etc.

Of special importance for the building capacity of civil society and state actors in human rights, tolerance and non-discrimination is the ODIHR's project "Strengthening dialogue among civil society and with key government stakeholders in Ukraine on human dimension issues". Within the framework of this project, the Second National Confidence and Capacity Building event was held in Kyiv in April 2016, with special focus on practices of monitoring, reporting and investigating hate crimes in Ukraine. In particular, the root causes of under-reporting of hate crime were discussed as the common problem for all the post-Soviet countries. Within the project, a Handbook for Ukraine "Understanding Hate Crimes" was published in Ukrainian, Russian and English languages.

In 2015-2016, a series of events was held in Ukraine within the project "Promoting Security for Religious Communities and Others in the Regions of Ukraine". Practical recommendations were developed for the further reforms in policy, legislation and practice pertaining to freedom of religion or belief and the prevention of and response to hate crimes. Ukrainian lawyers were trained on litigation related to freedom of religion or belief; law enforcement officers took part in the training-of-trainers events as a part of ODIHR's Training

Against Hate Crimes for Law Enforcement (TAHCLE) programme; study visit of Ukrainian policemen and prosecutors to Poland was organised focusing on hate crimes and freedom of religion or belief.

In September 2016, following the consultative opinion provided by the OSCE PCU and taking into account the "Guidelines on Freedom of Peaceful Assembly" produced by the ODIHR, Ukrainian Constitutional Court abolished regulations limiting the religious assemblies. Henceforth, there is no need to seek permission from the authorities to hold a religious gathering, but just to notify them following the regular procedure applying to the peaceful assembly.

Given the special responsibility of media and journalists at the time of conflict, of vital importance were the media forums, organised by the Ukrainian NGOs, held in June 2016, in Lviv (Western Ukraine) and Mariupol (the Donetsk region), which gathered hundreds of journalists and media experts. The important issues relating to the tolerance and non-discrimination were discussed, such as the objective reporting from the conflict zone, the avoidance of harsh language and dehumanization of the "other side", and etc. At the forums, the OSCE PCU presented a handbook "Conflict Sensitive Journalism – Best Practices and Recommendations", prepared in partnership with the Ukrainian NGOs "Telekritika" and "Institute of Mass Media", and published in Ukrainian, Russian and English languages within the PCU's project "Supporting Conflict Sensitive Journalism in Ukraine". Another important event to mention was the international conference "Participation of media in reconciliation: Lessons for Ukraine", held by the OSCE PCU and the NGO "Detector Media" in May 2016, in Kyiv.

The activity of the OSCE Special Monitoring Mission to Ukraine (SMM) and its field presence on the dividing line and on the territories affected by the conflict helps to decrease the risk of hate crimes against the civilians, assists to establish communication at the local level and thus to avoid in many cases the non-combat casualties.

Nonetheless, a lot remains to be done. In particular, the EESRI Foundation proposes the following **recommendations**:

To the participating States of the OSCE:

Increasing efforts on implementation of the OSCE Ministerial Council's Decision No.9/09 of 2009 on combating hate crimes;

Taking effective measures to prevent the usage of intolerant and hate speech in political agitation and propaganda; providing proper response to the relevant violations of the international and national legislation;

Providing full support to the activities of the Office for Democratic Institutions and Human Rights in preventing hate crimes; providing full support and access to own territory to the OSCE High Commissioner on National Minorities;

Improving identifying and recording of the hate crimes and regular submitting of the relevant data to the ODIHR;

Paying proper attention to the Russia's responsibility for the human rights violations, including the hate crimes, in the illegally annexed Crimea and the de-facto occupied territories in the Donetsk and Luhansk regions.

To the OSCE Secretary General:

Elaborating measures to provide access of the OSCE monitoring missions to the whole territory of Ukraine, including the Crimea and Donbas;

Calling on Russia to fulfil its international commitments, to stop preventing the OSCE High Commissioner on National Minorities from access to the illegally annexed Crimean peninsula, and to stop discrimination of the Crimean Tatar and Ukrainian-speaking communities in the Crimea and Donbas;

Facilitating exchange of experience among the OSCE participating States on prevention and responses to hate crimes and combating racism, xenophobia and discrimination.

To the ODIHR:

Elaborating measures to organise regular monitoring and reporting on human rights situation in the annexed Crimea and the de-facto occupied territories in the Donetsk and Luhansk regions;

Appointing a special rapporteur on the cases of intolerance, discrimination and hate crimes committed in the Crimea and Donbas;

Supporting regional, subregional and national initiatives on monitoring and protecting human rights, including the issues of tolerance and non-discrimination;

Providing assistance to Ukrainian public authorities to further improve the legislation in the sphere of combating hate crimes, racism, xenophobia and discrimination.

To the PCU:

Further supporting of the interaction between public authorities and civil society oriented on human rights monitoring and protection, including combating hate crimes and other manifestations of intolerance;

Assisting Ukrainian law-enforcement authorities in improving the identification and recording of hate crimes; establishing programs to encourage victims to report hate crimes;

Continuing project activity on the conflict sensitive journalism, including teaching on objective reporting from the conflict zone, tolerance, non-discrimination, and avoiding harsh language;

Establishing projects on teaching tolerance in the education institutions; elaborating together with the Ministry of Education and Science of the program to include the human rights into the educational curricula at all levels;

Establishing cooperation with the OSCE field presences in Western Balkans to exchange experiences in prevention of hate crimes and combating discrimination.

To the SMM:

Recording all detected hate crimes, cases of intolerance and discrimination in the territory of its monitoring with subsequent transmitting of such records to the Ukrainian law-enforcement authorities and the OSCE ODIHR for the further response.