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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**UKRAINE**

**OPINION**

**ON THE LAW  
ON SUPPORTING THE FUNCTIONING  
OF THE UKRAINIAN LANGUAGE  
AS THE STATE LANGUAGE**

**Adopted by the Venice Commission  
at its 121<sup>st</sup> Plenary Session  
(Venice, 6-7 December 2019)**

**on the basis of comments by**

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## I. Introduction

1. By letter of 22 May 2019, the Chairperson of the Committee of the Parliamentary Assembly of the Council of Europe on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) requested an opinion of the Venice Commission on the Ukrainian Law on Supporting the Functioning of the Ukrainian Language as the State Language (hereinafter: "the State Language Law") (CDL-REF(2019)036).
2. This opinion is based on the unofficial English translation of the Law. The translation may not always accurately reflect the original version on all points, therefore certain issues raised may be due to problems of translation.
3. Ms Bilkova (Czech Republic), Ms Kjerulf Thorgeirsdottir (Iceland), Mr Velaers (Belgium) acted as rapporteurs. Mr Dunbar (United Kingdom) and Mr Hofmann (Germany), DG II experts, joined the rapporteur group tasked with this opinion.
4. On 24 and 25 October 2019, a delegation of the Commission composed of the rapporteurs Ms Bilkova, Ms Kjerulf Thorgeirsdottir and Mr Hofmann, accompanied by Mr Markert, Secretary of the Venice Commission, and Mr Bedirhanoglu, legal officer at the Secretariat, visited Kyiv and had meetings with the Ministry of Foreign Affairs, the Ministry of Culture, Youth and Sport, the Ministry of Education, the National Council on Television and Radio Broadcasting, the Parliamentary Commissioner for Human Rights, the Constitutional Court, representatives of some parliamentary parties, the international community and representatives of the civil society, including some of Ukraine's national minorities. The Commission is grateful to Council of Europe Office in Kyiv for the excellent organisation of this visit. The Commission wishes to thank all interlocutors for the fruitful discussions which took place on this occasion.
5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the visit to Kyiv. The draft opinion was examined by the Sub-commissions on National Minorities, on Federal and Regional States and on Fundamental Rights at their joint meeting on 5 December 2019. It was adopted by the Venice Commission at its 121<sup>st</sup> Plenary Session (Venice, 6-7 December 2019).

## II. Background Information

### A. Linguistic situation in Ukraine

6. Ukraine is a multi-ethnic country. According to the latest Ukrainian population census of 2001, ethnic Ukrainians make up 77.8% of the population. Other larger ethnic groups are Russians (17.3%), Belarusians (0.6%), Moldovans (0.5%), Crimean Tatars (0.5%), Bulgarians (0.4%), Hungarians (0.3%), Romanians (0.3%), Poles (0.3%), Jews (0.2%), Armenians (0.2%), and Greeks (0.2%). Ukraine also has smaller populations of Karaites (>0.1%), Krymchaks (>0.1%) and Gagauzes (0.1%).
7. Although the Ukrainian language is the only State language of Ukraine, a considerable number of ethnic Ukrainians and persons belonging to non-Russian minorities have a command of the Russian language and even consider it to be their "native language". According to the 2001 census, 67,5% of the population of Ukraine declared Ukrainian to be their "native language", while 29,6 % declared Russian to be their "native language".<sup>1</sup>
8. While a census was supposed to be conducted in 2011, it has been repeatedly postponed and is now scheduled to take place in 2020. In this respect, the Venice Commission invites the

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<sup>1</sup> "Ethnical and language composition of the population of Ukraine"; 2001 Census, <http://2001.ukrcensus.gov.ua/eng/>.

authorities to take into consideration in the process of conducting a new population census the recommendations of its 2011 opinion on the draft law of Ukraine on languages.<sup>2</sup>

## **B. Constitutional and legislative framework for the protection of languages**

9. Several articles of the Ukrainian Constitution deal with the protection of linguistic rights and freedoms. Article 10 is the key provision from this perspective, as it lays down the basic/constitutional principles for the operation of languages in Ukraine: “*The State language of Ukraine shall be the Ukrainian language. The State shall ensure comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine. Free development, use, and protection of Russian and other languages of national minorities of Ukraine shall be guaranteed in Ukraine. The State shall promote the learning of languages of international communication. The use of languages in Ukraine shall be guaranteed by the Constitution of Ukraine and shall be determined by law.*”

10. Furthermore, Article 11 prescribes that the State shall “*promote the consolidation and development of the Ukrainian [...] culture, as well as development of ethnic, cultural, linguistic, and religious identity of all indigenous peoples and national minorities of Ukraine*”.

11. The non-discrimination clause in Article 24.2 forbids “*privileges or restrictions based on race, [...] linguistic or other characteristics.*”

12. Article 53.5 stipulates that “[c]itizens belonging to national minorities shall be guaranteed, in accordance with law, the right to education in their native language, or to study their native language at the state and communal educational establishments or through national cultural societies.”

13. The Constitution guarantees also other fundamental freedoms, such as freedom of expression (art. 34), freedom of religion (art. 35), freedom of association (art. 36), the right to peaceful assembly (art. 39), freedom of literary, artistic, scientific and technical creativity (art. 54), etc.

14. The use of languages is regulated in addition to the Constitution by the 1992 Law on National Minorities. This Law contains however only general provisions regarding the language related rights of persons belonging to national minorities<sup>3</sup> which do not offer any adequate guarantees for the protection of minority rights. That said, there are also in other legislative texts provisions regulating the language use in specific sectors (education, judicial proceedings, media, etc.).

15. Further, Ukraine has ratified several international treaties on the protection of human rights, which prohibit discrimination on the ground of language<sup>4</sup> and which protect minority rights – notably Article 27 of the [International Covenant on Civic and Political Rights](#) (hereinafter: “ICCPR”), the [Framework Convention for the Protection of National Minorities](#) (hereinafter: “the Framework Convention”) and the [European Charter for Regional or Minority Languages](#) (hereinafter: “the Language Charter”). In its instrument of ratification, Ukraine indicated that it would apply the Language Charter to the following languages: Byelorussian, Bulgarian, Gagauz,

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<sup>2</sup> [CDL-AD\(2011\)008](#), Opinion on the Draft Law on languages in Ukraine, §§14-15.

<sup>3</sup> Law of Ukraine ‘On National Minorities’ no. 2494-XII of 25 June 1992, available at [https://www.minelres.lv/NationalLegislation/Ukraine/Ukraine\\_Minorities\\_English.htm](https://www.minelres.lv/NationalLegislation/Ukraine/Ukraine_Minorities_English.htm). As rightly pointed out by the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter: “ACFC”), this law is badly focused and too vague to regulate complex issues connected to the protection of national minorities in contemporary Ukraine. [ACFC/OP/IV\(2017\)002](#), Fourth Opinion on Ukraine, adopted on 10 March 2017, §45.

<sup>4</sup> Article 14 of the [European Convention on Human Rights](#) (hereinafter: “ECHR”), Article 1 of [Protocol 12 to the ECHR](#), Article E of the [European Social Charter \(Revised\)](#), Article 26 of the International Covenant on Civic and Political Rights, Article 2 (2) of the [International Covenant on Social, Cultural and Economic Rights](#).

Greek, Jewish, Crimean Tatar, Moldavian, German, Polish, Russian, Romanian, Slovak and Hungarian. Furthermore, it stipulated that it would apply the identical Part III commitments of the Language Charter (Articles 8 to 14) to each of these languages.<sup>5</sup> In its 2010 report on Ukraine, the Committee of Experts of the Language Charter (hereinafter: “ECRML”) pointed out that the Language Charter also applies to other languages such as Karaim, Krimchak and Ruthenian. However, they are covered only by Part II (Article 7) of the Language Charter.<sup>6</sup>

16. According to Article 9 of the Ukrainian Constitution, “*international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine.*” International treaties, as explained in two previous opinions of the Venice Commission on Ukraine,<sup>7</sup> come therefore immediately after the Constitution and prevail over ordinary laws. The State Language Law as well as other legislation on minorities have to be in conformity with them.

17. The fulfilment of Ukraine’s international obligations to protect the language rights of persons belonging to national minorities is monitored by the specific supervisory bodies of the Council of Europe (CoE) – the ACFC<sup>8</sup> and the ECRML,<sup>9</sup> the European Commission against Racism and Intolerance (ECRI)<sup>10</sup> and the CoE Commissioner for Human Rights<sup>11</sup> and has led to the adoption of specific recommendations by those bodies and the Committee of Ministers of the CoE.<sup>12</sup>

### **C. Recent legislative developments in the field of linguistic rights in Ukraine and previous opinions of the Venice Commission**

18. The use of languages has been for a long time in Ukraine a highly sensitive issue, which has repeatedly become one of the main topics in different election campaigns and continues to be a subject of debate – and sometimes raise tensions – within the Ukrainian society as well as with kin-States of some national minorities of Ukraine.

19. In 2012, the Ukrainian Parliament adopted the Law on the Principles of the State Language Policy.<sup>13</sup> The Venice Commission had the occasion to examine in 2011 two draft versions of that law. In its March 2011 opinion,<sup>14</sup> the Commission found the draft unbalanced, as its provisions were disproportionately strengthening the position of the Russian language, without taking appropriate measures to confirm the role of Ukrainian as the State language, and without duly ensuring protection of other regional and minority languages. It questioned the preferential protection conferred on the Russian language in the Ukrainian context where the use of Russian

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<sup>5</sup> See the [Declaration](#) of Ukraine contained in the instrument of ratification deposited on 19 September 2005

<sup>6</sup> ECRML, Application of the Charter in Ukraine. [Initial monitoring cycle](#), ECRML (2010) 6, 7 July 2010, Chapter 3, sub Z.

<sup>7</sup> [CDL-AD\(2004\)013](#), Opinion on Two Draft Laws amending the Law on National Minorities in Ukraine, §9; [CDL-AD\(2004\)022](#), Opinion on the latest version of the Draft Law amending the Law on National Minorities, §6.

<sup>8</sup> The ACFC has adopted four opinions on Ukraine: [ACFC/INF/OP/I\(2002\)010](#), First Opinion on Ukraine, adopted on 1 March 2002; [ACFC/INF/OP/II\(2008\)04](#), Second Opinion on Ukraine, adopted on 30 May 2008; [ACFC/INF/OP/III\(2012\)02](#), Third Opinion on Ukraine, adopted on 22 March 2012; [ACFC/OP/IV\(2017\)002](#), *op. cit.*

<sup>9</sup> The ECRML has adopted three reports on Ukraine: [Initial monitoring cycle](#), *op. cit.*; application of the Charter in Ukraine. [2<sup>nd</sup> monitoring cycle](#), ECRML (2014) 3, 15 January 2014; application of the Charter in Ukraine. [3<sup>rd</sup> report in respect of Ukraine](#), 24 March 2017.

<sup>10</sup> ECRI [report](#) on Ukraine, fifth monitoring cycle, adopted on 20 June 2017.

<sup>11</sup> The CoE Commissioner for Human Rights’ statement of 29 October 2019: [Language policies should accommodate diversity, protect minority rights and defuse tensions](#)

<sup>12</sup> See Recommendation [CM/RecChL\(2018\)6](#) of the Committee of Ministers to member States on the application of the European Charter for Regional or Minority Languages by Ukraine, adopted on 12 December 2018.

<sup>13</sup> Before that Law the use of languages was governed by a legislation dating back to 1989 – the Law of the Ukrainian Soviet Socialist Republic on Languages in the Ukrainian Soviet Socialist Republic.

<sup>14</sup> [CDL-AD\(2011\)008](#), *op. cit.*, §§74 and 112.

is already an everyday fact and expressed concern that, based on such an approach, the draft might increase existing linguistic divisions in the country rather than decrease them.

20. The opinion adopted in December 2011<sup>15</sup> examined a second, revised draft law submitted by the Ukrainian authorities. The Commission welcomed it as a more balanced text, and an approach which could be beneficial, in certain areas of public life, to the protection of other regional or minority languages as well. It concluded, however, that increased guarantees were needed to ensure a fair balance between the protection of the rights of minorities and their languages, including Russian, and the protection of the Ukrainian language.

21. The adopted text, which was not submitted to the assessment of the Venice Commission, conferred upon national minority languages the status of a “regional language” of Ukraine where the percentage of persons belonging to national minorities exceeds 10% of the total local population. The Law authorized the use of regional languages in courts, schools and other government institutions in those areas. Although its articles mentioned both Russian and other regional and minority languages, it was focused especially on the protection and use of the Russian language at an almost equal level to the State language in many spheres of public, social, economic, cultural and educational life. Following the adoption of the 2012 Law, numerous local self-governments took decisions to recognise minority languages present within their territory as regional languages.<sup>16</sup>

22. In the aftermath of the Euromaidan protests in February 2014, the Ukrainian Parliament voted for the abrogation of this Law, but this abrogation was not signed by the then acting President of Ukraine. The 2012 Law was nevertheless declared unconstitutional by the Constitutional Court in February 2018 on the ground that the procedure for the consideration and adoption of the Law established by the Constitution was violated. The legal situation after the cancellation of the 2012 Law until the adoption of the State Language Law in 2019 is unclear.

23. On 5 September 2017, the Parliament adopted the Law on Education, which regulates in its Article 7 the use of languages in education. Article 7 (which is reflected in Article 21 of the State Language Law) establishes different regimes for the teaching of and in the languages of indigenous peoples of Ukraine, the official languages of the EU, and the languages of national minorities which are not the official languages of the EU.

24. In its 2017 opinion on Article 7 of the Law on Education (hereinafter: “the 2017 opinion”), the Venice Commission recommended that the authorities replace Article 7 with a more balanced and more clearly worded provision. Further, the Commission concluded that the less favourable treatment of the Russian and other non-EU languages was difficult to justify and raised issues of discrimination.<sup>17</sup> However, the Constitutional Court of Ukraine declared, by its ruling n° 10-r/2019 of 16 July 2019, the Law, including its Article 7, non-discriminatory and thus constitutional.

#### **D. Scope of the opinion**

25. In the present opinion, the Venice Commission has examined neither the overall legal framework in force in Ukraine in the field of minority and language protection nor the overall situation of national minorities and their languages in this country. The opinion is limited to the provisions of the State Language Law. Therefore, the present opinion refers to the provisions in

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<sup>15</sup> [CDL-AD\(2011\)047](#), Opinion on the draft law on principles of the state language policy of Ukraine, §§62 and 65.

<sup>16</sup> According to information that Ukraine provided to the ACFC in May 2016, the Russian language was recognised as a regional language in nine regions of Ukraine. Some other minority languages (especially Romanian and Hungarian) were also recognised as official languages in the relevant settlements. See [ACFC/OP/IV\(2017\)002](#), *op. cit.*, §119.

<sup>17</sup> [CDL-AD\(2017\)030](#), Opinion on the provisions of the Law on Education of 5 September 2017 of Ukraine, which concern the use of the state language and minority and other languages in education, §§124 and 125.



other laws on linguistic rights only when it is necessary for the assessment of the Law under examination.

26. The opinion analyses the State Language Law only as to its compliance with applicable international instruments (especially the Framework Convention, the Language Charter, Articles 26 and 27 ICCPR as well as Article 14 ECHR and its Protocol No. 12). The European Court of Human Rights (hereinafter: "ECtHR") stated regarding Article 14 that "*discrimination means treating differently, without an objective and reasonable justification, persons in similar situations. 'No objective and reasonable justification' means that the distinction in issue does not pursue a 'legitimate aim' or that there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realised'*". The Court also underlined that States enjoy a margin of appreciation under Article 14 ECHR and that "*the scope of a Contracting Party's margin of appreciation [...] will vary according to the circumstances, the subject matter and the background*".<sup>18</sup> The State Language Law is now pending before the Constitutional Court of Ukraine for examination of its constitutionality. In deference to the Constitutional Court, the Venice Commission will avoid commenting on the compatibility of the Law with the Ukrainian Constitution.

### **III. Analysis**

#### **A. General comments**

##### **1. Adoption procedure**

27. From information received by the delegation of the Venice Commission during its visit to Kyiv, it appears that representatives of the national minorities were not adequately consulted in the process of the preparation and adoption of the State Language Law. The Venice Commission recalls that Ukraine committed itself under Article 7, paragraph 4 of the Language Charter that in determining its policy with regard to regional or minority languages, it would take into consideration the needs and wishes expressed by the groups which use such languages. A similar obligation of consultation for Ukraine follows from Article 15 of the Framework Convention which requires that parties create conditions for the effective participation of persons belonging to national minorities in public affairs, in particular those affecting them. As pointed out in the Explanatory Report to the Framework Convention, this involves *inter alia* consultation with these persons when States are contemplating legislative or other measures likely to affect them directly, as well as involving them in the assessment of the possible impact that planned measures might have on them. (§80)

28. As the State Language Law contains many provisions which clearly affect speakers of minority languages, representatives of the minorities and indigenous peoples of Ukraine should have been sufficiently and adequately consulted in order to ensure that their needs are understood and taken into consideration.<sup>19</sup> Inadequate involvement could not be justified by the argument advanced by the authorities during the visit to Kyiv that national minorities would be consulted on the draft law on minorities. The draft law on minorities will be discussed further in §§33-38 below.

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<sup>18</sup> ECtHR, *Sejdić and Finci v. Bosnia and Herzegovina*, nos. 27996/06 and 34836/06, 22 December 2009, §42

<sup>19</sup> In several opinions, the Commission underlined the necessity and importance of the participation of persons belonging to national minorities in the legislative processes concerning minority questions. See, among others, CDL-AD(2004)026, Opinion on the Revised Draft Law on Exercise of the Rights and Freedoms of National and Ethnic Minorities in Montenegro, §44; CDL-AD(2004)013, *op. cit.*, §47; CDL-AD(2017)030, *op. cit.*, §54.

## 2. Legitimacy of the aim of promoting the State language and the need to adopt a balanced approach

29. The overarching purpose of the State Language Law is the protection and promotion of Ukrainian and its establishment as “*the language of interethnic communication in Ukraine*”. In parallel, the Law makes reference in its Articles 5 and 6 to the responsibility of the State to take necessary measures to ensure the good command of the State language by all citizens and non-citizens living in Ukraine.

30. The Venice Commission underlined in its opinion on Article 7 of the Law on Education and on the previous opinions on Ukraine and other countries, that it is a legitimate and commendable aim for States to promote the strengthening of the State language and its command by all citizens, and to take action for its learning by all, as a way to address existing inequalities and to facilitate more effective integration of persons belonging to national minorities into society.<sup>20</sup> The preamble of the Law itself refers expressly to the recommendations of the Venice Commission to the Ukrainian legislator to take additional measures in order to strengthen the role of the Ukrainian language in the Ukrainian society. The legitimate aim of the protection of the State language has also been clearly recognized by the Framework Convention (Article 14.3<sup>21</sup>) and the Language Charter (Preamble<sup>22</sup>) and underlined on several occasions by their supervisory bodies in the context of their country monitoring reports.<sup>23</sup>

31. That said, these treaties imply that the member States have to strike a fair balance between the preservation and promotion of the State language as a tool for integration within society, on the one hand, and the protection of the linguistic rights of persons belonging to national minorities, on the other hand.<sup>24</sup> While fully recognizing that it is a legitimate aim of every State to strengthen the State language, in particular in countries where it had been subject to oppression in the recent past, the ACFC has, in its relevant opinions concerning Estonia, Latvia and Ukraine, consistently stressed that such measures must not unduly limit the language-related rights of persons belonging to national minorities.<sup>25</sup>

32. This is also the approach adopted by the Venice Commission in its previous opinions regarding the use of languages in Ukraine. While the Venice Commission underlined the legitimate aim of promoting “*the Ukrainian language as one of the crucial components of national identity of the Ukrainian people and a guarantee of its national sovereignty*”,<sup>26</sup> it also stressed that the measures taken to achieve this legitimate purpose have to be coordinated and adequately balanced with guarantees and measures for the protection of the linguistic rights of Ukraine’s minorities, which may not be unduly diminished.<sup>27</sup>

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<sup>20</sup> [CDL-AD\(2017\)030](#), *op. cit.*, §118. See also [CDL-AD\(2010\)035](#), Opinion on the Act on the State Language of the Slovak Republic, §§41-42; [CDL-AD\(2012\)011](#), Opinion on the Act on the Rights of Nationality of Hungary, §73.

<sup>21</sup> According to the Explanatory Report of the Framework Convention, “[t]he opportunities for being taught the minority language or for receiving instruction in this language are without prejudice to the learning of the official language or the teaching in this language. Indeed, knowledge of the official language is a factor of social cohesion and integration”.

<sup>22</sup> The Preamble to the Language Charter recognises that “*the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them*”. In the explanatory note to the Language Charter, it is noted that “*it is recognised that in every State it is necessary to know the official language (or one of the official languages); consequently, none of the charter’s provisions should be interpreted as intending to raising obstacles to the knowledge of official languages.*”

<sup>23</sup> See e.g. [ACFC/INF/OP/I/\(2003\)005](#), Opinion on the Russian Federation, adopted on 13 September 2002, §80; [ACFC/INF/OP/I/\(2002\)5](#), First Opinion on Estonia, adopted on 14 September 2001, §39.

<sup>24</sup> See [CDL-AD\(2011\)008](#), *op. cit.*, §97.

<sup>25</sup> See [ACFC/INF/OP/I/\(2002\)5](#), *op. cit.*, 39; [ACFC/OP/I/\(2008\)002](#), First Opinion on Latvia, adopted on 9 October 2008, §109; [ACFC/INF/OP/I/\(2002\)010](#), *op. cit.*, §50.

<sup>26</sup> [CDL-AD\(2011\)008](#), *op. cit.*, §49.

<sup>27</sup> [CDL-AD\(2017\)030](#), *op. cit.*, §77.



33. The Ukrainian Constitution also imposes an obligation to guarantee “*free development, use, and protection of Russian and other languages of national minorities of Ukraine*” (art. 10.3), which necessitates a balanced approach in the field of use of languages. However, the Law under examination almost exclusively focusses on strengthening the use of Ukrainian, without simultaneously regulating in a systematic way the use of minority languages. That said, in several provisions the Law allows an additional use of a minority language. Many articles of the Law contain provisions which expressly define the exceptions to the general obligation to use Ukrainian.<sup>28</sup> Some provisions provide for exceptions by using the expressions “unless otherwise provided by law” (arts 13.6 and 13.8), “according to the law” (art. 28.2), “by special laws” (art. 21.9), etc. On the contrary, some other provisions clearly mention the laws where the use of other languages is regulated,<sup>29</sup> which is a preferable approach from the perspective of legal certainty. In particular, several provisions (Articles 18.5, 23.2, 26.1, 29.2, 32.3, 39.4) refer throughout the Law to the “law on the procedure for the exercise of rights of indigenous peoples and national minorities” (hereinafter: “the Law on Minorities”). Such a law does not yet exist. Point 8.3 of Section IX Final and Transitional Provisions of the State Language Law provides that the Cabinet of Ministers of Ukraine shall, within six months from the entry into force of the State Language Law (by January 2020), prepare and submit for consideration by the Verkhovna Rada of Ukraine a draft law on minorities. As the current Law on National Minorities is far from providing adequate guarantees for the protection of minorities, there is a real need for a new law on protection of minorities.

34. However, the Law on Minorities should have been prepared simultaneously with the State Language Law in order to secure from the outset a balance between the protection of Ukrainian and the language-related rights of persons belonging to national minorities. This would have been more advisable due to the close link between these two pieces of legislation, which should complement each other.

35. In effect, if some provisions of the State Language Law come into force at a time between one and five years after the date of entry into force of the Law, many other provisions which restrict the use of minority languages have already been in force since 16 July 2019 (e.g. Articles 8, 12, 14-18, 20, 23.7, 24, 28, 29, 34, 35, 39, 40, 41, etc.). Some of those Articles expressly states that the use of minority and indigenous languages in the area concerned will be determined by the Law on Minorities (e.g. Article 29<sup>30</sup>).

36. Those provisions leaving space for the use of minority and indigenous languages can only effectively be applied once the Law on Minorities is in force. The legislator should therefore consider postponing until the adoption of the Law on Minorities the implementation of the State Language Law’s provisions which are already in force. The amendments to be made to the State Language Law in the light of the recommendations of the present opinion and relevant previous opinions should be prepared simultaneously with the Law on Minorities and in close consultation with all relevant stakeholders, especially representatives of the national minorities and indigenous peoples.

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<sup>28</sup> This is for instance the case of Article 23 describing conditions under which the use of a language other than Ukrainian can be allowed in the cultural, artistic, recreational and entertainment events (art. 23.2), in announcements, posters, and other information materials about cultural, artistic, recreational and entertainment events (art. 23.3), in public rendition and/or public showing of a theatrical performance (art. 23.4), in information materials about museum items on display at museums or art exhibitions and in admission tickets to museums and exhibitions (art. 23.5), in films screened in Ukraine (art. 23.6), in tourist and sightseeing services (art. 23.8).

<sup>29</sup> See for instance Article 14.2 mentioning the possibility to use other language than Ukrainian in court proceedings in the manner prescribed by the procedural codes and the Law on Judicial System and Status of Judges; Article 23.6 stating that domestic films may be screened in the Crimean Tatar language or other languages of indigenous peoples in accordance with the Law on Film Industry; Article 24 providing that the mandatory (minimum) amount of broadcasting in Ukrainian for certain categories of television and radio organisations is determined by the Law on Television and Radio Broadcasting, etc.

<sup>30</sup> As provisions already in force which expressly refer to the Law on Minorities, see also Articles 18 and 39. Article 32, which refers to the Law on Minorities, will come into force on 16 January 2020.

37. The Venice Commission delegation was ensured during its visit to Kyiv that the national minorities and indigenous peoples would be provided adequate safeguards for the protection of their rights in compliance with the international commitments of Ukraine, especially those flowing from the Framework Convention, the Language Charter, the ECHR and its Protocol No. 12.

38. That said, the State Language Law already indicates the views of the Ukrainian legislator on the linguistic rights of persons belonging to national minorities. Article 2.3 specifies that the anticipated Law on Minorities will be “*subject to the specific features determined by this law*”. In the view of the Commission, this clause should not be interpreted in a way that would obstruct the issuing of legal guarantees for the effective protection and use of minority languages and the legislator should be ready to mitigate sufficiently, in the light of the recommendations made in the present opinion, the general rules laid down in the State Language Law which appear to be inconsistent with the international commitments of Ukraine.

### 3. Compliance with the principle of non-discrimination

39. Several provisions of the Law provide a differential treatment between different categories of languages: (a) the languages of indigenous peoples; (b) English; (c) the languages of national minorities which are EU official languages (more specifically Bulgarian, Greek, German, Polish, Romanian, Slovak and Hungarian); (d) the languages of minorities that are not EU official languages (in particular Russian, Byelorussian and Yiddish). The provisions concerned are the following:

- Article 21 establishes different regimes for the speakers of the abovementioned four categories of languages in the field of education (see *infra* §§68-69)
- Article 22.2 provides that “scientific publications shall be made public in the State language, English and/or other official languages of the European Union.”
- Article 25.5 provides for an exception to the obligation imposed on print media outlets to offer parallel Ukrainian-language versions and the obligation for the print media distribution points which distribute the print media in other languages to distribute their Ukrainian-language versions as well: these “*requirements [...] shall not apply to the print mass media published exclusively in the Crimean Tatar language, other languages of indigenous peoples of Ukraine, in the English language or another official language of the European Union, regardless of whether they contain texts in the State language, as well as to scientific publications whose language is determined by Article 22 of this Law.*”
- Article 26.2 provides that the requirement that 50 per cent of the total number of book titles available for sale at a bookshop or other book distribution facility must be in the State language, does not apply to bookshops or other establishments that distribute book publications in the official languages of the EU or in the State language only.
- Article 27.1 stipulates that “*computer software with a user interface, which is sold in Ukraine, must have a user interface in the State language, English and/or other official languages of the European Union.*”

40. The term “indigenous peoples” is not defined in the Constitution – though it refers to this term in three Articles: 11, 92 and 119) -, the State Language Law, the Education Law or the current Law on Minorities. Nor does it seem to be defined in any other national legislation. During the visit to Kyiv, the Venice Commission delegation was given to understand that “indigenous peoples of Ukraine” are those minorities which do not have a kin-State. Specific reference was made to the Crimean Tatar, Karaite and Krimchak minorities, but this category would exclude the Gagauzes due to the existence of an autonomous region of Gagauzia within the territory of the

Republic of Moldova. As for the term “national minorities”, it is understood by the authorities as covering only the minorities mentioned in the Declaration of Ukraine annexed to its instrument of ratification of the Language Charter (see *supra* §15). It is important to clarify the exact meaning of those concepts either in the text of the State Language Law or in the future Law on Minorities.

41. Turning to the issue of differential treatment, the Venice Commission underlines that the Framework Convention and the Language Charter do not impose an obligation on the State authorities to grant an identical protection to every single minority group. However, in order not to be deemed as discriminatory, any differential treatment of national minorities should be duly justified.

42. In its 2017 opinion, the Venice Commission stated that, taking into account of the specific conditions of the Crimean Tatars and other smaller minorities, affirmative action in their favour may indeed be justified. However, as regards differential treatment related to the use of languages in education between minorities speaking an official language of the EU, and other national minorities, such as the Russian minority, the Venice Commission opined that it is very difficult to see any reason justifying this differential treatment.<sup>31</sup> The Venice Commission concluded that it was highly likely that the less favourable treatment of the Russian language (and other languages which are not official languages of the EU), is not justifiable in the light of the principle of non-discrimination unless a more convincing justification is provided (§110).

43. The State Language Law extends the differential treatment to other areas. The Ukrainian authorities explained that, as the indigenous peoples do not have a kin-State, they are in a situation of vulnerability which warrants more support from the Ukrainian State. Already in its 2017 opinion the Venice Commission acknowledged that “*there might indeed be good reasons to provide preferential treatment to indigenous peoples, as foreseen in Article 7 of the Education Law*”. This statement is valid also for the exemptions foreseen in the State Language Law in favor of indigenous people languages.

44. With regards to the differential treatment between the minorities speaking an official language of the EU, and other national minorities in the above-mentioned provisions, the authorities explained it by the European ambitions of Ukraine and by the century of oppression of the Ukrainian language in favour of Russian which created *de facto* a privileged status for Russian in Ukrainian society. In the opinion of the Venice Commission, these arguments are not sufficient to outweigh the previous assessment of the Venice Commission and are not convincing from the perspective of human rights in general and the prohibition of discrimination in particular. Foreign policy considerations, – whether it be the pro-European policy of Ukraine or the conflict with Russia due to the annexation of Crimea – are not a valid argument in a debate on the languages that citizens, including members of national minorities, are allowed to use. As for the historical oppression of Ukrainian, it may lead to the adoption of positive measures aimed at promoting Ukrainian, but in the opinion of the Venice Commission, this cannot justify depriving the Russian language and its speakers living in Ukraine, of the protection granted to other languages and their speakers – leaving aside the fact that the regulation on “non-EU languages” affects not only Russian but many other languages as well. The Venice Commission

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<sup>31</sup> The Venice Commission stated: “*Taking into account the particular place of the Russian language in Ukraine (the most widely used of all of Ukraine’s regional or minority languages, and, as the Committee of Experts of the Language Charter has noted, the main language of communication for many persons belonging to non-Russian minorities), its more restricted use than that of official languages of EU member states, as it seems to be contemplated in Article 7 of the Education Law, is clearly problematic. It could be argued that the historical language policy, which favored Russian, and the current political context, may be factors which could justify such an approach. However, it appears that even the domestic constitutional order of Ukraine gives some recognition to the particular place of Russian. Article 10 of the Constitution of Ukraine provides that the state language of Ukraine is Ukrainian, but it also guarantees “the free development, use and protection of Russian, and other languages of national minorities of Ukraine”. It is therefore far from clear that a consideration of the historical factor would justify the less favorable treatment accorded to Russian under Article 7 of the Education Law.*” [CDL-AD\(2017\)030](#), *op. cit.*, §112.

recommends therefore the legislator to repeal the subdivision established by the Law among the minority languages to the extent that it is not based on an objective and reasonable justification.

## **B. Specific comments**

### **1. Private communication (art. 2)**

45. Article 2.2 provides that the Law does not apply to the sphere of private communication and the conduct of religious rites. It is unclear how the term “private communication” will be defined for the purposes of the Law. A definition of private communication exists in the third paragraph of Article 258 of the [Criminal Procedural Code](#) of Ukraine, which stipulates that “[c]ommunication is considered to be private insofar as information is transmitted and stored under such physical or legal conditions where participants to the communication can expect that such information is protected from interference on the part of others”.

46. If a similar interpretation was to be applied in the context of the State Language Law, this would contravene the right to freedom of expression and the rights protected under Article 10 of the Framework Convention, as private parties must be allowed to use a minority language among themselves, including when visible or audible by others in public spaces. Such an interpretation would breach the freedom of expression as guaranteed by Article 10 ECHR as well. This statement is also valid with regard to civil servants. They should not be required to use the State language in non-official verbal and written communication between themselves during active service.

### **2. Proficiency requirement (arts 6, 7-11, 44, 48)**

#### **a. Proficiency requirement for citizens (art. 6)**

47. Article 6 requires every citizen of Ukraine to be proficient in Ukrainian. The Law imposes on the State the responsibility to provide each citizen of Ukraine with opportunities for mastering the State language not only through the ordinary educational system but also by organising free Ukrainian language courses for adults (art. 6). Article 5 foresees adoption of a number of other positive measures by the State in order to facilitate mastering of the State language.

48. These measures to ensure a good command of Ukrainian by all citizens and non-citizens living in Ukraine are welcomed. They are in line with the previous opinions where the Venice Commission recommended the taking of positive measures in order to re-affirm the role of Ukrainian as the only State language and with Article 10.2 of the Ukrainian Constitution (see *supra* §9).

49. However, it is not entirely clear what would be the consequence for the citizens who do not comply with this requirement. It is also unclear how this provision would relate to the provisions of the Law, which allow the use of another language by a person who does not know Ukrainian. This is for instance the case under Article 16.2 which states that “*an employee of a law enforcement agency, intelligence agency, [...] may communicate with a person who does not understand the State language in a language acceptable for both parties, as well as via an interpreter.*” The question is whether a civil servant in such a case could refuse to communicate in another language with a citizen who claims not to understand Ukrainian? (for similar cases see also Articles 30.3 and 33.2). This provision should be redrafted in order to ensure that it is not used as a legal basis to refuse to apply to citizens the exceptions provided in these and other possible provisions in other legislative texts.

b. Proficiency requirement for acquisition of citizenship (art. 7)

50. Article 7 provides that a person applying for Ukrainian citizenship will need to prove an “*appropriate proficiency in the State language*” by passing a proficiency examination. The required level of proficiency will be determined and the examination will be organised by the National Commission for Standards of the State Language (hereinafter: “the Commission for the State Language”). This provision will be applicable after July 2021.

51. It is unclear to the Commission for what reasons other evidence of the appropriate proficiency – such as a school diploma – is not accepted as proof of language proficiency, as it seems to be the case under the current Law on Citizenship (no. 2235-III of 18 January 2001) and as it is the case for certain category of professions listed under Article 9.1 (see art. 10.3).

c. Proficiency requirement for access to state positions (arts 9-11, 44)

52. Article 9 contains a long list of public officials and elected persons required to “*be proficient in and use the State language in the course of their official duties*”. The degree of the required proficiency is to be defined by the Commission for the State Language and can be established for certain categories of positions (e.g. members of parliament, civil servants, etc.) only by a State certificate on proficiency in Ukrainian to be issued by the Commission. For other positions (e.g. members of local parliaments, lawyers, etc.) it can be established by school diploma of complete general secondary education indicating that a person studied Ukrainian as a subject (arts 10, 11.1 and 44.1.3). These requirements will enter into force on 16 July 2021 (Section IX, point 1).

53. Though these provisions serve a legitimate aim, in order to be in compliance with the principle of non-discrimination, the language proficiency requirements will have to be proportionate to the specific legitimate public interest which is at stake. The ACFC noted in its thematic commentary no. 3 that “*positions where proficiency in the official language is a legitimate condition, language proficiency requirements must in each case be proportionate to the public interest pursued and not go beyond what is necessary to achieve that aim. Moreover, language training courses and, where necessary, targeted support should be made available before language requirements are enforced, in order to facilitate the learning of the official language and prevent discrimination or insufficient participation of staff or applicants belonging to national minorities.*”<sup>32</sup> This implies that the Commission for the State Language will have to differentiate according to the legitimate expectations of the level of language proficiency that can be justified for each category of officials/professionals mentioned in Article 9 of the Law. The abovementioned provisions do not seem to preclude such a differentiation, which is positive.

54. With regard to the language requirement for the members of national and local Parliaments, the Venice Commission recalls that in its Judgment in the case *Podkolzina v. Latvia* the ECtHR stated that the obligation for a candidate to the parliamentary elections to understand and speak Latvian does not violate Article 3 of Protocol No. 1.<sup>33</sup> However, as explained in the thematic commentary no. 3 of the ACFC, language proficiency requirements imposed on candidates for parliamentary and local elections may raise issues of compatibility with Article 15<sup>34</sup> of the Framework Convention as they negatively affect the participation of persons belonging to national minorities in public affairs (§92). Though the Venice Commission acknowledges that the linguistic requirement for members of national and local parliaments pursues a legitimate aim, its compliance with Article 15 of the Framework Convention would depend on how in practice that requirement would be applied. The language proficiency requirements in Article 9 of the Law

<sup>32</sup> ACFC, [Thematic Commentary No. 3](#) on the language rights of persons belonging to national minorities under the Framework Convention, §87.

<sup>33</sup> ECtHR, 9 April 2002, [Podkolzina v. Latvia](#), n° 46726/99, §§33-34.

<sup>34</sup> Article 15: “*The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.*”

enter into force on 16 July 2021. The Ukrainian authorities will have to provide, in accordance with the Law, adequate opportunities for the persons who, according to the Law, must learn and use Ukrainian and to prove their language proficiency (Section IX, point 1).

d. Language proficiency testing (art. 48)

55. The level of proficiency in the State language can be evidenced by three documents only: 1) the State certificate, 2) an extract from the Register, evidencing the issuance of a State certificate, 3) a document of complete general secondary education. For Ukrainian citizens, taking the test is free of charge. Testing results may be appealed to the Commission for the State Language and then to a court. Information about state certificates (surname, first name, patronymic of a State certificate holder, level of proficiency in the State language, the State certificate serial number and date of issue) will be accessible online on the website of the Commission for the State Language (art. 48).

56. The Law seems to provide all the necessary safeguards in order to avoid arbitrary decisions regarding the issuance of the State certificates on proficiency in Ukrainian. That said, the information on the language proficiency of a person is to be considered as information on an aspect of his or her personality which is covered by the right to respect for private life. To make this information available to the general public cannot be deemed to be necessary in a democratic society in the interest of one of the legitimate goals mentioned in Article 8.2 ECHR. Therefore, this information should be accessible only for a limited group of persons who may have a legitimate interest in confirming the authenticity of a State certificate presented by a person to accede to Ukrainian citizenship or to public positions listed in Article 9.

### 3. Working language of public authorities (arts 13-16)

57. Articles 13-16, which are already in force, regulate the use of languages in the work of some public authorities. According to Article 13, regulations and acts of individual application adopted by the central and local authorities should be in Ukrainian and in conformity with the Ukrainian legal terminology standards established by the Commission for the State Language. However, acts of individual application adopted by the local authorities in the Autonomous Republic of Crimea “*may be additionally translated and made public in the Crimean Tatar language*” (art. 13.4).

58. It is difficult to understand the reason why this possibility is recognized only for the Crimean Tatar language and not for the languages of other indigenous peoples and national minorities. Moreover, this provision is at variance with Article 10.2.c and d of the Language Charter under which Ukraine undertook to allow, in areas where the number of residents using those languages justifies it, the publication by regional and local authorities of their official documents also in the relevant regional and minority languages.

59. Pertaining to Article 13, paragraphs 6 and 8, “*unless otherwise provided by law*” the central and local authorities shall “*accept for consideration the documents drawn up in the State language*” and their “*response to the appeals made by individuals and legal entities [...] shall be given in the State language*”. However, those authorities may use other languages when writing to foreign addressees (art. 13.7). Article 13 came into force on 16 July 2019 – except its second paragraph which will come into force once Ukrainian legal terminology standards are adopted.

60. The Commission recalls the obligation incumbent on Ukraine under the Framework Convention (art. 10.2) to ensure, in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities. That said, even in other areas, Article 13 should not be interpreted in a sense that it would not be allowed, under any circumstances, for civil servants to reply to the citizens in a language other



than Ukrainian. In a previous opinion, the Commission considered that “*the obligation to use the State Language should be imposed on public authorities (art. 3. 1) and their employees, civil servants and members, acting in their official capacity, only to the extent that this can be done without prejudice to the linguistic rights which private individuals can draw from the separate regulations or international treaties on human rights and on the protection of national minorities*”.<sup>35</sup> That opinion refers to the views of 25 July 2000, in *Diergaardt et al. v. Namibia*,<sup>36</sup> where the Human Rights Committee of the United Nations stated that a governmental instruction to civil servants not to reply to the written or oral communications including simple telephone conversations with the authorities in the Afrikaans language, even when they are perfectly capable of doing so, is a violation of Article 26 ICCPR. This decision implies that a State has to accept that, when private individuals address the public authorities in a non-official language, civil servants may voluntarily answer in this language, if they are capable of doing so.

61. The legislator is advised to take into consideration the above observations when revising the State Language Law and drafting the Law on Minorities. These Laws should provide for the possibility to use minority languages in areas of compact residence of minorities and the use of any language anywhere under circumstances described above, especially in oral communications. It is also of particular importance that the Law provide for clear exceptions for the use of languages other than Ukrainian in emergency situations (e.g. in communication with rescue services such as police, firefighters, hospital staff, etc.).

62. Article 16 provides that the “*language of regulations, documentation, record keeping, official activities and communication with citizens of Ukraine in law enforcement agencies, intelligence agencies, special-purpose government agencies with law enforcement functions shall be the State language*.” However, the employees of those agencies are allowed by the second paragraph of Article 16 to “*communicate with a person who does not understand the State language in a language acceptable for both parties, as well as via an interpreter*.”

63. Article 15 provides for the same obligation to use Ukrainian in the “*Armed Forces of Ukraine and other military formations established under the law*” without foreseeing any exceptions. The Commission recommends adding a similar exception to Article 15.

#### **4. State language in electoral process (art. 18)**

64. Article 18 – which is already in force – provides for the use of Ukrainian in the electoral and referendum process. It requires voting ballots and all other electoral documentation as well as all election campaign materials “*broadcast on television, radio, placed in outdoor advertising media, distributed as leaflets and newspapers, or posted on the Internet*” to be in Ukrainian. However, Article 18.4 allows reproducing the electoral campaign materials also in the respective minority or indigenous languages for their distribution “*in certain localities*” and “*in the manner and on the terms established by law*” on minorities.

65. By distributing election campaign materials, the candidates for elections and the political parties behind them, do not exercise a public function. They merely make use of their freedom of expression in order to impart their political ideas and their programme to the electorate. The freedom of expression implies the freedom to choose the means and also the language in which one communicates. In the view of the Venice Commission, Article 18.4 does not comply with the conditions that have to be fulfilled in order to justify the limitation of the freedom of expression it entails, as it is not clear how this limitation can be considered to be “*necessary in a democratic society*”, in the sense of Article 10.2 ECHR. In the opinion of the Commission, it should be

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<sup>35</sup> [CDL-AD\(2010\)035](#), *op. cit.*, §57.

<sup>36</sup> Human Rights committee – communication no 760/1997, [views of the committee](#), 25 July 2000 UN doc. A/55/40, vol II p.140, §10.10.

possible to distribute electoral campaign materials in any language not only in areas of compact residence of minorities but in whole country.

66. Furthermore, the obligation to distribute only materials issued in Ukrainian and translated/dubbed in another language could place a heavy burden on some political parties or candidates seeking votes from minority communities. If the authorities wish to have those materials in Ukrainian as well, it would be appropriate that the State provides adequate financial support for their translation, dubbing or subtitling.

67. As recommended by the ACFC, *“the authorities should also consider providing opportunities for the use of minority languages in public service television and radio programmes devoted to election campaigns and on ballot slips and other electoral material in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers”*.<sup>37</sup>

## **5. State language in education (art. 21)**

68. Article 21 repeats the content of Article 7 of the Law on Education which was subject of an opinion of the Venice Commission in 2017. Its first paragraph recognises for persons belonging to indigenous peoples the right to receive at communal educational institutions preschool, primary and secondary education in their language, along with Ukrainian. However, the persons belonging to national minorities have the right to receive at communal educational institutions only preschool and primary education in their language, along with Ukrainian. As for secondary education, members of national minorities all have the right to study their languages as a subject. Additionally, according to Article 21.5, one or more disciplines — which the Commission understands as meaning a subject in the curriculum — can be taught through the medium of English or one of the official languages of the EU.

69. Thus, it appears that members of the Bulgarian, Greek, German, Polish, Romanian and Hungarian minorities, in addition to being able to study their language as a subject, may also study one or more other subjects through the medium of their language at the secondary education level. However, members of national minorities who do not speak an official EU language — Byelorussians, Gagauzes, Jews, and, significantly, Russians — will only be able to study at the secondary school level their language as a subject. Thus, a hierarchy is created at the secondary school level, with indigenous peoples potentially treated more favourably than national minorities which speak an official language of the EU, and national minorities which speak an official language of the EU treated more favourably than other national minorities.

70. Neither the State Language Law nor the Law on Education regulates the details of the amount of time to be allocated to minority and indigenous languages. However, the law specifies that the right will be exercised by setting up separate classes for students receiving education in a national minority or indigenous language, implying that any such bilingual education will not be delivered any longer in separate schools dedicated to bilingual teaching, as it is currently the case.

71. The Venice Commission criticized in its 2017 opinion Article 7 of the Law on Education for its lack of legal clarity (§§56-65). At the time the Venice Commission was assured that the future Law on Complete Secondary Education would provide clear and precise guidance on the various aspects of the implementation of the new regime introduced by Article 7 (§68).

72. The Ministry of Education provided the Commission with the translation of the relevant provisions of the draft law on Complete Secondary Education which is pending in Parliament for second reading. The draft (art. 5.6) provides only some details on the minimum amount of time to be allocated to education in Ukrainian at basic and upper secondary education levels. It

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<sup>37</sup> ACFC, [Thematic Commentary No. 3](#), *op. cit.*, §92.

provides that “*persons belonging to national minorities whose languages are the official languages of the EU and who exercise the right to study in the respective languages can (shall?) receive in municipal and corporate schools basic secondary education in the state language in scope of 20 percent of the annual amount of study time at the 5th grade*”. This scope should be increased each year and should not be less than 40 percent at the 9th grade. These persons shall receive upper-secondary education in Ukrainian in scope of not less than 60 percent of the annual amount of study time.

73. According to the note provided by the Ministry of Education<sup>38</sup> this means that the children within this category will be able to fully study in their native language at kindergarten and elementary school, along with studying Ukrainian as a subject. From the 5<sup>th</sup> grade only they will study also some subjects in Ukrainian. However, since the minimum amount of time allocated to the teaching in minority language after 5<sup>th</sup> grade is not indicated, it seems that it would be up to the education authorities to decide whether and to what extent the teaching in minority languages will be integrated in the school programme.

74. As for persons belonging to other national minorities, they shall receive in municipal and corporate schools basic secondary and upper-secondary education in Ukrainian in scope of not less than 80 percent of the annual amount of study time. The list of subjects taught in Ukrainian and a minority language will be defined in the educational program of the school.

75. Therefore, the draft law continues to treat minority languages which are also official EU languages more favourably than those which are not. Furthermore, this text does not remove uncertainty regarding education in minority languages stemming from Article 7 of the Education Law. The draft law only ensures a sufficient level of teaching in Ukrainian for the persons belonging to national minorities who applied for a bilingual education (in Ukrainian and their respective minority language) without indicating the minimum amount of time to be allocated to the teaching in minority languages. The draft law therefore leaves it to the authorities to decide on the subjects to be taught in languages of minorities and indigenous peoples and the amount of time to be allocated to each language.

76. This may lead to arbitrary decisions and amount to a situation where some languages which are widely used in the country or in certain areas are allocated insignificant amount of time and/or where only one subject is taught in a minority language. As for education in languages of indigenous peoples, the translation of the provisions of the draft law provided by the Ministry of Education confirms that right without providing any details on the amount of time to be allocated to the teaching in their language.

77. The Venice Commission recalls its assessment as regards secondary education in its 2017 opinion: “*if the law were implemented in a manner that minority languages could only be taught as a subject and there would no longer be the possibility to teach other subjects in the minority language, this could clearly be a disproportionate interference with the existing rights of minorities*” (§122). However, it could be acceptable if the law enables the teaching of some subjects in minority languages on condition that “*the scope of this teaching will be sufficient to enable the students to attain a high level of oral and written proficiency, enabling them also to address complex issues*” (§123). The draft law on Complete Secondary Education does not ensure that a sufficient proportion of education would be in minority and/or indigenous people languages to enable the students to attain a high level of oral and written proficiency in their native language.

78. As for the differential treatment created by the Law on Education and confirmed in the State Language Law, the Venice Commission has already examined that in its 2017 opinion. While acknowledging that there might be good reasons to provide preferential treatment to

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<sup>38</sup> Non-paper on the implementation of the Venice Commission’s recommendations on the Law on Education, p. 3.

indigenous peoples, as foreseen in Article 7, the Commission concluded that it was highly likely that the less favourable treatment of the minority languages which are not official languages of the EU in that Article is not justifiable in the light of the principle of non-discrimination (§§110 and 114). The reasons advanced by the authorities during the visit to Kyiv are mainly the same as the arguments examined in the 2017 opinion. Therefore, the conclusion of the latter opinion remains valid for Article 21 of the State Language Law as well.

79. On a positive note, paragraph 10 of Article 5 of the draft law stipulates that private schools that provide complete secondary education at the expense of individuals and/or legal entities and that do not receive any public funds can freely choose the language of education. That said, those schools would be obliged to provide students with proficiency in Ukrainian. This provision implements a recommendation of the 2017 opinion (§105) and ensures the compliance with Article 13 of the Framework Convention under which Ukraine committed to recognise that persons belonging to a national minority have the right to set up and to manage their own private educational establishments. The legislator is therefore advised to adopt that provision as it is. Nevertheless, it should be noted that not all minority groups might have the possibility of establishing their own private schools in a sufficient number to respond to the need of their respective community. The possibility for the persons belonging to minorities and indigenous peoples to have the teaching of some subjects in their languages remains therefore a crucial need for them.

80. Another positive change in this area is the extension of the transitional period of implementation of Article 7 of the Education Law from 1 September 2020 until 1 September 2023 which implements another recommendation of the 2017 opinion (§82). However, unfortunately, here again, the State Language Law treats differently the persons belonging to linguistic minorities by applying that extension only to the students belonging to national minorities whose native language is an EU language and who started their classes before 1 September 2018. (Section IX, point 1). Therefore, this provision implements the recommendation of the Venice Commission only partly as persons belonging to national minorities whose languages are not the official languages of the EU (especially Russians) or to indigenous peoples who entered secondary education before 1 September 2018 will continue receiving education according to the previous system until 1 September 2020.

81. The authorities explained this differential treatment by the close relationship between the Russian and Ukrainian languages which would make it easier for Russian speakers to switch to the new system. The Venice Commission is not in a position to assess whether this explanation is well founded. At any rate, this does not explain why the languages of indigenous peoples are treated the same as the Russian language. The Commission therefore recommends prolonging the transitional period for students belonging to all national minorities – regardless of whether they are speakers of EU or non-EU languages –, and to indigenous peoples.

## **6. State language in scientific, cultural and sporting activities (arts 22, 23, 26, 34)**

### **a. Scientific activities (art. 22)**

82. Article 22 – which will come into force on 16 July 2020 (except its first paragraph) – states that scientific publications shall be made public in the State language, English and/or other official languages of the EU (art. 22.2). As explained above, this differential treatment between languages does not seem justified. This provision constitutes a breach of the freedom of expression and academic freedoms of the persons who want to make scientific publications in non-EU official languages.

83. According to Article 22.5 the language of public scientific events – except for events on the topic of a particular foreign language or literature – may be Ukrainian and/or English. If a

public scientific event (scientific conferences, round tables, symposia, seminars, scientific schools, etc.) is conducted in another language than English or Ukrainian, the organiser of the event shall notify its participants in advance. *“In this case, interpretation in the State language is optional”*. It is not clear how the last provision correlates with Article 22.6 which stipulates that *“a person attending any public scientific event may under no circumstances be denied the right to use the State language.”* Does it mean that the right to use the State language does entail for the organiser an obligation to provide interpretation for the persons who attend a scientific event and wish to speak in Ukrainian? Further clarifications may be needed.

84. In the opinion of the Venice Commission, the law should regulate only the language of events organised by the public authorities and/or through public funds and leave it to the organisers to decide freely the language of private events without any obligations for them to provide interpretation from or into the State language.

b. Cultural activities and sporting events (arts 23 and 34)

85. Article 23 – which will enter into force on 16 July 2021 (except its paragraphs 1, 7 and 9) – regulates the use of languages in the field of culture. According to its second paragraph, in cultural, artistic, recreational and entertainment events the use of Ukrainian is the rule and the use of other languages is exceptionally allowed where it is justified *“by the artistic or creative concept of the event organiser”*, as well as in cases stipulated by the Law on Minorities.

86. This provision limits the free exercise of the right to freedom of expression (arts 10 ECHR and 9.1 of the Framework Convention<sup>39</sup>) and of the right of the persons belonging to minorities to enjoy, in community with the other members of their group, their own culture or to use their own language (art. 27 ICCPR). Freedom of expression covers the artistic freedom. It guarantees not only the right to impart and receive information, but also the right to do so in the chosen medium, including language and form. Therefore, the Law should establish the freedom to express oneself in the language of one’s choice as the rule and its limitation as the exception, which has to be *“prescribed by law”*, serve a legitimate aim and be *“necessary in a democratic society”* (art. 10.2 ECHR). This also implies that any limitation of freedom to use the language of one’s choice must be proportionate to the legitimate aim pursued. Articles 23.1 and 23.6 have to be rewritten in order to be in compliance with this principle.

87. Article 23.4 provides that *“public rendition and/or public showing of a theatrical performance in a language other than the State language at a state or communal theatre shall be accompanied by translation in the State language by means of subtitles, audio translation or otherwise.”* Use of other languages than Ukrainian is allowed in announcements, posters, other information materials about cultural, artistic, recreational and entertainment events, provided that the amount and font of the text in another language are not larger than those of the text in Ukrainian (art. 23.3). Where a cultural, artistic, recreational and entertainment event in Ukraine is compèred in another language, the organiser shall provide simultaneous or consecutive interpretation thereof in Ukrainian (art. 23.2). Article 23.6 provides that the language of domestic film distribution and screening must be Ukrainian with the dialogue component of a soundtrack performed in Ukrainian, *“including by dubbing or voice-over”*. This paragraph then provides that domestic films may be screened in the Crimean Tatar language or other languages of indigenous peoples, an exception which does not apply to national minorities.

88. The Venice Commission has noted in the context of similar provisions in the State Language Law of the Slovak Republic that such provisions impose additional work and costs on the organisers of cultural events in minority languages, and that although such provisions serve

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<sup>39</sup> Article 9.1 states that: *“The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers.”*

a legitimate aim, namely informing persons belonging to the Slovak majority of cultural events intended for national minorities, this legitimate aim must be proportionate, and that the Slovak government should provide funding to support translation, as the financial burden may otherwise cause “*substantial disruption and could have a chilling effect on the organisation of cultural events*” in minority languages.<sup>40</sup>

89. These considerations are valid in the context of Ukraine as well. The obligation for translation, interpretation, subtitling, dubbing, etc. imposed by Article 23 might significantly raise the cost of cultural, artistic, recreational and other activities and might, therefore, negatively impact on the actual capacities of minorities to perform such activities essential for maintaining their distinct identities. This is at variance with Article 5 of the Framework Convention<sup>41</sup> and does not appear to “*encourage types of expression and initiative specific to regional or minority languages*” as required by the commitments of Ukraine under Language Charter (art. 12.1.a). Moreover, the State Language Law contains no provision with regard to financial support for translation, interpretation, dubbing or voice-over. Such a provision would contribute to the satisfaction of Article 12, subparagraph 1 b of the Language Charter, which obliges Ukraine “*to foster the different means of access in other languages to works produced in regional or minority languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities*”. Furthermore, the differential treatment of indigenous languages on the one hand and languages of national minorities on the other hand also raises potentially serious equality issues.

90. Unlike other provisions of Article 23 which in addition to imposing the use of Ukrainian, provide also for possibilities to use other languages (e.g. according to Article 23.5, admission tickets to museums or exhibitions can be in another language in addition to Ukrainian, etc.), Article 23.7 does not foresee such an exception regarding “*film posters and admission tickets to film theatres and other film exhibition facilities*” which thus can be in Ukrainian only. This constitutes a breach of freedom of expression.

91. According to Article 23.8 the “*language of tourist and sightseeing services shall be the State language. Tourist and sightseeing services may be provided to foreigners or stateless persons in other languages.*” This provision is a violation of freedom of expression as enshrined in Article 10 ECHR as this does not seem to serve any legitimate aim. Furthermore, this provision is difficult to implement. These services are usually provided to groups of tourists where there may be citizens and non-citizens together. It would be unrealistic to expect a provider of such services to check each time if his or her clients are citizens or not and not to answer a question in another language asked by a client who is a citizen. A person should not be punished for doing so.

92. According to Article 34 – which came into force already, on 16 July 2019 – “*information and other announcements during a sporting event*”, and “*admission tickets to a sporting event and other information products about sporting events*” shall be in Ukrainian, save for international sporting events for which, in addition to Ukrainian, other languages can be used. The fact that the use of other languages is not allowed under any circumstances as regards national or local sporting events constitutes a breach of the right to freedom of expression. Furthermore, as no exception is provided for minority languages, this provision is not in line with the obligations incumbent on Ukraine under the Framework Convention (art. 11.2) and the Language Charter (art. 12).

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<sup>40</sup> [CDL-AD\(2010\)035](#), *op. cit.*, §§92-94.

<sup>41</sup> Under Article 5 of the Framework Convention Ukraine undertook to “*promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.*”



c. Book publishing and distribution (art. 26)

93. Article 26.1 obliges all registered book publishers to ensure that books in Ukrainian constitute at least 50% of their annual publishing. This requirement does not apply to books published in indigenous or minority languages and funded through the State or local budgets in accordance with the anticipated Law on Minorities. Article 26.2 requires that books in Ukrainian constitute no less than 50% of selection in each bookshop and other book distribution facilities, except for those selling exclusively foreign language learning materials (dictionaries, phrase books, etc.) or books in the official EU languages, as well as “*specialized bookstores*” established for the purposes of realization of the “*rights of indigenous peoples and national minorities of Ukraine according to the law*”. These rules will come into effect on 16 July 2021.

94. In addition to being possibly problematic from the point of view of non-discrimination, this provision is possibly problematic from the perspective of Article 12, subparagraph 1 a of the Language Charter and Article 5 of the Framework Convention, as it could be viewed as discouraging and restricting the distribution of books in regional or minority languages. The term “specialized bookstores” will need to be clarified.

## 7. State language in media (arts 24 and 25)

a. Television and Radio Broadcasting (art. 24)

95. With regard to the use of languages in broadcasting, Article 24 refers to the Law on Television and Radio Broadcasting. At the same time, a transitional provision of the Law (Section IX, point 7.24) amends Article 10 of the latter Law, tightening the language quota requirements, by increasing the proportion of the Ukrainian language content for national and regional broadcasters from 75 to 90 per cent and, for the local broadcasters, from 60 to 80 per cent. This amendment will come into force five years after the Law’s entry into force (i.e. on 16 July 2024).

96. To the extent that these provisions apply to private broadcasting companies as well, they limit the right to freedom of expression (art. 10 ECHR) and the right, in those States in which ethnic, religious or linguistic minorities exist, of persons belonging to such minorities to enjoy their own culture or to use their own language (art. 27 ICCPR). Although these limitations serve a legitimate aim, it can be questioned whether they are proportionate to this aim, as they leave very little room for the use of minority languages. It should be recalled that Ukraine, by ratifying the Framework Convention, undertook to ensure, in the legal framework of sound radio and television broadcasting, as far as possible, that persons belonging to national minorities are granted the possibility of creating and using their own media (art. 9.3.).

97. The ACFC had already criticized in its 2017 opinion on Ukraine<sup>42</sup> the Law on Television and Radio Broadcasting as it imposes rigid language quotas in broadcast media and a Law amending that Law in 2016 in order to increase the use of Ukrainian and EU languages on Ukrainian television and radio. The ACFC stated that “*whereas promotion of the State language in public media is a legitimate aim, provided that adequate provisions are made for broadcasting in national minority languages, the conditions set in the new legislation breach the Framework Convention since they overstep licensing requirements and unduly interfering with private broadcasters*”. The State Language Law which limits even further the proportion of the minority languages in national and local broadcast media is at odds with the obligations committed by Ukraine under the Language Charter to “*make adequate provision so that broadcasters offer programmes in the regional or minority languages*” (art. 11.1.a.iii) and “*to encourage and/or facilitate the broadcasting of radio [and television] programmes in the regional or minority languages on a regular basis*” (arts 11.1.b.ii and 11.1.c.ii). This reduction in broadcasting time for

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<sup>42</sup> [ACFC/OP/IV\(2017\)002](#), *op. cit.*, §22.

minority languages is also inconsistent with the recent recommendations of the ECRML and the Committee of Ministers.<sup>43</sup>

98. In their comments on the present opinion, the Ukrainian authorities pointed out that according to the monitoring data of the National Council of Television and Radio Broadcasting, most television and radio broadcasters had already exceeded the quota set by the State Language Law. In the view of the Commission, this shows that the imposition of such a high quota in the current situation does not correspond to a real need. Therefore, the Venice Commission invites the legislator to reconsider the abovementioned quota requirements in the light of the principle of proportionality and develop, if necessary, appropriate means to promote the use of Ukrainian in broadcast media based on incentives and positive measures.

b. Print mass media (art. 25)

99. Article 25 allows publishing of print media in two or more language versions, one of which must be Ukrainian, provided that all language versions are identical in size, format and substance and are issued on the same day. Exception is made only for media issued in Crimean Tatar or other indigenous languages, and those issued in English or other official EU languages (which do not need a translation into Ukrainian). The Law requires that the print media in Ukrainian constitute no less than 50% of selection in each print media distribution point. These rules will apply to national and regional media in two and a half years from the Law's entry into force and to the local media in five years (Section IX, point 1).

100. In addition to the very problematic differential treatment provided for in this Article (see *supra* §44), these provisions raise the question whether the high administrative and financial burden they impose on editors of mass media will not “*cause substantial disruption and could have a chilling effect*” (see *supra* §88) on publishing in minority languages, and if so, whether this limitation of the freedom both to impart and to receive information can be considered to be necessary – i.e. also proportionate – in a democratic society.

101. The need for the printed media to get the news out immediately is of crucial importance when balancing this right against the interest of the State to promote the State language. In this regard, the Venice Commission refers to the ECtHR case-law which held that “*news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest*”.<sup>44</sup> The obligation to make available also in Ukrainian all printed mass media to be published in some minority languages risk causing significant delays for the publication of newspapers concerned by that requirement.

102. The Commission also recalls that Ukraine, by ratifying the Framework Convention, committed itself not to “*hinder the creation and the use of printed media by persons belonging to national minorities*” (art. 9.3). It further undertook under Article 11.2 of the Language Charter, “*to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language*”. In its 3<sup>rd</sup> monitoring report, the ECRML recommended that Ukraine should also take measures to facilitate the creation of at least one weekly or daily newspaper in certain languages which at present did not have one, including Byelorussian, (§32) and it is highly unlikely that the requirement that such a Byelorussian newspaper would have to publish

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<sup>43</sup> In its [3<sup>rd</sup> report in respect of Ukraine](#), the ECRML stated that the daily or weekly duration of the programmes in minority languages offered by public broadcasters remained too short to supply speakers of these languages with a comprehensive offer of news and entertainment and therefore recommended extending the duration of public broadcasts in minority languages (§30). In their most recent recommendations in response to the 3<sup>rd</sup> monitoring report, the Committee of Ministers directed Ukraine to “*extend and strengthen the offer of radio and television broadcasts in the Part III languages*”. Recommendation [CM/RecChL\(2018\)6](#), *op. cit.*

<sup>44</sup> ECtHR, [Observer and Guardian v. the United Kingdom](#), no. 13585/88, §60.

simultaneously an Ukrainian language version would encourage or facilitate the creation of such a paper; indeed, it would likely frustrate that end.

103. In view of crucial importance of the freedom of the press in a democratic society, the Commission recommends that the legislator repeal this requirement.

## **8. State language in economic and social life (arts 28, 29, 32)**

### **a. Publicly available information (art. 28)**

104. Article 28 – which is already in force – provides that publicly available information (such as advertisements, including those containing a public offer of an agreement, directional signs, pointers, signboards, messages, captions and other publicly placed textual, visual, and audio information that is or may be used to inform general public about goods, work, services, certain economic entities, officers or officials of enterprises or government authorities, local self-government authorities) shall be presented in Ukrainian, “*unless otherwise provided by this Law*” (art. 28.1). “*Publicly available information may be duplicated in other languages according to the law.*” (art. 28.2)<sup>45</sup>

105. The exact scope of the first paragraph is not clear. If it is to be applied to advertising made by private companies or individuals to offer for sale goods, services, real estate, etc. it may constitute a disproportionate interference with the freedom of expression. Although the second paragraph allows the use of other languages, the fact that all publicly available information should also be available in Ukrainian could imply a heavy burden on all those who want to communicate with the public. The Venice Commission examined a similar provision in the context of Slovakia where it warned the authorities that the “*effects of requiring that the Slovak language be used on all ‘signs, advertisements and notices intended to inform the public’ could be so onerous in some situations as to have a chilling effect on the exercise of the freedom of expression.*” The Commission invited the Slovak authorities to re-examine the provision in the light of the principle of proportionality and to assess to what extent bilingualism has to be compulsory even in municipalities with an almost exclusively minority population.<sup>46</sup> The same considerations and recommendations are valid in the Ukrainian context.

106. Additionally, the Commission recalls the obligation incumbent on Ukraine under Article 11.2 of the Framework Convention “*to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public*”. Article 28 should be revisited.

### **b. Public events (art. 29)**

107. Article 29 – which is already in force – provides that Ukrainian will be the language of “public events”. This term is defined to includes “*meetings, conferences, rallies, exhibitions, training courses, seminars, training sessions, discussions, forums and other events, accessible or open to attendees of such events free or by invitation, for a fee or free of charge, permanently, periodically, at one time or from time to time, which are organised, either in whole or in part, by government authorities, local self-government authorities, State-owned institutions or organisations, as well as by economic entities whose owners (founders, members, shareholders) include the State or a territorial community, regardless of the proportion of such ownership*” (art. 29.1). This paragraph makes clear that another language can be used but the organiser must provide simultaneous or consecutive interpretation into Ukrainian, “*if requested by at least one*

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<sup>45</sup> Article 28.3 provides that: “*The requirements of this Article shall not apply to the information posted via the Internet, except as stipulated in this Law.*”

<sup>46</sup> [CDL-AD\(2010\)035](#), *op. cit.*, §§124 and 126.

*attendee at such public event*". As for the use of indigenous and minority languages during public events, it will be determined by the Law on Minorities (art. 29.2).

108. This Article does not seem to limit the right to use the language of one's choice in private events organised by private individuals and legal persons, which is welcomed. Furthermore, as cultural, artistic, recreational and entertainment events are regulated in Article 23, they seem to be out of scope of this Article even if they are organized by public authorities.

109. This provision may, nevertheless, constitute a heavy administrative and/or financial burden on the public authorities. In fact, all would depend on how the term "attendee" would be interpreted: would it cover all persons participating in an event or only persons who are invited to intervene in an event? If the first interpretation prevails, then the authorities would need to ensure the presence of interpreters for all public events they hold – especially those accessible to the public without invitation – because they would not know beforehand if one of the attendees would speak in another language or not. At the same time, it is important for the persons belonging to national minorities to be able to use their languages at public events, especially those specifically organised for them or those affecting them and those held in areas where persons belonging to national minorities live in a compact manner. Since this question would be regulated in the Law on Minorities which is yet to be drafted, the Commission is not in a position to conclude whether or not this provision is consistent with the international standards.

#### c. Advertising (art. 32)

110. Article 32 provides for the use of Ukrainian in advertising. It states that the use of minority and indigenous languages in advertising will be regulated by the Law on Minorities. At the same time, this Article specifically allows the print media issued and television and radios broadcasting in one of the EU official languages to place ads in that language. These rules will apply as of 16 January 2020 (Section IX, point 1).

111. As commercial expression is also guaranteed by the provisions on the freedom of expression<sup>47</sup> the principle should be the freedom of the advertiser to choose the language in which he wants to advertise, including minority languages. The exercise of this freedom can only be limited "*by law*", in the pursuance of a legitimate aim, such as the protection of health or the right of the consumers to receive information on the goods and services in the market, and in so far as the limitation is "*necessary in a democratic society*" which implies that it has to be proportionate to the legitimate aim it pursues. Furthermore, the Law on Minorities should not provide a lesser guarantee to the languages which are not the official EU languages.

### 9. State language in health care institutions (art. 33)

112. The Venice Commission welcomes that although this Article establishes that "*the language in the field of health care, medical assistance and medical services shall be the State language*", it allows that at the request of a person seeking such services, they may also be provided to him or her "*personally in another language acceptable to the parties*" (arts 33.1 and 33.2 which are already in force).<sup>48</sup> The same opportunity should however be given to all services which operate in emergency situations presenting a threat to life, the physical or mental integrity of persons, such as rescue services, the fire brigade, etc. This should also include the institutions for the elderly – which are not necessarily health care institutions – as especially such persons belonging to minorities might not have sufficient command of Ukrainian.

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<sup>47</sup> See the United Nations Human Rights Committee in [Ballantyne, Davidson and McIntyre v. Canada](#), Communication Nos. 359/1989 and 385/1989, 31 March 1993, §11.3.

<sup>48</sup> Nonetheless, Article 33.3-5 requires all documents concerning the state of health of a patient to be prepared only in Ukrainian and imposes an obligation on the health care institutions to "*use medical terminology in their documentation according to the standards established by the National Commission for Standards of the State Language*". Article 33.3-5 will come into force on 16 July 2020.

113. It is as well important that the State recruits, in public administration located in areas where minorities live in a compact manner, persons who can provide public services (especially those operating in emergency situations) in both Ukrainian and minority languages. The Commission recalls the obligations which are incumbent on Ukraine under the Language Charter to allow and/or encourage “*the use of regional or minority languages within the framework of the regional or local authority*” (art. 10.2.a) and to comply “*as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used*” (art. 10.4.c). It should also be recalled that Ukraine committed itself under Article 10.2 of the Framework Convention “*to ensure, in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.*”

#### **10. State language in the activities of political parties and other legal entities (art. 37)**

114. Article 37 obliges the political parties and other legal entities (e.g. non-governmental organizations) registered in Ukraine to adopt their “*constituent documents and decisions*” in Ukrainian and use Ukrainian in their dealings with the public authorities (e.g. in accounting, taxation, reporting, correspondence).

115. This obligation constitutes a limitation of freedom of association, which entails the right to self-organization. The interference in the exercise of this freedom serves a legitimate aim of public order, as it makes possible supervision by State bodies of political parties, associations and other legal entities, in the interest not only of the State but also of the members of those entities. However, the term “*constituent documents and decisions*” is not clear. In order to be proportionate to that legitimate aim, the obligation to adopt documents and decisions in Ukrainian should be limited to those documents and decisions which are necessary in order to exercise legitimate public functions.

#### **11. State language in geographical names and toponyms (art. 41)**

116. Article 41 – which is already in force – provides that geographical names “*as well as names of public gardens, boulevards, streets, lanes, descents, passages, avenues, squares, plazas, embankments, bridges*” and other toponyms can only be in Ukrainian. However, in addition to Cyrillic alphabet, they can be in Latin alphabet as well.

117. This provision raises considerable problems as to its compatibility with the commitments of Ukraine under Article 11.3 of the Framework Convention<sup>49</sup> and Article 10.2.g of the Language Charter<sup>50</sup> and therefore should be reconsidered.

#### **12. Control mechanism (arts 49-57)**

##### **a. Complaint mechanism (arts 49-57)**

118. The Law creates the post of Commissioner for the Protection of the State Language (hereinafter: “the Commissioner”) who will be appointed for a five-year term by the Cabinet of

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<sup>49</sup> This provision stipulates that “[i]n areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, [...] to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.”

<sup>50</sup> This provision requires that in territories where the number of residents who are users of regional or minority languages justifies the State allow and/or encourage “*the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages*”.

Ministers (art. 50) and who will monitor the observance of regulations set forth by the State Language Law and report on it to the Cabinet of Ministers on a yearly basis (art. 49). The Commissioner (and his or her Secretariat) will examine complaints concerning the alleged violations by “*government authorities, authorities of the Autonomous Republic of Crimea, local self-government authorities, State- and community-owned enterprises, institutions and organisations, their officers, officials and employees*” as well as by “*political parties, associations, and other legal entities, their officers or employees*” of the requirements on the use of Ukrainian set forth by the State Language Law (art. 54).

119. However, according to Article 55.5, the complaints concerning non-compliance with the State language standards in public speeches of the officers of “*government or local self-government authorities*” will be inadmissible. It is unclear how this exception is to be interpreted. Does it mean that the complaints concerning public speeches of the officers, officials and employees of State- and community-owned enterprises, institutions and organisations, political parties, associations, and other legal entities would be admissible? As the Law does not seem to impose the use of Ukrainian or compliance with the State language standards in public statements of officers of public authorities or political parties and other legal entities, it is unclear on which legal basis the Commissioner would impose sanctions in case of non-compliance with the State language standards.

120. Furthermore, Article 54.2.5 provides for a possibility to submit a complaint to the Commissioner in case a document sent by political parties, associations, and other legal entities, their officers or employees to a person in response to his or her written appeals (proposals, comments, statements, petitions, complaints or other written appeals) fails to meet the State language standards and this failure was intentional. This provision is in contradiction with Article 1.6 which stipulates that “[d]eliberate distortion of the Ukrainian language **in official documents and texts**, including its deliberate use in contravention of the requirements imposed by Ukrainian spelling and the State language standards, as well as creation of obstacles and restrictions in the use of the Ukrainian language, shall entail the liability established by law.” (emphasis added) A document sent by a political party is not necessarily an official document.

121. At any rate, the Venice Commission doubts that the terms “*deliberate distortion*”, “*creation of obstacles and restrictions in the use of the Ukrainian language*”, etc. meet the criterion of being sufficiently defined to constitute a proper legal basis for interfering with freedom of expression guaranteed by Article 10 ECHR. The legislator is invited to remove Articles 1.6, 54.2.5 and 55.5.

122. Upon a complaint or on his/her own initiative, the Commissioner may conduct a State monitoring of the compliance with the requirements of the State Language Law in accordance with a procedure to be established by the Cabinet of Ministers (arts 55.3 and 56.1). In the framework of its monitoring activities the Commissioner can demand copies of all documents and information (save for information designated by law as restricted) from all public authorities and associations and other private legal entities, can freely accede to buildings of public authorities and attend their meetings (art. 56), can impose pecuniary sanctions (Section IX, point 7.1: “*a fine from one hundred to two hundred tax-free minimum individual incomes*”) to all those who, upon an initial warning, refused or failed to provide documents or information requested (art. 56).

123. Though the monitoring of the compliance with the provisions of the Law can evidently be justified, the Venice Commission would like to draw the attention of the legislator to the risk that the abovementioned provisions degenerate into means to control the internal life of political parties and other legal entities, which would raise questions on their compliance with Article 11 ECHR on the freedom of association. The abovementioned powers of the Commissioner should therefore be carefully reconsidered.

124. The Commission recalls that the Commissioner will only monitor the compliance with the requirements on the use of Ukrainian set forth by the State Language Law. In order to strike a



fair balance between the strengthening of the status of the State language and the protection of minority languages, the Ukrainian authorities are invited to examine how the rights of the linguistic minorities can be safeguarded as well. If the legislator is convinced of the necessity to maintain the Commissioner institution, it may wish to consider, for the sake of offering a more balanced approach to implementation of language provisions, to entrust the Commissioner, or another duly-constituted institution or body, with the responsibility to monitor the implementation of the legal provisions on the use of minority and indigenous languages.

b. Administrative fines (art. 57)

125. The commissioner can impose to the authorities, political parties and other legal entities administrative fines upon an initial warning by a decision subject to judicial review (arts 57.10 and 55.8). The administrative fines for violating the Law will vary from one hundred to seven hundred “*tax-free minimum individual incomes*” (from 1,700 UAH to 11,900 UAH / 64 EUR to 446 EUR). The highest sanctions are foreseen for violation of the rules on the use of Ukrainian in print media and for repeated violation committed within a year.

126. According to Section IX, point 1 of the Law, Articles 55, 56 and 57 regulating procedure for complaints and imposition of sanctions will enter into force on 16 January 2020. However, Section IX, point 7.1 which adds a list of sanctions to the Code of Ukraine on Administrative Offences will come into force three years after the Law’s entry into force (i.e. on 16 July 2022) (see pp. 38 and 39 of the CDL-REF(2019)036). This inconsistency should be removed.

127. In its 2017 Opinion on Ukraine, the ACFC stated that in view of the complex socio-linguistic context in Ukraine, it was important to give promotional measures preference over those of a punitive nature in order to pursue the legitimate objective of strengthening the knowledge and use of the State language by all members of the population in an effective manner.<sup>51</sup> In this regard, the ACFC has outlined in its thematic commentary no. 3 that “*sanctions of whatever nature for not complying with the provisions of state language laws must strictly respect the limit of proportionality and the existence of a clearly demonstrated, legitimate and overriding public interest. In this regard, the Advisory Committee has held that the mere legal possibility of imposing fines, whether on legal persons or self-employed natural persons, for using their minority languages in the private sphere is not compatible with the provisions of the Framework Convention. Equally incompatible with the Framework Convention is the imposition of language inspection systems in the private sector, as they may disproportionately intrude in the private sphere of the individual*”.<sup>52</sup>

128. The principle of giving priority to incentives and positive measures in the implementation of a language policy, have been underlined by many other international human rights bodies.<sup>53</sup> It should be noted that the Law already provides for incentives and positive measures in several areas in order to promote the use of Ukrainian. It imposes an obligation on the State to organise free Ukrainian language courses (art. 6.3), to “*assist video-on-demand service providers whose services are available in Ukraine in the production of audio tracks in the State language*” (art 23.6), to facilitate the creation and dissemination of cultural and artistic works in Ukrainian (art. 23.9), and to “*facilitate publication and dissemination of works of Ukrainian literature, translation and publication in the State language of literature in foreign language*” (art. 26.3). These provisions respond to an urgent need for Ukrainian society and the Commission encourages the authorities to mobilise all the necessary financial and human resources in order to comply, to the largest extent possible, with them.

<sup>51</sup> [ACFC/OP/IV\(2017\)002](#), *op. cit.*, §118.

<sup>52</sup> ACFC, [Thematic Commentary No. 3](#), *op. cit.*, §54.

<sup>53</sup> See, among others, OSCE HCNM, [Ljubljana Guidelines](#) on Integration of Diverse Societies (2012), in particular recommendation no. 11, p. 21; and Commissioner for human rights’ statement of 29 October 2019: [Language policies should accommodate diversity, protect minority rights and defuse tensions](#).

129. The Ukrainian authorities have made clear that the main purpose of the control mechanism is not the punishment of those who have not complied with the requirements of the Law but to ensure that the Law is fully implemented. The sanctions would rather act as a preventive means. The Commission acknowledged in its opinion on Act on the State Language of the Slovak Republic that in principle breaches of the law should be sanctioned. However, the Commission also underlined that the aim of the correct application of the law “*would be more efficiently reached through co-operation and confidence-building measures*” rather than through sanctions and that the latter should be left, if at all, for the most extreme cases.<sup>54</sup>

130. Furthermore, in order to be in compliance with the principle of legality – *Nullum crimen, nulla poena sine lege* – the penal provisions of the law have to be as clear and unambiguous as possible and foreseeable in their application, in order to provide fair warning to the potential lawbreaker. The current law contains provisions (see art. 1.6) that do not comply with these standards. It should also be clear in which situations the use of other languages than the State language is allowed. As the Law on Minorities which is to regulate the use of minority languages is not adopted yet, and since the State Language Law makes a number of references to the latter, under the current circumstances, the Law does not meet the criterion of foreseeability of the law.

131. In view of the above observations, the Commission recommends that the legislator consider repealing the mechanism of complaint and sanctions set forth in the Law or at least to limit it strictly to the public sphere and for the most extreme cases. At any rate, it would be advisable not to enforce the provisions regarding the imposition of sanctions until the adoption of the Law on Minorities and the revision of the State Language Law in order to avoid the risk of violation of the principle of foreseeability of criminal law provisions enshrined in Article 7 ECHR.

#### **IV. Conclusion**

132. Language policy is an extremely complex and sensitive issue in Ukraine which became in the past and may still become in the future a source of tension within Ukraine and with kin-States of national minorities of Ukraine. It is also a highly politicized issue especially due to the recent developments and conflict with Russia.

133. The Law on Supporting the Functioning of the Ukrainian Language as the State Language (State Language Law) under examination is the fourth Ukrainian text assessed by the Venice Commission in the field of language policy. Its overarching purpose, as indicated already in its name, is to support the Ukrainian language as the sole State language.

134. In view of the particular place of the Russian language in Ukraine (which is the most used language of all of Ukraine’s regional or minority languages and the main language of communication for many persons belonging to non-Russian minorities) as well as the oppression of the Ukrainian language in the past, the Venice Commission fully understands the need for the Ukrainian legislator to adopt measures to promote the use of Ukrainian as the State language. The Venice Commission itself urged in its previous opinions the Ukrainian legislator to take necessary measures with a view to strengthening the role of Ukrainian in society, a recommendation that the Law does not only implement to a certain extent but refers to expressly in its preamble.

135. In this regard, it is commendable that the State Language Law provides for some specific positive measures in order to achieve this objective. It imposes on the State an obligation to provide each citizen of Ukraine with an opportunity for mastering the State language through the educational system, to organise free Ukrainian language courses for adults and to adopt positive measures to promote access to films, and other cultural and artistic products in Ukrainian. These

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<sup>54</sup> See [CDL-AD\(2010\)035](#), *op. cit.*, §§130-131.

provisions respond to an urgent need for Ukrainian society and the Venice Commission encourages the authorities to mobilise all the necessary financial and human resources in order to comply, to the largest extent possible, with these legal obligations.

136. While fully recognising that it is a legitimate aim of every State to strengthen the State language, this legitimate purpose has to be coordinated and adequately balanced with guarantees and measures for the protection of the linguistic rights of Ukraine's minorities, which may not be unduly diminished. In order to avoid the language issue becoming a source of inter-ethnic tensions within Ukraine, it is of crucial importance that Ukraine achieve an appropriate balance in its language policy. Unfortunately, none of the four Ukrainian texts assessed hitherto by the Commission fully satisfied this criterion. If the first two texts assessed by the Commission in 2011 were criticised for disproportionately strengthening the position of the Russian language, without taking appropriate measures to confirm the role of Ukrainian as the sole, constitutionally guaranteed, State language, Article 7 of the Education Law analysed by the Commission in 2017 was again unbalanced, mainly because it was treating in the area of education the minority languages which are not official languages of the EU – in particular Russian – in a less favourable manner compared to other minority languages.

137. The Commission notes that the State Language Law submitted to its examination in the present opinion also fails to strike a fair balance between the legitimate aim of strengthening and promoting the Ukrainian language and sufficiently safeguarding minorities' linguistic rights. On the contrary, the State Language Law extends to other areas the differential treatment that the Commission considered in its 2017 opinion as very problematic from the perspective of non-discrimination. Furthermore, the Commission notes that the State Language Law includes several provisions which impose limitations on the freedom of expression and the freedom of association as enshrined in the ECHR. While limitations to these freedoms may serve legitimate aims, the Commission recalls that all limitations must be proportionate. The Commission in the present opinion has found that several articles of the State Language Law require further clarification in order to be proportionate to the legitimate aim.

138. The Commission welcomes that in several important areas, the State Language Law provides for the use of minority languages in parallel with the State language by referring to the anticipated Law on Minorities. However, as that Law, which is supposed to provide for detailed guarantees for the minority languages, is not prepared yet, it is difficult for the Venice Commission to assess whether the requirement for the use of Ukrainian set down by the State Language Law is coupled, as required by international obligations of Ukraine, with adequate and sufficient guarantees for the protection and development of the languages of Ukraine's minorities and indigenous peoples. The preparation of that Law, which should be submitted to the Parliament by January 2020, is a matter of urgency as several provisions of the State Language Law are already in force and the implementation of that Law without an appropriate legal framework for the protection of minority languages might lead to discrimination against persons belonging to minorities.

139. In order to further improve the compliance of Ukraine with international standards and its commitments resulting from the relevant international human rights instruments, the Venice Commission proposes in particular the following recommendations:

- to prepare without any unnecessary delay the Law on Minorities and to consider postponing until adoption of the Law on Minorities the implementation of the State Language Law's provisions which are already in force.
- to revise the State Language Law in order to ensure, in the light of the specific recommendations made in the present opinion, its compliance with Ukraine's international commitments, especially those stemming from the Framework Convention, the Language Charter, and the ECHR and its Protocol No. 12. In the legislative process, the legislator should consult all interested parties, especially representatives of national

minorities and indigenous peoples as they are and will be directly affected by the implementation of these two pieces of legislation.

- to repeal the provisions of the Law providing for a differential treatment between the languages of indigenous peoples, the languages of national minorities which are official languages of the EU and the languages of national minorities which are not official languages of the EU to the extent that the distinction between those languages is not based on an objective and reasonable justification (see §§39-44, 69-82, 87, 89, 93, 94, 99-102, 110, and 111).
- to consider repealing the mechanism of complaint and sanctions set forth in the Law or at least to limit it strictly to the public sphere and for the most extreme cases. However, if this mechanism should be kept, the provisions regarding the imposition of sanctions should not be enforced until the adoption of the Law on Minorities and the revision of the State Language Law.
- to consider removing Article 1.6 establishing liability for deliberate distortion of the Ukrainian language in official documents and texts.
- to safeguard the rights of linguistic minorities as well in order to promote a fair balance between the strengthening of the status and use of the State language and the protection of minority languages and to entrust the Commissioner for the Protection of the State Language, or another duly-constituted institution or body, with the responsibility to monitor the implementation of the legal provisions on the use of minority and indigenous languages.

140. The Venice Commission and the Directorate General of Democracy (DG II) of the Council of Europe remain at the disposal of the Ukrainian authorities for any assistance they may need in this respect.