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# Ukraina

## ***Constitution, Article 37***

The establishment and activity of political parties and public associations are prohibited if their programme goals or actions are aimed at the liquidation of the independence of Ukraine, the change of the constitutional order by violent means, the violation of the sovereignty and territorial indivisibility of the State, the undermining of its security, the unlawful seizure of state power, the propaganda of war and of violence, the incitement of inter-ethnic, racial, or religious enmity, and the encroachments on human rights and freedoms and the health of the population.

Political parties and public associations shall not have paramilitary formations.

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The creation and activity of organizational structures of political parties shall not be permitted within bodies of executive and judicial power and executive bodies of local self-government, in military formations, and also in state enterprises, educational establishments and other state institutions and organisations.

The prohibition of the activity of associations of citizens is exercised only through judicial procedure.

***Law on the Freedom of Conscience and Religious Organizations (1991) Article 4 - Equal Rights of Citizens Regardless of Their Attitude towards Religion***

Citizens of Ukraine shall be equal before the law and shall enjoy equal rights in all spheres of economic, political, social, and cultural life regardless of their attitude towards religion. A citizen's attitude towards religion shall not be indicated in official documents.

Any direct or indirect limitation of rights, any establishment of direct or indirect preferences for citizens depending on their attitude towards religion, as well as incitement of enmity and hate related thereto, or the offence of citizen's feelings shall result in the liability established by law.

No one may evade the performance of constitutional duties for the reason of religious convictions. The substitution of one duty for another duty for the reason of convictions shall be allowed only in the cases provided for by the legislation of Ukraine.

***Criminal Code, Article 67 - Circumstances aggravating punishment***

1. For the purposes of imposing a punishment, the following circumstances shall be deemed to be aggravating:

1) repetition of an offense or recidivism; (2) the commission of an offense by a group of persons upon prior conspiracy (paragraph 2 or 3 of Article 28); (3) the commission of an offense based on racial, national or religious enmity and hostility; (4) the commission of an offense in connection with the discharge of official or public duty by the victim; (5) grave consequences caused by the offense; (6) the commission of an offense against a minor, an elderly or helpless person; (7) the commission of an offense against a woman who, to the knowledge of the culprit, was pregnant; (8) the commission of an offense against a person who was in a financial, official or other dependence on the culprit; (9) the commission of an offense through the use of a minor, a person of unsound mind or mentally defective person; (10) the commission of an especially violent offense; (11) the commission of an offense by taking advantage of a martial law or a state of emergency or other extraordinary events;

12) the commission of an offense by a generally dangerous method; (13) the commission of an offense by a person in a state of intoxication resulting from the use of alcohol, narcotic, or any other intoxicating substances;

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2) Depending on the nature of an offense committed, a court may find any of the circumstances specified in paragraph 1 of this Article, other than those defined in subparagraphs (2), (6), (7), 9), 10), and 12), not to be aggravating, and should provide the reasons for this decision in its judgment.

3) When imposing a punishment, a court may not find any circumstances, other than those defined in paragraph 1 of this Article, to be aggravating.

4) If any of the aggravating circumstances is specified in an article of the Special Part of this Code as an element of an offense, that affects its treatment, a court shall not take it into consideration again as an aggravating circumstance when imposing a punishment.

**Law №1707-VI “On amendments to Criminal Code of Ukraine on responsibility for crimes, committed on the ground of racial, national or religious intolerance”**, which was approved by the Parliament on 5 November 2009. Full text of the Law available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1707-17>.

***Criminal Code, article 161 - Violation of citizens' equality based on their race, nationality or religious preferences***

1) Wilful actions inciting national, racial or religious enmity and hatred, humiliation of national honour and dignity, or the insult of citizens' feelings in respect to their religious convictions, and also any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, colour of skin, political, religious and other convictions, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics, shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labour for a term up to two years, or restraint of liberty for a term up to five years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

2) The same actions accompanied by violence, deception or threats, and also committed by an official, shall be punishable by correctional labour for a term up to two years, or imprisonment for a term up to five years.

3) Any such actions as provided for by paragraph 1 or 2 of this Article, if committed by an organized group of persons, or where they caused death of people or other grave consequences, shall be punishable by imprisonment for a term of two to five years.

***Law of Ukraine On Mass Media, Article 3***

prohibits using mass media for rousing racial, national, religious hatred.

**Draft Law (5247) on prevention and counteraction of Nazism and fascism propaganda** in Ukraine. On 20 October 2009, two MPs from the Party of Regions submitted to the Parliament a draft law, now transmitted to a Parliament Commission on 27/04/2010 Text of the draft and supporting documents available at [http://gska2.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?id=&pf3511=36351](http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=36351)

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# Case Law

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# Ukraine

Constitutional Court: <http://www.ccu.gov.ua/uk/index>

**КОНСТИТУЦІЙНИЙ СУД УКРАЇНИ**  
ОФІЦІЙНИЙ ВЕБ-САЙТ

12 жовтня 2011 року UKR | RUS | ENG |

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Забули пароль   
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**Президент України**  
**Верховна Рада України**  
**Уряд України**

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Конституційний Суд України розпочав діяльність 18 жовтня 1996 року. Своє перше Рішення прийняв 13 травня 1997 року. Конституційний Суд України – єдиний орган конституційної юрисдикції в Україні. Завданням Конституційного Суду України є гарантування верховенства Конституції України як Основного Закону держави на всій території України. Організація, повноваження та порядок діяльності Конституційного Суду України визначаються Конституцією України та Законом України "Про Конституційний Суд України". Діяльність Конституційного Суду України ґрунтується на принципах верховенства права, незалежності, колегіальності, рівноправності суддів, гласності, повноти і всебічності розгляду справ та об'єктивності прийнятих ним рішень. Друкуючим органом Конституційного Суду України є "Вісник Конституційного Суду України".

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- Обрано заступника Голови Конституційного Суду України 23.12.2010

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- Оприлюднено висновок у справі за зверненням Верховної Ради України про надання висновку про відповідність законопроекту про внесення змін до Конституції України щодо проведення чергової виборів народних депутатів України, Президента України, депутатів Верховної Ради Автономної Республіки Крим, місцевих рад та сільських, селищних, міських голів виногам статей 157 і 158 Конституції України (справа про внесення змін до статей 76, 77, 103, 136, 141 та до розділу XV „Перехідні положення” Конституції України) 19.11.2010

**РІШЕННЯ КОНСТИТУЦІЙНОГО СУДУ УКРАЇНИ** Всі матеріали розділу >

- Оприлюднено рішення у справі за конституційним зверненням громадянина Батіньського Артема Олександровича щодо офіційного тлумачення положень частини першої статті 141 Кодексу України про адміністративні правопорушення (справа про адміністративну відповідальність у сфері забезпечення безпеки дорожнього руху) 22.12.2010
- Оприлюднено рішення у справі за конституційним поданням 54 народних депутатів України щодо відповідності Конституції України (конституційності) положень статей 14, 24, 64, пунктів 7–13 розділу VIII „Перехідні положення” Закону України „Про Державний бюджет України на 2010 рік” 02.12.2010

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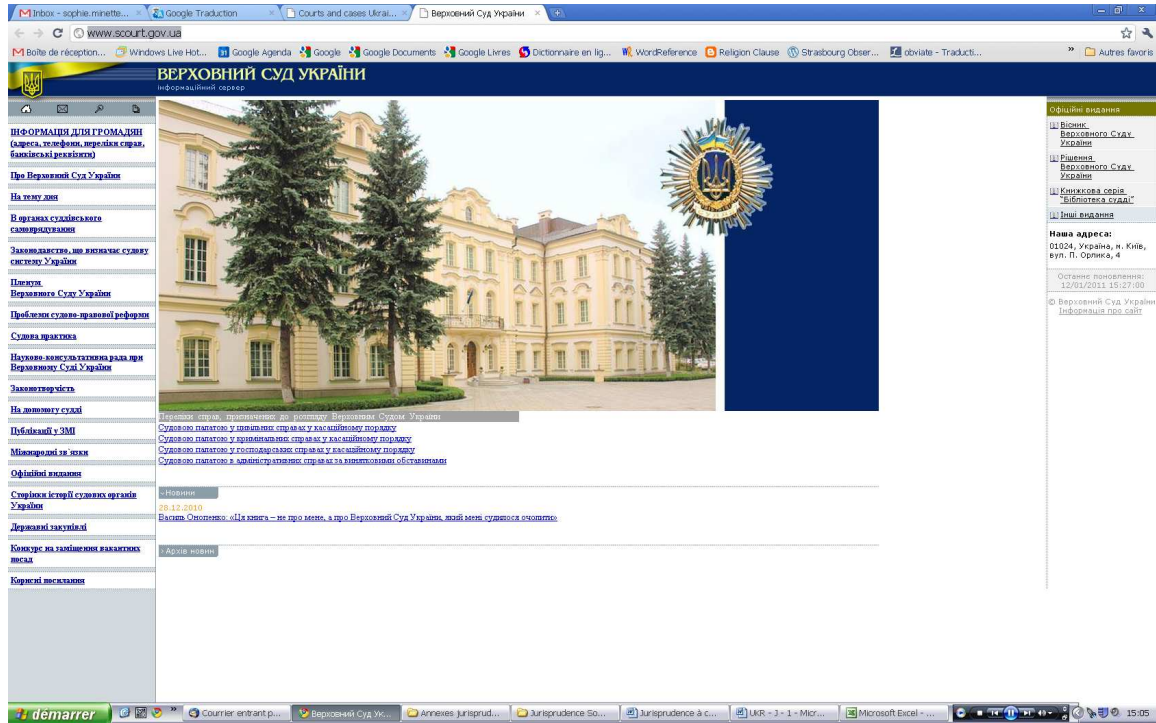
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# Public Policies

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з прав людини



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of the Ukrainian Parliament Commissioner  
for Human Rights

Уповноважений  
Верховної Ради України  
з прав людини  
**Ніна Карпачова**



Ukrainian Parliament  
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УПОВНОВАЖЕНИЙ  
ВЕРХОВНОЇ РАДИ УКРАЇНИ  
З ПРАВ ЛЮДИНИ



UKRAINIAN  
PARLIAMENT COMMISSIONER  
FOR HUMAN RIGHTS

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Kyiv, 01008, Ukraine

№ 1-1813/30-1864-10-81

" 23 " September 2000р.

**H.E. Ms. Navanethem Pillay**  
**UN High Commissioner**  
**for Human Rights**

*Palace of Nations*  
*CH-1211 Genève 10*

**Dear Ms. High Commissioner,**

I present my compliments to you and in response to your request for information from NHRIs on their experiences of countering incitement to national, race and religious hatred, have the honour to inform you the following.

There has been established an appropriate political and legal framework for protection of human rights and fundamental freedoms in Ukraine. In particular, there were adopted the Constitution of Ukraine, the Laws of Ukraine "On national minorities", "On the legal status of foreigners", "On refugees", "On migration", "On associations of citizens", "On citizenship", "On printed mass media in Ukraine", "On television and radio broadcasting", "On information", "On freedom of conscience and religious organizations" and the Criminal Code of Ukraine, with its provisions prohibiting incitement to racial and ethnic hatred and establishment of organizations and political parties based on the principles of racial hatred and discrimination.

Protection of the right to freedom from discrimination is one of the priorities of the Ukrainian Parliament Commissioner for Human Rights (Ombudsman).

Pursuant to Art. 11 of the Law of Ukraine "On the Ukrainian Parliament Commissioner for Human Rights" there has been appointed the Representative of the Ombudsman of Ukraine on protection of the rights of the child, equality and non-discrimination.

Dissemination of the information on international standards in the field of human rights has been given due consideration in Ukraine. Thus, in 2005 the Ombudsman issued a Collection titled "Concluding Observations and Recommendations of the UN Treaty Bodies with regard to the Human Rights Reports of Ukraine", encompassing, in particular, Recommendations of the UN Committee on Elimination of Racial Discrimination.

In August 2006, representatives of the Commissioner took an active part in the review of the 17<sup>th</sup> and 18<sup>th</sup> periodic reports of Ukraine by this Committee to provide for a highly objective assessment.

**On December, 10, 2008**, the International Day of Human Rights, and on the occasion of the 60<sup>th</sup> Anniversary of the adoption of the Universal Declaration of Human Rights, **the Ombudsman presented her Special Report "On the Observance by Ukraine of International Standards in the Field of Human Rights and Freedoms"** to the Parliament of Ukraine. A separate section of the Special Report focused on the implementation of Concluding Observations and Recommendations of **the UN Committee on Elimination of Racial Discrimination**. The above mentioned documents were disseminated among high level state officials, central and local bodies of executive power, higher educational institutions, libraries and the general public of Ukraine.

The cases of xenophobia as well as the relevant measures to be undertaken by authorities to overcome these negative trends were also included in the Annual Report of the Commissioner for Human Rights "On Observance and Protection of Human Rights and Freedoms in Ukraine", submitted to the Parliament of Ukraine in June 2009.

The Ombudsman of Ukraine took an active part in preparation of the joint 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> Report of Ukraine on implementation of the International Convention on Elimination of All Forms of Racial Discrimination that was submitted to the UN Committee by the Government of Ukraine in April this year. In line with the Working methods of the UN Committee on Elimination of Racial Discrimination as well as the well-established cooperation of the Ukrainian Parliament Commissioner for Human Rights with the UN treaty bodies, there was provided a separate input of the Ombudsman on implementation of the relevant Convention in Ukraine, with the update on the ongoing situation, positive results, existing problems and ways to resolve them.

On May 7, 2009, the Commissioner for Human Rights together with the European Commission Against Racism and Intolerance of the Council of Europe held a round-table on countering any manifestations of

xenophobia, racial and ethnic discrimination. The event was widely participated by representatives of central bodies of executive power, public organizations of minorities and mass media. A number of proposals made by the Commissioner during this meeting were included into a governmental Plan of Action on combating xenophobia, racial and ethnic discrimination in the Ukrainian society for 2010-2012.

On March 21, 2009, the International Day for the Elimination of Racial Discrimination, the Ombudsman called upon mayors and deputies of city councils of Ukraine to join the European Coalition of Cities against Racism by signing the Declaration of Intentions and the Act on assuming commitments to implement the relevant Action Plan. Odessa was the first city to uphold this initiative, followed by Kyiv and Kharkiv.

The Ombudsman of Ukraine repeatedly drew attention of the society to improving the anti-discrimination legislation. In November 2009, while making amendments to Art. 161 of the Criminal Code of Ukraine, the proposal of the Commissioner was taken into account as regards strengthening criminal responsibility for incitement to national, racial and religious hatred.

The Ombudsman has an on-going fruitful cooperation with the Regional Department of the Office of the UN High Commissioner for Refugees and the International Organization for Migration on the issues of counteraction to racism, xenophobia and protection of the rights of foreigners, refugees and asylum-seekers.

The Ombudsman of Ukraine has been consistently *promoting the need for the Law of Ukraine “On key principles of the state migration policy in Ukraine”*, as well as establishment of the State migration service – as an independent body of executive power, civil in nature, with a special status – which would be in charge of coordinating all efforts on protection of the rights of foreigners in Ukraine as well as Ukrainian citizens abroad. In this regard the Commissioner prepared and made relevant proposals to the President of Ukraine and the Prime-Minister of Ukraine.

The systemic and efficient activity of the Commissioner on counteraction to any manifestations of discrimination contributed to an enhanced work of the bodies of state power in this area. Thus, within the structure of some central bodies of executive power, in particular the Ministry of Interior of Ukraine, there has been established a subdivision for development and implementation of strategy to combat ethnically motivated crimes. Within the State Security Service, there has been formed a subdivision for identification and termination of actions aimed at

incitement to racial or national hatred. The Ministry of Foreign Affairs set up a post of a Special envoy on the issues of combating racism, xenophobia and discrimination.

There has been created an Interagency Working Group to combat xenophobia, ethnic and racial intolerance within the State Committee on Nationalities and Religions. The members of the Working Group are experts from bodies of state power, scientists, representatives of NGO on national minorities. According to the monitoring of the Commissioner, the activity of this Working Group contributed to harmonization of ethnic relations and promotion of tolerance in the Ukrainian society.

There is an ongoing public advertising campaign to raise tolerance, prevent cases of intolerance towards foreigners and persons representing other nations in Ukraine. Thus, within the framework of a joint project of the Kyiv city Main Department on Nationalities and Religions and the public association "SOS! Racism!" a relevant advertising campaign has been in place since March 1, 2009. About a hundred of city-lights with social advertising against racism and discrimination have been placed in the streets of Kiev. This advertising campaign is going to be extended to other cities of Ukraine.

Ukraine is a multi-confessional state with about 35 thousand religious organizations of 55 confessions operating within its borders. The effective national legislation provides for a model, according to which the Church and religious organisations in Ukraine are separated from the State (Art. 35 of the Constitution of Ukraine), and all religions and religious organizations are equal before law. The activities related to the freedom of conscience and operation of religious organizations are regulated by the legislation of Ukraine, in particular, by the Law of Ukraine "On freedom of conscience and religious organizations". Pursuant to Art. 4 of the Law, "...incitement to hostility and hatred or offences of citizens' feelings entail responsibility established by Law".

More than a thousand religious organizations are ethno-confessional. Most of them are registered by the followers of Islam, Judaism, representatives of Reformative, Evangelist, Lutheran and Armenian churches. At present, the relations between the church and the state are characterized more and more by a spirit of an equal dialogue. Such developments have been contributed by the Government Commission on the rights of religious organizations and the All-Ukrainian Church Council, founded by heads of religious confessions.

There were two meetings of the above mentioned Commission headed by the Deputy of the Prime-Minister of Ukraine in 2009. Members

of Ministries and State agencies, religious and public organizations, delegates of the Ukrainian Parliament, Commissioner for Human Rights were included herein.

In December 2008, the All-Ukrainian Church Council and the Commission issued a joint address to state and public organizations, mass media and all citizens of Ukraine. It emphasized the opposition of the Ukrainian society to such false values, as "free love", legalization of prostitution, sexual perversion, drugs, cultivation of acquisitiveness, intolerance, ignorance, anti-Semitism, xenophobia, neglect of national, cultural and religious sanctuaries.

In December 2009, the Commission adopted in the first reading a draft of the Guidelines on identification of printed, audio-visual, electronic and other materials promoting national and religious hatred, neglect of national and religious sanctuaries and humiliating the national dignity of a person.

At present, the Government of Ukraine is finalizing the development of the draft law "On conception of relations between the state and religious confessions in Ukraine", "On amendments to the Law of Ukraine "On freedom of conscience and religious organizations" and "On restitution of cult buildings to religious organizations". The adoption of the proposed draft laws will considerably contribute to harmonization of relations between the state and religious confessions as well as provide for a solid basis for prevention of any manifestations of discrimination on religious ground.

The Commissioner for Human Rights is convinced that only by joint efforts of bodies of state power, scientists, public organizations and mass media will it be possible to provide all necessary prerequisites to prohibit the incitement to national, racial or religious hatred and establish a tolerant multicultural society.

Availing myself of this opportunity, I would like to renew to you, **dear Ms. High Commissioner for Human Rights**, the assurances of my highest consideration.

Sincerely yours,



Nina Karpachova