

cases had been recorded in different locations across the country since the previous year. These events have raised concern within the country's Alevi population, as similar incidents in the past have escalated to violent attacks, including the killing of more than a hundred Alevi in Kahramanmaraş province in 1978.

In spite of events such as these, Turkey lacks comprehensive legislation on hate speech and hate crime, meaning that racist motives are not considered as an aggravating circumstance when people are sentenced for severe offences, such as killing or injuring people, and destroying property. Thus, hate crimes not only are not prosecuted as such and commonly remain unpunished, but are also directed at individuals belonging to a plethora of minority groups, ranging from Christian clergymen to Kurdish students.

Article 216 of the 2004 Turkish Penal Code criminalizes inciting people to hatred and enmity on the grounds of 'different social class, religion, race, sect' but excludes a number of other areas, including ethnicity. Professor Yasemin Inceoglu, a member of a coalition of Turkish civil society organizations campaigning for hate crime legislation, said this Article 'covers hate speech rather than hate crime and could even be described as falling short of criminalizing hate speech, as it is not usually used by prosecutors in support of minority groups'. The Hrant Dink Foundation's Media Watch on Hate Speech reports in 2013 highlight that hate speech towards ethnic and religious minorities is still prevalent in Turkey's print media. Their May–August 2013 report noted that, while there appeared to have been a slight drop in frequency compared to the previous period, the number of groups denigrated had expanded. In addition to Armenians, Jews, Christians and Greeks, who were regularly vilified, new categories also gained prominence, such as Syrian refugees.

Still, the 2013 democratization package proposed some amendments to the Penal Code that could provide the country with specific hate crime legislation for the first time. However, even though Turkey's Justice Minister had stated that the laws would be modelled on the principles of the OSCE, the draft defined hate and prejudice crimes as those 'committed based on someone's

or some group's language, race, nationality, skin colour, gender, disability, political views, philosophical beliefs or religion', excluding those based on ethnicity and sexual orientation – both areas covered by the OSCE. This means that, despite their vulnerability to bias-motivated violence, Kurdish victims of violence could not qualify within this definition. Furthermore the code, as agreed in March 2014 by parliament, punishes hate speech or hate crime with a penalty of up to three years. This means that more serious crimes, such as bias-motivated murder, fall outside its remit.

Ukraine

Ukraine's location between Russia and the European Union has had a profound impact on its internal politics, in particular relations between the ethnic Ukrainian majority and the country's ethnic Russians, who at around 17 per cent of the population comprise its largest minority group. However, an additional 15 per cent of ethnic Ukrainians consider Russian their first language. Since independence, Ukraine's politics have been strongly divided along these ethnic and linguistic lines. The implications of this divide became especially apparent following the spread of protests against the government of President Viktor Yanukovych following his abandonment of a planned EU trade deal in favour of closer ties with Russia. Following mass demonstrations in Kiev, tensions rose between the government and protesters, which led to sustained violence in early 2014, with hundreds killed or injured. On 21 February 2014, Yanukovych was removed from office.

While the primary factors behind the uprising were not ethnic but focused on the corruption of the incumbent government and its close relationship with Russian President Vladimir Putin, the fault lines within the country reflect entrenched political divisions that are strongly associated with ethnicity. This aspect was sharpened in late February 2014 when pro-Russian militia seized buildings in Crimea, allegedly with Russian support. In March, following a controversial referendum in the region, Crimea was formally annexed as Russian territory. In the run-up to the referendum, Crimean Tatars became increasingly exposed to

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Case study by Irene Fedorovych
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Ukraine fails to address hate crime against migrants and other groups

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The Ukrainian state has been slow to recognize the reality of hate crime in the country. Even now, there continues to be a clear gap between the small number of cases officially reported each year and the much larger number of incidents recorded by NGOs and rights groups. Furthermore, until recently, while Ukraine had legal provisions (Article 161 of the Criminal Code) criminalizing ethnic or religious hatred or hostility, this legislation was very difficult to apply. This was one of the reasons why many cases were not investigated properly and perpetrators were instead convicted for hooliganism or 'plain' crimes, without particular mention of hate crime or other aggravating circumstances. However, in 2009 the Criminal Code was amended, and in 2012 a new Criminal Code came into force. While civil society organizations were initially hopeful that this would help create a stronger framework for investigating and prosecuting hate crimes, in practice both police and the judiciary have shown little commitment to improving their work.

Ukraine's inadequate response to hate crimes against migrants, African students and other foreigners has attracted international criticism. In September 2012, following the failure of authorities to prosecute the arson of Roma houses in 2001 as a hate crime, Ukraine lost a case in the European Court of Human Rights (in *Fedorchenko and Lozenko v. Ukraine*) and was condemned for its inaction in the ruling:

'There is no evidence that the authorities have conducted any investigation into the possible racist

motives of this crime.... The Court considers is unacceptable that in such circumstances an investigation, lasting over eleven years, did not give rise to any serious action with a view to identifying or prosecuting the perpetrators.'

However, even more troubling than the failure of the authorities to punish the perpetrators of hate crime is the prosecution of minority members who have themselves been victims of violence. While a number of cases have been documented, one of the most notorious instances is the case brought against Olaolu Femi, a Nigerian student who arrived in the country in 2007 to study medicine. On 5 November 2011, however, his life changed completely after he was subjected to an unprovoked assault by a local gang. In the ensuing moments, Femi defended himself and his friend against his attackers with a broken bottle. When police arrived shortly afterwards, however, it was not the assailants who were arrested but Femi himself on charges of attempted murder.

The subsequent investigation and trial have been marked by numerous procedural flaws that reflect the continued imbalances in Ukraine's judicial response. After spending 18 months in custody, Femi was released on bail in April 2013 only after the Ombudsman for Human Rights supported a petition from a number of civil society organizations in his support. A year later, despite these irregularities and insubstantial evidence against him, on 1 April 2014 Olaolu Femi received a suspended sentence of five years with a three-year probation period. The sentence attracted widespread criticism from rights groups, with Femi announcing that he would be challenging the verdict. However, the prosecution also announced its intention to appeal for a harsher sentence. Meanwhile, the authorities are doing far too little to address the continued vulnerabilities of sub-Saharan migrants in Ukraine. ■



threats and physical aggression, including from paramilitary organizations. This vulnerability is reinforced by their long-standing marginalization in the country and the uncertain legal status of many Tatars as Formerly Deported People (FDP, referring to the mass deportations in the 1940s by the Soviet government under Joseph Stalin).

Ukraine's status as a major migration hub has also resulted in rising xenophobia against migrants. Asians, Africans and Caucasians are especially vulnerable to bias-motivated attacks. Roma communities have also been targeted with violence, including an arson attack on a settlement in the Darnitskii area of Kiev on 13 June 2013, resulting in 40 people being made homeless.

Just three cases of hate crime were recorded by the police in Ukraine, along with two prosecutions in 2012, according to a 2013 ODIHR report. However, civil society organizations recorded many more incidents involving cases of physical assault, a number

resulting in serious injury, stabbings and the use of other weapons. The majority of victims were of African descent. A number of physical assaults against Jewish victims were also reported, one in which a rabbi was attacked with a pepper spray, along with some arson attacks – one attempted against a synagogue – and graffiti, damage and desecration of gravestones and Holocaust memorials. While no official data on anti-Muslim crimes was reported to ODIHR, civil society organizations reported a case of grave desecration and an arson attack against a mosque.

Despite official recognition of hate crime as a serious issue that needs special attention at the ministerial level, at the level of policing victims still face discrimination, harassment and obstruction in opening criminal investigation. Another problem with hate crime investigations in Ukraine has been the prosecution of victims for self-defence. In at least three cases since 2008, people who were pushed to use force against perpetrators ended up facing criminal charges

Left: Tatar people wave Ukrainian flags at a rally in Simferopol against the 16 March referendum in Crimea. *Jeroen Oerlemans/Panos.*

when the offenders were set free.

It is also clear that in some cases the authorities have failed to respond adequately to hate crimes. The majority of reported cases are investigated and forwarded to courts as ordinary crimes without specific mention of the bias motivation. Inadequacies in the investigation of racist hate crime were illuminated by the European Court of Human Rights 2012 ruling in *Fedorchenko and Lozenko v. Ukraine*. The case involved an arson attack against a Roma family in 2001 which claimed the lives of five of the family members, and in which it was alleged that a police major participated. The Court rebuked the Ukrainian authorities for their failure to investigate the racist motives of the crime (see case study).

The effects of Ukraine's recent political instability could have troubling implications for its minorities. In February 2014, one of the first acts of the new parliament was to vote to annul the 2012 law on minority languages, which allowed Russian to be treated as an official second language in parts of the country with a significant Russian-speaking population. This also had implications for other linguistic minorities and indigenous peoples in the country, such as Crimean Tatars, whose language has been classified by UNESCO as severely endangered, as well as Krymchak, Karaites, Bulgarian, Hungarian and Romanian minorities in the country. The recently appointed interim President, Aleksandr Turchinov, subsequently stated that he would not enact the annulment. In the context of rising tensions between Ukraine and its Russian neighbour, the importance of curbing hate speech and hate crime against minorities – already a serious and poorly recognized challenge – could become even more pressing in 2014. ■

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Case study by Peter Grant
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Tackling Islamophobia in the United Kingdom

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In the United Kingdom, extremist organizations such as the English Defence League have launched vocal attacks against the Muslim minority. However, while these groups remain at the fringe politically, their activities comprise only a small fraction of the true extent of Islamophobic hate speech and violence. Fiyaz Mughal, director of the charity Faith Matters, discusses the challenges with MRG and how his organization's Tell MAMA (Measuring Anti-Muslim Attacks) project is supporting efforts to address them.

The UK has one of the better developed reporting mechanisms in Europe on hate crime, but Tell MAMA has highlighted that only a fraction of incidents against Muslims are actually reported. What is contributing to this lack of visibility?

There is a lack of trust, a lack of awareness in Muslim communities of what hate incidents and hate crimes are, and also a desire to let things go and not create 'trouble' as it is perceived – these all play a role. Many people have a reluctance to report hate incidents for fear that they may have to confront the accused or end up in court giving evidence. Some are intimidated by this process and so it is about treating victims with dignity, respect, and giving them all of the relevant information that they need. Also, our experience shows that if victims are supported at the beginning, they are more likely to want to go through the process.

We have also found that at a street level,