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ABSTRACT Until the tumultuous events of the ‘Orange Revolution’ surrounding the presidential elections in Ukraine in late 2004, western experts almost without exception had celebrated the Ukrainian post-Soviet transition as a huge success, lauding its apparent political stability and ethnic amity. This article challenges those assumptions, and offers a new look at the first decade of Ukrainian independence. Drawing from demographic data and witness affidavits from refugees who left Ukraine and requested asylum in the United States, Canada, Australia, Great Britain, and the European Union, the author argues that the first decade of Ukrainian independence from the Soviet Union corresponded with widespread and serious harassment of Ukraine’s religious and ethnic minorities. Economic crisis in post-Soviet Ukraine bred scapegoating and marginalisation of Ukraine’s minorities, driving hundreds of thousands to seek sanctuary in the West.

Until the tumultuous events of the ‘Orange Revolution’ surrounding the presidential elections in Ukraine in late 2004, western experts on Ukraine almost without exception had celebrated the Ukrainian post-Soviet transition as a huge success: almost universally, Ukraine was identified as ‘politically stable, a model of ethnic amity’.¹ This was the mainstream opinion among scholars and journalists alike. For instance, well-respected journalist and New York Times foreign correspondent Serge Schmemann wrote in a 21 February 1999 article, ‘What’s Wrong with This Picture of Nationalism?’:

Many regions where ethnic violence was thought probable, like Ukraine or Kazakhstan, have handled their transitions, so far, in peace ... For every outbreak of violence, there are less publicized instances of places where violence was initially deemed inevitable but never broke out. Papers were full of doomsday talk about Ukraine several years ago, or of impending anti-Russian ‘ethnic cleansing’ in Kazakhstan. Both lands have so far managed to keep difficult transitions peaceful.
A 1996 roundtable at Harvard’s Ukrainian Research Institute discussed the achievements of independent Ukraine during its first five years. Here, Zenovia Sochor of Clark University succinctly expressed the views of most Ukrainian experts:

Another success is that there is very little to report on the ethnic front. This runs contrary to the views that were prominent in the Western press that the break-up of Ukraine was imminent. It implied a basic question about modern Ukraine: is there a modern Ukraine or just its regions, with the eastern regions not being the least bit interested in being part of something modern called Ukraine?

The fact that the ethnic situation has proven to be much calmer than anyone predicted is a very important part of this success story, as were the political decisions made. The Law on Nationality, for instance, helped pave the way for ethnic harmony. Ukrainianization proceeded at a very gradual pace. And [the rightwing political party] Rukh set the tone by not presenting itself in terms of ‘Ukraine only for the Ukrainians’, so that from the very beginning there was an effort to reach out to all ethnic groups.²

A writer in the leading newspaper of the Ukrainian diaspora in North America, The Ukrainian Weekly, reported:

Both of independent Ukraine’s presidents and other high ranking politicians have condemned xenophobia and anti-Semitism, and advocated the principle of equal citizenship regardless of ethnic background. Significantly, along with the government, most major political parties have adopted a liberal approach on minorities, with the exception of a very small number of extreme nationalist parties. Since independence, ethnic Russians, Jews and others have held prominent positions in the Ukrainian government. There is no evidence of discrimination against minorities in official positions. Furthermore, minorities appear to be fairly and evenly represented politically.³

Charles King and Neil J. Melvin approached the same question from the perspective of minority politics, emphasising the power of the large Russian minority in Ukraine to exploit its resources and ties to the Russian Federation to place a firm check on ethnic Ukrainian nativism:

The multiethnic and multilingual character of Ukraine, with at least 22 per cent of the population composed of Russian and russified settler minorities who continue to form important segments of the political and economic elite, has provided a check on the kin state’s ability to build links to a diaspora defined solely in mono-ethnic terms. In other words, should the government consider ethnic Russians, Poles, or Crimean Tatars who originally hail from the territory of Ukraine to be part of the Ukrainian diaspora and establish ties with them, or should it cultivate ties only with those groups defining themselves as culturally Ukrainian?⁴

Harvard University’s Roman Szporluk has been the most powerful and consistent voice depicting the new Ukrainian nation as one defined not by Ukrainian ethnicity, but by
Ukrainian national consciousness; of Ukrainian nationhood as a multi-ethnic entity, not a monolithic one:

It is essential to remember that the independent Ukraine proclaimed in August 1991 did not define itself as an ethnic state. It was a jurisdiction, a territorial and legal entity, in fact, a successor of the Ukrainian SSR. Its citizens were of different ethnic backgrounds and spoke Ukrainian and Russian to varying degrees, but also other languages. The new state declared that all power in it derives from ‘the people of Ukraine’. The founders of the post-Soviet Ukraine thus adopted and adapted the concept of ‘the Soviet people’, which, the official line had held, consisted of persons of many linguistic and ethnic backgrounds. 5

Szporluk perceived the new Ukraine to be a federalist, multi-ethnic nation state where civic awareness, not ethnicity, would be the main litmus test for citizenship. Quoting Iulian Bachynskyi, from his Ukraina irredenta, first published in 1895, Szporluk continued: ‘The struggle for political independence of Ukraine is not a matter of concern to ethnic Ukrainians alone, but to all who live in Ukraine, without regard to whether it is a native Ukrainian or a colonist: Great Russian, Pole, Jew, or German. Common interest will Ukrainianize them, will force them all to become Ukrainian “patriots”’. Szporluk added: ‘When applied to Ukraine, this means that its ethnic Russians, free to use their language, to maintain their culture, and to retain a non-political attachment to Russia, may be considered (and consider themselves) full-fledged members of a Ukrainian nation that is political, civic, and cultural at the same time.’ 6

Inevitably, the US State Department’s Country Reports on Human Rights Practices were a direct reflection of western tendencies to downplay the significance of ethnic conflicts within the new Ukraine. Published annually beginning in 1995, the so-called Country Reports underlined Ukrainian achievements in human-rights practices and minimised the significance or frequency of ethnic conflicts:

With some important exceptions, there are only isolated cases of ethnic discrimination in Ukraine. . . . There is no evidence of serious ethnic tension, with the exception of two areas. In some parts of western Ukraine, the small Russian minority and Jewish groups credibly accuse some local Ukrainian ultranationalists of fostering ethnic hatred and printing anti-Semitic tracts. They also charge that local authorities in western Ukraine have not taken action against those who foment ethnic hatred. 7

By 2001, even such blunted criticism had disappeared from State Department Country Reports: ‘The [Ukrainian] Constitution provides for the “free development, use, and protection of the Russian language and other minority languages in Ukraine”. This provision expands a 1991 law on national minorities, which played an instrumental role in preventing ethnic strife by allowing individual citizens to use their respective national languages in conducting personal business and by allowing minority groups to establish their own schools.’ 8 According to the World Directory of Minorities, ‘the majority of politicians view Ukraine in terms of a melting pot for different peoples and cultures rather than as an ethnically defined state’. 9

While the street demonstrations and political crises surrounding the Yushchenko-Yanukovych election in 2004 brought global attention to the powerful forces of ethnic
nationalist divisions in Ukraine, it was the Ukrainian census of 2001 that began to force scholars to rethink earlier judgments about ethnic processes in Ukraine. The census revealed that the population of Ukraine had declined by nearly 6.4 per cent (3.4 million) during the first post-Soviet decade, from 51.5 m to 48.1 m, a decline that clearly reflected a deeper, more profound crisis that underlay the apparent calm. More significantly, however, was the discovery that these declines were concentrated in particular among Ukraine’s ethnic minorities. Over the course of the first decade of an independent Ukraine, the number of ethnic Russians fell 26.6 per cent, from 11.4 m to 8.3 m, and the number of Jews fell by a whopping 78.7 per cent, from 486,326 to 103,600. Even as the proportion of ethnic Ukrainians in Ukraine climbed between 1989 and 2001 from 72.7 per cent to 78.1 per cent, continuing in this way a century-long process of Ukrainian ethnic homogenisation, the proportion of ethnic Russians fell from 22.1 per cent to 17.3 per cent. Meanwhile, though Jews had started the decade as the third largest ethnic group in Ukraine, their numbers fell from one per cent to 0.2 per cent of the Ukrainian population in 2001. (See Table 3, below).

Such dramatic demographic changes could not have taken place in a vacuum. This article is a first step towards reinterpreting the tumultuous first decade of post-Soviet Ukrainian history, towards developing an understanding of Ukrainian history during the Kravchuk and Kuchma years that integrates Ukraine’s emergence as a European state in the twenty-first century with the powerful forces of ethnic Ukrainianisation that simultaneously produced such dramatic demographic changes.

The sources for this article are drawn from my work in asylum cases of Ukrainian nationals who petitioned for refugee protection in Canada and the United States during the first decade following the collapse of the Soviet Union. These sources have been supplemented by the publication of the details of several dozen cases in the US Court of Appeals. In addition, since all human-rights law operates under the same basic umbrella of the international convention on asylum, I have likewise drawn from hundreds of other published cases of immigrations appeals boards in Australia, Canada, the United Kingdom, and the European Union. Taken together, these cases provide powerful insights into ethnic politics during the first decade of Ukrainian independence.

The International Convention on Asylum for Refugees

An asylee is an alien . . . who is unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution.

With the dissolution of the Soviet Union at the end of 1991, 15 Soviet republics became independent nations. In the West, there was a general expectation of a wave of post-Soviet emigration, but now more than ten years later, US statistics reflect a curious pattern: of 518,607 former Soviet citizens who emigrated to the United States between 1992 and 2001, 162,272 came from Ukraine; the second most populous republic consisting of nearly one-sixth of the former Soviet population accounted for almost a third (31.2 per cent) of all post-Soviet emigrants to the United States (see Table 1).

Even more remarkable is the fact that Ukrainian emigrants to America and other western countries did not generally ride on the coattails of earlier Ukrainian diasporas: nearly three-quarters (120,869) of these new Ukrainian emigrants to America were protected under the international convention on asylum for refugees, as victims of
persecution back in Ukraine. Remarkably, 37.9 per cent of all asylees entering the United States from the former Soviet Union came from Ukraine, more than from any other post-Soviet Republic, and nearly twice the number of the next largest source of refugees, the Russian Federation. (See Tables 1 and 2 below). 16

While there were numerous factors accounting for the decline in Ukrainian population, the flight of post-Soviet Ukraine’s ethnic and religious minorities was certainly a key factor. Volodya Albert, 41, a Ukrainian Jewish researcher-turned-businessman put it this way: many Ukrainian Jews ‘speak Ukrainian, but between us the vernacular is only Russian. Our kids are studying in mainly Russian-speaking schools. We identify ourselves as Jews but as Russian Jews, Jews of Russian culture . . . I am not anti-Ukrainian; I simply don’t need their national culture, their language. For me, the collapse of the Soviet Union meant that overnight my native country turned alien to me.’ Soon after, Albert joined his parents, who had left Ukraine for Germany in August 2001. 17

Two Examples

How typical was this sense of estrangement among Ukraine’s ethnic and religious minorities following the collapse of the Soviet Union? While published summaries of immigration court proceedings provide enormous insight into developing patterns, these highly redacted records lack the intimate details and powerful contexts of the original


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<th>Proportion of Soviet Population</th>
<th>Immigrants to the USA</th>
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<th>Refugees/Asylees to the USA</th>
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Note: FSU, Former Soviet Union.
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<td>93.1% 96.2% 95.3% 86.0% 76.5% 77.4% 48.4% 57.3% 63.6% 63.3% 78.0%</td>
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*Indicates that the specific republic of origin is unknown.

Table 3. Ethnicity in Post-Soviet Ukraine, 1989–2001

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**Source:** Adapted from Derzhavnyi komitet statistyky Ukrainy [State Statistics Committee of Ukraine], ‘Pro kil’kist’ ta sklad naselenyia Ukrainy za pidsumkami Vseukrains’kogo perepisu naselenyia 2001 roku [on the size and composition of the population of Ukraine according to the results of the 2001 All-Ukrainian census of population]’ (Kyiv, 2003); *Perepis’ SSSR 1989 g.* [The census of the USSR for 1989] (Moscow, 1990).
case materials. Before proceeding, therefore, I would like to introduce the reader to my own first two cases in asylum law, since it was these real experiences of highly credible witnesses that refocused my attention to what became for me the yawning divide that separated idealised pronouncements about ethnic toleration in Ukraine versus the horrible reality of everyday life for so many of Ukraine’s ethnic and religious minorities during the first decade of Ukrainian independence.

Since 1993, I have been working on a massive study of the Soviet war against Ukrainian nationalism in the 1940s. My own epiphany on the circularity of history would come in 1996, when a local reporter in upstate New York decided to showcase my Ukrainian research in a Rochester newspaper. Less than two days after the story ran, I received a call from a lawyer in Rochester Legal Aid, who informed me that he had a client—an ethnic Russian and his family from western Ukraine—who had been subjected to just the same sort of nationalist violence described in the article. Would I be willing to prepare an affidavit to support the family’s claim for asylum?

I immediately refused: despite some unsettling first-hand experiences that I had passed off as isolated incidents, I had no reason to believe I had anything at all to say about ethnic conflict in post-Soviet Ukraine. And besides, like most scholars, I was apprehensive about the repercussions involvement in current human-rights issues could have on my continued research opportunities in Ukraine. Through the years, I had met several scholars who had been blacklisted from getting Soviet visas or archival access, ostensibly because of their human-rights work. But the lawyer insisted I take a look at the witness affidavits and other supporting materials, and I agreed to look them over, with no intention of taking this any further.

In the affidavit eventually submitted to US Federal Appeals Court in Buffalo, New York, in 1996, Nikolai B., an ethnic Russian army doctor stationed in L’viv from 1974 to January 1995, noted that Ukrainian independence in late 1991 corresponded to the sudden reawakening and escalation of deep-seated ethnic tensions: ‘In 1991, posters began to appear on the streets of Lviv stating “Let’s drown Moskali (Russians) in Jewish blood” and indicating that Jews and Russians would be attacked on a certain day.’ Nikolai B. was himself attacked on several occasions, and tortured by a Ukrainian mafiya-cum-nationalist band: ‘During my [first] beating, my [ethnic Ukrainian] assailants called me a “Moskal”, a derogatory term Ukrainians use to describe Russians. They told me that “Moskals are always stuffing their faces on the Ukraine’s account” and that they would spare Ukraine from one of the Moskals—me.’ On another occasion Nikolai B.

was beaten at the [L’viv] fortress for about 15 minutes. Andrei and I were then pushed back into the same car and taken to a construction site/landfill in the suburbs of Lviv, . . . where ‘gangsters’ take their victims to . . . kill them. There I was beaten and tortured for about 1 1/2 hours. My assailants jabbed lit cigarettes against my right wrist. . . . They then smoked more cigarettes and they said they were preparing more tools to burn me. I still have the scar from the cigarette burns. They beat me on my back with iron rods and baseball bats. As they did they said they were trying to get this Russian rid of his kidneys. They told me they would stick my ribs into my lungs. They pushed me to the ground and started to jump on my chest. While I was lying on the ground, they pinned my hands and legs to the ground and beat me with a heavy metal rod. [Ethnic Ukrainian nationalist criminal boss Mykailo] P. pointed out the construction pit to me and
said[:'] ‘You see that pit, we’ll put all you Moskals in that pit.’ During this beating, a man called Osyp ... said that they knew where my 12 year old daughter goes to school and where my wife works. Several of them said: ‘You don’t know what could happen to them’ and then said they would rape and kill my wife and daughter if I told the police what happened. ... I asked them why they wanted to harm my wife, who is [ethnic] Ukrainian. They said she was a ‘Ukrainian bitch’ and that she needs to be taught a lesson not to marry Moskals.\textsuperscript{18}

The account left me breathless, not just because of the abhorrent violence directed against this man and his family, but also because of the close parallels of this violence with the highly ritualised Ukrainian nationalist brutalities of the 1940s I had described in detail in a scholarly article I had just sent for publication.\textsuperscript{19} Similarly, the Mosalka phenomenon, where an ethnic Ukrainian woman could, like Nikolai B.’s wife, abrogate her membership in the Ukrainian community by suspected collaboration with the ‘Moskals’—the Soviets, the Russians—was exactly parallel to another phenomenon I had uncovered in my survey of classified Soviet police files from the late 1940s.

My unwilling sojourn into American asylum law left me gasping, and all the more grateful for the opportunity to rush back into the safety of studying the past. I did not return to human-rights work until 2000, when a college friend—by then a partner in his own law firm—contacted me looking for a referral to a scholar who could help his firm with an affidavit on gender violence in post-Soviet Ukraine. By this time, I had done considerable work of my own on patterns of gender violence during and after World War II, and had produced an article on the Mosalka phenomenon, where I studied the ways in which thousands of Ukrainian women in the late 1940s who were suspected of collaboration with the Soviet enemy were targeted for violent nationalist reprisals.\textsuperscript{20}

The case involved a 21-year-old ethnic Russian woman living in a central Ukrainian city. Olga V. had lived her happy life in a well-to-do family until, one evening in March 1999, she and her boyfriend—an American college student studying in Ukraine—were interviewed on local television at the gala opening of a local discothèque. I would add that the timing corresponded to the height of the American bombing raids in Serbia, and the war in Kosovo, so that anti-American feelings were then especially high throughout Russia and Ukraine. The interview was seen by the local mob boss of this town, who was outraged that this ‘Russian whore’ would dare to ‘consort’ so openly with an American. The mob boss, B—, ordered his goons to pick Olga up:

He started telling me, ‘I saw your cute face on TV, and I liked what I saw. I want you to be my woman.’ I said, ‘I have a boyfriend. I don’t want to be involved with you in any way. Please take me home.’ He said, ‘Do you mean that stinking American that I saw you on TV with? You can forget about him. He’s in his stinking America.’ Then he said, ‘We had a little talk with him, and he decided to leave after that.’ He spoke with animosity and hatred toward America. He said, ‘Why did you even date this American kozél [goat]?\textsuperscript{21}

In fact, unknown to Olga, the American boyfriend had already fled Ukraine after a severe beating and death threats.

When Olga continued to resist, B— ordered that she be dragged away, and locked in a small room, where she spent four days and nights without food or water. ‘On approximately
the fourth day, I passed out. I don’t know how long I was unconscious.’ Then, B— raped 
her for the first time.

The next thing I remember, I woke up in a big bed, in a big room. I couldn’t feel my 
body. I didn’t have the strength to cry anymore. I barely had the strength to open my 
eyes. I heard a man’s voice saying something. I don’t recall what he was saying, but 
he was speaking very politely. Then I felt someone sit down on the bed and lean over 
me. My vision was blurred. He got closer to my face, and then I saw the face of B—. 
He said, ‘Did you change your mind? Will you be my woman now?’ I didn’t have 
the strength to speak, but I shook my head back and forth: ‘No.’ I don’t remember, 
and I don’t think he said anything after that. The only thing I could feel after that was 
pain because he was raping me. I didn’t know where God was.

B— said, ‘You don’t want to be my woman. Okay, I don’t want it anymore. You will 
be the woman of all my friends.’ He stood up and he called for somebody. He said, 
‘You can take her from here. I don’t need her anymore. She’s yours now. You can 
do anything you want.’ I thought, ‘I’m not alive.’ Two guys walked in. They took 
to me to a different room. I don’t remember the room. I just remember shadows of 
bodies around me at that moment. There was some kind of loud talking and laughing. 
I don’t remember where it was they put me. It was not on the floor, I don’t think, but it 
was somewhere, on a table or a bed. I don’t remember many details, whether what I lay 
on was hard or soft. I just remember men kept coming in. I don’t remember how many 
times they each raped me, but each one raped me. Everyone who was there raped me. I 
think it was three or four men. I was feeling like a dead body lying there. There was 
nothing I could do. My body was aching everywhere—everywhere. Everything hurt. 
It was like one big pain everywhere. My heart felt like it would burst with the pain. 
I just wanted to die, and for everything to just end.22

Throughout that first night of non-stop rapes in which one man’s form melded into the 
next, Olga lost consciousness. When she awoke, she was alone—and was able to wash. 
Other women in the brothel forced her to eat. And then, after a perfunctory effort to 
sleep, B— returned.

He said, ‘You did a good job yesterday. My friends are happy.’ Then he turned to me 
and said, ‘And you, I’m going to explain to you what you’re going to be doing from 
now on. You feel okay now,’ (he told me how I felt.) ‘A lot of my friends stop by 
quite often, and we need girls to entertain. You’re now working for me, and you’re 
my property. And your life is in my hands. I can do anything I want with it. I hope 
you had enough time to think about everything. I’m sure you’re going to be a good 
girl from now on, and we’re not going to have any problems with you.’ I said, ‘So, 
I’m never going to make it back home?’ He said, ‘Now this is your home.’ . . . ‘Once 
you’re here, the only way out of here is being carried out feet first.’23

Olga had been transformed into a sex slave, and over the course of the next few days she 
was forced to perform sexual favours for many men, including the city’s mayor, the district 
attorney, and the local chief of police. Eventually, B— sold Olga to brokers in Moscow, 
who planned to re-sell her to the mafiya in the Middle East. During transport, she managed 
to escape with the help of a sympathetic mobster, only to be tracked and threatened twice
in Canada, before she illegally entered the United States several months later. The man who helped her to escape was beaten, then buried alive in an unmarked grave. Olga’s family was threatened.

Medical reports documented Olga’s serious physical abuse, while a psychological evaluation conducted months after her escape identified her to be suffering from severe post-traumatic stress disorder (PTSD): Olga exhibited 15 of 17 leading indicators of PTSD. Throughout the several hours of evaluations conducted in three separate meetings, the psychologist noted that the subject ‘several times . . . would sob uncontrollably and have difficulty continuing her statement’.24 Olga suffered from sleeplessness, hyperarousal, a pathological fear of intimacy, and serious loss of appetite, and she no longer found joy in her once-favoured activities. She was haunted by suicidal ideation, but deep religious convictions prevented her from taking her own life.25

‘Drown the Yids in Russian Blood!’

Despite repeated assertions by well-respected Ukrainian experts in the West throughout the 1990s that Ukraine was ‘politically stable, a model of ethnic amity’, there were growing indicators that pointed to a serious underlying crisis.26 Besides mounting evidence of refugee flight, there was also the emergence of a post-Soviet popular culture of hate literature, the ubiquity of radical right extremist broadsides that scapegoated Jews and Russians alike for post-Soviet Ukraine’s many woes.

Guided by the slogan ‘Ukraine for the Ukrainians’, and fuelled by economic hardship (more than 6,000 per cent inflation in the first decade after independence), epidemic corruption, and political instability, extremist ultranationalists were catalyzed in the 1990s by a growing fear of ‘Masonic–Russian–Jewish conspiracies’. The ultranationalist mindset was best described in an article entitled, ‘The Cleansers’, published in an extreme right-wing newspaper in 1995:

We must recognize our messianism, our holy obligation toward Ukraine and all of humanity . . . The next millennium will be marked by an aggravation of the struggle between two opposing worlds—the Aryan one and the Semitic one, between the forces of Good and those of Evil. Ukraine, headed by UNA-UNSO [the ultraright Ukrainian National Assembly, and its paramilitary wing, the Ukrainian Self-Defense] should be the vanguard of Aryan civilisation. That the Yids are the servants of the Devil is obvious from the Bible, the Talmud, the Torah [sic], the Protocols of the Elders of Zion and from the whole history of the Yid people. Who created the satanic teaching of Communism? Who built the Evil Empire of the USSR? Who were members of the CheKa [the Soviet secret police]? Who destroyed churches, organized the mass starvation and the destruction of the elite of the Ukraine?27

In the context of ubiquitous hate literature blaming the Russians and Jews for Ukrainian hardships, it was perhaps inevitable that acts of personal violence and arson targeting Jewish and Russian persons and symbols would likewise increase. This was especially true in the wake of ‘Kuchmagate’, the scandals surrounding the Ukrainian president’s alleged role in the murder and beheading of journalist Georgy Gongadze in September 2000. In post-Soviet Ukraine, as elsewhere, political uncertainty bred extremist action. We observed that polarisation’s explosion on streets throughout Ukraine in autumn
2004, corresponding to the so-called ‘Orange Revolution’ and the victory of Viktor Yushchenko in the Ukrainian presidential election.

In a society where messages of ethnic hatred became ubiquitous, examples are easy to find. As recently as 21 January 2001, on the day to celebrate Ukrainian unification, the extremist rightwing nationalist group UNA-UNSO openly rallied in L’viv, the largest city in West Ukraine, with hate slogans about Jews. Their placards read: ‘Yids are the executioners of mankind’, ‘Jewish-Zionists destroyed millions of Ukrainians’, and ‘The fate of the Yids: run the criminals out of Ukraine!’ According to reports, the vice-president of the L’viv Oblast administration, Ihor Derzhko, had attended the demonstration, but neither he nor the local police did anything to remove the placards. In Rivne in 2003, a parliamentary deputy celebrated the fact that of 1,500 shooters at Babii Yar, a massacre of over 30,000 Jewish men, women and children in 1941, 1,200 were Ukrainian policemen. Likewise, in the October 2001 issue of the L’viv extreme right newspaper, The Idealist, the editors called openly for violence against Jews: ‘We Christians want to serve God—not Satan and the yids, so therefore we declare a Holy War against the yid-Zionists.’ In an April 2002 demonstration in Kiev, a large mob defiled the largest Ukrainian synagogue in Kiev, shouting ‘Kill the yids!’, hurling bottles and breaking windows. Several Jews were beaten on the streets. Kiev’s chief Rabbi Moshe-Reuven Azman denounced the violence in unequivocal terms to the international press: ‘I call this act a pogrom. It’s a miracle that it was not worse.’ In its Chronicle of Anti-Semitism in Ukraine and Russia (2005–2006), the Union of Councils for Jews in the Former Soviet Union concluded that there was a marked increase in anti-Jewish violence in Ukraine. In a growing number of reports, Jews in Ukraine were ‘shot, stabbed, or beaten’ so badly that they required hospital treatment. In no case were there arrests or subsequent prosecutions.

Similar tensions arose between ethnic Ukrainians and ethnic Russians. To take just one of numerous examples: on the night of 16–17 May 2001, in the West Ukrainian city of L’viv, a Ukrainian nationalist band tore off the doors of the Russian Cultural Centre, broke all the building’s windows, set the building on fire, and sprayed graffiti on the outside walls: ‘Place of Galicians’—meaning: for Ukrainians only. In the wake of the incident, no one was arrested, a depraved indifference that lead director of the Russian Movement of Ukraine, A. Svistunov, to write an open letter to the Ukrainian President Leonid Kuchma:

Such actions of vandalism, whose goal is to sow fear and uncertainty among [ethnic] Russians, are repeated year after year. The ultra-right [Ukrainian] nationalists, confident in their impunity, encouraged by local authorities, openly call for the deportation of [ethnic] Russians and for prohibition of broadcasts of Russian language television shows, Russian songs and books, and the Russian language. In these explosive circumstances legislative and administrative structures of the [Ukrainian] state have chosen a tactic of noninterference. State officials unanimously declare: in Lvov everything is calm, there have been no pogroms, arson, physical assault of Russians, total closing of schools with Russian language instruction, or destruction of monuments honoring Russian culture and Russian history. This audacious pack of lies intensifies the situation, incites hostility among nationalities, and moves [Ukrainian] society toward new, dangerous contradictions.
Leading émigrés in the Ukrainian diaspora community in the West have rightly insisted that these hate messages and violent acts openly advocating ethnic cleansing represent the views of a small minority of extremists, and have repeatedly pointed to the Ukrainian constitution and specific legislation that protects the rights of ethnic and religious minorities. Time and again, the same basic message has been heard: ‘The reputation of our [Ukrainian] community is on the line. Be prepared to fight for it.’ Communities in Ukraine and throughout the world have been mobilised to defend Ukraine’s reputation against so-called ‘anti-Ukrainian’ attacks.

The underlying theme of those who challenged the indictments of post-Soviet Ukraine’s human-rights record throughout the 1990s has been the demand for specific evidence of persecution of Ukraine’s ethnic minorities. Here, the nay-sayers have spoken in the same language as lawyers representing the Immigration and Naturalization Service (INS) in US asylum cases: insisting that the cases involved isolated victims of random crime, not persecution qualifying under the international convention on asylum; that Ukraine’s laws guarantee freedom and full rights to religious and ethnic minorities; that emigrants are prepared to say or do anything to escape to the West, and even to rely on special paid consultants who coach them through the process. For most observers, the mass wave of emigration from post-Soviet Ukraine was economic emigration, not refugee flight from persecution.

All true, and yet... doesn’t it stretch the imagination to suggest that all 120,869 cases of Ukrainian refugee flight to America in the first decade of Ukrainian independence were perpetrators of fraud, exaggerating Ukrainian conditions for their own self-interest? When does the rapidly growing pile of human-rights abuses in post-Soviet Ukraine cease to be anecdotal evidence of a few extreme and isolated examples and instead emerge as an alarming central feature of post-Soviet Ukrainian social life? Who will take responsibility for the tens of thousands of victims of these ‘rightwing extremists’? Who will stop them in the future?

In the ideal case, we could survey patterns of ethnic conflict in post-Soviet Ukraine through the systematic study of asylum court records in the United States and elsewhere. Unfortunately, that is not possible: US asylum cases remain sealed by the courts for 75 years, making it virtually impossible to take the step available to future historians. And most other western nations likewise seal their asylum records under similar laws designed to protect the refugees’ rights to privacy, and preserve them from further persecution or acts of reprisal.

And yet, enough precedent-setting cases have emerged—in Australia, Canada, the UK, and the United States—that it is possible to paint an alarming picture of post-Soviet Ukrainian social life, one that makes it clear that it is time for all of us to reconsider our fundamental presumptions about ethnic intolerance in post-Soviet Ukraine. The experiences of Nikolai B. and his family, as well as the horrors of Olga V., are definitely not isolated anecdotes.

In the past decade, eight major cases involving refugees from post-Soviet Ukraine have helped to reshape international asylum law in Australia, Canada, the UK, and the United States. It is precisely these cases, I would argue, plus several others to which I have had access as an expert witness that should provide the foundation for a fundamental re-evaluation of ethnic violence in post-Soviet Ukraine.

First, I would like to begin with the details of an unsuccessful petition for asylum. I do so to demonstrate that the eight major cases are just the tip of the iceberg in a situation.
where aggregate data show that several tens of thousands of similar cases have appeared before immigration authorities. Testifying before the US Court of Appeals for the Tenth Circuit in May 1999, a Ukrainian Russian Jew from Kiev, Boris Zviagilsky, presented details of several incidents in 1992 when he was verbally or physically assaulted. The assaults began with yelling anti-Semitic and anti-Russian slurs through the door of his apartment, vandalising his mailbox with hate graffiti, and once even setting his mailbox on fire. Eventually, a Ukrainian ultranationalist managed to break into Zviagilsky’s apartment, forced him to his knees, and told him that all Russians and Jews should be on their knees before Ukrainians. Zviagilsky managed to escape, and hid out at a friend’s apartment. In late August 1992, he was accosted by two neighbours, members of the ultranationalist Rukh party, and verbally and physically attacked. Soon after, Zviagilsky received a letter, purportedly from his neighbours. The letter stated that they would continue to harass him until he left the building and emigrated from Ukraine, joining ‘your kikes in Israel’. The letter ended: ‘Didn’t Bogdan Khmelnitsky and Hitler kill enough of you? Let Ukraine be liberated! Dearth [sic] to kikes and communists! This is a final verdict without the right of appeal!’ Zviagilsky’s repeated pleas for help from the Ukrainian police were ignored. Fearing for his life, Zviagilsky fled Ukraine soon after, only to be rejected in his bid for asylum in both Australia and the United States.36

Zviagilsky was denied asylum not because he lacked credible evidence of serious abuse, but rather because of a failure to establish either past ‘persecution’ or a well-founded fear of ‘future persecution’. The INS successfully argued that ‘the discrimination and mistreatment he [Zviagilsky] complains of are at the hands of private individuals and exist in all societies . . . The failure of a government to stop acts of hatred before they occur can hardly be viewed as persecution’. Noting that no state can be expected to block all acts of persecution, but suggesting (on the basis of State Department Country Reports) that conditions had changed for the better in post-Soviet Ukraine, the court ruled that ‘if he [Zviagilsky] returns to Ukraine, he has absolutely nothing to fear from the government. He may have a fear of random violence (as do some residents of the United States). I do not believe the asylum laws are designed to grant refugee status under these circumstances’.37

It is interesting to note that the only evidence presented by the INS to dispute the likelihood of future persecution if Zviagilsky were forced to return to Ukraine was the US State Department’s profile of asylum claims from Ukraine, as well as the State Department’s 1995 Country Report on Human Rights Practices in Ukraine. It was standard practice throughout the 1990s for the INS to dismiss individual complaints of persecution as nothing more than tragic but isolated cases of victims of crime. In the same vein, the INS utilised general US State Department Country Reports to deny any legitimate claim of persecution. This was often a successful ruse, despite the fact that even those country reports identified the existence of violence and intolerance towards Ukraine’s religious and ethnic minorities.

In a similar case in Australia in 2001, Ms Justice Ruth Cheetham rejected an ethnic Russian’s claims of harassment, beatings, threats, and extortion, and the murder of his father, even though the petitioner showed credible evidence of the abuses. Here, as so often, the problem lay in alternative definitions of what constituted actual persecution. Ms Cheetham did not find that such abuses constituted persecution under the international convention on asylum:
I accept that the applicant has had several experiences with young men of apparently Ukrainian ethnicity who have harassed and physically harmed the applicant because he speaks Russian and, to those attackers, appears to be of Russian ethnicity. However, I accept the unanimous conclusions of several independent observers that the state of Ukraine, and the vast majority of its population, do not discriminate against persons of Russian ethnicity or who speak Russian. The evidence before me [drawn from *Country Reports*] is overwhelming that Russians in Ukraine do not suffer discrimination or any systemic harm, much less harm sufficiently serious as to amount to persecution. I do not accept that the state of Ukraine encourages or condones such harm by private individuals. Further, if the applicant were to experience such harm in the future, by which I mean harm caused by private individuals acting contrary to Ukrainian law, I find that it is open to him to seek the protection of the Ukrainian authorities, which I find would be adequate to provide effective protection.38

Remarkably, even in the face of substantial evidence of systematic abuse, the judge denied the probability of past persecution solely on the basis that ‘the evidence before me satisfies me that any such anti-Russian behaviour is not only criminal but is the subject of strongly worded condemnation by Ukraine’s leaders, including the [Ukrainian] President [Kuchma]’.

Accordingly, I find that the applicant has not in the past suffered harm sufficiently serious as to amount to persecution, except in the incidents when he was physically mistreated by the police and, in relation to those incidents I do not accept that such mistreatment was for a Convention reason or, if it was motivated by anti-Russian sentiment, that the government condones or is unwilling or unable to protect its citizens against such persecution.39

In another Australian case, Ms Justice Sue Zelinka noted that the nationalist paramilitary group (UNA-UNSO) responsible for perpetrating violence against an ethnic Russian woman and her sons had been proscribed by Ukrainian law, a fact that confirmed the view that the Ukrainian state did not support persecution of ethnic and religious minorities. Evidently, regardless of actual conditions, a state official’s condemnation of persecution was considered sufficient evidence of the host nation’s intolerance for persecutinal acts. Specifically on this matter of state protection, Justice Zelinka wrote:

No government can be reasonably held responsible for its inability to offer effective protection against every act of lawlessness . . . The Tribunal is satisfied on the evidence before it that, in this case, the harm suffered by the applicant is not officially tolerated or sanctioned. . . . In short, the Tribunal is satisfied that the applicant has suffered harm at the hands of an individual or individuals. The Tribunal is satisfied that this was the result of personal enmity as other people who shared the applicant’s beliefs were not so targeted. The Tribunal is not satisfied that the [Ukrainian] State is unable or unwilling to protect its citizens, including the applicant, particularly in regard to their right to worship in the UOC ([Ukrainian Orthodox Church] Moscow Patriarchate). The Tribunal is not satisfied that the applicant has a well founded fear of persecution in the Convention sense.40
If the Australian Refugee Review Tribunal has operated on the basis of the assumption that written laws or strong published statements of state officials were sufficient evidence to prove that governments may not condone persecution of ethnic and religious minorities, Canadian and US immigration authorities have come to dismiss as unreasonable such blind faith in the effectiveness of written laws alone to guarantee freedom from past or future persecution.

Ukraine: The Meaning of Persecution

Established in the wake of the Nazi Holocaust some 60 years ago, the international convention on asylum, or Geneva Convention, was designed according to a template grounded in the Jewish Holocaust experience: a strong central state that openly advocated Jewish persecution; a clear line of demarcation where perpetrators and victims were well-defined; a clear standard for persecution that lay in the Final Solution and the death camps. The problem in modern asylum cases is that the explicit categories set so long ago have imposed considerable burdens of evidence on refugee petitioners, who must prove that they have been not merely victims of violence, harassment, or discrimination, but that they have actually been persecuted. They must be able to show that they were persecuted because of their membership in a particular social group, and they must be able to establish the reasonable likelihood that they will be persecuted again if forced to return to their country of origin.

In the United States, three major Ukrainian asylum cases in the late 1990s fundamentally challenged mainstream views that dismissed claims of persecution directed at Ukraine’s ethnic minorities. The first was the case of ethnic Russian and Jew Irina Shchetinina (Chtchetinin), who won asylum in the US Board of Immigration Appeals in California in 1997. Shchetinina had witnessed ultranationalist gangs in L’viv attack her neighbours, and fled in terror with her husband and three children because she knew (or at least reasonably feared) that they would be next. Two of Shchetinina’s Russian–Jewish neighbours had been brutally tortured in their own apartment: the husband was branded with a hot electric iron and the wife’s eye ripped out of its socket, while their assailants screamed anti-Russian and anti-Semitic epithets. Ukrainian police refused even to take a report of the attack, or to follow up with an investigation of the incidents.

The transformation of official US perceptions of ethnic conflict in post-Soviet Ukraine began with Korablina v INS in 1998. Vera Korablina, a 55-year-old ‘half-Russian, half-Jewish’ woman from Kiev, was terrorised by an ultranationalist group for nearly a year. Granted asylum by the US Court of Appeals for the Ninth Circuit in October 1998, the Korablina case has had a profound impact on asylum law in the United States and abroad. Conforming to the typical pattern described in dozens of documented cases, the group began with anti-Semitic graffiti and anonymous arson, then escalated to personal intimidation and violence.

In 1990, Korablina lost her job of 28 years in a Kiev machinery factory when her Soviet-era ethnic Russian boss was replaced with an ultranationalist Ukrainian, who fired all the Jewish workers in her section. In October 1993, when she was already working for a new employer, Korablina watched as three nationalist vigilante-mafiya types came to her office, brutally beat her employer, and demanded payment of special dues for Russians and Jews who worked in Ukraine. Police were called, but never appeared at the scene,
and no criminal investigation was ever conducted. Korablina testified that she began receiving phone calls and letters threatening to kill her, saying that she too (like one of her friends) could disappear. One day in early 1994, two nationalist thugs found her alone in her office, tied her up in a chair, placed a noose around her neck and beat her about the head, yelling that her Russian surname and passport could not conceal her ‘Yid’ origins. In September 1994, the office where she worked was ransacked, anti-Russian and anti-Semitic graffiti (and the Star of David) were painted all over the walls and furniture. Soon after, her Jewish employer disappeared. Even after she had fled to the United States, Korablina’s husband and daughter, who remained behind, were beaten and threatened with comments such as ‘your kike wife won’t be able to hide for long’.43

While the lower courts had ruled against Korablina’s petition for asylum on the grounds that her experiences reflected ‘discrimination’ and not ‘persecution’ as required by the asylum convention, the Ninth Circuit Court established a new, more inclusive definition of persecution that weighed credible evidence of actual persecution more heavily than written laws or friendly reassurances from state leaders:

Cumulatively, the experiences suffered by Korablina compel the conclusion that she suffered persecution. Where evidence of a specific threat on an alien’s life, and here there were many, is presented in conjunction with evidence of political and social turmoil, the alien has succeeded in establishing a prima facie eligibility for asylum. . . With all respect, the Immigration Judge’s determination and the Board of Immigration Appeals’ affirmation that Korablina experienced merely discrimination are not ‘supported by reasonable, substantial, and probative evidence on the record considered as a whole’. The suffering inflicted on Korablina because she is Jewish was not simply a ‘minor disadvantage or trivial inconvenience’. It amounted to ‘the infliction of suffering or harm upon [one] who differ[s] (in race, religion, or political opinion) in a way regarded as offensive’.44

Korablina v INS blasted the assertion that general observations of a rosy nature in US State Department Country Reports on Human Rights could be used by the INS to refute well-evidenced claims of persecution: specific and credible evidence of persecution should always be weighed more heavily than general and sweeping statements about internal conditions: ‘A single isolated incident may not “rise to the level of persecution, [but] the cumulative effect of several incidents may constitute persecution”.’45

In Kraitman v Canada, Mr Justice J. Teitelbaum took the Canadian Immigration Board to task for just the same point: a refusal to acknowledge real persecution in the face of one-size-fits-all country reports. Citing the long record of harassment and beatings to which the Kraitman family had been subjected during their time in Kharkhiv, he concluded: ‘The board itself admits that there is a history of both discrimination and persecution in the Ukraine directed at Jews but believes that because the official policy of the country is alleged to be non-racist, the applicants (Jews) have nothing to fear for the future. How naïve.’46 Put simply: we cannot rely on overly general State Department reports to document human rights records of foreign nations. As Peter Margulies argued in the Colorado Law Review in Winter 2000:

State Department [country] reports are wholly unsystematic in their approach. At best, these reports amount to a grab bag of facts offering little insight into the
risks faced by returning refugees. At worst, they offer an apologia for human rights abuses that is driven by United States foreign policy concerns rather than the safety of refugees. While current officials at the State Department are more knowledgeable about human rights issues than many of their predecessors, it is difficult to overcome the department’s institutional culture, which treats human rights as a distraction from core policy concerns.\(^{47}\)

It is interesting to note that in one of the few cases when Australian federal judges overruled the rosy conditions depicted in State Department *Country Reports* and sided with the petitioner for asylum, Mr Justice Peter Gacs recounted in his brief granting asylum to a woman rabbi from Ukraine:

I read out, in summary form, the country information cited below. I said I did not necessarily discount the adviser’s comments but I had also to take the country information into account. He responded that much of what I had recited did not contradict his version of the situation, particularly that politically, the situation is better [now in 2004] than in 1991 (when Ukraine declared its independence from the USSR) and there is nothing in the Constitution which discriminates against Jewish people. Jewish life is flourishing and there are new Jewish communities in virtually every Ukrainian city.

However, *the main discrepancies between the country information I had referred to and the information he had received was to do with street anti-Semitism and state protection*. President Kuchma is pro-Jewish (both his sons-in-law are Jewish) and upholds rights and freedoms; but this has not decreased anti-Semitism and indeed has made it worse in that there is a lot of political opposition to him in Ukraine, and so his friendship with the Jewish people is a liability to them. Kuchma’s enemies have claimed that Ukraine’s economic problems are connected with his friendship with the Jewish community.\(^{48}\)

By drawing a sharp distinction between so-called ‘street anti-Semitism’ and Ukrainian state law, Justice Gacs was able to lend greater weight to the petitioner’s substantial evidence of persecution. In another Australian case, Mr Justice John A. Gibson followed the same logic when presented with the conflicting evidence of the petitioner’s substantial evidence of persecution versus the generally favourable picture presented in *Country Reports*:

There is a difficulty which a country like the Ukraine presents when it comes to assessing the significance which should be attributed to differing country information on the subject of anti-Semitism and the influence of Ukrainian nationalism in which context a claim such as this must be seen. There are differing layers and generality of information, and information from varying sources. Nonetheless, *the critical factor is of course the extent to which I can accept the applicant’s evidence and if so whether this gives rise to a well-founded fear of persecution* should she have to return to the Ukraine.\(^{49}\)

Another case that profoundly influenced the US Department of Justice perception of Ukrainian internal conditions was the *Matter of OZ and IZ*, who received asylum in the
US Board of Immigration Appeals in late May 1998. An unnamed Jewish father and son from Kharkiv testified that while living in their native city in 1992 and 1993, the father suffered repeated beatings, and received numerous handwritten and graffiti anti-Semitic threats. Eventually, their apartment was vandalised by a local Ukrainian nationalist band. While the INS had argued that the father and son had only experienced ‘isolated acts of random violence perpetrated by unknown individuals’, the federal judge reversed the INS on the grounds that the petitioners had proven a ‘well-founded fear of persecution in Ukraine’ on the basis of their Jewishness. To send a clear signal of the overriding importance of the new precedent, Attorney General Janet Reno ordered the immediate publication of the Board of Immigration Appeals decision on the Department of Justice website. A new standard was adopted for establishing a well-founded fear of persecution:

With regard to the [Immigration and Naturalization] Service’s contention that the harm suffered by the respondent and his son does not rise to level of persecution, we note that the respondent was physically attacked on three occasions. His son endured beatings at school and required surgery to treat an injury he incurred during the July 3, 1993, beating. Furthermore, the respondent’s apartment was broken into, his furniture and possessions were destroyed, and valuables were stolen. The respondent repeatedly received anti-Semitic fliers and written threats at his home. Finally, the respondent’s son suffered extreme humiliation when he was forced to undress by his classmates. We find that these incidents constitute more than mere discrimination and harassment. In the aggregate, they rise to the level of persecution as contemplated by the Act.

The Board of Immigration Appeals also directly addressed the question of whether an act of persecution can exist without government sponsorship:

With regard to the Service’s suggestion that the incidents of persecution were not ‘government-condoned’, we note that the respondent reported at least three of the incidents to the police, who took no action beyond writing a report. It appears that the Ukrainian Government was unable or unwilling to control the respondent’s attackers and protect him or his son from the anti-Semitic acts of violence.

After the Matter of IZ & OZ, it was no longer necessary for petitioners for asylum to prove that their host government actually supported persecution; instead, they had to meet only the lesser burden of showing that officials had been informed of the instances of persecution, but had failed to provide effective remedies to prevent further persecution. Such a standard expanded the web of ‘persecution states’ beyond the traditional realm of strong central states intent on persecuting citizens to include countries, like Ukraine, where state and local officials were either unable or unwilling to provide protections to all citizens. Side-by-side with state-sponsored violence, persecution definitions would now include anonymous vigilante violence.

Driven by the special conditions imposed by patterns of anonymous abuse in post-Soviet Ukraine, the cases of Kraitman, Korablina, and the Matter of OZ & IZ applied a commonsense approach to violence, accepting that an accumulation of individual acts of violence could over time amount to persecution, even where existing laws condemned such practices and even when state officials refused to legitimise them. In this way, immigration
courts would open an escape route to hundreds of thousands of Ukrainian Jewish and Russian refugees even as most western pundits and learned scholars failed to notice that such violence was even taking place.

This loosening of the standards of evidence of persecution in Korablina and the Matter of IZ & OZ was upheld and extended in August 2005 in the asylum case of a Jewish family from Belarus, Poradisova v Gonzales, where the Second Circuit Court found that lower court judges and INS personnel had used an ‘inappropriately stringent standard’ in their review of evidence:

Specifically, the Immigration Judge erred in dismissing certain portions of the Poradisovs’ testimony for lack of corroboration (much of which, in all likelihood, was not reasonably available), in failing to consider the cumulative significance of the events described, in drawing adverse inferences from the Poradisovs’ decision not to seek protection from the police or seek asylum from the United States Consulate in Belarus, in dismissing Tatiana [Poradisova]’s account of anonymous threats solely because the threats were anonymous, and in dismissing as irrelevant evidence that similarly-situated friends of the Poradisovs had been persecuted. As an additional ground for remand, we hold that the Board of Immigration Appeals abused its discretion in denying the Poradisovs’ motion to reopen because it inexplicably dismissed as ‘merely cumulative’ the strong evidence they presented that antisemitism in Belarus is virulent and on the rise.

Many of these same elements appeared in another case in which I was directly involved, G. v INS, in 2001. Mrs. Alla G., a 60-year-old grandmother—half-Russian, half-Jewish—from a small town in eastern Ukraine complained of sustained violent persecution by local members of the militia:

In 1993, anti-Semitic messages began to appear on or near my apartment. Mud was thrown on my laundry. I washed my laundry by hand in my bathtub and then would hang it out to dry. I found my laundry on the ground covered with mud and footprints more than 8 times. I had lived in the same apartment since 1968 and never before the harassment began did I find my laundry on the ground covered in mud and footprints. My apartment windows were also broken. I contacted the police about these incidents, but they assured me that these were only childish pranks...I was frustrated and afraid it would escalate.

Throughout the 1990s the graffiti consisted of hate messages—‘Jews get out’, ‘You Pig’, ‘All Jews must leave’—accompanied by a Star of David—painted at the entrance to G.’s building. The main culprit was a member of the local militia, who was also a physical education instructor at a nearby military school.

In 1995, my fear of the harassment escalating was realized. I was struck by a car while walking to work. Witnesses took down the license number of the car [which linked one of two suspected assailants to the crime]. I was hospitalized for two months after being hit by the car. My leg was badly broken. My hip and knee
were also badly injured. The police report [erroneously] cited poor visibility and short braking distance as the cause of the accident. 58

The assailants turned out to be two local members of the Ukrainian Armed Guard. These same two assailants were involved in a series of attacks over the next four years. Witnesses confirmed that these two teachers were often overheard teaching adolescent boys at the local school to hate Jews: ‘Jews are the cause of all the hardships in the Ukraine!’ ‘They hoard all the money!’ ‘They are infected with disease!’ One of the assailants admitted writing anti-Semitic graffiti—‘This is no place for Jews!’—on G.’s apartment door (Picture 1) with his own signature on the police report dated 1 September 1999. For this, he was fined 2000 Ukrainian hryvnias—then about US$400—for the crime of ‘hooliganism’. He was spared the more serious criminal charge of fomenting ethnic hatred. Free from criminal prosecution, the same perpetrator was able to take violent reprisals against Mrs G.

Alla G. was hospitalised again for over a month when, in December 1998, she was attacked and beaten by the same assailant outside of her apartment. A week after the graffiti ‘This is no place for Jews!’ was painted on her door, Mrs G.’s apartment was firebombed: ‘The firebombing of my apartment destroyed all my property and left me without a place to live.’ Alla G. fled to the United States in 2000, and was awarded asylum in Chicago in 2001. 59

Inevitably, scapegoating does not always conform to neat ethnic categories. As the decade wore on, and Ukraine’s hardships grew, there were increasing reports of similar acts of violence and extortion perpetrated against ethnic Ukrainians as well. In Canada, courts had by the late 1990s come to recognise corruption and extortion targeting ethnic Ukrainians under the guise of rightwing nationalist political actions. In Demchuk v The Minister of Citizenship and Immigration (Canada) a 36-year-old citizen of Ukraine reported a fear of persecution from the Ukrainian and Russian mafiya in his locale. From October 1992 until October 1995, the applicant worked for a company called

**Picture 1.** ‘This is no place for Jews’—with the Star of David in the upper-right-hand corner—painted on the apartment door of a 60-year old Russian–Jewish woman living in eastern Ukraine. A week later, the apartment was firebombed. *Source:* Court affidavit, *G. v INS* (2nd Chicago, 2001)
Energetic, 80 per cent of which was government-controlled. The branch in which he worked dealt with set-up and maintenance of energy distribution stations. Starting at the beginning of 1995, Demchuk also worked on contracts with another company called the Ukrainian Energy Consortium; he became president of that company in October 1995. At the beginning of 1995, the applicant also began to receive threatening phone calls from persons unknown who wished to dictate to whom he was to sell energy, as well as the prices to be paid. The callers also wanted him to transfer company funds to them illegally. The callers promised to initiate the applicant’s political career, should he so aspire. He did not report the calls to anyone, fearing it would have a negative impact on his position in the company. He also refused to accede to the callers’ demands. For his refusals, Demchuk claimed he was beaten on three separate occasions—on 5 April 1995, 23 August 1995, and 27 December 1995. He fled Ukraine on a tourist visa to Canada on 3 January 1996. Subsequently, his wife, who had remained in Ukraine, continued to receive threatening phone calls.60

The main question before the court was whether Demchuk had, in fact, been persecuted: ‘Refusing to participate in criminal activity, while laudable, has often been found not to be an expression of political opinion.’

The panel concluded that the Ukrainian government is fighting organized crime and is not so enmeshed in organized crime such that to challenge corrupt behaviour amounts to challenging the government’s authority. This conclusion is based on the existence of the Coordinating Committee for Combating Corruption and Organized Crime, which is headed by Ukraine’s deputy prime minister. This, the panel says, shows that the government is serious about going after organized crime. Well, that sentiment may be so, but is the committee in any substantive way effective?

Upon further perusal of the other documentary evidence, it appears evident that the Ukraine is mired in serious economic corruption and chaos. Mafia gangs are rampant and exist almost without [sic] impunity. One article ... proclaims that the situation is catastrophic and that the building of criminal feudalism is going ahead full speed. Another article ... states that law enforcement is virtually useless, and Ukraine’s president intones that the country’s national security is threatened by economic crime and corruption. An interview conducted with Ukraine’s deputy prime minister ... reports that official as stating, ‘Regrettably, the scale of economic crime continues to increase: there are abuses in the credit and finance system, in the privatization sector, and in the market for energy resources; briberies; the concealment of profits in both hryvnias and hard currency; the evasion of taxes; the illegal and untargeted use of budget means; thefts of materials; and fraud. The level of these crimes is quite high and the effectiveness of the counteraction to these dangerous manifestations remains low.’61

Once again, by ignoring the real situation in post-Soviet Ukraine, the Board of Immigration had substituted wishful thinking for real, genuine, and effective programs to combat rampant corruption and abuse. Under these conditions, the Federal Court of Canada essentially recognised that a government’s failure or inability to enforce anti-crime legislation could set the conditions for a well-founded fear of persecution among some citizens.62
Substantial evidence of widespread crime and corruption in post-Soviet Ukraine has fundamentally transformed views of the Ukrainian government’s ability to guarantee its people freedom from persecution. In Australia, Mr Justice Adolfo Gentile found in 2001 that local conditions in Ukraine—with the widespread predominance of organised crime and political corruption—helped to blur the lines between victims of criminal violence and victims of persecution:

The pervasiveness of corruption, connections between government officials and organized crime, and the political activities of organized crime figures often blurred the distinction between political and criminal acts. Politicians, politically connected businessmen, and journalists have been the victims of possibly politically motivated—and sometimes fatal—attacks. 

Therefore,

the Ukrainian authorities are unable to control the criminal syndicates which are pervasive in the Ukraine. Based on this information, the Tribunal finds that the applicant wife cannot look to the Ukrainian authorities to protect her. It thus finds that there is a real chance that she would be harmed for a Convention reason if she were to return to the Ukraine now or in the reasonably foreseeable future and her fear of persecution is well-founded.

Justice Gentile likewise rejected any notion that a Ukrainian refugee could escape future persecution by moving to a different region: ‘the pervasiveness of the criminal element in the Ukraine and the uncertain availability of protection by state authorities relates to the whole country. This means that relocation to another part of the Ukraine is not a “reasonable” option’.

* * * *

Taken together, the weight of asylum data substantiated by judicial precedents provide ample explanation of why Jews, Russians, and other religious and ethnic minorities have fled post-Soviet Ukraine in the tens of thousands each year throughout the 1990s. In 1989, just prior to the collapse of the Soviet Union, Jews were the third largest ethnic group in Soviet Ukraine. Demographic reports indicate 25,000 Jews left each year from Ukraine during the first half of the 1990s, so that from 1989 to 1997, the Ukrainian Jewish population had decreased by 445,000. By 1999, more than 40,000 Jews were fleeing Ukraine each year, leaving 225,000 Ukrainian Jews in January 1999; 185,000 by January 2000; and a mere 135,000 by January 2001. The 2001 Ukrainian census counted a mere 103,600 Jews in Ukraine, down 79.7 per cent from a decade before. The result? As Betsy Gidwitz observed in April 2001: ‘The Jewish population of Ukraine is in catastrophic demographic decline, a process that will exhaust its emigration pool within a decade or so, leaving the country with a severely depleted and disproportionately old and infirm Jewish population of perhaps 50,000 to 75,000 individuals.’

As we have seen, the same is true for ethnic Russians: over three million ethnic Russians, including more than half of all ethnic Russians in West Ukraine, fled Ukraine between 1991 and 2001. Contrary to mainstream views that these departures were guided most of all by economic factors, there is strong evidence to suggest instead that
economic hardship and widespread corruption have heightened the atmosphere of intolerance for Ukrainian’s religious and ethnic minorities. Marginalised politically, economically, culturally, and socially, many have fled as refugees seeking protections under the international convention on asylum.

‘Ukraine’s Bitter Diaspora’

It is depressing enough being Ukrainian. When you could have had a comfortable life in one of the world’s nicest countries, like Canada, it is even worse. Ukraine’s diaspora is having a ‘collective nervous breakdown’, in the words of one activist, as life-long hopes for independent Ukraine shrivel in the face of the impoverished and corrupt reality.

—The Economist, 23 January 2001

Regardless of where one stands on the question of mounting evidence of ethnic and religious violence in post-Soviet Ukraine, one thing is clear: Ukraine’s first decade was marked by serious challenges and numerous setbacks on the road to political independence. These factors are essential for a proper understanding of the forces behind the explosion of ethnic Russian and Jewish versus ethnic Ukrainian, eastern versus central and western Ukraine, pro-Yanukovych versus pro-Yushchenko factions, that surrounded the Ukrainian presidential elections of November and December 2004.

The real challenge here is to find some balance between the mounting evidence provide by anecdotes of violence versus the militant insistence among many Ukrainians—at home and abroad—that the reports of abuse are exaggerated. Here, scholar and commentator Myron Kuropas summed it up best: ‘No matter how things change for Jews in Ukraine, there will always be someone ready to believe the worst.’ 68 Ukrainians at home and abroad have continued to deny the evidence of abuse as little more than isolated acts of a few extremists. They insist that Ukrainian refugees are fleeing solely for economic reasons, and that allegations of violence are merely self-serving lies told to facilitate refugee flight. And there is a distinct tendency to indict the motives of the victims: that alleged victims are deliberately exaggerating their claims of persecution to serve their own ends, that they are abandoning Ukraine at her time of greatest need. 69 Or, as Mikhail Riabchuk put it: ‘Human trafficking is now nearly as profitable as drug and arms trafficking; it would be strange indeed if this business did not exploit the opportunities and loopholes provided by American law.’ 70

The bitter truth is that here, as elsewhere, history teaches important lessons. And if one takes just western Ukraine into account, the accumulation of anecdotal evidence amounts to inescapable patterns. The map in Appendix I traces western Ukraine’s transition from a multiethnic to a mono-ethnic zone over the past one hundred years. In the course of the twentieth century, western Ukraine experienced five major ethnic cleansings. Following World War I, Volksdeutsche or ethnic Germans were targeted. During the interwar period, ethnic Poles settled in the area, only to be driven out under the Soviets (1939–41), returning during the German occupation (1941–44), and forced out again from 1943–46. Jews were targeted in the wake of World War I, and again in World War II. As western Ukraine passed from one imperial power to another, local ethnic rivalries led to violent ethnic cleansing of minority groups: dominant Ukrainian and Polish factions used the occupation regime (Austrian, Russian, Polish, or German) to
make inroads against one another. The result? By the end of the 1940s, western Ukraine was largely homogenous, with few non-Ukrainians. Since World War II the Soviet era was marked by a resurgence in western Ukraine’s ethnic Russian and Jewish populations, but as we have seen, both these ethnic minorities have dissipated since 1991.

The main point is that regardless of the question of agency—whether one chooses to blame the Ukrainian government, corrupt local authorities, or just a few local extremists for the recent violence—the inexorable process of ethnic homogenisation in the twentieth century towards an ethnic Ukrainian majority has superseded war, political upheaval, and numerous other hardships. Western Ukraine began the century with a majority ethnic Ukrainian population of roughly 75 per cent, versus 12 per cent Jews, 10.5 per cent Poles, 1.2 per cent Germans, and 0.9 per cent other ethnic groups. Today, in contrast, western Ukraine is now 93.5 per cent ethnic Ukrainian (see Table 4). 72

What, in the decade following 1991, is different from the most notorious episodes of ethnic cleansing of the past? As the statistics of refugee flight from post-Soviet Ukraine

### Table 4. Ethnic Distribution in Western Ukraine

<table>
<thead>
<tr>
<th>Region</th>
<th>Ethnic Ukrainians (proportion)</th>
<th>Ethnic Russians (proportion)</th>
<th>Others (proportion)</th>
<th>Total Population (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chernivtsi</td>
<td>75.0</td>
<td>4.1</td>
<td>20.9</td>
<td>919.0</td>
</tr>
<tr>
<td>Ivan-Frankivs’k</td>
<td>97.5</td>
<td>1.8</td>
<td>0.7</td>
<td>1,406.1</td>
</tr>
<tr>
<td>L’viv</td>
<td>94.8</td>
<td>3.6</td>
<td>1.6</td>
<td>2,606.0</td>
</tr>
<tr>
<td>Rivne</td>
<td>95.9</td>
<td>2.6</td>
<td>1.5</td>
<td>1,171.4</td>
</tr>
<tr>
<td>Ternopil’</td>
<td>97.8</td>
<td>1.2</td>
<td>1.0</td>
<td>1,138.5</td>
</tr>
<tr>
<td>TOTAL</td>
<td>93.5</td>
<td>2.8</td>
<td>3.7</td>
<td>7,241.0</td>
</tr>
</tbody>
</table>

Source: Derzhavnyi komitet statystyky Ukrainy, Vseukraïns’kyi perepys naselelinnia 2001 (Kiev, 2002), http://www.ukrcensus.gov.ua/. Note that ‘Others’ generally refers to Poles and Belorussians. In Chernivtsi, Romanians are 12.5 per cent, Moldavians 7.3 per cent, Poles 0.4 per cent, Belorussian 0.2 per cent, and Jews 0.2 per cent.

![Picture 2. ‘Baby Yar will happen again’. Graffiti on the wall near the high-speed tramline in Kiev, July 2002 Source: Jewish Confederation of Ukraine, Jewish Observer, 16/35 (August 2002). Note that the graffiti is in Russian, not Ukrainian.](image_url)
show beyond any doubt, what is different this time around is the very fact that western nations have stepped up to the line and agreed to take in refugees from among Ukraine’s population of hundreds of thousands of fleeing ethnic and religious minorities. A journalist in Kiev, Mikhail Frenkel, was so shocked to find so much anti-Semitic writing and graffiti in Ukraine that he photographed the very worst examples, and devoted an entire column to express his outrage in *The Jewish Observer*—a Russian-English bi-monthly that is also the official newspaper of the Jewish Confederation of Ukraine. Frenkel’s outrage was particularly spurred by the fact that in July 2002 he saw the following graffiti in Kiev (see Picture 2, p. 715 above). ‘Ten years ago’, wrote the outraged Frenkel, ‘I saw a similar masterpiece—“Jews, get out to Treblinka” on a building in the center of Warsaw. Today, there are hardly any Jews in Poland.’ And so has it been in Ukraine, where—adds Frenkel—‘Fortunately, they have gone not to concentration camps, but to Israel or America.’

If the twentieth century has not taught us how to live with one another in peace, at least some nations have learned from the experience of the mass genocide of World War II to open their borders to refugees from other nations during times of deep internal crisis. Unfortunately, since the World Trade Center and Pentagon attacks of September 11, 2001, Ukrainian petitioners for asylum have faced a renewed governmental effort to restrict asylum-seekers. Once again, asylum attorneys and country experts find themselves having to establish the bona fides of persecution one case at a time.

Acknowledgements

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Notes

2. ‘The State of Ukrainian Independence: An Overview from Harvard’, transcript of a roundtable discussion that took place on 22 July 1996, subsequently published in the *Ukrainian Weekly*, Vol.64, 25 August 1996. In the most recent published study of ethnic politics in Ukraine, Alfred Stepan has confirmed my reading of the literature: ‘I should note that a standard assertion in the literature on Ukraine is that there
has been virtually no ethnic or political violence during or after the drive for independence.’ ‘Ukraine: Improbable Democratic “Nation-State” But Possible Democratic “State-Nation”’, Post-Soviet Affairs, Vol.21, No.4 (2005), p.288, note 13.
6. Ibid, original emphasis.
11. Part of the explanation for ethnic homogenisation no doubt lies in voluntary assimilation. As Stephen Rapawy recently observed in a study commissioned by the US Census Bureau, the last Soviet census in 1989 had reported that 25 per cent of all families in Ukraine had spouses of different nationalities. ‘In recent years, surveys indicate a growing share of the population identifying itself as Ukrainian while the Russian portion is decreasing. At the same time, a growing percentage of women register their children as Ukrainian. The Russian share is decreasing proportionately.’ Stephen Rapawy, ‘Ethnic Reidentification in Ukraine’, IPC Staff Paper No.90, International Programs Center, US Bureau of the Census, Washington DC, 1997. Such ethnic assimilation or ‘ethnic self-annihilation’, is common in times of upheaval or profound political and social transition, when ethnic identities have a tendency to become rather fluid, as families shed negative ethnic ties in favour of assimilating dominant ones that will offer greater security or opportunity. See John J. Kulczycki, ‘Who is a Pole? Polish Nationality Criteria in the “Recovered Lands”, 1945–1951’, Canadian Review of Studies in Nationalism, Vol.28, Nos.1–2 (2001), pp.107–18; and Kulczycki, ‘The National Identity of the “Natives” of Poland’s “Recovered Lands”’, National Identities, Vol.3, No.3 (2001), pp.205–19.
12. Cf., Jeffrey Burds, ‘Ukraine: The Meaning of Persecution’, TOL: Transitions Online (www.tol.org), 2 May 2006; and subsequent responses: Mykhailo Riabchuk, ‘Revising a “Success Story”?’, TOL: Transitions Online, 12 October 2006; and ‘Refleksi ob ochevidnom [Reflections on the Obvious]’, Telekritika (Kiev), 22 February 2007. Reflecting the extreme controversy surrounding even the mere discussion of these issues, an article by Dmytro Hubenko set to appear in the premiere issue of a new Ukrainian news magazine, Novynar (Kiev), in August 2007 was tabled by the magazine’s editor, based on a communication from Dmytro Hubenko, dated 27 August 2007. Similarly, the editors at Transitions Online refused to allow me to publish any response to the Riabchuk article. Instead, there followed a third article by the director of the Union of Councils for Jews in the Former Soviet Union, Nickolai Butkevich, ‘Racially Motivated Attacks on the Rise’, Transitions Online, 10 May 2007. Noting a March 2006 initiative of the Ukrainian central government to crack down on extremist groups, Butkevich ended with a pessimistic tone: ‘Given the political instability that the country is experiencing, even the best-intentioned efforts to mount a coordinated crackdown on extremist groups will be unusually difficult to mount. In the meantime, it’s a safe bet that hate groups, emboldened by the government’s apparent inability to counter their activities in any systematic way, will continue trying to demonize, terrorize, and even kill people who don’t fit into their image of “one race, one nation”’. 13. As of September 2005, there were 182 Ukrainian immigration cases summarised in the Australian Refugee Review Tribunal (RRT) database; 342 Ukrainian cases in the Canadian Immigration and Refugee Board (IRB) database; and several dozen Ukrainian cases of the US Immigration and Naturalization Service (INS) on Lexis-Nexis, with additional postings on the website of the US Department of Justice (DOJ). British and European rulings discussed in this article are generally drawn from published materials. Although
I have taken part directly or indirectly in 15 Ukrainian immigration cases, I have used just four unpublished cases for this article. For additional information, readers are advised to consult the experts at asylumlaw.org.


15. Ibid., Table 3, pp.23–26; Table 32, pp.114–116.

16. In all, there were 141,297 emigrants from Ukraine to the United States, 1991–2000, versus 534,790 from the entire former Soviet Union (FSU); 109,739 Ukrainian refugees found protection in America under the convention on asylum, from a total of 334,625 former Soviet citizens who were granted citizenship as asylum-seekers. Of all FSU emigrants to America, we do not know the republic origins of 103,913—or 19.4 per cent. Ibid., Table 3, pp.3–26; Table 32, pp.114–116. Ukrainians accounted for 10.8 per cent of all refugees receiving asylum in America, 1991–2000, and ranked third of all sources of refugees, just behind Vietnam (206,857) and Cuba (144,612).


Note that there are few traces of the problem of Ukrainian refugee flight in the publications and statistics of the main agency responsible for tracking global patterns in forced migration, the United Nations Refugee Agency. This is probably due to the fact that most Ukrainian refugees first obtain tourist visas to target countries, and then apply for asylum protections after they have arrived. In contrast to the 120,869 actual Ukrainian immigrants who obtain asylum in the United States from 1991 to 2001, the 2003 UNHCR Statistical Yearbook identified only 55,645 Ukrainians who applied for asylum in the United States during the period 1994-2001, less than sixty thousand for the entire period. Other target countries (in order of significance) were Germany, Canada, France, and the Netherlands.


18. B. v INS, US Court of Appeals, Second Circuit (Buffalo, New York), 1996. Affidavits have been retyped without corrections. Nikolai B. and his family were granted asylum in the US Court of Appeals, Second Circuit (Western District) in Buffalo, New York, on 29 October 1996. The text comes from Nikolai B.’s affidavit, reproduced by permission of the family, with the stipulation that names were removed and/or changed. The same policy was adopted in all four unpublished cases.


21. These materials have been reproduced by permission, with place and names changed or removed by request of the petitioner’s attorney. Olga V. was granted asylum as a victim of torture in 2000. O. v INS, US Court of Appeals, Ninth Circuit (Seattle, Washington), 2000.

22. Ibid.

23. Ibid., original emphasis.

24. Ibid.


34. To be fair, ethnic nationalist chauvinism was regionalized: ethnic Russians dominated the so-called anti-Orange movement in central and eastern Ukraine, while ethnic Ukrainians dominated sections of central and western Ukraine, and (from autumn 2004) controlled the central governmental apparatus of Ukraine. While it would be preferable to be in a position to discuss Russian violence against ethnic Ukrainians, that scenario simply does not conform to the relief offered under the terms of international asylum law. I want to state my position unequivocally here: while I readily agree that substantial violence against ethnic Ukrainians has originated in zones dominated by ethnic Russians, current asylum law does not recognize this scenario of an ethnic minority ‘persecuting’ an ethnic majority. In short, international asylum law does not identify ethnic Ukrainians in Ukraine as eligible for relief under the international convention on refugees. So the case law in this area is scant, and universally negative. Ethnic Ukrainians have been able to find relief under the international convention on asylum only by identifying themselves as a distinct ‘particular social group’, based on religious convictions or sexual orientation, and not on ethnicity.

35. While only a few asylum cases involving Ukrainian refugees have been won in the higher courts of western nations, dozens of similar cases reporting ethnic abuse have upheld lower court or immigration board rulings where the petition for asylum was denied. In this paper, with one exception (Zviagilsy v INS, 1999), I have restricted myself to citing only those cases where the applicant has in fact won asylum.
36. Zviagilsky v INS, 1999 US App. LEXIS 9762; 1999 Colo. J. C.A.R. 2865. Note that considerable doubt has been cast on the Zviagilsky case by those who point out that Zviagilsky was close to the Ukrainian president until autumn 2004, Leonid Kuchma. I repeat: this was an example of an unsuccessful petition for asylum in the West. In any case, subsequent information has largely confirmed Zviagilsky’s allegations. For instance, Zviagilsky was listed among several other politically active Jews in Ukraine who were targeted in an open letter to Ukrainian President Victor Yushchenko signed by more than one hundred leading Ukrainian nationalists, political leaders, and scholars. These leading Ukrainian Jews were denounced as members of ‘a national security threat the organized Jewish community poses to Ukraine’. The signatories demanded a formal secret police (SBU) investigation against those in the ‘organized Jewish community’ who were ‘responsible for anti-Jewish acts, enflaming Ukrainian-phobia, and other crimes against the Ukrainian nation’. The 22 April 2005 letter was published by the National Council for Post-Soviet Jews (NCSJ), at http://www.ncsj.org/AuxPages/042005Ukr_letter.shtml. Zviagilsky’s alleged crime? ‘Zviagilsky . . . and other Jews also played leading roles, as reported by various sources of mass information (SMI), that have an enormous stake in the disease of the impoverishment of the Ukrainian people . . . This is how over many years Ukraine is ruined and the Ukrainian people became paupers, which was closely followed by the incredible growth of wealth of many Jews, which together with Kuchma are responsible for putting in place an anti-national, anti-Ukrainian, and criminal regime.’


39. Ibid.


41. Board of Immigration Appeals case summary, as reported in Barry Lank, ‘Burlingame Ukrainian Woman Fleeing Anti-Semitism Gets Asylum’, Jewish Bulletin of Northern California, 22 August 1997; and Cyndi Spindell Berck, ‘Ex-Soviet Asylum Cases Getting Tougher, Attorney Says’, Jewish Bulletin of Northern California, Vol.103, No.2 (8 January 1999), p.12. I was able to corroborate the court record directly in interviews with Shchetinina’s neighbors in L’viv Ukraine just months after the incident. I am grateful to Iakov Khonigsman for helping to arrange those meetings. I did contact Shchetinina’s attorney, Mr Neil Grungras, but he refused to release further details of the case, stating his obligation to protect his client’s right to privacy.

42. Here and elsewhere I have translated the Ukrainian ‘Zhyd’ as ‘Yid’ rather than ‘Jew’. Although ‘Zhyd’ is in fact the standard Ukrainian word for ‘Jew’, it is not a term widely used by Ukrainian Jews, who prefer the Russian term ‘Evreï’. Moreover, each case ‘Zhyd’ is used in this paper derives from a documented case of brutal mistreatment of Jews. Does it not stretch the imagination to suggest that perpetrators of anti-Jewish violence are using a respectful term of address as they torture and persecute their victims? In several instances, other translators have adopted the derogatory form ‘kike’—which I have reproduced from official court records.

Note that Korablina was of mixed parentage: a Russian father who had converted to Judaism, and a Jewish mother.

43. In his 2006 diatribe against my summary of this case for Transitions on Line in Prague, Ukrainian journalist Mykola Riabchuk labeled the Korablina case ‘the most difficult to believe’. Riabchuk derided my alleged ‘manipulative use of figures’, my ‘uncritical use of “evidence”’, and my ‘selective justice’—by which he evidently meant that my discussion of Ukrainian anti-Jewish violence was deceptive when Ukraine has become a ‘safe haven’ for refugees fleeing persecution and hardship in their own countries. In Riabchuk’s view, it is evidently inappropriate for me ‘just to draw attention to the plight of Jews’: ‘One cannot ignore the plight of other [ethnic] groups (including Ukrainians).’ For the record: Transitions on Line solicited a piece on Jews in Ukraine, and its editors required me to focus on Jewish issues, ostensibly because of a planned special issue on the status of Jews in the former Soviet states. When that planned special issue did not appear, they published my article as a stand-alone piece with no prior notification. On this point, therefore, Riabchuk’s dispute is with the editors of Transitions on Line, and not with me. As for the rest, I stand by my research and findings. Suffice to say, hundreds of asylum judges, their staffs, and their attorneys who often work pro bono have found the petitioners’ accounts to be both credible and persuasive. In every one of 15 such cases where I have taken part, the petitioners have presented supporting physical and medical forensic evidence.

Riabchuk’s most curious objection to my work was that ‘no one should demonize Ukraine as a thoroughly rogue country or an extreme case in Europe’. Obviously, I have not ‘demonized’ Ukraine or her people. I have merely reported the facts. By comparison, does an American journalist reporting on violent street crime in America automatically become ‘anti-American’? Riabchuk’s reasoning is specious and absurd.
44. Korablina v. INS, 158 F.3d 1038, 1044 (9th Cir. 1998). Judge Stephen S. Trott wrote the court’s opinion in the Korablina case; attorney Joseph J. Rose presented the case for the petitioner. I was unsuccessful in my efforts to obtain copies of these materials from Mr. Rose.

45. Korablina v. INS, 158 F.3d 1038, 1044 (9th Cir. 1998). Text as in original.

46. Kraitman v Canada (Secretary of State) (1994), 81 F. T. R. 64.


49. RRT Reference: V96/04844 (12 March 1997), author’s emphasis.


51. Ibid., Section IV, page 4.

52. Ibid.

53. A similar evolution can be observed in the UK. In Storozhenko v UK (No. 19935), the British Immigration Appeal Tribunal (IAT) found that ‘it is quite impossible to say that the government is unable or unwilling to provide protection. This does not mean that such protection is always available: it is not, as the experiences of the appellant perhaps indicate. But there has not been such a breakdown of law and order as means that citizens are without protection.’ The meaning was clear: the failure of a state to provide sufficient protections in a particular case did not provide sufficient grounds for a well-founded fear of persecution.

By the end of the decade, however, the British government had reversed its position. In Secretary of State for the Home Department v Dzhygun, (Appeal No. CC/50627/00 (00/TH/00728), on 17 May 2000, the IAT ruled in favour of a Ukrainian woman who had been lured to Budapest, Hungary, and forced into prostitution, agreeing that the Ukrainian government had failed to provide sufficient state protection for Dzhygun. See European Council on Refugees and Exiles, Research Paper on Non-State Agents of Persecution (London: ELENA: European Legal Network on Asylum, November 1998, updated autumn 2000), pp. 62–3.

In the Galouchko case (6 October 1999), the UK’s Office of the Adjudicator (CRR) ruled similarly in 1999 that the Ukrainian state’s failure to protect Galouchko from persecution, her illegal abduction into the international sex slave trade, reflected the Ukrainian government’s inability or unwillingness to protect her from persecution. The CRR therefore found that Galouchko deserved protection under the asylum convention.

54. In his vicious and chauvinistic attack on the findings of US asylum courts in Schetinina, Korablina, and the Matter of IZ & OZ, Ukrainian journalist Mikhail Riabchuk demonstrated the militant myopia that marks much of the discussion of these sensitive issues in the post-Soviet Ukrainian press. Riabchuk labelled this and other credible evidence of Ukrainian crimes against religious and ethnic minorities as ‘mendacious’: ‘Any person in Kyiv would testify honestly that none of these things could have happened in 1993 or 1994, let alone in 1990 when the Soviet Union was still alive and the Communist Party retained the upper hand over hiring and firing . . . Korablina’s story is akin to claiming Sioux “ultranationalists” fired all white employees from a factory in North Dakota.’ Riabchuk, ‘Revising a “Success Story”? ’ Transitions Online, 12 October 2006.

55. Poradisova v Gonzales No. 024641p (2nd Cir. 2005). The Federal Court of Appeals for the Second District also criticized the immigration judge’s ‘apparent (and erroneous) technique of addressing the severity of each event in isolation, without considering its cumulative significance’. Similar logic was followed in a case of a Russian Jew from Vladivostok. Korbukh v Gonzales No. 03-74705 (9th Cir. 2005).


Dozens of similar cases likewise set new precedents in Australia, Canada, and the UK. From Australia, see RRT Reference: V93/00682 (24 April 1995), RRT Reference: V96/04844 (12 March 1997), and RRT Reference: N98/23857 (8 March 1999). From Canada, see Kraitman v Canada (Secretary of State) (IMM-88-94, July 5, 1994); and Lavrinenko v Canada (IMM-1721-98, February 8, 1999). From the UK, see Storozhenko v UK (No. 19935); and Home Department v Dzhygun (Appeal No. CC/50627/00 (00/TH/00728), 17 May 2000.

58. Ibid.

59. Ibid.

60. Demchuk v. Canada (IMM-1356-98, 7 September 1999).

61. Ibid. Cf., Klinko v. Canada (IMM-2511-97, 30 April 1998), where the court asked: ‘Does the making of a public complaint about widespread corrupt conduct by customs and police officials to a regional governing authority, and thereafter, the complainant suffering persecution on this account, when the corrupt conduct is not officially sanctioned, condoned or supported by the state, constitute an expression of political opinion as that term is understood in the definition of Convention refugee in subsection 2(1) of the Immigration Act?’
The question central to the decision in *Klinko* opened the way for *Demchuk* to reverse the findings in several previous Ukrainian cases where rampant corruption was not identified by the court as providing sufficient grounds for a well-founded fear of persecution: *Vassiliev v. Canada (MCI)* (IMM-3443-96, 4 July 1997); *Gatso v. Canada* (IMM-6043-98, 14 January 2000); *Montchak v. Canada* (IMM-3068-98, 7 July 1999).

62. The US Second District Court of Appeals reached the same conclusion in *Korbukh v Gonzales* No. 03-74705 (9th Cir. 2005). Citing *Chand*, 222 F.3d at 1074, the court upheld the view that ‘purely economic harm can rise to the level of persecution where there is ‘a probability of deliberate imposition of substantial economic disadvantage’ upon the applicant on account of a protected ground’.

63. RRT Reference: V00/10956 (31 July 2001).

64. Ibid.

65. Ibid.


70. Mikhail Riabchuk, ‘Revising a “Success Story”?’, *Transitions Online*, 12 October 2006.

71. Based on the Austro-Hungarian census of 1910 in Galicia, State Historical Archive in L’viv (DIAL), f. 201, op. 1, d. 265, l. 13. Cf. Rapawy (note 11), p.3.

72. Obviously, ethnic self-definitions as reflected in the census reports are somewhat unreliable measures of ethnicity. What really is being measured—ethnic cleansing, ethnic homogenisation, or national assimilation? See Arel (note 10). In times when ethnic intolerance grows, ethnic self-annihilation becomes an inevitable defence of the weaker, more vulnerable ethnic groups. It is worth noting that many of the anti-Jewish attacks in Ukraine targeted assimilated Jews in mixed marriages. Cf. note 11.

Western Ukraine went through five major ethnic cleansings in the twentieth century. Following World War I, Volksdeutsche were targeted. During the interwar period, ethnic Poles settled in the area, only to be driven out under the Soviets (1939–41), return during the German occupation (1941–44), and forced out again from 1943–46. Jews were targeted in the wake of World War I, and again in World War II. As western Ukraine was passed from one imperial power to another, local ethnic rivalries led to violent ethnic cleansing of minority groups: dominant Ukrainian and Polish factions used the occupation regime (Austrian, Russian, Polish, or German) to make inroads against one another. The result? By the end of the 1940s, West Ukraine was largely homogenous, with few non-Ukrainians. Throughout the twentieth century, non-Ukrainians lived in pockets, where whole communities were dominated by one ethnic group. This failure to integrate and assimilate facilitated ethnic cleansing operations. The fifth period of ethnic cleansing followed the collapse of Soviet power and is not reflected in this illustration.