

**FIGHTING AGAINST LANGUAGE SCEPTICISM: LINGUISTIC RIGHTS AS A
PART OF SELF-IDENTITY OF THE ROMANIAN NATIONAL MINORITY IN
UKRAINE**

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ABSTRACT

Since the adoption of the Law of Ukraine on Education in 2017, the linguistic rights of national minorities in Ukraine have constantly been under challenge. This Law became a prerequisite and the beginning of the struggle of all national minorities in Ukraine, particularly the Romanian one, for the right to study in their native language.

Since I am a member of the Romanian national minority, my focus in the Capstone Thesis is on language rights and the right to education in the mother tongue of the Romanian national minority. Additionally, I consider that this Law has had a detrimental impact on members of the Moldovan national minority. This feature is explained by the fact that they, along with representatives of the Romanian national minority, consider Romanian to be their native language.

My main focus is on the findings of the Venice Commission Opinion, which targets the Education Law and its “anti-national minority” linguistic rights provisions. In terms of legal protections within the human rights framework, I address the Council of Europe standards: the Framework Convention for the Protection of National Minorities, the European Charter for Regional and Minority Languages and the case law of the European Court of Human Rights. I indicate how these documents offer the fundamental provisions that serve as the framework for national laws that apply to national minorities and why Ukraine fails to comply with them.

This Capstone Thesis serves as an advocacy campaign, providing proposals aimed at modifying discriminatory provisions within the legislation to instigate reforms and align Ukraine’s national minority legislation with European standards.

*“Even though I speak Romanian, feel in Romanian, think in Romanian, and teach in Romanian, Ukraine remains my country, no matter what. This is where I was born. This land and these places are in Ukraine, and I’m proud that I’m Ukrainian. I’m a Ukrainian with a Romanian soul.”*¹

¹ K. Yuzefyk, “Romanians of Ukraine. Who Are They?”, Ukraïner.

INTRODUCTION

The language question and my self-identity had been my struggles long before I started researching this area. It was always challenging for me to define and establish my identity clearly: am I a Ukrainian? Am I a Romanian? Or should I go with either Ukrainian Romanian or Romanian Ukrainian? My family was always a Romanian-speaking one, and I proudly identify the Romanian language as my mother tongue. But it was like that until I went to school and needed to learn Ukrainian almost from the ground up. Although it was a shocking experience for me, as a child, I instantly got used to it. My own experience served as an impetus for this topic since I know first-hand what an essential role language plays in the self-identity of a person as a part national minority. And the foundation for children's language acquisition is their school education. It might be inferred from this that self-identity is lost if the mother tongue is not studied in school.

The Romanian ethnic community in Ukraine is the third largest ethnic group in Ukraine, living in the regions of Transcarpathia, Bukovyna, and Odesa. The number of ethnic Romanians, according to the last All-Ukrainian census conducted in 2001, is about 410 000.² In addition, the most recent estimates separately count 258,600 Moldovans as a distinct ethnic group.³ This statement suggests that when discussing linguistic issues in Ukraine, it is important to consider the Moldovan population⁸⁸ as well since Moldovans and Romanians are essentially the same people in terms of their ethnicity, language, and culture. However, historical events and political tensions have both separated and unified the two countries, and thus, the same language evolved differently. Contrary to the official data, unofficial estimates place the number of Romanian Ukrainians at 500,000, even after accounting for the 27% decline in the proportion of Romanians who identify as Moldovans (relative to the average expectation).⁴

² Governmental Courier, "How Many Peoples' Live in Ukraine".

³ *Ibid.*

⁴ I. Popescu, C. Ungureanu, Romanians in Ukraine between Past and Future I: Romanians in the Chernivtsi Region, p. 42, 61.

Several factors contribute to this, including linguistic assimilation, “the urge to naturalise”, the schooling of children in the language of the dominant ethnic group, etc.⁵

The Ukrainian government has consistently questioned the linguistic rights and national identity of all national minorities in Ukraine, and Romanian specifically. This issue became a burning one in 2017 when the Law of Ukraine on Education (Education Law, Law on Education) was adopted. The purpose of this law - which was later followed by the newly passed Ukrainian law On National Minorities (Communities) – was to protect the linguistic rights of national minorities, instead, it created chaos and concerns.

The fight for the language rights of the Romanian national minority started in 2017 and is still ongoing. The project aims to assess the infringement of the language rights of the Romanian minority in Ukraine as a result of the Law of Ukraine on Education and the Law on National Minorities. Based on this evaluation, the project seeks to develop an advocacy strategy that can promote modifications to the current legal framework and aim to improve the linguistic minority situation. In this advocacy project, the emphasis will be put on the entitlement to general secondary education in a minority language. The research of the Capstone project is based on the qualitative approach since a secondary study of sources such as reports, opinions, legislative documents, laws, journal articles, surveys, and interviews is required for data collection and processing. This research project analyses surveys and interviews conducted with members of national minorities and examines the existing legislation and policies in Ukraine that contribute to negative developments and the “extinction” of the Romanian-speaking minority in the country. The study will focus on how the recently passed laws have impacted children and their education in schools.

⁵ *Ibid*, p. 42-43, 61.

ON THE SIGNIFICANCE OF LINGUISTIC RIGHTS

While having laws that protect language rights may be important in maintaining linguistic diversity, how those laws are implemented and for what reasons they are used are key factors in safeguarding minority languages.⁶

Language and the right to have, speak, and exercise one's own language play a crucial role in the life of any individual. According to the British sociolinguist David Crystal, “*(e)very language provides a unique insight into the human condition and presents a view of the world that is shared by no other*”.⁷ Moreover, through many of his sociolinguistic pieces of research, he brings the idea of the death of the whole culture and, *inter alia*, the language when the last speaker of the language dies.⁸ Moreover, the most significant linguistic human rights – particularly in education – are still not included in human rights treaties, despite the fact that language has been considered one of the most significant human characteristics in terms of human rights concerns.

A language community – or, to put it another way, a minority – is logically defined as those who speak the same language. But do persons who belong to national minorities have the same rights as individuals when referring to them as a group of people? Initially, scholars did not show much support for linguistic human rights because they were viewed as being primarily collective rights rather than individual.⁹

Language rights at a collective level are fundamental, self-evident rights that must be upheld in any democratic state. Upholding linguistic human rights for groups entails their right to exist, develop, and use their language.¹⁰ Skutnabb-Kangas points out various aspects of linguistic human rights, including the entitlement of a person to receive a complete education

⁶ T. Skutnabb-Kangas, R. Phillipson, *Language in Human Rights*, p. 27-46.

⁷ D. Crystal, *Vanishing Languages*, p. 40-44.

⁸ *Ibid.*, p. 40-44.

⁹ T. Skutnabb-Kangas, *Linguistic Human Rights*, p. 2-3.

¹⁰ T. Skutnabb-Kangas. Mother Tongue Maintenance: The Debate. *Linguistic Human Rights and Minority Education*, p. 625-628

and feel connected to their native language, and benefit from the government's education system, regardless of their mother tongue.¹¹ It was found that modern-day minority children are unable to attain balanced bilingualism (speaking both their mother tongue and the official language) through schooling since schools do not provide adequate opportunities for these children to develop bilingualism.¹² Preventing children from learning their mother tongue can lead to a disconnection from the cultural heritage and traditions of the minority. Speaking a particular language is strongly associated with an individual's cultural and ethnic background, and it can facilitate a stronger connection to their customs and traditions. Thus, depriving children of the opportunity to learn their native language can pose a risk of losing touch with their cultural and ethnic identity.

When the right of a person to get an education in their native tongue is discussed, both the right as a member of a minority and the right as a citizen of a state are at stake. It is natural, when these rights are evenly distributed, neither side is being emphasized over the other. When one of those rights is exaggerated, we produce people who, on the one hand, cannot develop in the state in which they reside if they do not acquire the language of that state and, on the other hand, if they are denied the opportunity to study in their mother tongue, they lose their identity.

Language serves as the foundation for all cultural activity in addition to being a component of culture itself.¹³ Linguistic human rights are crucial, according to sociolinguists, since they enable people to positively identify with their mother tongue and to have that identification recognized by others.¹⁴ It might be claimed that respect for and preservation of identity can be considered fundamental parts of respect for human dignity because the right to one's self-identity involves numerous factors, including language.¹⁵ In essence, safeguarding

¹¹ T. Skutnabb-Kangas, R. Phillipson, *Language in Human Rights*, p. 23.

¹² *Ibid*, p. 23-24.

¹³ D. Crystal, *Language Death*, p. 26-67.

¹⁴ T. Skutnabb-Kangas, R. Phillipson, *Linguistic Human Rights: Overcoming Linguistic Discrimination*, p. 2-4.

¹⁵ C.D. Mac Giolla, *Language, Identity and Conflict: A Comparative Study of Language in Ethnic Conflict in Europe and Eurasia*, p. 26-40.

the linguistic identity of national minorities is a vital element of human rights protection. National minorities must be allowed to maintain their unique cultural and linguistic identities, which involves the entitlement to use and advance their language and receive education in their native tongue. When these rights are denied or infringed, minority groups may become socially, economically, and politically marginalized, which may have detrimental effects on their well-being and human rights.

Interconnection: Linguistic Rights and Right to Self-Identity

It was established in the previous chapter that language is an equally important part of the cultural self-identity of any national minority. Yet, as a part of cultural identity, language is equally important to individuals.¹⁶ As language rights constitute a claim to individuality and the contribution of a culture on its own terms to the cultural legacy of mankind, they are a key component of the right to self-identity of a minority.¹⁷

The idea of identity is heavily influenced by how society validates it and the power dynamics in institutions. The marginalization of ethnic minorities in social, economic, and cultural spheres is largely tied to how institutions construct and reinforce certain identities through their discourse.¹⁸ The nature of the political system contains the seeds of further identity conflict due to unresolved issues related to ethnicity and minority rights in particular.¹⁹

When individuals lose their linguistic and cultural identity, they may also lose a vital aspect of social life. Therefore, the coerced cultural and linguistic assimilation of groups and communities not only infringes on their basic human rights but also weakens the overall preservation of global diversity.²⁰

Nowadays, protecting the minority's language plays a crucial role in preserving the minority's identity. It is believed that *"Linguistic... rights are central for maintaining and reproducing a minority group as a distinct group."*²¹

Article 12 of the below-discussed newly adopted Law of Ukraine on National Minorities (Communities)³¹ states that those who are members of national minorities (communities) have the right to protect and promote their identity, particularly their language identity.²²

¹⁶ D. Crystal, *Language Death*, p. 30-44.

¹⁷ R. Medda-Windischer, "The European Convention on Human Rights and Language Rights: Is the Glass Half Empty or Half Full?", p. 95.

¹⁸ M. Hussain, *Exclusion as Discursive Practice and the Politics of Identity*, p. 144-145.

¹⁹ C.D. Mac Giolla, *Language, Identity, and Conflict: a Comparative Study of Language in Ethnic Conflict and Europe and Eurasia*, p. 107-108.

²⁰ *The Handbook of Language and Globalization*, edited by N. Coupland, p. 88.

²¹ T. Skutnabb-Kangas, R. Phillipson, *Linguistic Human Rights: Overcoming Linguistic Discrimination*, p. 4-8.

²² Law of Ukraine on National Minorities (Communities), Art. 12.

Given that using the minority language as a medium of instruction is considered to be “*of central importance for the preservation of the language and tradition of the culture conveyed through it, to subsequent generations,*” the relationship between instruction in the mother tongue and the right to respect for the separate minority identity is rather strong.²³ When the values, culture, religion, and, most importantly, the language of minorities are appropriately represented in the curriculum, it is ensured that the majority also learns about the identity of the minority.²⁴

Even though it is believed that having a unique national identity and a feeling of belonging to a recognizable national community are crucial factors in promoting minorities’ solidarity, it is the presence of a distinct language and culture that is essential in expressing this minority self-identity.²⁵ Additionally, when national minorities reside closer to their ethnic centres (countries), they tend to develop a stronger sense of identity compared to other cases.²⁶

Therefore, the relationship between linguistic rights and the right to self-identity is indisputable, given that language is a unique aspect of minority life and a crucial component of their identity. If members of a minority are denied the right to education in their mother tongue or are treated unjustly in the sphere of education, there can be no possibility for the development of that minority’s linguistic consciousness. Thus, an important factor in assessing the position of members of minority groups with regard to their right to self-identify is educational policy.

²³ K. Henrard, ‘The European Convention on Human Rights and the Protection of the Roma as a Controversial Case of Cultural Diversity.’

²⁴ K. Henrard, *Minorities, identity, socio-economic participation and integration: About interrelations and synergies*, p. 19-72.

²⁵ F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, p. 254.

²⁶ *Ibid*, p. 261.

DOMESTIC LEGAL FRAMEWORK: LAWS OF UKRAINE

Before the introduction of the new Law on Education in 2017, national minorities in Ukraine had the right to learn all subjects in a minority language (their mother tongue), apart from the state language, Ukrainian. Schools were considered to be a haven for all cultures, promoting multiculturalism and educating loyal citizens of Ukraine. Unfortunately, many believe that the provision that ensured that right ceased to exist.

The Constitution of Ukraine clearly states that “*the free development, use and protection of the national minorities’ languages shall be guaranteed in Ukraine*” (Article 10).²⁷ It also states that “*citizens belonging to national minorities shall be guaranteed the right to education in their mother tongue in educational institutions at the central or local level or through national cultural societies.*”²⁸ At the same time, according to Article 22(3),²⁹ “*the content and purpose of existing rights and freedoms may not be diminished by the adoption of new laws or by amendments to existing laws*”.

However, the Ukrainian government implemented a system of “language quotas in education” through the adoption of the Law of Ukraine on Education (Education Law)³⁰ in 2017, which prohibits children of ethnic Romanian origin, as well as other minorities, from being educated in their native language in public schools. Regardless of criticisms from the European community and the minority members, the Law is still taken as a basis, which does not allow children of different ethnicities to study subjects in their own languages, although until 2017 it was possible. While education in the mother tongue is permitted in primary schools, “language quotas” established by the Education Law are enforced at the secondary and high school levels. By imposing them, more subjects are being taught in Ukrainian as a mandatory language rather than being offered as a choice, resulting in a reduction of education

²⁷ Constitution of Ukraine, No. 254к/96-BP, Art. 10.

²⁸ Constitution, *Ibid*, Art. 53 (5).

²⁹ Constitution, *Ibid*, Art. 22 (3).

³⁰ Law of Ukraine on Education, 2017.

in the mother tongue. The effect will be that less and less Romanian will be spoken among the members of the minority, which might result in some drastic results on the minority's self-identity.

The recently passed Law of Ukraine on National Minorities (Communities)³¹ (Minority Law) brings up the topic of contradictions and inconsistencies in the phrasing of national minority rights and freedoms, particularly those rights related to education. The Law was passed by the Ukrainian Parliament in order to start EU accession negotiations as soon as possible and to uphold national minority rights and freedoms in accordance with European standards.

In the preamble of the Minority Law, it is mentioned that the Parliament, through the Law, aims to achieve (ensure) “*the creation of equal conditions necessary for the realization, preservation and development of the heritage of language, culture, ethnic and religious specificity, ensuring their full development...*”.³² But how is that possible to envisage without providing education in their mother tongue? The preservation of national identity and the accomplishment of all the other goals outlined in the Law's preamble require learning in the mother tongue of a national minority.

Article 1 of the Minority Law declares that the state is responsible for guaranteeing equal rights to all individuals, including linguistic freedom, regardless of the ethnic identity of national minorities, in addition to other freedoms safeguarded by the Constitution.³³ And Article 5 specifies that, on the right to education, the right to “*education in the languages of national minorities*” is required.³⁴

Until now, I concur that the law has accurately specified the entitlements and freedoms of individuals who recognize themselves as part of national minorities. However, Article 11 of

³¹ The new Law on National Minorities (Communities) was adopted on December 13, 2022, and is currently in the process of entering into force, which will happen on July 1, 2023.

³² Law of Ukraine on National Minorities (Communities). Preamble.

³³ Law, *Ibid*, Art. 1.

³⁴ Law, *Ibid*, Art. 5.

the Minority Law³⁵ poses the most significant challenge because it simply states that education in the language of national minorities is regulated by the Article 7 of the Education Law and other related legal texts concerning the right to education rather than explicitly establishing or describing the right itself. In its turn, Article 7 of the Education Law stipulates that children of national minorities will be able to attend preschool and primary school in their native tongue while also learning the official language.³⁶ Currently, according to the Education Law, children are able to study in their native language, which is Romanian, only in kindergarten and elementary schools. But, as a result of the above-mentioned “language quotas”, children are required to learn the state language and the language of the national minority as a separate discipline beginning from the fifth grade.³⁷

The biggest indignation among Romanian minority members is caused by the education clause. Firstly, it fails beneath the standards set by the Ukrainian government, which is committed to protecting all national minority rights, including language rights.³⁸ Secondly, Ukraine’s efforts to recognize the linguistic rights of national minorities have long been condemned by the European community.⁴¹ Finally, because that language is one of the primary components of the national minorities’ identification, this legal provision paves the way for the elimination of the Romanian national minority’s self-identity.

Thus, the new Minority Law does not solve the problem of school education in the mother tongue but stipulates in Article 11 that education is regulated by the Education Law. In other words, the scope of linguistic rights offered to the members of the minority remains similar.³⁹ In reality, the Constitution already recognised all of the rights outlined in the new Law.

³⁵ Law, *Ibid*, Art. 11.

³⁶ Law of Ukraine on Education, Art. 7.

³⁷ Law, *Ibid*, Art. 7.

³⁸ Constitution of Ukraine, No. 254к/96-BP, Art. 11.

³⁹ M. Gherman, “The New Law on National Minorities in Ukraine, a Disappointment for the Romanian Community. The Problem of Mother Tongue Education, Unresolved”.

Correspondingly, the Law only depicts political and legal reality without changing it or making it better.

Overall, Ukraine's conduct in the field of protection of national minorities is conditioned by the Resolutions of the Committee of Ministers of the Council of Europe, adopted following Ukraine's transposition of the Framework Convention on National Minorities, and the Opinion of the Venice Commission (the 2017 Law on Education). The Venice Commission's Opinion,⁴⁰ which Ukraine appears to agree with, but is hesitant to implement, serves as the most striking illustration of this. And finally, the greatest dissatisfaction is evident in numerous surveys and questionnaires conducted among the local Romanian-speaking minority.

⁴⁰ Venice Commission Opinion on the Provisions of the Law on Education of 5 September 2017.

LEGAL CHALLENGES TO THE LAW⁴¹

The Education Law's provisions respecting the language rights of national minorities have received significant criticism, which sparked discussions in the Parliamentary Assembly of the Council of Europe (PACE). PACE immediately urged Ukraine to send the discriminatory provisions of the Law for review by the Venice Commission after recognising the Education Law of Ukraine constitutes "*a major impediment to the teaching of national minorities' mother tongue.*"⁴²

When concluding the Education Law's provisions, the Venice Commission argued that in order to fully implement Article 7 of the Law, Ukraine should use its flexibility when adopting implementing legislation, especially by continuing to ensure that a sufficient portion of minority language instruction is provided in primary and secondary schools. The Venice Commission also made several recommendations to Ukraine, which include ensuring a "*sufficient level of education in official EU languages*", "*increasing the quality of learning in the state language*", and "*ensuring that the application of the law will not jeopardize the preservation of the cultural heritage of minorities*",⁴³ etc.

In their analysis of the Education Law, the experts for the Commission expressed concerns that it would result in a diminution in the legal ability of people who are members of national minorities to study their mother tongues, which would interfere excessively with already-existing minority rights.⁴⁴

In its analysis of Article 7(1)(3) of the Education Law, which guarantees the right to education in a national minority's language in separate classes "*alongside the state language,*"

⁴¹ The chapter "*Legal Challenges to the Law*" elucidates the critical assessment faced by the Education Law within the context of the European Community.

⁴² M. Tovt, I. Chernichko, *New Principles of Linguistic Regulation in Ukraine in the Mirror of the Constitutional and Legal Analysis of the National Legislation and International Obligations of Ukraine.*

⁴³ Venice Commission, *Opinion on the Provisions of the Law on Education* of 5 September 2017, para 72, 100-101, 103.

⁴⁴ *Ibid*, para 83, 87.

the Venice Commission noted that this right could be carried out in a variety of ways and that the wording of the norm creates issues with clarity about how much primary education is to be bilingual.⁴⁵ Furthermore, the Commission also pointed out that Article 7(1)(6) of the Education Law, which grants people the right to study their mother tongue in secondary schools, lacks legal clarity.⁴⁶

In addition, the Commission stressed the significance of safeguarding national minority languages and preventing “excessive reduction” of the level of instruction in those languages.⁴⁷ It was indicated in the Opinion that Article 7 of the Education Law demonstrates the inability “*to strike a fair balance between the development of the state language and the preservation of the national minority’ linguistic rights*”, among other things, by the fact that it diminished the level of available protection.⁴⁸

Essentially, the Venice Commission emphasised the value of “*instruction in both the minority language and the state language,*” given that “*the amount of teaching is sufficient to guarantee a high degree of competency in the respective language.*”⁴⁹ It was highlighted that “*a sufficient proportion of instruction in minority languages at the elementary and secondary level*” is guaranteed, as well as that the respective national minorities be taught the EU official languages to a sufficient degree.⁵⁰

Moreover, considering the “Moldovan” language, the Venice Commission, in its Opinion on the Education Law, emphasized that the less favourable treatment of minority languages that are not EU official languages raises concerns in light of the non-discrimination principle.⁵¹ Now, when the Ukrainian government is still in the process of transitioning to the Romanian

⁴⁵ *Ibid*, para 62-67.

⁴⁶ *Ibid*, para 62-67.

⁴⁷ *Ibid*, para 86-95.

⁴⁸ *Ibid*, para 62-67.

⁴⁹ *Ibid*, para 62-67.

⁵⁰ *Ibid*, para 122-127.

⁵¹ *Ibid*, para 36,48.

language in the education process, it is essential to eliminate any discrimination to which thousands of pupils and teachers of schools with “Moldovan language” teaching are subjected and for the period of transition to the Romanian language, the application of equal treatment of schools with “Moldovan language” teaching in relation to schools with Romanian language teaching. Moreover, the Venice Commission, when making statements of the Article 7 of the above-mentioned Education Law, referred to the people who speak the “Moldovan” language as those “*who identify themselves as Moldovans, whose language is the same as the language spoken by the Romanian minority and, therefore, the official language of the EU.*”⁵² In this situation, since the language is the same (only it is called something else: Romanian or “Moldovan”), the application of the provisions of Ukraine’s laws in the school education system of this language group must be identical. In the reply of the Ministry of Foreign Affairs of Ukraine to the lawyer Yosif Chernushka (Annex 1) that schools with the “Moldovan language” will be treated in the same way as schools teaching in the Romanian language, according to the obligation assumed to respect the Opinion of the Venice Commission.

It is worth mentioning that Ukraine might have disregarded the Venice Commission’s earlier recommendations made to the Education Law. The recommendations and observations suggested were never implemented by the Ukrainian government, and no amendments to the Law were made. Since the Commission also insisted on conducting consultations with the minorities’ representatives and considering their will when adopting a new Law that directly involves them, this recommendation was also disregarded, and the Law was adopted without any discussions.⁵³ The Venice Commission emphasized this by citing Article 15 of the Framework Convention, which states that states must establish the necessary frameworks for individuals who are members of national minorities to effectively participate in public affairs,

⁵² *Ibid.*

⁵³ *Ibid.*, para 53.

particularly through consultations.⁵⁴ Moreover, the newly adopted Law on National Minorities (Communities) was never submitted for the Venice Commission to review. The request to prepare an opinion on the Law of Ukraine on National Minorities (Communities) was submitted by the Chairman of the PACE Monitoring Committee, and the Law will be reviewed on June 9-10, 2023.⁵⁵

Following the adoption of the Minority Law, the Romanian authorities expressed their concerns that the law was adopted in the absence of a new consultation of the Venice Commission, whose opinion would certainly have contributed to ensuring a comprehensive and clear text from the perspective of European legal standards in this field, and in the absence of adequate consultation of representatives of the Romanian community in Ukraine, as requested by the Romanian side.⁵⁶ Additionally, the Romanian side is convinced that the newly adopted Law “*affects the right of Romanian children in this country to learn in their mother tongue*”.⁵⁷ Apart from that, representatives from the Romanian government indicated that Ukrainians should take a political stance on the existence or non-existence of the Moldovan language in order to protect the rights and freedoms of the national minority.⁵⁸ The challenging connection with the Moldovan language will be explained in the next chapter.

The Romanian Ministry of Foreign Affairs was also equally concerned about the linguistic limitations brought on by the Education Law. The Ministry referred to the criteria of the Framework Convention for the Protection of National Minorities, which requires states to uphold the right to learn one’s mother tongue.⁵⁹

⁵⁴ *Ibid*, para 52.

⁵⁵ Request for Opinion, PACE / Ukraine.

⁵⁶ D. Vulcan, “Controversies of the New Ukrainian Law on Minority Education”, *Europa Libera Romania*.

⁵⁷ *Ibid*.

⁵⁸ M. Dinu, “Ukraine's New Minority Law Is Stirring up Discontent in Bucharest. How Experts Explain ANALYSIS,” *Adevarul.Ro*.

⁵⁹ Framework Convention for the Protection of National Minorities, Art. 10.

Moreover, Ukraine's national minority legislation revisions have become a "foreign policy disaster" because several of its neighbouring nations have complained to the OSCE and the Council of Europe about Article 7 of the Law, which they believe to be discriminatory.⁶⁰ Despite this, they are certain that the education reform in Ukraine is mostly advantageous.⁶¹ According to their perspective, what contributes to the contentious nature of Article 7 is the question of how Ukraine can establish a cohesive nation while disregarding its rich historical national diversity.⁶²

In addition to facing legal obstacles, representatives from Romania have raised several parliamentary inquiries to the European Commission. The latest enquiry focuses on the measures undertaken by the Commission to guarantee that Ukraine, as a candidate state, upholds the rights of the Romanian community and other minority groups.⁶³

⁶⁰ V. Saakov, N. Mekhed, DW, European media about the Ukrainian law on education.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ E. Tocmac, Question for written answer to the Commission, E-000454/2023, Rule 138.

LINGUISTIC RIGHTS OF A ROMANIAN NATIONAL MINORITY IN EDUCATION UNDER CHALLENGE: THE IMPACT OF LAW

The earlier chapters examined and identified the legal and policy challenges, along with their implications, arising from legislation regarding the education of national minorities. Nonetheless, in addition to these legal and policy challenges, the Romanian minority itself expresses its own set of concerns.

First of all, the members of the minority have referred to this law as “*anti-minority law*,” which caused numerous struggles for the minority and is extremely discriminating. Secondly, it provides for the transition of minority language schools to Ukrainian language teaching. It imposes the reduction of Romanian language teaching hours and the exclusion of Romanian literature from the teaching classes, replacing it with an integrated course of universal literature. As a result, it might (and practice demonstrates it does) discriminate against Romanian pupils since they are supposed to learn Romanian Literature as a part of the integrated Universal Literature course, while Ukrainian pupils benefit from separate courses in Universal and Ukrainian Literature respectively, taught to Ukrainian pupils from 5th grade onwards.

Why does this method of teaching undermine a national minority’s identity as well as have an adverse effect on children? According to research, minority language education is one of the most crucial and successful strategies for addressing minority students’ academic underachievement, especially when implemented over an extended period of time.⁶⁴ Moreover, the efficacy of learning a second language would be significantly increased by instruction in the mother tongue.⁶⁵ As a result, when the medium of teaching is their minority language, minority pupils’ capacity to learn the official language is also considerably increased. To maximise the cognitive development of the students in question, it is crucial that they get an

⁶⁴ J. Cummins, ‘Fundamental Psycholinguistic and Sociological Principles Underlying Educational Success for Linguistic Minority Students’, p. 22-30.

⁶⁵ D. August, T. Shanahan, *Developing Literacy in Second Language Learners*, p. 380-385.

education in their mother tongue.⁶⁶ Finally, minority students' emotional growth is hampered by a lack of instruction in their mother tongue, which has an influence on their academic performance as a whole, their access to further education, and, eventually, their ability to get access to better employment.⁶⁷

Experts in the minority education area state that such elimination is created due to the fact that this practice effectively annihilates the borders of the existing distinctive self-identity and threatens to obliterate Ukrainian Romanians over time.⁶⁸ Instead, children are denied the chance to study in their mother tongue during a crucial time for development and acquiring fundamentals – in schools. And as history proves, all it takes to annihilate a nation or nationality is to take away its language.

The Education Law, though, in the opinion of representatives of the Romanian national minority,⁶⁹ has a wide geopolitical scope because its principal objective is to “*denationalize*” the Romanian minority. Moreover, its main purpose is to create uniformity within the state with only one speaking language – Ukrainian. According to them, achieving this goal would be extremely risky and undermine the diversity that has long been fought for.⁷⁰ Additionally, it is contested that the Law creates the preconditions for the assimilation of all national minorities in Ukraine.

It should be noted that the primary argument offered by lawmakers and those who advocate for the further implementation of the Article 7 of the Education Law is that students who attend schools that teach in a minority language do not succeed on state exams required for admission to universities. Both members of national minorities and representatives of the

⁶⁶ T. Skutnabb-Kangas, *Bilingualism or Not: The Education of Minorities*, p. 118-119,

⁶⁷ K. Henrard, *Minorities, identity, socio-economic participation and integration: About interrelations and synergies*, p. 55-59.

⁶⁸ Brochure, “The Romanian Community in Ukraine during the War: Needs, Expectations, Challenges (Social Barometer),” p. 16-17.

⁶⁹ *Ibid*, p. 16-17.

⁷⁰ *Ibid*, p. 16-17.

Venice Commission emphasise that in this situation, the issue is with the quality of teaching of the official Ukrainian language in schools rather than with the general method of instruction in a national minority language.⁷¹ But the practice demonstrates otherwise. One of the many examples of the fallacy that minorities' children perform poorly in the state Ukrainian language exam is Loredana, a Ukrainian of Romanian descent who received the highest score in the exam.⁷² In the interview, she explained, that was primarily driven by the need to dispel the myth that "*children from Romanian-teaching schools cannot pass the test with excellent scores*".⁷³

Since Ukraine declared independence in 1991, surveys and questionnaires on how satisfied national minority representatives are with Ukraine's level of protection of their rights have been performed regularly. In 2011, researcher Aurelian Lavric performed one of these questionnaires with 25 participants in the Chernivtsi region.⁷⁴ 15 out of 25 respondents answered negatively when responding to the question of whether the rights of the Romanian minority are respected in terms of preserving and using their native language in society and exercising traditions and customs.⁷⁵ One of the respondents claimed that Romanians are generally not appreciated for their culture or language, stating that "*if you don't speak Ukrainian, you cannot open any doors*."⁷⁶ Two of the total number of respondents answered "partly", meaning that while traditions and customs are respected, the language is not.⁷⁷

The Chernivtsi Institute for Political Studies and Social Capital in September-November 2022 conducted a sociological study called "The Romanian Community in Ukraine: Needs, Expectations and Challenges during the War (Social Barometer)".⁷⁸ The primary goal of the project was to conduct a comprehensive, interdisciplinary analysis to determine the

⁷¹ Venice Commission, Opinion on the Provisions of the Law on Education of 5 September 2017, para 72, 98.

⁷² I. Kapush, "Ethnic Romanian from Bukovyna Passes Ukrainian Language Test with Maximum Score."

⁷³ *Ibid.*

⁷⁴ Lavric Aurelian, *Moldovan-Romanian minority in Ukraine: Current Problems and Prospects for Survival*.

⁷⁵ *Ibid.*, p. 62-63.

⁷⁶ *Ibid.*, p. 62-63.

⁷⁷ *Ibid.*, p. 62-63.

⁷⁸ Brochure, "The Romanian Community in Ukraine during the War: Needs, Expectations, Challenges (Social Barometer)," p. 3.

requirements and expectations of the Romanian minority in Ukraine.⁷⁹ The sociological survey's findings demonstrated that 92% of respondents, who are members of the Romanian national minority, speak the Romanian language in Ukraine.⁸⁰ In the context of the language issue, 80% of the minority of Romanian speakers in Ukraine responded that there are some minor or substantial issues in their daily lives connected to discrimination, particularly based on language.⁸¹ At the same time, 64% of members of the Romanian community in Ukraine mentioned that access to education in their mother tongue has been the biggest problem in the last 30 years, followed by the closure of newspapers, television and radio in the Romanian language.⁸² Moreover, Odesa and Transcarpathian respondents expressed a lack of access to information in their mother tongue, with 27% of them being cut off from the Romanian-language press in Ukraine.⁸³

While comparing those surveys conducted with a gap of 11 years, it can be observed that the members of the Romanian national minority still express feelings of being discriminated against on the basis of their language. Discrimination and disregard are felt both from the state and the society.

While the above-mentioned results demonstrate the opinions of the members of the minority, official representatives also voiced their concerns regarding the issue. Vasile Răuț, President of the Golgotha Society of Romanians in Ukraine, and Aurica Bojescu, President of the Bucovina Independent Centre for Current Research in Chernivtsi, both are sure that *“(t)he next generation will not know the language and will not be able to read and write, and their children’s children will not even use the language in their families”*, which is *“unacceptable in a democratic state.”*⁸⁴ All Romanian national minority representatives call for the same

⁷⁹ *Ibid*, p. 4.

⁸⁰ *Ibid*, p 3-5.

⁸¹ *Ibid*, p. 9.

⁸² *Ibid*, p. 9-10.

⁸³ *Ibid*, p. 8-9.

⁸⁴ BucPress, “Ukrainian Romanians Unhappy with Law on National Minorities.”

thing: to change Article 11 of the Law on National Minorities (Article 7 of the Education Law) to allow children to learn in their native Romanian language.

According to an open letter from the Romanian national community in Chernivtsi,⁸⁵ Article 7 of the Law on Education contains clauses that conflict with Articles 10, 22, 23, and 53 of the Ukrainian Constitution⁸⁶ and call for the linguistic assimilation of ethnic minorities. The minority earlier even demanded to veto the law, calling it unconstitutional. The Romanian community contends that the law contradicts Ukraine's international obligations and the Constitution provisions, depriving national minorities of the right to study in their mother tongue.⁸⁷

In the context of the linguistic challenges of the Romanian national minority in Ukraine, it is also worth mentioning its indisputable connection with the so-called Moldovan language.⁸⁸ Up until the beginning of March 2023,⁸⁹ the Moldovan language was the official language of the Republic of Moldova. Moldovan language is recognized as a Romanian dialect spoken in North-Eastern Romania, the Republic of Moldova, and small areas of Ukraine (Chernivtsi and Odesa regions).⁹⁰

Although this may look quite unusual and may even appear that the Moldovan government is eradicating their language with its own hands, the Moldovan language does not exist in reality. It is an artificial term or an artificial "language" that was created in the Soviet Union to split the country in half.⁹¹ First of all, from a linguistic point of view, there really is

⁸⁵ RBN, "Romanian Community in Ukraine: Open Letter to the President of Romania, Klaus Werner Iohannis, to Urgently Intervene in the Situation Created Around Romanian Language Schools."

⁸⁶ Constitution of Ukraine, No. 254к/96-BP, Art. 10, 22-23, 53.

⁸⁷ *Ibid.*

⁸⁸ The Chapter "Linguistic Rights of a Romanian National Minority in Education under Challenge: the Impact of the Law" describes how "Moldovan" and Romanian languages are interconnected and the part that the "Moldovan language" plays in the current situation.

⁸⁹ Since March 24, 2023, the Republic of Moldova officially replaced "Moldovan language" with "Romanian language" in all Moldovan laws, including the country's Constitution, therefore making the Romanian language the state language. As Romanian is one of the EU's official languages, this was done to bring Moldova closer to membership in the Union.

⁹⁰ M. H. Ciscel, *A Separate Moldovan Language? The Sociolinguistics of Moldova's Limba de Stat*, p. 575-597.

⁹¹ *Ibid.*, p. 575-597.

no “Moldovan language based on the Latin script” (which is how the Constitution of Moldova defined the state language until recently).⁹² The language spoken in this region for centuries is called Romanian. Secondly, over time, the Romanian government has made several requests to the Ukrainian authorities to stop acknowledging Moldovan as a distinct language from Romanian. According to Bucharest, the Moldovan/Romanian differentiation is a fabricated and ideological concept created by the propaganda of the Soviet Union to create divisions between communities that share the same language and culture.⁹³ At the same time, it is one of the languages recognized by Ukrainian laws as a minority language. The Ministry of Education still issues textbooks, curricula, etc., and children are being given certificates in a language that no longer exists, which creates problems for further education. Moreover, the Cultural Association “Bassarabia” of Romanians from Odesa identified several cases of minority members whose applications for enrolment at Romanian universities were rejected because their graduation diplomas were issued by schools with the Moldovan language of conduct.⁹⁴ This and many other cases prove that the replacement of the “Moldovan” language by Romanian might help Romanians in Ukraine since such problems will cease to exist. (Annex 3) However, the other side of the problem is that while sharing the same language with Romanians, Ukrainian Moldovans are also subject to a discriminatory law. It is sufficient to eventually admit and officially recognize that Romanian is the language of the Moldovan minority.

It should be noted that authorities from Ukraine committed to implementing its recommendations regarding the new Education Law. In reality, appeals for the unification of the Romanian Language and Literature curricula, as well as the use of the accurate language

⁹² Constitution of the Republic of Moldova, Art. 13 (1).

⁹³ S. Constantin, ECMI Minorities Blog. “Romanians and Moldovans in Ukraine and their kin states’ engagement before and after the war – towards a triadic partnership for effective minority protection?”

⁹⁴ *Ibid.*

name in educational settings in Romanian-speaking regions, have been made repeatedly in the last twenty years. However, there has never been a decisive resolution to these requests.

Evidently, no one denies the importance of learning and knowing the state Ukrainian language. The state is authorized to impose restrictions on the use of other languages, including minority ones, if they start to predominate in order to safeguard and promote the official language. In the abstract, it is challenging to distinguish between when these constraints are appropriate and when they are not. The Ukrainian authorities will not improve the status of the Ukrainian language in society by artificially replacing the languages of national minorities through the law but will instead alienate a sizable portion of the population from the Ukrainian state. Correspondingly, no one is addressing how crucial it is for the maintenance of democracy and statehood that national minorities exist and maintain their identity within the borders of a state. One of the most crucial issues is the need to protect the rights and liberties of national minorities while preserving their self-identity. This is especially true for Ukraine, which is currently on the route to European integration.

But we can understand the level of frustration when we look at the legislation to see how the problem of access to mother-tongue school education is solved. Together with other minorities, the Romanian minority in Ukraine believed that this law would change the Education Law by reintroducing the option of studying all subjects of instruction in the mother tongue, except for the Ukrainian language and literature. These aspirations require looking into the standards of the Council of Europe and the case law of the European Court of Human Rights (ECtHR).

COMPLIANCE WITH NATIONAL MINORITIES' LINGUISTIC RIGHTS IN THE COUNCIL OF EUROPE: STANDARDS AND CASE LAW

The Council of Europe (CoE) has adopted several human rights documents that acknowledge the language rights of minority groups. Additionally, the CoE promotes the recognition of linguistic identity as an integral aspect of the cultural self-identity of any national minority.⁹⁵

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) neither guarantees specific language rights nor rights that are peculiar to minorities. The only mention of minorities in the ECHR is found in Article 14, which provides the right not to be freely discriminated against on the basis of, among other things, language and membership in a national minority, but only in the exercise of other Convention rights.⁹⁶

Even though the ECHR does not specifically address the rights of national minorities and education, Protocol No. 1 to the ECHR includes a provision for the right to education under Article 2.⁹⁷ The article discusses the importance of upholding democratic principles and ensuring that children have the right to receive an education that aligns with their beliefs.⁹⁸ In order to exercise the national minorities' right to education in their mother tongue, both Article 14 of the ECHR and Article 2 of the Protocol No. 1 have to be applied. In fact, the guarantee outlined in Article 14 lacks autonomous existence since it does not prohibit discrimination but solely discriminative practices impeding the enjoyment of "the rights and freedoms" established in the Convention.⁹⁹ The Court has consistently emphasized that Article 14 serves as a supplementary provision always construed in conjunction with the other substantive provisions contained therein.¹⁰⁰

⁹⁵ J. Groof, G. Laurens, 'Education Policy and Law: The Politics of Multiculturalism in Education', p. 9-19.

⁹⁶ R. Medda-Windischer, 'The European Convention on Human Rights and Language Rights: Is the Glass Half Empty or Half Full?' p. 96-97.

⁹⁷ ECHR, Protocol No. 1, Art. 2.

⁹⁸ *Ibid*, Art. 2 (3).

⁹⁹ ECHR, Guide on Article 14, p. 67.

¹⁰⁰ *Ibid*, p. 67.

For instance, the ECtHR, when reviewing the interpretation of Article 14 in the *Belgian Linguistic case*, established that prohibiting children who speak French as their first language and live in a Dutch-speaking area from attending French-language classes was unjustly discriminatory and lacked a legitimate aim as it was motivated exclusively by language-based factors.¹⁰¹ It was decided by the Court that the right to education would be meaningless if it did not include the right of those who benefit from it to receive education in their national language.¹⁰²

In the *Adam and Others v. Romania* case, which involved claims of discrimination against national minority students taking their final high school exams in their mother tongue, the ECtHR observed that there was a growing international consensus among CoE member states to acknowledge the unique requirements of minority groups and to safeguard their security, identity, and lifestyle.¹⁰³ Moreover, in this case, the Government argued that pupils could choose their language of instruction, and there was no obligation for an ethnic [Hungarian] to go to a school where the teaching was in that language.¹⁰⁴ In this case, the government's position is similar to that of Ukraine, as the government recognises that the students' decision to receive education in their mother tongue was not unchallenged.¹⁰⁵ Consequently, this required appropriate responsibility and decisive action on the part of the government to assess the language skills achieved by these students.¹⁰⁶

Another ECtHR case, *Cyprus v. Turkey*, concerned the violation, among others, of the right to education of the Greek Cypriots due to the absence of appropriate secondary-school facilities in their native language, according to Article 2 of Protocol No. 1.¹⁰⁷ Therefore, ECtHR

¹⁰¹ *Ibid*, para 32.

¹⁰² *Ibid*, § 3, p. 31.

¹⁰³ ECtHR, *Adam and others v. Romania*, para 70.

¹⁰⁴ *Ibid*, para 76.

¹⁰⁵ *Ibid*, para 80.

¹⁰⁶ *Ibid*, para 80.

¹⁰⁷ ECtHR, *Cyprus v. Turkey*.

ruled that shutting down Greek-language schools in Turkey breached the essential essence of the right to education, as it involved depriving individuals of the core of this right.¹⁰⁸

Therefore, it may be inferred that shutting down schools that teach in Romanian in Ukraine may pose a genuine threat to the language and self-identity of this minority group. However, the lack of a distinct stipulation regarding the rights of national minorities within the framework of the ECHR implies that the CoE does not attribute significant priority to addressing these rights. Considering the ECtHR's interpretation of Article 2 of Protocol No. 1 in the above-mentioned cases, the right of a national minority to receive education in their native language would be rendered meaningless if it does not benefit the group's members. Children's education, according to the ECtHR in the *Campbell and Cosans case*, is the complete process through which beliefs, culture, and other values are passed from the older generation to the young in any society.¹⁰⁹ Thus, it may be argued that Romanian-language schools play a crucial role in preserving Ukraine's historical heritage and should be sustained.

According to the Framework Convention for the Protection of National Minorities (FCPNM), states must “*protect the ethnic, cultural, linguistic, and religious identity of national minorities on their territory.*”¹¹⁰ The Advisory Committee, while interpreting Article 14(2) of the Convention, indicated that national minorities should be afforded the chance to access education in their native language, provided that there is substantial demand for it in regions where members of such minorities reside, either traditionally or in significant numbers.¹¹¹

By ratifying the FCPNM, Ukraine committed to recognising the right of every member of a national minority to learn their minority language Article 14(1) and to make efforts “*to ensure, as far as is practicable and within the framework of the education systems, that persons*

¹⁰⁸ *Ibid.*, para 275.

¹⁰⁹ ECtHR, *Campbell and Cosans v. the UK*, para 33.

¹¹⁰ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, para 33.

¹¹¹ Fifth Periodic Report of Ukraine on Implementation of FCPNM, p. 87-90.

belonging to those minorities have adequate opportunity to learn their own languages."¹¹² The FCPNM includes a periodic monitoring mechanism conducted by the Advisory Committee every five years.¹¹³ The purpose of this monitoring system is to evaluate the implementation of the Convention in participating countries.¹¹⁴ The findings from this monitoring process generate recommendations aimed at enhancing the safeguarding of minority rights and serve as guidance for the Committee of Ministers in formulating its resolutions.¹¹⁵

The European Charter for Regional and Minority Languages is another significant instrument for the linguistic rights of national minorities.¹¹⁶ According to Article 8 (c)(i, ii), the State has to guarantee secondary education in the relevant minority languages or make available a substantial part of secondary education in the minority language, or teach minority languages as an integral part of the curriculum.¹¹⁷ Moreover, Article 8 of the Charter confines the safeguarding of regional or minority languages to the specific geographic region where these languages have traditionally been spoken.¹¹⁸

Unfortunately, Ukraine has experienced a significant shift in its stance regarding the safeguarding of rights for national minorities since the adoption of the Education Law in 2017.¹¹⁹ This change is marked by a deviation from the proclaimed and upheld principles and goals outlined in the FCPNM. An examination of Ukraine's domestic laws reveals its failure to adhere to the fundamental criteria outlined in the FCPNM, notably including the prohibition of

¹¹² Venice Commission, Opinion on the Provisions of the Law on Education of 5 September 2017, para 32.

¹¹³ C. Furtado, 'Guess Who's Coming to Dinner - Protection for National Minorities in Eastern and Central Europe under the Council of Europe', p. 364.

¹¹⁴ *Ibid.*, p. 364-365.

¹¹⁵ L. Baillie, 'Protection of Religious Minorities in Europe: The Council of Europe's Successes and Failures', p. 629-630.

¹¹⁶ European Charter for Regional and Minority Languages (ECRML).

¹¹⁷ ECRML, Article 8(c)(i,ii).

¹¹⁸ ECRML, Article 8.

¹¹⁹ *Public discussion of Ukraine's Fifth Periodic Report on the implementation of the Council of Europe's Framework Convention for the Protection of National Minorities.*

discrimination and the guarantee of equal opportunities, particularly within the realm of education.¹²⁰

The significance of the CoE's language rights standards for national minorities cannot be overstated in Ukraine's efforts to combat discrimination and uphold the rights of minority languages. The implementation of these standards would facilitate Ukraine's transition from a trajectory of mistreatment of national minorities to a trajectory of impartial safeguarding of their rights.

¹²⁰ FCPNM, Art. 4.

CONCLUSION

It can be concluded that language rights as a part of the self-identity of the national minority are vulnerable and could be easily taken away or cancelled depending on the supporting ideology or government. Even though linguistic rights are fragile, the legal system can be an effective means for minorities to plan and shape language policies. If a state only allows the use of an official language in public education, it could be considered discriminatory if the disadvantages faced by linguistic minorities are deemed unreasonable compared to the advantages enjoyed by others. Breach of linguistic human rights, particularly in the field of education, has the potential to result in both conflicts driven by ethnic divisions and a decrease in linguistic and cultural diversity, and in fact, has done so in the past.

The Ukrainian government and society continue to face a particularly difficult task regarding language policy for national minorities. The politicised and geopolitical nature of the language challenge in Ukraine has had a detrimental effect on intersocietal trust, faith in governmental institutions, as well as individual respect among members of society.

The most contentious provisions of the new Law on National Minorities (Communities) and the Education Law, particularly those related to education, are highly likely to be amended in the near future since Ukraine is on the path to EU accession. However, this does not imply that all issues will be resolved, as it would be only a temporary political solution, while the sociolinguistic challenges would persist and recur over time.

My personal experience of being a part of the Romanian national minority in Ukraine became an invocation to develop this advocacy strategy in order to demonstrate what the members of the minority encounter in their daily life. This has acted as an impetus for creating and suggesting amendments to the existing laws that provide guarantees for the linguistic rights of national minorities.

The legislative amendments I suggest are meant to reinforce current requirements while also establishing preconditions for the state's language policy towards national minorities. Both my recommended revisions to the law and those made by members of the Romanian national minority will be included in the table.

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ANNEXES

Annex 1

Ministry of Foreign Affairs
of Ukraine
Mykhailivska Square, 1
Ukraine, Kyiv, 01018
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EDRPOU code 00026620
mfa.gov.ua

Y.I. Chernushka
58000, Ukraine, Chernivtsi
B. Khmelnytskoho str., 3/2

*Regarding legal aid to the Association of Teachers
of Ethnic Romanians in Odesa region*

Dear Yosif Ivanovych!

In response to your lawyer's request dated 25.05.2021 No. 25/05-21, the Ministry of Foreign Affairs of Ukraine, within its competence, informs you of the following:

The Ukrainian side adheres to the Venice Commission Opinion (European Commission for Democracy through Law) on the provisions of the Law of Ukraine "On Education" of 5 September 2017 regarding the use of the State language and minority languages, as well as other languages in education.

Paragraph 48 of the Opinion states, in particular: *"It is worth mentioning the special situation of persons identifying themselves as Moldovans, whose language is the same as the language spoken by the Romanian minority and is, therefore, an official language of the EU."*

The Final and Transitional Provisions of the Law of Ukraine "On Education" (subparagraph 19 of paragraph 3 of Section XII) stipulate that national minorities of Ukraine, whose languages are official languages of the European Union and who started receiving general secondary education before 1 September 2018 in the language of the respective national minority until 1 September 2023, continue to receive such education in accordance with the rules that existed before the entry into force of this Law, with a gradual increase in the number of subjects studied in Ukrainian (clause 3 of section XII supplemented by subclause 19 in accordance with the Law of Ukraine "On Ensuring the Functioning of Ukrainian as the State Language").

In its turn, the Ministry of Foreign Affairs and European Integration of the Republic of Moldova officially informed the Ukrainian side that the educational process in Moldova is conducted in Romanian and requested that in the process of implementing the Law of Ukraine "On Education" *"to provide schools where the educational process is carried out in the 'Moldovan language' with conditions and opportunities similar to those provided to schools where the educational process is carried out in the Romanian language."*

In accordance with the conclusions of the Venice Commission, the Moldovan language is treated as an official language of the EU, in particular, in terms of the transitional period until 1 September 2023 for the continuation of education in the language of this national minority in accordance with the rules that existed before the entry into force of the Law of Ukraine "On Education".

Director of the Second Territorial Department

Vasyl ZVARYCH

STATE LANGUAGE PROTECTION COMMISSIONER

Muzeinyi Lane, 12
 Kyiv, Ukraine, 01001,
 tel. (044) 256-60-84,
 e-mail: info@mova-ombudsman.gov.ua,
 site: <https://mova-ombudsman.gov.ua>

To the lawyer
 Yosif Chernushka
 B. Khmelnytskoho str., 32
 Ukraine, Chernivtsi, 58000

Dear Mr Chernushka!

I, as the Commissioner for the Protection of the State Language, have considered your request dated 07.07.2021 No. 07/07-21, which was received and registered at the Secretariat of the Commissioner for the Protection of the State Language under inc. No. ЧЕ-1577 dated 13.07.2021, to provide information on the language regulator of the Romanian and Moldovan languages in Ukraine. Within the limits of my authority, I hereby inform you of the following.

Article 19 of the Constitution of Ukraine stipulates that state and local authorities and their officials are obliged to act only on the basis, within the limits of their powers and in the manner provided for by the Constitution and laws of Ukraine.

The legal status of the Commissioner for the Protection of the State Language is defined by The Law of Ukraine “On Ensuring the Functioning of Ukrainian as the State Language” (the “Law”).

Paragraphs 1 and 2 of part two of Article 49 of the Law stipulate that the tasks of the Commissioner for the Protection of the State Language are to protect Ukrainian as the state language and to protect the right of Ukrainian citizens to receive information and services in the state language in the spheres of public life throughout Ukraine and to remove obstacles and restrictions on the use of the state language.

The Commissioner provides explanations on the application of the law. The Law does not provide for the Commissioner to provide explanations on the application of the law.

Regarding the issue raised in your request, I would like to inform you that I, as the Commissioner, or the Commissioner’s Secretariat, have no information that the exercise of functions or powers of the regulator in relation to languages other than the state language in Ukraine falls within the powers or competence of any state authority, local self-government body, official or employee, enterprise, institution, including scientific institutions, or organisation.

State Language Protection Commissioner

Olga Boyko 0442931171

Taras KREMIN

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Dear Yosif Ivanovych!

Regarding the lawyer's request

In response to your lawyer's request dated 01.10.2021. No. 01/10-21 and in addition to letters dated 02.06.2021 No. 660/36-091-36896 and 06.07.2021 No. 918-091-46795, the Ministry of Foreign Affairs of Ukraine, within its competence, informs the following.

Ukraine is implementing the provisions of the Opinion of the Venice Commission (European Commission for Democracy through Law) on the provisions of the Law of Ukraine "On Education" of 5 September 2017 regarding the use of the state language and minority languages, as well as other languages in education.

Paragraph 48 of the opinion states, in particular: "It is worth mentioning the special situation of persons identifying themselves as Moldovans, whose language is the same as the language spoken by the Romanian minority and is, therefore, an official language of the EU".

The Final and Transitional Provisions of the Law of Ukraine "On Education" (subparagraph 19 of paragraph 3 of Section XII) stipulate that national minorities of Ukraine, whose languages are official languages of the European Union and who started receiving general secondary education before 1 September 2018 in the language of the respective national minority until 1 September 2023, continue to receive such education in accordance with the rules that existed before the entry into force of this Law, with a gradual increase in the number of subjects studied in Ukrainian (clause 3 of section XII supplemented by subclause 19 in accordance with the Law of Ukraine On Ensuring the Functioning of Ukrainian as the State Language").

In turn, the Ministry of Foreign Affairs and European Integration of the Republic of Moldova, in a note to the Ministry of Foreign Affairs of Ukraine dated 7 April 2021 No. DB/3/220.1-3309 expressed the expediency of "providing the Ukrainian authorities with conditions and opportunities similar to those provided to schools where the educational process is carried out in the "Moldovan language" in the process of implementing the Law of Ukraine on Education".

At the same time, the Ministry of Foreign Affairs of Ukraine, within its competence, does not have information on the procedure for the practical implementation of the relevant acts in the educational process of Ukrainian schools.

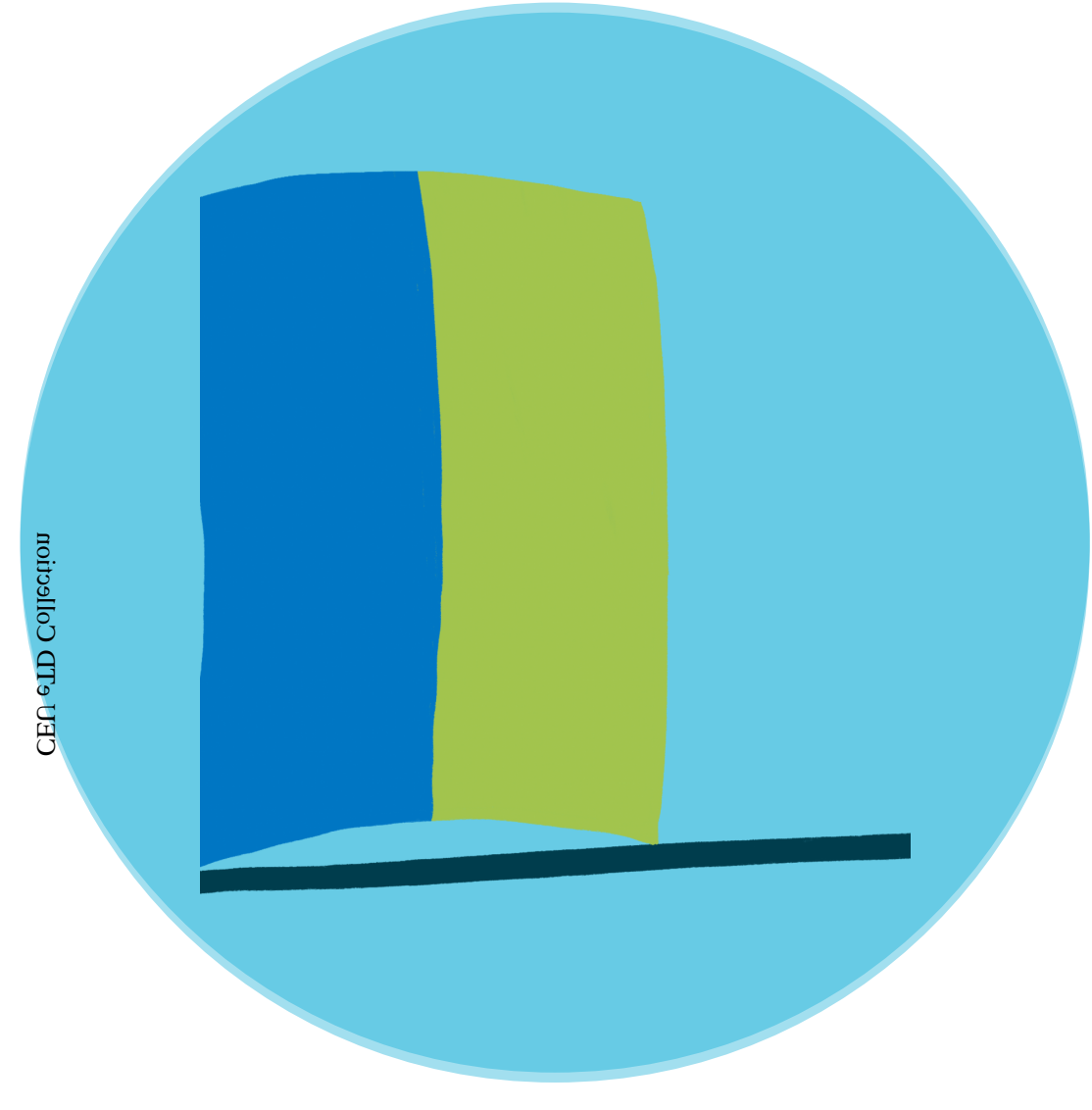
In this regard, we would like to suggest seeking clarification on the specific issues you addressed from the Ministry of Education and Science of Ukraine.

Director of the Second Territorial Department

Vasyl ZVARYCH

The above-mentioned documents (Annexes 1, 2, 3) were provided by **Eugen Patraș - historian, lawyer, PhD in Public International Law. I was given full consent and permission by **Eugen Patraș** to use documents in my Capstone Thesis research project.*

AMENDMENTS TO ARTICLE 7 OF THE LAW OF UKRAINE ON EDUCATION OFFERED BY THE ROMANIAN NATIONAL MINORITY



According to the Romanian national minority, the suggested text does not incorporate the right to education in their native language, which essentially disregards and nullifies the constitutional assurance of the right to education in the mother tongue.

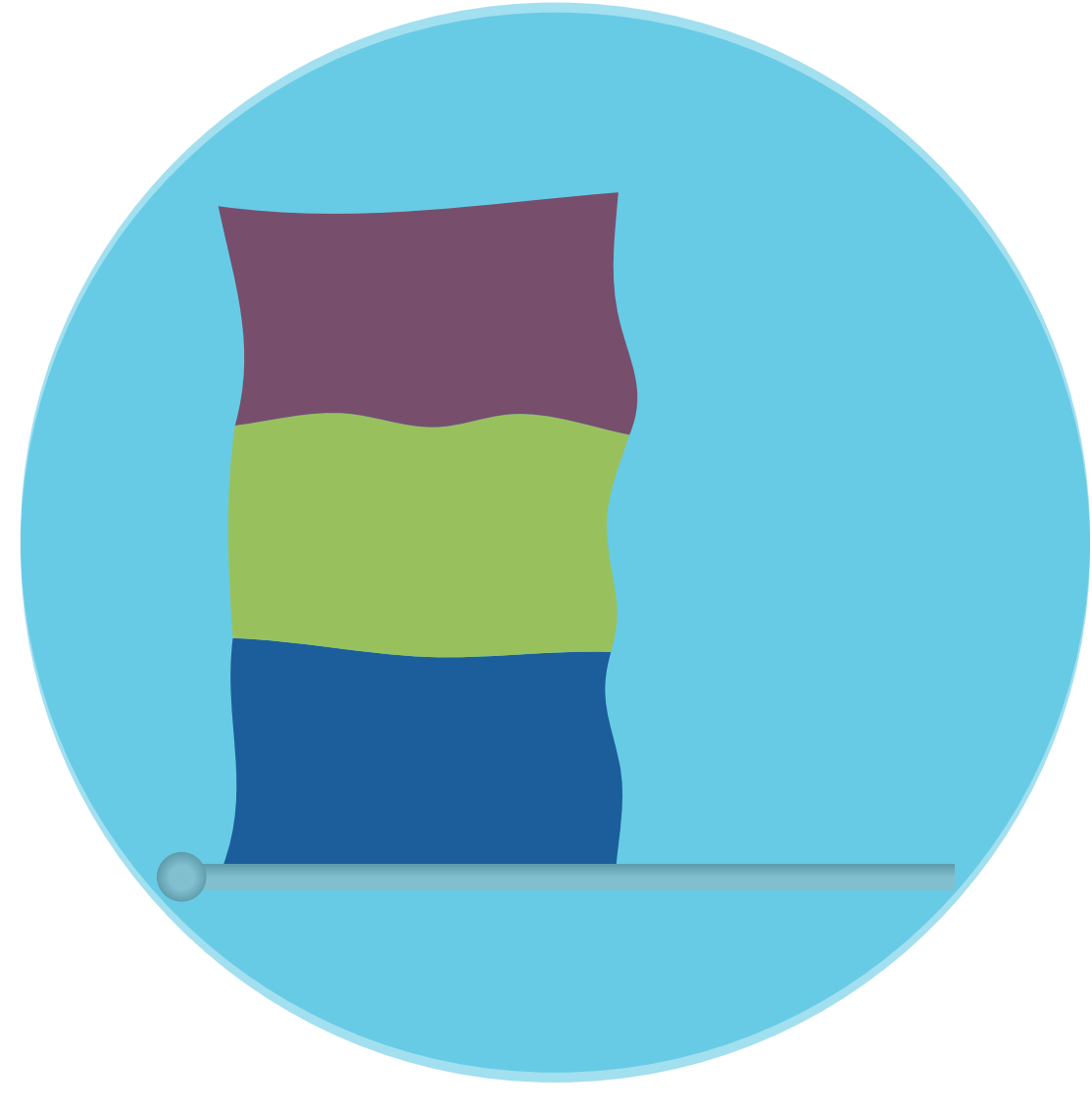
Furthermore, this justification is based on a provision of the Law of Ukraine on National Minorities (Communities) rather than a clause in the Ukrainian Constitution or a provision of any international treaty.

In relation to the proposed regulation of the right to education, members of national minorities have reason to argue that the law is an attempt to infringe on the rights of these minorities to receive education in their mother tongue, which is protected by the Ukrainian Constitution and international treaties. It is also a violation of their right to education in their native language, which is currently being practised through the implementation of the above-mentioned “language quotas in education”.

Moreover, as per members of the Romanian national minority, not learning in their native language, but doing it through the national cultural societies is a violation of their fundamental rights, mentioned in the Constitution of Ukraine and the European Charter for Regional and Minority Languages.

Therefore, the representatives of the Romanian national minority have reached a consensus that schools should be granted autonomy to decide whether to teach in the mother tongue or not. They suggest setting minimum requirements for learning the state language (Ukrainian) and prioritizing the improvement of the quality of teaching the state language instead of increasing the number of hours allocated for its teaching.

To ensure that the state has oversight over the proficiency level of national minority representatives in the state language and its teaching, the proposal suggests setting up periodic (semester) inspections by an independent body that will monitor and record relevant measures.



AMENDMENTS TO ARTICLE 7 OF THE LAW OF UKRAINE ON EDUCATION OFFERED BY ME

Promoting the growth of all national languages and treating them equally is essential for cultural development and social harmony. Protecting the rights of national minorities and improving the education system can help achieve this.

First of all, all the alleged amendments to the Law of Ukraine on Education and therefore to the Law of Ukraine on National Minorities (Communities) have to be implemented according to the existing European standards, like the European Charter for Regional and Minority Languages. Creating a monitoring body can ensure these standards are upheld.

To safeguard minority language rights, certain provisions in Article 7 of the Education Law should be exempted for regions where a minority language is spoken. These exemptions should be based on decisions made by the local council to promote the use of minority languages. In these areas, educational institutions should use both the official language and the minority language as the languages of instruction.

All citizens of Ukraine, including minorities, should have access to formal education at all levels in their native language. This should be provided by state and municipal educational institutions in regions where the minority language is spoken, with support from the local council.

To strengthen language rights, it is suggested that national minorities have the right to education in their native language at all levels, including vocational and higher education. This would expand their language rights significantly.

To avoid potential threats to public order and state security, and to prevent crimes that undermine national security, it is proposed to make amendments to existing legislation. This proposal is a response to recent events that have raised concerns about collaboration and other activities that pose a risk to the security and stability of the state. The amendments aim to address these issues and strengthen the legal framework to ensure the safety and security of the country.

To ensure the rights of individuals from different ethnicities and nationalities, a clear definition of “national minority language” and a register of national minorities residing in Ukraine should be included in the legislation.

Hence, the proposed solution is to rephrase Article 7 as: **“Individuals who belong to national or ethnic minorities in Ukraine are assured the right to receive preschool and basic secondary education in the state and communal educational institutions, using the language of their respective national or ethnic minority, in addition to the state language.**

The individual should have the freedom to exercise their right to pursue education in either the state language or a national minority language.

A minimum of three study hours per week in a primary school must be dedicated to the study of the state language. In the secondary school, five study hours per week must be dedicated to the study of the state language.”